

DESERTION AND THE MILITARIZATION OF QING LEGAL CULTURE

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By

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ABSTRACT

I use the adjudication of military campaign deserter cases (*congzheng taobing* 從征逃兵) from the armies of the late Ming Dynasty (1368-1644) and Qing Dynasty (1644-1912) up through the mid-eighteenth century as a category of analysis to understand the origins of militarizing tendencies in eighteenth-century Qing legal culture. This approach reveals the incorporation into late imperial *legal* culture of militarized adjudication (*yi junfa congshi* 以軍法從事), a discipline-focused, autonomous and harsh mode of adjudicating cases during military campaigns that had long-existed within late imperial *military* culture.

Both military and legal cultures existed within the wider social and political cultures yet were further shaped by their respective institutions, associated-persons, activities, and objectives. The most prominent intersection between the two was the emperor, who served as the highest authority within both. Faced with significant military-operational failures during the early frontier campaigns of his reign, the Qianlong emperor (r. 1735-1798) came to identify lack of military victory with military indiscipline and further identified this lack of discipline with the structural leniency that was part of the routine criminal adjudicative process. His solution was to reconfigure the long-standing authority of militarized adjudication as part of the routine adjudicative process for certain “extraordinary (*fei xunchang* 非尋常)” cases. This resulted in

entire categories of criminal cases' being marked for summary execution, starting primarily with cases that directly affected military operations and occurred on the frontier but later expanding to cases involving public disorder and particularly heinous crimes.

Given his imperial vantage point and authority over both military and legal cultures, the emperor's emphasis on militarized adjudication served as the most significant catalyst working on multiple short and long-term processes that formed the cultural origins of an increase of militarized adjudication during this period. For affected cases, these militarizing tendencies in legal culture resulted in truncated legal analysis and an increased number of summary executions beginning in the mid-eighteenth century.

Pursuant to an eighteenth-century adjudicative discourse that recognized the imperial standard (*wangmingpai* 王命牌) as constructively representing the emperor's will – his authorization – to execute an offender, summary execution spread from the institutional-military context and frontiers to heinous and public-disorder cases within the interior. Attempts from the center to conform the judgement of adjudicating officials to the imperial will led to codification efforts which further legitimized summary execution. Over time, imperial-standard summary executions were written into the Code as fully legitimate law. Increasingly, adjudicating officials experienced a change in adjudicative *mentalité* that condoned summary execution in “extraordinary” circumstances. No longer would summarily executing a man without the emperor's knowledge be taboo. This change in *mentalité* constituted an important legal-cultural origin for the proliferation of nineteenth-century on-the-spot summary executions (*jiudi zhengfa* 就地正法). Thus for the first time, this dissertation adds a legal-cultural link between the eighteenth-century and the militarization of nineteenth-century Qing society.

Dedication

I owe an enormous debt of gratitude to all those who have helped and guided me along the way in writing this dissertation. My advisor, Jim Millward, took a chance on a rather unconventional student. I thank him for opening up to me the vast frontier of Chinese history. Carol Benedict's patient guidance and meticulous attention to detail have made me a far better writer and historian. Micah Muscolino provided the initial suggestion of the topic of desertion and has consistently provided honest critique and friendship. Matthew Sommer sat on my dissertation committee and provided many deeply-insightful comments that helped me rethink portions of this dissertation. Jim Feinerman served on my comps committee and introduced me to the world of modern Chinese law. My friend Chiu Pengsheng has, since the beginning, been a consistent source of support and intellectual comraderie. Dr. William Volke, the entire Fulbright-Taiwan staff, and the Academia Sinica Institute of History and Philology made my year of research in Taiwan and China so incredibly fruitful. I miss the "beautiful island." I am grateful to Renmin University's Zhang Shiming 張世明 whose influence on this dissertation will be obvious to those who know his research. I owe a lifelong debt to my mentor and first Chinese teacher, Dr. Martha Gallagher – Wang Laoshi 王蒞文老師. Wang Laoshi, I would never have thought of diving into Chinese history and certainly would never have been able to read any of the original sources if not for your relentless commitment to turn a seventeen-year-old cadet into a scholar. In your more than two decades at West Point, you have been the real thing, a fine human being and a true patriot.

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List of Abbreviations

- DC. Di Chao 邸抄 (Court Bulletin) Beijing: Beijing tu shu guan chu ban she, 2004.
- DGIF. *Daicing gurun i fafun i bithe kooli i uheri hacin* (The Qing Code [Manchu version]) (1768). Rare Books, East Asian Reading Room, Library of Congress, Washington, D.C.
- DLCY. Xue Yunsheng 薛允升. *Du Li Cun Yi* 讀例存疑 [Lingering Doubts after Reading the Substatutes], edited and Punctuated by Huang Jingjia 黃靜嘉. Taipei: Chinese Materials and Research Aids Service Center, 1970 [1900]. Most of the citations in this dissertation utilize the electronic version edited by Dr. Terada (寺田浩明) and available at http://www.terada.law.kyoto-u.ac.jp/index_cn.htm.
- ECCP. Arthur W. Hummel, *Eminent Chinese of the Ch'ing Period*. Taipei: SMC Published, 2002 [1947].
- IHP-JBZL. The Biographical Portal (*jiben ziliao* 基本資料) maintained by Institute of History and Philology. Tapei. Academia Sinica. Unless otherwise noted in the footnotes, all biographical information in this dissertation comes from this source.
- LFYTB. *Qingchao qianqi lifanyuan manmengwen tiben* 清朝前期理藩院滿蒙文題本 (Routine Manchu and Mongol language memorials from the Lifanyuan from the early Qing period), compiled by Guanbu Zhabu and Wang Chihua. Vol. 1. Beijing: First Historical Archives.
- LFZZ-FHA. Palace Memorials (Copies, *lufu zouzhe* 錄副奏摺). Microfilm collection published by the First Historical Archives and held at the Fusinian Library of the Institute of History and Philology at the Academy Sinica. Documents identified by roll and page, as well as additional identifying information.
- MGLL. *Menggu Lüli* (QL 54), in *Zhongguo zhenxi falü dianji jicheng* 中國珍稀法律典籍集成, edited by Liu Hainian et al. Vol 2. Beijing: Kexue Chubanshe, 1994.
- MHD. Ming Collected Statutes, Wanli era.
- MWLD. *Manwen laodang* 滿文老檔. Pre-conquest Qing documents in the Manchu language, 1607 to 1636. References in this dissertation to the MWLD as page-keyed to the MWLD as they appear in Chinese translation in Liu Hainian 劉海年 et al, 中國珍稀法律典籍集成 Vol 2 盛京滿文檔案中的律令及少數民族法律. Beijing: Kexue Chubanshe, 1994.
- MZSL. *The Veritable Records of the Manchus*. Manzhou Shilu 滿洲實錄. Beijing: Zhonghua Shuji, 1986.

- NGDK. *Zhongyang Yanjiuyuan Lishi Yuyan Yanjiusuo xian cun Qing dai Neige Daku yuancang Ming-Qing dang'an* 中央研究院歷史語言研究所現存清代內閣大庫原藏明清檔案 (Ming-Qing Documents from the Qing Dynasty Grand Secretariat Archive in the Possession of the Institute of History and Philology, Academia Sinica). Taipei. Academia Sinica. Each case is identified by serial number.
- PDSNFL. Ledehong 勒德洪, *Pingding sannu* 平定三逆方略 [PDSNFL] (the official account of the pacification of the three feudatories), Siku Quanshu Edition.
- QHD (1753). QL 29 (1753) version of the *Qing Huidian* (Collected Statutes of the Qing). Wenyuange Electronic Edition (*Wen yuan ge Si ku quan shu dian zi ban* 文淵閣四庫全書電子版).
- QHD (1899). *Qing huidian* (Collected Statutes of the Qing), 1991 (1899). Beijing: Zhonghua Shuju.
- QHDSL. *Qing huidian shili* 清會典實例 (Collected Substatutes of the Qing with Substatutes Based on Precedent). 1991 (1899). Beijing: Zhonghua Shuju.
- QHDZL. *Qinding daqing huidian zeli* 欽定大清會典則例 (Qing Collected Regulations) [started in 1747 and completed in 1764]. Wenyuange Electronic Edition (*Wen yuan ge Si ku quan shu dian zi ban* 文淵閣四庫全書電子版).
- QLSYD. *Qianlongchao Shangyu Dang* 乾隆朝上諭檔 (Edicts of the Qianlong Emperor) Beijing: First Historical Archives, 1991.
- QSG. *Draft History of the Qing Dynasty (Qing shigao* 清史稿), edited by Zhao Erxun 趙爾巽. Beijing: Zhonghua shuju, 1985 [1914-28].
- QSL-SZ. *Veritable Records of the Qing Dynasty* (Qing shilu 清實錄), Shunzhi Reign.
- QSL-KX. *Veritable Records of the Qing Dynasty* (Qing shilu), Kangxi Reign.
- QSL-YZ. *Veritable Records of the Qing Dynasty* (Qing shilu), Yongzheng Reign.
- QSL-QL. *Veritable Records of the Qing Dynasty* (Qing shilu), Qianlong Reign.
- QSL-JQ. *Veritable Records of the Qing Dynasty* (Qing shilu), Jiaqing Reign.
- QSL-DG. *Veritable Records of the Qing Dynasty* (Qing shilu), Daoguang Reign.

QSL-XF, *Veritable Records of the Qing Dynasty* (Qing shilu), Xianfeng Reign.

SZSNL. *Shunzhi San Nianlü* 順治三年律 (The Qing Code of Shunzhi 3). Vol 5 of *Zhongguo zhenxi falü xuji jibian* 中國珍稀法律續編, edited by Yang Yifan 楊一凡 and Tian Tao 田濤. Harbin: Heilongjiang Renmin Chubanshe, 2002.

XKTB-FHA. Board of Punishment [Technically the Office of Scrutiny for the Board of Punishment] Routine Criminal Memorial (*Xingke tiben* 刑科題本). First Historical Archives, Beijing.

XKTB-NGDK. Board of Punishment [Technically the Office of Scrutiny for the Board of Punishment] Routine Criminal Memorial (*Xingke tiben*). Grand Secretariat Archives located at the Fusinian Library, Institute of History and Philology, Academia Sinica, Taiwan.

ZGLDZZNB – (*Zhongguo lidai zhanzheng nianbiao* 中國歷代戰爭年表), edited by the Chinese Military History Editorial Group, People's Liberation Army Press, 1964.

ZPZZ-FHA. Palace Memorials Archive. Held at the First Historical Archives, Beijing. Identified by serial number.

ZPZZ-FHA-MWD. Palace Memorial Archives. Manchu language. Identified by serial number.

ZPZZ-NPM. Palace Memorials Archive. Archived at the National Palace Museum, Taipei. Identified by serial number.

ZSZK. *Zhongshu Zhengkao* 中樞政考 (1742) (QL 7). National Palace Museum Documents Library, Taipei, Taiwan.

INTRODUCTION

Chinese and Western scholars have thoroughly discredited the myth of Qing Dynasty (1644-1912) law as a mere tool of oriental despots, or at best, as a system static and unresponsive to social change.¹ Scholars have also persuasively addressed the complicated ways in which such factors as the Qing's unique military and political institutions, military campaigns of frontier expansion, and Manchu identity were inseparable from the Qing's approaches to imperial governance.² Some scholars have argued that there was an eighteenth-century militarization of Qing culture and a nineteenth-century militarization of Qing society.³ Scholars have also considered the ways in which the meanings of Chinese terms changed over time both reflecting and driving changes in discourse.⁴ Yet, up to now, no scholar has considered the relationship between developments in the law and Qing governance, frontier warfare, militarization, and semantic-discursive change.

How did the massive imperial expansion of the eighteenth century with its incessant warfare influence development of Qing law during this period? What was the impact of long-standing

¹ For an updated, comprehensive and insightful historiography (and updated bibliography) covering most Western works on Qing law, see You Chenjun 尤陳俊, "How a 'New Legal History Might Be Possible: Recent Trends in Chinese Legal History Studies in the United States and Their Implications,'" *Modern China* 39(2) (2013), 165–202.

² Mark C. Elliott, *The Manchu Way: the Eight Banners and Ethnic Identity in Late Imperial China* (Stanford: Stanford University Press, 2001); Pamela Kyle Crossley, *A Translucent Mirror: History and Identity in Qing Imperial Ideology* (Berkeley: University of California Press, 1999); Peter C. Perdue, *China Marches West: The Qing Conquest of Central Eurasia* (Cambridge: Belknap/Harvard Press, 2005); Evelyn S. Rawski, *The Last Emperors: A Social History of Qing Imperial Institutions* (Berkeley: University of California Press, 1998).

³ Philip A. Kuhn, *Rebellion and Its Enemies in Late Imperial China: Militarization and Social Structure, 1796-1864* (Cambridge: Harvard University Press, 1980); Joanna Waley-Cohen, *The Culture of War in China: Empire and the Military under the Qing Dynasty* (London: I.B. Tauris, 2006). Joanna Waley-Cohen, "Militarization of Culture in Eighteenth Century China," in *Military Culture in Imperial China*, 292-95.

⁴ These scholars have focused on topics as diverse as international relations and the social and legal construction of sexual offenses. Lydia H. Liu, *The Clash of Empires: The Invention of China in Modern World Making* (Cambridge: Harvard University Press, 2004); Matthew H. Sommer, *Sex, Law, and Society in Late Imperial China* (Stanford: Stanford University Press, 2000).

Chinese military and legal traditions as well as the Qing's Manchu origins and identity on the development of the law? How did activities on the expanding frontiers affect the interior? What about the personalities and proclivities of individual emperors? How did changes in semantic meaning both reflect and shape the discourse in the adjudication of criminal cases (the adjudicative discourse)? In this dissertation, I use the crime of campaign *desertion* as a category of analysis to uncover interconnections between multiple processes over time, revealing militarizing tendencies in the form of increasing numbers and legitimacy of summary executions in the eighteenth-century Qing Dynasty (1644-1911). I propose these eighteenth-century militarizing tendencies as a major cultural origin – a legal-cultural origin – for the proliferation of widespread summary executions during the nineteenth-century.

Over the course of fifty years, the Qianlong emperor attempted to educate officials to autonomously carry out summary executions in “extraordinary cases” without ceding his authority over life and death. First, this involved changing the attitude of adjudicating officials – their collective adjudicative *mentalité* – so that they would be willing to summarily execute an offender rather than follow the entrenched and codified routine process for adjudication that required the emperor's actual approval to carry out a death sentence. It required overcoming a legal-cultural taboo against summary execution. Second, it required that officials' conform their judgement of what constituted “extraordinary” to the will of the emperor, thereby ultimately leaving control at the center. The impossibility of such a vicarious control resulted in fifty years of scolding and sometimes deadly edicts and rescripts in which the Qianlong emperor praised, upbraided, and guided officials in making this determination. Along the way, the idea that

summary execution could be appropriate in extraordinary cases became a norm of late imperial legal-culture.

References to summary executions can be found throughout the Ming-Qing historical record, but the degree to which the practice was officially tolerated, encouraged, and legitimated changed dramatically over time. Up until now, Western scholars have noticed but have not directly addressed the practice of summary executions during the eighteenth-century.⁵ They have tended to characterize the widespread summary executions under military authority that began during the mid-nineteenth century as a “new development.”⁶ This characterization rests on an understanding of the social-political context of devolution of power from the central government to regional governments in order to address widespread social unrest and uprising during the Taiping Civil War (1850-64).⁷ This is certainly the best explanation for the context in which summary execution proliferated, but it ignores the fact that summary execution had deep

⁵ For instance, Jonathan Ocko briefly referenced summary executions as an exception from the Qing’s careful review of criminal cases:

The seriousness of a case, in particular the severity of the potential sentence, determined whether the case was subject to obligatory review. ... Penalties in excess of the cangue, however, had to be approved by higher authorities. In these instances, after trial and provisional sentencing by the magistrate, the criminal, witnesses, and case records were transferred to the prefect. He reviewed the transcript, interrogated the accused, and then forwarded the case to the judicial commissioner and governor who successively repeated the process. If the sentence was no greater than temporary banishment, the governor's approval of the provisional sentence was final; if the sentence was more severe or the case entailed homicide, it still had to be reviewed by the Board of Punishment. Only the emperor could sanction executions, and then ostensibly only after careful review of a case (*except in instances of summary executions*)[italics mine].

Jonathan K. Ocko, “I’ll Take It All the Way to Beijing: Capital Appeals in the Qing,” *Journal of Asian Studies* 47, no. 2 (May 1988), 292-93. Following another equally erudite recitation of the high level of scrutiny maintained by the late imperial legal system in criminal cases, Thomas Bouye dropped another telling footnote on the existence of summary execution: “Summary executions, such as the wangming zhengfa, were exceptions to this rule. This type of execution was reserved for serious crimes involving rebellion, piracy, and secret societies.” Thomas Bouye, “Suddenly murderous intent arose: Bureaucratization and benevolence in eighteenth-century Qing homicide reports.” *Late Imperial China* 16.2 (1995): 62-97.

⁶ Xiaoqun Xu, “The Rule of Law without Due Process: Punishing Robbers and Bandits in Early-Twentieth-Century China,” *Modern China* 33, no. 2 (2007), 234.

⁷ Franz Michael, “Military Organization and Power Structure of Chian during the Taiping Rebellion,” *The Pacific Historical Review* (1949): 469-483.

legal-cultural roots in the eighteenth century which directly informed its form and shape during the nineteenth century.⁸

“Desertion,” the act whereby a soldier left his place of duty without authorization, was a valid legal concept in Chinese history that was well understood by those who dealt with the military and the law during the Qing. Most Ming sources and some early Qing sources used the term *taojun* (逃軍) to describe military deserters, a term that by the end of the seventeenth century no longer referred to deserter-soldiers at all, but instead to persons who had escaped from “military” exile (which by that time often had little to do with the military), a category of persons who also became subject to summary execution. By the Kangxi era (r. 1661-1722), the Qing referred to deserters almost exclusively as *taobing* (逃兵; M: *ukaka cooha*). Those deemed deserters included not only soldiers who fled the majority-Han-ethnicity Green Standard Army (*liūqi* 綠旗; *liūying* 綠營, the major component of the Qing’s armed forces during this period), the Manchu-Mongol-Han Eight Banners (*baqi* 八旗; M: *jakūn gūsa*), or the Mongolian Frontier Forces (the Jasak banners), but, less obviously, included such persons as hired and enslaved porters and other servants accompanying soldiers.⁹

The major legal division in desertion adjudication across time in both normative law and practice was between those cases in which the deserter fled his peacetime home-station garrison (*liwu* 離伍 or *liying* 離營) located in the inner empire (*neidi* 內地, that is, the provinces of the

⁸ The monocausal central-local power distribution explanation is complicated by the existence of officials such as Zeng Guofan who fully supported the central government while themselves actively engaging in summary executions. As Mary C. Wright pointed out, these officials were exercising their power on behalf of supporting the central government. Mary C. Wright, *The Last Stand of Chinese Conservatism: the T’ung-Chih Restoration, 1862-1874* (Stanford: Stanford University Press, 1957), 57-59.

⁹ See Appendix.

old Ming empire, as opposed to places on the Qing's Inner Asian, southwestern, or maritime frontiers) and those cases in which the deserter fled while on campaign (*congzhengtao* 從征逃). Throughout the Qing, if soldiers merely fled from their peacetime units in the interior, typically it was not considered a felonious offense and was handled locally by military authorities. Since at least Ming times though, if soldiers deserted while about to go into or during battle (*linzhen* 臨陣), they were often summarily executed under militarized adjudication (*yi junfa congshi* 以軍法從事). Moreover, prior to the Qianlong reign, soldiers merely *on campaign* who fled from a location short of the battlefield and were later apprehended (as opposed to those who turned themselves in) were processed, for the most part, under the routine campaign desertion statute (*congzheng shouyu guanjun tao lü* 從征守禦官軍逃律) set forth in the Qing Criminal Code (*DaQing lilü* 大清律例) which called for procedures more akin to the routine criminal process. This routine process, which exhibited a structural penchant for leniency, was generally the same as that used under peacetime conditions for non-military prosecutions. After the third decade of the Qianlong reign, however, nearly all such campaign deserters were summarily executed when apprehended. Presenting the narrative of this change over time, seeking its origins, and suggesting its implications was the driving force of my research for this dissertation.

Because I sought a single subject (desertion) in the archives over a long period of time, my research led me to focus heavily on *zouzhe* (*zhupi zouzhe* 硃批奏摺, palace or “secret” memorials) during the Qianlong reign because that is where the desertion case records were located. Many historians who have focused on Qing law, however, have sought to understand the Qing legal system from sources such as scholarly works (e.g., case compilations by officials

who had worked at the Board of Punishments or held other legal duties) and *tiben* (*xingke tiben* 刑科題, routine criminal memorials). To the western eye, such materials appear particularly “legal” in nature. By the eighteenth century, however, increasing numbers of cases were documented wholly or in part in *zouzhe* sent to the emperor by military and civilian officials. Scholars have written of the shift from a *tiben*-based memorial system to a *zouzhe* based memorial system, but have not grasped the extent to which this process coincided with and was an important part of the legitimization of summary execution.¹⁰ Such a focus on *tiben* does not render prior studies inaccurate – these “legal” documents are in fact reflective of the way the vast majority of criminal cases were adjudicated until the end of the nineteenth century– but the focus has rendered the scholarship on late imperial law incomplete in so far as it neglects the fact that the transition from *tiben* to *zouzhe* was also in many cases a transition from routine retrial-review to summary execution.¹¹

Frederick Wakeman, Philip A. Kuhn, Joanna Waley-Cohen, Edward A. McCord, and Elizabeth J. Perry have all used the term “militarization” to describe one or another facet of late imperial Chinese society or culture.¹² The common element in these studies has been the taking

¹⁰ Na Silu 那思陸, *Qingdai zhongyang sifa shenpan zhidu* 清代中央司法審判制度 (The Adjudicative System of the Qing Dynasty at the Central-Government Level)(Taipei: Wenshizhe chubanshe, 1992), 202.

¹¹ For an article ahead of its time that recommend use of palace memorials as sources of archival research in Qing legal history, see Nancy Park and Robert Antony recommended the use of palace memorials among other documents as sources of archival research in Qing legal history. Nancy Park and Robert Antony, “Archival Research in Qing Legal History,” *Late Imperial China* 14, no. 1 (June, 1993): 93-137. Na Silu has described the change in time in the use of *zouzhe* in criminal adjudication over time.

¹² Philip A. Kuhn, *Rebellion*, 13. Frederick Wakeman has discussed militarization of local community relating to the Opium War. Frederick Wakeman, Jr., *Strangers at the Gate: Social Disorder in South China, 1839-1861* (Berkeley: University of California Press, 1997). Kathryn Bernhardt has touched on militarization in Jiangnan in the wake of the Taiping occupation. Kathryn Bernhardt, *Rents, Taxes, and Peasant Resistance: The Local Yangzi Region, 1840-1950* (Stanford: Stanford University Press, 1992), 53. Joanna Waley-Cohen has identified a Qing’s militarization of culture through normative state rhetoric extolling martial characteristics that culminated under the

on by a broader segment of society or non-military institution of some form or characteristic that had, prior to the “militarization” described, been primarily associated with military activity. To have meaning within a China-centered analysis, scholars applying the term “militarization” to Chinese history have the additional burden of showing that the particular characteristic that they assert symbolized the “militarization” was itself recognized in late imperial China as particular to what was considered the “military (Ch: *jun* 軍; *bing* 兵; *wu* 武; M: *coohai*).” Eighteenth-century legal culture was *militarized* when it appropriated summary execution as a legitimate criminal response along with the linguistic and symbolic discourse (reflecting specific principles, norms, and procedures) from the long-standing tradition of self-consciously *militarized* adjudication (*yi junfa congshi* 以軍法從事; M: *coohai fafun i gamarangge*).

Philip A. Kuhn’s classic monograph, *Rebellion and Its Enemies in Late Imperial China*, described a form of militarization of nineteenth-century Qing society. For Kuhn, the “militia” was a key stepping stone to local control over the military within the militarization of society. Kuhn defined “militia” as “those institutions in which the civilian and military roles of the participants are in a substantial degree interconnected.”¹³ He described militarization as “a process in which men are separated from the institutions of civil life. It is also the range of ... possible degrees of separation.”¹⁴ If we consider the pre-Qianlong routine criminal adjudicative process at its most procedurally-robust application as an “institution of civil life” and further

Qianlong Emperor. Joanna Waley-Cohen, *The Culture of War in China*; Joanna Waley-Cohen, “Militarization of Culture in Eighteenth Century China,” in *Military Culture in Imperial China*, 292-95; Edward A. McCord, “Militia and Local Militarization in Late Qing and Early Republican China: The Case of Hunan.” *Modern China* (1988): 156-187; Elizabeth J. Perry, *Rebels and revolutionaries in North China, 1845-1945* (Stanford University Press, 1980).

¹³ Kuhn, *Rebellion*, 13.

¹⁴ Kuhn, *Rebellion*, 14.

consider militarized adjudication in its most autonomous and summary form at the other extreme, we can similarly conceptualize “degrees of separation” in the militarization of law. Kuhn’s militarized villager had a foot in both military and civilian cultures.¹⁵ This idea helps to conceptualize how eighteenth-century officials adjudicating cases came to feel little or no cognitive dissonance in adjudicating some cases under the routine process while at the same time summarily executing other offenders.

Joanna Waley-Cohen argues that the Qing sought to militarize the culture itself by intentionally creating a “culture of war” during the eighteenth century. She identified two ways in which the Qing Empire developed. First, it expanded through military means. Second, there was the “substantiation of conquest by the introduction of a radically new element into the broad field of culture.”¹⁶ She saw this cultural transformation as a deliberate project to reprioritize *wu* (武, martial) over *wen* (文, civilian, scholarly). The military evolved as a “distinct cultural category,” with emperors’ redefining nonmilitary events in military terms, and a pervasive injection of military themes and referents into the cultural realm. Of the factors Waley-Cohn cited for the militarization she described, two of them resonant with themes of this dissertation. First, the Qianlong emperor “possessed such extraordinary stature” and such a forceful personali[ty]” that his “goals, concerns, and priorities carried an enormous weight of

¹⁵ He saw the “militia” as falling somewhere between the two poles of military and civilian, based on three characteristics. First, economically, the “militiaman’s relation to his regular occupation is not wholly severed.” Second, administratively and socially, the militiaman remains connected to the social and administrative agencies of civilian life. Third, psychologically, “[s]ervice in a military organization does not require conformity to a purely military set of values.” Kuhn, *Rebellion*, 13.

¹⁶ Waley-Cohen, *Culture of War*, 13.

influence.”¹⁷ Second, she considered the Qianlong emperor’s frontier wars to have been critical to the development of an eighteenth-century culture of war.

These frontier wars included the Qing campaigns that eliminated the Zunghar power and put down Altishari resistance to Qing rule in Xinjiang (1755-59). They also included the First and Second Jinchuan Wars (against local non-Han people) in western Sichuan (1747-1749, 1771-1776), the Burmese Campaigns (1765-1769), the Pacification of the Lin Shuangwen 林爽文 “Uprising” in Taiwan (1786-1793), the Gurkha Campaigns (1788-1793), and the Campaign against Vietnam (1788-89). With the exception of the campaign against the Zunghars, these frontier wars ranged from frustrating, expensive, and embarrassing quagmires to merely ambiguous successes. Of the First Jinchuan War (Zhandui-Jinchuan) (1745 - 1749), Waley-Cohen noted that it “had proved more intractable than anticipated; victory was achieved only after the dismal and dramatic execution of both generals following a trial over which the emperor himself presided.”¹⁸ I present this war and the execution of these two officials as formative developments in the militarization of Qing legal culture.

This dissertation follows in a long line of studies that have raised the idea of “legal culture” in the historical context.¹⁹ Clifford Geertz defined culture as a “system of inherited conceptions

¹⁷ In Waley-Cohen’s original quote, she referred to the Kangxi, Yongzheng, and Qianlong emperors collectively. Waley-Cohen, *Culture of War*, 14.

¹⁸ She then pointed out how despite these ambiguities, within the culture of war, the representation of these campaigns took on special importance. “Feeling perhaps that imperial honor had been at stake, at [the end of the Second Jinchuan War] the emperor launched the first of a series of monumental and historiographical commemorations of Qing wars. Later, he would retroactively elevate the first Jinchuan War to first in the series of his ‘Ten Complete Military Victories’ (*shi quan wu gong* 十全武功) and would call himself the ‘Old Man of the Ten Complete Victories’ (*shiquan laoren* 十全老人).” Waley-Cohen, *Culture of War*, 20-21.

¹⁹ For example, Thomas Buoye used routine criminal memorials of murder cases adjudicated during the Qing to demonstrate the commercial phenomenon of increasing commercial transactions involving land. Thomas M. Buoye, *Manlaughter, Markets, and Moral Economy: Violent Disputes over Property Rights in Eighteenth Century China*

expressed in symbolic forms by means of which men communicate, perpetuate, and develop their knowledge about and attitudes towards life.”²⁰ Culture makes it possible to at least account for “a large range of practices that must be taken into consideration: not only clear and well-elaborated thoughts but also unmediated and embodied representations; not only voluntary and reasoned engagements but also automatic and obligatory loyalties.”²¹ Culture is a way to think about origins while avoiding the “chimera of origins” described by Roger Chartier.²²

While the term legal culture could refer to the legal consciousness of the broader society, I use the term legal culture in a far more restricted way that focuses on the community of adjudicating officials, from the emperor at the top to the magistrate at the bottom, with the main focus on high-level provincial officials and the emperor. This restricted use of the term is more consistent with what Lawrence Friedman has described as “internal legal culture”:

We can distinguish between an *external* and *internal* legal culture. The external legal culture is the legal culture of the general population; the internal legal culture is the legal culture of those members of society who perform specialized legal tasks. Every society

(New York: Cambridge University Press, 2000). Joanna Waley-Cohen points out the influence of both political and “supernatural” influences in late imperial legal culture. Joanna Waley-Cohen, “Politics and the Supernatural in Mid-Qing Legal Culture,” *Modern China* 19, no. 3 (Jul. 1993), 330-353; Paul R. Katz more fully develops the idea of a religious element to late imperial legal culture. Paul R. Katz, *Divine Justice: Religion and the Development of Chinese Legal Culture* (Abingdon: Routledge, 2009); Jérôme Bourgon, “Aspects of chinese legal culture - the articulation of written law, state, and society: A review (part two). private law and private lawyers: A discussion on the ‘fields’ of law,” *International Journal of Asian Studies*, 5(1) (2008), 71-86.

²⁰ Clifford Geertz, *The Interpretation of Cultures: Selected Essays* (New York: Basic Books, 1973), 89.

²¹ Chartier, *The Cultural Origins of the French Revolution*, 6.

²²

When history succumbs to the “chimera of origins,” it burdens itself, perhaps unconsciously, with several pre-suppositions: that every historical moment is a homogeneous totality endowed with an ideal and unique meaning present in each of the realities that make up and express that whole; that historical becoming is organized as an ineluctable continuity: that events are linked together, one engendering another in an uninterrupted flow of change that enables us to decide that one is the “cause,” another the “effect.” Roger Chartier, *The Cultural Origins of the French Revolution* (Durham: Duke University Press, 1991), 4.

has a legal culture, but only societies with legal specialists have an internal legal culture.²³

According to Friedman, “legal specialists” use *legal reasoning* – “a formal, authoritative exposition which purports to show how and why a decision-maker reached his particular decision” – because their decision-making authority is only derivative, unlike that of the highest level legal authority (e.g., the absolute monarch) who supposedly can make decisions by fiat.²⁴ This “legal reasoning” is the content of the adjudicative discourse I follow in this dissertation. To apply this narrow conception of legal culture to Qing law, one has to conceptualize “legal specialist” broadly to include the cohort of self-consciously *legal* personnel, such as legal secretaries (*muyou* 幕友) and litigation masters (*songshi* 訟師) as well as all those officials involved in adjudication (county and prefect magistrates, circuit attendants, provincial judges, governors, governors-general, to name only a few), many of whom may have had limited specialized legal training. Within the internal legal culture, I am particularly interested in how the change in time in adjudicative discourse reflected change in adjudicative *mentalité*. What made nineteenth century officials insist on their prerogative to summarily execute offenders when early eighteenth century officials could have hardly have imagined executing a man without specific imperial approval?

²³ Lawrence M. Friedman, *The Legal System: a Social Science Perspective* (New York: Russell Sage Foundation, 1975), 222. Lawrence Friedman is acknowledged by both Western and Chinese scholars as perhaps the earliest proponent of the notion of “legal culture.” Liang Linxia has noted Friedman as the original proponent of the idea of legal culture. Liang Linxia, *Zhongguo chuantong fa wenhua yu fazhi xiandaihui* 中國傳統法文化與法制現代化 (Traditional Chinese Legal Culture and Modernization of the Legal System) (Beijing: Zhongguo Zhengfa Daxue, 1992), 2.

²⁴ Friedman, *The Legal System*, 235.

Susan S. Silbey captures this sense of adjudicative *mentalité*, noting that “legal culture emphasized the role of taken-for-granted and tacit actions that operated on and within the interactions of the legal system and its environment.”²⁵ French legal scholar and prominent jurist Guy Canivet has similarly articulated the link between legal culture and *mentalité*, stating “A legal culture is a spirit, a mentality, a set of reflections of the legal professionals facing a practical problem.”²⁶ This dissertation shows that there occurred during the eighteenth century a change in *mentalité* that made it possible for large number of officials adjudicating cases to imagine summary execution as an option (under the right circumstances).

For the Qing, a legal culture with a long history of what one could call legal doctrine – in the form of Codes, handbook commentary, edicts, and other unwritten and written as well as published material – comprised a significant portion of the adjudicative discourse and both influenced and reflected the change over time in the adjudicative *mentalité*. Writing in the early 1960’s, H.L.A. Hart noted that institutionalization made legal norms distinct from other norms: “legal rules differ from a mere threat or personal order to do something in that they are of general application and issued by a sovereign or the sovereign’s agents.”²⁷ Roger Cotterrell prefers the term “legal doctrine” over “legal culture” as an organizing principle for the social history of law because “[w]hat makes doctrine ‘legal’ is its institutionalization: the fact that it is created,

²⁵ Susan S. Sibley, “Legal Cultures and Cultures of Legality,” in *Handbook of Cultural Sociology*, edited by John R. Hall, et al (New York: Routledge, 2010), 472. Sibley has also noted that the “importation of this term [legal culture] into legal scholarship is fraught with unfortunate confusion.” 470-471.

²⁶ Guy Canivet, “The Interrelationship between Common Law and Civil Law,” *Louisiana Law Review* 63:4 (Summer, 2003), 937.

²⁷ H.L.A. Hart, *The Concept of Law* (New York: Oxford University Press, 1994), 18-25.

interpreted or enforced in certain socially established ways, through the use of recognized procedures and agencies.”²⁸

According to Cotterrel, “the concept of [‘legal culture’] is most useful for its emphasis on the sheer complexity and diversity of the social matrix in which contemporary state legal systems exist.... Yet, in many circumstances, reliance on a general concept of culture also makes problematic the theoretical identification of a specifically *legal* culture.”²⁹ My approach is to treat doctrine as one aspect of legal culture recognizing that adjudicative *mentalité* was closely linked to, shaped by, and reflected in formal doctrine but was not limited by it. In some respects, legal culture and military culture were both situated within and transcended the wider bureaucratic-administrative culture and thus cannot be considered separate from political culture.³⁰ The institutional aspect of the military and legal cultures is particularly important as legal and military cultures were closely identified with and to some extent bounded within particular institutions.³¹ This latter point makes the constant rotation of many Qing officials

²⁸ Roger Cotterrell, *Law, Culture, and Society: Legal Ideas in the Mirror of Social Theory* (Hampshire: Ashgate Publishing Co.), 2006.

²⁹ Cotterrell, 95. One must concede though that the term “legal culture” has been used so broadly that it sometimes serves as a synonym for “law-and-society-related scholarship. For instance, Zhang Shiming’s recent edited volume, containing works from scholars on a broad range of topics related to law, in its Chinese title describes its contents as “Chinese Traditional Legal Culture” yet its English title does not use the phrase “legal culture” at all, instead describing the topic as “Scholarship on Traditional Chinese Law.” Zhang Shiming 張世明, *Shijie xuezhelun Zhongguo chuantong falü wenhua: 1644-1911* 世界學者論中國傳統法律文化: 1644-1911 (printed English subtitle: Recent International Scholarship on Traditional Chinese Law) (Beijing: Law Press, 2010).

³⁰ One early work that presents important aspects of the wider bureaucratic-administrative culture is Thomas A. Metzger, *The Internal Organization of Ch’ing Bureaucracy: Legal, Normative, and Communication aspects* (Cambridge: Harvard University Press, 1973).

³¹ As Julia C. Strauss explains, organizational culture is a key attribute of any institution:

Organizations become internally institutionalized and stable in so far as they socialize their members into administrative ideologies, reward those who believe in the organization’s values, and effectively carry out the tasks deemed important, replicating those values for subsequent generations of employees within the organization.... An organization that aspires to become well institutionalized must launch a two-front

between the frontiers and the interior as well as between postings with distinct legal responsibilities important for how change in legal culture was affected spatially over time. The same man might find himself summarily executing offenders on a frontier military campaign one year, then adjudicating cases under the routine process the next as a provincial judge or governor, and then might find himself pronouncing on empire-wide principles at the Board of Punishments.

Considering this change in terms of culture permitted me to better contextualize the most evident influence on the eighteenth-century adjudicative discourse surrounding summary execution, the Qianlong emperor himself. But what about the genealogy of the ideas he advocated and how they came to be applied within the particular context of the eighteenth century? What about the principles of militarized adjudication that, at least within military culture, long predated the Qianlong emperor's reign? What about the routine adjudicative process that had a certain quality of path-dependency from the late Ming through the Qing times? What about the Qianlong emperor's wars? Certainly, the enemy, the terrain, and actions of high and low Qing officials involved in the wars were all factors at best only partially within the emperor's control.

Given culture's deeply linguistic roots, this dissertation looked for cultural change – change in adjudicative *mentalité* – within the adjudicative discourse. This discourse was composed primarily of two elements. First, I reviewed hundreds of dialogues between military and civilian

attack, simultaneously building internal commitments and organizational culture while externally realizing enough of its goals to stay in operation.

Julia C. Strauss, *Strong Institutions in Weak Politics: State Building in Republican China, 1927-1940* (Oxford: Clarendon Press, 1998), 3-4.

officials in the provinces and on the frontiers and the emperor (or at least, the imperial office) in the capital that took place within the context of criminal adjudication. This discourse was reflected in *zouzhe* and *tiben* memorials, often reproduced in the Collected Statutes, Veritable Records, and imperial edicts. Second, there were the changes in the Qing Code and authoritative government documents over time that both reflected and influenced the discourse.

Part One describes the routine and militarized adjudicative processes prior to the Qianlong reign as, as a general matter, paradigmatically-distinct procedures that mostly operated in different civilian and military-campaign cultural spheres. It further describes how the adjudication of desertion cases prior to the Qianlong reign reflected both modes of adjudication as a function of the proximity of the desertion to actual military operations and the frontier. In practice during the Kangxi and Yongzheng eras, a practice began called “requesting to execute through a *zouzhe* (*zouqing zhengfa* 奏請正法)” by which provincial officials began directly memorializing cases to the emperor using *zouzhe* and the emperor either directly decided the case using a rescript or forwarded the *zouzhe* to the Board of Punishments (or directed the memorializing official to send a *tiben* to the Board of Punishments. Because the *zouzhe*-execution process still required imperial approval prior to execution, I also refer to such cases as “routine,” but it should still be recognized as a significant new development because the flexibility it provided ultimately proved a catalyst for the spread of summary execution. I also describe a fourth mode of responding to misconduct, the strategic mode, that discursively constructed the men engaged in the crime as enemies and sought to console them or destroy

them, using the language of war and not legal adjudication.³² The strategic approach was different from both the routine and militarized adjudication processes because it did not purport to be adjudication at all. Understanding the place of the strategic approach in Qing statecraft is important for recognizing that one of the fruits of the militarization of Qing legal culture was the appearance of what I call *strategic summary execution* in the nineteenth century.

In Chapter One, I describe the routine adjudicative process that was the *default* process for adjudicating criminal cases as set forth in the Ming-Qing Codes for the majority of criminal cases throughout the dynasty's reign as a manifestation of late imperial legal culture. It encompassed up to six hierarchical levels of retrial-review.³³ Under this routine process, no one was supposed to be executed without an imperial edict. At every stage of this process, which could take years or decades, various mechanisms existed to grant leniency to the offender. I rely on Western and Chinese scholars who described "traditional Chinese legal culture (*chuantong falü wenhua* 傳統法律文化)" to parse out what I consider to be the three fundamental principles of the routine process: careful adjudication with punishments minutely tailored to degrees of culpability and desired level of deterrence, leniency to allow for self-renewal (*zixin* 自新), and

³² The strategic mode is more closely situated within what might be called strategic culture. For instance, see Alastair Ian Johnson, *Cultural Realism: Strategic Culture and Grand Strategy in Chinese History* (Princeton: Princeton University Press, 1995), a work that focuses exclusively on Chinese strategic culture. William H. Mott, IV, and Ja Chang Kim, *The Philosophy of Chinese Military Culture: Shih v. Li* (New York: Macmillan, 2006); see also Chen-Ya Tien, *Chinese Military Theory: Ancient and Modern* (New York: Mosaic Press, 1991). DiCosmo, *Military Culture in Imperial China*, 4.

³³ When referring to the Code, this dissertation uses the numbering system developed by Huang Jingjia and used by William Jones. William C. Jones, *The Great Qing Code* (New York: Oxford/Clarendon Press, 1994). Article 411 of the Ming-Qing Codes set forth the basic framework for this system, but it was more definitively set forth in various provisions of the Qing Collected Statutes. Jones, 393. Legal Scholar Na Silu 那思陸 has summarized the various provisions of the Qing Collected Statutes. Na Silu 那思陸, *Qingdai zhouxian yamen shenpan zhidu* 清代州縣衙門審判制度 (Beijing: Zhongguo zhengfadaxue Chubanshe, [Originally published in Taiwan in 1982]); originally published as: Na Silu. *Qing Dai Zhou Xian Ya Men Shen Pan Zhi Du.*, *Qingdai zhouxian yamen shenpan zhidu* (Taipei: Wen shi zhe chu ban she, 1982).

respect for imperial authority. This resulted in a system in which careful adjudication was normatively emphasized by impartial officials properly supervised by appropriate agencies.³⁴

Careful adjudication and exacting attention to the rules was considered laudable.³⁵ The routine

³⁴ Liang Linxia, *Zhongguo chuantong fa wenhua yu fazhi xiandaihui* 中國傳統法文化與法制現代化 (Traditional Chinese Legal Culture and Modernization of the Legal System) (Beijing: Zhongguo Zhengfa Daxue, 1992), 46-49. Other sources I consulted include Li Wenling 李文玲, *Zhongguo gudai xingshi susongfashi* 中國古代刑事訴訟法史 (Criminal Procedure Law in Ancient China) (Beijing: Law Press, 2011); He Qinhua 何勤華, *Zhongguo fa xue shi* 中國法學史 (The history of Chinese legal studies) (Yonghe: Wei bo wen hua guo ji chu ban you xian gong si, 2004); Shûzô Shiga, *Criminal Procedure in Ch'ing Dynasty: with Emphasis on its Administrative Character and Some Allusion to its Historical Antecedents* (Tokyo: Toyo Bunko, 1974); Zhang Pufan 張普藩, ed., *Qingdai liuxue mingzhu xuanjie* 清代律學名著選介 (Zhongguo Zhengfa Daxue Chubanshe, 2009); Chang Wejen 張偉仁, "Legal Education in Ch'ing China," in *Education and Society in Late Imperial China, 1600-1900*, eds Benjamin A. Elman and Alexander Woodside, (Berkeley: University of California Press, 1994), 292-339; Geoffrey McCormack, *Traditional Chinese Penal Law* (Edinburgh: Edinburgh University Press, 1990); Mühlhahn, Klaus, *Criminal Justice in China: A History* (Cambridge: Harvard University Press 2009); Sun Jiahong 孫家紅, *Qingdaide sixing jianhou* 清代的死刑監候 (Beijing: Social Sciences Academy Press, 2007), 16-22. Wu Shuchen, one of the scholars who has worked longest on the concept of Chinese legal culture, has noted that traditional Chinese legal culture "held the view across history that indiscriminate and excessive adjudication of punishment (*sifa wanglan* 司法枉濫) disrupted the cosmic order (*tian dao* 天道), leading to disaster." Wu Shuchen 武樹臣, *Zhongguo falü wenhua daxieyi* 中國法律文化大寫意 (A General Description of Chinese Legal Culture) (Beijing: Beijing University Press, 2011), 58. The capstone of Chinese scholarship on historical legal culture to date has been the ten-volume series, *Research into Traditional Chinese Legal Culture* which I cite in Chapter Two. Zeng Xianyi 曾憲義 et al., eds, *Zhongguo chuantong falü wenhua yanjiu* 中國傳統法律文化研究 (Research into Traditional Chinese Legal Culture), 10 vols (Beijing: Zhongguo Renmin Daxue Chubanshe, 2011).

³⁵ Tung-Tsu Ch'ü's *Law and Society in Traditional China* (1961) and his *Local Government in China under the Ch'ing* (1962) provide what remain foundational descriptions of fundamental assumptions of late imperial legal culture (although Ch'ü did not use that term), such as the two millennial intermixing of Confucian and Legalist principles; the influence of religion; the importance of social class in law; and how the law reflected family and clan. T'ung-tsu Ch'ü, *Law and Society in Traditional China* (Paris: Mouton, 1961); T'ung-tsu Ch'ü, *Local government in China under the Ch'ing* (Cambridge: Harvard University Press, 1962). Yet, Ch'ü saw Chinese law as changing within tradition and tended to consider the meaning of long-used legal terms as stable, reflecting long-term consistency in the underlying concepts they represented. Ch'ü's failure to distinguish between changes that were predominantly procedural and apparent substantive stability masked significant change over time. Derk Bodde and Clarence Morris' classic work added the element of practice to Ch'ü's study and questioned Ch'ü's view that Chinese law was by nature mostly static. Derk Bodde, Clarence Morris, and Chin-ch'ing Chu, *Law in Imperial China: Exemplified by 190 Ch'ing Dynasty Cases* (Cambridge: Harvard University Press, 1967). Yet while they were in fact describing important elements of legal culture, these scholars did not frame their research in such terms; nor did they focus on procedural changes in how cases were adjudicated over time. More recently, Liang Zhiping's article on the differences between Chinese and Western "Legal Cultures" is an example of a broad comparative analysis using the analytical construct of culture. Liang's basic criticism is that the modern Chinese system inherited the traditional Chinese idea of law as rules for punishment rather than the western concept of law as protector of individual rights. Liang Zhiping, "Explicating 'Law': A Comparative Perspective of Chinese and Western Legal Culture," *Journal of Chinese Law* 3 (1989), 55.

process, completely rooted in late imperial legal culture, acted as a significant counterweight to the temptation of efficient summary execution.

In Chapter Two, I describe the Chinese (and touch on the Manchu) traditions of militarized adjudication as an element of military campaign culture. Consistent with Geertz' anthropological approach to culture, Nicola Di Cosmo has defined military culture, in part, as “a discrete, bounded system of conduct and behavior to which members of the military are supposed to adhere, made of written and unwritten rules and conventions as well as distinctive beliefs and symbols.”³⁶ Militarized adjudication left at most two levels of review at the provincial level and often no review at all at the central government level. In fact, in the most autonomous cases (which became common after 1750), the provincial-level adjudicating official only notified the emperor after the execution had already taken place.

From the point of view of actual outcomes, we know that once desertion cases began to be adjudicated within the militarized track in the mid-eighteenth century, execution became almost certain (at least for deserters who were apprehended). This was as much the objective of the change as it was a natural consequence of removing central review. Prior to the eighteenth-century, the inevitability of central government and imperial review – at least theoretically – of every death sentence had a profound impact on how such cases were investigated and tried at the local level. It follows then that removing those levels of review had an impact on how cases were adjudicated. How exactly did the procedural shift of cases to dealt summary execution affect the actual trial of cases at the basic level of trial, in terms of investigation, proof, citation and development of substantive law, analysis, and outcome?

³⁶ Nicola Di Cosmo, ed., *Military Culture in Imperial China* (Cambridge, Harvard University Press, 2009), 3-4.

Wang Zhiqiang 王志強 argues that the integrated nature of Qing legal procedure helps us to understand how a change in central government review could affect the way in which trials were conducted. Wang argues against the traditional position that Qing law “emphasized substantive law while deemphasizing procedural law.”³⁷ Rather, Wang points out that the totality of the Qing’s legal system – especially the process of retrying the factual case on review – served a function somewhat equivalent to that ideally achieved by Western procedural rules: to improve factual and legal correctness. Based on the integrated procedural-substantive nature of Qing law, if central government review and retrial served as an important guarantor of factual correctness, then removing the review would be expected to have a substantial impact on the outcomes of trial.

Philip C.C. Huang, one of the leading scholars in the late twentieth-century resurgence of Qing legal studies, discovered a related phenomenon in the local cases he studied. Huang finds that cases involving “minor matters” (*xishi* 細事) (akin to modern civil law cases) normally did not require central government review. Unlike the cases stored in the central government archives, these local cases seldom cited the applicable Code provisions. Rather than draw the inference that magistrates merely relied on custom rather than codified law, Huang finds that the legal decision often relied on codified law even though it did not explicitly cite the code provision. For Huang, the fact that the magistrates knew these “minor matters” were not going to be scrutinized at the central government legal level affected how the local decisions were

³⁷ Wang Zhiqiang 王志強, “Qingdai xingshi sifa shishi panding zhong de chengxu guize 清代刑事司法事實判定中的程序規則 (Qing-era judicial rules of procedure for factual adjudication) (paper presented at the 2013 International Conference on Ming-Qing Studies, Academia Sinica, Taipei, Taiwan, Dec. 5, 2013).

drafted (Huang found that the officials still often hewed closely to the Code or at least to the spirit of the Code, but just did not cite it).³⁸ The same sort of process was at work with the militarized track desertion cases, but unlike in Huang's cases, the elimination of review had a tremendous (and deadly) impact on actual desertion case outcome.

Despite the profound differences between the Ming and Qing military institutions (Appendix), I show in Chapter Three that from 1644 through the very end of the Yongzheng reign (d. 1735), the adjudication of campaign desertion cases across the Qing's "ethnically-" and institutionally-diverse military forces actually converged with the procedural and substantive norms set forth in the routine campaign desertion statute that the Qing had adopted from the Ming in the early 1640's. This finding is consistent with findings of "legal convergence" suggested by other scholars, at least with regards to the Qing's Mongol subjects.³⁹ Yet, as I show in Part II, after 1755, nearly all campaign deserters from any ethnic-component of the military and regardless of where they deserted from were summarily executed upon apprehension following a brief trial conducted under militarized adjudication.

Part II focuses on the particular circumstances under which militarized adjudication began to have application outside of its traditional military-campaign context. In Chapter Four, I show that the militarizing tendencies that began to appear during this period were largely driven by the Qianlong emperor's particular views on the relationship between lenient adjudication and

³⁸ These decisions were usually read out loud to the litigating parties. Philip CC Huang, *Code, Custom, and Legal Practice in China: the Qing and the Republic Compared* (Stanford: Stanford University Press, 2001).

³⁹ According to Ying Hu, "The Qing solution [to jurisdictional ambiguity and conflicts of laws] was to make criminal laws and procedures with respect to death penalty crimes uniform across the empire." Ying Hu, Unpublished dissertation, "Justice on the Steppe: Legal Institutions and Practice in Qing Mongolia," PhD diss., Stanford University (2014), Introduction 9.

military-operational failure. Around 1745 (QL 10) under pressure of the military quagmire of the Zhandui-Jinchuan Campaigns, the trajectory of change between militarized adjudication and the routine process began to shift towards breakdown of the hard distinction between the two. During these deeply frustrating military campaigns, the emperor identified a lack of military discipline (*junji* 軍紀, *junlü* 軍律, *faji* 法紀) as a significant contributor to military failure. As part of what became an ongoing discourse on discipline, the emperor further identified the hope for leniency that was a structural part of the routine process as a major factor influencing the behavior of officials to act in an undisciplined manner (cowering, seeking to avoid hardship and filing deceptive reports). In other words, the emperor himself became highly critical of an important aspect of late imperial legal culture. In his view, because officials hoped for leniency under the routine adjudicative process, they were more willing to risk undisciplined behavior. Under the emperor's logic, militarized adjudication provided the type of strong and unambiguous deterrent (*yi junfa yishi jingjie* 以軍法以示警戒) that would restore military discipline (*sujunji* 肅軍紀) by eliminating the hope for leniency that was inherent in the routine criminal process.

For the remainder of his life, the Qianlong emperor sought to educate officials – even educating some to death – to distinguish extraordinary (*fei xunchang* 非尋常) from ordinary cases and to adjudicate the former in the militarized or summary-execution mode. One of the prominent lessons in this re-education was the emperor's self-styled militarized adjudication and execution of his two highest-level commanders in the first Jinchuan Campaign, Bordered Red Chinese Bannerman Governor-General Zhang Guangsi 張廣泗 (d. 1749) and Manchu Plain Yellow Bannerman Jinchuan Supreme Commander Necin (Ch: Neqin 訥親) in 1749 (QL 14). In

a dramatic effort to further shape the discourse using the symbolic value of these executions, the Qianlong emperor published in widely-distributed woodblock-print editions a series of documents related to these cases, including what he considered the key offending memorials from the two condemned officials and the edicts he issued in response. After the executions, it became increasingly clear that the civilian and military officials adjudicating criminal cases finally began to understand that leniency in matters of military discipline would not be tolerated. By the end of the second decade of the Qianlong reign (QL 19), even the most quintessentially internal-legal officials of the Board of Punishments were willing to openly cite *junfa* principles in routine criminal decisions.

I frame the emperor's overzealous occupation with deserters and other "undisciplined officials" as instances of "disproportionate extrapolation," a term I borrowed from Melissa Macauley. In her cultural history of litigation masters, Macauley shows how an official belief that so-called litigation masters were the root cause of backlogs in litigation led to significant changes in law. An official negative view of litigation rested uncomfortably with a community of litigation masters. These freelance litigators provided an essential service to the litigious population, but were officially scapegoated for an incredible backlog of cases that was probably more attributable to insufficient bureaucratic infrastructure.⁴⁰ Macauley focuses on how officials simplified the complex social phenomenon behind litigation backlogs into simple prohibition: "[t]he practical weapon of the beleaguered official was statecraft legalism: law after law was passed to thwart all of these efforts and compel local magistrates to arrest and punish litigation

⁴⁰ Melissa Macauley, *Social Power and Legal Culture: Litigation Masters in Late Imperial China* (Stanford: Stanford University Press, 1998).

masters.”⁴¹ I argue that we see a similar phenomenon with regard to the Qianlong emperor’s views on undisciplined military officials and later in a very pronounced way towards Green Standard campaign desertions. The emperor blamed their lack of discipline for the extensive failure of military operations; his efforts to incorporate modal *junfa* into a broader field of adjudicative action directly reflected his view that their expectation of leniency from the routine system contributed to this indiscipline.

In Part III, I show that the increase in militarized adjudication went beyond one campaign, went beyond the military-institutional context of campaign deserters, and that the change in adjudicative *mentalité* went beyond the Qianlong reign leaving an enduring impact on Qing legal culture. A careful reading of the dialogues between the emperor and his officials reveals a process by which officials resisted and then came to accept and even embrace the emperor’s efforts to get them to incorporate certain principles of militarized adjudication in *extraordinary* cases. Ultimately, what changed over the course of the sixty years of the Qianlong reign was the adjudicative *mentalité* of the officials charged with resolving criminal cases. In some cases, this change was subtle. In others, it was profound. But it was real change and it endured beyond the Qianlong emperor’s reign.

In Chapter Six, I show that by the time of the Burma campaigns (1765-69), within the adjudicative discourse associated with extraordinary cases, meticulous adjudication and exacting attention to the rules – what late imperial legal culture had considered a virtue of adjudication – was now discursively reconstructed as being overly-pedantic (*juni* 拘泥). Up to this point, this

⁴¹ Macauley, 60.

fastidiousness to rule-based retrial review as a legal-cultural virtue had ensured in most cases that the final say over life and death rested with the center. In addition to whatever coercive force the center could generate, as a matter of legal culture, adjudicating officials would have been highly reticent to engage in summary executions. Now, those aspects of the routine process that allowed for rehabilitation – in accordance with the important late imperial legal concept of renewing oneself (*zixin* 自新) – were reconstructed as overly-indulgent leniency (*guxi* 姑息) for cases in which it was not conducive to delaying punishment (*weibian jizhu* 未便稽誅).

Up until this point, consistent with the Ming-Qing Codes, *lijue* (立決) had referred to punishments that could not wait until the Autumn Assizes to be carried out (*you juebudai shi* 有決不待時). Whereas prior to Qianlong, all such cases still required review through the Three Judicial Offices and a final imperial edict authorizing the carrying out of the sentence – as distinct from after-the-assizes cases (*jianhou* 監候) that required the additional Autumn Assizes review – now, the *lijue* requirement for an edict could be satisfied *constructively* by invocation (and use) of the “imperial standard (Ch: *wangming qipai* 王命旗牌; M: *hesei kiru temgetu*).” Here, I use *constructively* in the legal sense, to mean that invocation of the imperial standard came to satisfy the requirement for review and an imperial edict approving the sentence and execution.⁴² The earliest case in which the emperor directed this use of the imperial standard was a parricide case in 1761, and the rhetoric of “invoking the imperial standard” came to

⁴² The legal meaning of “constructive” is “that which is established by the mind of the law in its act of construing facts, conduct, circumstances, or instruments. That which has not the character assigned to it in its own essential nature, but acquires such character in consequence of the way in which it is regarded by a rule or policy of law; hence inferred, implied, or made out by legal interpretation; the word “legal” being sometimes used here in lieu of constructive.” Black’s Law Dictionary, 313

replace the term *junfa* in most summary executions outside of the strictly military-institutional context from the time of the Burma campaign on.

In Chapter Seven, I deal explicitly with the proliferation of summary execution beyond the military-institutional context and beyond the Qianlong reign, first during the eighteenth century under the imperial standard and then under nineteenth-century on-the-spot execution (*jiudi zhengfa* 就地正法). Zhang Shiming has identified the challenge of resources to deal with long-distance retrial-review adjudication as a major factor in the harsh punishment of offenders in Xinjiang and Taiwan during the latter half of eighteenth and nineteenth centuries.⁴³ While this was no doubt one of the most significant immediate factors contributing to on-the-spot summary execution, as Zhang acknowledges, it *alone* does not account for the fact that other categories of cases that were switched to default militarized-track processing were not limited in their geographic origin but were often based on the subject-matter of the offense. He, along with other scholars has also concluded that on-the-spot-executions evolved from imperial-standard-executions.⁴⁴ Zhang notes that “When Lin Zexu 林則徐 returned from his exile in Xinjiang and received the authority from the highest levels of the Qing government to exercise on-the-spot executions in his suppression of the Du Wenxiu 杜文秀 uprising in Yunnan, this ran in a single line with the Qing’s earlier implementation of strict law in Xinjiang under military

⁴³ As he noted, the Qianlong emperor specifically cited this distance from the capital in authorizing imperial writ execution authority for resisting arrest in Taiwan. Zhang Shiming, *Sifa changyu*, 590-93.

⁴⁴ Zhang Shiming, *Law, Resources, and Time-Space Constructing*, 614.

government."⁴⁵ I agree with this statement, but draw the line back earlier to Zhandui-Jinchuan and draw it forward to the nineteenth century.

Wang Duancheng 王端成 argues that the system of on-the-spot executions so prevalent in the nineteenth century was actually an institutionalized alternative track for capital cases that stretched back to the beginning of the dynasty and developed out of a need to handle some capital cases expeditiously. I agree with Wang that summary executions existed, but they were not a legitimate part of the legal culture (they were either aberrations or took place on military campaigns). According to Wang, because the routine process (my word) was so time- and resource-consuming, the “expedited procedures” were a necessary component of the Qing’s system of administering capital punishment.⁴⁶ This dissertation agrees with much of Wang’s insightful analysis, especially his argument that this alternative track gave the emperor increased power over adjudication (at least in so far as the emperor retained final approval *prior to* execution), but, in my opinion, several of the earlier-period cases he cited were not criminal-legal cases, but actions handled in the strategic mode, highlighting the importance of maintaining a distinction between criminal-legal versus non-legal (strategic approach) actions. These two concepts did not merge until the advent of nineteenth-century strategic summary executions. The near-complete legitimization of imperial-standard summary executions in the Code itself – which sapped the process of much of its quasi-extra judicial flexibility – by the end of the

⁴⁵ Zhang Shiming, *Law, Resources, and Time-Space Constructing*, 596.

⁴⁶ Wang Duancheng 王端成, “Jiudi zhengfa yu Qingdai xingshi shenpanzhidu: cong wan Qing jiudizhengfa zhi zhi de zhenglun tanqi 就地正法與清代行事審判制度--從晚清就地正法之制的爭論談起 (On-the-Spot Summary and the Qing Criminal Adjudicative System Execution: A Discussion from the Starting Point of Late-Qing On-the-Spot Executions),” *Modern China History Studies* 近代史研究 (2005:2).

Daoguang era partly explains the appearance of on-the-spot summary executions to deal with the new mid-nineteenth century social situation.

Wang and I both agree that the earliest example of simplified execution can be found in the Qing Code provision on *frontier military rebellion* (which I discuss at length in Chapters Two and Three). Wang, however, argues that the existence of this one instance of simplified execution in the Code supports his proposition that simplified execution procedures were actually a long-standing aspect of the legal process. I think its existence supports the opposite conclusion. He explains away the complete lack of other instances of simplified execution procedure in the Code by asserting that during the early Qing, the routine process itself was not so well established that it required a clear articulation of a simplified exception.⁴⁷ This is true, and there was always flexibility in routine adjudication, but most of the early cases I looked at in Chapter Three tended to follow the logic of the routine process. In other words, summary execution was not an exception to the routine process that just became more common as time passed, but rather was a long-recognized adjudicative process rooted in military culture that spread to legal culture as a result of many factors, but was especially influenced by particular factors during the Qianlong era. There was real change that was part of larger, on-going processes. The change in *mentalité* that took place among adjudicators made it possible for officials on a large scale to embrace summary execution when widespread social unrest and resistance to the Qing altered political conditions during the nineteenth century. It was an important cultural origin for what came in the nineteenth century.

⁴⁷ Wang Duancheng, 218.

Part I. The Routine Adjudicative Process and Militarized Adjudication

Chapter 1: Late Imperial Legal Culture and Routine Criminal Adjudication

This chapter describes the routine retrial-review criminal-adjudicative process during the Qing as a particular manifestation of late imperial legal culture. It also describes the particular legal mechanisms – Code, precedent, and publications – that formed the unique context of transmitting knowledge in the legal realm that underlie the change over time in adjudicative *mentalité*. Given what were revered as ancient principles emphasizing careful adjudication leading to nuanced and balanced punishment, late imperial legal culture saw the process of routine adjudication – which within its doctrinal parameters was often applied quite flexibly – as both constitutive and reflective of the ideals of justice and good governance. This process upheld the emperor’s authority over life and death and, in most cases, tried to strike a balance between providing the offender with an opportunity to renew himself while at the same time deterring both the offender and those who knew of his crimes from committing similar crimes. It reflected the long-term development of several philosophical strains, most notably the synthesis of Confucianism and Legalism. Militarized adjudication, which until the Qianlong era had been understood as an incident of military campaign command, was the antithesis of the routine process: expeditious (less cautious) and harsh (not nuanced) punishment with little hope for leniency (self-renewal) for the purposes of maintaining military discipline. In those cases in which the commander had complete autonomy, militarized adjudication even contravened the emperor’s final authority over life and death.

The basic principles that informed late imperial legal culture were widely known and affirmed by that wide range of officials – magistrates, prefects, circuits, provincial judges, provincial finance commissioners, governors, governors-general, frontier generals – who adjudicated criminal cases in addition to their other administrative duties. It was especially well-known to those whose occupations solely involved legal work, such as the legal secretaries who often ghostwrote for the above officials, litigation masters who assisted persons involved in the litigation process, and officials at the board of punishments and other specifically-legal offices. The latter group were clearly lifelong legal experts, but I refer to both groups collectively as legal specialists to the extent both performed important legal duties.

The emperor himself (and in a broader sense, the “imperial office” to the extent the Grand Council also may have exercised authority on the emperor’s behalf to varying degrees at different times) must be included under this broad definition of legal specialists, but his position transcended all the others. Traditionally, the emperor’s authority (*huangquan* 皇權) was simply the highest judicial and military authority.¹ By the time of the Qing, the emperor occupied the central position of the political system, one aspect of which was the legal system. The legal system itself – including the routine process – served to uphold the emperor’s power and position.² He was both the chief judge and the chief lawmaker. As described below, most of the time, the emperor personally approved “special cases” and (theoretically) all death penalty

¹ For a discussion of the emperor’s authority, see Zheng Qin 鄭秦, “Huangquan yu qingdai sifa 皇權與清代司法 (Imperial authority and Qing-era adjudication),” *Zhongguo faxue* 4 (1988), 100. *Zhongguo chuantong falü wenhua yanjiu* 中國傳統法律文化研究 (Research into Traditional Chinese Legal Culture), eds Zeng Xianyi 曾憲義 et al., vol 2, *Zui yu fa* 罪與罰 (Crime and Punishment) (Beijing: Zhongguo Renmin Daxue Chubanshe, 2011), 258-64.

² *Zhongguo chuantong falü wenhua yanjiu* 中國傳統法律文化研究 (Research into Traditional Chinese Legal Culture), eds Zeng Xianyi 曾憲義 et al., vol 1, *Li yu fa* 禮與法 (Ritual and Law) (Beijing: Zhongguo Renmin Daxue Chubanshe, 2011), 383-85.

cases (philosophically set apart from other crimes).³ He also personally directed or approved the creation of new statutes in the Code. He supervised the whole judicial process, reviewing yearly compilations (*huangce* 黃冊) of all types of cases.⁴ The emperor, at specific points designated in routine criminal procedure – or whenever he so desired – could intervene and change characteristics of the response, even midstream.

It was the *mentalité* within the wide community of legal specialists that had to change in order for late imperial legal culture to imagine militarized adjudication as an alternative to routine criminal adjudication outside of the purely military campaign context. Yet, as I show in Chapters Five through Seven, it was the Qianlong emperor's position at the apex of both legal and military cultures that enabled the disproportionate role he personally played in the development of militarizing tendencies in eighteenth-century legal culture.

The dominant *mentalité* of late imperial legal culture survived the Ming-Qing transition. Soon after occupying Beijing in 1644, the Qing adopted the routine retrial-review adjudicative system largely as set forth in the Ming Code. This move committed the Qing, at least in its Chinese domains, to reconciliation with late imperial Chinese legal culture, a construct very different from pre-conquest (pre-1644) Manchu adjudication of criminal cases. Pre-conquest Manchu legal culture had more parallels with militarized adjudication than with late-Ming legal

³ *Zhongguo chuantong falü wenhua yanjiu* 中國傳統法律文化研究 (Research into Traditional Chinese Legal Culture), eds Zeng Xianyi 曾憲義 et al., vol 1, *Li yu fa* 禮與法 (Ritual and Law) (Beijing: Zhongguo Renmin Daxue Chubanshe, 2011), 184.

⁴ Zheng Qin, "Huangquan yu qingdai sifa," 105-06. At least from the Shunzhi reign (r. 1644-61) through the beginning of the Qinglong era, the emperor was supposed to review each routine death penalty case at least three times, a process scholars have referred to as "*fuxingbu sanfuzou li* 復刑部三復奏例." Li Wenling 李文玲, *Zhongguo gudai xingshi susongfa shi* 中國古代刑事訴訟法史 (The History of criminal procedure in ancient China) (Beijing: Law Press, 2011), 494.

culture. The Qing's adoption of the Ming legal system reflected not only practical requirements – this was the Code that multitudes of legal specialists were already using across the vast expanse of the former Ming realm to adjudicate cases for a large population – but also a desire to draw upon the strong association between proper adjudication and good governance to affirm the conquest dynasty's legitimacy before its new Chinese constituents.

Late imperial legal culture was manifested in the procedures under which cases were routinely adjudicated. Fundamentally, the routine criminal-legal process sought to uphold the legitimacy of the imperial state on an individual case-by-case basis. Adopted from the Ming, its persuasive authority derived from its status as an ancestral institution and commitment to the proper performance of criminal adjudication.⁵ It was thoroughly grounded in (and constitutive of) late imperial legal culture, whose adherents shared not only a high degree of consensus on the philosophical underpinnings of the criminological viewpoint, but also agreement on the correct bureaucratic processes and forms criminal-legal actions should take, all perpetuated by the community of legal specialists.⁶

I. Legal Doctrine and Legal Specialists

A. The Criminological Viewpoint of Late Imperial Legal Culture

Roger Cotterell argues that the notion of legal doctrine is a more useful analytical category than legal culture. Doctrine alone, however, fails to capture the unspoken and reflexive aspect of legal adjudication (as a *mentalité*). Still, what were understood as the time-honored principles of legal doctrine constituted a strong shaping force in the late imperial Chinese legal culture. Over

⁵ On the notion of 'ancestral institute,' see Zheng Qin 鄭秦, "Huangquan yu qingdai sifa," 102.

⁶ Klaus Mühlhahn, *Criminal Justice in China: A History* (Cambridge: Harvard University Press 2009), 15.

the two millennia of legal development from the Qin Dynasty (221-206 BC) through the Qing, out of Confucianism, Legalism and other philosophical and practical influences, there developed a general consensus on what constituted the correct criminological viewpoint.⁷ The Confucian strain emphasized restoration of peace and justice as well as the role of family relationships (the five relationships and three bonds). *Li* (禮), “proper deportment and attitude” at each level within hierarchical relationships and virtue were seen as key to living in a harmonious Confucian society.⁸ The punishment had to meticulously fit the crime. The Legalist strain emphasized controlling the population through fear by implementing uniformity of punishment, clear laws (*fa* 法), and deterrence (severe punishment).⁹

The idea that the taking of a human life was qualitatively different (*renming guantian* 人命關天) also had a tremendous influence on criminal-legal philosophy, calling for special procedures both for cases in which someone took a life and in which the punishment was death.¹⁰ In all cases, but especially death-penalty cases, legal culture “held the view across history that indiscriminate and excessive adjudication of punishment (*sifa wanglan* 司法枉濫) disrupted the cosmic order (*tiandao* 天道) leading to disaster.”¹¹ Thus, prior to the Qianlong era, deeply

⁷ This development is sometimes referred to as the “Confucianization of the law.” T’ung-Tsu Ch’ü, *Law and Society in Traditional China* (The Hague: Mouton & Co., 1965), 226-279. A longue durée view of the development of Chinese legal philosophy is set forth in *Zhongguo chuantong falü wenhua yanjiu* 中國傳統法律文化研究 (Research into Traditional Chinese Legal Culture), eds Zeng Xianyi 曾憲義 et al., vol 2, *Zui yu fa* 罪與罰 (Crime and Punishment) (Beijing: Zhongguo Renmin Daxue Chubanshe, 2011).

⁸ Derk Bodde and Clarence Morris, *Law in Imperial China: Exemplified by 190 Ch’ing Dynasty Cases* (Philadelphia: University of Pennsylvania, 1973).

⁹ Bodde and Morris, 23-26; Mühlhahn, 20.

¹⁰ Sun Jiahong 孫家紅, *Qingdaide sixing jianhou* 清代的死刑監候 (Beijing: Social Sciences Academy Press, 2007), 16-22.

¹¹ Wu Shuchen 武樹臣, *Zhongguo falü wenhua daxieyi* 中國法律文化大寫意 (A General Description of Chinese Legal Culture) (Beijing: Beijing University Press, 2011), 58. Mühlhahn also identifies a “cosmological school,” that

embedded within late imperial legal culture was what modern scholars have referred to as a principle of cautious adjudication (*shenyong yuanze* 慎用原則) that translated into a norm of high importance of careful adjudication at all levels of the hierarchical retrial-review system.¹²

Most scholars who have considered the Qing legal system in relation to the Ming would agree that “there is clear continuity from the Tang dynasty (AD 618-906) to the end of the Qing, and that there is every reason to suppose that the tradition stretch[ed] back many centuries”¹³ Geoffrey McCormack has convincingly demonstrated the existence of such a recognizable Chinese legal tradition from the Warring States period, with a codification of the law in the Tang that became the template for Ming/Qing legal codes.¹⁴ Renowned Chinese legal scholars Zheng Qin 鄭秦 and He Qinhua 何勤華 have authored persuasive tomes densely documenting this continuity.¹⁵ One gets the same sense from perusing the recent ten-volume work, *Research into Traditional Chinese Legal Culture*.¹⁶ These works leave the impression of a conceptual category of law that was well recognized by the sixteenth century. Moreover, the sense that late imperial legal culture and the procedures associated with it represented time-tested philosophies and practices of good governance lent it increased authority. The scholarly and political consensus

he argues attempted to find an appropriate effort to remedy the social harm caused by a crime, taking into account how the criminal disturbance of the human order affected the larger cosmic order of things. Mühlhahn, 22.

¹² *Zhongguo chuantong falü wenhua yanjiu* 中國傳統法律文化研究 (Research into Traditional Chinese Legal Culture), eds Zeng Xianyi 曾憲義 et al., vol 2, *Zui yu fa* 罪與罰 (Crime and Punishment) (Beijing: Zhongguo Renmin Daxue Chubanshe, 2011), 497-98; *Zhongguo chuantong falü wenhua yanjiu* 中國傳統法律文化研究 (Research into Traditional Chinese Legal Culture), eds Zeng Xianyi 曾憲義 et al., vol 1, *Li yu fa* 禮與法 (Crime and Punishment) (Beijing: Zhongguo Renmin Daxue Chubanshe, 2011), 186-87.

¹³ William C. Jones, *The Great Qing Code* (Oxford: Clarendon Press, 1994).

¹⁴ Geoffrey McCormack, *Traditional Chinese Penal Law* (Edinburgh: Edinburgh University Press, 1990), 1-18.

¹⁵ He Qinhua 何勤華, *Zhongguo faxue shi* 中國法學史 (Taipei: Weber Publications, 2004).

¹⁶ Zeng Xianyi 曾憲義 et al., eds, *Zhongguo chuantong falü wenhua yanjiu* 中國傳統法律文化研究 (Research into Traditional Chinese Legal Culture), 10 vols (Beijing: Zhongguo Renmin Daxue Chubanshe, 2011).

on the correctness of the criminological viewpoint as manifested in the routine criminal process rendered the proper performance of criminal adjudication an important tool for affirming the dynasty's legitimacy, especially during the early period.¹⁷ For the new dynasty, the proper performance of Chinese criminal adjudication was an important legitimating ritual.¹⁸

Liang Linxia has described how the legal sphere was distinct from other activities.¹⁹ She identifies three characteristics of “traditional” Chinese legal culture that are important to this study.²⁰ First, the emperor's authority was paramount. “After the merging of Confucianism and Legalism, the orthodox Confucian-Legalist thought retained the absolute authority of the emperor that had been inherited from Legalism.”²¹ According to Liang, the emperor had absolute authority to create, modify, or annul law, and he was the highest-level adjudicating official in the whole system.²² Second, Chinese legal culture reflected a well-developed theory

¹⁷ Pamela Crossley has described the eighteenth-century Qing imperial system as simultaneous emperorship. Pamela K. Crossley, *A Translucent Mirror: History and Identity in Qing Imperial Ideology* (Berkeley: University of California Press, 1999). In this regard, we can think of the performance of late imperial criminal adjudication as an important legitimating ritual for the Qing emperor before his Chinese “constituency.”

¹⁸ “There are, of course, many kinds and definitions of ritual, but in its broadest sense, the term may be said to include all forms of artificially structured social behavior, from the etiquette of daily greetings to solemn ceremonies and religious sacrifices.” Richard J. Smith, “Ritual in Ch'ing Culture,” in *Orthodoxy in Late Imperial China*, ed. Kwang-ching Liu (Los Angeles: University of California, 1990), 284. “State Ritual was thus seen as a means of both legitimizing political power and exerting administrative control.” Smith, 288. “Within the regular bureaucracy, civil and military officials from grand councilors down to county magistrates adhered scrupulously to an elaborate set of ritual rules and regulations covering every conceivable situation.” Smith, 293. Scholars have addressed the role of ritual performance as it pertains to several aspects of Qing imperial legitimacy. In terms of guest ritual, see James L. Hevia, *Cherishing Men from Afar: Qing Guest Ritual and the Macartney Embassy of 1793* (Durham: Duke University Press, 1995). In terms of Qing ritual directed at maintaining Qing imperial legitimacy among the Mongols, see Chia, Ning 賈寧, “The Lifanyuan and the Inner Asian Rituals in the Early Qing (1644-1795).” *Late Imperial China* 14, no. 1 (June 1993), 60-92; Joanna Waley-Cohen, “Military Culture in Eighteenth Century China” in *Military Culture in Imperial China*, ed., Nicola DiCosmo (Cambridge: Harvard University Press, 2009).

¹⁹ Liang Linxia, *Delivering Justice in Qing China: Civil Trials in the Magistrate's Court* (Oxford: Oxford University Press, 2007).

²⁰ Liang Linxia, *Zhongguo chuantong fa wenhua yu fazhi xiandaihui* 中國傳統法文化與法制現代化 (Traditional Chinese Legal Culture and Modernization of the Legal System) (Beijing: Zhongguo Zhengfa Daxue, 1992), 2.

²¹ Liang Linxia, *Zhongguo chuantong fa wenhua*, 20.

²² Liang Linxia, *Zhongguo chuantong fa wenhua*, 21.

of criminal punishment (which I elaborate on in Chapter Two).²³ Finally, it advocated righteousness and justice and thus emphasized education while opposing gratuitous killing. This latter point meant that punishment had to be dispensed very carefully.²⁴

B. *Legal Specialists Conducting Legal Activity in a Legal Manner*

In order to make Friedman's notion of inner-legal culture meaningful within the context of late imperial China, the notion of "legal specialist" must be defined broadly.²⁵ It must include all those who had adjudicative responsibilities for cases, all those men for whom a change in *mentalité* meant a difference in adjudication. In order to identify these men, it is first necessary to identify "legal actions" as distinct from purely administrative or military actions. As Japanese legal scholar Shûzô Shiga correctly stated nearly forty years ago, the legal system of late imperial China was one of the many forms of public administration engaged in by China's single bureaucracy.²⁶ But, Liang Linxia has argued that when Qing officials at all levels engaged in legal duties, they did so in a "legal manner."²⁷ This "legal manner" encompassed both elements of procedure (the rules governing how actions circulated through the system) and substance (the linguistic composition of the documents). The existence of a distinct, recognizable sphere of legal activity (characterized by those administrative actions done in a legal manner) during the Qing is also consistent with the existence of legal specialists (who assisted or ghost-wrote legal documents for government officials), the existence of specialized legal organs, specialized legal

²³ Liang Linxia, *Zhongguo chuantong fa wenhua*, 36-38.

²⁴ Liang Linxia, *Zhongguo chuantong fa wenhua*, 39-40.

²⁵ Lawrence M. Friedman, *The legal system: a social science perspective* (New York: Russell Sage Foundation, 1975), 222.

²⁶ Shûzô Shiga, *Criminal Procedure in Ch'ing Dynasty: with Emphasis on its Administrative Character and Some Allusion to its Historical Antecedents* (Tokyo: Toyo Bunko, 1974), 134.

²⁷ Liang Linxia, *Delivering Justice in Qing China: Civil Trials in the Magistrate's Court* (Oxford: Oxford University Press, 2007).

education, and the enormous body of Qing legal scholarship (*lǚxue* 律學).²⁸ In addition to the specialized legal education, there was a sort of general legal education that came from the publishing of statutes, the reading of the Sacred Edict and the various philosophical doctrines – which was not specifically legal included many principles upon which the legal system was based – that all officials memorized as part of their education in preparation for the exams.²⁹

Formally, there was not a clear distinction between Qing officials who performed legal duties and those who performed other administrative duties. For instance, county magistrates (*zhixian* 知縣) – the same officials responsible for all central government matters at the county level – also served as the sole “judges” of their respective counties. But, magistrates and higher-level officials often hired legal secretaries (*muyou* 幕友) with extensive legal-training who assisted during trial and drafted formal legal decisions.³⁰ At the provincial level, cases were often retried by the provincial judge (*anchashi* 按察使), a position closely-associated with legal processing. At the central government, the Board of Punishment (Board of Punishments) was the most specifically-legal.

²⁸ During the Qing *Lǚxue* scholarship was highly focused on describing the change of this codified law, therefore this body of literature proved useful to observe the change in codified law over time. Zhang Pufan 張普藩, ed., *Qingdai lǚxue mingzhu xuanjie* 清代律學名著選介 (Zhongguo Zhengfa Daxue Chubanshe, 2009); Chang Wejen 張偉仁, “Legal Education in Ch’ing China,” in *Education and Society in Late Imperial China, 1600-1900*, eds, Benjamin A. Elman and Alexander Woodside, (Berkeley: University of California Press, 1994), 292-339.

²⁹ *Zhongguo chuantong falü wenhua yanjiu* 中國傳統法律文化研究 (Research into Traditional Chinese Legal Culture), eds Zeng Xianyi 曾憲義 et al., vol 6, *Lǚxue yu faxue* 律學與法學 (Statutory Scholarship and Legal Education) (Beijing: Zhongguo Renmin Daxue Chubanshe, 2011), 103-07.

³⁰ Chang Wejen 張偉仁, “Legal Education in Ch’ing China,” 292-339. Those accused of crimes sometimes hired “litigation masters” who acted somewhat like private lawyers. Melissa A. Macauley, *Social power and Legal Culture: Litigation Masters in Late Imperial China* (Stanford: Stanford University Press, 1998).

Chen Li's research on legal secretaries (*muyou* 幕友) (Chen refers to them as "legal specialists") during the Qing provides strong evidence of the existence of both a discrete legal culture and the particular *mentalité* that supported the perpetuation of the routine adjudicative system (and would have been strongly adverse to militarized adjudication). According to Chen, there were three thousand legal secretaries during the Qing, divided between *qian'gu* (錢谷) legal secretaries who worked mainly for provincial financial commissioners, and criminal-law (*xingming* 刑名) legal secretaries who worked for provincial judges and other officials. Chen finds that the practice of hiring legal secretaries began under the Ming under the name of *zhuwen* (主文) and spread rapidly during the Qing. This occupation of legal secretary, which was extremely well paid, provided a secondary path (sometimes a preferred path) for literati who had no hope of gaining an official position as the population expanded from 100 million to 450 million people while official positions increased by only forty-two. Chen cites the European definition of a "profession": formal training, a shared sense of calling, social distinction, and a formal regulating agency. He argues that this European definition should not be determinative for late imperial China but then goes on to show how the community of legal secretaries actually met these requirements.³¹

As for a sense of common community and common education, according to Chen, many legal secretaries were from Shaoxing (Zhejiang), an especially wealthy area known for the number of scholars it produced. Generally, the ones who passed the exams became officials and many of

³¹ Chen Li 陳利, "Legal Specialists and Judicial Administration in Late Imperial China, 1651-1911," *Late Imperial China* 33, no. 1 (June 2012), 1-54. Chen Li presented the current state of his research into legal secretaries at the Association of Asian Studies Conference in Chicago in March 2015, showing a far more extensive role for legal secretaries in the drafting of legal decisions.

those who did not become legal secretaries. These legal secretaries maintained their horizontal and vertical connections with other Shaoxing natives who became both officials and their fellow legal specialists. They apprenticed for two to six years at a yamen, time spent in intensive study, drafting documents and proving that they could distinguish cases. Thus we see similar training and a mutual set of handbooks.³²

Chen finds that legal secretaries had a group-identity (beyond a common Shaoxing identity), and aspired to ideals of law and justice. For instance, Wang Huizu 汪輝祖 (1731-1807), a well-known *liuxue* scholar, wrote about a “way” of the legal secretary (*muyoudao* 幕友道) and Wang Youfu 王有孚, a Jiaqing-era (r. 1796-1820) *liuxue* scholar, wrote about the spirit of legal secretaries (*muqi* 幕氣). According to Chen, these writings support a conclusion that legal secretaries enjoyed a strong “ethical” sense of legal adjudication. The “Way” valued independence: they had to watch out for the *gong* (公) of the people and block the *si* (私) of the officials (even if they happened to work for the official). It was important for them to get decisions right from “behind the curtain” even if the officials for whom they worked disagreed. A good legal secretary should have argued or resigned rather than give in to a recalcitrant official who wanted to adjudicate a case in an improper manner. Legal secretaries had a suspicion of torture because it provided unreliable evidence and the accused would likely retract their confessions on appeal. According to Chen, legal secretaries aspired to the ideal of *pingshu* (平恕) – which I translate as maintaining peace through leniency – and would judge cases very carefully, especially death penalty cases. They had an image of themselves as saving the world

³² Chen Li 陳利, “Legal Specialists and Judicial Administration in Late Imperial China, 1651-1911,” 1-54.

(*jingshi* 經世) and the practice of law was viewed as a kind of statecraft or practical learning – they represented their “profession” as not only respectable but vital to the whole state and society.³³

Legal secretaries were just one of several categories of legal experts, many of whom could properly be called legal officials. For instance, Wu Tan 吳壇 (1724-80) was a legal scholar from a family of legal scholars. He served practically his whole career on the Board of Punishments, as had his father.³⁴ He wrote the *DaQing Lüli Tongkao* 大清律例通考 (The Complete Reference of the Qing Code), published in the 1770s, a work I have used extensively in this dissertation.³⁵ Like Wu Tan, Zhu Qingqi 祝慶琪, son of a longtime official of the Board of Punishments, was the editor of the famous mid-nineteenth-century casebook *Xing'an Huilan* (刑案匯覽).³⁶ Zhu himself served as a jurist at the Board of Punishments starting in 1820. In 1832 he left the Board to become the legal secretary of Fujian-Zhejiang Governor-General Sun-erzhun.³⁷ Xue Yunsheng (1820-1901), editor of the *luxüe* work best known to modern scholars, *Duli Cunyi* (獨例存疑), spent thirty years at the Board of Punishments.³⁸ These officials and others often came from multi-generational families of legal experts and officials primarily concerned with self-consciously legal matters.

³³ Chen Li 陳利, “Legal Specialists and Judicial Administration in Late Imperial China, 1651-1911,” 1-54.

³⁴ Ma Jianshi 馬建石 and Yang Yutang 楊育棠, eds, *DaQing Lüli Tongkao Jiaozhu* 大清律例通考校注 (The Annotated ‘Complete Reference to the Qing Code) (Beijing: Zhongguo Zhengfa Daxue Chubanshe, 1992).

³⁵ Ma Jianshi and Yang Yutang, 1.

³⁶ Zhu Qingqi 祝慶琪, *Xing'an Huilan Sanbian* 刑案匯覽三編 (The Compendium of Cases, including all three editions) (Beijing: Guji Chubanshe, 2000 [1834]) [hereinafter XAHL].

³⁷ Qiu Pengsheng 邱澎生, “Jianxi ‘Xian’an huilan’ de zhishishi 淺析《刑案匯覽》的知識史 (A brief analysis of the intellectual history behind the compendium of cases)” Report of the Academia Sinica’s Conference on the History of Legal Trials (June 17, 2004).

³⁸ DLCY.

C. *The Ming-Qing Codes and the Transmission of Late Imperial Legal Culture*

H. L. Hart argued that what makes law is the institutionalization of doctrine. It is this aspect of institutionalization of doctrine in Code and regulations that are edited, revised, studied, and archived that provided an important vehicle of transmission for changes over time in adjudicative *mentalité*. To a certain extent, it is this institutionalization that, along with the transmitted practices of the community of legal specialists, gave the specific emphasis of the Qianlong emperor life beyond his single reign to affect the adjudicative *mentalité* of officials in subsequent reigns.

The most important vehicle for transmission of legal doctrine and legal culture was the Ming-Qing Code. Understanding the role of Code and precedent in transmitting legal doctrine is central to this dissertation. The Qianlong emperor's personal and outsized impact on the cases outlined in Chapter Five below could overshadow the greater change in adjudicative *mentalité* that I am proposing came out of his reign. The formalization of that emperor's pronouncements in Code and unpublished precedents as formal doctrine belies any notion that his impact ended with the end of his reign.

The Ming-Qing Code was the most perfect expression of late imperial legal culture and, prior to the Qianlong Reign, of the routine-criminal legal process. Ming Dynasty founder Zhu Yuanzhang (r. 1368-98) was the driving force behind the creation of the Ming Code (*DaMing lii* 大明律). He perceived that one of the reasons for chaos under the Yuan Dynasty (1271-1368) was a laxness of law. With the Ming Code, he sought to balance the needs of social order versus

leniency. The Code was finalized by 1397.³⁹ The Qing *de facto* adopted the Ming Code during the first year of the Shunzhi reign and formally adopted and re-promulgated the Code as the Qing Code in 1646 (SZ 3) (Ch: *Da Qing lüli* 大清律例; M: *Daicing gurun i fafun bithe kooli i uheri hacin*).⁴⁰ The Code incrementally defined crimes (*zuiming* 罪名) by closely calibrating criminal culpability and social harm to varying degrees of punishment.⁴¹ Punishment had to serve both retributive and deterrent functions while at the same time allowing, in appropriate circumstances, for self-renewal (*zixin* 自新) and rehabilitation. One important manifestation of this was the long-term existence of mechanisms in the law that either reduced or remitted punishment if one turned himself in for a crime and often even extended this privilege if one's family member turned one in for a crime. Traces of self-turn in provisions can be found as early as the Zhou period (c. 1046-256 BC) and were quite mature by the Tang period. By the time of the Ming-Qing Codes, the basic rule (which was modified in various other statutes and substatutes) was that self-turn in for a crime unknown to authorities resulted in complete absolving of criminal guilt (*mianzui* 免罪).⁴² Various other mechanisms in the Code also reflected the Code's mixed genealogy: provisions to increase or decrease punishment based on family relationships, the possibility to commute a sentence to allow a convict to care for an older relative, provisions

³⁹ Jiang Longlin, *The Great Ming Code: Da Ming Lü* (Seattle: University of Washington Press, 2005), iii.

⁴⁰ The Qing *de facto* adopted the Ming Code in 1644 when prince-regent Dorgon (regent, 1643-50) ordered that all criminal cases within the Inner-empire (*neidi* 內地) – meaning the former realms of the Ming Dynasty – were to be tried under the criminal code of the defunct dynasty. SZSNL, 1. Initially, the substatutes were compiled in a separate publication, but were combined into the same work (with the substatutes appended directly at the end of the related statutes) at least since the early Qing, as reflected in the title of the Qing Code since the Qianlong-era.

⁴¹ Mühlhahn, 54.

⁴² *Zhongguo chuantong falü wenhua yanjiu* 中國傳統法律文化研究 (Research into Traditional Chinese Legal Culture), eds Zeng Xianyi 曾憲義 et al., vol 2, *Zui yu fa* 罪與罰 (Crime and Punishment) (Beijing: Zhongguo Renmin Daxue Chubanshe, 2011), 348-54.

allowing for certain persons to redeem certain crimes through monetary payment, and provisions allowing for imperial grace to forgive crimes with amnesty.⁴³ Finally, another manifestation of structural leniency in the Code were the various provisions that allowed for general and specific amnesties.

The Code consisted of both statutes (*lü* 律) and substatutes (*li* 例). The relationship between a given statute and its appended substatutes varied based on the practical authority of the statute over time and the degree to which it was modified or contradicted by substatutes.⁴⁴ In citing Code provisions, terms such as *yi* (以), *yi* (依), *zhao* (照), *an* (按), and *cong* (從) – roughly meaning “according to” – had significant specialized meaning that reflected a particularly-legal analysis.⁴⁵ These terms signaled the degree to which the particular provision cited was considered legally-binding, analogous or the degree of severity (i.e., *congqing* 從輕) to be applied.

⁴³ Mühlhahn, 56; *Zhongguo chuantong falü wenhua yanjiu* 中國傳統法律文化研究 (Research into Traditional Chinese Legal Culture), eds Zeng Xianyi 曾憲義 et al., vol 2, *Zui yu fa* 罪與罰 (Crime and Punishment) (Beijing: Zhongguo Renmin Daxue Chubanshe, 2011), 354-72.

⁴⁴ Derk Bodde and Clarence Morris, *Law in Late Imperial China: Exemplified by 190 Ch'ing Dynasty Cases* (Philadelphia: University of Pennsylvania Press, 1967), 57-66. When statutes and substatutes conflicted, the substatutes controlled. Newer law prevailed over older law. In the absence of a directly-applicable law, Chinese officials decided cases by analogy to existing codified law.

⁴⁵ Qing *lüxue* scholar Wang Mingde's 王明德 exposition of legal prepositions in *Dulü peixi* (讀律佩觿) (1676) described the various analytical-legal usages of these terms. For instance, the accusative *yi* (以) was used to signify that whatever Code provision was cited using the “*yi*” accusative precisely matched the facts and gravamen of whatever criminal behavior was alleged. “以者,與真犯同.” Wang, juan 1, page 3. *Cong* (從) was usually used to describe a situation where there were two branches for analysis within the law, one of which was more harsh (e.g., *congzhong*, 從重). Depending on the circumstances, the particular facts should be analyzed under one or the other branches. It means to follow one branch and abandon the other branch. “有舍此從彼之意焉.” Wang, juan 3, 32. Wang Mingde, *Dulü peixi* 讀律佩觿, eds., He Qinhuo 何勤華 et al. (Beijing: Falü chu ban she, 2001).

The primary mechanism with the Code for the transmission of legal doctrine over time was the statutes.⁴⁶ From the early Ming on, statutes changed little. For instance, the main desertion statute remained substantially unchanged from the early fifteenth century through the early twentieth century.⁴⁷ In Chapter Six, I show that the militarized adjudicative track was formalized – at least for some crimes – through the promulgation of statutes during the Qianlong reign. Statutes almost always derived in one form or another from former decisions (*li* means precedent). First, there were those decisions for which the emperor, either upon request or *sua sponte*, issued an edict declaring that they would be made statutes, a form of legislation.⁴⁸ Second, the emperor sometimes directed that future cases be decided consistently with his present decision, making a case binding precedent without promulgation in the Code as a statute. Both of these methods involved outer-court vetting and involved a deliberate promulgation process. The majority of previously decided cases, though, fell into a third category: informal precedents. Informal precedents were never formally promulgated, but they were often published either privately or semi-officially in case reference books. There is substantial scholarly disagreement whether informal precedents actually affected judicial

⁴⁶ Derk Bodde and Clarence Morris, *Law in Late Imperial China: Exemplified by 190 Ch'ing Dynasty Cases* (Philadelphia: University of Pennsylvania Press, 1967), 57-66.

⁴⁷ From 1647 to 1905, the only significant change in the desertion statute was that its administrative sanction provisions (consisting primarily of fines for officials) were transferred to separate regulations, (first to the *Zhongshu Zhengkao* and then later to the *Bingbu Chufen Zeli*) leaving only its criminal content in the Code, a change consistent with other provisions of the Code.

⁴⁸ Bai and Yu take the view that statutes are more properly considered the product of legislation. Bai Hua 柏樺 and Yu Ying 于雁, "Qindai lüli cheng'an de shiyong -- yi qiangdao lüli wei zhonxin 清代律例成案的使用 – 以強盜為中心 (the use of decided cases vis-à-vis the Code during the Qing-era, an analysis using the strong-armed robbery statutes and statutes)," *Zhengzhi yu Falü* (2009), 134. Yet, as Philip C.C. Huang correctly noted, when prior cases become embodied in statute, they have binding precedent analogous to Anglo-American common law. Philip C.C. Huang, "Civil Adjudication in China, Past and Present," *Modern China* 32:2 (April 2006), 139.

decision-making.⁴⁹ At the very least, one can conclude from the many case books published during the Qing as well as from actual references to prior cases in decisions that informal precedent influenced the thinking of officials interpreting the law.⁵⁰

⁴⁹ “Statute” and “substatute” are at best imperfect translations because these English terms belie that substatutes could completely contradict and effectively abrogate their putative parent statute. When distinguishing between substatutes (*tiaoli*), general precedents (*shili* 事例), and regulations (*zeli* 則例), all of which contain the Chinese character *li*, translation becomes even more problematic. Substatutes and regulations are contained in many sources. The Da Qing Huidian, sometimes translated as *Collected Statutes and Precedents of the Qing*, was both an authoritative source of law as well as a history of the evolution of the law. *Shengli* (省例) pertaining to several of the provinces contain substatutes applicable to a particular provinces. Endymion Wilkinson, *Chinese History: A Manual* (Cambridge: Harvard University Asia Center, 2000), 948. Each of the six boards maintained its own set of disciplinary regulations (*zeli* 則例). The Qing Code normatively envisioned a very narrow use of informal precedent. Normatively, the Qing Code envisioned a very narrow use of informal precedent. The Code enjoined officials not to “cite and consider as laws by analogy [those] Imperial Decrees that decided individual cases and that have not yet been promulgated [as substatutes].” Jones, *The Great Qing Code*, 396-97. Notwithstanding this restriction, if the application of the Code was unclear, the adjudicator could request permission to use a case precedent as the source of law. Bai Hua and Yu Ying, “Qindai lüli cheng’an de shiyong -- yi qiangdao lüli wei zhonxin,” 138. In Anglo-American legal parlance, a precedent refers to “an adjudged case or decision of a court, considered as furnishing an example or authority for an identical or similar case afterwards arising or a similar question of law.” *Black’s Law Dictionary*, 6th ed., “precedent” (St. Paul: West Publishing Co., 1990), 1176. R. Randle Edwards sides with Zheng Qin finding that based on a number of cases from the *Xing’an Huilan*, magistrates relied heavily on prior cases as a source of law. Edwards argues officials felt free to rely on informal precedent and only cited the Code’s prohibitions against the use of informal precedent when they needed a pretext to avoid using a certain precedent. Wang Zhiqiang agrees that precedent was an independently effective source of law. Wang Zhiqiang 王志强, “Qingdai cheng’an de xiaoli he qi yunyongzhongde lunzheng fangsgì – yi ‘Xiang’an huilan’ wei zhongxing 清代成案的效力和其运用中的论证方式——以《刑案汇览》为中心,” *Legal Research* 2003:3, 149. Debin Ma has referred to Zheng Qin’s view as “something of a precursor to a doctrine of precedent,” however he also noted that “except for those rulings approved by the Imperial government, the practice of ruling by analogy was often discouraged for fear that officials may deviate too far from the formal codes or imperial instructions.” Debin Ma, “Law and Economic Change in Traditional China: A Comparative Perspective,” *Center for Economic Institution Working Paper Series* No. 2009-2, Institute of Economic Research, Hitotsubashi University, Tokyo, Japan (September 2009), 17. While Su Yigong acknowledges the restrictions on case precedent, he still finds it functionally similar to Western case law. Su Yigong 蘇亦工, *Ming Qing lü yu tiaoli* 明清律與條例 (Beijing: Zhongguo Zhengfa Daxue Chubanshe, 1999), 55-56. Bai Hua and Yu Ying, on the basis of several robbery cases, concluded on a very limited role for precedent in adjudication, arguing against referring to prior Qing cases as precedent (*panli* 判例). Bai Hua 柏樺 and Yu Ying 于雁, “Qindai lüli cheng’an de shiyong – yi qiangdao lüli wei zhonxin,” 131-32.

⁵⁰ Many such case books existed. For instance, two additional versions of the XAHL were published during the nineteenth century adding thousands of cases. Some other such collections include: Xu Lian 許樺 and Xiong E 熊莪, *Xingbu bizhao jiajian cheng’an* 刑部比照加減成案 (Decided cases exemplifying increasing and decreasing punishment by analogy contained in the Compendium of Cases) (Shanghai: Guji chubanshe, 1995 [Daoguang Period]); Lan Dingyuan 藍鼎元, *Luzhou gon’an* 鹿州公案 (Taipei: Wenhai Chubanshe 1971 [1765]). Writing of the Ming, Jiang Yonglin and Wu Yanhong suggest such a middle position that might be applicable to the Qing, explaining that prior cases provided “examples of judgments that embodied fairness-centered judicial reasoning”

The main partitions of the Code generally followed the subject matter of the Six Boards. The Qing Code section titled “Law of War” (Ch: *binglü* 兵律; M: *coohai fafun*) – corresponding to the Board of War (Ch: *bingbu* 兵部; M: *coohai jurgan*) contained an additional subdivision, “Military Administration” (Ch: *junzheng* 軍政; M: *coohai dasan*) under which were grouped twenty-one statutes, including the main desertion statute.⁵¹ These statutes were routine-track substantive law. Military-related codified criminal laws were part of the broader corpus of late imperial law and regulations which generally divided administrative sanctions (fines, demotions) and criminal punishments (*xing* 刑).⁵²

Under the traditional “Five Punishments” (*wuxing* 五刑) listed in the Ming-Qing Codes, execution (*zhengfa* 正法) had two formal degrees, strangulation (*jiao* 絞) and decapitation (*zhan* 斬).⁵³ Although not listed as one of the “Five Punishments,” the highest degree of execution was “death by slicing” (*lingchi chusi* 凌遲處死), reserved for the most heinous crimes.⁵⁴ The other four punishments included caning with a thick (*zhang* 杖) or thin (*chi* 笞) bamboo rod, the

influencing officials, but not controlling their decisions. Jiang Yonglin and Wu Yanhong, “Satisfying Both Sentiment and Law: Fairness-Centered Judicial Reasoning as Seen in Late Ming Casebooks,” in *Thinking with Cases: Specialist Knowledge in Chinese Cultural History*, ed. Charlotte Furth et al. (Honolulu: University of Hawai’i Press, 2007), 54. Supporting this position, a Board of Punishment’s official noted in the early nineteenth century, “If there are any doubtful aspects of cases we review, the Board needs a reference to confirm the cases, something of the same kind to compare it to in order to do a careful analysis and in order to use the [statutes and substatutes] to their maximum extent.” XAHL, 1.

⁵¹ Jones, *The Great Qing Code*, arts. 199, 202, 203, 205, and 208.

⁵² Administrative sanctions (*chufen* 處分) and rewards (*shang* 賞) were usually set forth in regulations (*zeli* 則例). Under the Qing, the two most important regulations for military administrative sanctions and rewards were the *Zhongshu Zhengkao* 中樞政考 (1745) (Rare Book Collection, National Palace Museum Documents Library, Taiwan, 欽定中樞政考三十一卷; 殿本中樞政考(乾隆十一年刊)) and the *Bingbu chufen zeli* 兵部處分則例 (*Qin Ding Bing Bu Chu Fen Ze Li: San Shi Jiu Juan*. Daoguang 3, (1823)).

⁵³ The generic phrase *zhengfa* (正法) was often used in more summary proceedings without specifying the precise manner of execution.

⁵⁴ Timothy Brook, Jérôme Bourgon, and Gregory Blue, *Death by a Thousand Cuts* (Cambridge: Harvard University Press, 2008).

wearing of the cangue (*jia* 枷), as well as several degrees of exile – local exile (*tu* 徒), out-of-province term exile (*liu* 流), so-called military or permanent exile (banishment) at the frontier (*junliu* 軍流) – based on the length of time one was to be exiled and the distance from home.⁵⁵

D. *Lüxue* Scholarship as Reflective and Constitutive of Late Imperial Legal Culture

Legal experts left a legacy of hundreds of casebooks and legal handbooks, much of it belonging to the highly-developed late imperial tradition of commentary on codified law known as *lüxue* (律學), primarily composed of annotations and notes explicating the legislative history and meaning of statutes (and sometimes substatutes).⁵⁶ This body of legal scholarship, a somewhat self-contained discursive world of (usually rather simplistic) statutory elaboration, is further evidence of the existence of an identifiable legal culture, the *mentalité* associated with that culture, and the appearance of militarizing tendencies in that legal culture. In his book-length work, Zhang Jinfan 張晉藩 has compiled reviews and summaries of hundreds of Qing-era legal works, most of which fall into the category of *Lüxue*.⁵⁷ During the course of my research, I reviewed in depth several of these works. In *lüxue* works written prior to the mid-eighteenth century, such as Wang Mingde's 王明德 (Shunzhi period) *Dulü Peixi* 讀律佩觿, I found no acknowledgement of the existence of the practice of militarized adjudication, despite that practice's ubiquitous presence in military manuals of the time as well as in the archives pertaining to military affairs.

⁵⁵ Administrative sanctions included fines and forfeitures, honorary and substantive demotion, loss of title as well as complete dismissal from position in varying degrees. Rewards included both monetary and honorary awards.

⁵⁶ Zhang Jinfan 張晉藩, ed., *Qingdai lüxue mingzhu xuanjie* 清代律學名著選介 (A selective introduction to famous *lüxue* works of the Qing era) (Zhongguo Zhengfa Daxue Chubanshe, 2009).

⁵⁷ Zhang Jinfan 張晉藩, ed., *Qingdai lüxue mingzhu xuanjie*.

Militarized adjudication and similar adjudicative procedures only began to appear (mainly in edited case compilations) after about the mid-Qianlong period. For instance, the *Bo'an Huibian* 駁案匯編 (a mid-nineteenth century work which expanded a mid-eighteenth century work) describes several militarized-adjudication cases from 1774 and 1777.⁵⁸ The nineteenth-century work, *Xing'an Huilan*, also contains various edicts and cases demonstrating adjudication under militarized adjudication. Before the Qianlong era, routine adjudication and militarized adjudication were culturally dichotomous: militarized adjudication was never mentioned under the Board of Punishments section of the 1764 (QL 29) (or earlier) Qing Collected Statutes, but was described within the Board of War section, specifically under “Campaigning (出征)” which described militarized adjudication for a series of campaign offenses.⁵⁹ As I show in Chapters Five through Seven, the appearance of militarized adjudication in works associated with late imperial legal culture coincides (unsurprisingly) with the militarization process I describe in those chapters.

II. The Routine Adjudicative Process as a Manifestation of Legal Culture

A. A “Procedural” Change

Although late imperial Chinese legal theory did not recognize any sort of “rationalized” distinction between substantive and procedural law, a common way of thinking about Western, modern legal systems, I nevertheless use this distinction to better highlight that the fundamental importance of the militarizing tendencies that appeared in eighteenth-century legal culture was

⁵⁸ Quan Shichao 全士朝, Zhang Daoyuan 張道源, et al, *Bo'an Huibian* 駁案匯編 (Compendium of Returned Cases), eds., 何勤華, Zhang Boyuan 張伯元, et al (Beijing: China Law Pres, 2009), 48-49, 100-103.

⁵⁹ QHD (1753), juan 61, chuzheng 出征, 12r-19v.

that it enabled those operating in that culture to accept a significantly different way of processing cases that derived from a different institutional-cultural sphere. I use the terms *substance/substantive* and *procedure/procedural* to distinguish the mode in which cases were adjudicated (procedure) from the particular law and legal analysis applied within the adjudication itself (substance).⁶⁰

Such a distinction between Qing legal procedure and substance – albeit an academic and artificial one – is useful for identifying how a legal culture that highly valued long-term textual stability in fact changed over time. This allows one to understand that although the letter of the substantive law, for instance, requiring a punishment of “immediate execution,” might have remained unchanged for centuries, if at some point the imperial court granted a dispensation from the regular retrial-review process (a *procedural* change), this could mean the actual difference in fact between life and death. The text had not changed, but the procedural sense of “immediate” changed or at least came to reflect wider possibilities. My main argument is that the appearance of militarizing tendencies in eighteenth-century legal culture enabled a significant change in process that would have been unimaginable to those adjudicating the same offense prior to the change. In fact, the change in process was so significant that it gave new meaning to traditional legal terms. Both reflected (and themselves continued to effect) a change in *mentalité* among adjudicating officials: they came to accept, with little apparent cognitive

⁶⁰ In contemporary Anglo-American law, “procedural law” is defined as “the rules that prescribe the steps for having a right or duty judicially enforced, as opposed to the law that defined the specific rights or duties themselves.” “Substantive law” is defined as “the part of the law that creates, defines, and regulates the rights, duties, and powers of parties.” Bryan A. Garner, ed., *Black’s Law Dictionary* (St Paul: West, 2009), 1567.

dissonance, summary executions coexisting with the routine process until the very end of the dynasty (and perhaps beyond).

That mix of roughly-bounded discrete elements I am calling late imperial legal culture manifested itself in a very complex, cautious, lumbering, and resource-intensive routine adjudicative retrial-review process that was structured to provide opportunities for leniency at many junctures. The bureaucratic flow of defendants, witnesses, and evidence required by the routine criminal-legal process not only left a mark on the historical record but made the process ill-suited for application within the inner zones of the military operations gradient. The highly-developed (and logistically burdensome) procedure of trying (*shenming* 審明), reviewing (*fuhe* 復核) and/or retrying (*fushen* 復審; *shenzhuan* 審轉) criminal cases at successively higher administrative levels, the hierarchical retrial-review procedure, included up to six-levels of review.⁶¹ The defendant, witnesses, and relevant evidence had to be escorted (*jieshen* 解審) to the next higher administrative level for retrial, all the way to Beijing if necessary.⁶² Escorting, jailing, supervising, and conducting this movement across the temporal-spatial gradient of military operations was not an insignificant factor in the appearance of militarizing tendencies in

⁶¹ Article 411 of the Ming-Qing Codes set forth the basic framework for this system, but it was more definitively set forth in various provisions of the Qing Collected Statutes. Jones, 393. Legal Scholar Na Silu 那思陸 has summarized the various provisions of the Qing Collected Statutes. Na Silu 那思陸, *Qingdai zhouxian yamen shenpan zhidu* 清代州縣衙門審判制度 (Beijing: Zhongguo zhengfadaxue Chubanshe, [Originally published in Taiwan in 1982]); originally published as: Na Silu. *Qing Dai Zhou Xian Ya Men Shen Pan Zhi Du*. (Taipei: Wen shi zhe chu ban she, 1982).

⁶² Na Silu, *Qing Dai Zhou Xian Ya Men Shen Pan Zhi Du*, 148-57.

eighteenth-century Qing legal culture as military operations proliferated and imperial space expanded, although I am not convinced it was the primary driving factor.⁶³

B. *Local Adjudication and Hierarchical Jurisdiction*

At any given administrative level, an official could only adjudge and carry out a sentence within his jurisdiction. For instance, a county magistrate could adjudge and carry out sentences of caning and below on non-officials in cases not involving the taking of a human life (*renming'an* 人命案). In cases beyond his jurisdiction, the most he could do was investigate and draft (*ni* 擬) a sentence which he then forwarded to the next higher administrative level, the prefect, who, if it was beyond his own jurisdictional limitations, again reviewed, retried and redrafted (*heni* 核擬) a sentence to forward on to the next higher level. A draft sentence could not be carried out until it was approved by an administrative level with sufficient jurisdiction.⁶⁴

The retrial-review procedure had both local-provincial and central components.⁶⁵ The first administrative level of trial – the department (*zhou* 州), county (*xian* 縣) or subprefecture (*ting* 廳) – was only permitted to independently carry out sentences up to caning with the light or heavy bamboo. Cases for which the designated punishment under the statute was greater than caning had to be forwarded to the prefect (*fu* 府). The prefect forwarded them to the provincial

⁶³ I agree with Zhang Shiming who persuasively argues that this resource-burdensome requirement was one of the driving factors towards simplification of procedures on the frontier. Zhang Shiming 張世明, *Sifa changyu* 司法場域 (The Judicial Field), vol. 4 of *Faliü, ziyuan, yu shikong jiangou: 1644-1945 de Zhongguo* 法律、資源與時空建構: 1644-1945 年的中國 (*Law, Resources, and Time-Space Constructing China in 1644-1945*) (Guangzhou: Guangdong renmin chubanshi, 2012), 585-96.

⁶⁴ DLCY, “有司決囚等第.”

⁶⁵ *Zhongguo chuantong falü wenhua yanjiu* 中國傳統法律文化研究 (Research into Traditional Chinese Legal Culture), eds Zeng Xianyi 曾憲義 et al., vol 2, *Zui yu fa* 罪與罰 (Crime and Punishment) (Beijing: Zhongguo Renmin Daxue Chubanshe, 2011), 265-89.

judge who then forwarded them to the governor and / or governor-general. In military cases, the first level of trial was sometimes the *zongbing*, and the second level might be the assistant prefect (*tongpan* 通判). In the later Qing, the governor-general (or sometimes instead the provincial judge) was often the first level in military trials. For independent departments and sub-prefects that were directly attached to the province and were not under the jurisdiction of a prefect, the circuit intendant (*dao* 道) served as an additional level of review before the provincial judge.⁶⁶ The governor and governor-general could approve and execute cases of penal servitude that did not involve the taking of a life.⁶⁷ If cases involved the taking of a human life or the designated punishment was military exile, then the governor / governor-general forwarded their draft sentence to the Board of Punishment (*xingbu* 刑部) for approval.⁶⁸ There were shortcuts to this process.

C. The Adjudication of Military-Related Cases under the Routine Process

Militarized adjudication was a special delegation of authority granted by the emperor to campaign commanders, that is, officials leading soldiers in active military operations against an enemy. It was definitely not a *carte blanche* writ authorizing military officials to execute soldiers during peacetime. In fact, from at least the Kangxi period on, for the most part, the Qing seems to have treated cases involving soldiers in a non-campaign context under the routine retrial process. This is consistent with the Qing's reconfiguration of the Green Standard Army into a

⁶⁶ Na Silu, *Qing Dai Zhou Xian Ya Men Shen Pan Zhi Du*, 142-43.

⁶⁷ Na Silu, *Qing Dai Zhou Xian Ya Men Shen Pan Zhi Du*, 143.

⁶⁸ Na Silu, *Qing Dai Zhou Xian Ya Men Shen Pan Zhi Du*, 143-44.

constabulary force arrayed within the inner-empire and the gradual “civilianization” of much of the Banner Garrisons within the peaceful inner-empire.

Since I use desertion as a category of analysis for comprehending the expansion of militarizing tendencies in legal culture, it is worthwhile to also note two things. First, that at least by the late Ming, it appears that *non-campaign* desertion cases – perhaps it would be better to call these AWOL cases, i.e. cases that took place for the most part in the inner-empire, home-station garrisons – were punished locally and were not subject to the death penalty. According to the routine statutes on campaign desertion (discussed in the next section), default adjudication for campaign desertion was according to very specific campaign desertion statutes contained in the *Binglü* section of the Code. More importantly, prior to the Qianlong-era, even in practice *campaign*-desertion cases were usually not subject to militarized adjudication unless they occurred at the epicenter of battle. From the sample of cases I found in the archives, my impression is that most campaign desertion cases were in fact tried according to the principles of the routine retrial-review system. This is what makes desertion such an excellent category of analysis for the understanding the appearance, deepening, and broadening of militarizing tendencies in late imperial legal culture. Because desertion was a military offense but, other than cases of battlefield-epicenter desertion, tried under the routine process according to the routine retrial-review system, the marked turn during the Qianlong-era towards adjudicating all campaign desertion cases under militarized adjudication served as a bellwether for the broadening of militarizing tendencies.

The routine retrial-review system was flexible within parameters. Adjudication of military cases within the retrial-review system were not always procedurally-identical to those of non-

military offenders (although sometimes they were). Na Silu concludes that in homicide cases involving military persons (Green Standard), the military authorities and county magistrate would jointly investigate, but the case would be tried by the county yamen.⁶⁹ In cases such as illicit sex, theft, fraud, marriage, land disputes, and assault, if the other party was civilian, it would be jointly tried and investigated by the military and county authorities; if, however, all parties were military, it would be investigated and tried by military authorities only. In serious cases of rebellion, the civil and military authorities would investigate and try the case together whether or not the accused was of military or civilian status. Finally, the civilian authorities alone would try cases in which military-status personnel accused civilians in issues related to marriage, land, assault, or homicide. On the balance, though, most cases involving non-campaign military personnel were tried by civilian officials. In each province where there were assigned bannermen (*qiren* 旗人), the Qing, at least on paper, assigned special county or prefectural magistrates, both at the rank of an associate prefect, for purposes of trying cases related to bannermen. These associate prefects or special magistrates appear to have answered to the Court of the Imperial Clan.⁷⁰ Even those cases that were tried by military officials (such as crimes involving only military personnel), once they were tried, would be forwarded through the routine retrial-review process.

⁶⁹ Na Silu, *Qingdai zhouxian yamen shenpan zhidu*, 46-49. For an example of a local magistrate's handling of crimes by garrison soldiers, see Huang Liuhong, *A Complete Book Concerning Happiness and Benevolence*, tr. and ed., Diang Chu (Tucson: University of Arizona Press, 1984), 166-71.

⁷⁰ Charles O. Hucker, *A Dictionary of Official Titles in Imperial China*, entry 3640, page 307.

D. Central-Government and Outer-Court Retrial-Review

Above the level of the province, the central government component of the routine-criminal legal process ensured additional levels of review for factual and legal correctness. If the *draft* sentence were death, then the governor or governor-general had to memorialize the case directly to the emperor who then forwarded (*jiao* 交) the case to the Board of Punishments for retrial and review.⁷¹ The Board of Punishments, either on its own or as the lead agency of the Three Judicial Offices – the other two were the Court of Judicature and Revision (*dalisi* 大理寺) and the Censorate (*duchayuan* 督察院) – retried the case and either returned it (*bo* 駁) to the governor / governor-general for further investigation/trial or forwarded a routine criminal memorial (*xingke tiben* 刑科提本) to the emperor setting forth the Board’s own draft sentence and requesting an imperial edict (*qingzhi* 請旨) approving it.⁷²

The Three Judicial Offices were all outer court agencies known for their strict adherence to precedent. These precedent-bound outer court agencies served as a type of guarantor that criminal-legal adjudicative procedure would be performed properly.⁷³ Even though the emperor

⁷¹ According to Chang Wejen, the governor/governor-general forwarded the case through the provincial administrative commissioner to the Grand Secretariat where the case was annotated with a brief summary slip (*piaoqian* 票簽) and then forwarded to the emperor for imperial review. After receiving the emperor’s command, the memorial was annotated and then forwarded to the Censorate and the *Liuke* (六科) to be copied out, with copies forwarded to each relevant board. For the most part, cases that involved the taking of human life or were subject to a punishment of exile were sent to the Three Judicial Offices for Review; some particularly aggravated cases in which the accused himself was at risk of being killed were sent only to the Board of Punishment to speed the matter along. More complicated cases might be referred to the Three Judicial offices and other relevant agencies for discussion. The draft sentence would then be forwarded back to the emperor for approval or back to the governor/governor-general to retry the case. Na Silu, 160 (citing Chang Wejen, *Zhongyang Yanjiuyuan lishi yuyan suo xiancun qingneigedaku fazhi dang’an de yanjiu*, page 19, (Shihuo Yuekan), No. 7, 7-8 Season.)

⁷² Na Silu, *Qing Dai Zhou Xian Ya Men Shen Pan Zhi Du*, 142.

⁷³ For a discussion of the inner-court, outer-court dynamic and the efforts of the Yongzheng and Qianlong emperors to readjust the relationship between the emperor’s autonomy and the constraints of outer court bureaucracy, see

sometimes directed changes to a particular sentence, most of the time he endorsed the draft sentence (and reasoning) of the Three Judicial Offices. The Board of Punishments even provided the emperor with draft language to approve the sentence, and if the emperor agreed, the board's language was simply copied onto the case in imperial vermilion.

The emperor usually received the recommendation of the Three Judicial Offices in the form of a routine memorial on a criminal matter (*xingke tiben* 刑科題本).⁷⁴ These routine criminal memorials presented the factual and procedural background, legal analysis, and draft punishment for the case in minute detail. They ranged from around thirty folds in length to over one hundred folds. By the late eighteenth century, they included a Chinese-language version, read from right to left; a Manchu-language version read from left to right; with the two versions physically spliced together by a one-fold summary of the case (*tiehuang* 貼黃) between the Manchu and Chinese versions.

Death sentences under the routine process indicated not only the degree of punishment but also whether it was to be executed immediately (*lijue* 立決) after imperial approval or had to await the conclusion of the Autumn Assizes process (*jianhou* 監候). Note that “immediate execution” usually did not mean on-the-spot or summary execution (*jiudi zhengfa* 就地正法); rather, it meant execution after the retrial-review process at the provincial level as well as retrial-

Beatrice S. Bartlett, *Monarchs and Ministers: The Grand Council in Mid-Ch'ing China, 1723-1820* (Berkeley: University of California Press, 1991). For an extreme example of a dysfunctional inner court-outer court dynamic during the Ming Dynasty, see Ray Huang's discussion of the Wanli emperor. Ray Huang, *1587, a Year of No Significance: the Ming Dynasty in Decline* (New Haven: Yale University Press, 1981). For an excellent discussion of the Qing administrative system, see Zhang Deze 張德澤, *Qingdai guojia jiguan kaolue* 清代國家機關考略 (Beijing: The Forbidden City Publishing House, 2012).

⁷⁴ For a discussion of the various legal-related documents available in the Qing archives, see Nancy Park and R. Anthony, "Archival Research in Qing Legal History," *Late Imperial China* 14, no. 1 (June 1993), 930129.

review by the Board of Punishments/Three Judicial Offices and final approval by the emperor was complete.⁷⁵ Thus “immediate” contrasted with “after the Autumn Assizes review,” a longer – potentially much longer – process.

The Autumn Assizes (*qiushen* 秋審) took place in the fall. It was a drawn-out process whereby all cases of imperially-approved sentences of decapitation or strangulation designated as *after the assizes* were reviewed to determine if the accused should be executed. The process involved an additional review for the provincial judge, the governor/governor-general, the Board of Punishments / Three Judicial Offices as well as the so-called Nine Ministers (*jiuqing* 九卿) to determine if a case was well-founded (*qingshi* 情實), was worthy of commutation to the next year’s Autumn Assizes (*huanjue* 緩決), should be considered for leniency (*kejin* 可矜) or should result in some other disposition, such as permitting an only-son to be released to care for aging parents.⁷⁶

The Autumn Assizes process, in addition to serving as a further factual-legal review, was an important function of the emperor’s personal supervision of the criminal-legal process and imperial power over life and death. After the case was fully reviewed, it was sent to the emperor; if the emperor selected a case (*gou* 勾) that had been determined to be well-founded, then an

⁷⁵ Sun Jiahong 孫家紅, *Qingdaide sixing jianhou* 清代的死刑監候 (The capital assizes process during the Qing period) (Beijing: Social Sciences Academy Press, 2007), 4, 5-6.

⁷⁶ Bodde and Morris, 134-43. During the Ming, *Nine Ministers* “referred to the Ministers (*shang-shu*) of the Six Ministries (*liu pu*), the Censors-in-chief (*tu yǔ-shih*) of the Censorate (*tu ch'a-yüan*), the Chief Minister (*ch'ing*) of the Court of Judicial Review, and the Transmission Commissioner (*t'ung-cheng shih*) of the Office of Transmission (*t'ung-cheng ssu*). Some sources say that Ch'ing followed the Ming pattern; others identify the group as the heads of the Censorate, the Office of Transmission, the Imperial Procession Guard (*luan-i wei*), and the Courts of Judicial Review, of Imperial Sacrifices, of Imperial Entertainments, of State Ceremonial, and of the Imperial Stud. In Ming and Ch'ing times the group was also known as the Nine Major Chief Ministers (*ta chiu ch'ing*).” Charles O. Hucker, *A Dictionary of Official Titles in Imperial China* (Stanford: Stanford University Press, 1985), 176.

order was sent to the province where the accused was confined to have him executed.⁷⁷ An accused sentenced to death could remain in the Autumn Assizes process for several years, and in rare cases, for more than a decade.⁷⁸ To an accused sitting in the miserable county goal, this may not have been tremendous comfort; but during all the years of retrial-review and waiting, if new evidence came forward, the emperor felt merciful, or a general amnesty was issued upon the enthronement of a new emperor, the accused – although sentenced to death – might find himself free or subject to exile or a lesser punishment.⁷⁹ In a review of the fifty-five cases of high officers who were sentenced to death “after the assizes,” Sun Jiahong found that forty-three of them ultimately had their sentences reduced to a lesser punishment.⁸⁰

E. *Simplified Execution Under the Routine Process*

The emperor’s authority over life and death was an important principle in late imperial legal culture. For crimes listed in the Code with execution designated as *lijue* or *jianhou*, at least prior to the Qianlong era, the requirement for a final edict approving the execution as a prerequisite to the execution taking place was clear. There were a few crimes in the Code, however, even prior to the Qianlong era for which the designated punishment was *jixing zhengfa* (即行正法), or “to be immediately carried out.” For the most part, I refer to the process underlying these

⁷⁷ Bodde and Morris, 134-43. For an example of a memorial reporting provincial-level executions after the assizes, see NGDK, 055229 (QL 14/11/4).

⁷⁸ For instance, Green Standard soldier Zeng Jiulin was one of the lucky few deserters to be granted mercy during the Qianlong era (for having suffered injuries in combat and turning himself in after deserting). His case was reviewed for more than ten years within the assizes process. Eventually his sentence was converted to exile. Memorial from Sichuan Governor-General Fukang’an, (QL 48/5/16) (June 16, 1783). NGDK, 127518.

⁷⁹ The famous nineteenth-century case of Xiao Baicai is illustrative of how the multiple levels of retrial-review could result in fortuitous results for the defendant. William P. Alford, "Of Arsenic and Old Laws: Looking Anew at Criminal Justice in Late Imperial China," *California Law Review* 72, no.6 (Dec. 1984), 1180-1256; Madeleine Yuedong, “Communities and Communication: A Study of the Case of Yang Naiwu: 1873-1877” *Late Imperial China* 16, no. 1 (June 1995), 79-119.

⁸⁰ Sun Jiahong, 341-46.

punishments as “simplified execution” because they usually provided expedited procedures under specific circumstances. For instance, a statute was added to the Code in 1701 (KX 48) that read: “Those criminals under a sentence of military exile to Ningguta or Heilongjiang, if they commit murder while under escort to their place of exile, then after the Board has memorialized the case on a *tiben*, the Board should send notification to the general to immediately execute (*jixing zhengfa*) the criminal in front of the people.” Immediately execution here still required action from the Board and at least notification to the emperor.⁸¹ The logic behind this statute and in its successor statutes over the next fifty years was that since the criminal was already under a sentence of exile, he had already been through a criminal process and convicted. His subsequent misconduct simply aggravated the previous crime – necessitating some central review to ascertain the veracity of the previous conviction – and then merely considering the additional misconduct as an aggravating factor increasing the punishment from exile to death and immediately carrying it out.

Another example is those cases in which the accused had been sentenced to death and then had his death sentence commuted (or suspended, depending on how one looks at it) to a sentence of exile. Over time, practices developed that allowed such offenders, if they fled, or if they fled and committed further misconduct, to have their original death sentences carried out immediately (*jixing zhengfa*). But, these cases had already been adjudicated and approved by the emperor at the time they were reduced for whatever reason to exile. In other words, rather than consider these cases as examples of summary execution, I think it is better to consider them as instances where the suspension of a death sentence was vacated based on additional misconduct and the

⁸¹ Wu tan, 258.

original, approved sentence was belatedly carried out. True summary execution, where an accused was tried and executed in the first instance, was not something explicitly spelled out in the Code prior to the Qianlong era.

F. *Adjudicative Mentalité at the Magistrate's Level: An Anecdote*

Huang Liuhong's 黃六鴻 manual for magistrates, *A Complete Book Concerning Happiness and Benevolence* (*Fuhui quanshu* 福惠全書), published in 1694, provides a view of late imperial legal culture from the magistrate's level that is remarkably consistent with the above description. This book, which covers a wide array of county-magistrate responsibilities, was based on Huang's own experience as a magistrate in two different postings and was no doubt informed by his metropolitan assignments at the Boards of Rights and Public Works.⁸² Huang's discussion of the magistrate's role in the administration of justice was just one of many topics covered, such as tax collection, cadastral surveys, the *baojia* system, rites and ceremonies, education and welfare, famine relief, courier service, and other administrative matters.⁸³ Despite Huang's diverse non-legal duties, Huang's writing on legal matters evinces recognition of a legal sphere of activity in which actions were administered in an identifiable legal manner. It is this association with the legal sphere of activity that made him, under a wide definition, a legal specialist for purposes of late imperial legal culture. Huang defined the basic duties of magistrates within the criminal adjudication process. He took care to articulate the restrictions on magistrates' autonomy and latitude in criminal adjudication.⁸⁴ He showed a keen awareness of the sources of law and

⁸² Huang Liuhong, *A Complete Book*, 4-5.

⁸³ Huang Liuhong, v – x.

requirement to abide by strict procedure.⁸⁵ Huang believed that the restrictions placed on his freedom of adjudication – the requirement to make his judgments conform closely with known principles and laws – had deep roots (time-tested legitimacy). Huang’s writing provides a discourse of legitimation for the law itself. The law was legitimate because the ancient lawmakers were compassionate, thus getting at the structural leniency inherent in the routine process. He also demonstrated a nuanced knowledge of various legal principles, such as the distinctions between *lijue* and after the assizes.⁸⁶ Huang’s writing is especially helpful as a gauge of the *mentalité* among low-level (magistrate) adjudicating officials at the end of the seventeenth century. Huang believed that the law was nuanced and complex, and that its complexity was necessary so that the right punishments could be applied to the right crimes.⁸⁷

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[Huang Liuhong]: It is the duty of the magistrate to render judgments or to propose penalties for criminals commensurate with their crimes. In rendering judgments or proposing penalties the magistrate must proceed according to the exact provisions of the statutes (*lii*) or the statutes (*li*). The statutes are a part of the fundamental laws of the land, while the statutes are the legal enactments of an *ad hoc* nature gradually added to the Penal Code as established precedents. Proposed penalties in all cases must be made in conformity with either the statutes or the statutes. The magistrate is not at liberty to pronounce judgments according to his whims. If there is an applicable statute, he must decide the case according to the statute; if there is no applicable statute, he must decide it according to the statute. If there is neither a statute nor a statute applicable, he must decide the case by analogy to a certain statute or statute. Then the proposed decision is presented to a superior court to be approved or rejected. In lawsuits under his own jurisdiction, the judgments he makes are final unless challenged by a higher court.

Huang Liuhong, *Complete Book*, 282-83.

⁸⁵ “Some of the statutes or precedents have their origin in imperial edicts, while others are initiated by the Board of Punishment and sanctioned by the emperor. They are appended to the basic statutes as supplementary laws, effective in all provinces throughout the land. Therefore, there are frequent additions or deletions of statutes. The statutes, on the other hand, remain constant and unchanged. When the magistrate applies a new statute to a case, he should take special precaution to avoid making mistakes.” Huang Liuhong, *Complete Book*, 282-83.

⁸⁶ Huang Liuhong, *Complete Book*, 282-83.

⁸⁷

[Huang Liuhong]: The principle under which the law is applied today is no different from the principle that guided ancient lawmakers. The principle is that punishments should be meted out according to circumstances under which the crimes are committed. But the meaning of the law, both explicit and implied, is difficult to understand, and its intricacies are beyond the comprehension of even the experts. Special attention must be paid to the statutes, which change constantly. Some cases of minor offenses are fraught with aggravating circumstances, while other cases of major offense have mitigating

Huang's description of his criminal-adjudicative duties as well as his representation of the legal system reflected the *mentalité* of legal specialist of his time. By the mid-nineteenth century, some magistrates (and many high-level provincial officials) were summarily-executing alleged criminals. In contrast, based on his writings, it is hard to imagine that Huang would have even conceived of doing this. The processes that came together to change the *mentalité* of adjudicating officials was a significant change in legal culture.

III. Legal Framework For Campaign Desertion Prior to the Qianlong Reign

I use desertion as a category of analysis for understanding the development of the eighteenth-century militarized criminal track. There were two Ming-Qing routine criminal statutes that criminalized the fleeing of soldiers: *the battlefield first flight statute* (Article 207(2)) and the *campaign desertion statute* (Article 217).⁸⁸ The major distinction between the conduct prohibited by each was where the conduct occurred along the gradient of military operations. The battlefield first flight statute read as follows, "Officers or soldiers who, in the face of the enemy, retreat first, or who, besieging an enemy fortress, flee, will be decapitated *after the assizes*."⁸⁹ Note that it applied to those who fled *first*, the object of which was to prevent a

circumstances. Some cases are decided in accordance with either a special imperial edict or a decision of the Board of Punishment. These are frequently added to the Penal Code as new precedents, and the magistrate simply cannot afford to ignore them.

Huang Liuhong, *Complete Book*, 282-83.

⁸⁸ Both statutes were originally formulated during the time of the Ming *weisuo*. They were both republished in each of the major republications of the Qing Code during this period, the *Shunzhi* 3 Code (1647), the *Yongzheng* 7 Code (1727), the Manchu-language Qianlong 29 (1764) Code (*Daicing gurun-i fafun-i bithe kooli*), and the *Qianlong* 34 Code (1769). The article numbers were added by modern scholars for reference purposes only. Other related statutes included "Unauthorized departure from a civilian or military post 擅離職役"; "Reporting late for a campaign deployment 從征違期"; and "Arranging for another person to fulfill one's military duties 軍人替役."

⁸⁹ I have slightly modified Jones' translation here. Art. 207 (2). Jones, 203. According to Sun Jiahong, prior to the "battlefield retreat statute" was a freestanding statute; during the Qianlong reign, it was combined with two other

trickle of deserters turning into an utter rout of forces. This statute applied to officers and soldiers (Ch: *guanjun* 官軍; M: *hafan*).⁹⁰ Its prerequisites were that the conduct had to have occurred in close proximity (spatial) to the enemy during (temporal) an engagement with the enemy, either directly on the battlefield (Ch: *linzhen* 臨陣; M: *afara nergin de*), or in the context of besieging an enemy city (Ch: *weikun dicheng* 圍困敵城; M: *bata i hoton be kambi*). This statute thus could only be triggered at the epicenter of the military operations gradient.

The routine campaign desertion statute (*congzheng shouyu guanjun tao lü* 從征守禦官軍逃律) was not new during the Ming. According to Wu Tan, it was originally a Tang-period law that was referenced as *congjun zhengtao wang* (從軍征討亡). During the Tang, the law was placed within the laws that pertained to the *Xingbu* under the “apprehension” category (*buwang* 捕亡).⁹¹ Here I will not present a traditional *kaoju* analysis of the etymology of the linguistic elements of the law prior to the Ming, but I mention the Tang background to show that the legal discourse surrounding *taobing* had long roots and that many of the ideas ultimately incorporated into the Ming law originated prior to that dynasty.

While it applied to the same group of persons – officers and soldiers – and prohibited sometimes identical misconduct (minus the fleeing *first* aspect), the campaign desertion statute

statutes into one statute, but the “battlefield retreat” language of the new combined statute remained the same as the former language of the freestanding statute. Sun Jiazhong, 61-62.

⁹⁰ The Qing retained the Ming-era language of *jun* in the Chinese-language version, which originally referred to the hereditary soldiers of military households (*junhu*), but the Qing treated *jun* as synonymous with *bing*, the common term used for all soldiers by the time of the Qing. The Manchu version of the statute used the term *cooha*, which was commonly used to translate both *jun* and *bing*. During the Ming and early Qing, it was more common to refer to routine soldiers as *jun*, such as in the late Ming, early-Qing use of the term *taojun* for deserter. After the early Shunzhi period, the term *taojun* was used mainly to refer to routine fugitives who had fled a sentence of military exile, and the term *taobing* was used exclusively for military deserters.

⁹¹ Wu Tan, 601.

was also directed against conduct that occurred away from the epicenter of the gradient (although the precise language of the law would have made it applicable to the battlefield situation as well). It was directed not against those who broke *first* and deserted while in contact with the enemy, but against those who fled the campaign at any point or fled a position they were tasked to defend against a potential attack (Ch: *shouyu chengchi* 守禦城池 M: *hoton hecen be seremšeme tuwakiyara*).⁹² In a broad sense, both required a time of active military operations (*yongbing zhiji* 用兵之際). They could both apply to a single incident, with those who panicked and fled first punished under the former statute and the later deserters punished under the latter. Willy-nilly absence without authority from one's peacetime position – where the soldier normally resided during times other than active military operations – did not trigger these two statutes.

Consistent with late imperial legal philosophy, the campaign desertion statute set forth a graduated scale of punishment based on individual behavior and distinguished between initial and subsequent offenses in terms of punishment. A first offense of fleeing from campaign was to receive an actual punishment of forty strokes of the heavy bamboo; a second offense proscribed strangulation *after the assizes*.⁹³ For fleeing a defensive garrison, the first offense

⁹² A further provision clarified that sneaking into a different unit was also considered fleeing, so the crime was not simply fleeing the campaign, but fleeing one's assigned military unit.

⁹³ When military officials (Ch: *guan* 官; M: *hafan*) or soldiers (Ch: *jun* 軍; M: *cooha*), having already been notified to proceed on military campaign or while actually on campaign, flee without authority and return home (*sitao huanjia* 私逃還家; M: *cisui ukame boode bederere*) from military campaign (Ch: *congjun zhengtao* 從軍征討; M: *cooha de genehe*), or flee to some other place, for the first offense, they will receive 100 strokes of the heavy bamboo [automatically reduced to 40], and be deployed on campaign. If they offend again, they will be strangled after the assizes (*jianhou* 監候; M: *loode horifi aliya*). The small-character notations (*xiaozhu* 小註) added by the Qing editors in the 1647 (SZ 3) version of the Code. These small notations remained part of the Code into the early twentieth century. In brackets, I have added additional interpretory notations, such as converting the number of

prescribed thirty strokes, the second forty, and the third offense prescribed strangulation *after the assizes*.⁹⁴ It provided a complete remission of punishment if the deserter turned himself in within one hundred days and a reduction in two degrees if after this time period. It also mandated forty-five strokes of the heavy bamboo and frontier exile for those who knowingly gave a deserter shelter.⁹⁵ The routine nature of the desertion statute also derived from its

strokes set forth in the text of the Code to the actual number of strokes required by a conversation table the Qing added to the Code (because the bamboo rods used by the Qing were different from those used by the Ming). Qing Code, art. I. Jones, 33.

⁹⁴ In the Defense: If a military person serving in the Capital Guard Unit (*zai jing ge wei jun* 在京各衛軍) on garrison guard duty 守禦 flees, then he will receive 90 strokes of the heavy bamboo [reduced to 35] and be enlisted in a nearby unit, for the first offense. For a second offense, he will receive 100 strokes (reduced to 40 strokes 板) of the heavy bamboo and be enlisted in a distant frontier military unit. If a soldier serving in a defensive garrison flees, he will receive 80 (converted to 30 strokes 板) strokes of the heavy bamboo and be enlisted in the same unit, for the first offense. For city garrisons in all other places outside the capital, if military persons flee (*tao* 逃), for the first offense, he will receive 80 strokes of the heavy bamboo, and be fill the ranks in that unit. For subsequent offenses regardless of whether in the capital or other garrison unit, he will receive 100 strokes of the heavy bamboo and be enlisted in a distant unit. For the third offense, he will be strangled after the assizes. Adjudicate those who know that he is a deserter and yet give him shelter according to the same penalty as the subject himself, but not to exceed 100 strokes of the heavy bamboo, dismissal from official position (in SZ3, deleted from the criminal code, and later addressed in the administrative regulations), and enlistment in the nearby military unit. The punishment does not extent to exile to the distant frontier or strangulation. If the *lizhang* is aware, but does not turn him in, then it is reduced two degrees from the offense of knowingly sheltering. If his campaign, garrison, or current supervisor (Ch: *guantoumu* 管頭目; M: *kadalara data*) is aware of the situation but wantonly disregards (Ch: *guzong* 故縱; M: *jortai sindaci*) the behavior, in accordance with the number of accuseds, he will also be punished the same as the accused, but not to exceed 100 strokes of the heavy bamboo, dismissal from official position, and enlistment in a nearby military unit.

⁹⁵ Those knowing that they are dealing with deserters who give them shelter (Ch: *zhiqing wocangzhe* 知情窩藏者; M: *ukaka turgun be same gidame somici*), whether it's the first or subsequent offense, will receive 80 strokes of the heavy bamboo (SZ 3 changed to 100, which equated to 40 strokes) strokes of the heavy bamboo, and be enlisted in frontier military units (*chongjun* 充軍; M: *cooha obu*). If the *lizhang* (Ch: 里長; M: *falgai da*) of the native place or some other place (Ch: *yuanji ji tasuo zhi* 原籍及他所之; M: *da ba jai gūwa bai*) knows and does not turn him in, one hundred strikes of the heavy bamboo. If the subject returns prior to the conclusion of the military campaign and his unit's return but he does not accompany them on their return, reduce the punishment from the above crime of desertion five degrees; because of being AWOL and not being in the ranks, he will receive 80 strokes of the heavy bamboo.

relationship with other statutes, such as the law requiring that followers be distinguished from leaders in crimes.⁹⁶

Although both statutes reflected the concerns of late imperial legal culture and required routine-track legal processing (including the full Autumn Assizes process, in some cases), prior to the Qianlong era, in practice the two crimes were often adjudicated in different modes. Despite no hint in the Code, pre-Qianlong practice suggests that battlefield first flight was more often than not adjudicated outside of the routine criminal-legal process under militarized adjudication. A 1645 (SZ 2) memorial from the Board of War impeaching *Zongbing Zhao Guozhu* for executing seven deserters without any central review or imperial pre-approval suggested this distinction between Code and practice in terms of the gradient of military operations. The Board of War concluded that *Zongbing Zhao* was wrong to summarily execute the soldiers because they had not fled the battlefield (the epicenter).⁹⁷ The implication was that if they had fled the battlefield, then they could have been executed without going through the routine criminal-legal process.

IV. Conclusion to Chapter One

This chapter has described late imperial legal culture and the routine retrial-review adjudicative process which was the manifestation of that legal culture. Legal culture was bounded by men, concepts, writings, and particular adjudicative activity. It included a broad community of legal specialists of which a smaller community of dedicated legal scholars was a

⁹⁶ “In crimes committed by two or more people, the person who first had the idea to commit the crime is the head/leader. His punishment should be drafted in accordance with the applicable statute. The punishment for those who followed him should be reduced one degree.” Xue Yunsheng, *Duli Cunyi*, “共犯罪分首從.”

⁹⁷ NGDK, 185044-052.

subset. These legal specialists carried out legal activity in a consciously legal manner. Qing legal scholars have left a significant body of legal scholarship, including *liuxue* works and casebooks. Members of the functional-legal-specialist community – magistrates, prefects, governors, and so on – have also left extensive writings, such as Huang Liuhong’s magistrate’s manual, that attest to the description of legal culture provided in this chapter.

Proper performance of routine criminal adjudication represented the fullest manifestation of late imperial Chinese legal culture. Its long-term development and seemingly ancient roots gave it authority and made it an important legitimating ritual for the early Qing. The routine process took account of the individual accused in the context of society and sought the perfect punishment balancing the degree of social harm, deterrence, and shame to the offender based on a careful finding of the truth of what actually happened. Each additional procedural step was another opportunity for mitigation of the punishment. Under the routine criminal adjudicative process, an accused sentenced to death could expect to have his case heard through the retrial-review process all the way to the emperor, with significant outer court involvement at the central government level; if his sentence specified “after the assizes,” he could expect to have his case reviewed annually potentially for years to come, with many opportunities for mitigation. Prior to the Qianlong-era, campaign desertion was supposed to be tried according to this rigorous system under the *battlefield first flight statute* or the *campaign desertion statute*, both of which strongly reflected the principles of late imperial legal culture. In practice, as shown in the next Chapter, battlefield-epicenter cases of desertion were almost always adjudicated under militarized proceedings, but short of the battlefield, the practice was quite consistent with the Qing Code.

The proper performance of routine criminal adjudication drew its strength as a pillar of dynastic legitimacy through its thorough grounding in late imperial legal culture. Because of the strong consensus on the ancient roots and correctness of the criminological viewpoint, the routine process was the default process for nearly all misconduct. Under the *campaign desertion* and *battlefield first flight statutes*, under normal circumstances all campaign deserters normatively should have been adjudicated according to the routine criminal process, at least since the Qing's adoption of the Ming Code in 1646.

As we will see in the next chapter, epicenter desertion cases were often adjudicated under militarized proceedings despite the existence of the routine criminal process. Unlike the routine process with its concerns for self-renewal, militarized adjudication developed as a tool of military campaign discipline emphasizing expedient adjudication under an autonomous commander; as events converged on the epicenter of military operations – the battlefield at the moment of battle – the frequency and degree of autonomy of militarized adjudication grants approached a zenith.

Campaign desertion is an ideal unit of analysis for observing the relationship between the temporal-spatial gradient of military operations and the development of law over time because campaign desertion occurred anywhere from the point that a soldier was first notified of his requirement to deploy – often within the outer zone of the gradient – to the battlefield itself. Because campaign desertion and battlefield first flight were both prohibited routine criminal statutes, as we will see in the next chapter, the fact that battlefield first flight cases were often adjudicated under militarized proceedings and that, campaign desertion cases prior to the

Qianlong era were seldom tried under militarized adjudication highlights a fuzzy boundary between the two responses that ran along the military operations gradient.

Chapter 2. Militarized Adjudication

This chapter demonstrates the existence of militarized adjudication over the long term as a manifestation of late imperial military culture. It also provides the semantic link between militarized adjudication (*yi junfa congshi* 以軍法從事) which had long-existed in the Chinese tradition and the development of militarizing tendencies which began during the Qianlong reign. This link was the imperial standard (*wangming qipai* 王命旗牌) which first began to appear in large numbers of cases during the Qianlong and Jiaqing reigns and appears in at least some cases through the end of the dynasty. This chapter also introduces the notion of strategic adjudication, which is more closely related to Di Cosmo's notion of military culture as "strategic culture," a decision-making process that transcends the "specific behavior of military people and involves instead the accumulated and transmitted knowledge upon which those involved in making strategic choices, from both the civil and military side, base their arguments, validate their positions, and examine a given situation."¹ While the routine process and militarized adjudication were both methods of adjudicating individual culpability and meeting out punishment, the strategic mode constructed its subjects as enemies who were either to be annihilated or consoled and brought over to one's side.

¹ DiCosmo, *Military Culture*, 4.

I. Military Law and Militarized Adjudication

Published legal-normative rules for proper military behavior were ubiquitous by the Qing and they stretched back to antiquity. First, military culture had a common classic canon, the *Seven Military Classics* (Qiwujing 七武經) which outlined many of these norms. Six of the seven, including Sunzi's famous work, were composed by the second century B.C. According to Ralph Sawyer, these works "continued to be studied and transmitted down through the centuries until the remnants were collected and edited in the Sung dynasty.... Combined with a T'ang dynasty work, they compose the *Seven Military Classics*, a compilation that comprised the orthodox foundations for military thought and the basis for the imperial examinations required for martial appointment."² Various norms of military behavior can also be found dispersed throughout most of the classic philosophical and historical canonical texts.

The Qing abounded in military regulations, and even generally-applicable code compilations, such as the Qing Collected Statutes, or the *Binglü* section of the Qing Code I have described above, which contained numerous legal rules regulating military behavior. Both Qi Jiguang's manual and the late eighteenth century manual by Xue Dalie (Appendix), which was very closely patterned on (today, one would say plagiarized) Qi Jiguang's original manual. Both of these works are packed with normative rules for military behavior as were most of the military campaign commander's handbooks that proliferated during the Ming-Qing periods.

² Ralph D. Sawyer, *The Seven Military Classics of Ancient China* (Boulder: Basic Books, 1993), xii.

Military law (*junfa*), already known in the time of the Qin and Han Dynasties (206 BC- AD 220), did not develop as an exception to the civilian law, but in many ways preceded it.³ The concept was well developed by the Ming Dynasty.⁴ In fact, traditional Chinese historiography holds that “punishment started with the military (*xing shiyu bing* 刑始於兵).”⁵ Under this conception, *xing* (刑) was originally something applied to outsiders – the modern reference is *yizu* (異族) – and administered by soldiers.⁶ The *Seven Military Classics* early on recognized that rules of discipline had to be clear, and punishment had to be quick in order to maintain the authority of the commander and military discipline during battle.⁷ Conceptually, militarized adjudication was also situated squarely within the Chinese tradition of granting autonomy to the campaign commander, referred to as “convenience of action (*bianyì xingshì* 便宜行事).”⁸

³ Zhou Jian 周建 points out that on oracle bone writing one finds the phrase, “the military must respect the law (*shì wéi lǚyòng* 師惟律用)” and that the term *lǚ* (statute) first developed its legal meaning within the context of military law, most likely during the Shang Dynasty (1600-1046 BC). Zhou Jian 周建 and Jia Guow'en 賈國文, “Zhongguo gudai junfa de zaoqi xingtai 中國古代軍法的早期形態,” *Journal of the Xi'an Political Institute* (4/1999, 12:2), 38-40.

⁴ The term *junfa* appeared in many literary references starting around the Qin Dynasty (221-206 BC). Sima Guang's eleventh-century Song classic *A Comprehensive Mirror for Government* (*Zizhi tongjian* 資治通鑑) contained many references to *junfa* from previous dynasties, reflecting both militarized adjudication and other meanings.

⁵ Zhu Xiaohong “Lun ‘Xing shiyu bing er zhongyu’ jian lun Zhongguo junshifa de qi yuan,” 67-81; *Zhongguo chuantong falü wenhua yanjiu* 中國傳統法律文化研究 (Research into Traditional Chinese Legal Culture), eds Zeng Xianyi 曾憲義 et al., vol 2, *Zui yu fa* 罪與罰 (Crime and Punishment) (Beijing: Zhongguo Renmin Daxue Chubanshe, 2011), 40-42.

⁶ *Zhongguo chuantong falü wenhua yanjiu* 中國傳統法律文化研究 (Research into Traditional Chinese Legal Culture), eds Zeng Xianyi 曾憲義 et al., vol 2, *Zui yu fa* 罪與罰 (Crime and Punishment) (Beijing: Zhongguo Renmin Daxue Chubanshe, 2011), 49.

⁷ *The Seven Military Classics* 武經七書 consists of: *Tai Gong's Six Secret Teaching* 太工劉韜, *Sima Fa* 司馬法, *Sunzi's Art of War* 孫子兵法, *Wuzi* 吳子, *Wei Liaozi* 尉繚子, *The Three Strategies of Huangshi Gong* 黃石公三略, and *Questions and Replies Between Tang Taizong and Li Wei Gong* 唐太宗問對李衛公. The works were canonized during the Song Dynasty. Sawyer, *The Seven Military Classics*.

⁸ Zhao Xianhai, *Mingdai jiubian changcheng junzhenshi*, 160-61.

At least by the time of the Ming (and probably much earlier), there was a distinction between how adjudication proceeded for violations of military behavioral norms *on campaign* and violations of norms in home-station, inner-empire garrisons. This distinction might have derived from the increasing sophistication and importance of routine retrial-review to late imperial legal culture over the centuries since the Tang. In other words, more than militarized adjudication emerging as a campaign exception to routine retrial-review of military-related cases (which assumes incorrectly that the highly sophisticated routine Ming-Qing process preceded militarized adjudication), rather, the process of development more likely involved increasing encroachment of a developing routine retrial-review process on what had traditionally been the purview of militarized adjudication. This view is completely consistent with what happened with Manchu law following the 1644 conquest, and, if we take at face value the Chinese historiographical notion that “punishment started with the military,” it is also consistent with the process of military legal development over the very long term.

Although we can only speculate as to why the routine retrial-review process encroached more and more on what had been the purview of militarized adjudication, it seems that this process started very early. Robin D.S. Yates identifies the Warring States period as a point where “behavior in the military and behavior in civil life came to be sharply distinguished.”⁹ He concludes that the “elaboration of military law was one of the most important ways in which the civil bureaucracy, representing the *wen* side of Chinese culture, were able to control over two millennia the powerful forces of *wu*...” No doubt there were fits, starts, reversals and long periods of equilibrium along the way, but across two millennia for what it’s worth, this seems to

⁹ Yates, 34.

be a correct characterization of the process. If the trend prior to the Qianlong-era had been the slow encroachment of routine retrial-review on military matters, then the appearance of militarizing tendencies in legal culture represented a hard turn in the opposite direction.

A. *Military Law and Militarized Adjudication*

Robin D.S. Yates has noted that “even though more and more attention is being paid to the rich legal heritage of the Chinese, surprisingly little attention has been paid to military aspects of the law by legal historians of China.”¹⁰ “Military Law” (*junfa* 軍法; M: *coohai fafun*) is a category that was well-recognized in late imperial China. To understand how it was situated within late imperial military culture, in Chapter Three, I turn to the Seven Military Classics, contemporary privately-published “military manuals,” political writings on war, and dozens of cases from the archives, as well as secondary scholarship on late imperial campaign authority.¹¹ To sum up the view within these sources: militarized adjudication was justified as a long-standing aspect of the commander’s authority to carry out campaign actions autonomously, granted by the emperor on a campaign-by-campaign or incident-by-incident basis, for the purpose of maintaining military discipline through harsh and expedient punishment. It was the punishment side of the classic Chinese formula of maintaining discipline through rewards and punishments (*shangfa* 賞罰). While most would see this as a remnant of Legalist philosophy,

¹⁰ Robin D.S. Yates, “Law and the Military in Early China,” in *Military Culture in Imperial China*, 25.

¹¹ *The Seven Military Classics* 武經七書 consists of: *Tai Gong’s Six Secret Teaching* 太工劉韜, *Sima Fa* 司馬法, *Sunzi’s Art of War* 孫子兵法, *Wuzi* 吳子, *Wei Liaozi* 尉繚子, *The Three Strategies of Huangshi Gong* 黃石公三略, and *Questions and Replies Between Tang Taizong and Li Wei Gong* 唐太宗問對李衛公. These seven works were canonized during the Song Dynasty, and with some discontinuity, served as the source texts for the imperial military examinations during the Qing era. Ralph D. Sawyer, *The Seven Military Classics of Ancient China* (Boulder: Basic Books, 1993). For a discussion of the campaign commander’s autonomy during the Ming, see Zhao Xianhai 趙現海, *Mingdai jiubian changcheng junzhenshi* 明代九邊長城軍鎮史 (The history of the junzhen along the Great Wall and Nine Frontier region during the Ming Dynasty) (Beijing: Social Sciences Academy Press, 2012).

Chinese historiography contends that the military philosophy predated and later developed into the Legalist Philosophy (*xing shiyu bing* 刑始於兵) during the late Warring States period (475-221 BC).¹² In other words, the law itself was seen as originating in military law and then still in ancient times branching off into generally-applicable “routine” law.

1. *Junfa* as Substantive Military Law

Late imperial sources referencing military matters contain ubiquitous references to *junfa* (軍法). As I show in Chapters Three through Six, however, the sources suggest that *junfa* could mean both the entire body of laws (no matter what the source) applicable to the military, or it could refer to militarized adjudication, the procedure by which cases were tried (the distinction is mostly for academic purposes). In this dissertation, I use the term “*junfa*” to refer to what was primarily the substantive subset of the actual Chinese term. By contrast, I use the term “militarized adjudication” to refer to the more procedural connotation of *junfa*. In Chapter Three, I rely on Zhou Jian, a Chinese Army lawyer-scholar, as well as other scholars who have written on the development of Chinese military law since ancient times. Zhou traces the roots of China’s military law to primordial legends of ancient China and finds concrete expression in the earliest written testimonies.¹³ Zhou’s work shows that China maintained a distinct military law from the earliest times. *Substantive* military law – *junfa* – included a vast array of rules and laws from temporary campaign orders (*junling* 軍令) to administrative provisions (such as those in the

¹² Zhu Xiaohong 朱曉紅, “Lun ‘Xing shiyu bing er zhongyu li’ jian lun Zhongguo junshifa de qi yuan 論‘刑始於兵而終於禮’兼論中國軍事法的起源 (A discussion of ‘Punishment started with the military and ended with rights’ and a discussion of the origins of Chinese military law),” *Journal of Xi’an Political Insitute* 23, no. 2 (April 2010), 67-81.

¹³ Zhou Jian 周健, *Zhongguo junshifa shi* 中國軍事法史 (The history of Chinese military law), vol. 1 of *Jun shi fa wen ji* 軍事法文集 (An anthology of military law) (Beijing: Fa lü chuban she, 2008).

Zhongshu Zhengkao 中樞政考 and later the *Bingbu Chufen Zeli* 兵部處分則例). Moreover, prior to the Qianlong reign, most of the substantive “military crimes” listed in the *Binglü* (兵律) section of the Ming-Qing Codes were tried under the routine process except when they occurred on or very near the battlefield.

The Ming-Qing Codes followed the organization of the Six Boards, thus the *Binglü* Section corresponded to the Board of War (*Bingbu*). All of the crimes defined under this section of the Code, including campaign desertion, were structurally indistinguishable from other crimes adjudicated within the routine track. In other words, despite the fact that these crimes were “military crimes,” they were meant to be – and, at least with campaign desertion prior to the Qianlong era might well have been – adjudicated under the logic of the routine process. Because these crimes were already “military crimes,” they were on the leading edge of the militarizing tendencies in eighteenth century legal culture, which is another reason why adjudication of campaign desertion served as a bellwether for these tendencies.

2. *Junfa* as Militarized Adjudication

As I demonstrate in Chapter Three, by the sixteenth century (and likely much earlier), there was already firmly established within late imperial military culture a “discrete” and “bounded” system for adjudicating ostensibly criminal acts by soldiers who committed certain crimes, such as campaign desertion, while on campaign or stationed at garrisons on the militarized frontiers. I use the adjective *modal* to signify that what *most* distinguished militarized adjudication from routine adjudication was the mode – the paradigmatically-distinct manner – in which such cases were adjudicated. While common ancient roots shared with

routine law are interesting, by the Ming period, it is clear that militarized adjudication and routine criminal adjudication were seen as two paradigmatically-separate constructs.

Traditions of authority and autonomy of commanders on military campaigns were constitutive elements of militarized adjudication over the *longue durée*. By the late imperial period, militarized adjudication's basic purpose was understood as supporting the campaign commander's independence of action (*bian yi xing shi* 便以行事) to facilitate punishment, one side of the classic binary regulating the military through rewards and punishments (*shangfa* 賞罰). Under militarized adjudication, on an *ad hoc* basis, the emperor granted officials temporally- and spatially-restricted degrees of autonomy to adjudicate certain criminal cases, mostly when they were on military campaigns. Traditionally, the most frequently-cited purpose for militarized adjudication was to maintain military discipline through deterrence. It often involved group punishment (*lianzuo* 連坐). Its traditional characteristics were expeditiousness, harshness, and lack of potential leniency (finality).

Militarized adjudication had a largely isolated military genealogy. During the late imperial period prior to the Qianlong reign, outside of military reports, references to militarized adjudication surfaced primarily in military-related reports and military-related writings, such as military handbooks, written by men with military experience about military matters. Meanwhile, prior to the Qianlong reign, militarized adjudication was almost entirely absent from works that were consciously works of legal scholarship, such as *lixue* scholarship.

As linguistic, symbolic, and practical discourse, militarized adjudication was composed of a recognizable analytical approach and included distinct symbols with both core meanings and

those that varied over time. In identifying change over time, the *imperial standard* was the most important such symbol. Its appearance in non-military cases for the first time during the eighteenth century was one of the indications of the increase in militarizing tendencies in the law. As Zhang Shiming pointed out, most historians trace the origins of the imperial standard to earlier symbols of the emperor's delegation of militarized-adjudication authority, such as the *fuyue* (斧鉞) or *shangfangjian* (尚方劍), given to high officials, allowing varying degrees of autonomy to exercise the imperial authority over life and death.¹⁴

Within the archives, it is usually not difficult to distinguish militarized-adjudication cases. Such cases often cited campaign orders (*junling* 軍令; *haoling* 號令; *faling* 法令), but sometimes also cited regular codified statutes and/or substatutes.¹⁵ Rather than reflecting the routine retrial-review process, the adjudicative discourse in militarized adjudication was largely restricted to the emperor (or the imperial office) and a commander. Militarized-adjudication cases usually did not involve such outer court agencies as the Three Judicial Offices. Whereas it was common for an early Qing routine criminal memorial to be more than forty folds in length, a militarized adjudication memorial was commonly less than eight folds in length (sometimes just three or four folds). Towards the end of the Kangxi reign, militarized adjudication matters began to appear in palace memorials (*zhupi zouzhe* 硃批奏摺). I also believe there is a link between the institutionalization of a militarized track during the Qianlong reign and the creation of specific

¹⁴ Zhang Shiming 張世明, *Sifa changyu* 司法場域 (The Judicial Field), vol. 4 of *Falii, ziyuan, yu shikong jiangou: 1644-1945 de Zhongguo* 法律、資源與時空建構: 1644-1945 年的中國 (Law, Resources, and Time-Space Constructing, China in 1644-1945) (Guangzhou: Guangdong renmin chubanshi, 2012), 571 .

¹⁵ A number of these campaign orders can be found in the “campaign” section of the Qing Collected Statutes (precedents) (1749), starting at least from the Qianlong era. Using Wang Mingde's explanation of legal citation terms *yi* (以) and *cong* (從), one can see that even the phrase *yi junfa congshi* could have the legal connotation that out of more than one way to process this crime, it is being processed under militarized adjudication.

institutions – the secret memorial procedure and the Grand Council –that provided the requisite administrative infrastructure to support a direct and regular communications channel between officials in the provinces and the emperor.¹⁶

B. *The Emperor's Authority Over Both Legal and Military Cultures*

The position of emperor was central to both military and legal cultures as well as military and legal institutions. Given the emperor's place in late imperial political culture, most studies on Qing governance likewise put his position at or near the center of the political system.¹⁷

Although neither institutional-cultural system was hermetically-sealed off from the other – many officials either concurrently or sequentially served in both institutions – the most conspicuous common point between both institutional cultures was the position of the emperor. It was not so much that the emperor was a “great man” with personal wisdom and charisma (although some emperors met this description), but that his institutional and conceptual position – the imperial office – was the point of intersection between military and legal cultures (as well as the theoretical focal point of all political culture). The emperor's authority (*huangquan* 皇權) was simply the highest judicial and military authority.¹⁸

All three modes of response – routine adjudication, militarized adjudication, and the strategic approach – had as their ultimate goal the preservation of this imperial authority. In both military

¹⁶ In April 1717, the emperor sent an edict to all the grand secretaries, Nine Ministers, governors-general, governors, provincial military commanders and *zongbing* affirming they all had authorization to secretly memorialize the throne. He reminded them that failing to memorialize important events, such as bandit attacks, was an offense punishable under militarized adjudication. QSL-KX, juan 271, 662-1 – 662-2

¹⁷ For example, in Mark Elliott's *The Manchu Way*, it is the Qianlong emperor who is the strongest advocate for Manchu ethnic difference; in Pamela Crossley's *Translucent Mirror*, the Qing emperor is the focal point of “simultaneous rulership.”

¹⁸ For a discussion of the emperor's authority, see Zheng Qin 鄭秦, “*Huangquan yu qingdai sifa* 皇權與清代司法 (Imperial authority and the Qing-era judiciary), *Zhongguo faxue* 4 (1988), 100.

and judicial matters, the emperor was often the formal initiating force, the final say, and, at specific designated points in the routine process – or whenever he so desired – could intervene to change the direct or result of adjudication. His actions were often shaped but not bound by precedents. The appearance of militarizing tendencies in legal culture meant the transmutation of traditional Chinese principles and procedures of military-campaign criminal adjudication – militarized adjudication – from military culture to late imperial legal culture. Given the emperor’s paramount position over military and legal institutional-cultural systems, it should come as no surprise that the emperor – especially the Qianlong emperor – played an extremely outsized role in this process. As I show in Chapters Five and Six, the transmigration of militarized adjudication from a deeply-embedded element of military culture to an aspect of late imperial legal culture was dominated by the Qianlong emperor’s discourse on discipline and punishment.

C. *The Imperial Standard (Wangmingpai) and the Imperial Will*

The emperor’s authority over military and legal cultures was symbolically reflected in the *wangming qipai* (王命旗牌; M: *hesei kiru temgetu*), literally translated as the “standard mounted on a plaque with the king’s command,” which I translate as “imperial standard” for short.¹⁹ In one dimension, the imperial standard was the successor symbol of the battle-ax (*fuyue* 斧鉞) and the imperial sword (*shangfang baojian* 尚方寶劍), as symbols of a commander’s possession of imperial authority. True to its name, the Qing version of this standard was emblazoned with both the Chinese character “order” (*ling* 令) and the Manchu word “law”

¹⁹ Pre-Qing, were both symbols of the delegation of the emperor’s judicial authority. Zhang Shiming, *Law, Resources, and Time-Space Constructing*, vol. 4, 571.

(*fafun*), suggesting the dual military-legal basis of militarized adjudication and reflecting the emperor's authority.

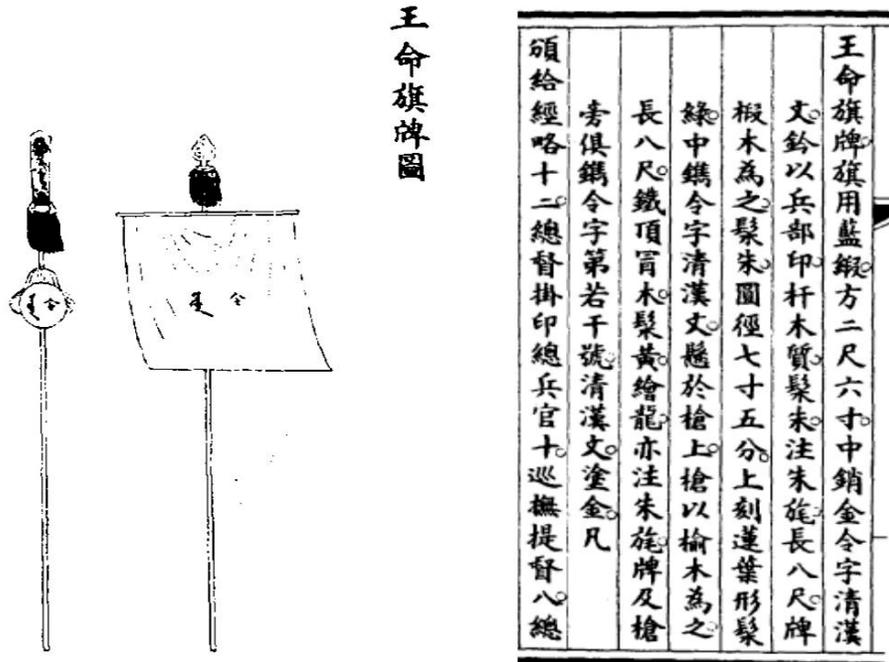


Figure 2-1. From the Qing Collected Statutes (Illustrations)(1899).

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The imperial standard is easily traceable to the Ming Dynasty, but likely has earlier origins. Throughout the Ming and seventeenth-century Qing, however, it only appears in the record as a symbol of imperial authority. During this period, there are no cases in which it was invoked as a independent justification for the autonomous execution of offenders without imperial review. During the fourth decade of the Qianlong reign on, however, it became the primary mechanism for exercising summary execution as it was construed to represent the constructive imperial approval of a death sentence. It was nowhere referenced in the Qing Code until 1789, although it was prominent in the adjudicative discourse since at least 1761.

²⁰ QHD-Illustrations (1899), juan106, 武備 16, 38r-38v.

Wang Yangming referred to the standard as the military commander's symbol of militarized-adjudication authority.²¹ In 1647 Shaanxi governor Leixing noted that it was currently a time of war (*zhengzaiyongjun zhi ji* 正在用軍之際), and that without an imperial standard, any exercise of *junfa* would not be legitimate.²² In 1724, the Yongzheng emperor noted that the standard was to be maintained by each governor-general, governor, provincial military commander, and *zongbing*.²³ According to the 1764 (QL 29) Collected Statutes, imperial standards were issues to all specially appointed supreme commanders as well as governors, governors-general, provincial military commanders and *zongbing* (and that if they damaged or lost them, they would be punished).²⁴

The imperial standard was at the center of an interesting shift in linguistic meaning that occurred along with the regularization and codification of summary execution. Prior to the Qianlong reign, when an official wanted to carry out an execution under militarized adjudication, unless he had already been granted militarized-adjudication authority, he usually had to first memorialize the emperor, and only after he received permission could he carry out the execution. For instance, in one of the few cases I found referencing the imperial standard in the context of an execution prior to the Qianlong reign, a case that took place in 1651, the imperial standard was referenced only after the case had been reviewed and the emperor granted an edict

²¹ Wang Yangming, juan 32, 40v. “改巡撫為提督得以軍法從事欽給旗牌八面。悉聽便宜”

²² NGDK, 007193-001.

²³ QSL-YZ, juan 33, 501-1 – 501-2; NGDK, 011686-001; there are additional Qing-era examples as well, such as NGDK, 007193-001 and QSL-QL, juan 83, 316-1.

²⁴ “王命旗牌自經畧軍務至直省督撫提鎮皆賜給以重委任損失者論。” QHD (1753), juan 73, gongbu 工部, 6v.

authorizing the governor to carry out the execution.²⁵ In other words, prior to the Qianlong reign, the imperial standard did not independently signal constructive imperial approval.

During the Qianlong-era, however, the phrase “respectfully requesting to use the imperial standard to immediately carry out an execution (*gongqing wangming jixing zhengfa* 恭請王命即行正法),” despite its linguistic meaning of a “request” came to represent in the documents that the memorializing officials had already executed the subject. Despite its literal meaning, within the Qianlong-era adjudicative discourse, it came to mean “I have carried out an execution under the imperial standard” with the inference being that the imperial standard itself satisfied the edict requirement.²⁶

II. Official Killing Without Adjudication: the Strategic Response

Whereas the routine criminal-legal mode and militarized adjudication had different fundamental concerns, both constructed the transgression of the boundaries of normative behavior as individual crimes. The strategic response was different. It supported the current order not through the correct performance of a criminological point of view or through the maintenance of campaign discipline, but through pragmatism. It simply reflected that sometimes when a problem presented a proximate threat to the existence or stability of the dynasty, it was

²⁵ NGDK, 005736-001.

²⁶ For example, during the Qianlong-era Lin Shuangwen rebellion in Taiwan, the commnader, Zongbing Chai, reported that when three soldiers were facing the enemy, they refused to fire their weapons and fled. Chai stated that because of their cowardice, the rebels entered the government camp. Chai reported to the emperor via memorial that Chai had already “respectfully requested the imperial standard (*gongqing wangming*)” and immediately executed the three in front of their troops.” To this, the emperor responded, “All this was properly done. [Zongbing] Chai Daji profoundly understands military discipline (*junlü* 軍律). When NCOs and soldiers retreat/shrink back in the face of battle, they should be immediately executed. Moreover, soldiers who loot the personal property and clothes of civilians should be handed according to militarized adjudication (*an junfa congshi*) in order to create a deterrence. QSL-QL, juan 1281, 158-1 – 159-2.

necessary to address the problem outside of the conceptual framework of crime. It is important to understand the strategic mode to avoid classifying strategic mode cases as militarized-adjudication cases. Although both were rooted in military culture (or perhaps it would be better to say the strategic approach straddled military culture and the broader political-governing culture), the strategic approach was very different from militarized adjudication.

Throughout the Ming-Qing transition, the Qing successfully attracted Ming military and civilian officials to the Qing cause by offering to forgive their “crimes” (which usually consisted of the Ming-side officials carrying out his duties to the Ming government). Hongtaiji, Dorgon and other early Qing leaders recognized that if they treated surrendering Ming officials well, then it would weaken the will of remaining Ming loyalists to resist.²⁷ The early Qing was not concerned with punishing these officials or framing their conduct of resistance as “crimes” but with bringing them over to the Qing side.²⁸ Prince-regent Dorgon continued the policy when, soon after occupying Beijing, he “formally invited Ming metropolitan officials to remain in their posts once they had shaved their heads and registered in their ministry rosters.”²⁹ The early development of the Green Standard as a military force was largely the result of the Qing’s strategic approach in dealing with its former enemy.³⁰

²⁷ For instance, when Hongtaiji conducted the first attack into China proper in November 1629, he “took special pains to welcome Chinese officials who surrendered, including the local magistrate, the garrison commander, and three high-ranking military officers.” Wakeman, 164.

²⁸ Even though the famous Ming general Hong Chengchou resisted surrendering to the Qing and was only captured pursuant to the treachery of his subordinates in January 1642, he acknowledged the Qing’s approach, “I had accepted the fact that I ought to be executed, but the Manchu Emperor was compassionate and ordered that I be mercifully treated instead of killed.” Wakeman, 217

²⁹ Wakeman, 416.

³⁰ “When a local commander surrendered – like Colonel Lu Guonan, commander of the Ming army camp at Changping, northeast of Beijing – the officers and their men were reconstituted as Green Standard Forces.” Wakeman, 480-81. The pacification of the north in 1644 saw the continuation of this policy. Wakeman, 492-93.

Consistent with Ian Johnson’s formulation, the strategic response can be thought of as an element of Chinese “strategic culture.”³¹ Recall that Di Cosmo identified strategic culture as a form of military culture. Johnson identifies in Chinese strategic culture a “parabellum paradigm” at the core of Chinese strategic thinking, which prioritized military force as a way to resolve issues with adversaries; yet Johnson also finds a Confucian-Mencian “symbolic discourse,” opposed to the parabellum paradigm, but used to justify actions that did not actually influence decision-making.³² The upshot of this was that the Chinese would use force if they thought they could win; and if they thought military force was unlikely to prevail, then they negotiated or even capitulated but articulated the response using a Confucian-Mencian pretext.

Qing-era strategic mode cases support Johnson’s argument. Strategic mode case discourse generally constructed the potential options in terms of a binary pair: exterminating (*jiao* 剿 or *mie* 滅) [the parabellum response] and consoling-beckoning back (*zhaofu* 招撫) deserters (the Confucian-Mencian pretext). This binary pairing of killing versus consoling was the most common linguistic marker of strategic mode analysis. Not surprising, strategic mode cases usually did not cite law, employed a distinctly non-legal vocabulary, and generally reflected a non-criminal process.

Under certain circumstances, the strategic approach to dealing with one’s enemy also extended to dealing with one’s own subjects, but in such cases, the erstwhile subject was

³¹ According to Johnson, “strategic culture” is “a set of assumptions that provides answers to three questions: what role does conflict or warfare play in human affairs; what is the nature of the enemy and the threat it poses; and how efficacious is the use of force in dealing with threats to state security?” Alastair Ian Johnson, *Cultural Realism*, 248.

³² According to Johnson, the “parabellum paradigm” “accepts that conflict and war are constant characteristics of human affairs, views the adversary as disposed to challenge one’s own interests in such a manner that conflict becomes zero sum, and places a great deal of faith in the efficacy of military preparations and the applications of violence to resolve these high-stakes conflicts.” Alastair Ian Johnson, *Cultural Realism*.

discursively re-constructed as an enemy (e.g., *zei* 賊). We see this in the Qing response to the Jiang Xiang rebellion of 1649. Although Jiang Xiang had previously declared loyalty and gone over to the Qing side, when he felt his position as satrap of Datong, 250 km west of Beijing threatened, he closed the city gates and declared himself and all his troops in rebellion against the Qing.³³ Soon, officials across Shanxi had joined Jiang Xiang in rebellion. Prince-regent Dorgon responded in the strategic mode, setting forth an ultimatum in terms of the strategic binary:

Jiang Xiang has rebelled and will be executed. He has collected adherents and assembled followers, fabricating lies and deceits to beguile them to kill officials and soldiers. All of you are mistaken to believe these are true, and thus to rebel en masse I cannot bear to see you die because of your own stupidity. Therefore, a special edict is ordered to announce your collective pardon. If, on the day the pardon arrives, you can repent your earlier faults, turn over a new leaf and return to us, we will forgive your former crimes and continue to nurture you in our benevolence. But if you cling stubbornly to your delusions and continue to believe Jiang Xiang, you will bring death upon yourselves.³⁴

Qing officials themselves recognized the conceptual link between the treatment of a former enemy and the treatment of one's own norm-defying subjects. In a 1658 case, a number of soldiers who had joined the anti-Qing Zheng forces in Taiwan – making them technically subject to trial under the crime of treason – returned to Fujian and asked to rejoin the Qing. Rather than trying them under the treason statutes, Bordered Red Chinese Bannerman and Zheijiang Governor-General Zhao Guozuo memorialized that these soldiers should be treated like “*officials of a former regime who have come over to us (qianqizhizhu 前禽之祝)*” and be accepted back

³³ Wakeman, 805-807

³⁴ Wakeman, 811.

into the Qing ranks without punishment.³⁵ In order to avoid the criminal process completely, Zhao's discourse reconstructed criminal traitors into "officials of a former regime."

The seminal military event of the Kangxi reign (r. 1661-1722) was the Revolt of the Three Feudatories (1673-81, KX 13-21), which began only twenty-nine years after the Qing first occupied Beijing.³⁶ In December 1673 (KX 12/11), former Ming general Wu Sangui (1612-78), the Western Pacifying Prince, who had been given a large fiefdom in Yunnan and Guizhou after he helped the Manchus conquer China, rebelled. The next year, on April 21, 1674, Tranquil Prince of the South Geng Jingzhong (d. 1682) mobilized his Fujian fiefdom in rebellion against the Qing. Finally, in March 1676, Shang Zhixin (d. 1680) (the son of Shang Kexi (1604-76), the "Southern Pacifying Prince") "openly acknowledged the fact that he was in rebellion" by formally allying with Wu Sangui and mobilizing his father's Guangdong fiefdom against the Qing.³⁷ By the end of 1673, most of the south and southeast of the empire was in open rebellion

³⁵ NGDK, Memorial from Zhao Guozuo 趙國祚, 清代台灣檔案史料全編 (學苑出版社, 320-28). Liu Xian and eighty-one other soldiers who were originally assigned to the Left Battalion of Chao Territorial Defense Region, under Major Yanglun. In May 1658 (SZ 15/4), they followed orders to transfer to reinforce Denghai area. 澄海 On May 18, the rains damaged the city walls. At the same time pirates arrived from Taiwan. "Because the soldiers were few and the enemy were many, the city fell." They followed Adjudant-Second Captain Guo Yunxue and went out to sea (with the pirates) under threat, they were not bound up, everything they said is completely true. In September of this year (1660) (SZ17/8), they drifted to at Longshan 龍山 suo 所 of Zhe Xun 浙汛, and went on shore and sought to come back to the Qing side (*toucheng* 投誠).

³⁶ The dynasty's grip on the country was still tenuous and military resources were limited. The precipitating event for the rebellion was the purported request to retire from Wu Sangui, the satrap of Yuannan-Guizhou. The debate at court that followed the request centered on how the Qing could garrison the vast area now being garrisoned by Wu if he were to withdraw. The focus of the debate was the limited number of soldiers and whether it would be better to request Wu to remain in and continue to garrison the south. PDSNFL, juan 1, 6r,v. The early days of the rebellion were also marked by a key awareness that Qing troops were limited and careful strategic decisions had to be made about where to deploy them. The Qing transferred soldiers from Xi'an to the Sichuan theater, but then had to backfill Xi'an. In writing to General Waerga campaigning in Sichuan, the Kangxi emperor noted, "I think the rebel soldiers will attack Bashu. You do not have many soldiers under your command. You should be very careful about where you attack and where you defend and make sure your logistics are ready. PDSNFL, juan 2, 2v.

³⁷ Wakeman, 1107-09.

and the very existence of the dynasty was threatened.³⁸ From the perspective of the military operations gradient, it represented the creation of a large middle zone including vast areas of Shaanxi, Hunan, the southeast coast, Sichuan, Yunnan, and Guizhou, with multiple epicenters.

The strategic situation at first deteriorated quickly. The dynasty's security was so precarious that at the end of March, 1674, even the Hunan governor fled after hearing rumors that Changsha would be attacked.³⁹ "The summer and fall of 1674 ... saw the dynasty at its lowest point since the capture of Beijing three decades earlier."⁴⁰ "Most of south China was in the hands of the rebels; Wu Sangui was suggesting that Kangxi either commit suicide or return to the northeast."⁴¹ The revolt encompassed a large crescent of territory stretching from Shaanxi in the north to Sichuan in the southwest to Guangdong and Fujian in the southeast and included large parts of southern Hunan. Large numbers of people fled in fear and many military and civilian officials joined the revolt.⁴²

³⁸ PDSNFL, 提要 from the Siku Quanshu Edition, page 1.

³⁹ PDSNFL, juan 3, 1r.

⁴⁰ Wakeman, 1108.

⁴¹ Wakeman, 1108.

⁴² According to the official account, the beginning of the Rebellion was marked by chaos as people ran to the hills before the advancing armies and large numbers of senior and junior military and civilian officials declared their loyalties to the rebellious regimes. After the rebellion broke out, on February 8, 1674, the emperor ordered Banner Commander Gioro Baerbu to lead the elite Banner Cavalry from Beijing to secure the strategic city of Jingzhou (荊州) in southern Hubei from rebel forces. The local people were already panicked and the Qing was very concerned about getting soldiers there as quickly as possible to restore calm about both the civilians and local military. PDSNFL, juan 2, 1r-1v. The Board of War received reports that people in the capital were panicking and running to the hills. PDSNFL, juan 2, 4r. People in Huguang were panicking both at the approach of rebel armies and, it seems perhaps at those of the government. PDSNFL, juan 2, 10r. The Kangxi emperor lamented, "Soldiers and civilians are all my children. I sent large forces to defend the people. Why should the people now develop this absurd fear of our armies? Have the officials publish this edict to calm the people." PDSNFL, juan 2, 10r.

Scholars have recognized the Kangxi emperor's policy of consoling-beckoning the large numbers of military and civilian officials who went over to the rebels during the revolt.⁴³ What has not been widely considered is that the Qing also employed the strategic response with regards to its own desertion cases, even down to the level of common soldiers.⁴⁴ In fact, the Kangxi emperor issued a general edict that not only articulated the strategic response to the revolt, but set forth a framework for utilizing routine and militarized adjudication procedures which closely corresponded to the gradient of military operations:

[Strategic Mode]: For those who resist, kill them (*kangju bushun luzhi* 抗拒不順戮之), but for those who joined the rebels out of coercion, if they immediately surrender upon the arrival of our main forces, then do not kill them (*mianzhulu* 免誅戮). For those who can capture or kill their rebel superiors, then reward them appropriately.

[Militarized adjudication] Rigorously enforce military discipline. Wherever the armies go, do not harass civilians and console commoners who return to loyalty. My intent in pacifying this revolt is to save the people. Both the merits and serious crimes of the campaign leaders should be thoroughly investigated and memorialized to me. If any officer commits a minor crime, he should be administratively sanctioned (*chufen* 處分) on the spot. For Banner Elite Cavalry ranks of second captain (*junxiao* 軍校, 5a) and below, for both minor and serious crimes, deliberate on them and carry out administrative sanctions.

[Approaching Routine criminal-legal Track] After [temporal] the rebels in Yunnan and Guizhou have been exterminated, the area pacified, and strategic places garrisoned, then

⁴³ Meng Zhufang 孟姝芳, "Cong dang'an kan 'sanfanzhiluan' zhong Qingting shenglide yuanyin zhi yi 從檔案看 '三藩之亂' 中清廷勝利的原因之一" *Journal of Inner Mongolia University (Humanities and Social Sciences)*, June 2000, Vol. 32, Supplement, 48-51; Xie Yulin 邪玉林, "Cong pingding 'sanfan' panluan kan Kangxi de junshi sixiang 從評定 '三藩' 叛亂看康熙的軍事思想" *Zhongnan Minzuxueyuan xuebao* 中南民族學院學報 (1983):4, 36-38.

⁴⁴ The official Kangxi-era Campaign History of the Suppression of the Three Feudatories (PDSNFL) documents several instances of the Qing's strategic treatment of rebels and its own soldiers during the period. This sixty-juan account was commissioned by the Kangxi emperor the year after the Rebellion of the Three Feudatories was suppressed. It was written by the accomplished central government official and Gioro-clan member, Ledehong (Ch: 勒德宏).

memorialize their crimes and wait for an edict. Except for capital crimes, all other punishments should be executed after thorough discussion among the generals.⁴⁵

This edict, published at least twice, reflected the official and simultaneous consciousness of all three modes of response, with a clear affirmation that criminal-legal concerns would be addressed only after strategic ends were satisfied. For officials who joined the revolt, the primary concern was bringing them back into the fold. For Qing officials who committed crimes, the local officials could autonomously impose administrative sanctions, but more serious cases had to await the completion of the main military effort, or for capital cases, still had to be memorialized to the emperor, in line with the routine criminal-legal approach.

Under the strategic mode, the concern for attracting back officials and soldiers who had gone over to the side of the Feudatories [or killing them on the battlefield] outweighed concerns of individual criminal culpability. The emperor singled out the Green Standard, saying “As for the rebellious Green Standard officers and soldiers, similarly try to console and beckon them back (*zhaofu* 招撫).⁴⁶ On March 2, 1674, the emperor ordered the Board of War to allow Green Standard soldiers who had joined the revolt but now surrendered to rejoin the ranks of the governor-general and governor’s personal detachments (*dufubiao*) if they were willing to fight for the Qing.⁴⁷ This policy also manifested in a widespread effort to console and beckon deserters back into the Qing ranks.

The distinction between the strategic approach and the militarized adjudication is again illustrated by a case in a palace memorial by Henan Governor Yang Zongyi 楊宗義 on KX

⁴⁵ PDSNFL, juan 2, 6v-8r.

⁴⁶ PDSNFL, juan 2, 18r.

⁴⁷ PDSNFL, juan 2, 16v.

58/11/18 in which Yang requested to execute on the spot – Yang used *jiudizhengfa* (就地正法) terminology that would become far more common in the nineteenth century – against robber-bandits (*daofei* 盜) that he had already apprehended. According to Yang, these were “imbecilic locals” who gathered together in a gang and took advantage of the opportunity to rob. Yang was continuing to apprehend them, but he requested permission to exercise the maximum extent of the law against (execute) those he had already apprehended in order to “secure the peace of the area.” The emperor responded that the cases of those already apprehended still had to be memorialized to the Board and handled accordingly (*hai gai juti ting buyi cai shi* 還該具題聽部議才是).⁴⁸ Under the strategic approach such bandits could be killed during a confrontation or beckoned and consoled, but once apprehended they could not be simply summarily tried and executed, a level of adjudicative autonomy mostly restricted at this time to *ad hoc*, epicenter military campaign situations. Still, the very fact that Yang requested permission to adjudicate them summarily suggests that there was some leeway.

While the routine-criminal legal mode and militarized adjudication treated a given behavior as a crime to be punished, the strategic mode was more pragmatic. The concern was bringing enemy officials (or revolting soldiers) over to one’s own side, and if that was not possible, then eliminating them militarily (not an adjudicative concern). The binary between eradication and consoling-beckoning suggests that the latter was in many cases primarily a Confucian-Mencian pretext for pragmatic action where it was thought imprudent or impracticable to pursue military or criminal-legal action.

⁴⁸ ZPZZ-NPM, 401001680.

III. Militarized Adjudication Prior to the Qianlong Reign

A. Militarized Adjudication Over the Longue Durée

The *Seven Military Classics* already contain the basic ideas of awards and punishments (*shangfa* 賞罰) and emphasized that expeditiousness and lack of leniency were critical to military campaigns. From at least the Ming Dynasty, the substantive law of military campaigns was typically set forth in various campaign orders (most of which either implicitly or expressly called for some degree of militarized adjudication) in addition to those military laws set forth in the *Binglü* or other sections of the Code itself, some of which also applied to campaign and all of which called for the routine retrial-review process). The routine desertion statute was an example of the latter. In his *New Book on Military Discipline* (*Jixian Xinshu* 紀效新書), Qi Jiguang (1528-88) described a number of orders listing offenses that were to be adjudicated according to militarized adjudication while on campaign.⁴⁹ Notably, battlefield retreat was the only offense listed which included autonomous authority to carry out the death penalty.⁵⁰ In this regard, Qi Jiguang's work merely reflected long-standing Ming reality.⁵¹

⁴⁹ Not maintaining proper order in the ranks during march, leaving the unit without authorization, not obeying the signal drums and signal flags, not abiding or properly transmitting orders, getting lost on the road, and rioting were all to be adjudicated under militarized adjudication (*ju zhi junfa* 俱治軍法).

⁵⁰ This provision included the provisions for group punishment, going all the way up the chain of command, making both community heads (*jiazhang* 甲長) responsible as well as ten-men unit leaders (*duizhang* 隊長). If they retreated with their soldiers they were executed. Qi Jiguang 戚繼光, *Jixiao xinshu* 紀效新書, ann. Zhang Haipeng 張海鵬 (Taipei: Wuzhou Press, 2012 [1560]), 41-45.

⁵¹ The Ming Collected Statutes already included an order from 1449 (ZT 14) requiring that if the leader (*toumu* 頭目) was the first to retreat in cowardice, then the justice official was to decapitate him and choose another leader to replace him. If the soldiers regardless of the leader, retreated "first in cowardice on their own," then the soldiers in the ranks behind them were permitted to kill them, and they were to be rewarded for this action. MHD, juan 111, bingbu 6, 6r; QHD-SL, juan 111, 14v-15v.

Although militarized adjudication (Ch: *yi junfa congshi* 以軍法從事; M: *coohai fafun i gamarangge*) stretched deep into the ancient Chinese past, by the period of the Ming-Qing transition, it had developed certain relatively fixed characteristics. Whereas the routine criminal-legal mode of adjudication was dominant in the outermost zone of the military operations gradient, farthest from the battlefield, militarized adjudication became more dominant towards the center of the gradient, where military operations were most intense. While the routine criminal process supported the maintenance of the current political order through the proper performance of judicial procedure, militarized adjudication focused on deterrence, expeditiousness and convenience directed towards maintaining military discipline (*junji* 軍紀). While both the routine criminal track and militarized adjudication were individual criminal approaches – they saw the behavior as a crime -- the distinction between the two went beyond the Chinese tradition of adjusting the harshness of criminal penalties based on the necessities of the times (*shiqing shizhong* 世輕世重). By the time of the Ming, the two were paradigmatically distinct modes of adjudication, both constructing the criminal activity in different ways and reflecting distinct criminological viewpoints.⁵²

Given militarized adjudication's lack of deference to what late imperial legal culture viewed as the ancestral institution of the routine process, prior to the Qianlong reign, it was an *ad hoc* and tightly-restricted mode of adjudication. In fact, during the Ming and post-conquest Qing, references to militarized adjudication seldom appeared in legal scholarship. Prior to the Qianlong era, an imperial grant to employ militarized adjudication took the form of an *ad hoc*

⁵² Long Fenglan 龍鳳蘭, “Xingfa shiqing shizhong’ yanjiu ‘刑法世輕世重’ 研究 (Research into the concept of adjusting the serverity of criminal law based on the times),” *Fazhi yu shehui* 法制與社會 1 (2014), 291-92.

delegation of imperial judicial authority to an individual official, usually on a case-by-case, incident-by-incident, or campaign-by-campaign basis. Militarized adjudication was usually limited to adjudicating cases of military persons or civilian officials below a certain rank and non-officials during times and within space associated with military operations. It was further typically limited to behavior closely related to military campaigns. The extent of autonomy – to what degree one was granted the right to deviate from the procedures of the routine criminal-legal process – varied from grant to grant.

Due to the close tie between imperial power and reservation of death-penalty approval to the emperor himself, it is not surprising that the greatest extent of autonomous jurisdiction under militarized adjudication was also the rarest prior to the Qianlong era: complete autonomy to investigate, try, and carry out death sentences with no retrial-review and only *post hoc* notification to the emperor.⁵³ Restrictive grants – far more common – dispensed with various levels of retrial-review but, consistent with the emperor’s position at the apex of the criminal-judicial hierarchy, still required final imperial permission prior to carrying out a death sentence. Almost all death penalty cases involved direct communication between the emperor and his military commanders as well as minimum outer court involvement.

Although not acknowledged by *liuxue* scholars prior to the Qianlong era, militarized adjudication was well known in the early Ming. Neo-Confucian philosopher and fifteenth-

⁵³ Given the *zongbing*’s initial autonomy, it is no surprise that militarized adjudication authority was vested in this position under the Ming. An order (*ling* 令) from 1465 (CH 1) stated that if while a *zongbing* was leading troops against the enemy in actual combat operations (the epicenter of the spatial-temporal continuum), one of his soldiers failed to follow an order, the *zongbing* was granted authority to adjudicate such soldier’s case under militarized adjudication. “令成化元年令總兵官出師臨敵軍中有違犯號令者聽以軍法從事尋常出哨等項不許。” MHD, juan 111, 15v.

century Board of War minister Wang Yangming (1472-1529) authored a number of memorials while a secretary on the Nanjing Board of War, several of which addressed militarized adjudication, including the following from 1499 (HZ 12) discussing actions at the epicenter of military operations:

From now on, for any officer leading soldiers in combat [the epicenter of the gradient], if soldiers under his command retreat or fail to follow orders, permission is granted to adjudicate the matter in front of the troops according to militarized adjudication (*yi junfa congshi*). If the leader himself does not follow orders, then the commander-general (*zongtong guan* 總統官), is granted permission to adjudicate the leader's case according to militarized adjudication in front of the troops.⁵⁴

B. Militarized Adjudication During the Ming-Qing Transition

A 1637 *draft* memorial from the Ming Board of War demonstrated three things: first, the conceptual link between military discipline and militarized adjudication was deterrence; second, that militarized adjudication (as compared with *junfa*) was about expedited procedures and judicial autonomy at a level below the emperor; and third, that such authority was always cautiously granted. In the 1630's, one important epicenter of military operations was the northeast in modern Liaoning and Jilin provinces. By January 1637 (CZ 9/22), with increasing Manchu raids, the Ming Board of War, in conjunction with various supreme commanders (*zongdu*), memorialized the emperor requesting that *militarized-adjudication authority* be granted to the provincial military commissioners (*dufu*) extending authority to execute all officials who dithered, retreated or withdrew in the face of barbarian incursions. In response, the Chongzhen emperor (r. 1627-1644) issued an edict authorizing limited militarized-adjudication

⁵⁴ In July 1517, the Board of War had been requested to grant “military mode” case processing authority to the provincial military commander whereas in that particular theater of operations, it had only previously been granted to the grand coordinator. Wang Yangming, juan 32, 39v.

authority to the supreme commanders and grand coordinators (*xunfu*) of the nine frontiers. His response evinced an awareness of the distinction between militarized adjudication and routine criminal approaches: “for those who should be impeached and then punished, immediately memorialize with an impeachment; for those who should be immediately executed, immediately execute them.”⁵⁵

The fact that the supreme commanders had to specially request militarized-adjudication authority as late as 1637 for operations essentially at the epicenter at a life-and-death moment for the dynasty, and that the emperor still limited jurisdiction to cases of accused officials under the rank of colonel provides some idea of the irregular, restricted, and *ad hoc* status of militarized adjudication prior to the Qianlong era. In a Board of War memorial drafted three years later – as the military situation was truly becoming desperate – we see the same themes for militarized adjudication. In an August 7, 1640 (CZ 13/6/20) *draft* memorial, the Ming Board of War responded to an edict from the Chongzhen emperor seeking recommendations following a disastrous Manchu raid the year prior. The Board styled their memorial a “recommendation that *junfa* be made manifest (*shenming junfa* 申明軍法).” But what exactly did the memorialist mean by *junfa*? We know because he provided a historical example of how such an approach could address discipline problems: in the time of the Ming founder, if soldiers were deployed to a battle, yet were incompetent and returned, they were *immediately* beheaded; likewise, if they

⁵⁵ Whenever the enemy (*zeiyi* 賊夷) breach the frontiers (*rukou* 入口), supreme coordinators are hereby authorized to immediately exercise militarized adjudication (*lizheng junfa* 立正軍法) to adjudicate cases of officials [in charge of the breached security points] who demonstrated cowardice (*qie* 怯). This authority does not extend to cases of *zongbing*, circuit intendants (*dao*), and colonels (*fujian*) who must still be impeached and investigated. NGDK, 201343-001 (1/17/1637). For a discussion of the Ming Nine Frontiers System, see Zhao Xianhai 趙現海, *Mingdai jiu bian changcheng junzhenshi*.

stole anything that belonged to the people, they were beheaded. “This is how General Muying achieved great victories, and it was the law at the time of Mingtaizu.” The memorial was obviously requesting the emperor to authorize officials to carry out highly autonomous judicial actions – the death penalty – in order to maintain military discipline. From the subject of the memorial, we know that the Board of War considered this type of process *junfa*, what I am calling militarized adjudication.

At the very end of the memorial, using the same language as in the initial styling of their memorial (*shenming junfa*), the original drafter requested the emperor to order all supreme commanders, grand coordinators, *zongbing*, and circuit intendants to make *junfa* manifest. At some point, another official crossed out that request, inserting an interlinear correction, requesting “special” promulgation of rules to make the criminal process faster and simpler (*teban suxing jieqiu zhi fa* 特頒速刑節求之法). This phrasing really captures the sense of “modal” *junfa*; it is not just the law itself, but the way a case was to be adjudicated under the law.⁵⁶ This was essentially a recommendation for a widespread delegation of a highly autonomous form of militarized adjudication.

⁵⁶ NGDK, 035347 (CZ 13/6/20). The Board was not only talking about “military law” in the sense of specific regulations applying to the military, but about military law in the sense of procedure or mode – what I call militarized adjudication – as evidence by an interliner correction on the draft memorial. The original drafter of the memorial had written, “*fuqi chixia dufudaozhen shenming junfa* 伏祈勅下督撫道鎮申明軍法,” which has the ambiguous meaning of asking that an order be issued to all Supreme Commanders, Grand Coordinators, *Zongbing*, and Circuit Intendants to *either* make military laws manifest (meaning the laws applicable to the military) or to adjudicate cases in the military manner (militarized adjudication). The Board of War official who reviewed this draft crossed out this line and wrote in grass script, “*meng wo huangshang teban suxing jieqiu zhifa* 蒙我皇上特頒速刑節求之法,” which has the much less ambiguous meaning of requesting that special expedient and simplified procedures be promulgated for punishment. This is militarized adjudication. This also strongly suggests the inherent meaning of militarized adjudication as a departure from the routine procedures of routine process.

After the Qing initially occupied Beijing, one can imagine that given ongoing operations, most of the north could be classified as falling within the inner zones of the military operations gradient, with ongoing logistical operations and low- to high-intensity military operations. Under these circumstances, we can understand how the Qing initially used militarized adjudication to enforce public order. In 1644 (SZ 1), when the epicenter of military operations lay around Shaanxi-Shandong-Henan, Prince of the Blood Duoduo was directed to apprehend former Ming Board of War official Zhang Jinyan and punish him under militarized adjudication.⁵⁷ As the epicenter shifted south, in 1645 (SZ 2), after the fall of Yangzhou, when the imperial order went out for Han men to cut the hair on the front of their heads in the Manchu style, it subjected violators to militarized adjudication (the actual cases suggest execution authority was still retained by the prince-regent).⁵⁸

C. *Militarized Adjudication and a Discourse of No Leniency*

Thus far, I have framed militarized adjudication mostly as an adjudicative discourse which constructed certain norm-violating behavior during military campaigns as worthy of expeditious and harsh treatment. This association of militarized adjudication as expeditious and offering little hope for leniency gave the phrase *yi junfa congshi* (以軍法從事) a frightening connotation. It should not be surprising then that even outside of the adjudicative discourse, one finds the phrase used as a threat in the broader military-affairs discourse. Emperors frequently threatened to adjudicate officials under militarized adjudication (the Qianlong emperor, however, really meant it more than did the others). For instance, in August 1680 (KX 19/7), the Kangxi emperor

⁵⁷ QSL-SZ, juan 11, 105-2

⁵⁸ QSL-SZ, Juan 17, 150-1.

responded to dueling memorials from Shaanxi Governor-General Hazhan and Sichuan Governor Kang'an regarding reasons for delay in transporting military supplies through Sichuan. Both parties were blaming external factors for the lack of progress. The emperor responded, "If you try to pawn off your responsibility or delay, and it leads to failure of military operations, then all those responsible from governor-general on down – each official – will be punished under militarized adjudication."⁵⁹

In another example of the emperor using *junfa* as a threat, General and Censor-in-Chief Goro Shushu left his duty position in Guangxi in 1680 (KX 19/7) and returned to the capital claiming to be sick. When it turned out that he was malingering and had deceived the emperor about having an illness, the Kangxi emperor stated that if Shushu were not a member of the imperial lineage, then he would have been adjudicated under militarized procedures.⁶⁰ In October 1680 (KX19/9), as the Qing surged forward to recapture Guizhou, the emperor called for troops, "to retake Guizhou as quickly as possible.... If there is some delay, or slowing down, like when the high officials approach Sichuan, and there develops mutual animosity between the two factions, and it leads to military errors, then *junfa* is harsh, and you cannot be forgiven."⁶¹ In December 1680, the emperor again threatened the use of militarized adjudication against Governor-General

⁵⁹ "[Emperor's voice] The Sichuan-Shaanxi governor-general should make all effort to plan things, and make no mistakes with logistics, don't nitpick one another and push your responsibilities off, you are already so late, this is an important responsibility. From now on, you consult together with one heart, do not [use your separately-assigned jurisdictions as an excuse] QSL-KX, juan 91, 1145-2. Two years later, the emperor again threatened the use of militarized adjudication if there were errors in logistics. When there was an attack on the Yunnan capital in 1682, and a relief column set out from Sichuan, the Kangxi emperor warned that if flawed logistics led to military failure, then those responsible would be adjudicated under militarized adjudication. QSL-KX, Juan 15, 1205-2

⁶⁰ "覺羅舒恕 Shushu is a general, he has committed a great crime; he should have made concerted efforts to redeem his crime, yet he pretended to be ill; if any other high level military leader (*tongshuai*) was so wantonly deceptive, his case would have been adjudicated under militarized adjudication. Yet, Shushu is a member of the imperial lineage. Wait until the day the army returns, then rigorously investigate his case, consult together and memorialize the throne." QSL-KX, juan 91, 1145-2 – 1146-1.

⁶¹ QSL-KX, juan 92, 1170-2.

Hazhan who had not arrived with his troops to assist at the Qing siege at Yuyang County in Sichuan.⁶²

The emperor's threat of militarized adjudication also reminded officials that he himself was above the routine criminal process. We see this on a long rescript from the Yongzheng emperor on a routine criminal case from 1733 (YZ 11). Former Provincial Military Commander Ji Chengbin had been being criminally tried for allowing a supply wagon to be robbed at a *karun*.⁶³ In one of those long interlineal rescripts for which the Yongzheng emperor was famous, the emperor specifically noted that when Ji Chengbin had been responsible for an earlier military disaster, many court officials had recommended adjudicating his case under militarized adjudication in order to restore military discipline, but at that time the emperor had given him the opportunity to renew or rehabilitate himself (*zixin* 自新).⁶⁴ Then, the emperor had contradistinguished the alternative of militarized adjudication from the goal of self-renewal, the latter an important element of late imperial legal culture. This second time, Ji Chengbin was not as fortunate. The Three Judicial Offices drafted a sentence of immediate execution, and after the emperor's wordy approval, an order was sent to Pacifying Afar General Jalangga to execute Ji Chengbin right in the camp where he was deployed.

⁶² “These troops should quickly enter the fray, so that they can squeeze and annihilate the rebels from the front and the back. If Hazhan procrastinates and just waits to see what happens, thereby missing a military opportunity, then he will be adjudicated in the military mode (*yi junfa congshi*). QSL-KX, juan 93, 1176-1.

⁶³ NGDK, 058792-001.

⁶⁴ NGDK, 058792-001. A later example comes from a Xianfeng-era memorial imperial rescript, stating, “I should deal with you according to the military law and not even wait for Yang Pei to impeach you (必將汝軍法從事).” ZPZZ-NPM, 406008057.

IV. The Froniters and Spatial Aspects of Militarized Adjudication

There were two important spatial aspects to militarized adjudication: first, militarized adjudication was more likely to be authorized and to be used when the crime and the adjudication occurred within close proximity to actual military operations, a concept I describe as a military operations gradient. Second, there was a distinct association between militarized adjudication and the frontier over time. An early example promulgated in the fourteenth-century Ming Code that was adopted into the Qing Code and reveals both of these spatial dimensions of militarized adjudication was the statute titled “execution of military rebels (*chujue panjun* 處決叛軍).⁶⁵

For this type of military rebellion on the frontier – note both the military subject matter and the correspondence with the association with the frontier – the Ming-Qing Codes permitted local officials to execute an accused following only review by the *xunfu* and/or *zongdu*. No central-government review or imperial pre-approval was required, a major structural departure from the routine criminal process. Further, if the plotting occurred during battle – at the epicenter – then local officials could execute the accused on the spot *without even seeking approval* from the governor/governor-general. In both cases, the emperor had to be *notified immediately after the fact*.⁶⁶ Although the frontier military rebellion statute did not use the term *junfa*, authorizing immediate, local execution without retrial-review or an imperial edict was clearly militarized adjudication.

⁶⁵ Qing Code, arts 2(3), 26. Jones, 35, 58.

⁶⁶ Art. 33. Jones, 67.

A series of cases from the Yongzheng era similarly exemplify the spatial dimension of militarized adjudication. These cases have to be understood within the context of the Yongzheng emperor's particular goals for the frontier and his use of "new men."⁶⁷ In several of these cases, the emperor made allowance for militarized adjudication on the frontier but explicitly cautioned against its frequent use in the inner-empire.

On August 27, 1724 (YZ 2/7/9), Guangdong-Guangxi Governor-General Kong Yuxun memorialized the emperor that he had apprehended, tried and executed the "pirate" Liang Yayue. Apparently aware that he had gone beyond his authority (acted *ultra vires*), Governor-General Kong seemingly preemptively explained,

If I had sent up a memorial and waiting for an edict authorizing the execution, it would have taken several months. The evildoers would not have been afraid [no deterrence]. Then, if the action was delayed until June, that is a month during which we cannot perform executions [for ritual reasons]. Thus on August 21, I invoked the imperial standard (*gongqing wangming*) and escorted Pirate Liang Yayue and the seven others to the market where, under the imperial standard, I had them executed in front of everyone.

⁶⁷ William Rowe has described the Yongzheng's emperor's statecraft philosophy primarily in terms of creating a centralized, "rational" state:

The state itself would be unprecedentedly centralized, bureaucratized, and efficient. It would closely monitor the routine processes of the society and economy and would intervene by an unprecedented activism in such areas as provisioning, education, and public works. This activist state would be financed by a progressively expanding tax base and a fiscal system that was regularized, standardized and centrally controlled. By contrast, the Qianlong emperor moved (or returned) over the first decades of his reign to a vision of society that was divided into semi corporate ethnic groups, internally stratified into a hierarchy of privilege, and to a great extent self-nurturing. His rule was to be universal in scale but far less direct and managerial than that of his predecessor.

William T. Rowe, *Saving the World: Chen Hongmou and Elite Consciousness in Eighteenth-Century China* (Stanford: Stanford University Press, 2001), 49. According to Rowe, the emperor recruited a cadre of "new men" to help him carry out his vision. C. Patterson Giersch comments directly on the Yongzheng emperor's policies vis-à-vis the frontiers: "Rather than initiating a long-term process of continuous political centralization [referring specifically to the Yunnan borderlands], the Yongzheng conquests represented a specific era when extreme violence was used to destroy indigenous control over some regions." Like Rowe, Giersch also commented on the "new men" who assisted the emperor in this endeavor: "In order to assess the Yongzheng era's new frontier militarism, it is important to first understand those who implemented it, in this case the "new men" recruited by the emperor to manage Yunnan at its highest levels." C. Patterson Giersch, *Asian Borderlands: The Transformation of Qing China's Yunnan Frontier* (Harvard University Press, 2006), 45.

[Yongzheng emperor's rescript]: Having just taken up your new duties, it is probably permissible to handle one or two cases like this to shake things up. If you do execute first, however, you have to follow up with a memorial about the law and factual situation of the case. First, matters of human life are very important. It must be considered whether it is a matter of the interior (*nei*) or exterior (*wai*) [I believe the distinction here is between “inner-empire,” i.e. former Ming territory and then-expanding outer frontiers]. Second, I am afraid that people will talk, saying that you wanted to silence the mouths of those you executed summarily so that you could cover up some big problems [making them out instead to be small issues]. You wouldn't be able to bear this criticism. ... *if you do this type of thing within the (inner-empire), you will be impeached.* ⁶⁸

Governor-General Kong expressed that he was afraid the routine process took too long, so he simply executed the pirate to achieve maximum deterrent value. Kong may have been motivated by the awareness that routine criminal actions could take months or years to resolve, perhaps providing an opportunity for Liang's pirate-comrades to attempt a rescue. Two things stand out though: first, that Kong's explanation sounded as if he had a guilty conscious about the execution, explaining why this particular summary execution was necessary; and second, the emperor did not respond by scolding him for killing someone without authorization (seemingly a very serious offense against the emperor's authority over life and death), but rather counseled him on prudence and moderation in executing people outside the routine criminal track. Unlike the later Qianlong-era militarized-adjudication cases that were recorded in the Imperial Diary and later published in the Veritable Records (in fact, the emperor made an effort to make some case widely known, as I will show in Chapter Five), I believe that these Yongzheng-era cases were

⁶⁸ 兩廣總督孔毓珣 奏報拿獲海盜梁亞月等審明 正法 並犒賞有功兵丁 ... 若待提請正法。尚隔數月。奸民不知怕懼。俟過六月停刑之期。臣隨於七月初三日請出王命將積盜梁亞月等七名押赴市曹處斬示衆。硃批: 爾初到任如此振作一二事猶不可為常即便 正法 亦當補奏其所以情由。一者人命所關重大,以內外斟酌(斟酌)二者恐人議論你將大事減口以為小事爾並當不起如果係錯候請旨 而外有救應可疑恐有疏虞處又當權宜爾而為了也亦當劇實奏聞真情此奏知道了料理得好人命盜案審之不可隱隱移和著實請察爾境內如有此等嚴加參處。” ZPZZ-NPM, 402019243.

actually meant to remain classified . They did not make it into the Veritable Records. Perhaps the Yongzheng emperor at some point during the imperial audience with his new men before they proceeded to their new posts – discussed judicial philosophy.

The next month, October 14, 1724 (YZ 2/8/28), Guizhou Governor Mao Wenquan *asked for authorization* to use the imperial standard to “execute leading Miao rebels who were extremely evil.” The sense of the request is that he is asking for a standing authorization to execute such people; a prospective authorization for militarized adjudication. He phrased the request as asking for the authority to carry out matters according to his convenience [autonomy], which as we have seen above was the justification for militarized adjudication. Notice that at this point, the phrase “requesting to use the imperial standard” was still an actual request (unlike later during the Qianlong reign when it became a statement in a *post hoc* notification that the official had carried out an execution).

In his rescript to Governor Mao, the emperor noted that this issue had come up with Governor-General Kong Yuxun and Yongzheng again counseled prudence in executing people outside the routine process:

Manbao and Kong Yuxun [the above case] handled several matters in this way. I have directed them to only handle one or two matters in this way. It can't be too many. If you execute offenders in this matter, you must send up a memorial afterwards, detailing the technical crime and all the circumstances.⁶⁹

⁶⁹ “貴州巡撫毛文銓奏請欲望慈許臣便宜從事。獲苗狃極惡之魁漢奸窮兇之首立刻請出王命綁赴市曹即行處斬。硃批：滿保孔毓珣曾如此舉行數事使得只可整理一二事。不可過多。即如此行亦將罪名正法緣由補奏。” ZPZZ-NPM, 402015342.

This case reflected the ongoing incorporation of the southwestern Hunan Miao into the empire.⁷⁰

Four years later, on December 14, 1728 (YZ 6/11/14), during the Yongzheng emperor's campaign against the Zunghars, Shaanxi Governor-General Yue Zhongqi memorialized his request that a sentence of execution be drafted [presumably by the Board of Punishments] for the rebel Zhu Jilin. This case is important because Yue Zhongqi seemed to understand that the important distinction separating routine adjudication from militarized adjudication was that Rebel Zhu had been escorted to the inner-empire (Xi'an), thereby precluding Yue from exercising fully autonomous militarized-adjudication authority:

Zhu advocated for leading troops in rebellion. He is a really evil person. His misconduct cannot be wantonly tolerated. I have already sent him to Xi'an. The provincial judge already reviewed his case. Because he has already been brought to the interior [Xi'an], according to my review [of the regulations], he cannot be executed without going through the process of requesting an edict for decision. I do not dare to exercise my own convenience, therefore I respectfully request an edict.

⁷⁰ The above case also reflected a broader policy debate regarding the use of law to integrate the Miao frontier, as described by Donald S. Sutton. The Miao of the southwestern Hunan region were not incorporated into the bureaucratic structure prior to Yongzheng period. During the Yongzheng period they were incorporated, but local administrators found that in order not to create chaos, they had to let the Miao continue to decide their own legal cases (e.g., bone payments, blood feuds, and compensation for crimes) by their own extensive customary rules. A legal debate then developed in the Qing government characterized by two camps: the "quarantineists" and the "assimilationists," leading to an incoherent policy. The quarantineists wanted to keep the many Han settlers away from the Miao in order to avoid trouble. When the Han came in to Miao area, they would loan money and eventually take over Miao land. It had not always been this way; in earlier days, the Miao had welcomed the trickle of Han and allowed them to intermarry into their families and buy land. Now with the great inflow of Han into the region in the eighteenth century, the welcome cooled. Assimilationists argued that Miao should abide by the same Qing code as everyone else. Donald S. Sutton, "Violence and Ethnicity on a Qing Colonial Frontier: Customary and Statutory Law in the Eighteenth Century Miao Pale," *Modern Asian Studies* 37, no.1 (2003), 41-80. There was even a special series of statutes enacted, the Miaoli (苗例), to address these problems: an expression of the Qing's pluralistic legal system. Hu Xingdong 胡興東, "Qingdai minzufa zhong 'Miaoli' zhe kaoshi." 清代民族法中'苗例'之考釋 (A reference and explanation for the Miao Substatutes of the Qing's Nationalities Laws)," Yunnan University Law School, Yunnan, Kunming, publication 650091.

The emperor rescripted that he had drafted an edict and was requesting the deliberative council to publish it.⁷¹

On May 25, 1732 (YZ 10/5/02), the Fujian Governor Zhao Guolin memorialized regarding another frontier case, this time in Taiwan:

The Taiwan *zongbing* Wang Jun has informed me that he personally led soldiers to apprehend Xiao Tian and the seven others as well as Li Cheng, who was plotting to lure in soldiers. Our soldiers apprehended them all alive. If we had tried them according to routine criminal procedures, then it would have taken so long that there would have been little deterrent value. Therefore, it was appropriate to immediately execute them. On May 10, 1732 (YZ 10/4/16), I had Xiao Tian, Li Cheng and the six others escorted to the execution grounds, had them decapitated and had their heads displayed.

The emperor rescripted simply that he had “read” the memorandum. It seemed uncontroversial.⁷²

On March 22, 1735 (YZ 13/2/28), we see another case that reflected the Yongzheng emperor’s willingness to use militarized adjudications, especially if they did not take place in the inner-empire. The Mongolian frontier, now more and more an interior Qing frontier, continued to reflect elements both of the military operations gradient and the empire’s special considerations for Mongol sentiment. Note that this case involved *genyi* (see Chapter One), so the official soldiers being referred to here were likely Eight Banner Soldiers. Also, *genyi* had a particular slave-like genealogy and unique social status. In this edict, the Yongzheng emperor authorized militarized-adjudication execution for soldiers, their *genyi* (and others) who were stationed in the outer frontier (*guanbing zhuzha waibian* 官兵駐劄外邊) and stole horses from

⁷¹ ZPZZ-NPM, 402000634 .

⁷² ZPZZ-NPM, 402016944.

Mongols. His logic evinces his use of militarized adjudication for a specific statecraft purpose of maintaining good relations with the Mongols of the outer frontier.

[Yongzheng Emperor]: An Edict to the Board of War. The original justification for stationing official soldiers in the outer frontier was to defend the Mongols. If [soldiers] steal the Mongols' horses, that's turning defense into harassment. It should be punished more harshly in order to create a better deterrent. From now on, when official soldiers and their *genyi* as well as others steal Mongols' horses, they should be immediately tried to ensure matters are certain and then immediately executed on the spot. Have the appropriate high officials make this edict known widely. If Mongols steal the horses of official soldiers, or official soldiers steal one another's horses, then the cases shall be decided according to the old statute. ⁷³

To sum up these several pre-Qianlong “shoots” of a militarizing legal culture, while the Ming Code did codify one instance of militarized adjudication – frontier military rebellion – this was a special case of a crime philosophically distinguished as one of the *Ten Great Wrongs* (treason) *that occurred in an area of military operations*. No additional militarized adjudication statutes were added to the Code until the late Kangxi era, at a time of very high dynastic security, when the dynasty may not have felt as strong a need to justify its legitimacy through the proper performance of cumbersome routine procedures. After all, militarized adjudication was far more efficient. Even then, crimes such as resisting arrest and injuring and killing officials were still conceptually related to treason and the *Ten Great Wrongs* and related to at least low-intensity military operations.

Across the Late-Ming, pre-Qianlong Qing period, the most consistent indicator of mode of response – routine criminal adjudication, militarized adjudication, or the strategic response – was where the events at issue occurred along what I call the “temporal-spatial gradient of military operations.” On a given slice of space and time, the *epicenter* of the gradient was a particular

⁷³ QSL-QL, juan 152, 876-1 – 876-2.

battlefield (a spatial element) at the moment of battle (a temporal element). These two elements were themselves both functions of the intensity of military operations at a given place.

Expanding out from the epicenter of the gradient (the battlefield at the time of battle), multiple and irregularly-shaped zones corresponded with a decreasing intensity of military operations.

The maintenance of military discipline within the innermost zone was the point at which militarized adjudication was most often invoked. Because the power to approve death sentences was a fundamental prerogative of the emperor's authority, wholly autonomous authority to try and summarily-execute offenders – the fullest extent of militarized-adjudication authority – was seldom granted even on campaign except for conduct that occurred at the *very epicenter* of the gradient.

Even towards the end of the Yongzheng period, the extent of militarized adjudication autonomy granted campaign commanders still closely corresponded to the military operations gradient, although the emperor was already beginning to tolerate a certain level of initiative in exercising militarized adjudication, especially in the outer territories. In 1733 (YZ 11), in a pronouncement relating to soldiers returning from the Zunghar campaigns, the Yongzheng emperor specifically related the spreading of rumors to the gradient of military operations, articulating two different degrees of militarized adjudication for two different positions within the spatial-temporal gradient. If someone spread rumors at the military front, then he was to be immediately decapitated under militarized adjudication; but, if soldiers, civilians, *genyi* or traders in the course of returning from battle – moving outward along the gradient – “spread confusion,” then they were still to be executed, but only after imperial approval. The latter is still militarized adjudication to the extent that the retrial-review process was dispensed with, but the level of

autonomy was far less.⁷⁴ This is highly consistent with how late imperial campaign desertion cases were adjudicated prior to the Qianlong era, as shown in the next chapter: battlefield epicenter cases were usually subject to militarized adjudication, but cases of desertion along the route of march were usually subject to adjudication more in line with late imperial legal culture.

V. Pre-Qianlong Militarizing Tendencies in Qing Law

Prior to the Qianlong reign, militarized adjudication was not routine precisely because it was *ad hoc* and closely tied to the always-changing military operations gradient. At certain points prior to the Qianlong era, however, some narrow applications of militarized adjudication were already becoming regularized in the Qing Code. There were also some instances during the Yongzheng era in which the emperor seemed to countenance his officials exercising militarized-adjudication authority outside of the context of epicenter military operations. Why were these crimes considered exceptions to the routine criminal procedure? Were what I have identified as militarizing tendencies in eighteenth-century Qing legal culture even something new?

A. Militarized Adjudication and Particularly-Heinous Crimes

The philosophical distinction that conceptually rendered militarized adjudication procedures for frontier rebellion coherent within the context of the Code may have been the long-term designation of treason – frontier rebellion was a form of treason – as one of the *Ten Great Wrongs* (*shi'e* 十惡).⁷⁵ The Qing Code listed the *Ten Great Wrongs* as (1) plotting rebellion; (2) plotting high treason; (3) plotting treason (including secretly going into the service or another country); (4) gross un-filialness, such as striking one's parents; (5) acts that are not in accordance

⁷⁴ QSL-YZ, juan 130, 688-2 – 689-1

⁷⁵ Qing Code, art.2. Jones, 34-36.

with the way, such as killing three persons in one family; (6) great lack of respect, such as stealing imperial items or preparing medicine for the emperor incorrectly; (7) lack of filial piety, such as bringing lawsuits against ones parental grandparents or parents; (8) discord, such as plotting the killing or selling (into servitude) of relatives of the fifth degree and above; (9) failure to fulfil one's duty, such as when one of the common people kills the prefect or the department magistrate or the district magistrate under whose jurisdiction he falls, or when a soldier kills his own officers; (10) disorder, such as engaging in sexual relations with relatives of the fourth degree and above, or with the concubines of one's father or paternal grandfather.

The *Ten Great Wrongs* were considered so philosophically-distinct that modern scholars have developed a periodization of the development of Chinese law based significantly on the appearance and refinement of the *Ten Great Wrongs*.⁷⁶ Under this conception, the second phase in the development of traditional Chinese law began with the initial development of the Ten Wrongs during the fourth to seventh centuries. This represented a particular fusion of Confucianism with the principle that the law should maintain the current political order.⁷⁷ A system of law based on the Ten Wrongs was established during the Sui-Tang period (581-907) and was continued up through the Song (960-1279) and Yuan (1271-1368).⁷⁸ The Ten Wrongs continued to be central to Chinese penal law through the Ming and Qing, even after the Code was organized according to the Six Boards.⁷⁹

⁷⁶ *Zhongguo chuantong falü wenhua yanjiu* 中國傳統法律文化研究 (Research into Traditional Chinese Legal Culture), eds Zeng Xianyi 曾憲義 et al., vol 2, *Zui yu fa* 罪與罰 (Crime and Punishment) (Beijing: Zhongguo Renmin Daxue Chubanshe, 2011), 63.

⁷⁷ *Zhongguo chuantong falü wenhua yanjiu*, 157.

⁷⁸ *Zhongguo chuantong falü wenhua yanjiu*, 63.

⁷⁹ *Zhongguo chuantong falü wenhua yanjiu*, 63.

According to the Ming-Qing Codes, the *Ten Great Wrongs* were “serious,” “evil,” “perversions of morality,” “violated the five human relationships and offended heaven.” Violators “despised reason and violated duty.”⁸⁰ Yet, while many of the Ten Wrongs called for extra harsh punishment or made certain exceptions to the normal procedures, neither the Ming or pre-Qianlong Qing Codes provided any blanket dispensation from the routine criminal process for their adjudication, except for this single case of frontier military rebellion.⁸¹ It seems to have taken the combination of designation as one of the “*Ten Great Wrongs*” in addition to its gradient inner-zone/epicenter status to ultimately justify this narrow instance of regularized militarized adjudication in the Ming Code. In other words, criminologically-speaking, frontier military rebellion was really a special case, the uniqueness of which tends to prove rather than disprove the paradigmatically-distinct nature of militarized adjudication prior to the Qianlong era. As such, prior to 1646 (SZ 3), the Code did not reference *junfa* by name (even in the case of frontier military rebellion), again demonstrating the intellectual awareness that routine criminal process and militarized adjudication sprang from two distinct sources and had two distinct objectives. The Manchus did not demonstrate as great a respect for this distinction. This may ultimately explain why, as scholars have argued, the Qing ultimately expanded the categories of crimes under the *Ten Great Wrongs*.⁸²

⁸⁰ Qing Code, arts 2, 4(2). Jones, 34, 38.

⁸¹ The specific statutes on treason made some exceptions to routine criminal-legal provisions, such as making inapplicable the statute which allowed relatives to conceal one another’s crimes was not applicable to those who plotted or joined rebellions. Qing Code, art. 36.4. Jones, 66-67. Unlike regular cases, in treason cases, property and family-members were to be confiscated by the government. Qing Code, art. 140.1. Jones, 152; Qing Code, arts 254-55. Jones, 237-39.

⁸² *Zhongguo chuantong falü wenhua yanjiu*, 205-54.

B. *An Early Manchu Militarized Adjudication Addition to the Qing Code?*

Soon after occupying Beijing, the Manchus did add the word “*junfa*” to the Code for the first time in late imperial legal history. Under the military administration subsection of the *Binglü* section of the Code, since the early Ming, the crime of “Delays in Following [Orders] to go Meet the Enemy (*congzheng weiqi* 從征違期)” had been divided into two parts.⁸³ The first part punished with caning a delay in movement when the time for campaign had already been set. The second part stated, “If an army is facing the enemy (*ruo jun lin dijing* 若軍臨敵境), one who invents a pretext and avoids the fixed date ... to proceed to his post for three days, will be decapitated.” It went on to state, “For those who can establish their merit and [thus] redeem their offense, it will be up to the commander to decide the matter.” Note that for this epicenter misconduct, the original Ming language already gave the commander the authority to pardon the offense, a power usually reserved to the emperor.

In 1647 (SZ 3), the Qing modified the original Ming-era language by adding, following the word “decapitation,” the phrase “after the assizes” and further indicating that the *zongbing* had authority to carry out the provision under *junfa* (*xing junfa* 行軍法).⁸⁴ Since the Qing also added “after the assizes,” there can be little doubt that a draft sentence of decapitation was still intended to go through the routine criminal process. After all, the assizes represented the routine process at its most procedurally-robust. What, then, did the small notation authorizing the commander to

⁸³ Jones, 201-202; DLCY, juan 21, *binglü* 2, “從征違期.”

⁸⁴ SZSNL, 265. It is not entirely clear what degree of autonomy this reference to *junfa* was meant to grant since the punishment was simultaneously designated “after the assizes.” My guess is that it simply was an authorization for the *zongbing* to try the case (as compared with a civilian magistrate, for instance), but then it still had to go through the retrial-review system.

carry out the provision under militarized adjudication mean? It was not an authorization to autonomously execute an offender. I believe that the Qing's addition of the term *junfa* here was meant to clarify (as most of the SZ 3 small notes were meant to clarify) the original intent of the Ming drafters, that the commander had the authority to autonomously decide *not to draft* a sentence and forward it, thereby letting the offender off the hook (without this authority, under Ming-Qing law, the commander normally would have had to send up the case for adjudication under the routine process). Thus, while the Qing addition of *junfa* did not change the procedure, the Qing's willingness to acknowledge the military commander's autonomous judicial authority in the Code as *junfa* (even if that autonomy only extended to not prosecuting) for the first time in late imperial history arguably demonstrates that the early Qing had less of an aversion than the Ming to militarized adjudication as a regular, routine judicial procedure, consistent with pre-conquest Qing law. Still, the early Qing needed to prove its bona fides to its Chinese constituency through the proper performance of criminal adjudication. At any rate, one should be cautious not to read too much into a small notation that essentially seemed not to change the meaning of the statute.

C. Pre-Qianlong Militarized Adjudication Under the Qing Code

It was not until the Kangxi reign that there again occurred a certain degree of regularization of militarized adjudication within the Code (although the term *junfa* was not used). In 1702 (KX 41), the substature on those who fled exile was modified to require that if they resisted arrest and began causing trouble as bandits, they would be executed immediately upon apprehension.⁸⁵ In 1725 (YZ 3), a substature was added, authorizing immediate execution for bannermen who killed

⁸⁵ DLCY, “徒流人逃-17”

their supervisors because their supervisors were disciplining them.⁸⁶ In 1727 (YZ 5), a substatute was added for certain types of official corruption, but I believe this substatute was never meant to be effective.⁸⁷ In 1728 (YZ 6), another substatute was enacted authorizing immediate execution of groups of robbers who, while resisting arrest, killed or injured officials. All robbers who were part of the group were to be executed, whether or not they had actually assaulted the officials.⁸⁸

With the exception of the 1727 substatute on corruption, which, based on the comments of two Qing-era legal scholars appears not to have been implemented in practice, the other substatutes authorizing militarized adjudication procedures were all united by a single theme: harming or killing officials in the conduct of their official duty, which is closely related to treason.⁸⁹ Given the precedent of frontier rebellion, late imperial legal culture could perhaps intellectually tolerate – short of a major change in *mentalité* that I argue occurred over the course of the Qianlong reign – the routinization of militarized adjudication procedures for these particular offenses because they were philosophically distinguished as among the “*Ten Great Wrongs*” and still closely related to military activity. Still, unlike frontier military rebellion, these offenses were not necessarily occurring within the inner zones of the gradient, so they must be considered to some degree as reflecting the encroachment of militarized adjudication on what

⁸⁶ DLCY, juan 35, “鬪毆上, 毆制使及本管長官-02.”

⁸⁷ DLCY, “官吏受財-01.”

⁸⁸ DLCY, “罪人拒捕-02.”

⁸⁹ According Xue Yunsheng, this latter statute was too harsh and not enforced. “謹按。此例與詐欺官私取財門, 指稱內外大小官員名頭一條參看。彼祇充軍, 此則處斬, 以非尋常犯贓可比也。然定例過嚴, 後即無引用者。” DLCY. Based on mid-eighteenth-century *lǚxue* scholar Wu Tan, it seems that it was implemented more to express the emperor’s frustration with corruption than to codify militarized adjudication vis-à-vis corruption. Wu Tan 吳壇, *DaQing lǚli tongkao jiaozhu* 大清律例通考校注, edited by Ma Jianshi 馬建石 (Beijing: Zhongguo Zhengfa Daxue Chubanshe, 1992), 907.

had been the purview of the routine process. Why are we to make of these pre-Qianlong shoots of a militarizing legal culture?

In fact, I believe it is no coincidence that routinization of militarized adjudication for such offenses – even though they were among the *Ten Great Wrongs* – did not take place until after the dynasty was fully secure following the pacification of the Revolt of the Three Feudatories. This suggests a correlation between the dynasty's willingness to push the limits of the proper performance of routine adjudication and the dynasty's security in its rule. While these substatutes represented a substantial departure from the past – even if justified in terms of the *Ten Great Wrongs* – there was also something else going on in terms of judicial practice during the Yongzheng reign.

D. *The Grand Council and the Tiben-Zouzhe Transition*

There is a very close relationship between the development of the *zouzhe* system and the routinization of summary executions. The eighteenth-century proliferation of summary execution relied on those specialized mechanisms that allowed the emperor more direct control of his officials. Typically, campaign or provincial officials forwarded their cases directly to the emperor using *zouzhe*. If the accused had already been executed, this was just a notification; if the execution had not yet taken place, then it was a brief recitation of the facts, some legal analysis, and a recommendation for sentence. If there was an imperial reply, the Grand Council packaged it into a court letter (*tingji* 庭寄), and forwarded it to the official. Unless the emperor forwarded the case for additional consultation to an outer court agency (e.g., the Three Judicial Offices or one of the other boards), then cases adjudicated summarily often saw no outer court involvement.

The development of the *zouzhe* system has been well studied by scholars. Starting with the Kangxi emperor, the emperor sought more independent information from his officials. The Yongzheng emperor expanded the system, and under the Qianlong emperor, the system became almost routine.⁹⁰ The Grand Council (C: *junji banshi chu*, 軍機辦事處 ; M: *coohai nashūn i baita be icihiyara ba*) developed across the Yongzheng and Qianlong reign, served to regulate this new burden of paperwork and bypassed outer court administrative mechanisms. With regard to adjudication of desertion, the Grand Council served largely to remove militarized track cases from the scrutiny of outer court legal agencies. It was in many ways an informal consultative council composed of between four and ten high-ranking officials, usually disproportionately Manchu, who held concurrent appointments in other important government posts. Its distinguishing characteristic was its inner court nature, although the councilors' outer court concurrent positions formed natural overlap. Indeed, Waley-Cohen specifically identified the creation of the Grand Council as one manifestation of the culture of war.⁹¹

Beatrice S. Bartlett and Zhang Deze 張德澤 have written of the origins and functions of the Grand Council.⁹² According to Zhang, the Grand Council was established in 1729 during the Yongzheng emperor's reign in order to deal with matters of military planning for the western campaigns.⁹³ Zhang believed that it was originally meant to be an *ad hoc*, temporary body. In addition to describing the Grand Council's basic functions, Zhang noted that one of the Grand

⁹⁰ Silaas Hsiu-Liang Wu, "The Memorial System of the Ch'ing Dynasty (1644-1911)," *Harvard Journal of Asiatic Studies* 27 (1967), 7-75; Pei Huang, "The Confidential Memorial System of the Ch'ing Dynasty Reconsidered," *Bulletin of the School of Oriental and African Studies, University of London* 57, no. 2 (1994), 329-338.

⁹¹ Waley-Cohen, *Culture of War*, 14.

⁹² Zhang Deze 張德澤, *Qingdai guojia jiguan kaolüe* 清代國家機關考略 (A general reference to the governmental organs of the Qing Dynasty)(Beijing: Xueyuan chubanshe, 2002).

⁹³ Zhang, *Jiguan kaolüe*, 16-18.

Council's duties was trying important cases (*shenban dayu anjian* 審辦大獄案件).⁹⁴ As Zhang pointed out, however, exactly how the Council tried important cases was left unclear. While there is definitely overlap, the Grand Council's role in *trying* important cases and what its role as a *conduit* in the militarized adjudication of certain categories of cases seem to be fairly distinct roles (granted, it is possible that in some cases the Grand Council autonomously applied the emperor's red vermillion). At the very least, the Grand Council served as a forwarding and redrafting agency for correspondence between the emperor and the provincial level adjudicating officials. In terms of communication, the "militarized track" was the loop between the provincial-level adjudicators and the imperial office.

Beatrice S. Bartlett's argues that the Council "allowed the emperor to bypass not only the outer court, but also the law."⁹⁵ In this study I argue that the routinization of summary-execution did not so much use the Council to "bypass" the law – at least in regard to the criminal law – but rather was an alternative and eventually legitimate channel for legal adjudication, an important distinction once summary execution became formalized in late imperial law. The important point is that the motivations behind and the uses to which the *zouzhe* and Grand Council were put cannot be separated from the militarization of legal culture, because that militarization relied on them.

According to Na Silu:

During the Shunzhi, Kangxi, and Yongzheng periods, all death-penalty cases had to be memorialized on *tiben*. During the Qianlong period, cases in which there was the taking

⁹⁴ Zhang, *Jiguan kaolüe*, 25. This function is also recorded in the Jianqing -era description of the Grand Council in the Qing Collected Statutes.

⁹⁵ Beatrice S. Bartlett, *Monarchs and Ministers: The Grand Council in Mid-Ch'ing China, 1723-1820* (Berkeley: University of California Press, 1991), 55.

of more than one life and grave violations of Confucian relationships were memorialized using *zouzhe*, but this was not recorded in a statute at the time. Only during Jiaqing 3, did there start to be statutes clearly setting forth which death penalty cases would be memorialized on *zouzhe*. Little by little those cases that were to be memorialized using *tiben* or *zouzhe* were differentiated. For death penalty cases that were not to be memorialized using *zouzhe*, they were to be memorialized using *tiben*. But this was only the original rule. After the Jiaqing era, many cases for which the regulations did not call for them to be memorialized using *zouzhe* began to actually be memorialized using *zouzhe*. During the Tongzhi era, with the rise of Taiping military strength, it became common place to memorialize death penalty cases using *zouzhe*.⁹⁶

This transition from *tiben* to *zouzhe* concurred simultaneously with and was intimately related to the codification of summary execution as a legitimate aspect of Qing legal culture, a topic I return to in Chapter Seven.

VI. Conclusion to Chapter Two

I have identified three distinct modes of Qing response to ostensibly criminal behavior across a broad period of time from the pre-conquest Ming-Qing period through the end of the Yongzheng reign: the routine retrial-review process, militarized adjudication, and the strategic mode. For the most part, implementation of these three modes corresponded to where the underlying events occurred in space and time on a gradient of military operations.

Unlike the routine process, militarized adjudication was a separate *ad hoc* tradition that served as a tool of military campaign discipline emphasizing expedient adjudication under an autonomous commander; as events converged on the epicenter of military operations – the battlefield at the moment of battle – the frequency and degree of autonomy of militarized adjudication grants approached a zenith. As we will see in the next chapter, epicenter desertion cases were often adjudicated under militarized procedures despite the existence of the routine

⁹⁶ Na Silu, *Qingdai Zhongyang Sifa*, 202.

criminal process. As demonstrated by the hard strategic turn during the Revolt of the Three Feudatories, unlike the routine process or militarized adjudication, the strategic mode was not concerned with individual criminal culpability. Rather, it sought to address some proximate and serious threat to the dynasty during a period of instability or insecurity. This pragmatism is suggested by the common use in such cases of the binary pair *eradicate* versus *consoling-beckoning*. It also demonstrates the relationship between how a given discourse constructed a given norm-violator and how that person was eventually adjudicated.

Pre-conquest Manchu law was essentially militarized adjudication. One can at least speculate that this may have been a factor in why militarized adjudication was prominent in the Qing-produced Mongol Code and why the Qing added a reference to *junfa* to the Ming Code for the first time soon after occupying Beijing. Prior to the Kangxi era, only in the case of frontier military rebellion were militarized adjudication procedures written into the Ming and Qing Codes. The proper performance of routine criminal adjudication could tolerate this apparent aberration from the routine process because treason was philosophically distinct as one of the *Ten Great Wrongs* and occurred at the epicenter of military operations. At any rate, the addition of these crimes represented the first routinization of militarized adjudication in the Code outside of the inner zones of the military operations gradient, and as such, were an important precursor to the eighteenth-century militarized track.

Also during the Yongzheng period, apparently with the emperor's acquiescence, some governors and governor-generals executed criminals – pirates, rebels – without specific grants of militarized-adjudication authority and without being on military campaign. These officials justified their actions by pointing out that the routine process took too much time, inhibiting a

necessary deterrent effect. The emperor was sympathetic but cautioning in his response. The whole process seems to have been shrouded in secrecy. Both the new militarized-adjudication substatutes and the form of secret, autonomous adjudication at the provincial-level are probably related to the fact of an increasingly-confident dynasty that no longer had to slavishly perform late imperial legal norms. If this is true, assuming that the regularization of militarized adjudication was a breakdown of the late imperial legal system, if I am right, it was a breakdown caused by the high confidence and security of the dynasty, not by its weakness.

Perhaps more importantly, the Yongzheng-era cases, with their distinctions between the inner and outer empire, focus on frontier-borderlands; this, combined with the apparently “confidential” nature of the correspondence between the emperor and what were probably his “new men,” all suggest that one must take the Yongzheng emperor’s particular statecraft policies into account when considering these cases. Overall, however, given the limited impact these cases could have had on the overall *mentalité* of the broad corps of legal specialists, I decline to locate the beginning of militarizing tendencies in the Yongzheng era. Though they represent “shoots” of militarizing legal culture, these cases do not yet mark the main event.

Chapter 3. The Response to Desertion Prior to the Qianlong Reign

This chapter narrates the Late Ming and Qing responses to desertion through the very beginning of the Qianlong reign (r. 1735-98). Throughout this period, mode of response continued to roughly correspond with the gradient of military operations introduced in Chapter Two. In a broad sense from the Qing's perspective, during this period the gradient shifted first from the northeast (initial conflict) to the central plains and east coast (occupation of Beijing; pursuit of the Southern Ming and peasant rebels; and the Zheng forces in Taiwan), then to the south and southwest (final defeat of Southern Ming and the Revolt of the Three Feudatories) and finally to the north and northwest (the Kangxi and Yongzheng emperors' campaigns against the Zunghars). The reification of the inner-empire-Mongolian frontier as the line of demarcation between routine criminal adjudication and militarized adjudication for the Qing armies campaigning against the Zunghars reflected late Kangxi-Yongzheng shape and location of the gradient. As the banner garrisons of the inner-empire were increasingly located in the outer zones of the gradient (the civil zones), permanent Qing garrisons in the northern and northwestern Mongolian territories became situated within the inner zones, as they supported ongoing or potential military operations. The strategic approach continued to correlate most closely with periods of dynastic insecurity, as demonstrated by the hard strategic turn during the Revolt of the Three Feudatories and the near complete abandonment of that mode of response afterwards.

As Qing military operations continued against Ming resisters following the occupation of Beijing in 1644, the dynasty granted senior campaign commanders militarized-adjudication

authority, but generally limited that authority to epicenter desertion of certain ranks of offenders. At the same time, the dynasty took great pains to adjudicate other desertion cases – mostly off-epicenter cases – under the routine criminal procedures it had only recently adopted from the defunct Ming, thereby bolstering its legitimacy before its new Chinese constituency. During this period, even cases adjudicated under militarized procedures tended to demonstrate some routine track sensibilities. Throughout the entire period, the emperor sometimes used the threat of adjudicating the military failings of senior officials under militarized adjudication to encourage improved performance. While the emperor usually did not follow through on these threats, such statements affirmed the emperor’s position above routine criminal procedure.

There was significant development in the routine-criminal response to desertion as well. The routine desertion statute was originally drafted to apply to Ming society in which soldiers belonged to a fixed social category (*junhu*). Over the first century of Qing rule, however, increasing categories of persons – Green Standard soldiers, Eight Banner soldiers, *genyi*, other slaves and servants accompanying the campaign force, *Jasak-Banner* soldiers – became subject to this statute. This brought actual criminal practice under the old Ming statute more in line with the realities of the socio-political organization of the Qing’s military forces. Because this reflected a shift to the routine process, adjudicative documents for these cases came to flect the length necessary for careful deliberation and analysis, as compared with the very brief two-three fold notifications typical for militarized-adjudication cases. This also represented a widening of the definition of those considered deserters for purposes of the statute, focusing more on a man’s performance of military duties in the context of a campaign regardless of whether he was technically a “soldier.”

Prior to 1731 (YZ 10), the desertion statute did not require that first-time offender cases be reviewed at the central government level. Such first-time offenders were apprehended, tried, and caned without any documentation going to the central government (or into central government archives). But, we do have a window onto the adjudication of individual rank-and-file deserters of this period because often cases involving officials (which always had to be acted on at the central government level) also included rank-and-file deserters.

In 1731 (YZ 10), the routine desertion criminal framework was modified by a substatute nullifying the distinction between desertion from a campaign or defensive position as well as the distinction between a first and subsequent offense. The result was that from 1731 on, all desertion cases adjudicated under the routine criminal process were decided according to the provisions for a subsequent offense of campaign desertion, punishable by the death penalty. I argue that this change better reflected the new political-spatial realities of the empire, but officials at the time felt uneasy with the new framework which, on its surface, conflicted starkly with late imperial legal culture's preference for nuanced distinctions between crimes as well as punishment carefully calibrated to the level of individual guilt and social harm.

The adjudicative discourse that roughly corresponded with the Yongzheng era – the language used in the reporting, discussing, and analyzing of desertion cases – included both individual and structural themes. The discussion of individual culpability was largely consistent with the concerns of late imperial legal culture: recognition of human weakness, providing opportunities to renew oneself, and specific deterrence (detering this individual from deserting again). Structural themes recognized that there were systemic conditions apart from the individual deserter that resulted in desertion, such as poor leaders, fatiguing operations, and lack

of pay. This discourse was largely sympathetic to deserters and tended to support lenient treatment of offenders.

I. Late Ming and Pre-conquest Qing Responses to Desertion

The routine desertion statute was promulgated during the early Ming, and was reaffirmed during the Wanli era (r. 1572-1620).¹ Yet, with Ming forces being routed left and right by the late Ming, the dynasty tended to respond in the militarized adjudication and strategic modes. A “rout of forces” represented the total collapse (*kuibing* 潰兵) of a battle formation, usually followed by soldiers scattering (*kuisan* 潰散) or fleeing (*kuitao* 潰逃). A rout was the disintegration of a military force with a common mission into scattered men seeking their individual survival. The recognition that a lack of military discipline could result in a rout strongly influenced the response to desertion.

In the two decades preceding 1644, the routing of Ming forces reached crisis proportions. In a July 1632 (CZ 5/5/14) memorial commenting on the phenomenon of Ming soldiers’ being routed during battle, a Board of War memorialist commented that in the latest incident, at first one then another soldier fled, until the whole unit collapsed and the main force disintegrated. He

¹ Nearly all of the substututes added to the main desertion statute during the late Ming Wanli-era (1572-1620) reinforced the criminological viewpoint of the routine desertion statute. Most of these substututes dealt with desertion from the *weisuo* and did not touch on the campaign aspect of the statute. See Huang Zhangjian 黃彰健, *Mingdai lüli huibian* 明代律例匯編 (Taipei: Academia Sinica Institute of History and Philology, Special Publication No. 75, 1978)[hereinafter MDLLHB], 666-677. In a development that highlights the temporal aspect of the spatial-temporal gradient of military operations, in 1500 (HZ 13), the Ming enacted a substutute which clarified that the desertion statute applied from the moment a soldier was notified of his duty to deploy (*yu you zheng tiao* 遇有征調). WLHD [Wanli Huidian], Juan 111, 14v-15r. 弘治十三年奏准凡官軍遇有征調□選已定避難在逃者依律問斷。若征期已過發宣府獨石等處沿邊哨瞭半年滿日回衛若仍發出征及哨瞭而復逃依從征私逃再犯者律處絞。 In 1647, the Qing confirmed this change by adding a small notation to the text of the statute indicating that the statute applied from the time of notification of deployment. See *Shunzhi San Nianlü* 順治三年律, in *Zhongguo zhenxi falü xuji jibian* 中國珍稀法律續編, Vol. 5, edited by Yang Yifan 楊一凡 and Tian Tao 田濤 (Harbin: Heilongjiang Renmin Chubanshe, 2002), 273-74.

described the broader problem as follows: “The grave problem of soldiers being routed during battle (*kuibing*) was not just a one-time incident. In Liaoyang the soldiers were routed (*taokui erzou* 逃潰而回), in Guangning, the soldiers were routed, at Jizhou *zhen*, an important strategic point in the Nine Frontier Defense System, the soldiers were also routed.” He then articulated the justification for using militarized adjudication to adjudicate epicenter *battlefield first flight cases* in order to prevent a rout: “If we do not implement *junfa*, how can we punish the first ones [who flee] to prevent later ones [from fleeing]?”²

From 1632 to 1642, the Ming’s military situation went from bad to disastrous, as the rebel forces of Zhang Xianzhong and Li Zicheng mounted scores of victories.³ At this time, Shanxi Province was squarely situated within the inner zones of the military operations gradient, given both rebel activities and Manchu raids from the Northeast. Shanxi military forces were critical in the fight against Li Zicheng. As Li moved in 1641 to occupy Kaifeng, the Ming called on forces stationed in Shanxi to repel him. In May 1641, Ming *Zongbing* Xu Dingguo led a contingent of Shanxi military to aid in the defense of Kaifeng, but his whole unit disintegrated and deserted along the way.⁴ Kaifeng was lost.

Against this background, in July 1642, Shanxi Grand Coordinator (*xunfu*) Cai Pande reported that he had pacified (*jiufu* 就撫) a soldier “riot” (*binghua* 兵嘩) in his Shanxi forces primarily by dismissing the “inferior junior officers.” No doubt with the memory of the disintegration of Xu Dingguo’s Kaifeng relief forces still in mind, the Chongzhen emperor (1627-44) forwarded Cai’s

² NGDK, 034128.

³ ZGLDZZNB, 344-56.

⁴ ZGLDZZNB, 356-57.

memorial to the Board of War with the rescript, “A riot among the soldiers is a disregard for discipline. With no discipline, when they are deployed, they will be routed and desert (*kuitao* 潰逃). ... It makes a mockery of military discipline. They must be strictly apprehended and completely annihilated. How can Cai punish them so lightly?” The emperor drew the link between punishment and deterrence and, furthermore, that between discipline and the rout. The Board of War then issued an order to Cai directing him to punish the soldiers harshly.⁵

The emperor reacted to Cai’s strategic approach with a classic militarized adjudication concern, maintaining military discipline through deterrence. He specifically identified the lack of military discipline (*junji* 軍紀) as the cause of soldiers’ being routed (*kuisan* 潰散). The lack of accord over mode of response reflected inherent tensions between the strategic mode and militarized adjudication. Military discipline is based on deterrence. Punishment is an important component of deterrence, but absent soldiers cannot be punished. Strategic beckoning and consoling brings soldiers back into the ranks, but does not have deterrent value. If word got out that Cai went back on whatever assurances he gave the soldiers, it would be that much harder to persuade future groups of deserters to return.. As it turned out, the emperor’s concerns over discipline were well-founded. On April 25, 1644, as the Ming’s last armies defending Beijing were routed, Li Zicheng’s rebel forces penetrated deep into city and the Chongzhen emperor hung himself.⁶

⁵ NGDK [need document number] “兵嘩蔑紀。調發潰逃。總係集猾唆措。玩視軍律。必須嚴緝盡殲。方能懲姦。”

⁶ Wakeman, 225-318.

As I pointed out in Chapter Two, prior to the Qing's occupation of Beijing, Qing law consisted of a hodgepodge of legal sources that somewhat approximated Ming militarized adjudication in its simple procedure and expeditious *ad hoc* application. In 1620 (TM 5/9), it was reported that when deployed soldiers from three banner companies (*niru*) left the ranks without authority and looted property, only coming back after three days of unauthorized absence, they were all adjudged to have committed the crime of leaving the ranks without authority and "were killed."⁷ On April 4, 1636 (CD 1/2/29), Khan Hongtaiji stated "Whenever on the march, it is not permitted to riot, and it is not permitted to leave the main body. ... After the soldiers have started going forward, if there are one or two who leave (the formation) to loot and are killed, then take their wives and children as prisoners and criminally adjudge the supervisors with jurisdiction over them. ... If anyone disobeys this order, he will be executed immediately."⁸ On August 18, 1638 (CD 3/7/9), Plain White Bannerman Demutu saw the enemy approaching his area of responsibility and "deserted in the face of battle." According to the khan, he should have been adjudicated the death penalty, but instead the khan issued an order: "The death penalty is remitted. He can monetarily redeem his crime with a fine. Restrict him for fifteen days and jail him for three days in a cage."⁹

Pre-conquest cases also reflected that *genyi* were a highly integrated part of the Eight Banners campaign organization. During this period, most *genyi* were also "slaves," meaning their

⁷ According to the Chinese translation, "遂以离队罪，盡殺之。" (MWLD), in Liu Hainian 劉海年 et al, 中國珍稀法律典籍集成 Vol 2 盛京滿文檔案中的律令及少數民族法律 (Beijing: Kexue chubanshe, 1994).

⁸ MWLD, 177. On December 25, 1636 (CD 1/11/29), in a series of instructions on the impending Korea campaign, Sulu read the Khan's order: Anyone who does not obey this edict, leaves the ranks without authority, kills surrendered persons without authority, or watonly takes people's cloths, will be handled under military law 以軍法從事, and they will not be lightly released...." MWLD, 197

⁹ 刑部檔 XBD, 272.

desertion from campaign was within the purview of the developing fugitive slave law. By the late 1630's, when a *genyi* deserted from campaign, the offense was against the state, not against the *genyi*'s master. For example, on December 30, 1638 (CD 3/11/26), Manggu of the Buga Company of Beizi Feiyanggu's banner, made an untrustworthy, Chinese bachelor a *genyi* to follow him in battle, which predictably resulted in the *genyi*'s deserting during the campaign. For this reason, the khan ordered that Manggu be whipped fifty times, and that the company commander, Buga, be criminally adjudicated.¹⁰

II. Responding to Desertion in the Early Post-Conquest Period

Desertion continued to be a problem in the early post-conquest period, as evidenced by cases discussing the rations that were paid to military leaders for soldiers who had already deserted. Judging from the number of memorials over a broad period of time, this was a significant issue – accountability of the total number of troops. Still the tendency at this time seems to have been to bring military adjudication more in line with late imperial Chinese norms. For instance, on July 28, 1656 (SZ 13/6/7), the emperor issued an edict making nearly all crimes under the *Military Administration* subsection (which included campaign desertion) of the Qing Code eligible for full remittance upon the declaration of a general amnesty.¹¹

During the conquest of the Southern Ming, it is not surprising that the Qing granted its campaign commanders militarized-adjudication authority. The epicenter of the spatial-temporal gradient was shifting; thus in 1645 (SZ 2) the Qing emperor granted former Ming General Hong Chengchou (1593-1665) authority to adjudicate all cases under militarized adjudication that

¹⁰ GSD, 257.

¹¹ QSL-SZ, juan 102, 793-2 – 795-1.

occurred during combat (at the epicenter), where logistical problems led to military setbacks, *where soldiers retreated without authorization on the battlefield* (epicenter), claimed false merit, or used military operations to harass civilians in the cases of civilian officials of the fifth rank and below, and military officials of colonel and below.¹²

Meticulously observing the proper performance of routine criminal adjudication in order to bolster its legitimacy, the new dynasty was already trying some Green Standard cases involving deserters according to the routine criminal process despite the existence of militarized adjudication as an alternative and the existence of chaotic conditions in much of the former Ming realm. In 1644-45, Shanxi Governor Ma Guozhu sent a memorial to the emperor regarding a desertion-larceny case in which he cited the routine requirement for memorialization of draft capital sentences. The case involved a number of Green Standard soldiers who had deserted and engaged in larceny. Ma had found three soldiers not guilty, and was requesting authorization to execute the other seven. As per the routine track, the emperor forwarded the case to the Board of Punishments. On a summary (*huangtie*) which originally would have been part of a longer routine criminal memorial, the Board of Punishments recommended approval.¹³

¹² QSL, SZ 2/7, Juan 19, p.167-2. I was not able to find any desertion cases adjudicated by Hong under militarized adjudication at this time. The grant of authority was limited in time, as evinced from that fact that in October 1655 (SZ 9), Hong had to send a routine memorial to the emperor requesting authorization to take a first captain (rank, 4a) out in front of the ranks, tie him up, and beat him. Because a first captain was an official, Hong Chengchou had to first ask the emperor to issue an edict dismissing the first captain from his position and ordering him investigated (*qing zhigeren jiuni* 請旨革任究擬). Hong asked the emperor to have “the board” review the case.

¹³ NGDK, 逃兵例應題明候旨正法伏乞敕部覆議行登錄號 008941-001

貼黃 欽差提督鴈門兼撫山西太原等處地方都察院右副都御史臣馬○啟為捉獲嚮馬強賊事據鴈平道盧震陽呈拏獲逃兵○劉文成等具招到臣該臣謹會同按臣黃徽胤看得○成等拾名脫伍私逃白晝截劫當被擒獲律應梟示○於傅朝相等參名均屬無辜審明釋放其劉文成等俱係逃兵例應題明候旨正法伏乞勅部覆議行臣等遵奉施行謹具啟知。

In August 1647 (SZ 4/8), the Qing again adjudicated a case precisely in accordance with the routine battlefield first flight statute and the routine desertion statute.¹⁴

By the mid 1650's, the Qing was, at least normatively, applying the routine desertion statute to the Eight Banners. The fight against various forces more or less allied with the Southern Ming continued until 1662, when the last claimant to the Ming throne was executed by former Ming general Wu Sangui. In the early 1650's the Qing was concentrating on the pacification of the south and southwest. Banner forces were heavily involved in these operations. According to the Qing Collected Statutes, in 1656 (SZ 13), a substatute promulgated under the campaign desertion statute indicated a punishment of one hundred lashes with the whip (for a first offense) and execution for a second offense for soldiers who fled from campaign. Based on research by Hu Xiangyu, I believe this substatute was part of a series of measures meant to unify the law, making both Han civilians and bannerman both subject to the Qing Code, although some exceptions always remained.¹⁵ The two modifications – whipping in lieu of caning and a lack of distinction between degrees of the death penalty – were consistent with the application of Qing law to Manchu and Mongols at this time.¹⁶

This substatute was at issue in a case the same year involving a *genyi*. Given the fugitive slave law's basis in pre-conquest Manchu law, at this time fugitive slaves were adjudicated at the Board of War, apparently outside of the routine criminal process. On March 3, 1654 (SZ 11/1/23), President of the Board of Punishments Bordered White Manchu Bannerman Gioro

¹⁴ NGDK, 150370-001, 揭為逃兵情固可恨而首從法自殊科司農等三十五名應審其為首者正法警眾其餘為從仍照例各責四十板著伍收管。

¹⁵ Hu Xiangyu

¹⁶ DQHDSL (1899), 刑部/卷七百七十三 刑部五一/兵律軍政四/從征守禦官軍逃- 493-1 -○歷年事例順治十三年議准。凡隨征軍士私自逃回者。鞭一百、遞發軍前。二次者正法。

Bahana sent a routine memorial on criminal matters to the Shunzhi emperor. A Manchu Deputy Banner Commander's Mongolian *genyi* had deserted his master while on campaign. Bordered White Manchu Assistant Banner Commander Aisong'e had taken his *genyi*, a Mongolian known as Gushen, on campaign with him, but according to Aisong'e, Gushen deserted, stealing a horse from a bondservant named Shayi. Much to Gushen's misfortune, Shayi recognized his horse at a Beijing horse market, apprehended Gushen and turned him over to Aisong'e's wife. Aisong'e's wife (Aisong'e was probably still deployed) then ordered a company *bošokū* to send Gushen to the Board of *War* for punishment.

The board interrogated Gushen:

Interrogator: "Gushen, why are you back here? Where did you get this horse, saddle, bow, and knife?" Gushen: "I accompanied my master to Yuezhou Prefect in Hunan where I fell ill. I made it to Changsha, and my master, seeing that I was sick, told me to temporarily stay in Changsha until I recovered from my illness. In January 1653 (SZ 9/12), I started to get better, so begging along the way, I made my way back. On July 1, 1653 (SZ 10/6/7), I arrived at the capital. I bought the horse, saddle, bow, and knife in the capital." Interrogator: "If your master knew you were sick and told you to return home when you got better, why didn't you return home? Why did you buy a bow and knife, and what were you doing in the horse market?" Gushen: "I wanted to have a bow and knife on me, so I bought them."

The Board of War returned the horse to Shayi, recessed the case, and confined Gushen to await the return of his master to receive his testimony. Aisong'e's younger brother, Wudan, later arrived with a letter from Aisong'e:

"I never told Gushen to go back. Without authorization he took the horse and deserted, and it was not only once. The last time we were engaged in operations against the enemy, he also deserted and went home. At that time, I reported it to the Board of War, and he was whipped one hundred times. Now, I'm reporting this second offense. Gushen should be executed."

The Board of War then retried (*fushen* 覆審) Gushen. This time he admitted, "My master did not know I came back. I deserted without authorization. But, I did not take the horse." The

Board of War reviewed its regulations which stated, “When one deserts from a place of military operations (*chubingchu* 出兵處), he shall be whipped one hundred times and returned to his original master.” Yet, rather than make the final decision based on its own regulation, on January 6, 1654 (SZ 10/11/18), the Board of War memorialized the emperor, petitioning to have the matter transferred to the Board of Punishments for that Board to draft a criminal sentence. The potential difference was significant because under the Board of War regulation (cited by the Board above), even for a second offense a *genyi* would only be whipped; if by contrast, the case were decided under the routine desertion statute (treated as a soldier-desertion case), the punishment for a second offense was execution *after the assizes*. The next day, the Board of War received the imperial edict granting the request to transfer the case to the Board of Punishments. It is only because the case had been initially transferred to the Board of Punishments – a change of venue to the routine criminal process – that a routine criminal memorial was produced and is still found in the archives.

Using the leg vise “to get to the truth,” the Board of Punishments rehashed Gushen’s earlier confessions and posed some additional questions: “The horse mentioned in your master’s letter, where is it? Where did you get the silver to purchase the bow and knife?” Gushen confessed, “I took the money from my master as travel money, and used the remaining money to buy the bow and knife. I did not take the horse.” The Board of Punishments also asked about the precise circumstances of Gushen’s first offense. He stated that while on campaign, he and his master were on a boat, and his master gave him seven *taels* of silver to go to Nanjing to purchase provisions. “Because we were in a rush, my master did not join me. When I was in Nanjing, I took off. When I got to Jining, I saw some relatives, stayed some time, and then went home to

my master. When I arrived home, my master arrested me and sent me to the Board of War where I was whipped one hundred times.” The Board of Punishments then verified the original case in the files of the Board of War.

According to the eleven-fold routine criminal memorial that Board of Punishments President Bahana forwarded to the emperor, “when Gushen was deployed against the enemy, he absconded and returned home (*sitao huanjia* 私逃還家). Then later when the main force returned, he ran off again. While on the run, he bought a bow and knife.” Apparently citing the recent substatute, noted above, applying the desertion statute to Banner soldiers, the Board of Punishments then explicitly cited the text of the desertion statute and reasoned that because this was a second offense, if applied, the statute required execution after the assizes. But then the Board made a distinction: Gushen was not a soldier (*pjia* 披甲); rather, he was a *genyi*. Accordingly, the Board of Punishments recommended that Gushen should be sentenced according to the Board of War’s regulation requiring one hundred lashes (which did not distinguish between first and second offenses). In other words, the Board cited the desertion statute, but then decided that it did not apply to a bannerman’s *genyi* despite the new substatute making the statute applicable to bannermen.¹⁷ The emperor’s rescript approved of the Board of Punishments’ draft sentence, stating simply that Gushen was to be whipped one hundred times. Thus, even though the case was transferred to the Board of Punishments for analysis, the Board

¹⁷ Perhaps to provide a second basis for leniency, the Board of Punishments also pointed out that Gushen fled prior to the last amnesty, implying that because of that amnesty after the first offense, the current offense should not count as the second offense even if the case were subject to the desertion statute. ZPZZ-FHA, 02-01-02-1870-009.

decided – against the wishes of the *genyi*'s master and perhaps out of a sense of pity – to decide the case under the fugitive slave regulation maintained by the Board of War.

If the Board of Punishments had tried Gushen's case two years later, the result may have been different. In 1656 (SZ 13), a new substatute was added to the desertion statute, expressly making the desertion framework applicable to servants or soldiers (including *genyi*) of banner cavalry who absconded from campaign and returned home.¹⁸ This innovation was necessitated by the structure of the Eight Banner campaign forces. For the Eight Banners on campaign, servants – in particular enslaved servants – were an integral part of the force. They served personally under their masters, performing many logistical tasks. This inclusion of non-military persons directly under the desertion law was a first for late imperial law, making the statute applicable to persons based on their *performance* of military duties while on campaign, despite their technically not having “soldier” status. There is no evidence that they were treated legally as soldiers while in their peacetime banner garrisons.

By 1653 (SZ 10), the Qing Court was “alarmed by the victories of Li Dingguo and Sun Kewang – Zhang Xianzhong's former lieutenants, now technically allied with the Southern Ming regime of the Yongli emperor (1623-62) – in Guangxi, Hunan, and Sichuan.”¹⁹ Li Dingguo had already cornered and driven former Qing stalwart Kong Youde to suicide in Guilin, and had succeeded in pushing Qing forces back in Guangxi, Hunan, and Sichuan.²⁰ In response to these Southern Ming successes, the Qing appointed Hong Chengchou as the Grand Commander and

¹⁸ DQHD (1762), juan 109, 27r-27v. 十三年定隨征前鋒護軍領催驍騎廝養卒等私自逃回初次鞭一百遞發軍前二次正法。

¹⁹ Wakeman, 972.

²⁰ Wakeman, 1103, 1030.

Military Governor of Huguang, Liangguang, Yunnan and Guizhou.²¹ In 1655 (SZ 10), the Qing reauthorized him to exercise militarized-adjudication authority in several categories of cases, including cases of epicenter desertion.²²

Despite the concurrent authorization to use militarized adjudication in one theater, other battlefield desertion cases were still being adjudicated according to routine criminal procedure. In 1654 (SZ11), a naval skirmish near Guangdong pitted Qing *Zongbing* Sun Yiyan's directly-attached maritime battalion (*zhenbiao*) against forces allied with Li Dingguo. In August 1655 (after the reauthorization of militarized-adjudication authority to Hong Chengchou), Guangdong Governor Li Qifeng memorialized the emperor explaining that directly after the skirmish, Maritime-Land Right Battalion first captain (4a) Zheng Changren, who was assigned to the *zhenbiao*, reported that "during the battle, I fought as one with *Zongbing* Sun, but as the battle turned against us, I lost track of him and do not know where he went to." When he initially received the report, Governor Li noted "it is suspicious that one would not know whether one's commander had survived or died," but with military operations still ongoing he did not immediately investigate. Later, some soldiers captured during the battle escaped and returned to allege that Zheng Changren, Lieutenant (6b) Qu Binbai, and Centurian (*Baizong*) Zhang Cai had in fact deserted when in contact with the enemy (*linzhen tuitao* 臨陣退逃), leaving their commander to die alone. According to Governor Li, the case was a matter of "manifesting military discipline."

²¹ Wakeman, 1030.

²² QSL-SZ, juan 76, 602-2 – 603-1

Because Zheng was an official whose case had to be forwarded to the central government for impeachment, we have a window onto the fate of several rank-and-file deserters (*taohui bingding* 逃回兵丁) also involved in the case, “Zhao Xue and the others.”²³ Governor Li’s twelve-fold impeachment memorial related that the case had been vetted through the Maritime Circuit Intendant, and reevaluated by the Provincial Judge with the Provincial Financial Commissioner, and had then been forwarded to the governor. Governor Li, together with Southern Pacifying Prince Geng Jingzhong (of the Guangdong Feudatory) and Guangdong-Guangxi Governor-General Li Shuaitai, again reviewed the case. It read, “Zheng Chengren was himself in the midst of battle and saw with his own eyes that his commander was in danger. He should have gone forth and risked his life against the enemy, yet he dared to lead the boats under his command and desert, such that *Zongbing* Sun Yiyan was killed.” In September 1655, the governor received the imperial edict dismissing Zheng and the others from office and ordering them tried.

After a provincial-level trial, the Board of Punishments retried Zheng and the others criminally and forwarded a routine criminal memorial to the emperor on March 1656 (SZ 13). Although the Board of Punishments found them guilty, it recommended that they be pardoned. The emperor received the document and rescripted, “Zheng Changren’s deserting first when engaged with the enemy was a matter related to the frontier (*fengjiang* 封疆). How could the Board of Punishments recommend that his punishment be reduced under a pardon? I am

²³ The administrative impeachment process – formally requesting that permission be granted to criminally try officials – was a prerequisite to criminal adjudication. Qing Code, Art. 6(a). Jones, 40. For instance, in June 1632, in a case that arose out of the Ming’s military operations to recapture Dengzhou, Shandong from Kong Youde after the latter turned coat, the Ming Censor memorialized to impeach Assistant *Zongbing* Wu Anbang on the grounds that the latter had disobeyed orders and retreated without authority on the battlefield. NGDK, 088938-001.

returning this action to the Board to correctly draft a punishment and memorialize back to me.”²⁴

In June 1656, the Board memorialized the emperor again with a new routine criminal memorial setting forth the corrected draft (*queni* 確核) punishment. Even this corrected draft was still seventeen folds-long, not counting the *huangtie* summary or the Manchu-language translation.

According to the Board of Punishments’ new reasoning:

In the midst of a deteriorating military situation, First Captain (dismissed) Zheng dared to raise his sails, retreat and flee, leading to the death of the main commander; his sentence is drafted according to the law on those who flee first when facing the enemy [the *battlefield first flight* statute], [and he is sentenced to] decapitation *after the assizes*. The sentences of Qu Bin and Zhang Cai are drafted according to the statute on allowing bandits to enter the territory such that officers or soldiers are killed or injured, [and they are to receive] eighty strokes [automatically reduced to thirty] of the heavy bamboo.²⁵ Soldier Zhao Xue and the eighteen other soldiers who were suddenly surrounded, fled and returned to the camp, should be tied up and beaten [I believe here that this means that they were to be caned in accordance with the statute]. We do not dare to carry out this action without authority and therefore respectfully request your majesty’s edict.²⁶

All the soldiers, including the lower-ranking soldiers, received routine criminal process treatment even though the case was an epicenter battlefield retreat case with the gravamen of the offense being a loss of military discipline (*junji* 軍紀) leading to the death of the commanding officer. It appears that Zhao Xue and the others were punished under the routine desertion statute, the punishment for a first offense of which was caning (one hundred reduced to forty). Why was this case not tried according to militarized adjudication? It could just be that Guangdong Governor Li Qifeng had not been granted militarized-adjudication authority or that his militarized-adjudication jurisdiction was limited by rank. Perhaps more importantly, by the

²⁴ NGDK, 121001

²⁵ Stroke reduction, see Qing Code, Art. I. Jones, 33.

²⁶ NGDK, 121001-001.

time the criminal investigation began, the exigent circumstances of battle were no longer an issue. A year had already passed by the time the soldier-witnesses escaped from enemy captivity and reported the incriminating version of events.

This case highlights the extent of procedural scrutiny in cases handled in the routine criminal mode even in a case that seemed hardly routine at all (desertion during a battle at sea). This case went before the emperor at least three times: first, for the initial impeachment, then with the Board of Punishments' first draft punishment, and finally with the final recommendation. It took approximately two years from the time of the incident to fully process the case to an approved sentence. It included a lengthy impeachment that was acted on by at least seven high-level provincial officials and two formal criminal opinions by the Board of Punishments. We can assume additional documents were created in the process of the provincial-level criminal trial. After all this, Zheng was adjudicated and sentenced to decapitation *after the assizes*, so it may be the case that he was never executed or spent years in prison before being executed.²⁷ When the Shunzhi emperor died two years later, Zheng may have even been pardoned.

In another case that arose out of military operations directed at Li Dingguo's forces, soldiers from a joint Chinese Banner-Green Standard force garrisoning Chenzhou in southeastern Hunan – at a time when this was an important strategic point located squarely within the two inner zones of the gradient – were not paid for twenty months from about the end of January 1653 (SZ 10/1) to August 1654 (SZ 11/7) because their commander, Major Liu Jin, was diverting their military salaries to pay for weapons and other necessary military equipment. Soon after finally

²⁷ We have evidence that his case was again considered the next year at the 1659 Autumn Assizes. A summary of judicial actions from that year stated that the circuit censor was ordered to conduct another trial. NGDK, 294395-006.

being paid, on August 30, 1654 (SZ 11/7/19), junior officers Sub-lieutenant Zhang Yi, Ran Yingjie, and Lieutenant Li Biao led the soldiers to desert Chenzhou as a group and return to *Zongbing* Zhang's camp. Centurion Zhang Gui was also not satisfied and deserted two weeks later leading twelve soldiers back to Zhang's camp.

Because they were officials, Major Liu Jin and Sub-Lieutenant Zhang Yi had to be impeached before they could be criminally tried. After the emperor granted the impeachment, they were tried jointly by the Circuit, Prefect, Assistant Prefect, and Sub-prefect, then retried by the Huguang provincial judge. The case was forwarded to the governor/governor-general for additional retrial-review. Finally, the case was forwarded to the Board of Punishments. After retrying the case, Board of Punishment President Plain Yellow Manchu Bannerman Tuhai (d. 1681) sent a routine criminal memorial to the emperor on behalf of the Board of Punishments. The eighty-three fold (not counting the included Manchu translation) routine criminal memorial from the Board of Punishments gave a minute accounting of the procedural history of the case as well as presented the Board's own findings, analysis, and draft sentences.²⁸

The Board of Punishments initially reasoned that under the applicable statutes, Major Chen was subject to caning and exile for larceny of public funds in his custody (but misappropriated for a non-personal purpose). For the three junior officials who led the desertion, the Board of Punishments found that the routine desertion statute (which the Board cited by name) required a sentence of one hundred strokes of the heavy bamboo (reduced to forty). The Board, however, went on to recommend that all the punishments be set aside. Their sympathetic reasoning powerfully reflected the grounding of the adjudicative discourse in late imperial legal culture.

²⁸ NGDK, 121001.

The Board argued that the three were not enriched by deserting and did not flee the military entirely, but led the soldiers from their garrison back to *Zongbing* Zhang's camp. The Board also provided a technical reason for setting aside the sentence: the crimes occurred before an amnesty. The emperor approved the recommendations.²⁹

While the archival cases from this early period are few, they suggest that the Qing made a concerted effort to adjudicate desertion cases according to the Ming-era statute that it formally adopted in 1647 (SZ 3). During this period, to the extent that the Qing authorized campaign commanders to decide desertion cases under militarized adjudication, their autonomy was usually limited to epicenter desertion cases. Even when not decided precisely according to all the strictures of the routine criminal process under the desertion statute, most of these early cases reflected routine criminal track sensibilities, showing that the Qing exerted considerable effort in properly performing routine criminal adjudication of deserters. The trend over time was to include both regular banner soldiers and their *genyi* – who were functionally soldiers but without formal soldier status – as subject to the routine desertion statute from the Ming.

While the number of cases reviewed renders any conclusion anecdotal, the cases do confirm that the procedure – factual and legal retrial-review as well as the Autumn Assizes process – could and did result in punishment being mitigated at any level. An adjudicative discourse sympathetic (or at least not hostile) to deserters supported opportunities for mitigation. The time-consuming procedure kept the accused alive long enough to benefit from some good turn of events, such as an amnesty or a sympathetic official at the Board of Punishments.

²⁹ NGDK, 121001.

The routine criminal desertion statute was best-suited to individual cases. Cases involving large numbers of deserters were often handled differently.

III. Adjudication of Cases Involving Large Numbers of Deserters

The dynasty's response to cases of multiple deserters during the early Qing often reflected a hybrid of approaches. In 1648 (SZ 4), two years after the formal re-promulgation of the Ming Code as the Qing Code, Bordered Red Chinese Bannerman Shaanxi governor-general Meng Qiaofang reported the apprehension of thirty-five deserters. Meng was a prior Ming Colonel who had surrendered to the Qing in 1630 and then entered China at the side of Prince-Regent Dorgon. He had been largely responsible for the initial Qing pacification of Shaanxi.³⁰ Consistent with the principle of the *leader-follower* statute requiring one degree of separation between leaders and followers under the *routine desertion* statute and the *battlefield first flight* statute, the governor's draft punishment called for those who had fled first (*shouzhe* 首者) to be executed.³¹ The Board also cited the routine desertion statute in noting that the remaining soldiers – those who deserted, but did not flee first – would be caned forty times. Although the facts are not clear, such a recommendation could have been based either on the *battlefield first flight* statute or the *campaign desertion* statute, depending on whether or not the deserters were engaged in battle at the time they fled, demonstrating the temporal aspect of the military operations gradient.

³⁰ Wakeman, 683-93, 1032-1033. These men may have been former rebels from the Jiang Xiang rebellion, for whom Meng Qiaofang had developed a deliberate plan to convert them to regular troops. Wakeman, 832-833. His plan was to make them dependent on the provincial treasurer for pay, assign them to the provincial military commander's detachment, and to turn their names over to the Board of War, essentially making them centrally-controlled soldiers.

³¹ NGDK, 150370-001. Unlike the letter of the statute which called for the followers to be adjudicated one degree lower than the leader, this case adjudged one degree *higher* to the leaders.

The emperor referred Meng's memorial to the Board of War. In accordance with the campaign desertion statute, the Board of War then went on to recommend that the remaining soldiers be punished with forty strokes each, consistent with the actual number of strokes required under the desertion statute for a first offense. While the fact that this case was processed within the Board of War, not the Board of Punishments, distinguishes it from the routine criminal-legal track (in which the Board of Punishments was always the lead agency), the case was still processed for the most part in accordance with the routine-track desertion statute. Perhaps it was the large number of offenders that pushed the case towards a strategic response – one processed by the Board of War – yet, the desertion statute still clearly served as the reference point for adjudication. Note that in the previous case of the *genyi* Gushen, the Board of Punishments adjudicated the case under the Board of War's substatute; here, the Board of War adjudicated a case under a routine criminal statute, which was normally the purview of the Board of Punishments.

From the same year, we have an example of a case of a larger number of deserters handled entirely according to the strategic mode. On June 1, 1658 (SZ 15), Zhili-Shandong governor-general Plain Yellow Chinese Bannerman Li Yinzu dispatched a memorial (*tiben*) to the emperor titled “urgent report on deserters.”³² It relayed a report from a local Green Standard sub-lieutenant that over two hundred deserters, apparently from Hunan, were wreaking havoc in Shandong. Most of these soldiers originally came from a single territorial defense region which

³² In a collection of memorials by Zhili-Shandong governor-general Plain Yellow Chinese bannerman Li Yinzu 李蔭足, published posthumously by his son.

would have been under the command of single *zongbing*. These deserters had been deployed on campaign (*chushi* 出師) in the fight against the Southern Ming.

The initial posture of the case conveyed the sense that this incident could not be put down easily, suggesting the appropriateness of a strategic response from the outset. At this time, the Southern Ming still maintained a credible Naval force which may have been capable of operations along the Shandong coast, the Qing military was stretched thin, and significant factional strife divided the young Qing court.³³ Given these circumstances, Li framed the decision in strategic terms as between the parabellum “all those who fled from the deployed camp should be annihilated and decapitated” and the Confucian-Mencian “graciously rewarding them instead of killing them.”³⁴ Far from the concerns of late imperial legal culture – nuanced determination of facts, careful determination of offense (*zuiming* 罪名), finely graded punishments, instilling a sense of shame, opportunities for self-renewal, or deterrence – his initial memorial was a naked plea for military reinforcements to defend against the rampaging deserters: a strategic concern.³⁵ On December 13, 1658, Li again memorialized the emperor, relating that he had come to an agreement with the deserters that they could go back to the ranks or become farmers. He even rewarded their leaders for leading the soldiers to turn themselves in.³⁶

A memorial from Supreme Commander Hong Chengchou on the same incident reflected the contestation of soldier status versus performance in determining who was a deserter. On

³³ Wakeman, 995-1016.

³⁴ “*Fan tuoyingwu dang jiaozhan* 凡脫營逃伍茲當剿斬。”

³⁵ 全國圖書館文獻縮微複製中心, 總督奏議, 485-93.

³⁶ 全國圖書館文獻縮微複製中心, 總督奏議, 547-51.

February 15, 1659, Hong memorialized from his headquarters in Changsha in part to advocate that certain officials should not be punished for the desertion incident. His argument implied that many of those who deserted were not actually soldiers. He stated, “It has come to my attention that among the deserters were supernumerary men (*yuding* 餘丁) who had not yet been put on the regular payroll (*bu shiliang* 不食糧) as soldiers. They fled because they were afraid of the danger involved in campaigning afar.”³⁷ Were supernumerary men accompanying the forces on campaign to be tried as deserters when they fled? How were they different? This question would be more definitively posed during the Qianlong era.

Since both of the above two cases occurred in the same year and both involved desertions of multiple soldiers, why did Governor-General Li respond in the strategic mode and Governor-General Meng under militarized adjudication? Given the stage of the Qing conquest, both incidents were located within the inner zones of the military operations gradient. But, the posture of each case (i.e., the extent to which the immediate emergency had been resolved, the extent to which the offenders had already been apprehended) at the times of the *first memorialization* of the incidents to the emperor were different: Li was dealing with was an on-going threat at the time it was memorialized; Meng memorialized that he had already detained the deserters. The scale of the two cases was also different: Li’s case involved hundreds of deserters; Meng’s involved only thirty-five. Together with the case of First Captain Zheng (whose epicenter misconduct was discovered a year after the fact), these cases suggest that in addition to where misconduct occurred along the gradient, the posture of the case at the time it

³⁷ NGDK, 089403-001.

was first memorialized also determined how the Qing responded.

A few months later, on October 9, 1659 (SZ 16), Shanxi Governor-General Li Guoyin responded to an edict requiring him to investigate a group of almost five hundred deserters.³⁸ In that case, Second Captain Luo Guangyuan was leading the Green Standard troops to Chongqing to take over garrison (*zhufang*) duties, but “along the route, they began to cause trouble and fled (*tuzhong zaotao* 途中譟逃).” In Li’s memorial, styled “Capturing and Decapitating Rebellious Soldiers on the Battlefield (*dangzhen qinzhan fanbing* 當陣擒斬叛兵),” he related that the matter had originally been memorialized to the emperor by Shaanxi governor Chen Jixin. The emperor had forwarded the case to the Board of War. According to Governor Chen, more than one hundred soldiers from Luo’s detachment had deserted and returned to their native places or home stations (*taohui bingding* 逃回兵丁), engaging in looting along the way. The response to this case reflected a hybrid of the three different modes of response.

First, there was an initial strategic response at the local level. Lieutenant Colonel Huang Jiapin had been sent with troops to eradicate (*jiao* 剿) – *parabellum* language – the deserters. Characteristic of epicenter *junfa* operations, he decapitated (*zhan*) sixty-eight of them “on the battlefield (*zhen* 陣).”³⁹ However, the official-impeachment requirement pulled cases towards the routine criminal process: when Huang apprehended the “rebellious” *Zongbing* Ma Conglin

³⁸ NGDK, 056259-1.

³⁹ Note also that characterizing the soldiers as rebelling “*pan* 叛” may have also allowed for the use of one of the only pre-Qianlong provisions in the Code which allowed for direct criminal execution on the battlefield without further review. DLCY, “處決叛軍”: “卷首凡邊境(重地)城池, 若有軍人謀叛, 守禦官捕獲到官, 顯跡證佐明白, 鞫問招承, 申報督撫提鎮審問無冤, 隨即依律處治, 具由奏聞。如在軍前(有謀叛能)臨陣擒殺者, (事既顯明, 機係呼吸), 不在此(委審、公審之)限。(事後亦須奏聞)。此仍明律, 國初及雍正三年修改。”

alive along with nine rank-and-file deserters, he forwarded the whole case – including that of the rank-and-file deserters –to the emperor who in turn referred it to the Board of War. The Board of War recommended that the sublieutenant and the nine deserters who had been captured alive be executed. The emperor approved the recommendation and ordered it carried out. References to the soldiers as “rebellious (*panbing* 叛兵)” muddied the distinction between the extra-judicial strategic mode and criminal approaches to desertion, since the frontier military rebellion statute in the Code itself had allowed for summary executions even from Ming times.⁴⁰

The above cases from Shunzhi and early Kangxi eras demonstrate the tendency to try cases involving several soldiers within the strategic framework. At the same time, these cases demonstrate that late imperial legal culture tended to push even the militarized-adjudication cases of this period towards processing in the routine criminal mode. This is very different from what happened during the Revolt of the Three Feudatories, when the strategic response to deserters largely supplemented the two individual criminal approaches.

⁴⁰ Rebellious soldiers – soldiers joining the enemy – continued to be a primary concern of resolving desertion cases during the early Qing. Prior to the Qing’s conquest of Taiwan in 1683, the island served as the base for the commercial-pirate-political activities of the Zheng 鄭 family. During the first year of the Kangxi reign (r. 1662-1722), Plain Blue Chinese Bannerman, veteran of Hongtaiji’s campaign’s against the Chahar Mongols, Fujian Governor-General Li Shuaitai, memorialized the emperor following up on the case of Sub-lieutenant Liqi and soldier Guosan who had “gone out to sea and joined the rebels (*touzei* 投賊).” I previously submitted this matter to the Board of War and received back the edict: vigorously apprehend them and place their family members under arrest. Again and again I have sent soldiers to apprehend them without success. Luqi’s wife, surnamed Hu, hung herself and is dead. His son, Sunshi followed him to sea and joined the theives. Soldier Guosan’s dependents went with him. The three other soldiers involved are all from outside of the province (*waishengren* 外省人), and since they joined the military as single bachelors (*danshen* 單身), they have no dependents that we can reach. I have ordered the community (*li* 里) and battalion (*ying*) officials to provide testimony, and nothing is being hidden. There is only Tong Yutai from Xinghua who was temporarily living with Luqi’s family, taking care of the horses. He can’t be compared to family members and should be released, but I do not dare release him without an edict which I am now requesting. Memorial (tiben) from Fujian Governor-General Li Shuaitai 李率泰, dated (KX 25/1/2), 清代台灣檔案史料全編 (學苑出版社, 1999), 569-60. <http://archive.ihp.sinica.edu.tw/ttscgi/ttsquery?0:16510812:mctauac:TM%3D%A7%F5%B2v%AE%F5>

IV. The Revolt of the Three Feudatories and Dynastic Insecurity

As discussed in the last chapter, the Revolt of the Three Feudatories (1673-81) was the existential event of the early Qing. During this dangerous period, the Kangxi emperor's express policy tilted heavily towards the strategic response. In January 1674 (KX 12/12), the emperor appointed Bordered Red Manchu Bannerman and Xi'an Manchu General Waerka (d. 1673) commander and authorized him to assemble a detachment from the Xi'an banner garrison to enter Sichuan, wait until a larger Qing force was ready to enter Sichuan, and then to take advantage of targets of opportunity in the fight against Wu Sangui.⁴¹ A couple months later, in March 1674 (KX 13/1), the Kangxi emperor issued an edict to Waerka and Assistant Banner Commander Fonile granting them both a significant degree of autonomy – convenience of action – but within the parameters of the strategic response:

You two have much experience in military operations. Everyone knows that you know how to train. I do not have to worry about military operations in the West. But, with our large military force entering Sichuan, whether Green Standard soldiers who have already rebelled, or the so-called “official soldiers” of the rebel Wu (Sangui), if they come to surrender to you, then as appropriate under the circumstances, you should console and accept them. Whether to appoint them as guards, to appoint them to conduct patrols, or to give them jobs around the camp, only you can know the circumstances, you do not have to memorialize requesting an edict in each case. ... As far as the Green Standard troops who already rebelled, you should look for opportunities to beckon and console them, you have the authority to carry out things as you see convenient (*bianyixingzhi* 便宜行之).⁴²

Although the emperor granted General Waerka autonomous authority to respond to desertion cases, the emperor still encouraged him to employ the strategic approach of beckoning and consoling deserters to bring them back into the ranks. On August 12, 1674 (KX 13/7/11), he

⁴¹ QSL-KX, juan 44, 586-1.

⁴² PDSNFL, juan 2, 17v – 18r.

memorialized from Sichuan that some soldiers from *Zongbing* Wang Haizhong's battalion (*zhenbiao*) had deserted and scattered (*taosan* 逃散) because they had not been paid. The fact that failure to pay soldiers was a problem during the Revolt suggests the precarious circumstances of the dynasty during that particular crisis because this issue was not a problem generally during the early and mid-Qing. As discussed in Appendix, failure to pay soldiers had been a significant cause of desertion during the late Ming, but by the eighteenth century almost disappeared as a cause during the eighteenth century.

General Waerka's main concern in the memorial was not establishing deterrence in order to maintain military discipline (the primary concern of militarized adjudication), but rather requesting troops to move against the enemy: "At this time, we have to move against the enemy, but our forces are weak. Please dispatch troops to assist." Confirming the emperor's preference for beckoning/strategic consoling the emperor's edict, couched in deeply Confucian-Mencian language, directed Waerka to "be lenient with their crime (*gukuan qizui* 姑寬其罪) console them and bring them back (*funa* 撫納)."⁴³ It is not that the emperor did not recognize that the soldiers had committed a crime – he even referred to their actions as a "crime" – but rather that pragmatism (the distinctive characteristic of the strategic mode) called for getting the soldiers back in the ranks by any means available. Under these circumstances, the balance between

⁴³ *Pingding Sanni Fanglüe*, juan 8, 6r (KX 13/7/11). 將軍瓦爾喀等奏征四川總兵官王懷忠標兵因餉匱逃散。今欲勦賊兵力單薄。運餽不至。乞發兵救援。上諭。康親王傑書及貝子準達所部驍騎俱令貝勒洞鄂率之以行其大兵或仍據壕塹圍守保寧或因糧運艱難暫還廣元令經畧莫洛將軍瓦爾喀等共同商酌王懷忠標下逃兵姑寬其罪。應如何撫納亦令莫洛商酌速行；6v, 丁亥大將軍順承郡王勒爾錦奏官兵敗賊于岳州是月十一日貝勒察尼將軍尼雅翰等分部滿漢官兵水陸齊發進攻岳州偽將軍吳應麒等率賊七萬餘列鹿角牌銃陸路相拒我兵奮擊大敗之斬首萬級舟師抵七里山以礮攻賊沈其船十餘艘己丑大將軍康親王傑書帥師之浙江大將軍貝；see also QSL-KX, juan 48, 635-2 – 636-1.

individual criminal adjudication and increasing the number of soldiers available for battle weighed for the latter.

Even where the emperor did grant militarized-adjudication authority to his campaign commanders during the Revolt, he carefully limited the degree of autonomy according to where the misconduct occurred along the gradient. For instance, in 1675 (KX 14/5), two years into the rebellion, the Kangxi emperor noted in an edict to the Board of War that “there are currently ongoing military operations everywhere in the strategic mountain locations in Shaanxi.” The emperor described a wide middle zone of military operations with multiple floating epicenters. He then granted General Zhang Yong and General Zhongqin, who were leading the military effort in that theater, militarized-adjudication authority over military persons in the rank of colonel and below at those epicenters (on the battlefield) in the case of battlefield retreat/desertion.⁴⁴ Yet, further out from the epicenter in dealing with logistical support, for civilian officials of the rank of circuit intendant and below who were remiss in “providing critical logistical support in a timely manner,” the emperor directed that the generals were still to “coordinate with the governor and memorialize the throne based on the true facts.”⁴⁵ This latter approach was more consistent with the routine criminal track than with a high level of autonomous militarized adjudication.

Still, the strategic mode held sway throughout most of the Revolt. On January 1676 (KX 14/12), in response to a memorial from Governor-General Hazhan and Sichuan Governor

⁴⁴ “*you linzhen tuisuo* 有臨陣退縮.” QSL-KX, juan 55, 714-2.

⁴⁵ QSL-KX, juan 55, 714-2.

Kang'ai notifying the emperor that Green Standard forces had been routed, the emperor directed them to be lenient on deserters, using deeply Confucian-Mencian strategic-track language:

According to your memorial regarding the Wang Fuchen soldier uprising and the *biao-level* Green Standard *route*, as to the Shaanxi soldiers, I think that for those who have been in the ranks for a long time, they have labored in their defensive postures. As for the new recruits, they have been deployed to go off to combat in far off places. I greatly worry. If something unexpected happened, it is not without reason. When something inevitable happens, one should not treat it as a crime. I would like you officials to carry out my intent, and *offer amnesty and opportunities to return to the military*. Those who are willing to return to camp can re-enter into the ranks; those who are willing to become farmers, can be so be placed. Their *past crime (of desertion) will be forgotten*. As for the fathers, mothers, and wives of these officers and soldiers, those who live in their original domiciles, explain to them that they are pardoned and will not be considered to be involved in their crime. I remember that they are all my subjects, and especially promulgate my pardon, so they may renew themselves, and not continue in confusion and bring trouble on themselves. Go make known far and wide, my intent to soothe and solicit the people.⁴⁶

This Confucian-Mencian language (despite the implied threat towards the end) cannot be separated from the precarious circumstances of the dynasty at the time. Such consoling language – recognizing the structural and individual causes for desertion related to the hardships of long-term military operations – in the aftermath of a military rout would be utterly inconceivable under the Qianlong emperor only a few years later.

This strategic mode of dealing with deserters continued through the end of the Rebellion. On June 9, 1680 (KX 19/5/13), the troops under Manchu General Lai-da fell victim to a rumor seeded by the enemy that the enemy had eight thousand feudatory troops ready to oppose them.

⁴⁶ QSL-KX, juan 52, 677-2 - ○諭陝西總督哈占、巡撫杭愛、據爾等奏稱王輔臣兵變、致經 標下綠旗兵丁驚潰等語。朕思秦省兵士、舊在行伍者、戍守著勞、新行召募者、驟經調遣、今俱隨征遠出、深軫朕懷、事出意外、必非無因、 - 678-1 - 念其變起倉卒、情非得已、未忍加罪、爾等即宣諭朕意、速行招撫。願歸營者、隨便入伍、願歸農者、加意安插、前罪一 不究。其官兵人等父母妻子、見在原籍者、俱行宥釋、並不株連。念伊等皆朕赤子、特布寬典、予以自新、勿得執迷不悟、自貽伊戚。爾等即廣行曉諭、以副朕撫綏招徠之意。

“When soldiers in the two Qing battalions (*ying*) heard that they were up against so many rebel troops, they were filled with fear.” On the evening in question, “following the striking of the drum, the soldiers packed up their camp and fled.” General Lai-da, Shilang Yi-chang-a, Governor-general Jin Guangzu, Governor Jin Hui, Banner Commander Wang Guodong “all worked on a plan to console the deserters and have them brought to Guangxi Province.”⁴⁷

Six months later, in December 1680 (KX 19/11), Plain Yellow Manchu Banner Commander and Pacifying Afar General Duke Tuhai memorialized that the deserters who had fled and scattered at Luzhou still did not dare to return to their units (*ying*). This is the same Tuhai who, as Board of Punishments president a few years earlier, had requested amnesty for the Chenzhou deserters who had not been paid for twenty months. The situation now appeared dire. Recently, Yongning had been lost to the enemy and an important road was blocked. Duke Tuhai believed that “if the deserters were not speedily beckoned back and consoled (*ruo bu suxing shoufu* 若不速行收撫) they might join the rebel camp or create great chaos.” He requested that the emperor order the deserters consoled and beckoned back to their units (*ying*) and even given back rations.⁴⁸ The emperor responded immediately with an edict granting Duke Tuhai’s request:

I have recently ordered Zongdu Hazhan and the others to rally all the deserters. General Duke Tu-hai memorialized that the Green Standard *deserters* who fled at Luzhou do not

⁴⁷ QSL-KX, juan 52, 6-2 – 7-2. 命將軍賴塔等安撫平南王下兵時賊流言欲分調平南王所部兵往雲南史部/紀事本末類/平定三逆方略/卷五十二各營於是藩兵八千人。聞之盡恐。五月十三日夜遂鼓譟拔營遁歸。巡撫金備以聞上命將軍賴塔, 侍郎宜昌阿, 總督金光祖, 巡撫金備, 都統王國棟等設策安撫逃兵發赴廣西。壬午命大將軍康親王傑書率兵還京師。先是令傑書等議奏旋師事宜。至是傑書奏今 PAGE 7V 當需餉之時。在閩大兵理宜全撤。但福建投誠之人甚多。金門廈門諸處新經恢復人心。未定宜。留大兵一千二百人駐守福州。六百人駐守泉州。一千二百人駐守漳州。餘兵臣與叅贊副都統銜禪布先率入京。至於沿海綠旗官兵設防之外。孰宜先撤孰宜鎮守應。令尚書介山侍郎吳努春溫岱等。會同總督, 巡撫, 提督, 議覆上報可。

⁴⁸ A few months later in Kangxi 19/11, QSL-KX, juan 93, 1176-2. 丙寅。撫遠大將軍都統大學士公圖海疏言、瀘州逃散綠旗官兵、不敢還營。近永寧失陷、建昌路阻、若不速行收撫、將來或投入賊營、或相聚為亂、其害匪細。宜招撫還營、仍給糧補伍。得上 日、著總督哈占、將軍王進、速招逃兵入伍、俾贖罪圖功。

dare to return to their battalion. At this time, Yongning has been lost and the road to Jianchang has been blocked. If we do not quickly console and beckon back the deserters, they will soon join the enemy camp or cause trouble. In order to bring these soldiers to bear against the rebels, it is appropriate to console them and bring them back to camp. They can even be given make-up rations. General Tuhai memorialized back that it is appropriate. Now, Governor-General Ha-zhan and General Wang Jinbao are quickly calling back the deserters into the ranks and giving them the opportunity to redeem their crimes through military merit.⁴⁹

After the Qing successfully put down the Revolt of the Three Feudatories, the Kangxi emperor seems to have abandoned the strategic approach to desertion cases. In many ways, the precarious position of the government during that Revolt resembled the government at the time of the initial Ming-Qing transition, also a time when the government was quick to treat surrendering Ming officials well if they submitted to the Qing. The end of the Revolt marked two turning points. First, it marked the definitive end of the inner-empire's frontier-like status. Second, the security of the dynasty increased dramatically after this point. Henceforth until the nineteenth century, the dynasty's many wars were wars of expansion, consolidation, or simple folly, but they were no longer matters of survival.

⁴⁹ QSL-KX, juan 55, 7-1 – 7-2. 命四川漢中諸將。乘機剿賊。上諭。議政王等曰四川逆賊猖獗。皆由諸將畏怯。瞻顧不竭力剿禦。所致今大將軍貝子彰泰等。擊敗賊渠吳世璠。恢復鎮遠平越貴陽。諸府四川漢中將軍大臣宜乘此機會併力進剿。毋得仍前觀望坐失事機。丙寅命總督哈占等招集逃兵。大將軍公圖海奏瀘州逃散綠旗官兵不敢還營。今永寧失陷建昌路阻。若不速行收撫。將來或投入賊營。或相聚為亂。其害匪細宜招撫還營。仍前給糧補伍。上諭大將軍公圖海所奏甚善宜。令總督哈占將軍王進寶速招逃兵入伍俾其贖罪圖功。庚午命總督哈占暫駐保寧哈占奏臣於十月二十四日已抵保寧一面酌。

V. The Kangxi-Yongzheng Zunghar Wars and Desertion

“Zunghars” refers to the Oirat (Western) Mongol people whose political organization tended towards a “state” sometime between 1635 and 1678.⁵⁰ For the remainder of the Kangxi and Yongzheng reigns, and during the first part of the Qianlong reign, Qing military activity focused on containing or defeating the Zunghars. For the next sixty years, Qing military operations in the northwest, Qinghai, Tibet, and Sichuan (discussed in Part II) all supported the main effort against the Zunghars. But the Zunghar Wars were never a life or death matter for the Qing. With the assembly of Dolon Nor in 1691 – which marked the definitive submission of the remaining Khalkha Mongols to the Qing – the Qing strategic position was utterly secure.⁵¹ One can debate the value of the Kangxi emperor’s remaining campaigns against Galdan as well as the Yongzheng emperor’s campaigns against Galdan’s successors, but a strong argument can be made that the Zunghars represented no existential threat to the dynasty after 1691.

On January 19, 1696, in preparation for his third campaign against Galdan, the Kangxi emperor issued the following military order (*junling*).⁵²

We must conduct our campaigns according to law. ... From the time of Nurhaci, Hongtaiji, and the Shunzhi emperor to the present, we have always won on the battlefield and overcome every resisting city; our military has been unstoppable. Although our soldiers have repaid the grace of the dynasty with their lives, this is really all because of our dynasty’s military discipline. If one has achieved military merit, he is sure to be rewarded; if one deserves to be punished, he will be punished. It is also because our soldiers are strong and their equipment is all in order.

...

All soldiers must proceed in proper order of march by banner. Do not proceed chaotically in fragments. From back to front, proceed quicker (the back has to walk faster to keep up). From the time you depart the country's pass until the victorious return,

⁵⁰ Perdue, 104.

⁵¹ Perdue, 175-90.

⁵² QHDSL, juan 581, bingbu 40, junzheng 2, junling 1, 531-1 to 532-2; QSL-KX, juan 169, 836-1 to 837-1.

each one must obey these rules. Violators will be whipped and reprimanded to deter others. Once on the road, *do not depart* from your unit. Do not drink. Do not riot. Do not call out. Those who do not obey their officers will be immediately apprehended and reprimanded. In every place the army passes through. Do not harass civilians or the Mongolian tribes. If children – boys or girls – are violated, horses or livestock are looted, fields are trampled on, *anyone leaves the main body (camp) without permission*, anything is stolen from a farm or valley, then the responsible soldier or his servant will be punished severely. Also, the officials of the soldiers or the servants' masters will also be administratively sanctioned.

With the dynasty completely secure, missing from this order is the deeply Confucian-Mencian language that characterized the Kangxi emperor's adjudicative discourse during the Revolt of the Three Feudatories. Instead, military discipline and its catalyst of deterrence through strict application of law were emphasized. Reflecting the shift of the military operations gradient to the north and west, the emperor also articulated a geographical demarcation that spatially distinguished between the proper performance of routine criminal adjudication and militarized adjudication. The evolving physical frontier (*bianjing* 邊境) became conceptually a jurisdictional frontier. By doing this, the emperor compartmentalized the legitimacy of the routine criminal track and militarized adjudication within distinct spheres, preserving both from contamination by the other:

If any soldier deserts (*tao* 逃) inside the frontier (*bianjing yinei* 邊境以內), then he will be adjudicated according to the statute (*yi dingli zhizui* 依定例治罪). If he deserts once the military has passed outside the frontier (*chubian ertao* 出邊而逃), the high official with jurisdiction over him will send soldiers out to vigorously apprehend him and punish him under militarized adjudication. If those appointed to apprehend him do not apprehend him, they will be punished harshly.⁵³

Most *Jasak*-Banner desertion cases from this period that can be found in the central government archives today were cases of group desertion. The typical scenario was that an

⁵³ QHDSL, juan 581, bingbu 40, chuzheng 2, junling 1, 531-1 to 532-2.

indigenous leader (e.g., *jasak*, prince, or banner administrator) leading some group of Mongols as part of a joint Qing force – joint meaning more than just one military component – would simply desert from the larger Qing force, leading the *Jasak*-Banner soldiers under his command back to their pastures.

Peter Perdue has described the Qing campaigns against Galdan's successor Tsewang Rabdan (r. 1697-1727) between 1700 and 1731 as “imperial overreach and Zunghar survival.”⁵⁴ In these campaigns, the Qing made heavy use of the *Jasak* Banners. Capturing somewhat this sense of the relationship between the Qing center and the *Jasak*-Banner troops, in 1715 the Qing organized a joint Green Standard-Eight Banner-*Jasak* Banner force to respond to Tsewang Rabdan's efforts to occupy Hami.⁵⁵ As part of that operation, the Kangxi emperor reminded the Khalkha *Jasak*-Banners of their legal responsibility to come to one another's aid in the event of attack. As per the text of the Mongol Code, he informed them that if Mongol relief troops did not arrive in a timely manner when a neighboring Mongol banner was attacked, then the responsible *jasak* would be adjudicated under militarized adjudication.⁵⁶

Under the Yongzheng emperor, battlefield retreat/flight was still the target of militarized adjudication. At the very beginning of his reign, he set forth forty campaign orders, specifically

⁵⁴ Perdue, 209.

⁵⁵ ZGLDZZNB, 435. During this time, there was also an increase in agricultural colonies, which also suffered from desertion. Re: Agricultural colonies, In YZ 11/12/04, the Grand Secretary Responsible for Military Pay and Military Agricultural Colonies, Fude 傅德, memorialized that Agricultural Military Colony Deserter He Chongming had been apprehended at Xuanhua 宣化 and that eighty others had not yet been apprehended. ZPZZ-FHA, 03-0171-0194-015. The next month, he again memorialized that he had turned over the soldier to the “appropriate board” for adjudication and would handle his case according to the board's instructions when received. ZPZZ-FHA, 03-0171-0197-002. Around the same period of time, Assistant Banner Commander Feibiao memorialized that Rehe Deserter Xu Taifu was placed in the cangue and exiled to Altai-Mountain region agricultural military colony. ZPZZ-FHA, 03-0172-0881-007.

⁵⁶ QSL-KX, juan 264, 597-1.

linking the orders to campaign discipline (*junxingzhiji jiliyanming* 軍行之際紀律嚴明).⁵⁷

Battlefield (epicenter) retreat/desertion was near the top of the list, but off-epicenter desertion was nowhere on the list. The rest dealt with various situations that might arise while on campaign, both on or off the battlefield.⁵⁸ The same year, the emperor appointed Sichuan Governor-General Nian Gengyao (1679-1726) as Consoling Afar General and Sichuan Provincial Military Commander Yue Zhongqi (1686-1754) as Grand Minister Military Consultant to lead a joint Eight Banner-Frontier Mongolian- Green Standard force to move against the *Khoshut* leader *Lobzang Danjin*, a descendent of Gushi Khan.⁵⁹ In his edict appointing Nian and Yue, the emperor granted them militarized-adjudication authority: “If official soldiers should retreat on the battlefield with consequences for the operation, you two

⁵⁷ The Yongzheng emperor set forth his logic in issuing these campaign orders: 雍正元年諭。自古用兵之道。首以申明號令爲務。周易曰師出以律。周書曰不愆於六步七步不愆於四伐五伐。乃止齊焉。可知進退步驟之間尺寸。不可違越方。爲節制之師必須平日申明號令。使三軍之士。無不熟知深曉。倘其中或有不遵者則按軍律置之於法。是其獲罪。乃本人之自取。無所歸咎。雖領兵將帥。不能以己意一毫輕重於其間。此大公之道也。我國家武備精強。超越往古從來。軍行之際。紀律嚴明。信賞必罰是 PG 32 R/V 以天戈所指。迅奏膚功。此中外臣民所共知者。今承平日久新進少壯之人。未曾親履戎行則於從前規制未必一一諳練。若不詳細申明宣諭。以致官弁兵丁等。或因陷於不知而遽罹罪譴。朕心實爲不忍。今特令大臣等酌議軍令條約經。朕親加鑒定。凡大端細務莫不備載其中者蓋以軍機關繫至重必使事事合於紀律人人祇奉章程勿犯重罰。而妄冀從輕勿。因事小而不遵成法將來荷天眷佑奏凱言旋。凡我弁兵等數十萬人有大功。而無小過。此則朕心所厚望者也。著即刊刻交與兩路大將軍通行頒布咸使凜遵。欽此。

⁵⁸ Many of these orders that pertained to operations on the battlefield set forth decapitation as the punishment, such as following the drum signals to advance or retreat, unauthorized battlefield retreat, failure to follow orders on the battlefield, improperly transmitting orders or leaking secret orders, making false reports punishable by decapitation. A number of offenses dealt with claiming false military merit. Another mandated decapitation for abusing local civilians along the campaign route. Another mandated decapitation for claiming to have seen demons in dreams and confusing other soldiers. Another severely punished commanders who did not seek medical care for soldiers who become sick along the campaign route. Malingering (faking illness) was punishable by decapitation. A number dealt with misappropriating horses, with punishment for misappropriation on the battlefield being decapitation. Another series punished with decapitation soldiers whose actions caused panic within the camp. Another series dealt with accidentally losing control of fire, punishing such offenses with decapitation when it happened in close proximity to battle. Others punished guards who let authorized persons into the deployed camp; if they let the enemy in, then they were to be decapitated. ZGLDZZNB, 440-41.

⁵⁹ Peter C. Perdue, *China Marches West: the Qing Conquest of Central Eurasia* (Cambridge: Belknap, 2005), 243-47.

consult together about the case; if the person is at the rank of administrator (*guanyuan* 官員) and below then you are authorized to immediately adjudicate the case under militarized adjudication in front of the troops.”⁶⁰ After significant Qing victories, Lobzang Danjin fled north with some followers to the shelter of the Zunghars.

In the ensuing campaigns against the Zunghars, militarized adjudication still closely correlated with the military operations gradient. In 1728 (YZ 7), the emperor authorized militarized-adjudication authority to General Yue Zhongqi for civilian officials of rank four and below, as well as military officials of rank three and below, only in cases of retreating while facing the enemy or harassing military operations.⁶¹ Later that year, the Yongzheng emperor again authorized the same authority to Manchu Bordered Yellow Bannerman General Furdan (1683-1753) for the same ranks of officials.⁶²

On August 7, 1731 (YZ 9/7), Mongol Deputy Jasak-Banner Commander Gemoer left his assigned area of responsibility without authority, with the intent to lead all his troops back to Xining. The Yongzheng emperor punished him administratively by dismissing him from his position and assigning him to duty at a *karun*, a mere administrative punishment. The emperor also commented that Gemoer should have been adjudicated under militarized adjudication.⁶³

The difficulties with *Jasak*-Banner desertions continued across the Yongzheng reign. In April 1729, Bordered Yellow Manchu Bannerman Furdan was appointed Pacifying the Frontier

⁶⁰ QSL-YZ, juan 12, 216-2 to 217-2.

⁶¹ QSL-YZ, juan 80, 58-2.

⁶² QSL-YZ, juan 82, 90-1 to 91-1.

⁶³ QSL-YZ, juan 108, 425-1 to 425-2. In terms of mode of response and the military operations gradient, how is this case to be evaluated? The applicable statute from the Mongolian Code actually spelled out that such cases would be handled under militarized adjudication (Ch: 以軍法從事). MGLL, 320.

General and given command of the Northern Route Army in the Yongzheng emperor's campaign against Tsewang Rabtan's successor, Galdan Tseren.⁶⁴ On July 12, 1731, Furdan set out with a joint force of ten thousand *Jasak*-Banner and Eight Banner soldiers from his headquarters at Khobdo in the hope of definitively defeating the Zunghars, but on July 23, he marched "into a trap."⁶⁵ A small band of Zunghars lured Fudan's force deep into the mountains and then "on July 23 the Zunghars poured out of the mountains and surrounded the Qing army with a full force of 20,000 at Hoton Nor, a small lake 210 kilometers west of Khobdo."⁶⁶ In early August, Furdan memorialized the throne saying that during the ambush, "The Solon, Chaha'er, Guihua, Tomote, Kalaqin soldiers [that were part of his joint force], were completely routed, and took advantage of the chaos to scatter and desert." According to Furdan, "We tried to rally the remaining soldiers, but we were few and finally withdrew, only to be pursued by the enemy, fighting a rear guard operation night and day...."

Furdan believed that the Solon deserters were "spreading rumors" which were causing other military commanders to lose confidence. "On July First, I, Furdan and the other officials reached the outskirts of Khobdo.... Banner Commander Gun Tai and the other officials had memorialized that the whole military situation was lost because they believed the malicious rumors of the Solon deserters [who presumably reached them first]. Today because I predict the enemy are going to attack on both routes from Khobdo, I am currently making defensive

⁶⁴ ECCP, 264.

⁶⁵ ECCP, 264.

⁶⁶ Perdue, 254.

preparations. I will continue to memorialize as the situation develops.”⁶⁷ This incident reflected the significant desertion problems the Qing faced when relying on *Jasak*-Banner forces.

Moreover, after the soldiers scattered and deserted, they continued to spread “rumors” (perhaps true) that the emperor blamed for his commanders’ hesitancy to advance on Khobdo.⁶⁸

In 1730 (YZ 9/7), we see how a singled incident could involve both routine criminal and militarized adjudication responses, in the case where the emperor had limited a commander’s militarized-adjudication authority to adjudicating only officials of a certain rank and below.

Furdan memorialized that he had exercised his militarized-adjudication authority by executing (*zhengfa*) Solon *lingcui* (sub-company level administrative position) Lise and Bende’ertu for

⁶⁷ QSL-YZ, juan 108, 430-2. 靖邊大將軍傅爾丹摺奏。臣等於六月初九日進兵。十七日擒獲賊夷已陸續奏聞。二十日。遇賊二萬餘人連日交戰。殺賊數千。因賊夷踞山拒險。難以仰攻。移營和通腦兒地方。誘賊邀擊。賊人益兵尾追。圍困軍營。索倫、察哈爾、歸化城、土默特、喀喇沁兵丁。俱乘機潰散逃遁。臣等整齊殘兵。且戰且走。賊人追擊。晝夜力戰。臣傅爾丹等。渡哈爾哈納河。於七月初一日。已至科布多修城地方。前因索倫等處逃兵。妄造訛言。都統袞泰等。以全軍失利奏聞。今因賊人有從科布多河兩路來犯之信。臣現在辦理防守之事。其每日交戰情形。陣亡大臣官員。查明續奏。得上 日、前據北路都統袞泰等奏報。大將軍傅爾丹等領兵進剿。為賊所困。全軍失利。彼時已傳諭西路大將軍岳鍾琪、令其加意防守。今據傅爾丹奏稱、官兵為賊誘敗。臣於七月初一日。帶領兵馬。回至科布多軍營等語。是從前北路逃軍所報。竟屬子虛。不過兵馬有傷損之處。大將軍等原無恙也。可即傳諭岳鍾琪知之。總之目前進兵之議。且不必言。而防守之策。倍當加意。著大將軍等、照近日諭上 日、謹慎辦理。

⁶⁸ Bordered Yellow Manchu Banner Commander Marquis Chen Tai had been appointed General Furdan’s imperial military councilor leading forces that were responsible for entering Khobdo. On March 14, 1732 (YZ 10/2), the emperor issued the following order:

When Furdan has been leading the troops in combat, Chen Tai was trusted with two thousand soldiers. Yet, he remains bivouacked on the bank of the Khobdo River, ever-preparing to attack the enemy. And now, the moment Chen Tai heard the malicious rumors being spread by the Solon deserters, he became afraid to lead the troops and is withdrawing. Even with all of Furdan’s urging, Chen Tai just pushes off his responsibility. He has yet to advance into Khobdo. This is extremely undisciplined. In accordance with the law, he should be adjudicated decapitation after the assizes. Dispatch a letter to the deployed camp. Send Chen Tai to the capital. Have him turned over to the Board of Punishments. His crime is unpardonable. Have them draft the punishment as immediate decapitation. Then have him restrained in the military camp. When the Autumn Assizes arrives, if his case is verified/death penalty confirmed, then memorialize, wait for my edict and then have him executed.

QSL-YZ, juan 115, 534-2. 丙午。大學士等議奏。陳泰世受國恩。身為 贊。傅爾丹統兵進巢 刀之時。特授伊兵二千。令在科布多河岸駐劄。以備敵兵。乃陳泰一聞索倫逃兵訛言。即畏懦領兵回向扎布韓地方。後經傅爾丹屢次催調。陳泰惟事推諉。又不即赴科布多。殊干法紀。應照律擬斬秋後處決。行文軍營。令將陳泰解送來京。交刑部監候。得上 日、陳泰之罪。斷無可赦。著照擬處斬。即在軍營監禁。至秋審時。擬為情實具奏。俟命下之日。再行正法。

having conspired to retreat on the battlefield. At the same time, he memorialized to “the board” the cases of company commanders and other officials who had either retreated in battle or committed some other battle-related offense because officials of those ranks were beyond the emperor’s grant of militarized-adjudication jurisdiction.⁶⁹ Thus out of one epicenter desertion case, we see two modes of response depending on the rank of the soldier and the particular limitations on the grant of militarized-adjudication authority. This also explains why some cases may be in the central government archives and others not.

In a similar limitation of militarized-adjudication authority the next year, in September 1731 (YZ 9/8), the emperor appointed Manchu Plain Red Bannerman Ma’ersai (-1734) as the Consoling Afar General to lead a military force against the Zunghar leader Galdan Tsering (d. 1745). He granted Ma’ersai militarized-adjudication authority to adjudicate cases of civilian officials in the rank of four and below as well as military officials in the rank of three and below who retreated in the face of battle causing harm to military operations.⁷⁰ In December 1731, he granted similar authority to Plain Red Manchu Bannerman Pacifying the Frontier General Prince Siboo (1688-1742), again singling out those who retreated in the face of battle.⁷¹ As the war against Galdan Tsering proceeded, in 1732 (YZ 10), the emperor replaced Yue Zhongqi with Ningyuan Manchu Bordered White Bannerman General Jalangga (d. 1747), and granted Jalangga the same militarized-adjudication authority previously granted to Yue.⁷²

⁶⁹ QSL-YZ, juan 108, 439-2 to 440-1.

⁷⁰ QSL-YZ, juan 109, 454-1 to 455-1.

⁷¹ QSL-YZ, juan 112, 497-1 to 498-1. A year late in August 1733, the emperor replaced General Siboo with General Fupeng, granting Fufeng the same level of militarized adjudication. QSL-YZ, juan 133, 717-1 to 718-1.

⁷² QSL-YZ, juan 121, 597-2—598-2. ECCP, 395-96.

Because the emperor himself was at the apex of the military-judicial-political hierarchy, he was not bound by the strict parameters of the different modes, although as the examples show, he generally operated within them. In April 1732 (YZ 10/3), the emperor considered a case of Khalkha Commander Prince Minzhuerduerji that had been forwarded to him by the *Lifanyuan*. From the Veritable Records entry, it appears that the *Lifanyuan* had drafted a death sentence for retreating during time of war (*junqian tuisuo* 軍前退縮). The emperor noted, however, that Prince Minzhuerduerji was really sick at the time. Given that the prince's ancestor has been one of the first Khalkhas to submit to the Kangxi emperor, the Yongzheng emperor appointed a different *jasak*-administrator to command the prince's banner until the prince recovered and otherwise pardoned his crimes.⁷³ The same day, the emperor considered another case from the *Lifanyuan* of *Jasak*-Administrator Emubuji who had left his assigned military area of responsibility without authority, a crime the emperor referred to as “a crime for which it is difficult to be lenient (*zui gu nankuan* 罪固難寬).” Still because the *jasak*-administrator had gotten cut off by the enemy, was unable to communicate, and only then returned to his pastures (*huigui youmu* 回歸遊牧), the emperor “excused his crime.”⁷⁴

The theme that begins to emerge from these *Jasak*-Banner cases is that as a military component, these forces were not reliable.

On December 1, 1732 (YZ 10/10/14), the emperor ordered the Grand Council:

According to General Da'erqi memorial, he deployed three thousand Ordos [*Jasak*-Banner] soldiers. The Ordos soldiers originally designated were supposed to be strong and energetic men (*jingzhuang* 精壯). But Vice Banner Administrator Cewang-Duoerqi,

⁷³ QSL-YZ, juan 116, 548-1.

⁷⁴ QSL-YZ, juan 116, 548-1.

along with Beile Tashi Lobdan (Ch: *Daxilabutan* 達西喇卜坦) and Beile Nuirobjamsu (Ch: *Nuoyiluobuchamusu* 諾依羅卜查木蘇), switched the soldiers [to inferior men] without authority. Out of the three thousand, more than five hundred were in no shape to deploy, and more than four hundred others *deserted*.

I have not stinted in spending tens of millions of *taels* from the imperial treasury, garrisoning the far frontier, all because I desired to protect the ancient lands of the Khalkha Mogols. The Khalkhas should exert themselves to kill the enemy. But instead, they switched the soldiers without authorization and wantonly deserted. *Jasaks* have never before done anything like this!

I have dispatched *Lifanyuan* Vice Minister Nayantai, to select replacement soldiers to fill the empty ranks, and to punish harshly the officials and soldiers who deserted. Those *who fled first will be executed*. Beile Dasirabtan, Beile Nuirobjamsu, Vice Banner Administrator Cewang-Duoerj, Grand Minister Hu, should all be punished harshly. The five hundred soldiers who were in no shape to deploy will be sent back to their original grazing lands.⁷⁵

Once again in the emperor's order, we see that he was most willing to authorize militarized adjudication in the case of epicenter deserters, especially those who fled the battlefield first. Assuming there was no review of individual cases at the central government level after the emperor's order to execute the deserters who fled first, the process was squarely under militarized adjudication. If the case had been adjudged under the routine criminal process, then under the *battlefield first flight* statute or the desertion statute combined with the leader-follower statute, the deserters who fled the battlefield first would have been sentenced to death after the

⁷⁵ QSL-YZ, juan 124, 634-2 to 635-2. The emperor continued by outlining how, in contrast to the quoted language on harsh punishment, also graciously bestowed imperial favor when officials performed well: This year, 八月, Deputy General Wangdanjin-Duoerji, Imperial Son-in-Law Celing, and the others, led a great military victory over the enemy at Erdenizhao. I bestowed on all the Khalkha Banner Prince Administrators the honorific "*batulu* (courageous) [Mo.: baatar]" I am preparing to bestow additional honorable ranks on them and have bestowed the imperial grace on their sons and grandsons. I have also distributed two million tael from the imperial treasure to the soldiers and given them plaques for their military merit. Last year when the Jasak Tuhun Tribe of the Khalkhas on the Western Frontier was looted, for those that were injured or died on the battlefield, I bestowed my imperial grace on them. For their banner administrator Ce-le-ke who was killed in battle with the enemy, I raised him to the rank of duke. As far as slaves, servants, and household property, I have bestowed it all on them.

assizes, giving them a real chance at survival. As it was, under the emperor's militarized-adjudication approach, they were likely executed in the field after a summary trial.

In November 1732 (YZ 10/9), referring to Khalkha *Jasak* Tuhan-Cewang-Zhabu and Prince Lama-Zhabu, and the Duke *Jasaks* who “in fear retreated (weiju tuisuo 畏懼退縮),” and then all deserted from the battlefield and returned to their home pastures, the Yongzheng emperor ordered Pacifying Afar General Siboo, Derjin, and Dzing to investigate and strictly punish the *Jasak*-Banner administrator who had led the soldiers to desert as well as the soldiers' direct-commander, the deputy banner commander (*fudutong*).⁷⁶ As a result, *Jasak* Tuhan-Cewang-Zhabu was later stripped of his hereditary position, which was given to his younger brother.⁷⁷ Prince Lama-Zhabu ended up worse off. On March 27, 1733 (YZ 11/2), the emperor ordered the *Lifanyuan*:

An order to the *Lifanyuan*. Lama-Zhabu, last year he believed the lies of the enemy, and became afraid, leading his forces to be completely routed in panic. And at Keerlinqi Place, he abandoned the army and *deserted back* to his pasture. I thought there might be some justification for his actions. But now that I brought him to the capital and had him questioned, he had no words in his defense. He is just a shameless coward. Therefore, I am stripping him of his *Jasak*-Hosoi Prince title and bestowing his title on his little brother to be inherited perpetually. I am also stripping the banner of one company and rewarding it to Imperial Son-in-Law Celing. I sent the case of Lama-Zhabu to the appropriate yamen for adjudication. Their recommendation was that since Lama-Zhabu was a Prince of the Khalkhas and a League Captain who did not properly teach his subordinates, he should be executed according to the law. I agree that he should be adjudicated according to the law. But, his ancestor Prince Shan-ba, before the time the Khalkhas all submitted, came over to our side and really contributed significant military

⁷⁶ QSL-YZ, juan 123, 616-1 – 673-1. 又諭。喀爾喀扎薩克圖汗策旺扎布、親王喇嘛扎卜、公扎薩克等。畏懼退縮。俱由陣前逃回遊牧。目今行兵之際。軍法豈可姑容。著行文順承親王、丹津多爾濟、額駙策凌。將陣前逃回之汗王以下台吉、暨領兵之副都統等。查明嚴加治罪。See also 中國珍稀法律典籍集成，丙編，第二冊，蒙古律例，310. This provision provides for punishment of the named positions in the event that they were ordered to produce troops for battle and did not.

⁷⁷ QSL-YZ, juan 123, 621-2 – 喀爾喀扎薩克圖汗副將軍策旺扎布、緣事革爵。以其族弟多羅郡王格勒克顏木聘爾、襲替。

effort on our behalf. That is why the Kangxi Emperor was so gracious to Lama-Zhabu. In consideration of this, I am remitting his death sentence and sentencing him to long-term confinement in the capital.⁷⁸

In what appears to be the same matter, Siboo also sent back a Manchu-language memorial the same month notifying the emperor that battlefield deserters – rank-and-file soldiers – who willingly returned to the deployed camp (*coohai kūwaran*) were being permitted to redeem themselves.⁷⁹ This was consistent with the self-surrender provision of the routine desertion statute.

In January 23, 1733 (YZ 10/12/8), within the context of an imperial edict, the emperor noted the unreliability of Khalkha Cecen *Jasak* forces. Three thousand Cecens had been deployed, but at the battle of Erdeni-Zhaodi, only twelve-hundred showed up. The other eighteen hundred had deserted (*taohui* 逃回).⁸⁰ On January 20, 1733 (YZ 10/12/05), Bordered Yellow Manchu Bannerman and Chamberlain of the Imperial Bodyguard Fengsheng's memorialized recommending that Cecen deserters who had fled from the deployed camp (FOB) should be thoroughly tried and punished.⁸¹ I do not know if this recommendation was accepted.

In another example, militarized adjudication was worked out directly in a particular case between the emperor and a campaign commander. The next month, General Darji memorialized regarding four hundred deserters from the Ordos who had fled from a group of three thousand

⁷⁸ QSL-YZ, juan 128, 673-1. 諭理藩院。喇嘛扎卜、前年一聞賊信。即駭然驚潰。及戰於克爾森齊老地方。棄軍奔往遊牧處所。朕恐此中別有情節。令其來京訊問。伊竟無一語置對。甚屬怯懦無恥。著革去扎薩克和碩親王。令伊弟德親扎布承襲。撤回一佐領。賞給額駙策凌。喇嘛扎卜、著交該衙門議處。尋議、喇嘛扎卜、係喀爾喀部落親王盟長。不思訓導屬人。力軍事。應按律正法。得上 日、喇嘛扎卜、理應照議治罪。但伊祖親王善巴、於喀爾喀等未定之先。即輸誠歸順。後於軍事甚屬 力。是以 聖祖仁皇帝加恩於喇嘛扎卜、備極愛養。著從寬免死。在京永遠監禁。

⁷⁹ ZOZZ-FHA, 03-0173-1135-009, 061012005. 錫保, 奏聞臨陣脫逃之兵丁治罪並有情願歸軍仍送軍營效力折

⁸⁰ QSL-YZ, juan 126, 652-2 – 653-1.

⁸¹ ZPZZ-FHA, 03-0173-1134-004.

(almost one sixth). In this case, consistent with the *battlefield first flight* statute, the emperor again ordered that the soldiers who *deserted first* should be immediately executed. My guess here is that once Darji received the order, he proceeded to directly execute the soldiers (assuming their guilt was established at what was probably a fairly summary trial). Again, contrast this militarized-adjudication outcome with the routine criminal process which would have required lengthy trials and retrial-review culminating, at the most extreme, in a sentence of execution *after the assizes*, giving the accused a real chance to live.

As Qing military and administrative control increased over Mongol territory, new Qing garrisons proliferated, making long-term frontier garrison duty a permanent aspect of the Qing military after this period. These garrisons were unlike the permanent Manchu garrisons in the *neidi* that were quickly becoming non-combat assignments. The garrisons on the frontier were perpetually situated within the inner zones of the military operations gradient. These frontier garrisons were either directly participating in or providing support for active military operations for an extended period of time.

Guihua, today's Hohot City, was during the early phases of the Qing's incorporation of Mongolia an important administrative center. In 1731, the Qing was trying to populate the garrison with a permanent enduring force, but was encountering serious desertion from the Chinese banner forces and their family members sent there. In response, the Yongzheng emperor authorized an extremely autonomous degree of militarized-adjudication authority, the authority to execute Chinese Banner soldiers (or their family members) who deserted from the Guihua Banner Garrison, basically on the spot:

December 3, 1731 (YZ 9/11/甲子). An edict. I have heard that out of the four thousand Chinese Banner troops who were transferred from Beijing to Guihua City, there were many horses and camels that were injured. And when they got to Guihua, they sold their clothes, and expended significant military funds. It is really unbearable. It is embarrassing and cowardly. Send an order [usually contained in a court letter] to Maersai ordering that all the high level officials who led the troops on this transfer, they must exercise better command. If the soldiers act like this or desert again, Ma'ersai will immediately apprehend them, and punish the ones who should be punished and execute the ones who should be executed. Also, send an order to Chenghua Banner Garrison Commander Danjin and to the surrounding *zongbings*. If a soldier's family member deserts back to the capital, apprehend him, send up a memorial notifying me, and immediately execute him. If any officials do not exercise strict supervision, they will be punished severely. Make this matter known to all the high officials and rank-and-file soldiers.⁸²

Previously, the only place we saw such autonomous grants of militarized-adjudication authority was at the epicenter of military operations, primarily in battlefield retreat/desertion cases. This case, towards the end of the Yongzheng reign, seems to be the recognition that there was now less and less distinction between campaign and desertion from anywhere within the Mongolian frontier. It was recognition that the frontier garrisons were, in a sense, located within a perpetual campaign. Moreover, it signaled perhaps a conflation of that perpetual campaign with the epicenter of the gradient, the battlefield. This was a true militarization of the law.

The above cases suggest that desertion within the *Jasak* Banners was a significant issue. Also during the period leading up to the mid-Yongzheng reign, the sources provide no significant evidence that desertion was a problem in the other two military components. One could conclude from this that changes to desertion law at this time were at least partially motivated by

⁸² QSL-YZ, juan 112, 489-1. 又諭。朕聞漢軍兵四千名。自京至歸化城。傷損馬駝甚多。及至歸化城。變賣衣物。任意費用。甚屬不堪。且路途尚近。即如此窘迫。亦甚屬懦弱。著行文馬爾賽、此次領兵大臣等、若不加意統攝。致兵丁仍蹈故轍。或有逃回者。馬爾賽即行拘拏。應懲治者懲治。應正法者正法。再行文歸化城都統丹晉、右□、大同、宣化等處總兵官。凡兵丁家人內有逃回者。拏獲奏聞。即行正法。其不加約束之大臣官員、從重治罪。馬爾賽將此曉諭大臣官員兵丁知之。此兵到扎克拜達里克地方。馬爾賽加意操演。嚴行約束○以浙江衢州副將葉應龍、署江南崇明總兵官。

what was happening among the *Jasak* Banners. In fact, the most significant modification of the Ming-Qing normative criminal framework for adjudicating desertion cases occurred right in the midst of these *Jasak*-Banner desertions. Most of the cases discussed in this section involved high level *Jasak*-Banner leaders. The Mongol Code contained no statute criminalizing individual-soldier desertion. In nearly all of the cases in which rank-and-file deserters were cited, the emperor ordered that those who fled first be executed under militarized adjudication, despite the existence of the routine battlefield first flight statute that would have required Autumn Assizes review. Still, what about all of the rank-and-file deserters who fled, but did not flee first? Certainly, such individual rank-and-file cases were adjudicated, but those cases did not make it into the central government archives prior to the Qianlong era. What was happening to those cases? I believe they were being adjudicated under the routine desertion statute at the local level. If true, they would have been caned forty times each for a first offense and returned to service. The next section provides some justification for this assertion.

On November 18, 1751 (QL 16/10/01), Pacifying the Frontier Fujiang Chenggunzhabu 成衮扎布 memorialized in Manchu that Mongolian soldier Shenketu had deserted to the Zunghars, that he had been apprehended, decapitated and displayed to the masses in accordance with the Mongol Code.⁸³ Contrasting this case with the extensive Lifanyuan-Three Judicial Offices trial of Mongolian deserters Amirtu, Bahan, and Hama, one senses the change that had occurred in legal culture over the intervening fourteen years. It is obvious that the logic of militarized

⁸³ ZPZZ-FHA-MWD, 03-0174-1292-005.

adjudication had already affected at least some desertion cases, even before a specific imperial edict directing that desertion cases would be tried under militarized adjudication.

VI. Routine Adjudication of Individual Deserters by a Secure Dynasty

By all indications, the routine desertion statute continued in force throughout the early Qing.⁸⁴ The extant archival cases adjudicated under it, however, were few before the Qianlong era because under the original language of the statute, first offenses did not mandate the death penalty and therefore were not subject to central government review-retrial or imperial approval. According to the Qing Collected Statutes (Precedents) (1893), a substatute was enacted in 1731 (YZ 10) which abolished both the distinction between first and subsequent desertion offenses and also between campaign and garrison-defense desertion, making all such offenses, including first offenses, subject to the same punishment as a subsequent offense of campaign desertion under the Code.⁸⁵ No longer would such adjudications remain entirely at the level of province and below.

For over three hundred years, both the Ming and the post-conquest Qing had made no significant changes to the published normative framework for criminally adjudicating desertion cases under the routine statute. The strategic mode, militarized adjudication, and carefully

⁸⁴ For instance, the updated Qing Code re-promulgated during the third year of the Yongzheng reign (r. 1722-1735) confirmed that the routine-track desertion statute continued to provide the adjudicative framework for campaign desertion. The official commentary in the Code reflected that the provision was still in effect – it simply restated in a matter of fact fashion the provisions of the desertion statute. This particular version of the Qing Code was different from earlier versions primarily in that it included as an actual authoritative part of the Code what had previously been private legal commentary. Other than the Manchu version of this Code published in 1764, this practice was dropped from subsequent revisions of the Code.

⁸⁵ QHDSL, juan 773, xingbu 5, 489-1. According to the DQLL published in QL 5 (1739), this substatute read “隨征兵丁,自軍前逃回,照官軍從軍征討私逃再犯律,擬絞監後。” Tian Tao 甜濤 and Zheng Qin 鄭秦, eds, *DaQing Lüli* 大清律例 (Beijing: Falü Chubanshe, 1999). See also Wu Tan 吳壇, *DaQing lüli tongkao jiaozhu* 大清律例通考校注, edited by Ma Jianshi 馬建石 (Beijing: Zhongguo Zhengfa Daxue Chubanshe, 1992), 602-03.

articulated boundaries (such as the Mongolian frontier) allowed both dynasties to respond to desertion cases outside of the cumbersome routine-criminal framework, but those devices were strictly-delineated alternatives to the proper performance of criminal adjudication. They did not purport to modify the routine framework. By contrast, collapsing first and subsequent offenses as well as defense and campaign desertion into the same offense was contrary to late imperial legal culture's preference for minutely-graduated punishments and the long tradition of the distinction between the commission of first and subsequent offenses.

I believe this change was driven by the recent experience with mass *Jasak*-Banner deserters combined with the shifting gradient of military operations concurrent with the expansion of imperial space. Given that most of the cases preceding this change involved desertion from the *Jasak* Banners, the change may have been an effort to decrease the incentive to desert by creating a harsher punishment for first offenses. Also by this point, disregarding the distinction between campaign and garrison-defense desertion may have made sense in light of the establishment of long-term defensive garrisons within the Mongolian frontier. Long-term transfer from the inner-empire to one of these frontier garrisons at a time of on-going military operations was becoming very similar to going on campaign. Perhaps the proponents of the YZ10 change simply felt there was no longer good reason to provide a lesser punishment for desertion from a garrison defense. No longer distinguishing between campaigns and garrison was also consistent with both the Kangxi emperor's designation of the Mongol frontier as the determinative line for the mode of response within the campaign armies. It is also possible that the Qing actually intended the collateral consequence of requiring all desertion cases to come to

the central government for retrial-review. This certainly resulted in very exacting oversight of desertion cases – the emperor was supposed to see each one!

We know that at this time, desertion was a topic of political discussion and that the discussion was still rooted in late imperial legal culture. A 1731 (YZ 11/9) memorial from the Grand Council responding to a proposal from Ningyuan Acting Military Governor Jalangga (d. 1747) on prohibiting deserters demonstrates that at this point, the debate on reforming desertion law still reflected the Confucian (opportunity for self-renewal) and legalist (notice and deterrence) influences so prominent in the routine process. The main thrust of the argument, expressed in highly sympathetic language, was that officials had to make the desertion statute better known among the troops (to achieve deterrence):

We are afraid that soldiers are stupid/foolish. They are easily enticed by others, they err and suffer harsh punishment. From now on, those high officials in charge must admonish those officials who directly lead soldiers to make this Code provision known widely among the rank and file.

Further on, the memorial expressed the Confucian influence in legal culture:

Deserters are capable of repenting and turning a new leaf. For those who turn themselves in, whether it is the first offense or a subsequent offense, it can be requested that their crime be excused, if they enter the ranks and deploy to combat. If they send a letter within one month's time, they will be permitted to deploy. Those who turn themselves in will in turn be transported to their battalion (*ying*). Those who surrender after the time limit will have their punishment reduced two degrees, but they will still be permitted to re-enter the ranks. If they desert again, they will be executed.”⁸⁶

There was nothing in Jalangga's recommendation to suggest that this framework for responding to desertion cases should be abandoned altogether.

⁸⁶ These recommendation were approved by the emperor. QSL-YZ, juan 135, 734-1.

After first-offense desertion cases were made subject to the death penalty, individual rank-and-file deserter cases (not merely bootstrapped to cases of officials) began to appear in the archives. On February 26, 1732 (YZ 12/3) the case of Green Standard first-time deserter Liu Tianqi cited the deserter statute expressly.⁸⁷ Liu Tianqi, a native of Dingyuan County, Chuxiong Prefect in Yunnan Province had been recruited as a soldier (*bingding* 兵丁), sent to Beijing, paid an advance (or bonus) of thirty *liang*, and provided with a uniform and a weapon. Five months later, on July 29, 1732, he was deployed to Gansu province and assigned to Ganzhou City as part of the forces garrisoning that city.⁸⁸ Such a garrison-defense assignment was situated within the inner zones, but not epicenter, of the military operations gradient. On October 26, 1732, he deserted the garrison and returned home to Yunnan. Four months later, he was apprehended in his native county in Yunnan.

Liu later admitted that he deserted because he could not endure the cold, a common reason deserters fled. Consistent with the burdensome logistical requirements of the routine criminal-legal system, Liu was transported back to Beijing and tried by the Board of Punishments. Reminiscent of the Kangxi-era rule delineating the frontier as the boundary between routine criminal and militarized adjudication, this case cited what appeared to be a relatively new procedural rule:

If deserters [from the northwest army] are captured in Mongolia, they are to be tried in the deployed camp (*junying* 軍營), but if captured in the interior (*neidi*), they are to be

⁸⁷ XKTb-FHA, 02-01-02-2494-004. 刑部奏准嗣後軍前逃兵如在蒙古地方拿獲者由步站解送軍營從重治罪如在內地拿獲者解[兵]部轉送刑部從重治罪.

⁸⁸ We know that thirty years later, the Ganzhou City Garrison consisted of one first captain, one lieutenant, and one sublieutenant as well as five hundred soldiers and that it was part of the Ganzhou territorial defense region under the Ganzhou *zongbing*. Luo, 186.

brought to Beijing and turned over to the Board of War which will then turn them over to the Board of Punishments.⁸⁹

This rule again showed that time delay between desertion and apprehension – the posture of the case at the time of first memorialization – was significantly related to the mode of response. Unlike the earlier Kangxi-era rule, this rule did not focus on where the desertion occurred, but where the deserter was apprehended. Like the earlier Kangxi rule, though, it distinguished between militarized adjudication and the routine criminal track, holding each out as legitimate within its own strict geographic boundary. If we think of the two rules in terms of the military operations gradient, the Kangxi-era rule focused on the proximity of the desertion to the location of military operations (outside the frontier) whereas this later rule left the campaign commander in no doubt: no militarized-adjudication authority to adjudicate deserters in the inner-empire. The distinction between inner and outer empire referenced in the Yongzheng-era “secret cases” seemed to follow the same logic. From this rule, we can cautiously assume that there may have been other deserters from the northwest army, who, having been apprehended within the Mongolian territories, were tried according to militarized adjudication.

Consistent with routine retrial-review, the Board of Punishments’s final routine criminal memorial to the emperor was seventy-five folds in length. The Board presented the prior history of the case, its analysis, and its draft sentence expressly in accordance with the statute, calling for strangulation after the Autumn Assizes. Although the emperor approved the sentence, since it

⁸⁹ “刑部奏准嗣後軍前逃兵如在蒙古地方拿獲者由步站解送軍營從重治罪如在內地拿獲者解[兵]部轉送刑部從重治罪。”

was *after the assizes*, there is some chance that Liu was never actually executed.⁹⁰ By the mid-Qianlong case, this would have been a case of a summary provincial-level trial and execution with no imperial review.⁹¹

In another individual rank-and-file deserter case from the post-1732 archives, on February 13, 1735, Yuan Liang, a native of Yizhou, Zhili, joined the Green Standard and was assigned to a local battalion (*ying*). At some point, he was deployed on campaign in the northwest. He fled on January 12, 1733 because “he became sick and could not endure the cold.” While he was on the run, he ploughed fields, begged for food, worked for a cousin (whom he insisted knew nothing of his deserter status), and sold *toufu*. He eventually made his way back to Yizhou and was apprehended on April 30, 1735, three years and four months after leaving his deployed unit. His case was tried by the Zhili provincial judge and the governor-general. The governor-general forwarded the case to the Board of War which then transferred the case to the Board of Punishments on September 24, 1735.⁹² The Board of Punishments, as part of the Three Judicial Offices, retried the case and drafted a criminal memorial twenty folds in length. The Board of Punishments cited the rule referenced in the last case for soldiers who deserted from Northwest Route Army.⁹³ The Board of Punishments also applied the desertion statute, invoking the provisions for a soldier on campaign who committed a second or subsequent offense (even

⁹⁰ “劉天奇依擬應絞著監後處決餘議。”

⁹¹ By 1774 (QL 34), a representative similar case – except that it noted the execution of not one but seven campaign deserters – entailed no central government review, immediate execution, and was documented in a secret memorial (*zhupi zouzhe*) only seven folds in length. ZPZZ-NPM, 403027684.

⁹² XKTb-FHA, 02-01-07-04291-002 / 02-01-07-207-003-1460.

⁹³ “From now on, deserters assigned to the deployed camps (*junying*) in the northwestern campaign theater, whether or not it is their first or subsequent offense, in any case, shall be escorted to the Board of War which will then transfer the accused to the Board of Punishments to draft a sentence of strangulation after the assizes. According to that statute, 嗣後西北路軍營逃兵不論次犯再犯俱解部轉送刑部擬絞監候.

though it was Yuan's first offense).⁹⁴ The Board of Punishments drafted a sentence of strangulation after the assizes which it forwarded to the emperor on April 8, 1736 (QL 1/2/28).

However well the modified routine framework may have suited the realities of expanding imperial space, the lack of distinction and nuance in a routine criminal statute did not sit well with officials steeped in late imperial legal culture. In September 1736, Chinese Banner-Inspector Censor of the Shandong Circuit Mabing memorialized requesting to "correct" the 1732 (YZ 10) substatute requiring that all deserters be tried under the provisions for second-offense campaign deserters. He argued that the 1732 rule should have been a temporary measure implemented only to get the military into shape (which supports my hypothesis that the change was made with the *Jasak* Banners in mind) and that it was no longer necessary. Like Jalangga above, Mabing referred to the crime of desertion as pitiable, expressing a level of sympathy which completely disappeared from the adjudicative discourse as the eighteenth century proceeded and officials began to imitate more and more the Qianlong emperor's disgust for deserters. It seems that Mabing intuitively did not think it was right to try deserters without carefully distinguishing between factual circumstances and degrees of punishment:

Vice Director for the Shandong Circuit (Chinese Banner) Investigating Censor Mabing memorializes to request that the substatute under the desertion statute be rectified (*gaizheng* 改正). The text of the desertion statute distinguishes between soldiers on campaign or from a defensive-garrison position as well as first and subsequent offenses in the following way: in the case of a soldier who deserts from campaign, for a first offense, he will be caned one hundred times [automatically reduced to forty during the Qing] and sent back to the campaign; and for a second offense will be strangled after the assizes. For a soldier who deserts from a garrison-defense position, for a first offense, he will be caned eighty times [reduced to thirty-five] and placed back within a military unit;

⁹⁴ “派往軍前____軍兵丁逃回者照官軍從軍征討私逃再犯律擬絞監候秋候處決。”

for a second offense, he will be caned one hundred times and exiled to the distant frontier; and for a third offense, he will be strangled after the assizes.

But since [the 1732 (YZ10) substatute was implemented], whether a first offense or a subsequent offense, all are punished under the provisions of a second offense for one who fled a campaign, strangulation after the assizes.

Although the emperor has graciously granted amnesty upon amnesty, these have excepted-out military matters. But, *desertion is a really pitiable offense*. As this ignorant official sees it, although it may have been necessary to implement a harsh substatute at the beginning of military operations, this harsh posture cannot be retained forever.

At this time, military operations are nearly complete. Those deserters already convicted (and undergoing the assizes process) should have their convictions corrected to reflect trial according to the desertion statute (not the substatute) in accordance with the imperial grace; and *I request that your highness order the three judicial offices (fasi 法司) that for now on, desertion cases will, according to the desertion statute, be distinguished as to whether the deserter fled campaign or garrison defense and whether it was a first or subsequent offense so that they will be punished according to the right crime and the harshness or lightness of the punishment will be suited to the crime.*

It does not appear that this recommendation was followed. Soon after, on May 3, 1737 (QL 2/4), Vice Minister of the Court of Imperial Sacrifices Tangsuizu (1686-1754) also memorialized, recommending that the main desertion statute be considered for revision. His basic criticism was also the current lack of nuance under the modified statute (an argument he also made for how slaves and contract servants were being adjudicated):

Currently, soldiers who desert are sentenced according to the provisions of the campaign desertion statute for a second offense, strangulation after the assizes. Their slaves and contract servants who accompany the force on campaign (*gensui nupu gugong* 跟隨奴僕雇工), if they steal horses or military equipment and flee, they are tried according the punishment on stealing the maximum amount (*manguan* 滿貫) under the larceny statute, strangulation after the Autumn Assizes. Reviewing the actual language in the Qing Code, it states that when officers or soldiers desert from campaign, for a first offense, they will be caned one hundred times and then sent on campaign. If they commit a second or subsequent offense, they will be strangled after the assizes.

There is also a substatute that punishes *genyi* who desert with a hundred lashes of the whip. If they are apprehended by bystanders or by officers, they are all confined at the

city gate, to await the return of the deployed army, and at that time, are whipped and tattooed.

He went on to acknowledge the effect of the 1732 statute:

Currently, when soldiers desert, our practice does not distinguish between the first and subsequent offenses; all offenders are tried according to the provisions for a second or subsequent offense contained in the desertion statute, and sentenced to strangulation after the assizes. When horse attendants steal horses or military equipment, the law does not distinguish the amount they have stolen, and instead they are all punished according to the larceny statute on stealing the maximum amount.

He argued that the current imperial configuration actually required nuance in the criminal desertion framework (this is the opposite argument from my hypothesis that collapsing the various nuances into one offense may have better suited frontier garrison and campaign operations):

Moreover, the law on officers and soldiers leaving on their own accord, originally only applied to soldiers who deserted from a place of campaign (*zhengtaochu taohui* 征討處逃回). But now, we have many defensive garrisons along the frontier (*yanbian zhufang* 沿邊駐防); additionally, when soldiers are en route returning from campaign, sometimes they flee. *Yet, we still try them all according to the statute on desertion from campaign.* I feel this is not appropriate. This should be discussed.⁹⁵

This recommendation reflected the increasing pressure put on the criminal-legal framework by the actual context of an expanding empire. The memorial demonstrated an awareness that the

⁹⁵ QSL-QL, juan 40, 710-2 – 715-2. 總一、欽定例、兵丁逃回者、照官軍從軍征討私逃再犯律。絞監候。秋後處。其跟隨之奴僕僱工。偷竊馬匹器械逃回者。照竊盜滿貫律、擬絞監候、秋後處。查律內、官軍從征私逃。初犯者杖一百、仍發出征。再犯者絞監候。又定例內、跟役自出兵處逃回者。鞭一百。如被旁人拏獲。並地方官拏解。均拏送墩門。俟同次出征之兵到日鞭刺。今將兵丁逃回。不分初犯再犯。概照再犯律、擬絞監候。跟役偷竊馬匹器械、不分多寡。亦照竊盜滿貫律擬絞。且官軍私逃本律。原專指征討處逃回。今將沿邊駐防、及由軍前撤回兵丁。遇有逃走。均照征討處逃回問擬。似覺未協。應請酌議。The emperor requested that modifications to the law be considered and that they be memorialized to him for consideration. QSL-QL, juan 40, 713-1. 王大臣議覆、太常寺少卿唐綏祖 (1686-1754) 條奏、臣向在外任。辦理案件。見條例內、有情同而罪異。或法重而情輕者。若不更訂畫一。易滋吏胥出入之弊。而成例遵行既久。未敢輕議更張。今恭逢我皇上慎重刑獄。特命大臣纂修律例。謹抒管見數條。恭備採擇。定議具奏。

increasingly long-term deployments on the frontier, as well as movement to and from the frontier, called for variations in the way desertion cases were handled.

In one of the most interesting archival finds from this period, a Manchu-language *tiben* from the *Lifanyuan* to the emperor the same year, July 4, 1737 (QL 2/6/7), demonstrates that individual deserters from the *Jasak* Banners were adjudicated according to the routine desertion statute as modified by the 1732 (YZ 10) substatute.⁹⁶ In other words, this case provides definitive proof that *Jasak* Banner deserters, at least by 1737, were adjudicated completely within the routine track (routine with the addition of the *Lifanyuan*). In fact, according to Ying Hu, by this time routine adjudication with the *Lifanyuan* acting in concert with the Three Judicial offices was common for death penalty cases arising out of the *Jasak* banners. This case also leads me to believe that prior to the 1732 (YZ 10) modification to the desertion framework, individual rank-and-file *Jasak*-Banner deserters were probably adjudicated locally, but still under the statute.

Grand Minister Consultant/Grand Minister Attendant and *Lifanyuan* President Prince of the Blood Yunli (1697-1738), the seventeenth son of the Kangxi emperor, sent a twenty-four fold Manchu-language memorial to the Qianlong emperor on behalf of the *Lifanyuan* signed by sixteen *Lifanyuan* officials. This memorial was – for all intents and purposes – structurally- and analytically-identical to a routine criminal memorial, except it did not come from the Board of Punishments directly and contained neither a Chinese-language translation nor a Chinese-language one-fold summary (*huangtie*). It detailed the case of Mongolian Cavalryman (*uksin*) Amirtu, of the single Jalaid *Jasak*-Banner of the Jirim League, who deserted from the area where

⁹⁶ *Qingchao qianqi lifanyuan manmengwen tiben* 清朝前期理藩院滿蒙文題本 (Routine Manchu and Mongol language memorials from the *Lifanyuan* from the early Qing period), compiled by Guanbu Zhabu and Wang Chihua (Beijing: First Historical Archives), Vol. 1, 549-553.

his unit was deployed (*coohai ba*).⁹⁷ Jalaid Banner *Jasak* Tegusa had initially reported the case to the Jirim League Captain (*culgan i da*), Korcin *Jasak* Prince of the Blood Arabtan, who then reported the case to the *Lifanyuan*. The *Lifanyuan* tried the case jointly (*emgi acambi*) with the Board of Punishments, the Censorate, and the Court of Judicature and Revision [together, the Three Judicial Offices]. Here, note that the *Lifanyuan* served as the lead agency (and authored the final memorial) rather than the Board of Punishments, as in routine desertion cases. The memorial described the procedural history of the case, including how originally there had been three deserters, Bahan, Hama, and Amirtu, but Bahan and Hama had been previously apprehended and tried:

The Jirim League Captain Korchin-Mongol *Jasak* Prince of the Blood Arabtan presented the case: “My league’s Jalaid Banner *Beile* Tegusa forwarded this case to the League” stating that “Cavalrymen Bahan, Hama, and Amirtu, deserted my banner’s area of military responsibility (*coohai ba*). They will be strictly apprehended.”⁹⁸ The *Lifanyuan* directed the silver that Bahan, Hama, and Amirtu received for deploying should be collected from their three families and that the result should be reported to the *Lifanyuan* [the collection of funds used in their deployment is also a subject of the memorial]. ... This year, on June 5, 1734 (YZ 12/5/4), Banner Administrator Bisiralti reported that he apprehended Bahan and Hama. They were interrogated and stated that they deserted during YZ 12 and went to live in the Kalkha territory. Recently, they heard about the general amnesty [upon the accession of the Qianlong emperor] and came back. Amirtu lived in the Kalkha territory with them. ...

The case was forwarded to this Board (*jurgan*, the *Lifanyuan*) for decision. According to the statute, if officers or soldiers are deployed to conduct military operations and desert, they are tried according to the law on desertion (second offense) and sentenced to execution after the assizes. Although Bahan and Hama committed their offense before the amnesty, all military-related crimes are exempt from the amnesty, thus Bahan and Hama’s draft sentence should be execution; they should be escorted to the capital and confined until completion of the Autumn Assizes process and then executed.

⁹⁷ See Appendix.

⁹⁸ See Appendix. It is not entirely clear from my reading of the original document whether the cases were originally tried by the League. Even though the *Lifanyuan* would have been the capital reviewing agency, it was routine at this time for initials trials and appeals to be adjudicated by the *Jasak* and League, respectively. That may have been the case here, too.

[In that memorial the Board also stated that] As for Amirtu who has not yet been apprehended, the League Commander Prince Arabtan should have him strictly apprehended. [In that memorial] we also stated that it should be estimated the cost in terms of horses, tents, pots, etc, for the deployment of all the soldiers and that the *jasaks* from whose banners soldiers deserted should have to repay those funds according to the number of deserters... The *Lifanyuan* submitted this memorial to the emperor on December 12, 1736 (QL 1/11/11). Two days later on December 14, the *Lifanyuan* received the imperial edict, that in accordance with the recommendation in the memorial, Bahan and Hama should be sentenced to death after the Autumn Assizes....

[Now to this case] Cavalryman Amirtu, who also deserted with Bahan and Hama, was apprehended by Banner Administrator Jamyan on February 14, 1737 (QL 2/1/15). ... In conjunction with the Board of Punishments, the Censorate, and the Court of Judicature and Revision, we jointly tried the case based on the documents from the League [and our own interrogation of Amirtu]. Amirtu was asked whether he also deserted with Bahan and Hama. He stated, "On June 22, 1734 (YZ 12/5/21), I deserted along with Bahan and Hama from Khobdo. [We deserted to the Kalkha territory]. I do not know when Bahan and Hama left the Kalkha territory. I heard recently about the amnesty so I returned and, at that time, was apprehended by Banner Administrator Jamyan...."

Reviewing the statute, when officers or soldiers are deployed and flee without authority from campaign, they are punished according to the desertion statute in the Qing Code (according to the provisions of a second offense) and sentenced to death after the assizes.

Although Amirtu's crime occurred before the amnesty, military-related crimes cannot be forgiven during the amnesty, thus Amirtu should be sentenced to death after the Autumn Assizes in accordance with the statute. The appropriate subordinates from the Banner should be sent forth to be evaluated by the Board of Revenue to determine if they have paid back the required amount for the deployment expenses of Amirtu.

We dare not execute this punishment without imperial authorization and thus respectfully request an edict.

The Qianlong emperor's Manchu-language rescript approved the draft punishment of execution after the Autumn Assizes. This case proved that at least some individual rank-and-file *Jasak*-Banner deserters were tried according to routine track criminal procedures modified ever so slightly by the addition of the *Lifanyuan* as the lead agency and Manchu as the primary language of the final routine memorial. If this case were translated in Chinese and references

“Board of Punishments” were substituted for *Lifanyuan*, it would be hard to distinguish from a routine criminal memorial. The existence of this case after the rule requiring all cases adjudicated under the statute to undergo central government review suggests that *Jasak*-Banner rank-and-file soldiers may have been being adjudicated under the statute since some earlier point. It is also an interesting case because the desertion in question happened in the “Mongolian” territories, affirming that that the “Northwest Campaign deserter rule” (that such deserters be tried according to militarized adjudication if they were apprehended in the Mongolian territories) only applied to that campaign army, consistent with the traditional limiting of scope of militarized-adjudication authority.

VII. Conclusion to Chapter Three

Soon after occupying Beijing, the Qing abandoned its pre-conquest *ad hoc* approach to adjudicating campaign desertion cases. During its campaigns against the Southern Ming and peasant rebels, the Qing continued to grant campaign commanders militarized-adjudication authority to autonomously adjudicate deserters, but usually limited that authority to epicenter-of-operations cases. The new dynasty’s almost immediate emphasis on the proper performance of routine criminal adjudication according to the norms of late imperial Chinese legal culture – despite early dynastic instability – was directly related to its state-building efforts. During the early period, even cases involving multiple deserters tended to reflect routine-track sensitivities within a hybrid approach. The Revolt of the Three Feudatories, which represented an existential threat to the survival of the dynasty, overwhelmingly saw the strategic mode – primarily consoling and beckoning back deserters – as the dominant response. Not surprisingly, given the vastly improved security of the dynasty after the defeat of the Revolt, the strategic response to

desertion disappeared almost immediately from the historical record (and did not reappear in force until the nineteenth century).

Across this period, the location from which deserters fled, the number of deserters in a single incident, whether, where, and when they were apprehended, and the threat they posed were all factors in understanding the Qing's response. Considering these factors within the context of the shifting gradient of military operations reveals a degree of coherence and consistency in the Qing response. As the gradient shifted north and west for the long term during the Zunghar Wars, the Yongzheng and Kangxi emperors approved rules that essentially reified the frontier between the inner-empire and the Mongolian and Western territories as distinct zones of routine-criminal or militarized-adjudication response to desertion within the campaign armies. To a certain extent, these rules fixed the military operations gradient over the Mongolian frontier.

From the end of military operations against The Three Feudatories through the beginning of the Qianlong Reign, the Kangxi and Yongzheng emperors' campaigns against the Zunghars drove the development of the Qing's response to desertion. The newly-confident Kangxi emperor ceased using the language of consoling and beckoning, replacing it with the legalist language of discipline and deterrence. Most of the *Jasak-Banner* cases involved large-scale, group desertion under *Jasak-Banner* leadership. This reflected the historical circumstances of the Mongols' incorporation into the Qing as well as the varying relationships between each Mongolian group and the Qing center. When it came to the *Jasak-Banner* leaders, both the Kangxi and the Yongzheng emperors talked the tough language of militarized adjudication (which also reflected the Mongolian Code), but often excused or reduced the death penalty they claimed such deserting *Jasak-Banner* leaders deserved.

The overall trend was to include more and more men involved in military campaigns as subject to the routine desertion statute whether or not they were technically soldiers. Thus, Green Standard soldiers, Eight Banner soldiers, slave and slave/contract servants to Eight Banner soldiers (*genyi*), and *Jasak*-Banner troops were all subject to the routine statute by the end of this period. This is consistent with Ying Hu's finding that Mongol law tended to converge with unified Qing law over time. This brought the Ming-era status-based desertion law into harmony with the reality of the Qing's campaign structure. After all, the Qing deployed its three-component force in joint military operations. For the most part, *rank-and-file* *Jasak*-Banner deserters made only incidental appearances in the central government archives until after the 1732 (YZ 10) substatute requiring the death penalty for all offenders subject to the routine desertion statute. The appearance of rank-and-file *Jasak*-Banner cases under the routine statute after YZ 10 suggests that at some earlier point – perhaps at the same time Eight Banner troops became subject to the statute – *Jasak*-Banner troops were being adjudicated locally under the statute (but did not require review at the capital because a first offense did not mandate the death penalty prior to this time).

The adjudicative discourse surrounding campaign desertion of this time was deeply rooted in late imperial legal culture. Officials adjudicating cases were more likely to discursively construct deserters as pitiable rather than as cowards. The discourse also reflected a structural theme, that systemic causes motivated soldiers to desert. This discourse drove sympathetic case outcomes, such as deferred death penalties and outright pardons worked out in lengthy routine criminal memorials from the Board of Punishments. In their recommendations for changes to the law, government officials also expressed pity for deserters and seemed uncomfortable with a

legal regime that no longer distinguished between degrees of desertion or first and subsequent offenses.

As the Amirtu case shows, at the very beginning of the Qianlong era, the default mechanism for adjudicating campaign desertion cases was the routine criminal process under the Ming-era statute.⁹⁹ This was the baseline for the Qianlong era. By the end of the second decade of the Qianlong reign, however, a period in which the dynasty was as secure as it would ever be, there were no more seventy plus-fold routine criminal memorials ending in lenient draft sentences for campaign deserters. By the end of the third decade of that reign, only immediate execution after a rapid trial were seen as sufficient to deter the “cowardly habits” of Green Standard soldiers.

⁹⁹ By this, I do not mean to underplay the changes in the law that were occurring. For instance in the second year of the Qianlong era, a new substatute was added to the desertion statute which seemingly expanded the scope of persons encompassed within campaign desertion.

October 23, 1738 (QL 2/9/天庚). An Order. Grain transportation along the Grand Canal is dependent on the season. Not only must full loads be delivered expeditiously, but the return trip empty has to be made within time limits in order to avoid the freezing of the Grand Canal. This year, there was a lot of silt buildup. I have heard that many transport-bannermen [《六部成語注·戶部》「旗丁」：「運船之水手人丁皆世襲其業，官給田糧，如八旗兵丁，故謂之旗丁。各船有一定之旗號。」] [need to verify source – this is from internet] abandoned their boats on the side of the canal and returned south by foot. ... Some of them even left their family members on the boats. It fell to the military laborers (*bingyi* 兵役) along the canal route to pull those boats along, giving them additional burdens. Considering certain military districts in Jiangnan... I think that these types of bannermen who abandon their boats, if it's a matter that they don't have sufficient funds to cover transportation expenses, or they have insufficient strength, supervising officials should make arrangements to assist them with sufficient resources to return south without too much difficulty. But, if they are abandoning their boats and absconding with no reason, and just lacking in discipline, how can we be lenient, just encouraging bad behavior? The Grain Storage and Transportation Supervisors-General should investigate, distinguish between the two cases, and quickly take care of this. QSL-QL, juan 76, 207-1 to 207-2.

As we saw earlier, there was an increasing number of persons included within the gambit of the desertion statute. In response the Board of Punishments recommended and the emperor approved the following substatute to be appended under the routine desertions statute: “Whether Bannermen (*qiding* 旗丁) are transporting cargo by boat, whether the boat is transporting full or returning empty, if they abandon the boat and flee without good cause, then they will be adjudicated according to [the routine desertion statute], and have the characters ‘deserting man’ (*qiding* 旗丁) tattooed on their faces.” DLCY, “旗丁不拘重運回空，如有無故潛逃，棄船中途不顧者，照守禦官軍在逃律治罪，仍於面上刺逃丁二字。” What stands out about this statute is the almost casual way in which the routine desertion statute – that once had to be triggered by either temporal or spatial movement along the military operations gradient – was not invoked utterly off the gradient.

Over the next three chapters, I show that this hard shift to adjudicating nearly all desertion cases according to a highly autonomous militarized adjudication – contemporaneous with the regularization of militarized adjudication as a militarized track – was shaped by both the long-term processes I have been describing since Chapter One as well as new factors that came into play during the Qianlong reign. Historically, the original structure of the forces described in Appendix, the Ming-Qing modes of response described in Chapter Two, the developing trends discussed in this chapter, as well as the Pre-Qianlong concerns for imperial autonomy and efficiency that resulted in the creation of the Grand Council, palace memorial/court-letter systems enabled the functioning of the militarized track. The role of the Qianlong emperor himself, situated as he was at the apex of the legislative-judicial system, gave his objectives outsized influence on the whole system. An adult emperor of a highly secure and confident dynasty, he was far more concerned with efficient military victory and distinguishing Manchu military virtue than with achieving legitimacy by slavish adherence to late imperial Chinese legal norms. From an institutional standpoint, the heavy use of Green Standard forces during the successive quagmires of the emperor’s “Ten Great Military Victories” combined with their inadequate campaign structure resulted in increased desertion among that component, but as I argue over the next three chapters, desertion during this period was never in fact such a significant problem. Calling to mind Melissa Macauley’s description of how the Qing government blamed its litigation backlogs on litigation masters by over-extrapolating from a few cases of egregious litigation-master misconduct, I also argue that the Qing over-extrapolated from a few incidents the overall meaning of deserter in the Qing’s military discipline and military-operational problems. Despite the Qing’s rhetoric, it was the adjudicative discourse –

shaped disproportionately by the Qianlong emperor's particular concerns – that reconstructed campaign desertion in a way that justified summary execution of deserters and disregarded any hint that it was the folly of the military operations themselves that were the significant cause of that desertion.

**Part II. Desertion and the Eighteenth-Century
Origins of Militarizing Tendencies in Qing Legal
Culture, 1735-1765**

Chapter 4. Zhandui-Jinchuan: Militarized Adjudication For Extraordinary Cases, 1735-1754

When the soldiers are on campaign all clothed in armor, they should think of competing to be first on the battlefield and go towards the danger and die at the head of the spear or arrow if it cannot be avoided, and the dynasty will richly reward them, their families, and their descendants. But, if they cower and seek to avoid hardship, leading to failure on the battlefield, perhaps they will be able to evade for a time, but the ax will eventually find them and they will die. To die by the enemy's hand is honorable. To die under the law is shameful. Even imbeciles, upon careful reflection, would know which option to choose.¹

– The Qianlong Emperor, December 8, 1749

From at least the late Ming (1368-1644) through the Qing Yongzheng period (1721-1735), apart from those epicenter battlefield cases adjudicated under militarized adjudication or cases addressed during times of dynastic insecurity in the strategic mode, the available sources suggest that most campaign desertion cases continued to be adjudicated within the routine criminal process under the Ming-era desertion statute. One ubiquitous element of the routine process was the hope for leniency. This hope was grounded in both the emperor's power to dispense grace (*en* 恩) as well as in the importance late imperial legal culture placed on providing an accused the opportunity to renew himself (*zixin* 自新). Moreover, this hope for leniency was a reasonable one. At every stage of the routine criminal process, leniency could – and often was – granted, even years after an offense had occurred, and many, if not most, desertion cases from this earlier period ended in sentences that were either unlikely or less likely to result in execution. By contrast, by the beginning of the third decade of the Qianlong reign (r. 1735-96), early all

¹ QLSYD, v. 11, p. 388, No. 1523. QSL-QL, juan 351, 852-2 – 853-2; this edict was also entered into the QHD-SL, juan 194, 40r-42v.

campaign deserters were summarily executed under militarized adjudication. What happened? For the individual man accused of desertion, a key difference was the end of hope, and that was the point.

Beginning in 1745 (QL 10), the significant military setbacks of the Zhandui and First Jinchuan campaigns in Sichuan Province – and the conclusions the Qianlong emperor drew as the causes for these military failures – were the initial catalysts for the reconfiguration of militarized adjudication and the routine criminal process. These campaigns were supposed to be, in the words of the Qianlong emperor, “once and for all victories (*yilao yongyi* 一勞永逸)” against what were thought of as inferior adversaries, thus it was particularly galling that these operations ended up costing millions of *taels* and resulted only in temporary face-saving settlements. It was during this period that the emperor began to develop deep frustration with operational delay and failure to achieve victory. The emperor never really focused on potential institutional or strategic reasons for this failure, but rather in his edicts and rescripts expressed that he believed that a lack of military discipline (*junji* 軍紀, *junlü* 軍律, *faji* 法紀) was at the heart of operational failure.

Specifically, the emperor honed in on cowardice (“*akin to cowering on the battlefield*”), seeking to avoid hardship or danger, and deception (false reporting) as the three primary manifestations of an endemic lack of military discipline. According to the emperor, when soldiers and officials calculated the pros and cons in making the choice – and he believed it was a choice – to act in an undisciplined way, they took the potential for leniency into account. Thus, as the cases discussed below will show, the emperor came to relentlessly advocate militarized adjudication, with its roots in late imperial *military* culture, as both an expeditious process as

well as an analytical counterweight to the accepted late imperial *legal* repertoire available for deciding cases. Under the emperor's logic, militarized adjudication created the type of strong and unambiguous deterrent (*yi junfa yi shi jingjie* 以軍法以示警戒) that would restore and maintain military discipline (*su junji* 肅軍紀) by eliminating the hope for leniency that was inherent in the routine criminal process.

As discussed in Chapter Three, militarized adjudication generally meant that a campaign or provincial official with direct-memorialization authority tried and “clarified” the facts of a case, then *directly* memorialized the emperor requesting to execute the subject, and if the emperor approved, the official then had the subject executed. This was a relatively quick process (weeks as compared with months or years within the routine criminal process) and all the possibilities for leniency in the routine process were avoided. Only under the most autonomous militarized-adjudication authority was imperial pre-approval for execution dispensed with completely. Most of the cases discussed in this chapter still required imperial pre-approval, thus respecting the emperor's authority over life and death while still eliminating the possibilities for leniency built into the routine process.

The execution of the highest-level commanders in Jinchuan, Bordered Red Chinese Bannerman Governor-General Zhang Guangsi and Manchu Plain Yellow Bannerman Jinchuan Supreme Commander Necin in 1749 (QL 14) signaled a definitive turning point in the evolution of militarized adjudication. The emperor framed Zhang Guangsi's crime (deception) and Necin's crime (seeking to avoid hardship and cowering) in a way to corresponded closely with the disciplinary problems he had already identified as the causes of operational failure in Jinchuan. In a series of widely-published memorials and edicts, the emperor used the execution

of these two highly-favored officials to educate the civilian and military bureaucracy that leniency in matters of military discipline would not be tolerated.

An adjudicative discourse that simplified the complex and interrelated causes of strategic and operational military failure in Sichuan to individual indiscipline coexisted with, drew from, and supported what Mark Elliott has identified as the Qianlong emperor's particular project of Manchu "ethnic-sovereignty." While the emperor sought to criminalize and prosecute indiscipline on an *individual* basis, he also believed that the Green Standard was institutionally-undisciplined as a matter of long-accumulated bad habits. Thus when Manchu officials, such as Supreme Commander Necin or Governor-General Fucing, acted in an undisciplined way, it was an aberration: an offense against the Manchu Way, especially deserving of punishment. By contrast, when Green Standard officials, soldiers, or even Manchus working with the Green Standard acted in an undisciplined way, it was attributed to the Green Standard's institutional character of accumulated indiscipline (a group trait which was inseparable in the discourse from individual cowardly Green Standard soldiers).

This chapter broadly narrates how militarized adjudication expanded from an *ad hoc* and highly-restricted temporary delegation of the emperor's authority granted to officials on campaign, to an acknowledged, yet never contested, aspect of the late imperial legal repertoire. Rather than leave militarized adjudication limited to battlefield misconduct, the emperor sought to expand it to a regularized consideration in addressing certain categories (*xiang* 項) of cases, those cases for which hope for leniency was inappropriate. Military commanders and high-ranking provincial officials needed to recognize which cases, based on a totality of the circumstances, rose to the level of militarized adjudication (*zhi junfacongshi* 至軍法從事) so they

could expeditiously adjudicate them. If such cases somehow did end up before the Three Judicial Offices, even there, officials needed to be willing to draw upon the logic of militarized adjudication in their *legal* recommendation for punishment, a logic which had heretofore been distinct from and largely at odds with late imperial legal culture.

Up to this point in the Qing, the proper categorization of behavior as a particular named-crime (*zuiming* 罪名) had been, at least for the most part, the end result of the routine retrial-review process, but with his new emphasis on militarized adjudication, the emperor pushed towards making the initial categorization of crime determinative as to whether a given case would even enter the routine process. Getting campaign commanders and provincial officials to consistently categorize militarized-adjudication cases as such and autonomously adjudicate them proved extremely difficult and frustrating. This was because the categorization of cases involved determining the true facts (*qingshi* 情實) and matching those facts to the proper crime as defined in codified formal law (*zuiming* 罪名) under the unique circumstances of each case. Given the ambiguities of any investigative process – lack of witnesses; intentionally-deceptive or muddleheaded witnesses; contradictory motivations of various accused parties, investigators, and officials to deceive; slow communication; and a myriad of other motivations and influences – it proved consistently difficult to get provincial and campaign officials to “properly” categorize cases.

In case after case, the emperor cited factors that he believed made it clear that a given case *should have been* adjudicated under militarized adjudication. The key binary that emerged in the discourse was between “ordinary (*xunchang* 尋常)” and “extraordinary (*fei xunchang* 非尋常)”

cases. Militarized adjudication or, at the very least the principles of militarized adjudication, were to guide the adjudication of extraordinary cases. An overarching, yet subjective and elusive, criterion defining an extraordinary case was whether under the circumstances a severe deterrent could not wait for the routine process to run its course. Was this a case in which it was necessary to immediately remove all hope for leniency?

Reflecting militarized adjudication's campaign and epicenter-misconduct genealogy, the adjudicative discourse that emerged in purely military cases placed heavy emphasis on whether the facts of such a case could be conceptually reduced to being "*akin to cowering on the battlefield (sici linzhen tuisuo 似此臨陣退縮)*." It continued to be important whether the misconduct occurred during a time of war or during an attack. Yet despite what the emperor portrayed as clear guidance, the nuances of each case, the fear of wrongly executing someone, and the weighty bureaucratic impulse to let the routine process and the emperor himself make the ultimate determination continued to result in officials defaulting to the routine administrative and criminal processes. The emperor called these "incorrect categorizations" when he thought a case should have triggered militarized adjudication).

I. Military Failure as the Catalyst For Reconfiguring Militarized Adjudication

The Zhandui-Jinchuan (1745 - 1749) military debacle was the context and catalyst for the reconfiguration of militarized adjudication and routine criminal law. During this period, most of the major themes of the reconfiguration of militarized adjudication emerged: the identification of indiscipline as the overriding cause of military failure (the discourse on discipline), the criticism of leniency within the routine system of administrative sanctions and criminal punishments, the

development of the discourse on what constituted an “extraordinary case,” and even the particular association between a lack of discipline and the Green Standard as an institution.

A. *Military Operational Failure in Zhandui-Jinchuan*

It all began in 1745 (QL 10) deep in the mountain ravines and isolated hamlets of Sichuan Province. As part of a standard rotation of troops, Sub-Lieutenant Zhang Feng was leading thirty-six Green Standard soldiers along a newly-opened road between Sichuan and Tibet, an important artery for military supplies. In what is now Xinlong Tibetan Special Administrative Region in western Sichuan, they were ambushed by three hundred *Jiaba* locals and were robbed of their horses, military equipment, baggage, silver and food. This happened at the height of the Qing’s power, the ninth year of the Qianlong emperor, 1744.²

The dynasty had to respond to this attack on “official soldiers” (*guanbing* 官兵) and theft of military supplies. Dai Yingcong has written persuasively of the strategic importance of Sichuan in the Qing’s control of Tibet, which was in turn viewed as important for control over the Mongols.³ The goal of the operation was as much to keep the Qing’s lines of communication open between Sichuan and Tibet as it was to punish Bangun for this betrayal of the emperor’s grace. The overall commander of the Qing military response was Bordered Yellow Manchu Bannerman and Shaanxi-Sichuan Governor-General Cingfu.⁴ For his main effort he ordered his military commanders, Green Standard Colonel Ma Liangzhu, *Zongbing* Song Zongzhang, and *Zongbing* Yuan Shibi to attack Zhandui, closing in from four different directions. Sichuan

² Alai 阿來, *Zhandui: yige liangbai nian de kangba chuanqi* 瞻對:一個兩百年的康巴傳奇 (Chengdu: Sichuan Publishing Group, 2014), 2.

³ Dai Yingcong 戴英聰. 2009. *The Sichuan Frontier and Tibet: Imperial Strategy in the Early Qing*, University of Washington Press.

⁴ IHB-JBZL; ECCP, 796.

Provincial Military Commander (PMC) Li Zhicui maintained a reserve force. The operation, which involved attacking tall stone fortified towers built by the local inhabitants, was a slow-going and miserable operation, but overall the Qing's forces succeeded in pressuring several local chieftains to re-affirm their loyalty to the Qing. Despite the use of a large number of forces, however, the Qing was unable to capture or kill the main target of the operation, Zhandui Chieftain Bangun.⁵

The archives do not suggest any particular official concern with desertion during this time. Officials occasionally wrote reports and sent up memorials on desertion – mostly referring to home-station desertion within the inner-empire – but the emperor was not actively shaping desertion policy in any discernable way.⁶ The campaign-related desertion cases that did come to the attention of the emperor, like the cases of mass desertion of *Jasak*-banner forces, reflected

⁵ ZGLDZZNB, 452.

⁶ Although we do not have many actual desertion cases from the early part of the Qianlong reign, we know that desertion cases were occurring because we have palace memorials from Yunnan Zongbing Tian Yun from both June and October of 1745 requesting that the emperor issue an edict on deserters “to maintain order within the forces.” Tianyun wrote that officials were not reporting or falsely reporting deserters because of fear of punishment. One also imagines that given the Yongzheng 10 requirement that every deserter go through the full retrial-review process, officials may have been reluctant to add so many people to the judicial process. Tianyun requested that in order to get correct reporting, the emperor should give the officials some leeway: “If in the future officials truthfully report deserters and capture half within the time limits, then they should not be punished; if they capture all, then they will be rewarded.” ZPZZ-FHA, 04-01-01-0121-032 / 04-01-01-019-0760. Tianyun tried again in November of the same year (QL 10), this time pleading with the emperor: “If officials would only properly report [deserters] and make an effort to capture them, then how could it be hard to apprehend them? ... [Officials] misreport deserters as soldiers who have been dismissed for disciplinary violations or having been on leave for a long time and not coming back and then they report that there is an empty slot (*jubao kailiang* 具報開糧), but then this type of reporting relieves them of the responsibility to make an effort to apprehend the deserters. I am requesting temporary leniency for those specialized officials in charge of apprehending deserters and to establish a time limit; if they diligently apprehend half the deserters within the time limit, then their superiors will be rewarded and they will not be punished. If they would report truthfully, then deserters would not be able to flee far away and escape the legal net. LFZZ-FHA, QL10/7/28, 田玉, 軍務, 人事/517-20. Two years later, on December 22, 1747 (QL 12/11/12), Labuduo, a significantly higher-ranking Manchu official, raised nearly the identical point in a much more thoroughly-reasoned memorial, arguing that the timeline for apprehending home-station deserters – currently only three days – be expanded to one hundred days. The emperor perfunctorily approved the request. He did not appear too concerned. ZPZZ-NPM, 001501; a transfer-copy of the memorial is also archived at NGDK, 206620-001 and at ZPZZ-FHA, 04-01-01-0149-055 / 04-01-01-023-0720.

more the systemic problems of the Qing's joint-force campaign structure discussed in

Appendix.⁷

⁷ One such Zhandui case illustrates the complicated political-military nature of mass desertion cases arising out of Qing joint forces. Governor-General Cingfu memorialized in February 1746 (QL 11/1) that Tibetan Prince (Taiji) Lengzongnai, who was leading a contingent of Jiangka soldiers as part of the joint Qing force in Zhandui, had returned to his home in Tibet to recover from illness and that his soldiers had followed him, deserting from the Qing joint force located at the Zhandui deployed camp. Subsequent memorials revealed a more complicated picture. According to a memorial from Qing Grand Minister Superintendent for Tibet Bordered Yellow Manchu Bannerman Fucing, the *de facto* Tibetan leader Miwang Polhanai (Puluonai 頗羅鼐) had been informed by Governor-General Cingfu that Lengzongnai had been drinking excessively and causing trouble while at the deployed camp in Sichuan – a condition Fucing identified as a mental illness (*xinbingkuang* 心病狂) – so in order to teach Lengzongnai a lesson, Polhanai had ordered Lengzongnai to transfer his Jiangka soldiers over to Qing officials and for himself to return to Tibet for “admonishment and retraining.” As it turned out, Lengzongnai refused to turn over the troops, went back to Tibet on his own, and his Jiangka troops followed him home, thereby deserting the joint force. Superintendent Fucing also noted that Polhanai was quick to seek punishment for Lengzongnai – Polhanai was now requesting that Lengzongnai be immediately executed – because Polhanai was worried that as Lengzongnai's superior, he would be blamed for the desertion of Tibetan troops “and have no chance to live.”

In a manner reminiscent of previous emperors' dealings with the Mongols, the Qianlong emperor expressed caution in this situation because of the political sensitivities involved. In his rhetoric, he seemed to treat the “lack of discipline” of Tibetan forces as a mitigating factor in their desertion, saying “All the soldiers being led by Lengzongnai were frontier native troops (*biandi fanbing* 邊地番兵) who know no military discipline (*buzhi faji* 不知法紀).” He noted that Lengzongnai violated “*junfa*” and ordered Minister Fucing to draft a sentence, but to keep Polhanai informed. QSL-QL, juan 257, 331-2 – 332-1; QSL-QL, juan 259, 345-2 – 346-2; QSG, 本紀十一 高宗本紀二; 二月戊戌. Upon receiving Fucing's recommendation to immediately execute Lengzongnai (which mirrored Polhanai's recommendation), the emperor summed up the case as follows:

Originally, Lengzongnai was deployed to lead *Jiangka* soldiers. He was responsible for defending important strategic areas around Zhandui. When Polhanai heard that he was drinking excessively and acting improperly in the deployed camp, Polhanai was afraid that Lengzongnai would impede military operations. Thus, he ordered Lengzongnai to turn over all his troops ... and return to Tibet. Lengzongnai did not obey and simply left, with his troops following him. It would be appropriate, as Polhanai has requested, to immediately decapitate Lengzongnai for violating a military order. ... [As far as all the rank-and-file soldiers Lengzongnai was leading], they just have no military discipline. Whichever soldiers first thought to advocate to return [to Tibet], it is appropriate to punish them. [To the Grand Council]: Inform Minister Fucing in Tibet, to turn Lengzongnai [and his troops] over to Polhanai for punishment. ... It is all because Lengzongnai is an imbecile, yet is still rather sympathetic. By my grace, I remit his death penalty and transfer him to Polhanai for punishment. QSL-QL, juan 259, 351-1 – 351-2.

The Qianlong emperor's actions in this case were not inconsistent with the actions of his predecessors when dealing with mass desertion of frontier forces, demonstrating strategic elements. The emperor both asserted Qing judicial authority by claiming the right to have Minister Fucing adjudicate the case under militarized adjudication, but then purported to allow (again asserting Qing authority) Polhanai to determine the final punishment. Importantly, though, despite a mass desertion from a deployed military camp during a time of war, the political considerations far outweighed any concern for rank-and-file desertion itself.

B. *The Qianlong emperor's Discourse on Discipline*

While the emperor was not, at this early period, particularly concerned about desertion *per se*, he had already identified lack of military discipline as the reason progress in Zhandui was halting. The emperor was beginning to articulate the distinction between administrative sanctions, routine process, and militarized adjudication as a continuum based on the degree of leniency appropriate to a particular categorization of crime. He sought to tweak the threshold between the three approaches to more effectively deal with the lack of military discipline, as shown in the following cases.

A fairly early case that showed the development of the emperor's thinking on the relationship between leniency in adjudication and military indiscipline involved an enemy raid on a Qing basecamp in the Zhandui region in mid-1746 in which some artillery equipment was pilfered. The local Green Standard junior officer (*bian* 弁; major and below) had originally reported the equipment as "lost," leaving out details of the raid. Governor-General Cingfu had identified two Green Standard military officials, Colonel Mancang and Major Sun Huang, as at fault in allowing the camp to be raided and forwarded their case to the Board of War for *administrative sanction*. In accordance with accepted bureaucratic routine, the Board of War reviewed the case and, on September 8, 1746 (QL 11/7/23), memorialized recommending administrative sanctions, citing the administrative statutes/precedents on "making false statements and negligently carrying out ones' duties."

Rejecting the Board's recommendation, the emperor took the opportunity to educate the Board on what he viewed as the proper threshold – which in fact represented a re-configuration – between administrative sanctions and criminal punishment. First, the emperor sought to dispel

any notion that leniency in matters of military discipline might be appropriate simply because Zhandui was a relatively “insignificant conflict”:

[Qianlong Emperor]: [It is thought that] simply because Zhandui is just some minor matter so [they think it is appropriate] *to be lenient* on campaign discipline (*xingjun jilü* 行軍紀律), and because the empire is at peace, and there is a big difference between some minor matter and facing a great enemy, [the officials again conclude that] because Zhandui only involves some minor chieftain, we can be lenient on military discipline.”

He then pointed out that “originally *junfa* did not distinguish between large and small scale operations (*junfa yuan wu qubie* 軍法原無區別).” Rather, the emperor set out a much simpler, and for this time, a surprisingly autonomous vision of militarized adjudication: “If [the facts of the case] were *clear* (*ming* 明) that [the military equipment was taken by the enemy during a raid] and that instead it was reported as lost, it shows that the camp was not well defended, and so it was robbed. Right now, it is a time of offensive operations (*jinjiao zhi ji* 進剿之際). Based on this, military discipline (*junlü*) requires that those responsible be executed on the spot (*anzhi junlü, jiying yu bendi zhengfa* 按之軍律, 即應於本地正法).”⁸

The initial recommendation from the field, the Board decision, and the emperor’s response to it have to be understood in the context of the existing adjudicative *mentalité*. In fact, the Board was acting consistently with a *mentalité* that favored the routine bureaucratic process. Despite the emperor’s seemingly blunt language, it is likely that officials reading this comment *at this time* would have understood that “on the spot execution” still required imperial pre-approval through the Grand Council. No local official would have simply executed a major on his own without checking with the emperor first. Still, the emperor’s suggestion to avoid the entire

⁸ QSL-QL, juan 271, 537-1 – 537-2. A copy of the original impeachment memorial from the Board of War is located at NGDK, 169154-001.

impeachment and routine retrial-review process and go directly to execution for this type of crime was notable.

What could Board officials or field commanders understand from this imperial guidance? The most difficult question – and the enduring conceptual impediment to categorization outside the routine process – was what constituted a “clear” case? What was more aggravating, the negligence in allowing the camp to be raided or the false report? Was either one of these factors independently sufficient to merit a militarized adjudication? Did the value or military importance of the equipment matter? Did the strategic location of the place raided matter? What about mitigating circumstances? What constituted a time of war? Did common gendarmerie actions of the Green Standard forces against county bandits count as time of war? Based on all this, how should the crime be defined and punished? Rather than deal with all this and consistent with both late imperial legal culture and bureaucratic logic, the adjudicative *mentalité* of the time preferred to *draft* an initial administrative sanction (as in this case) or send up an impeachment followed by a draft criminal sentence, but then let the routine process confirm or flesh out the draft, leaving the ultimate question of life or death to the emperor.

Because “execution on the spot” completely overriding the the routine process conflicted with the prevailing adjudicative *mentalité* – it lacked any basis in late imperial legal culture’s analytical repertoire – the emperor grounded this shift in the threshold between administrative sanctions and criminal punishment in late imperial *military* culture’s conceptual repertoire:

[Emperor] The ‘Way of the Soldier (*yongbing zhi dao* 用兵之道)’ from the beginning has been concerned with how to motivate soldiers to be first in the line in battle, brave, energetic and avoid the humiliation of being routed in the defense? ‘The country may not use soldiers for one hundred years, but it cannot fail to train them for even a day (*bing ke*

bainian buyong buke yiri bubei 兵可百年不用不可一日不備).’ Since ancient times, this has not been an easy principle.

Having prefaced his analysis with a military standard, the emperor went on to assert that rather than mitigate the disciplinary problem, the Board of War’s adjudication of an administrative sanction contributed to indiscipline by fostering an expectation of leniency:

[Emperor] Now, considering this matter of military operations in Zhandui, that in the matter of such a small scandal, there has been no quick success, and there are just delays and delays and false reports on top of false reports, it is because normally, the soldiers and junior officials do not have the spirit of the best troops. When the time comes, they have no hatred for the enemy. If they are punished according to the [administrative] recommendation [of the Board], then their sloppy habits of managing military affairs *would just be reinforced* and it would become even worse than before. How can we then hope them to improve?

Finally, not only was Cingfu wrong to forward the case to the Board of War for a mere administrative sanction, but the emperor also admonished the Board officials themselves for only drafting an administrative sanction. In other words, on their end the Board should have recognized that this was a case for which leniency was inappropriate and then requested the emperor to transfer it to the Board of Punishments:

The governor-general merely requested the Board of War to administer some administrative punishment. That itself was already too lenient. And the Board of War merely recommended dismissal from office. *That was especially lenient.* Those Board of War officials who wrote the recommendation will be reprimanded. Mancang and the others are hereby transferred to the Board of Punishments for adjudication to draft a [criminal] punishment.⁹

While it is best to avoid a teleological reading based on the later maturity of the militarized track, and it was certainly not unprecedented for a Qing emperor to shift a case from administrative sanctions to criminal punishment, the emperor’s decision to go further and

⁹ QSL-QL, juan 271, 537-1 – 537-2. A copy of the original impeachment memorial from the Board of War is located at NGDK, 169154-001.

sanction the Board of War officials who drafted the recommendation highlighted the emperor's didactic intent to reconfigure the process itself.

It is hard to imagine that many officials at this early time would have felt comfortable skipping the entire routine administrative/criminal process, as the emperor seemed to be suggesting. Such autonomy was extremely uncommon (although as noted in Chapter Three, there were some examples of completely autonomous executions during the Yongzheng reign documented in “secret” memorials and not recorded in the Veritable Records). Officials were very aware that if they executed someone without legal authorization (which up to this point had almost always meant imperial approval pursuant to the routine criminal process), then they themselves were subject to punishment under the law against the unauthorized killing of a criminal (*shan shashang zuiren li* 擅殺傷罪人律).¹⁰

The Great Qing Empire's frustrating campaign against the minor Zhandui chieftain Bangun *seemed* to come to an end when Governor-General Cingfu reported that Qing forces had finally surrounded Bangun and burned him to death in one of his fortified towers. The emperor was suspicious of this news at first, but reluctantly believed it. When it was discovered that Bangun had not actually been killed but had escaped to the protection of Greater Jinchuan Chieftain Solobun – who then became the Qing's new villain for a time – and was even daring to continue to raid the jurisdictions of other native officials allied with the Qing, it heightened the emperor's distrust of his “deceptive” field officials. It also created an immediate problem for the emperor.¹¹ On the one hand, he wanted to punish those involved with both the military failure

¹⁰ DLCY.

¹¹ ZPZZ-NPM, 001807.

and deception of Zhandui. This punishment had to be quick so that the emperor would not be perceived as lenient in matters of military discipline. On the other hand, he could not trust their accusations and counter-accusations because the officials involved had already deceived him about Bangun's death. He temporarily resolved the matter by pushing the decision off until after military operations in Jinchuan were complete and the matter could be more fully investigated. First, the emperor highlighted that indiscipline had to be punished by death and then explained that immediate execution was not yet appropriate in this case because the investigation was not yet reliable.

January 26, 1748 (QL 12/12/26). An edict to the Grand Secretariat and the Board of Punishment. On campaign, discipline is of the utmost importance, so that is why indiscipline is punished with death (*xingshi zuizhong jilü, gu shilü youzhu* 行師最重紀律, 故失律有誅).

During the Zhandui Campaign, *Zongbing* Yuan Shibi 袁士弼 was at odds in opinion with PMC Zhicui 李質粹. Whenever something came up, he would try to pass it off. Letters would go back and forth. He would miss deadlines. Based on Governor-General Cingfu's memorial, I referred his case to the Board of Punishment for criminal adjudication. At the palace assizes, the facts of his case were confirmed. He should have been selected for execution (*gou* 勾).

But Cingfu's memorial was originally based on Li Zhicui's report. And it was Li Zhicui who had reported that Bangun had been burned to death. When I originally received this report, I was suspicious. Thus I ordered Zhang Guangsi and Sichuan Governor Jishan to carefully investigate, and they determined that Bangun was actually living at Rulang [in Sichuan]....

Li Zhicui's previously reported merit was fake. So how could he [now] be believed [in the impeachment of Yuan Shibi]? Once the Jinchuan campaign is over, Zhang Guangsi will have to take care of Bangun. At this time, I am deferring Yuan Shibi's execution. The fact that Li Zhicui was trying to implicate Yuan Shibi in a deceptive memorial is already clear. Li Zhicui is hereby referred to the Board of Punishments. Once Bangun

has been taken care of, order Zhang Guangsi to thoroughly investigate this case and determine the actual facts (*chaming* 查明).¹²

Recognizing the potential conflicts of interest between Li Zhicui's accusations of Yuan Shibi and Li Zhicui's own potential responsibility in the Zhandui debacle, the emperor postponed Yuan's execution until the matter could be sorted out. But the emperor could only postpone the case because it was pending before the Autumn Assizes, as a result of going through the routine process. But this very process was what the emperor's new vision militated against! He contended that only immediate and severe punishment could manifest deterrence by eliminating the inappropriate expectation of leniency. The contradiction between the emperor's constant willingness to grant leniency or delay cases within the routine process (as here) and his increasing demands that they not be placed into that process to begin continued to send mixed messages to his officials.

The emperor sought to make it clear that cowering, seeking to avoid hazardous duty, and writing deceptive military reports (the three pillars of military indiscipline) would lead to a shameful death at the hands of the executioner. At the moment of a man's decision whether to engage in these behaviors, the emperor did not want that man contemplating potential leniency under the law. This was evident in his reluctance to delay Yuan Shibi's punishment. He worried that rank-and-file soldiers would think he was lenient in matters of military discipline because (he assumed that) it was common knowledge in the deployed camp that Yuan Shibi had been detained and tried, but not yet not executed. At the same time, he felt he could not release the information that the Qing knew Bangun was still alive because it might hamper efforts to

¹² QSL-QL, juan 302, 951-2 – 952-1.

apprehend or kill him. Again expressing what he perceived as the relationship between hope for leniency and the lack of military discipline, the emperor explained:

Since [Yuan Shibi] was transferred from the deployed unit to the Board of Punishments, when the junior officials and soldiers hear that he has not yet been executed, not knowing the reason, *they might think that if they violate the law while on campaign, they can still hope for leniency.* In this way, how could military discipline and military authority/credibility (*junwei* 軍威) be maintained?

[To the Grand Council] Send this edict secretly to Zhang Guangsi. Order him to consider this matter. He should wait until a time when it is proper to publish the reasons why Yuan Shibi has not yet been executed. He should then summarize these reasons and make it known, so that everyone will know that the reason I have not yet selected him for execution is because I want to have his crime thoroughly investigated so that the decision will be correct. It is not because I am lenient and lax in matters of military law (*bingfei zhen zhi shang guxi er chi junfa* 並非朕之尚姑息而弛軍法).¹³

In the follow-up to this case the following December 7, 1749 (QL 14/10/28), during the next year's Autumn Assizes review, the emperor again delayed Yuan Shibi's execution, saying "[Yuan] was following the directives of [former PMC] Li Zhicui, who neglected [this and that]. Yuan's crime is thus still different from cowering on the battlefield and bungling military operations (*shang yu linzhen tuisuo, yiwu junjizhe youjian* 尚與臨陣退縮, 貽誤軍機者有間).¹⁴ Thus, the emperor himself again granted leniency, but leniency was only appropriate because it was not a case of "cowering on the battlefield."

The Jinchuan I conflict, in many ways an extension of the Zhandui conflict, began in 1748 (QL 13) when Chief and Native Qing Official Solobun of Greater Jinchuan sheltered Bangun and occupied territory claimed by Lesser Jinchuan as well as the territory of other native chiefs.

¹³ QSL-QL, juan 302, 952-2 – 953-1.

¹⁴ QSL-QL, juan 351, 848-2.

Sichuan Governor Jishan responded to a request for assistance from some of these other chieftains by sending in troops. When Solobun openly attacked and successfully resisted these troops, it marked the beginning of the Jinchuan campaign.

Wanting to avoid another Zhandui-like debacle, the emperor chose a high official with a proven military track record to lead operations. By 1747, Chinese Plain Red Bannerman Zhang Guangsi (d. 1749) had successfully put down the Miao “Uprising” in Guizhou in the 1720’s, had campaigned as the assistant to Yue Zhongqi (1686-1674) in the 1730’s campaigns against the Oirats (it was Zhang’s accusations of mismanaging military affairs that resulted in Yue’s impeachment and downfall at that time), served as governor-general of Guizhou in 1736, and had defeated another “uprising” in Hunan in 1740. With the Sichuan military leadership in chaos after the Zhandui affair, he seemed to be the right man in April 1747 for the emperor to appoint as governor-general of Sichuan-Shaanxi, replacing Cingfu who had falsely reported Bangun’s death.¹⁵

Jinchuan proved even more intractable than Zhandui. Chieftain Solobun’s defense consisted of occupying fortified stone towers and taking advantage of the complicated mountain geography. Zhang Guangsi implemented a strategy of setting up small combat operating posts to attack similar size units and building or using captured towers as offensive platforms to attack enemy-held towers (*yi ka bi ka, yi diao gong diao* 以卡逼卡, 以碉攻碉). Despite Zhang’s large numbers of troops – initially thirty thousand and then increased to forty thousand – the conflict eventually broke into a tit for tat war of attrition and progress was slow.¹⁶

¹⁵ ECCP, 33-34.

¹⁶ ECCP.

Frustrated with Zhang's lack of progress, the Qianlong emperor dispatched Bordered Yellow Manchu Bannerman Necin (d. 1749) as Supreme Commander (*jinglüe* 經略) of forces along with Yue Zhongqi as the provincial military commander (PMC). Necin was a member of the prestigious Niugulu Clan, and had served in various high-level positions since the early Yongzheng reign, such as commander of the Plain White Manchu Banner, as well as president of the Boards of War, Rights, and Officials. He was serving as the general editor of the Qing Collected Statutes when the Qianlong emperor assigned him as Supreme Commander to work with Zhang Guangsi in the flailing Jinchuan campaign.

During the Jinchuan I campaign, the emperor increasingly identified the institutional- Green Standard with disciplinary problems. Given that the majority of Qing troops in Sichuan were Green Standard soldiers, I believe that this concern over indiscipline intersected with what Mark Elliott has referred to as the Qianlong emperor's efforts to maintain Manchu "ethnic sovereignty."¹⁷ Frustrated with the slow pace of operations and the failure of Green Standard soldiers to engage in offensive operations, the Qianlong emperor in an October 31, 1749 (QL 13/9/10) order contrasted the putative character-differences between Manchu and Green Standard soldiers, a theme that would increasingly become part of the adjudicative discourse on deserters in the years to come: "Military operations in Jinchuan have been ongoing for some time. The only reason that a quick victory could not be reported is because Green Standard forces are frail and weak by accumulated habit (*lüying bingding leiruo chengxi suozhi* 綠營兵丁羸弱成習所致). I want to backfill the campaign units with Manchu soldiers (*Manzhoubing* 滿洲

¹⁷ Mark C. Elliott, *The Manchu Way: the Eight Banners and Ethnic Identity in Late Imperial China* (Stanford: Stanford University Press, 2001), 205.

兵), so that our offense can start being effective.” In his explanation of this order, he stated that in the ongoing operation, every time the Green Standard soldiers met the enemy, they “scattered like birds,” a reference to the ultimate manifestation of indiscipline, the complete rout.¹⁸

While the emperor was already suggesting the utility of militarized adjudication outside of its highly-restricted sphere of battlefield epicenter operations, traditional notions of militarized adjudication and military discipline continued to inform the thinking of field commanders. For instance, in one of their first reports after arriving at the Jinchuan deployed camp, on June 16, 1748 (QL 13/5/21), Imperial Envoys Bandi and PMC Yue Zhongqi memorialized in language that very closely tracked the language used by Wang Yangming two hundred years before:

We arrived at the deployed camp in Sichuan on May 16th and ascertained what needed to be done. Awards and sanctions must be appropriate and severe (*shangfa yiyuan* 賞罰宜嚴). The native troops (*fanbing*) seek opportunities to profit. The Han troops seek official rewards. This is how we will encourage them. Only after rewarding should there be sanction (*wei xin shang er hou ke bi fa* 惟信賞而後可必罰). But when there are still those who disobey orders and cower *on the battlefield*, they must be immediately adjudicated under militarized proceedings (*shang you weifan faling, ji linzhen weisuo, jixing junfa congshi* 倘有違犯法令, 及臨陣畏縮, 即行軍法從事).¹⁹

There never came a point when the emperor rejected this classical view of militarized adjudication; if anything, his discursive construction of crimes that actually occurred off the battlefield as “cowering in the face of the enemy (*linzhen tuisuo* 臨陣退縮)” continued to affirm the basic notion. Yet, what was occurring in fact was an expansion of the legitimate field of militarized adjudication beyond epicenter misconduct.

¹⁸ QSL-QL, juan 324, 351-2; QSL-QL, juan 324, 346-1.

¹⁹ QSL-QL, juan 315, 172-2 – 173-3.

Given the geography, long lines of communication, and native adversaries on their home turf, the Zhandui-Jinchuan I conflict would have been a difficult mission for any institutional-military force. The Qing's main forces were composed of Green Standard Han troops and locally-trained native Green Standard troops (*tubing* 土兵), with the later addition of Manchu banner forces from the Northeast and Beijing. The majority- Green Standard forces, cobbled together in deployed camps from numerous small units throughout the southwest, had little unit cohesion. When placed under quarreling leadership, it is hard to imagine that they would have come together as an effective fighting force.

In so far as the Jinchuan Campaign was meant to punish the locals for harassing Qing troops, the apprehension and punishment of Bangun and Solobun were the operational objectives. Despite deploying over forty-thousand troops and spending millions of *taels* from the treasury, the Qing never accomplished this objective. The string of false reports, routed forces, and a sense of plodding progress and stagnation led the emperor to identify the overwhelming cause of failure as a lack of military discipline. The lack of military discipline was manifested in three primary aspects: cowardice (cowering on the battlefield), seeking to avoid harm, and outright deception. Given the context of the Qianlong emperor's efforts to bolster Manchu ethnic sovereignty, one aspect of this discourse was the beginning of the identification of the institutional Green Standard with indiscipline.

The emperor sought to reset the calculus in his officials' and soldiers' decision-making, first by adjusting the threshold between administrative and criminal sanctions. He wanted to eliminate the hope that leniency would be an option if they engaged in these behaviors. He wanted it to be clear to them that the choice was not between energetic prosecution of the war

and a possible life of ease, but a choice between going forth into battle bravely and dying (and maybe surviving) with great honor or a shameful death.

Because the routine criminal process was deeply steeped in late imperial legal culture, one of its important attributes was holding out the hope for leniency. Thus, the emperor sought to reconfigure both militarized adjudication and the routine process, disregarding the conceptual barrier between the two, and educating his officials to recognize those cases in which it was inappropriate to hold out hope for leniency; these latter cases should have been adjudicated under militarized proceedings. Even in these early cases, the emperor himself proved to be the major impediment against his efforts to remove cases from the routine system by his own granting of clemency in questionable cases within the routine process.

II. The Lesson of Zhang Guangsi and Necin: Neither Grant Nor Expect Leniency

By mid-1748, the emperor was no longer willing to tolerate what he saw as excess leniency on the part of his own officials, a manifestation of their own lack of military discipline which he saw as infecting the whole campaign army. The Qianlong emperor may have had many complicated political reasons for executing Governor-General Zhang Guangsi and Supreme Commander Necin in 1749. Yet, his stated reason – which was also the reason he widely published – was their neglect of military discipline. Zhang Guangsi’s crime of “deception” and Necin’s crimes of “cowering and seeking to avoid hardship” represented the core behaviors of the disciplinary problem the emperor had identified since the beginning of the Zhandui setbacks. These executions sent a shocking and unmistakable lesson to the bureaucracy: leniency in military discipline would not be tolerated.

The emperor's criticism of Zhang Guangsi and Necin pertained not only to their own lack of motivation and insight into military operations, but specifically to their inability to institute effective discipline within the forces they were supposed to be commanding. The emperor made this point several times before removing the pair from command at the end of 1748.

For instance, on October 29, 1748 (QL 13/9/8), Zhang Guangsi sent up a routine memorial regarding a stone tower on Zuogu Mountaintop that had been appropriated by Qing forces and was being used to store gunpowder. Several months earlier, on May 25, 1748 (QL 13/4/29), a soldier had lost control of the camp fire, which spread to the gunpowder, causing the whole thing to explode, killing forty-six soldiers. Zhang reported that although Green Standard Major A'erzhan had falsely reported that lightning had struck the tower, [Zhang's own] investigation had revealed the truth. In his routine memorial, Zhang had requested the Board of War to *administratively sanction* those involved. Based on this, the emperor issued an edict, in which he criticized Zhang and Necin for forwarding the case as a mere *routine* administrative action to be handled by the Board of War. First, the emperor distinguished this as an *extraordinary* case:

[Qianlong Emperor] There is an intimate relationship between gunpowder and managing the camp. Having secured an enemy tower and stored gunpowder in it, as the officer in charge, [the official] should have, but did not, exercise precaution such that it caught on fire and the whole thing blew up, killing several soldiers. How can it be compared to a case of *ordinary negligence* in duties (*qi xunchang yushizhe kebi* 豈尋常虞失者可比)?

According to the emperor, as the overall commander, Zhang Guangsi should have recognized that this was not an ordinary case and, after determining it was a clear case of indiscipline, he should have executed Major A'erzhan in front of his subordinates. Once again, given the prevailing adjudicative *mentalité*, most officials reading the emperor's

comment at this time probably would have understood that the “immediate execution” still needed imperial pre-approval; it simply did not need to go through the retrial-review process:

[Emperor] Zhang Guangsi was the commander-in-chief (*zongtong* 總統). He was responsible for both the merits and crimes of his subordinates. This sort of inferior official (Major A’erzhan) should have been immediately taken before the camp, interrogated, and, once the matter was clarified through the investigation, he should have been executed (*ji yingyu junqian jiuming zhengfa* 即應於軍前究明正法).

The emperor also pointed out that Zhang’s poor example of military discipline was being imitated by others in the deployed force:

But instead, [Zhang Guangsi] just sat on the sidelines and delayed. For a case of negligence that happened in May of this year, waiting until August to send up a palace memorial about it, and until October to send up a routine memorial [was not appropriate]. And then he only requested that the Board administratively punish A’erzhan. And also Major A’erzhan, sending him on a mission away from the camp [A’erzhan had been away from the camp at the time the tragedy occurred]. *It is clear that everyday camp discipline is completely lacking.* [Zhang Guangsi] covers for his subordinates and his officers and junior officials, and then the soldiers imitate a bad example with no fear (*jiangbiandeng xiangshuai xiaoyou, siwu weidan* 將弁等相率效尤，肆無畏憚).

The emperor framed Zhang’s request for administrative sanctions as a failure to follow proper procedure when in fact it was the emperor who was advocating for a new approach. He also used this occasion to make it clear to the Boards that if they encountered such an “extraordinary case,” they should not simply process it according to administrative precedent, but instead should recognize it as a case undeserving of leniency:

The grand secretary (who drafted the recommendation from the Board of War) should have carefully read over this matter. [Zhang’s] drafting of an administrative punishment according to the [administrative] regulation and then referring the matter to the Board was completely unacceptable! He did not even know that the crime of errors in the defense was something that *was not subject to administrative sanction*. And A’erzhan was away from the camp and then falsely reported what happened.

It is clear that [A’erzhan] intentionally submitted a *false report* in order to avoid harsh punishment. This cannot be tolerated by military law (*jie wei junfa suo bu rong* 皆為軍法

所不容). Lu Dazhi and A'erzhang will be immediately apprehended and interrogated. They will be transferred to acting governor Bandi for a rigorous trial. Zhang Guangsi wasted so many resources. ... The Grand Council and the appropriate boards should investigate and make Zhang Guangsi repay the cost of the damages.²⁰

Nine months after the emperor directed that Major A'erzhan be criminally tried, he received the report of trial back from the field (by this time Zhang Guangsi and Necin had been executed). The initial trial had been conducted by the Circuit Intendant. PMC Yue Zhongqi then confirmed that A'erzhan had not, in fact, falsified or embellished the original report. Instead, it turned out (supposedly) that it had been Zhang Guangsi who had made up the false report of lightning hitting the storage facility.²¹ The irony in this turn of events was that when Zhang had originally forwarded Major A'erzhan's case for administrative sanctions, the emperor had remarked that if the case had been "clear," then A'erzhan should have been summarily executed. Yet, the emperor directed that he be tried, and his trial (which reflected some elements of the retrial-review system) resulted in his being cleared of the charge of deception.

On October 31, 1748, the emperor issued another edict, this time directly criticizing Zhang for his failure to maintain military discipline. He first noted that he had specially appointed Zhang as governor-general *because of Zhang's experience with military discipline*:

October 31, 1748 (QL 13/9/10). Edict. Zhang Guangsi had long served in the Miao frontiers. *He was very experienced in matters of military discipline (shouyu junlü 熟於軍律)*. Because of the on-going military operations in Jinchuan, I specially appointed him as the governor-general of Shaanxi-Gansu and ordered him to lead the forces to exterminate the bandits. At first, he bravely handled matters (*yi chu yi yongwang renshi 伊初亦勇往任事*). He even memorialized to say that in two months, they would be exterminated.

²⁰ QSL-QL, juan 328, 432-1 – 432-2.

²¹ QSL-QL, juan 342, 738-1 – 732-2.

But, he exceeded that time limit and did not memorialize further progress. Because he fell into a routine of just watching things happen (*yinxun guanwang* 因循觀望), it led to errors ... so many setbacks on the front lines, and no military success whatsoever. And then, he memorialized that there was not sufficient military manpower, thus he requested additional soldiers. ... I granted everything he requested, and deployed ten thousand additional men in order to bolster our military awesomeness (*yi zhen junwei* 以振軍威). I anticipated that the thieves would be quickly defeated and the frontier pacified.

The emperor then explained that the reason he appointed Necin was to assist the emperor with command and control from afar, and that he had expected that Zhang would have pretty much had the operation wrapped up by the time Necin got to the deployed camp:

[Qianlong Emperor] But the situation on the ground was very hard for me to control from afar, so I appointed Grand Secretary Necin to proceed to Jinchuan as Supreme Commander (*jinglüe* 經略). I had expected that [when Necin got there] the soldiers would all be gathered together, and I could expect to receive a memorial reporting a great victory. Then, when Necin was at the camp, he could just plan for the aftermath of the Jinchuan affair. That was why I sent him.

Not only did Zhang fail to achieve success on his own, but after Necin arrived at the deployed camp, Zhang and Necin immediately developed a poor relationship, “standing at opposite ends,” and pushing off the blame for failed military operations on one another:

[Qianlong Emperor] But Zhang Guangsi still for so long had no success. And because Necin was there, [Zhang Guangsi] just passed off all his responsibilities to [Necin]. And Necin was in the Jinchuan deployed camp for many months. And despite some recent small successes – which were all the result of my personally supervising him and issuing him edicts – it was never close to achieving overall victory. It has been delayed until today and the operation has not been concluded.

The emperor then directed that Zhang and Necin come to the capital, saying that a face-to-face meeting was required, effectively removing them from command of the Jinchuan operation.²² Despite having effectively relieved Zhang and Necin, the emperor continued his

drumbeat accusing them of neglecting military discipline. The emperor again made the link in a case that arose out of an enemy raid on the Qing's Manai Route Basecamp in 1748.²³

The emperor used this incident to make the broader comment that Zhang Guangsi and Necin's lack of enforcing military discipline was adversely affecting the entire operation.

According to the emperor, the disaster at the camp was not a one-time incident but resulted from Zhang Guangsi and Necin's *ongoing failure* to implement military discipline:

The outpost was left unsecured because there is *usually no military discipline* (*ze qi pingri haowu junji* 則其平日 毫無紀律). It is like [Zhang Guangsi and Necin] are treating this as a child's game. Since beginning operations in Jinchuan, our losses due to intense enemy action have been far less than our losses due to our own laxness. *This is all because military discipline has not been enforced* (*zong you junji buming* 總由軍紀不明), so much so that not even one person gets it right. This is not at all what I anticipated [when the emperor assigned Zhang and Necin].²⁴

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Everything that has been memorialized over the course of this campaign, *there is no way to understand it except in a face-to-face discussion*. Necin and Zhang Guangsi are hereby ordered to the capital, to provide an opportunity to discuss this in person. The Shaanxi-Gansu Governor-general's seal will be turned over temporarily to Bordered Yellow Manchu Bannerman Furdan, who will consult on all military matters closely with PMC Yue Zhongqi, who is hereby appointed second in command of the military operations.

QLSYD, vol. 2, p. 235, no. 992; QSL-QL, juan 324, 351-1 – 351-2.

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November 11, 1748 (QL 13/9/19). [Emperor]: An order. Necin and Zhang Guangsi have memorialized the current military situation. After reading their memorial, I see that their mistakes were many. For instance, on the Manai Route on October 16, 1748 (QL 13/8/24), between one and three in the morning (*sigengshi* 四更時), twenty to thirty thieves attacked the checkpoint (*karun*) at Zagu Camp pretending to be Gebushenzha native troops (aligned with the Qing). But at the time, the official native and Han troops were all deeply asleep. Green Standard Second Captain Wang Liangbi and Sergeant Ma Rulin had not checked on them, such that the enemy entered the base, killed and injured soldiers, and stole an artillery piece. Wang Liangbi himself was shot in the leg. We lost the forward base.

The night required that the soldiers be alert. The drums should be strictly sounded every three hours [to keep the soldiers awake] and patrols conducted carefully. This is what *junfa* required. By contrast, the soldiers here were sleeping and the enemy breached the camp. Twenty or thirty enemy entered the camp, injured soldiers, and took equipment.

QLSYD, vol. 2, p. 235, no. 992; QSL-QL, juan 324, 351-1 – 351-2.

²⁴ QSL-QL, juan 325, 361-2.

Having recently removed Zhang and Necin from command, the emperor lost no time in using their case as an example to teach his officials to neither expect nor grant leniency in matters of military discipline. The emperor had recently appointed Furdan commander of the Bordered Yellow Banner Guards contingent that was being deployed to Jinchuan as part of the efforts to inject Manchu military vigor into the operation.²⁵ The emperor ordered the Grand Council to issue an order to Furdan and PMC Yue Zhongqi telling them that if they failed as Necin and Zhang had, they should expect even less leniency. Rather, the emperor warned them that they had to work together to implement vigorous military discipline (*shenming ji jilü* 申明激紀律):²⁶

November 12, 1748 (QL 13/9/22). An order to Furdan and Yue Zhongqi. Since first commencing military operations in Sichuan with the Zhandui campaign and continuing now with Jinchuan, it was Cingfu who was lax and indulgent at the start (*shuzong yu qian* 疏縱於前); then, it was Zhang Guangsi who was lazy and lax; things were continually delayed and there was no military merit. Thus, I especially raised up you two discarded officials [Furdan and Yue Zhongqi had both been under house arrest based on previous impeachments at the time the emperor selected them for this operation] and appointed you to an important military mission. At this time, I have already recalled Zhang Guangsi and Necin. I am turning over the military operations to you two.

I have established unity of command (given you all the authority) in you. You two should act as one person and your two minds should be as one mind. Remember all the imperial graces you have received. I have invested much in you. After committing your previous offenses, being put under house arrest, and never having the chance in life to remove your shame, now that I have decided to use you again you have an opportunity to renew yourselves (*zixin* 自新). You should enthusiastically and diligently act, going forth, exerting effort, and achieving victory, so that you can quickly memorialize a victory. If you have resolve, you can wipe clean your prior shame and repay the grace of your sovereign and you will be rewarded. How can I be called stingy? It is good fortune for both of you.

²⁵ “以原任領侍□內大臣傅爾丹、為內大臣兼鑲黃旗護軍統領。命馳驛前往金川軍營。” QSL-QL, juan 313, 134-1 – 134-2.

²⁶ QSL-QL, juan 325, 361-2 – 362-2.

But, if you maintain conflicting opinions [with each other], you will not be able to [work together to] stimulate military morale. Then matters will be off track again. In that case, it is not only that *junfa* cannot be lenient in such a situation, but you will be adjudged on the basis of this combined with your previous crimes. That is much worse than Zhang Guangsi and the others. Originally, they had no crimes [unlike you too who were under house arrest for previous transgressions].

The emperor made it clear to Furdan and Yue Zhongqi that the gravamen of Zhang and Necin's crime was their lack of military discipline, saying: “[Zhang and Necin] did not perform their duties well, and it could not be excused in *light of the necessity of military discipline*.”²⁷ If they also acted the same, *junfa* would not be lenient.

Although as of November 1748, the emperor had not openly announced a decision to execute Zhang and Necin, he was increasingly using them as an example for his officials of what not to do.²⁸

November 21, 1748 (QL 13/10/1) [Emperor]: An Order.... My thought [in sending Necin to command the Jinchuan operations] was that since he had regularly received my great favor, so he would exert himself. But at the time he set out [from Beijing], he was not at all enthusiastic. His thought at that time was that he could deploy military forces and set a date for victory. If there was a victory, he would gain merit; if there was no victory, he could simply withdraw.

While Zhang was waiting around to see what would happen, Necin was implementing poor military strategy.²⁹ The emperor framed Necin's conduct as seeking to avoid danger and hardship and even went so far as to assert that it was Necin's failure to personally lead that

²⁷ QSL-QL, juan 325, 366-1 – 366-2.

²⁸ QSL-QL, juan 326, 380-2 – 383-2.

²⁹

Zhang Guangsi was sitting around to see what would happen and not moving things. And [Necin] also was confused and had no plan. ... I waited for him to do something for two months. And everything Necin memorialized, like requesting to build a stone tower and [his statements regarding] the danger of the rebels never raised the abilities of the soldiers to attack. On the contrary, having [our soldiers] build towers was his first plan. I laughed at this. So I sent him an edict, and then waited day and night for some success. QSL-QL, juan 326, 380-2 – 383-2.

resulting in the Qing's forces being routed, the ultimate indication of a complete loss of discipline.³⁰ Reflecting underlying concerns of "ethnic sovereignty," the fact that Necin was a high Manchu official exacerbated his crime: "A high Manchu official who has received such imperial favor, undertaking such an important mission, to ruin things to this level. How could this be tolerated anywhere?" While the emperor criticized both Green Standard soldiers and Manchu officials of cowardice, a fundamental distinction was already developing in the discourse between on the one hand the Green Standard as a whole with its accumulated habits of cowering, seeking to avoid hardship, and deception, and on the other, Manchus, for whom these behaviors were out of character. The result may have been the same, but the issue was framed very differently.

Although the emperor himself had recalled Necin (and Zhang) to the capital, things took a strange turn when Necin responded to the emperor enthusiastically (in the emperor's opinion) saying that he needed to personally memorialize (*mianzou* 面奏). The emperor expressed that Necin's enthusiasm in agreeing to return to the capital was another indication of his cowering behavior. If Necin simply returned to Beijing after having failed in the mission, in the emperor's consideration, this would have left the impression that the emperor was lenient in matters of

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However, Necin only looked for ease and comfort and did not go forward to personally lead but dared to memorialize about the soldiers late at night firing their weapons at the stone towers while he remained in the camp viewing this scene of fires [from afar]. Finally he personally went forth after I urged him many times. And what he recently memorialized about the Alishan mission. Our soldiers often retreated. When he was on the scene, the soldiers had not completely started to run; but, once they [the leaders] returned to the camp, many tens of our soldiers began to scatter like a flock of birds. And they no longer listened to their leaders. Seeing this situation, that before the soldiers ran, the leaders had already retreated, how can the soldiers be blamed for falling into a rout?

QSL-QL, juan 326, 380-2 – 383-2.

military discipline. He did not want men to calculate potential leniency into their decisions on whether to avoid dangerous duty, as he inferred Necin had done; in other words, deterrence required that Necin be punished even more harshly than Cingfu (who was at this time under house arrest but was soon to be ordered to commit suicide).³¹

As he had recently done in the above warning to PMC Yue Zhongqi and Banner Commander Furdan, the emperor again used Necin's increasingly-clear fate to remind Fuheng (who replaced Necin as Supreme Commander) that he should also expect no leniency if he were to be a “coward” like Necin:

I have thought of this too often. I did not teach Fuheng to retreat in cowardice. If Fuheng turns out to be a coward like Necin (*ruo Fuheng ru Neqin zhi qieruo* 若傅恒如訥親之怯弱), he has the prior example (of what is happening to Necin). Now Minister (*shangshu*) Daledang'a, because his younger brother Necin has committed this crime, has asked to go to the deployed camp to show his effort, and I have approved this request. He will follow Fuheng....

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[Qianlong Emperor] All of Necin's memorials never responded with the critical details I demanded in my edicts to him.... He just made florid but meaningless remarks. He even went so far as to not respond at all. And as for his colleagues at the front, although I ordered them three times, he did not make them memorialize one word.

Because he had not been ready for so long, I had no alternative but to send him an order and question him, expressing that I wanted to bring him back to the capital. This was simply to encourage him so that he would feel shame and exert himself. Maybe [after shaming him by telling him I was going to bring him to the capital] he would memorialize about some success, and I could use this to encourage him. But, once he received my edict [the edict above recalling Zhang and Necin], he seemed instantly reinvigorated and forgot all about his military duties, and made excuses about having to come to the capital to memorialize the current situation in person (*tuoyan you mianzou qingxing* 託言有面奏情形). He was enthusiastic about returning to the capital. I cannot think of any words to describe this....

Necin worked for me for many years. If it is said that I used him but he was not effective and then [I just] let him retire and did not harshly punish his crime, how would people consider me as a sovereign? [Necin] did not consider this [what kind of position he would put me in]. And for him to ask in such a hurry to return to the capital, people will know the reason [that he is trying to shirk his duties]. Clearly they will know he is not being recalled to fulfill [some new] mission. I must strictly punish his crime. It must exceed that of ordering Cingfu to be dismissed and remain under house arrest.

QSL-QL, juan 326, 380-2 – 383-2.

In this same memorial, the emperor also made a reference to the particular process of avoiding the routine system as militarized adjudication:

If because of Necin’s downfall, Daledang’a is overly eager to succeed [to extirpate the shame] and thus brings harm to others [perhaps by engaging in reckless military operations], I will adjudicate his case under militarized proceedings (*yi junfa congshi*). ... Originally I trusted Necin and gave him an important task. I did not expect him to muddle things so much. Because of this past incident [with Necin], how can I trust Fuheng or any official going forward? Fuheng only needs to keep my edict in mind and really make an effort and use his heart. ... Transmit this edict to all Manchu and Han civilian and military high officers – make it known to them.³²

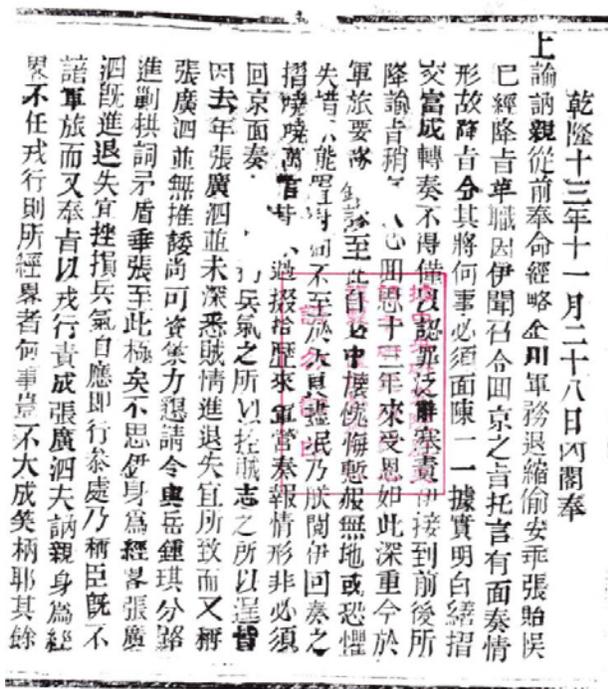


Figure. 4-7. Mass-circulation woodblock published edition of edict outlining Necin’s crimes. On December 24, 1748 (QL 13/11/5), the emperor issued an edict condemning Necin, which he ordered published widely so that all would know his reasoning. Specifically the emperor wrote that Necin “cowered, sought comfort and was recalcitrant in his errors.” The emperor ordered that his edict, along with Necin’s original memorial asking to return to the capital to personally memorialize the emperor “*mianzou* 面奏” be published widely so that everyone would know about it, “*fachu zhonggong zhizhi* 發出眾共知之.” NGDK, 093173.

On December 27, 1748, Supreme Commander Fuheng sent a memorial to the throne that tied the Zhang Guangsi case to the overall strategic problem of Jinchuan. According to Fuheng, because Zhang wrongly trusted native officials – specifically Liang’erji and Solobun’s niece,

³² QSL-QL, juan 326, 380-2 – 383-2. Moreover, when Necin’s crime was generalized in the documents surrounding his arrest and trial, the crime was summed up as cowering and seeking comfort, using the excuse of making a personal report to come back to Beijing. NGDK, 093173-001.

A’Kou – and “covered” for the “traitor (*hanjian* 漢奸)” Wang Qiu, it ultimately led to a series of intrigues and misunderstandings – including family members and associates of Zhang misappropriating native property – that ultimately “brewed” into the Jinchuan rebellion. In other words, Zhang not only failed in military operations, but his conduct was responsible for the very escalation of the conflict itself! According to Fuheng:

When I received the box with Furdan’s memorial, as per the imperial edict, I opened the box and read it. It contained a report from Lesser Jinchuan Native Chieftain (*tusi* 土司) Zewang 澤旺. It reported that Zhang Guangsi’s family members, clerk, and the traitor Wangqiu 王秋 had unlawfully appropriated Zewang’s property. This is shocking. According to the very specific details of that report, Zhang Guangsi did not so lose his reason that he [himself] appropriated Zewang’s property. But, seeing that Zhang routinely covered for Liang’erji, A’kou, and Wang Qiu, and that because of this, it was unavoidable that his family members and clerks hooked up with Wang Qiu to wantonly abuse the law. This matter is related to keeping military matters confidential (*ci shi guanxi junzhong ermu* 此事關係軍中耳目). The locales must have heard about military matters [because of this].

Fuheng’s request for imperial approval to execute Liang’erji and Wang Qiu as well as several others who were involved reaffirmed Zhang’s crime of deception (covering for bad elements). The memorial also demonstrated the workings of militarized adjudication in a semi-autonomous execution of subjects outside of the institutional military. Fuheng first indicated that it was inconvenient to escort the subjects to the capital for trial, thus he tried them locally. Executing both frontier natives and Zhang’s relatives and clerk (from the inner-empire) under militarized adjudication is an example of how militarized adjudication operated and expanded first to the margins of military operations. Fuheng also noted that although they should be executed in front of the deployed army in the deployed camp (to get the full deterrence value), he was afraid they

would escape en route, so he was petitioning the emperor to execute them in Chengdu.³³

Fuheng's memorial also reflected the notion that it was Zhang's deception – his covering up – that led to the spread of the conflict.³⁴ The emperor responded, “This is all detailed and appropriate. There is nothing else to order. Everything is granted as requested.”³⁵

Three weeks later, the emperor turned Necin over for formal trial. In doing this, he explained in excruciating detail his justification for trying Necin. One of the emperor's primary condemnations was that when Fucheng (who had been assigned to interrogate Necin) questioned Necin about the need to “personally memorialize” the emperor, Necin responded that he did not “dare to memorialize” the difficulty of Jinchuan military operations:

January 20, 1749 (QL 13/12/2). [Qianlong Emperor] When Necin was managing military affairs in Jinchuan, he did things nonsensically and cowered, wasting military resources. The princes, Manchu, and Han officials have all memorialized. I ordered Fucheng to apprehend him and interrogate him and consider his demeanor and then to memorialize. Today, I received Fucheng's memorial.

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[Fuheng] Regarding Liang'erji, Wang Qiu, these two criminals. [He first recounted that if they had been apprehended closer to the capital, he would have sent them to Beijing for trial, but because they were not immediately apprehended, he had sent them to Chengdu]. Thus, I had them immediately brought back to Chengdu, and, along with Zhang Guangsi's family member Xue Er and his Clerk Jiao Xiude, strictly tried them and drafted sentences (*yanshen dingni* 嚴審定擬). Liang'erji, Wang Qiu, they originally should have been executed and displayed in front of the army [at the Jinchuan deployed camp]. But, I am afraid they will escape [if escorted to the camp]. I am requesting permission to execute them at Chengdu (*qing ji yu Chengdu zhengfa* 請即於成都正法). It's not far to the deployed camp. I can make sure that those on the frontier know about this.

QSL-QL, juan 328, - 431-1 – 432-2.

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As far as the Jinchuan uprising, originally, it was because Zewang was an imbecile and coward. ... Add to that that Liang'erji contributed to the evil, it all brewed into a rebellion (*niangcheng beini* 釀成悖逆). ... This is all because Zhang Guangsi was covering up evil and was unable to get the loyalty of the hearts of those on the frontier. In my opinion, there can be absolutely no leniency with A'kou [Zewang's wife and Solobun's niece](*chen yiwei A'kou duan bu ke guxi* 臣以為阿扣斷不可姑容). When I get to the deployed camp, I will immediately execute A'kou and her fellow evil doers. I will turn over her seal of native office to Zewang to manage.

QSL-QL, juan 328, - 431-1 – 432-2.

³⁵ QSL-QL, juan 328, - 431-1 – 432-2.

[According to Fucheng's memorial], Necin said: "It is very difficult to manage the affairs of the frontier people. In the future, we must exercise caution. How could I dare to put these words on paper and memorialize?"

[Emperor]: Necin's words are extremely deceptive. He received my favor for thirteen years, he laid out his heart to me, how could there be something that he could not memorialize?³⁶ If the thieves were really so dangerous yet he previously exerted maximum effort to attack *together with the soldiers*, and had faced the enemies' weapons many times, but still seemed unable to gain victory, and then had deployed soldiers, and gone into the frontier, but was still unable to overcome them, however complicated were the matters to be memorialized ... it would have been appropriate to memorialize the truthful situation and request an edict to end the operation.³⁷

This matter of Jinchuan. ... harassing the frontier. Sichuan Governor Jishan originally responded to it by deploying troops. ... Necin was charged with handling everything. And I waited a long time while Necin and Zhang Guangsi had no success. And then I issued more edicts. To make them consider carefully. If there were a reason the enemy could not be exterminated, why did they not come out and tell me truthfully and then ask for more troops? They should not have been ambiguous about it. Moreover, when I rescripted his memorials [asking him as the supreme commander, how could he hold different opinions from Zhang such that the emperor himself had to manage things from afar?] If he could guarantee that he could defeat the thieves in the next year, and requested to add troops, I am not stingy. And if in the end he could not succeed, he could have just said clearly that he had tried his best and think of a way to end operations.³⁸

Necin was a trusted official. Entrusted with great responsibility. I have been telling him how to do things. And to memorialize truthfully. How could I not think about it and grant everything he requested. If he could have been more upfront, then this situation could have early been concluded. How would we have wasted so much money and manpower. Now it's too late. It was all bungled by Necin. Is there any other word to describe it?³⁹

And he stated that he was concerned to write down things because all the Grand Councilors and officials handling [the memorial] would know about those matters. Yet, he could have personally wrote about it and sealed it as secret (*yi yi qinbi mijian* 亦宜親筆密緘) until it came directly to me to read. How could he say that he "dared not write it?" ... How could it be that for so long he wrote such superfluous words? It is such a contradiction. Was it just that all the other memorials you wrote were not important?

³⁶ QSL-QL, juan 330, 476-2 – 478-1.

³⁷ QSL-QL, juan 330, 476-2 – 478-1.

³⁸ QSL-QL, juan 330, 476-2 – 478-1.

³⁹ QSL-QL, juan 330, 476-2 – 478-1.

Now [that I have confronted him about what to memorialize in person] he went back and is saying it is because he does not dare to put it on paper. Officials should know not to do this....⁴⁰

Once again, the memorial made it clear that the emperor's fundamental accusation again

Necin was cowardice:

[Emperor] And Necin further stated, “the emperor only wants me to *be brave*. How can I live up to it (*huangshang zhi xiang wo danzi da, wo ruhe dangdeqi* 皇上只想我膽子大, 我如何當得起)?”

[Emperor] Necin cowered and sought to avoid hardship (*tuisuo touan* 退縮偷安). He did not dare to rush to the front line and face danger (*bugan chongfeng duoxian* 不敢衝鋒奪險). He does not have any courage at all (*shi nai haowu danliang* 實乃毫無膽量). And then, I [the emperor] scolded him as afraid, insecure, and too cowardly (*qi guoyu weisi, guoyu danxiao* 其過於畏蕙,過於膽小). How could I possibly have thought he was brave?

Importantly, the emperor then compared Necin to Necin's brave Manchu ancestor Yidu, saying:

His ancestor, Yidu, risked his life, and was shot through the neck with arrows, but he still made it up to the top of the wall, and was still about to endure his wounds and go on fighting, and he never considered it was a hardship. His ancestor fought well for the dynasty. And now his descendent has come to such a waste. I cannot explain it.⁴¹

But it was not simply a matter that Necin's ancestor was a courageous Manchu military man, but additionally that Necin himself was implying that it was a hardship for Manchu soldiers to be involved in the Jinchuan operation at all. Necin was accused of saying that, “I ordered all these Manchu soldiers to come, and they are experiencing much hardship.” The emperor responded strongly to this perceived insult to Manchu military virtue:

[Emperor] Necin's words are especially frightening. Manchu soldiers are known everywhere for their bravery. When they hear that they are to be deployed in battle, they are excited, they are unable to resist jumping and dancing for joy! (*Manzhou guanbing*,

⁴⁰ QSL-QL, juan 330, 476-2 – 478-1.

⁴¹ QSL-QL, juan 330, 476-2 – 478-1.

youyong zhifang, yiwen diaoqian, wubu guwu bianyue 滿洲官兵, 有勇知方, 一聞調遣, 無不鼓舞忭躍).⁴² Their ideal is hatred of the enemy. Everyone sees this. It pleases me deeply [to see Manchu soldiers so brave and excited to deploy]. But Necin considers this a burden!

According to the emperor, the very fact of Necin's eagerness to return to Beijing will confuse the troops: "His leaving the deployed camp to come to Beijing, to say such superfluous words, it really demoralized (confused) the troops."⁴³

The emperor then compared Necin's actions with those of his successor, Supreme Commander Fuheng, who was "loyal and brave and stood up to deploy." Here again, the emperor made the point that it was the commander who set the tone for the whole campaign army.⁴⁴ Showing again his intent to influence officials beyond this single case, the emperor directed that the edict be widely distributed among officials.⁴⁵

Six days after issuing the detailed edict on Necin's crimes and thirty days after authorizing the execution of Zhang's family members and close associates, the emperor personally interrogated Zhang at what is now the *Zhongnanhai* government complex in Beijing:

January 26, 1749 (QL 13/12/8). An order. Since the beginning of military operations in Jinchuan, Zhang Guangsi bungled operations at first and then Necin bungled operations later. Although the substance of their crimes is the same, but the way they went about scheming was different (*liangren zhi zuizhuang sui yi, er qi chuxin jilü, geyou butong* 兩人之罪狀雖一, 而其處心積慮, 各有不同). They have no sympathy for the dynasty, and are really both inferior people.

⁴² QSL-QL, juan 330, 476-2 – 478-1.

⁴³ QSL-QL, juan 330, 476-2 – 478-1.

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[Qianlong Emperor]: And [Necin] makes everyone know about this. [Necin is trying to say] you [other officials] do not know how difficult the enemy's territory is. [Fuheng] has firm resolve and is not being confused by Necin's words [about Jinchuan being a dangerous place]. Once the soldiers heard this [about Fuheng], they became courageous. ... I have already dispatched high officials to go forth and try Necin.

QSL-QL, juan 330, 476-2 – 478-1.

⁴⁵ QSL-QL, juan 330, 476-2 – 478-1.

Yesterday, I personally questioned Zhang Guangsi at the Ocean Platform [*Yingtai* 瀛臺, in the modern Zhongnanhai complex] about his deceptive and embellishing behavior. But on everything, although he admitted each point, he still strongly argued. He seemed like he wasn't afraid. All the high officials who were there had never seen anything like it. How is this incident any different from those worthless rascals who hang out at the city well (meaning worthless men).

The well-known Qing statecraft writer Wei Yuan would later write that Zhang had “argued” with the emperor during this interrogation and that the emperor “got mad” and thus had him killed.⁴⁶

After criticizing Zhang, the emperor went on to criticize the latest defense from Necin:

And today, I received Fucheng's memorial. Necin sent up the memorial [in response to my edict]. Necin blamed Zhang Guangsi. All the things I pointed out, he had no response to. He only wanted to come and personally see me. I don't know how he can still dare to show his face to me. And he asked to go back to the deployed camp to show he can do it.

He [Necin] was a grand secretary, yet he wants to go like some foot soldier. ... he has no shame. Seeing this, and Zhang Guangsi is such an obstinate, small person. Necin is a weak little person. They have ruined things to this level.

When Zhang Guangsi arrived at the deployed camp, he mistakenly believed that Jinchuan's little chieftain would be as easy to take care of as the Miao in Guizhou. Many times he said big words indicating he would soon be memorializing victory. But, after a long time, there was no success. Many times there were mistakes. He would just blame his subordinates and junior officers, and rely on the excuse that he did not have sufficient numbers of soldiers. Thus I sent Necin forward. Zhang Guangsi and Necin [in the deployed camp] still maintained their distance from one another.

In this same edict, the emperor elaborated on how Zhang's deception differed from Necin's cowardice. In fact, it was Necin's cowardice that enabled Zhang's deception. The problem with deception, from a military discipline standpoint, was that it was a way for officials to seek private ends while claiming it was official purposes. Zhang's was a manipulating deception

⁴⁶ Wei Yuan 魏源, *Shengwuji* 聖武記 [Sacred Military Victories][originally published 1842], juan 7, 17r-17v.

whereby Zhang sought to appear better at the expense of Necin and the dynasty's important military mission.⁴⁷ For the emperor, though, the fundamental issue was still not wanting to appear lenient. Even though there existed many legal procedures and precedents for leniency, the emperor framed the discourse to imply that it was *the law itself* that excluded leniency. This point is important because this framing did not reflect the actual state of the law at the time, but rather what the emperor believed the law *should* be. In the emperor's view, the law could not provide leniency in such a situation:

How could I twist the law to be lenient and be an indulgent sovereign?...
Today, I am going to clearly punish his crime in order to uphold the dynasty's law (*jin zhen ming zheng qi zui, yi zhang guoxian* 今朕明正其罪, 以彰國憲). Indeed, in matters of rewards and punishments, I do not act out of personal interest. I follow the path of impartial righteousness (*nai zhen shangfa wu si, dagong zhizheng zhi dao* 乃朕賞罰無私、大公至正之道). At this time, Zhang Guangsi will be transferred to the Grand Council to be tried jointly with the appropriate boards and to draft a punishment in accordance with the law.⁴⁸

This edict also reflected the Grand Council's involvement in the trial of high officials. This function of the Grand Council as an adjudicative institution was conceptually distinct from its role as an administrative conduit in other, less political, militarized-adjudication cases. As seen

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[Qianlong Emperor] Zhang Guangsi stood back and watched how Necin would do things. If [Necin was successful] he could claim credit for himself. If not, then he could blame Necin. He pushed off everything on Necin, leading to utter failure....

As for Necin, his crime was that he *cowered* and was incompetent (*tuiqie wuneng* 退怯無能). Zhang Guangsi saw this. Once Necin had failed in his mission, he [Necin] was at his wits' end. When Necin became afraid of the uprising of the Guyuan soldiers, he improperly gave great rewards [to try to coax the soldiers]. Finally, he implored Zhang Guangsi to suppress the insurrection, and thus he also become subject to Zhang Guangsi's deceptive bungling [Zhang Guangsi had him in his clutches]. ... Zhang did not truthfully memorialize. ...

QSL-QL, juan 330, 482-2 – 484-2.

⁴⁸ QSL-QL, juan 330, 482-2 – 484-2.

in nearly all the cases cited in the next chapter, as a conduit, the Grand Council forwarded memorials and packaged imperial edicts in court letters to send back to the memorializing officials. This latter role allowed militarized adjudication to function outside of routine bureaucratic channels. The Grand Council's additional function as an adjudicative institution, seen in this case, was usually reserved for important or politically-sensitive cases. Starting from the early Qianlong reign, both roles were important to the expanded role of militarized adjudication.

Early in 1749 (QL 13/12/11), the emperor briefly returned his attention to the ongoing trial of Cingfu (who had forwarded the inaccurate memorial about Bangun's being burned to death during the Zhandui affair). Given the emperor's earlier references to house arrest, I believe that this edict – directing a speedy conclusion to Cingfu's case – was part of the ramping up of militarized adjudication, of sending a clear signal that deception and especially cowardice (the roots of military indiscipline) would not be tolerated:

[Emperor] An order. The Board has still not forwarded a memorial asking to have Cingfu's case completed. I think the facts of this case are obvious (*zhen si ci anqing jie xianzhu* 朕思此案情節顯著). There is no doubt. This case has been hanging out there not completed for a long time....Cingfu's crime is different (*you jian* 有間) from that of Zhang Guangsi and Necin's.

Necin's crime was doing things wrongly (nonsensically) and cowering, turning his back on the imperial grace and ruining things (*zai guai Zhang tuisuo, fuen fenshi* 在乖張退縮, 負恩償事). Zhang Guangsi's crime was being deceptive (*zai jiaozha qi wang* 在狡詐欺妄) and wasting military resources. I issued so many clear edicts. As far as Cingfu's deceptive reporting that Bangun was burned to death (*niebao Bangun fenbi* 捏報班滾焚斃), maybe he got the idea from PMC Li Zhicui, ...the crime cannot be pardoned. ...

All the junior officials and subordinates thought that Bangun had been burned to death. Cingfu knew it was not correct, and announced operations complete. ...he must have missed his family, and so cowered and did not do things right. But, it is not as bad as

Necin. With Cingfu's crime being like this, the Grand Councilors should interrogate Cingfu based on this edict. ...

Cingfu was a high official...[who] wasted military resources. .. Although he deserves it. At this time, there are also the crimes of Necin and Zhang Guangsi....Cingfu cannot wait. ... Make all the princes and Manchu and Han high officials aware of this...⁴⁹

Based on this, the Grand Council memorialized back that former Sichuan Governor-general Cingfu, PMC Li Zhicui, and *Zongbing* Song Zongzhang, should all be sentenced to decapitation after the assizes. The emperor rescripted simply: it is approved.⁵⁰

On the same day (January 29th), the Grand Council memorialized the draft sentence in Zhang Guangsi's case:

[Grand Council] Zhang Guangsi has received the grace of the dynasty and served for a long period on the frontier. Because he was experienced with military campaigns, the emperor specially appointed him to carry out offensive operations in Jinchuan.

...
We officials have drafted the punishment according to the law after consultation. Zhang Guangsi bungled military operations (*shiwu junji* 失誤軍機), leaked military secrets (*louxie junqing* 漏洩軍情), incited people's hearts (*shanhuo renxin* 煽惑人心), did not maintain the defense (*shoubei bushe* 守備不設), covered for thieves (*weizei suo yanxi* 為賊所掩襲), and he abandoned military equipment because he lost cities and hamlets. Based on each of these crimes, he should be decapitated (*zui jie ying zhan* 罪皆應斬).

At the time, to the extent each of the above crimes was defined in the Code, the Code listed their maximum punishments as decapitation *after the assizes* (which, as shown in Chapter Two preserved a significant opportunity for leniency). Yet in this case, the Grand Council's memorial continued:

Because [Zhang Guangsi] also turned his back on the imperial grace and intentionally bungled things for the dynasty (*youxin wuguo* 有心誤國), his punishment truly cannot be pardoned.

⁴⁹ QSL-QL, juan 30, 488-1 – 488-2.

⁵⁰ QSL-QL, juan 30, 488-1 – 488-2.

Zhang Guangsi should be decapitated *immediately* (not after the assizes) (*ying jiang Zhang Guangsi ni zhan lijue* 應將張廣泗擬斬立決).⁵¹

Depending on one's views of the relationship between the Grand Council and the emperor at this time, this memorial could be taken to show that the Council understood the message of the emperor's earlier edicts calling for a lack of leniency. The emperor responded with an edict, approving the sentence of *immediate* decapitation for Zhang Guangsi: "Zhang Guangsi will be immediately decapitated. Have Debao and Le'ersen go forth to the place he is being held and execute the punishment." That was the matter-of-fact end of Plain Red Chinese Bannerman Qing high official and former war hero Zhang Guangsi. But the emperor did not stop there. He used the edict as another teaching moment, to further shape the law in accordance with his vision. The emperor of course could execute anyone he wanted, but he wanted the law itself to limit leniency. Thus, he criticized the Board for implying that the *law* did not *require* the *immediate* execution:

[Emperor]: The Grand Council consulted with the Board of Punishments on the case of Zhang Guangsi. In the Grand Council's memorial, it cited that while on military campaign, [Zhang Guangsi] just delayed and waited to see what would happen (*linjun zhengtao, douliu guanwang* 臨軍征討、逗遛觀望). Because of this, the Grand Council [and Board of Punishments] applied the statute on "bungling military operations requiring decapitation (*shiwu junjizhe zhan zhi lü* 失誤軍機者斬之律).

The memorial further stated that since Zhang's crime was especially egregious, decapitation *after the assizes* was insufficient to make up for his guilt, and therefore requested that I approve decapitation without delay. In fact, the letter of the law [cited by the Grand Council and the Board of Punishments] did not require *immediate* decapitation, but the high officials all recommended it.

⁵¹ QSL-QL, juan 330, 491-1 – 492-2.

The emperor specifically pointed out that “deception and cheating” were the gravamen of Zhang’s offenses. The emperor apparently considered that the Grand Council’s draft sentence (while sufficient to support execution) did not make the point about military discipline.⁵² The emperor explained that there was no reason for an adjudication *after the assizes* because there was no further investigation to be done. Since there was obviously no possibility for leniency, there was no reason to delay the execution:

If it was adjudged *after the assizes*, what else would I personally have questioned him about [at *Zhongnanhai*] or issued an edict to have him questioned about. In the past, in the case of Nian Gengyao [from the Yongzheng period], there were so many statutes cited to justify his decapitation. Now, Zhang Guangsi has committed so many crimes that it makes one’s hair stand on end. Yet the Grand Council, so many people working together, just came up with this sloppy and confusing memorial. It is not logical.⁵³

Having already executed Zhang, the emperor ordered the execution of Necin, but note how the series of orders dealing with the execution itself touched on two important facets of deterrence: it should be widely-known (done “in front of the army”) and it should be quickly implemented (especially to avoid complications). These two goals came into some conflict in Necin’s execution:

March 3, 1749 (QL 13/1/15). An order. I [the emperor] previously forwarded an edict to President (of the Board) [Plain White Manchu Bannerman] Šuhede (Ch: Shuhede 舒赫德) (1710-77) to bring Necin before the deployed army and to jointly try him with Supreme Commander Fuheng, to execute him in front of the [deployed] camp gate (*junmen*

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[Qianlong Emperor] Standing aside and waiting to see what would happen, bungling military operations, and so many crimes. Zhang Guangsi engaged in deception and cheating [*Zhang Guangsi jiaozha qiwang* 張廣泗狡詐欺妄]. He intentionally meant to harm the dynasty. His crime was great. Immediate [decapitation] was appropriate. In his confession, [Zhang even] recognized that immediate decapitation was appropriate.

QSL-QL, juan 330, 491-1 – 492-2.

⁵³ QSL-QL, juan 330, 491-1 – 492-2.

zhengfa 軍門正法). Fucheng memorialized that Necin is refusing to eat and just stays in bed and does not get up....⁵⁴

Necin betrayed the dynasty's grace and brought ruin to the dynasty. It is appropriate to punish him. Now, in his heart he knows that the crime is very aggravated. So, he wants to kill himself. But, he cannot be allowed to avoid his punishment. Send an edict to E'shi. If Necin is still on the way [to Chengdu], E'shi should temporarily wait at Chengdu. When Necin arrives, he should consult with the acting governor, the finance commissioner and the provincial judge as well as with the assistant banner commander (Furdan). Then, he should publish this edict and execute Necin right at that place. E'shi should then proceed to the deployed camp, stay for a day or two, and then return to Beijing. If Necin has already been escorted past Chengdu, then he should be escorted to the deployed camp, and disposed of as per the edict. E'shi again should wait one or two days and return to the capital.⁵⁵

Four days later, the emperor modified the order:

March 7, 1749 (QL 14/1/19). An order. I previously ordered that Necin would be executed in front of the deployed army. And then I sent an edict to E'shi to have Necin escorted to Chengdu, and for E'shi to consult with the local officials and take care of things. ...but at this time the army is already redeploying [because Fuheng negotiated a deal with Solobun!]. So there is no need to go to the deployed camp. At whatever place this edict arrives at, if it is a prefect or county, then consult with whoever the local officials are, and immediately execute Necin there. If it is a place where there are no officials, then E'shi is an imperial envoy, and he can publish the edict [himself] and execute Necin. After the execution, he should inform Supreme Commander Fuheng. It's okay to tell Šuhede, too.⁵⁶

Twenty one days later, on March 28, 1749 (QL 14/2/11), Imperial Envoy and Guardsman E'shi memorialized that he had received the above edict and executed Necin on March 17 (QL 14/1/29) when he reached desolate Banlan Mountain and received the edict: "I received the edict and executed Necin, and that's it."⁵⁷ The early nineteenth-century statecraft writer Wei Yuan, wrote that the emperor sent the sword of Necin's famous ancestor to the deployed camp in

⁵⁴ QSL-QL, juan 332, 559-2.

⁵⁵ QSL-QL, juan 332, 559-2.

⁵⁶ QSL-QL, juan 333, 569-2.

⁵⁷ QSL-QL, juan 334, 590-2.

Sichuan and ordered him executed with it, but there is no reference to this in the Veritable Records. Perhaps this was a rumor that developed later to suggest the empire's desire to extirpate the shame of the Manchus?⁵⁸ As indicated above by the reference to the soldiers redeploying, the new Supreme Commander, Fuheng, along with PMC Yue Zhongqi (who had actually worked with Solobun on a mission years before) ultimately came to a deal with Solobun, ending the First Jinchuan campaign.⁵⁹

Is it proper to understand the trial and execution of Zhang Guangsi and Necin as militarized adjudication? After all, the Grand Council consulted with the Board of Punishments to draft the sentences. But, at the same time, the emperor had already more or less dictated the results to the Grand Council before their drafting even began. With the various edicts and the direct, ubiquitous guidance of the emperor, the process did not reflect simple bureaucratic routine. Most importantly, the emperor himself characterized what he did to Zhang and Necin as militarized adjudication. In a major face-saving measure, the emperor blamed the two former high officials for what he now inferred were misunderstandings over Jinchuan and even had Chieftain Solobun informed that "I have executed them [Necin and Zhang] under militarized adjudication (*zhen yi jiang yideng junfa congshi* 朕已將伊等軍法從事)."⁶⁰

The emperor's deliberate publication of the key memorials in the two cases reflected the didactic purpose behind the executions. Whatever the primary motivation for the emperor's execution of these two once highly-esteemed officials, he used the occasion to educate his officials on the cost of indiscipline. The important message to the emperor's officials was not to

⁵⁸ Wei Yuan. ECCP, 43-45.

⁵⁹ ZGLDZZNB, 453.

⁶⁰ QSL-QL, juan 335, 609-1 – 610-1.

tolerate military indiscipline within the ranks of their subordinates. Following the executions of Zhang Guangsi and Necin, there could be little doubt: in matters of military discipline, leniency would not be tolerated.

III. Legitimizing Militarized Adjudication as Qing Law

The Qianlong emperor's efforts to shore up military discipline by eliminating the hope for leniency in specific categories of cases meant that militarized adjudication – or at least its basic logic – had to be incorporated into the available repertoire for officials adjudicating cases. The Ming-Qing Codes had long contained a provision criminalizing *negligence* in military operations that harmed the mission (*shiwu junshi* 失誤軍事). This provision covered such things as missing logistics deadlines and procrastinating and provided for punishments ranging from caning to decapitation *after the assizes*. Not only did this provision fail to provide the immediate deterrence the emperor required, but it also failed to capture his central idea that indiscipline was a conscious choice. This distinction had become apparent in the above memorial from the Grand Council recommending a draft sentence in the case of Zhang Guangsi. The emperor was not satisfied that the law cited required only decapitation after the assizes. He felt that the law should have required immediate decapitation. Seven days after receiving that memorial, on February 4, 1749 (QL 13/12/17), he thus directed the Grand Council and the Board of Punishments to change the formal law:

[Qianlong Emperor]: Military discipline is the most important business of our dynasty, thus in order to adjudicate cases under militarized proceedings, harsh statutes must be enacted (*junlü nai guojia diyi yaowu, junfa congshi, mingli cuanyan* 軍旅乃國家第一要務, 軍法從事, 定例綦嚴). Currently, within the formal criminal code, there is no provision for laxness in military operations leading to unnecessarily exhausting the troops or intentionally bungling military operations (*jin xinglünei wankou laoshi, youxin yiwu, jingwu zhengtiao* 今刑律內玩寇老師, 有心貽誤, 竟無正條). This means that there is no

law emphasizing military operations to foster deterrence of indiscipline (*fei suoyi zhong junwu jingjie shilü ye* 非所以重軍務儆戒失律也). ...

The old cases should be researched and the criminal provisions clarified in order that the law will be feared and to encourage bravery and following orders. This is not because I want to make laws harsh. I want to make it clear to my military officials that we need to maintain discipline and encourage soldiers to be brave. The very meaning of law is deterrence to prevent later evil (*bi yi zhi bi zhi yi ye* 辟以止辟之義也). Now when revising the Collected Statutes, consider with the Grand Councilors. The appropriate board should consult, and send up recommendations....⁶¹

Almost immediately, the Grand Council and the Board of Punishments jointly memorialized with the following new substatute, to be published under the Code statute on *Failure to Maintain the Defense* (*zhujiang bu gushou* 主將不固守). This substatute essentially codified the emperor's viewpoint on the Zhang and Necin cases:

Any high level official leading troops who treats military matters frivolously (凡統兵將帥玩視軍務), who sits around seeking comfort, deliberately procrastinates, does not report the situation truthfully, thereby bungling the dynasty's matters; any high level troop leader who because of personal animosity or jealousy pushes off his responsibilities or holds back another official, leading to the exhaustion of troops and wasting of resources, thereby bungling military operations; when the highest level commander for a given operation (主帥), cannot overcome the enemy and spreads rumors inciting men's hearts in order to entrap other people, thereby bungling military operations; all of the foregoing behaviors are included with the crime of *intentionally* bungling military operations, and are to be punished by immediate decapitation (*jun shu youxin yiwu, ying ni zhan lijue* 均屬有心貽誤, 應擬斬立決).

This substatute not only criminalized a number of new offenses, but affirmatively incorporated the criminological viewpoint upon which militarized adjudication was based. These offenses were all to be considered as *intentionally* bungling military operations and were not subject to

⁶¹ QHDSL, juan 581, 536-1 – 536-2; DLCI, “主將不固守-03.”

leniency. When he immediately approved this new statute, the emperor enshrined his view of the relationship between indiscipline and individual criminal punishment in the Code itself.

In comments the emperor made the next year, it became even clearer that he was not merely dissatisfied with a single case or a single crime, but with the ineffectiveness of the routine criminal process in general to effectively support military discipline. In criticizing the extent of process under routine procedure, he referred back to what can only be described as highly-legalist portions of the ancient Confucian *Book of Documents* (551-449 BC) to essentially criticize the Three Judicial Offices' adherence to the norms of late imperial legal culture. By suggesting the possibility of leniency, the Three Offices were still holding out hope. This was directly interfering with the emperor's efforts to ensure that officials conducting military operations did not take potential imperial leniency into account when making decisions that affected military discipline. He told the Three Judicial Offices – in many ways the very institutional manifestation of late imperial legal culture – that when they encountered these types of cases, they should look towards the military-campaign genealogy of militarized adjudication:

December 8, 1749 (QL 14/10/29). An order. The dynasty (*guojia*) established the Green Standard system (*yingwu* 營伍) and they are led by officers and junior officials (*ling yi jiangbian* 領以將弁). In order to prevent violence and wickedness, military law requires death for indiscipline (*bingfa shilü youzhu* 兵法失律有誅). According to the Book of Documents, “If one does not follow orders, he shall be executed in front of the Earth God temple.” This is how strict is the legislation. Lately, though, the Three Judicial Offices, have been designating many cases involving officials as “deferred execution (*huanjue* 緩決).” Because of this military officials and junior officials expect [request] leniency under the law. This is completely against the original intent of the legislation.

...

If in ordinary times (*pingshi* 平時) rank-and-file soldiers (*shizu* 士卒) are not trained (*fuxun* 拊循) or because of the type of [incorrect] training they become undisciplined (*huo yinxu er liuyu feiche* 或因循而流於廢弛) or because the training is severe and intense their wrath is incurred, then when they are called upon to respond to the outbreak

of some minor conflict (*ouyu xiaochouqie fa* 偶遇小醜竊發), they do not obey orders and cannot be led, they become scared and insecure and cower (*weisi tuisuo* 畏葸退縮) and criminals will be allowed to run amok and the soldiers will be exhausted (*zongkou laoshi* 縱寇老師) or the soldiers will be routed [scatter with the wind on the battlefield (*wangfeng weimi* 望風委靡)], even to the point they secretly cover for one another betraying the imperial grace and ruining things (*shenzhi qibi rongyin, fu'en fenshi* 甚至欺蔽容隱, 負恩僨事). Where then will be the loyal and competent soldiers the dynasty relies on (*guojia suo yifei ganchengfuxin zhe hezai* 國家所倚為干城腹心者何在)? If these are not punished/killed (*ci er bu zhu* 此而不誅), how can there be deterrence?

But, because officials in the past did not respect military discipline, so the emperor had to execute a number of them, as he reminded his officials in this edict:

I rule all under Heaven through benevolence. I exercise great care over the lives of the people (*shenzhong minming* 慎重民命). I do not dare to forgive those who dare to not respect and thereby provoke Heaven (*wanggang fuqin, er tiantao suoza, zhen fu ganshi* 罔敢弗欽, 而天討所在, 朕弗敢赦). Like Necin and Zhang Guangsi, they harmed the country and failed to appreciate the imperial grace, so many times did I publicly publish edicts, and I already immediately had them punished (*ru Necin Zhang Guangsi zhi wuguo fe'en, lüban yuzhi, yi lizheng dianxing* 如訥親張廣泗之誤國負恩, 屢頒諭旨, 已立正典刑). Also, Cingfu was deceptive (in reporting Bangun's death), covered up things and was indulgent towards the enemy (*Qingfu zhi qimeng zongkou* 慶復之欺朦縱寇). I already ordered him to commit suicide,

And then he went on to criticize the specific actions of the Three Judicial Offices in this case.

Their fault was that they had not recommended a number of military officials for execution who appeared on the Autumn Assizes rolls, a process that could hold out the hope for leniency for years to come.

Yet, now I read the documents from the Autumn Assizes. ... Xu Yinghu lost a military opportunity, and cowered on the battlefield. First Captain Shen Duanlong deserted his post, pretending to be sick in order to seek comfort. Hu Lin, Liu Zhong, were cowards who retreated and hid, leaving their designated *xun* undefended. That's also like Zhang Tong and Yang Wenfu who left their posts unguarded, hindering relief operations. These crimes are all unpardonable under the law. There is nothing forgivable. All of them that were drafted as deferred execution, I order that they be changed to "checked, execute" in order to deter (*yi wei jiongjie* 以為炯戒).

In this same edict, the emperor again explained how he was using deterrence to adjust the calculus of those who would break discipline seeking to avoid harm or death. The thrust of his assertion was that summary execution pursuant to militarized adjudication was a shameful way to die. He sought to eliminate entirely the hope that cowering or avoiding hardship was a good strategy for survival. The emperor wanted it known among his officials and troops that the choice was not between death in battle and seeking comfort, but between merit in battle (which may or may not lead to death) and a shameful death under militarized adjudication. In other words, by stripping away any real hope for leniency and closing the “net” for escape, the emperor’s goal was to make bravely going into battle the best hope for survival.⁶²

As with earlier edicts he had ordered published, the emperor used this case as an example to educate his officials, expressly stating that its purpose was to educate military officials, and again ordering it widely published in a wood block edition:

After I have changed these [cases] to “checked [for execution]”, *publish this edict* to give meticulous direction to all in order that all military officials will know that those who bring down ruin must not escape punishment (*xiangxi kaidao, ling wuchen xian zhi fenshizhe, bi wu yifa* 詳悉開導, 令武臣咸知僨事者, 必無軼罰). *Those who commit crimes will no longer have the good fortune of living.*

And when they are executed after having committed such blunders, it will be nothing like if they had martyred themselves in battle. This is the way to make righteousness known. By taking it upon oneself individually to implement orders to the utmost, in war the enemy will be overcome, in the defense, things will be secure. ... This is the righteousness of proper laws preventing future evil. Publish this edict in a wood block

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When the soldiers are on the campaign all clothed in armor, they should think of competing to be first on the battlefield and go towards the danger and die at the head of the spear or arrow if it cannot be avoided, and the dynasty will richly reward them, their families, and their descendants. But, if they cower and seek safety, leading to failure on the battlefield, perhaps they will be able to evade for a time, but the ax will eventually find them and they will die. To die by the enemy’s hand is honorable. To die under the law is shameful. Even imbeciles, upon careful reflection, would know which option to choose. QLSYD, v. 11, p. 388, No. 1523.

edition. Make sure all the inner and outer military official officials enter it into their reference books to pass it on forever and may they all obey it.⁶³

In these edicts, the emperor was lecturing the archetypical agencies of the routine criminal process – the Three Judicial Offices, as well as the other officials involved with the Autumn Assizes – to incorporate the logic of militarized adjudication into their analysis, something that had previously been foreign to late imperial legal culture. Moreover, there were serious contradictions inherent in what the emperor was advocating. Conceptually, the most significant obstacle to the simplification and expeditiousness the emperor sought continued to be the inevitable ambiguity and factual diversity of individual cases. No two crimes were alike. For instance, in an edict from the beginning of 1750, the emperor addressed three different cases that were pending at various stages of investigation and trial more or less pursuant to the routine process. These three cases all involved military officials who had left their place of duty in the Jinchuan theater. The emperor cautioned that officials or rank-and-file soldiers would be unable to distinguish the facts of the three cases and thus would think that the emperor was being lenient in some of the cases.⁶⁴ The emperor’s own vision of deterrence – quick categorization of a case

⁶³ QLSYD, vol. 11, p. 388, No. 1522. QSL-QL, juan 351, 852-2 – 853-2; this edict was also entered into the QHD-SL, juan 194, 40r-42v.

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January 1, 1750 (QL 14/11/28). [Emperor] An order. Dismissed Colonel Hu Dayong. While at Jinchuan, he rashly sought to manufacture artillery-resistant cotton-reinforced plates (攔炮綿牌). Therefore, he [left the Jinchuan deployed camp and] proceeded to Yunnan to take care of this. Things got delayed, and it ultimately came to nothing. I referred his case to the Grand Council to adjudicate jointly with the Board of Punishments. In accordance with the law on “relying on an excuse for missing a deadline in a wartime environment (*junlin dijing, tuogu weiqi lü* 軍臨敵竟，托故違期律)” he was sentenced to exile and sent to Hunan Province.

At this time, in the Autumn Assizes rosters, there is also the case of the First Captain Shen Duanlong who claimed to be sick in order to dodge his duty (malingering). He has already been selected (*gou* 勾) for execution. These two men both went from the deployed camp to some other place. Although superficially the cases are similar, but Shen Duanlong claimed to be sick when he was facing the enemy, and he did not

at the ground level followed by, if appropriate, summary execution – conflicted with the nuances of the cases he identified as determinative in their diverse outcomes. The distinctions he relied on came to light in part as a result of the very process he was trying to shortcut.

Despite the emperor's admonitions, his officials – seemingly in his opinion either through laziness, incompetence, or intentional deception – continued to fail to properly distinguish (categorize) behavior in terms of administrative, routine-criminal, and militarized-adjudication processing. For instance, in the case of Colonel Wang Kai, an officer accused of malingering, Governor Celeng had forward a recommendation for administrative sanctions without directly addressing the issue of whether Celeng had been malingering.⁶⁵ The emperor sought clarity: was

remain in Sichuan to be reassigned, he just went back to his original duty station in Guizhou on his own accord. For him, he just cared about his official position for his private interests and set aside concern for military matters. This crime cannot be pardoned. Hu Duanlong also intended to avoid duty (*guibi zhi xin* 規避之心), but it seems Furdan and Bandi authorized him to proceed to Yunnan. This is different from the crime of intentionally relying on some excuse to delay in one duties. If Furdan and Bandi had not dispatched him to Yunnan, Hu would not have been able to depart the deployed camp. The two situations are fundamentally different.

The essence of military discipline is to manifest rewards and punishments. If people see that Shen Duanlong is put to death and Hu Dayong gets to live, there will be talk (*buwu yilun* 不無議論). Additionally, the Zhenyuan *Zongbing* Song Aitiao memorialized, requesting to end his convalescent leave and return to duties. People will compare this with the former two cases. These cases have to be distinguished on how serious they are. The junior officials in the camp do not know all the facts of these cases....

NGDK, 055229-001; QSL-QL, juan 353, 877-2 – 878-1.

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On May 13, 1749 (QL 14/3/13). An edict. Colonel Wang Kai was assigned to conduct military operations against Ladi. He allegedly had a stroke and requested to be returned to his home province to convalesce. Necin and Zhang Guangsi did not bother to verify whether it was true or false, and merely sent up a memorial requesting to back fill his position. I ordered Celeng to investigate and determine whether it was true or not that he was sick. Celeng's report (memorial) stated:

[Celeng] I have spent a long time [reviewing the material in this case]. No conclusive evidence was presented. But, Wang Kai was in the position of a commander (*shen wei tongling* 身為統領). The fact that he was unable to directly enter Ladi Strategic Area, is itself negligent and without military merit. Even if it is true that he got sick, it was not appropriate for him to request convalescent leave and avoid his duties. Now it has already been investigated, and is still necessary to request the Board to fill the vacancy. Wang

this a case of malingering (i.e., cowering or seeking to avoid hazardous duty)? Governor Celeng instead gave what appears to have been a comfortably bureaucratic response: while not confirming that Wang was sick, he reasoned that even if Wang were sick, he should still have been referred to the Board for avoiding duties.

Celeng's actions – investigating and referring questionable behavior to the Board – was consistent with the Qing's tradition of bureaucratic management and could also be said to reflect the prevalent adjudicative *mentalité*. If there was a crime, the Board of War could make the call and recommend that the official be referred to the Board of Punishment, and then the emperor could make the final call. But as the emperor pointed out upon reading this recommendation, he wanted Celeng himself to categorize the behavior at the initial point of investigation. Rather than the process determining the proper categorization, the emperor wanted the categorization to determine the process. In the emperor's opinion, this appeared to be a case of an official engaging in cowardly behavior which should have been adjudicated under militarized adjudication.

[Emperor] Wang Kai was a high level commander who was unable to exert himself bravely and take strategic ground. Occasionally people get sick. Because of occasionally getting sick (*ouer huanbing* 偶爾患病), they request to return to their home provinces. It seems [*akin to*] like this is an official who cowered on the battlefield, and used the excuse of being sick to avoid difficult duties (*linzhen tuisuo tuobing touan* 臨陣退縮托病偷安).

Such a muddleheaded memorial (from Celeng). If this incident occurred at the time of attack (*ruo zai jingong zhiji* 若在進攻之際), then it should have been adjudicated under militarized proceedings (*anyi junfa congzhong zhizui* 按以軍法從重治罪), but to just draft a punishment of dismissal from office, how is that sufficient to address his guilt?

Kai should be referred to the Board and be administratively sanctioned according to the statute on avoiding duties (*guibi li* 規避例).”
QSL-QL, juan 337, 644-1 – 644-2.

But now that we have been victorious (only in the emperor's mind) and military operations are complete, it cannot be compared to a time of active military operations (*fei yongbing shi kebi* 非用兵時可比). And whether this junior official was really sick or not, there is no conclusive proof. This is a matter of balancing aggravating and minor crimes (*ci suishi qingzhong zhi quanheng* 此隨時輕重之權衡). We cannot allow there to be any leniency (fortune) outside the law. For this reason, Wang Kai will be adjudicated according to the Board's recommendation. Publish this order to all the junior officials.⁶⁶

The emperor's rhetorical reference to leniency outside the law is again important because it was precisely leniency under the law that was the main subject of his criticisms. It was the leniency built into the routine process that drove him to incorporate militarized-adjudication concepts as a counterweight in the analysis. Again, the emperor emphasized the availability – in fact the appropriateness – of a militarized adjudication if the category of the case was clearly akin to cowering on the battlefield. He also emphasized the traditional temporal aspect of militarized adjudication – at the time of the attack – thus showing that these previous considerations were not completely unimportant in his analysis. After all this, and probably unsurprising for a case in which the underlying “crime” was likely a stroke, the emperor appeared to grant leniency in this case.

On February 23, 1749 (QL 14/1/7), on a remaining Zhandui case, the emperor made some further distinctions about what was to be a militarized-adjudication case. Cingfu had deceived the emperor by reporting that Bangun had been killed. The emperor suspected that Cingfu's subordinate, Green Standard Major Luo Yuchao, had a part in falsely reporting Bangun's death.⁶⁷ But the emperor ultimately determined that “Luo Yuchao's crime did not rise to the

⁶⁶ QSL-QL, juan 337, 644-1 – 644-2.

⁶⁷ QSL-QL, juan 309, 64-1 – 65-2.

level of militarized adjudication (*shang bu zhiyu junfa congshi* 尚不至於軍法從事). He is a junior officials from the inner-empire (*neidi jiangbian* 內地將弁). Still, as per my edict, he should be escorted to the capital and turned over to the Board to knock the dust off this old case.”⁶⁸ The language here of *not rising to the level of* (*buzhi* 不至) militarized adjudication is conceptually instructive, indicating that the categorization of a *junfa* offense was based on a *totality of all the circumstances*, and was to a large degree subjective.

As time went on, the emperor pushed more and more for consideration of militarized-adjudication principles in cases on the margins of military, such as the execution of non-military persons who had been part of the Ma Chaozhu peasant upheaval that started in Hubei on May 16, 1752 (QL 17/4/3), a “rebellion” (in the words of the emperor), that involved perhaps less than one hundred persons.⁶⁹ The emperor issued an edict, noting that the case was obviously a case of “rebellion” and exhorting provincial officials to *show no leniency*. He warned his officials against following ordinary procedure (*xunchang* 尋常) in such a case. He pre-authorized his officials to execute the prisoners under the imperial standard once they had been tried, an exercise of militarized-adjudication authority.⁷⁰ This was an imperial authorization for

⁶⁸ QSL-QL, juan 332, 547-1 – 548-2.

⁶⁹ Chang Jinghua 常建華, *Qianlong Shidian* 乾隆事典 (Taipei: Yuanliu Chubanshe, 2008), 164.

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[Qianlong Emperor]: Edict: It is obvious that this is a case of rebellion (*panni* 叛逆). ... The governor-general and other high officials should not exercise any leniency in this case. They cannot respond according to the routine (*xunchang* 尋常) precedent/substatute prohibiting people from gathering in a crowd (*qunzhong zhili* 聚眾之例). Rather, they should select one or two people to execute first. They must show the seriousness of the mater. If they execute a few more people, the common people will be deterred (*suoquan yu houzhe duo yi* 所全於後者多矣). In addition to those being kept in jail – those who are subject to death by slicing and certain hostages we are holding to apprehend Ma Chaozhu – the rest should all be executed. On the day that they have been interrogated and the facts clarified, the imperial standard

militarized adjudication in a non-institutional military case. This case did not reflect the strategic approach of just executing rebels on the battlefield, but rather was comprised of executing individuals under the imperial standard, a strong indicia of classic battlefield militarized adjudication. This case went well beyond the rebellion statute which provided no such provision for summary execution.

The emperor continued to chip away at the boundaries between militarized adjudication and routine criminal process on the margins of military activity. During 1752 (QL 17), Nan'an Prefect of Jiangxi Province was having some issues with local bandits. This was not a rebellion in any sense, but appeared to be more of a local gang led by the "criminal" He Yasi 何亞四. In his law enforcement capacity, Green Standard Sub-Lieutenant Xie Yourong 謝又榮 was working with Shangyou County 上猶縣 magistrate Gao Xianzong 告顯宗 to apprehend He Yasi and the other bandits. It was reported that when Sub-Lieutenant Xie went out with the magistrate to confront the bandits, he just fired his bird gun ineffectively alerting the bandits and causing them to scatter. He did not apprehend any of the bandits within the time limits.

On December 20, 1752 (QL 17/11/15) Acting Governor E'rong'an 鄂容安 memorialized "As to Sub-lieutenant Xie Yourong, who had gone forward with the magistrate to apprehend the bandits, the magistrate encouraged him to advance with his weapons and fire.... But all he did was fire his weapon and scatter the thieves and not even apprehend one person. The thieves scattered, making it more time consuming to apprehend them." The governor requested that Xie

should be taken out, and they should be immediately executed (*ji yingyu xunming zhi ri, yong wangming qipai jiang gairan jixing zhengfa* 即應於訊明之日, 用王命旗牌將該犯等即行正法).
QSL-QL, juan 440, 424-1 – 424-2.

be *administratively sanctioned* with dismissal from office. As in other cases, however, the emperor noted that in Xie's case "it *seems* like this is a cowardly and incompetent junior military official (*si ci nuoqie wushi zhi bian* 似此懦怯誤事之弁). Merely dismissing him from his position is insufficient to account for his guilt (*zige buzhu bigu* 資革不足蔽辜). He is hereby referred to the Board of Punishment for criminal adjudication."⁷¹

Thus far, the case was in line with the emperor's efforts to reset the threshold between administrative sanctions and criminal punishments seen in earlier cases. The emperor again discursively reduced Xie's conduct to "*akin to cowering*" and incompetence. However, this case was not only about adjusting the boundaries between administrative sanctions and punishments, but also about adjusting the boundaries – conflating the logic – between routine criminal process and militarized adjudication, in a case arising out of the margins of the military activity.

On March 30, 1753 (QL 18/2/26), after having received the Board of Punishments' routine criminal memorial in the Sub-lieutenant Xie case with a draft punishment of caning and exile pursuant to the "knowing where a criminal is located but not apprehending him" statute, the emperor upbraided the Board of Punishments, accusing them of not recognizing that this was not an "ordinary" case but a case "no different" from that of "cowering on the battlefield leading to the bungling of military operations." He noted it should have been addressed by summary execution under militarized adjudication, clearly impressing on the Board that the Board should have looked to militarized adjudication in deciding such a case.⁷² By telling the Board that the

⁷¹ "*Sici nuoqie wushi zhi bian, zige buzhu bigu, zhao nazhuo jiaobu zhizui* 似此懦怯誤事之弁, 資革不足蔽辜, 著拏交刑部治罪。" QSL-QL, juan 426, 580-2.

case should originally have been adjudicated under militarized adjudication, the emperor was shaping the Board's analytical approach to this *extraordinary* case:

[Emperor]: Yet, the Board of Punishments improperly cited the statute on “knowing where a criminal is located but not apprehending him,” and forwarded a draft sentence of caning and exile. How can the case of people who were planning to rebel be compared with that of *ordinary* (*xunchang*) robbers or gamblers? After having received such imperial favor, [Xie] acted with such wanton disregard. How can we restore military discipline (*junji* 軍紀)? Send this case back to the board for rigorous deliberation.

Finally, the emperor concluded by dismissively telling the Board, “I am “tossing” your original routine memorial back to you (*qi yuanzhe zhihuan* 其原摺擲還)! Redraft the punishment.”⁷³

As in other cases, the Qianlong emperor first discursively reduced the situation down to the prototypical example of misconduct supporting traditional epicenter militarized adjudication – cowering on the battlefield – and reduced the complex causes of military operational failure to a personal character flaw, cowardice. In telling the Board of Punishments to take militarized adjudication into account in adjudicating the case, the emperor again disregarded the conceptual divide between militarized adjudication and routine criminal processes. When he criticized the Board for deciding this domestic law enforcement case under a [domestic law enforcement]

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[Emperor]: [The Board of Punishments] has adjudicated this case wrongly and confusingly. Xie was a junior official (*shenwei wubian* 身為武弁). He had been dispatched to conduct operations against bandits. Based on the trial conducted with the original county magistrate, when Xie led troops forward, he was neither energetic nor brave in apprehending the bandits. ... [H]e only fired when the magistrate pressed him and did not apprehend even one bandit, leading to the chief bandit escaping, so it took longer to apprehend [the bandits]. The reasons that he was specially dispatched to deal with these bandits was to deal with it quickly before the bandits could cause problems. But there are no words for how badly he has hurt the people. It is all because of his cowardice that the matter ended in failure (*si ci nuoqie fenshi zhi yuan* 似此懦怯僨事之員). There is really no difference between this and cowering on the battlefield, leading to *the bungling of military operations* (*shi yu linzhen tuisuo, yiwu junjizhe wuyi* 實與臨陣退縮，貽誤軍機者無異). He should have been immediately adjudicated under militarized adjudication (*ji yi junfa congshi yi soul yingde* 即以軍法從事亦 所應得).

QSL-QL, juan 433, 658-2 – 659-1.

⁷³ QSL-QL, juan 433, 658-2 – 659-1.

substatute, he was not merely criticizing the Board's treatment of this single case but more broadly the Board's inability to distinguish categories of cases – ordinary from extraordinary cases – and apply the correct analysis. Finally, the upshot of the whole case again was military discipline. The emperor's language was clear. He “tossed” their “confusing” memorial back to the Board for reconsideration under the principles he outlined.⁷⁴

By 1754, the emperor was increasingly drawing a link between the Green Standard as an institution and an accumulated character trait of lack of discipline. In other words, indiscipline was an institutional habit of the Green Standard:

On December 20, 1754 (QL 19/11/7). An order to the Grand Council. According to [Yunnan-Guizhou Governor-General] Shuose's 碩色 memorial, Sha Bandit Ruan Zhongzhen attacked and occupied Mengsuo Zhaicheng. Eight hundred trained native troops (*tulian* 土練) were assigned under the command of Green Standard First Captain Ma Bingxiang to expel the bandits. This first captain first ordered the lieutenant to go forward and investigate the actual facts on the ground. Based on his inquiries, he determined that the Sha Bandits had already returned to Manmao Place. Now we have sent native troops forward to that place to investigate.

[Emperor]: It is a common occurrence for the Sha Barbarians to attack and kill one another. First, it was not necessary to bother with bringing in troops from the inner-empire. It was already a negligent manner of addressing this situation for this governor-general and the others to send in over eight hundred trained native troops (*yi shu banli shiyi* 已屬辦理失宜).

Just as in the Zhandui-Jinchuan conflicts, the emperor was frustrated with the length of time it was taking to achieve military success, and attributed this lack of success to personal cowardice (it seemed like a case of cowardice on the battlefield).⁷⁵

⁷⁴ Unfortunately, I have not been able to find the subsequent re-drafted routine criminal memorial from the Board of Punishments.

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But since troops have already been deployed, and according to the memorial, the Sha Bandits are no more than thirty to forty, so why is it taking so long to expel them? And, First Captain Ma Bingxiang did not

This case also showed the relationship between the new statute on intentional bungling of military operations (formal substantive law) and mode of adjudication (procedure). Here, the emperor clearly stated that the new statute would be adjudicated under militarized proceedings (as distinct from the routine process):

The governor-general and others should immediately punish [First Captain Ma] harshly. If it was intentional (wanton) bungling of operations (*you xin wanwu* 有心玩誤), then he should have been immediately adjudicated under militarized proceedings (*ji yi junfa congshi* 即以軍法從事).⁷⁶

Once more in this case, the emperor reduced the behavior of First Captain Ma to potential cowering, which he attributed to Ma's membership in the Green Standard. Ma was not only the product of these accumulated Green Standard habits of poor discipline, but, as a first captain, he was also their propagator within the Green Standard. On the same day (December 20th), the emperor issued an edict in another case in which he again reduced the behavior to "fear and cowering," but this time granted leniency for two high officials who, he found, had served the dynasty well in the past. The emperor again affirmed that this type of misconduct (cowering) rightfully should have been adjudicated under militarized proceedings, and that militarized adjudication meant that the two should have been immediately executed on the spot in front of

even go personally to Meng City. He just ordered his lieutenant to go investigate. Knowing that the Sha Bandits escaped to Manmao, he should have immediately led his troops after them. How could he merely send native troops to go investigate? This is *akin* to returning late and cowering (*sici chihui tuisuo* 似此遲迴退縮). It is all because the bad, old habits of the Green Standard lead to bungling of missions (*nai lüqi xianglai louxi, yiwu junshi, jie youyu ci* 乃綠旗向來陋習，貽誤軍機，皆由於此).

QSL-QL, juan 476, 1151-1 – 1151-2.

⁷⁶ QSL-QL, juan 476, 1151-1 – 1151-2. Here, the emperor's phrase, "有心玩誤," seems best translated as intentional negligence, an oxymoron in English. I believe conceptually, this is closest to what Anglo-American law refers to as "culpable negligence," "recklessly acting without reasonable caution and putting another person at risk of injury or death (or failing to do something with the same consequences)." Later, the emperor determined it was sufficient to have First Captain Ma simply repay the salaries of the soldiers engaged in the wasted effort. QSL-QL, juan 478, 1178-1 – 1178-2; QSL-QL, juan 483, 47-2 – 48-1.

the troops. In other words, the law required such action, and it was only through extraordinary grace that this result was avoided.⁷⁷

The fact that the emperor was still willing to grant leniency in certain cases shows that officials in the provinces were wise to exercise caution in taking up his call to execute offenders in “extraordinary” cases under militarized adjudication. Certainly, officials always understood that whatever local autonomy was implied with militarized adjudication, this authority did not extend to high officials, such as Celeng and Šuhede. If such high officials were to be executed under militarized adjudication, it would have to come from the emperor.

Up to this point, we have seen that the emperor’s educational efforts were directed at both his provincial military and civilian officials as well as at the quintessential institutions of routine criminal procedure. He had incorporated the logic of militarized adjudication into the formal law and relentlessly urged the institutions of routine criminal process to think in terms of militarized adjudication. Did the Three Judicial Offices start to get it? A desertion case from January 1753 (QL 19/4) suggests they did.

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An order. [Emperor] [Sichuan Governor-General] Celeng 策楞 and [Beijing Gendarmerie Commander] Šuhede are both men who have received great favor. But since they proceeded to the deployed camp, they have shown fear and cowering (*weinuo tuisuo* 畏懦退縮) and have handled things in an absurd manner (*banshi guaimiu* 辦事乖謬). I previously issued an order to [Governor] Bandi to interrogate the two and take their confessions, then to memorialize to me and punish them on the same day as he memorialized. Now, I read his memorial. Those two admitted their serious crimes. They bowed their heads without a word. If we adjudicated them under militarized adjudication, then it would have been appropriate to immediately execute them in the deployed camp for everyone to see (*ruo lun junfa, dangjizai junying zhengfa shi* 若論軍法, 當即在軍營正法示). But, I remember that in the past, when they went on missions, they exerted themselves. They have worked in the Inner Palace (*neiting* 內廷) for many years. Based on extraordinary grace, I am remitting their immediate execution (*mianqi zhengfa* 免其正法). They can remain in the deployed camp to redeem their crimes. But they are not permitted to go on the great campaign that is coming up.

QSL-QL, juan 476, 1151-2 – 1152-1.

Manchu Plain Blue Bannerman and Board of Punishments President Akdun (1685-1756) sent a routine criminal memorial on behalf of the Board of Punishments to the emperor describing the case of a Mongol soldier who fled during the Yongzheng era and was only apprehended in 1753 when he turned himself in. According to that memorial, in January 1734 (YZ 11/12), Soldier Edui of Taiji Hongwu'er'e'long's unit left the deployed camp and went to search for a missing horse, got lost, and did not come back. Eighteen years later, he turned himself in.⁷⁸ The case had originally been forwarded to the Board of War, and the Board of War referred the case to the Board of Punishments.⁷⁹ The lower memorial (from the Board of War) was forwarded to the emperor on April 3, 1754 (QL 19/3/11), and a rescript was received back the same day, approving the transfer of the case. Edui was escorted to the Board of Punishments for his criminal trial. He was tried by the Three Judicial Offices.

According to the Board of Punishment's analysis, "Edui was one who fled from the deployed camp. He should have been brought to this Board upon his apprehension." Edui confessed as follows:

I was originally a Da'ligang'ai pasture-soldier (*mubing* 牧兵). I am 43 this year. I have no father, mother, or wife; my family consists only of 5 brothers. In 1734, I was selected as part of a group of one thousand soldiers and made a member of the Guards (*hujun* 護軍). In the tenth month, I was sent to the Hong'wu'er'e'long place. At that time, I was

⁷⁸ NGDK, 015057-001.

⁷⁹ According to the Board of War:

Edui is one who deserted from the deployed camp. Although he has now returned on his own, it is still a terribly evil scenario (*qing shu kewu* 情殊可惡). In addition to forwarding Edui's case to the Board of Punishments for rigorous prosecution [the Board of War] has also determined that since Edui was a deserter from the deployed camp who turned himself in, at the time he turned himself in, Dasong'a (the military administrator) should have immediately memorialized requesting that the case be turned over to the Board of Punishments for criminal punishment, last year in October. That he delayed five months before notifying [the Board of Punishments] is not acceptable. [Request the emperor to] refer Dasong'a to the Board (of Officials?) for administrative sanction.

NGDK, 015057.

sent out to graze the horses. When I was called back with Celing [another Mongol soldier] and the four others to go back to the camp to practice with bird guns, my horse got lost on the road. I rode a different horse to find it, but then I got lost. I was so worried that I went crazy.

In a stupor, I ended up at Keleng place. There, the lama saw I was sick and gave me some medicine. A year later, I was better. I was afraid so I did not dare to return. I stayed there over three years. I also went and lived in Celingbaidoubu's [Jasak] banner for five years. Then I went to General Wang Celing's [Jasak] banner and lived for six years. Then to Cheng'gunzhabu [Jasak] Banner and lived for eight years. The whole time I was on the run, I never told people my real name. I pretended to be a Su'nete person, and changed my last name to Guo. I never lived in a fixed place. I made my living by begging. I did not do anything wrong or join bandits.

Last year, in the second month, because I missed my family, I turned myself in. As far as my military weapon [bird gun], back then when I was crazy, I lost it, and I don't know how it got lost. The horse I was riding is already dead.

At this time, the routine desertion statute was still in effect. The Board of Punishment acknowledged this, writing: "According to the statute, when soldiers on campaign flee from the army, they will be adjudicated according to the [routine] desertion statute, under the provisions of a second offense, and be sentenced to strangulation after the assizes." If it had ended here, this analysis would have been just like the case of Mongol Cavalryman Amirtu I presented at the end of Chapter Four. In fact, since Edui turned himself in, this case should have been even more sympathetic, and directly implicated the strong late-imperial legal culture element of giving criminals an opportunity to renew themselves. The routine desertion statute provided a complete remission of punishment if the deserter turned himself in within one hundred days and a reduction in two degrees if he turned himself in after that time period. However, seventeen years had passed since the Amirtu case.

The Board of Punishment did not stop with matching the facts to the formal substantive law set forth in the Qing Code to recommend a sentence. They simply ignored the statutory

provision on self-turn in. Rather they went outside the Code entirely and cited *junfa* as the basis for an *increased* sentence:

This case of Mengu Guard (*hujun* 護軍) E'due who deserted from the deployed camp is certainly true. Because he went to look for the horse, he got lost and went crazy; although he [eventually] turned himself in, he absconded for more than 20 years; [if it were to go to the Autumn Assizes] the case should be selected as a verified case (*qingshi* 情實); moreover, it should not be adjudged according to the [routine statute] with that statute's [punishment] limitation of strangulation *after the assizes*. His case should be adjudicated in the harsh mode (*congzhong* 從重), and, in accordance with *junfa*, his sentence should be drafted as immediate decapitation (*zhao junfa ni zhan lijue* 照軍法擬斬立決).

On May 10, 1754 (QL 19/4/19), the Emperor rescripted the Board of Punishments's routine criminal memorial, "E'dui will be immediately decapitated and the rest as stated in the memorial."⁸⁰ To recommend an increase in punishment (*congzhong*) based on an aggravated fact pattern was a standard part of routine criminal practice. What was surprising, though, was that the Board of Punishments cited the justification for the aggravated sentence as *junfa* and ignored the statutory provisions for leniency for self-turn in.⁸¹ The logic of militarized adjudication was used not just as one factor in a criminal-legal analysis, but to override wholesale the careful framework set forth in the Code. Militarized adjudication had become part of the legal repertoire that the quintessential institutions of the late imperial criminal-legal system could (or felt compelled) to draw from.

In light of the emperor's comments on other cases leading up to this one, it is not hard to imagine that if the Board had merely recommended a sentence pursuant to the letter of the

⁸⁰ NGDK, 015057.

⁸¹ DLCY, juan 21, "從征守禦官軍." 若在限外自首者, 減罪二等。但於隨處官司首告者, 皆得准理 (准免罪及減罪二等).

statute, strangulation *after the assizes* (even without the two degree reduction), the emperor would have berated them for leniency. He might have “thrown” their routine criminal memorial back at them. The Board of Punishments had learned.

IV. Conclusion to Chapter Four

At the beginning of the Qianlong reign in 1735, militarized adjudication was an *ad hoc* and tightly-restricted aspect of a commander’s autonomous authority applicable only to certain battlefield epicenter cases of military misconduct. It was definitely not part of the analytical repertoire rooted in late imperial legal culture. By the end of the nineteen years covered in this chapter, it was cited by the Board of Punishments in a formal routine criminal memorial as a blanket justification for showing no leniency in a deserter case that would have screamed out for leniency twenty years earlier. What did this mean for desertion? Comparing the Amirtu case at the end of the last chapter with the Edui case at the end of this chapter confirms that for the individual accused deserter, this was already a matter of life or death.

The Zhandui-Jinchuan I campaigns coincided with a major shift in the contours of and interstices between militarized adjudication and routine criminal adjudication. The empire sent tens of thousands of soldiers into the campaigns and spent millions of *taels* from the treasury yet never accomplished the objectives of apprehending and punishing Bangun and Solobun. In the emperor’s analysis, the military failed to perform, not because the mission was difficult and the force structure inappropriate, but because of a lack of military discipline. The primary attributes of this lack of discipline were cowardice, seeking to avoid hazardous duty, and deception. When such highly-esteemed Manchu officials as like Necin acted “cowardly,” it was, to borrow a phrase, a betrayal of the Manchu Way. For the Green Standard, it was an in-bred, accumulated

institutional character trait. In either case, such a lack of discipline could only be countered by a strong deterrent (and supplementing Green Standard units with disciplined Manchu soldiers).

The emperor sought to create an effective deterrent by eliminating the hope for leniency inherent in the routine administrative-sanction / criminal-punishment process. He had to make his officials (and soldiers) more afraid of the law than of the enemy. The old Chinese (and Manchu pre-conquest) tradition of militarized adjudication was the perfect vehicle to accomplish this, but it needed to be expanded beyond its traditional limits as a highly restricted, battlefield-centric *ad hoc* mode of adjudication. It had to look more like it had before the Qing conquest of China. To this end, the emperor had to educate his officials that it was proper – even necessary – to include militarized adjudication in their repertoire of *legal* analysis when adjudicating cases. The widely-published trial and execution of Governor-general Zhang Guangsi and Supreme Commander Necin, as much for violating discipline themselves as for failing to instill discipline in the campaign armies, was a significant ramping up of the emperor's educational efforts. He no longer acknowledged, as his predecessors' had, the distinction between militarized adjudication and routine criminal procedure. He widely published the memorials and edicts regarding the Zhang-Necin Cases revealing a particular criminological viewpoint which he himself called militarized adjudication. Militarized adjudication was not a single set procedure but described a range of procedural simplifications and autonomy mostly outside of the routine criminal process. It meant expeditious and harsh punishment with no hope for leniency. Militarized-adjudication communications between the localities and the center traveled through the maturing palace memorial-Grand Council-court letter administrative channel. By incorporating militarized adjudication into the repertoire of legal analysis, the emperor sought to

create an alternative that would bypass the routine process' structural leniency in cases where the hope for such leniency was harmful to military discipline. The expansion of this logic to the military margins and its regularization in cases related to the *Ten Great Wrongs*, as I will show in the last two chapters, constituted militarizing tendencies in eighteenth-century Qing law. In this chapter, we saw that time after time, the emperor admonished campaign, provincial and board officials for not taking *junfa* into account, incorporated the concept of “intentional bungling” into the formal law, and even “threw” a routine criminal memorial back at the Board of Punishments, telling them to redraft it. The Board of Punishments got the message.

Still, militarized adjudication never became routine during this period. The emperor himself was the greatest impediment to accomplishing his vision of expeditious and harsh punishment with no hope of leniency because he kept granting leniency. The idea of the correct naming of crimes – precise matching of facts to the appropriate law (*zuiming* 罪名) – was a cornerstone of late imperial legal culture. Up to this point, it had been the routine retrial-review process that ensured that the facts of the crime were, by the end of the process, adjudicated under the right criminal statute and that other considerations of late imperial legal culture were taken into consideration in the final draft punishment. After a long process, with many chances for the “truth” to come out, the emperor was to make the final call on life or death. By contrast, under militarized adjudication, if the official on the ground was wrong about the essential category (*xiang* 項) of the behavior and “wrongly” executed (or requested imperial permission to execute) the subject, the official himself could be accused of the wrongful killing of a prisoner. This clearly did not sit well with officials who did not want to make the decision. Simply put, the natural ambiguities and conflicting interests present in any case militated against a quick and

clean categorization of “extraordinary” cases with “clear” facts, the standard advocated by the emperor. The result was that all but the most straightforward of cases continued to be memorialized through the routine process during this period despite the emperor’s many protestations.

For all the development and reconfiguration of and between militarized adjudication and routine criminal process during this time, militarized adjudication had still not emerged as a “track” by 1754. While the Qianlong emperor was encouraging officials to autonomously or semi-autonomously adjudicate cases that fell into the militarized-adjudication category, the archival evidence does not support that officials were actually doing this in large numbers or that it had achieved any sort of bureaucratic momentum. To the extent it was openly cited – both by the emperor and later by the Board of Punishment in a formal opinion – it had gained a certain (contested) legitimacy as a source of law. However, it was not until the Qianlong emperor’s campaigns against Dawaci, Amursana and mopping-up operations in the Altishahr region that militarized adjudication became sufficiently routinized to be properly called a *track*, as seen in the desertion cases considered in the next chapter.

Chapter 5. Desertion in the Western Campaigns and Defaulting to Militarized Adjudication, 1755 - 1765

During the decade from 1755 (QL 19) to 1765 (QL 30), the long- and short-term processes described in previous chapters continued to interrelate within the new context of the Qianlong emperor's northwest campaigns that ultimately resulted in the incorporation of Xinjiang into the empire (1755-59). It was during these campaigns that, for the first time, militarized adjudication was designated as the *default* mode of adjudication for certain categories of military crimes. While there had always been summary executions, within the military context, those had been tightly limited in time and space to cases during particular campaigns in close proximity to battle; in the non-military context, such cases had been limited to special circumstances on a limited and hidden way, such as the examples I presented from the Yongzheng reign. This shift reflected the process by which law that developed in the context of frontier war and military operations came to shape the law of the interior. The three-hundred year trail of desertion cases extending across Ming-Qing space and time reveals not only how desertion became a much more deadly affair, but how late imperial legal culture itself increasingly exhibited militarizing tendencies.

Recall that in Chapter Three, I cited Chinese Banner-Inspector Censor Mabing who, in 1736, memorialized a request to “correct” the 1732 (YZ 10) substature. He argued that the 1732 rule should have been a temporary measure implemented only to get the military into shape. Vice Minister of Imperial Sacrifices Tanguizu in 1737 (QL 2) in which he criticized the lack of nuance in the modified substature. Tanguizu criticized on similar grounds the substature that uniformly punished all household slaves and hired/contracted attendants (*gugong*, usually

referred to collectively as *genyi*) who stole horses or military equipment and then deserted while accompanying their masters on campaign.¹ In Chapter Three, I also noted that Tangsuizu had raised the problem of correlating the legal framework for punishing desertion with the reality of the expanding frontier-garrison situation, as it had developed up to the beginning of the Qianlong reign. Eighteen years after Tangsuizu's memorial, the Qing Code provision punishing deserter-soldiers and deserter-*genyi* had not changed substantively, as reflected in "Substatute I" under the Routine Desertion Statute in force in 1754 (QL 19), the eve of the events covered in this chapter:

1. [First, the Substatute reflected the change made in 1732]. When soldiers on campaign desert from the army and return [home], then they shall be adjudged according to the provision of the [routine] campaign desertion statute [adopted from the Ming] for those who commit a second offense, and their sentence shall be drafted as strangulation *after the assizes*.
2. Those slaves (*nupu* 奴僕) and *gugong* (雇工) who accompany them [on campaign], if they steal horses or military equipment and desert and return home, then they will be adjudged according to the offense of first degree larceny [stealing the maximum amount], and their sentence shall be drafted as strangulation *after the assizes*.
3. For those slaves who desert, but do not steal horses or military equipment, they will be apprehended and taken to the [appropriate] city gate [detention facility] to await the day of the victorious return of the campaign army [from which they deserted], and [at that time] their master will be questioned as to whether he will take them back, and if so, then they will be whipped one hundred lashes, tattooed, and returned to their masters. If the master is unwilling to take them back, then they will be exiled to Heilongjiang and given to the [Banner] soldiers there as slaves.
4. For those *gugong* who desert yet do not steal horses or military equipment:
 - a. if the *gugong* [the one who was hired, *gu* 雇] is a banner household slave (*qixia jianu* 旗下家奴), then he shall wear the cangue for three months, receive one hundred lashes, be tattooed, and be returned to his master.

¹ QSL-QL, juan 40, 713-1 – 715-2.

b. if the *gugong* is a commoner (*min* 民), then he will be tattooed and returned to his original domicile (*yuanji* 原籍), caned one hundred times, and be exiled within his province for three years, and the original contract price shall be sought from the criminal's family and guarantor and turned over to the master (*zhu* 主)[the soldier or official who had contracted for his service as a *gugong-genyi*].²

On one level, this chapter traces the change over time in this statute from Qianlong 19 to Qianlong 31. During that time, this statute was modified to reflect *militarized adjudication* principles, signaling the regularization of militarized adjudication in the Qing Code as the default and normative adjudicative track for campaign desertion cases. From the perspective of late imperial legal culture, this statute in its form above, was not a perfect model of nuanced correlation between degree of guilt and punishment, as Tangsuizu had observed two decades prior, yet it still completely reflected the routine process, with the most aggravated punishment designated as strangulation *after the assizes*. This was a far cry from autonomous militarized adjudication and summary execution. In its distinction between slaves and commoners, this statute also reflected important social status distinctions that existed within the occupational category of *genyi*.

While the Qianlong emperor had been railing against military indiscipline since the beginning of the Zhandui-Jinchuan conflict, he first focused on desertion during military operations against the Zunghar leader Dawaci in 1755 (QL 20).³ He then identified desertion as a disciplinary problem, although the paucity of *bona fide* individual deserters recorded in the archives strongly suggests that the emperor overestimated the impact of desertion on military operations. This too

² Tian Tao 甜濤 and Zheng Qin 鄭秦, eds, *DaQing Lüli* 大清律例 (Beijing: Falü Chubanshe, 1999), 324.

³ ZGLDZZNB, 451-62.

appears to be an example of what Melissa Macauley called “over-extrapolation.” His adjudicative gaze first settled upon desertion from Eight Banner and *Jasak*-Mongol military units, starting with an edict on January 9, 1755 (QL 19/11) authorizing militarized adjudication for *genyi*-deserters accompanying banner forces who stole from their masters or from the army. Significantly, the emperor’s initial focus on *genyi* arose from his concern over campaign logistics. The fact that the *genyi* occupation was still associated with the social status of slavery likely made it conceptually less problematic to shift such cases to the militarized track. When the Zunghar leader Amursana (1723-57) turned against the Qing the next year, the Qing’s focus of military operations from 1756 to 1757 (QL 21-22) turned to his defeat and the total defeat of the Zunghars. Throughout this conflict, there was an increasing tendency to treat even rank-and-file deserters according to militarized adjudication principles, especially Mongolian and even some Manchu-Solon deserters. This is not surprising, since these made up the majority of operational forces fighting in the conflict.

While there is some evidence in the Manchu-language sources that summary execution of *Jasak*-banner Mongol deserters was becoming more common during the campaigns against Dawaci and Amursana, it was not until September 11, 1758 (QL 23/8/10), three years after authorizing militarized adjudication for *genyi* deserters, that the emperor issued a Chinese-language edict authorizing militarized adjudication against rank-and-file deserters, specifically referring to Green Standard indiscipline. The form this edict took and the accompanied changes in the codified law help us understand how the imperial standard was conceptualized as constructive imperial authorization to execute. The emperor issued this edict in the context of

the campaign against the Khwaja brothers (Ch: *Daxiao Hezhuo zhi luan* 大小和卓之亂) in the Tarim Basin south of the Tianshan mountains between 1758 and 1759 (QL 23-24).⁴

I. Military Logistics, *Genyi*, and the Coalescing of the Militarized Track

Seven years prior to the Zhandui-Jinchuan transformation of militarized adjudication, on October 26, 1741 (QL 6/9/17), the Board of Punishment memorialized the following case to the emperor in which a *genyi* had stolen a horse, lost (or stolen) silver from his master, and had deserted from campaign:

[Board of Punishment] The Chahar Mongol *genyi* Duoerqi had deserted from military operations in E'Erkun 鄂爾坤 (currently in Outer Mongolia). According to his confession:

I was a bannerman without an official position (*xiansan* 閑散) under the Fifty-Fourth Company of the Bordered White Mongol Banner.⁵ I accompanied (gensui 跟隨) Imperial Guardsman (*Hujun* 護軍) Abida on campaign. We were stationed at Taxiertu (塔細爾屠) Place. My master told me to ride a horse to E'erdengzhao (額爾登昭) Place to request repayment of the six *liang* Soldier Daladun 達拉敦 in the banner company there owed my master. Daladun gave me five *liang*, three *qian*, and three slices of tea worth seven *qian*.⁶ I hid on my person the five *liang* and three *qian* that I was going to give to my master and gave the three pieces of tea to a banner-mate of mine, E'erbo, to give to my master because he was going back first [to our banner]. Since Soldier Daketu 塔克圖 also owed my master three *qian*, I went there to ask him for it. Since he did not give me the money, I went back to E'erdengzhao. I ate and got drunk at a liquor shop (*jiupu* 酒舖) and lost the money I was taking back to my master. Because I was afraid the master would beat me, I deserted [to go back home] on horseback. Unexpectedly, after

⁴ Reminiscent of the fate of Zhang Guangsi and Necin, during certain military setbacks in this campaign, the emperor had Manchu Plain Red Bannerman Goro Yarhashan (d. 1759) (Ch: Ya'erhashan 雅爾哈善), Deputy Banner Commander Shundenehe and provincial military commander Ma Desheng all executed. He further ordered the imperial councilor Haning'a to commit suicide. Zhu Chengru 朱誠如, ed. *Qingchao tongshi* 清朝通史, vol. 9 (Beijing: Zijincheng Chubanshi, 2003), 206.

⁵ “*Wuzhizhe yue xiansan* 無職者曰閑散.” DQHD, juan 19, 5v.

⁶⁶ Tea then favored by the Mongols came in blocks, which were often used as currency.

two days, the horse died. When I got back to my home in Chahar, I was apprehended.⁷

The Board of Punishments decided the case precisely according to the version of Substatute I noted in the introduction to this chapter which was in force at that time:

[Board of Punishments]: According to the substatute, “Those slaves (*nupu* 奴僕) and *gugong* who accompany soldiers on campaign, if they steal horses or military equipment and desert and return home, then they will be adjudged according to the offenses of first degree larceny [stealing the maximum amount], and their sentence shall be drafted as strangulation *after the assizes*.” Thus, Duoerqi’s sentence is hereby drafted as strangulation *after the assizes*. The responsible official should seek to recoup the cost of the horse he stole and silver he lost from his family and it should be given to Abida.⁸

This sentence of adjudication after the assizes still left open the hope for leniency. In stark contrast to this case, thirteen years later on January 9, 1755 (QL 19/11), after the Zhandui-Jinchuan transformation of militarized adjudication into an aspect of the late imperial legal repertoire had already taken place, the Qianlong emperor issued an order that any *genyi* who stole and fled from campaign – exactly what Duoerqi had done thirteen years earlier – would no longer be adjudicated under the substatute but would be instead executed *on the same day* he was apprehended. The order was part of the preparation for the campaign against Zunghar leader Dawaci in QL 20 (1755). Military forces for this campaign were to be made up of a joint force composed of fifty thousand mostly Manchu-Mongol-Chinese Eight Banner Forces and *Jasak*-banner forces as well as some Green Standard forces split into Northern and Southern Route Armies. *Genyi* were an important logistics element of that force.⁹ The emperor wanted to avoid

⁷ NGDK, 071113-001.

⁸ NGDK, 071113-001.

⁹ Capital Manchu Banner Troops, 4000; Heilongjiang “soldiers,” 2,200; Solon Baerhu, 8000; Yuancheng Youyingbing (遠城右營兵), 2,500; Xi’an Manchu Garrison troops, 2,500; Liangzhou Manchu Auxiliary Troops (莊

slowing down the movement of troops in the event that *genyi* deserted from the march, so he directed that local officials along the route of the march would hunt down the deserters instead of requiring apprehension teams from the forces in transit.¹⁰ Recall that at the time of this order, Routine Desertion “Substatute I” in the Qing Code required that if household slaves or *gugong* (by this time, the term *genyi* included both of these categories) who deserted had stolen horses or military equipment, they would be sentenced to strangulation *after the assizes*, essentially providing such offenders the entire range of Qing criminal process with its inherent possibility of leniency in multiple ways at all levels. By contrast, in this order, the Qianlong emperor utterly contradicted the codified substatute by ordering that such offenders be executed under militarized adjudication on the day they were apprehended (*huori*), a breathtaking departure from the code provision:

[Emperor]: If *genyi*-deserters take military equipment, clothing, or silver, on the day they are apprehended, they should be adjudicated under militarized procedures, and immediately executed (*huori yi junfa congshi jixing zhengfa* 獲日以軍法從事即行正法). And these adjudications should be published and made known all along the route.¹¹

浪滿洲兵); Ningxia “soldiers,” 100; Cha’haer “soldiers,” 1000; Newly submitted Oirat “soldiers,” 2000; Guihua cheng “Tumote soldiers”, 1000; Alashan Mongol Soldiers, 500; Zhilimu “soldiers,” 2000; Zhaowuda “soldiers,” 6000; Hetuohuite “soldiers,” 500; Xuanhua Green Standard guard soldiers (*shoubing*), 1000; Gansu/Anxi Grand Standard Forces, 10000. This represented each component of the Qing military forces. QSL, Qianlong 19/5, 1027-1 to 1027-2.

¹⁰

[Qianlong Emperor] January 8, 1755 (QL 19/11/26). An order. Now, we are dispatching the Northern and Western Route Armies to go forth and eradicate the enemy. Next spring, they will depart the capital in successive waves. For every two [Banner] soldiers, there will be one *genyi* (跟役). I am afraid that they will desert along the way, but the deploying soldiers should make progress each day based on the total distance they need to travel. They cannot take a break to apprehend *genyi*-deserters. All the local officials must be admonished. Have the gendarmerie commander (*bujun tongling* 步軍統領), as well as all the governors and governors-general along the route, send out apprehension teams and soldiers as well as junior officers in advance, to follow the units as they travel through their jurisdictions to prevent desertion. They should carefully apprehend deserters.

QSL-QL, juan 477, 1166-2.

¹¹ QSL-QL, juan 477, 1166-2.

Two years later, Substatute I itself was modified to codify this edict, regularizing militarized adjudication in the Code as the default mode of adjudication, not only for *genyi*-deserters who committed larceny on the northwest campaigns, but on any campaigns, thereby creating a militarized adjudicative track that became the default way of adjudicating such cases. The codified substatute even included (for the first time in the Qing Code) the significant phrase “on the day apprehended” which signaled extremely summary procedures, even by militarized adjudication standards. This edict must be understood in the context of the post Zhandui-Jinchuan transformation of militarized adjudication, but why did all the previous trends coalesce into a military track at this moment, and why did it start with *genyi*? We can only begin to understand this aspect in reference to other long-term processes, including the development of the social-status of *genyi* (itself part of a large process involving ongoing changes in social status of indefinitely enslaved persons) and the Qing’s efforts to resolve the age-old military problem of the steppe, which was largely a logistics problem.

It was not mere happenstance that the formation of a true militarized adjudicative track in the Qing Code had for its first unfortunate subjects *genyi* who committed larceny and then fled campaign. *Genyi* were not regular rank-and-file soldiers (Ch: *bingding* 兵丁 or 官兵 *guanbing*; M: *cooha*), but were instead an occupational category. The Chinese term “*genyi* (Ch: 跟役)” literally means “follower-laborers.” Chinese sources use the phrase *genyi* prior to the 1644 Manchu conquest, but after 1644, the phrase *genyi* usually referred to what Manchu sources

called *kutule* both before and after the 1644 conquest.¹² *Genyi* were the personal assistants to the soldiers of the Eight Banners, and in aggregate, an important logistical labor force for the Banners on campaign. They were not necessarily assigned to the military unit per se, but were usually the slaves or contracted-employees of individual bannermen or pairs of bannermen.¹³

Prior to 1644, most *genyi* were household slaves, who had been captured and distributed as booty during the conquest.¹⁴ Although household slaves continued to serve as *genyi* through the Qianlong reign, once the supply of new slaves began to dry up, increasingly *genyi* were hired under contract. Yet, the slave pedigree-connotation of *genyi* continued to have significance even as the underlying social status of the men serving as a *genyi* became increasingly complex.

During the Yongzheng reign, a large proportion of *genyi* were contracted workers (*gugong* 雇工), as it appears that Duoerqi may have been. By the Qianlong reign, an increasing number of *genyi* were in fact the unemployed sons and younger brothers of banner soldiers, a category

¹² The 滿和辭典, which was heavily based on the Kangxi-era Manchu-Han dictionary defines “*kutule*” as “跟馬人。”羽田亨, ed, 滿和辭典 (Taipei: Xuehai, 2011), 282. According to Norman, the term means: “1. Serf, banner slave, footman, attendant; 2. Horse herder, groom.” The verb “*kutulembi*” means “1. to lead (animals); 2. to hold hands.” Jerry Norman, A Comprehensive Manchu-English Dictionary (Cambridge: Harvard University Asia Center, 2013), 241.

¹³ Along with soldiers, it is especially interesting to see the early treatment of *genyi* within the context of fugitive slave law. TC 6 (1632) / TC 6/1/11. The Korean Zhangdaoyuan 張道員 arrived. The reason was because, When going along the coast hunting, the Korean man 朝鮮男丁 of Zhongtuoyi's family (of ZhongWudahai's niuru), Zhong Baoqi, was serving as a gending 跟役. This Korean fled to Korea. At that time, the Korean King caught him and sent him back, and reported this matter to the Khan. The Khan said, "He doesn't understand the law, and so he fled 逃去. He is a poor person, sever his ankle 割其足筋, and return him to his original master" (27) (MWLD) (Japanese 628-629).

¹⁴ For instance on July 18, 1632 (TC 6/6/2) Qing emperor Hongtaiji issued an edict regarding recent prisoners that highlighted the subservient status of *genyi*. “An order regarding all the prisoners: distribute them among the banner soldiers; do not give any to the *genyi*. (MWLD) (124) [Ici (初) juwe (二) de (於), olji (俘虜) niyalma be meni (各) gūsa uksin (甲) bodome (籌劃) dende (令分), kutule (跟役) be ume (不必) dabure (算在人數內). (774).”

referred to as *xiansan* (閒散).¹⁵ The functional category of *genyi* accompanying the Eight Banner forces had substantial overlap with the functional category of *yuding* (餘丁) (discussed in Chapter One) who accompanied the Green Standard forces. As I briefly mention in the conclusion, I believe the development of desertion law with regard to *yuding* reflected both functional-category convergences and social-category divergences with *genyi*.

The legal status of *genyi* deserters had a different genealogy from that of soldier-deserters.¹⁶ The fact that there was no formally-promulgated desertion substatute covering *genyi* in the Qing Code from 1646 (SZ 3) to 1732 (YZ 10), suggests that *genyi* who deserted from campaign were either adjudicated under the fugitive slave law just like any other banner slave who fled, or according to specific campaign orders issued in individual campaigns, such as those during the Shunzhi era as we saw back in Chapter Four.¹⁷ Just as a particular crime's conceptual

¹⁵ See Liu Xiaomeng 劉小萌, “Kutulekao 庫圖勒考,” *Manyu yanjiu* 满语研究, Manchu Studies, 编辑部邮箱, 1987年02期.

¹⁶ Hu Xiangyu, “From Manchu Law to Qing Law: the Evolution of the Fugitive Law in the Qing dynasty,” Paper presented at NEAAS, University of Connecticut, October 4, 2014.

¹⁷ SZSNL, 175. There was a further distinction among the contract workers: whether they were long-term contract workers, *gugong* (雇工), a special legal status under the Ming which still had some meaning during the Qing or if they were short term or occasional workers and should be treated as commoners (凡人) under the Code. According to the 1725 Qing statute, if workers were under a set-period written contract (*li you wen qi yi you nian xian zhe* 立有文契議有年限者) then they would be treated as *gugong* under the law; if it was a short time hire for months or days, not for a high pay, then they would be treated as commoners.” Jiang Yanling 蔣燕玲, “Lun Qingdai liuli dui gugongren falü shenfen de jieding 論清代律例對雇工人法律身分的界定” *Social Scientist* 社會科學家 2003:9 (September 2003), 152. This had consequences because the employer/master had more rights over a *gugong* and a *gugong* had a greater obligation to stay with the employer. Consider the emperor's treatment of various categories of *genyi* who died in battle for purpose of rewarding their families, masters, or survivors:

(QL 25) For those regular soldiers (*guanbing*) who died in battle during the campaign to “pacify” the Muslim areas, I have granted them [their families] extraordinary grace. As for their *genyi* who followed their masters into battle and died, these *genyi*, also sacrificed their lives relentlessly for the dynasty. It is really sympathetic. They should all receive increased grace. Among these *genyi* of official soldiers (官兵跟役), determine those who died in battle and send their information to the appropriate Board. If they are the *genyi* of officials (官員跟役), then their sons and younger brothers shall be removed from the slave registration book (奴僕冊檔) and they will be made commoners (民). If they are the *genyi* of rank-and-file

correspondence with the *Ten Great Wrongs* made it more susceptible to militarized adjudication, so too it seems that the slave-pedigree of *genyi* (combined with the importance of logistics in this particular campaign) as well as the significant shift in legal culture that had occurred over the past twenty years, made *genyi* as a category more vulnerable to militarized adjudication treatment of this particular crime – stealing and deserting while on campaign – at this particular time when logistics were critical to military success. At the very least, we can note that the social-legal category of *genyi* was complicated.

In addition to their unique social status, the cumulative role of *genyi* in campaign logistics also influenced their susceptibility to militarized track adjudication. The Qing's ultimate victories in far-flung Xinjiang against both the Zunghars north of the Tianshan Mountains and the Altishahris south of Tianshan were heavily based on logistical preparations.¹⁸ Other militarized adjudication-logistics cases suggested that the Qianlong emperor was certainly willing to use militarized adjudication to establish the type of deterrence he determined necessary for logistics to function smoothly. For instance, the feeding and care of military horses was among the most important aspects of campaign logistics. In February 27, 1755 (QL 20/1/17), Governor-General Liu Tongxun memorialized with allegations from the circuit intendant that Ningxia Prefect Zhao Benzhi, a feed supervisor, was “skimming off the fat” (perhaps selling feed on the side for personal profit) (*qinfei toulou* 侵肥偷漏) in Ningxia.

soldiers (兵丁跟役), then consider whether to pay their master the price of their redemption (from slavery) (身價), such that they will become commoners. For those *genyi* who are already commoners, then in accordance with the precedent on those who have died in battle, their names will be entered into the (忠祠). QHD-SL,juan 154, 965-4. DQHD-SL, juan 773, xingbu 51, 489-1.

¹⁸ Peter C. Perdue, *China Marches West: the Qing Conquest of Central Eurasia* (Cambridge: Harvard University Press, 2005).

Although Prefect Zhao had not yet been impeached, Liu informed the emperor that he (Liu) had already begun a criminal investigation. This was significant because as an official, Zhao should have been formally impeached before a criminal trial could be initiated. In justifying this deviation from procedure, Liu explained, “This case relates to military matters. If I waited for an edict following an impeachment and then had the provincial judge conduct the trial, it would take too long and the case would not be quickly resolved, so that is why I have simultaneously memorialized the case and began the criminal trial in order to expedite the process.”

Liu’s attitude reflected the particular shift in legal culture that had taken place over the last twenty years and already reflected militarized adjudication principles. Here was a governor-general who recognized an “extraordinary case,” as the emperor had been urging. The emperor’s response went further and stated that it would be appropriate to adjudicate the prefect’s case under militarized adjudication if it turned out to actually be a case of corruption in military logistics:

[Emperor]: Horses relate to military operations (*mapi guanxi junxing* 馬匹關係軍行). Now in this time of military operations [against Dawaci], for a feed supervisor to act in this way to the harm of military operations, it must be punished harshly. Zhao is hereby dismissed from his position and should be immediately brought to criminal trial. He is hereby turned over to the governor-general for purposes of investigating his skimming off the fat. If the investigation is substantiated, then he should be immediately adjudicated under militarized procedures in order to deter wantonly blundering military logistics (*ji ying zhan junfa congshi, yiwei wanwu junxuzhe jie* 即應照軍法從事, 以為玩誤軍需者戒).¹⁹

Thus, the emperor very clearly articulated that militarized adjudication was appropriate for matters of campaign logistics, even justifying departing from procedure in the matter of an

¹⁹ NGDK, 097927-001; QSL-QL, juan 481, 16-1 – 16-2.

official as high ranking as a civilian prefect (this was not a low-ranking military official, such as a corporal or sergeant). Once the investigation was complete and it had been determined that Prefect Zhao was not guilty of corruption of military logistics, the emperor still used the occasion to reiterate that *if it had been*, then only militarized adjudication would have been appropriate:

If Prefect Zhao *had gotten fat* off of military provisions, since he was an official responsible for military logistics, then there is nothing short of militarized adjudication which would have been sufficient to atone for his guilt (*xi chengban junxu zhi yuan, ruguo qinfei shushi, fei junfa congshi, buzu bigu* 係承辦軍需之員, 如果侵肥屬實, 非軍法從事, 不足蔽辜).”²⁰

Recall that the Kangxi emperor had sometimes threatened his officials with militarized adjudication if they did not properly attend to military logistics.²¹ This case was different. The emperor was telling the adjudicating official that it might be appropriate to adjudicate this case of a prefect under militarized adjudication, not using militarized adjudication as a threat to get the prefect to perform better. From this, one can reasonably conclude that the logistical importance of *genyi* in the context of this campaign was significant.

To place the emperor’s edict in historical context, Ming and Qing emperors had always issued campaign orders (*junling*) at the beginning of military operations that included matters of military discipline. For instance, in SZ 13, the Shunzhi emperor had issued a seemingly similar order that any corporals, cavalymen, or *genyi* of the vanguard division of the imperial guards who deserted on campaign would be whipped one hundred times for a first offense and executed

²⁰ QSL-QL, juan 490, 163-2 – 164-1.

²¹ [Emperor]: “The Sichuan-Shaanxi governor-general should make all effort to plan things, and make no mistakes with logistics, don’t nitpick one another and push your responsibilities off, you are already so late, this is an important responsibility. From now on, you consult together with one heart, don’t stand on your separate jurisdictions....” QSL-KX, juan 91, 1145-2. Two years later, the emperor again threatened the use of militarized adjudication if there were errors in logistics. When there was an attack on the Yunnan capital in 1682, and a relief column set out from Sichuan, the Kangxi emperor warned that if flawed logistics led to military failure, then those responsible would be adjudicated under militarized proceedings. QSL-KX, juan 15, 1205-2

for a second offense.²² This campaign order mostly mirrored the Ming routine campaign desertion statute and was probably just meant to apply the legal framework of that statute to banner troops. By contrast, the Qianlong emperor's order for summary execution for *genyi*-larceny-desertion flatly overrode all the procedures of the routine framework then in force in the Code. Moreover, this order was soon codified in formal law in the Qing Code itself, modifying Substatute I to create a distinct militarized adjudication *track* for such offenses that was largely independent of the other structures of the Qing Code.

From a number of memorials issued in response to the *genyi* execution edict, we know both that officials energetically implemented it and – perhaps more surprising – that *genyi*-desertion was really an insignificant problem to begin with, begging the question of why was the emperor so concerned? For instance, two months after the edict was issued, Zhili Governor-General Fang Guancheng 方觀承 memorialized that four *genyi*-deserters were reported as the units deploying to the northwest passed out of Zhili. Fang's memorial provided some idea of the diversity of occupation and social-status of the *genyi* who were accompanying the northwest army and also how the emperor's edict was – in the grand scheme of things – much to do about nothing:

[Fang Guancheng]: Provincial Financial Commissioner Wang Lin reported that the Heilongjiang soldiers of the Northern Route Army (NRA) arrived at Zhangjiakou this month [over the course of a week] It was reported that the *genyi* of two official soldiers (*guanbing genyi* 官兵跟役) deserted from the camp located at the Beijing Gate of Victorious Triumph and that two others deserted from Huailai Place. Neither took military equipment, clothing or silver. The two who deserted from Huailai have already been apprehended by local officials.

...

Of the two who deserted at the [Beijing] Gate of Victorious Triumph, one, named Liu Chen 陳六, was a commoner from Fengtian 奉天 (Liaodong) hired (*gu* 雇) by Vanguard

²² QHD-SL, juan 581, *bingbu yi* 兵部一, *chuzheng er* 出征二, *junlin yi* 軍令一, 528-2.

Troop (*qianfeng* 前鋒) Bashiliulizixiao. Mase was a *genyi* brought on campaign by Soldier (*bingding* 兵丁) Eshenwulimbao. Currently the chief of the Gendarmerie and the local prefect are vigorously working to apprehend them. I have consulted with the provincial military commander to order the local civilian and military officials to apprehend them within the time limits...²³

Considering that this report was written by a governor-general and it detailed the efforts of several officials to apprehend and punish a mere four *genyi*-deserters who had not even stolen anything – making them subject only to the punishment under the original Substatute I – one can see that the emperor's order really spurred a lot of effort for highly questionable benefit. Three months later, the Board of War again reported to the emperor the status of these same four *genyi*-deserters as well as three others – only three more in four months – who had committed larceny in conjunction with their desertion:

March 29, 1755 (QL 20/2/17). [The Board of War]: This Board has sent letters to the senior commanders (*dachen*) of the Northern and Southern Route Armies as well as to the Peking Gendarmerie (*bujun tongling*) and all of the *dufu* assigned in the provinces to work as one body in executing this edict.

After the above notification, there were continuous reports about the troops proceeding with the Northern and Western Route Armies. Among them: *Janggin* Ming'atai's *genyi*, Liu Chengyu deserted at Huailai County of Zhili province; Soldier Bashiliuwoshen's *genyi* Chen Liuma and Mase both deserted outside of the Gate of Victorious Triumph (see illustration); Soldier Qiao Xun 's *genyi*, Qier, deserted from the Western Deployed Camp; *Janggin* Fucheng's *genyi* Jiwa deserted in Weiyuan County (near Dingxi City in Gansu province); Soldier Duoluntai's *genyi* Wang Zhonghan deserted at Shandan County (near Zhangye City in Gansu Province); *Janggin* Fuzhu 福柱's *genyi* Wu ? (吳) deserted at Huihuibao (in modern-day Shanxi).

Altogether there were seven *genyi*-deserters. Of these, *genyi-deserter* Liu Cheng was apprehended in Tongzhou County (in Jiangsu Province).²⁴ He has already been sent to the Board of Punishments to be executed (*zhengfa*). Wang Zhonghan who fled from

²³ ZPZZ, 403008755.

²⁴ This might be the Liu Chengzhong referred to by the late Qing legal scholar Xue Yunsheng in discussion, *infra*, on the codification of *genyi* edict into law. DLCI, juan 21, binglü 2, junzheng, “從征守禦官軍逃-01.”

Gansu has been apprehended in Xianning County (outside of Xi'an in Shaanxi Province) and executed.

At this time, the troops have been continuously arriving at the Deployed Camp. We will send up a memorial requesting an edict to have those governors, governors-general, and the gendarmerie chief, who have not vigorously apprehended the *genyi*, administratively sanctioned. For the five who have not yet been apprehended, this Board has sent orders to rigorously apprehend them within three months. This Board will separately memorialize to impeach them.

In response to this memorial, the board received an edict to investigate and impeach, and then memorialize.

On August 2, 1755 (QL 20/6/25), Shaanxi-Gansu Acting Governor-general Liu Tongxun, who had been appointed governor-general of Shaanxi-Gansu in 1754 to manage logistics for the imminent Zunghar Campaign, memorialized the cases of three more *genyi* apprehended and tried, bringing the total of *genyi*-deserters identified to twelve out of what was likely more than ten thousand *genyi* accompanying the forces on this campaign.²⁵ The three were first tried by the Gansu Circuit Intendant and then personally retried by the governor-general himself, a breathtaking level of effort for officials who were no doubt already extremely busy with the campaign.

Liu's memorial cited the emperor's edict from the previous year directing that *genyi*-deserters who stole military equipment or silver be immediately executed upon apprehension. It was determined that *genyi* Luqi had been found with silver on his person, thus Liu had him executed. Since the emperor's order only covered *genyi*-deserters who stole, the governor-general adjudicated the remaining two *genyi*-deserters (who had not stolen anything) under the previous language of Substatute I for non-larceny *genyi*-deserters and recommended that their original

²⁵ ECCP, 533-34.

contract prices be recovered from their families, and that they be caned one hundred times.

Given that this punishment tracked the punishment for commoner *gugong* (not slaves) who deserted, it is likely that Luqi was a commoner who had contracted himself out as a *genyi*. Governor-General Liu may have been hesitant to autonomously carry out even this minor sentence (even though it was within his jurisdiction to do so) given the emperor's other order on summary adjudication of *genyi*-deserters and the emperor's significant criticism of leniency in military matters. At any rate, he forwarded the case to the emperor who then referred it to the Three Judicial Offices for a recommendation.²⁶

Still, some cases involving *genyi* continued to be adjudicated under either the routine track or some combination of routine and militarized adjudication procedures, showing what was probably the continued recognition that militarized adjudication was most appropriate for on-going military operations and perhaps reflecting that the *genyi* execution statute was viewed, at this time, as only an *ad hoc* application of militarized adjudication applicable to the northwest campaigns. The next case though is interesting because it involved a household slave, apparently on some type of military mission – not the Western Campaigns. Although he was not referred to as a *genyi* in the case itself, a household slave accompanying his banner master on a military operation was in fact a *genyi*, as Substatute I made clear.

In January 1756 (QL 20/12), the Board of Punishments produced a routine criminal memorial based on their retrial-review of the case forwarded by Shanxi Governor Hengwen. The household slave (*jia'nu* 家奴) Ga'erjishuole, who accompanied the campaign army (*suiwang*

²⁶ ZPZZ-NPM, 4030009797.

junying 隨往軍營) and stole his master's camel and silver. Governor Hengwen requested “based on the statute/precedent (*zhaoli* 照例)” to execute him “under militarized adjudication at Hohhot City (*yi junfa congshi jiyu Guihuacheng zhengfa* 以軍法從事即于歸化城正法).”²⁷ Although the request was approved, the case still involved a request from the governor, *a review from the Xingbu*, and imperial approval, suggesting the application of militarized adjudication principles within the routine process, demonstrating the resiliency of late imperial legal culture in light of militarized adjudication pressure.

What is really striking about the harsh treatment of *genyi* is that it does not seem that their desertion was a real problem. If only a part of the fifty thousand soldiers assigned to the two wings of the northwest campaign army were accompanied by *genyi*, there could have been easily more than ten thousand *genyi* accompanying the force. Despite scouring the archives, I only found these twelve cases of *genyi* who deserted from this massive campaign. Of course there were probably more, but even if there were twice or ten times as many, it still would not have been a significant problem, and there was no general discussion in any of the reports or documents of the period noting a significant strategic-logistical problem with *genyi* desertion.

²⁷ NGDK, 106591-001.

II. Creeping Militarized Adjudication

Up to this point, there is little evidence that non-epicenter, non-*genyi* deserters – rank-and-file soldiers – were subject to militarized adjudication. At most, as we saw at the end of the last chapter, in adjudicating such cases the Board of Punishment was willing to base its draft sentence on militarized adjudication principles, but that was a far cry from autonomous provincial-level adjudication and execution of campaign deserters, as was now happening with some *genyi*-deserters. This began to change in 1755. On July 23, 1755 (QL 20/6/15), during the campaign against Dawaci, in response to some Oirat soldiers’ “looting and acting with disregard of the law,” the emperor ordered that the general in charge vigorously investigate, apprehend, and rigorously punish the offending soldiers under militarized adjudication as a deterrent to others (*ling Elute bingdingdeng, wangxinglüe, dagan faji, jiangjundeng jiying yanxing cha’na, zhi yi junfa congshi jingjie* 今厄魯特兵丁等,妄行掠,大干法紀,將軍等即應嚴行查拏,治以軍法以示警戒).²⁸ The familiar militarized adjudication-deterrence language here was consistent with the emperor’s approach to military discipline since the Zhandui-Jinchuan debacles. Although the order did not apply specifically to rank-and-file deserters, commanders seemed to have understood it to apply to deserters as well.

A year later, on February 4, 1756 (QL 21/1/5), Manchu Plain Yellow Bannerman and Banner Commander of the Mongol Plain Yellow Banner during the Zunghar campaign Fude 富德 memorialized that he had recently ordered Oirat soldiers to deploy on campaign, noting that if Mongol soldiers deserted or lingered, then he would have them adjudicated under militarized

²⁸ QSL-QL, juan 491, 168-1 – 168-2.

procedures (*ru you taohui douliuzhe, yi junfa congshi* 如有逃回逗留者, 以軍法從事). While Fude's memorial seemed consistent with the emperor's edict the year prior, the Qing's Mongol forces always had to be considered with political sensitivity, for the very reasons I outlined in the Appendix.

In this case, the emperor responded by telling Fude to remember that these were Mongol soldiers and that it would be counterproductive to be too harsh on them.²⁹ Indeed, the problem of Mongolian *Jasak* leaders taking their soldiers home without permission continued to be a significant challenge and political issue just as it had been during the Kangxi and Yongzheng eras as we saw in Chapters Two and Three.³⁰ In fact, a trickle of early cases of summary execution of campaign deserters from the northwest campaigns appeared first only in Manchu-language documents related to Mongolian *Jasak*-banner soldiers. For instance, on December 8, 1756 (QL 21/10/17), Manchu Plain Red Bannerman Goro Yarhashan (d. 1759) (Ch: Ya'erhashan 雅爾哈善) who had been recently appointed as Grand Minister Superintendent of Balikun

²⁹ “此項兵丁, 俱係蒙古, 全在臨事鼓舞, 善於駕馭, 若過為嚴峻, 轉非所宜。” QSL-QL, juan 504, 359-2 – 360-1.

³⁰ QL 21/08/03. Khalkha Prince of the Blood Sangzhaiduoerji 桑齋多爾濟 memorialized regarding that Khalkha *Jasak* Prince (Taiji) Suonuomuduobu and others who, while leading troops and junior officers in manning the *karun*, deserted and should be rigorously punished. ZPZZ-FHA-MWD, 03-0176-1608-017. QL 21/09/04. Pacifying the Frontier Fujiang Daledang'a memorialized that Khalkha Assistant Prince (Taiji) Pileduoerji's led soldiers on the Northern Route and many deserted. ZPZZ-FHA-MWD, 03-0176-1617-017. QL 21/09R/10. Right Wing Pacifying the Frontier General Jaohui memorialized that he had “dispatched persons to track down and bring back the deserters from Wulanpansu postal station.” On QL 21/09R/15, Jaohui again memorialized regarding Khalkha soldier-deserters from Yilebaeryishao Post Station, relating that “we have sent dispatched men to track them down and apprehend them.” ZPZZ-FHA-MWD, 03-0176-1618-026. On August 18, 1756 (QL 21/7/23) Khalkha Mongol Commandery Prince Qinggunzapu 青滾雜卜 took his troops and left without authorization. Because the law is military law, the crime cannot be treated leniently. “帶兵擅回。律以軍法。罪不容誅。且捏為種種浮言。” QSL-QL, juan 517, 530-2 – 531-2. According to the Mongol Code, “Failure to deploy troops after receiving a movement order,” Any *Jasak*, Beile, Beize, Gong, Taiji, Dabunang, who does not personally lead the troops, will be stripped of his honorary rank (爵) and sent to the front. If he controls an entire banner and fails to move forward, then he will be adjudicated under militarized proceedings 即以軍法從事. If they are one day late for the appointed time of departure, he will be fined three months' salary. Two to three days late, six months' salary; four days, nine months; five days, an entire year's salary.

(Xinjiang), memorialized the apprehension and execution of Khalkha soldiers Bayaertu and three others who were *planning on* deserting from Aketasi Station.³¹ This willingness to summarily execute the deserters may have been based on the emperor's July 23rd order of the previous year.

Meanwhile, the emperor continued to push to eliminate the lenient tendencies inherent in the routine adjudicative process when it came to military cases, as seen in the Qianlong-dominated adjudicative discourse. In a December 15, 1756 (QL 21/10/24) edict, the emperor forbade the Board *when adjudicating military cases* from considering generally-applicable routine statutes which called for leniency in the cases of criminal defendants whose previous-generation family member died in battle for the Qing.³² It is interesting that even though this particular case did not involve desertion, the emperor used desertion from the battlefield as his example of what would result from an overindulgence in *leniency* in crimes that involved military operations. As in Zhandui-Jinchuan, the emperor's theme was the expected leniency leads to indiscipline. He warned his officials, "From now on, consider the facts and the crime

³¹ ZPZZ-FHA-MWD, 03-0176-1624-002. In a manner reminiscent of the fate of Zhang Guangsi and Necin, during certain military setbacks in this campaign, the emperor had Manchu Plain Red Bannerman Goro Yarhashan (d. 1759) (Ch: Ya'erhashan 雅爾哈善), Deputy Banner Commander Shundenehe and provincial military commander Ma Desheng all executed. He further ordered the imperial councilor Haning'a to commit suicide. Zhu Chengru 朱誠如, ed. *Qingchao tongshi* 清朝通史, vol. 9 (Beijing: Zijincheng Chubanshi, 2003), 206.

³²

[Emperor]: Reviewing this year's rolls for the Autumn Assizes, [I saw that] the official-criminal Jipu whose crime has already been verified (*ying ni qingshi* 應擬情實), based on the fact that his older brother died on the battlefield, the Board [of Punishments] cited the statute permitting him to avoid the death penalty once (*li zhun miansi yici* 例准免死一次). The reasoning behind this statute [remitting the death penalty once if an ancestor had died in battle for the dynasty] was that the dynasty could remit the death penalty to express sympathy for the death of the relative in battle. It was meant to encourage military vigor (*nai guojia youxu sisui zhi dian, zheng yu jili jixing zhi yi* 乃國家優卹死綏之典, 正寓激厲戎行之意). QSL-QL, juan 525, 615-2.

when you memorialize requesting approval for a sentence. Do not cite statutes requesting leniency. Disseminate this edict widely.”³³

Despite the clarity of this order, and the emperor’s admonition to make it widely known, the next year the case of Lieutenant Colonel Maisihan 邁斯漢 prompted a reminder from the emperor.³⁴ Although, Maisihan was also the descendent of men who died in battle, the emperor again noted that this provision for leniency was “meant to apply to *ordinary* criminals and cannot be considered applicable in cases involving *junfa* (*yuan zhi xunchang zuifan er yan, bingfei junfa kebi* 原指尋常罪犯而言, 並非軍法可比).”³⁵ As in other cases, the emperor suggested that *junfa*

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[Emperor]: [For this reason] if the matter [the accused man’s crime] involved military operations, citing this [leniency] provision would be gratuitous. [The result would be that] family members of those who died in battle, because of this statute, would be willing to desert from the battlefield (*ze zhenwang zhi jia yin you cili jiang linzhen tuotaozhe* 則陣亡之家因有此例將臨陣脫逃者). That would be too lenient. If regardless of military blunders [they could receive the benefit of this statute], what kind of logic would that be? If, relying on this, one dares to commit a crime, for instance premeditated murder, then he could not be tried. That was not the intent of the statute. How could it be? In this case, Puji delayed and blundered military logistics. The law cannot pardon this. How can it be treated like an ordinary “after the assizes” case and be adjudicated according to the statute? The statute cited by the Board is inappropriate. From now on, consider the facts and the crime when you memorialize requesting approval for a sentence. Do not cite statutes requesting leniency. Disseminate this edict widely (嗣後酌量情罪請旨, 不得一概援例請寬, 將此通行傳諭知之). QSL-QL, juan 525, 615-2.

34

[Emperor]: December 10, 1757 (QL 22/10/29). The *Xingbu* has today presented those Autumn Assizes cases of official-criminals (criminals who were officials) which it has verified as correct. Last year, Yarhashan ordered Maisihan to lead troops to scout for news of Jaohui (Ch: Zhaohui 兆惠 [during the suppression of the Zunghars]). He really did not encounter any rebels on the route which would have prevented him from going forward, but rather he just took side roads, extended his sortie, and then just returned to the deployed camp [without completing his mission]. [Since] the [other] officer who also led soldiers on the mission was successful and killed many enemy whereas Maisihan turned back upon hearing rumors, thus even though Maisihan had a relative who died in battle, and that would be enough for leniency if it were a common crime, but that cannot be compared to military law (*junfa*). Maisihan is a coward, he did not make any effort. He will be selected for execution at the assizes [here, the emperor is directing that when the assizes process takes place, Maisihan will be designated for execution].

QSL-QL, juan 549, 1005-2 – 1006-1.

³⁵ The emperor continued:

In this incident, Maisihan led several hundred troops. Gao Tianxi (Ch: 高天喜) also led troops on the same mission [and was killed in battle]. Gao Tianxi was able to kill around one hundred enemy. ... Why

bound his hands so that he would be “bending the law” by not ordering the accused executed, even though *junfa* was a highly amorphous concept that in no definite way required the accused officials to be executed. What the emperor was actually doing was framing the cases in terms of cowardice and deception in order to align those cases more closely with the traditional epicenter domain of militarized adjudication. In reality though, most of these new cases occurred far from the epicenter of battle, and their association with cowardice was to a significant degree the emperor’s own rhetorical flourish.³⁶

In both of the above cases, the emperor pointed out that such extraordinary cases should not have the benefit of the leniency that was otherwise structured into the routine process. The emperor used these cases as a form of education to encourage his adjudicating officials to understand that cases like this one were to be considered as “not ordinary,” and that the considerations were different in a military case, even if the case were otherwise being adjudicated within the routine process. The emperor wanted all to be aware that he had no ability to “bend the law” in such *junfa* cases of cowardice and cowering, and so he ordered that

was it so hard for Maisihan to exert himself and move forward? He even listened to the empty words of the rebels. This is cowardice not going forward (恆怯不進 *kuangqie bujin*). At that time, if we had not sent other soldiers forward to assist Jaohui, it would have been a disaster.

QSL-QL, juan 549, 1005-2 – 1006-1.

³⁶

[Emperor]: And Maisihan’s crime. Although his ancestor died on the battlefield, it is difficult to pardon. Thus, I have selected him for execution. If Eight Banner hereditary slaves (*baqi shipudeng* 八旗世僕等) can rely on their ancestors having died in battle, they will not make efforts when sent to war. This is directly related to the development of bad habits (*yu xisu dayou guanxi* 於習俗大有關繫). If his situation were pitiable, then I would have to be forgiving; but in this situation where Maisihan was a coward, how could I bend the law to be lenient (*guo qi qing you kejin, zhen yi bi jia yuanyou, ruo si Maisihan shiji weiqie, qi nen qufa jiaen* 果其情有可矜, 朕亦必加原宥, 若似邁斯漢失機畏怯。豈能屈法加恩)? Transmit an edict to the generals of the two route armies. Ensure all the soldiers in the deployed camp are aware of this (*tongxing xiaoshi junying guanbingdeng zhizhi* 通行曉示軍營官兵等知之).

QSL-QL, juan 549, 1005-2 – 1006-1.

the case be made known to the rank and file deployed soldiers as well. There was to be no leniency in matters of military discipline.

In many ways, telling the *Xingbu* to adhere strictly to determining the correct facts and matching those facts to the correct crime and to no longer memorialize about other collateral legal provisions that may have affected leniency was itself a major call for restructuring of how the Board made recommendations. Each part of the Code was related to the next and those statutes and substatutes which provided seemingly lenient treatment drew from particular aspects of late imperial legal culture. After all, according to the classic formulation, justice required consideration of human feeling, reason, and law (*qinglifa* 情理法).

In 1755 (QL 21), the Code Revision Committee (*liliguan* 律例管), revised both the rank-and-file deserter provision as well as the *genyi*-deserter provisions of Substatute I and republished it in the Code. For rank-and-file soldiers, references to the routine campaign desertion statute were deleted (even though the substatute would continue to be associated with or appended under that substatute in subsequent published editions of the Qing Code) and the punishment was changed from strangulation *after the assizes* (*jiao jianhou* 絞監候) to immediate decapitation (*zhan lijue* 斬立決) which not only increased the punishment one level, but by removing assizes-review substantially increased the chances that the sentence would be carried out. The new language read as follows:

When a soldier on campaign deserts from the army and returns [home], his sentence shall be drafted as decapitation *without delay* (*zhan lijue* 斬立決).

Within the context of late imperial legal culture “decapitation *without delay*” was a far, far cry from summary execution. Rather, it meant that a case had to go through the routine retrial-

review process all the way through review by the Three Judicial Offices and imperial approval but would not be subject to the potentially multi-year assizes additional review. Given that some campaign desertion cases were already being adjudicated under militarized procedures at the time this statute was modified and the shift in legal culture since the Zhandui-Jinchuan campaigns, the use of this terminology – *lijue* – must be understood in the developing trend to apply militarized adjudication summary execution to all campaign deserters. Unless, we assume that the new statute was meant to be ignored, it must have been the case that *lijue* no longer necessarily signaled full routine process minus the assizes but rather could include autonomous militarized adjudication execution as well. This interpretation is supported by a desertion case that occurred the year after the new statute was promulgated in which the rank-and-file campaign deserters were summarily executed under militarized adjudication despite the “decapitation without delay.” As we will see in the next Chapter, the imperial standard would come to serve as a constructive edict for purposes of satisfying the *lijue* review requirement.

On October 14, 1757 (QL 22/9/2), Grand Minister Consultant Yarhashan memorialized regarding the apprehension and execution (and showing to the public) of Deserter Boro and the others who fled the Sangedeng Deployed Camp.³⁷ According to Yarhashan, one evening “thieves” simultaneously attacked the deployed camps (*kūwaran*), outlying checkpoints (*bingtai*), and postal relay station (*ula*) that were under the jurisdiction of commanders Sangge and Aladang’a. Eight Mongol *genyi* deserted and did not come back. Four Mongolian rank-and-file deserters, Alashan-Khalkha Mongols Boro, Tasijaba, and Narma, as well as Chahar Deserter Gungge came back [after initially fleeing during the attack].

³⁷ ZPZZ-FHA-MWD, 03-0176-1653-020.

Yarhashan adjudicated Boro's case first. According to Boro, when the thieves came, their checkpoint was surrounded on all sides, they were at a distance from any help and were really in pathetic circumstances. They hid. When they checked things out in the morning, all their superiors were gone. In his brief reasoning on the case, Yarhashan stated that "to intentionally desert from a military area (*coohai ba*) is an evil crime (*weile uyen*). To desert on the battlefield is an evil crime (*afandure nergin de ukaci weile ele uyen*). He then cited an edict from the emperor that invoked the "Manchu Way":

When at any place of military operations, one must give it one's all according to the Old Way (*fe doro* – Elliott, "Manchu Way"). It cannot be pardoned (*guweburakū*) if at first high officials and lower officers become disheartened and hide [desert] and do not go forward.

After quoting this edict, Yarhashan stated that he then had these rank-and-file deserters executed in front of the other soldiers (*cooha urse de tuwabume fafun i gamahabi*). In this case, Yarhashan obviously felt comfortable informing the emperor that he had executed rank-and-file deserters. Still, there was no mention of the imperial standard (*hesei kiru temgetu*) in this memorial.

Like the case of *Jasak*-banner soldier Edui at the end of the last chapter, the analysis in this case similarly disregarded both the late imperial legal principle that leniency should be granted to those who turn themselves in, as well as the specific statutory provision granting leniency to deserters who turned themselves in prior to the completion of operations. However, at least in Edui's case, the accused deserter went through some level of routine review and his final execution had to be approved by the emperor. In this case, by contrast, the four were simply executed. The difference in meaning between the textually-identical "without delay" language in

the Edui case twenty years earlier and in the statute in force at the time of this execution was significant: the former contemplated final imperial approval; the latter, at least in this case, did not. This was not only the difference between a militarized track and the application of militarized adjudication principles within the routine adjudicative process, but signaled how militarized adjudication was shifting the meaning of specialized legal terms. Recognizing this shift shows the value of taking a cultural-linguistic approach when understanding the changes that took place during this period. To the extent that *lijue* could now mean summary or autonomous, hundreds of provisions in the Qing Code were now open to new possibilities without the change of a single word, much like the phenomenon Matthew Sommer identified whereby the old terms commoner and debased persons took on entirely new meanings without changes in long-standing Code text.

The second change made by the Code Revision Committee to Substatute I in 1755 (QL 21) was to codify and generalize the Qianlong emperor's edict authorizing militarized adjudication for *genyi*-deserters who engaged in larceny and then deserted. The second provision, which also referenced "without delay," further suggested this shift in the meaning. Note that within the revised provision on *genyi*-larceny-desertion, the code drafters could not have believed that there was an irreconcilable contradiction between "decapitation *without delay*" and "execution on the day apprehended" because they used the latter term to provide more detail on how the former would be carried out in this particular type of case. Prior to the Qianlong era, execution on the day of apprehension would have been impossible to reconcile with "execution without delay," because the latter required imperial approval. Moreover, we know this language was not merely sloppy drafting, because the drafters actually changed the former punishment of "strangulation

after the assizes” to “decapitation *without delay*.” This was the first instance in which these two terms were used together in the Code:

2. Any slaves and *gugong* who accompany [soldiers on campaign], if they steal horses, military equipment, clothing or silver [‘clothes’ and ‘silver’ were specific additions to the statute], shall also be adjudicated as *decapitation without delay* (*zhan lijue*)[an increase in severity from the previous punishment of strangulation *after the assizes*], and the Beijing gendarmerie as well as the governors-general and governors along the campaign route of march are ordered to strictly apprehend them, and on the day they are apprehended to immediately execute them on the spot (*huori jiyu bendi zhengfa* 獲日即於本地正法)³⁸

While the late nineteenth-century legal scholar Xue Yunsheng stated that this statute was based on Governor-General Fang Guangcheng’s adjudication of a *genyi*-deserter Liu Chengzhong 劉成中 under militarized adjudication, and that may have been the original inspiration or precipitating document for this statute, it is clear from the identical language that this statute was a codification of the emperor’s *genyi*-larceny-desertion edict originally issued for the Northwest Campaigns.³⁹

This codal provision not only regularized militarized adjudication in the Qing Code as the default adjudicative track for *genyi* offenders under certain circumstances, but also authorized a level of expeditiousness (“on the day they are apprehended”) rare even in classic militarized adjudication. The codification of the emperor’s 1735 edict was also remarkable, because that edict, as seen within the long line of military campaign orders classically governing militarized adjudication, applied on its face only to the specific campaign in the northwest. By enshrining it

³⁸ Wu Tan, 602-03.

³⁹ DLCL, juan 21, binglü 2, junzheng, “從征守禦官軍逃-01.”

in the Qing Code itself, the revisers of the Code transformed it from a particular *ad hoc* application to a wholly normative aspect of generally-applicable routine Qing criminal law.

In addition to regularizing militarized adjudication in the Code in this dramatic way, and signaling (perhaps contributing to) a shift in the meaning of routine legal language, this substatute also forced the code drafters to rethink other substatutes. The Qing Code was a very complex and interconnected document with many internal cross-references between provisions and external references to other regulations. In fact, the Code provision that prohibited and punished *genyi* who fled while accompanying their masters on *non-military operations* had, prior to the above change, referenced this Substatute I, essentially directing that such offenders would be punished according to Substatute I (prior to the change), as if they had deserted during military operations. Yet, when Substatute I was changed to make *genyi*-deserters who committed larceny subject to militarized adjudication execution, the Code revisers obviously felt that was too harsh for non-wartime deserters and deleted the other substatute's cross-reference to Substatute I, and simultaneously enshrined the old Substatute I punishment, namely "strangulation *after the assizes*," to remain as the punishment for non-military operation *genyi*-desertion.⁴⁰ The upshot of all this is a very clear distinction between wartime and non-wartime *genyi*-desertion that echoed the temporal element of the military operations gradient.

III. A Militarized Track For Rank-and-File Desertion Cases

From the start of the Northwest Campaigns until September 1758, the only cases I was able to find in the archives in which rank-and-file deserters were executed under militarized adjudication

⁴⁰ Wu Tan, 718.

were cases from the *Jasak*-banners, and many of those cases were recorded in Manchu-language memorials. What about Green Standard deserters? Despite the apparently expanded meaning of “decapitation without delay” in the newly-modified Substatute I, there was no direct imperial guidance directing that rank-and-file Green Standard deserters be adjudicated under militarized procedures. This changed in September 1758 when, clearly with the Green Standard in mind, the emperor issued his first direct guidance recorded in the Chinese sources directing that rank-and-file deserters be adjudicated under militarized procedures:

September 11, 1758 (QL 23/8/10). An order to the Grand Council, etc. The memorial from Yarhashan (and the others) stated: Among the Green Standard soldiers being commanded by Ma Desheng, Cavalryman Li Ziyun stole official silver and a camel and deserted. Among the soldiers responsible for logistics transport (*yunsong kouliang* 運送口糧兵丁), there are more than four hundred and sixty who have not yet arrived. Among these, some got sick and died and others deserted [End of Yarhashan's memorial].

[Emperor]:For one thing, these soldiers do not make any effort when they deploy, and then on top of that they steal things and abscond. It is really unlawful. As they desert back to the inner-empire (*neidi* 內地), they must pass Hami and Barkul (Ch: Balikun) (in Xinjiang) and Anxi (in Gansu). Send an order to Huang Tinggui for him to notify the An'xi provincial military commander and the Hami *zongbing* to apprehend these quickly. They should also write to the home stations of these soldiers (*shiliang yinxun* 食糧營汛) as well as the local officials in their home towns, so they can all work together to apprehend them.

The leaders and followers should not be separated. They should all be immediately executed in order to maintain military discipline (*ji zhengfa yi su junji* 即正法以肅軍紀).⁴¹

As would become clear later on, the problem with this particular incident – one of the more significant incidents of desertion during the campaign – was distinguishing which of the soldiers had actually deserted from those who had gotten sick or died. We know that this instance of

⁴¹ QSL-QL, juan 568, 207-1 – 207-2.

desertion stood out because the emperor continued to reference it over the next couple years and it was later cited as proof of incompetence in the conviction and execution of Yarhashan and Ma Desheng. Despite the occurrence of militarized adjudication executions prior to this edict, the emperor's language suggests that he recognized the distinction between what he was ordering now and the application of routine adjudication and traditional militarized adjudication. In this case, he specifically stated – contradicting long-standing principles of late imperial legal culture – that “the leaders and followers should not be separated.” This was obviously a reference to the fact that in traditional militarized adjudication and even in the Battlefield First Flight Statute, only the *first* men to desert were executed to set an example. Here, the emperor not only mandated that men who deserted from places away from the epicenter be executed, but he directed that they *all* be executed and autonomously at that.

Almost immediately following this edict, field officials began memorializing the execution of more deserters. First, there was the immediate response (eleven days later) from Huang Tinggui. On September 22, 1758 (QL23/8/21), Huang opened his memorial by quoting the above edict in full and acknowledging that he had taken steps to comply with it.⁴² Additional memorials from high level campaign and provincial officials similarly reflected compliance. On October 9, 1758 (QL 23/09/08), Heilongjiang Manchu General Coldo (Ch: Zhuoleduo 綽勒多) memorialized the apprehension and execution (*fafun yi gamaha*) of a deserter according to what he referred to as the substatute referring to absconding from a military place (*coohai baci bulcame ukaka kooli*).⁴³ On the same day, Aligun memorialized the apprehension of Balikun deserter Cui

⁴² ZPZZ-FHA, 04-01-01-0226-011 / 04-01-01-032-2517.

⁴³ ZPZZ-FHA-MWD, 03-0177-1716-010.

Wencai and his summary execution.⁴⁴

The next month, Huang Tinggui sent up another memorial summarizing his efforts to deal with deserters, which again referenced the case of Green Standard Cavalryman Deserter Li Ziyun that had occasioned the emperor's edict authorizing militarized adjudication for rank-and-file deserters. On October 31, 1758 (QL 23/9/30), the emperor responded to the memorial with an edict, using the opportunity to make a more formal and unambiguous pronouncement on adjudicating deserters through the militarized track:

October 31, 1758 (QL 23/9/30). An order. According to the memorial of Huang Tinggui:

[Huang Tinggui]: At Jiayuguan, over time, we apprehended Guyuan deserter Li Ziyun and some others as well as Jingyuanying deserter Sun Lin, in total 7 men. We escorted these seven to Gansu and executed them.

[Emperor]: **As these deserters are apprehended, they should be executed. Do not be lenient** in the slightest (*cideng tuotao bingding, yijing nahuo, zidang jixing zhengfa, duan buke shaocun guxi* 此等脫逃兵丁, 一經拏獲, 自當即行正法, 斷不可稍存姑息). As for all the remaining “criminals” [rank-and-file deserters] that have not yet been apprehended, order all the [officials stationed at the] interior and exterior passes to increase their efforts to apprehend them. Do not allow any to escape the net! The governor-general should investigate and determine which junior officers and soldiers stationed at Jiayuguan should be rewarded for apprehending the deserters in order to encourage them. Write out a letter to the [officials at the] deployed camps, and to those supervisors of the military agricultural colonies. Make sure each Green Standard soldier knows each order.⁴⁵

On November 2, 1758 (QL 23/10/02), Grand Minister Superintendent of Military Agricultural Colonies Yonggui memorialized the apprehension and execution of Ma San who deserted from

⁴⁴ ZPZZ-FHA-MWD, 03-0177-1717-017.

⁴⁵ QSL-QL, juan 571, 256-2 – 257-1. On November 12, 1758 (QL23/10/12), the Huang Tinggui again memorialized, responding that he had reported the soldiers and junior officers's at Jiayu Guan who had apprehended the deserter with silver in accordance with the emperor's order. ZPZZ-FHA, 04-01-01-0224-058 / 04-01-01-032-1983.

Pizhan.⁴⁶ Less than two weeks later, on November 15, 1758 (QL 23/10/15), Yonggui reported that Military Agricultural Colonel Deputy General Zhaopan, and acting *bazong* Dai Jin and others, apprehended and executed deserter Mashun. The emperor responded again by directing Yonggui to consider those involved with the apprehensions for rewards as an incentive to continue to apprehend deserters.⁴⁷ The emperor again addressed the case in January 1759. Because this case was taking place at the same time as the trial and execution of Yarhashan and Ma Desheng, the emperor's interpretation of the case must also be understood within this political context. There are two important things that came out from this order: first, that many of the four-hundred soldiers who had allegedly deserted had probably actually fallen behind due to sickness or exhaustion; second, that the emperor's original order (or at least his interpretation of it now) to immediately execute these deserters did not just apply to deserters from this particular logistics mission, but to all campaign deserters:

January 15, 1759 (QL23/12/17). An order. According to Huang Tinggui's memorial regarding the order to investigate last year's desertion cases from when Yarhashan was leading Green Standard troops on deployment:

[Huang Tinggui]: Within these cases, there are some soldiers who really got sick en route. These cases seem like they should be distinguished from actual desertion cases. I have directed each high official in the agricultural colonies to interrogate the soldiers who got sick along the way. We will distinguish them and to send a memorial up for decision.

The emperor first reiterated the basic principle that rank-and-file campaign deserters should be executed summarily under militarized adjudication. This applied to all campaign deserters, not just the ones from this incident:

⁴⁶ ZPZZ-FHA-MWD, 03-0177-1721-013.

⁴⁷ QSL-QL, juan 572, 277-1.

[Emperor] When soldiers are on campaign and abscond en route, they should be handled according to militarized adjudication (*zhengbing zhonglu qiantao, zi ying zhi yi junfa* 征兵中路潛逃, 自應治以軍法).⁴⁸

Nevertheless, because the facts of the original crime were not always clear, especially if some time had passed, it was necessary that the responsible official investigate the alleged desertions right away. The fact that Yarhashan and Ma Desheng (who would soon both be dead by the emperor's command for this as well as other perceived missteps) did not immediately investigate these alleged deserters itself reflected a "complete loss of discipline":

If [the soldiers accused of deserting] came down with an illness, then the true facts are different. How could one be slow to distinguish the two types of cases? Still, Yarhashan was a general. [His duty was to] lead troops to attack. Ma Desheng had dedicated duties as a leader of troops. But [when soldiers were accounted for] they did not even inquire as to whether they had [intentionally] deserted or simply become sick [and then continued on the march]. *This reflected a complete loss of discipline.* Moreover, among the soldiers there are those who came down with illness, and it was not reported at the time. [This is a matter of] soldiers becoming sick, with no one going to check on them, give them rations, or nourish them, to the point that they fell behind. What happened was the soldiers became sick and could not continue to go forward.⁴⁹

Although the emperor had other complaints about the leadership of Yarhashan (including his failure to effectively assist Jaohui during the earlier campaign) and Ma Desheng, the failure to properly handle this desertion incident was certain one of the precipitating events that led to their downfalls. The emperor concluded his order by saying, "Seeing this, it is obvious that the crimes of Yarhashan and Ma Desheng merit execution. They will be investigated."⁵⁰

Clearly the emperor did not like the ambiguity of these cases. He did not necessarily want to execute innocent people, but by the same token he sought a system that efficiently produced

⁴⁸ QSL-QL, juan 577, 352-1 – 352-2.

⁴⁹ QSL-QL, juan 577, 352-1 – 352-2.

⁵⁰ QSL-QL, juan 577, 352-1 – 352-2.

harsh deterrence and quashed the hope for leniency. The routine process – by virtue of its multiple levels of review and molasses-like processing – naturally gave an opportunity for contradictory facts to surface and be resolved. By bypassing that inefficient system, the emperor inevitably increased the risk of the people being wrongly, if efficiently, executed. This inherent contradiction continued to plague the emperor’s push to shift cases to militarized adjudication:

[Emperor]: Although these soldiers have already been removed from the ration rolls, there will be some who will claim they were sick even though they were really deserters. I am afraid this is unavoidable (*qizhong gui tao wei bing zhe, yi kong bumian* 其中詭逃為病者, 亦恐不免). How can the truth be determined? They should have been questioned at the time ... The whole blame is on Yarhashan and Ma Desheng. Huang Tinggui will investigate which soldiers really got sick en route....⁵¹

After the above incident, the Qianlong emperor never again lifted his critical gaze from rank-and-file deserters. By the end of 1759 (QL 24), he was fully focused on desertion cases as a prime object of militarized adjudication. From this time on, the major elements of his adjudicative discourse on deserters – one that would develop on similar themes throughout the rest of his reign – began to coalesce. For instance,

On December 7, 1759 (QL 24/10/18), Yang Yingju memorialized:

[Yang Yingju]: According to information received from *Zongbing* Yang Ning, Infantryman Li Canguai and Cavalryman Han Shijie deserted one after the other from the assigned location in Kashgar. I [Yang Yingju] have ordered that they be rigorously apprehended.

[Emperor]: When soldiers desert en route during a deployment, the facts and the crime are evil (*bingding zhongtu tuotao, qingzui kewu* 兵丁中途逃脫, 情罪可惡). They should be apprehended and immediately executed in order to keep military operations on track (*wu ying nahuo zhengfa, yi su junxing* 務應拏獲正法, 以肅軍行). This governor-general has already notified [the officials at] all the frontier gates and strategic areas as well as communicated with the original camp and

⁵¹ QSL-QL, juan 577, 352-1 – 352-2.

native places [of the offenders] to apprehend the deserters. But these kind of “bandits (*feitu* 匪徒)” procrastinate along the route and hide. They might not [yet have returned] return to their homes (*weibi jin hui yuanji* 未必盡回原籍). They fled from Kashgar. Nearby places include the agricultural colonies around Urumchi. It is appropriate to secretly investigate there. Do not let them get away. Transmit an edict to Yang Yingju. He should immediately coordinate with the high officials in charge of each place to work together to rigorously apprehend him. Do not let them escape.⁵²

Three things stand out in the emperor’s response to this report. First, that he characterized rank-and-file campaign desertion as *kewu* (可惡), a term that could be interpreted as “evil” or “revolting” but in either case was the same character used to describe the heinous crimes of the *Ten Great Wrongs* (*shi’e* 十惡), another link between militarized adjudication and the *Ten Great Wrongs*. Second, that he characterized the deserters as “bandits,” implying disloyalty to the dynasty. And third, similar to the guidance he gave for apprehending *genyi*, he was willing to greatly increase the workload of his already-burdened officials to apprehend relatively few deserters.

On December 12, 1759 (QL 24/11/1), Yang Yingju responded that all efforts were being made to apprehend the two deserters.⁵³ And on December 28, 1759 (QL 24/11/10), Yang further reported that in accordance with the edict he had sent expeditious notification (*feizi* 飛咨) to all the high officials to apprehend Li Cangui and Han Shijie.⁵⁴ If one pauses for a second to consider the level of work foisted on various commanders across a large region for two rank-and-file deserters, and the paucity of deserter cases otherwise being reported at this time, one

⁵² QSL-QL, juan 599, 692-1 – 692-2.

⁵³ LFZZ-FHA, 軍務, Roll 11/其他/1467-1468.

⁵⁴ ZPZZ-FHA, 04-01-01-0233-044 / 04-01-01-033-2285.

realizes that rank-and-file desertion, like *genyi*-desertion, had taken on meaning far beyond its objective strategic importance, an example of disproportional extrapolation.

In Chapter Four, I argued that the emperor's motive for the broader turn towards militarized adjudication was driven by a concern over military discipline. By this time, this had become especially true for campaign desertion cases, as highlighted in a November 1760 case that arose out of operations in Xinjiang in which both Muslim soldiers (perhaps from Gansu or Altishahr?) and Green Standard soldiers had deserted. The emperor directed that the Green Standard deserters be adjudicated under militarized procedures and that the Muslim soldiers not be punished. As in the case of Tibetan and Mongolian deserters, one cannot discount the place of strategic politics and concerns for the sensitivities of alliance in this decision, but one should also give some weight to how the emperor actually justified his decision based on his different concerns for maintaining discipline within the two types of forces. He remarked that Muslim soldiers "have no discipline," but for the Green Standard soldiers who deserted at the same time, they had to be adjudicated according to militarized adjudication. Both groups had deserters, but they were treated differently:

On November 1, 1760 (QL25/9/24). An order. Šuhede memorialized, reporting that Deshu had been injured and that he had already ordered Nashitong to lead four hundred soldiers to pursue the enemy. Also, Yonggui memorialized. He first dispatched Chechen Muslim troops on the march, along with Aksu soldiers to jointly fight the enemy.

[Emperor]: At the time Yonggui memorialized, ... the Green Standard sub-lieutenant and the others saw Deshu's being injured ... and deserted. When official soldiers (*guanbing* 官兵) are with their battalion on campaign engaged in military operations against the enemy, when their leader is unfortunately killed on the battlefield, they should continue to dauntlessly kill the enemy (*jiying fenli shazei* 即應奮力殺賊). Perhaps if they are seriously injured, they can still have some excuse. If they desert when facing battle, this is far from [what they should do].

As far as Muslims go [these were Chechen Muslim soldiers that were part of the joint force and also fled], they simply do not know about discipline (*buzhi jili* 不知紀律). As far as the Green Standard, they should be adjudicated under militarized procedures (*zhi lüqibing, zi ying yi junfa congshi* 至綠旗兵, 自應以軍法從事).⁵⁵

By the emperor's logic, unlike the Green Standard Forces who merely suffered from a learned and habitual character trait of indiscipline (as the emperor had pointed out in other cases), there was absolutely no hope of making these Muslim soldiers disciplined, therefore there was no reason to summarily execute them.

IV. Desertion and the New Frontier: Post-Conquest Xinjiang

Scholars have recognized the importance of law in the Qing's Xinjiang project. Recently, studies on the pluralistic nature of the Qing legal regime have provided much additional detail.⁵⁶ My intent here is not to rehash those studies, but, rather to use desertion as a category of analysis to consider how the recent addition of a large militarized frontier affected the desertion analysis within the context of increasing militarizing tendencies in legal culture. My broader goal here is to understand the relationship between space and militarized or summary execution. This adds a more spatial element to the idea of the Qing's pluralistic legal framework for its various frontier peoples. After the conquest of Xinjiang, the frontier was a vast area that was far more militarized than the inner-empire, as evinced by the distinction between frontier military garrisons and inner-empire, home-station garrisons (whether Eight Banner Garrisons,

⁵⁵ QSL-QL, juan 597, 653-2 – 654-1.

⁵⁶ Pär Kristoffer Cassel, *Grounds of Judgment: Extraterritoriality and Imperial Power in Nineteenth-Century China and Japan*. (Oxford, 2012), 1-25. Yang Jun 楊軍, *Qingdai xinjiang diqu falü zhidu ji qi bianqian yanjiu* 清代新疆地區法律制度及其變遷研究 (Beijing: Mingzu Chubanshe, 2012); For instance, Dorothea Heuschert, "Legal Pluralism in the Qing Empire: Manchu Legislation for the Mongols," *The International History Review* 20, No. 2 (1998): 310-324.

baqizhufang 八旗住防 or Green Standard camps, *yingwu* 营伍) that I described in the Appendix. At the same time, it was still less militarized than an actual military campaign (*chuzheng* 出征). Overall, the need to elaborate how deserters would be treated legally in the newly-acquired, semi-militarized frontier areas revealed more deeply the relationship between war and criminal adjudication. The resulting discourse, which elucidated the difference between a garrisoned frontier and a warzone, represented post-conquest Xinjiang as neither a warzone (located towards the center of the military operations gradient) nor as the inner-empire (located on the periphery of the gradient), consistent with the establishing of military government.

The extreme frontier in post-conquest Xinjiang was a militarized frontier, both in its governmental administration as well as its soldier-residents. The soldiers stationed in Xinjiang included permanent-party soldiers whose home station had been moved to Xinjiang, many agricultural-colony soldiers, and also a large contingent of soldiers in Xinjiang on rotation (*banbing* 班兵). Now that the “real” fighting was over, when these soldiers deserted, were they to be treated like the hundreds of thousands of Banner and Green Standard soldiers garrisoning their home-stations in the inner-empire? Or, when soldiers deserted from these frontier garrisons and fled back to the inner-empire, were those soldiers to be executed just the same as campaign deserters? The correct response was not clear to the officials on the ground as indicated by the fact that such cases ended up being adjudicated in a variety of manners, some under militarized adjudication executions and some under procedures that more closely approximated the routine process.

For instance, on September 15, 1761 (QL 26/8/17), Kashgar Grand Minister Consultant Šuhede memorialized, requesting permission to execute Green Standard soldiers who fled from

Kashgar; by this time, however, the soldiers were not involved in campaign-combat operations.⁵⁷ Yet, two months later, on November 19, 1761 (QL 26/10/23), Kashgar Grand Minister Consultant Yonggui memorialized regarding the case of Green Standard rotational troop Shi Tuode, who deserted while en-route [to Kashgar]. Yonggui acknowledging that he would temporarily hold Shi under confinement and, in accordance with the emperor's instructions, await an edict prior to punishing him.⁵⁸ The next month, on December 4, 1761 (QL 26/11/09), Yonggui memorialized again to report that he had obeyed the emperor's edict and given Shi Yuode to the Yili Muslim farmers (Ch. *tarabachi*; Mo. *taranci*) as a slave.⁵⁹ In other words, Shi had not been executed.⁶⁰ In another case, on March 19, 1763 (QL28/2/5), Gansu Circuit Intendant Leerjin memorialized regarding the summary execution of one deserter.⁶¹ On July 25, 1763 (QL 28/06/15), Pacifying the Frontier Left Deputy General Chenggunzhabu memorialized to report the apprehension and execution of one Oirat deserter, Kexike.⁶²

The disparity in treatment of Xinjiang deserters seemed to have come to a head with a memorial from Anxi 安西 (Gansu) Governor and Manchu Bordered Blue Bannerman Ebi (Ch: 鄂彌) (d. 1763) on April 2, 1763 (QL 28/2/19).⁶³ Ebi memorialized as a follow up to an earlier exchange with the emperor. In that instance, Ebi had noted that he had punished a deserter but

⁵⁷ ZPZZ-FHA-MWD, 03-0179-1894-034.

⁵⁸ ZPZZ-FHA-MWD, 03-0179-1903-011.

⁵⁹ ZPZZ-FHA-MWD, 03-0179-1906-018.

⁶⁰ There were other indications of ongoing desertion problems at this time. For instance, on February 24, 1763 (QL 28/01/12), Aksu Grand Minister Superintendent Haiming memorialized requesting to impeach Qianzong Gao Zhisheng because several Green Standard soldiers under his supervision had deserted for a second time. ZPZZ-FHA-MWD, 03-0180-2005-004.

⁶¹ LFZZ-FHA, 軍務, 人事, juan 3, 0969-0970.

⁶² ZPZZ-FHA-MWD-03-0180-2033-013.

⁶³ ZPZZ-NPM, 403014470.

had not executed him. The emperor rescripted the memorial, telling Ebi to memorialize with an explanation of what law he had followed in that case. Ebi responded:

I [Ebi] memorialized that, as to the QL 23 troop rotation to Yili and environs, when the number of rotating troops was reduced mid-route [which means the soldiers had to return to Xi'an Garrisons before reaching Yili and would have to repay their deployment stipends], Green Standard soldiers continually deserted, and that among these four who were apprehended were deserters [whose peacetime assignment was] from Xi'an City Garrison. [They deserted en route to Yili].⁶⁴ One of these has already been punished according to the law. Upon this memorial, your highness rescripted, "Explain clearly under what law this action was taken (*an shi hefa mingbai fenglai qinci* 按是何法明白奉來欽此)." ⁶⁵

Ebi then explained that the case had been adjudicated under the routine statute pertaining to soldiers who deserted from their inner-empire home stations:

[Ebi]: ...I have reviewed the Xi'an records for this case. For the QL 23 troop rotation [of troops from Yili back to Xi'an], there was a [Green Standard] soldier Zhao Yu 趙玉. On March 13, 1759 (QL 24/2/15) he fled the ranks (without stealing anything) with no reason. Later on October 21, 1759 (QL 24/9/1), he was apprehended by the banner leadership.

⁶⁴ Prior to departing for their Xinjiang rotation, rotation soldier (*banbing*) were paid a bonus / advance (*fengshang yin* 俸賞銀). For instance, see NGDK 165651-001; NGDK, 210251-001. One of the concerns that arose around this time was soldiers' taking the advances they received to serve on rotation in Xinjiang but then deserting. In early 1763 (QL 28) Anxi 安西 (Gansu) Governor and Manchu Bordered Blue Bannerman Ebi (Ch: 鄂彌) (d. 1763) memorialized that Green Standard soldiers in the process of rotating into Xinjiang (*banbing* 班兵) from Gansu fled after notice was received that the rotation was cancelled while they were en route to Xinjiang. The soldiers were ultimately apprehended and punished short of execution, but Ebi was concerned that there were no procedures in place to recoup the deployment bonuses/stipends that had been paid to the soldiers prior to them setting out on the rotation. Ebi suggested that at the outset, the authorities should recoup twenty percent of the rotation bonus from the soldiers. The remaining eighty percent should be collected within the home-station over two years. The emperor responded on March 7, 1763 (QL 28/1/23):

[Emperor] I feel the time for repayment is still too short. Extend the repayment period to four years. It should leniently be collected back, in order to show condolence. As for that category of those called deserters (*zhi suo cheng taobing yixiang* 至所稱逃兵一項), although these soldiers have deserted, don't they have families? They flout military discipline, relying on others to substitute for them and suffer loss for them (*you shi you taren wei zhi daibei* 又特有他人為之代賠). The facts are really despicable (*qingshi kewu* 情實可惡). If we extend the deadline for all for recouping the funds, then these lawless rascals will abscond without paying back the money. Transmit an order to the governor. Have them arrested. Go after them. Do not let them escape the legal net. ZPZZ-NPM, 403014470; QSL-QL, juan 679, 598-2 – 599-1.

⁶⁵ ZPZZ-NPM, 403014470.

In this case, the responsible lieutenant colonel adjudicated the case according to the substature on soldiers who flee the [inner-empire, home-station] camp, first offense, but did not steal military equipment, which directed that on the day the deserter was apprehended, he would be beaten forty times with the board, returned to his original domicile, and enrolled in the *lijia* for duty (*yingbing tuotao dingli chuci taozou bingwei dai you junqizhe nahuo zhiri kunze sishi gun chi fa yuanji bianru lijia dangchai* 營兵脫逃定例初次逃走並未帶有軍器者拿獲之日捫責四十棍飭發原籍編入里甲當差). The Xi'an garrison was originally under the jurisdiction of the provincial military commander (PMC). Acting PMC, Yansui Zhen Zongbing, Zhang Jietian authorized Zhao to be beaten and in QL 24 transferred him to the Chang'an magistrate to be enrolled in the *lijia* as a civilian.⁶⁶

In other words, Green Standard Soldier Zhao Yu's case was handled as an in-house matter by the provincial military commander, which from various references in the archives seems to have been the way most cases of inner-empire, home-station desertion (unauthorized absence) had been handled since the beginning of the dynasty.⁶⁷ In his rescript, the emperor distinguished between the situation of a soldier who deserted while on his way back to his inner-empire home-station and the situation where a soldier deserted from the deployed camp during military operations:

[Qianlong emperor]: This is a case of a rank-and-file soldier who deserted while [en route] redeploying from the deployed camp [back to his inner-empire garrison], thus it can be adjudicated under this substature [the one used by the authorities in this case]; for so-called 'deployed camp deserters (soldiers who desert from the deployed camp in a

⁶⁶ ZPZZ-NPM, 403014470.

⁶⁷ According to Ebi,

[Ebi]: This case. I ordered the Chang'an magistrate to determine the current whereabouts of Zhao Yu. According to the magistrate, after he was transferred to the county, he left to go make his livelihood. I just received a letter that the deployment stipends (transport fee, etc) that Zhao Yu should have repaid have already been paid in full by his brother Zhao Cang.

I have directed all Xi'an Garrison officials to apprehend the remaining four deserters and to adjudicate punishment as well as recover the deployment stipends. ...

campaign situation),’ it is not appropriate to use this precedent/substatute (*ci xi zi junying tuihui er taozhe, an cili shang kechu; suowei junyingzhe buyi zhao cili* 此系自軍營退回而逃者, 按此例尚可處; 所謂軍營者不宜照此例).

On May 5, 1763 (QL 28/3/26), the emperor followed up with a more detailed edict, directing the Board of Punishments to distinguish various types of deserters and make adjustments to the law to fit the circumstances. First, he reaffirmed the necessity of summary executions for soldiers who fled the deployed camp during military operations. He again made the explicit tie between militarized adjudication and maintaining military discipline on campaign:

[Emperor]: Usually, soldiers on campaign (*chuzheng bingding* 出征兵丁) who deserted en route or from the deployed camp (*zhogntu ji junying tao* 中途及軍營逃) and return home are immediately executed. This punishment is used as a deterrent to punish those who linger as a means to enforce military discipline (*suoyi chengdounao, su junji ye* 所以懲逗撓, 肅軍紀也).

He then contrasted militarized adjudication punishment for campaign deserters (above) with the relatively light punishment meted out to soldiers who deserted their inner-empire home-stations during peacetime:

[Emperor]: If soldiers from the various units within the provinces deserted from their peacetime/inner-empire home-station garrisons (*gesheng yingbing zaiwu tuotao* 各省營兵在伍脫逃), under the old substatute/regulation/precedent (*li* 例), on the day they were apprehended, in addition to canceling their military registration (*chuqu junji* 除去軍籍), they were beaten with the heavy bamboo (*jiazhi zhongzhang* 加之重杖). Because it was considered a minor crime (*qizui yi bo* 其罪亦薄) the facts were not serious, so the punishment was also light.

In this statement, the emperor essentially articulated the logic of the military operations gradient. But where along the gradient was the post-war frontier? As in the past, the emperor’s stated concern was creating a deterrent. The emperor pointed out that soldiers stationed on the frontier were more like soldiers on campaign, but, given that they were not engaged in an active

campaign, militarized adjudication was inappropriately harsh. Yet, the punishment designated for inner-empire, home-station deserters did not create a sufficient deterrent:

[Emperor]: For those soldiers sent on rotation to garrisons and agricultural colonies in Yili and the other areas [in Xinjiang] (*wei paiwang Yili dengchu huanfang zhongdi bingding* 惟派往伊犁等處換防種地兵丁) [compared to the inner-empire home-station garrison soldiers] their status is relatively more like those deployed in war (*jiaozhi shenlie xingzhenzhe* 較之身列行陣者). Although there is some difference, being stationed in Xinjiang (*Xinjiang zhushou* 新疆駐守) is different from those deserters who did not steal military equipment and were just serving at the peacetime garrisons [in the inner-empire] when they deserted. I feel it is too severe to punish them [the Xinjiang deserters] under militarized adjudication. But, if they are just punished according to the substature on inner-empire home-station desertion and beaten and dismissed [from the ranks], it is not sufficient to create a deterrence. Discipline/military law has to be enforced (*sheng yi junfa* 繩以軍法). That is why it seems stricter. If they are just adjudged according to the precedent for soldiers who flee inner-empire garrisons, and reprimanded and removed from the ranks, then that is insufficient to deter them. The previously-enacted substatures are insufficient for this analysis.

The emperor's comments were directed towards the changing frontier situation that Tangsuizu had identified thirty years earlier. After framing the problem, the emperor directed the Board of Punishment to draft a legal framework that would take into account the new situation of the garrisoned frontiers and distinguish it both from active campaign and inner-empire garrisoning:

[Emperor]: I direct the Board of Punishments to consider the two categories (*xiang* 項) of soldiers who desert from campaign and soldiers who are sent to garrison Xinjiang and desert from there and also to consider those soldiers stationed in Xinjiang. If they flee [from Xinjiang], how should the severity of their crime be considered (*ying ruhe fenhe qingzui qingzhong zhizui zhi chu* 應如何分覈情罪輕重治罪之處)?⁶⁸

Three days later on May 8, 1763 (QL 28/3/26), the Board of Punishment responded, providing

⁶⁸ Zhong guo di yi li shi dang an guan. (1991). *Qian long chao shang yu dang: Wu shi jiu nian liu yue zhi liu shi nian shi er yue zhi* [QLSYD]. Bei jing: Dang an chu ban she., QLSYD, Vol. 4, p. 380; QSL-QL, juan 683, 646-2 – 647-1.

for the first time a punishment drafted specifically for soldiers stationed on the frontier who deserted. Such soldiers would be sent back to their Xinjiang garrison, paraded around in the cangue, and assigned hard labor (which entailed a status lower than a regular soldier):

[Board of Punishments]: Those Manchu and Han soldiers sent to garrison Xinjiang and in agricultural colonies (*zhushou zhongdi bingding* 駐守種地兵丁), if they flee while en route or from their destination [in Xinjiang], on the day they are apprehended, they will first be sent to the location they were originally en route or assigned to [in Xinjiang], then be placed in the cangue for two months and paraded around the camp for others to see, as well as assigned hard labor [and their banner registration suspended, if applicable].

This formulation continued to respect the important legal doctrine of providing a chance for self-renewal, but at the same time, the discourse re-affirmed the place of summary execution in routine adjudication (for repeat offenders), at least on the frontier:

[Board of Punishments]: If they regret their crime and work hard, and they commit no additional offense for ten years, then the responsible (Manchu) general may memorialize requesting that they be permitted to re-attain their banner registration. But, if they commit an additional offenses, they will be immediately executed (*zhun gehui qiji, zaiifanzhe lixing zhengfa* 准各回旗籍, 再犯者立行正法).

At the same time, the Board of Punishments increased the punishment for Green Standard rank-and-file deserters from home-station in the inner-empire, a topic which had not been addressed in any sustained way since the beginning of the dynasty. In addition to being caned (as explained in the footnotes to Chapter Two, one hundred strokes equated to forty strokes just as before), and dismissed from the military, they would also wear the cangue, a significant increase in punishment:

[Board of Punishments]: As for the Green Standard soldiers inside and outside the capital who desert [their garrison], they will be caned one hundred times with the heavy bamboo, will wear the cangue for one month and not be permitted to reenter the ranks. The Eight

Banners within the capital, and the garrison banner soldiers in each province will be adjudged according to the previous substatute/precedent (*qi zaijing baqi, ji gesheng zhufangbing tuotao, reng zhao jiuli banli* 其在京八旗, 及各省駐防兵脫逃, 仍照舊例辦理).

The proposed resolution from the Board of Punishments clearly distinguished between inner-empire and frontier garrisons. The emperor authorized these changes.⁶⁹ *Genyi* deserters continued to be adjudicated according to the portions of Substatute I (Chapter Six) that had not changed; in other words, if they deserted without stealing equipment, then they would either be returned to their master or made slaves.⁷⁰ And other deserters were adjudicated according to the other provisions of Substatute I, with the emperor's orders to execute all campaign deserters informing the interpretation of "decapitation without delay" for rank-and-file soldiers. With these changes, more than twenty years after Tangsuizu's suggestion, there was finally a legal framework for adjudicating desertion cases that took account of the frontier, but it was a legal framework that had been created in the aftermath of the Zhandui-Jinchuan affair and so included a significant degree of militarized adjudication, something that would have seemed highly irregular during Tangsuizu's time. While other considerations continued to shape the adjudication of individual cases, this framework at least resolved the conceptual notion of the garrisoned frontier as a zone somewhere between a campaign location and the peacetime inner-empire.⁷¹

⁶⁹ QSL-QL, juan 683, 646-2 – 647-1.

⁷⁰ For instance, on March 20, 1764 (QL 29/2/18), Ye'erjiang canzandachen E'erjing'e memorialized that Ye'erjiang *genyi*-deserter E'lege and two others went sent to Yili to be slaves to the agricultural workers. ZPZZ-FHA-MWD, 03-0181-2076-023. Two years later, on QL 31/10/26, Yili Jiangjun Mingsui memorialized reporting the apprehension of a Eluth *genyi*-deserter, and that in according with the substatute/precedent, he had been escorted to the inner-empire and awarded to the official soldiers as a slave. ZPZZ-FHA-MWD, 013-0182-2179-007.

⁷¹ The formal legal framework that now applied to non-campaign frontier deserters was just one thread of the adjudicative discourse in actual cases. For instance, in one frontier desertion case from early 1764 (QL 29), a Solon-

Consistent with the new legal framework, on January 6, 1765 (QL29/12/28), in response to a memorial by Heilongjiang General Fu-seng-a reporting the progress and circumstances of Heilongjiang Manchu soldiers returning from operations in Xinjiang, the emperor admonished Fu-seng-a for not distinguishing between those who may have deserted during active combat operations and those who may have deserted after active combat operations.⁷² The emperor continued to insist that deserters be distinguished based on whether they deserted during active combat operations or during redeployment:

[Qianlong Emperor]: It should all be done according to the requesting memorial. I have

Manchu deserter, Eyilemubao, had been apprehended after having deserted his unit during redeployment following completion of operations in Xinjiang. He had abducted a “Muslim” woman and fathered a child with her, and, for reasons that are not completely clear, could not take her back with him, so he deserted with her to Aksu [Xinjiang].

“According to his confession, E-yi-le-mu-bao [a Solon soldier] was at A-le-chu-er places. He took a Muslim women he had apprehended (abducted), Ku-tu-shi, back to Ye-er-jiang where she gave birth to a son. Because when the military was withdrawing [after the completion of military operations], [she or he] was not willing to go with them. So, he took Kutushi and fled towards Aksu. I have already sent Sebuteng and the others (four persons) to confront each other/confront as witnesses. Previously Zhong-yin and Hai-ming memorialized. Eyilemubao, because he had assaulted his uncle, was afraid of being punished and fled. I [the Emperor] said that the circumstances were not certain. Now, it was not as predicted/expected. Eyilemubao should, as previously adjudged, be sentenced to strangulation after the assizes and should be noted as a verified case for the Autumn Assizes. As far as the Muslim women Kutushi, send her to Yili and award her to the Eluths as a wife.” QSL-QL, juan 702, 849-1 – 849-2. For further background on this case, see QSL-QL, juan 700, 832-1 – 832-2. The emperor’s comments reflected elements of several discourses, such as civilizing frontier peoples, military discipline, and female chastity:

[Emperor]: Previously when we deployed soldiers, due to the habits of the Zunghars, there was violence and no shame. This is why soldiers abducted women (*congqian jinbing shi, yin Zhungaer suxi, baohengwuchi, gu yu bingding liehuo funü* 從前進兵時, 因準噶爾素習, 暴橫無恥, 故於兵丁掠獲婦女). There was no in-depth investigation. Now, the land is at peace and there are soldiers stationed everywhere. How can we still engage in the old ways/slavishly follow old precedents? Issue an order to the high officials in every city. They should rigorously control the soldiers under their jurisdiction. If this kind of thing happens again. Investigate it thoroughly and punish it harshly.

QSL-QL, juan 702, 849-1 – 849-2. For further background on this case, see QSL-QL, juan 700, 832-1 – 832-2.

⁷² According to Fu-seng-a’s report, “In the year 1757 (QL 23), there were 2,514 soldiers (from the Heilongjiang Banner Garrison) that were assigned to the Western Route Military Camp. In 1761 (QL 27), two hundred and one of them redeployed to Heilongjiang under the command of Commander Luoerbensu (Ch: 羅爾本泰). Over the course of one year, they all returned. Excepting out those who remained behind to man the deployed camp (*liuyingli* 留營力), those that were killed or injured on the battlefield, and six deserters, now there are 1,583. As far as the horses that were killed or died, if calculated according to precedent, there should be 284 horses and seventy-five donkeys that should be provided for compensation. Request that this be subtracted from the official soldier’s salaries. When they fought their weapons were damaged. They should not have to pay for this. They should be provided weapons from the stores/remaining supply.” QSL-QL, juan 724, 1076-1 – 1076-2.

issued an edict. During the deliberation, there was no discussion of deserters. If they fled from the deployed camp, then they should be harshly condemned when apprehended. This category of deserter (those cited in the memorial), investigate whether they fled from the deployed camp [actual combat operations] or whether they fled during the redeployment operation. The memorial is silent about this. Have FuSeng'a (and the others) elaborate as to where they deserted from [from the deployed camp or the redeployment], whether they have been apprehended at this moment, and how their cases were handled after they were apprehended. Investigate and memorialize.⁷³

The frontier was significant in ways that transcended the mere fact of a pluralistic legal regime for diverse peoples and transcended the single crime of desertion. This followed on the Qianlong emperor's analysis of how soldiers in the frontier garrisons were not like soldiers who fled peacetime garrisons. It was not the epicenter of the military operations gradient, but neither was it the inner-empire.

The new legal framework for desertion on the northwestern frontier also did not adequately account for the changing pattern of Banner peacetime desertion in inner-empire Eight Banner cases. While the Board of Punishments had created a distinction between inner-empire garrison and frontier-garrison deserters, it had also simultaneously directed that inner-empire home-station *banner* deserters would be adjudicated according to the "old" precedent. This became a problem starting in 1765. According to Mark Elliott, during the Qianlong era, a number of "Hanjun" ("ethnically"-Chinese) Banner troops were transferred out of the inner-empire Banner Garrisons and into the Green Standard ranks, a process by which Banner identity became more closely tied with Manchu identity.⁷⁴ These empty positions in the Provincial Banner Garrisons (*zhufang* 住防) were then back-filled with "Manchu" bannermen from Beijing. Because capital bannermen were sometimes ordered to transfer to the provinces against their will, on occasion

⁷³ QSL-QL, juan 724, 1076-1 – 1076-2.

⁷⁴ Elliott, 330-42.

they deserted either shortly before the time for departure or en route. This was nothing new. Back in 1746 (QL 10), when increased number of capital bannermen were being ordered to replenish soldiers in various garrisons in the inner-empire, in one year alone more than two hundred and fifty had fled, but they usually immediately just turned themselves in at the capital because at that time the appropriate statute absolved them of guilt if they self-surrendered in within one year. Moreover, by waiting just long enough, they could avoid their assignment and just stay in the capital after they rendered themselves to authorities. Because of this, the Board of War ordered the Banners that when these banner soldiers voluntarily returned, they should be immediately sent to the provincial assignment they were trying to avoid.⁷⁵

For instance, on June 24, 1765 (QL 30/5/7), the Fuzhou Banner General reported that the Fuzhou Garrison had separated one thousand [*Hanjun*] households from the Banners and requested that they be backfilled [with Manchus] from Beijing. The emperor agreed to the request.⁷⁶ On June 1, 1765 (QL 30/8), Beijing Infantry Manchu Bannerman Dehu deserted after being notified that he was being transferred to Fuzhou Banner Garrison from the capital to backfill a position previously occupied by *Hanjun* personnel. The Fuzhou General reported that “once he is apprehended, he will be turned over to the Board of Punishments for punishment.”

An impeachment memorial. According to the third *jala* of my banner, Canling Suming 蘇明 (and the others), reported that a company commander, *canling*, in his *jala*, Fushan, reported that Infantryman Dehu (*bujia Dehu* 步甲德虎) whom the company had planned to send to Fuzhou this month, on the 7th, but at the time they were supposed to set out [for Fuzhou] Corporal (*lingcui* 領催) Baxianbao...discovered that [Dehu] and all his dependents were gone....

⁷⁵ QSL-QL, juan 244, 151-2 – 151-2.

⁷⁶ QSL-QL, juan 736, 103-1.

I respectfully submit that Infantryman Dehu was being sent to Fuzhou and so he should have been supervised closely prior to his departure, and he did not obey the law. That he would leave before his time of departure is really evil. It seems like he would be too fortunate if he were handled according to the law on ordinary/routine fugitives [the fugitive slave law, *xunchang taofan* 尋常逃犯]. We are not only investigating the case, but have also notified the Board of Punishments, the Eight Banners Command (*baqi bujun tongling* 八旗步軍統領), the Censorate, and the Shuntian prefect. Once he is apprehended, he will be immediately sent to the Board of Punishments for an aggravated adjudication (*congzhong zhizui* 從重治罪).

His supervisor, Company Commander Fushan, should have kept close watch on him once he was scheduled to be transferred to Fuzhou...we hereby impeach him for negligence.

The emperor rescripted, “Refer [this case] to the appropriate board.”⁷⁷ As a result of the above cases, a new statute was promulgated in the Qing Code on June 5, 1765 (QL 30). As noted by late Qing legal scholar Xue Yunsheng, this provision “should have been under the campaign desertion statute,” but instead it was promulgated under the fugitive slave law section of the Qing Code, the (*dubu zeli* 督捕則例). This showed the continued significance of banner-status despite the trend towards applying a universal desertion law:

For any Manchu soldiers (*Manzhou bingding* 滿洲兵丁) who were re-assigned to any of the inner-empire Banner garrisons (*paiwang gesheng zhufang Manzhou bingding* 派往各省駐防滿洲兵丁), if, “as the time approaches for their departure from Beijing or when en route, they desert, but turn themselves in, then they will not be punished. If, however, they flee and are

⁷⁷ The Canling who was originally the impeachment subject of this memorial was fined one year's pay. NGDK, 080845-011; Also a case of a 閒散 who fled while en route to Fuzhou the same year, also attached to the above documents in file. NGDK, 170342.

apprehended, then their banner registration will be cancelled and they will be caned eighty times [they were to be caned not whipped – because they are no longer bannermen). They will be escorted to Yili to serve as soldiers and do bitter labor.”⁷⁸

V. The Imperial Standard and Summary Execution

Logically, since the Qianlong emperor had been emphasizing extraordinary versus ordinary as the dividing line for militarized versus routine adjudication of cases, if militarized adjudication was no longer to be strictly tied to military operations, then Ming-Qing law already contained a pre-defined set of extraordinary-case subject-matter in the *Ten Great Wrongs*, and one of the most despicable of the *Ten Great Wrongs* was “gross unfilialness (*zhongda nilun* 重大逆倫)” in the form of parricide.⁷⁹

On May 9, 1761 (QL 26/4/5), Jiangxi Governor Canggiyūn, who would play a major role in the Burma Campaigns as Yunnan Governor seven years later, memorialized the emperor stating that a man by the name of Jiang Huang had “gone crazy” and killed his mother. Under the Code provision in force at the time (and since the Ming), Governor Canggiyūn should have drafted the punishment for this offense – death by slicing – and forwarded it for review and an imperial edict prior to carrying out any execution under routine *lijue* procedures.⁸⁰ But Canggiyūn explained that he had tried the case, had Jiang Huang executed and had his corpse mutilated.

⁷⁸ DLCY, juan 53, 《督捕則例》, “039 派往駐防滿洲兵丁臨行及中途脫逃”

⁷⁹ Jones, 35.

⁸⁰ The basic parricide statute that had carried over in the Code from the Ming called for death by slicing for any son or daughter convicted of killing a parent (*jie lingchi chusi* 皆凌遲處死). Jones, 269-70; DLCY, “謀殺祖父母父母.” Although the statute was not expressly annotated as *lijue*, according to the general provisions of the Code, this offense should have been memorialized as a *lijue* offense. DLCY, 死刑二 (凡律中不註監候立決字樣者, 皆為立決。凡例中不註監候立決字樣者, 皆為監候). Moreover, there are enough cases in the pre-Qianlong record suggesting that slicing cases were reviewed at the central level (at least by the emperor) and were not, at least openly, subject to summary execution.

What did it mean that an inner-empire governor was willing to openly exercise autonomy to try and execute a commoner in a non-military case during peacetime without central review or an edict from the emperor authorizing the execution? What does this say about the developments in legal culture (adjudicative *mentalité*) since Zhangdui-Jinchuan? When Governor Kong Yunxun had informed the Yongzheng emperor thirty-six years before that he had summarily executed “pirates,” that emperor had responded with great caution, admonishing Kong that such summary executions had to be limited and that people would suspect his personal motives for summarily executing offenders. The Qianlong emperor’s response to Canggiyūn’s notification could not have been more different.

The emperor’s opening line in his response to Canggiyūn was, “This is all very correct (*suo jian shenshi* 所見甚是).” As the emperor noted below, it seems that the heinous nature of such offenses – insanity leading to parricide – had, in the past, resulted in both local people (non-officials) and local officials sometimes executing such offenders outside of the framework of the law by simply beating them to death.⁸¹ The fact that local officials would “beat” a suspect “to death” (not an authorized punishment by any means) and “not notify their superiors” suggests the extent to which, even in such a heinous, unfilial crime, late imperial legal culture – at least in the past – had not been able to easily accommodate summary-execution of such offenders as an open,

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[Qianlong Emperor]: In the past, when these types of cases were encountered in each province, some officials memorialized and requested an edict to execute (*you zouming qingzhi zhengfazhe* 有奏明請旨正法者)[this could mean either full routine process or summarized process with some elements of the routine process]. There were other local officials who just beat the accuseds to death on their own and did not notify their superiors (*yiyou jing zi zhangbi, bu yi shang wenzhe* 亦有經自杖斃, 不以上聞者)....
QHD, juan 800, Board of Punishments, 757-1 –757-2; QSL-QL, juan 634, 76-2 – 76-3.

formal, legitimate response.⁸² One should also ask whether Canggiyūn’s open notification to the emperor of this autonomous execution could reflect – to varying degrees – a change in adjudicative *mentalité* of the officials involved with the case at varying levels. After all, for the case to come to Canggiyūn’s attention, it had to be forwarded to him to begin with.

Rather than be a voice of restraint on summary execution like his father, the Qianlong emperor used the occasion to direct that cases in which a son (or presumably daughter) “went crazy” and killed his mother (*fengshi mu* 瘋弑母) would, *from then on*, be summarily executed by default, precisely the transformation that was taking place at the same time in Western Campaign desertion cases:

If [such cases] are handled by memorializing a notification [after the fact] that the person has been executed, that is proper (*shi zouwen zhengma, yuanshu banli zhi zheng* 是奏聞正法, 原屬辦理之正). I especially fear that if [officials go through the routine process and wait for an edict to authorize execution], it cannot avoid taking time. Some [suspects] will get sick and die. Others will fear the law and kill themselves. They will be able to escape being punished in public (*ji zhi xintao xianlu* 即致倖逃顯戮) which will reflect a lack of coherence with the law (*yu xiandian wei xie* 於憲典未協).⁸³

After constructing the problem in terms of ensuring that offenders suffered the penalty of law (as opposed to committing suicide or just dying during the drawn-out routine process), the emperor issued an edict regularizing local execution in these types of cases, for the first time openly assigning a category of non-military cases to a militarized track. It is specifically the “from now on” language in this case which shifted the *default* method of handling these types of cases in the future and justifies calling this a shift to a militarized track. Moreover, the emperor addressed

⁸² It also suggests that perhaps the new Qing intentionally left some ambiguity in the statute by not annotating the statute as either *lijue* or *jianhou*, as it did with most other death sentences in the Code in 1647.

⁸³ QHD, juan 800, Board of Punishments, 757-1 –757-2; QSL-QL, juan 634, 76-2 – 76-3.

the conflict with the written law by directing that the execution would take place under the imperial standard, thereby constructively satisfying the requirement of an imperial edict in each case:

[Qianlong Emperor]: From now on, in each district and county, if a case like this arises, notify the governor and governor-general. Once the case has been investigated, then as outlined in Canggiyun's memorial, if the case is in the provincial capital then take out the imperial standard (*wangming pai* 王命牌); if it is outside the provincial capital, then appoint someone to send forth the *lingjian* (令箭) (another traditional symbol of military authority). And then immediately according to the law execute him by slicing (*anfa ling chi chusi* 按法凌遲處死).⁸⁴

Since the imperial standard reflected the emperor's order – his will – it makes sense that the emperor continued to educate his officials on discerning his will. One can discern from the construction of the emperor's statement the relationship between the imperial standard and the law. The same as in the campaign desertion cases – which first incorporated imperial standard language seven years later during the Burma Campaigns – the presence of the imperial standard was what made it possible to satisfy the requirement “under law (*anfa* 按法)” that death penalty cases be approved by imperial edict. Given this use of the imperial edict, it was not necessary to change the law, and in fact, the codified law was not changed. In fact, for the next seventy years, the codified law on parricide remained as it had been, completely masking the fact that parricide would now be largely decided through summary execution. It does not take much imagination to consider parricide as “extraordinary,” especially in the context of late imperial Confucian culture, but what about other offenses?

⁸⁴ QHD, juan 800, Board of Punishments, 757-1 –757-2; QSL-QL, juan 634, 76-2 – 76-3.

Another very early example of using the imperial standard as a constructive edict to satisfy the requirements of the law occurred in 1763 in a case of what appears to have been peasant food riots that occurred in Hebei Province. In his initial notification of the case, Provincial Financial Commissioner and Manchu Plain Yellow Bannerman Janggimboo (Ch: Guanyinbao 觀音保) (d. 1768) indicated to the emperor that he would investigate the matter and send up a detailed memorial analyzing the guilt of the offenders under law, consistent with the routine process.⁸⁵

The emperor, though, admonished Janggimboo for not recognizing that this was an extraordinary case. First, the emperor laid out his extreme efforts to assist the local people, suggesting that one of the things that might have made this case extraordinary in the emperor's mind was his own involvement in it.⁸⁶ Whatever the motivation, the emperor's language reflects aggravation that the subjects apparently did not appreciate the imperial grace. The emperor's response did not construct these troublemakers as the "enemy" as was common in strategic responses, but rather recognized that they were commoners. These circumstances were no doubt

⁸⁵ QSL-QL, juan 683, 649-1.

May 12, 1763 (QL 28/3/30). An order. Janggimboo memorialized: The wicked rascals of Zunhua District [in Zhili Province], because they were trying to borrow grain from the granary, they led people to cause a commotion. Now, I have distinguished among the various people and apprehended them. After I have determined from interrogation who is the head instigator, I will then memorialize a detailed analysis of which law to apply and draft punishments.

QSL-QL, juan 683, 649-1.

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[Qianlong Emperor]: Last year, because this area was low-lying ground and previously had become flooded during autumn, I issued an edict showing grace to console and demonstrate sympathy with the people. From end to end, over twenty thousand sections of the canal, I spent one million six hundred thousand *liang* out of the public treasury. For four months, I have granted famine relief, lending seed and deferring the collection of grain taxes. I have spared no effort to transform this place of five catastrophes into a place of no catastrophes. Out of fear that the officials would not do good, I have issued many edicts to the governor-general and others to personally inspect the work [in the hope that] the people would not suffer from disaster.

QSL-QL, juan 683, 649-1.

factors, but the common element within the disciplinary discourse from the military campaigns was the emperor's identification that these offenders had "no fear." They were not afraid of the routine criminal process because it was too lenient. Like in the case of his military officials or soldiers who had no fear, he similarly directed that this case be summarily adjudicated. The emperor directed Janggimboo to immediately execute the head offenders under the imperial standard. The emperor specifically clarified that this case should not be adjudicated according to the routine process ("there is no need to send up a routine memorial").⁸⁷ As in the case of parricide, the codified law was left unchanged, but the actual practice changed dramatically with the imperial standard constructively satisfying the requirement for imperial review.

VI. Conclusion to Chapter Five

At the very beginning of the Qianlong reign, *Jasak*-banner rank-and-file deserter Amirtu was sentenced to strangulation *after the assizes* for deserting from campaign. Despite the fact that the lead adjudicating agency at the capital for that case was the *Lifanyuan* and his case was recorded in Manchu, the case was processed and analyzed according to the norms of late imperial legal culture within the boundaries of the routine process. Archival evidence suggests that the routine processing of his case was like that of most campaign deserters prior to the Qianlong reign and also reflected a trend towards adjudicating deserters from all Qing military-components

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[Qianlong emperor]: After the dynasty has been so generous, if they really felt they were wronged, how is it hard for them to go up the supervisory chain with their complaint? As for causing a ruckus at the yamen, this is indulgent in the extreme. The head person must be handled under the law, in order to scare the followers from causing trouble, so that all the little people will clearly understand. Simultaneously exercise the authority by taking out the imperial standard (*wangming pai*) and immediately execute the top few criminals. This way by punishing one, one hundred can be deterred (*yimian congquan qingchu wangming, jiang weishou shufan, lixing zhengfa, ji ke shi chengyi jingbai zhi yi* 一面從權請出王命, 將為首數犯, 立行正法, 既可示懲一儆百之義).

QSL-QL, juan 683, 649-1.

according to the routine framework. By the end of the second decade of the Qianlong reign, a similarly-situated deserter, E'dui, still had his case tried within the routine process, but in that case the Board of Punishments cited *junfa* to override other more lenient provisions in the Qing Code and sentenced E'dui to *immediate* decapitation. E'dui's case still had to go to the emperor for final approval. By the end of the third decade of the Qianlong reign, deserters similar to Amirtu and E'dui were simply tried and summarily executed in the field according to militarized adjudication with no central-government review or imperial approval at all. With some important exceptions, summary execution would be the default mode of adjudication for campaign deserters for the remainder of the eighteenth century. We also see that the emperor was beginning to apply militarized adjudication principles in cases that were arguably on the margins of military activity. Did these militarizing tendencies affect the adjudicative *mentalité* of officials responsible for resolving criminal cases?

The change over time in adjudication from Amirtu's case through E'dui's case to the campaign desertion cases covered in this chapter reveals the appearance of militarizing tendencies in late imperial legal culture. It was clear that the procedures and case outcomes had changed. The way officials talked about desertion cases – the adjudicative discourse – had simultaneously changed. What is most important though is that the way cases were adjudicated was inseparable from the linguistic and symbolic content of the discourse. Militarized adjudication not only signaled expeditious, autonomous, and simplified procedures, but this mode of analysis also had to assume that those processed according to its logic deserved no leniency. The sympathetic adjudicative discourse that still pertained to the desertion cases narrated in Chapter Four had disappeared completely from the cases by the third decade of the

Qianlong reign. Desertion was now seen as an evil crime undeserving of sympathy. This combined with a view of the Green Standard in particular as a military force with an institutional character for cowardice. Gone was any possibility of leniency for deserters, and that was the point. Because the direction of this change in legal culture was to increasingly include the principles, procedures, and logic (all constituted by a particular discourse) of what had formerly been exclusively a campaign military authority, it is appropriate to refer to this transformation as the appearance of militarizing tendencies in eighteenth-century legal culture.

Using campaign desertion as a category of analysis, this chapter has continued to reveal significant aspects of how long-existing and new military, social, institutional, and philosophical processes interrelated to effect a significant change in late imperial legal culture. Militarized adjudication was originally an *ad hoc* authority restricted to the epicenter of military campaign activity. As the empire expanded, the physical frontier itself took on characteristics of the gradient of military operations. During and after the Zhandui-Jinchuan conflicts, in an effort to improve military discipline, the emperor promoted militarized adjudication as a counterweight to the tendency towards leniency inherent in late imperial legal culture. Yet, all the cases in the last chapter were still individual cases. It was only in the third decade of the Qianlong reign that this whole process culminated in the creation of default militarized adjudication-based *tracks* for adjudicating entire categories of cases.

The spread of militarized adjudication was always based on particular circumstances. The first explicit and codified example of a militarized adjudication track was that of *genyi*-larceny-deserters at the end of the second decade of the Qianlong reign. The shift of this category of cases to a militarized track was no doubt influenced by the unique social background of *genyi*

and the importance of campaign logistics. For rank-and-file soldier-deserters, the precipitating event for shifting their adjudication to a militarized track was the particular incident when soldiers under the responsibility of Yarhashan and Ma Desheng deserted in September 1758 (QL 23).

In the next chapter, I look at how the large, new militarized frontier affected the adjudication of desertion cases within the newly militarized legal culture. I also track the expansion of militarized tracks beyond desertion to the margins of military activity and finally to non-military offenses. Chapter Six concludes with the Qianlong emperor's Burma campaigns (1665-1770), where the militarizing tendencies in legal culture merged with the discourse of Green Standard military inferiority (understood as an aspect of the Qing's maintenance of ethnic sovereignty) to create an adjudicative discourse that was truly deadly for Green Standard soldiers.

Part III. The Imperial Will and the Routinization of Summarized Adjudication

Chapter 6. Burma Campaign Deserters and the Shift to the Imperial Standard, 1765 - 1770

It was during the Qianlong emperor's disastrous Burma campaigns (1765-1770, QL 30-QL 35) that, for the first time, invocation of the imperial standard became a common feature of the adjudicative discourse in the summary execution of campaign deserters. This chapter considers this development within the context of the multiple processes highlighted by the particular context of military quagmire, a major feature of which was the processes involved with the Qianlong emperor's efforts to maintain what Mark Elliott has called "ethnic sovereignty."

During the Burma Campaigns, the summary-execution approach towards deserters that the Qianlong emperor had developed outside the desertion code provisions since since Zhandui-Jinchuan became even more cruel and systematized as it merged more fully with an increasingly prominent discourse of Green Standard Army *inferiority* (or, in the case of the Yunnan Green Standard soldiers, a discourse that asserted their *despicability*). The main incidents driving what became the emperor's personal campaign against deserters were several high profile routs in which Green Standard Forces completely collapsed in the face of Burmese assaults. At first the emperor ordered all the soldiers who had broken ranks executed, but he later relented in the face of the practical difficulty of executing entire Qing units numbering in the thousands of soldiers. But, for the rest of his reign, the imperially-dominated adjudicative discourse on desertion closely linked those and future routs to campaign desertion and insisted on the apprehension and execution of every last campaign deserter.

The new meticulousness the object of which was apprehending and summarily executing individual deserters largely eclipsed the old meticulousness of careful adjudication and deliberate review that had traditionally characterized the routine adjudicative process, even when dealing with campaign deserters. Thus, while the way deserters were adjudicated during the Burma Campaigns reflected the militarizing tendencies in Qing law described above, the particular circumstances of the Burma military quagmire also reaffirmed and deepened the regularization of those militarizing tendencies. The adoption within the adjudicative discourse of the imperial standard as a way to satisfy the Code requirement of *lijue* while at the same time engaging in summary execution in practice deepened the legitimation of militarized adjudication in a way that would have been unthinkable only thirty years before.

I. Overview

The Qianlong emperor's Burma Campaigns between 1765 and 1770 were collectively the Qing's worst military disaster prior to the nineteenth century. With the exception of some early scholarly interest, and some relatively recent works by Dai Yingcong and C. Patterson Giersch, scholars of China have largely ignored these campaigns. According to Dai Yingcong, the Qing lost tens of thousands of soldiers in this war and ended up with nothing to show for it other than a falsified historical record which portrayed it as a victory.¹

The Burma Campaigns provide a window on how various processes continued to interrelate as the contours of the militarized legal culture were becoming visible. First, showing the process of frontier consolidation and integration, the war took place in the southern disease-ridden

¹ Dai Yingcong, "A disguised defeat: The Myanmar campaign of the Qing dynasty," *Modern Asian Studies* 38, no. 01 (2004), 145-189.

marshes on the Yunnan-Burma frontier, stretching all the way from Yunnan's Pu'er Prefecture to the outskirts of the capital of modern-day Burma (Myanmar), then called Ava.² On the Qing side, this area was largely governed by local "native officials" (*tusi* 土司) who variously swore their loyalty to either Qing or Burmese authorities (or both simultaneously). During the Yongzheng reign, the area had been a target of the process to "regularize" administration by converting the "native official" system into regular county-prefect administration (*guitugailiu* 歸土改流) (part of the same Yongzheng era processes I described vis-à-vis the Miao in Chapter Three). This process impacted both the degree of integration of this area into the Qing Empire and the feelings of the local people towards Beijing. At the same time, in Burma a new dynasty had come to power that was assertive in taxing these same local officials that the Qing considered subject to its empire. The conflict apparently started with Burmese raids and the Qing's local efforts to eject Burmese forces.³

The Burma conflict was composed of three separate campaigns from the Qing perspective. In fact, the fate of the leadership of the three campaigns at once portrays the hopelessness of the campaigns as well as (again) the Qianlong emperor's penchant for executing his high officials. One cannot help but see a similarity with the executions of Necin and Zhang Guangsi for their military failures in Zhandui-Jinchuan more than a decade prior. The first commander of Qing forces against the Burmese was Yunnan-Guizhou Governor-General Liu Zao 劉藻 (1701-66) (who committed suicide after his military efforts failed, for fear that he would be punished by the

² Although I understand it is somewhat inaccurate, I translate the Chinese term *zhangqi* 瘴氣 as malarial and malria, for simplicity of narrative.

³ Dai Yingcong, "A disguised defeat: The Myanmar campaign of the Qing dynasty," *Modern Asian Studies* 38, no. 01 (2004): 145-189.

emperor); the second was his replacement, Chinese Plain White Bannerman Yang Yingju 楊應琚 (d. 1767) (whom the emperor ordered to commit suicide as a result of military failure in Burma); then there was Manchu Bordered Yellow Bannerman and specially-appointed Yunnan Supreme Commander (*jinglüe* 經略) Mingšui (Ch: Mingrui 明瑞) (d. 1768) who committed suicide on the battlefield after losing perhaps more than ten thousand troops and himself suffering a fatal injury); and finally his replacement, the emperor's trusted Chief Grand Councilor Fuheng (Ch: 傅恆) (d. 1770) who, despite some successes, settled with the Burmese and died soon after the campaign from what was probably malaria contracted while on campaign.

Most significantly from the intersection of the processes of rulership and legal culture, it was during the Burma campaigns that the Qianlong emperor's particular discourse on military discipline collided with the discourse on Manchu military superiority – what Elliott describes as the “ethnic sovereignty” component to Qing rulership – to produce a truly pitiless official treatment of Green Standard Army deserters, a toxic *mentalité* among officials adjudicating Green Standard desertion cases. The particular object of the animus so evident in the adjudicative discourse of this time was the routed Green Standard soldier. There were several significant routs (*kuibing* 潰兵) during the Burma campaigns. Whereas the actual number of campaign deserters from the Burma campaigns seems to have been less than 400 (although this number seems remarkably low, it is the number recorded in almost all archival documents that address the subject), there were thousands of soldiers involved in these routs. In each of these routs, either all or a large part of the Qing defending force collapsed. Most routed soldiers did not actually desert but more or less regrouped soon after the rout.

The Qianlong emperor's discursive juxtaposition of supposedly excellent Manchu troops with inferior Green Standard troops fit neatly with the reports of routed Green Standard soldiers. Ironically, in the records of the Burma campaign, the representation of the four hundred campaign deserters portrayed them as a significant threat to military discipline that had to be eliminated ("Do not let one escape the legal net!") despite the fact that there were 40,000 Green Standard soldiers participating in the campaigns, suggesting that this was another incident of the rhetoric of over-extrapolation.⁴ Apprehending and executing every campaign deserter represented a new meticulousness focused on apprehension and execution rather than careful adjudication, a new emphasis that continued to reshape the adjudicative *mentalité*. Initially, officials continued to try to implement routine procedures, such as cross-jurisdictional coordination and joint investigations, but the emperor meant what he said: if one was "sure" they were deserters, just execute them on the day they were apprehended.

II. Green Standard Inferiority and the Expansive Logic of No Leniency

Given the executions of Necin, Zhang Guangsi, and other officials over the previous two decades, it is no surprise that Governor-General Liu Zao chose to kill himself rather than face the Qianlong emperor's justice. This suicide itself must be understood within the context of the ongoing series of discourses on the Green Standard. The emperor's condemning of Liu Zao was completely tied in with the emperor's general distrust of the Green Standard Forces. In fact, in the emperor's view, the root of Liu Zao's "crime" was his misplaced reliance on the reports of

⁴ In a memorial from Aligun and Mingde, dated August 2, 1768 (QL 33/06/19), they reported the then-current Green Standard troop levels in Yunnan. ZPZZ-NPM, 025307.

the “deceptive” Green Standard Forces. In a series of memorials and edicts, the main focus was how Governor-General Liu Zao had been taken in by the “lies” and “deceptions” of the Green Standard Forces, in particular relating to Lieutenant Colonel He Quanzhao who was initially reported as having died in battle, but had actually fled during the rout of forces. According to the emperor:

[Qianlong Emperor]. March 7, 1767 (QL 31/2/8). Edict. ... The Green Standard’s deceptions, lying, and embellishments are well known Yet, the governor-general just relied on their affidavits and for such an important matter did not thoroughly investigate. Like when that governor-general at first reported that Lieutenant Colonel He Qiongzao had been killed by the enemy... and whether it was all just the lies and embellishments of the Green Standard junior officers. But, he believed it all and did not investigate”⁵

At the same time as the emperor criticized the Green Standard, he exulted the Eight Banners, constructing a binary pair that contrasted militarily-competent Manchu forces with militarily-incompetent Green Standard Forces:

[Qianlong Emperor]: March 13, 1766 (QL 32/2/3). An edict. Regarding the soldiers of the Green Standard Army, who single-mindedly cheat and manipulate reports. This [type of behavior] has accumulated over the generations. I do not know whether they can be reformed. In peacetime, doing details and training, they choose to have a deceptive/cheating attitude. However, it cannot help but be exposed. When they are occasionally deployed on campaign, they are not only cowardly, but incompetent. They inevitably exaggerate and show their empty arrogance in their deceptions. They fear heads and tails.

...
That is why when “pacifying” the Zunghars I chose to use Manchu Solon and Mongolian Oirats. ... I did not rely on Green Standard troops in the least (*weichangshao lüying bingli* 未嘗少藉綠營兵力). But for the inner-empire, there are Green Standard troops stationed in every province (*neidi gesheng jie xi lüqi biaoying* 內地各省皆係綠旗標營). We nourish and cultivate them during peacetime so that they will be ready to deploy. If we just give free reign to their long-standing habits and do not reform them, how could we not just leave them in their [inner-empire] bases and not use them [not use them for campaign]? The Green Standard’s government salaries and government-provided grain is

⁵ QSL-QL, juan 754, 294-1 – 295-1.

just wasted. ...How is it possible to restore military discipline (*he yisu junji* 何以肅軍紀)?⁶

In another memorial, a few days later dealing with the same incident, the emperor again criticized the Green Standard Forces:

[Qianlong Emperor]: March 16, 1767 (QL31/01下). It was already impossible to encourage/urge the Green Standard Forces to bravely attack (charge). And its habits of deception make it untrustworthy (*er qi su xi zhawei, geng buzu xin* 而其素習詐偽, 更不足信).”⁷

Even Yunnan Governor Canghaiyūn, who was more experienced with military affairs, was (according to the emperor) taken in by the “lying and deception” of the Green Standard Forces.

Here, the emperor said:

[Qianlong Emperor]: February 27, 1766 (QL 31/1/19). Edict to the Grand Council. According to Canghaiyūn’s memorial about a government victory in the offensive operations against Jiulongjiang, how can a report of injuring or killing some ten or fifty rebels be sufficient to call this a complete victory?

And it was based on Green Standard reports and their evil habit of exaggerating. That based on these reports Canghaiyūn hurriedly reported a victory is really laughable (*Canghaiyūn yi sui ji bingbaojie, shishu kewu* 常鈞亦遂據稟報捷, 實屬可笑). On previous deployments, Canghaiyūn faced serious enemy forces; how could he be so polluted by the Green Standard like this (*Canghaiyūn qian zai junying cengjing dadi he yi wei lüqi xiqi suo ran hu* 常鈞前在軍營曾經大敵何亦為綠旗習氣所染乎)?....⁸

On April 11, 1766 (QL 31/3/3), the emperor received a memorial from Canghaiyūn informing him that Governor-General Liu Zao had attempted suicide and was in critical condition. Liu soon died.⁹ Despite the example of Liu’s suicide, according to the emperor, Liu replacement Yang Yingju was similarly “taken in” by the Green Standard’s deceptions, causing him to blithely

⁶ QSL-QL, juan 754, 296-1 – 297-2.

⁷ QSL-QL, juan 753, 281-2 – 282-2.

⁸ QSL-QL, Juan 753, 285-1 – 286-1.

⁹ QSL-QL, juan 757, 334-2.

“misreport defeats as victories.”

[Qianlong Emperor]: Assigning him [Yang Yingju] to supervise the Green Standard with their exaggerating and deceiving habits. They made so many deceptive reports. Yet, Yang Yingju allowed himself to be taken in by them and did not investigate. He just took their reports and turned around and memorialized what they had reported....¹⁰

.... Yet, to rely on the deceptive and embellished lying reports of the Green Standard. ...¹¹

If more than ten thousand enemy had been killed, and my soldiers' awesomeness was feared, it could be called a great victory. Then why did we have to withdraw troops? I don't know how Yang Yingju could just believe this without suspicion and be fooled [by the Green Standard].¹²

...
Have Yang Yingju return to the capital to handle things within the Grand Secretariat so that he can mentally recuperate. After I have considered his failings against his merits, I will issue another edict. Assign Mingšui to fill the position of Yunnan-Guizhou governor-general and to take over the military operations. And make this edict known to all.¹³

Having now relieved Yang Yingju (whom the emperor eventually ordered to commit suicide over his Burma failings), Qianlong sent Mingšui south to command forces.

The discourse of Green Standard inferiority (notwithstanding how well it did or did not reflect a certain reality of poor military performance on the ground) constructed Green Standard soldiers as less deserving of human sympathy. In fact, the emperor initially ordered all the routed soldiers to be executed (whether or not they also had deserted). Given the large number of soldiers routed, he must thought better of creating a spectacle of such a mass execution of entire military units. Yet according to the emperor, the routed soldiers all still deserved to be

¹⁰ QSL-QL, juan 780, 575-2 – 578-1; NGDK, 215837-001.

¹¹ QSL-QL, juan 780, 575-2 – 578-1; NGDK, 215837-001.

¹² QSL-QL, juan 780, 575-2 – 578-1; NGDK, 215837-001.

¹³ QSL-QL, juan 780, 575-2 – 578-1; NGDK, 215837-001.

executed (which was a drastic departure from traditional law), but in his “mercy,” he allowed compassion. This reflected a further shift in traditional notions of punishment, essentially shifting the line between harsh punishment and leniency:

[Qianlong emperor]: July 14, 1767 (QL 32/6/19). Edict. Soldiers should march with their armor on, but instead they dare to scatter in chaos. Reason requires that they be strictly punished in order to manifest the military law. But, during the previous deployments, it all resulted from accumulated cowardly habits. This was all due to the mismanagement of Yang Yingju. Still, they retreat and recoil with the wind. How can they maintain unit integrity? Speaking of the deserters from this instance, among them, the crime is not the same. Some of them were the first to call out to flee and fanned the flames. Their crime unequivocally cannot be pardoned. After they have been thoroughly questioned, they should be executed in order to create a deterrence.

Executing the first to break ranks during a rout was harsher than the codified statute as discussed in Chapter Three, but it was consistent with Ming-Qing practice, as discussed in Chapter Four. In other words, this was consistent with practice of the *longue durée*:

[Emperor]: As for the rest who went with them [those who continued to break ranks once the formation had already begun to collapse], there are many men. From investigating, one can see that they belong to a slightly different category than those who willingly brought on disaster first. Mingšui and others appear to have been implementing the prior edict [executing them all]. There is no need to nitpick. Inform him to show leniency in these cases [in which subsequent soldiers broke ranks during the rout but did not desert]. ... In order that military discipline/morale will be harmonized. Transmit this order to Mingšui and to Oning.¹⁴

Nevertheless, even this retreat to traditional practice simultaneously reified the developing militarizing tendencies in legal culture, because the discourse continued to validate the initial impulse – which was apparently being carried out prior to this edict – to execute all of the soldiers who broke ranks. Under this logic, not executing all the soldiers was reconstructed as leniency whereas prior to the increase in militarizing tendencies in legal culture, such executions

¹⁴ QSL-QL, juan 787, 675-1 – 675-2.

of non-deserters would not have been within the reasonable sphere of potential courses of action to begin with.

The adjudicative discourse on desertion cases possessed its own internal logic. I have already partially described this logic as the rhetoric of over-extrapolation, in the sense that it generally exaggerated the campaign deserters' contribution to military failure. There was an additional sense in which it overextrapolated. It took its own discursively-constructed representations of deserters as truisms – as logical basis – for further extrapolation. The general direction of this extrapolation was towards even less leniency and an expanding notion of who should be denied leniency, as seen in the emperor's claim that not killing all soldiers who broke ranks amounted to "leniency." Already by the 1750's, *genyi* and rank-and-file deserters were designated for military-track processing. The internal, self-justifying logic of the combined discourses on discipline and lack of leniency is illustrated in a particular series of discourses in which one official argued that *yuding*-deserters should be summarily executed (another expansion of those subject to the military track) when apprehended because that was the practice with rank-and-file soldiers (since the Northwest Campaigns). The emperor later used that official's request to summarily execute *yuding*-deserters to rhetorically strike down another official's request to treat a group of rank-and-file deserters *who turned themselves in* with some degree of leniency.

Yuding (餘丁), sometimes referred to in English-language scholarship as "supernumerary men," were by the time of the Burma campaigns functionally somewhat akin to *genyi* in so far as they acted as porters for the Green Standard, but they were different in that they also served as replacement soldiers. *Genyi* (following Eight Banner soldiers) continued to be executed at this

time under the militarized track that had been set up during the Northwest Campaigns.¹⁵ On December 18, 1767 (QL 32/10/28), Guizhou Governor Oboo [Ch: Ebao 鄂寶] first brought the problem of *yuding* desertion to the attention of the emperor. His representation of the *yuding* character and crime reflected the competition to justify increasingly summary and harsh punishments in military matters, the logic of which had dominated the adjudicative discourse since Zhandui-Jinchuan:

[Oboo]: Memorial to clarify. For the Guizhou soldiers deployed to Yunnan to eradicate the enemy, for every 100 soldiers there are 30 *yuding*. They are used to carry supplies and military provisions along the route. From the time the main force departed to the time it arrived at its locations in Yunnan, according to the military leaders' reports, a total of fifty-four *yuding* deserted. Many times I have ordered the local civilian and military officials to expend effort to apprehend them and not let them escape far away. At this point, Dingpan district has apprehended five *yuding* ... who deserted back to there: [names the five]. I immediately ordered that all of these be sent to the provincial seat so I could interrogate them to find out whether they had gotten sick or simply missed their relatives. I interviewed them several times, none stole military equipment, etc.¹⁶

Oboo's logic basically represented that *yuding* were functionally-similar enough to rank-and-file deserters that they should also be summarily-executed when *apprehended*:

[Oboo]: I have researched that although the category of *yuding* (*yuding yixiang* 預定一項) is different from that of soldiers (*bingding* 兵丁), these *yuding* were hired and received the imperial grace by being paid silver and received grain along the route. They should have worked hard along the route and made maximum efforts when they arrived at the camp. Instead, they dared to desert en-route and abscond. It is really a wanton violation of the law.¹⁷

Oboo's analysis relied on the prior series of discourses which had constructed rank-and-file

¹⁵ August 8. 1768 (QL 33/6/26). Yunna Governor Mingde and Yunnan-Guizhou Governor-General Aligun jointly memorialized. “奏為拿(續)獲逃兵” Summary executions of three persons, two Green Standard rank-and-file soldiers and one *genyi* who accompanied his banner-master (*qiren hedaide genyi* 旗人合帶的 跟役). ZPZZ-NPM, 403025393

¹⁶ ZPZZ-NPM, 403023216.

¹⁷ ZPZZ-NPM, 403023216.

deserters as worthy of execution since the Northwest Campaigns, representing *yuding* as similar in function to rank-and-file soldiers. This extrapolated construction of *yuding* neglected what would have been important distinctions (under traditional legal culture) between categories of persons (after all, *yuding* were closer to the civilian pole of Kuhn's continuum of militarization) and the place where offenses occurred (in terms of the military operations gradient). Following the logic of militarized adjudication, consistent with the newly developing *mentalité* of a militarized legal culture, despite the difference between these *yuding* and regular soldiers, Oboo requested an edict to immediately execute them all.¹⁸ Oboo was not referring to *yuding* who turned themselves in but to those who were apprehended. The distinction between self-turn in and apprehension had always been a critical distinction in late imperial legal culture, but the subsequent discourses in this exchange blurred this distinction and conflated the two.

In response to Oboo's memorial, the emperor affirmed that these *yuding* all deserved to be immediately executed, thereby newly constructing *yuding*-desertion as a crime appropriate for execution. Nonetheless, he declined to authorize their immediate execution at this time. Instead, he noted that other *yuding*-deserters were still on the run. He related that if word got out that the *yuding* who had been apprehended had all been executed, it would make it even harder to apprehend the ones still on the run:

[Qianlong emperor]: January 25, 1768 (QL 32/12/6). Edict. These deserting *yuding* (*taoyuding*). As soon as they are apprehended, it is appropriate that they be immediately dealt with in the law in order to establish military discipline (*cideng zaitao yuding, yijing nahuo, ziying mingzheng dianxing, yi su junji* 此等在逃餘丁，一經拏獲。自應明正典刑，以肅軍紀). But, only six have been apprehended. There still remain more than forty who should be apprehended.

¹⁸ ZPZZ-NPM, 403023216.

If, before apprehending the rest, we execute the ones who have already been apprehended, I am afraid those still on the run will hear and, becoming afraid, flee even further. They will cover their tracks and hide. It will become harder to catch them within the time limit. Put Yang Minglong and the others who have already been apprehended under strict supervision/confinement. When they have all been apprehended, memorialize again requesting authorization [to execute]. Transmit this order to Liangqing. As they are apprehended, memorialize.¹⁹

Following the emperor's Machiavellian proposal, reports were fairly consistent on the low number of *yuding*-deserters as well as the efforts to apprehend them. On January 26, 1768 (QL 32/12/7), Guizhou Governor Liangking (d. 1770) (Ch: Liangqing 良卿) memorialized: Twenty-four *yuding* had been reported apprehended by various jurisdictions. Among the group, three confessed to fleeing en-route because they had gotten sick and they could not pay their medical expenses, so they fled home. Seven owed money, so they fled. Typical of the cross-inquiries that were being made among provincial officials at this time in the context of investigations, Liangking noted that he had made several cross-inquiries with other jurisdictions to secure additional facts for the investigations:

[Liangking] I have sent inquiries to Minšui and Governor-General Oning to inquire whether this is true. I have also ordered the military leaders (*lingbing jiangbei* 領兵將備) to inquire of Zhang Wengui whether they took military equipment, or got sick, or what the circumstances were. I still have not heard back. I have ordered all subordinates, civil and military officials, to strictly apprehend deserters.²⁰

It is unclear what mitigating value (sickness, debt) the emperor would have attributed to this, if true; and second, very shortly, the emperor became less intolerant of these sorts of fastidious inquiries anyway. In his rescript to this memorial, the emperor kept up the pressure,

¹⁹ QSL-QL, juan 800, 790-1.

²⁰ ZPZZ-NPM, 23685.

[Emperor]: Be strict in apprehending them. I'm giving you three months. Report back in three months with how many have been apprehended. If any [previously captured] escape again, then those responsible for guarding will substitute for their crime. This applies to everyone.

A mere ten days later, on February 5, 1768, Liangking memorialized about the status of the apprehension of the fifty-nine *yuding*-deserters. Here, he again noted his multi-jurisdiction investigation to get to the bottom of the *yuding* desertion problem:

[Liangking]: In addition to Deserter Yang Minglong and the five others who were previously reported as apprehended, Pu'an District 普安州 has reported that the apprehension of Ding Mingliang and seven others who had not even been reported as deserters.

According to the reports of all the various home-units in Guizhou *yuding* who returned (unauthorized from the campaign), Zhang Wengui and nine others confessed that they absconded from en-route. Of them, three confessed that they returned because they were sick and that they could not afford to pay the medical expenses so they absconded. Seven claimed that they had others substitute for them.

Whether this is true or not, I have already dispatched queries to Governor-General Mingšui and acting Governor-General Oning to forward orders to all the campaign leaders to investigate and report back as to whether Zhang Wengui and the nine others stole any military equipment; and/or really got sick and had to convalesce. I have not yet received replies.

I also ordered all of my subordinates to strictly apprehend the remaining deserters. I have ordered all the civil and military officials in Guizhou as well as all the local officials in the original domicile (*yuanji* 原籍) of the soldiers to figure out ways to rapidly apprehend them and will send up a by-name list.

Again expressing his impatience at the amount of time it was taking to apprehend the deserters, the emperor issued another ominous warning:

[Qianlong emperor's rescript]: Work hard to apprehend them. I am giving you three months. After this time expires, memorialize back with the status. If any that have been apprehended escape again, those who were guarding them will substitute for them. Make

this edict known to all your subordinates.²¹

Understanding the background discourse of *yuding* is necessary to understanding what happened next. In February 1768, Oning petitioned the emperor for leniency for those campaign deserters *who turned themselves in* (which would have been completely pardoned under the pre-Qianlong-era law if they turned themselves in prior to the end of the campaign from which they had deserted). He proposed that they be exiled forever as slaves in Xinjiang, showing just how far the notion of leniency had shifted. Yet, despite the utter reasonableness by late imperial legal standards of Oning's request, the emperor was aghast at Oning's shocking willingness to be so lenient. This particular series of communications – first, a memorial, then a strongly-rebuking edict, and then a follow-up memorial – shows how the emperor shaped the adjudicative discourse on deserters. Before getting to his point of requesting that deserters *who turned themselves in* be exiled as slaves to Xinjiang rather than being immediately executed – only by the draconian standards of the time could such a request be considered leniency – Oning first affirmed the discursive construction of deserters as evil:

[Oning] February 7, 1768 (QL 32/12/19). Memorial to request an edict.

We officials, because of the evil habits of Yunnan deserters, it has been extremely necessary to punish them, so we have ordered every Green Standard unit official and local official to rigorously apprehend them, and on the day they are apprehended to immediately execute them.

...

After Mingšui departed [to his suicide in battle] leading the main army [three more deserters were apprehended]. ... At that time, Mingšui was still at Longling, so the subjects should have been taken to the military camp and executed in front of the soldiers.

Now, at this time, the Western Detachment Dusi Zhang Shixiong and the Jianzhou

²¹ ZPZZ-NPM, 23685.

Magistrate worked together to apprehend a deserter from this detachment, Xiong Guochen. The Heli Zongbing apprehended the deserter Yang Menglin 楊夢林. They have all been escorted forward. I, along with the circuit intendant in Yongchang have carefully tried/interrogated both Xiong Guochen and Yang Menglin. They were all deployed on campaign, they had already started out from their camps, and on the route they absconded, deserting by way of side roads.

This is really a crime that cannot be forgiven. Accordingly, they were all taken to the execution grounds and immediately executed before all.

After reciting his eagerness and effectiveness at summarily executing campaign deserters as they were apprehended – a clear reflection of just how militarized legal culture had become by this point – Oning requested that those campaign deserters who *voluntarily turned themselves in* could be exiled as slaves in Xinjiang forever. Even though the formal statute was practically a dead-letter at this point, in a demonstration of its continued significance as part of the broad adjudicative discourse on deserters, Oning cited the provisions that provided a complete remission of punishment to deserters who turned themselves in prior to the end of campaign. Yet, indicative of the developing *mentalité* of those adjudicating cases at this time, he made a special point of the fact that he was not suggesting following this rule (although he clearly meant to invoke its wisdom):

[Oning]: I am asking, however, that for those deserters who after they deserted *voluntarily turn themselves in*, after this sort of disregard, it is a time to set things right in the unit, so they should not be pardoned under the substatute [for turning oneself in] but rather they should be exiled to Urumchi as slaves to the agricultural troops.

I'm asking for this edict, and if granted, I will separate out those who turn themselves in from those who are apprehended.²²

What Oning was asking for was already draconian by standards of pre-Qianlong desertion law,

²² ZPZZ-NPM, 403023787.

but the Qianlong emperor scolded him for his proposed “leniency” anyway:

[Qianlong Emperor] February 12, 1768 (QL32/12/24). Edict. Yesterday, Oning’s memorial, *His lenience is inappropriate*. This was really unexpected. ... Ever since I first selected Oning to be governor until the present, in all endeavors, he has done his utmost to properly arrange things. Never before has he committed this type of error.

Again in an example of how the linguistic representation of desertion simultaneously constituted the reality of desertion adjudication, the emperor went on to point out how Oboo had just recommended that *yuding* be executed. The emperor’s over-extrapolative logic was that if even *yuding* should be immediately executed, then *a priori* so much more so regular soldiers. Of course, the emperor completely overlooked the distinction – which had been a critical one in late imperial legal culture – between *yuding*-deserters who were *apprehended* and those Oning was now referring to as rank-and-file deserters *who turned themselves in*. The emperor simply did not acknowledge this distinction:

[Qianlong emperor]: The cowardice of Yunnan Green Standard soldiers has already become an inveterate habit. Without punishing them harshly, there is no way to reverse their bad habits (*Diansheng lüying bingbian, kuangqiu yi cheng guxi, fei dajia chengchuang, wu yi zhen shuawanfeng* 滇省綠營兵弁，恇怯已成痼習，非大加懲創，無以振刷頹風). Oboo's last memorial [recommended that] *yuding* who deserted should be executed. If even *yuding* should be executed] what about those men who belong to the regular Green Standard forces [regular soldiers]? They joined the military at a time of military operations. Yet, they despised military discipline like this. If just because they have turned themselves in, they are allowed to escape death, then these criminals, because they are too greedy to live, so they will not be willing to brave [malaria] and charge forward in battle. Later, because they fear death, they will slyly act like they are submitting and turning themselves in. They really are cowardly people. They are just opportunistic. And this does not manifest the law of the dynasty. If the governors and governors-general are *lenient* with them, then inferior soldiers will also in turn imitate them.

In perhaps the most interesting representation, the emperor essentially argued that exiling them to Xinjiang would have violated the ancient legal principle of balancing human feeling (*qing* 情)

and law (*fa* 法) – here, the emperor incorporated the core logic of late imperial legal culture – because slavery on the agricultural colonies of Xinjiang was simply too good of a life to constitute sufficient punishment!

[Emperor]: Now, the Xinjiang military agricultural colonies have resources. They are happy. Those who are exiles live happily. Thinking of *qing* and *fa*: Isn't it not fair? Previously, when Mingšui did not rigorously investigate and memorialize, it already was not right. Moreover, once the whole force returns victorious [in fact, Mingšui committed suicide soon after as a result of horrendous losses]. Mingšui will not be able to stay long in Yunnan [in fact, he was soon dead]. The task of supervising all the military units will be turned over to Oning. This time therefore [his] ability to maintain the law and to punish one to scare one hundred [is important] in terms of his future ability to make determinations/decisions. If he handles things in too lenient a manner, it does not matter that it also has no benefit for the soldiers, but in addition it has no benefit for his future position.

The emperor used this as another opportunity to eliminate the notion of leniency for deserters from the discourse:

[Emperor]: Send Oning an edict to rigorously address this. Again, for the soldiers on deployment who fled, investigate and determine the actual number. Also, determine how many have been punished thus far as well as how many have not yet been apprehended. Have Oning rigorously investigate and send up a memorial. Simultaneously rigorously apprehend them. If he does not put forth maximum effort and instead allows [the deserters] to escape the legal net, then only Oning will have to answer for it. Have him memorialize that he is clear on this.²³

One value of this particular series of discourses is that Oning's immediate response (less than three weeks later) shows how quickly the emperor's iterative constructions of desertion constituted the new reality. Oning completely dropped any reference to mitigating deserter punishment and focused instead on apprehension and execution, using the proper language of the acceptable adjudicative discourse:

²³ QSL-QL, 803-1 – 803-2.

[Oning]: March 2, 1768 (QL 33/1/14). I have investigated and these Yunnan soldiers' cowardice has become a matter of habit. They entered the ranks at a time of war, yet they dare to abscond so they can escape their true crime and not be punished. I have directed all personnel to continually report on deserters. Altogether they have reported 337 total, out of which 314 have not yet been apprehended, and twenty-three have been apprehended." ... Twenty have been escorted to Yongchang (the site of the headquarters) and executed. Out of an additional thirteen, two were escorted to Yongchang and executed.

Oning went a step further in his response to the emperor, explaining that "I have already put the families of these criminals under detention. If by the time the time limit expires the apprehension-supervising officials have not apprehended them, then I will send a memorial asking for them to be administratively punished."²⁴ The emperor's rescript contained yet another threat: "So many deserters. What are you officials doing? If you do not rigorously apprehend them, then you will not be able to escape responsibility."²⁵

This one series of discourses consisting of correspondence on the one hand between Oboo and the emperor and, on the other hand, between Oning and the emperor demonstrated a self-contained discursive logic in which *yuding* should be executed *because* rank-and-file soldiers should be executed, and rank-and-file soldiers *should receive no leniency* because *yuding* also deserved execution (although they ultimately faced a different fate). Oning's quick adjustment shows how dominating was the emperor's position in the discourse. In 1773, only three years later, this sort of rhetorical logic was again extended to justify summary execution of locally-hired porters – complete civilians – who fled an active campaign for which they were hired thereby impeding logistics during the Second Jinchuan Campaign. At the same time, the emperor directed that even inner-empire magistrates who embezzled funds that should have been

²⁴ ZPZZ-NPM, 403023926

²⁵ ZPZZ-NPM, 403023926

paid to these local porters (thereby causing them to desert for lack of payment) should also be executed under militarized adjudication.²⁶

Initially, the emperor had responded to Oboo's request to execute *yuding* by agreeing that they deserved to be immediately executed, but, with Machiavellian calculation, explained that if they were immediately executed, then the other deserter-*yuding* would try even hard to evade apprehension. The temporary solution was to keep the ones already apprehended under confinement until the others were apprehended. What eventual disposition did the emperor make of *yuding*? According to a memorial, dated January 1, 1775, five years after the Burma campaigns concluded, the emperor eventually ordered that *yuding*-deserters would be held permanently under death penalty conditions (*sizui laogu jianjin* 死罪牢固監禁). Considering the miserable conditions of the county gaols (where prisoners were known to die anyway while awaiting trial), one can imagine the pathetic lives these perpetual prisoners led. The off-the-book nature of the punishment is also striking and is indicative of militarizing tendencies in legal culture. Life imprisonment under death penalty conditions was not one of the five punishments. The emperor considered this an exercise of his mercy, but what it really shows is how far the adjudicative discourse during the Qianlong reign had reconstructed the notion of leniency from its earlier meaning in late imperial legal culture (from a chance to renew oneself to a life of perpetual misery).²⁷

²⁶ QSL-QL, juan 925, 432-2 – 433-1.

²⁷ LFZZ-FHA, Miscellaneous Military Affairs (軍務其他), Roll 12, 1703-04.

III. A New Meticulousness to Deal with the Pollution of Indiscipline

Despite the unimpressive number of *bona fide* deserters reported, the adjudicative discourse that had developed since the time of Zhandui-Jinchuan had reconstructed campaign desertion as a manifestation of the indiscipline that was itself represented as the fundamental strategic and military-operational problem of the day. As in the “soulstealing” episode also taking place at this time, the emperor himself dedicated a tremendous amount of time and effort to pressuring his officials to deal with the problem of desertion, a problem he likely considered more serious than did his officials.²⁸ Given his other duties (including rooting out soul-stealers), the amount of effort the emperor expended on the issue seems objectively unreasonable if emptied of the background discourse (both within the development of the formal law and practice) that had been evolving since Zhandui-Jinchuan. Not only did the emperor continue to insist that every last deserter be apprehended and dealt with under militarized adjudication (an extremely tall order given the infinite number of places deserters could hide), but he also made desertion a topic of private imperial audiences with officials being dispatched to the Burma theater and even tasked a high level Manchu official to go to Yunnan expressly to deal with the problem.

The emperor represented desertion as a fundamental aspect of indiscipline, which he treated as a pollutant. An indisciplined person would pollute another. If a good man were sent to a polluted unit, he too would become polluted. This was especially true in the case of good Manchu soldiers who were sent to polluted Green Standard units. The Green Standard as an institution was already polluted (because of accumulated bad habits that resulted from poor

²⁸ Kuhn, *Soulstealers*.

leadership), but the most polluted Green Standard soldiers were those stationed in Yunnan. Manchu soldiers were somewhat immune. The only way to prevent the spread of this “pollution (*wuran* 污染)” was to apprehend and execute every last deserter. This represented a commitment to a high level of meticulousness that was far different from the adjudicative-procedural meticulousness heretofore demanded by late imperial legal culture. The prior meticulousness of late imperial legal culture had focused on getting the facts and law right through careful retrial-review and imperial approval. The new meticulousness focused on expeditiously apprehending and executing every last campaign deserter. The former was deliberative, scholarly, and plodding whereas the latter was executive, military, and efficient. Although clearly dominated by the emperor’s views, this new focus represented a fundamental shift in the balance between means and ends that affected the *mentalité* of those adjudicating cases.

The emperor’s relentless pressure to apprehend and execute every last deserter was putting pressure on officials all the way down to the lowest levels of the civilian-military hierarchy. For instance, Mingšui had been concerned with how these investigations were affecting his subordinate officials. While completely adopting the emperor’s tone towards deserters (demonstrating the emperor’s dominant position in the discourse), Mingšui requested some relief from the relentless pressure being put on his subordinate officials.

[Mingšui]: December 6, 1767 (QL 32/10/16). Since last winter, there have been many deserters from the [Burma] campaign and garrison forces in Yunnan. Previously leaders and subordinates interfered and did not report this such that it led to this deleterious situation. The problem is already bad. It is really a hateful thing.

After we arrived and took up our posts, we carefully reviewed the records and ordered all those who had at first been reported as deserters to be investigated to determine if they

really died on the battlefield, got sick and died, or had been transferred and their names lost. There were many for whom their whereabouts were unknown. There were also many that were at first reported but their names did not match the records and the records were just incomplete. There were also some cases for those who were sent back to convalesce but were not given road passed and turned themselves into different battalions... among the soldiers who are verified to have actually have deserted and been caught....

As they were apprehended, they were each vigorously interrogated, taken to the education field (*jiaochang* 教場) and immediately executed and shown to the masses.

At this time that the main force (*dabing* 大兵) has deployed to eradicate the enemy, these deserters' evil habits must be completely eliminated. Only by rigorously apprehending them, and immediately killing them in front of others is it sufficient to maintain military discipline and maintain military morale (*zheng junxin* 正軍心).

We have already informed the senior military leaders of each route, if there are any who retreat in the face of the enemy (*you lindi tuisuo* 有臨敵退縮) they should be immediately killed and their heads spiked for display on the battlefield.

...

As far as the responsibility of the battalion junior officers and local officials for apprehending deserters. Because in the past the administrative sanction was not severe, they neglected the matter. The area around Yunnan has so many mountain crevices and hamlets that it is easy to hide. Moreover, if many days have passed [since the desertion], the deserters have all gone back to their original domiciles (*benji* 本籍). These deserters are truly flouting the law, and *they are worse than ordinary fugitives* (*fei xunchang taofan kebi* 非尋常逃犯可比).

Those officials in charge of apprehending them should be strictly administratively punished in order to break these bad habits and they should apprehend all the remaining deserters within the time limits.

Mingšui's description of deserters and the summary way in which they were executed is in stark contrast to Shandong Circuit Inspector-Censor Mabing's recommendation for leniency for *pitiable* deserters made only thirty years prior at the very beginning of the Qianlong reign. By the time of Mingšui's memorial, campaign desertion had been discursively-reconstructed as evil, not pitiable. Notwithstanding Mingšui's affirmation of the new construction of the crime of desertion, he went on to request that his officials be given some relief with apprehension

deadlines:

[Mingsui]: We are requesting that for the officials in charge of supervising the apprehension of deserters, counting from the time the desertion is reported until the time the main military force returns, if these battalion officers and junior officials during these months can apprehend half of the deserters, then they do not need to be impeached or punished. If not one half, then they should be immediately impeached and an edict requested to dismiss from their technical position (*gezhi* 革職) those directly supervising apprehension. They should then be given another six months; if they again do not apprehend half, then they should be dismissed from their duties. ...

Although the emperor approved this request, he still continued to demand that each deserter be apprehended and executed, and represented that it was only by apprehending every last one that military discipline could be salvaged:

[Emperor]: March 16, 1768 (QL33/1/28). An order. I previously issued an edict to Liangking to imprison the *yuding*-deserters that they had apprehended and wait until they were all apprehended, then at that time to memorialize asking for permission to summarily execute them (*qingzhi zhengfa* 請旨正法). I later ordered him that as they continually captured a few people, to immediately and quickly memorialize. But now, it has already been several months. How many have been captured in that time? It has not yet been memorialized. Issue a special edict to Cingyu to quickly apprehend them all and not to allow them to escape the net of the law. As for the Yunnan Green Standard regular soldiers (*Diansheng liuying zhengbing tao* 滇省綠營正兵逃) who have fled, there are more than three hundred.

Unless they can be apprehended and summarily executed under the law, then there is no way to restore military discipline (fei yanna wuhuo anliu zhengfa, wuyi zhengchi junji 非嚴拏務獲按律正法, 無以整飭軍紀. I have already sent an edict to Oning, to work harder to apprehend the deserters.²⁹

The emperor personally discussed desertion with his officials in their imperial audiences prior to their departing Beijing on assignment, even recalling Oning to the capital to discuss desertion:

[Qianlong Emperor]: May 22, 1768 (QL33/4/7) An edict. ... I previously issued an edict. The Green Standard soldiers at Mubang [who were routed], they deserted. It is really evil. Those who ran first should be investigated and taken care of. ... Oning should

²⁹ QSL-QL, juan 803, 840-2 – 841-1.

immediately come to the capital. Aligun and Šuhede should remain and diligently investigate. Once Oning arrives at the capital, I will give additional guidance and training. When he goes back to Yunnan, he could work together with Aligun and Šuhede. Do not leak this. Transmit this order to Šuhede and Aligun.³⁰

Around mid-1768 (QL 33/04/28), the emperor first began to distinguish Yunnan Green Standard soldiers as particularly undisciplined. From the records, my impression is that he was not referring to the native, non-Han Yunnan soldiers (whom he tended to write off completely) but rather the ethnic-Han component (the majority) of the Green Standard soldiers in Yunnan. While the emperor attributed their indiscipline to an accumulated habit of bad character, there were also other factors (which he either overlooked or did not consider significant enough to mention), two of which are worth considering. First, the majority of soldiers involved in the early phases of the Burma Campaigns were Yunnan soldiers, so naturally when operations failed, Yunnan soldiers were involved; second, given the proximity to their homes, it was probably more tempting for Yunnan soldiers to abscond from operations on the Yunnan-Burma frontier regardless of their relative character compared to other groups of soldiers. Even in the later phases of the operation, after large numbers of Guizhou Green Standard Soldiers and Manchu bannerman had been incorporated into the fighting force, Fuheng was only able to fight the Burmese to a standstill. But, the emperor did not seem to take notice of the fact that his vaunted banners and Guizhou soldiers ultimately did not accomplish anything more in Burma than did the initial contingents of Yunnan Green Standard soldiers. For the emperor, Yunnan Green Standard soldiers simply were of bad character:

[Qianlong Emperor]: June 12, 1768 (QL33/04/28). An Edict to the Grand Council on the subject of Liangking's memorial on the subject of the time limit having passed for

³⁰ QSL-QL, juan 808, 918-1.

apprehending *yuding*-deserters.

[Emperor]: These *yuding* who desert. They must be rigorously apprehended. Not one can be permitted to escape the net. Only in this way can we manifest a deterrence. Within the Green Standard, Guizhou soldiers put forth more effort. And from start to finish there are several tens of deserter-*yuding*. However, Yunnan Green Standard soldiers are of an especially cowardly character. Every time battle is imminent, they desert. Formerly, according to Oning's many memorials, there were more than three hundred deserters. I issued many edicts to rigorously apprehend them. But each time Oning memorialized, only a few had been apprehended. It is clear that the reason is because he did not make much of an effort. When soldiers desert, it is a crime that the law cannot pardon.

If the governors-general and governors do not rigorously order their subordinate military and civilian officials and junior officers to quickly apprehend and punish them, it will be difficult to motivate them.

The emperor continued to suspect that there were more deserters than had been reported (he may have been right, given the various incentives to officials not to report deserters as such, as noted in Chapter One). In the same memorial, he demonstrated a meticulous level of detail over who specifically was responsible – at the moment – for the issue of desertion in Yunnan and questioned why he had not yet received a report on deserters from Sichuan Governor-general Artai (Ch: A'ertai 阿爾泰) (d. 1773):

How then will military discipline be maintained and the soldiers encouraged to fight? Oning should memorialize clearly. He is now traveling along the postal route on his way to the capital. The matter of Yunnan deserters has been transferred to [Yunnan Governor] Mingde (Ch: 明德) (d. 1788) to immediately investigate. As for the Sichuan soldiers sent to Yunnan, there were those who fled *en route*. Why has [Sichuan Governor-General] Artai not memorialized with details of these deserters? Also, send a special edict to Artai to report on how many deserters there are and how many have not yet been apprehended. And those Guizhou criminals who have not yet been apprehended, have Liangking rigorously apprehend them within the time frame, and handle those who have been apprehended according to the prior edict.

Yunnan Governor Mingde again responded with the number of total campaign deserters as 337, explaining that a total of fifty-four had been executed, died of illness, or had committed

suicide. In response to this memorial, the emperor rescripted: “I am giving you three months. When the time is up, you must memorialize.” Finally, Governor-General Artai sent the report from Sichuan that the emperor had been requesting:

[Artai]: There were eight thousand Sichuan Green Standard soldiers sent to Yunnan. Yunnan asked for an additional two thousand *yuding*. Forty of these soldiers as well as forty-three of the *yuding* deserted en-route to Yunnan. Four have been apprehended and immediately executed. Seven *yuding* were apprehended and are in confinement awaiting trial and draft of punishment. There are still thirty-six soldiers that have not been apprehended.³¹

The emperor’s rescript was calculated to keep pressure on the officials to apprehend every last one:

[Emperor’s rescript]: With so many that are not yet apprehended, if in half a year they are not all apprehended, then they [the officials] will not be able to evade responsibility. In half a year, memorialize again with the status.³²

Approximately a month later, the emperor again took up the differentiation of Yunnan and Guizhou Green Standard soldiers.

[Qianlong emperor] July 10, 1768 (QL 33/05/25). Edict. In the past, Yunnan soldiers were cowards and could not fight. Their accumulated habits were such that when they met the enemy they fled and hid. They were unwilling to risk their lives. It was necessary to overhaul them. But among the Green Standard Soldiers, Guizhou soldiers put forth more effort. That is why I ordered Liangking to select soldiers from all the units of Guizhou to put together an effective force.

...

Now, according to [the memorial from Liangking], there are 5,000 [Guizhou Green Standard soldiers] ready to go to fill the ranks in Yunnan. That will be good for the units. But these soldiers, once they get to Yunnan, they need to be supported in terms of food and other supplies. Send an order to Aligun. Cut those tired and undiligent soldiers from the Yunnan soldier ranks and then give their slots to the Guizhou soldiers. If more need to be cut, simultaneously memorialize the throne and inform Liangking ...

...

The emperor continually returned to the problem of soldiers’ being routed in battle. This was

³¹ QSL-QL, juan 809, 941-2 – 942-2.

³² QSL-QL, juan 809, 941-2 – 942-2.

certainly a real strategic concern, but the sole identification of the rout with a lack of discipline also shows the emperor's tendency to engage in rhetorical over-extrapolation and simplification in analyzing a highly complex phenomenon. This must be seen as a continuation of the ongoing discourse on discipline and deterrence:

[Emperor]: As far as Yunnan soldiers' being routed and scattering, this is a long-term evil habit of weakness. This is all because governors-general and governors across many terms during peacetime did not strenuously train such that they [the Green Standard soldiers] do not know the bravery of righteousness, and *they have no military discipline. They are not afraid* [of authority]. Since we have been at war, like last year the incident at Mubang and Pu'er [the sites of two serious routs], or this year as with the incident at Xibo and Tianshengqiao [two additional routs], the Yunnan soldiers were just routed and then hid. Again and again it was like this. *If yet once again they are not punished harshly, then how will we be able to conduct military operations in the future?*

It was at this point that the emperor's language incorporated the metaphor of pollution, first expressed here in the idea that the younger brother and sons of deserters should not be used to fill the ranks:

[Emperor]: We must deploy soldiers who will fight. We cannot use Yunnan soldiers anymore. More should be cut from the force. If we just go on as usual, then the Army will not be effective. ... This is military operations. As far as transportation duties are concerned, there is no way to avoid using Yunnan soldiers. And when recruiting local soldiers, if there are any sons or younger brothers of deserters, they cannot be used to fill the ranks. If a deserter has already fled and escaped the net, if we allow his sons and younger brothers to fill the ranks, then they will flee one day, too. ... Of course, if they are enjoying the benefit of the dynasty's granaries, they must obey the dynasty's law and exercise military discipline (*guofa junlü* 國法軍律).

...

The emperor continued this analogy of contagion with a warning that his officials should exercise caution lest the new Guizhou soldiers arriving in Yunnan be "polluted" by the Yunnan Green Standard soldiers already there: "When these Guizhou soldiers get to Yunnan, do not let them become polluted by the evil habits of the Yunnan Green Standard Forces (*wu ling zhanran*

diansheng e'xi 勿令沾染滇省惡習).”³³

Meanwhile, the emperor continued to argue that draconian punishment with no leniency for deserters was the only way to prevent future routs of Green Standard Forces:

[Qianlong Emperor]: July 1, 1768 (QL 33/5/17) Edict. Aligun memorialized regarding the investigation of deserters. The deserters from Xibo, Hulukou, and Mubang [sites of routs] cannot be pardoned. At this time, only forty have been executed. This is too lenient. How is it sufficient to deter and restore military discipline (*he yi jing qiyu er shen jili* 何以警其餘而申紀律)?

The emperor then made it clear that he had assigned Manchu Plain White Bannerman Šuhede (Ch: Shuhede 舒赫德) (1710-77) as grand minister consultant (*canzan dachen* 參贊大臣) for the explicit purpose of addressing the campaign desertion problem:

[Emperor]: Šuhede received the edict in person, and I sent him to Yunnan to take care of this matter. Why, once he got to Yongchang, did he not take measures to address this? This is really inappropriate. Last year, when Yangning was in Mubang and there was the rout of soldiers from the deployed camp (*you yingbing bing kuitao yian* 有營兵潰逃一案), I transferred the matter to Mingšui and Oning to investigate, but at that time they only punished a few. The soldiers lacked fear, such that many later quit the ranks and deserted. If at this time we again fail to handle it strictly and rectify the ranks, then this will just happen again. But, it has already happened. It is hard to start again. Now, among the soldiers needed in the south, there are still more than 300 deserters who have not yet been apprehended. I am giving Aligun and Mingde three months to vigorously apprehend the deserters and manifest the law in order to deter. At the expiration of these three months, they should memorialize how many have been apprehended, if they do not make an effort, I will not be lenient and the blame will be completely on them.³⁴

Again, the emperor’s microscopic attention to desertion forced his subordinate officials to press their own subordinates to engage in meticulous efforts to apprehend deserters as demonstrated in the following edict from Yunnan Governor Mingde in which he referenced the personal charge the emperor bestowed on him before he left Beijing:

³³ QSL-QL, juan 811, 964-1 – 964-2.

³⁴ QSL-QL, juan 801, 959-2 – 960-1.

[Mingde]: July 6, 1768 (QL 33/05/21). In obedience to the court letter, ... I have reviewed all the cases of the more than 300 deserters from Yunnan. I remember when I was in the capital, and I personally received the order to strictly apprehend these deserters [from the emperor]. It is etched deeply in my heart. When I got to Yunnan and took over as governor, Oning came to Yongchang and brought me the log of deserters (*taobing juanzong* 逃兵卷宗) [and he also turned over the seal of office].

I read the log. It listed 337 deserters from Yunnan. During Mingšui's tenure, seven were captured and executed. During Oning's tenure, twenty-nine were captured and executed. It was reported that four killed themselves because they were scared. One became sick and died. I have already executed more than twelve. In total, this accounts for fifty-four. There are still 283 deserters who have not been apprehended. I have reviewed all their cases and they are very guilty. They must be apprehended immediately in order that they do not flee to even more distant places. The fact that Yunnan has over 300 deserters really makes one's hair stand on end. I have already offered heavy rewards to my fugitive-apprehension team (*huofan bingyi* 獲犯兵役) in order to encourage them. And I have written out copies of a by-name list and had it sent out quickly to [all the officials in all the jurisdictions in the province], establishing heavy rewards for apprehending deserters. Heavy rewards will be provided for each deserter apprehended. I have also dispatched junior officials to observe whether [all jurisdictions] are making efforts to apprehend deserters. ...³⁵

The next day, Mingde sent up another memorial summarily noting the execution of twelve deserters (by name), including several who had turned themselves in [which would have been highly uncharacteristic of late imperial legal culture prior to the Qianlong reign].³⁶

Yet, despite his officials' representation of their diligent efforts to apprehend deserters, the emperor continued to criticize what he viewed as the low rate of apprehensions of deserters and continued to stress the need to use Manchu troops.³⁷

[Qianlong Emperor]: August 12, 1768 (QL33/7/1). Edict. ... Also, on the issue of Yunnan soldiers' bad habits which are awful. Moreover, new recruits are unusable. They should all be returned to the inner-empire. For garrisoning Longling and other important places, we should use Manchu soldiers. For routine important places, if there are insufficient Manchu soldiers, then use Guizhou soldiers. ... Again, the soldiers at Mubang [site of one of the routs] saw the rebels and fled. It was terrible. I sent out an edict to

³⁵ ZPZZ-NPM, 025074.

³⁶ ZPZZ-NPM, 205073.

³⁷ ZPZZ-NPM, 025386.

have them investigated and executed [later reduced to only the ones who fled first]. But up to this point, only about over 40 have been so investigated. From Tianshengqiao [another rout], only two people have been investigated. Being so lenient, how can we reorder the army? Have Aligun (and the others) strictly investigate and apprehend [these deserters]. *Do not allow even one to escape the net.* When Agui arrives in Yunnan, also order him to do the same. If Aligun cannot investigate, then have Agui investigate. He can redeem his (prior) crime. The accumulated habits of the Yunnan soldiers are all bad. It was all caused by their supervisors' failing to train them. ... During peacetime, they do not train them. Although it is already a past matter and we do not have to punish them [the officials who failed to instill military discipline in the past], they should be investigated and prevented from advancing [in rank].³⁸

IV. The Discursive Trivialization of Investigative and Trial Procedure

Throughout most of the post-Zhandui period, the emperor's main military-judicial concern had been to expeditiously adjudicate extraordinary cases in a way that left no hope for leniency to prospective offenders. In the cases I have presented, the meticulousness advocated by the emperor was not a meticulousness of retrial-review procedure, but a meticulousness of apprehending and executing deserters (or dealing with other extraordinary offenses). It was during the Burma Campaigns, however, that the emperor first began to articulate logical collateral implications of the efficiency-no leniency approach on the investigation and trial itself. The new attention to apprehension and execution that characterized the militarized approach actually trivialized the meticulousness of procedural scrutiny – calling it pedantic (*juni* 拘尼) – that had characterized late imperial legal process. First, this new approach had to assume that suspected deserters were guilty and that no mitigating factors were sufficient to result in a sentence less than death. Second, it represented any sort of delay in the process as a sign of wanton leniency (*guxi* 姑息), even if that delay was for a seemingly laudable reason, such as

³⁸ QSL-QL, juan 814, 1010-2 – 1011-2.

coordinating with other provinces for additional evidence or allowing soldiers to coalesce from sickness. To be sure, there were other cases in which the emperor simultaneously emphasized the need for careful findings of fact and law at every level, though procedurally that contradicted his desire to expeditiously execute the guilty.

The new default position for soldiers initially reported to the throne as deserters was that they were, in fact, guilty and deserving of death. An example of this is how during the Burma Campaigns the number – often repeated in the archives – of “337” took on the discursive existence of an adjudicated fact, although it was, in its origin simply a reported number of suspected deserters. These “337” were guilty by default of having been listed when a firm number was required to be reported. If a soldier was among the 337, then he was to be immediately executed when apprehended (or even when he turned himself in). In a sense, they were “guilty until proven innocent.” While technically, even under summary procedures, there was a basic interrogation and fact-finding investigation, the *mentalité* required of those charged with administering the summary process was becoming such that it was difficult to prove innocence. There was simply very limited forums in which to challenge the initial categorization.

The above difficulty was demonstrated when provincial officials sought to clear soldiers who had initially been reported as part of the guilty 337. For instance, on September 16, 1768 (QL 33/08/05) Aligun and Mingde reported the summary execution of five soldiers who were determined to be deserters, but added that fourteen others had mistakenly been reported as deserters. It turned out that these fourteen had become sick and had been issued road passes by competent authority to return to their home stations to coalesce. Unfortunately for them, under this atmosphere of intense imperial attention and increased official vigilance on the issue of

deserters, authorities in their home provinces had apprehended them as suspected deserters.

While Aligun and Mingde's request to readjust the numbers based on this new information sounded reasonable on the surface, the emperor interpreted their actions as either a self-serving move to reduce the number of deserters they were responsible for apprehending or as an undue demonstration of leniency. To be fair to the emperor, he might have thought that the officials were just trying to write fourteen deserters off the books since he was putting so much pressure on them to "apprehend every last one." In either case, in his rescript, the emperor admonished them, "You have already been overly lenient and should not be overly lenient in the future (*erdeng yi guxi yuqian bu ke zai guxi yuhou* 爾等已姑息於前不可再姑息於後)." It was clear that each change to the number "337" reported had to be highly justified against a bias that assumed the soldiers were guilty. Provincial authorities lacked the authority to simply declare that the number was a mistake.³⁹ The ironic result of this arrangement was that under the routine process, it had been procedurally-onerous to execute a suspect; under militarized adjudication, at least under these circumstances, it was becoming procedurally-onerous *not* to execute a suspect.

Showing how the imperially-dominated adjudicative discourse continued to logically develop under the dominance of the emperor's views, Aligun and Mingde responded to the emperor's rescript on September 27, 1768 (QL33/08/16). Their narrative reflected that they understood the emperor was questioning their commitment to leniency-free and efficient execution of campaign deserters. Thus, they pointed out their own execution record and made a special note that they were apprehending all those without road passes and were planning on executing them as

³⁹ ZPZZ-NPM, 25670.

deserters (the next month they reported these as executed as well). Their reference to executing soldiers without road passes spoke directly to their previous request to excuse the fourteen who had been issued road passes. They were trying to convince the emperor that they understood the issue and were making a valid distinction: “During [our] tenure, twenty-two were apprehended and executed, in addition, an additional twenty-five soldiers without road passes who were also apprehended and will be executed.”⁴⁰

Aligun and Mingde went on to remind the emperor that they were still waiting on the emperor’s edict to clear the fourteen who had been mistakenly added to this deserter roll in the first place. The two officials reaffirmed the dominant representation of campaign deserters: “These soldiers deserted while on campaign; they dared to flee during a time of active military campaigning. We have received the emperor's great graciousness and will not dare to be lax. We will restore military discipline in a timely manner.”⁴¹

Despite the fact that Aligun and Mingde (as did most other officials corresponding on the matter) had adopted the emperor’s representation of campaign deserters, the emperor still responded to the above memorial with further accusations that the officials were still being too lenient. His point was that such cases should be adjudicated even more expeditiously.

[Emperor]: September 29, 1768 (QL33/8/19). An edict. The last time, [Mingde and Aligun] handled this matter too leniently. At that time I rescripted. For Yunnan deserters, the facts and crime are really evil. I have issued many edicts to apprehend and execute them (*shangjin chana zhengfa* 上緊查拏正法) in order to create a deterrence. Yet, what Aligun memorialized ...was still based on the previous governor-general and governor’s

⁴⁰ ZPZZ-NPM, 25727. These were reported executed the next month. On October 19, 1768 (QL33/09/08), Aligun and Mingde again memorialized. Follows up on earlier report (as ordered in edict) of capture of 109 逃兵, with 25 not yet having arrived at the capital. Now, those 25 have arrived, were found to be deserters, were all tried and executed. Another group of 11 is being escorted to trial. ZPZZ-NPM, 025877.

⁴¹ ZPZZ-NPM, 25727.

investigation.

And up until now, only ten percent have been apprehended. This is so few. As to Mubang and Xibo [sites of two routs], there are so many soldiers who fled the battlefield, why have only fifty been interrogated (*linzhen taobizhe shenduo, he yi jin xunchu wushiyu ming* 臨陣逃避者甚多, 何以僅訊出五十餘名). Where did the others go? It is easy to see that they are too lenient and cultivating scoundrels. They have not put forth real effort to investigate. Send another edict to Aligun and the others. From now on, they must strictly order their junior officials and junior officers to rapidly and with real energy apprehend the deserters. Do not let even a few escape the net.

The emperor then specifically returned to the issue of the fourteen who had been issued road passes. First, the emperor expressly reiterated that it was undue leniency on Mingde and Aligun's part to clear accused deserters who were in fact on valid passes at the time they were adjudicated. Second, and more surprising considering the forces were operating in an environment plagued by malaria (from which many in the Qing forces died), the emperor stated it was also undue leniency on the part of the officials who initially issued the road passes.

[Emperor]: As to the other matter memorialized, the last time when the soldiers got sick at Xinjie (新街)[the site of another rout] and their officials gave them passes to return to the camp, that was not necessary. These are just cowardly, fleeing soldiers. You certainly should not twist things to be lenient with them. (*qianci Xinjie dengchu huanbing bingding, jiyou guan gei yinpiao huiyingzhe, yuan ke wuyong banli, qi shizai qienuo taocuan bingding, duan buke quwei kuandai* 前次新街等處患病兵丁, 齎有官給印票回營者, 原可毋庸辦理, 其實在怯懦逃竄兵丁, 斷不可曲為寬貸). Send an order to Aligun letting him know.⁴²

The same logic that constructed suspected deserters as *ipso facto* guilty and deserving of immediate execution combined with the emperor's suspicions that his officials were using jurisdictional lines as an excuse to push off the investigation of desertion cases onto other

⁴² QSL-QL, juan 817, 1071-1 – 1071-2. Note that an alternative (and reasonable) translation of the emperor's statement would change the meaning significantly: "As to the soldiers who became sick at Xinjie and were given road passes by officials to return to camp, it was originally not necessary to handle them as deserters. But, for actual soldiers who are cowards and flee, do not twist things to grant them leniency." Under this interpretation, the emperor was granting Aligun and Mingde's request to drop these fourteen from the desertion rolls.

officials. He exhorted his officials to pay no attention to jurisdictional boundaries when adjudicating these cases:

October 2, 1768 (QL 33/8/22). An order to the Grand Council [to prepare a court letter based on the order] on the matter of Dingchang's 定長's memorial regarding the apprehension of Sichuan deserter Yang Kui who has already been executed in accordance with the statute (*yijing zhaoli zhengfa* 已經照例正法) and also in the matter of the investigation into the other Sichuan soldiers who fled with him, Zhoucheng, Hanning, Jin Yin.

[Qianlong Emperor]: In this campaign to kill the Burma bandits, we deployed Green Standard soldiers. Yet, they dare to desert, run far away and hide. The facts and circumstances are really evil. I have issued many edicts to rigorously apprehend them, but there are been few apprehensions. Recently, Liangking memorialized that he had apprehended Yunnan deserters. Today, Sichuan memorialized that a Sichuan deserter was apprehended in Huguang. These fleeing criminals are afraid they will be recognized in their own provinces, so they dare not return to their native place (*bu gan huizhi yuanji* 不敢回至原籍). Thus they flee.

Because officials are not working together across jurisdictions, it allows these criminals to escape the net. In order to manifest military discipline, send an order to Artai, Dingchang, Liangking, and Chengdao 程燾. Only by ordering all their subordinates to select good teams (to apprehend deserters) and by working together regardless of the original province of the deserter, immediately apprehending and trying them, and not caring the least about administrative boundaries ...⁴³

The emperor's patience grew thinner and thinner for cross-jurisdictional coordination. On

October 21, 1768 (QL 33/09/11) Hunan Governor Fang Shijun 方世儁 memorialized regarding the apprehension of two deserters from the Sichuan Deployed Camp who had been deployed to fight in Burma. They had been apprehended in Hunan. Fang explained that he had not yet executed the deserters because he had sent lateral requests to the Sichuan and Yunnan-Guizhou governors-general for the original enlistment information on these deserters. He reported that when he received the information back from Sichuan and Yunnan-Guizhou, he intended to send

⁴³ QSL-QL, juan 717, 1074-2 – 1075-1.

up another memorial on the results of the adjudication.⁴⁴ The first thing one should note is that Fang's expressed actions conformed closely to late imperial legal culture of how cases should be carefully investigated. Under a pre-Qianlong standard, this type of deliberate, patient, and thorough effort to get the facts right would have been represented as good administrative-judicial-bureaucratic fieldwork. Times, however, had changed.

The emperor strongly rebuked Fang that he should have *immediately* executed the deserters:

[Emperor]: November 9, 1768 (QL33/10/1). Soldiers who have been deployed to combat against Burma, if they flee and hide when facing battle, that serious crime is deeply evil (*zhengjiao mianfei bingding, linzhen tuotao yuanni, qingzui shenshu kewu* 征剿緬匪兵丁, 臨陣脫逃遠匿, 情罪甚屬可惡).

I have already issued many edicts on this, for governors-general and governors to exercise caution and apprehend them, it does not matter which province they are from (*buju hesheng taobing* 不拘何省逃兵). When they are apprehended, they should be executed. Now, two deserters from Sichuan Suining Camp have been apprehended. From the original documents, you have verified their age, appearance, and registration. They should be expeditiously executed (*jiying xunsu zhengfa* 即應迅速正法) in order to create a deterrence (*yi zhao jiongjie* 以昭炯戒). Why coordinate with the authorities in Sichuan and Yunnan and transfer the investigation, extending this case for a month? *When the case is clear, they should be executed. There does not need to be any special coordination.*

Send this edict to Fang Shijun and have him obey it. Moreover, send this edict to Yunnan, Guizhou, Sichuan, Guangdong, Hubei, Hunan, every governor-general and governor. From now on, whenever deserters are apprehended, immediately and meticulously investigate. Once there are no doubts about their name, age, and appearance, then execute the criminal according to the precedent. There is no need to make collateral inquiries.⁴⁵

Although the emperor still gave lip service to the late imperial legal principal of “meticulous investigation,” it was clear that the thrust of “meticulous” now applied to the apprehension and execution, not the process of deliberate adjudication and careful matching of the right degree of

⁴⁴ ZPZZ-NPM, 025896.

⁴⁵ QSL-QL, juan 820, 1126-1 – 1126-2.

punishment for the precise degree of guilt under all the circumstances. The emperor's self-contradictory dictate of *expeditious yet thorough* adjudication put his officials in the difficult position of having to decide when they were *just sure enough* to go ahead and execute someone on their own. In November 1761, in a ginseng smuggling case involving an accused by the name of Wang San, the Board of Punishments requested Yunnan Governor Liangking to investigate Wang Er (who was then located in Yunnan). It seems that during the course of the investigation, another man, Shao Liangyu, came up for suspicion of desertion. Although by this time desertion had been removed from the routine process and transferred to the militarized track, because this case involved ginseng smuggling, it had ended up at the Board of Punishments (desertion surfaced as a collateral issue during the investigation). The emperor, responding to a memorial from the Board, rebuked those involved, stating that Shao Liangyu should have already been marked as a deserter and executed at the beginning. The emperor again emphasized that punishment could not be delayed:

[Qianlong Emperor]: November 21, 1768 (QL33/10/13). An edict. The Board of Punishments has reviewed and redrafted a provisional sentence in the case of Wang San who had requested through his Baoshan County family member Wang Er to buy ginseng. The Board of Punishments requested the Yunnan governor to interrogate Wang Er to determine all the facts. With regard to soldier Shao Liangyu, he was first reported a deserter from the deployed camp and was later apprehended in Guizhou. He lied and said Wang San had made him transport baggage. This was deceptive. According to the Board of Punishments' investigation, Wang San did not order him to accompany them. [According to the Board], this criminal is really a deserter. When he was apprehended, he lied and said he was discharging a duty. With even less doubt, send this to Liangking. Quickly investigate the desertion circumstances of Shao Liangyu. Immediately execute him on the spot. And from now on, when apprehending deserters, they must be rigorously questioned, and handled according to the statute [the new militarized statute discussed in Chapter Six]. Do not again like this be fooled by their deceitful confessions thereby allowing punishment to be delayed (*wuzai sici tingqi jiaogong ji miu*

毋再似此聽其狡供稽覈).⁴⁶

This case demonstrates how the routine process (for the ginseng case) was continuing to function in much the same way as it had while at the same time a discrete, yet expanding, category of “extraordinary” elements – here, desertion – were sliced off and handled according to militarized adjudication. Upon conducting some quick investigation, Liangking requested an edict to immediately execute Shao. This point is interesting because by this time deserters were to be summarily executed (and in this case specifically the emperor had directed him to just investigate and execute on his own), thus Liangking’s request suggests that he must have harbored some doubts about this particular deserter or at least felt the price of top-cover approval was worth a possible rebuke from the emperor for being inefficient.

Liangking’s reasoning was very much in line with the discursive representation of desertion as it had developed up to that point. He reasoned that a thorough investigation was not necessary because whether Shao Liangyu left the ranks on his own or whether it was at the request of some other soldier to carry baggage, it should still count as desertion and be subject to summary execution. Ironically, in his response, the emperor accused Liangking of engaging in shoddy judicial work:

[Qianlong Emperor]. An edict. According to Liangking’s memorial regarding the Wangsan case, the soldier who was escorting the baggage, Shao Liangyu, has already been rigorously interrogated as to whether or not he was a deserter. [According to Liangking], being on campaign, and listening to someone’s advice to leave the ranks, that is the same thing as campaign desertion, and thus [Liangking’s] memorial requested to immediately execute him (*dan fengpai suizheng, ting ren shu shi liwu, ji yu sitao wuyi* 但奉派隨征, 聽人囑使離伍, 即與私逃無異).

[Emperor]: This is all wrong. This criminal Shao Liangyu, according to the trial, it was

⁴⁶ QSL-QL, juan 820, 1135-2 – 1136-1.

Wang San who ordered him to go together with Bo Wenzhi, and escort the baggage. It does not match the confession of Wang San taken by the Board of Punishment. The two should confront each other to clarify (*zi ying zhidui mingque* 自應質對明確) so that there is no perversion. How can [Liangking] just ask for an edict to execute him?

Send an edict to Liangking to send that criminal quickly to Beijing. Turn him over to the Board of Punishment to confront Wang San.

To the emperor, it was a significant fact that Shao Liangyu seemed to not be acting with a guilty conscience at the time he was apprehended. In other words, his behavior seemed to indicate that he did not think he was deserting:

[Emperor] When Shao Liangyu arrived in Guizhou, he dared to go to the *dusi's* office. This is not the same as absconding/desertion (*zi yu sitao xingji bulei* 自與私逃形跡不類). At that time he was hurriedly identified as a deserter and arrested. Have Liangking investigate, and memorialize back the facts.

The emperor's perceptive analysis of the facts belied the fact that Shao Liangyu's rash apprehension and Liangking's crude adjudication were both consistent with the adjudicative discourse on deserters as it had developed up to that point under the dominant influence of the emperor's very own views. Based on this rebuke by the emperor, Liangking engaged in a more thorough investigation and legal analysis of the case (which was more characteristic of the *mentalité* of adjudicating officials prior to the Zhandui-Jinchuan debacle). In the second round, Liangking reported:

[Liangking] Shao Liangyu was originally a local official. Because he did not have a pass, so he was nabbed as a deserter during a roundup. Later, based on the desertion report from the deployed camp, it appeared true. But when I sent the provincial judge and the provincial military commander to try him, the results of the interrogation conflicted with the findings of the Board of Punishments. It is really hard for me to escape the blame for not sending him to Beijing to confront Wang San and instead just requesting to execute him.

Recounting the course of events, when the emperor found out about the deserter from the Board

of Punishments, he directed Liangking to immediately investigate and execute him. Liangking, no doubt under the weight of the imperially-dominated discourse, requested an edict to execute him regardless of the mere factual-legal distinction of whether Shao had left the ranks on his own or been ordered by some unauthorized third party to do so. It was ironic that the emperor then rebuked Liangking for his lack of attention to legal and factual detail when the emperor himself had been putting such pressure on officials to expeditiously execute with minimum coordination. Despite the fact that the whole course of the imperially-dominated adjudicative discourse since Zhandui-Jinchuan supported Liangking's summarized treatment of the deserter, the emperor again scolded him, saying, "This is really muddleheaded and this writing reflects the evil habits you have developed because you are deep off in the outer provinces (*yi yin shenru waisheng wenguo e'xi* 亦因深入外省文過惡習)." ⁴⁷

This case shows how multiple levels of hierarchical review – precisely what was most obviously eliminated with the turn towards militarized tracks – affected the initial investigation and trial, as Philip Huang found in the adjudication of local "civil" cases (discussed in the Introduction). It was not just a matter of eliminating review. The elimination of review affected the *mentalité* of those investigating, adjudicating, and (under militarized adjudication) autonomously punishing suspects to begin with. The lynchpin difference between Shao Liangyu's case and the many three-to-four-fold memorials that kept streaming in noting the execution of deserters among the "337" was that his case happened to become caught up with a ginseng smuggling case so its details received some level of review. ⁴⁸ Not surprising, the facts

⁴⁷ QSL-QL, Juan 822, 1163-1 – 1163-2.

⁴⁸ Meanwhile, very brief palace memorials continued to arrive from Liangking, Mingde, Guangxi Governor Biyuan,

were not so clear after all. The emperor happened to get interested in the case (although his initial interest was just to get another deserter executed). This forced a more careful investigation at the local level that ultimately more or less cleared Shao. But, having any sort of review was becoming very, very scarce in militarized-tracked cases. Few accused deserters were as fortunate as Shao Liangyu. In this case, ginseng saved this soldier's life to the extent that it resulted in some additional procedural review. However, militarized tracks were ultimately contrary to this type of review except in serendipitous circumstances like this case.

As a general matter, the militarizing tendencies I identify in late imperial legal culture – dominated by the Qianlong emperor – reconstructed, at least in some instances, the symbolic meaning of time-honored legal procedures as a waste of time – a pedantic adherence to

and others documenting the summary execution of individual campaign deserters. On March 14, 1769 (QL 34/2/7) Guizhou Governor Liangking memorialized 奏為拿獲撫標在營出師滇省逃兵平元龍審明正法; 奏為拿獲撫標在營出師滇省逃兵平元龍審明正法事. ZPZZ-FHA, 04-01-26-004-066 / 04-01-26-001-1822; On March 28, 1769 (QL 34/2/21), Yunnan-Guizhou Governor-General Mingde memorialized 奏為昭通府拿獲逃兵二名各審明即行正法事. ZPZZ-FHA, 04-01-01-0279-006 / 04-01-01-038-2187; On April 25, 1769 (QL 34/3/19), Yunnan-Guizhou Governor-General Mingde memorialized notifying the emperor that one deserter had been apprehended, tried and immediately executed (拿獲逃兵審明即行正法). ZPZZ-FHA, 04-01-12-0128-103 / 04-01-12-022-1464; On May 13, 1769 (QL 34/4/8), Shaanxi Governor Biyuan 畢沅 memorialized that two deserters had been apprehended, tried and executed. ZPZZ-FHA, 04-01-01-0323-022 / 04-01-01-043-1557; On May 26, 1769 (QL 34/4/21), Guangzhou Manchu General Mingliang 明亮 and Pacifying the Frontier Right Wing General Agui memorialized the emperor that a new-recruit deserter (新兵) from the Sichuan Provincial Military Commander's Directly Attached Brigade, Forward Battalion, Xu Zhankui 徐占魁 had been apprehended, tried (訓明 this time as opposed to the usual 審明) and executed. ZPZZ-FHA, 04-01-16-0057-062 / 04-01-16-009-0161; On June 2, 1769 (QL 34/4/28) 護理廣西巡撫 畢沅 memorialized notifying that two deserters had been apprehended, tried (審明) and executed. ZPZZ-FHA, 04-01-01-0323-021 / 04-01-01-043-1551.; On June 26, 1769 (QL 34/5/23) Yunnan-Guizhou Governor-General Mingde memorialized to report that deserter Dong Tianfu had been apprehended, tried (審明) and immediately executed. ZPZZ-FHA, 04-01-01-0279-009 / 04-01-01-038-2201; On October 6, 1769 (QL34/9/7) Guizhou Governor Liangking reported that Guizhou campaign soldier Wen Huan and others had deserted from the campaign army, and on the same day that he was apprehended, was tried, taken to the execution grounds and 恭請王命 and executed (all in the same day) (獲日即行正法) in order to promote military discipline (肅軍紀). ZPZZ-FHA, 04-01-01-0279-018 / 04-01-01-038-2254. On November 10, 1769 (QL34/10/13) Yunnan-Guizhou Governor-General Mingde memorialized that Deserter Li Shenghe (李盛和) had been apprehended, tried (*shenming* 審明), and immediately executed. ZPZZ-FHA, 04-01-01-0279-024 / 04-01-01-038-2292.

bureaucratic forms – in extraordinary cases. Prior to the Qianlong reign, the lengthy, detailed criminal memorials that the Three Judicial Offices forwarded to the emperor requesting final approval of death sentences had reflected the constitutive place of procedure in late imperial legal culture. These documents were the culmination of months or even years of retrial-review. They carefully parsed out facts, noted contradictions, and assiduously matched the facts to codified law or reflected sophisticated analogies. They noted other provisions in the law which provided for leniency or aggravated punishment. They concluded by recommending a sentence that was usually approved by the emperor. The symbolic element of this procedure itself must be understood as part of the adjudicative discourse and as constitutive of late imperial legal culture. The Qianlong emperor, at least for the malleable and expanding category of “extraordinary cases,” however, re-characterized such procedures as at best a mindless and over-fastidious adherence to empty procedure, and at worst, an excuse officials used for pushing off their responsibilities on other officials (as with the cross-jurisdictional investigations, noted above).

Just as “deserters” were now construed in a way that required their immediate apprehension and execution, by this time, the palace memorials recording individual executions had also become brief and *pro forma*. Few of these memorials – and there are hundreds from this point until the end of the Qianlong reign – were more than three or four folds long. They took on a completely formulaic recitation, often opening with some close variation on the caption, “notification of the apprehension of a campaign deserter” “*zouwei nahuo taobing* 奏為拿獲逃兵” and concluded with “I ordered [such and such local or military officials] to escort the accused to

the execution grounds and had him executed under the imperial standard.”⁴⁹ Compared with the long and detailed routine criminal memorials that had documented such campaign desertion cases up through the beginning of the Qianlong reign, these curt notices reflected the paradigmatic change in the adjudication of such cases that I refer to as the militarizing tendencies in late imperial legal culture.

Certainly, this shift to less procedure in certain cases reflects some of the time-distance-resource factors (cited by Zhang Shiming) that became more acute as both imperial space and population expanded massively without a subsequent increase in adjudicative infrastructure (as Melissa Macauley pointed out regarding civil litigation). But, if we focus on the discourse itself, the enduring legal-cultural feature was the emperor’s ideological reconstruction of extraordinary cases as simply not requiring these procedures. In one case, a local, non-Han southerner, Shayila Zhawang got together with a man who was apparently a Han commoner (*minren* 民人) to “loot along the border.” They were apprehended and tried under Jingzhou Manchu General Yongrui 永瑞. Yongrui forwarded a memorial to the emperor citing a draft sentence under the “strong-armed robbing and burning statute.” In his response, the emperor rebuked Yongrui for not just taking it on himself to execute the offenders:

[Emperor]: April 12, 1769 (QL 34/3/6). Order to the Grand Council. From what you wrote, you do not get it. I have already written an order in a rescript. These types of bandits dare to get together and enter into the strategic areas under the *tusi*. They wantonly burn, kill, and pillage. When we use troops, and apprehend them, they should be immediately handled according to militarized adjudication and displayed to the barbarians

⁴⁹ ZPZZ-NPM, 403024416-3. On July 29, 1768 (QL33/06/15), Yunnan-Guizhou Governor-general Aligun and Yunnan Governor Mingde memorialized the summary execution of these four rank-and-file deserters with absolutely no extraneous comments and minimum citation to law. Summary really meant summary. The emperor simply noted the executions. ZPZZ-NPM, 025284.

in order to create a deterrence (*jijing nahuo, ziying ji yi junfa congshi, xuanshiyi, bizhi jingti* 既經拏獲, 自應即以軍法從事宣示夷, 俾知警惕).

[Emperor] But, Yongrui did not immediately do this. Instead he cited the strong-armed burning and robbing statute and substatute *which should be used in the interior* (*qie yuanyin neidi qiangdao fenjie lili* 且援引內地強盜焚劫律例). He drafted a sentence and sent it up (*wenni juzou* 問擬具奏). This is being such a pedantic rule-follower and is all confused (*juni hutu* 拘泥糊塗). He completely does not understand the difference between what is important and what is not (*quan buzhi shi li qingzhong* 全不知事理輕重). Yongrui, Wufu, sent them a special edict. For every criminal apprehended, quickly handle them. Do not delay.

This case is significant because the emperor stated outright what he had been inferring and pushing for. If the case was an extraordinary case, then what had been time-honored routine legal procedures were just a fastidious waste of time – a pedantic exercise – and were “not important.” Following the procedural rules was discursively reconstructed as being pedantic. According to the emperor, Yongrui should have just executed the offenders, suggesting that by 1769 (QL 34), this type of case had also been added to those categories of cases for which militarized adjudication had been deemed appropriate as a default track (although it was not published in the Code as such).

The emperor continued to exhort his officials to handle “extraordinary cases” in this way, shaping the discourse to laud cases that were adjudicated under militarized procedures and to criticize ones that were not. For instance, first the emperor wholeheartedly approved Fuheng and Mingde’s summary execution of a soldier who abused a civilian porter:

[Qianlong Emperor]: September 9, 1769 (QL 34/8/10). Edict. Previously Fuheng reported that Fujian Green Standard sailor Lan Tingbo, at Malong Department place, cut a hole in a civilian porter's ear. Fuheng heard the report from the local authorities and informed Mingde who executed the criminal at the spot where it occurred. That was all done correctly. I have already commented in my rescript.

But in the same edict, the emperor criticized Guizhou Governor Ganing's 喀寧阿 for putting a soldier in a cangue (a punishment associated with the routine process) for similar misconduct.

[Emperor]: This was a grave error. When soldiers are ordered to deploy or are on deployment and cause trouble, they should be handled according to militarized adjudication in order to deter the others (*chuzheng bingding, ganyu yantu zishi bufa, ziying ji an junfa congshi, yi jing qiyu* 出征兵丁, 敢於沿途滋事不法, 自應即按軍法從事, 以儆其餘). But, Ga'ning's saw him only as a common criminal, and only put him in the cangue. ... How can military discipline be maintained in this way? Notify Fuheng of this case.⁵⁰

A couple weeks later, on September 17, 1769 (QL 34/8/18), Guizhou Governor Liangking memorialized for authorization to adjudicate under militarized adjudication the case of Zhang Hongren, a soldier who beat a Miao porter to death (*zouwei oubi Miaofu zhi bingding Zhang Gongren, qing zhao yi junfa congshi, lizheng xing you* 奏為毆斃苗夫之兵丁張供仁請照依軍法從事立正典刑由). The emperor responded, “Do it quickly according to the recommendation (*yi yi su xing* 依議速行).⁵¹

V. Militarized Adjudication and Desertion at the End of the Burma Campaign

By the end of the Burma campaign, the Qianlong-era adjudicative discourse on deserters had matured. The main threads were neatly summed up in an imperial edict from January 1, 1769. First, the emperor again affirmed the link between desertion and lack of military discipline (which itself was identified as the cause of military operational failure) and the necessity of executing every last deserter under militarized adjudication in order to restore military discipline. This reflected the original reasoning that saw militarized adjudication as a counterweight to

⁵⁰ QSL-QL, juan 840, 224-1.

⁵¹ ZPZZ-NPM, 010446.

leniency that had been part of the discipline discourse from as far back as Zhandui-Jinchuan; and combined it with the adjudicative discourse which had reconstructed desertion as a synecdoche for the whole disciplinary problem:

[Emperor]: January 1, 1769 (QL33/11/24). Edict. Soldiers who fled the battlefield should be apprehended and immediately punished in order to maintain military discipline (*bingding linzhen tuotao ziying jinshu chana, lizhi dianxing, yisu junji* 兵丁臨陣脫逃自應盡數查拏, 立置典刑, 以肅軍紀). But the habitual cowardice of Yunnan soldiers developed over the cumulative mistakes of successive terms of governors-general, governors, provincial military commanders, *zongbing*, etc. It coalesced into a mistake/disruption. It has taken years.

At this time, there is a need to conduct military operations so the matter is just becoming clear. If we do not at this time correct things, we will not be able to use Green Standard forces to defend important areas along the frontier. And we cannot just admonish Yunnan soldiers and then not let them into the ranks. This type of cowering, cowardice, not going forward, and drafting away, it is a long-term habit. How to reestablish the system? These soldiers, we can punish them after the fact, but how to get them in shape before the fact? Send an order to Aligun and the others.

For those soldiers currently within the deployed camp, encourage them even more. (*cishi zaijunyingzhe, gudang jiayi zhengli* 此時在軍營者, 固當加意整勵) and for the soldiers of the various battalions and camps of the inner-empire, they must be taught clearly about the righteousness of bravery (*ji neidi geying, yi ying shili dong chi bi mingyu you yong zhifang zhi yi* 即內地各營, 亦應實力董飭俾明於有勇知方之義)...⁵²

While the imperial language seemed focused more on education than punishment, it still reduced the problem of military failure to one of personal and institutional indiscipline (here, focusing on the latter). His fundamental position had not changed. With each memorial that a deserter had been executed, the emperor just sent out an order lamenting that the number executed was still too few:

On November 25, 1769 (QL34/10/28). An edict. According to Mingde's memorial, deserter Li Shenghe was apprehended, tried (*shenming* 審明) and executed.

⁵² Juan 823, 1177-1 – 1177-2.

[Emperor] I have already written a rescript on the memorial. Previously, that so many Yunnan Green Standard soldiers deserted (or temporarily fled) when facing the enemy on the battlefield was greatly linked to discipline within the deployed camp. I have ordered Mingde many times to rigorously investigate and apprehend them and punish them. It's already been a while. But he has only memorialized that a few have been apprehended....⁵³

Even as the campaign wound down, the emperor clearly blamed all the problems on the

Green Standard Army:

[Emperor]: December 26, 1769 (QL 34/11/29). Edict. At this time that my dynasty is victorious. How can a minor chieftain [the Burmese] cause such trouble? They must be punished to deter others. But the Yunnan Green Standard soldiers have the accumulated habit of cowardice, and the thieves [the Burmese] are not afraid of them (*er woguo jia dang quansheng zhishi, qi ke ren xie qiu tiaoliang, jing bushi zhi chengchuang, kuang diansheng liuying, kuangqiu jixi, jiu wei zeifei suoqing* 而我國家當全盛之時，豈可任小醜跳梁，竟不示之懲創，況滇省綠營，恆怯積習，久為賊匪所輕).

Not surprising, his solution was still militarized adjudication:

[Emperor]: Of course, the Green Standard troops should be sincere, not seek to avoid the frontlines, and if they do cower and refuse to go forward, they should be handled under militarized adjudication. (*ruo duidi weibujian, shangdang zhi yi junfa* 若對敵畏不前，尚當治以軍法).⁵⁴

And again, a few months later,

[Emperor]: May 29, 1770 (QL35/5/5). Edict. Although one moment these [deserters] appear crafty and hide, they are really tired cowards. When they leave the wives and children they are attached to, they go through different places and delay. And then they abscond to their original home or they might plan to run off to some far off place, but eventually they must go home to find out what is going on. They might go here and there, but they do not leave Yunnan province. The governor and governor-general cannot stop their apprehension efforts. They cannot be become lax over the days.

Transmit an order to Zhangbao. Order all your subordinates to strictly apprehend the deserters who have not been apprehended over the years. *Don't let one escape the net.*

⁵³ QSL-QL, juan 845, 320-1 – 320-2.

⁵⁴ QSL-QL, juan 847, 345-1 – 348-1.

As they are apprehended, immediately execute them (*yuyou jiu huo zhe, liji zhengfa* 遇有就獲者, 立即正法). Do not be even a little lenient.

The Yunnan deployed camp has been lax for too long. It is time to strictly issue an order to manifest discipline and to create a deterrence. If Zhangbao and the others do not get things straight, and just go on with their routine perfunctory work, and the Yunnan Green Standard soldiers continue in their accumulated bad habits, how bad can it get! ... If they are lax on the frontier, and it leads to mistakes. ...how will they be able to face me? Transmit this order to them.⁵⁵

Even in the aftermath of the Burma Campaigns, officials continued to apprehend and execute campaign deserters: On October 18, 1770 (QL 35/8/30), acting Yunnan-Guizhou governor-general Zhangbao memorialized in language that characterized the discourse throughout the remainder of the Qianlong reign. Six deserters had been apprehended. Some had fled the rout at Mubang, some had fled the deployed camp at Yongchang: “They all abused the law (*jun shu dagan jili* 均屬大干紀律). According to the statute requiring execution for those who desert on the battlefield (*zhao linzhan tuotaoli zhengfa* 照臨陣脫逃例正法), I have already executed the six.”⁵⁶ In an ominous warning for future deserters, the emperor issued an edict in response to this memorial:

[Qianlong Emperor]: There are still many deserters, you must strictly apprehend them. Do not let any escape the net. These deserters *will eventually go home*. It will be in your Yunnan province. There are still many not apprehended. Immediately apprehend them and memorialize.⁵⁷

⁵⁵ QSL-QL, juan 858, 488-2 – 489-1.

⁵⁶ QSL-QL, juan 867, 639-1. There continued to be others as well : On September 23, 1770 (QL 35/8/5) Guizhou Governor Gong Zhaolin memorialized regarding the apprehension of Anlong Zhen Center Battalion Deserter Wang Zhaokui (安籠鎮中營兵王兆魁). He was tried (審明) and executed. ZPZZ-FHA, 04-01-01-0288-045 / 04-01-01-039-2534.

⁵⁷ QSL-QL, juan 867, 639-1.

After the Burma campaign, more of what the emperor later characterized as his “Ten Great Campaigns” were still to come. The Second Jinchuan Campaign (1771-76), the “Pacification” of Taiwan (1786-88), The Gurkha Campaigns (1788-1793) and the Qing’s campaign against Vietnam (1788-89). While each of these campaigns saw variations in the way campaign deserters were treated, like eventually allowing routed soldiers from the Second Jinchuan Campaign to be exiled to Xinjiang rather than be executed *if they turned themselves in*, the adjudicative discourse and general framework of relentless and meticulous government pursuit, apprehension, and execution of campaign deserters was never reversed during the Qianlong reign. The pattern had been set in the 1750’s.

VI. The Imperial Standard and the Legitimization of Militarized Adjudication

In this Chapter and the last, the emperor and his officials referred to their summary execution of deserters as an exercise of *junfa*. But, around 1767 (QL 33), the frequency of the term *junfa* greatly diminished from *zouzhe* that were sent to the emperor noting the execution of individual deserters. From 1767 on, major officials involved in the Burma Campaigns – Liangking, Artai, Ening, Mingde, Dingcang, Fang Shijun, Tuside, to name a few – all began to use a standard format when reporting the summary execution of Burma deserters:

According to the statute, when soldiers desert from a military campaign, their punishment will be drafted as *lijue* decapitated, and governors and governors-general will rigorously apprehend them and execute them in the place where they are apprehended. At this time, I have apprehended [name of deserter] who deserter without authorization from the [name of the deployed camp] . It is a grave disregard for the law. I have therefore obeyed precedent by invoking the imperial standard and appointing officials who have executed [name of offender] at the execution grounds.

With minor variations, starting about April 21, 1768 (QL 33/3/5) in a memorial by Liangking noting the execution of a deserter, this language became standard in all deserterion summary

executions throughout the rest of the Burma campaign and the rest of the Qianlong reign, including in all his remaining “Great Campaigns.”⁵⁸ These very brief – usually no more than six or seven folds – memorials were mere notices to the emperor than an execution had take place. There may be a specific edict directing this phraseology, but I do not believe so.

While the cases cited in this chapter make clear that the emperor considered the immediate execution of deserters as a function of militarized adjudication (*junfa*), the statute in force, at least on its face, continued to require central review and an imperial edict prior to execution. Unlike the new *genyi*-desertion statute which explicitly called for executed “on the day apprehended,” the modified rank-and-file deserter statute merely called for the sentence to be *drafted* as *lijue* decapitation. Yet, we also know that the emperor demanded that these deserters be executed under militarized adjudication. What about the *lijue* requirement for a post-review edict authorizing the execution? In most of the cases cited thus far in this chapter, it appears that the requirement was just ignored. After all, the emperor was, himself, at the apex of the military-judicial hierarchy. But, what about officials adjudicating these cases, was there not some type of contradiction between citing the law (after all, it was a recently-enacted statute) and then not following it in the same memorial? The semantic fix for this occurred sometime in QL 33 when officials executing soldiers during the Burma campaign began to use the phraseology of summarily executing deserters “under the imperial standard.”

The reference to the imperial standard in *zouzhe* notifying the emperor that individual deserters had been summary executed was very different from how the imperial standard had

⁵⁸ This language is quoted from a memorial from a memorial by Liangking, ZPZZ-NPM,403024416. More examples from the Burma campaign include ZPZZ-NPM, 403025022,403024924, 025073,025386, 025393, 025686, 026169, 026278, 201870, 026710, 10935, 027684.

been cited prior. In the past, the imperial standard had (usually) meant that the official was in possession of some type of edict authorizing the execution. Now, the imperial standard itself was a constructive edict. Now, it would not mean that a case had been reviewed, but rather that the official had a general authorization to execute these types of offenders. It basically came to reflect that the official could execute the offender because the emperor had ordered all such offenders – even prospective offenders the emperor did not even individually know about – executed. It took the very idea of case review and made the whole thing constructive.

There was a precedent for the use of the imperial standard in this fashion because as early as May 9, 1761 (QL 26/4/5), the emperor had issued an edict for certain parricide cases to be adjudicated under summary execution using the rhetoric of the imperial standard, arguably to constructively satisfy the review and edict requirements of the Code.⁵⁹ From about QL 33 on, references to “junfa” in cases other than battlefield cases for which the Code ostensibly required review and an edict – *lijue* cases – nearly disappear from the record and are replaced by invocation of the “imperial edict.” From the Burma campaign, it is clear that “the imperial standard” essentially reflected an attempt to satisfy ostensibly routine Code requirements of an edict while continuing to exercise the normal summary execution practice of militarized adjudication. The desertion cases from the Burma campaign make it clear that the imperial standard was a sign of the legitimization of militarized adjudication into the Code. No longer would the term *lijue* executions necessarily require review and a final edict. As we will see in the final Chapter, for “extraordinary cases,” officials would now be expected to satisfy the edict requirement by invoking the imperial standard. Semantically, this was a way to implement

⁵⁹ QHDSL, juan 800, Board of Punishments, 757-1 –757-2; QSL-QL, juan 634, 76-2 – 76-3.

militarized adjudication under the Code while not explicitly rejecting traditional interpretation of lijue. Lijue was still lijue, but could now be constructively satisfied. This represented a significant legitimization of militarized adjudication.

VII. Conclusion to Chapter Six

During the Burma Campaigns, several additional on-going processes came together. Before those campaigns even started, deserters had been subject to the militarized track (as discussed in the last chapter). Burma reflected the processes of southern-integration that had accelerated under the Yongzheng emperor's statecraft policies (this was the source of the conflict to a certain extent as Qing ambitions collided with Burmese ambitions on taxing the borderlands). The difficulty of campaigning in a disease-ridden marshland far away from supply lines led to the deaths of all four major campaign commanders. The final settlement was more or less negotiated. Yet, we see that despite the impossible conditions, the Green Standard Army took the brunt of the blame from the emperor. It was during these campaigns that the process of Manchu-Han military differentiation – the same process that was at work in a different context with the Manchu-ification of the inner-empire banner garrisons – collided with real military operational failure on the ground in an already militarizing legal culture that showed absolutely no mercy for campaign deserters, even if they turned themselves in. Still, the paucity of actual recorded campaign deserters raises the question of whether the emperor's near obsession with apprehending every last one of them in order to maintain military discipline was an instance of rhetorical over-extrapolation? Certainly the routs were real and affected military operations negatively, but the Qing was also facing significant strategic odds and the number of actual deserters was not great.

The logic of militarized adjudication had a trivializing effect on what had been time-honored procedures of late imperial legal culture, at least in extraordinary cases (an amorphous and expanding category of cases). Those few cases on the margins of military activity at the end of the campaign showed that the Qianlong emperor meant what he was saying about avoiding the routine process in extraordinary cases. Here, it is very clear that one factor which might suggest a case was “extraordinary” was that it did not occur in the inner-empire. Also, it is remarkable that the emperor reconstructed and trivialized the routine retrial-review process, at least for campaign deserters and other select categories of offenders, as overly-fastidious details. Only a little more than a century before, Dorgon’s actions adopting that legal system suggested that he considered those procedures a necessary rule-legitimizing ritual before the Qing’s new Chinese constituency. By this time, ethnic-sovereignty may have been a more important concern for the Qianlong emperor than legitimating Qing rule through the proper performance of routine judicial ritual, but while the effect on discourse and representation was one thing, it had a more direct effect on actual men: soldiers were treated poorly and killed because of these shifts in discourse... real human beings suffered.

It was during the Burma Campaigns that the imperial standard came into widespread use to ostensibly satisfy the requirement that *lijue* offenses be reviewed and only executed upon receipt of an imperial edict. The earliest case I found wherein the emperor directed that the imperial standard be used in conjunction with summary executions was the parricide case of 1761 (QL 26). Since the time of the Burma Campaigns, within the adjudicative discourse on extraordinary cases, the imperial standard replaced the patently-military phrase *yi junfa congshi* in all but the most military-related cases of summarily adjudicated. In other words, within the Burma

Campaigns, we saw the discursive reconstruction of summary execution from something semantically tied to the military sphere and outside the Code to something that could constructively satisfy the routine Code requirement of *lijue*. More importantly, the transformation of the imperial standard from a symbol of the actual imperial will in a particular case to a constructive imperial will opened new possibilities for the legitimation of summary execution because it could be construed as operating within the traditional framework of the law.

As in the last chapter, the Qianlong emperor continued to be the motive-force propelling the expansion of militarized adjudication and its incorporation into late imperial legal culture. While the emperor compelled officials at all levels to adjudicate cases according to militarized adjudication principles, the self-sustaining change that deepened the transformation of the legal culture was a much longer process in which, over the course of many cases and several years, officials became comfortable with taking the power of life and death into their own hands. This reflected a significant change in *mentalité*. This process was already underway by the end of the last chapter, as seen in those cases in which officials took it upon themselves to apply militarized adjudication principles. Looking back from the vantage point of the nineteenth century, these cases were just the beginning.

Chapter 7. The Imperial Will and the Legal-Cultural Origins of Summary Execution

This chapter narrates three things: first, the expansion of militarized adjudication from the frontier to the interior and beyond adjudication of crimes purely situated in the military-institutional context, such as desertion; second, the efforts of both the Qianlong and Jiaqing (1796-1820) emperors to keep summary executions tethered to the imperial will while fostering autonomous adjudication of “extraordinary cases” on the frontier and in the provinces; and third, how this mostly eighteenth-century phenomenon ultimately formed a significant legal-cultural origin of widespread summary executions in the nineteenth century.

I have reviewed hundreds (of what I believe are thousands) of summary-execution cases not involving deserters or strictly military-institutional matters that took place from the time of the Burma Campaigns through the end of the Qianlong reign. Throughout these cases, the Qianlong emperor consistently sought to conform the judgement of his adjudicating officials to the imperial judgment. He sought to maintain central authority over summary executions while jettisoning the “pedantic (*juni* 拘泥)” retrial-review-edict process. He wanted officials to use the imperial standard as a constructive edict, but he wanted that constructive edict to reflect the actual imperial will. The constructive imperial will was essential to retaining central control while also having a highly autonomous summary execution regime. The fact that he was never satisfied demonstrates the insurmountable challenges of this goal. The unintentional result was that both the Qianlong emperor and the Jiaqing (1796-1820) emperor after him, created a discursive space within late imperial legal culture for summary execution in “extraordinary cases” that were supposed to continue to conform closely to the imperial will. This ultimately

resulted in a shift in adjudicative *mentalité* that recognized summary execution as a legitimate and routine practice under appropriate circumstances.

From the time of the Zhandui-Jichuan Campaigns, officials came to adopt the particular way of describing extraordinary cases that reflected a top-down influence on the adjudicative discourse. According to this discourse, for extraordinary cases, careful adjudication was reconfigured as a waste of time. Following routine procedure became indulgent (*guxi* 姑息) and reflected being a pedantic rule-follower (*juni* 拘泥). In important cases, such pedantic behavior would lead to a delay in manifesting punishment (*jixian lu* 稽顯戮) that might allow the accused the good fortune of escaping punishment (*xingtao xianlu* 倖逃顯戮) by dying or being killed while in the county gaol awaiting the routine criminal process to run its course (*jiangu* 監故). Most of the major elements of this discourse were already apparent within the adjudicative discourse on desertion cases by the end of the Burma Campaign and became standard fare in most imperial-standard summary executions over the next century.

The willingness to accept summary execution on the frontiers, especially in Taiwan and Xinjiang, but also in Tibet, Sichuan, Yunnan, and the maritime frontiers of Fujian and Guangdong, during this period might be expected considering the association of frontiers with war zones and the relationship between the gradient of military operations and militarized adjudication. Over the course of the remainder of the eighteenth century and the beginning of the nineteenth century, however, summary executions became increasingly common in the interior. This process was accelerated as social breakdown and rebellion increasingly brought conditions associated with the frontier into the interior. Summary execution expanded along two

paths, spatially from the frontier inward and conceptually along the path of criminal subject matter that already possessed extraordinary criminological character. Concurrently, as had been the case since Zhandui-Jinchuan, the Qianlong emperor (and his immediate successors) found that officials continued to be unable to distinguish consistently – to his satisfaction – which cases should be summarily adjudicated as extraordinary from which should be adjudicated until the routine process. To deal with this, over time the emperor issued edicts designating entire categories of cases for summary adjudication, focusing on crimes involving the frontiers, gross unfilialness (*zhongda nilun* 重大逆倫), and public order (such as those involving bandit-robbers, pirates, and fugitives).

Over time, the lack of congruence between the constructive imperial will represented by the imperial standard and the actual imperial will led to codification of certain offenses explicitly stating that such cases would be summarily adjudicated under the imperial standard. This codification was a turning point because it reduced the invocation of the imperial standard to a *pro forma* requirement of what had become codified summary execution procedures. Thus, the discursive role of the imperial standard in the construction of crime and legitimization of summary execution under the law changed over time, from a system of actual imperial authorization prior to the Qianlong reign to a constructive imperial edict that satisfied the *lijue* requirements of the Code, and finally to its own codification within the Code beginning in 1789 and accelerating during the Jiaqing and Daoguang reigns (1820-1850). By the end of the Daoguang reign, the Code provisions citing the “imperial standard” constituted a separate and wholly legitimate “imperial-standard summary execution” procedure in the Code. With its own formalization as an independent means of adjudication in the Code, the imperial standard’s

character as a constructive – and flexible – means of meeting legal requirements in what were deemed extraordinary cases was also diminished. From a legal-cultural perspective, the significant change in *mentalité* was that officials now understand summary execution as a legitimate possibility. The near-absolute *taboo* of executing offenders without the emperor's personal say was no longer a constituent aspect of legal culture when adjudicating officials were confronted in the nineteenth century with a trifecta of resource constraints, widespread social unrest and weak imperial control. The continuing challenges of early nineteenth-century uprisings, combined with the onslaught of the Taiping Civil War (1850-64), represented social breakdown on an extraordinary scale. In that War, the notion of a strategic response to eradicate one's enemies came together with legitimized summary execution to produce something new and deadly: strategic summary executions on a new scale.

I. The Geographic Reconfiguration of Inner and Outer Empire

Given the traditional relationship between the frontier, the military operations gradient, and militarized adjudication, it is no surprise that summary execution under the imperial standard expanded along the frontiers through the second half of the eighteenth and early nineteenth centuries.

A. Summary-Execution of Exile-Fugitives

Writing in the 1770's, Wu Tan described the changes over time in the codified language regarding punishment of exiles who fled their place of exile. These exile-fugitives (often referred to as *taojun* 逃軍 in reference to their flight from "military exile") presented an interesting case because they, like military deserters, represented the spatial aspect of the change in summarized adjudication. The original statute, which the Qing adopted in identical form from

the Ming, called for a maximum punishment of one hundred strokes of the heavy bamboo.¹ They had, since at least the Kangxi period, been subject to a form of simplified trial based on their original underlying offense. The apprehending official was supposed to check with the Board of Punishments to ascertain whether the original offense (that landed the criminal in exile in the first place) merited execution in light of the subsequent flight from exile. The Board was supposed to memorialize the emperor. Although there were various statutes added prior to the Qianlong era, the Code never acknowledged a legal mechanism to summarily execute them. This began to change in the fourth decade of the Qianlong reign, around the same time that military deserters became subject to summarized execution during the Western campaigns.² I propose two reasons why summary execution spread quickly among this category of offense. First, this offense typically occurred (or originated) on the frontiers which were already associated with summary execution. Second, exiles had already been convicted of a crime, so summary execution did not so much involve summary adjudication as summary vacation of a sentence and a resentencing (to death).

About the time the Burma Campaigns were concluding, on June 19, 1770 (QL 35/5/26), the emperor rebuked Shanxi governor Oboo for having memorialized requesting an edict authorizing

¹ DLCY, “徒流人逃。”

² In QL 32/12, Shangdong Governor Leerjin memorialized requesting that the distinction between those fleeing exiles who subsequently committed crimes and those who did not subsequently commit crimes be abolished (calling for removing a distinction that at the time was relatively recent for this offense) such that all felons whose death sentences had been commuted to exile but subsequently fled would be subject to execution after imperial review (*qingzhi zhengfa*). The emperor granted the request and this change was recorded in formal law by modifying the statute. QSL-QL, juan 80, 791-2 – 792-1; QHD, juan 834, Xingbu 113, 1070-1. Even after granting the request, each such case still had to be processed to the central government and an edict received *prior* to execution (*qingzhi jixingzhengfa*).

execution of an exile who had escaped from exile in Xinjiang.³ The emperor rhetorically asked, “Why in the memorial did [Oboo] *not just* say that he used imperial standard authority and appointed high officials to execute [the criminal]. How can this governor-general not know the precedent, and think he had to wait [for my approval prior to the execution] in a rescript?⁴ This case is very different from a case handled only four years earlier, in which a man was exiled to Xinjiang, escaped, and had his case adjudicated through the full routine process.⁵ It reflected an alignment of exiles who fled on the frontiers with the way campaign deserters were now being summarily adjudicated, suggesting the conceptual similarity between the frontier and the inner zones of the military operations gradient.

In November 1768 (QL 33/10), the emperor responded to a case memorialized by Yunnan Governor Qiandu 錢度 (d.1772), who had previously served as the Anhui Provincial Judge and the governor of Guizhou, Guangxi, and Guangdong, and was fresh from duty in the disastrous Burma Campaign. The case involved an exile who has escaped from a location in Yunnan. The Qianlong emperor issued an edict to “all governors and governors-general” criticizing “pedantic (*juni* 拘泥) action that leads to mistakes.” The emperor flatly stated that there was no longer any need to memorialize or coordinate with the Board of Punishment prior to execution in such exile-

³ Oboo had previously served as Fengtian Prefectural magistrate (QL 16-20), Guangxi Governor (20-24), Kuqa (Xinjiang) Amban (26-31), Hubei Governor (31-32, 33), Guizhou Governor (32), Fujian Governor (33), Guangxi Governor (33), Shanxi Governor, 刑部右侍郎 (36-37). After this case, he went on to serve as 理藩院侍郎事務(署理)(37), Shanxi Governor again (38-41), 理藩院左侍郎(刑部右侍郎署理) (37-38), and then Fengtian prefect (QL 38). IHP-JBZL.

⁴ QSL-QL, juan 859, 516-1 – 516-2.

⁵ NGDK, 182396-001.

fugitive cases, thereby overturning what had been a long-standing and nuanced way of thinking about such cases in terms of the original offense.⁶

On November 1, 1768 (QL 33/9/22), Huguang Governor General (Irgen Gioro) Dingchang 定長 (1765-68) summarily executed under the imperial standard an exile-felon who fled his exile in Guizhou. Dingchang had previously served as the Shandong provincial judge, the governor of Shaanxi, Anhui, Guangxi (simultaneously serving as provincial military commander), Shanxi, Guizhou, and finally the governor general of Yunnan-Guizhou.⁷ Dingchang cited the death-commutation exile-fugitive substatute (*gaiqiantao li* 改遣逃例) which ostensibly required memorialization of the draft sentence and an edict prior to execution, but then, with neither of those requirements actually met, went ahead and summary executed Liu.⁸ The imperial edict constructively satisfied both requirements.

⁶ The original memorialize read as follows:

November 25, 1768 (QL 33/10/17), Yunnan Governor Qiandu 錢度 memorialized a case of “Fleeing-Military-Exilee” Xiongjun who had broken out of prison, requesting that the officials who supervised the jail be administratively sanctioned. Consistent with his familiar themes, the emperor scolded Qiandu for his leniency, saying the recommendation was wrong and demanding to know how such a proposed course of action would foster deterrence (the same concerns he had been expressing in the military cases)....

[Qianlong emperor]: As for repeat-offender-bandit-sneaky-thieves (*jifei huazei* 積匪滑賊) who had their sentences reduced to exile in Xinjiang, if they flee en route to exile, the facts and crime are truly evil. At the moment they are apprehended, they should be immediately executed. Why should there be any need to research the prior case (the old substatute based the punishment on the original crime)? That takes too much time [for the request to research the original case to go to the Board of Punishments and the response to come back to the official]. If we allow the bandit-criminals to remain in jail for many days, they will take advantage of the opportunity to escape. That wouldn't be handled well. For now on, whenever a criminal like this is apprehended, interrogate him to be sure of the facts and then immediately execute him in order to avoid wasting time and making mistakes. Make this edict known to all governors-general and governors.

QSL-QL, juan 821, 1139-2 – 1140-1.

⁷ IHP-JBZL.

⁸ NGDK, 178433-1.

When officials did not summarily execute such offenders, the emperor was quick to respond. In June 1770 (QL 35/5), the emperor scolded Zhili Governor-General Yang Tingzhang 楊廷璋 (1689-1771) – who went on the next year to serve as president of the Board of Punishments – for forwarding a case for review and an approving edict to execute an exile-fugitive “according to the statute.” The emperor rhetorically stated, “Why would Yang send a memorial asking for authorization to execute him and wait for a rescript before taking action if he knows the prior precedent?”⁹

Huguang Governor General (Zhejiang Governor) Sanboo (Ch: Sanbao 三寶)(d. 1784) on October 3, 1777 (QL 42/9/3) had Liu Hong, whose death sentence had been commuted to military exile in Xinjiang but then had subsequently fled, summarily executed under the imperial standard.¹⁰ Sanboo had served as Hami (Xinjiang) amban in the early 1760's.¹¹ Similar exile-fugitive cases from all across Qing territory can be found, extending through the end of the Qianlong reign.¹² As these examples (and many other cases) show, even though the exile was usually fleeing exile on the frontier, he was often fleeing back to his home someone in the inner-empire, and thus was often apprehended and summarily executed within the inner-empire. Thus,

⁹ QSL-QL, juan 859, 516-1.

¹⁰ NGDK, 179787-1.

¹¹ Sanboo also served as provincial finance minister in Sichuan, Hubei and Hunan, before going on to be governor of Hunan, Guizhou, and Shanxi before taking up duties as the Zhejiang Governor (this case). IHP-JBZL.

¹² In another case that took place in June 1786 (QL 51/5), Guangdong Governor Fugang memorialized his execution under the imperial standard of Zhang Da, a “rebel” who was originally supposed to be exiled to Xinjiang but had his exile commuted to the malarial regions of western Guangdong but then fled. NGDK, 215115-1; Shangdong Governor Mingxing (Ch: Mingxing 明興)(d. 1807) executed another such commuttee-exile under the imperial standard on November 14, 1786 (QL 51/9/24). The next day, Huguang Governor-General Li Shiyao 李侍堯 (d. 1788) executed a similarly-described offender under the imperial standard. NGDK, 100165-1. On QL 51/11, Jiangxi Governor He Yucheng 何裕城 executed another under the imperial standard. NGDK, 093451-1. Henan Governor Liang Kentang 梁肯棠 executed another such felon in QL 53/3 and again on QL 54/7. In a two-fold memorial, Acting Sichuan Governor-General Sun Shiyi 孫士毅 executed another such fleeing felon under the imperial standard in QL 56/11. NGDK, 095607-1.

imperial-standard summary execution of exile-fugitives was an important vehicle for the transmigration of summary execution to the interior. It also gave many provincial officials their first taste of summary execution.

B. *The Frontier and the Extraordinary Case*

There are a number of cases from the late eighteenth century that suggest that the mere fact that a case took place on the frontier was a major factor in making it an extraordinary case appropriate for summary execution. For instance, on June 12, 1784 (QL 49/4/25), Taiwan *zongbing* Chaidaji 柴大記 memorialized that he had executed an arsonist-rapist under the imperial standard. The emperor specifically approved the way Chaidaji had handled the case because it was a “case involving weapons in Taiwan and involved burning, forcible rape, and perversion, was extremely unlawful (*bufa yiji* 不法已極) and the criminal dared to flee and hoped to escape the legal net.”¹³

In August, 1791 (QL 56/7), in a memorial explaining why he had summarily executed an offender, the Urumqi Dutong Šanggan (Ch: Shang’an 尚安) (d. 1812), who went on to serve on Sichuan Governor General, and more importantly for purposes of diffusion of summary execution across the legal culture, as chief minister of the Judicial Court of Review (*dalisi* 大理寺), used the fact that the crime occurred in Xinjiang as the overriding justification why he summarily executed the offender. He stated, “The statute on this point is written as, “Intentional

¹³ The emperor, though, was displeased with Chaidaji for requesting the Board of Punishments to review his action. But the emperor was mystified by the fact that Chaidaji requested review by the Board of an execution already completed: “The *zongbing* already executed the criminal under the imperial standard! This memorial should have only been a notification [of that fact] so that the Board could archive the case. They have no ability to review it [since he’s dead!]. Yet, Chaidaji forwarded the memorial requesting that the Board review the case. He really does not understand the rules governing the memorial system!” QSL-QL, juan 1205, 123-1 – 123-2.

murder will be punished with decapitation *after the assizes* (*gushazhe zhan jianhou* 故殺者斬監候).” He then went on to explain why he deviated from this very clear code provision:

“According to this intentional murder statute, Xu Ying should be sentenced to decapitation after the assizes, but if in the Xinjiang area, if we adjudicate this type of fornicating and lawless evildoer according to the precedent of *after the assizes*, it will be insufficient to create a deterrent. Moreover, because [the criminal’s] own wound has not yet healed, it is especially inconvenient to process the case [under the routine process after the assizes] because that would enable him to [unjustly] benefit from the good fortune of escaping his punishment [by dying from his own wound first], thus immediately after trying him, he was executed under the imperial standard.”¹⁴

There were other such cases out of Taiwan and the maritime frontier.¹⁵

14

On August 11, 1791 (QL 56/7/12) according to the acting District Magistrate of Dihua District, a non-resident (*kemin* 客民) Xu Ying stabbed Ms. Liang née Mei to death and injured his own throat. The autopsy of Ms. Liang’s throat revealed two penetrating wounds. Xu Ying’s throat also revealed one place that had a rubbing injury but he did not die. I ordered the Zhendi Circuit intendant to expeditiously investigate and interrogate. According to the investigation Xu Ying was registered in Zhangye County of Gansu province. During QL 49, he moved to Dihua as a contracted worker. He often hired Ms. Liang to wash his clothes. He forced himself on Ms. Liang and they had sex. After this he could have with her at his convenience. Once he said he wanted to marry her. Because he had no resources, he did not marry her. Ms. Liang had sex with the Veterinarian Ma Jinyu and they recognized each other as cousins. On 7/4 Xu Ying went to Ms. Liang’s home and saw her sitting on the kang with Ma Jinyu. Xu scolded Liang and Ma and said they shouldn’t be doing what they were doing, and they got in an argument. Landord Zhang Sheng encouraged them to break it off. Xu Ying got angry. On the afternoon of the 11th, he went back to Ms. Liang’s house to cause trouble with Ma Jinyu. He saw Ms. Liang sleeping alone on her bed. Xu Ying then closed the door and got on the kang to sexually assault Ms. Liang. Ms. Liang sat up and resisted. Xu Ying then cursed Ms. Liang saying that she had replaced him with Mr. Ma. Ms. Liang cursed him back. Xu Ying suddenly became motivated to kill her so he pulled out the small knife he usually carried on him and stabbed Ms. Liang’s throat in two places and also stabbed below both her breasts. She immediately died. Because Landlord Zhang Sheng was returning home at this time, she heard the commotion, pushed open the door and tried to stop Xu. Xu was afraid of getting in trouble with the law so he stabbed himself and fainted on the ground. Landlord Zhang reported the crime. Xu (or Zhang’s) story held up under careful questioning. Xu was brought forth and this slave [I] personally questioned him again. His story was consistent with what he had told the circuit intendant.

NGDK, 015649-4. The emperor responded simply, “Acknowledged (*zhidao le* 知道了).”

C. Interior Cases with Significant Connections to the Frontier

There was a progression from frontier cases to cases associated with the frontier. In the series of cases that follow, the adjudicating officials or the emperor specifically noted particular frontier associations when justifying or directing summary execution.

In an April 1784 (QL 49/R3) case memorialized by Jiangxi Governor Yixing's 伊星阿 (d. 1849) involving Sichuan criminals attacking a family and committing arson in Hubei, the emperor responded, recognizing that this was a case that called for a draft of *lijue* punishment under the Code, but stated that because “the matter was clear,” and it would take significant time for the case to be memorialized and reviewed, that the provincial officials should use the imperial standard and execute the criminals. He further directed that this edict – directing use of the imperial standard to satisfy the *lijue* review-edict requirements – be sent out not only to those officials in charge, but to every governor-general and governor in the empire.¹⁶

¹⁵ These were far from one-off incidents. In November 28, 1792 (QL 57/10/15) the Taiwan *Zongbing* and Taiwan Circuit Intendant jointly memorialized again citing a precise statute that required an edict prior to carrying out the execution in the case of strong-armed robbers, but as in the previous cases then went on to announce that they had summary executed the accused under the imperial standard. The officials acknowledged, “the sentence should be drafted as *lijue* execution (*yi qiangdao yizing decaizhe zhanjue luming ni zhan lijue* 依強盜已行得財者斬決律名擬斬立決)” NGDK, 151251-3. In another case, Maritime Provincial Military Commander (水師提督) Huang Shijian (黃仕簡) executed Fujian-Taiwanese rebel Xu Guoliang on April 17, 1783 (QL 48/3/16) under the imperial standard. NGDK, 096247-1.

¹⁶

Emperor: this is all appropriate. Having this type of arson and plunder case on the Sichuan-Hunan Border, all effort must be put forth to arrest them. Te Cheng'e and Yao Chenglie have already gone forth. It is appropriate that Yixing'a remains in Hunan to handle things there. There is no need for them to all go forward together. He should order the officials to arrest them, question them. Their crime calls for a draft of *lijue* decapitation. But it's a clear crime 自屬情真罪當. The governor and governor-general should immediately exercise authority under the imperial standard and simultaneously memorialize. If they take the time to request an edict and wait for the Board to review the case, and hadn't gone to specially adjudicate, it would result in a delay in punishment 致稽顯戮, and I'm afraid evildoers if they were restrained long in prison, or broken out of prison, it would be even worse. Send out an edict to every governor and governor general. For now on, if they encounter this type of case of ganging together and burning and murdering, once the suspects are apprehended and questioned, according to the law those that

Pirates (*yangdao* 洋盜) were a particularly interesting case because they operated both on the maritime frontier but also in internal waterways and raided along the eastern coast. Between 1795 and 1810, piracy was an extensive problem throughout the Southeast China maritime world with nearly 10,000 pirates apprehended and thousands of commoners taken captive by pirates seeking ransom.¹⁷ On February 22, 1781 (QL 46/1/30), Fujian Governor Fugang (富綱) (d. 1800) – who would go on to serve as governor-general of several provinces and as the president of the Board of Punishments – apprehended and executed under the imperial standard the pirate Chou Touchuan who had been at large for several years and had robbed more than five passenger boats while participating in two gangs.¹⁸ This only increased during the Lin Shuangwen Rebellion 林爽文 (1787–1788) in Taiwan when Special Imperial Envoy Fuk'anggan (Ch: Fukang'an 福康安) (d. 1796) executed twelve seaborne robbers in one incident in September 1793 (QL 50/8) citing the imperial standard.¹⁹

On April 27, 1788 (QL 53/3/22), Fujian Governor Li Shiyao 李侍堯 (d. 1788) memorialized a case in which pirates had stolen military salaries that were being transported by sea. The emperor's response left no doubt of the propriety of imperial-standard summary executions in

should be immediately executed (*lü ying jishi zhengfa renfan* 律應即時正法人犯), once the trial has absolutely clarified the facts (no doubt), those that the law requires to be tattooed and to be drafted as *lijue* decapitation, that cannot be pardoned under law, that each governor and governor general immediately execute them under the imperial standard and simultaneously memorialize. Don't delay and allow them to cause trouble 毋致稽緩滋事. Send this edict out to Techeng'a, Yixing'a, Yao Chenglie, and every governor and governor general.

QSL-QL, juan 1202, 82-2 – 83-1.

¹⁷ “Because of the upsurge in piracy, the Jiaqing emperor, in 1796 and 1797, ordered provincial officials to henceforth execute convicted pirates immediately after trial in accordance with an extraordinary procedure known as summary execution by royal mandate (*wangming xianxing zhengfa*). Afterward the severed heads were sent to the localities where the crimes had been committed and placed on pikes in cages for public exposure.” Antony, 98.

¹⁸ NGDK, 172632-1.

¹⁹ NGDK, 095823-1.

such “extraordinary” cases, accusing Li Shiyao of being a pedantic rule-follower by following the routine process.²⁰ The next month, Li Shiyao responded with a memorial detailing his execution of the offenders under the imperial standard.²¹

The emperor used his response to this case to issue an edict providing more guidance on how he conceptualized the distinction between extraordinary and ordinary cases and what those cases meant for mode of adjudication.²² The emperor – as had been his practice since Zhandui-Jinchuan – distinguished between extraordinary and ordinary cases, reiterating that ordinary (*xunchang*) offenders should be memorialized to the Board, but “if the facts and crime are truly serious,” the offender should be expeditiously executed under the imperial standard. The

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According to Li Shiyao’s memorial, he has investigated the case and interrogated Yu Huan who was transporting military salary for Fujian soldiers by sea. According to the interrogations conducted by the appointed 通判 and 遊擊, on the night of the offense, when Yu Huan had three ships out at sea, they encountered more than ten thieves who boarded the boats and absconded with 2,930 strings of cash. He immediately reported it to the yingxun (營汛). According to the local 同知, this was all true and Yu Huan was willing to pay it back. The lower officials never reported the theft. I am hereby referring them for administrative sanction.

[Emperor]: Zhejiang Governor Gioroi Langg'an (Ch: Langgan 琅玕) previously memorialized this case for impeachment. I have already issued an edict to administratively sanction Yu Huan [and the other officials who covered it up] by dismissing them from their positions and having them brought in for criminal questioning. Transporting the Fujian military salaries is an imperial matter. Those appointed to do so did not exercise due care such that they were robbed on the seas. And they reported it to local officials who dared to cover up the matter [not report it]. They were going to privately pay it back in order to cover it up. And those appointed were willing to tolerate this. This cannot be compared to an ordinary case of simply not mentioning a robbery (*fei xunchang huidao kebi* 非尋常諱盜可比). In the future when such cases are drafted, the lower officials [who covered up] should be exiled to Yili. Those who tolerated should be exiled to Urumqi.Even though Li Shiyao is now reporting that the local officials reported that the three of the thieves have been apprehended and that they have recovered nine or ten thousand and that they have already tried them, but still they have not apprehended the others, order Li Shiyao to strenuously apprehended all of them, they have to be reported by name when they are apprehended, handle them in the harsh manner. Once they are tried, then they should be executed under the imperial standard according to law. Don't be a stickler for formalities by delaying things until you receive an edict following review of the case from the Board such that it delays punishment and is negligent. [*buke juni zuojiangzhi, tinghou bu fu, zhiyao fan jizhu, shaoyou shuzong* 不可拘泥昨降旨。聽候部覆。致要犯稽誅。稍有疏縱。].

QSL-QL, juan 1301, 505-2 – 506-1.

²¹ QSL-QL, juan 1301, 505-2 – 506-1.

²² QSL-QL, juan 1301, 505-2 – 506-1.

emperor lamented though that he was “afraid that not all governors and governors-general can distinguish between serious and minor cases and that they act pedantically, and that when they encounter cases where the facts and crime are serious, they still wait for the board to review the case leading to a delay in executing punishment.” He explained that given that “in recent years cases of pirates around Fujian have been numerous,” he had “issued many edicts to the provincial officials to apprehend these seaborne robbers, directing that there is no need to distinguish between the leaders and followers.” But, he was quick to point out that this was only a temporary measure until the piracy was brought under control, at which time they could return “to the old statute, based on the amount of punishment needed to restore discipline at a given time.” He then went on to praise Fujian authorities for not following the routine statute and instead summarily executing the offenders because they recognized it was not an ordinary case. In this case, they were not “pedantic.”²³

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[Qianlong emperor]: This was all handled appropriately. I have previously issued edicts to all the governors and governors-general. When they try cases in the provinces, if the facts and crime are truly serious, then they should not delay and should expeditiously execute the offender under the imperial standard. Regular [*xunchang* 尋常] criminals who should be drafted as strangulation after the assizes should be, according to precedent, changed to immediate execution and the official should wait for a response back from the Board after review and only then carry out the sentence in order to show the importance of human life. But, I am afraid that not all governors and governors-general can distinguish between serious and minor cases and that they act pedantically, and that thus when they encounter cases where the facts and crime are serious, they will still wait for the board to review the case leading to a delay in executing punishment, thus I issued another edict. Moreover, in recent years cases of pirates around Fujian have been numerous. I have issued many edicts to the provincial officials to apprehend these seaborne robbers, directing that there is no need to distinguish between the leaders and followers. They should all be adjudicated and drafted as aggravated offenses. Later, two or three years after, once the robbery in this province has subsided, then they can go back to the old statute, reflecting the principle of based the amount of punishment need to restore discipline on the times. At this time, Fujian authorities have apprehended the robber-porter of military salaries Wu Qin and Lin Fa, and according to the precedent, it should only be adjudicated as strangulation after the assizes, but because this governor recognized that this was a matter pertaining to military salaries and at this time soldiers are in the midst of redeploying victoriously [from other campaigns] and military duties are unending, if it had been adjudged according to the statute, it would have been insufficient to create a deterrent [to deter porters from stealing military

The emperor even explicitly acknowledged the transference of frontier methods of adjudication to the interior, noting temporary conditions of public disorder in Fujian and Guangdong following military operations in Taiwan. In response to a June 1788 (QL 53/5) case in which Guangdong Governor Tusabu 圖薩布 (d. 1789) had apprehended and executed a pirate, the emperor outright acknowledged that his creation of the imperial-standard summary execution process was something new, saying that “previously because when cases were adjudicated in the provinces, if it was an ordinary case [for which the law required a] draft [sentence] of decapitation or strangulation, [officials] had to wait for a review back from the Board of Punishments prior to carrying out the execution. There was no way to cite a precedent for using the imperial standard to carry out an execution.” He even acknowledged that he had been trying to educate officials to use the imperial standard to avoid being “pedantic rule-followers.”²⁴

In the case at hand, the emperor acknowledged that formal military operations in Taiwan had concluded, but then noted that “both Fujian and Guangdong have many reports of robbers and looting” and that “they cannot but be handled harshly in order to create a deterrent.” He then praised the local officials for executing the offenders under the imperial standard. “They were not pedantic. This was all done appropriately. Transmit this edict to them.”²⁵ In December 9,

salaries], thus he had the two criminals immediately executed under the imperial standard and was not a stickler about procedures. Send him a copy of this edict.
QSL-QL, juan 1304, 548-2 – 549-1.

²⁴ “And because I feared that the governors and governors-general could not distinguish serious from minor cases, and thus would be pedantic for procedure [follow the routine process], such that when they encountered serious cases, they would still wait for a response back from the Board and it would delay punishment, thus I issued another edict.”

²⁵ In June 17, 1788 (QL 53/5/14). An order to the Grand Council. According to the memorial of Guangdong Governor Tusabu 圖薩布 (d. 1789), the seaborne robber Chen Yawu was apprehended. After the case was tried, the head criminal was executed under the imperial standard. QSL-QL, juan 1304, 555-2.

1788 (QL 53/11/12), the emperor, in nearly identical language praised Fujian Governor Xu Sizeng 徐嗣曾 (d. 1790) – who had previously served as the Yunnan provincial judge and would go on to serve as the Fujian-Zhejiang Governor General – for immediately executing pirates under the imperial standard, reflecting all the main elements of the summary-execution adjudicative discourse.²⁶

The path of expansion of summarized execution had its own logic. If pirates could be summarily executed, even in the interior and even after the conclusion of military operations, then the same logic could be applied to robbers operating on the land. In a February 1792 (QL 57/1) case Zhejiang-Fujian Governor-General Gioro Wulana 覺羅伍拉納 (d. 1795) and Fujian Governor Pu Lin 浦霖 (d. 1795) jointly memorialized that they had executed a group of land-based robbers (*luli xingjie* 陸路行劫) along with a group of pirates. The officials noted that following the routine statute in the case would not have been sufficient to create a deterrent (adopting the emperor's language since Zhandui-Jinchuan) and would have resulted in a delay in punishment. The memorial openly conflated Taiwan with Fujian with the emperor specifically denigrating the character of people in Zhangzhou and Quanzhou counties in Fujian, the two mainland counties that constituted the ancestral home of most ethnic-Han Taiwanese. It also conflated land-based robbers with pirates (for whom summary execution had already become widespread) in order to justify the propriety of summary execution.²⁷

²⁶ QSL-QL, juan 1316, 793-1. In 1789 (QL 55/5), Shaan-Gan Governor-General Lebao (樂保) notified the emperor of another execution in a two-fold *zouzhe*. NGDK, 102310-1.

²⁷ “Because the people in Zhangzhou and Quanzhou (in Fujian) are fierce, there must be strict deterrence of robbery cases, therefore it is not appropriate to follow the routine statute (*changli* 常例) and submit a memorial [as per the routine process] in order to manifest punishment (*weibian xunzhao changli juti zhiji xianlu* 未便循照常例具題

On January 24, 1798 (JQ2/12/8) Fujian-Zhejiang Governor-General Kuilun 魁倫 (1752-1800) memorialized requesting review and an edict in the matter of the trial of the “gang of robbers who stole, resisted arrest, killed and harmed the soldiers along the Fujian coast.” In the emperor’s response, he again implied that frontier-like adjudication was appropriate in Fujian because of the Taiwan connection, saying “The popular customs of the people of Zhangzhou and Quanzhou are really wicked, exactly like Taiwan.” He also went on to explicitly downplay the distinction between the inner and outer empire: “The principle for balancing crimes should be weather the crime was serious or minor, not strictly based on whether it occurred in the interior or exterior (*zhi dang yi shiti qingzhong wei quanheng, bu de qiangfen hainei haiwai, banli shaoyou qubie* 社當以事體輕重為權衡不得強分海內海外辦理稍有區別).” He pointed out that the number of criminals involved in this case and the amount of money stolen combined with the fact that the criminals resisted arrest and killed soldiers made the case appropriate for summary execution. He scolded Kuilun:

[Qianlong emperor]: This governor-general, after he had tried them, should have immediately executed them under the imperial standard as in cases of Taiwan robbers, separating out the leaders from the followers. Only this would have been sufficient to create a deterrent and would have avoided wasting time. But instead he was a pedantic rule-follower and requested an edict such that the punishment was delayed for these evildoers. This is not the way to enforce the maritime frontier. [The officials were referred to the Board for administrative sanction].²⁸

There is a similarly expansive logic in a memorial presented by the same two officials five months later (June 26, 1792)(QL 57/5/8) in which they informed the emperor that they had

致稽顯戮). Therefore, this official has put these [non-seaborne robbers] together with the seaborne robbers already apprehended and has executed them all under the imperial standard.” Again, the emperor’s response was, “Inform the Board.” NGDK, 102860-4.

²⁸ QSL-JQ, juan 2.

executed another “strong-armed robber.” As in the previous case, they acknowledged that the statutory crime called for *lijue* execution but then went on to announce, using the exact same language as before, that it was not appropriate to follow the routine process of memorializing with a *tiben* in this case to manifest punishment. The emperor approved their resolution.²⁹ There were many such cases.³⁰

II. Conforming the Extraordinary Case to the Extraordinary Will

The challenge of shaping the judgment of adjudicating officials to conform to the will of the emperor as constructively represented by the imperial standard was a constant effort that required very interested and energetic emperors. The Qianlong and Jiaqing emperors – or perhaps the imperial office of the time – were willing to stay on top of summary executions issuing constant rescripts shaping the executions in one way or another. In this sense, even if the emperor was not aware of each summary execution before it took place, there still continued to exist a real tie to the imperial will because the emperor continued to closely supervise the process after the fact.

²⁹ NGDK, 098037-4.

³⁰ Li Shiyao executed under the imperial standard armed robbers who resisted arrest in July 1787 (QL 52/6). NGDK, 101956-1. A few months later in February 1788 (QL 53/1), he executed a pirate under the imperial standard. NGDK, 096514-1. On March 1790 (QL 55/2), Fujian-Zhejiang Governor-General Goro Wulana and Fujian Governor Xu Sizeng (徐嗣曾)(d. 1790) memorialized that they had executed under the imperial standard two criminals for robbing (*xingqie* 行竊) a military boat at Jinmen island. NGDK, 101005-1. Henan Xunfu Bi Yun executed a gang of thieves who resisted arrest under the imperial standard in June 1790 (QL 55/5). NGDK, 172463-1. For instance, Liangguang Governor-General Goro Changlin (覺羅長麟)(1748-1811) and Guangdong Governor Zhu Gui 朱珪 (1731-1806) jointly memorialized such an uncontroversial execution in January 7, 1795 (QL 59/12/17) with the emperor’s rescript of “Inform the Board.” For additional cases, see NGDK, 098075. Another more involved case of seaborne robbers was also adjudicated under the imperial standard. NGDK, 103262.

A. *Too Summary or Too Pedantic: The Elusive Imperial Will*

On November 26, 1781 (QL 46/10/11) Shandong Governor Guotai 國泰 received an expedited report from the Yanggu County Magistrate. A number of peasants had refused to go to another province to work on a levy-breach project. The leader was arrested, but then his fellow prisoners used force to get him out of custody. Finally, the magistrate personally went to the village with the sheriff and interrogated the suspects. In his memorial, Guotai informed the emperor that he had “drafted a punishment in accordance with the law.”³¹ The emperor’s response – “What kind of nonsense is this (*Qi you ci li* 豈有此理)?” – was caustic and left no doubt that the emperor considered Guotai pedantic because he had used the routine process; the emperor made it clear that he should have executed the suspects under the imperial standard.³² Governor Guotai understood because he immediately responded to the rescript by stating that he

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Of the river-porters assigned to assist with the breach in the levy at Yifeng Township in Henan (Henan *yigong* 儀工), Village Head Wang Wei, Wang Taihe and others from Sidu Village of Beixiang Township resisted because they felt they should not be sent out of the province to perform corvee. The magistrate ordered them apprehended and escorted for questioning. Their fellow villagers released them by force. They destroyed the grain register books 糧書苗繼孔房屋。So the magistrate then went forth with the sheriff 典使 but they beat the sheriff. They arrested Lü Futing on the spot and interrogated him about the gang. They also conducted other arrests with military and civilian officials. “Repairing the breach in the levy at Yifeng Township is critical work 要工.” Previously I, along with Li Fenghan 李奉翰 memorialized that 10,000 porters would be needed from nearby provinces. And that according to the cost of grain, it would cost 30 liang to send one porter. Now, the evildoers in this village county freed a criminal and assaulted officials. I personally went to supervise the arrest and questioned them for the reason. I have drafted a punishment according to the law.

QSL-QL, juan 1142, 302-2 –303-3.

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Based on this the emperor responded with a rescript saying “I have read it. What kind of nonsense is this (*Qi you ci li* 豈有此理)? It should have immediately been handled in a harsh manner (*ji dang suxing congzhong banli* 即當速行從重辦理). The memorial also stated that the Magistrate Zheng Feiming questioned military student 武生 Qi Guanjun and several others. They were arrested and interrogated. These people should have been immediately executed under the imperial standard (*ciren ji dang qingwangming lixing zhengfa* 此人即當請王命立行正法.”

QSL-QL, juan 1142, 302-2 –303-2.

had obeyed the edict and had the evildoers of Yanggu County all executed under the imperial standard (*jun qingwangming xianxing zhengfa* 均請王命先行正法).”³³

On September 3, 1785 (QL 50/7/30), Guangdong-Guangxi Governor-General Šucang (Ch: Shuchang’s 舒常)(d. 1798) memorialized a case involving a Mrs. Chen who murdered her aunt with the assistance of her lover, Lai Yaoqin. Lai had provided the poison even though it was Mrs. Chen’s idea to kill the aunt. Šucang had already had Lai Yaoqing sliced to death under the imperial standard and had drafted Mrs. Chen’s punishment and was requesting an edict. The emperor rebuked Šucang, telling him that he should have memorialized Lai’s case through the routine process and summarily executed Mrs. Chen by slicing under the imperial standard, but Šucang had done exactly the opposite. The emperor based his conclusion on the nuances of the case, in particular that the idea to kill the husband had originated with Mrs. Chen and that Lai had only provided the poison.³⁴ Šucang would go on to serve as a president of both the Board of

³³ QSL-QL, juan 1143, 319-1.

³⁴

[Emperor]: According to the law, if a woman plans to kill her own husband because she is committing adultery and the intent arose with her, then the man she was having the affair with shall be drafted as decapitation after the assizes. In this case, Ms. Gui engaged in adultery with Lai Yaoqin. It was she who first had the idea [to kill her relative]. Lai Yaoqin only purchased the poison for her. His punishment should have been drafted as decapitation after the assizes. But because the circumstances of his assistance to Ms. Gui are very serious, selecting this case as verified at this year’s Autumn Assizes would have been sufficient to address the seriousness of the crime. But, Shuchang executed him under the imperial standard! This was really a big mistake. As for Ms. Gui who engaged in a serious violation of Confucian relationships and whose sexually-perverse evil is extreme, the same as plotting to kill one’s own parents, and who should have been summarily sliced to death right after trial under the authority of the imperial standard, yet for her, how could Changyun forward the case [through routine channels] for an edict! Giving the time it takes for the case to be processed, the punishment will have already been delayed (*you jixian lu* 有稽顯戮). For the criminal that the statute required him to adjudicate a sentence of decapitation after the assizes, Shuchang immediately executed him. And for the criminal whose punishment absolutely could not wait, he extended the time for him to have to wait for an edict! [Shuchang] certainly does not grasp the precedents distinguishing the difference between important and minor cases. He is hereby referred to the Board [for administrative sanction].

QSL-QL, juan 1235, 605-2 – 606-1.

Punishments and the Censorate, suggesting how his experience with summary executions could spread to other areas of legal culture.³⁵

In April 1788 (QL 53/3), the emperor upbraided Guangxi Governor Sun Yongqing 孫永清 (1732-90), for immediately executing a criminal who merely escaped from jail (*yueyu tuotao* 越獄脫逃). The emperor pointed out that such a case should have been adjudicated according to the routine process by memorial with a request for an edict. The emperor also affirmed, however, that if the case had involved attacking and looting a jail (*fanyu jieyu* 反獄劫獄), then it would have been appropriate for summary execution under the imperial standard.

Summarily executing someone under the imperial standard in an ordinary case amounted to murder, or at least an “*ultra vires* killing (*shansha* 擅殺).” The emperor lamented that officials were still unable to properly distinguish between ordinary and extraordinary cases: they summarily executed criminals in ordinary cases, and they “acted as pedantic rule-followers [going through the routine process] in cases for which the accused should have been summarily executed thereby leading to a delay in punishment.” The emperor could not have framed the issue any clearer: “They misunderstand my will, and they do not summarily execute under the imperial standard those who should be summarily executed and instead they send them to the Board for review [prior to executing punishment], thus leading to a delay in punishment of serious criminals (*zhi yaofan jizhu* 致要犯稽誅) or leading to some [other problem].”

³⁵ Šucang had commanded three different Manchu and Mongol banners, had served as the Guizhou xunfu (QL 44), Yunnan-Guizhou Governor General (QL 44-45), the Huguang Governor-General (QL 45-49) and Hunan Governor (QL 47-49), Hubei Governor (QL 47), Jiangxi Governor (QL 50), and would go on to serve as the president of both the Board of Punishments and Censorate, two of the agencies that made up the Three Judicial Offices at the capital.

With the above case, seemingly disappointed with his officials' ability to channel the imperial will without his constant attention, he issued an edict to "all governors and governors-general" requiring that "from now on when a criminal is apprehended, do not consider whether it is a serious or minor offense. If the *li* 例 calls for summary execution under the imperial standard, then do it according to the *li*."³⁶ Here, I translate *li* as precedent because at this time there was no statute authorizing imperial-standard execution. The emperor's reference though suggests that his thinking was towards making the summary execution decision more objective.

This was all the short run up to the first codification of an imperial-standard summary execution statute in 1790. On December 5, 1789 (QL 54/10/19) Sichuan Governor General Li Shijie 李世傑 (1716-94) memorialized regarding "the evil criminal Chen Nianfu who had killed three people in one family." Li announced that after the trial, he had immediately had Chen executed under the imperial standard by slicing. The emperor took advantage of this case – which he considered well-handled – to criticize Zhili Governor-General Liu E 劉峨 (1723-1795) as a "pedantic" rule-follower because the day prior, Liu had sent up a memorial asking for an edict in what the emperor considered a similar case. The emperor pointed out that "From this incident, one can see that Liu E does not handle things as well as Li Shijie. Yesterday, I issued an edict. Can this governor-general (Liu E) be ashamed? Send him a copy of Li Shijie's memorial and also a copy of this edict."³⁷ Reminiscent of his use of the executions of Zhang

³⁶ QSL-QL, juan 1300, 491-1.

³⁷ QSL-QL, juan 1341, 1183-1. Killing four persons in the course of a robbery. On August, 1786 (QL 51/7), Henan Governor Biyuan 畢沅 (1730-97) executed Wang Yuxiu "under the imperial standard." for killing four members of a family while in the course of home invasion robbery that went bad.³⁷ In a two-fold memorial, Li Jiangxi Governor He Yucheng reported that he executed Li Bixian under the imperial standard for killing his father with an ax.³⁷

Guangsi and Necin, the emperor continued to educate his officials by comparison to one another and shame. Shortly after this case, the murder of three people in one family became the context in which imperial-standard summary execution was codified for the first time in 1790 (QL 55).

The new statute read:

Whoever shall kill three or more people in one family, will, after a trial has made the facts clear, have their crime determined in accordance with the statute (*yi lü ding zui* 依律定罪). At the same time that a notification memorial is forwarded to the emperor, the accused will be summarily executed under the imperial standard.³⁸

While purporting not to change the substantive law – in fact, it stated that the offense would be adjudged according to the old law – the statute provided a new procedural method of carrying out the old Ming statute. The statute on killing three people in one family required death by slicing, which, should have required imperial review and an edict prior to execution. This statute codified the fact that this offense would no longer require review, but could be handled with summary execution. The imperial standard satisfied the retrial-review and edict requirements. At the same time, codification of the imperial standard in this first instance was the beginning of a trend towards codification of all the circumstances under which it was appropriate – permissible – to invoke the imperial standard. By codifying the imperial standard, it was the beginning of suggesting that the imperial standard was unavailable to satisfy the edict requirement in cases in which it had not been codified. While this codification started in the late Qianlong period, it became more comprehensive during the reign of the next emperor.

³⁸ DLCY, “殺一家三人-09”: “一，凡殺一家三命以上兇犯，審明後，依律定罪。一面奏聞，一面恭請王命先行正法。” One hundred years later, Xue Yunsheng commented about this provision that “This justification for the enactment of this statute was the fear that punishment would be delayed [in such cases]. It should be considered along with other cases of gross unfilialness within the Code provisions on officials who autonomously punish prisoners.” “謹按。此恐其日久稽誅之意，與有司決囚等第門內逆倫重案各條參看。” DLCY.

The Jiaqing emperor (1799-1820) assumed full authority upon the death of the Qianlong emperor in early 1799 (technically, JQ 4).³⁹ With the actual transition of imperial power to the new emperor in the “fourth year” of the Jiaqing reign (1799), perhaps officials questioned whether the imperial center would continue to be as tolerant of summary executions. On May 9, 1799 (JQ 4/4/5) Urumqi Dutong 督統 Xingkui 興奎 (1746-1824) memorialized that he had tried the Muslim commoner Ding Chengjie for killing Ma Zhongde and drafted his punishment as decapitation *after the assizes*, as per the intentional murder statute. He then forwarded a memorial inquiring whether he should adjudicate cases under the “Xinjiang precedent in intentional murder cases that required that after the trial, the accused be summarily executed under the imperial standard.” Apparently Xingkui was wise to memorialize with the question and not just carry out the summary execution because the emperor responded that this was an ordinary (*xunchang*) case involving human life and thus should be processed according to the routine statute. But the emperor also added that if it has been an extraordinary case, then it would have been appropriate to summarily execute the criminal under the imperial standard and that to do otherwise would be pedantic.⁴⁰ Indeed “extraordinary” cases in Xinjiang continued to be adjudicated summarily under the imperial standard, and the extraordinary-ordinary framework

³⁹ Mark C. Elliott, *Emperor Qianlong: Son of Heaven, Man of the World*, 160-61.

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[Jiaqing emperor]: In this case, Ding Chengjie killed Ma Zhongde because he hated him. It's just a regular murder case [*xi shu xunchang ming'an* 系屬尋常命案]. It should be processed according to the regular statute. There was no need to execute him under the imperial standard. Ding Chengji should adjudicate his punishment as decapitation after the assizes and wait until after the assizes to carry out the punishment. As for the difference between Xinjiang and the interior, if two or three people in one family are killed, and for important cases of intentional murder, then for those cases after the trial the person should be, according to precedent, immediately executed under the imperial standard. If in those cases this law is cited and an edict is required, it's really being too much of a stickler, if just adjudicates the cases as after the assizes. In that case, why did we bother to issue imperial standards to begin with?

QSL-JQ, juan 42.

remained the same: “This crime occurred in Xinjiang. If it is not handled [summarily under the imperial standard], then when would the imperial standard ever be used?” It seems the new emperor took advantage of the occasion to affirm the distinctiveness of Xinjiang: “From now on, when there is an important case of intentional murder anywhere in Xinjiang, then the old precedent should be cited and the accused executed under the imperial standard.”⁴¹

And it was not just Xinjiang. In August 1799 (JQ 4/7), the emperor responded to Fujian Maritime Provincial Military Commander (*tidu*) Hadangga (Ch: Hadang’a 哈當阿) (d. 1799) who had memorialized requesting an edict to execute a soldier in Taiwan who had gotten into a conflict with a commoner and fired off a gun, injuring some people.⁴² After noting the logistical problems of the frontier and the necessity of maintaining discipline among soldiers in Taiwan, the emperor sarcastically retorted, “For these kinds of important cases, if the criminals are not

⁴¹ On June 9, 1799 (JQ 4/5/7) in a memorial forwarded by Kucha (Aksu, Xinjiang) Amban Yisang’a 伊桑阿 (d. 1801). Yisang’a memorialized that he had apprehended a fugitive-ferocious criminal who had been on the run for many years, tried him and was now requesting an edict to execute him. The emperor pointed out that because this was an important case of intentional murder that occurred in Xinjiang, it merited summary execution under the imperial standard.

[Emperor]. In the past when cases were handled in Xinjiang, if it was just an ordinary case of assault involving the loss of human life (*dou’ou ming’an* 鬥毆命案), it should be drafted according to the statute and memorialized for review prior to execution. If it an important case of intentional murder, then there was the precedent of using the imperial standard to immediately execute the person. In this case Abuderman murdered someone because he was plotting to get property. After Yisang’a tried him clearly and then just cited the statute and requested review. But this crime occurred in Xinjiang. If it is not handled according to the Sichuan precedent, then when would the imperial standard ever be used? From now on, when there is an important case of intentional murder anywhere in Xinjiang, then the old precedent should be cited and the accused executed under the imperial standard. In this case, Abuderman should be immediately decapitated.

QSL-JQ, juan 44.

⁴² Hadangga was very familiar with the Taiwan local conditions. From a period of time beginning in JQ 2 and ending a month before this case, Hadangga had been jointly appointed as both the Fujian Maritime PMC and acting Taiwan zongbing. In JQ 4/3, his zongbing duties were transferred to Aisintai (Ch: Aixintai)(伊爾根覺羅)愛新泰)(d. 1807). QSL-JQ, juan 40.

executed under the imperial standard, then why even have an imperial standard?”⁴³ Similarly when soldier indiscipline resulted in the death of two soldiers in Tibet in April 1801 (JQ 6/2), not only did the emperor make it clear that the case should have been handled summarily but also indicated that Tibet Amban Hening 和寧, who went on to become the president of the Lifanyuan, was being “pedantic” for even considering that the soldier had to be escorted all the way to Lhasa for execution. He should have been summarily executed under the imperial standard.⁴⁴ Other cases out of Tibet also suggest that the emperor was still more willing to tolerate, even encourage, summary executions on the frontier.⁴⁵

Was the Jiaqing emperor more cautious about summary executions under the imperial standard if they did not occur on the frontier? Perhaps. On January 9, 1800 (JQ 4/12/15), Zhili Governor-General Hu Jitang 胡季堂 (1729-1800) memorialized that he had tried the robber Di Tuzi. After Hu Jitang had completed the trial, he had Di Tuzi executed under the imperial standard. Recognizing that the statute in question did not explicitly authorize summary execution and conceding some facts that may have mitigated Di Tuzi’s crime, Hu Jitang

⁴³ QSL-JQ, juan 48.

⁴⁴ “Waiwai Pu Shun, who was stationed in remote Dazhaidi (located in today’s Xinjiang-Sichuan border area), dared to fleece the natives under his jurisdiction, already making him a criminal. When his supervisor, Youji He Defang went to investigate whether this was true, Soldier Tian Feng served revealed the matter [to the Youji], making Pu Shun angry, so Pu Shun used a knife to attack Tian Feng. Soldier Duan Gui came to [Tian Feng’s] rescur. Pu Shun then took a small knife, vegetable knife, and an ax and attacked both of them, killing Duan Gui.” QSL-JQ, juan 79.

⁴⁵ For instance, on August 3, 1810 (JQ 15/7/4), Tibet Amban Wenbi 文弼, memorialized and requested an edict in the case of the strong-armed native-commoner and evil criminal, Luoangxie’re and four other men, who had been apprehended. The emperor responded that such a case in which the criminal had killed eight people in the process of engaging in strong-arm robbery should have been adjudicated summarily under the imperial standard. The emperor stated asked, “Why did [the amban] request an edict, and wait to take care of this. Luoangxie’re will be decapitated and his head displayed. Those still on the loose, after each one is apprehended, try him, and if their confessions are clear, they should be immediately executed. There is no need to request an edicts.” QSL-JQ, juan 232, 1241.

explained that he had summary executed Di because the case involved multiple larcenies and Zhili was an important area with lots of people around the capital.⁴⁶ The Jiaqing emperor, however, did not find this reasoning sufficient to justify summary execution in the interior in this case. The emperor criticized Hu Jitang for not paying attention to the nuances of the case: the man executed had not actually gone into the house to commit robbery but had waited outside. In typical routine-process discourse, the emperor asked, “How could we not review the seriousness of the facts and crime, and not separate the leaders from the followers, and just punish them all harshly?” The emperor noted Hu’s prior service on the Board of Punishments and asked how he could have still failed to properly memorialize a case that should have gone through the routine process. The emperor even went so far as to insinuate that when officials engaged in this type of unauthorized summary execution, they were doing so for their own benefit.⁴⁷

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Hu Jitang explained that Di Tuzi engaged in theft as a member of Zhang Biaoyao’s gang. It’s in the category of crimes that are difficult to pardon. But this criminal, at time that Zhang Biao and the others stole, watched the horses in the forest. After the crime, they all split the loot and each took his share away. Later, Di Tuzi returned to Neihuang. Because Zhang Biao had already fled, Di Tuzi did not receive his share of the loot. Compared to the case of the lead criminal, his crime is comparatively pardonable. It should have been distinguished from the other. It thus may seem that it was handled too harshly, but Di Tuzi committed multiple larcenies of the stores in that area, a densely populated area around the capital (Beijing). At this point he has already been executed. So all the people around the important capital territory can see. As far as what the governor-general memorialized, for those criminals who have already been apprehended in the capital area, once they have been interrogated, if they are a member of Zhang Biao’s gang, but have committed thefts, it shouldn’t matter whether they actually went into the home to find loot, they should all be adjudicated as immediate decapitation, even if they stole once. For those who waited outside and received loot, they should be held out as potentially pardonable.

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If we did as this governor-general is requesting, it would not matter whether the accused actually went in the house or not to seek loot, or whether he just waited outside and got his loot, there would be no authorization to request that the case be adjudicated as potentially pardonable, and there would be no mechanism in the law to distinguish serious from minor crimes. If an ordinary case of theft of some small amount is comparable to a serious robbery case, and just because he once lived with Zhan Biao’s gag, so we don’t separate leaders from followers, and just adjudicate them all like sneaky-bandit-thieves, how will we balance human feeling and law? Hu Jitang has been on the Board of Punishments for a long time. He is well versed in the statutes and substatutes. As for serious cases of robbers, the governor-general should

Despite the Jiaqing emperor's words of caution, he continued to approve of imperial standard executions in the interior, at least for public order and particularly heinous offenses. On January 5, 1801 (JQ 5/11/21), Guangdong governor Hutuli 瑚圖禮 (d. 1814) memorialized, using what had become the *pro forma* justifications for use of the imperial standard, that he had executed fifteen robber-bandits who were operating along the coast.⁴⁸ Two years later in July 1802 (JQ 7/6), Hutuli again memorialized, this time jointly with Gioroi Giking (d. 1802) (Ch: Jiqing 吉慶) noting the execution of five more bandit-robbers and citing the exact same language to justify deviation from the Code.⁴⁹ On March 22, 1802 (JQ 9/2/11), Jiangsu Governor Wang Zhiyi's 汪志伊 (1743-1818) memorialized a draft sentence in the case of the grossly-unfilial "evil robber-criminal" Kang Huai who plotted with accomplices Chen Laosan and Xu De'an to steal from his father Kang Huazhou. They planned together to use a rope to strangle Kang's father to death. Even though this case occurred in the interior, the emperor disagreed with it being forwarded for review and an edict. He called it a "detestable" case and said that if it were just an ordinary robber case in the provinces (*xunchang daofan* 尋常盜犯), it would be appropriate to cite the substature, but here, where it involved gross unfilialness, the punishment

have enforced the law without error and without indulgence, yet when he should have arrested this great robber, at first he got tired and didn't go forward, such that it became a serious case. I have ordered many times, after a criminal is apprehended, if harsh punishment is executed upon him to fulfill the official's own (personal) interests, for instance if he want to cover up the fact that he was slack in everyday operations. When high officials carry out their duties with true heart, they should be like this. As for all the gang associated with Zhang Biao when each is captured, after he is tried, then have Mingjitang consider the facts and crime, and according to statutes and substatures, distinguish each one and draft a punishment, don't have the intent to increase the punishment

QSL-JQ, juan 56.

⁴⁸ "Those who commit seaborne robbery will be decapitated and their heads displayed," but then again pointed out that it was necessary in this case to summarily execute the offenders under the imperial standard because the law quoted "would not be expedient to manifest punishment." NGDK, 016007-3.

⁴⁹ NGDK, 214187-2.

could not “be delayed.” This “pedantic” governor should have summarily “executed the criminal under the imperial standard.” Importantly, the emperor sought to apply this rule prospectively – removing the extraordinary versus ordinary distinction – by making summary execution under the imperial standard the default mode for adjudicating such cases.⁵⁰

Despite that the statute authorizing imperial-standard summary execution for cases in which there were three people murdered in one family has been written into the Code since 1790 (QL 55), officials continued to memorialize such cases from time to time. On October 23, 1804 (JQ9/9/20), Zhili Governor-General Yanjian 顏檢 (d. 1833) memorialized regarding the trial and draft punishment of Yongnian County commoner who fornicated with a prostitute and killed three people in one family, and requested that the case be expeditiously forwarded to the Board of Punishment for a review. The emperor responded that the case should have been summarily handled under the imperial standard and went on to recite the standard language of the summary-execution adjudicative discourse, showing very clearly the roots of summary execution in the Qianlong emperor’s original concern with too much leniency during the Zhandui-Jinchuan

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[Jiaqing emperor]: The facts [of this case] are true and detestable. In the provinces, for ordinary cases of robbers (*xunchang daofan* 尋常盜犯), and they gather in a gang and strangle the owner, they should cite the [routine] statute and draft a punishment, send it up in a memorial and wait for the Board’s opinion. But this matter is a case of gross unfilialness. It can’t be compared to an ordinary robber case. How could punishment be allowed to be delayed? After the governor tried him, he should have simultaneously sent up a notification memorial and invoked the imperial standard and executed them. How could he be so pedantic as to memorialize requesting that the Board review the case. Chen Laosan and Xu Dean will be immediately executed and their heads displayed. It does not have to go to the Board for an opinion. From now on in each province, if there are these types of serious crimes, then they should be adjudicated according to this case (*sihou gesheng anfan, yousici qingzui zhongda, ji zhao ci banli* 嗣後各省案犯，有似此情罪重大，即照此辦理).

QSL-JQ, juan 126.

Campaigns. The emperor noted both the distance of outlying provinces and the necessity to not show leniency:

[Jiaqing emperor]: How could it be treated like an ordinary case with a memorial to have it transferred to the Board and to await the Board review? How could this type of evil doer still have some room to determine if there was some possibility of leniency?

Every governor and governor-general has been issued an imperial standard, which was originally meant to be used to adjudicate cases that could not wait. If this is not such a case, then what kind of matter are they waiting for? If the place where the case occurs is close to the capital, and it does not take long to correspond with documents [then it can be tried under the routine process]. In a more outlying province, if there is this type of case, waiting for the board to review and to receive the results to carry out punishment would take a long time. Perhaps the criminal would die of illness? How can he be allowed to escape his punishment? Yanjian is really a pedantic rule-follower. Send him an edict. From now on where there are these type of cases in which the facts and crime are serious, like killing three people (not otherwise condemned to death) in one family, after the governor tries the case, then the punishment should be executed under the imperial standard. Do not even be a little pedantic.⁵¹

Despite the regularization of summary execution, the emperor continued to insist that cases be individually adjudicated, although several criminals all involved in the same crime could be adjudicated within the same case. What was not permitted was to send up compilation reports listing all cases summarily adjudicated over some interval of time. As a matter of adjudicative discourse, this individual treatment of each case was essential to maintain the link between the actual imperial will and the constructive imperial will upon which the summary execution was based. In September 29, 1805 (JQ 10/8/7), Guangdong-Guangxi Governor General Nayancheng 那彥成 (1764-1833) – who later served in multiple positions in Xinjiang, as Governor-General of Shaanxi-Gansu and Zhili, as well as president of the Lifanyuan and, most importantly, president of the Board of Punishments – memorialized requesting to send up periodic

⁵¹ QSL-JQ, juan 134.

compilations of the cases of pirates summarily executed under the imperial standard rather than sending up a memorial in each case. The Jiaqing emperor responded strongly, “What kind of words are these? ... What kind of principle is this to compile all the cases together into one memorial? I have been around for a long time. I have never been reticent to work hard. In criminal cases, men’s lives are important. Whenever cases are memorialized from the provinces, and the Board reviews them and forwards memorials, I carefully examine each one and finalize the recommendation.”⁵²

In 1809 (JQ 13), the emperor seemed to pull back from the general notion that all cases of gross unfilialness were extraordinary. On January 29, 1809 (JQ 13/12/14), Huguang Governor-General Wang Zhiyi’s 汪志伊 (1743-1818), who had previously served at the Board of Punishments, memorialized that he had tried the case of a criminal who engaged in adultery resulting in the death of his own brother and executed the criminal under the imperial standard. While the emperor acknowledged that such a criminal merited being sliced to death under the law, he pointed out that such a death-by-slicing case still required an imperial edict prior to carrying out the sentence. Tellingly, the emperor stated, “From now on, whenever these types of cases involving gross unfilialness are encountered, the system should be followed and the cases distinguished and reviewed. Do not just use the imperial standard in all such cases.”⁵³

⁵² QSL-JQ, juan 148.

⁵³

[Emperor]: In this case, Yang Gang fornicated with his older brother’s wife and ended up killing his older brother. According to law, he should have been sliced to death. After the trial, the governor-general should have just requested an edict to execute him. Why did he use the imperial standard? If in all cases in which someone deliberately kills their older relative are handled like this, and their heads are all displayed, then there is no way to distinguish crimes. Moreover, the woman-criminal involved Mr. Deng, he requested that her case be referred to the Board for deliberation. Have her strangled immediately. From now on, whenever these types of cases involving gross unfilialness are encountered, the system should be followed

But some such cases were still to be adjudicated summarily. On November 29, 1810 (JQ 15/11/3), Shanxi Governor Heng Ling 衡齡 (d. 1819) memorialized that Commoner Guo Yuyou intentionally killed his blood uncle and stabbed his other blood uncle. Heng Ling requested an edict prior to execution. The emperor responded:

[Qianlong emperor] This criminal consecutively killed two older relatives. The wickedness and evil is extreme. After the trial made things clear, why did this crime need to be deliberated on further? Yet, this governor caused delays by memorializing the case with a request that it be reviewed by the Board. Why then was each province issued an imperial standard? If a response from the Board is waited on, then this criminal will be killed in prison. How can he be allowed to escape punishment? The way Heng Ling did things is really being a pedantic rule-follower. Send an order for Guo Yuyou to be immediately sliced to death.⁵⁴

A continued lack of congruence between the imperial will and the judgment of adjudicating officials showed the difficulty of maintaining central control while dispensing with the retrial-review process.⁵⁵ The emperor turned to codification.

and the cases distinguished and reviewed. Don't just use the imperial standard in all such cases, in order to show that the facts are related to the law.

QSL-JQ, juan 204, 1093.

⁵⁴ QSL-JQ, juan 236, 1265.

⁵⁵ For instance, on January 8, 1811 (JQ 15/12/14), the Jiaqing emperor considered a case that Sichuan governor-general [Cangming (Ch: Changming 常明)(d. 1817)] tried him, he immediately executed Cheng Degong under the imperial standard but requested an edict regarding the execution of Mrs. Cheng (the mother) had memorialized requesting an edict. In that case Mrs. Cheng née Deng conspired with her son to strangle her husband. The emperor insisted that this case should have been summary adjudicated under the imperial standard, not memorialized as Cangming had pedantically done. This was not an ordinary case of a wife plotting to kill a husband (*fei xunchang moubi fu ming'an* 非尋常謀斃夫命案) because it involved the son. The emperor added, "From now on, if there are facts similar to these, then adjudicate the case in accordance with this resolution. QSL-JQ, juan 237, 1273-1274. The opposite conclusion was reached on a case arising on the "maritime frontier." On March 14, 1811 (JQ 16/2/20) Taiwan *Zongbing* Ulungga (Ch: Wu Long'a 武隆阿(d. 1831) memorialized that he had tried the case of the evil criminal Su Guangju who plotted and did kill with an ax Su Tingyu, his *sima*-degree mourning relative. and was requesting an edict to immediately execute him. According to the emperor, "This is an extremely evil crime. According to the substatute on a younger generation person killed an older person within the five bonds of mourning in order to secure property, he should have been decapitated without the Autumn Assizes and his head displayed. Moreover, the maritime frontier (*haijiang* 海疆) is a strategic place. When there is this kind of lawless activity, punishment must be immediate in order to restore discipline. How can one be so pedantic as to request an edict and delay the punishment for days of an evil offender?" Again, the emperor directed that "if similar cases arise in this

B. Codification of the Imperial Standard and Pro Forma Application

Prior to the codification of the imperial standard in the Qing Code itself, it had served as a constructive mechanism of satisfying *lijue* review requirements within the Code. In other words, in a sense, it left the law intact and ostensibly left intact within the process the superior position of the imperial will. While the process driving codification involved limiting discretion, it also legitimized summary execution itself expressly in the Qing Code. At the same time, the imperial standard seems to have lost its function as a mechanism for satisfying the *lijue* requirements under Code provisions for which it was not explicitly written into the law. To be sure, there continued to be summary execution cases which referenced the imperial standard until the end of the dynasty, but these cases were now limited to the scope of the statutory language.

In 1811 (JQ 16), imperial-standard summary execution was codified for pirates operating on internal waterways who gathered together in groups of forty or more, swore oaths to one another, resisted and injured property owners, broke men out of official custody, held themselves out as officials, stole three or more times, or had been on the run two or three years. According to the statute, “they will be adjudicated as *lijue* decapitation. Moreover, the imperial standard will be invoked and they should be executed immediately.”⁵⁶ All this was leading up to 1812 (JQ 17) when the emperor made the most comprehensive codification effort.

place, they will be handled according to this precedent and be simultaneously memorialized and an execution carried out under the imperial standard.

QSL-JQ, juan 239, 1285-1286.

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強盜-46 一，粵東內河盜劫，除僅止一二次，夥衆不及四十人，並無拜會及別項重情，仍照例具題外，如行劫夥衆四十人以上，或不及四十人而有拜會結盟，拒傷事主，奪犯傷差，假冒職官，或行劫三次以上，或脫逃二三年後，就獲各犯，應斬決者，均加梟示，恭請王命先行正法。

DLCY, juan 26, Criminal Law 2, “強盜-46.”; DQHD-SL, juan 784, 604-1.

The direct topic of the 1817 edict was which cases should be memorialized using *tiben* and which ones should be memorialized using *zouzhe*. “Imperial standard executions” *per se* were not mentioned in this edict, but they were lurking large in the background. By this time, many cases were already being memorialized on *zouzhe*, including both notifications of summary executions under the imperial standard and the more-simplified request for edicts (*qingzhi* 請旨) cases. For those *zouzhe* cases that were not mere notifications of completed imperial-standard summary executions, special procedures had been put in place at the Board of Punishments to expedite review so the emperor could expeditiously respond with an edict. “Ordinary” cases were still supposed to be adjudicated using *tiben* and were subject to more generous processing-time limits. The emperor’s stated concern here was that too many cases were being forwarded for expedited *zouzhe* review, thus overburdening the Boards with expedited time limits and leading to sloppy work.

But, despite the seemingly innocuous administrative concern behind the edict, the emperor made it clear that the reason he was taking this codification action was because officials were getting the extraordinary versus ordinary distinction wrong, a topic with significant consequences for imperial-standard summary executions: “[E]ach governor and governor general, whether it is too slow or too fast, continues to use *zouzhe* for ordinary cases that should use *tiben* (*yu xunchang mingdao anjian, yi duo gai ti wei zou* 於尋常命盜案件, 亦多改題為奏).”⁵⁷ Only

⁵⁷ The emperor then gave the following example,

For instance, like the case memorialized by Shanxi Governor-General Hengling of of the commoner Wang Hengxin who was plotting to get property by killing a child. That was the case of plotting to kill an unrelated child (by mourning degree) of the same clan. According to the statute on plotting to kill a child under twelve, such a case should be drafted as decapitation with the head displayed. Under this statute, the case should be memorialized using a *tiben*. This governor already forwarded the *zouzhe*,

zouzhe presented the type of communication channel – a direct conduit between an adjudicating official anywhere in the empire and the imperial office – that was a prerequisite of a summary execution system still anchored in the imperial will. Thus, it is no surprise that the sixteen offenses that were ultimately designated under the edict for adjudication using *zouzhe* mostly corresponded to those “extraordinary” offenses for which summary execution under the imperial standard had been practiced: gross unfilialness, killing more than three people in one family, and gathering in gangs and injuring or killing officials.⁵⁸ Further driving home that what was really

and I have already forwarded it to the Board of Punishments for expedient review. From now on, based on the the new rules from the Board of Punishments, every province must follow them. From now on, each governor and governor-general, in important cases involving life and robbery, every governor and governor general will annotate at the foot of the memorial which provision of the Board’s new regulations their correspondence corresponds to. Those that should be treated under a special memorial should use *zouzhe*. When I rescript them, I will request that the Board review whether the memorial is in compliance with these regulations. If they used a forced comparison or rashly send up a *zouzhe* for a case that should use *tiben*, then Board will return it to be memorialized on a *tiben*; if they don’t use a *zouzhe* for a case that should be a *zouzhe*, it will also be investigated.

QHDSL, juan 750,279-1 – 279-2; juan 845, 1183-1.

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As for murder and robbery cases within the provinces, all the governors and governors-general memorialize those cases using *zouzhe* for my thorough review. I forward some of these cases to the Board of Punishments for review and consultation. Originally because for serious cases (*fanqing zhongda* 犯情罪重大), no delay in punishment could be tolerated (*burong jizhu* 不容稽誅), so a five day time limit for reviewing the *zouzhe* was implemented. But recently, among those cases that the provinces have memorialized to me using *zouzhe*, reading their facts and circumstances, there are some that at the most should be memorialized using *tiben*, but the governors-general memorialize them on *zouzhe* anyway. The [five day] time limit is too limited, and the Board officials have insufficient time to carefully review the cases, leading to negligent errors and a lot of malpractice. This is far from the principle of exercising caution in the matter of men’s lives (*shufei shenzhong renming zhi dao* 殊非慎重民命之道). The Board is hereby directed to minutely distinguish all cases involving human life and robbery, and to determine which one should be memorialized using *tiben* and which ones should be memorialized using *zouzhe*. They will consider this and memorialize recommending statutes. After I have approved the new statutes, they will be made known to all governors and governors-general to follow in perpetuity. If, after the enactment of these statutes, governors and governors-general are late for no reason, or mix up the cases that should use *tiben* with those that should use *zouzhe*, then they will be referred to the Board for administrative sanction.

Na Silu, Qingdai Zhongyang Sifa, 204; DQHD, juan 750, 278-2 – 279-2. The sixteen included:

1. Gross unfilialness in the form of planning/conspiring and carrying out rebellion, but only for the planners;
2. Entering into conspiracies with the object of / and murdering their parents or grandparents;
3. A wife or concubine who enters into conspiracy and murders her husband’s parents or grandparents;
4. A wife or concubine who intentionally murders her husband’s parents or grandparents;
5. The primary offender in the

at stake here was imperial-standard summary execution, the edict distinguished that all other *lijue* crimes still required review: “All other ordinary cases that should be adjudicated as death by slicing, decapitation with head displayed or *lijue* decapitation, must continue to be memorialized on a *tiben* explaining the facts, and requesting that an imperial edict be issued.”⁵⁹ All of these offenses were heinous in their own way, and none specifically referenced the frontier. Moreover, many had been designated as *lijue* offenses as early as 1497.⁶⁰ From the legal-culture standpoint, by codifying extraordinary in the Code, it *ipso facto* lost something of its extraordinary nature. In other words, it was working its way into routine process, not only in terms of formal law, but in terms of how adjudicating officials thought about what was permissible, a matter of adjudicative *mentalité*. This edict was entered into the Qing Code under

killing of three people in one family where those killed were not already subject to the death penalty or dismemberment cases; 6. Plotting to kill maternal relatives of an older relative within the five degrees of mourning, but if the circumstances are pitiable, it is permissible to request that the Board of Punishment consider a reduction of sentence and it may be memorialized on a *tiben*; 7. Harvesting human body parts for medicinal purposes; 8. A child or grandchild who assaults his grandparents or parents; 9. A criminal in jail who gathers in a gang and engages in robbery, the head person who carries weapons and resists and kills officials and junior military officers, and anyone who actually engages in the killing; 10. If an older relative with the purpose of taking over property or inheriting official rank, kills three people in the family of a *gongsibei*-relation younger relative; 11. For a criminal who was exiled to the frontier as a slave, killing three people in the family of his master; 12. For a criminal in prison who gathers together in prison with others to overthrow the prison, carries weapons and resists and injures officials and junior officers, and those who actually kill officials; 13. If a wife or concubine fornicates with a relative within the five degrees of mourning, plots (and kills) her husband; if the fornication is with someone outside of the five degrees and plots (and kills) her husband, then the case can be adjudicated using the *tiben* system. 14. If, coveting property, a younger generation person rapes or plots (and murders) someone of the older general; 15. Killing two people (not subject to the death penalty) in one family, but only if the victims were grandfather, father, or male descendants, or within the degrees of mourning; 16. Robbers gathering in gangs of bandits and strong-arm robbers resisting and killing officials (and runners), if their crime is such that it meets the requirements for decapitation and display of the head.

QHDSL, 刑部/卷七百五十 刑部二八/吏律公式二/事應奏不奏; DLCY, “有司決囚等第—55.”

⁵⁹ 其餘尋常罪應凌遲斬梟斬決之案。仍專本具題等因。奏奉諭旨。QHDSL, 刑部/卷七百五十 刑部二八/吏律公式二/事應奏不奏。

⁶⁰ DMLJJFL, 附真犯雜犯死罪 (Fu zhenfan zafan sizui). Da Ming lü jijie fuli 大明律集解附例 (1610).

the statute which most clearly set forth the entire retrial review system, including the retrial-review and edict-prior-to-execution requirements.

Again showing the close connection between this substatute and summary execution under the imperial standard, the next year, under the same statute, another substatute was authorized that made it explicit that “whenever the investigation reveals that someone has engaged in gross unfilialness,” specifically referring “to a child or grandchildren that beats a parent or grandparent to death,” such a person would be summarily executed under the imperial standard. This new substatute was not formally published in the code until 1822 (DG 3).⁶¹ Once this codification was complete, for the most part, when cases were summarily adjudicated under the imperial standard, they were adjudicated according to the new codified law. In other words, while the extraordinary versus ordinary language continued to surface in practice, which cases were appropriate for imperial-standard summary execution became a matter of statute that in fact made summary execution more ordinary.

Imperial-standard summary execution cases that followed were generally consistent with these regulations.⁶² But, there was never quite a resolution of the extraordinary versus ordinary

⁶¹ DLCY, juan 49, Criminal Law 25, “有司決囚等第-58”

⁶² In response to a October 31, 1814 (JQ 19/9/19) memorial from Sichuan Governor-General and Chengdu General Cangming (Ch: Changming 常明)(d. 1817) in which he drafted and requested an edict to execute in the case of the “serious criminal who ripped the limbs off a victim,” the emperor responded that he should have been summarily executed.

In this case, the beggar “Begging-for-Food” Chen (陳討口) because the little pig of the Cheng Hong’s family ate his rice, so he beat [the pig] to death. It was really a minor pretext for a dispute. Chen Hong then talked with his little brother Chen Huai and they dismembered “Begging-for-Food” Chen to death in order to vent their anger. They then burned the body to erase the tracks. This is extremely evil and cruel. People in Sichuan are extremely uncouth and ferocious. There are many serious cases. After the governor-general tried this case of a serious criminal, he should have immediately executed the serious criminal under the imperial standard and displayed his head. Killing one to deter one hundred. This is using punishment to instill a sense of law. But instead Cangming was such a stickler for procedure that he

determination. For instance, in May 1816 (JQ 21/4), the emperor rebuked Guangxi Governor Cingboo (Ch: Qingbao 慶保) for not summarily executing a murderer-arsonist whose actions

requested an edict. Every province was issued imperial standards. Why don't they use them? Governors and governors-general have jurisdiction over the entire province. They should be able to distinguish serious and minor cases under the law in order to transform the habits of the people. But this kind of evil and wicked lawless element, after he was fully interrogated, to not immediately and harshly punish him, to delay things by using an edict, and wait for the time for the response to come back, potentially allowing him to die in prison and luckily escape punishment. This types of local bandits, I see that the governors and governors-general cannot immediately deal with them under the law. They just intend to toy around with cases. Thus it makes for not deterrent. How can this way of dealing with things change the uncouth habits to the good habits of commoners? Chen Hong will, according to the statute on the lead criminal who dismembered someone, will be sliced to death. Chen Huai, as the following, will be immediately decapitated.

QSL-JQ, juan 297, 1610-1611. Beating an older brother to death required summary execution under the imperial standard. December 14, 1814 (JQ 19/11/3). Shanxi Governor Hengling 衡齡 (d. 1819) regarding the apprehension of the neighboring jurisdiction fugitive felon. Beating one's blood older brother to death, according to the statute, it should be *lijue* decapitation without the assizes. This criminal Tian Fu, after he beat his brother Tian Yin to death, he fled. It's already been more than fourteen years since the crime. There has been much delay in executing the punishment. This governor after he was apprehended, and tried clearly, should have immediately sent up a notification memorial and simultaneously executed the criminal under the imperial standard. But instead, he following the ordinary statute and drafted a punishment of decapitation and notified the Board requested review. This is being an extreme stickler for procedure. The criminal will be immediately executed.

QSL-JQ, juan 299, 1622. Although not mentioned in the new statute, beginning in 1815, a series of "Confusing the masses" cases with heterodox religion, mostly in and around Sichuan Province were all, according to emperor appropriate for summary adjudication under the imperial standard. January 2, 1815 (JQ 19/11/22). An order to the Grand Council. Sichuan Governor-General and Chengdu General Cangming memorialized. Tang Guoxing, the criminal who used heterodox words to fabricate the so-called 明靈教名色 religion and confuse the masses, has been apprehended and strictly tried. This case of Tang Guoxing, originally it started out with him using spells to cure illness to swindle people out of food and money. And then he fabricated the 明靈教名色, planning to spread it wide to confuse the masses. He fanatically spread the heterodox teaching. He arrested when the magistrate when down to the countryside to inspect the condition of the baojia system. After the governor general tried him, he immediately decapitated him under the imperial standard and displayed his head. He was not taken in by his evil spells during questioning and simply sentenced the person who asked for the healing, He Hongshou and the others distinguished them and sentenced them to the cangue. This is all really appropriate. These kind of know-nothing bandits, the fanatically make up heterodox teachings and at first they just intend to swindle people, but as the days go on and they confuse more people, it lures in a larger crowd and then causes big trouble. If local officials investigate this type of crime early and arrest them, punishing the head offender, then it is killing one to deter one hundred. Then not many people would be fooled.

QSL-JQ, juan 299, 1625. In a similar case, the Jiaqing emperor again affirmed that there was "no need to have the Board review the case" and affirmed as proper execution under the imperial standard. QSL-JQ, juan 304, 1649. When a Western missionary infiltrated Sichuan after having been previously expelled from Qing territory, in October 21, 1815 (JQ 20/9/19), Cangming similarly summarily executed him under the imperial standard. The emperor responded, affirming the decision using language very similar to the non-western religion cases. "All the followers who refused to apostatize were put in the cangue for perpetuity." QSL-JQ, juan 300, 1683.

resulted in the deaths of several people.⁶³ Cingboo had previously served as an official at the Board of Punishments, as the Quanzhou (Fujian) prefect, and as the Taiwan Circuit Intendant. At the other extreme, in June 1817 (JQ 22/5), he rebuked Urumqi Dutong [simultaneously serving as Urumqi PMC] Liu Fen 劉芬 (1744-1820) for summarily executing Zhang Xi, a sojourner who fornicated with his Aunt (outside the mourning degrees) Mrs. Zhang née Zheng and later murdered her. Even though this case occurred in Xinjiang and touched on unfilialness, the emperor still held that it should have been adjudicated under the routine process.⁶⁴

This case provides significant insight into how summary execution was perceived at the imperial center at this time. According to the emperor, originally, Xinjiang cases of plotting (with others) to murder (*mousha* 謀殺) and intentional murder (*gusha* 故殺) were adjudicated under the routine process. The emperor then explained his reasons why he felt this particular case was just an *ordinary* case of intentional murder (*zhi xi xunchang gusha zhi a* 祉係尋常故殺之案). The emperor lamented that if ordinary cases in Xinjiang were summarily adjudicated

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May 5, 1816 (JQ 21/4/9). An order to the Grand Secretariat. Guangxi Governor Cingboo (Ch: Qingbao 慶保) memorialized. I have tried the case of the evil criminal who committed arson, plotted to kill the sick beggar, leading to killing many people.

This criminal Liang Yuren, because he appropriated the monetary donations that the village had donated to the sick beggar, having realized that Zhu Bengui was on to him, got the idea to burn Zhu Bengui to death in order to seal his mouth. In the process, he burned seven additional people to death. This is a case involving the murder of eight people. It's extremely evil and cruel. The governor adjudication according to the statute on murdering three people who are not members of the same family, drafting a punishment of decapitation (without waiting for the assizes) and forwarded a memorial requesting a decision. The way he handled things was really negligent. Send him an edict. Every province was issued imperial standards, for the purpose of handling important cases, especially for those cases in which the punishment could not wait! Like this kind of evil and wicked crime. If one still waits for the time it takes to send a memorial and request and edict, what good is it to have issued imperial standards? Liang Yuren will be immediately decapitated and his head displayed.

QSL-JQ, juan 318, 1719.

⁶⁴ QSL-JQ, juan 330, 1773.

under the imperial standard, then there would be “no Xinjiang cases left for the Autumn Assizes.” He explained that “in the past” because officials in Xinjiang were so pedantic about the procedures, so they were authorized to execute offenders summarily under the imperial standard. He noted that with this edict – directing routine adjudication in this case – he was “afraid” that officials would go back to their pedantic ways, even when an extraordinary case arose, so he gave this advice: “I do not want the cases to be drawn out without a fixed opinion, but for the facts and reason to be balanced. From now on when cases involving human life are drafted in Xinjiang, each case should be carefully considered and distinguished. Do not be lopsided on the side of being harsh or light, but follow my intent on how to properly punish.”⁶⁵ Thus, at least for the frontier, officials still had to make their extraordinary-ordinary judgment conform to the imperial will, but by this point, summary executions were far more normalized than they had

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[Jiaqing emperor]: When I read this case, I felt it was too much (went beyond appropriate). Thus, I referred it to the Board of Punishment to inquire whether this type of case should be handled with summary execution and whether Xinjiang has this type of precedent. Today, I received the memorial back from the Board of Punishments. In the past, Xinjiang handled both cases of plotting to kill and intentional murder by still sending them through the Autumn Assizes process. This place, Xinjiang, when there were important cases originally, it was permitted to execute offenders under the imperial standard. In this case of Zhang Xu fornicating with his unrelated auntie, it should be adjudicated according to the routine procedure (*de yi fan lun* 得以凡論). Later because he was refused by her, he vented his anger by killing her. That’s a routine intentional murder case (*zhi xi xunchang gusha zhi an* 祉係尋常故殺之案). It should have been entered into the Autumn Assizes process. If it was selected upon Autumn Assizes review, then it would have been checked. If these cases are all just first executed under the imperial standard, then in Xinjiang there would be no cases in the Autumn Assizes. In handling criminal cases, one must always pay attention during trial to the little details and balance the severity of the case. Recently, I have been using edicts to try to address this (the severity). Previously cases in Xinjiang were especially evil and [officials were being so] pedantic about the adjudication procedures for cases that were designated as after the assizes according to the law. Thus in the past, an edict was issued that for now on ordinary intentional murder cases would be summarily executed under the imperial standard. Now that I am issuing this edict, I am afraid that where there is a case of extraordinary evil that it will also be drafted as after the assizes. I don’t want the cases to be drawn out without a fixed opinion, but for the facts and reason to be balanced. From now on when cases involving human life are drafted in Xinjiang, each case should be carefully considered and distinguished. Don’t be lopsided on the side of being harsh or light, but follow my intent on how to properly punish.

QSL-JQ, juan 330, 1773.

been a century before during Zhandui-Jinchuan when the Qianlong emperor first embarked on this path.

In his later years, the Jiaqing emperor seems to have become increasingly critical of cases involving gross unfilialness for which the facts did not present a clear picture of culpability. For instance, on July 20, 1817 (JQ 22/6/7), Guangdong-Guangxi Governor-General Ruan Yuan 阮元 (1764-1849) memorialized the case of Cai Yunguang who allegedly excited his mother to kill herself in order to incriminate (*tulai* 圖賴) another person for the purpose of settling a property dispute. Ruan had Cai summarily executed under the imperial standard by slicing. The emperor's response reflected significant effort to show how the facts in that case could be distinguished to construe it as an ordinary case, not appropriate for summary execution under the imperial standard.⁶⁶

[Jiaqing emperor]: To sentence him to *lijue* decapitation would have already been severe enough without resorting to an immediate and extreme punishment. Recently within the provinces, among these cases of gross unfilialness, there have been some that involve pressuring a mother to commit suicide, and involve providing the implements of suicide as well as standing by and encouraging the suicide, what would these crimes then be called [if this crime were grouped in the same category]? Cai Yunguang has already been executed. There is no need to discuss it further. From now on, these types of cases should be drafted and reviewed for all the facts and circumstances. Do not be slow to distinguish them and simply punish them all harshly.⁶⁷

⁶⁶ In this case, Cai Yunguang's mother, Ms. Wan, because Qiu Chenggong was unwilling to return land, went to his place and cried, causing a commotion. At night, she slept in his house and hung herself to death. Because Cai Yunguang had excited his mother to go to Qiu Chenggong's place and kill herself to incriminate him, the governor-general and others adjudicated his case according to the statute on a son who plots to and actually did murder which carried a sentence of death by slicing, and then the governor-general executed him under the imperial standard. This was not handled appropriately. Ms. Wan went to Qiu Chenggong's home to incriminate him. Cai Yunguang did not go there. She hung herself with a hemp rope. It was something she found at Qiu Chenggong's home. It was not provided to her by Cai Yunguang. His confession to exciting his mom to give her life to incriminate was made after she killed herself and he was at trial. These are empty words.

⁶⁷ QSL-JQ, juan 331, 1778.

A few days later, July 28, 1817 (JQ 22/6/15), a case memorialized as a summary execution by Anhui Governor Kang Shaoyong 康紹鏞 (1770-1834) invoked a similar reaction from the emperor who made it clear that the case should have been ordered through the routine process.⁶⁸ And two years later, the emperor rebuked Sichuan governor-general Cangming (Ch: Changming 常明)(d. 1817) for not summarily executing a criminal under the imperial standard who had killed two people in one family with the aggravating circumstance of having been a fugitive for twenty years.⁶⁹

⁶⁸ On July 28, 1817 (JQ 22/6/15), Anhui Governor Kang Shaoyong 康紹鏞 (1770-1834) memorialized regarding the trial of the serious criminal who engaged in gross unfilialness. The initial conflict involved bamboo shoots growing up in an adjoining field, which, through a convoluted ceremony led to a mother giving her life (with the active support of one son) to help build the case by incriminating a neighbor.

In this case, Wang Zhuqian had a vegetable garden that was adjacent to his same-clan Wang Yankuan's bamboo grove. The bamboo roots stretched over to the vegetable garden and two bamboo shoots were coming up in the vegetable garden. Wang Zhuqian dug them up and took them home. Wang Yankuan suspected that Wang Zhuqian had stolen them. Thus he complained to the clan-head Wang Bangning who scolded Wang Zhuqian and fined him. Moreover, because Wang Zhuqian did not listed to him, so [the clan head?] beat him with his fists and knocked him over. Wang Zhuqian went home and told his moth Mrs. Wang née Shi what happened. Mrs. Wang went with her second son Wang Zhuyi to explain things to the Wang Bangning, but they were scolded and sent home. Mrs. Wang was angry and wanted to abandon her life to incriminate Wang Bangning, thus she snuck over to Wang Bangning's house at night and intentionally bumped her head and passed out. Wang Zhuyi was sleeping [got up] and quickly went to see his mother. He saw that he head was injured and her breath was already slight and he got the idea to strangle his mother to death, in order to make it look like his mother had killed herself to incriminate. He thus used his mother's hemp belt and wrapped it around her neck and then used pressure to take her life. He hung the body on Wang Bangning's door frame and went home to hide the fact. He woke up Wang Zhuqian who went with him to see. Wang Zhuqian then went and reported to the magistrate that Wang Bangning and his son had strangled his mother.

[Jiaqing emperor]: According to the governor's trial, he sentenced Wang Zhuyi according to the law on plotting to kill and actually killing one's mother to death by slicing and then immediately executed him by slicing under the imperial standard. But, this case was because Wang Zhuqian dug up sprouts and it lead to a conflict leading to his mother wanted to vent her anger by giving her life and his little brother Wang Zhuyi engaging in gross unfilialness. The governor did not get to the roots of the conflict and address Wang Zhuqian's crime of falsely accusing Wang Bangning and his son.....

QSL-JQ, juan 331, 1780.

⁶⁹ August 10, 1817 (JQ 22/6/28). An edict. Cangming memorialized regarding the apprehension of the important fugitive, his trial and drafting of punishment.

[Jiaqing emperor] In this case, Liu Ying killed two people in one family. According to the substatute, it should be drafted as executed (assizes-exempt) without subsequent display of the head. This criminal has

Recall that the very first case in which the Qianlong emperor had directed the use of the imperial standard to constructively satisfy the review and edict requirements was in the case of parricide, back in 1761. Despite the emperor's clear intent to establish a precedent ("From now on..."), officials still questioned whether *insane* killers of parents and grandparents should be summarily executed without any central government review or imperial approval. In 1823, there arose another such case. This latter case was republished in the well-known nineteenth-century case collection, *Xing'an Huilan* 刑案匯覽 under the title "When someone beats a parent to death, regardless of whether he is suffering from mental illness, he should be immediately executed." We have to pause for a second and think about what this reflects about the contemporary status of summary execution in Qing legal culture. By this time, summary execution was routine enough to find its way into a routine legal casebook presumably read widely by legal specialists across the empire, and this was prior to the Taiping. This case presence within the *Xing'an Huilan* itself reflects a significant change in adjudicative *mentalité vis-à-vis* summary execution.

According to the *Xing'an Huilan* version, Anhui governor Taoshu 陶澍 (1779-1839) memorialized a case in December 1823 (DG 3/11) that specifically cited the original 1761 precedent (edict) that parricide cases were subject to summary execution under the imperial standard (which itself had also involved an insane killer), but based on the fact that this case involved an insane killer, he still memorialized the case for approval prior to carrying out the

been on the run since JQ 2. The punishment has already been delayed more than twenty years. When this governor-general apprehended him, he should have executed him under the imperial standard right after the trial. Yet, instead he memorialized and requested an edict before executing him. It really was handled in error. Liu Ying will be immediately decapitated and his head displayed.
QSL-JQ, juan 331, 1783.

execution. In response, the *Board of Punishment* – that quintessential agency of the routine retrial-review process, responded that such a case should have been adjudicated summarily. The fact that even the Board of Punishments approved of summary execution and even corrected a provincial official for not using it reflects significant change since the early eighteenth century.

[Board of Punishments]: This is a case of a grandson or son killing grandparents or parents. The statute [which had been enacted during JQ 3] also has language regarding immediate execution under the imperial standard, and thus immediately after the trial, he should have been executed under the authority of the imperial standard.

As for this being a case of an insane defendant who killed, although it involved someone who was insane and without knowledge of what he was doing, still killing one's grandparents or parents is related to gross unfilialness and cannot be compared to killing other people. As this defendant is a son who killed the one who brought him into the world, it is an extremely evil crime (*shishu zuida eji* 實屬罪大惡極).

The *Board of Punishments'* memorial used the verbatim language that had developed within the summary execution adjudicative discourse:

Law enforcement officials did not exercise their convenience [to immediately execute him] because he was insane and unaware of what he had done, thus it has delayed the execution of his punishment, having to wait for an imperial edict in response to a memorial before executing the criminal, thereby allowing – while waiting to receive the imperial edict, the accused to die or be killed in prison, thereby avoiding the penalty of the law.

Moreover, what this case shows is that now that summary execution was codified, it was subject to citation and legal reasoning in all channels dealing with criminal punishments. It had been routinized as part of Qing law and legal culture. Here, the Board of Punishments cited to summary execution just as they would cite to any other statute:

From now on, apart from cases in which children or grandchildren assault with injuries, accidentally injure, mistakenly (*wusha* 誤殺) or accidentally kill (*guoshisha* 過失殺) their grandparents or parents which should still be memorialized according to the applicable statutes, cases in which sons and grandsons beat their grandparents or parents to death, regardless of whether it is by reason of insanity, should all be adjudicated according to

this statute. Simultaneous with immediately carrying out the execution under the imperial standard, such cases will be memorialized, so that cases in which there is a serious violation of Confucian relationship will no longer take so long to carry out punishment and thus avoid unfortunate things happening during the long process.⁷⁰

Thus, by the 1820's, both in Code and practice, we can see that summary execution had achieved a legitimate place within late imperial legal culture. As long as the imperial standard, even imperfectly, was understood as a constructive edict meant to be in conformance with a hypothetical imperial will, summary executions in the provinces remained in some real way individual criminal actions tied to the imperial will. Each case had required an individual judgment of whether the case was in conformance with the imperial will. Yet, as seen in many cases since Zhandui-Jinchuan, this required constant supervision by the emperor himself which greatly detracted from the whole project of expeditious and harsh punishment lacking the potential for leniency that could create a meaningful deterrent. Codification could address the problem of individual judgment, but codification changed the imperial standard's character from a means of constructively satisfying Code provisions requiring imperial ascent to itself a legitimate process of summary execution enshrined in the Code. It also reduced reference to the imperial standard to nothing more than *pro forma* rhetoric in such cases.

III. The End of the Imperial Standard and the Rise of Strategic Summary Execution

The term “on the spot summary execution (*jiudi zhengfa* 就地正法),” in the rare instances it had appeared within the adjudicative discourse *prior* to the Daoguang era, consistent with its semantic structure, meant nothing more than that an execution had taken place at the location

⁷⁰ [Qing] Zhu Qingqi 祝慶祺 et al, Xing'an Huilan 刑案匯覽 [Compendium of Criminal Cases], V. III (Beijing: Beijing Guji Chubanshe, 2000), 1617-18; QSL-DG, juan 61, 565.

where the crime had occurred, for any number of reasons. During the eighteenth century, its appearance did not signal any type of procedure distinct from imperial-standard executions.⁷¹ As Zhang Shiming has noted, it really appeared haphazardly in the historical record and cannot be fully accounted for by economic or political explanations.⁷² As Zhang also pointed out, the term had staying power in the nineteenth century because it became tied to a particular system of summary execution. It was during the Daoguang era that the term “on-the-spot” execution first began to connote a type of summary execution distinct from imperial-standard summary executions, even if occasionally some Daoguang-era cases continued to use the terms synonymously such as “*gongqing wangming jiudi zhengfa* 恭請王命就地正法.”⁷³

The Veritable Records, *zouzhe*, and *tiben* archives all consistently reflect that during the Daoguang reign, imperial-standard summary executions became increasingly confined to the new statutory limitations that had been enacted since 1790 to address the lack of conformance between individual adjudicators’ judgment and the imperial will.⁷⁴ At the same time, for the first

⁷¹ For instance, during Qianlong 46, in a case of planning to murder in order to gain property, Sichuan Governor-General Wensui sentenced the accused to *jiudi zhengfa*, but the meaning seems to have been synonymous with imperial-standard summary execution. ZPZZ-NPM, 030478.

⁷² Zhang Shiming, *Sifa Changyu*, 617.

⁷³ NGDK, 232102.

⁷⁴ For instance, in the military context, on January 24, 1824 (DG 3/12/12). An edict. Shaanxi-Gansu Governor-General Nayancheng memorialized regarding the case of the local native (番子) who killed his own centurion.

[Daoguang emperor]: In this case Taxuge was a native under the jurisdiction of Centurian Luozangduan, and Taxuge built up hatred against him and stabbed him to death with a knife. It really is a case of disdain for the law. After the governor-general tried him, he should have immediately executed him under the imperial standard in order to manifest the punishment and to make sure that all the natives (*fanzhong* 番眾) understood deterrence. What’s the use of sending up an edict to request a decision? Taxuge will be immediately executed and his head displayed.

QSL-DG, juan 62, 571. In a case of gross unfilialness directly in line with the codified use of imperial-standard summary execution, on December 30, 1826 (DG 6/12/2) Zhili Governor-General Nayancheng memorialized regarding the trial of the criminal who chopped his mother to death detailing his draft of the sentence according to the statute.

time as a distinct way of adjudicating cases, “on-the-spot execution” began to appear in the adjudicative discourse. In fact, the correspondence between the reduction-in-scope of the former and the increase in the latter is itself strong evidence of the interrelatedness of the two phenomena which was more than semantic. The key to understanding this crossover lies in the legal-cultural blurring of the distinction between militarized adjudication and routine adjudication that had been occurring over the prior century since Zhandui-Jinchuan.

Under the adjudicative *mentalité* that had developed along with the legitimation and routinization of summary execution, officials – who under the Qing system both led armies as well as adjudicated cases – no longer *felt* a dichotomous distinction between the non-adjudicative strategic approach used in war against those designated as enemies – the old binary of consoling (*zhaofu* 招撫) versus annihilating (*jiaomie* 剿滅) – and between and among the adjudicative approaches of militarized and routine procedure. During the Daoguang era, developing first primarily in cases of troublesome “barbarians (*yi* 夷)” on the Sichuan frontier and then spreading to cases of Han-ethnic persons on the frontier, on-the-spot execution developed as a new hybrid:

[Daoguang emperor]: In this case, Zhou Zhuer, from the time he was 11 sui, was raised by Mrs. Zhou née Qin as her adopted son (*yizi*). She graciously raised him all those years and he has already taken a wife. He has received her property. This case should be adjudicated just like a son or grandson. The governor-general drafted the sentence as slicing according to the statute and then also stated that its extremely heartless to kill like this, then he cited the case of Men Yao'er from JQ 17 and requested to execute the offender after a review by the Board. This criminal used a knife to chop Mrs. Zhou head into two pieces. How can it wait for a review by the Board! As far as the Men Yao'er case, that was a case of encouraging parents to kill themselves in order to incriminate another person by hanging themselves from the rafters. It's not close to this case. Citing it is very inappropriate. Zhou Wangr will be immediately sliced to death. Notify the Board.

QSL-DG, juan 111, 570. As had begun during the Jiaqing reign, imperial standard executions continued to be used in individual cases of heterodoxy. For instance, on October 1, 1828 (DG 8/8/23), Yunnan-Guizhou Governor General Ruan Yuan and others memorialized that the bandit-criminal who planning on craving a stone seal and inscribing on it false words of rebellion had been summarily executed under the imperial standard. QSL-DG, juan 141, 1321.

strategic summary execution. Considering the association between the strategic response and the Ming-Qing transition as well as the Rebellion of the Three Feudatories, its return during nineteenth-century dynastic instability should not be surprising. What allowed it to morph into a new judicial adjudicative method, however, was that Qing legal-culture, by this point, had come to accept summary execution as a legitimate, individual legal-adjudicative response.

A. *The Daoguang Crossover*

There are ubiquitous references to imperial-standard summary executions in the Jiaqing-era Veritable Records, but no such references at all to on-the-spot summary executions.⁷⁵ Likewise, during the Xianfeng era, there are ubiquitous entries to on-the-spot executions, but not a single entry on imperial-standard summary executions, although from other archives we know that imperial-standard summary executions continued through the Xianfeng reign and through the end of the dynasty. Only the Daoguang-era Veritable Records contain significant numbers of entries using one term or the other (or both) to describe summary executions.

During the Daoguang reign, the possibility of the imperial standard serving as a *constructive* edict to satisfy the *lijue* requirements of the Code diminished as the imperial standard itself became explicitly codified as a formal, legitimate means of carrying out summary executions for particular offenses under the Code. Its application became formalistic in those cases that met the definition under the new imperial-standard statutes. Although imperial-standard summary executions continued to take place during the Daoguang era along statutory lines, it was the appearance of on-the-spot summary executions that revealed the change in adjudicative

⁷⁵ As is well known the Veritable Records was a heavily-edited government-controlled narrative of history from the emperor's perspective. Yet, out of the hundreds of *zouzhe* I have compared to their corresponding Veritable Record entry, most have been exact duplicates. Thus, one must recognize its value while using it cautiously.

mentalité.⁷⁶ Demonstrating the militarized-adjudication genealogy of on-the-spot summary executions, almost all of the Daoguang-era references to on-the-spot summary execution took place within a military context, with most cases having a tie to either a frontier area or frontier non-Han peoples, or both.

Chengdu General Nimašan (Ch: Nemashan 呢瑪善)(d. 1824) who had been appointed imperial councilor to supervise military operations in Yunnan memorialized the throne on December 6, 1822 (DG 1/4/23) regarding the on-the-spot execution of native (not Manchu, Mongol, or Han) frontiersmen-criminals in Yunnan (*fanzei* 番賊). Given that there had been many cases involving these native frontiersmen “forming up in gangs, stealing property, and dividing it among them,” Nimashan sent ethnic-Han and native-local troops to apprehended the local chief father and son as well as the “well-known evil criminal” and had them all executed on-the-spot (*jiudi zhengfa*). The Daoguang emperor noted that this was all appropriate.⁷⁷

Another on-the-spot summary execution case that arose in the context of military operations involved (not surprisingly) the Taiwan frontier and ethnic-Han offenders. On December 17, 1832 (DG 12/10/26), Fujian-Zhejiang Governor General Cheng Zuluo memorialized regarding a conflict in Jiayi County, Taiwan. A feud had erupted between two rival groups from Canton and

⁷⁶ The imperial-standard summary execution cases of the time also reflect the rise of social unrest and public disorder that characterizes most of the nineteenth century in the historical imagination. For instance, in June 1832 (DG 12/5), multiple people ganging together in Fujian to steal from rice stores were adjudicated summarily under the imperial standard. QSL-DG, juan 212, 1957. Resisting arrest in November 1840 (DG 20/10) in Suzhou was another example. QSL-DG, juan 340, 3200. One of the last imperial-standard summary execution cases from the Daoguang era occurred in July 1847 (DG 27/6). In that case Qiying 耆英 (d.1858), who would later be blamed and executed by the Court for signing the treaty with the British that ended the First Opium War, memorialized that he had executed Green Standard soldiers under the imperial standard who had become robbers as well as killed resisting property owners. The adjudicative discourse in this case was largely similar to that which had developed since Zhandui-Jinchuan. QSL-DG, juan 443, 4090.

⁷⁷ QSL-DG, juan 44.

Fujian over stealing of livestock. Bad elements “took advantage of the opportunity to get together in a gang.” The military nature of the operation was clear: generals dispatched troops, conducted patrols with hundreds of soldiers, and acted on intelligence. Ultimately, the offenders were apprehended and disarmed. They were then summarily executed on-the-spot.⁷⁸

In another military operation, in January 1833 (DG 12/12/1) Yunnan Governor Gioro Yilibu 伊里布 (1772-1843), who would later play a significant role in military and diplomatic aspects of the First Opium War (1839-42) as well as serve as Governor-General of Jiangnan and Jiangxi, memorialized regarding a murder case that arose out of “hateful litigation.” Eventually, as vengeance and anger took hold, the case boiled over into a situation where a “few hundred bandits took advantage of the situation to engage in robbing.” They even got a “crazy woman” involved who “recklessly predicted fortune and disaster, thus confusing the country bumpkins.” Local magistrates initially led soldiers and runners to attack the bandits, but over ten soldiers were ambushed and injured or killed. Finally, a detachment of more than five hundred soldiers was led by Guiyang Prefect to go quickly and supervise the annihilation 督剿 [of the enemy].” Within this patently military situation, Yilibu had ordered their “summary execution on-the-spot in order to create a deterrence (*zhouji fenbie jiudi zhengfa, yi zhao jiaojie* 著即分别就地正法以昭炯戒).”⁷⁹

In another military operation against bandits recorded in an edict dated October 15, 1834 (DG 14/9/13) to the Chengdu Manchu General Hūsungge (Ch: Husong’e 瑚松額) (1772-1847), who

⁷⁸ QSG-DG, juan 224.

⁷⁹ QSG-DG, juan 317.

would later go on to serve as the Shaaxi-Gansu Governor General, the emperor approved of Hūsungge military operation to “annihilate and capture the barbarian-bandits” of Sichaun’s E’bian district. “Apart from the leaders that were brought to the capital, the ones for which leniency was appropriate were turned over to their headmen, and the rest were executed on the spot (*yu ji jiudi zhengfa* 於即就地正法).”⁸⁰

Referring to roughly the same Sichuan native-frontiersmen, again on May 11, 1835 (DG 15/4/14), Chengdu Manchu General Ošan (Ch: Eshan 鄂山) (1770-1838), who went on to become the President of the Board of Punishments the same year, memorialized that he had sent official soldiers to annihilate (*jinjiao* 進剿) the barbarian-rebels (*yifei* 夷匪), and that all those who were captured were summarily-executed on-the-spot in order to create a deterrence (*suoyou qinhuo xiongyi zhuoji jiudizhengfa yi jing xionghan* 所有擒獲兇夷著即就地正法以儆兇頑).⁸¹ There were also other military-operation cases in which on-the-spot summary execution was employed.⁸²

At the same time that the rhetoric of on-the-spot summary executions was beginning to become more prominent in summary executions within the context of military operations, the move towards codifying – further taming – imperial standard executions both continued and reflected

⁸⁰ QSL-DG, juan 256.

⁸¹ QSL-DG, juan 265.

⁸² And in another military action, in August 1838 (DG 18/6). Chengdu General Kaiyinbudeng 凱音布等 (1775-1839) who had formerly served on the Board of Punishments and would go on the next year to be the Governor-General of Sichuan, led another military operation to deal with social unrest among native frontiersmen. Because of a recent crop failure, these natives were sneaking into the border region, to loot the grain stores and livestock of the commoners who live there. According to Kaiyinbudeng, “The civilian and military officials have led the soldiers and braves of the area and killed many barbarians. They have summarily executed on-the-spot the ferocious barbarians (*xiongyi* 兇夷).” The emperor response to this was an increasing concern that the officials were not getting to the root of the problem, but he did not seem bothered by the summary executions. QS-DG, juan 311.

the chaotic times, such as in an 1836 (DG 16) statute. That statute required that if sailors operating on grain boats robbed or killed, they would be subject to *lijue* decapitation with head displayed and would be immediately executed under the imperial standard.⁸³ The statute also mandated imperial-standard summary execution for some people who engaged in conspiracy to murder, if they found strength in a group to do so.⁸⁴ What is particularly telling is that in one provision of the new statute that called for step increases in punishment for those who fled after committing such offenses, summary execution under the imperial standard was treated as just one higher level of punishment, right above immediate decapitation. Within this particular iteration of the adjudicative discourse, then, it was elevated to the level of the five traditional punishments.⁸⁵

⁸³ DLCY, “強盜-34”; If sailors operating on grain boats rob and kill, whether or not there are many together, or whether they actually get anything, they will be adjudicated as *lijue decapitation with the head displayed, and will be executed immediately under the imperial standard*. DLCY, juan 26, Criminal Law 2, “強盜-39.”

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Within cases of robbery, those who actually killed people, they will be adjudged according to the statute on robbing, and be executed with head displayed. Their followers who assisted them to beat up or used knives or their hands and feet to injure will be adjudicated as *lijue* strangulation. Those who did not injure with a knife and did not cause serious injury, they will be drafted as strangulation after the assizes. Those who [were willing to provide assistance beating] did not participate in the beating will be banished to Xinjiang as slaves to official soldiers stationed there.

Intention or conspiracy murder cases involving ordinary feuds will be drafted as *lijue* decapitation. If upon trial, it turns out that there is no issue of plotting to murder, but it was just a matter of getting caught up with the crowd and beating, then it will be adjudicated according to the Guangdong statute on murder committing in the course of armed brawl in a feud. Those who hid weapons or carried weapons, regardless of whether they fired the weapon and injured someone, will be banished to Xinjiang as slaves to official soldiers.

All of the above offenders, having found strength in the crowd, use weapons to resist and injure officials, except for those in which the original punishment for the underlying crime cannot be increased, all those who were adjudged as immediate decapitation will have their sentence increased to the same plus display of the head and will be summarily executed under the imperial standard.

DLCY, juan 26, Criminal Law 2, “強盜-39.”

There is no doubt that imperial-standard summary executions continued to be carried on throughout the empire by a wide range of officials. For instance, in the hundred and nine random Daoguang-era imperial standard execution cases I reviewed from the Grand Secretariat Archive, the following significant administrative divisions were included: Guangxi-Guangdong (combined)(18), Shanxi (13), Hunan (12), Fujian and Zhejiang (11), Taiwan (alone) (11), Guangxi-Guangdong (combined)(18), Zhili (8), Sichuan (7), Shandong (7), Jiangxi (6), Xinjiang (4), Jiangsu (3), Hebei (2), Anhui (2), Heilongjiang (1), Huguang (1), Yunan-Guizhou (3). Out of these cases, the subject-matter almost perfectly reflected the imperial-standard statutes codified since 1790 (QL 55). Sixty-five involved gross unfilialness, with the majority of those involving the killing of a parent. Twenty-four involved gathering in gangs, robbing, resisting arrest, and killing officials. Eleven involved killing three or more people in one family. And nine involved exile fugitives. These were all strictly statutory by this time.

The disorder of the times is also reflected in another imperial-standard summary execution statute from 1846 (DG 25). According to this statute, for “Guangdong and Guangxi armed robbers, if after having engaged in robbery, they were dissatisfied with their loot and so took the property-owner hostage demanding a ransom, no matter whether there were many people involved or not and no matter the number of times, the lead criminal would be drafted as *lijue*

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Those whose original offenses called for *lijue* strangulation will be changed to *lijue* decapitation. Those that should have been sentenced to strangulation after the assizes will be changed to *lijue* strangulation. Those who should have been exiled will be changed to strangulation after the assizes. If, in the course of resisting, they kill someone, then the leaders, whether or not the original offenses was serious or not, will all be drafted as *lijue* decapitation with display of the head and summarily executed under the imperial standard....

DLCY, juan 26, Criminal Law 2, “強盜-39.”

decapitation with head displayed and would be immediately executed under the imperial standard.”⁸⁶

For Westerners, there may be no more famous a nineteenth-century Qing official than Lin Zexu 林則徐 (1785-1850). After the disastrous First Opium War – for which Lin’s aggressive methods as Imperial Commissioner were partly blamed – Lin spent a stint in exile in Xinjiang. Later, he was called upon to lead the fight against rebels in Yunnan. In October 1848 (DG 28/9), Lin, now in Yunnan, memorialized the throne requesting permission “to immediately punish the Southwest Yunnan rebels without following the requirement to have them escorted to the provincial capital for retrial-review.” He was requesting to execute them on the spot under the imperial standard (*gongqing wangming jiudi zhengfa*), which again highlights the fluid and imprecise nature of the language.⁸⁷ The request was forwarded to the Board of Punishments for an opinion. According to the Board of Punishment,

[Board of Punishments]: Southwest Yunnan is a frontier territory (*Yunnan Yixi yidai jie zai bianyu* 雲南迤西一帶界在邊隅). From now on, except for ordinary life and robbery cases (*xunchang mingdao an*) that must still be adjudicated according to the [routine process] statute, if there are bandits who gather together in gangs, Lin Zexu is permitted to authorize those in charge of circuits and prefects, after they have tried them and thoroughly had the cases reviewed by the provincial judge who then had the governor and governor-general review and authorize it, then the local official may execute the criminals on-the-spot in order to create a deterrence. Moreover, a time limit for the procedure should be considered.

[Daoguang emperor]: Military operations in that area have just been completed. It is appropriate to be harsh with the remaining bandits. Thus, the above procedure is authorized for five years. Once the five years is up, then judicial action will again be

⁸⁶ DLCY, “強盜-39.”

⁸⁷ Lin’s memorial is reproduced in Zhang Shiming, *Sifa Changyu*, 619-20.

handled according to the [routine] statute with the governor-general and governor personally conducting the trial and forwarding a *tiben* to the Board for review.⁸⁸

B. *Summary Execution as a Strategic Response to the Taiping Civil War*

When faced with new demands for summary execution during the Taiping Civil War – an extraordinary situation in many regards – adjudicating officials operating under this post Zhandui-Jinchuan *mentalité* that accepted summary execution under “extraordinary conditions” – like the Taiping War – requested authority to carry out such summary executions. “The war that engulfed China from 1851 to 1864 was not only the most destructive war of the nineteenth century, but likely the bloodiest civil war of all time. Known in English as the Taiping Rebellion, it pitted the Chinese rebels of the Taiping Heavenly Kingdom against the waning authority of the two-hundred-year-old Qing Dynasty of the Manchus, and in its brutal fourteen-year course at least twenty million people lost their lives to warfare and its attendant horrors of famine and pestilence.”⁸⁹ During times of massive rebellion and dynasty transition, such as the Ming-Qing Transition and the Revolt of the Three Feudatories, the Qing had in the past resorted to the strategic mode of response that sought either to console or annihilate those it defined as enemies. From a legal-culture standpoint, what happened during the Taiping drew on this tradition but was also very different.

On March 19, 1853, Nanjing fell to the Taiping. That year, the Xianfeng emperor issued an edict stating, “If, in any province there are cases of bandits gathering together and wantonly engaging in stealing and robbing, then the local officials (*difang guan* 地方官), upon

⁸⁸ QSL-DG, juan 459.

⁸⁹ Stephen R. Platt, *Autumn in the Heavenly Kingdom: China, the West, and the Epic Story of the Taiping Civil War* (New York: Vintage, 2012), xxiv.

apprehending them and after interrogating them, may execute them on-the-spot (*jiudi zhengfa*).”⁹⁰ The use of the judicial term *zhengfa* (execute) as compared with a strategic-military term, such as “to annihilate or exterminate (*jiaomie* 剿滅)” shows that the subject under consideration was indeed summary execution, not military-style killing. Indeed, this was summary execution on a new scale. According to Stephen R. Platt,

Through 1854 and into 1855, the governor-general of Canton oversaw what the British consul described as “a series of executions, among the most horrible for extent and manner, of which the world has any authentic records.” According to one British eyewitness, tens of thousands of accused Taiping supporters were slaughtered in the Canton execution grounds.⁹¹

Out of 219 on-the-spot execution cases I reviewed from the National Palace Museum (Taiwan) *zouzhe* archives, 118 characterized the executed criminals as “bandits (*fei* 匪).” Ninety-nine involved robbers.⁹² Liu Yanbo has provided persuasive research showing that summary executions were indeed being performed on a large scale, at least in Hunan and Hubei, by county and prefectural officials. The edict meant what it said, “local officials,” even if most of the on-the-spot executions continued to be carried out by high level provincial officials such as had been the case with imperial-standard summary executions. This was a new, more lethal summary execution that combined the lack of restraint of the strategic response with the new legal-cultural legitimacy of summary execution.

At this point, another change in adjudication of desertion cases provides significant insight for how on-the-spot summary executions were usurping the subject matter of imperial-standard

⁹⁰ Liu Yanbo, 138.

⁹¹ Stephen R. Platt, *Autumn in the Heavenly Kingdom: China, the West, and the Epic Story of the Taiping Civil War* (New York: Vintage, 2012), 21.

⁹² For example, NPM-ZPP, 83051, 83858, 087133.

summary executions (now limited to codified situations) while at the same time going way beyond imperial-standard executions in terms of local autonomy and scale. Since the time of the Burma War, campaign deserters had been summarily executed under the imperial standard, constructively satisfying the *lijue* requirement of the campaign deserter statute. With the rise of the Taipings, desertion became an increasingly critical issue. Tellingly, though, even deserters would now be summarily executed on-the-spot. In August 1854 (XF 4/7), the Xianfeng emperor issued another imperial edict, “Every general, governor-general, governor, and prefect, if you are notified by the deployed military unit that they have apprehended a campaign deserter, then immediately take him into custody and execute him on the spot (*jiudi jixing zhengfa* 就地即行正法).”⁹³ In the case of campaign deserters, then, it is very clear that on-the-spot summary executions had appropriated the subject-matter of imperial-standard summary execution. In another example, even at the very beginning of the Xianfeng reign and through almost the end of the second year, cases of serial-robbers gathering in gangs under an oath to rob, serial robbers, and bandit-robbers were still being handled as individual adjudications under the imperial standard at the provincial levels.⁹⁴ After the third year of the Xianfeng reign, these types of imperial standard executions – those dealing with what might be called bandits and gangs – were removed almost entirely from imperial-standard executions and instead became the purview of on-the-spot executions. When the Taiping was defeated, the number of such summary executions only increased under the Tongzhi reign. This time, however, the problem was too widespread to maintain the pretense of imperial control using rhetoric of the imperial standard.

⁹³ Di Chao 邸抄 (Beijing : Beijing tu shu guan chu ban she, 2004), XF 4/7, 1100.

⁹⁴ ZPZZ-NPM, 083874, 084966, 084967.

A very energetic emperor interested in summary executions may have made a difference, but that was not to be.

IV. Conclusion to Chapter Seven

In this chapter, I have shown that during a period of approximately one hundred years, starting with the Zhandui-Jinchuan campaigns an untold number of high level officials – many of whom rotated into important positions on both the frontier and on key central government legal agencies – summarily adjudicated offenders under the imperial standard. The Qianlong and the Jiaqing emperor kept close tabs on these officials, constantly trying to shape their judgement of what constituted ordinary and extraordinary cases to conform to the imperial will. Given the impossibility of complete congruence between the two, over time, offenses were increasingly codified, reducing the meaning of the imperial standard from a means of constructively satisfying the *lijue* requirements under various code provisions to itself a codified *pro forma* semantic device in formal law. This process, playing out across thousands of cases and officials across the empire who engaged over and over again in an adjudicative discourse that constructed summary execution as legitimate, if properly done – no doubt far more than the few cases listed in this chapter – worked a change in adjudicative *mentalité* that did away with the legal-cultural taboo against executing a man without imperial authorization. Without this mental restraint, there was no longer a conceptual need to tightly distinguish militarized executions from the non-judicial strategic response. When a trifecta of weak imperial control, widespread social unrest, and resource constraints presented a “criminal problem” to nineteenth century adjudicating officials, they were no longer constrained by the legal culture. Under these circumstances, with

no external force at the center to constrain them, they demanded the ability to engage in summary execution to deal with the problem at hand. They never let go.

Conclusion

The *Draft History of the Qing Dynasty* captures the sense that the central government lost control over on-the-spot summary executions during the Taiping Civil War in the 1850's and never again regained that control.¹ By the middle of the nineteenth century, even officials as low on the bureaucratic hierarchy as county magistrates in inner-empire zones of conflict, such as Hunan and Hubei, were routinely taking it upon themselves to execute armed robbers and bandits, a usurpation of the Son of Heaven's authority over life and death that would have been unthinkable prior to the Qianlong reign.² Despite edicts issued in the name of the emperor and directives from the Board of Punishments to provincial officials to investigate their circumstances and return to the routine retrial-review process, the governors-general and governors memorialized that local circumstances continued to require summary executions, and the practice continued.³ In this dissertation, I have followed the change over two centuries in the way military campaign desertion cases were adjudicated, a process that has revealed eighteenth-century militarizing tendencies in Qing legal culture. These militarizing tendencies constitute a

¹ QSG, art. 118, xingfa 2.

² Liu Yanbo 劉彥波, "Wanqing Lianghu diqu zhouxian 'jiudi zhengfa' xulun 晚清兩湖州縣'就地正法'述論[A Discussion of On-the-Spot Executions in the Districts and Counties of Late Qing Hunan and Hubei], *Jinan Journal (Philosophy and Social Sciences)* 2012:3, No. 158.

³ For instance, one such unsuccessful attempt to reign in summary execution occurred in 1886 (GX 12):

From now on, for Xinjiang, except for exceptionally aggravated cases which should be adjudicated according to imperial-standard summary execution substatutes (*sihou Xinjiang chu qingzui zhongda li ying gongquang wangming* 嗣後新疆除情罪重大。例應恭請王命) and those criminals who cannot wait to be executed for which on-the-spot execution is temporarily authorized, all other crimes of unfilialness that should be punished with death by slicing, or *lijue* decapitation/strangulation, and all ordinary cases involving human life (*xunchang ming'an* 尋常命案) which are drafted as decapitation or strangulation after the assizes, should still be reviewed by the governor who should specifically cite the law and forward a memorial requesting an imperial edict. After the governor has received the response from the Board following review of the case, for [*lijue* executions], the governor can execute them....

DQHDSL, Xingbu, juan 850, Xinbu 128, /刑部/卷八百五十 刑部一二八/刑律斷獄一三/有司決囚等第七, 1234-1 – 1234-2.

significant legal-cultural origin for the eighteenth and nineteenth-century rise of summary execution and its explosive application during and after the Taiping War.

From the time of the Ming-Qing transition until the beginning of the Qianlong era, there was a punctuated trend towards adjudicating campaign deserters under the routine retrial-review process pursuant to the campaign desertion statute the Qing had adopted from the Ming. During this time, the primary exceptions to routine adjudication were times of widespread social unrest and domestic instability – the early Ming-Qing transition period and the Rebellion of the Three Feudatories – during which authorities tended to respond in the strategic mode, a non-adjudicative mode of response that constructed the subjects as enemies either to be killed or consoled and brought over to one’s side. The strategic approach did not even purport to be part of an adjudicative process, militarized or routine.

This trend towards routine adjudication took a sharp turn in the 1750’s, with almost all campaign deserters from then on being summarily executed “under the imperial standard” after 1765 despite the plain language in the campaign desertion substatute which required at least *lijue* review and an imperial edict prior to execution. In the 1850’s, summary execution for campaign deserters became even more summary after the Xianfeng emperor issued an edict that all such campaign deserters would be subject to “on-the-spot summary execution.” As it turned out, these two phenomena were highly related and had mutual legal-cultural origins in the military campaigns and judicial practices of the Qianlong emperor.

During the Zhandui-Jinchuan Campaigns in the late 1740’s, the Qianlong emperor concluded that significant military-operational failure was the result of military indiscipline and that indiscipline stemmed from an expectation among his military officials that even if they acted in

an undisciplined way, they could still expect leniency from the routine adjudicative process. To counterbalance the structural leniency of the routine process, the emperor forcefully directed his adjudicating officials to incorporate the principles of militarized adjudication, a mode of summarily trying (and executing) offenders that had long existed within military campaign culture for purposes of maintaining military discipline. Prior to the Qianlong emperor, militarized adjudication had been, for the most part, paradigmatically-distinct from the routine process with different justifications rooted in different goals: self-renewal versus military discipline. With the Western Campaigns against the Zunghars in the 1760's, the emperor extended this same logic to campaign deserters. Still, there was seemingly a mismatch between the summary execution of campaign deserters in practice and the campaign desertion statute that formally required *lijue* review and an edict approving the execution prior to execution. This contradiction was resolved with the practice that developed during the Burma Campaigns of using the imperial standard to constructively represent the imperial edict.

Two points are important. First, despite admonishing his officials to autonomously carry out summary executions and only inform him after-the-fact, there is no evidence that the Qianlong emperor ever intended to cede imperial authority over life and death. Second, from the time of the Zhandui-Jinchuan campaign, the Qianlong emperor relentlessly sought to train his officials to distinguish *extraordinary* cases that merited militarized adjudication (summary execution) and ordinary cases that were to be directed for review and an edict. In order to make this determination in a way that continued to tie such autonomous action to the imperial center, adjudicating officials throughout the vast empire had to conform their judgement to the emperor's will. Ultimately, the emperor and his successors were never able to get the judgment

of adjudicating officials to align completely with the imperial will, but over the course of sixty years, they did manage to change the adjudicative discourse surrounding summary executions. Within the summary-execution adjudicative discourse, legal-cultural values that had held great importance prior to the Qianlong reign, such as careful deliberation, review, leniency and an opportunity to renew oneself were reconstructed as pedantic rule-following and being indulgent, at least when applied to “extraordinary cases.”

The inability to conform the judgement of adjudicating officials to the imperial will was the most likely background motivation for an increasing effort, starting in the 1790’s, to codify imperial-standard executions as part of formal Qing law. This was the first time that summary-execution procedures expressly entered the Code in a systemic way. At the same time, codification also limited imperial-standard executions to the circumstances set forth in codified law. Over the course of the Qianlong and Jiaqing emperors’ reigns, adjudicating officials came to accept that summary execution was appropriate under the right circumstances. When society exploded in the cataclysmic violence of the Taiping Civil War and control from the imperial center was weak, there was no longer any legal-cultural restraint to summarily executing offenders with little regard to the imperial will.

I have used the construct of legal culture to express how multiple processes, each involving unique strains of discourse, came together in the militarization of legal culture, the concrete expression of which was the legitimation of summary execution. It spread from military campaigns and a frontier context to a formally-codified and fully-legitimate means of adjudicating certain offenses even in the capital itself. The origins involved were many: the pre-extant campaign authority of militarized adjudication which itself had been changing since

ancient times; the routine criminal adjudicative process which had been adopted from the Ming but had never remained static, and had developed to a point of robust procedural sophistication by the eve of the Qianlong reign; the military processes of expanding and consolidating frontiers on all corners of the empire; the commercialization of society which was having impacts on the social categories of people such as *genyi*, *yuding*, and regular soldiers; and increased population and administrative distance from the center which was leading to a backlog of civil litigation and increased transport costs across the empire for a burdensome legal system, and, of course, the Qianlong emperor, and his wars. All these changes existed within and, in many cases, were constitutive of a political framework that interpreted and tried to shape events based on particular notions of rulership and empire that were in important ways related to Manchu identity. In both the military and judicial spheres, it was a system in which the emperor – especially an energetic emperor with vision – had the space to exercise an extremely dominant role.

During this period, the frontier served as the source and situs of both militarized adjudication development and campaign desertion adjudication. The summary execution adjudicative discourse was frequently interspersed with references to the meaning of the frontier vis-à-vis the need to summarily execute offenders. Woven throughout the many dialogs cited in this dissertation have been references to “inner” versus “outer” adjudication, most often physically correlated with the frontier. This adds a new spatial dimension to the notion of a pluralistic legal system for different “ethnic” constituencies converging over time.

There is also the subplot of deserters themselves. One thing that seems obvious from the records is that while the Ming faced a devastating problem of deserters (Appendix), at least up through the mid-eighteenth century desertion never constituted a serious strategic problem for

the Qing from a quantitative perspective. The Qianlong emperor's draconian crackdown on individual campaign deserters began during the Xinjiang campaigns, at a time when there is no evidence that individual campaign deserters constituted a significant problem. I have argued that the emperor's treatment of deserters at that time represented a form of "rhetoric of over extrapolation" that constructed deserters as a synecdoche for the broader problem of military failure he associated with a lack of discipline, especially in the disastrous Burma Campaigns. It was not that there were so many deserters during this period, but that any deserter became too many, a definitive change in the direction of the official discourse on desertion.

Correspondingly, desertion went from being constructed as a somewhat sympathetic crime at the end of the Yongzheng period to an "evil crime," using the same *e* (惡) descriptive that had been classically used to refer to the *Ten Great Wrongs*. The new discourse, strongly influenced by the Qianlong emperor's view of the crime, began to refer to individual deserters as "evil (*kewu* 可惡)" and "unforgivable (*bukeyou* 不可宥)." These and other related adjectives came to completely characterize the discourse on campaign deserters by the 1760's. But, this was not merely a direct progression of changes in law reflected in society or changes in society reflected in law. It was rather the mutual confluence and welding together of discourses related to particular processes that were simultaneously developing on the ground and coming together at various points. When this negative discourse on deserters came together with the adjudicative discourse of summary execution which devalued deliberation and leniency, a truly efficient and deadly result was achieved. When, during the Burma Campaigns, it came together with the related discourse of Green Standard military inferiority and Manchu military superiority – an aspect of ethnic sovereignty – it became even more deadly.

If we focus on individual deserters alone – not counting those Mongol and Tibetan tribal soldiers who followed their leaders to desert Qing joint forces *en masse* (more secession or defection than desertion) – then, at least according to cases that made it into reports to the central government, there were perhaps no more than fifty or so desertions from the Northwest campaigns documented in the central archives. Thus, the number of actual campaign deserters from the Northwest Campaigns was miniscule and the number from Burma, less than a thousand. In both campaigns, they likely constituted less than one percent of the combat force. There were probably more deserters that did not make it into the central government’s records, but it would be surprising if it were many more because, unlike the *weisuo* desertion during the Ming, collateral documents during this period never identified desertion as a major problem from a quantitative perspective. If anything, officials at the end of the Yongzheng reign thought campaign deserters should be afforded even more leniency. More to the point, if we set aside the Qianlong emperor’s legitimate strategic concern with routs, the emperor’s day-to-day concern was never with ending a massive wave of desertions, but with prosecuting individual deserters, apprehending every one of them, and “not letting one escape the legal net.” The meaning of desertion was more important than the strategic problem of desertion.

The widespread proliferation of summary execution during the Taiping Civil War has been seen as a natural outgrowth of provincial and local officials’ having assumed many powers that had traditionally been the purview of the central government in order to quell social unrest. That makes even more sense if one considers that by this time, the adjudicative *mentalité* had changed to accept summary execution as a useful judicial tool rather than a taboo. For all the reasons cited in this dissertation, on the eve of the Taiping conflagration, nineteenth-century legal culture

was far less offended by summary executions than early eighteenth-century legal culture had been. To the extent this change in adjudicative *mentalité* enabled or shaped the widespread summary executions of the Taiping era and quickened the devolution of central government authority and end of the Qing, it is ironic that the legal-cultural origins of this phenomena actually developed and were spurred on by one of the Qing's most powerful emperors.

Appendix: Late Imperial Military Institutions and Desertion

“It was the Qing that through military achievement conquered all under Heaven.”¹
- Opening sentence of the *Draft History of Qing Dynasty*

From its seventeenth-century rise and conquest of China and throughout its eighteenth-century frontier expansion and consolidation, the Qing Dynasty relied upon its three major military components – the Green Standard Forces, the Manchu-Mongol-Chinese Eight Banners and the Frontier Mongolian Forces (*jasak* banners) – as instruments of coercive force and objects of discourse. Using campaign desertion cases as a category of analysis, this dissertation identifies the processes by which the traditional late imperial mode of militarized adjudication (militarized adjudication) transmigrated from the sphere of military campaign activity to late imperial legal culture.

The broad goal of this appendix is to describe particular military institutions, personnel, and activities that constituted and roughly bounded the cultural-institutional sphere in which militarized adjudication originally developed. One of the very first references to all three military components together on campaign appeared in the *Veritable Records* of 1646 (SZ 2):

An edict. To Banner Commanders Asan and Malasi currently garrisoning Pingyang and to Deputy Banner Commander Ahanikan, you are ordered to group together with the Manchu and Mongol banner soldiers, the Khorchin Frontier Mongol soldiers, as well as the soldiers being personally led by the Chinese bannermen Tang Yu and Lang Shaozhen. You will then proceed to rendezvous with Prince Dodo to plan the attack on [the Southern Ming] at Nanjing. At that time, place the [Khorchin Mongol and Chinese banner] soldiers under the [control of] the Eight banners. Turn over the official seals being held by Asan to Chinese Bannerman Ren Degong so that he may take over garrison

¹ “有清以武功定天下。” QSG vol. 14, juan 130, zhi 105, Military I, p. 3859.

duties at Pingyang [to relieve the banner forces of garrison duty so they may attack]. As far as the Green Standard soldiers that were led to Xunfu and Datong, leave them under the command of Ren Degong.²

This brief order – attaching a particular entity of Frontier Mongolian Forces to an Eight Banner formation and commanding Green Standard forces to take over a garrison from the Banners to free up the latter for a critical military operation – was an early manifestation of the fact that throughout the Qing, each of these three military components drew from distinct historical backgrounds that reflected very different social and institutional characters. These differences affected their political relationships with the dynasty, the shape of desertion within their ranks, how the dynasty represented that desertion, and the dynasty’s responses to it.³

This appendix also identifies five long-term, interrelated historical dynamics that played out anew in the context of the eighteenth century. First, throughout the Ming and into the eighteenth century, the need to control and defend imperial space as well as the consolidation and diffusion of political power influenced the institutional structures and geographic dispositions of the military, with politically-motivated reforms sometimes increasing the tendency of soldiers to desert from either their home stations or while on campaign. Second, social, cultural, and economic factors, such as the need to support a family and the value of military identity, shaped desertion. An overarching factor was the concept of one’s native place and whether troops were “local” (*tuzhu* 土著; *zhubing* 主兵) or “guest troops (*kebing* 客兵),” notions that were often at

² QSL-SZ, juan 14, 128-2.

³ There were also native “auxiliary forces” (*tubing* 土兵) used extensively in Yunnan, Sichuan, and Taiwan during this period. The number of such soldiers involved in military operations, while not insignificant, do not have a large presence within the desertion archives. For a discussion of auxiliary forces during the Jinchuan campaigns, see Ulrich Theobald, *War Finance and Logistics in Late Imperial China: A Study of the Second Jinchuan Campaign (1771-1776)* (Leiden: Brill, 2013), 43-47; for a discussion of auxiliary forces in Taiwan, see John R. Shepard, *Statecraft and Political Economy on the Taiwan Frontier, 1600-1800* (Stanford: Stanford University Press, 1993).

the center of politically-motivated reforms. Third, as discussed in the introduction, across the Ming-Qing period, the location in space and time along a gradient of military operations served as a reliable indicator of militarized criminal adjudication and distinguished the serious crime of campaign desertion from the relatively minor crime of fleeing one's peacetime inner-empire home station. Fourth, the logistical requirements of early modern warfare on unprecedented spatial and temporal scales affected who the Qing considered a deserter, as well as the Qing's perceived need for efficient criminal adjudication. Finally, the historical development of each component and its relationship to the Qing affected how the Qing represented desertion and how it responded to desertion as it sought to reify its own legitimacy and to conquer all under Heaven.

I. From the Ming-era *Weisuo* and *Zhenshu* to the Qing's Green Standard Forces

During the Ming, whenever soldiers faced battle, they were cowards. Their formations collapsed and they scattered with the wind. It was all because during peacetime, they had no discipline and order. It went so far that the generals did not know the soldiers; and the soldiers did not care about the generals. Matters concerning the country gradually became worse. We cannot afford not to learn from this.

- Qianlong emperor, Jinchuan II, Jan. 1, 1785. ⁴

To a significant degree, the institutional-culture of the military was bounded by ideas and practices that developed or were perfected during the Ming. Institutionally, the causes of eighteenth-century desertion had deep historical links to the Ming-era development of what later became the Green Standard's leadership hierarchy and campaign-organization (how units were organized for campaigns), both of which were shaped by the catastrophic desertion that had plagued the Ming since at least its second century. Criminally, the Qing's ordinary response to

⁴ QSL-QL, juan 1220, 369-1.

desertion was based on the Ming's main desertion statute, which was itself a product of early Ming legal-military development. From the very long-term perspective, Chinese historiography holds that criminal law started with the military. The Ming military served as the original institutional-cultural site of the traditional mode of militarized adjudication that became a part of late imperial legal culture in the eighteenth century.

Published writings of military officials over the *longue durée* lend support to the idea that there was a common "military" institutional-cultural sphere. The ancient Chinese past and in particular the Ming was embedded within the consciousness of Green Standard officers who from youth studied pre-Qing works in preparation for the military examinations. Only slightly preceding such statecraft thinkers as Gong Zizhen 龔自珍 (1792-1841) and Wei Yuan 魏源 (1794-1857), Xue Dalie 薛大烈 (1760-1815), the retired provincial military commander (*tidu* 提督) of Zhili Province composed an illustrated manual on military training and campaigning, *The Essentials of Training Soldiers* (*Xunbing jiyao* 訓兵輯要).⁵ In the introduction to *The Essentials*, Xue wrote:

When I was a child, my mother was very strict with my education. Whenever I came back from meeting with my tutor, she asked me what books I had read. ... If I could not tell her, she got angry and whipped me. In one such encounter, I still remember two paragraphs from the classics I quoted to her, "When officials conduct affairs, they should be loyal to their sovereign" and [the passage from Confucius] about "failing to instruct the people in military operations [is the same as abandoning the people]." When my mother heard me recite these two passages, her whole face lit up with joy and she said, "These are the words of a sage. Let them guide you throughout your whole life." When I grew of age and entered the ranks [of the Green Standard], my mother said to me "When

⁵ Xue Dalie 薛大烈, *Xunbing jiyao* 訓兵輯要 (The Essentials of Soldier Training), in vol. 16 of Mao Haijian, ed, *Qing dai bing shi dian ji dang ce hui lan* 清代兵事典籍 (Qing-era military books) (Beijing: Xue yuan chu ban she, 2005), 1-182. This edition is a photocopy of a woodblock edition published during the Qing (date uncertain). All references are to the original page numbers as printed in the Qing edition.

undertaking your military duties, you must talk about military strategy. If one has received the great grace of the dynasty, how can one act as if one is valiant yet have no plan?" So during the day I would practice with weapons; at night I would read. I dared not disobey Mother's words. I read and am familiar with the ideas in [the Seven Chinese Military Classics from antiquity].⁶ But only Qi Jiguang from the Ming Dynasty [General Qi Jiguang 戚繼光 (1528-88)] was closer in time to the present, so his *New Book of Effective Discipline* (*Jixiao xinbing* 紀效新書), *The True Memoir of Training Soldiers* (*lianbing shiji* 練兵實紀), and *Miscellaneous Matters* (*Zashi* 雜事) could all be taken as a standard. His *New Book of Effective Discipline* used illustrations and plain language. While it is not elegant, it is easily understood by anyone. Everything in it is reliable. After I entered the service, I deployed on campaign [against Muslim rebellions in Gansu, Lin Shuangwen in Taiwan, the Gurkhas in Tibet, and the rebellions of the White Lotus in Huguang]. [Later when serving as a grand minister commander and leading Manchu, Han, and local troops], I used Qi Jiguang's methods to train the soldiers, and the appropriate language of command, and there was not one soldier that was not effective in battle. Qi Jiguang did not fail me.

The fact that Xue, writing in the late eighteenth century, based his work on his role model Qi Jiguang, who wrote in the late sixteenth century, shows significant stability of the discursive boundaries of military culture over the *longue durée*. Xue was an officer of the Qing and Qi Jiguang was a Ming military official. Yet, despite vastly changed political circumstances and military institutions, Xue and Qi's works on soldiers, a very distinct genre that should be called "commander's manuals," share a readily-identifiable common discourse with such commander's manuals going all the way back to the Song. Their genealogy in antiquity – at least their inspiration – was the Seven Military Classics. Other than some historical sources, militarized adjudication appears almost exclusively within these "soldiers" manuals as a legitimate mode of adjudicating criminal cases for campaign commanders on campaign. In other words, these

⁶ *The Seven Military Classics* 武經七書 consists of: *Tai Gong's Six Secret Teaching* 太工劉韜, *Sima Fa* 司馬法, *Sunzi's Art of War* 孫子兵法, *Wuzi* 吳子, *Wei Liaozi* 尉繚子, *The Three Strategies of Huangshi Gong* 黃石公三略, and *Questions and Replies Between Tang Taizong and Li Wei Gong* 唐太宗問對李衛公. The works were canonized during the Song Dynasty. Ralph D. Sawyer, *The Seven Military Classics of Ancient China* (Boulder: Basic Books, 1993).

manuals consistently constructed and represented militarized adjudication as a legitimate adjudicative mode by which commanders on campaign could maintain military discipline. Xue discusses the matter extensively, as does Qi Jiguang's earlier work.

The Ming-Qing institutional history of unifying and fragmenting command authority is inseparable from the position of the *zongbing* (Ch:總兵; M: *uheri kadalara da*), the central figure of the Green Standard's Ming-era predecessor, the *zhenshu* (鎮戍) military system.⁷ Prior to the Ming's establishment of permanent *zongbing* in the early fifteenth century, the term *zongbing* – as used in referring to late Yuan Dynasty (1271-1368) and the original Ming armies that overthrew the Yuan – was used to describe a high level of unified and autonomous military authority.⁸ In what was partly a political reform seeking to consolidate power in the central government and weaken other potential poles of military authority, soon after defeating the Yuan, Ming founder Zhu Yuanzhang (1328-98) disbanded the types of forces that would have been commanded by an overall *zongbing*.

To replace the more autonomous military forces, Zhu instituted a system which divided military campaign leadership from home-station unit leadership, the *weisuo* (衛所) military system. This intentional fragmentation of command had a logistical basis: it was consciously modeled on the Tang Dynasty's (618-907) *fubing* (府兵) system in which soldiers were

⁷ In fact, some scholars prefer to use the title *zongbing* system (*zongbing zhidu* 總兵制度) in lieu of *zhenshu* system. A recent author has also argued that it should be called the province-zhen-camp military system (*shengzhenyingbing zhidu* 省鎮營兵制度). Xiao Lijun 肖立軍, *Mingdai shengzhenyingbing zhidu yu difang zhixu* 明代省鎮營兵制與地方秩序 (Tianjin: Tianjin Guji Chubanshe, 2010).

⁸ The term appeared in the official Yuan History referring to command of regional campaign armies. Zhao Xianhai, *Mingdai jiubian changcheng junzhenshi*, 160-61. Some authors argue that the term was applied to any overall commander of military forces. Zhan Xianhai, 158-60.

supposed to remain self-sufficient through the cultivation of individually-assigned plots of land, performing military duties on a rotating basis.⁹ The *weisuo* system, consisted of *wei* of 5,600 men each. Each *wei* was composed of five battalions (*qianhusuo* 千戶所) of 1,120 men, and each battalion was divided into ten companies (*baihusuo* 百戶所) of 112 men each. The leader of each guard unit reported to the Regional Military Commanderie (*dusi* 都司) at the provincial level, but the Regional Military Commanderie had no campaign authority. The *weisuo* system was implemented throughout Ming territory, but was concentrated especially heavily in the north and northeast.¹⁰

Central to Zhu Yuanzhang's vision of a self-sustaining but non-autonomous military force was the military household (*junhu* 軍戶) which was meant to solve the fraught logistical issue of long-term maintenance of military manpower.¹¹ Military households each had to provide one able-bodied man for military service.¹² Replacements for soldiers who died or were injured came from the soldiers' sons and younger brothers (*yujun* 餘軍 or *yuding* 餘丁).¹³ *Yuding* were encouraged, if not required, to participate in training and follow their household-member soldiers on campaign to be available as replacements. Designated officer posts within particular *wei* were heritable, which meant that an officer's son inherited his father's original post in his

⁹ Frederic Wakeman, *The Great Enterprise: the Manchu Reconstruction of Imperial Order in Seventeenth-Century China*, vol. 1 (Berkeley: University of California Press, 1985), 25-36.

¹⁰ Charles O. Hucker, "Ming Government," in vol. 8, *The Ming Dynasty: 1368-1644, part 2*, John King Fairbank et al., eds in *The Cambridge history of China* (Cambridge: Cambridge University Press, 1980).

¹¹ Frederic Wakeman, *The Great Enterprise: the Manchu Reconstruction of Imperial Order in Seventeenth-Century China, vol 1* (Berkeley: University of California Press, 1985), 25-36

¹² Hucker, "Ming Government," 63.

¹³ These have been translated into English variously as surplus men, supplementary troops, or supernumerary soldiers. Hucker, "Ming Government," 64; Theobald, 46.

original *wei* unit.¹⁴ For instance, at sixteen, Qi Jiguang 戚繼光 (1528-88) inherited the military position originally granted to his sixth-generation ancestor.¹⁵ The registers of military families for the entire *weisuo* system were under the control of the Chief Military Command of the Five Armies (*wujun dudufu* 五軍都督府).

Because each military household was divided between a native place and a *weisuo*, it created a dynamic tension between statuses of local soldier (*tuzhu* 土著) and guest soldier (*kebing* 客兵) in a way that helps us understand desertion. The notion of “local” reflected the complicated Chinese relationship between the place where one was born and/or lived all one’s life and one’s native place (*laoxiang* 老鄉; *yuanji* 原籍; *guxiang* 故鄉) where one was registered or was perhaps associated with more distant ancestors, yet where one may never have actually lived.¹⁶ Yu Zhijia 于志嘉 has extensively researched the relationship between the Ming military household and native place. She has argued that the legal obligations of native-place clan of *weisuo* military households – to provide subsidies and equipment to distant relatives living in the *weisuo* and especially to provide a man to fill the ranks if no *yuding* were available – made the *weisuo*-native-place relationship even more complicated than mere native-place relationships based on co-sanguinity. Her studies make it clear that despite long periods without contact, soldiers in the *weisuo* remained conscious of their native-place connections. Similarly, across

¹⁴ Hucker, “Ming Government,” 55.

¹⁵ Hucker, “Ming Government,” 56.

¹⁶ Bryna Goodman has written about this strong association with one’s native place in the case of nineteenth-century Shanghai residents. Even long-term Shanghai residents identified strongly with their native places, forming native-place associations (*huiguan* 會館) and even spending significant funds to be buried in a native place they may never have seen. Bryna Goodman, *Native Place, City, and Nation: Regional Networks and Identities in Shanghai, 1853-1937* (Berkeley: University of California Press, 1995).

the Ming-Qing period, Chinese soldiers never forgot their native places. Even into the eighteenth century, when soldiers deserted, they often fled to their native places. One difference during the Qing, however, was that the Qing focused on recruiting local soldiers for the Green Standard forces, and the Green Standard was, in practice, largely hereditary. Thus, the home-station military camp for Green Standard Soldiers often closely corresponded with native place. This made the government's task of finding them relatively easy because the soldiers almost always fled back to their home military stations, which was the only home they knew often the only place where they had family.¹⁷

The way the Ming task-organized the *weisuo* for campaign is similar to the way the Qing later task-organized the Green Standard Forces. Although the individual *wei* were attached to the provincial military commanderies and the military household registers were maintained by the Chief Military Command of the Five Armies, neither of these organizations commanded the troops in battle. Instead, civilian officials at the Board of War maintained the authority to mobilize soldiers for campaign. When the time came to deploy, the individual units were detached from their provincial commanderies and placed under the *tactical* command of a general appointed by the Chief Military Command, but the overall campaign commander

¹⁷ Yu Zhijia 于志嘉, “*MingQing shidai junhu de jiazhu guanxi – weisuo junhu yu yuanji junhu zhijian* 明清時代軍戶的家族關係 – 衛所軍戶與原籍軍戶之間 (The Ming-Qing period relationship between military families and clans: between the military family of the *weisuo* and the original/pre-*weisuo* military family” *Zhongyang Yanjiu Yuan Lishi Yuyansuo Jikan* N. 74, no.1 (2003).

(*tongshuai* 統帥) was a government minister.¹⁸ What this meant in practice was that task-organization for combat was different from home-station task-organization.

Even as early as two years into the Ming, it was reported that almost forty thousand troops had deserted their *weisuo*. By 1437, according to statistics from the Board of War, desertion had reached 1,200,000 soldiers.¹⁹ Although the *weisuo* was in fact a soldier's home station, *weisuo* desertion during the Ming was different from humectation during from inner-empire Green Standard garrisons during the Qing for two reasons. First, *weisuo* desertion – which Ming sources referred to as *taojun* (逃軍) in reference to the military household (*junhu*) – was a flight from one's military household registration and strict social category. In addition, because most frontier *weisuo* were positioned in a twilight zone between a noncombat environment and a war zone, *weisuo* desertion often had a quasi-campaign aspect that ambiguously implicated the legal notion of “time of war,” making it under certain circumstances more akin to frontier desertion during the Qing.

The low status of being a military member during the Ming and the reasons behind that low status were basic reasons (among many others) for why soldiers deserted.²⁰ In the early Ming, the three main sources of *weisuo* soldiers were decommissioned large campaign armies used to defeat the Yuan, surrendered troops of the former dynasty, and criminals sentenced to fill the

¹⁸ Wakeman, 27. Yang Chenning 楊晨寧, “Ming zhonghouqide weisuo ‘minhua’ 明中後期的衛所‘民化’ (The civilianization of the *weisuo* during the mid to late Ming period)” *Fudan University, Department of History Journal* 33 (2004), 8.

¹⁹ Zhang Shizun 張士尊, “Mingdai Liaodong dusi junzheng guanli tizhi ji qi bianqian 明代遼東都司軍政管理體制及其變遷 (The system of *dusi* military government in Ming-era Liaodong)” *Journal of Northeast Normal University* 199, no. 5 (2002), 9.

²⁰ Some other reasons included fear of death, unfair labor burdens, uncomfortable living conditions, and low pay.

ranks (*chongjun* 充軍). Thus, joining the military was associated with criminality.²¹ Low status also stemmed from the poverty associated with the military. Powerful families in the capital often drafted soldiers as workers for personal construction projects. Some officers claimed the land originally allotted for the soldiers to cultivate, turning the remaining soldiers into low paid or unpaid laborers.²² Low pay and appropriation of soldiers' pay by officials also induced soldiers to desert.²³ After the agricultural colony system collapsed early in the Ming, the government took over providing rice and grain to soldiers, but the amount provided was barely enough to support a small family and decreased over time. Taking advantage of soldiers who could not live off of their military compensation, officers "sold leisure" (*maixian* 賣閑) to soldiers who paid to avoid training in order to make a living in some other fashion.²⁴ Desertion was a natural alternative to escape the military household.

The native-place dynamic was a significant factor in the Ming's response to this massive desertion. By the 1500's, officials were being assigned from the Censorate to "cleanse military affairs" (*qingli junwu* 清理軍務).²⁵ This involved determining how many soldiers had fled and securing replacements from either the military household or, if the household could not supply a replacement, from the original native place of the military household, a detested practice called

²¹ Zhang Nuo 張娜, *Mingdai taojun wenti yanjiu* 明代逃軍問題研究 (Research into the problem of Ming-era military deserters)" (Master's thesis, Qinghai Shifan Daxue, June, 2009), 7-8.

²² Zhang Shizun, "Mingdai Liaodong dushi junzheng guanli tizhi ji qi bianqian,"9. Sometime between 1521 and 1567, Board of Revenue Minister Pan Huang 潘潢 sent up a memorial requesting to reestablish the agricultural plots for the soldiers which had collapsed by that point in view of officials taking the property for personal use. Memorial from Pan Huang 潘潢, "*Qing fu juntun shu* 請復軍屯疏" in Ding Shouhe 丁守和, ed., *Zhongguo li dai zou yi da dian* 中國歷代奏議大典 (Ha'erbin: Ha'erbin chu ban she, 1994), 1132-33.

²³ Zhang Nuo, 11.

²⁴ Hucker, "Ming Government," 61

²⁵ Zhang Nuo, 23-27.

“hooking soldiers” (*goujun* 勾軍). Many unsuspecting distant relatives were forcibly impressed and dragged off to far-flung *weisuo* to substitute for deserters who may have originally come from the same clan, thus showing that the government also shared a long memory of native place.²⁶ These replacements obviously had no affinity for their new *weisuo* homes.

At the end of the fifteenth century, Sichuan Grand Coordinator (*xunfu* 巡撫) Hu Shining 胡世寧 sent a memorial to the Hongzhi emperor (r. 1488-1505) in which he articulated the link between official corruption, paying for leisure, “hooking recruits” from native place clans, and the immiseration of the local people:

The faults of the *weisuo* across the country are causing great hardships to the people. There are many who have deserted and the soldiers who are left do not train. When officials “hook” replacements for the missing soldiers under the cleansing-the-ranks system, this causes even greater hardship to the people. On the frontier when the soldiers meet the enemy or when they patrol around cities, they just stand by and watch the bandits loot the people. When there is some emergency in the interior, officials must impress strong men of the countryside to go die or be injured. The people nourish the soldiers, but then have to substitute for the soldiers and die! What is this! ... And as for shipping provisions to the military garrisons on the frontier, it is not only the matter of paying for labor. Now, it requires one *shi* of grain and rice to support a soldier for one month [on the frontier], and then you have to add in the feed for war horses, but the soldiers just pay off the officials to buy leisure, and only pay 2-3 copper coins. What cost the people 3-4 *shi* of rice [to gain an able-bodied soldier on the frontier], powerful people sell for 2-3 copper coins. No wonder all under Heaven are impoverished. ... The [military households] are poor to the extreme and unable to avoid having family members “hooked” to go fill the ranks. ... No wonder when the weak people from the southeast fill the ranks in the northwest, they are worthless. When the people from the northwest, close to the frontier, fill the ranks of the southeast, they often desert....²⁷

²⁶ Hucker, “Ming Government,” 65.

²⁷ Memorial from Hu Shining 胡世寧, “Beibian shice shu 備邊十策疏” in Ding Shouhe 丁守和, ed., *Zhongguo li dai zou yi da dian* 中國歷代奏議大典 (Ha'erbin: Ha'erbin chu ban she, 1994), 1104. The reference to north-south rotations: the Ming so feared the creation of a local power base that starting during the Yongle period (r. 1402-24), it developed a rotational system whereby soldiers in the south were rotated north for frontier defense and soldiers in the north were rotated south. Zhang Nuo, 12-13.

In 1574, in a memorial strongly petitioning to garrison *weisuo* with local soldiers, Vice Censor-in-Chief Wang Shizhen 王世貞 (1526-90), set forth the classic argument for recruiting local troops for home-station garrisoning: first, because the recruits would not have to travel to a far off place, local people would not run off and hide from the recruiters; second, local people would be more familiar with the local geography; third, local people usually would not desert the garrison, and if they did, they would be easy to track down (there would be family members to answer for them); and fourth, filling the ranks with local people would not destroy families.²⁸ Despite this official awareness, by the early sixteenth century it was claimed that in some commands as many as eighty percent of the total number of soldiers had deserted and that numerous frontier garrisons were operating at only half-strength.²⁹

In some sense, because Ming-era *weisuo* and *zhenshu* were concentrated on frontiers, there was not a clear distinction between desertion from one's peacetime garrison and desertion from campaign or an active defense position. This distinction grew more important during the Qing when the Green Standard Forces (the institutional successor to the *zhenshu*) was reconfigured primarily as an internally-stationed force.

²⁸ Memorial from Wang Shizhen 王世貞, "Yichu qingjun shiyi yi shiyingwu laopinkun shu 議處清軍事宜以營伍勞民困疏" in Ding Shouhe 丁守和, ed., *Zhongguo li dai zou yi da dian* 中國歷代奏議大典 (Ha'erbin: Ha'erbin chu ban she, 1994), 1245-55.

²⁹ Wakeman, *The Great Enterprise*, 28-30; Hucker, "Ming Government," 61-62. In the mid-sixteenth century, a former deputy military circuit attendant, put the number of deserters at two-thirds of all the soldiers assigned within the *weisuo*. Memorial from Lin Xiyuan 林希元, "yingzaho cenyan binzheng shu 應詔陳言兵政疏" in *Zhongguo li dai zou yi da dian* 中國歷代奏議大典, ed., Ding Shouhe 丁守和 (Ha'erbin: Ha'erbin chu ban she, 1994), 1087-88. One sub-prefect magistrate memorialized claiming that the uneven distribution of labor duties between neighboring *weisuo* resulting in over half of his soldiers fleeing from exhaustion. Memorial from Wang Yingzhen 汪應軫, "Zheliang jianyun yi laojunmin kunku shu 折糧減運以勞軍民困苦疏," 1122.

The fact that the number of “military households” was fixed at the beginning of the Ming Dynasty, combined with the government’s need to maintain that number of military households despite mass desertion, resulted in the formalization of a new criminal punishment, the so-called “military exile” (*chongjun* 充軍). Military exile was actually a form of the traditional punishment of “exile” (*liu* 流). While military exile was practiced from the time of the Yuan, it was only regularized during the Ming. On the one hand, Ming law exempted military persons from exile (substituting caning) and on the other sentenced certain criminals to military exile. Both practices were designed to maintain the number of soldiers in the ranks.³⁰ Although the Qing retained the term “military exile” for banishment to the far frontier, it lost its administrative-military aspect because the Qing had abolished the military household system. During the Qing, *chongjun*, although it was still called that, no longer necessarily meant that a person banished to the frontier would be enrolled in the ranks of the military.³¹ By the same token, outside of the official Ming-era desertion statute adopted by the Qing, by the end of the seventeenth century, the Qing substituted the term “*taobing* (逃兵)” for *taojun* when referring to military deserters but continued to use the term “*taojun*” to refer to civilians who fled from their locations of “military exile.” The development of the law on Qing “*taojun*” (those who fled military exile) had parallels with the development of desertion law.

³⁰ Wang Yunhong 王云紅, *Qingdai liufang zhidu yanjiu* 清代流放制度研究 (Research into the exile system of the Qing dynasty) (Beijing: People’s Press, 2013), 30-35.

³¹ Wang Yunhong, *Qingdai liufang zhidu yanjiu*, 52-53.

The direct predecessor of the Green Standard, the Ming *zhenshu* (鎮戍) system, largely developed as a response to desertion within the *weisuo* system.³² The Qing’s conscious adoption of the Ming *zhenshu* rank structure for the Green Standard supports using similar English-equivalent titles for officers in both forces, a practice I have followed in this dissertation.³³ One of the most common terms for unit organization across the Ming and Qing, the *ying* (Ch:營; M: *kūwaran*), merits some additional discussion. Its simplest meaning was “camp.” As the name implies, *ying* had both a geographic and unit component: soldiers were assigned to an *ying* and they lived at an *ying*. The most common English translation – “battalion” – stresses the unit aspect because an *ying* often corresponded to a 600-800 man western battalion. *Ying*, however, represented many different sizes and types of military organizational forms.³⁴ My solution has been to translate *ying* dynamically based on the context but to indicate in parenthesis when the underlying Chinese term was *ying*.³⁵

³² Zhang Shizun 張士尊, “Mingdai Liaodong dushi junzheng guanli tizhi ji qi bianqian,” 70-76.

³³ I indicate in parentheses the numerical bureaucratic ranking according to eighteenth-century Qing regulations. I do not translate the Chinese term *zongbing* (總兵, 2a), but for the lower *zhenshu*-Green Standard ranks, I translate *fujian* (副將, 2b) as “colonel”; *canjiang* (參將, 3a) as “lieutenant colonel”; *youji* (遊擊, 3b) as “major”; *dusi* (都司, 4a) as “first captain”; *shoubei* (守備, 5a) as “second captain”; *qianzong* (千總, 6b) as lieutenant; *bazong* (把總, 7a) as “sub-lieutenant”; *waiwei qianzong* (外委千總) as “ensign”; and *waiwei bazong* (外委把總) as “sergeant.” Charles O. Hucker, *A Dictionary of Official Titles in Imperial China* (Stanford: Stanford University Press, 1985). The Qing-era archives referred to low-level leaders in the ranks of lieutenant and sublieutenant as *bian* (弁), which I have rendered as “junior officers.”

³⁴ It even referred to an entire military component: the “Green Camp” (*lüying*) (also called *lüqi* 綠旗, Green “Standard”).

³⁵ Thus, I refer to a unit as a brigade if it had jurisdiction over more than one but less than four battalions, such as an area defense brigade (*xie* 協). Field Manual 1-02, Operational Terms and Graphics (Department of the Army Publication, 2004), 1-25. Hucker always translated the term as “brigade.”

In its mature form, the *zhenshu* system involved territorial defense commands (*zhen* 鎮), usually encompassing an entire province under the jurisdiction of *zongbing*.³⁶ Placing such a large jurisdiction of soldiers under a unified commander was in some ways a throwback to a pre-*weisuo* unified command structure. The *zongbing*'s autonomy reached its highest point of independent military and judicial authority fairly early, during the Zhengtong reign (r. 1435-49), before the *zhenshu* system was fully “mature.” The extent of the *zongbing*'s authority to adjudicate cases in the military mode had important implications for the Qianlong-era militarizing tendencies in the legal culture.

With the addition of *zongbing* and an increasing *zhenshu* infrastructure outside of the *weisuo* system, the Ming went from a *weisuo* to a *zhenshu-weisuo* hybrid military system.³⁷ Even though “military” households within the *weisuo* increased over time, they were generally more civilianized and increasingly served as a source of recruits to fill the *zhenshu* ranks (a recruitment pool) and functioned less as a trained and ready military force.³⁸ Ultimately, the Ming came to rely almost entirely on the *zhenshu* system for military strength.³⁹ Still, *weisuo*, at

³⁶ The *zongbing*'s position was so central to the *zhenshu* and Green Standard that within the Qing archives, the term for territorial defense region – *zhen* – was synonymous with *zongbing*.

³⁷ The Tianjin Territorial Defense Command (Tianjin *Zhen*) at the end of the sixteenth century provides a good example of *zhenshu* infrastructure under the command of a *zongbing*. The entire *zhen* was under the jurisdiction of the Tianjin *zongbing*. The *zongbing* directly commanded (*qindai* 親帶) his Left and Right Battalions (*ying*) and had an additional six battalions located in various places directly attached (*zhishu* 直屬) to his position, each commanded by a major or first captain. He also exercised supervision over four area defense brigades (*xie* 協) commanded by colonels and one route battalion (*lu* 路) commanded by a lieutenant colonel. The area defense brigades were composed of battalions (*ying*) led by majors and first captains. Luo Ergang 羅爾綱, *Lüying bingzhi* 綠營兵志 (The Green Standard Army) (Beijing: The Commercial Press, 2011[1945]), 19-24.

³⁸ Zhang Shizun, 10; Yang Chenning 楊晨寧, “Ming zhonghouqide *weisuo* ‘minhua’.”

³⁹ Zhang Shizun, 9.

least in name, continued into the early eighteenth century.⁴⁰ With both systems existing simultaneously and overlapping, the Ming used the term *jun* to refer to heritable *weisuo* soldiers and applied the term *bing* to soldiers whose positions were not inheritable (this is probably the discursive origin of the Qing's substitution of *taobing* for *taojun* as the general term for desertion). This distinction of *jun* versus *bing* was meaningless under the Qing which did not recognize military households *per se* (Eight Banner registration was a different matter). Nevertheless, the term *jun* was still found in the Chinese text of the Qing Code, but took on the generic meaning of "soldier."⁴¹ This is yet another example of the phenomenon pointed out by Matthew Sommer, whereby despite textual stability in the written law, over long periods of time, the seemingly-static legal discourse actually masked significant change in meaning.

The development of the Liaodong military region reflects the rise of the autonomous *zongbing* and the later tempering of his authority.⁴² In the fourth year of the Ming Dynasty (1371), the Ming established the Liaodong *Wei*, under the authority of the Northeast Military Commanderie which at that time constituted the only authority for military administration in the region. In 1402, partly in an effort to shore up imperial control after the Ming Civil War of 1402 (*Jingnanzhiyi* 靖難之役), the Yongle emperor (r. 1402-24) established the Liaodong *zongbing* as

⁴⁰ Yang Chenning, 8. The *weisuo* system in Guizhou was established at the beginning of the Ming and was not abolished until the Qing Yongzheng reign in 1727. Ma Guojun 馬國君 and Li Hongxiang 李紅香, "MingQing shiqi Guizhou weisuo zhifei dongyin in guankui 明清時期貴州衛所置廢動因管窺 (A glimpse into the motives for the establishment and elimination of the Guizhou weisuo during the Ming-Qing periods)," *Journal of Guizhou University* 29, no. 2 (March 2011), 88-93.

⁴¹ In the Manchu version of the Qing code, both *jun* and *bing* were translated as *cooha*. *Daicing gurun i fafun i bithi kooli i uheri hacin* (The Qing Code [Manchu version]) (1768), Rare Books, East Asian Reading Room, Library of Congress, Washington, D.C.

⁴² The *weisuo-zhenshu* system formed the core of the Ming's Nine Frontier Fortifications along the Great Wall, an extension of which was the territorial defense region of Liaodong. Zhao Xianhai, *Mingdai jiu bian changcheng junzhenshi*, 158-232.

a position superior to the Commanderie.⁴³ With the establishment of the *zongbing*, those outposts within the jurisdiction of the *zongbing* – battalions (*ying*) and area defense brigades (*xieying*) – became more and more separated from the *weisuo* system. In the northeast, the *zongbing* reached the epitome of his power in the early 1430's, after which time the Ming assigned three additional *ad hoc* levels of provincial officials with superior military authority over him.

The appointment of officials above the *zongbing* severely weakened the *zongbing*'s autonomous authority, both in terms of his actual command authority and his criminal-adjudicative authority. (The Qing-era *zongbing* would be far more a functionary and far less an autonomous military commander than the *zongbing* of the early Ming). In 1435, the Ming first appointed a Grand Coordinator (巡撫 *xunfu*) superior to the *zongbing*, later adopted by the Qing as a stable, formally ranked position. (For Qing-era *xunfu*, we use the translation “governor.”)⁴⁴ The Ming-era *zongbing*'s power was further limited by the appointment of an official sent from the Censorate in 1442 in the midst of a frontier crisis to “supervise and take charge (*tidu* 提督)” of military affairs, another *ad hoc* Ming innovation later institutionalized by the Qing as the “provincial military commander” (PMC) (rank 1b).⁴⁵ By the fifteenth century, the *zongbing* system in the northeast had undergone significant development in response to continuing military

⁴³ Zhang Shizun, 72.

⁴⁴ Zheng Shizun, 74; R. Kent Guy tracked the evolution of the Ming *xunfu*, translated as “Grand Coordinator,” an *ad hoc*, unranked position implemented by the ailing Ming to coordinate disjointed military affairs, into the Qing *xunfu*, usually translated as “Governor,” a stable, formally-ranked position in the Qing bureaucracy. R. Kent Guy, *Qing Governors and Their Provinces: The Evolution of Territorial Administration in China, 1644-1796* (Seattle: University of Washington Press, 2010).

⁴⁵ Zheng Shizun, 72-74.

crisis on the northern frontier.⁴⁶ By this time, with the grand coordinator, provincial military commander and *zongbing* all in place, the system superficially included all of the major components of what would become the high level command structure of the Qing Green Standard Forces.

In addition to establishing the *zhenshu* system in the northeast, the Ming attempted to include the various Jurchen tribes within the *weisuo* structure, conferring *weisuo* rank on prominent Jurchen leaders. On May 7, 1618, Brigadier General of the Left *Wei* of the Jianzhou Jurchens (*Jianzhou zuowei dudu* 建州左衛都督) of the Aisin Gioro clan, Nurhaci (1559-1626), renounced his Ming overlords and declared his “Seven Grievances” against the Ming Dynasty, founding his own dynasty, the Later Jin. Nurhaci immediately began the conquest of the northeast.⁴⁷ Over the next twenty-two years, Nurhaci and then his son Hongtaiji (r. 1626-43) continued to defeat desertion-plagued Ming armies until internal Chinese rebel armies – whose ranks were filled with government deserters – opened the way for Prince Regent Dorgon to lead the Eight Banners through the Shanhai Pass and on to the conquest of all under Heaven. As the Qing rolled through China, it was quick to convert the local *zhenshu* forces to Green Standard Forces and add Green Standard forces where none previously existed, beginning with the establishment of Green Standard in Zhili, Shandong, and Shanxi Provinces in 1644 (SZ1), and followed by

⁴⁶ Then Chenghua reign saw constant “Tartar” incursions. ZLDZZNB, 263-67. The Jiajing reign saw continued Mongol and “Tartar” invasions, including the Altan Khan’s raids near Beijing and General Qi Jiguang’s suppression of “Japanese pirates.”

⁴⁷ The fall of Fushun, an important trading city and military garrison, represented a tremendous setback for the Ming because it represented the first time that a Ming military officer surrendered himself and his entire command to Nurhaci. The commanding major at Fushun, Li Yongfang 李永芳, and his adjutant (*zhongjun* 中軍) Zhao Yihe 趙一鶴, surrendered along with five hundred members of the command. MZSL, Juan 4 (TC 3/4/13).

Shaanxi-Gansu and Jiangnan (1645); Henan, Jiangxi, Hugang (1646); Sichuan (1647); Zhejiang (1648); Fujian (1650); Guangdong and Guangxi (1651); and Guizhou and Yunnan (1660).⁴⁸

II. The Qing's Green Standard Forces

These Green Standard soldiers. At the Jinchuan deployed camp [the temporary, forward staging area, base camp for soldiers deployed to Jinchuan], their formations collapsed and they all fled. These deserters, as soon as they are caught, should be immediately executed. The numbers were especially great. Moreover, the great military enterprise is already completed. Many times did I issue gracious edicts: to be lenient for one year, to let them turn themselves in and avoid death. With this I really was exercising benevolence outside of the law. There's no more leniency I can grant.

- Qianlong emperor, Jinchuan II, Jan. 1, 1785.⁴⁹

Only Luo Ergang 羅爾綱 has attempted to provide an overall history of the Green Standard. According to Luo, in 1644 the Qing's approximately 186,000 banner forces were sufficient to occupy Beijing, but insufficient to defeat the remaining Ming claimants and ongoing peasant uprisings.⁵⁰ Thus, the Qing "regularized" and expanded the defunct Ming Dynasty's forces, forming the Green Standard Forces (600,000 to 800,000 strong), while leaving significant remnants of the Ming military system intact. Whereas the *weisuo-zhenshu* force was to a great degree focused on frontier defense, the Green Standard's primary peacetime duties consisted of conducting various details and training (*chaicao* 差操). Details mostly consisted of police duties, and were the main focus of the Green Standard Forces: patrolling, escorting prisoners,

⁴⁸ Chen Feng 陳鋒, "Qingdai lüying 'mingliang' zhidu shulun 清代綠營 '名糧' 制度述論 (The *mingliang* system of the Green Standard during the Qing," *Shehui Kexue Jikan*, no. 83 (June 1992), 91-97.

⁴⁹ QSL-QL, juan 1220, 369-1.

⁵⁰ Luo Ergang, *Lüying bingzhi*. See also Lai Fushun 賴福順, *Qingchu lüying bingzhi* 清初綠營兵制. Master's thesis. Taipei. Zhongguo wenhua xueyuanshixue yanjiusuo (1977); Wang Yufeng 王御風, "Qingdai qianqi Fujian lüying shuishi yanjiu (1646-1795) 清代前期福建綠營水師研究 (1646-1795) (Green Standard army marines of the early Qing period) (Master's thesis, Taizhong Sili Donghai Daxue lishixue yanjiusuo, 1995).

and apprehending criminals. Training included military skills, battle drills, and understanding orders.⁵¹

Desertion, at least on some level, was apparently still a problem for the Qing during the dynasty's early years. At the time, the Qing associated this problem with a lack of recruiting troops (ethnic-Han troops in the inner-empire) from the local area who had connections to the local area. A January 6, 1656 (SZ 12) memorial from Lieutenant Colonel (*canjiang*) Dai Weifan, commander of the area defense brigade responsible for Wenzhou Prefect in Zhejiang Province, explained that because during the conquest, soldiers were recruited from many different provinces and were not adequately vetted, once they received their training and pay advances to settle their families, they sometimes deserted, or even enlisted in another province. "The arrogance of these soldiers was the cause of the Ming Dynasty's problems." Dai's solution was to have all the soldiers in the ranks make guarantees (*baojie* 保結) for one another. If a soldier fled the camp, he argued, the other soldiers should be punished under the Manchu banner fugitive law, so that deserters would have no one to hide them.⁵² Dai emphasized that only soldiers with known backgrounds – local soldiers with roots in the area where they were to be stationed – should be recruited. Deterring those who shielded deserters and enforcing collective responsibility were recurring themes during the Ming. The Qing had the same rule but did not seem to enforce it for deserters whereas the dynasty did enforce it in cases of fugitive slaves, especially during the early years.

⁵¹ Luo Ergang, 266.

⁵² "Yi Manzhouren taorenfa lianzuo 依滿洲人逃人法連坐" Memorial from Dai Weifan 戴維藩, "Zhejiang wenzhoufu fujiang wei jiechen zhizhang suoguan shiyou 浙江溫州府副將為揭陳職掌所關事宜由," NGDK, 037726-001.

Closely tied to the issue of local soldiers was the issue of hereditary positions. Unlike the *weisuo* system, the Green Standard was technically a non-hereditary force. Membership in the Green Standard, however, became effectively hereditary due to the Green Standard's system for replenishing the ranks. Of the three types of soldiers within the Green Standard, cavalymen (*qibing* 騎兵) were chosen from among infantrymen (*buzhanbing* 步戰兵); infantrymen were chosen from among guardsmen (*shoubing* 守兵); and guardsmen were chosen from among *yuding* (餘丁). Just as in the *weisuo* and *zhenshu*, *yuding* were the sons and younger brothers of actively serving soldiers. Like their *weisuo* and *zhenshu* predecessors, when Green Standard soldiers were deployed on campaign, they were accompanied by *yuding* who served as potential replacement soldiers.⁵³ If *yuding* were needed as regular soldiers (*zhengbing* 正兵), they joined the ranks – “received food subsidies” (*shiliang* 食糧) – as paid soldiers. If there were no available *yuding*, then new local soldiers (*xinbing* 新兵) would be recruited. Once soldiers enlisted and were trained – at government expense – they were normally not permitted to resign (*tuiwu* 退伍). The ultimate effect of this system for filling the ranks, combined with local garrisoning, was a convergence between native-place and home military station, concepts that had diverged under the Ming *zhenshu* and *weisuo* systems. This was exactly the point and seems to have achieved the Qing goal of reducing Green Standard desertion from their home-station

⁵³ Every month, *yuding* were paid five *qian*, as a retainer to fill the ranks when needed. At sixteen years old, a *yuding* could petition to become a guardsmen, if a slot was available (the number of positions was fixed). Luo Ergang, 243-44.

garrisons, a relatively insignificant issue in the eighteenth century Qing inner-empire to be handled as a noncriminal internal camp matter with a reprimand and beating (*zeda* 責打).⁵⁴

The determination of whether *yuding* who fled on campaign were the same as regular deserters became significant during the Burma Campaigns (1765-1770). The Qing recognized that *yuding* differed in military status from regular soldiers, but authorities focused increasingly on their important logistical function. The same logic that saw *yuding* who fled campaigns as soldier-deserters also led to the Qing's inclusion of civilian laborers within the deserter category. For the Green Standard on campaign, the logistical support required to move millions of tons of war materiel came in the form of hired laborers. These laborers (*fuyi* 夫役; *renfu* 人夫; *shuifu* 水夫) were sometimes arranged by local officials through whose jurisdictions the campaign armies passed and sometimes resembled soldiers in that they traveled with the armies across vast territories. Of the civilians involved with the Second Jinchuan Campaign, Ulrich Theobald has estimated that "by far the largest group" were the hired porters.⁵⁵ This was probably true for most if not all of the "Complete Victories."

The central government sought to maintain political control over the Green Standard by having the central Board of War maintain the records of registered soldiers.⁵⁶ Every Green

⁵⁴ We know that such desertion continued to exist in the eighteenth century because there are collateral references to it in other cases, but it was handled as an internal camp matter and seldom rose to the level of the central government concern. For instance, in a Guangdong case from 1771, local Green Standard officials were criminally sanctioned for punishing a home-station deserter while he was sick so severely that he died. According to the Board of Punishments, it was correct for the local officials to handle the case in-house with a reprimand and beating (*zeda* 責打), but they should have waited until the soldier was no longer sick. Criminal case memorial, *xingke tiben*, from Board of Punish official Liu Tongxun 劉統勳, dated April 16, 1771 (QL 36/3/2). XKTB-FHA, 02-01-07-13992-002.

⁵⁵ Theobald, 43.

⁵⁶ Luo Ergang, 239-47.

Standard regular soldier had a military registration (*bingji* 兵籍). This registry of currently-serving soldiers was not part of a strict social category like the *weisuo* military household registry, thus Green Standard desertion never implicated the idea of fleeing a strict social category.⁵⁷ Yet, because the Green Standard was based on local troops, whenever soldiers on campaign died, fled, or became incapacitated and replacements were needed, the replacements were drawn from the original province – and perhaps original unit – of the soldier being replaced.⁵⁸ In some ways, this shows that the campaign organization sought to replicate a native place-like tie to the home station. Luo saw this as an element of the Qing's efforts to keep military authority centralized; if the commanders had been permitted to recruit replacements locally, then it would have run the risk of privatizing armies.⁵⁹ This home-station orientation was only too effective, as their home-stations had such pull on Green Standard soldiers that they were repeatedly willing to desert from campaign only to return (and be caught) at their home stations.

⁵⁷ Luo Ergang, relying heavily on the *Bingbu Chufen Zeli* (兵部處分則例), an early nineteenth-century official compilation of Qing military regulations, described the administrative system of merits and demerits (*yixu* 儀叙) applicable to military officials, but most of his chapter on discipline focuses on punishment (*chengjie chufen* 懲戒處分). He detailed three types of what we would refer to today as administrative sanctions: forfeiture of pay, demotion, and dismissal from one's duties. He emphasized the distinction between infractions committed in the course of one's duties (公罪) and infractions committed for personal gain (私罪), an important concept found everywhere in Qing criminal law. He went on to note that crimes were adjudicated by the Board of War according to imperially-approved precedent (from the *Chufen Zeli* or *Huidan*), statutes from the Qing Code (although he only cited the early version of the Code), or from statute.

⁵⁸ Luo Ergang, 307-10.

⁵⁹ Luo Ergang, 307-10.

For reasons of political control, the Qing went beyond the Ming, further diluting Green Standard autonomy and further fragmenting that force.⁶⁰ During peacetime, the Green Standard was organized geographically by what Luo referred to as military regions (*junhu* 軍區), corresponding to the jurisdiction of governors-general (*zongdu* 總督), and then by territorial defense regions (*zhen* 鎮) under *zongbing*.⁶¹ Unlike the Ming, during which a single territorial defense region usually corresponded to an entire province, Qing provinces contained several defense regions, each under the command of a separate *zongbing*. This fragmentation continued down the unit structure. For instance, in 1656, Wenzhou Lieutenant Colonel Dai pointed out that during the Ming, his geographic jurisdiction had nine thousand soldiers. But in the twelve years of Qing rule, the number of soldiers had been reduced to four thousand. Among those, only two thousand were under his command and these were spread out over four counties, with only thirty to fifty soldiers stationed together at each place, with seventy to one hundred *li* between stations. During the Ming, a single lieutenant-colonel (*canjiang*) commanded all nine thousand troops whereas by Dai's time for two thousand troops, there were a full colonel (*fujiang*), two first

⁶⁰ Luo identified two principles in the Qing's approach, "mutual control between larger and smaller entities (*daxiao xiangzhi de yuanze* 大小相制的原則)" and "consolidating authority then disseminating a portion (*jiquan yu fenji* 積權與分寄). Luo Ergang, 251-56.

⁶¹ Luo's description was based on the 1764 Qing Collected Statutes (Precedents). QHDZL, juan 111, "營制一" to "營制四." The province for purposes of the military region did not overlap entirely with the province for purposes of provincial administration. It was based entirely on the territory, so for logistical reasons, territory from two provinces might be included in one military region. Thus, for instance, Jiangsu, Anhui, and Jiangxi comprised one military region, Liangjiang. The highest commander was the Liangjiang *zongdu*. The eleven military regions were Zhili, Shandong, Shanxi, Henan, Liangjiang, Minzhe, Huguang, Shaangan, Sihuan, Liangguang, and Yungui. Luo, 123-24. For the work on Qing governors and governors-general, see R. Kent Guy, *Qing Governors and Their Provinces: The Evolution of Territorial Administration in China, 1644-1796* (Seattle: University of Washington Press, 2010).

captains, two second captains and a lieutenant. He recommended that these ranks be consolidated and the savings used to hire more rank-and-file soldiers.⁶²

The four highest provincial officials with authority over the Green Standard had units personally assigned to themselves. These *biao* (標) units – governor-general’s brigade (*dubiao* 督標); governor’s brigade (*fubiao* 撫標); provincial military commander’s brigade (*tibiao* 提標); and *zongbing*’s brigade (*zhenbiao* 鎮標) – were usually co-located with their respective commanders. According to Luo, the focus of *biao* was training to deploy on campaign rather than on performing police duties. Within each territorial defense command and under the supervision of the geographic commanders – were two additional major functional divisions of units responsible for area defense. The focus of area defense brigades (*xie*) was to assist in the defense and patrol of important areas throughout the region-wide area; and the focus of non-*biao* battalions was to defend and patrol cities and other specific places.⁶³

Reflecting the multiple levels of fragmented authority, the governor-general, governor, provincial military commander, and *zongbing* each simultaneously maintained three forms of authority, depending on the unit’s geographic location and function: command authority (*tong* 統

⁶² Memorial from Dai Weifan 戴維藩, “Zhejiang wenzhoufu fujiang wei jiechen zhizhang suoguan shiyou 浙江溫州府副將為揭陳職掌所關事宜由,” 《明清檔案》 卷冊: A024-095, 品名: 《明清史料》 卷冊: 甲 04 頁次: 368, 登錄號 037726-001, Archives of the Grand Secretariat, Institute of History and Philology, Academia Sinica, Taiwan, at <http://archive.ihp.sinica.edu.tw/mctkm2/index.html>. NGDK, 037726-001. The debate on the correct disposition of troops on the east coast continued with related arguments into the Kangxi era. See Memorial from Board of War Shanshu Ke'er'ke'da 科爾可大, requesting reestablishing of maritime Green Standard troops on the coast, KX 10/5/3. Qingdai Taiwan shiliao quanbian 清代台灣檔案史料全編 (compilation of historical documents from Qing-era Taiwan (學苑出版社), 550-51.

⁶³ A *biao* was usually made up of three or four separate battalions (*ying*). For instance, the Zhili governor-general’s brigade (*dubiao*) was composed of the Left, Right, Forward, and Rear Battalions, each with 500 men, but then located within the governor-general’s AOR were several additional geographically distributed garrison units (*fangying* 防營), such as the *Yongdinghe Ying*, comprised of 1,249 men. Luo Ergang, 123-28.

), control authority (*jiezhi* 節制), and administrative jurisdiction (*guanxia* 管轄). The latter two might best be thought of as a geographic command. A given official “commanded” his directly-assigned *biao* unit, exercised “administrative jurisdiction” over other units within his geographic area of responsibility, and “controlled” lower-ranking officials (thereby exercising indirect control over their directly-assigned subordinate units). The governor-general, governor, and provincial military commander exercised control authority over the *zongbing* within their geographic area of responsibility.

An important functional position (not rank) within the Green Standard was the adjutant (*zhongjun* 中軍). The adjutant’s duties were primarily to transmit the orders of the *biao* commander within the *biao*. The adjutant’s rank varied based upon the rank of his commander and the type of unit in which he was performing adjutant duties. For instance, the Zhili governor-general had direct command of his governor-general’s brigade (*dubiao*), but because his brigade consisted of two thousand soldiers divided into four battalions (Left, Right, Forward, and Rear), the governor-general – also occupied with other civil and military affairs – relied on a colonel (*fujian*) as adjutant to transmit his orders and serve as a day-to-day manager for his *biao*. In this example, the colonel-adjutant also commanded the Left Battalion while the Right, Forward and Rear Battalions were commanded by majors (*youji*).⁶⁴

In 1764, across the empire there were eleven military regions (each under a governor-general); these were further divided geographically into sixty-six territorial defense regions (each

⁶⁴ Likewise, provincial military commanders were assigned lieutenant-colonels (*canjiang*) as adjutants; *zongbing* were assigned majors; colonels were assigned first captains; and lieutenant-colonels, majors, and first captains were all assigned second captains. Luo Ergang, 232.

under a *zongbing*), with a total of 1,169 battalions (*ying*). Out of these 1,169 battalions, 336 were part of *biao* units. Additionally, there were six battalions (*ying*) as part of area defense brigades co-located with cities (*tongcheng xieying* 同城協營). There were 169 battalions assigned under area defense brigades (*fenfang xieying* 分防協營) for patrolling important areas within the territorial defense region. Finally there were 61 guard battalions (*fangying* 防營) assigned to defend specific areas, usually divided into highly dispersed detachments.⁶⁵

Local disposition of *xuntang* (汛塘), the lowest order and most widely-distributed military units, exemplified that the Green Standard was a geographically-dispersed force under deeply fragmented leadership whose orientation was policing, not campaigning.⁶⁶ *Xun* were the higher level units of *tang*, so there were several *tang* within one *xun*'s area. *Xun* had simple infrastructure: two to three barracks rooms, smoke-signaling towers, and lookout towers. *Xun* seemed to have been arrayed at between ten to fifty *li* intervals and *tang* at about ten *li* intervals, depending on the strategic needs of the area. There may have been thirty men to a *xun* and around five to a *tang*. *Xun* were interlinked and included important roads and mountain passes where *tang* were emplaced. The *xuntang* served policing functions: patrol and inspection, communicating news, apprehending those wanted in criminal cases, investigating bandits,

⁶⁵ Luo Ergang, 123-26 (Luo relied on the 1764 edition of the Qing Collected Statutes).

⁶⁶ Although *xuntang* organization was not described in regulations, researchers have used local gazetteers to create some picture of how *xuntang* were arrayed. Qin Shucai 秦樹才 has written the only recent monograph on the Green Standard. His detailed research on the *xuntang* system in Yunnan provides a rough idea of how *xuntang* were likely arrayed elsewhere. Qin Shucai 秦樹才, *Qing dai Yunnan lü ying bing yan jiu: Yi Xuntang wei zhong xin* 清代雲南綠營兵研究: 以汛塘為中心 (Kunming: Yunnan jiao yu chu ban she, 2004), 88.

maintaining communications, and protecting travelers.⁶⁷ While the total number of *xuntang* is unclear, we do know that by the early nineteenth century, fifty-one percent of the total Green Standard force in Yunnan was sprinkled about among nearly two thousand *tang*.⁶⁸

The officer ranks of the Green Standard were overwhelmingly held by lifelong, ethnic-Han career military men. This is different from the late Ming, when many *zongbing* were wealthy eunuchs. Xue Dalie's career is an example of the progression of a Green Standard officer at the end of the eighteenth century. One is almost tempted to categorize his career as a military "professional," although the point of this dissertation is not to enter the debate over the existence of "professions" in late imperial China.⁶⁹ From the time he was a lieutenant (1787) to the time he first achieved the rank of provincial military commander (1805), he served in just about every possible home-station and campaign position, including high level adjutant, *zongbing* for various jurisdictions, and Grand Minister Commander.⁷⁰

⁶⁷ Qin Shucui, 254. Xue Dalie described the *tang* as in terms of signaling observation points to be emplaced outside of garrisoned cities. According to Xue, in all directions radiating from the city, there was supposed to be one *tang* every 10 *li* (how far out is not stated), manned by five soldiers each, to form a fire-signal relay chain. Xue Dalie, 67r. From scattered references in the Zhejiang gazetteers, we know that in Yongkang County, there were seven *xun*, to the west of the county seat at ten, twenty, and thirty *li*; to the east at five, twenty, and forty *li*; and to the north at the fifty *li* intersection, that each *xun* was equipped with three barracks rooms, a smoke signal tower, and a lookout tower. Zhao Shengrui, 691. During the Yongzheng period, the soldiers distributed among *xuntang* within Yunnan increased, to include a total of 20,780 soldiers, forty-three percent of the 48,000 Green Standard soldiers in Yunnan. Qin, 128.

⁶⁸ By the Daoguang reign (r. 1820-50), within Yunnan there were 308 *xun*, 1,810 *tang*, and 159 checkpoints (*guanka* 關卡). Qin, 254.

⁶⁹ A common Western definition of profession is "a group...pursuing a learned art as a common calling in the spirit of public service." Allison W. Conner, "Lawyers and the Legal Profession during the Republican Period," in *Civil Law in Qing and Republican China*, eds. Kathryn Bernhardt and Philip Huang (Stanford: Stanford University Press 1994), 215-248. Although there has been some academic interest in whether imperial China had a nascent legal "profession," there has been little academic interest in the Chinese "profession" of arms.

⁷⁰ From 1792 to 1794, he served as a second captain in the Rear Battalion of the Shanxi Province Provincial Military Commander's Brigade. From 1794 to 1797, he served as a first captain in the battalion stationed at Liyuan in Gansu Province (the battalion was probably assigned to an area defense brigade); in 1797, he transferred to the Battalion at Hongguang and served as a company commander; he served as a lieutenant-colonel of the Yanping Pass Battalion in Shaaxi Province from 1797 to 1798. From 1798 to 1799, he served as the adjutant-colonel in the

A large number of Manchu and some Mongol officials also served within the Green Standard. Out of the 209 provincial military commanders who served during the Qianlong reign, 118 were bannermen, with fifty-four Manchus, thirteen Mongols, and fifty-one Chinese bannermen. Bannermen served in positions all the way down to sub-lieutenant in Green Standard forces across the empire, but most commonly as ranks of major and above.⁷¹ Although bannermen had served with the Green Standard since the time of the conquest, Manchu service in the Green Standard took on new meaning during the eighteenth century with the Qianlong emperor's repeated warnings that Manchus serving in Green Standard ranks were being "polluted" by exposure to bad Green Standard "habits."⁷²

The challenge of actually paying soldiers was cited as a factor contributing to desertion during the Ming-Qing transition and even as late as the Rebellion of the Three Feudatories (1673-81), yet it was never directly cited as the cause of desertion in the hundreds of extent eighteenth-century cases I reviewed. How did soldiers' need to support their families affect

Sichuan governor-general's brigade (*Sichuan dubiao zhongjun fujiang*). He also served as the *zongbing* of the Northern Sichuan Territorial Defense Region (*Beichuan zhen*) from 1799-1801 and of the Zhili-Tianjin Territorial Defense Region from 1805 to 1802. Between 1805 and 1811, he served on and off again as the Zhili Provincial Military Commander and between 1807 and 1809 as the Shaanxi Provincial Military Commander. Perhaps representing a demotion, in 1809 he served as the Shaanxi Ning-Shaan Territorial Defense Region commander, but later that year served as the Jiangnan Provincial Military Commander. From 1811 to 1815, he served as the Provincial Military Commander of Guangdong, but then was seemingly reduced again to Henan-Hebei Territorial Defense Region Commander from 1815 to 1816. Over the course of his career, he was showered with awards, including the honorary ranks of a first class imperial guardsman (*toudeng shiwei* 頭等待衛) and the hereditary Commandant of Fleet-as-clouds Cavalry (*yunqi weishizhi* 雲騎尉世職) and even the use of the imperial physician in his old age. IHP-JBZL (visited June 25, 2014).

⁷¹ According to data from 1784 (QL 49), Zhili had the most with 106, Gansu was second with eighty-four. Only Zhili and Gansu had bannerman in ranks as low as lieutenant (Zhili, 8) and sublieutenant (Zhili, 10; Shanxi 1). Wang Yue 王月, "Qingdai baqi bufang liying wuguan wenti tanxi 清代八旗補放綠營武官問題探析" *Heilongjiang Minzu congkan* (Bimonthly), no. 119 (June 2010), 93-99.

⁷² For instance, during the Burma Campaign, the Qianlong emperor pondered how the high Manchu official Changjun could be polluted by the Green Standard, "常鈞前在軍營曾經大敵何亦為綠旗習氣所染乎." QSL-QL, juan 753, 288-2 – 289-1.

desertion? During the eighteenth century, while on campaign, rank-and-file Green Standard soldiers were paid their regular monthly salaries (*fengxiang* 俸餉) which ranged from a little less than one to two *liang* per month.⁷³ When preparing for deployment, soldiers were paid a one-time “baggage pay” (*xingzhuang yin* 行裝銀) “to care for all things necessary when leaving the garrison and going out on campaign, to buy or repair uniforms, boots and weapons, which were normally not provided by the garrisons but were a private matter of each soldier.”⁷⁴ These funds were also used to settle family affairs prior to departure.⁷⁵ Additional campaign entitlements were salt-and-vegetable pay (*yancai yin* 鹽菜銀) and daily rice rations (*kouliang yin* 口糧銀). Moreover, soldiers could receive gratuities and compensations for meritorious action on campaign.⁷⁶ Overall, Qing regulations suggested that rank-and-file Green Standard soldiers on campaign earned on top of their regular salaries between .6 and 1.6 additional *liang* per month, in addition to a one-time baggage payment between 1.3 and 4 *liang*.⁷⁷

⁷³ Luo Ergang,

⁷⁴ The baggage fee was sometimes paid a second time. Ulrich Theobald, *War Finance and Logistics in Late Imperial China* (Leiden: Brill, 2013), 48.

⁷⁵ “The practice during the various campaigns was very different, and the amounts of the stipends could exhibit large disparities. High ranking officers could receive baggage pay varying from one to two years’ salaries, or only a stipend of 100 *liang*, and it was not always clear whether the money was donated or only given as a loan.” Theobald, 48.

⁷⁶ Theobald, 57-58.

⁷⁷ Monthly campaign allowances for Green Standard soldiers (in *liang*) according to Qing regulations. Figures are drawn from Theobald, 54-60.

	Sichuan	Shaan-Gan	Hu-Guang	Yun-Gui
Baggage-Pay (usually one time, sometimes given a second time)	4-6 (loan)	6-10 (outright) 4 (loan)	15-24 (loan)	1.3 (outright)
Salt-and-Vegetable Pay (per month while on campaign)	.3-1.3 (depending on regulation cited)			

These regulations, however, could not reveal how much pay actually reached the soldier, a fact that might have been obscured in the desertion reports as well. In fact, individual payment figures cited in archival cases often differed from the regulations.⁷⁸ I agree with Dai Yingcong that mutinies (*binghua* 兵嘩; *bingzao* 兵噪) resulting from lack of pay were common during the late Ming and continued to occur in the seventeenth-century Qing, but then disappeared in the eighteenth century.⁷⁹ Yet, in the hundreds of eighteenth-century desertion cases I reviewed, I came across little evidence to support her contention that in the eighteenth century “many deserters fled with their pockets full of award silver and materials.”⁸⁰ As the cases show, many deserters performed menial labor, begged for food and slept in temples while on the run.⁸¹ In my opinion, all one can conclude from the eighteenth-century desertion cases is that Green Standard soldiers were probably paid reliably and likely paid more while on campaign than while at their home stations.

If looking for economic incentives to desert and return to one’s home station while on campaign, official peacetime versus campaign compensation is only one factor in what has to be a broader consideration of opportunity costs. How did “homesteading” – the tendency of local

Rice Pay (may have been paid in kind)	.3 (unclear if paid in kind)			
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⁷⁸ In one early eighteenth-century desertion case, 4/26/1734 (YZ 12/3/23), the soldier was given thirty *liang* just to enlist. XKTB-FHA, 02-01-02-2494-004.

⁷⁹ Dai Yingcong, *The Sichuan Frontier and Tibet*, 173.

⁸⁰ Dai Yingcong, *The Sichuan Frontier and Tibet*, 173.

⁸¹ For instance, there are many cases like that of Guardsman Chen Zaidong 陳在東 who was recruited in Changsha County, Hunan as a *yuding* for the Second Jinchuan Campaign. While on campaign, he entered the ranks as a regular soldier. While campaigning in Sichuan, he “missed home” and “decided to desert” on September 16, 1773. In his confession, he explained that while on the run, he “took the small roads back to Hunan and begged along the way, sleeping in deserted temples.” LFZZ-FHA, Military Affairs (軍務), Other (其他)/Roll12/1827-30.

troops in any army to have sources of income and social connections outside the military due to a long-term local presence – affect the soldiers’ desire to get back to their home stations? While scholars have considered the question of Banner immiseration, there exists little scholarship on the living conditions of Green Standard forces.⁸² One study that focused on a single Green Standard battalion in Guangdong found that by the Jiaqing reign (r. 1796-1820), soldiers were signing mutual aid agreements with soldiers from other battalions, engaging in smuggling and illegal businesses, and soliciting bribes in order to alleviate endemic economic hardship. These soldiers looked at campaigns as an opportunity to enrich themselves.⁸³ In the eighteenth century, when deserters fled from campaign, they almost always returned to their home station battalions or native places. If the soldiers had well-established side business at the home station, any campaign may have been a significant economic hardship despite additional compensation.

The Qing’s military pay system did affect how desertion cases were reported. Because payment for military salaries was allotted from the center based on the number of soldiers assigned to a unit, if a commander reported a greater number of soldiers than were present in the ranks, he could personally retain or use for military expenses the money designated for their salaries.⁸⁴ In 1699, the Kangxi emperor (r. 1661-1722) noted:

It has come to my attention that with the number of soldier-positions in each province, many of them are actually unfilled because their salaries are being appropriated. This is

⁸² Pamela K. Crossley, *Orphan Warriors: Three Manchu Generations and the End of the Qing World* (Princeton: Princeton University Press, 1990).

⁸³ Wei Ke 魏珂, “Qing qianqi Guangdong lüyingbing shengcun zhuangkuang zhi kaocha, yi Naozhouying wei zhongxin 清前期綠營兵生存狀況之考察,以硃洲營為中心 (Research into the living standards-livelihoods of early Qing Green Standard soldiers, using the Naozhou battalion as the center of analysis).” *Journal of Zhangjiang Normal College* 29, no. 4 (Aug 2008), 58-63.

⁸⁴ “Xumao yingzhan zhi bi 虛冒影占之弊.” Chen Feng, “Qingdai lüying ‘mingliang’ zhidu shulun,” 91-97.

an extreme violation of discipline. This must be painstakingly reformed and strictly prohibited.⁸⁵

Grasping for a *modus vivendi* to control the problem, in 1703 the Qing began paying Green Standard officials according to a certain number of “personal soldier” positions (*qinding mingliang* 親丁名糧) that commanders could fill (or not fill) at their discretion. Since the actual total number of soldiers authorized (*bing’e* 兵額) was not increased, for every additional *qinding*, there was potentially one less real soldier.⁸⁶ By the mid-Yongzheng (r. 1722-35) period, the number of *qinding* stood at about 65,143, approximately ten percent of the entire Green Standard Forces.⁸⁷ Several eighteenth-century deserter confessions attested that superiors had told the soldiers to enlist under the names of absent, dead, or nonexistent soldiers.⁸⁸ Combined with the fact that officials were punished if they did not promptly apprehend deserters or were found to have abused the soldiers thus driving them to desert, the desertion reports must be read with some skepticism.⁸⁹

Some of the major sites of eighteenth-century campaign desertion – Sichuan (Jinchuan I, 1747-49 and Jinchuan II, 1771–1776), Yunnan (the Burma Campaigns, 1765-69), and Taiwan (the Lin Shuangwen Rebellion, 1786-88) – were also home to large local Green Standard home-

⁸⁵ Chen Feng, “Qingdai lüying ‘mingliang’ zhidu shulun,” 92.

⁸⁶ Chen Feng, “Qingdai lüying ‘mingliang’ zhidu shulun,” 92.

⁸⁷ In 1781 (QL 46), the emperor ordered that *qinding* be replaced with real soldiers and at the same time instituted payment for nourishing virtue (*yanglianyin* 養廉銀) to make up for the economic shortfall. Cheng Feng, 93.

⁸⁸ For instance, in a 1777 desertion case, Zhong Chaoguo was a *yuding* campaigning with Qing Green Standard forces in the Burma campaign. When the soldier Luo Jinmei died of illness, his commanding first captain Wen Tingxiu ordered Zhong to assume the dead soldier’s name. QSL-QL, juan 993, 275-1.

⁸⁹ “營兵譟變: If because local officials are slow to pay soldiers, the junior officers appropriate their pay and abuse them, leading to riot (*binghua* 兵譟), then officials will be dismissed and indicted criminally (*tiwen* 提問)” and “營兵私逃一。營兵私逃。管官。罰俸一年。兼轄官。罰俸六個月。若該管官若累兵丁逃走者。降一級調用。兼轄官。降一級留任。統轄官。罰俸一年。” ZSZK, juan 12, 18r-19v.

station populations. For instance, in 1764 Sichuan boasted approximately 32,570 local Green Standard troops (not counting non-Han auxiliaries or Eight Banner troops) and an extensive Green Standard home-station infrastructure.⁹⁰ This meant that during major military operations both local soldiers and guest soldiers comprised the campaign force.

Yunnan was a special case. In 1660, there were 53,000 Green Standard troops in Yunnan.⁹¹ Most of the Green Standard units joined Wu Sangui in rebellion.⁹² This suggests why the Qing was far more concerned about the strategic problem of bringing deserters back into the fold during that period than about criminally punishing them, as reflected in the strategic-response cases I have already presented. After that Rebellion was put down, the Green Standard had to be wholly reconstituted. Qin Shucaï 秦樹才 has hypothesized that the Green Standard served an important role in ethnic Chinese in-migration into Yunnan, especially after the Burma quagmire.

⁹⁰ The Sichuan military region was commanded by the Sichuan governor-general, stationed at Chengdu. The governor-general directly commanded the governor-general's brigade composed of a Left, Center, and Right Battalion, each consisting of eight hundred soldiers. He exercised command through his assigned adjutant-colonel who transmitted his orders to the three battalions. By virtue of his administrative rank, the governor-general exercised control over the Sichuan provincial military commander and four *zongbing*. Luo, 188-93. Geographically, the region covered most of modern-day Sichuan province. The Sichuan provincial military commander, also stationed at Chengdu directly commanded his own brigade. This *tibiao* was composed of the Center, Left, Right, Forward and Rear Battalions (*ying*), each composed of about six hundred soldiers. The provincial military commander commanded the Chengdu City Garrison, which was composed of a single major as leader of three battalions (*ying*), with a total of nearly two thousand soldiers. He commanded two additional Area Defense Brigades (*xie*), composed of an addition ten battalions and four thousand soldiers, with responsibility for a vast swath of area defense and patrolling. Reflecting how the Qing divided each province into several territorial defense regions (as opposed to one during the Ming), the governor-general and provincial military commander exercised joint, tiered administrative control over four *zongbing* who themselves presided over the four territorial defense regions within the Sichuan military region: Baoding, Chongqing, Ningyuan, and Songfan. The Baoding *zongbing*'s brigade (*zhenbiao*) was comprised of three Battalions, and a total of one thousand eight hundred soldiers. In addition, the Baoding *zongbing* commanded five geographically dispersed battalions (with an additional one thousand seven hundred soldiers) who performed area defense and patrol functions. The remaining three *zongbing* each commanded their respective *zongbing* brigade in addition to controlling numerous area defense forces divided among area defense brigades. Luo Ergang, 188-193.

⁹¹ Qin provides a chart listing the disposition of the Green Standard in Yunnan during the early Qing. Qin Shucaï, 5, 8-13.

⁹² Qin Shucaï, 12-21.

According to Qin, the Burma campaign caused the Qianlong emperor to grasp the importance of frontier defense in Yunnan, causing a major shift in the way the Green Standard was arrayed throughout that province.⁹³ Soldiers transferred to Yunnan from other places had their actual place of registration changed to Yunnan. This is a new twist on the local soldier versus guest soldier dynamic because, if true, the Green Standard was itself the catalyst for the creation of a significant part of the local Han population.⁹⁴

In her research on the Green Standard in Taiwan, Xu Xueji 許雪姬 identifies the Taiwan *zongbing* and the *banbing* (班兵) troop rotation system as important regional variations.⁹⁵ Both of these developments resulted from political and strategic considerations stemming from Taiwan's unique island geography, a frontier noncontiguous with the rest of the Qing, and reflected variations on the idea of localness and autonomous military authority. Not long after the conquest of Taiwan in 1683, Taiwan was designated a single large territorial defense region under the Fujian-Zhenjiang governor-general. It was divided into ten battalions, with a total authorization of eleven thousand soldiers.⁹⁶ The highest military authority in Taiwan was a *zongbing* whose autonomy in both military and judicial matters was more akin to that of early Ming *zongbing* than to that of his Qing contemporaries.⁹⁷ In the eighteenth century, criminal

⁹³ Qin Shucai, *Qing dai Yunnan lǚ ying bing yan jiu: Yi Xuntang wei zhong xin*, 172.

⁹⁴ Qin also notes regionally the Qing's fragmenting policy: in Yunnan as elsewhere, the Qing modified the Ming system from one that had geographically concentrated soldiers together to one that spread soldiers across a wider area. Additionally, the Qing added several Area defense battalions (*xieying*) within the new, smaller *zhen*. Qin Shucai, 95.

⁹⁵ Xu Xueji 許雪姬, *Qingdai Taiwan de lüying* 清代台灣的綠營 (Nangang: Academia Sinica Press, 1987), 401.

⁹⁶ Xu Xueji, 9.

⁹⁷ Most of the battalions were commanded by majors. Two colonels served as the *zongbing*'s adjutants to his naval battalion, and two lieutenant colonels served the same role to his ground *ying*, located with the *zongbing*'s brigade (*zhenbiao*). Xu Xueji, 9-10. The *zongbing*'s brigade was composed of the Center, Left, and Right Battalions, each composed of one thousand soldiers, along with an additional three hundred and fifty soldiers divided among four

cases in Taiwan were adjudicated at the *zongbing*'s *yamen* (*zhenshu* 鎮署), not at the prefectural or circuit *yamen* and the *zongbing* was granted authority to execute death sentences without capital review, the maximum extent of militarized adjudication.⁹⁸ Unlike most other jurisdictions (Sichuan was later another exception), the Fuzhou Manchu General had concurrent jurisdiction over his own directly-attached Green Standard brigade (*jiangjunbiao* 將軍標) and control authority over all the various battalions within the various territorial defense regions, including the Taiwan Territorial Defense Region.⁹⁹

When Taiwan was first brought under its jurisdiction, in 1683, and for the next century, the Qing prohibited local recruitment of soldiers directly from within Taiwan; Green Standard troop strength was maintained by rotating troops from mainland Fujian into Taiwan, under a troop rotation (*banbing* 班兵).¹⁰⁰ Although the Qing first used the troop rotation system in Taiwan, it later applied the model to other frontier military units and locations, most notably in Xinjiang. That these rotation troops were all from Fujian and that Taiwan was a prefecture of Fujian further complicates the local-guest dynamic. Were rotation troops in Taiwan local? The troops themselves did not seem to think so. We know from the desertion cases that by hook or crook, rotation soldiers who deserted in Taiwan tried to make their way back to their home stations in

xun (and likely further subdivided into various *tang*). The Yongping Area Defense Brigade (*xie*) consisted of the Center, Left, and Right Battalion (*ying*), each with approximately one thousand soldiers and a further five hundred and twenty soldiers distributed among seven *xun*. The Penghu Area Defense Brigade was comprised of the Left and Right Battalion, each with one thousand soldiers, with six hundred and ten soldiers divided among five *xun*. Xu Xueji, 293. Finally, there were two additional camps, the Southern Route Battalion, comprised of five hundred soldiers, with four hundred additional soldiers spread out among *xun*; and the Northern Route Battalion, with five hundred soldiers and four hundred sixty soldiers spread out in various *xun*. Xu Xueji, 294.

⁹⁸ Xu Xueji, 184.

⁹⁹ Xu Xueji, 4.

¹⁰⁰ Xu Xueji, 259-60, 266. There was one complete rotation of troops every three years. In the first year of the three-year cycle, there was the main rotation (*da banbing*, 大班兵), followed the next year by a smaller rotation (*xiao banbing*); on the third year, there was no rotation. Xu Xueji, 404.

mainland Fujian. Taiwan was considered an undesirable duty location and the Qing put extensive procedures in place to reduce desertion during the rotation.¹⁰¹

Even though the rotation system was technically a form of home-station garrisoning, the logistics of troop movement naturally echoed campaign themes, such as how the campaign-pay system may have created an incentive to desert. Before departure to Taiwan, soldiers were given three months advance salary to settle their families and provisions for travel (*panchan* 盤纏); but if the soldiers spent all this money soon after they received it, they sometimes asked to borrow more money from the officials at Xiamen just prior to departing on the boat to Taiwan. Since it was known among the soldiers that their entire record of debt would be forwarded to Taiwan to be deducted from their salaries, this created a further incentive to flee (who would want to serve on a malarial island with no pay?).¹⁰²

The Lin Shuangwen rebellion influenced the policy of using local versus nonlocal (Fujianese) troops. Most ethnic-Han immigrants in Taiwan came from one of two Fujian counties: Zhangzhou or Quanzhou. Lin Shuangwen was originally from Zhangzhou, so when the feud erupted, volunteers (*yibing* 義兵) whose native place was Quanzhou were happy to ally with the

¹⁰¹ Xu Xueji, 266. Once Green Standard soldiers stationed in Fujian were named to participate in the upcoming Taiwan rotation, the names, local registrations, and any physical characteristics of these soldiers were recorded in three separate registers. One register remained with the soldiers' home battalion in Fujian to verify their identity when they returned from Taiwan; one register was sent to the officials in Xiamen, the Fujian coastal point of departure for Taiwan; and one was sent to Taiwan to verify the identity of the soldiers when they arrived. Xu Xueji, 403.

¹⁰² Apparently fleeing was enough of a problem that starting in 1748, the Fujian-Zhejiang governor-general ordered that junior officers from the rotating soldiers' home battalion escort them all the way to Xiamen. Xu provided some examples of soldiers who fled during the Taiwan troop-rotation process. In 1748, during the second *banbing* rotation of the Ground Provincial Military Commander, after the Maritime Provincial Military Commander had verified that the soldiers had boarded the boat, Zheng Qing, Zhou Fu, Li Youren, Chen Shang, and Wen Xian (five soldiers), suddenly absconded. They never returned to their unit prior to the ship departing for Taiwan; another group of rotating soldiers from Fuzhong *zhen* in Fujian absconded while enroute to Xiamen and returned on their own to their home station. Xu Xueji, 279.

government against Lin and his Zhangzhou-native place allies.¹⁰³ As a result of the success of the *yibing* in augmenting the Fujian forces in putting down the rebellion, the Qianlong emperor insisted that more local Chinese be used in Taiwan defense, so the Qing reduced the number of rotational soldiers by half.¹⁰⁴

Qing regulations were nearly silent on how politically-fragmented and widely dispersed local Green Standard forces that were normally focused on police duties coalesced into campaign armies.¹⁰⁵ Relying on the memorials of the famous early Ming-Qing military commander Hong Chengchou 洪承疇 (1593-65), Luo Ergang concluded that in general, when preparing for battle, soldiers from certain battalions (*ying*) and territorial defense regions were brought together under united leadership appointed by the central government.¹⁰⁶ From various archival references, we know that the central government commissioned a high level government official under various titles – Grand Minister Commander (*jinglüe dachen* 經略大臣), Special Commissioner (*qinchai dachen* 欽差大臣), General-in-Chief (*jiangshuai* 將帥), Supervising Military Operations General (*duban junwu jianjun* 督辦軍務將軍) – to consolidate the forces from various home station units, somewhat similar to the *tongshuai* and tactical generals appointed to consolidate

¹⁰³ Xu Xueji, 386.

¹⁰⁴ Xu Xueji, 405. John Shepard explained that the Qing continued to expand their military presence in Taiwan, especially after the “double rebellion” of 1731-32 while at the same time relying to a greater and greater degree on the aborigines. After the substantial (Han) Lin Shuangwen rebellion of 1786, and acting upon a memorial by Fukang-an, the Qing formalized the role of aborigine military colonies. John R Shepard, *Statecraft and Political Economy on the Taiwan Frontier, 1600-1800* (Stanford: Stanford University Press, 1993), 194-95.

¹⁰⁵ Luo Ergang has asked how the Green Standard, arrayed and administered in such a fragmented fashion, could perform when it reached the battlefield? What was the organization of this force for battle? Qing-era regulations provide no answer to these questions. They only refer to peacetime organization. Because the Green Standard’s wartime organization was never put down in regulations, whenever it became necessary to conduct military operations, the appointed supreme commander had no way to know how to organize the troops. Luo Ergang, 303.

¹⁰⁶ Luo Ergang, 304.

Ming *weisuo* troops for campaigning. Because campaign deployment altered the unit structure of the Green Standard Forces, home-station units had to be reconstituted after a campaign (*guiwu* 歸伍).¹⁰⁷ Desertion occurred at every stage of this campaign process.

Deployed military authority also had a spatial aspect, the actual consolidation of military personnel drawn from many different home stations in one or more locations within the combat theater at a place the archives referred to as deployed camps (Ch: *junying* 軍營 or *daying*, 大營; M: *coohai kūwaran*). At these deployed camps, the Qing sought to reunify the command and spatial aspects of the force it had intentionally kept fragmented and dispersed. If the deployed camp supported a significant portion of a single theater of operations and had an enduring presence for a substantial portion of the named campaign, then I refer to the camp as a forward operating base.¹⁰⁸ For instance, during the Lin Shuangwen campaign, the Taiwan *deployed camp* was a Taiwan Forward Operating Base (Taiwan *junying*).¹⁰⁹ Qing-era regulations contained no specific prescriptions for these camps. For this, I have relied on Xue Dalie who specifically related the importance of the deployed camp to the problem of desertion in the commander's manual he published:

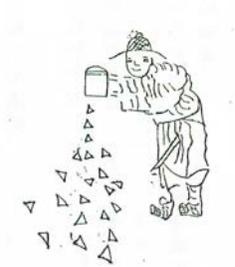
¹⁰⁷ Luo Ergang, 310.

¹⁰⁸ A "base" is defined as a "locality from which operations are projected or supported." Headquarters, Department of the Army, *Field Manual 1-02: Operational Terms and Graphics* (Sept. 2004), 1-18.

¹⁰⁹ Memorial from Fu'kanggan, dated QL 53/1/8, "Zoubao shenxun zeifei gongqing bingjiang yaofan yajiefujing zhe 奏報審訊賊匪供情並將要犯押解赴京摺" available at the Academia Sinica's Taiwan Aboriginal Documents Collection Digitalization Project, [http://www.aborigines.sinica.edu.tw/02/npm/piah100\[1\].htm](http://www.aborigines.sinica.edu.tw/02/npm/piah100[1].htm) (last accessed July 8, 2014). Other examples include: in 1748 (QL 13) in the aftermath of the Zhandui Campaign and the buildup of the First Jinchuan Campaign, between the Northern and Southern Route Deployed Camps, there were more than fifty thousand personnel, thus I refer to these locations as the Sichuan Northern Route FOB and Sichuan Southern Route FOB. QSL-QL, juan 306, 8-1 – 9-2. For the First Jinchuan Campaign, there was the Greater Jinchuan FOB (*DaJinchuan junying* 大金川軍營) and the Lesser Jinchuan FOB (*Xiao Jinchuan junying*). QSL-QL, juan 308, 33-1 – 33-2. For the second Jinchuan Campaign in 1737, one large deployed camp, the Sichuan FOB (Sichuan *junying*) was established at Chengdu. QSL-QL, juan 902, 53-2 – 54-1.

When soldiers desert from the battlefield, it is because they do not have a secure deployed base camp (*ying*). If travelers have no home, then they have no place to return to. When engaged in combat, if once things start to go poorly, if there is no place to return to, how could one not desert? This is why it is appropriate to first establish the camp. ... By comparison [without a camp], the soldiers would just run around in the wild and lose their lives, being killed if they meet up with or are captured by the enemy. If this were the case, soldiers would not go out to fight. Thus, training in establishing a good camp is the basis of training in courage.¹¹⁰

Xue provided extensive guidance for establishing the camp, including recommendations on barriers, such as moats and hedges, security of the entrance points, passive-resistance measures such as feces-laden barbs (“Demon Barbs”) sprinkled on the ground outside the perimeter, elaborate watch towers, telescopes (that he indicated had to be purchased from westerners) to night patrolling. A lot of Xue’s recommendations came verbatim from Qi Jiguang’s Ming-era work.



Xue Dalie’s spreading “Demon Barbs” outside the camp.



Qi Jiguang’s spreading “Demon Barbs”, from the *New Book of Effective Discipline*.

For camp security – the lack of which was the cause of some of the greatest desertion-inducing episodes of the eighteenth century, such as the tragic debacle at *Muguomu* (木果木) Forward Operating Base during the Second Jinchuan Campaign – Xue recommended establishing observation posts (*waipu* 外舖) at three to five *li* outside the camp on important roads, manned by a total of thirty to fifty combat troops. Each post was supposed to be equipped with a drum to

¹¹⁰ Xue Dalie, 52v, 53r.

provide a warning to the deployed camp in the event of an approaching enemy.¹¹¹ Night patrols were also an important part of deployed camp force-protection. Xue advised that when conducting combat operations, and specifically when going deep into enemy territory, the commander establish smaller camps (*ying*) that I refer to as *combat operating posts* every ten *li* along the route to cache provisions.¹¹²

The Qing campaign to quell the Lin Shuangwen Rebellion provides an example of how the Qing's *ad hoc* task-organization for campaign drew from units and officials far from the jurisdiction of rebellion and developed as the campaign went along. The anti-government activity started in January 1787. In February, the emperor appointed the Fujian Maritime Provincial Commander to lead troops from Fujian and Guangdong to Taiwan and suppress the rebellion. Not satisfied with the progress against the rebels, the emperor appointed Hubei-Hunan governor-general Changqing 長青 as Supervising-Taiwan-Military Operations General (*duban Taiwan junwu jianjun* 督辦台灣軍務將軍). At the same time, he appointed Fuzhou General-in-Chief Hengrui 恒瑞 and Jiangnan Provincial Military Commander Lan Yuanmei 藍元枚 both as grand-minister consultants (*canzan* 參贊) to advise Changqing. Still frustrated with the lack of progress, on December 10, 1787, the emperor replaced Changqing with the famous Qing general, Shaanxi-Gansu governor-general, Bordered-Yellow Manchu bannerman Fuk'anggan (Fukang'an 福康安) (1753-96) of the Fuca clan and Grand Minister Consultant Hailanja (Ch: Hailancha 海

¹¹¹ Xue Dalie, 62r.

¹¹² Xue Dalie, 64r. The establishment of networks of logistical camps was important to overcoming the inner Asian logistical problem – how to campaign deep into Mongolia without running out of supplies – that allowed the Qing to fully subdue the Zunghars in the eighteenth century. Peter C. Perdue, *China Marches West: the Qing Conquest of Central Eurasia* (Cambridge: The Belknap Press of Harvard University Press, 2005).

蘭察) to lead an additional nine thousand Eight Banner and Green Standard troops to Taiwan.

Thanks to this overwhelming force – as well as the assistance of local *yibing* troops in Taiwan – the anti-government activity was put down.¹¹³

The *ad hoc* assignment of officers notwithstanding their original positions; the extreme changes in overall leadership; the cobbling together of forces piecemeal ultimately including more than fifty thousand troops from across four provinces and both Eight Banner and Green Standard forces; and the infusion of Eight Banner troops for the finale were all characteristic of the Qing's haphazard formation of its campaign armies in several of the other "Complete Victories" for which one gets the sense that the Qing initially underestimated its opponents or overestimated its own military capabilities.

¹¹³ On January 1, 1787, Lin Shuangwen and soon after Zhuang Datian 庄大田 rose in revolt. Upon receiving notification of the revolt, the Qianlong emperor appointed the Fujian maritime provincial commander Huang Shijian 黃仕簡 to immediately deploy soldiers and horses to Taiwan and lead a major force "direct to the rebels' lair." Xie Maofa 謝茂發, "Jianxi Qianlong nianjian Lin Shuangwen qiyishi de Fujian lüying shuishi 簡析乾隆年間林爽文起義時的福建綠營水師 (A brief analysis of the Fujian Green Standard marines during the Qing-era Lin Shuangwen Uprising)," *Lishi Changlang* 歷史長廊, The Qing History Institute, People's University, 100872, No. 467 (July 2012). On February 21, 1787, Huang landed on Taiwan with a total of 2,300 Green Standard troops including his personal brigade with two majors assigned; a lieutenant colonel leading forces from the Fujian-Zhejiang governor-general's brigade; a battalion from the Nanao Maritime Territorial Defense Region in Guangdong; as well as forces from Jinmen island. Two days later the Fujian Ground Provincial Commander Ren Cheng'en 任承恩 landed on Taiwan with another two thousand soldiers. Over the next month, in four more iterations, the number of troops introduced to put down the rebellion reached nearly ten thousand. Combined with the thirteen thousand troops already stationed on the island, the total of Green Standard troops reached more than twenty thousand. Xie Maofa, 135-36. Huang made slow progress and, according to the emperor, refused to personally lead the troops. He sent the Fujian Haituan Maritime Territorial Defense Region *zongbing* Hao Zhuangxian 郝壯獻 to attack with three thousand men and sent the Taiwan Territorial Defense Regional *zongbing* Chai Daji 柴大紀 to attack with three thousand men, but kept seven thousand men back with himself safe in the Taiwan Prefecture seat. Following a disastrous incident where two thousand four hundred of Hao's men were killed or injured and six hundred fled, the emperor had Huang stripped of rank and turned over to the Board of Punishment for a criminal trial. The emperor ordered Hao to serve as acting Fujian Maritime Provincial Commander, but soon ordered him executed because of failure to perform (by this time, the militarized track was well in place). The emperor then appointed Changqing, Hengrui, and Lan Yuanmei. The emperor ordered the three to immediately proceed to Taiwan and exterminate the enemy (*jiaozei* 剿賊). Soon after, Lan was given the title of Fujian Maritime Provincial Military Commander. During the eight months that Changqing was in charge of military operations, the Qing sent a total of 30,000 troops from Fujian, Guangdong, and Zhejiang to Taiwan, including Eight Banner garrison troops. Xie Maofa, 135-36. After this, the emperor appointed Fuk'kanggan. Xie Maofa, 135-36.

Across the Ming-Qing, Green Standard institutional development reflected both a local-guest dynamic as well as political considerations of avoiding alternative poles of military power. While reforms – creating an extremely diffused force under fragmented leadership that was supposed to be local to the place it was garrisoned – created a force far less likely to revolt or flee its home stations than its Ming predecessors, it also created conditions favorable to campaign desertion. The Green Standard was squarely the product of *Chinese* military development, and the Qing always identified it as such. During the eighteenth century, when it became more important to the dynasty to distinguish Manchu and non-Manchu, banner service in the Green Standard came to be seen as polluting the Manchus and the adjudicative discourse of eighteenth-century desertion cases came to represent the Green Standard as the essential military “other” to the Eight Banners.

Because the Green Standard was primarily stationed within the inner-empire, after the early Qing, most soldiers’ home-stations were largely located within zones of no active military operations. Other than the fact that both campaign and Inner-Empire, home-station deserters were both referred to as “*taobing*” and both implicated notions of military discipline to a certain extent, they were considered matters of different importance. For the Qing, this dissertation is concerned with campaign desertion. Within the Inner-Empire, home-station desertion was largely a matter of administration and local punishment.

III. The Eight Banners

Whenever they are ordered to deploy on campaign, among the Eight Banners of my dynasty, there is not one soldier who is not excited and enthusiastic. They pour out their sincerity. From the military operations in Yili, the Muslim Regions, and Jinchuan up to now. Never has even one soldier deserted (*congwu yiren tuotao* 從無一人脫逃). But these Green Standard soldiers....

- Qianlong emperor, Jinchuan II, Jan. 1, 1785. ¹¹⁴

The institutional history of the Eight Banners was a process of early seventeenth-century identity formation (from distinct tribes to Qing Banners), then of bureaucratization to loosen the personal hold of the *beile* princes and finally eighteenth-century efforts to shore up their “ethnic” Manchu identity.¹¹⁵ Unlike the Green Standard with its Ming genealogy, the Eight Banners (Ch: *baqi* 八旗; M: *jakūn gūsa*) traced their past to that process of state-building initiated by Nurhaci when the Later Jin was still beyond the Shanhai Pass. Around 1615, Nurhaci began reorganizing various Jurchen tribes that had come under his control into a unified military organization. In 1635, Chahar and Kharchin Mongols were organized into the Mongol Eight Banners.¹¹⁶ As more Chinese transfrontiersmen and, later, regular Ming units began to surrender, they too were incorporated first into the “Old Han Army” and in 1637 reorganized into the Chinese component of the Eight Banners.¹¹⁷

Like the Green Standard, the Eight Banners was an object of imperial representation, but unlike the Green Standard, the Eight Banners was held out (with new emphasis during the Qianlong reign) as an ideal of Manchu martial virtue. Mark Elliott posits that because the Qing

¹¹⁴ QSL-QL, juan 1230, 369-1.

¹¹⁵ Elliott, *The Manchu Way*, 13.

¹¹⁶ Draft History of the Qing Dynasty, juan 105, The Military. Part One.

¹¹⁷ Wakeman, *The Great Enterprise*, 201.

was a non-Chinese conquest dynasty, one basis for its legitimacy was “ethnic sovereignty.” This source of legitimacy was “distinct from the Neo-Confucian Manchu embrace of Chinese literary and political norms.”¹¹⁸ Ethnic sovereignty required an emphasis on the differences, not similarities between the Manchus and Chinese. Because of this, during the eighteenth century, the Manchu identity of the banners became central to Qing legitimacy. This was one of the motivations behind the eighteenth-century efforts to distinguish the Manchu ethnicity of the banners – complete with new Manchu genealogies – that was also part of the process Elliott identifies as the “transvaluation” of Manchu identity onto the banners.¹¹⁹ This process – in which the adjudicative discourse of Green Standard desertion cases served as an ideal forum for distinguishing Manchu military virtue from Han cowardice – coincided closely with the eighteenth-century militarization of the Qing’s criminal response to desertion. It was tied especially closely to both the Qianlong emperor’s efforts to reduce the number of Chinese-banner soldiers in the inner-empire garrisons and to use Manchu soldiers to turn failure into success in the Burma Campaigns.

As both a fundamental unit of society and military formation, the Eight Banners reflected that early Qing state formation and military campaign were intrinsically inseparable. Like Prussia, the new state was a product of war. Correspondingly, during this period, the Qing developed its own repertoire of militarized criminal adjudication. Whereas during the Ming, the militarized mode of adjudicating cases was limited and always irregular next to the robust and bureaucratic ordinary criminal legal system, the normally-applicable pre-conquest law of the Eight Banners

¹¹⁸ Elliott, *The Manchu Way*, 13.

¹¹⁹ Elliott, *The Manchu Way*, 13.

was basically militarized adjudication, with orders from the Khan (Nurhaci and Hongtaiji) forming the substantive basis of law.¹²⁰ Pre-conquest campaign desertion was punishable by immediate execution, as it became again during the Qianlong era. This historical memorial of pre-conquest Manchu militarized adjudication formed a second historical source from which the Qing could draw to justify eighteenth-century militarizing tendencies in legal culture. In 1784, the Qianlong emperor imagined the pre-conquest past, saying “In the time of my ancestors Nurhaci and Hongtaiji, in time of war (*fanyuyongbing* 凡於用兵), if there were soldiers in the front ranks facing the enemy who tried to desert, the soldiers in the rear were permitted to kill them.”¹²¹

By the 1640's, the Eight Banners had already attained a mature organizational form, with a total of twenty-four banners, four each of plain and bordered yellow, white, blue, and red banners further replicated in three “ethnic” sets based on the particular way individuals were identified at the time the banners were established: Manchu (Ch: *baqi manzhou*, 八旗滿洲; M: *manju gūsa*), Chinese (Ch: *hanjun* 漢軍; M: *ujen cooha*); and Mongolian (Ch: *baqi menggu*, 八旗蒙古 M: *monggo gūsa*) banners. While almost all of the ethnic “Manchu” population was enrolled in the banners by the time of the conquest in 1644, only a minority of ethnic Chinese and Mongol soldiers were ever part of the Eight Banners system.

A banner company (M: *niru*; Ch: *zuoling*, 佐領) was comprised of about three hundred soldiers. It was commanded by a banner first captain (M: *niru ejen*, *niru janggin*; Ch: *zuoling* 佐

¹²⁰ Zhang Pufan 張普藩 and Guo Chengkang 郭成康, *Qing ruguanqian guojia falü zhidushi* 清入關前國家法律史 (Shenyang: Liaoning renmin chubanshi, 1988), 248-50.

¹²¹ QSL-QL, juan 1211, 240-1.

領, 4a). A banner regiment (M: *jalan*; Ch: *canling*, 參領) was composed of five banner companies and was commanded by a banner lieutenant colonel (M: *jalan janggin*; Ch: *canling* 參領). A banner (M: *gūsa*; Mo: *khoshuu*; Ch: *qi* 旗) was comprised of five regiments. The banner *qua* banner (the entity called the Plain Yellow or Plain White Banner) was commanded by a banner commander (M: *gūsa ejen*; Ch: *dutong* 都統, 1a), who along with a deputy banner commander (M: *meile janggin*; Ch: *fudutong* 副都統), was stationed at the banner headquarters in Beijing.¹²² During the early years of the Qing, each banner was the private property of a *beile* (Ch: 貝勒) or prince. But *beile* became less and less significant as the banners were bureaucratized, a process largely complete by the Qianlong era. A number of other officer positions filled out the ranks below company, such as Banner Second Captain (*junxiao* 軍校, 5a).

The question of local versus guest soldiers took on a complex character within the Eight Banners, one that may hold clues to why the particular Banner- Green Standard binary developed within the adjudicative discourse at the time it did. At the time of the conquest, approximately 100,000 bannermen physically remained in Beijing, and approximately 110,000 were sent out to garrison important cities throughout the inner-empire.¹²³ Mark Elliott writes that at the time of

¹²² To make comparison possible with the Green Standard ranks, I have where possible given the Eight Banners ranks similar titles based on the bureaucratic ranking of the banner position given in the 1734 *Zhongshu Zhengkao*, the same source I used for the Green Standard ranks. Since the *zuoling* was ranked 4a in the bureaucratic system, the same as a Green Standard first-captain, I translate *zuoling* as “banner first captain.” Prior to 1652, whenever banner ranks or units were cited in Chinese-language documents, the Manchu term was transliterated into Chinese, so for instance, the Manchu title *niru janggin* (banner first captain) would have been translated into Chinese as *niulu zhangjing*. In 1652 (SZ 8) a whole set of Chinese terms was developed to translate the Manchu terms, although the transliterations still appeared after this date (and the Chinese terms were sometimes even transliterated back into the Manchu script).

¹²³ Because a large proportion of Banner troops were in garrisons (*zhufang* 駐防) throughout the country that mixed personnel of the various colored banners, including Manchu-Mongol-and Han, often garrison location is a more important identifier than the banner color. The garrisons were also referred to as Manchu Cities (Ch. *mancheng* 滿

the conquest, the Qing did not thoroughly consider the consequences of long-term occupation of China, but simply assumed that the “home” for all bannermen, whether or not they were stationed in the provinces, would be with their same-colored banners in Beijing. Since property ownership and burial were important indicia of “home,” prior to the eighteenth century, most bannermen could only own property and be buried in Beijing. As Elliott sees it, due to the reality that the garrisons were lifelong assignments, by the eighteenth century, the notion of “returning to the banner” was quickly losing its meaning of returning to Beijing. As with many other indicia of Manchu identity, the Qianlong emperor was at first adamant about the burial-in-Beijing requirement. Later, he relented, but according to Elliott, this caused him to emphasize other aspects of “Manchu”-banner identity to compensate for the loss of the bannermen’s physical connection to the dynasty capital.¹²⁴

In Beijing, each banner had a commander (*dutong*), eventually a Yamen, and a particular geographic residential location, but increasingly over time these Beijing banner institutions exercised little real control over their “members” located in the provincial and frontier garrisons.¹²⁵ Most of the banner soldiers who remained in Beijing formed the core of the

城) and often were made up of walled-off districts in larger Chinese cities. There were over twenty semi-permanent or permanent Eight Banners garrisons over the course of the Qing. In their mature form, they were arrayed along the following lines: the Grand Canal Line (Jingshi 京師, Dezhou 德州, Jingkou 京口, Hangzhou 杭州 Garrisons); the Yellow River Line (Dezhou 德州, Kaifeng 開封, Xian 西安); the Yangzi River Line (Jiangning 江寧[Nanjing]; Jingkou 京口; Jingzhou 荊州; Chengdu 成都); the Southeast Coastal Line (Hangzhou 杭州; Fuzhou 福州; Guangzhou 廣州). Wu Haiyan 吳海燕, “Qingdai Mancheng gongneng tanxi 清代滿城功能探析” *Nanchang jiaoyu xueyuanbao* 南昌教育學院報. 2010: v.25:4, p. 185-86. While some garrisons were permanent, such as the Nanjing, Fuzhou, and Guangzhou Garrisons, others, such as the Suzhou Garrison, was temporary. Wang Gang 王剛, “Qingchu Suzhou baqi zhufang tanxi 清代蘇州八旗駐防探析 (An analysis of the Qing-era Banner Garrison of Suzhou),” *The Qing History Journal* 2 (May 2014), 101.

¹²⁴ Elliott, *The Manchu Way*, 256-59.

¹²⁵ By the eighteenth century, retirement and burial at the local garrison was permitted, but the notion of the colored banner headquarters in Beijing as the formal home of garrison banner soldiers was never completely abandoned.

imperial guard and a number of other special units.¹²⁶ The twenty-four Beijing-based banner commanders each retained operational control over only a small number of soldiers from each banner that were designated as “elite calvary” (M: *aliha cooha*; Ch: *xiaoqi* 驍騎). The garrison banner forces throughout the empire were commanded by either a Manchu General (*jiangjun* 將軍, 1a) or a garrison commander (*fudutong*).¹²⁷ In two locations, Fuzhou and Sichuan, at different times the Manchu generals had a personally assigned Green Standard brigade (*jianjunbiao*).

Banner registration (*qiji* 旗籍), which was based on colored-banner, not garrison location, was different from the soldier-registration of the Green Standard, and in some ways more like the Ming *weisuo* military household registration because the registration was hereditary and included even non-military members of the family. The banners included not only banner soldiers (M: *uksin*; Ch: *pijia* 皮甲; *majia* 馬甲), but their dependents, “bondservants” (Ch: *baoyi*, 包衣 M: *booyi*), and men for whom there was no soldier slot available (M: *sula*; Ch: *xiansan* 閒散). There was, however, an important difference between Ming military household registration and banner registration that I believe led to the low rate of banner campaign desertion: bannermen wanted to remain part of the banners.¹²⁸

¹²⁶ Zhao Shengrui, 21-22.

¹²⁷ It does not make sense to translate the term *fudutong* here as deputy banner commander because the garrisons contained companies from many different banners.

¹²⁸ Even though rioting and desertion in the banners seems to have been downplayed in the Qing’s carefully managed historical record, we know that there were conflicts within the banner forces. Pan Honggang 潘洪剛 and Guo Fuliang 郭福亮 have written of two seventeenth-century revolts that took place in the Fuzhou and Guangzhou Eight Banner Garrisons that were not recorded in the *Veritable Records*, demonstrating that one should exercise some caution when looking for incidents of Manchu military weakness within the printed government archives. Pan Honggang and Guo Fuliang, “Qingchu Fuzhou, Guangzhou baqi zhufangde huabian shijian 清初福州，廣州八旗

In the eighteenth century, banner registration had real economic and social value. First, the Qing financially supported bannermen. But more important, it was prestigious to be a member of the “conquest elite.”¹²⁹ As Evelyn Rawski has pointed out, “The first major division in Qing society was between bannermen and the civilian population. As indicated by the Manchu, Mongolian, and Hanjun divisions of the banners, the division was not ethnic but political, between the conquerors and the conquered population.”¹³⁰ Banner prestige stood in direct contrast to the low social status of military persons during the Ming, in which soldiers were associated with criminals.

There were, however, some people who wanted out of the banners. Because prior to the conquest, banner soldiers had been compensated for their military efforts with slaves (M: *aha*; Ch: *nupu* 奴僕) as booty, the banners included a significant involuntary population. Under Nurhaci, the nascent state began implementing what would ultimately be known as the banner fugitive law (*taorenfa* 逃人法), mandating death for slaves who fled. Under Hongtaiji, the law was relaxed somewhat, but then after the conquest, the problem of fugitive slaves increased dramatically, leading the Qing to implement draconian punishment: for a first or second offense, the fugitive slave would be whipped one hundred times; for a subsequent offense, both he and persons who sheltered him would be executed.¹³¹ In addition, the property of those who sheltered a fugitive was turned over to the person who reported them and the family members of shelterers

駐防的嘩變事件 (Incidents of Soldier-disturbances at the Fuzhou and Guangzhou Banner Garrisons during the early Qing period),” *Journal of South-Central University for Nationalities (Humanities and Social Sciences)* 29, no. 2 (Mar. 2009), 63-66.

¹²⁹ Evelyn S. Rawski, *The Last Emperors* (Berkeley: University of California Press, 1998), 59.

¹³⁰ Rawski, *The Last Emperors*, 59.

¹³¹ Shao Peng 邵鵬, “*Qingchu taorenfa yanjiu* 清初逃人法研究.”

were exiled, creating a tremendous incentive for corruption. It was this particularly harsh version of the law that Wenzhou Lieutenant Colonel Dai cited when he wrote his memorial seeking group punishment of a deserter's colleagues. The Kangxi emperor greatly reduced the effect of the law. From the perspective of the evolution of law, what is interesting is that it was this banner fugitive law onto which was grafted the desertion law punishing banner soldiers who deserted frontier garrison postings.

The most common campaign “deserters” within the Eight Banners were the *genyi* (Ch: *genyi* 跟役; *genma* 跟馬; M: *kutule*). *Genyi* were one of the very first categories of men on campaign to be subject to militarized adjudication. In terms of the adjudicative discourse, the later construction of *yuding* as deserving of militarized adjudication followed the logic first applied to *genyi*. *Genyi* were the personal assistants to the soldiers of the Eight Banners, and in aggregate an important logistical labor force for the Banners on campaign. *Genyi* were not assigned to the unit per se, but were the slaves or employees of individual bannermen.¹³² The number of *genyi* permitted per Banner soldier varied, but was generally governed by regulation after the conquest of China and also varied based on the individual wealth of the bannerman. Prior to the conquest of China, most *genyi* were household slaves, who had been captured and distributed as booty during pre-1644 campaigns. Although household slaves continued to serve as *genyi* through the Qianlong reign, once the supply of new slaves began to dry up, increasingly *genyi* were hired

¹³² Along with soldiers, it is especially interesting to see the early treatment of *genyi* within the context of fugitive slave law. TC 6 (1632) / TC 6/1/11. “A Korean, Zhangdaoyuan 張道員, arrived. The reason was because: When going along the coast hunting, the Korean man 朝鮮男丁 of Zhongtuoyi's family (of ZhongWudahai's niuru), Zhong Baoqi, was serving as a gending 跟役. This Korean fled to Korea. At that time, the Korean King caught him and sent him back, and reported this matter to the Khan. The Khan said, "He doesn't understand the law, and so he fled 逃去. He is a poor person, sever his ankle 割其足筋, and return him to his original master" (27) (MWLD) (Japanese 628-629)).

under contract. By the time of the Yongzheng reign, a large proportion of *genyi* were contracted workers (*gugong* 雇工). During the Qianlong reign, an increasing number of *genyi* were the unemployed sons and younger brothers of banner soldiers.¹³³ The banner connection of *genyi* who fled naturally implicated the banner fugitive law, thus providing an additional justification for harsh punishment, one which I believe also eased the creation of the more generalized militarized criminal response.

Among extent banner desertion cases from the southwestern campaigns of the eighteenth century, most involve members of the “Manchu” Solon (Ch: *Suolun*, 索倫) banners. “Solon” refers to groups of people whose origin was the far north of “Manchuria.”¹³⁴ By the time of the Yongzheng reign, the Solon were considered to be superior warriors among the banners because they had not been moved south after the conquest and retained their warrior spirit. During the Yongzheng and Qianlong reigns, groups of Solon were moved to garrison Xinjiang and deployed in several of the Qianlong emperor’s “Complete Victories.” Hailanja (Ch: *Hailancha* 海蘭察), the famous Manchu general and Fuk’kanggan’s advisor in the campaign against Lin Shuangwen, was a Solon.¹³⁵

Banner frontier garrisons and frontier garrison generals were a special application of the banner garrison system that unified political and military leadership. For the most part, only in

¹³³ See Liu Xiaomeng 劉小萌, “Kutulekao 庫圖勒考 (A reference on *Kutule*),” *Manyu yanjiu* 满语研究 2 (1987).

¹³⁴ These groups included mainly the Ewenk (ewenke 鄂溫克), Elunche (elunche 鄂倫車) and Dawor (*Dawoer* 大斡爾) tribes in Heilongjiang. References to Qiqihar (齊齊哈爾; M. Cicigar) in southwestern Helongjiang are usually references to the Solon-Manchu banner troops. Liu Xiaomeng.

¹³⁵ By the time of the mid-Qianlong reign, the Solon were split into very different groups, a large group still around Heilongjiang, a more Sinicized group within the capital banners, and garrison (*zhufang* 駐防) groups in Xinjiang. Li Dianrong 李典蓉 and Zhang Rui 張蕊, “Zaiqi de buzhu: suolunbu yu manzhou baqi de ronghe 在旗的部族: 索伦部与满洲八旗的融合 (Tribes in the Banners: the amalgamation of Solon and Manchu),” *Journal of Inner Mongolia Normal University* (Philosophy & Social Science) 39, no. 4 (Jul. 2010), 49-59.

the frontier banner garrisons was a single official – the Manchu General – not only in charge of civil affairs but also of military affairs. Militarily, he was in charge of large numbers of forces from all components – jasak banners, Eight Banners, the Green Standard – stationed within his geographic area of responsibility. This is very different from the intentionally fragmented military leadership structure that was common through the inner-empire, demonstrating very different political considerations. Frontier garrison generals were an important part of militarized frontier government. Only for the Manchu general did the Qing permit a unified command under non-campaign conditions. Unlike the garrison commanders and Manchu generals of the inner-empire, “frontier” Manchu generals exercised extensive geographic military and civil authority (as well as military-civil judicial authority), to the point that several of their postings have been translated as “military governor” or “viceroy.”¹³⁶ Military governors and their subordinates exercised authority in a large crescent spanning Qing Inner Asia, from the northeast, across Mongolia, to western Xinjiang.¹³⁷ I explore how the notion of frontier corresponded with the military operations gradient as an indicator of mode of adjudication. With the mid-seventeenth century addition of the Xinjiang frontier, the discourse surrounding the adjudication of frontier deserters provides a window onto the meaning of the frontier vis-à-vis adjudication, adding a spatial element to the well-accepted idea of a pluralistic Qing legal system. The development of law related to bannermen who fled instead of reporting to rotational duty in the Xinjiang garrisons – a phenomenon no doubt influenced by the lack of native-place feeling and hardship on the frontier – also demonstrates how the expansion of imperial space

¹³⁶ H. S. Brunnert and V. V. Hagelstrom, *Present Day Political Organization of China* (Shanghai, 1912).

¹³⁷ For a discussion of government in the northeast, see Christopher M. Isett, *State, Peasant, and Merchant in Qing Manchuria, 1644-1862*.

affected the development of desertion law, creating something resembling a state of perpetual low-intensity “time of war” as I argue may have occurred with the Ming *weisuo* several centuries earlier.¹³⁸

After the Qianlong emperor’s conquest of Zunghars and Altisharis in 1758-59, Xinjiang became a vast, militarized frontier of the Qing. It was divided into three regions relative to the Tianshan Mountains: the Northern, Southern, and Eastern Marches. Because the Qing had all but exterminated the Zunghar Mongols of the Northern March, the region was in many ways a blank slate. The Eastern and Southern Marches, long populated by persons of Turkic descent, however, had deeply ingrained local administrative structures that the Qing coopted and incorporated. After the final pacification of Xinjiang in the mid-eighteenth century, the Qing put all of Xinjiang under the authority of a military governor at Yili in the far west.¹³⁹ Before 1860, there were perhaps 35,000-37,000 soldiers in Xinjiang, half of them Manchu or Mongol Eight Banner troops stationed in the Eastern and Northern Marches. Combined with another four to five thousand mostly Green Standard soldiers in the Southern March, this amounted to a total of approximately 39,000-42,000 men for Xinjiang as a whole, more than half of them Manchu or Mongol banner troops.¹⁴⁰

Yili, occupied by the Qing beginning in 1760, was the seat of the military governor (*jiangjun fu*) as well as the home station of “Manchu” Solon and Sibo bannermen and frontier Mongolian

¹³⁸ Ma Shikai 馬詩凱, “Shixi Dezhou baqi zhufang de xingcheng ji zuoyong 試析德州八旗駐防的形成及作用 (An analysis of the formation and function of the Dezhou Eight Banners Garrison),” *Journal of Educational Institute of Jilin Province* 30, no. 1 (2014), 147.

¹³⁹ James A. Millward, *Beyond the Pass: Economy, Ethnicity, and Empire in Qing Central Asia, 1759-1864* (Stanford: Stanford University Press, 1998), 32.

¹⁴⁰ Millward, *Beyond the Pass*, 79.

Chahar and Oirat forces. The early years of the Yili garrison and Qing administration were an utter negation of localness. With the exception of some Oirat and Torghut troops who were recruited locally, through the 1760's and 1770's, Manchu, Chahar, Sibe, Solon, and Oirat banner troops with their families were transferred from Rehe, Liangzhou, Zhuanglang, Xi'an, Zhangjiakou, Heilongjiang, and Shengjing garrisons. Some Green Standard soldiers were transferred from Shaanxi and Gansu. By some estimates, there were over seventeen thousand Qing troops plus their dependents in Yili alone by the late eighteenth century.¹⁴¹

Eighteenth-century archival desertion references to military agricultural colonies (*bingtun* 兵屯) in Xinjiang were common. Starting in 1715 with the Kangxi emperor's campaigns against the Zunghars, the Qing established Green Standard military colonies within the Eastern March – Hami, Musang, Barkol, Turfan, and Altai – in order to alleviate grain supply issues.¹⁴² These were abandoned in 1725, reestablished after 1729, and withdrawn to Hami by 1735. After the complete conquest of Xinjiang, in 1757 the Qianlong emperor established military colonies around Yili, composed of Turkic Altishahris from the Southern March as well as Green Standard soldiers. At the same time, a cluster of military colonies was established with Urumqi as its center. Banner colonies were also established, but these were worked by others.¹⁴³

¹⁴¹ Millward, *Beyond the Pass*, 78-79.

¹⁴² Millward, *Beyond the Pass*, 50. The Eastern March also had a unique banner-garrison structure. It was generally under the authority of a garrison commander (*fudutong*) in Urumchi, but as the local Han population increased, districts (*xian*) and sub-prefectures (*zhou*) were created, and magistrates like those in China proper were appointed to handle civil affairs. For some purposes these officials answered to the Shaanxi-Gansu governor-general. The *jasak* system was used in Hami and Turfan, as well as among the Torghut and Khoshuut peoples settled near Karashahr. Millward, 33. There were also rotational soldiers in the Eastern March. For instance, in 1751 (QL 16) twenty Green Standard officials and two thousand soldiers were transferred from Anhui and Gansu to Hami in Xinjiang on a two year rotation. Xu Xueji, 259-60.

¹⁴³ Millward, *Beyond the Pass*, 50.

The addition of the entire Xinjiang regime was the culmination of a long process of imperial expansion that significantly interrelated with the militarizing tendencies in eighteenth-century legal culture. The Kangxi and Yongzheng-era Qing campaigns to conquer Xinjiang saw the first hints of the militarized criminal track. During the Qianlong-era campaigns that resulted in the acquisition of Xinjiang, the militarized track was fully formalized for campaign deserters, a move which signified a definitive breaking down of the distinction between militarized adjudication and late imperial legal culture. Later, banner soldiers deserted to avoid rotational duty at the Xinjiang garrisons.

With the exception of the campaigns that “pacified” Xinjiang, the Eight Banners maintained a relatively low presence within the Qing campaign forces of the “Ten Complete Victories.” But, the development of desertion law in response to banner desertion related to frontier garrison rotations and the Qing’s identification of *genyi* as military deserters were important milestones in the broadening of militarizing tendencies in legal culture, as discussed in Part II. Within the eighteenth-century adjudicative discourse, the Eight Banners were held out as the paradigm of a loyal and dependable military force, the binary “other” of the Green Standard. In adjudicating eighteenth-century desertion cases, the Qing also had available the repertoire of Manchu law that developed in response to the social needs of the early Manchu state formation, including the banner fugitive law and the pre-conquest memory of militarized adjudication. Banner forces were portrayed as the force that could turn the tables as conflicts descended into chaos. One of the clearest distinctions between the Green Standard and the Eight Banners is that the Qing was willing to entrust unity of command and autonomy in the military governors to an awesome

degree unparalleled in any Green Standard official. The frontier garrison system was also a primary instrument of Qing control over the Frontier Mongolian Forces.

IV. The Frontier Mongolian Military System

An edict. Of [the subordinates of] the Khalkhas Jasaghtu Khan Cewangzhabu (Ch: 扎薩克圖汗策旺扎布) (served as jasaghtu khan from 1703-32), Prince (qinwang) Lamazhabu and the Duke Jasak [the duke named jasak or simultaneously designated as a jasak] all feared in the face of battle. They deserted the battlefield and fled back to their pastures. This is a time of war (*mujin xingbing zhiji* 目今行兵之際)! How can military law be lenient with this? Send an order to Prince Danjin Duoerji (*qinwang Danjin Duoerji* 親王丹津多爾濟) and son-in-law (*efu*) Tsering (Ch: *celing* 策凌). Have them bring back that khan-prince (汗王) and his subordinate banner administrator (*taiji* 台吉) as well as the deputy jasak-banner commander who was leading troops at the time. Investigate them with an eye towards strictly adjudicating their crimes!

– Yongzheng emperor, Zunghar campaign, 1732.¹⁴⁴

The *Draft History of the Qing Dynasty* refers to military forces drawn from those Mongolian entities that submitted to the Qing but were never incorporated into the Eight Banners as the Frontier Mongolian Military System (*Fanbu bingzhi* 藩部兵制).¹⁴⁵ These men, somewhat like a reserve force in that they were usually not full-time soldiers, were the military manifestation of a vast and diverse socio-political system of Qing imperial control, often referred to as the *jasak*-banners (*zhasakeqi* 札薩克旗) (these “banners” are not to be confused with the Eight Banners). Eighteenth-century desertion directly challenged two key tenants of this control: geographic immobility and loyalty to the Qing center. Whether the Qing responded strategically or criminally to desertion cases arising out of these forces, and to what extent individual Mongolian

¹⁴⁴ “又諭。喀爾喀扎薩克圖汗策旺扎布、親王喇嘛扎卜、公扎薩克等。畏懼退縮。俱由陣前逃回遊牧。目今行兵之際。軍法豈可姑容。著行文順承親王丹津多爾濟、額駙策凌。將陣前逃回之汗王以下台 - 616v - 吉、暨領兵之副都統等。查明嚴加治罪。” QSL-YZ, juan 123, 616-1.

¹⁴⁵ QSG, juan 105, Military I.

cases were adjudicated within the militarized track was largely a function of the degree of Qing political control over the particular entity from which the soldiers were drawn. The development of desertion law vis-à-vis the Mongolian forces was also part of a broader legal transformation.

For military purposes, when called up for campaign, the Frontier Mongolian Forces were organized similarly to the banners of the Eight Banners System. The company-sized units, called *sumu* in Mongolian, were commanded by a banner company commander (Ch: *zuoling*), and were composed of approximately 150 cavalymen each. Six *sumu* comprised a “regiment,” (Ch: *jiala* 甲啦) like the Manchu *jalan* and also commanded by a lieutenant colonel (Ch: *canling* 參領).¹⁴⁶ But, this seemingly familiar banner structure belies tremendous diversity of relationship between the individual Mongol military forces and the dynasty.

Home-station and campaign desertion challenged the first prong of Qing control over Mongolia: the reorganization of Mongolian tribes into aimaks (sometimes translated as “khanates”, since they were nominally under a khan) and banners geographically fixed into place. According to David Farquhar, central to the Qing’s successful control of Mongolia was a process of “rationalization” and “bureaucratization” of Mongol institutions he termed “bureaucratic feudalism” that resulted in the addition of a spatial Inner-Outer dynamic based on the temporality of submission.¹⁴⁷ This Qing innovation aimed to limit the Mongols’ freedom of movement by territorially restricting them.¹⁴⁸ Pre-Qing, if a Mongol felt himself oppressed, he

¹⁴⁶ William F. Mayers, *Chinese Government: A Manual of Chinese Titles, Categorically Arranged and Explained, with an Appendix* (Shanghai: Kelly & Walsh, 1886), 80, 97; H. S. Brunnert and V. V. Hagelstrom, 447.

¹⁴⁷ David M. Farquhar “Ch’ing Administration of Mongolia up to the Nineteenth Century,” 13, 138-39.

¹⁴⁸ Farquhar, 123, 124, 127, 141

could submit to another prince. Under the Qing, fleeing one's territory became a crime.¹⁴⁹ Thus, unlike with the Eight Banners or Green Standard, home-station desertion in the Frontier Mongolian forces was a direct challenge to a broader Qing project of control.

The second prong of Qing control over Mongolia was refocusing banner leadership on loyalty to the Qing center. Over time, the Qing divided once-independent tribes (Mo: *aimagh*; M: *aimak*; Ch: *bu* 部) into banners (Ch: *qi* 旗; M: *gūsa*; Mo: *khoshuun*) headed by a hereditary but imperially-approved *jasak* (M: *jasak*; Ch: *zhasake* 札薩克 or *qizhang* 旗長), replaced higher potential indigenous groupings with administrative “leagues” (Ch: *meng* 盟; Mo: *chuulghan* or *chighulghan*; M: *culgan*), and replaced the power of the former khans with the power of administrative League Commanders (Ch: *mengzhang* 盟長; M: *culgan i da*). This process unfolded over time, with the league chief created over the 1670's in Inner Mongolia and in 1728 for the Khalkhas of Outer Mongolia.¹⁵⁰ Above the League was the military governor. Farquhar wrote that the frontier military-governor was an “entirely new Chinese solution to the problems of Mongolia”; today we would call this a Qing solution, in which the Qing created a “pyramid structure” leaving real power with the Manchu military governor and other officials of the frontier military government system.¹⁵¹ The Qing recognized Mongol nobility, but coopted it

¹⁴⁹ Farquhar believed that Qing changes to Mongolian institutions were acceptable because the resulting institutions “greatly resembl[ed] traditional Mongol” ones. Farquhar, David M. 1968. “Origins of the Manchu's Mongolian Policy,” in *The Chinese World Order*, ed., John K. Fairbank (Cambridge: Harvard University Press, 1968), 198-205. Salaries, appointments, and titles were additional keys to control.

¹⁵⁰ Qing control typically increased in response to military events, such as the original defeat of Lingdan Khan, the 1675 “revolt” of the Chahars, or when the Khalkhas submitted to the Qing at Dol Nor in 1691 for fear of Zhungar attack. Most of the Oirat banners were formed during and after the suppression of Amursana between 1753 and 1760. Farquhar, 28, 72, 96, 104.

¹⁵¹ Farquhar, 294-97. In addition to the Governor and his assistants, the grand secretariat, the Board of Revenue (as a military pay disbursing office), the Board of War (to administer the Chinese banner troops, soldiers serving at the

into its system, and assigned noble ranks.¹⁵² Whether Mongolian soldiers deserted en masse following their princes, or deserted individually, campaign desertion constituted a direct challenge to the loyalty demanded by Qing political control.

The Qing response to the unique challenges of Mongolian desertion had to take into account the actual level of Qing control over the particular banner to which the deserting soldiers belonged. Inner Mongolia, representing the territory of Mongols who had submitted earliest to the Qing, demonstrated the most varied and complex forms of administration among the diverse groups, and in general Qing control was far more comprehensive than for outer Mongolia. The Inner Mongols consisted of 49 banners later divided into Six Leagues.¹⁵³ Banners in the Six Leagues were administered through *jasaks* and the eight Chahar banners and the two Tümed banners around Guihua (modern-day Hohhot) were directly administered by the Qing. Even those *jasak*-banners in Inner-Mongolia that were not directly controlled by the Qing were

post stations, and to handle lawsuits between Chinese), and the LFY all maintained their own yamen in the city. Farquhar, 290. The postal system was very important and was under the jurisdiction of both the Board of War (for passports) and the LFY (for use permits). Farquhar, 294.

¹⁵² For instance, the highest *jasak* was designated *qinwang* (親王). According to H. S. Brunnert and V. V. Hagelstrom, the “aimak” is “the old Mongolian designation of a Princely appendage – group of Banners forming the inheritance of one Banner line. Thus the Aimak is a consolidation of a number of Banners, bound together by ties of race, past history and the former dominion of a common prince (ruler), an ancestor.” H. S. Brunnert and V. V. Hagelstrom, 80; Mayers, *Chinese Government: A Manual of Chinese Titles*, 89.

¹⁵³ The Chahars, the Tümeds of [Guihua], the Mongols of Alashan, and the Old Torguts. Jirim League (Khorchin 6 banners; Jalaid 1 banner; Dörbet 1 banner; Gorlos 1 banner); Josotu League (Kharchin 3 banners; Kharchin Right Banner; Kharchin Middle Banner; Kharchin Left Banner; Tümed 2 banners); Juu Uda League (Aokhan 1 banner; Naiman 1 banner; Baarin 2 banners; Jarud 2 banners; Ar Khorchin 2 banners; Onginuud 1 banner; Kesigten 1 banner; Züün Khalkha 1 banner); Xilin Gol League (Üzemchin 2 banners; Khuuchid 2 banners; Sünid 2 banners; Abga 2 banners; Abganar 2 banners); Ulanqab League (Dörben Khüükhed 1 banner; Muu Myangan 1 banner; Urad 3 banners; Baruun Khalkha 1 banner); Ihe Juu League (Ordos 7 banners).

“subject to much more” imperial control than those of Outer Mongolia.¹⁵⁴ The Suiyuan and Ningxia military-governors had significant authority over the Mongols of Inner Mongolia.¹⁵⁵

Qing administration of Outer Mongolia was looser and conceptually simpler. Outer Mongolia included the Khalkha (four tribes), Kobdo, the Altai, and the Tannu Uriankhai. Local government was carried on “without interference” from the Qing. The *jasak* was “master” of banner affairs. In judicial matters, he conducted lawsuits and allotted duties.¹⁵⁶ The Uliastai military-governor exercised Qing civil and military authority in northern and western Mongolia.¹⁵⁷

¹⁵⁴ H. S. Brunnert and V. V. Hagelstrom, 444, 458. The bulk of banner administration, however, was carried out by two assistants, the “Administrator” (*xieli taiji* 協理台吉) and his subordinate, the “Adjunct” (Ch: *guanqi zhangjing* 管旗章京). H. S. Brunnert and V. V. Hagelstrom, 443, 447. The Qing-supervised league meeting became the “supreme organ of local administration.” The League Captains-General “simply supervise[d] the execution of resolutions of the League meetings,” presided over by Qing-dispatched presidents. The *jasaks* of the League – itself the “highest judicial-administrative institution” – met once every three years to discuss judicial, economic, and administrative matters concerning the entire tribe. The Qing made the League Captain-General elective from the *jasaks* and required imperial confirmation of his appointment. Every *jasak* banner was financially independent and could only collect from his subjects funds necessary to meet obligations to the dynasty and banner expenses, thus precluding super-banner organization outside the Qing structure. The Administrator was a Qing appointee and often acted as regent. H. S. Brunnert and V. V. Hagelstrom, 461-63. Sometimes the *Lifanyuan* (理藩院) sent officials to the banner to rule during the *jasak*’s minority.

¹⁵⁵ The Suiyuan Military-Governor, who had a second title of Superintendent of Colonial Affairs (*duban kenwu dachen* 督辦墾務大臣), supervised the Ulanqab League and the two Tümed banners of Guihua. Despite the *jiangjun*’s overall jurisdiction, lawsuits, judicial affairs and tax questions concerning both Chinese and Mongols were handled by the “Intendant” (*guisui bingbeidao* 歸綏兵備道). The Ningxia military-governor “superintended” the affairs of the Mongols of Alashan and the Old Torguts. The Ningxia Garrison Commander (*dutong* 督統) supervised the Alashan Mongols (who were under a *qinwang*) as well as the Old Torguts banner. Commissioners (*lishisi* 理事司員) conducted the civil administration of Jehol (Rehe) under the supervision of the *dutong*, with the imperial hunting preserves forming a separate sub-prefecture Weichangting (圍場廳). H. S. Brunnert and V. V. Hagelstrom, 461-63.

¹⁵⁶ We know that there were Green Standard agricultural colonies around Kobdo as well, serviced by Green Standard troops on a rotational basis. For instance, in 1792 (QL 57), troops from Zhili and Shanxi provinces were rotated on five-year rotations to agricultural colonies in Kobdo. Xu Xueji, 259-60.

¹⁵⁷ There was also the Urga (now Ulan Bator) Imperial Agent (Ch: *kulun banshi dachen* 庫倫辦事大臣; M: *amban*) was also a significant Qing official. The Urga *amban* originally served as an assistant to the military-governor. Once he was granted the authority to directly memorialize the throne, his “dependence” on the military-governor was reduced to providing copies of reports sent to Beijing. H. S. Brunnert and V. V. Hagelstrom, 452-54; Mayers, 83.

The Qing ostensibly maintained a separate criminal code for its Mongolian subjects, the Mongol Code (*Menggu lüli* 蒙古律例). The Qing's response to desertion within Frontier Mongolian Forces was influenced by that separate Code, but over time, the *lifanyuan* came to incorporate into the Mongolian Code more and more precedents from the Qing's principle legal code, the *Great Qing Code* (*daqing lüli* 大清律例).¹⁵⁸ Reflecting the different political relationship between the Qing and the Mongols and the overall Qing effort to fix Mongolians in place, the Mongolian Code focused on desertion as a "group crime" and the Qing Code focused on it as individual crime. The issue of choice of law – to apply Mongol or Qing law and procedures – was always an important one. Farquhar noted that if someone from inside the frontier committed a crime outside the frontier, he was punished by the Board of Punishments under the *Qing Code*. If someone from outside committed a crime inside, Mongol law applied.¹⁵⁹ The desertion cases both complicate and simplify this picture because desertion cases usually derived from huge Qing armies, with many non-Mongol forces, campaigning in

¹⁵⁸ Farquhar, 157, 160, 163. Dorothy Heuschert has shown that over time, the *lifanyuan* completely took over case appeals, thus eliminating the ability of Mongol nobles to go directly to the emperor. Dorothea Heuschert, "Legal Pluralism in the Qing Empire: Manchu Legislation for the Mongols," *The International History Review* 20, no. 2 (June, 1998): 310-324.

¹⁵⁹ If the case involved Mongols and Chinese, they were decided jointly with "commissioners for Mongolian Chinese affairs." Farquhar, 165. Four "Judicial Commissioners for Chinese Affairs" (*dzarghuchih, tongpan* 通判 or *siyuan* 司員), at Urga, Uliasutai, and Kobdo exercised jurisdiction over all Chinese and Manchus in Mongolia. In cases only involving Mongols in Outer Mongolia, *jasak* authority was supreme. Actual case records suggest otherwise. As early as 1969, Charles R. Bawden described an Outer Mongolian case of murder from the eighteenth century showing the actual workings of the system in one banner in one league in one case. A *meiren* (not the *jasak*) adjudicated the case, and the case was – as per normative sources – supervised by the League. If one substitutes the *meiren* for the magistrate and the League for the prefecture, the case bears great similarity to same-era *neidi* case processing. Charles R. Bawden, "A Case of Murder in Eighteenth-Century Mongolia," *Bulletin of the School of Oriental and African Studies* 32, no. 1 (1969): 71-90; Charles R. Bawden, "The Investigation of a Case of Attempted Murder in Eighteenth-Century Mongolia," *Bulletin of the School of Oriental and African Studies* 32, no. 3 (1969): 571-592. In Outer Mongolia, the "Office of Appeal" made up of one prince from each of the four Khalkha tribes, dealt with issues pertaining solely to Mongols. In minor affairs, the Office issued a judgment; for more serious matters, it referred the Mongol litigant to his particular banner for judgment to be made by banner officials. H. S. Brunnert and V. V. Hagelstrom, 454-455.

ostensibly Mongolian space; under these conditions, the significance of the frontier was that it represented a theater of war, not a frontier between two peoples.

Home station and campaign desertion among the Frontier Mongolian forces was thus a two-fold challenge to the project of Qing control. Because Qing control over Mongolia was temporally and spatially diverse, the Qing's response to that desertion had to strategically take account of the level of Qing control over the particular banner to which the soldier belonged. The degree of Qing political control over the diverse Frontier Mongolian Forces reflected the history of Mongolian-Qing relations as those relations developed up through the eighteenth century. In general, the eighteenth-century Qing response to Mongolian desertion had a strong strategic component and adjudication did not reflect the discourse distinguishing the Green Standard from the Eight Banner along a binary between cowardice and military virtue. The Khorchin Mongols of Inner Mongolia submitted prior to the Qing's conquest of China and were the only Frontier Mongolian Forces permitted to participate in that southern conquest as reflected in the brief campaign order with which I opened this appendix.¹⁶⁰

V. Conclusion to the Appendix

This appendix has shown that the Qing military was sufficiently bounded over a continuous period of time in terms of its administrative structure, personnel, associated writings, and objectives that it constituted an identifiable institutional-cultural sphere. Although the highest level officials – governors, governors-general, provincial-military-commanders, frontier generals, supreme imperial commanders, etc – moved in and out of the military culture as they

¹⁶⁰ Zhang Shengrui 趙生瑞, *Zhongguo Qingdai yingfang shiliao xuanji* 中國清代營房史料選輯 (An edited selection of historical material on Qing-era Chinese garrisons) (Beijing: Junshi kexu Chubanshe, 2005), 21.

were assigned on an *ad hoc* basis to command military affairs, the manner in which they performed their military duties – including criminal adjudication on campaign – was still informed by this military culture. I return to this idea to show that the militarized mode of adjudication was developed and retained (almost exclusively) within this particular institutional-cultural sphere until it transmigrated to late imperial legal culture during the eighteenth century.

This appendix has also shown that desertion was not a new problem in the eighteenth century but had complicated historical influences embedded both in the institutional structures of the military components, individual soldiers' social identities and circumstances, and the long-term relationships between the military components and the Qing. Social, cultural, and economic factors, such as native-place identity, soldier identity, and the ability to make ends meet played out in different ways among these different components, thus affecting the shape of desertion and the dynasty's response to it. The logistical requirements of ceaseless, far-flung imperial campaigns drove a convergence of military and civilian as even *genyi*, civilian laborers, and *yuding* were deemed soldier-like enough for purposes of desertion law, and simmering low-intensity military stress at the frontier garrisons ambiguously suggested a time of war, the classic trigger for militarized adjudication. During the Qianlong era, given the Chinese genealogy of the Green Standard, its institutional campaign weaknesses, and a series of military quagmires, when real desertion surfaced in a period when the dynasty was intent on distinguishing Manchu difference, Green Standard "cowardice" served as the perfect discursive complement to Manchu military virtue. This binary was not evoked, however, with the Frontier Mongolian forces over whom the Qing exercised varying levels of control. Within the Frontier Mongolian Forces, desertion presented unique challenges to fundamental tenants of Qing control. Despite

continuing desertion among *jasak*-banner forces during the Qianlong era, this is a very different picture from the one presented in the Qianlong-era adjudicative discourse of desertion which reduced much of this complexity to a moral problem of Green Standard cowardice amenable to draconian deterrence that required and went far to justify the formation of the militarized criminal track.¹⁶¹

¹⁶¹ In some scholar's works, this Qianlong-era narrative has been adopted as historical fact when in reality it was also part of a complex imperial project of representation. For instance, Qin Shucai completely adopts the Qianlong emperor's discourse when identifying the strategic problems of the Burma Campaign and accounted for poor performance of the Green Standard Forces on the basis of Green Standard "cowardice, slackness, and weak fighting ability." He further noted that the Qianlong emperor and commanders all shared common knowledge of the Green Standard's "cowardice and failure." For instance, Qin cites the following statements from the archives: "Yunnan Green Standard soldiers, in the habits and manners are rebellious are all extremely deteriorated (習氣頹靡已甚)"; "being cowardly is a habit of Green Standard soldiers and junior officers (*bian*), one can't bear to use them"; "Yunnan Green Standard are all cowardly, they just abandon the ranks and flee en masse, they mock the law and miss opportunities, it's already that one cannot bear to use them." Qin Shucai, 37.

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