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INSANITY AND PARRICIDE IN LATE IMPERIAL CHINA (EIGHTEENTH–TWENTIETH CENTURIES)

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*This article provides an in-depth analysis of the reasons for which insane individuals who had committed patricide were systematically sentenced to dismemberment (*lingchi 凌遲*) under the Qing dynasty (1644–1911), the most severe form of capital punishment that could be called for in the state's administrative and penal Code. This extreme harshness ran contrary to several "theoretical" foundations of Chinese traditional law, first and foremost the principle of criminal intent. Through the study of such criminal cases, and others legally affiliated to patricide, spanning the seventeenth to the early twentieth century, it underlines the importance of the relationship between a parent and his child, which was prominent in China's moral and cultural context at the time. It also stresses the role of political issues related to the legitimacy of the imperial state and to the upholding of the legality of its judicial process. Even though legal tools existed in the Qing Code, which would have allowed for a more lenient approach, and notwithstanding the Qing authorities' ongoing effort at defining specific legal procedures for insane homicides,* lingchi *was systematically applied to insane patricides until the early twentieth century, when the far-reaching legal reforms implemented during the last years of the imperial regime progressively opened the way for the recognition of the legal irresponsibility of insane individuals.*

Keywords: China; Qing dynasty; law; parricide; insanity; rule of law; archives

INTRODUCTION

In all traditions and cultures, parricide has been considered as a horrendous crime. In China's imperial judicial tradition, it was the worst single crime one could commit inside the family structure.[1] This was reflected in the severity of the punishment suffered by those

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1 See Lauwaert 1999.

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who were unfortunate enough to resort to it. They were sentenced to dismemberment through the renowned *supplice* of "slicing" or "death by a thousand cuts" (*lingchi chusi* 凌遲處死).[2]

In this article, I will shed light on a specific type of parricide – that committed by insane individuals[3] – and limit my observations to the Qing dynasty (1644–1911) only. The choice might seem peculiar at first since all along the Qing, insane parricides were systematically assimilated to ordinary parricides and sentenced to slicing.[4] Legally, this not only meant that the insane person was considered aware of his or her deed, but that he or she had committed it intentionally. Such assimilation ran contrary to the Chinese juridical tradition, which, at least from the Tang on (618–907), had always recognised madness as a mitigating factor in criminal circumstances. As Nakamura Shigeo has shown in his 1973 authoritative study of crime and insanity in the Qing, the Manchu rulers' judiciary apparatus devised sophisticated judicial approaches in cases of homicides perpetrated by mentally affected individuals, but in spite of their "modern" tone, these never led to a complete exemption of punishment for insane criminals.[5] More recently, some scholars have interpreted this Qing legislative effort as a trend towards increasing control over and penalisation of madness in China starting from the eighteenth century.[6] Whether the phenomenon should be approached through this specific lens is a question that will not be dealt with here, but it should be noted that even in such a context, the legal procedures always maintained a clear distinction, for a similar crime, between sane and insane perpetrators. This principle suffered only one exception, parricide. In what follows, I shall try to give some clues as to why.

As a first step, we will survey the information that can be drawn from historical cases. Because of the exceptional character of the crime under review, examples for the Qing dynasty are not numerous. We will thus start with cases that do not correspond to the narrow definition of parricide – "the murder of the mother or the father" – but do fit into the larger legal approach to it in imperial China, specifically "the murder of the mother or the father, or any legitimate ancestor". We will then turn to cases involving parricide in its narrow definition. Two main conclusions will emerge from this survey. First, the judicial treatment of insane parricides (in the larger sense of the word) was the object of debates in the eighteenth century, and that severity of punishment did not go unchallenged, even though it was eventually imposed during the period, largely through the

2 On the history of this specific death penalty in China, see Brook, Bourgon and Blue 2008.

3 The individuals concerned were labelled as mad by the imperial judiciary apparatus itself. In the overwhelming majority of parricides however, the offender was not insane, or not labelled as such. The documents referred to never specifically detail the grounds – medical or other – upon which the distinction was established. Medical approaches to madness at the time will thus be set aside here. For interesting insights on madness in late imperial China from a medical as well as a judicial standpoint, see Simonis 2010.

4 Several authors have signalled the expeditious judicial treatment insane parricides were confronted by, relating it to the horrendous character of the crime in the Confucian world vision. See Nakamura 1973, chap. 3, pp. 197–98; Chiu 1981; Ng 1990, chap. 4; Lauwaert 1999, third part, chap. 3, but none has dug any more thoroughly into the topic. One does not find any information either in Shiga 1967, the best work to date on traditional China's principles of family law.

5 See Nakamura 1973, chap. 3. Retrospectively, this work can be said to have put an end to the debate stirred in the late 1940s and early 1950s by the question of the penal responsibility of insane individuals in the Chinese legal tradition. See for example Bünger 1950; Hulsewé 1955.

6 See in particular Ng 1990; Chiu 1981.

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efforts of the central judiciary apparatus. Second, that when direct filial links were concerned (i.e. in the narrow signification of the crime), insanity lost all its mitigating potential. In such cases, extreme severity was systematically applied, the assimilation of insane perpetrators to sane ones being overtly supported by the highest levels of the state. Interestingly, as we will see, the phrasing of such a legal stance was grounded on political as much as on moral considerations.

In the second part, we will turn to an analysis of the official legal dispositions of the Qing *Code* (*Da Qing lüli* 大清律例) to understand to what extent the sentence of slicing applied to insane parricides (this last term being understood, here, in the strict sense) was sustained by traditional Chinese law. This specific crime never made its way into the *Code* as a distinct article of law. Thus, the punishment resorted to stemmed from an interpretation of both the legislation at hand and its underlying principles. As artificial as it might be – since we know dismemberment was systematically called for in such circumstances – the confrontation of the sentence with the existing laws does shed interesting light on traditional Chinese law and on the orientations given to it by the state along the years.

INSANE PARRICIDES IN QING CHINA: A REVIEW OF CASES (LATE SEVENTEENTH–EARLY NINETEENTH CENTURIES)

Cases Pertaining to Parricide

As Nakamura and others have pointed out, legal sources show that in early Qing China mentally ill individuals who committed ordinary homicides were dealt with in a lenient way.[7] Archival cases point to a similar attitude when the crime was committed inside the family sphere. In this section, we shall analyse three such cases, which occurred between the late seventeenth century and the 1730s and which shed light on the stances taken by the judicial apparatus in dealing with these crimes.[8]

Case 1: Woman Zhang, the husband killer (1696–1697)[9]

In the spring of 1696, in Zhili province, a woman named Zhang 張氏, while suffering a fit of madness, murdered her husband Liu Yuan 劉淵. Because of the importance of the marital relation in China's traditional kinship structure, in normal circumstances, the law

7 In 1667, the Kangxi emperor (*r.* 1662–1722) ordered that such individuals be spared all judicial charges (*fan fengbing sha shang ren zhe mian yi* 凡瘋病殺傷人者免議). Starting from 1669, they were ordered to pay a monetary compensation (12,42 ounces of silver) to the victim's family, which was tantamount to assimilating their act to unintentional homicide (*guoshi sha* 過失殺). This last decision was codified in 1727. See *HDSL* (*Da Qing huidian shili*), *j.* 805, p. 12a–b; Xue Yunsheng, *j.* 34, p. 849; Nakamura 1973, p. 190.

8 The family relationships taken up below are also addressed by Nakamura, and two of the cases I mention are also found in his study. See Nakamura 1973, pp. 195–201. The general conclusions arrived at are related, but my stance differs from that of the legal historian Nakamura, who approaches the examples from a strictly juridical point of view. As a social historian, I am more inclined to present the circumstances in which the events took place and the positions of the different parts in the judicial process. In other words, more than the law in its strict sense, I try to approach the general context in which it was applied, construed and debated.

9 Zhang Guangyue, *j.* 22, "Homicides", p. 26a–b. This case is also mentioned in Nakamura 1973, p. 199, and Ng 1990, pp. 134–35.

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punished this very serious crime with immediate beheading. Such was the sentence proposed by governor Shen Chaopin 沈朝聘, head of the provincial administration at the time, when he forwarded the case to the capital for revision. But, as the following excerpt makes clear, the Board of Punishments (Xingbu 刑部) in Beijing decided to overrule governor Shen's proposed sentence, on the grounds that the decision did not take into account the mental state of woman Zhang at the time of her dreadful deed:

> There is no specific article in the *Code* proposing a sentence in cases of homicide of the husband by the wife during a fit of madness. But if in ordinary cases of homicides committed by mentally ill individuals the death sentence is not resorted to, it is because the perpetrator was not aware of his action. In the case of a wife who, in her folly, is unaware of her deeds, the situation is similar, even if she goes as far as killing her husband.
>
> 律例內雖無妻因瘋病毆死丈夫擬罪之條，凡人瘋病毆死人不問抵償者因瘋病無知之故，妻雖毆死丈夫其瘋病無知所行俱係相同

The position taken by the Board was confirmed in the summer of 1697 by an imperial edict which lifted all charges against woman Zhang.[10] Thus, at the turn of the eighteenth century, the highest judicial authorities of the empire were ready to clear mentally ill individuals of all criminal intent even when their "crime" had taken place inside the family. In other words, the sentence applied to woman Zhang shows that for early Qing legal specialists, the lack of criminal intent could prevail over family relations.

While remaining an issue open to debate inside the bureaucracy, in the following decades this position came under growing pressure. As Nakamura shows in the section he devotes to this same crime, from the mid-eighteenth century on, the Board of Punishments started to systematically call for the death penalty through immediate decapitation (*zhan lijue* 斬立決) in such instances, a sentence generally commuted to decapitation after the Autumn Assizes (*zhan hou* 斬候) by imperial order.[11] The following examples, which bear on other forms of parricide-related crimes, similarly point to a tendency towards increased severity.

Case 2: Woman Jiang "murders" her mother-in-law (1711)[12]

The first example dates back to 1711, a mere fifteen years after the preceding case. Confronted with very similar circumstances, the Board of Punishments adopted, this time, an opposite stance. The tragedy occurred in Jiangsu province. Woman Jiang 蔣氏, spouse of a certain Hua Fangrong 花芳榮, had long suffered from mental instability (*suran fengji* 素染瘋疾), causing Hua to restrain her physically (*suolian* 鎖練). One day when he was out in the fields, his mother, woman Xue 薛氏, considering that her daughter-in-law was very calm, decided to unrestrain her for a while. The decision proved

10 Before turning to the emperor for confirmation of its position, the Board had requested that the provincial authorities investigate further to ascertain woman Zhang's mental condition.

11 See Nakamura 1973, pp. 199–200.

12 Hong and Rao, *j.* 19, "Homicides", p. 39a–b.

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to be ill-fated. As soon as she was free to move, woman Jiang, in a sudden fit of madness, grabbed a nearby bludgeon and turned against her mother-in-law, hitting her on the head. Woman Xue passed away almost instantaneously (*dengshi yun ming* 登時殞命).

Listed in the *Code* as one of the ten major abominations (*shi e* 十惡), the murder of the grandparents or parents of the husband (*sha fu zhi zufumu fumu* 殺夫之祖父母父母) was punished by dismemberment. Not surprisingly, Wang Duzhao 王度昭, the then governor of Jiangsu, proposed this specific sentence when he forwarded the case to Beijing for revision. But the direct reference to the 1696 precedent of woman Zhang in his correspondence to the Board of Punishments clearly shows he considered woman Jiang to be legally irresponsible for her deed. However, the Board's lawyers were of a different opinion:

> Woman Jiang has murdered woman Xue, her mother-in-law. It wouldn't be correct to lift the charges against her as was done for woman Zhang, who had slain her husband, Liu Yuan. Therefore, she shall be sentenced to dismemberment according to the statute on murdering the parents of the husband.
>
> 查蔣氏係毆死親姑薛氏之犯不便照張氏毆死伊夫劉淵之案免罪應將蔣氏毆殺夫之父母者凌遲處死律應即凌遲處死

To explain why the mental illness of woman Jiang was completely disposed of in this circumstance, one can turn to three main elements. First, of course, is the kinship relation involved. As is well known, in Chinese traditional society spouses stepped into their in-laws' family through marriage, becoming officially part of it. Killing the husband's parents was thus tantamount to parricide in the restricted sense. Involving a direct filial link, the most sacred of all among social relations inside the Chinese family, the horrendous dimension of the act brought about the blurring of eventual mitigating factors, including insanity.

The second explanatory factor can be linked to what Martha L. Chiu and Vivien Ng have considered as a trend towards increasing criminalisation of mentally ill individuals in Qing China.[13] Throughout the eighteenth century, and up to the first half of the nineteenth century, several sub-statutes (*li* 例) dealing with homicides committed by insane individuals inside as well as outside the family sphere were added to the Qing *Code*, bringing this special category of criminals ever more under the yoke of the law, a legislative process best rendered in Nakamura's work. Accordingly, the case of woman Jiang could be considered as a harbinger of this trend.

But to apprehend the Board's decision in its different dimensions, one cannot do so without taking into account the idiosyncrasies of the persons responsible for the judicial procedure at the time. Even in a judicial system as sophisticated in its institutions as that of the late imperial Chinese bureaucratic monarchy, decision-making could not avoid such a constraint. Thus, one cannot exclude the possibility that the contrast between the Board's 1697 position and its 1711 stance actually stemmed from diverging opinions among its personnel. The case of woman Jiang comes as a telling example. Whereas the

13 See Chiu 1981; Ng 1990, especially chaps. 4 and 5.

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governor of Jiangsu leaned towards leniency, the officials in charge of the Board of Punishments upheld a position of utmost severity, in a complete reversal of the decision made by their predecessors fifteen years earlier in the case of woman Zhang. The final judgment came from the emperor himself, who put an end to the debates in 1713 by issuing an edict ordering that woman Jiang be condemned to beheading after the Autumn Assizes (*qiushen* 秋審).[14] By taking into account the importance of the disruption to the social order brought about by the murder committed, as well as the mitigating role of the mental illness, the Kangxi emperor was able to balance in his ruling the legal constraints stemming from the importance of kinship relations in law and the cardinal notion of criminal intent in the empire's legal tradition. Incidentally, his decision also reinforced the idea that even in the most serious circumstances, an insane individual could not be legally considered as equal to a wrongdoer sound of body and mind.

The two cases reviewed so far have shown that in the first decades of the eighteenth century, legal notions regarding insanity and serious crimes committed inside the family were yet to be precisely defined and judicial procedures clearly set. The following case confirms this observation, while documenting how the issue could give rise to heated debates inside the judicial apparatus.

Case 3: The Deng brothers, 1734–1737[15]

In this affair, the facts date back to late 1734 and involve a man called Deng Tingmei 鄧廷梅, who was found guilty of the murder of his elder brother, Deng Tingzhu 鄧廷柱, during a relapse of his mental condition. The details of the crime are not of utmost importance here, except for two aspects underlined during the investigation: first, that the two siblings had been living together since their youth and that no animosity had ever set them apart; second, that ever since Deng Tingmei's illness had set in, some years earlier, his elder brother had taken care of him together with their mother, calling upon doctors in an effort to find a cure. What is of relevance is the process that brought about the definitive ruling.

For his crime, Deng Tingmei was finally sentenced to beheading after the Autumn Assizes, a judgment that was confirmed by an imperial edict in the spring of 1737. Chinese family law considered the link between younger and elder brothers as similar to that between wives and husbands. Accordingly, ordinary homicides at the expense of husbands and elder siblings had the same punishment meted out to them: immediate beheading. Obviously, in Deng Tingmei's case, mental instability was considered a mitigating factor, hence the light reduction of the sentence. But Deng's punishment was never carried out. The Board of Punishments included him in the imperial amnesty (*enshe* 恩赦) that was promulgated on the occasion of emperor Qianlong's accession to the throne. Condemned but not punished, Deng was nevertheless put in jail at the request of the Board of Punishments, in an effort to ensure he would not harm anyone else.[16] Seemingly in line with the relative leniency we have pointed out above, the ruling was actually the result of a compromise to solve a serious quarrel that arose between the

14 Hong and Rao, *j.* 19, p. 39a.

15 *Ibid.*, *j.* 20, "Fights and Brawls", pp. 35a–37b.

16 *Ibid.*, p. 37b.

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legal specialists of the Board and the governor of Guangdong province, where the incident had taken place. Let us see what the arguments were on each side.

Right from the beginning, governor Yang Yongbin 楊永斌 (1670–1740) considered that all charges against Deng Tingmei ought to be lifted on the grounds of his mental condition. According to him, the central issue in such cases was not the relationship binding the persons involved, but criminal intent. Aware that his position would not win easy approval in Beijing, he developed an original line of legal argument to reinforce his point. It was based on statute 35 of the Qing *Code*,[17] which dealt with the different penal designations a crime could lead up to (*bentiao bie you zuiming* 本條別有罪名). In its third paragraph, the law stipulated that,

> If the punishment [meted out by the law] is severe but that at the time of the deed the culprit was unaware [of the seriousness of his action], determine the sentence according to the provisions for ordinary people.[18]
>
> 其本應罪重而犯時不知者依凡人論

Applied to homicides committed inside the family by insane individuals, this statute would have led to their assimilation to ordinary homicides by mentally ill persons, which, in turn, were, since 1669, considered as unintentional homicides (*guoshi sha* 過失殺).[19]

The core of governor Yang's argument revolved around the idea of unawareness of the very serious nature of the crime whilst committing it (*fanshi bu zhi* 犯時不知). It fitted nicely with the unintentional character of crimes by insane individuals, largely recognised by Chinese administrators at the time and customarily expressed in judicial reports by the sentence "[the culprit] was unaware of his/her act because of mental illness" (*feng fa wu zhi* 瘋發無知). But the Board's lawyers went out of their way to bar this position from being adopted. In their reply rejecting Yang's conclusions, they argued that the phrasing of statute 35 did not relate to insane individuals. In fact, the interlinear notes[20] of the above paragraph never referred to madness:

> [This disposition means for example that] in the case of an uncle and his nephew who have always lived in distant places and therefore do not know each other, if it happens that the nephew hits his uncle and wounds him, and that during the investigation the officials come to know that [the victim] is the uncle, the sentence shall be determined only according to the article on brawls involving ordinary individuals. Or if [a person] commits a robbery in an ordinary locale and ends up with ritual objects used for imperial

17 My numbering of the *Code*'s statutes follows that established by Huang Jingjia in his edition of Xue Yunsheng's work.

18 Xue Yunsheng, p. 134.

19 In such instances, the wrongdoer was only liable to the payment of an indemnity to the victim's family. See footnote 7, above.

20 Found throughout the Code, these notes gave explanations on the use of specific legal dispositions.

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> sacrifices, the situation also pertains to the idea of unawareness [of the seriousness of the crime] when committing it. [There too] the sentence shall be determined only according to the statute on ordinary robberies.[21]
>
> 謂如叔姪別處生長素不相識姪打叔傷官司推問始知是叔止依凡人鬥法. 又如別處竊盜偷得大祀神御之物, 如此之類並是犯時不知止依凡論同常盜之律

In their rebuttal, the Board's officials went on to say:

> In the present situation, even though Deng Tingmei was overcome by a fit of madness when he beat his elder brother Deng Tingzhu to death, both of them have shared the same roof since their childhood. How could one refer to this article [35] to determine the sentence according to [the provisions] set for ordinary individuals? When a person hits an elder sibling, killing him, the social status of the parties and the respective obligations that stem from it are involved. Thus, it is not suitable to propose a sentence hastily, as is the case in the communication we have received. The governor shall re-examine the facts in detail and propose an adequate [sentence]. We will discuss the matter once again upon receiving his memorial.[22]
>
> 今鄧廷梅雖因瘋病昏迷打傷胞兄鄧廷柱身死但鄧廷梅與鄧廷柱自幼同居共爨何得比引此例以凡人定議且弟毆胞兄致死名分攸關不便據咨遽議應令該撫詳查妥擬具題到日再議

Like in case 2 above, the Board was obviously not ready to ignore the kinship relation at stake on the sole grounds of the mental condition of the culprit. The leniency granted woman Zhang in 1697 (case 1) was seemingly long forgotten, even though the relation involved in this instance was similar. Undeterred by the critiques of the Board of Punishments, governor Yang kept the same line of reasoning in his second memorial:

> In the general rules of application of the law, one finds written that "if the punishment is severe but that at the time of the deed the culprit was unaware [of the seriousness of his action], the sentence shall be determined according to the provisions for ordinary people." Here, it seems that the stress is put on the idea that "the culprit was unaware [of the seriousness of his action] whilst committing it". In the case at stake today, whereas Deng Tingmei and Deng Tingzhu did indeed share the same roof and thus cannot be considered as persons who did not know each other, when folly obscured Deng Tingmei's mind to the point he could not comprehend the world around him anymore, not even who Deng Tingzhu was, there was precisely no difference with the idea of "being unaware of one's action whilst committing it". [. . .]

21 Xue Yunsheng, p. 134.

22 Hong and Rao, *j.* 20, "Fights and Brawls", p. 35b.

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> Today, the circumstances of this case in which a man has beaten to death his elder sibling are similar to those of the case [of woman Zhang]. Accordingly, and like I explained originally, the death penalty shall not be called for. Rather, following the legal precedent on insane homicides,[23] the person responsible for this dreadful act shall be condemned to the payment 12,42 ounces of silver to the victim's family to cover funeral expenses.[24]
>
> 按名例所載本應罪重犯時不知依凡人論者似重在犯時不知，今鄧廷梅與鄧廷柱雖同居共爨非素不相識之人但鄧廷梅瘋病昏迷不省人事之時實以不識鄧廷柱為何人正與犯時不知無異。 [...]今本案弟因患瘋顛毆死胞兄與彼案情事相同，鄧廷梅應仍照原擬免其抵償合依瘋顛殺人例追埋葬銀一十二兩四錢二分給付死者之家

As neither side was willing to give in, the dispute came to a head. The way out of the impasse was finally found in the Board's archives in Beijing, in a case originating from Hubei. Through a decision ratified by the emperor in April 1735, Liu Guolin 劉國林, a mentally ill individual who had similarly beaten and killed his elder brother, was condemned to beheading after the Autumn Assizes. A year later, in the late spring of 1736, Liu's case was included by the Board among those that were to be granted imperial amnesty.[25] Applied to Deng Tingmei, this procedure eventually proved acceptable to both the Board of Punishments and governor Yang, even though it clearly favoured the Board's effort to stress the importance of family relations over the mitigating dimension of mental illness in such circumstances.

As the three cases presented here show, in the first half of the Qing, the way to mete out adequate punishment for insane individuals guilty of serious crimes inside the family structure was the object of hesitations and debate on the part of the administrative authorities. Over time, a trend towards increased severity seems to have set in, fostered by the growing importance attached to the moral principles underlying family relations and to their translation into the legal field. Our documents point to the Board of Punishments as one of the sources of this process. Let us now try to understand how insane parricides, in the strict sense, were dealt with in this context.

Effective Parricides

During the first century of Qing rule, parricides by insane individuals seem to have been seldom heard of. Over this period of time, I have been able to spot only one example in historical records, that of a young bannerman called Ding Qishisi 丁七十四 who had suffered from mental instability since his youth and who murdered his mother in 1726.

23 The reference here is to the 1669 decision by the Kangxi emperor to assimilate ordinary homicides committed by mentally ill individuals to unintentional homicides. See *HDSL*, *j.* 805, p. 15227. This legal precedent (*shili* 事例) was never codified, a process which would have turned it into an official sub-statute (*tiaoli* 條例).

24 Because he still lived with his mother and his sister-in-law, Deng Tingmei was finally spared the expense. See Hong and Rao, *j.* 20, pp. 35b–36a.

25 *Ibid.*, p. 36a–b. Nakamura 1973, p. 195, also mentions Liu Guolin's case, but does not signal its later inclusion in the imperial amnesty.

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Condemned to dismemberment, Ding died in an epidemic while imprisoned in Yanqing county's jail, Zhili province, and before his transfer to the provincial capital where the punishment was to be meted out. The governor of the province thus sent a special memorial to the throne asking that he be granted the permission to proceed to the posthumous dismemberment of Ding (*lushi* 戮屍), the equivalent in death of *lingchi*. The permission was granted. Insanity was never considered a mitigating factor in this instance. In his petition, the governor of Zhili linked Ding's case to a precedent of 1719, in which a man named Fan Jianyi 范見義 had murdered his father and the latter's secondary spouse. He too died in prison before he could be properly executed, and was thus subjected to posthumous dismemberment. The fact that Ding's case was connected to Fan's is telling. Nothing in the latter's record points to insanity as an element of the crime. In other words, Ding Qishisi was assimilated to a parricide sound of body and mind.[26]

This approach was to have long-lasting influence. Starting from 1761, cases of parricide in the narrow sense committed by mentally ill individuals show up every now and then in the archival records, up to the 1830s, and then again after the mid-nineteenth century crisis, up to the early 1900s.[27] The sentence of dismemberment was meted out to all of them. Such judicial uniformity points to the overwhelming influence of the direct filial relation in the handling of these cases. Until the early twentieth century, the sacred nature of this specific social relation in Chinese conceptions of kinship, and the disgust spurred in society at large by violent acts aimed at it, were strong incentives for the judiciary and its representatives to call for utmost severity. In the specific case of insane parricides, the blind violence which was by definition an element of the crime,[28] strongly supported, even in the eyes of most legal specialists, the complete overriding of mental illness as a mitigating factor. Nevertheless, as we will see below, a close analysis of the cases at hand dating to the mid-Qing (1760s–1820s) shows that along with traditional moral principles, political considerations were crucial in the process which brought about, without any overt resistance inside and outside the administrative apparatus, the assimilation of these specific insane wrongdoers to mentally sound criminals.

Case 4: Jiang Hui, the insane matricide, 1761

Information on Jiang Hui's 姜會 matricide is very limited. We know that it happened in Anhui province in 1761, that for years before his dreadful deed Jiang had been suffering from mental instability and that, like Ding Qishisi, he died in prison before the sentence could be carried out. The case is known to us because the memorial the provincial governor sent to announce the culprit's death, which does not seem to have been preserved, was followed by an imperial edict that made its way into the *Compendium of administrative*

26 Hong and Rao *j.* 20, p. 1a–b.

27 The evidence used here has been brought together through a careful search of published casebooks, the Grand Council archival holdings at the National Palace Museum in Taibei, and the *xianshen* (現審, "cases examined directly") section of the Board of Punishment archives in Beijing's No. 1 imperial archives. More could certainly be found in the latter's holdings of Palace memorials and memorial copies of the Grand Council.

28 All cases I have come across are characterised by blind and unrestrained violence against one of the parents. His or her mad child generally beat the victim to death. In his fit of madness, Ding Qishisi, for example, went as far as to sever the head of his mother from her body after having stabbed her to death, and then went out running in the street holding the head at arm's length. Hong and Rao, *j.* 20, p. 1a–b.

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regulations of the Great Qing (*Da Qing huidian shili* 大清會典事例) as a legal precedent (*shili* 事例). In his memorial, the governor of Anhui proposed to establish a specific procedure which would allow for a uniform treatment of all parricides. The Qianlong emperor warmly approved of the suggestion in his edict, justifying it as follows:

> Up to the present day, when similar affairs took place in the provinces, some [governors] would memorialise to the throne requesting an imperial order to execute the sentence, whereas others chose on their own initiative to put the wrongdoer to death in an expeditious manner by beating, without referring the case to the hierarchy. The latter ignore the fact that due to the immensity of the empire and the multiplicity of its population, monsters of this sort, fortuitous offspring of harmful energies who pay absolutely no respect to human relations, do exist. Why then try to conceal them? But if sending a memorial to mete out the proper punishment has always been the suitable procedure, one cannot but fear that it will take a long time to receive the order to execute the sentence. During [this interval], the criminal might pass away in jail due to illness or try to take his or her own life by fear of the harshness of the law, thus claiming the good fortune to escape his or her exemplary execution. This would run contrary to the meaning of our laws and to the spirit of our institutions.[29]
>
> 向來各省閒遇此等事件, 有奏明清旨正法者, 亦有徑自杖斃, 不以上聞者. 殊不知似此蔑倫孽惡之人, 雖為沴氣所偶鐘, 然以天下之大, 生民之眾, 即有之何足為諱. 是奏聞正法, 原屬辦理之正, 特恐候旨治罪, 時日未免有稽, 其中或因病瘦死, 或畏法自戕, 即致倖逃顯戮, 又於憲典未協.

To make sure such a situation would not happen again, the emperor approved a new regulation granting authority, in such instances, to provincial governors to proceed with the execution as soon as the facts were clearly established and the memorial to the central government sent (將該犯立行按法凌遲處死, 一面具摺奏聞).[30]

In light of this edict, two aspects need to be stressed. The first is the lack of any reference to Jiang Hui's mental condition. Obviously, as in Ding Qishisi's case, only the family relation was of relevance in this circumstance in the eyes of the Qianlong emperor. It is revealing, and somewhat ironical, that this text, which aimed at establishing a uniform judicial procedure to deal with parricides across the empire, was actually spurred by a case involving a mentally ill individual. Inserted in the corpus of legal precedents of the dynasty, it gave a decisive impulse to the extra-legal practice of assimilating insane parricides to sound ones.

29 *HDSL*, *j.* 800, pp. 15184–85.

30 Found in the sources under the expression *gongqing wangming* 恭請王命, "requesting respectfully an imperial order", this procedure was first introduced in the field of military affairs. It gave provincial authorities dealing with very serious matters the right to short cut the ordinary communication channels and act before having received an order to do so from the capital. See Suzuki 2003.

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The second important aspect is the allusion by Qianlong to expeditious judiciary practices. It shows how seriously society at large – and not only the judicial apparatus – considered the fact of harming one's parents. Apart from the shame some high provincial officials may have felt at the idea of reporting such crimes in their constituencies, the sources point to the pressure enacted by local communities as an important element in the decision to hastily dispose of these criminals.[31] Polluted by such dreadful acts, the communities longed for fast and effective retribution. As anachronistic as it may appear, the main concern expressed by the emperor in this context is related to what we today would term as "rule of law". The expression with which the above citation ends – *wei xie xiandian* 未協憲典, which I have freely translated as "this would run contrary to the meaning of our laws and to the spirit of our institutions" – supports this opinion.[32] The message conveyed was that even when dealing with the most horrendous of crimes, the government bodies, whatever their hierarchical level, were not to depart from the legal and institutional framework from which they drew their legitimacy. The law was the ultimate limit. For state officials to venture beyond it was tantamount to setting foot in barbarian territory. The exceptional nature of the procedure adopted in 1761 not only stemmed from the horror of the crime but also from the necessity to make known to all, and first and foremost to the local community in which the unfortunate deed had taken place, the unwavering will of the state to defend the principles of imperial orthodoxy.

The concern over the state's legitimacy – as expressed in the "rule of law" – was thus at the source of the severity systematically called for in cases of parricides. Along with the argument based on the sacred nature of the kinship relation involved, it became in turn the most effective incentive justifying, at the start of the 1760s, the systematic assimilation of insane parricides to ordinary parricides in the judicial procedure, and the undifferentiated recourse to dismemberment for the former and for the latter.

Interestingly, this concern remained strong in the following decades. In 1822 for example, the Daoguang emperor (*r.* 1821–1850) issued an edict ordering that administrative sanctions be taken against Jiang Hantun 江涵暾 and Nie Feng 倪灃, the local magistrates of Xinning and Hepu counties, Guangdong province, for having each decided to execute by beating one of their constituents who had committed parricide. Far from concealing their decision, both had actually reported the matter to the provincial authorities, explaining that they had serious reasons to believe the culprits would have passed away before the punishment they deserved could have been meted out.[33] Both had moreover

31 As the Qianlong emperor himself underlined, parricides were highly at risk while in prison, where summary community "justice" could easily be enacted. See *HDSL*, *j.* 800, p. 15185, 1764 edict. Similarly, in Ding Qishisi's case, a thorough investigation was ordered by the provincial governor to ascertain that Ding had effectively died of illness and not of violence he could have been subjected to while in Yanqing's prison. See Hong and Rao, *j.* 20, p. 1a.

32 For insights on the question of the "rule of law" in imperial China, albeit in a very different context, see Will 2011.

33 After having admitted his crime, the first, Wu Rongyi 伍榮奕, fell victim to an epidemic and his state of health was deteriorating rapidly at the time. As for the second, Han Chunqing 韓淳青, when the investigation proved without doubt his culpability, he chose to starve himself to death. See Zhu Qingqi *et al.*, 2004 revised ed., pp. 1618–19.

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justified their choice by referring to a decision of the Jiaqing emperor (*r.* 1796–1821), Daoguang's own father, who, a mere five years earlier, in 1817, had chosen to absolve a magistrate of Shaanxi province who had similarly disposed of a man found guilty of matricide.[34] Whereas Jiaqing did not consider an expeditious execution as illegal in such circumstances (係屬權宜辦理並無不合), in his edict Daoguang upheld the opposite opinion:

> To refer to the [1817] precedent to execute [someone] by beating is not in conformity with the law. [. . .] From now on, when such cases disrupting the natural order of social relations happen, local magistrates shall do their utmost to transfer safely these serious criminals to the provincial capital, where the case will be investigated. It shall be done according to the law only. Systematic execution by beating at the county level will not be tolerated. This, in order to reveal clearly the meaning of our laws and the spirit of our institutions.
>
> 援案杖斃殊屬不合 [. . .] 嗣後各案遇有逆倫之案, 該地方官務將要犯小心防範解省審鞫, 照例辦理, 不准率行由縣杖斃, 以彰憲典

The critique of the position expounded by the Jiaqing emperor set aside, this episode is interesting for what it reveals. Obviously, in the first decades of the nineteenth century, the Chinese judiciary apparatus was still hesitating on the legal stance to adopt when confronted with parricide. Because of the horrendous nature of the crime and of the disgust it spurred among the population and the officials, the specific and uniform legal procedure drafted sixty years earlier by the Qianlong emperor had not entirely succeeded in leading to an untroubled and upright enforcement of justice. In circumstances so serious that the legality of the judicial process could not be systematically guaranteed, it comes as no surprise that the mental condition of the culprit was considered at best as secondary in comparison to the exemplary and edifying character expected of the punishment.

MADNESS, PARRICIDE AND THE QING *CODE*

As we have seen above, under the Qing, the execution of insane parricides by dismemberment stemmed from the combination of the sacred nature of the direct filial relation in China's cultural context and of political considerations aiming at reinforcing the institutional legality of the imperial regime. In the second part of this contribution, we shall try to analyse to what extent this sentence was justified from a purely legal point of view. To do so, we will briefly examine the evolution of the legal dispositions of the Qing *Code* related, first, to madness, and second, to parricide. We will do so for the period spanning the eighteenth to the middle of the nineteenth century.

Madness, Homicide and Traditional Chinese Law

To begin with, let me insist on two important points. First, if mental illness was, as it is needless to say, a central element of such affairs, it was not an issue. A parricide was

34 *Ibid.*

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labelled as insane as the result of the investigation, which brought to light that he or she had been suffering from his or her mental condition for some time. Extant judicial records never go beyond this criterion. There does not seem to have been any systematic recourse to medical authority to acknowledge the illness, nor do we find any precise definition of what type of disorder was considered as pertaining to madness. This lack of information may be frustrating when trying to study insanity as such, but it does not impede an analysis of its legal approach. Not all criminals in Qing China were labelled as insane, let alone parricides. Therefore, for the judicial authorities to label a parricide as insane was not a meaningless indication.[35]

Second, as has been mentioned above, no legal statute in the traditional Chinese legal *Code* ever dealt specifically with insane parricides. The systematic resorting to dismemberment thus stemmed from an interpretation of the legislation at hand and of its underlying judicial principles. It was not *a priori* a legally indisputable option. Whether or not the way madness was conceptualised in the Chinese legal tradition gave support to this choice is an important question, to which, as we shall see, no definite answer can be given.

As I have mentioned above, criminal acts by mentally ill individuals came under the growing scrutiny of the Qing state, especially in the eighteenth and up to the first decades of the nineteenth century. This process was limited to the most severe deeds – homicides – and followed a strenuous path, reflecting the hesitations and uncertainties of the state authorities.[36] From its inception, the Chinese legal tradition had been founded on the cardinal principle of criminal intent, or *mens rea*, which, in its most refined sense, linked punishments to intentional acts only.[37] Since legal specialists under the Qing generally showed no reluctance to consider mentally ill criminals as irresponsible for their actions, as we have seen above, this principle should have resulted in the dropping of eventual charges brought against an insane individual, however serious the grounds, because of the impossibility to prove his or her intent to harm. The fact that it did not, underlines the tensions between the moral and the legal aspects of the issue – in traditional China as elsewhere, criminal laws were expected to mete out adequate punishments as "retributions" for crimes.

As hinted above, Qing lawyers made their first forays into the realm of ordinary homicides (i.e. outside the family sphere) by mentally ill individuals in the late 1660s. In 1667, an imperial decision stated bluntly that in such instances, all charges were to be dropped (*fan fengbing shashang ren zhe mianyi* 凡瘋病殺傷人者免議). Two years later, the central judiciary amended slightly its position by choosing to assimilate these peculiar cases to unintentional homicides (*guoshi sha* 過失殺). As far as the punishment was concerned, the new labelling did not make a big difference,[38] but it did from a legal perspective,

35 It is noteworthy that Qing sources do not point to any direct link between medical, religious and/or popular conceptualisations of madness and the penal procedures applied to mentally ill criminals adopted by the state authorities. The topic would certainly require a more thorough investigation, which cannot be undertaken here for lack of space. See Ng 1990, chap. 2 for a tentative approach.

36 See Nakamura 1973, chap. 3, pp. 187–95; Ng 1990, especially chaps. 4 and 5; Chiu 1981. The following section relies largely on these works.

37 McKnight 1981, p. 2, dates the influence of this idea back to the founder of the Western Zhou dynasty in the twelfth century BC. Brook, Bourgon and Blue 2008, chap. 1, have useful developments on the same topic.

38 Following Ming legislation, the Qing *Code* stated that in such instances, the culprit was to pay 12,42 ounces of silver to victim's family as compensation.

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since it openly acknowledged that mentally ill individuals could be held partly responsible for their acts. The measure was maintained unchanged until the early years of the twentieth century. In other words, up until the last years of the Qing dynasty, insane homicides were treated as unintentional homicides, a rather lenient position as far as pre-modern judicial systems are concerned. One needs to add an important element to this picture, though: starting from the middle of the eighteenth century, new statutes progressively inserted in the *Code* stated that homicides considered as insane were to be held in prison, first until their complete recovery, and from 1768 onwards without any hope of ever coming out, except in the event of an imperial amnesty. In 1806, even this last possibility was finally denied them. Regardless of their state of health, it was decided that all such criminals were to remain in jail for life to make sure they would not cause a new tragedy while suffering a relapse of their condition.[39]

Since prison was not an official punishment in the Chinese legal *Code*,[40] from a legal standpoint, insane homicides, just like unintentional ones, were only considered partly responsible for their act. But this principle, rather lenient as has just been said, did not hold very long when confronted with the tensions caused by more serious affairs, such as multiple homicides. During the eighteenth century and up to the first decades of the nineteenth century, the central authorities introduced several new laws dealing specifically with such issues, and which recognised a growing level of legal responsibility to insane perpetrators according to the number of their victims and to whether or not the latter belonged to the same family. For magistrates, judges and for the central government's lawyers, the main issue, here, was adequate retribution. One important step was taken in 1776, when the Board of Punishments decided – in the wake of a quadruple homicide committed by an insane individual with all victims belonging to the same family – that in such instances, mentally ill culprits would be judged according to the sub-statute on homicides during a brawl (*dousha* 鬥殺). This decision paved the way, for the first time, to the sentencing to death of insane individuals.[41] Half a century later, in 1824, the Board of Punishments confirmed the lawful possibility to condemn criminals recognised as mentally ill to capital punishment in such instances, even granting the right to execute them by beheading.[42] At this stage of the evolution, only the fact that the effective decision to proceed with the execution was to be ratified by the Autumn Assizes distinguished the penal procedure applied to insane individuals from that for mentally sound culprits.[43]

39 See Chiu 1981, pp. 88–90, for some possibilities of overruling this decision. The author insists on the fact that the central authorities were reluctant to grant discharges on such terms.

40 Jail sentences were not included among the punishments available to the judge in the traditional Chinese *Code*. They were preventive measures, and in this instance, the decision aimed at safeguarding the local communities against the threats posed by mentally ill individuals considered as dangerous.

41 The effective execution was postponed until its ratification by the Autumn Assizes. See Nakamura 1973, chap. 3, p. 194; Chiu 1981, p. 84. On the relatively low number of executions confirmed through this procedure under the Qing, see Bourgon 2000, pp. 32–39.

42 Strangulation and beheading were the two ordinary types of capital punishment in Qing China. Considered more severe, the latter was resorted to for more serious crimes. In spite of being legal, dismemberment was nevertheless an extraordinary form of punishment. See Brook, Bourgon and Blue 2008.

43 See Nakamura 1973, chap. 3, p. 194; Chiu 1981, p. 84.

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Of course, the evolution was not as linear as highlighted above. In the second half of the eighteenth century, several documents testify to the hesitant course of the process.[44] But over the long run, one can unmistakably observe a tendency towards increased severity in dealing with insane homicides.[45] As we have seen, the sphere of family law was not spared this momentum. In fact, by the late eighteenth century, in cases of murder of a family member by a mentally ill kinsperson, the practice, at the Board of Punishments in Beijing, was to order the relevant provincial authorities to sentence the culprit according to the statutes applied to persons sound of body and mind. This generally meant calling for the death penalty by beheading or strangulation, with immediate effect or postponed until the Autumn Assizes. A possible reduction of the sentence on the grounds of mental illness was left to the emperor to decide. The fact that these procedures were inserted into the *Code* only between the middle of the nineteenth century and the 1870s bears testimony to the persistence of tensions and hesitations on the topic of the legal responsibility of insane individuals among successive generations of Qing legal specialists.[46]

To sum up, one should first underline that in Qing China, starting from the 1670s, madness was no longer a sufficient factor to free insane criminals of legal responsibility, regardless of the nature of their deed. Irrespective of the notion of criminal intent, cardinal in imperial China's legal tradition, the Qing judiciary authorities drew up, during the next two centuries, legislation dealing with insane homicides, which resulted paradoxically in bringing mentally ill individuals under the yoke of the law even before they had committed any lawfully reprehensive action. The similar evolution that can be observed, in this respect, in cases involving ordinary persons on the one hand, and cases implicating individuals linked by kinship relations on the other, should not blur an important distinction. The specific judicial rationale of Chinese kinship relations called for harsher punishments when crimes were committed inside the family.[47] Thus, whereas from the last decades of the eighteenth century, the death penalty could be applied, in ordinary circumstances, to an insane homicide only if he or she were found responsible for the death of three or more individuals of the same family, it could be immediately called for if the culprit and his or her victim were linked by a kinship relation, and that the former belonged to a later generation than the latter or was an inferior in the hierarchy of fundamental social relations.

Even though the sources do not signal a direct relation between the severity of the judicial handling of insane parricides under the Qing and the general trend towards increasing rigor in dealing with acts committed by insane individuals during the eighteenth century, the latter obviously did not hinder the expression of the former. Nevertheless, and this is

44 For a 1766 defense of the principle of unintentionality for insane homicides by the presiding officials of the Board of Punishments, see *Dingli huibian, j.* 13, pp. 74b–75a. The case reviewed was that of a quadruple homicide committed inside a same family by a mentally ill individual by the name of Liu Fuxing 劉復興.

45 One striking aspect of the eighteenth century's drive to legally frame madness in China was the adoption of a legislation which aimed at controlling mentally ill subjects before they had even minimally breached the law. See Xue Yunsheng, p. 859; Ng 1990, especially chaps. 4 and 5.

46 See Nakamura 1973, chap. 3, pp. 196–97; Chiu 1981, p. 86.

47 The system was structured hierarchically along generational lines. In a given family structure, younger generations were considered as inferior to elder ones, and subjected to heavier sentences in cases of wrongdoing against their superiors. Thus, parricide was the most horrendous crime imaginable inside the family sphere, and infanticide was at the opposite end of the ladder, at least from a legal standpoint. See Lauwaert, 1999.

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the second aspect that ought to be underlined here, the fact that harsher punishments were progressively meted out for mentally ill criminals never infringed upon another basic principle of Chinese traditional law, which held that, for a similar crime, insane wrongdoers were to be submitted to a different judicial procedure from that applied to culprits sound of body and mind. This distinction, which imposed on mentally ill individuals less severe punishments, was systematically upheld in ordinary penal affairs as well as in cases where kinship bonds linked the parties, until the early twentieth-century reform of the country's imperial legal framework. The sole exception was parricide. As has been shown above, the utmost seriousness of this crime in China's cultural context barred the authorities from considering the mental illness of criminals they had labelled as such, as a mitigating factor. But when one turns to the contents of the Chinese legal *Code*, this judicial approach, which ran contrary to the age-old distinction established between insane and sound criminals, does not appear legally grounded.

Parricide and Chinese Traditional Law

Unintentional parricide

Modelled on its Ming dynasty predecessor, the first Qing legal *Code* considered parricide along two lines: the premeditated act and the unintentional deed. The first was dealt with through statute 284 (*mousha zufumu fumu* 謀殺祖父母父母), which called for dismemberment if death had resulted, and for immediate decapitation if the victim had only been injured, as well as if he or she had not suffered any consequences.[48] Similarly, statute 319, which dealt with blows inflicted to one's parents or grandparents (*ou zufumu fumu* 毆祖父母父母), punished by dismemberment and immediate decapitation, respectively, intentional acts resulting in death or injuries. But if the deed had been unintentional (*guoshi* 過失), the statute condemned the culprit to a hundred blows of the bamboo stick, to which were added either a period of three years of penal servitude (*tu sannian* 徒三年), if the parent had been injured, or exile at three thousand *li* (*liu sanqianli* 流三千里), if he or she had died.[49]

In other words, in the purest expression of China's imperial legal framework, that of its fundamental statutes (*lü* 律), intentionality was deemed of relevance even for one of the most horrendous abominations imaginable. Interestingly, this element was actually linked to the specific case of insane parricides. Since 1669, homicides committed by mentally ill persons in the sphere of ordinary penal law (i.e. not dealing with the dimension of kinship relations) were assimilated, as we have seen, to unintentional homicides (*guoshi sha* 過失殺). From the standpoint of judicial coherence, it would have been natural to proceed in

48 See Xue Yunsheng, pp. 780–82. For a description of the first Qing *Code* and of its origins, see Zheng Qin, 2000, pp. 1–21.

49 Xue Yunsheng, p. 949. I will not delve here into the notion of "unintentionality" in the context of China's late imperial legal culture. For a complete treatment of the question from the perspective of a legal historian, see Nakamura 1973, chap. 1, pp. 17–149. Among other, the author stresses the idea that traditional Chinese lawyers – i.e. legal specialists – did not construe this notion basing themselves on abstract juridical principles, but always considered it through the observation of the concrete circumstances of a given act. This practical approach is well summarized in the following expression used to define unintentional acts: "[acts whose consequences] neither the senses nor the intelligence [of the perpetrator] could have led [him/her] to perceive or conceive" (耳目所不及思慮所不到).

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a similar fashion with insane parricides, and thus assimilate their crime to unintentional parricide rather than to intentional parricide by an individual sound of body and mind. Statute 319 would have given legal authority to such an approach, while maintaining the internal equilibrium of the Qing *Code*. Seriously challenged by the judicial apparatus's unwillingness to take into account the mental illness in cases of parricides involving mentally ill persons, such an option would have helped preserve the integrity of the principle of *mens rea*. Moreover, it would also have allowed the essential distinction to be maintained, in Qing judicial practice, between mentally ill criminals and criminals sound of body and mind. Finally, it would not have breached the judicial rationale underpinning the legal framework built around the notion of kinship, since statute 319 took into account the worsening of the punishment, which was typical of the judicial rationale of kinship relations underpinning traditional Chinese law.

Nevertheless, under the Qing, the provisions of statute 319 on unintentional parricide were never applied. For the authorities, provincial as well as central, an act harming one's parents' physical integrity was so serious that it was deemed impossible to consider as unintentional, and so profound was the moral stain that it was unimaginable not to take the culprit's life in retribution, whatever the circumstances. From a legal standpoint, this rigoristic approach to homicides at the expense of the parents left no other solution than dismemberment as a punishment. In due time however, it confronted tensions arising from concrete cases,[50] tensions that were dealt with by an extension of the legislation on parricide. This effort came to fruition in two phases: first in 1762, with the codification of sub-statute 292-11 devoted to the unintentional homicide of the parents and grandparents (*zisun guoshi sha zufumu fumu* 子孫過失殺祖父母父母), and second in 1822, with that of sub-statute 319-10 on negligent homicide of the same persons (*zisun wu sha zufumu fumu* 子孫誤殺祖父母父母).[51]

Both sub-statutes were elaborated through a long and strenuous process.[52] After its first adoption, sub-statute 292-11 – which had the distinctive feature of having been drafted to punish a crime that was already included in the *Code* – was the object of no fewer than four successive revisions, up until 1843.[53] Its redundant character stemmed from the excessive leniency of the provisions of statute 319.[54] Thus, in its 1762 phrasing, sub-statute 292-11 adjusted this "defect" by calling for immediate strangulation against unintentional parricides (*jiao li jue* 絞立決). The following revisions swung in turn between leniency and severity, the movement finally stopping in 1806 with the decision that in such circumstances, the effective execution – always by strangulation – would be put off until the

50 For an interesting example dating back to 1726, see Hong and Rao, *j.* 31, pp. 2a–3a.

51 See Xue Yunsheng, pp. 856 and 957 respectively. One can find two sub-statutes in the Qing *Code* – 292–11 and 319–12 – devoted to unintentional homicide of the parents. They actually are very slightly diverging versions of the same text. For sub-statute 319–12, see Xue Yunsheng, p. 958.

52 Also see Nakamura 1973, chap. 1, pp. 115–24, for a detailed analysis of the process.

53 See Xue Yunsheng, pp. 856–57. For the three main cases that led to the successive revisions, see *Dingli huibian*, respectively *j.* 10, pp. 86a–87b; *j.* 46, pp. 171a–174b; *j.* 48, pp. 80a–85b.

54 It must be noted here, though, that rare would be those escaping death after having received a hundred blows of the bamboo stick – the punishment meted out by statute 319 for unintentional parricide.

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Autumn Assizes.[55] Xue Yunsheng's detailed analysis of the successive stages of this evolution shows, interestingly, that the incentive for increased severity was directly related to the nature of the relation between the culprit and his or her victim. When direct filiation was concerned, the judicial authorities found it unjustifiable not to call, at least formally, for capital punishment, however mitigating the circumstances.

It is noteworthy that even though in ordinary law, homicides by mentally ill individuals were assimilated to unintentional homicides, the case of insane parricides was never dealt with through sub-statute 292-11. The same can be said of sub-statute 319-10, devoted to the negligent homicide of parents. But this time, while it was in the process of being ratified, the case of insane parricides was raised.

Negligent parricide

In the Chinese legal tradition, the label of negligent homicide (*wusha* 誤殺) was generally limited to brawls that had resulted in death (*dou sha* 鬥殺), with the victim not a direct actor in the fight. The intention to hit and thus the risk of harming, or even killing someone, was characterized, but in an instance of the victim being a third party not taking part in the fight, a difference was made as far as the law was concerned. It is this difference that the central authorities chose to officially introduce in the field of parricide in 1822 with the codification of sub-statute 319-10. Two cases prompted the process, one dating to 1813 and the second to 1822.

The first took place in Shanxi and had as the main character a man called Bai Penghe 白鵬鶴.[56] Drawn into a feud with his sister-in-law over a trivial matter, Bai threw a brick at her, which ended up hitting his mother in the face, causing her death. As no specific law existed in the *Code* to deal with such circumstances, the provincial authorities condemned Bai Penghe to dismemberment according to the provisions of statute 319 on children beating their parents to death.[57] The emperor Jiaqing chose to overrule the decision on the grounds that when he threw the brick, Bai was not in a position to foresee the possible ill-fated consequence of his act – reason for which it could not be simply assimilated to an erroneous homicide during a brawl (以鬥毆誤殺者究屬有間). He ordered the punishment to be commuted to immediate decapitation and insisted that in the future, similar cases be dealt with according to this approach (嗣後有案情似此者即照此問擬).

Effective codification had to wait for another nine years though, after a young man of Miao origins called Longahou 隴阿候 killed his grandmother in error in June 1821, hitting her on the head with a bludgeon he intended to use on a certain Yu Maosheng 余茂勝, with whom he had gotten into a violent fight.[58] Originally sentenced to dismemberment, like Bai Penghe, Longahou's punishment was commuted by the Daoguang emperor to immediate decapitation in the beginning of 1822. Like his father, whose earlier similar

55 The 1843 revision did not alter the punishment meted out. It added to the list of cases included in this sub-statute, that of the spouse killing unintentionally her husband's parents or grandparents (子孫之婦過失殺夫之祖父母父母).

56 See *Dingli huibian, j.* 60, pp. 77a–79a.

57 The *Code* stipulated that in the case of erroneous homicide of a third party during a brawl, the culprit was to be sentenced according to the statute on homicides during a brawl (因鬥毆而誤殺旁人以鬥殺論).

58 *Dingli huibian, j.* 69, pp. 83a–85a. For both cases, also refer to Xue Yunsheng, pp. 957–58.

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decision had clearly been forgotten, Daoguang ordered the provision to be applied in all future cases of negligent parricide, setting this time in motion the official process of codification which gave birth to sub-statute 319-10.[59] In its codified phrasing, the sub-statute does not call for any precise penal provision. It first invites the provincial authorities to call for dismemberment, in accordance with statute 319, before urging them to draw attention to the decisions taken in the two cases reviewed above and to wait for an imperial order (*gonghou qinding* 恭候欽定).

Sub-statute 319-10 was the last addition to the penal structure during the Qing around the crime of parricide. This structure was organised hierarchically according to the seriousness of the circumstances. Less serious than premeditated parricide (*mousha zufumu fumu* 謀殺祖父母父母) and parricide through intentional blows (*ou zufumu fumu zhi si* 毆祖父母父母致死), negligent parricide (*wusha zufumu fumu* 誤殺祖父母父母) was on the other hand more serious than unintentional parricide (*guoshi sha* 過失殺). With intentional acts being punished by dismemberment and unintentional ones by strangulation, in order to follow the scale of punishments of the Qing *Code*, negligent parricide could only be dealt with through beheading.[60]

The question of insanity

Remarkably, while the judicial authorities spent time designing such an elaborate and differentiated legal framework for parricide, they never bothered to include in it the cases of insane parricides, even though such cases were openly acknowledged. The main reason for this omission, I believe, is primarily linked to the outbursts of unrestrained violence that characterised the acts of mentally ill individuals. These sudden fits of unrestricted brutality did not correspond to the legal definition of unintentional deeds: "[acts whose consequences] neither the senses nor the intelligence [of the perpetrator] could have led [him/her] to perceive or conceive" (耳目所不及, 思慮所不到).[61] This open violence rendered obsolete any reference to the circumstances of the case, however mitigating. It explains why, when confronted with such events, the authorities chose to systematically ignore, when proposing a sentence, the irresponsibility they were otherwise prompt to recognise in insane individuals in all other criminal circumstances.

As we have seen above, from time to time some imperial bureaucrats did feel uncomfortable with the practice of assimilating mentally ill persons to sound individuals in cases of parricide. The codification process of sub-statute 319-10 offers yet another example of this. In April 1813, only a few weeks after the Jiaqing emperor decided to make way in the *Code* for negligent parricide, Wen Chenghui 溫承惠 (?–?), then governor-general of

59 In his edict, the Daoguang emperor did not mention his father's similar position nine years earlier.

60 For observations on some of the legal inconsistencies that underpin the whole penal structure of parricide under the Qing, see Xue Yunsheng, pp. 957–58.

61 This sentence is found in the interlinear notes to the third paragraph of statute 292, which delineates the legal framework of unintentional homicide. Xue Yunsheng, p. 849. The *locus classicus* of unintentional parricide is that of a son dropping a teapot after having burnt himself with the spilt boiling water; the water from the broken teapot leaves a puddle on the floor; alarmed by the sound, the mother comes rushing out of the next room, slips on the puddle, falls on the ground, cuts herself on a shard and dies shortly thereafter of an infection of the wound. On this central notion see Nakamura 1973, chap. 1, pp. 31–43; Lauwaert 1999, pp. 176–77.

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Zhili province, openly questioned the central authorities about the case of insane parricides, suggesting that they be dealt with according to the new provisions.[62] His main point was that the act of a mad individual[63] against one of his parents, however brutal, could not be considered as more intentional than a negligent deed involving a mentally sound person:

> A violent dispute was indeed at the origin of Bai Penghe's error, but the circumstances leaned toward an unintentional act. He was thus sentenced to immediate beheading in order to distinguish [his deed] from parricide through [intentional] blows, punished by dismemberment, and unintentional parricide, which calls for immediate strangulation. This is an excellent example of the equilibrium [to seek] between the circumstances and the law. On the other hand, in cases of parricides by mentally ill individuals, [the culprits] have systematically been sentenced to dismemberment, in accordance with the statute [319], and no distinction has ever been drawn. As a matter of fact, no punishment whatsoever can suffice as a retribution for the crime of an individual who, fruit of the womb of his parents, lays hands on either one of them, even if [his dreadful deed was caused] by mental illness. However [...], if at the time of the facts, the person was suffering from a fit of madness and that he or she, for this reason, was not aware of the identity of his or her victim, the act is unintentional just like Bai Penghe's [...]. That is why, [in ordinary law], the sub-statute dealing with homicides by mentally ill individuals is inserted in the section [of the *Code*] devoted to negligent and unintentional homicides.[64]
>
> 誠以白鵬鶴釁雖起於鬥毆而情寔近於過失，故改為斬立決以別於毆殺之凌遲並過失殺之絞決，實為情法之平，至因瘋毆殺祖父母父母之案向亦依律擬以凌遲並無區別，竊以身為人子因瘋而戕及所生罪固不容於誅．惟[...]當其瘋病猝發並不知被殺者為何人與白鵬鶴[...] 同為無心之失．是以瘋病殺人之例載在誤殺及過失殺門內

Governor-general Wen clearly considered the lack of a specific law to deal with cases of parricides involving mentally ill individuals as a weakness of the *Code*, which could easily lead to instances of mismanagement (律例未有明條辦理誠恐岐誤).[65] This observation prompted his suggestion to the central judicial authorities to apply in such instances the provisions just codified on negligent parricide. His line of argument was centred on criminal intent, but the possibility to bring the problem to the light was closely linked to Jiaqing's final settlement of Bai Penghe's case in April 1813, which had opened a window

62 *Dingli huibian, j.* 60, pp. 80a–83a.

63 But not any mad individual: Wen only took into consideration persons whose mental illness was permanent and had been previously reported to the local authorities. He thus hoped to diminish the risks of mentally sound criminals trying to dodge their responsibilities using madness as an excuse.

64 *Dingli huibian, j.* 60, pp. 80b–81a.

65 *Ibid.*, p. 81b.

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of opportunity. For the first time, the idea of conferring an ounce of leniency to individuals having laid hands on their parents was taken into consideration when the blows had been dealt unintentionally. In principle, cases of insane parricides fitted more adequately with the newly adopted sub-statute, better on any counts than with the one centred on unintentional deeds. It was nevertheless insufficient to win the support of the Board of Punishments, as its rather terse answer to the suggestion shows:

> [The governor-general] wishes to extend in an ill-considered way [the possibilities of leniency], beyond the provisions already in the law and the gracious imperial decision [recently adopted]. By so doing, he does not take at all into consideration the paramount importance of the social relation that links grandchildren or children to their parents or grandparents. If the former happen to wound or kill the latter, how could it be acceptable that they seek at all costs to save their lives through a trick of language or out of cowardice? As for those responsible for implementing the law, how could they dare show the least sign of leniency and ignore the fundamental principles that rule social relations?[66]
>
> 因是欲於律例並欽奉 恩旨之外復濫行推廣, 殊不思子孫之於祖父母父母倫紀攸關, 設有殺傷何忍更言偷生視息, 而執法者又何敢稍存姑息蔑視倫常

Apart from its tone, the Board's rebuttal is striking for its lack of legally grounded arguments. Nothing is said of the level of criminal intent that should be held against mentally ill individuals in such circumstances, nor do we find any discussion, based on clearly expounded legal principles, about the worthlessness of drafting a specific sub-statute dealing with these crimes. Obviously, for such a prominent institution in the realm of justice as the Board of Punishments, in cases of parricide committed by mentally ill individuals, nothing justified any revision of the usual procedures. Taking advantage of the opportunity, its direction went as far as to insist publicly on this point, declaring that in such instances, provincial authorities were banned from requesting an alleviation of the sentence on the count of mitigating factors ([. . .] 因瘋殺傷祖父母父母[. . .] 之案不得輕議夾簽聲請末減).[67]

The unwavering opinion of the Board, which, as all the preceding developments have shown, was not entirely grounded from a legal standpoint, was once again confirmed in 1823 – just one year after the codification of sub-statute 319-10 – in yet another case of parricide involving an insane person. On the December 31st, the Daoguang emperor issued an edict confirming the validity of the position of the Board of Punishments, which had upheld the decision of the Anhui provincial authorities to execute by dismemberment a man called Zhou Chuanyong 周傳用 who had been suffering from a serious mental condition for years and had killed his father, Zhou Jian 周建, some months earlier.[68] Zhou

66 *Ibid.*, p. 83a.

67 It laid down the same ban for cases in which parents or grandparents had been wounded by error (*wu shang zufumu fumu* 誤傷祖父母父母). This document inspired the phrasing of sub-statute 319-10 as it was elaborated in 1822.

68 See *Dingli huibian, j.* 71, pp. 55a–58a.

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Chuanyong's case has left its mark in Qing China's legislative annals because it paved the way to an important adjunct to sub-statute 411-58. Set in italics in the next citation, the addition to the original text stated that "for children or grandchildren who kill their parents or grandparents through blows, *be they insane or mentally sound*, sentence according to the statute [319] [...]" (其子孫毆殺祖父母父母之案, *無論是否因瘋,* 悉照本律問擬).[69] Since it belonged to the section of the *Code* dealing with the practical details of executions (*yousi jue qiu deng dimen* 有司決囚等第門) – in this instance, the executions of parricides –, this sub-statute never held an important role as far as the judicial process was concerned.[70] But as it is the sole text of the *Code* explicitly referring to insanity and parricide, it offers an interesting window on the position of the central authorities. The motives for the adjunct were justified as follows:

> In the case of a homicide involving a mentally ill individual, even if it has been perpetrated while in the midst of a fit of madness, if the victim is one of the parents or of the grandparents, [the crime] is linked to the fundamental social relations and thus cannot compare with [a similar act committed against] an ordinary person. That such a criminal, the own child of his victim, might lay hands against the person who gave birth to him, is an incommensurable horror. For those responsible for implementing the law, it wouldn't be decent to let the culprit wait endlessly [in jail] for his punishment simply because he was not aware of his act due to his mental condition. On the contrary, they ought to proceed with the dismemberment as soon as they have sent to the throne the memorial establishing the facts [without doubts].[71]
>
> 至瘋病殺人之犯雖由瘋發無知然所殺係祖父母父母則倫紀攸關 ?非常人可比, 在本犯身為人子戕及所生寔係罪大惡極, 執法者亦未便因其瘋發無知即令日久稽誅必俟奏明後方加刑戮

Yet again, no legal line of argument is to be found here. The phrasing only stresses the inevitability of the assimilation of insane parricides to mentally sound ones, an assimilation which, according to the highest levels of the empire's judiciary apparatus, ought almost to be considered as a natural offspring of the country's legal foundations.

Coincidence or not, one year after the codification of sub-statute 319-10, which had given rise, ten years earlier, in 1813, to the dispute between the Board of Punishments and Zhili's governor-general Wen Chenghui, this upholding of the inevitability of dismemberment for insane parricides brought the debate over this topic to an end. It would be reopened only once Western influence would have dramatically contributed to shattering traditional China's long-established legal tradition and judicial practices.

69 Xue Yunsheng, p. 1266. Emphasis mine.

70 Its main object was to make sure insane parricides (just like "ordinary" parricides) would not wait for years in prison for their adequate retribution.

71 *Dingli huibian, j.* 71, p. 57a.

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CONCLUSION

As we have seen, several factors lie at the source of the Qing practice of assimilating mentally ill individuals who committed parricide to parricides sound of body and mind. The long-sacred nature of family values in China, and their translation in the legal field, was one such factor. The context of the crimes, more specifically the unrestrained outbursts of violence which in all cases characterised them, was another. This open violence against one's parents helps explain why it was never considered acceptable, from an intellectual and moral standpoint, to draw up a specific law to deal with such criminals. When one knows that the Qing regime contributed in an unprecedented way to defining a legal space for mental illness in the framework of homicide, in ordinary as well as in family law, this aspect is even more striking. Finally, as the survey of extant cases shows, the problem posed by insane parricides became a political issue in the second half of the eighteenth century. The defence of "the rule of law" drawn up by the Qianlong emperor contributed its share in ensuring that the option upheld would be implemented. That this defence was based on a misdirected reading of the law was only of minor importance. That it contributed heavily to condemning to a terrible fate persons who, because of their illness, had committed an act considered as barbaric did not have any importance either, even though an interpretation just as common of the basic principles of traditional law regarded these mentally ill individuals as the archetype of persons upon which no punishment could ever reach the desired result.[72]

Under the Qing, the unwillingness to confer any kind of leniency on insane parricides thus stemmed from the concurrence of an unbending approach of the *Code*'s provisions and a serious political concern centred on the necessity to ensure the legitimacy of the state, most notably in the judicial process. These factors conferred a considerable strength to the option devised, to the point that nothing was ever able to undermine it from within. The destabilisation finally came from without, through the legal reforms inspired by Western and Japanese examples and implemented after the turn of the twentieth century.

In fact, the age long – and legally dubious – practice of dismembering insane parricides in China was abandoned on 8 February 1904. The case that resulted in this decision is not of utmost importance.[73] What is relevant is that in the wake of the judicial procedure, the famous legal reformer Shen Jiaben 沈家本 (1840–1913) and his colleagues of the Office of Codification (*Lüliguan* 律例館) in the Board of Punishments sent a memorial to put an end to what they termed an iniquity (*you jue cenci* 尤覺參差).[74] Developing an elaborate line of argument grounded on the principles of the country's legal framework, they were able to convince empress dowager Cixi (1835–1908) that in the sphere of parricide, as it was already the case in other legal spheres, insanity and intentionality ought not be considered synonymous. But, as a testimony of the sensitive nature of the debate, they did not go further than suggest that insane parricides be thereafter dealt with through the provisions on negligent parricide, officially introduced eighty-two years earlier. In other words, what

72 For an example of such an approach of madness, see *Dingli huibian*, *j.* 13, pp. 74b–75a.

73 It involved a man called Zhang You 張有, who killed his mother in Beijing in late November 1903. See *Xingbudang* 刑部檔, catalog 26, *xianshen* 先審 file 21174, dated Guangxu 29.12.23 (8 February 1904).

74 For the text, see *Shen Jiaben weike shu jizuan* vol. 1, pp. 494–95, memorial dated GX 29.12.16 (1 February 1904).

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Shen Jiaben and his colleagues achieved was what governor-general Wen Chenghui had suggested eight decades earlier, to no avail.[75]

This seemingly insignificant achievement, at least from the standpoint of the "criminals" involved,[76] comes as a testimony of the still very sensitive nature of the question after the turn of the twentieth century. The abolition of cruel punishments, in April 1905, offers another demonstration. As a result of the decision, two capital punishments were maintained: beheading and strangulation. But instead of integrating the crimes up to then punished by dismemberment into the category of those subjected to decapitation, the authorities chose to diminish by one degree in the hierarchy of punishments of the *Code* all crimes punished by death.[77] Consequently, and because of the decision adopted in February 1904, some provincial governors suggested that insane parricides be sentenced to immediate strangulation. The Board of Punishments reacted swiftly. It drafted a request sent to the throne asking that the proposal be rejected. In the opinion of its head officials (among them Shen Jiaben), since that crime had in the past been punished by dismemberment, it could not be compared to an act that, originally, would have called for decapitation (是本罪尚係凌遲, 與原犯斬決者不同). Cixi chose to uphold the Board's position, considering that she had already shown sufficient largesse (改為斬決已邀實典未便再改絞決).[78]

The draft of the *New Penal Code* (*Xin xing lü* 新刑律), prepared by the Office of codification in the years 1904 to 1908, stipulated that mentally ill individuals would be considered legally irresponsible for any criminal act (精神病人之行為不為罪).[79] Had it been adopted, the fate of insane individuals in their relation to the judiciary would have been completely changed. But this provision was never applied under the imperial regime. As is well known, the new *Code* sparked a fierce dispute among the highest levels of the bureaucracy, which led to the delay in its promulgation. The initiative finally fell on the Republican regime, which was set up in the wake of the revolution of the winter of 1911–1912.

Insane parricides seem to have benefited from this institutional revolution, which imposed the legal tool – the new *Code* – that many hoped would help bring about the modernisation of the country. Promulgated shortly after the Republican revolution, a decision of the Board of Justice (*Fabu* 法部) not to press any charges against a mentally ill individual who had just committed parricide on the grounds of his illness – which made him legally not responsible for his deeds – comes as a testimony.[80] Obviously, the legal reforms initiated close to a decade earlier had led to a significant alteration in the legal impact

75 See Gabbiani, 2009, pp. 337–47.

76 They were still sentenced to capital punishment, but through beheading rather than dismemberment. Several archival records show that the change was applied immediately. See for example, *Junjichu lufu zouzhe*, document 159735, dated GX 30.3.29 (14 May 1904); *Yuzhe huicun*, memorials dated GX 31.1.30 (5 March 1905) and GX 31.6.16 (18 July 1905).

77 Dismemberment was thus replaced by beheading, which was itself replaced by strangulation; in turn, crimes for which the punishment of strangulation was meted out had that punishment commuted to exile.

78 *Shen Jiaben weike shu jizuan*, vol. 1, p. 508.

79 See *Da Qing Xin Xinglü*, part 1, chapter 2, article 12.

80 At first, the Sichuan provincial authorities had sentenced him to life imprisonment. This case is mentioned in Stapleton, 2000, p. 207.

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of traditional family values, of which insane parricides had long featured among the most peculiar victims. But it would take another form of struggle for mentalities to be transformed. An analysis of this second phase, which, starting from 1915, led China on the path of what is commonly coined its first cultural revolution, lies beyond the scope of this work. Still, it is noteworthy that the movement was inaugurated, among other things, by the publication of a series of articles in radical newspapers such as *New Youth* (*Xin Qingnian* 新青年), in which personalities like Wu Yu 吳虞 (1874–1939), once an editor of the reformist journal *Shubao* 蜀報, denounced with a level of verbal violence seldom encountered before, the tyranny of China's traditional social and familial model, now depicted as the epitome of barbarianism.

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