

**Asymmetry and Elastic Sovereignty in the Qing Tributary World:  
Criminals and Refugees in Three Borderlands, 1630s-1840s**

by

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## ABSTRACT

This dissertation analyzes how Qing China (1636-1912) and three of its tributary states (Chosŏn Korea, Vietnam, Kokand) handled interstate refugees and criminals from the 1630s to the 1840s. I use Classical Chinese and Manchu memorials and diplomatic documents from Qing archives in Beijing and Taipei as well as Chinese, Korean, and Vietnamese published sources to construct a bilateral view of these interstate relations and compare them. My research reveals multiple, flexible, and shifting conceptions of boundaries, jurisdiction, and sovereignty. Boundaries between Qing and its tributaries were not absolute to a Qing court that claimed universal rule, and the court often erased them by adopting tributary refugees as Qing subjects or encroaching on tributary domains. Further, the Qing court often asserted jurisdiction over tributary subjects committing crimes on its soil or against its subjects. In contrast, no tributary court openly asserted jurisdiction over Qing subjects. Together, these cases reveal two defining characteristics of the Qing tributary order: asymmetry and elastic sovereignty. They show how the political norms of early modern Asia defy post-Westphalian norms of inter-state equality and non-interference in the internal affairs of fellow sovereign states.

This work breaks new ground in Chinese history by highlighting Qing imperial projects outside today's Chinese borders and by comparing borderlands in Northeast, Southeast, and Central Asia. It is also a work of world history that combines the connective method and the comparative method in a novel way, focusing on interactions across interstate boundaries in Asia while comparing these Asian borderlands with those in other early modern empires such as Russia and the Ottoman Empire. Lastly, my work engages with the field of international relations by reconstructing the contours of interstate affairs in early modern Asia before the introduction

of public international law to the region, thus answering the recent call by scholars for a more inclusive, pluralistic view of international relations.

## CHAPTER I.

### Introduction

William Rockhill, an American diplomat and Sinologist, began his 1889 article on Korea's historical relationship with China with a question: "Were they [Western nations] . . . to consider it [Korea] as an integral part of the Chinese empire, or should they treat it as a sovereign state enjoying absolute international rights?"<sup>1</sup> Since the second half of the nineteenth century, Rockhill's contemporaries, from lawyers to politicians to historians, were asking similar questions regarding Qing's various tributary states. The way Rockhill phrases this question makes it look like a straightforward question. Under international public law in a world of nation-states, a state was either sovereign or not, and the line dividing the two was clear-cut. The reality in nineteenth-century East Asia, however, did not fit this straightforward and binary view of the world. Still, Rockhill held on to this ideal model and concluded in the rest of his article that Korea was indeed a sovereign state. Subsequent history seemed to eliminate this disjunction between theory and practice. Qing China went on to "lose" her tributary states to various colonial empires (e.g. Ryukyu Islands and Korea to Japan, Vietnam to France), and the collapse of these colonial empires after the World War II finally seemed to create a world of nation-states in East Asia.<sup>2</sup>

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<sup>1</sup> William W. Rockhill, "Korea in Its Relations with China," *Journal of the American Oriental Society* 13 (1889), 1.

<sup>2</sup> On the disintegration of the Qing tributary world, see Immanuel C. Y. Hsü, "Late Ch'ing Foreign Relations, 1866-1905," in *The Cambridge History of China, Volume 11: Late Ch'ing, 1800-1911, Part 2*, ed. John K. Fairbank and Kwang-Ching Liu (New York: Cambridge University Press, 1980), 70-141 and Okamoto Takashi, "Qing China's Foreign Relations and Their Modern Transformation," *Memoirs of the Research Department of the Toyo Bunko* 70 (2012): 1-21.



As I will show in this dissertation, however, the Qing tributary world was based on the multiplicity and elasticity of imperial boundaries and jurisdictions. This elasticity makes it hard for us to answer Rockhill in simple terms, but his question is still meaningful because it prompts us to inquire further about the nature of tributary sovereignty as well as Qing imperial sovereignty. To what extent and in what ways did Qing China's official self-representation as a universal empire ruling “All under Heaven (*Tianxia*)” influence practical interactions along imperial frontiers? How were the frontiers themselves perceived? How did Qing conceptualize the East Asian political world? How did Qing rulers understand “sovereignty?” How did their views compare with norms of sovereignty and territoriality in post-1648 Europe—and in non-European “world empires” other than China? Indeed, what is an “empire?”

This dissertation approaches these issues by examining Qing imperial projects outside the central Qing domain. Specifically, it analyzes how the Qing empire and three of its tributary states (Chosŏn Korea, Vietnam, Kokand) handled interstate refugees and criminals from the 1630s to the 1840s. Each of these Qing-tributary relations is treated in two chapters. Drawing on Qing, Chosŏn, Vietnamese sources, this dissertation offers a comparative analysis of boundaries, jurisdictions, and sovereignty in three critical Qing borderlands. These cases reveal two defining characteristics of interstate relations in early modern Asia—asymmetry and elastic sovereignty—that defy post-Westphalian norms of inter-state equality and non-interference in the internal affairs of fellow sovereign states. In the remainder of this chapter, I will place Qing history in historiography and then elaborate on each of these points.

## **I. Historiography**

## A. “New Qing History” and “China-Centered History”

This dissertation is first and foremost a work of Qing history. Before the 1990s, the Qing state was often considered the last premodern or feudal Chinese dynasty, not fundamentally different from its dynastic predecessor of Ming (1368-1644). The historiography accordingly remembered the Qing state more as a victim of Western imperialism, which was widely agreed to have started with the First Opium War (1839-42), rather than an imperial power itself. The focus of historical analysis was on China Proper, consisting of provinces ruled by regular bureaucracy. In addition, territorial extension that happened during the Qing period was understood in the national framework of “unification,” while administration of such new territories was seen under the light of regional governance.<sup>3</sup>

In the 1990s, however, a new generation of scholars began to challenge that view. Evelyn Rawski, in her 1996 Association for Asian Studies (AAS) presidential address, called for scholars to “reenvision” the Qing history. According to her, the Qing dynasty was qualitatively different from preceding dynasties because of its Manchu identity and Inner Asian traditions. By utilizing these traditions, Qing was able to transform potential rivals of the empire into personal subjects of the Qing emperor and rule over a multicultural, multiethnic empire. This drive to reenvision Qing history has met with enthusiastic response in the last two decades, giving birth to a growing body of scholarship often called “New Qing History.”<sup>4</sup>

“New Qing History” has focused on two interrelated themes. The first theme is Inner Asian and early modern characteristics of the Qing state. Mark Elliott has shown in a pioneering

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<sup>3</sup> For one example, see Ping-ti Ho, “The Chinese Civilization: A Search for the Roots of Its Longevity,” *The Journal of Asian Studies* 35, no. 4 (1976): 547–54.

<sup>4</sup> Evelyn S. Rawski, “Presidential Address: Reenvisioning the Qing: The Significance of the Qing Period in Chinese History,” *The Journal of Asian Studies* 55, no. 4 (1996): 829–50; Joanna Waley-Cohen, “The New Qing History,” *Radical History Review* 88, no. 1 (2003): 193–206.

study that Manchu “ethnic sovereignty” was a major foundation of Qing authority. The banner people, organized under the Qing institution of Eight Banners (Ma. *jakūn gūsa*, Ch. *baqi*), were distinguished from the Han Chinese civilian population by their separate residence in Manchu cities as well as the legal and occupational privileges accorded them. This differentiation between the conqueror and the conquered was precisely the cornerstone of universal Manchu rulership. Rawski, in a careful analysis of Qing history from the perspective of its Manchu rulers, has shown how the Qing ruler developed a multifaceted identity as a Confucian Son of Heaven, an Inner Asian khan of khans, and a reincarnation of bodhisattva of wisdom Manjusri. That identity was further legitimated by bureaucratic principles and ritual performance that tied Mongols and Tibetans personally to the Qing ruler in a patron-client relationship. In short, the Qing state was founded upon an Inner Asian tradition and incorporated other traditions, Han Chinese tradition being only one of many, to become a universal empire comparable to other contemporary Eurasian empires. Peter Perdue’s landmark study on the Qing conquest of Central Eurasia elaborated on this comparative aspect. In a careful analysis, Perdue presented the Qing conquest as a process of imperial competition among three Eurasian empires (Qing, Zunghar, and Russian), showing their commonalities as early modern Eurasian empires.<sup>5</sup>

The second theme in “New Qing History” is the focus on Qing frontiers and borderlands. Indeed, it is exactly this spatial reorientation from the metropole to the periphery that has enabled these scholars to recognize the Inner Asian, early modern, and imperial characteristics of Qing. Perhaps the frontier that has received the most attention is Xinjiang. James Millward analyzed

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<sup>5</sup> Mark C. Elliott, *The Manchu Way: The Eight Banners and Ethnic Identity in Late Imperial China* (Stanford: Stanford University Press, 2001); Evelyn S. Rawski, *The Last Emperors: A Social History of Qing Imperial Institutions* (Berkeley: University of California Press, 1998); Peter C. Perdue, *China Marches West: The Qing Conquest of Central Eurasia* (Cambridge, MA: Belknap Press of Harvard University Press, 2005).

commercial, military, and cultural aspects of the Qing rule in Xinjiang, showing that Qing rule in Xinjiang differed fundamentally from that in China Proper. Building on Millward's work, historiography on Xinjiang has seen something of a renaissance, with several impressive monographs published in recent years. These works on Xinjiang are notable for showing Xinjiang's characteristic as an imperial frontier and for pointing out similarities in the ways that different Eurasian empires managed their frontiers.<sup>6</sup>

Works on other frontiers have also shown how the complexities and ambiguities within the Qing empire defied a model of national state building. Qing governance of Southwest China is a good example. The older story of Southwest China, with its concentration of Tai and other tribal polities, was that it underwent a fundamental political transformation during the Yongzheng reign (1723-35). According to this narrative, best exemplified in work by Harold Wiens, the long-term trend of Han Chinese expansion in this region culminated in Yongzheng's policy of replacing the native chieftains with regular bureaucrats (*gaitu guiliu*), which began the region's irreversible incorporation into the Chinese nation-state. More recent work, however, has complicated the picture. For example, there was a cultural dimension in Qing frontier policy, akin to the "civilizing mission" ethos found in other colonial empires. Moreover, a focus on native agency has uncovered the transnational world in which these native chiefdoms dwelt, a world in which the Qing state and Han Chinese culture constituted only one set of repertoires available to these borderlands residents.<sup>7</sup>

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<sup>6</sup> James A. Millward, *Beyond the Pass: Economy, Ethnicity, and Empire in Qing Central Asia, 1759-1864* (Stanford: Stanford University Press, 1998); James A. Millward, *Eurasian Crossroads: A History of Xinjiang* (New York: Columbia University Press, 2007); David John Brophy, *Uyghur Nation: Reform and Revolution on the Russia-China Frontier* (Cambridge, MA: Harvard University Press, 2016); Justin M. Jacobs, *Xinjiang and the Modern Chinese State* (Seattle: University of Washington Press, 2016); Kwangmin Kim, *Borderland Capitalism: Turkestan Produce, Qing Silver, and the Birth of an Eastern Market* (Stanford: Stanford University Press, 2016).

<sup>7</sup> Herold J. Wiens, *China's March Toward the Tropics* (Hamden, CN: Shoe String Press, 1954); C. Patterson Giersch, *Asian Borderlands: The Transformation of Qing China's Yunnan Frontier* (Cambridge, MA: Harvard

In summary, scholarship on the Qing empire has seen remarkable growth in depth and breadth in the past twenty years. Even with such growth, however, there remains a lacuna in the scholarship. Historians of the Qing empire, despite their emphasis that the Qing empire and the modern Chinese nation-state should not be equated, often unconsciously set the spatial and conceptual limits of the Qing empire at the national borders of the People's Republic of China (PRC) and Republic of China (ROC). Thus, even though they see the Qing empire as an imperial state, they often focus on Qing imperial projects inside today's "Chinese" borders and have largely ignored Qing imperial projects outside those borders. However, the Qing empire's borders extended beyond the borders of today's Chinese nation-state, encompassing the Mongols that today constitute the nation-state of Mongolia. Further, as an imperial power, Qing also had clear agendas when dealing with its tributary states, and these agendas could be as intrusive as Qing projects in its core zone of China Proper and intermediate zones in Inner Asia.

My project pushes the scholarly boundaries of Qing imperialism outward by looking at how the Qing state dealt with tributaries such as Chosŏn Korea, Lê/Nguyễn Vietnam, the Khanate of Kokand, and the Kirghiz tribes in and beyond Xinjiang.

This attempt is also closely linked to a general trend in American historiography of China called "China-centered history." In a penetrating 1984 book, Paul Cohen criticized Western-centric distortions that resulted from specific frameworks used in American historical writings on modern China, including the "Western impact-Chinese response," modernization, and imperial narratives. Drawing attention to how the Vietnam War helped scholars move toward "other-centered historiography," Cohen urged American historians to take a China-centered approach

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University Press, 2006); John E. Herman, *Amid the Clouds and Mist: China's Colonization of Guizhou, 1200-1700* (Cambridge, MA: Harvard University Asia Center, 2007); Laura Hostetler, *Qing Colonial Enterprise: Ethnography and Cartography in Early Modern China* (Chicago: University of Chicago Press, 2001).

by basing their analytical criteria internally in China, focusing on regional and local history, and abandoning 1840 as a general time marker separating premodern and modern Chinese history.<sup>8</sup> The rise of China-centered history since then has fundamentally transformed the field of Chinese history in the U.S. As James Hevia noted, however, this approach comes with a danger of putting too much emphasis on endogenous factors in historical analysis of China.<sup>9</sup>

With this dissertation, I aim to show the utility of going beyond the China-centered approach by adopting the perspectives of China's smaller neighbors in looking at the history of China. More specifically, I look at the Qing empire from perspectives of Qing and three of its smaller neighbors: Chosŏn Korea, Lê/Nguyễn Vietnam, the Khanate of Kokand. As they interacted with Qing as its tributaries, this dissertation also engages with the historiography on the Chinese tributary system.

## **B. The Chinese Tributary System**

Exactly 50 years ago, John Fairbank proposed the thesis of a "Chinese world order." Fairbank emphasized the Sinocentric and hierarchical nature of the tributary system as well as the gap between how the system worked in theory and in practice. As Fairbank emphasized, however, Korea, Vietnam, and Ryukyu were three "model tributaries," where the theory of Qing supremacy corresponded most closely to reality.<sup>10</sup> In all fairness, Fairbank was the first to acknowledge that the thesis was a working hypothesis rather than a definitive model on

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<sup>8</sup> Paul A. Cohen, *Discovering History in China: American Historical Writing on the Recent Chinese Past* (New York: Columbia University Press, 1984).

<sup>9</sup> James L. Hevia, *Cherishing Men from Afar: Qing Guest Ritual and the Macartney Embassy of 1793* (Durham, NC: Duke University Press, 1995), 7-9.

<sup>10</sup> John King Fairbank, "A Preliminary Framework," in *The Chinese World Order: Traditional China's Foreign Relations*, ed. John King Fairbank (Cambridge, MA: Harvard University Press, 1968), 1-19.

premodern Chinese foreign relations. Indeed, the rest of the volume consists of individual chapters that challenge this framework on empirical bases. Joseph Fletcher, for example, noted that Ming and Qing relations with Central Asian powers were more often conducted on basis of equality. Robert Sakai, analyzing the position of the Ryukyu king as a tributary ruler to both the Chinese emperor and the daimyo of Satsuma in Japan, showed Satsuma's firm economic control over Ryukyu.<sup>11</sup>

Since then, scholars have produced many more empirical critiques of this idea by showing the gap between theory and practice in various historical times. Morris Rossabi's edited volume, for example, has convincingly shown a multi-state system, in which China was one state among equals, that existed in Asia between the tenth and thirteenth centuries.<sup>12</sup> More commonly, scholars have produced case studies that emphasized the disjunction between theory and practice. John Wills Jr., perhaps the most well-known historian of the tributary system in Anglophone scholarship, has produced several meticulously researched works on Qing relations with maritime Europeans. These works have shown how the tributary system was in some respects an illusion and have pushed the boundaries of Qing interstate relations beyond the rubric of tributary relations.<sup>13</sup>

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<sup>11</sup> Joseph Fletcher, "China and Central Asia, 1368-1884," in *The Chinese World Order: Traditional China's Foreign Relations*, ed. John King Fairbank (Cambridge, MA: Harvard University Press, 1968), 206–24; Robert K. Sakai, "The Ryukyu Islands as a Fief of Satsuma," in *The Chinese World Order: Traditional China's Foreign Relations*, ed. John King Fairbank (Cambridge, MA: Harvard University Press, 1968), 112–34.

<sup>12</sup> Morris Rossabi, ed., *China among Equals: The Middle Kingdom and Its Neighbors, 10th-14th Centuries* (Berkeley: University of California Press, 1983).

<sup>13</sup> John E. Wills, Jr., *Pepper, Guns, and Parleys: The Dutch East India Company and China, 1662-1681* (Cambridge, MA: Harvard University Press, 1974); John E. Wills, Jr., *Embassies and Illusions: Dutch and Portuguese Envoys to K'ang-Hsi, 1666-1687* (Cambridge, MA: Council on East Asian Studies, Harvard University, 1984).

And yet, there have been surprisingly few attempts to look at the praxis of the Qing tributary relationship with its “model tributaries.” One important exception is nationalist historiography on the foreign relations of these model tributaries. This scholarship must be seen in the context of colonial historiography that portrayed Korea and Vietnam as “little Chinas” and justified Japanese and French colonial rule over these societies. Writing against colonial scholarship, nationalist historiography often emphasized the tributary’s autonomy in its actual relations with China. It is, to a large degree, historiography more interested in the framework of autonomy and national sovereignty rather than actual tributary relations.<sup>14</sup>

More recently, a few scholars have begun to focus on the praxis of Korean and Vietnamese tributary relations with China. These works have attempted to go beyond the dichotomy of Chinese superiority and tributary independence that was common in both Fairbank’s thesis and nationalist historiography. By doing so, these works have constructed more holistic overviews of these “model” tributary relations. With these recent works, we can begin to conduct a comparative overview of the Qing tributary praxis, and that is precisely what I attempt in this dissertation.<sup>15</sup>

The necessity of such a comparative overview becomes even more apparent when we look at more theoretical critiques of the “Chinese world order” model. More specifically, several systematic critiques of the Fairbank thesis based on postmodern, postcolonial scholarship have appeared in recent decades. Perhaps the most well-known of these critics is James Hevia. In a

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<sup>14</sup> Liam C. Kelley, *Beyond the Bronze Pillars: Envoy Poetry and the Sino-Vietnamese Relationship* (Honolulu: University of Hawai’i Press, 2005), 1-36; Kim Sön-min (Seonmin Kim), “Mansönsa, Manhak, kürigo Manjuhak,” *Myöng-Ch’öngsa yön’gu* 38 (2012): 89–122.

<sup>15</sup> Kathlene Baldanza, *Ming China and Vietnam: Negotiating Borders in Early Modern Asia* (New York: Cambridge University Press, 2016); Sixiang Wang, “Co-Constructing Empire in Early Chosön Korea: Knowledge Production and the Culture of Diplomacy, 1392-1592” (Ph. D. dissertation, Columbia University, 2015).



well-received 1995 book, Hevia revisited the Macartney embassy of 1793, which had often been interpreted as a failed British attempt to bring China into the modern system of international relations as well as a missed opportunity for China's modernization. Instead, Hevia framed the event as an encounter between two imperial worlds, each with its universal pretensions and worldviews. By doing so, Hevia successfully showed Britain to have been as immobile and inflexible as Qing. Just as remarkable to me, however, is the fact that Hevia embarked on a systematic analysis of the Qing imperial formation and yet allocated just three pages to model tributaries.<sup>16</sup>

In this dissertation, I compare two of Qing's model tributaries—Korea and Vietnam—and a Central Asian outlier—Kokand—often considered to have been the antithesis of a model tributary. By focusing on how the Qing empire and these three tributary states handled refugees and criminals in their borderlands, my project highlights the meanings of boundaries, jurisdictions, and sovereignty in these sets of interstate relations. As such, my project engages with recent developments in the field of international relations as well. One of these developments is a renewed interest among international relations scholars in the tributary system. David Kang, for example, has looked at the tributary system as an East Asian system of international relations, emphasizing its stability over the five centuries before the mid-nineteenth century. Brantly Womack, by analyzing the entire period of Sino-Vietnamese relations, has postulated asymmetry as the defining characteristic of the relationship.<sup>17</sup>

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<sup>16</sup> Hevia, *Cherishing Men from Afar*, 50-2.

<sup>17</sup> David C. Kang, *East Asia before the West: Five Centuries of Trade and Tribute* (New York: Columbia University Press, 2010); Brantly Womack, *China and Vietnam: The Politics of Asymmetry* (New York: Cambridge University Press, 2006).

Through this dissertation, I will develop a working definition of elastic sovereignty that could be a useful analytical concept for international relations scholars. In doing so, I seek to move beyond recent revisionist views that have exposed Westphalian sovereignty as an “organized hypocrisy” or a “myth” even in the context of early modern and modern European history.<sup>18</sup> Instead, I wish to answer as a global historian the recent call for a Global International Relations that moves from Eurocentrism and exceptionalism to a more inclusive, pluralistic view of the world.<sup>19</sup> In this light, one aim of this dissertation is reconstructing sovereignty and interstate affairs in the Qing tributary world as part of a multifocal look at the early modern world.

### **C. Law and China**

Lastly, this dissertation engages with the historiography on law and China. For many reasons, including the hegemony of functionalism within comparative law and the dominance of the “Western impact, Chinese response” framework within Chinese history, Chinese law did not attract much scholarly attention until the 1980s. With the opening of the archives in China in that decade, however, many detailed legal records became available to Western scholars of China. This new availability led William Alford to express in 1997 his cautious optimism on the state of

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<sup>18</sup> Stephen D. Krasner, *Sovereignty: Organized Hypocrisy* (Princeton: Princeton University Press, 1999); Luke Glanville, *Sovereignty and the Responsibility to Protect: A New History* (Chicago: University of Chicago Press, 2014).

<sup>19</sup> Amitav Acharya, “Global International Relations (IR) and Regional Worlds: A New Agenda for International Studies,” *International Studies Quarterly* 58, no. 4 (2014): 647–59; Andrew Phillips, “Global IR Meets Global History: Sovereignty, Modernity, and the International System’s Expansion in the Indian Ocean Region,” *International Studies Review* 18, no. 1 (2016): 62–77.

Chinese legal studies, and the scholarly work on Chinese law in the past two decades has justified his optimism.<sup>20</sup>

On the one hand, some scholars have attempted to show that Chinese imperial law had concepts and institutions comparable to those usually considered to be unique to modern Western law. One aspect that has received the most attention is civil law. Philip Huang, for one, has argued that there was a law that dealt with civil matters (land, debt, marriage, and inheritance) and “civil justice” at the edge of the official Qing justice system. He went as far as to define that law as “Qing civil law.”<sup>21</sup> Other scholars, in a similar vein, went on to “excavate” other aspects of Qing law that had traces of legal modernity.<sup>22</sup> In doing so, these scholars were essentially trying to undo the stereotype of Chinese law as a tool of state tyranny, which had its roots in both China (Confucian literati who emphasized ritual over law) and in the West (ever since Max Weber), and to frame Qing law as early modern law, following the general trend among “early modernists” in the 1990s who searched for roots of Chinese modernity in the Qing period. Not surprisingly, this approach has received a fair share of criticism. Jérôme Bourgon, for example, criticized what he called the “civil-customary law” hypothesis, calling it another case of “invented tradition.”<sup>23</sup>

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<sup>20</sup> William P. Alford, “Law, Law, What Law?: Why Western Scholars of Chinese History and Society Have Not Had More to Say about Its Law,” *Modern China* 23, no. 4 (1997): 398–419; Teemu Ruskola, “Legal Orientalism,” *Michigan Law Review* 101, no. 1 (2002): 179–234.

<sup>21</sup> Philip Huang, *Civil Justice in China, Representation and Practice in the Qing* (Stanford: Stanford University Press, 1996).

<sup>22</sup> See Melissa Macauley, *Social Power and Legal Culture: Litigation Masters in Late Imperial China* (Stanford: Stanford University Press, 1998) for an example. In this work, Macauley seems to have found in Qing litigation masters (*songshi*) legal professionals found in early modern Europe.

<sup>23</sup> Jérôme Bourgon, “Uncivil Dialogue: Law and Custom Did Not Merge into Civil Law under the Qing,” *Late Imperial China* 23, no. 1 (2002): 50–90.

On the other hand, others have tried to show what imperial Chinese law was like in theory and in practice without an explicit mission statement of recovering China's "lost modernity." Matthew Sommer, for one, rejected using the Western paradigm of progress in the law as his starting point and instead used legal archives as a gaze toward the lower strata of society during the Qing period. By doing so, he was able to show that one of fundamental goals of Qing law was to keep proper gender order in society by regulating and penalizing "illicit sexual intercourse."<sup>24</sup> In my dissertation, I follow Sommer's approach by using actual legal cases as my lens toward particular members of the Qing world: borderlands peoples who lived at the edges of geographical, cultural, and judicial boundaries of the Qing empire.

Historians of Chinese law, like historians of the Qing empire, have unconsciously set the spatial and conceptual limits of Qing law at the national borders of the PRC and ROC. One important exception is Pär Cassel's recent work on extraterritoriality in Japan and China in the nineteenth century. In contrast with previous works on extraterritoriality in Asia, which almost always depict Asian states as victims of unequal treaties that imposed extraterritoriality on them, Cassel's work shows how Japan and China actively used extraterritoriality to the advantages of their own subjects living in the other country.<sup>25</sup> Following Cassel's approach, I analyze Qing law at the edges of its jurisdiction by looking at how Qing law dealt with foreign subjects who committed crimes on Qing soil or against Qing subjects.

In doing this, my aim is to expand the spatial and conceptual limits of Chinese legal history as well as to put the scholarship in conversation with the burgeoning field of world legal

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<sup>24</sup> Matthew Sommer, *Sex, Law, and Society in Late Imperial China* (Stanford: Stanford University Press, 2000).

<sup>25</sup> Pär Kristoffer Cassel, *Grounds of Judgment: Extraterritoriality and Imperial Power in Nineteenth-Century China and Japan* (New York: Oxford University Press, 2012).

history. Western legal history, in general, has not had much to say about Chinese law. Arthur Nussbaum, in his monumental study on the law of nations, made it clear that the law of nations and Chinese law had little, if any, relationship with each other until the mid-nineteenth century.<sup>26</sup> Even recent works do not fare much better. Laura Benton's 2002 study, which is arguably the first work of world history to look at the use of law in colonial orders from both a comparative and a connective perspective, still has no room for Chinese law. Thus, although she convincingly shows that a global institutional order emerged as a result of constant jurisdictional jockeying between global legal regimes even before the formal emergence of international law, her global institutional order stands totally outside China.<sup>27</sup> Similarly, her 2010 work on "layered sovereignties" of empires and a world of spatially and legally uneven empires gives no role to the Chinese empire.<sup>28</sup> Daniel Heller-Roazen's fascinating study on the place of piracy in the law of nations, likewise, argues that the pirate is the original enemy of humankind and the universal foe, and yet this "humankind" and "universe" have again no place for China.<sup>29</sup>

In my dissertation, I construct a regional history of law in Qing-centered Asia and develop a comprehensive overview of Qing legal pluralism in its borderlands. As such, it can serve as a bridge between the field of Chinese legal history and the field of global legal history, which could benefit much from each other.

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<sup>26</sup> Arthur Nussbaum, *A Concise History of the Law of Nations*, revised ed. (New York: Macmillan, 1954).

<sup>27</sup> Lauren Benton, *Law and Colonial Cultures: Legal Regimes in World History, 1400-1900* (New York: Cambridge University Press, 2002).

<sup>28</sup> Lauren Benton, *A Search for Sovereignty: Law and Geography in European Empires, 1400-1900* (New York: Cambridge University Press, 2010).

<sup>29</sup> Daniel Heller-Roazen, *The Enemy of All: Piracy and the Law of Nations* (New York: Zone Books, 2009).

## II. Sources and Languages

This dissertation mainly utilizes three sets of sources: Qing archival sources, diplomatic documents, and other published sources. Qing central archival sources from the First Historical Archives (*Zhongguo diyi lishi dang'anguan*) in Beijing and the National Palace Museum (*Guoli gugong bowuyuan*) in Taipei constitute the most important body of sources for this dissertation. I have made much use of palace memorials (*zouzhe*) that were sent from Qing borderland officials directly to the Qing emperors in Beijing. This palace memorial system was developed in the later years of the Kangxi reign (1662-1722). Unlike routine memorials (*tiben*), which were formal and had to go through multiple levels of bureaucracy before reaching the Qing emperor, palace memorials were informal and personal channels of communication between an official and the emperor. Originally meant to ensure secrecy, these features are the reason that these documents are sometimes also called secret memorials.<sup>30</sup> The palace memorials are well-known to historians of Qing, so not much explanation is needed here. One recent published collection from the First Historical Archives, however, merits a brief mention: the 283-volume collection of Manchu-language archival materials from Qing Xinjiang (*Qingdai Xinjiang Manwen dang'an huibian*). This wealth of materials promises to change the ways we look at the history of Qing Xinjiang as well as history of eighteenth- and nineteenth-century Central Asia, and I have benefited greatly from this collection in my chapters on the Qing-Kokand borderland.<sup>31</sup>

The second body of sources is diplomatic documents exchanged between Qing and its tributary states. Qing and Chosŏn, as we will see in Part I of the dissertation, had the most

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<sup>30</sup> Beatrice S. Bartlett, "Research Note: The Newly Digitized Archives Program at China's Number One Historical Archives, Beijing," *Late Imperial China* 32, no. 1 (2011): 1-12; Mark C. Elliott, "The Manchu-Language Archives of the Qing Dynasty and the Origins of the Palace Memorial System," *Late Imperial China* 22, no. 1 (2001): 1-70.

<sup>31</sup> *Zhongguo diyi lishi dang'anguan and Zhongguo bianjiang shidi yanjiu zhongxin*, eds., *Qingdai Xinjiang Manwen dang'an huibian* (Guilin: Guangxi shifan daxue chubanshe, 2012) (QXMDH hereafter).

frequent and regular channel of interstate communications. The lateral communications (*ziwen*) between the Chosŏn king and the Qing Board of Rites (*Libu*) in Beijing were the norm of interstate communications. Lateral communications, within the Qing context, were horizontal documents exchanged between officials of equal status, unlike the vertical documents exchanged between superiors and inferiors. All the lateral communications between the Chosŏn king and the Qing Board of Rites were written in Classical Chinese, the official administrative language shared between the two courts. Fortunately for the researcher, many of these lateral communications have been preserved in a Chosŏn governmental publication called *Tongmun hwigo*. Originally published in 1784 and periodically updated until 1881, *Tongmun hwigo* was a collection of diplomatic documents that the Chosŏn court exchanged with the Qing court and Japan. It has since been reprinted by the National Institute of Korean History (Kuksa P'yŏnch'an Wiwŏnhoe) and fully digitized by the Northeast Asian History Foundation (Tongbuga Yŏksa Chaedan). *Tongmun hwigo* is also notable for preserving some routine memorials from early Qing that do not seem to have survived elsewhere.<sup>32</sup>

Qing and Vietnam, likewise, largely communicated through lateral communications written in Classical Chinese. Unlike the Chosŏn court, however, the Vietnamese court did not have direct access to the Qing Board of Rites. Most often, the Vietnamese court exchanged lateral communications with provincial officials of the three Qing provinces bordering northern Vietnam: Yunnan, Guangxi, and Guangdong. Qing provincial officials often attached these lateral communications to their palace memorials to the emperors, and some of these lateral communications have survived as attachments within the Qing central archives.

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<sup>32</sup> Kuksa P'yŏnch'an Wiwŏnhoe, ed., *Tongmun Hwigo*, reprint (Seoul: Kuksa P'yŏnch'an Wiwŏnhoe, 1978). The digitized version can be accessed via <http://contents.nahf.or.kr/id/NAHF.dh>.

As hinted above, Kokand entered the Qing tributary world at the height of Qing expansion in the 1750s. Perhaps due to this imperial self-confidence, the Qing court of the 1750s did not recognize any of the Central Asian polities that established tributary relations with it as states represented by kings, as Chosŏn and Vietnam were. Instead, they were regarded as “outer tribes” (*tulergi aiman*) ruled by chieftains—*bii* for Kirghiz nomads and *beg* for Kokand, for example.. Reflecting this low status within the tributary hierarchy, the Kokand begs reported to Qing officials in Xinjiang in a vertical manner. These documents, originally written in Chaghatay Turkic or Persian, were almost always translated into Manchu but sometimes into Classical Chinese as well. As in the Qing-Vietnamese case, some of these documents—whether original copies or in translation—survive as attachments to the palace memorials that Xinjiang officials sent to the emperors. With no proficiency in either Chaghatay or Persian, I have relied exclusively on the Manchu translations, which David Brophy has pointed out often involved much loss of nuance. Thus, my reconstruction of Qing-Kokand interactions has a more Qing centered perspective than that of other interactions, a situation I hope to remedy in the near future.<sup>33</sup>

The third group of sources consists of other published materials. The most important published materials consulted here are annals of the Qing and Chosŏn courts: *Qing shilu* and *Chosŏn wangjo sillok* (朝鮮王朝實錄). *Sillok* is especially important for providing some detailed information on the early history of Jin/Qing-Chosŏn relations as well as internal discussions within the Chosŏn court unavailable in Qing archives and diplomatic documents. Both these

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<sup>33</sup> David Brophy, “High Asia and the High Qing: A Selection of Persian Letters from the Beijing Archives,” in *No Tapping around Philology: A Festschrift in Honor of Wheeler McIntosh Thackston Jr. 's 70th Birthday*, ed. Alireza Korangy and Daniel J. Sheffield (Wiesbaden: Harrassowitz Verlag, 2014), 325–67.



annals have been fully digitized and are available online.<sup>34</sup> For the chapters on Vietnam, *Đại Việt sử ký toàn thư* (大越史記全書) and *Khâm định Việt sử thông giám cương mục* (欽定越史通鑑綱目) have been invaluable.<sup>35</sup>

Using these groups of sources, I have constructed a bilateral view of these interstate relations, ranging from the official documents exchanged between imperial and tributary courts to the self-perceptions and internal discussions within these courts. All these sources have contributed to the depth and breadth of this dissertation, allowing me to zoom in the details of each set of interstate relations and to compare all three sets of interstate relations.

### **III. Outline of the Dissertation**

This dissertation consists of three parts, each focusing on boundaries and jurisdictions in one of the three borderlands in question. Chapter two begins by analyzing wars between Qing and Chosŏn that resulted in a 1637 treaty delineating the subjects and domains of the two states. The Qing rulers, having just carved out a frontier khanate after decades of state-building and campaigns against their neighbors, sought above all to protect their newly acquired territories and subjects. These imperatives governed the ways the Qing and Chosŏn polities handled two recurrent issues. The first, subjecthood, concerned runaway Chosŏn and Han Chinese slaves from the Qing domain and Jurchen residents in the Chosŏn domain. The Chosŏn state, which initially protected these people, gradually succumbed to Qing pressure to send them back, thus

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<sup>34</sup> Both annals can be accessed through the Academia Sinica online database: <http://hanchi.ihp.sinica.edu.tw>.

<sup>35</sup> For the *toàn thư*, I have used the Chin Keiwa (Chen Ching-Ho), ed., *Daietsu Shiki Zensho: Kōgōbon* (Tokyo: Tōkyō Daigaku Tōyō Bunka Kenkyūjo Fuzoku Tōyōgaku Bunken Sentā, 1984) version. For the *cương mục*, I have used the version available on the digital collection of Vietnamese Nôm Preservation Foundation: <http://lib.nomfoundation.org/>.

acknowledging Qing claims that imperial prerogatives gave them ultimate jurisdiction over Qing subjects residing in tributary domains. This acknowledgment also influenced the second issue, territorial delineation. From 1637 to the mid-1800s, the Qing-Chosŏn borderland came to exhibit a much clearer level of physical demarcation, albeit favorable in every instance to Qing interests, than did Qing frontiers with Vietnam or Kokand.

Chapter three looks at interstate jurisdiction between Qing and Chosŏn. Reflecting its preoccupation with preventing infringements, from the 1630s to the 1770s the Qing state vigilantly investigated and punished Chosŏn subjects who illegally entered the Qing domain or engaged in illicit activities on Qing soil. This produced a joint jurisdiction, wherein Qing and Chosŏn judiciaries cooperated based on routine procedures drawn from precedents. But this was also an asymmetrical relationship, with the Chosŏn judiciary acting as the lower court to a Qing judiciary that reviewed the terms of adjudication and made all final decisions. Moreover, the Chosŏn judiciary, in contrast to its Qing counterpart, never asserted formal jurisdiction over foreigners entering its territory, merely repatriating Qing subjects in its territory.

Chapter four, which begins the second part of the dissertation, examines boundaries between the Qing empire and Vietnam. Because Vietnam voluntarily became a Qing tributary state in the 1660s, there was no treaty delineating the domains and subjects of the two states. A partial demarcation took place in the 1720s after a territorial dispute between the two states, but native chiefdoms in the borderland, only indirectly ruled by either state, constituted a “middle ground,” or buffer zone, that had been eliminated in the Qing-Chosŏn borderland. The consolidation of Qing rule over China proper in the 1680s gave rise to the Qing perception of its realm as unbounded and universal, which came to coexist with the early seventeenth-century view of a bounded Qing realm seen in chapter two. This universal pretension manifested itself in

at least two ways. First, the Qing state often encroached on the Vietnamese domain in cases concerning security and imperial prestige. Second, asserting its theoretical claim to rule over “all peoples under heaven,” the Qing often accepted Vietnamese who were bandits and rebels from the perspective of the Vietnamese state.

Chapter five looks at interstate jurisdictions between Qing and Vietnam. This borderland, far from the administrative centers of both states, saw only sporadic attention to interstate crimes until the early eighteenth century. With the Qing attempt in the 1720s to replace some native chieftains with Qing bureaucrats, however, interstate crimes began to receive more scrutiny. Without precedents for action and with less official reach, interstate jurisdiction here was less routinized than in the Qing-Chosŏn borderland and relied on more informal, ad hoc procedures. The Qing state repatriated some Vietnamese criminals but openly asserted jurisdiction over others, while the Vietnamese state mostly repatriated Qing fugitives, never openly asserting jurisdiction over them.

Chapter six, introducing Part III of the dissertation, examines boundaries between the Qing and Kokand states. Xinjiang was incorporated into the Qing domain during the height of imperial expansion in the 1750s. Here, an imperial vision of unbounded and unlimited frontier initially overshadowed the more linear and modest administrative boundaries of *karun* (guard post) lines. The existence in this region of nomadic Kirghiz tribes, some of whom moved freely between Kokand and Qing, defied an easy demarcation of peoples and domains. The Qing state, consistent with its expansive late seventeenth-century self-image, tolerated this ambiguity until the death of the Qianlong emperor in 1799. But his successors, recognizing the imperial overreach of the Qianlong reign (1736-95), gradually retreated to rely on fixed *karun* lines as the Qing-Kokand boundaries.

Chapter seven looks at interstate jurisdiction between Qing and Kokand, with a focus on Qing jurisdiction over Kokand subjects. Scholars have interpreted the 1835 Qing-Kokand agreement as the first unequal treaty signed by Qing that accorded extraterritoriality to foreign subjects residing in the Qing domain. However, this chapter shows that the 1835 agreement was merely a continuation and affirmation of a Qing policy that dated back to the 1760s in Xinjiang and the 1630s in other borderlands. The Qing state was willing to let the Kokand merchant community in Xinjiang or the Kokand state itself handle minor criminal cases involving Kokand subjects. But in cases that it deemed to be important, such as large-scale smuggling or aid to rebellions by Xinjiang Muslims, the Qing state did not hesitate to assert jurisdiction over Kokand subjects.

The dissertation's conclusion puts the three borderlands in an explicit comparative framework. The Qing-Korea borderland shows the clearest delineation of subjects and domains as well as the most routine procedures for interstate trials. Here practical arrangements most closely resembled post-1648 European practices, even though the underlying political/philosophical assumptions were incomparable. The Qing-Kokand borderland was more of an open frontier, where movement was relatively free and interstate justice summary, unilateral, and improvisational. The Qing-Vietnam borderland occupied an intermediate position. All three borderlands, however, had these characteristics in common: multiple and shifting conceptions of boundaries and jurisdiction, an asymmetrical relationship between Qing and tributary states, and elastic sovereignty. They show an early modern worldview that defies post-Westphalian norms of inter-state equality and non-interference in the internal affairs of fellow sovereign states.

To put this early modern imperial worldview in perspective, the next section of the conclusion compares Qing with two other Eurasian empires: Romanov Russia (1613-1917) and the Ottoman Empire (1299-1922). The comparison with Russia focuses on the imperial competition between the Qing and Russian empires, starting from their clashes in the Amur River region in the mid-seventeenth century and ending with the Russian conquest of Central Asia in the second half of the nineteenth century. The comparison with the Ottoman Empire, on the other hand, will concentrate more on the general shared features of imperial rule.

## CHAPTER II.

### **The First Qing Borderland: Boundaries in the Qing-Chosŏn Borderland, 1630s-1840s<sup>1</sup>**

In this chapter, I will look at how the Qing and Chosŏn states negotiated and maintained various boundaries in their borderland from the 1630s to the 1840s. The first section will analyze the two wars between Qing and Chosŏn that resulted in a 1637 treaty delineating the subjects and domains of the two states. The second section will then focus on the two groups of borderland residents—runaway slaves from the Qing domain and Jurchen residents in the Chosŏn domain—to see how the boundaries between Qing imperial and Chosŏn tributary subjects were negotiated. The third section will move on to the issue of the territorial boundary by looking at how the two states delineated their domains and then sought to maintain that delineation. In the last section, I will turn to other boundaries that existed in the borderland, thereby showing how these boundaries worked in relation to state boundaries as well as how both state and other boundaries could be crossed by residents of this borderland.

#### **I. The Development of Jin/Qing-Chosŏn Interstate Relations: 1595-1637**

The story of how the Jurchens under Nurhaci (努爾哈赤; 1559-1626) built the frontier khanate of Jin (1616-36) and how the Manchus under Hong Taiji (皇太極; 1592-1643) transformed it into the imperial dynasty of Qing (1636-1911) is a familiar one. Frederic Wakeman Jr.'s two-volume masterpiece on the Ming-Qing transition is perhaps the best account

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<sup>1</sup> For transliteration of Chinese terms, I have followed the pinyin system; for Korean, the McCune-Reischauer Romanization; and for Manchu, the Möllendorff system. The dates are given according to both the original lunar calendar and the Gregorian calendar.

of this history. In his narrative, Wakeman focused on two themes. First was the recognition of this transition as a historically contingent and drawn out process that required constant experimentation and adjustments on the part of emergent Qing. Second, and more directly relevant to this dissertation, was the vital role that the social milieu of the Liaodong frontier played on the Jin/Qing state-building. According to him, this was a frontier inhabited by “transfrontiersmen” who lived at the intersections of Ming, Jurchen, and Mongol ways of life.<sup>2</sup>

One aspect of the Liaodong frontier that has not garnered much attention in Anglophone scholarship on Ming-Qing transition, however, is the place of Chosŏn. Even though the importance of Chosŏn sources in reconstructing Jin history is often recognized, Chosŏn does not figure as an important actor in the narrative of Ming-Qing transition. In fact, Chosŏn constituted a major regional rival for a Jin state that was also hemmed in by the Ming state and various Mongol polities. Moreover, for the Qing state to become a credible imperial competitor with and eventually successor to the Ming state, the Qing state needed to incorporate tributary states and become the pivot of a regional world order that could rival the Ming tributary world. In that sense, Chosŏn’s incorporation as the first Qing tributary state in 1637 was an event that had a much broader spatial and temporal implication than previously considered.

In what follows, I will narrate the story of Ming-Qing transition from the perspective of the Jin/Qing-Chosŏn interstate relationship. By doing so, I will show that Chosŏn, far from being a mere “flank,” was an indispensable part of the transformation of the Jurchens from a tribal polity to a frontier khanate and eventually an empire. In the following narrative, I focus on three aspects of this interstate relationship from 1595 to 1637: the nature of the relationship, the

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<sup>2</sup> Frederic Wakeman, Jr., *The Great Enterprise: The Manchu Reconstruction of Imperial Order in Seventeenth-Century China* (Berkeley: University of California Press, 1985).

territorial boundary, and subjecthood. I will end the section with an analysis of the ceasefire agreement that established the tributary relationship between the Qing and Chosŏn states.

### **A. The Nature of the Relationship**

Any discussion of the Jin/Qing-Chosŏn interstate relationship must be preceded by a discussion of Ming-Chosŏn relations. As explained in the introduction, the picture of Korea as a model tributary, like other facets of the tributary system model, has come under increasing scrutiny recently. Donald Clark, for example, shows how Ming-Chosŏn tributary relations changed through several phases even while he maintains the view of Korea as a model tributary and the Ming period (1368-1644) as representative of the tributary system. There was the rocky first phase, which was characterized by the suspicion of the Hongwu emperor (r. 1368-99) towards the new Chosŏn dynasty (1392-1897). Then there was the more stable second phase that lasted until Toyotomi Hideyoshi's invasions of the Korean Peninsula (1592-1598).<sup>3</sup>

Anglophone historians of East Asia are increasingly paying attention to Hideyoshi's invasions as regional or world historical events that had far-reaching ramifications for the East Asian region.<sup>4</sup> Among those ramifications was the sense of debt and gratitude among the Chosŏn elite towards the Ming for its military aid against Hideyoshi's forces, which was neatly summed up in the phrase "the grace of rebirth" (Ko. *chaejo chi ũn*, Ch: *zaizao zhi en*).<sup>5</sup> Another

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<sup>3</sup> Donald N. Clark, "Sino-Korean Tributary Relations under the Ming," in *The Cambridge History of China, Volume 8, The Ming Dynasty, 1368-1644, Part 2*, ed. Frederick W. Mote and Denis Twitchett (New York: Cambridge University Press, 1998), 272-300.

<sup>4</sup> Kenneth M. Swope, *A Dragon's Head and a Serpent's Tail: Ming China and the First Great East Asian War, 1592-1598* (Norman: University of Oklahoma Press, 2009); JaHyun Kim Haboush, *The Great East Asian War and the Birth of the Korean Nation* (New York: Columbia University Press, 2016).

<sup>5</sup> Han Myŏng-gi, *Imjin Waeran kwa Han-Chung kwan'gye* (Seoul: Yŏksa Pip'yŏngsa, 1999), 67-87.



ramification relevant to our discussion was the weakening of both the Chosŏn state, whose subjects were ravaged by years of warfare, and the Ming state, which expended enormous sums of money and manpower during the war. This weakening of state power and social turmoil were most apparent in the Ming-Chosŏn borderland.<sup>6</sup>

It was in this context of Ming-Chosŏn relations that Nurhaci began his state-building efforts. Nurhaci was a minor chieftain of the Jianzhou Jurchens who built his state through his military genius and institutional savvy. The first phase of his career lasted from 1583, when he began his military career, to 1618, when he began his Liaodong campaign against the Ming. During this phase, his focus was on Jurchen unification, alliance with the Mongols, and institution building, the combination of which resulted in the founding of the Jin (*Ma. aisin*) khanate in 1616. This was a declaration of independence from the Ming world order in which the Jurchens had participated as tributary polities, and Nurhaci had succeeded in carving out a frontier khanate.

It was early in this phase that Nurhaci made his first overtures towards the Chosŏn state, as Nurhaci's campaigns against other Jurchen polities brought Nurhaci's domain and the Chosŏn domain into direct contact along the Yalu River. In 1595, Nurhaci communicated with the Chosŏn state for the first time by repatriating 14 Chosŏn trespassers, only to learn that Chosŏn soldiers had killed 27 Jurchen trespassers around the same time. Over the next year the two states exchanged envoys and agreed on the future repatriation of trespassers. The Chosŏn court, however, rejected Nurhaci's wish to establish a formal diplomatic relationship, citing the Ming prohibition on private relations between tributaries. The Chosŏn court granted its main envoy Sin

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<sup>6</sup> Masato Hasegawa, "War, Supply Lines, and Society in the Sino-Korean Borderland of the Late Sixteenth Century," *Late Imperial China* 37, no. 1 (2016): 109–52.

Ch'ung-il (申忠一; 1554-1622), a minor official of rank 6b, the temporary post of the Manp'o (滿浦; in P'yongan) garrison commander (*chōmsa*; rank 3a), and Manp'o served as the hub for the Jurchen-Chosŏn relations for the next two decades. The nature of Jianzhou Jurchen-Chosŏn relationship at this point was clearly unequal, as the Chosŏn court saw Nurhaci as being below even its own provincial governor (*kwanch'alsa*; rank 2b), but Nurhaci was content that the Chosŏn court had sent an envoy at all, according to Sin.<sup>7</sup>

The Chosŏn policy towards Nurhaci was grounded in its overall Jurchen policy, which was based on a patron-client relationship. Since the early days of the dynasty, the Chosŏn court had used the institution of military post appointment, in which the Chosŏn king granted the Jurchen chieftains Korean military posts and established hierarchical relationships with them. These chieftains were permitted regular trips to Hanyang (漢陽; the Chosŏn capital and today's Seoul) for audience and trade. It was a similar system to the Ming *weisuo* system, and some of the Jurchen chieftains in fact received posts from both the Ming and Chosŏn states. When the Ming court became aware of this situation, it became a diplomatic issue between the Ming and Chosŏn states. Eventually, the Chosŏn court acquiesced to the Ming demand that it cut its communications with the Jianzhou Jurchens after the Ming-Chosŏn joint campaign against the Jianzhou Jurchens in 1467. The Chosŏn court, however, kept its loose hierarchical relations with other Jurchen chieftains, using them as frontier buffers and sources of information.<sup>8</sup>

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<sup>7</sup> Kye Sŭng-bōm, "Hyangt'ongsa Ha Se-guk kwa Chosŏn ūi sōnt'aek," *Manju yŏn'gu* 11 (2011): 179–208; Kim Chong-wŏn, *Kŭnse Tong Asia kwangyesa yŏn'gu: Cho-Ch'ōng kyosŏp kwa Tonga samguk kyoyŏk ūl chungsim ūro* (Seoul: Hyeon, 1999), 25-43.

<sup>8</sup> Han Sōng-ju, *Chosŏn chŏn'gi sujik Yŏjinin yŏn'gu* (Seoul: Kyōngin Munhwasa, 2011); Kenneth R. Robinson, "Residence and Foreign Relations in the Peninsular Northeast during the Fifteenth and Sixteenth Centuries," in Sun Joo Kim, ed., *The Northern Region of Korea: History, Identity, and Culture* (Seattle: Center for Korea Studies, University of Washington, 2010), 18-36; Adam Clarence Immanuel Bohnet, "Migrant and Border Subjects in Late Chosŏn Korea" (Ph. D. dissertation, University of Toronto, 2008), 40-58.

Even the founding of the Jin state in 1616 did not fundamentally change the Jurchen-Chosŏn relations. From the Chosŏn perspective, Nurhaci was still a chieftain (Ko. *ch'u*, Ch. *qiu*), and his followers were still bandits (Ko. *chŏk*, Ch. *zei*) or barbarians (Ko. *ho*, Ch. *hu*). In fact, according to Yi Yŏng-ok, the state title Jin does not even appear in the Annals (*sillok*) during the reign of Prince Kwanghae (光海君; 1608-23).<sup>9</sup>

Rather, the real turning point in the relations came in 1618, when Nurhaci declared his “Seven Grievances” against the Ming and attacked the Ming garrison of Fushun (撫順). With this attack, Nurhaci was directly challenging Ming hegemony in the region as well as the Ming world order in which Chosŏn was an integral member. Thus, the attack on Fushun turned the Jin state into an enemy of the Chosŏn state. Nothing illustrates this point better than the 1619 Battle of Sarhū, in which 13,000 Chosŏn soldiers under the command of Kang Hong-nip (姜弘立; 1560-1627) fought on the Ming side. Chosŏn participation in this disastrous battle officially made the Chosŏn state a part of the Ming-led coalition against the Jin state.<sup>10</sup> By 1621, the Jin annexation of Liaodong was complete, and Nurhaci’s frontier khanate had incorporated a million Liaodong Chinese into its state. This conquest changed the nature of the Jin khanate. Despite the difficult Jurchen-Chinese relations, it was now a multiethnic state with a more solid agricultural base, and it had proven itself to be a regional rival of the Ming state. By the time Nurhaci died in 1626, shortly after his defeat at Ningyuan (寧遠) at the hands of Yuan Chonghuan (袁崇煥; d.

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<sup>9</sup> Yi Yŏng-ok, “Kŭ irŭm pullŏjugi: Sillok ūi Chosŏn-Ch’ŏngnara hoch’ing punsŏk,” *Myŏng-Ch’ŏngsa yŏn’gu* 38 (2012): 59–88.

<sup>10</sup> Evelyn S. Rawski, *Early Modern China and Northeast Asia: Cross-Border Perspectives* (Cambridge: Cambridge University Press, 2015), 67-9.

1630), he had built a formidable regional polity that would form the basis for the future Manchu imperial state.<sup>11</sup>

In the meantime, Jin hegemony over Manchuria changed Nurhaci's attitude towards the Chosŏn state. Right after the Battle of Sarhū, Nurhaci as the Jin khan sent a letter to the Chosŏn king, asking that the king answer in a letter whether he would join Nurhaci's campaign against the Ming. The reply from Chosŏn came in the name of the P'yŏngan (平安) governor and only said that the two states should watch over their boundaries and live in peace.<sup>12</sup> For the next two years, as Nurhaci's Liaodong (遼東) campaign progressed, Nurhaci kept demanding that the Chosŏn state abandon the Ming and join the Jin, even using the expression "imperial edict" (Ko. *cho*, Ch. *zhao*) in a letter delivered to Ŭiju (義州; in P'yŏngan). As Ŭiju had been the Chosŏn hub for relations with the Ming, Nurhaci was asking Chosŏn to accept the Jin state as the new hegemon in the region, which Chosŏn was unwilling to do.<sup>13</sup>

The coup in the Chosŏn court in 1623 ousted Prince Kwanghae, who had shown some willingness to leave the Ming world order by refusing Ming edicts to send troops and drive the Liaodong refugees away from the Chosŏn domain. King Injo (仁祖; r. 1623-49) was installed as the new king, and he proved to be a staunch supporter of the Ming against the Jin, which further alienated the Chosŏn and Jin states from each other.<sup>14</sup>

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<sup>11</sup> Wakeman, Jr., *The Great Enterprise*, 49-86; Gertraude Roth Li, "State Building before 1644," in *The Cambridge History of China, Volume 9, Part 1: The Ch'ing Empire to 1800*, ed. Willard J. Peterson (New York: Cambridge University Press, 2002), 27-51.

<sup>12</sup> *Qing shilu* (QSL hereafter), *Manzhou shilu* (Manzhou hereafter) 5: 253b-256a, 256b-258a; *Chosŏn wangjo sillok* (CWS hereafter) Gwanghaegun (Chŏngjoksan version) 139: 14a (11.4.16=5/29/1619).

<sup>13</sup> Kye Sŭng-bŏm, "Hyangt'ongsa Ha Se-guk kwa Chosŏn ũi sŏnt'aek," 189-201.

<sup>14</sup> Han Myŏng-gi, *Imjin Waeran kwa Han-Chung kwan'gye*, 305-73.

This alienation resulted in the first war between the two states. In 1627, Hong Taiji, the new Jin khan, sent 30,000 troops to the Korean Peninsula, listing the following grievances: “troop incursions across their mutual border; Chosŏn’s refusal to repatriate political and economic refugees from Liaodong; its participation in the 1619 Ming offensive against the Later Jin, and especially the harboring of a former Ming military officer, Mao Wenlong, who built a regional base within Chosŏn territory from which to launch attacks on Liaodong; and Chosŏn’s failure to send condolences upon Nurhaci’s death in 1626.”<sup>15</sup>

The subsequent war, which lasted about two and half weeks, resulted in a ceasefire and the establishment of the first formal interstate relationship between the two states. The protracted nature of the discussion leading to the establishment of this interstate relationship shows the vital importance of interstate recognition in Jin state-building efforts. The Jin demanded that the Chosŏn state sever its relationship with the Ming, which the Chosŏn state flatly refused to do. The Jin accepted the status quo on that point but objected to the Chosŏn use of the Ming reign title (*nianhao*) of Tianqi in its communications, claiming that Jin was not a tributary state of the Ming, and insisted on the use of the Jin reign title of Tiancong. As a compromise, the Chosŏn state used the sexagenary cycle (*ganzhi*) in its future communications with the Jin, thereby proclaiming more of a neutral stance on the Ming-Jin conflict.<sup>16</sup> We can see clearly here that the Jin challenge to Ming hegemony took place not only on battlefields but also through diplomatic documents.

The Jin also insisted on an Inner Asian ritual involving the sacrifice of a black ox and a white horse as well as the taking of an oath. The Chosŏn court, considering this practice barbaric,

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<sup>15</sup> Rawski, *Early Modern China and Northeast Asia*, 69.

<sup>16</sup> CWS, Injo 15: 22b-23a (5.2.2=3/18/1627), 25b-26a (5.2.5=3/21/1627), 29a (5.2.7=3/23/1627), 42a (5.2.21=4/6/1627), 43b (5.2.23=4/8/1627).

refused at first but eventually acquiesced. But it did so only after finding precedents in the Spring and Autumn Period (ca. 771-476 BC), thereby translating this ritual from a barbaric one to an ancient Chinese one.<sup>17</sup> The ritual took place on April 15, 1627, and there are striking similarities between this oath and the Jianzhou Jurchen oaths with other Jurchen polities such as the Yehe, Hada, Ula, and Hoifa, as well as those with Mongol polities such as the Khalkha and the Khorchin. It seems clear that the Jin state sought to move the Chosŏn state further away from the Ming world and into the Jin sphere of influence in Inner Asia through this ritual.<sup>18</sup>

In any case, both states agreed to regard each other as legitimate states on equal footing, with Hong Taiji to be regarded as the elder brother of King Injo. Contrary to the common assumption that East Asia has always been dominated by a strong China that lorded its power over other East Asian states by imposing tributary obligations, there were many Asian precedents for such equal interstate relationships. From the tenth to thirteenth centuries, for example, a multi-state system existed in East Asia, in which China was one state among equals. This particular historical precedent was familiar to the Ming, Jin, and Chosŏn courts.<sup>19</sup> In the next decade, however, interstate conflicts over the territorial boundary and subjecthood as well as the continued success of the Jin imperial project, resulted in a war that would fundamentally change the nature of the relationship between the two states.

## **B. The Territorial Boundary**

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<sup>17</sup> CWS, Injo 15: 47a-48a (5.2.30=4/15/1627), 48a-49a (5.3.1=4/16/1627), 49a-50a (5.3.2=4/17/1627), 50a-51b (5.3.3=4/18/1627).

<sup>18</sup> See QSL Manzhou 2: 104b-106a for an oath with the Yehe, Hada, Ula, and Hoifa; QSL Manzhou 6: 285a-288a for an oath with the Khalkha; and QSL Manzhou 7: 366a-368b for an oath with the Khorchin.

<sup>19</sup> For such precedents, see Morris Rossabi, ed., *China among Equals: The Middle Kingdom and Its Neighbors, 10th-14th Centuries* (Berkeley: University of California Press, 1983).

Nurhaci was a state builder who sought to carve out a frontier khanate in the face of competition from three political entities, the Ming dynasty, Chosŏn, and the Mongols. Interstate recognition of his subjects and territorial domain were therefore of utmost importance to him, and these issues were consistently reflected in Nurhaci's interstate policies early in his career. In 1608, for example, Nurhaci and two Ming officials in Liaodong erected steles along the Ming-Jurchen boundary, making an oath to not trespass across the boundary.<sup>20</sup> During the ceasefire of 1627, the Jin and Chosŏn states had reiterated the principle of each state's defending its own boundary (*ge shou fengjiang*). Encroachment on the domain of the other state was explicitly prohibited, and the boundary was understood to correspond roughly to the Yalu River.

The ceasefire of 1627, however, did not result in a stable territorial boundary between the Jin and Chosŏn states. Even though both states had agreed to see the Yalu River as this boundary and not encroach on it, the presence of the Ming general Mao Wenlong (毛文龍; d. 1629) in the Chosŏn domain, on the island of Kado (椴島; Pidao 皮島 in Chinese sources) near the mouth of the Yalu River, complicated the issue. Mao was a Ming officer who stationed himself on the island of Kado after being driven out of Liaodong in 1621. Mao recruited Liaodong refugees who had fled to the Chosŏn domain and engaged in guerilla warfare against the Jin state. His initial success earned him support from both the Ming and Chosŏn states, which allowed him to set up a semi-personal regime in Kado. In her recent monograph, Evelyn Rawski compared Nurhaci with contemporary maritime merchants/warlords such as Wang Zhi, Li Dan, and Zheng Zhilong. The same comparison can be extended to Mao.<sup>21</sup>

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<sup>20</sup> QSL Manzhou 3: 139a-b.

<sup>21</sup> Rawski, *Early Modern China and Northeast Asia*, 77-87. On Mao Wenlong, see Arthur W Hummel, ed., *Eminent Chinese of the Ch'ing Period (1644-1912)* (ECCP hereafter) (Washington: United States Government Printing Office, 1943), 567-8.

In fact, a contingent of the Jin army was stationed near Ŭiju even after the ceasefire on the pretext of guarding the region against Mao's troops. When the Chosŏn court requested the complete withdrawal of Jin troops from the Chosŏn domain, Hong Taiji sought assurance from the Chosŏn state that it was not going to let Mao's troops land on the Korean mainland. The Chosŏn court intentionally gave an ambiguous answer, promising that it would defend its own domain and not let others occupy it.<sup>22</sup>

After the withdrawal of the Jin troops, however, Mao's troops landed on the Korean mainland so frequently that some Jin envoys to Chosŏn even encountered them and engaged in battle with them in the Chosŏn domain. Moreover, the Jin troops crossed into the Chosŏn domain to engage Mao's troops on many occasions.<sup>23</sup> Even the execution of Mao by the Ming general Yuan Chonghuan in 1629 did not solve the problem, for Kado continued to operate as a Ming outpost under Mao's lieutenants until 1637. Until this changed, the territorial boundary between the Jin and Chosŏn states was bound to remain more of an ideal than a reality.<sup>24</sup>

### C. Subjecthood

During the ceasefire of 1627, both states agreed to repatriate the subjects of the other state who had fled from their own domains.<sup>25</sup> To Nurhaci and Hong Taiji, whose state-building efforts were centered on military conquests, accumulating new subjects and protecting them was

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<sup>22</sup> CWS Injo 17: 6b-7b (5.8.14=9/22/1627), 17: 8a (5.8.16=9/24/1627).

<sup>23</sup> CWS Injo 17: 53b (5.12.24=1/30/1628), 17: 54a (5.12.25=1/31/1628), 18: 28b (6.2.20=3/25/1628), 25: 49a-50a (9.11.22=1/13/1632), 28: 41b-42a (11.8.29=10/1/1633), (11.11.27=12/27/1633), 29: 16a (12.4.24=5/20/1634), 31: 69a (13.12.4=1/11/1636).

<sup>24</sup> CWS Injo 34: 44a (15.4.14=5/8/1637).

<sup>25</sup> Yi hwa-cha (Li Huazi), *Cho-Ch'ŏng kukkyŏng munje yŏn'gu* (P'aju: Chimmundang, 2008), 36-46; CWS, Injo 15: 25b-26a (5.2.5=3/21/1627), 15: 37b (5.2.15=3/31/1627), 15: 50a-51b (5.3.3=4/18/1627), 16: 39a (5.5.30=7/12/1627).



at least as important as expanding and defending their territorial domain. In his first letter to King Injo after the ceasefire, for example, Hong Taiji specifically claimed three groups of people as his subjects to be returned if they fled to the Chosŏn domain: Jurchens, the Han Chinese of Liaodong, and Chosŏn subjects who had been captured in the 1627 invasion.<sup>26</sup> The Chosŏn court often contested his claim.

The two states disagreed most on the subjecthood of the Chosŏn prisoners of war. The Jin state considered the captives, who had already shaved their foreheads in the Jurchen fashion and submitted, as its rightful possessions. Thus, the Chosŏn state would have to return these runaway slaves or purchase them from their masters at appropriate prices. The Chosŏn state, on the other hand, still considered these people to be Chosŏn subjects. Furthermore, it argued that turning them away would go against Confucian principles (*yili*), as these people had risked their lives to come home to their families. In short, the Chosŏn captives were Chosŏn subjects because of their former status as Chosŏn subjects and their family ties.<sup>27</sup> This basic disagreement would become a cause of great tension between the two states. When the Jin state made an official request in 1628 for repatriation of 1,300 runaways believed to have fled to Chosŏn, for example, the Chosŏn court recognized that hiding the runaways might jeopardize the peace between the two states and even result in another war. The Chosŏn court eventually decided on making only a minimal gesture by returning five runaways whose residence in Ŭiju was already known to the Jin state. Hong Taiji did not press the issue further for the time being, but the Chosŏn captives would remain an issue for as long as the two states held dissenting views on their subjecthood.<sup>28</sup>

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<sup>26</sup> QSL Taizong 3: 45b-46a (TC1.5.5=6/17/1627); CWS Injo 16: 39a (5.5.30=7/12/1627).

<sup>27</sup> CWS Injo 17: 6b-7b (5.8.14=9/22/1627), 17: 8a (5.8.16=9/24/1627), 18: 34a-b (6.2.28=4/2/1628), 18: 46a (6.4.3=5/6/1628), 18: 56a-57a (6.5.26=6/27/1628), 18: 64a (6.6.23=7/23/1628), 19: 29b-30b (6.9.27=10/23/1628).

<sup>28</sup> CWS Injo 18: 64a (6.6.23=7/23/1628), 19: 2a-b (6.7.6=8/5/1628), 19: 29b-30b (6.9.27=10/23/1628), 20: 20a-21a (7.4.11=5/3/1629), 22: 48a (8.6.7=7/16/1630), 25: 49a-50a (9.11.22=1/13/1632), 27: 14a-b (10.9.17=10/30/1632).

The two states also disagreed on the subjecthood of the Han Chinese of Liaodong. This disagreement had been an issue ever since the success of the Liaodong campaign prompted many Liaodong refugees to flee to the Chosŏn domain.<sup>29</sup> The Jin state, having taken most of Liaodong away from Ming control, considered all residents of Liaodong as its rightful booty. In 1621, after the Jin captured Liaoyang, Nurhaci declared to the Chosŏn court: “Return . . . all the people of Liaodong. Now the officials and people of Liaodong have all shaved their heads and submitted (*uju fusifi dahaha*).”<sup>30</sup>

The Chosŏn state objected. These people were still Ming subjects, and Chosŏn, as a tributary state of Ming China, was obligated to protect them. This sense of tributary obligation, we might note, had been further strengthened by the notion that the Chosŏn state owed its survival to the Ming military assistance during Toyotomi Hideyoshi’s invasions in the late sixteenth century.<sup>31</sup> From the Chosŏn perspective, the 1627 ceasefire agreement, which had recognized Chosŏn’s tributary relationship with the Ming, reaffirmed the validity of this Chosŏn position. Thus, the Chosŏn state did only the most perfunctory job of repatriating the Han Chinese of Liaodong, preferring to let them stay on the Chosŏn mainland or join the Ming outpost on Kado Island. The Jin state was aware of this situation and accused the Chosŏn court of breaching the agreement between the two states, as it considered these Han Chinese now to be its subjects.<sup>32</sup>

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<sup>29</sup> Bohnet, “Migrant and Border Subjects in Late Chosŏn Korea,” 92-108.

<sup>30</sup> QSL, Manzhou 7: 330b.

<sup>31</sup> Han Myŏng-gi, *Imjin Waeran kwa Han-Chung kwan'gye*; Kye Sŭng-bŏm, *Chosŏn sidae haeoe p'abyŏng kwa Han-Chung kwan'gye: Chosŏn chibaech'ŭng ūi Chungguk insik* (Seoul: P'urun Yoksa, 2009).

<sup>32</sup> CWS Injo 20: 14b-15a (7.3.9=4/2/1629), 20: 20a-21a (7.4.11=5/3/1629), 22: 32b-33a (8.4.26=6/6/1630), 27: 19a-b (10.10.2=11/13/1632), 28: 3a-b (11.1.25=3/4/1633), 28: 14a-15a (11.3.6=4/13/1633), 28: 21a-b (11.4.28=6/4/1633), 32: 30a-31b (14.6.17=7/19/1636).

Finally, the two states disagreed on the definition of the Jurchens. Both states agreed that the Jurchens who had already pledged allegiance to the Jin state before 1627 were Jin subjects. The Chosŏn state, for example, had no qualms about repatriating two Jurchens who fled to the Chosŏn domain in 1628.<sup>33</sup> The disagreement was over the Jurchens who were residing in the Chosŏn domain as of 1627.

Until the sixteenth century, the Chosŏn state maintained a comprehensive Jurchen policy that distinguished between the immigrant (Ko. *hyanghwa*, Ch. *xianghua*) and non-immigrant Jurchens as well as between the Jurchens living north and south of the Yalu and Tumen Rivers. As Kenneth Robinson has shown, the two sets of boundaries—personal and territorial—did not always correspond.<sup>34</sup> For our discussion, this means that when Nurhaci began to focus his attention on becoming the ruler of all Jurchens in the late sixteenth and early seventeenth century, some Jurchens were living near or within the Chosŏn territorial boundaries of the Yalu and Tumen Rivers. This situation made Nurhaci's quest for Jurchen unification an interstate issue. In 1609, for example, Nurhaci made a claim over the Jurchens living in and near the Chosŏn domain when he petitioned the Wanli emperor as follows: "The Warkas residing along the Chosŏn border are all mine (*miningge*). Let [Chosŏn] find and send them to me." According to this record, the Chosŏn court ended up repatriating 1,000 households of Warkas to Nurhaci.<sup>35</sup>

Nurhaci's Jurchen unification took the form of political submission following military conquests. Nurhaci's campaigns against the Ula Jurchens, based north of the Tumen River, are especially relevant here. To mobilize their manpower, both sides heavily recruited the Jurchens

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<sup>33</sup> CWS Injo 18: 17a (6.1.25=2/29/1628).

<sup>34</sup> Robinson, "Residence and Foreign Relations in the Peninsular Northeast during the Fifteenth and Sixteenth Centuries."

<sup>35</sup> QSL, Manzhou 3: 140b-141a.

living near the Tumen River. Those who wished to avoid enlistment sought to move south of the Tumen River and settle in the Chosŏn domain, but the Chosŏn court was more concerned about defending its frontier from all Jurchens and turned them away. With Nurhaci's ultimate triumph over the Ula in 1613, he consolidated his rule over the Jurchens north of the Tumen River with Chosŏn acquiescence.<sup>36</sup>

From the Chosŏn point of view, however, the Jurchens living in the Chosŏn domain had given allegiance to the Chosŏn state and lived as Chosŏn subjects for generations, even intermarrying with ethnic Koreans. Because their loyalty, place of residence, and family ties connected them to the Chosŏn state, these people were different from the Jurchens under Jin rule and should remain Chosŏn subjects. In 1633, for example, the Chosŏn state made it clear that it could not send the Jurchens who had been living in the Chosŏn domain since before 1627 to the Jin domain.<sup>37</sup>

From the Jin point of view, however, these people formed a part of the larger Jurchen community of the Eight Banners, which was the backbone of the Jin state and would form the source of what Mark Elliott calls Qing "ethnic sovereignty." According to Elliott, ethnic sovereignty and Neo-Confucian legitimacy formed two foundations of Qing imperial authority. Because their heritage and kinship linked them to the Jin state, these people should be a part of the multiethnic but Jurchen-centered Jin state.<sup>38</sup> Hong Taiji, for his part, made it clear that the

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<sup>36</sup> Kye Sŭng-bŏm, *Choson sidae haeoe p'abyong kwa Han-Chung kwan'gye*, 156-62.

<sup>37</sup> CWS Injo 26: 31a (10.3.29=5/17/1632), 27: 14a-b (10.9.17=10/30/1632), 27: 19a-b (10.10.2=11/13/1632), 28: 14a-15a (11.3.6=4/13/1633), 28: 24b-25a (11.5.21=7/8/1632), 28: 41a-b (11.8.16=9/29/1632), 29: 7b (12.2.28=4/6/1633), 29: 7b-8a (12.2.29=4/7/1633), 29: 10b (12.3.15=4/22/1633).

<sup>38</sup> Mark Elliott, *The Manchu Way: The Eight Banners and Ethnic Identity in Late Imperial China* (Stanford, CA: Stanford University Press, 2001), 4-8.

Jurchens in Korea were an indispensable part of his state. In a 1632 letter to King Injo, he made a clear distinction between the Chosŏn captives and the Jurchens, stating that he would stop demanding that the Chosŏn court return runaway Chosŏn captives, but not the Jurchens, who were linked by “flesh and blood.” In 1634, a Jin envoy in search of these Jurchens stated that even though these Jurchens had lived in Chosŏn, they were originally Jurchen and thus had nothing to do with Chosŏn.<sup>39</sup>

In sum, we see the multi-dimensional nature of subjecthood during this period. Both states listed many factors, such as submission, heritage, blood relations, or residence, in claiming these groups of people as their own subjects because subjecthood could not be determined by single factors in multiethnic states like Jin and Chosŏn. As long as the two states’ perspectives on these groups of people were so disjointed, no real categorical distinction could be made between Chosŏn subjects and Jin subjects. Such disagreements in claims of subjecthood would not be resolved until well after the Chosŏn state was forced to become a Qing tributary state in 1637, when it had to accept the Qing delineation between Qing subjects and Chosŏn subjects.

#### **D. The Establishment of the First Qing Tributary Relations: The Tributary Treaty of 1637**

The tension between the two states, which had been exacerbated by conflicts arising from the issues outlined above, was further heightened as the Jin state began insisting to the Chosŏn state on Jin equality vis-à-vis the Ming.<sup>40</sup> These imperial pretensions from the Jin eventually culminated in the proclamation of the Qing empire in 1636. For it to become a truly universal

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<sup>39</sup> CWS Injo 27: 14a-b (10.9.17=10/30/1632), 28: 24b-25a (11.5.21=7/8/1632), 29: 7b-8a (12.2.29=4/7/1633), 29: 10b (12.3.15=4/22/1633).

<sup>40</sup> CWS Injo 27: 29a (10.10.30=12/11/1632), 27: 30b (10.11.6=12/17/1632), 27: 31a-b (10.11.13=12/24/1632), 27: 34a (10.11.18=12/29/1632), 27: 40a (10.12.24=2/2/1633), 28: 14a-15a (11.3.6=4/13/1633), 31: 67b (13.11.12=12/20/1635), 31: 76a-77b (13.12.30=2/6/1636).

empire, this new Qing state needed not only to defeat the Ming state but also to incorporate tributary components of the Ming world order. That is why Hong Taiji, even after he took the dragon throne following the recommendation of his Han officials, Manchu princes (*beile*), and allied Mongol princes, decided to send a large mission consisting of Qing officials and Mongol princes to the Chosŏn court to declare the new Qing order. The Chosŏn court refused to accept this new order, which would downgrade the Chosŏn state to an inferior of the Qing state and the Chosŏn king to an equal of Manchu and Mongol princes.

Now the Qing state would attempt to corroborate its imperial claim through the actual submission of the Chosŏn state and its incorporation into the new Qing imperial order.<sup>41</sup> In December 28, 1636, Hong Taiji personally led a march into Chosŏn with more than 100,000 soldiers, leading the Chosŏn court to flee Hanyang by January 9, 1637. As many Korean historians have pointed out, the 1637 Manchu invasion of Korea was an important first chapter in Qing imperial formation. However, rather than looking at this war as merely a step on the path to the Qing campaigns against the Ming, it is important to recognize it as the first war launched in the name of the Qing empire, as Evelyn Rawski and a few Korean scholars have done recently.<sup>42</sup> Looking at Hong Taiji's imperial edict from February 22, 1637, is instructive in this sense.

Most immediately, this edict urged King Injo to come out of Namhan Fortress, where the Chosŏn court had taken refuge, and surrender as a tributary ruler. This edict also set the terms of the new tributary relationship between the two states. There were a few measures that were

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<sup>41</sup> CWS Injo 32: 8b (14.2.16=3/22/1636), 32: 10a-b (14.2.24=3/30/1636), 33: 11b (14.3.1=4/1/1636), 32: 22b-23b (14.4.26=5/30/1636), 32: 27b (14.5.26=6/28/1636), 32: 30a-31b (14.6.17=7/19/1636).

<sup>42</sup> Kim Sŏn-min (Seonmin Kim), "Insam kwa kangyŏk: Hugŭm-Ch'ŏng ũi kangyŏginsik kwa taewegwan'gye ũi pyŏnhwa," *Myŏng-Ch'ŏngsa yŏn'gu* 30 (2008): 227–55; Song Mi-ryŏng, "Ch'ŏnch'ong yŏn'gan(1627-1636yŏn) chibaech'eje ũi hwangnipkwajŏng kwa Chosŏnjŏngch'aek," *Chungguksa yŏn'gu* 54 (2008): 161–88; Rawski, *Early Modern China and Northeast Asia*.

meant to ensure full Chosŏn participation in the Qing campaign against the Ming, such as holding Chosŏn princes as hostages or requiring the Chosŏn state to send out troops and ships for future Qing campaigns against the Ming. These measures would soon become obsolete with the fall of the Ming dynasty in 1644. At the same time, this edict laid out a few principles that essentially formed the backbone of the Qing-Chosŏn tributary relationship for more than two centuries. Not only that, as I will explore in more detail below, this ceasefire reads like a treaty agreement at many points and in fact shares many elements in common with the later Qing-Russian Treaty of Nerchinsk (1689), often considered the first treaty that the Qing state signed with a foreign state.

First, the edict ordered the Chosŏn state to begin a tributary relationship with the Qing state. The Chosŏn state was to cut all tributary ties to the Ming empire. It had to stop using the Ming reign title (*nianhao*) and give up the patent of investiture (*gaoming*) and the seal (*ceyin*) that it had received from the Ming. Instead, it was to accept the Qing calendar system (*zhengshuo*) and enter the Qing tributary world in both spatial and temporal senses. Within this new relationship, the Chosŏn state was to observe the same forms of documents and rituals as it had in its previous relationship with the Ming. The Qing state was finally taking the Chosŏn state from the Ming tributary world.

Second, the edict claimed two groups of people as Qing subjects: the Chosŏn captives and the Warka people. If the captives fled back to the Chosŏn domain after having entered the Qing domain, they would have to be repatriated or bought from their owners. As for the Warka, a tribal group forming the Wild Jurchens during the Ming period, who lived in the Chosŏn domain, they were to be sent to the Qing.<sup>43</sup> If the Warka tried to return to Chosŏn after repatriation to

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<sup>43</sup> Li, "State Building before 1644," 10.

Qing, they would also have to be repatriated. Never again was the Chosŏn state to claim them as its subjects. Hong Taiji thus sought to secure the allegiance of these borderland subjects, who so far had formed a “Middle Ground” in this borderland and thus threatened the security of his state.<sup>44</sup> Hong Taiji and later Qing rulers, as we will see below, came to consider this provision the most important one in the ceasefire agreement. Here, I would like to stress that this provision, in both its language and perceived importance, is completely in line with article IV of the Treaty of Nerchinsk, which stipulated mutual repatriation of deserters from 1689 on. As Andrey Ivanov has recently demonstrated, the negotiations leading to Nerchinsk clearly show that securing the loyalty of mobile borderland subjects was more important than delineating the territorial boundary for both states.<sup>45</sup>

Nonetheless, and third, the edict set the Yalu River as the territorial boundary between the Qing domain and the Chosŏn domain. As soon as the Chosŏn captives crossed the Yalu River, they would not be allowed to leave the Qing domain. The Yalu River clearly served as the point of no return and the beginning of the Qing domain. In short, this edict established some basic protocols for the Qing-Chosŏn tributary relationship, especially regarding issues of subjecthood and boundaries.<sup>46</sup>

Protocols, however, do not automatically translate into practice. In the following sections, I will look at how the Qing and Chosŏn states implemented these protocols in practice by

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<sup>44</sup> Richard White, *The Middle Ground: Indians, Empires, and Republics in the Great Lakes Region, 1650-1815* (New York: Cambridge University Press, 1991).

<sup>45</sup> Andrey V. Ivanov, “Conflicting Loyalties: Fugitives and ‘Traitors’ in Russo-Manchurian Frontier, 1651-1689,” *Journal of Early Modern History* 13 (2009): 333–58.

<sup>46</sup> CWS Injo 34: 20a-21a (15.1.28=2/22/1637); QSL Taizong, 33: 430b-431b (CD 2.1.28=2/22/1637).



focusing on the two most important boundaries established by this new tributary relationship: subjecthood and the territorial boundary.

## **II. Subjecthood: Between Imperial and Tributary Subjects**

### **A. 1637-44: Expanding the Category of Imperial Subject**

In a perceptive analysis of the Pyrenean frontier of France and Spain, Peter Sahlins shows how the idea of jurisdictional sovereignty, most importantly the relationship between a king and the subjects who pledged him allegiance, was much more important than the idea of territorial sovereignty in seventeenth century Europe. For much of the seventeenth and eighteenth centuries, both notions coexisted in a state of complex interplay. On a similar note, Thongchai Winichakul has shown how, according to the traditional Siamese perspective, the sphere of a kingdom could be defined only by power relationships between the king and the townships that pledged allegiance to him.<sup>47</sup>

Like these early modern counterparts, Hong Taiji was most interested in his control over people. As far as he was concerned, the allocation and demarcation of Qing subjects and Chosŏn subjects had been completed by February 22, 1637, when King Injo accepted the terms of the ceasefire agreement and formally submitted to him. For this demarcation to be maintained, however, the Qing state needed the cooperation of the Chosŏn state. As the Chosŏn state was an unwilling tributary state at best, though, the maintenance of demarcation was far from a foregone

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<sup>47</sup> Peter Sahlins, *Boundaries: The Making of France and Spain in the Pyrenees* (Berkeley: University of California Press, 1989), 1-7, 25-9; Winichakul Thongchai, *Siam Mapped: A History of the Geo-Body of a Nation* (Honolulu: University of Hawai'i Press, 1994), 74-80.

conclusion at the end of the war in 1637. But within a few years, as we will see next, the Qing had mostly succeeded in inducing such cooperation from the Chosŏn state.

### *1. Chosŏn Resistance (1637-40)*

From 1637 to 1640, the Chosŏn state was not a cooperative partner in maintaining the demarcation between Qing and Chosŏn subjects. First, the Chosŏn state showed little initiative in repatriating Chosŏn captives who fled back to Chosŏn. In 1637, soon after the ceasefire, King Injo was already petitioning the Qing Board of Rites that he be excused from returning the Chosŏn captives who had fled to his domain. The Board flatly refused this request.<sup>48</sup> It is not surprising that King Injo and the Chosŏn court at large found it especially difficult to repatriate these people. After all, these captives had cried out to Injo when he was on his way to surrender personally to Hong Taiji: “Our king, our king, do you abandon us so?”<sup>49</sup> As Han Myŏng-gi has pointed out, the legitimacy of the Chosŏn court after the war was very fragile. Returning the runaway Chosŏn captives would have meant abandoning these people twice and could have had serious political ramifications for King Injo.<sup>50</sup>

As early as summer 1637, King Injo remarked to his officials that he was too grieved to send back the “returners” (Kr. *chuhoe in*, Ch. *zouhui ren*) and ordered that they be ransomed using the state treasury.<sup>51</sup> It is important to note that the king used the expression “returning” to describe the runaway captives. He was emphasizing his view that these were Chosŏn subjects

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<sup>48</sup> *T'ongmun 'gwan chi* (TMGC hereafter) 9: 3.

<sup>49</sup> CWS Injo 34: 23a-24a (15.1.30=2/24/1637).

<sup>50</sup> Han Myŏng-gi, *Chŏngmyo, pyŏngja horan kwa Tongasia* (Seoul: P'urun Yoksas, 2008), 435-9.

<sup>51</sup> CWS Injo 35: 14b (15.7.23=9/11/1637).

simply returning home (Chosŏn) rather than fleeing from home (Qing). Redeeming the captives, however, was an untenable policy due to their staggering number and the steadily rising price for redeeming them. Redeeming all “returners” would have exhausted the treasury of the Chosŏn state, as the number of the Chosŏn captives during the 1637 war is estimated between tens of thousands and a half million.<sup>52</sup> Thus, the Chosŏn court took a general policy of passively resisting the Qing order to send back all “returners.”

Between 1637 and 1640, the Chosŏn court did send back runaway captives on many occasions. In 1638, for example, the Chosŏn court decided to return a Chosŏn captive who had fled to Korea with a horse he had stolen. Reasoning that the Qing authorities must have noticed his escape because of the stolen horse, the Chosŏn court sent him back to the Qing domain.<sup>53</sup> The Qing court, however, continuously and correctly suspected the Chosŏn court of hiding many other runaway captives.

Second, the Chosŏn state showed some ambivalence about the repatriation of Han Chinese runaways, who had not been explicitly mentioned in Hong Taiji’s February 22, 1637, edict. It is not clear from the sources when the Qing state first made a request for the repatriation of the Han Chinese and what its terms were, but the Chosŏn state was rounding up the Han Chinese living in the Chosŏn domain and sending them to Qing as early as the fall of 1637. That timing might have had something to do with the Qing conquest of the Ming outpost in Kado (Pidao), which the Qing considered both a military threat and a place of refuge for Han Chinese

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<sup>52</sup> Morioka Yasu, “Prices Levied by the Ch’ing Victors for the Redemption of Korean Prisoners of War,” *Memoirs of the Research Department of the Toyo Bunko* 43 (1985): 45–71; Han Myŏng-gi, *Chŏngmyo, pyŏngja horan kwa Tongasia*, 399–404.

<sup>53</sup> CWS Injo 36: 3b-4a (16.1.14=2/27/1638).

runaways, in the summer of 1637.<sup>54</sup> The Chosŏn state repatriated at least 23 runaways in 1638, four runaways in 1639, and 13 runaways through the fall of 1640. At the same time, however, 165 Han Chinese who had fled the Ming outpost in Kado (Pidao) Island after its fall in 1637 were still living in P'yŏngan province as of 1640 with active support from the Chosŏn state.<sup>55</sup>

Third, the Chosŏn state continuously competed with the Qing state over the definition of Qing and Chosŏn subjecthood. The term *Warka* that Hong Taiji used in his February 22, 1637, edict is a good example. From the Chosŏn perspective, the term *Warka* was restricted to the first generation of the “naturalized Jurchens,” those who had submitted to Chosŏn rule themselves. Thus, the Chosŏn court claimed their descendants, who were born mostly of marriages with Chosŏn subjects, as Chosŏn subjects. The Qing court, however, extended its claim to these descendants as well.

An exchange in 1638 between Crown Prince Sohyŏn (昭顯; 1612-45), held as a hostage in Shenyang (瀋陽), the Qing capital, and Qing Board of Revenue officials Mafuta (馬福塔; 1594-1640) and Inggŭldai (英俄爾岱; 1596-1648), who were in charge of Chosŏn affairs, is instructive.<sup>56</sup> The crown prince maintained that the 1637 edict for the transfer of the Jurchens only referred to these naturalized Jurchens. The Qing officials countered that the descendants of Qing subjects were Qing subjects as well. Moreover, they argued that the Chosŏn court should send the Chosŏn family members of the newly incorporated Qing subjects so that they could live

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<sup>54</sup> TMGC 9: 3; CWS Injo 35: 21a (15.8.30=10/17/1637), 35: 35b (15.11.22=1/6/1638); QSL Taizong: 34: 442b-443a (CD2.4.12=5/6/1637).

<sup>55</sup> TMGC 9: 3, 5; Kim Chong-su et al, trans., *Yŏkchu Sohyŏn Simyang ilgi* (Seoul: Minsogwŏn, 2008) (SYIG hereafter), 1: 385 (*wuyin*.9.22=10/28/1638), 430 (*jimao*.8.1=8/29/1639); QSL Taizong 47: 626b-627a (CD4.6.15=7/15/1639); CWS Injo 41: 2b (18.7.13=8/29/1640), 41: 4b (18.8.3=9/18/1640), 41: 7a (18.9.1=10/15/1640).

<sup>56</sup> Pae U-sŏng, *Chosŏn kwa Chunghwa: Chosŏn i kkum kkugo sangsang han segye wa munmyŏng* (P'aju: Tolbegae, 2014), 33-47; On Inggŭldai, also see ECCP, 394-5.

as families. After this exchange, the Qing Board of Revenue gave a list of 690 Jurchens, with their names and places of residence, to the Chosŏn envoys returning to Hanyang. The Chosŏn court reluctantly found and sent 36 people on the list to Shenyang.<sup>57</sup>

Even after this, the Chosŏn court took every chance to emphasize the distinction between the naturalized Jurchens and their descendants. In a 1639 lateral communication (Kr. *chamun*, Ch. *ziwen*) to the Qing Board of Rites on finding and sending seven Jurchens, for example, King Injo pointed out that four of seven Jurchens “were all descendants of the Jurchens naturalized (Kr. *hyanghwa*, Ch. *xianghua*) a long time ago and born of marriages with the subjects of the small state (i.e. Chosŏn; Kr. *sobang*, Ch. *xiaobang*).” Injo added that their names were even listed on Chosŏn military registers, but the Qing court did not accept this distinction and incorporated all seven as Qing subjects.<sup>58</sup>

As mentioned, the perfunctory nature of the Chosŏn state’s cooperation did not go unnoticed, and on November 27, 1640, Hong Taiji issued an edict condemning ten crimes of King Injo. Three of the crimes had to do with the topic at hand: not returning runaway Chosŏn captives; not sending runaway Han Chinese and disguising them in Chosŏn attire; and doing a perfunctory job of tracking down and sending Chosŏn family members of the Warka.<sup>59</sup> Hong Taiji sent Inggŭldai and two other officials to Ŭiju to call to account King Injo for his crimes, try his ministers, and oversee the search for and repatriation of those he considered Qing subjects. King Injo’s statement to his officials during this diplomatic crisis shows that he was still reluctant to give up on runaway Chosŏn captives: “As for those who have returned (Kr. *chuhoe*

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<sup>57</sup> SYIG 1: 372 (*wuyin*.7.4=8/13/1638), 372-3 (*wuyin*.7.7=8/16/1638); TMGC 9: 4.

<sup>58</sup> QSL Taizong 46: 611b-612b (CD4.5.4=6/4/1639).

<sup>59</sup> QSL Taizong 53: 706a-707a (CD 5.10.15=11/27/1640).

*in*, Ch. *zouhui ren*), words cannot describe the pity of their situation, and [the issue] concerns human feelings. Never can it be lightly allowed. First use a few naturalized [Jurchens] (Kr. *hyanghwa*, Ch. *xianghua*) to do the job nominally. Searching and repatriating runaway Han Chinese (Kr. *to Han*, Ch. *tao Han*) also cannot stop.”<sup>60</sup> Clearly, protecting the runaway Chosŏn captives from repatriation was still the top priority of the Chosŏn state.

By February 5, 1641, Inggŭldai was back in Shenyang with the outcome of a major trial of Chosŏn ministers, which will be discussed in chapter three, and with the repatriation of 512 people from Chosŏn: 151 Jurchen men, 3 Jurchen women, 124 Chosŏn men, 64 Chosŏn women, 152 Han Chinese men, and 18 Han Chinese women. The Jurchens became “new Manchus (*xin Manzhou*)” and were incorporated into the Na-lin (納林) company of the Plain Yellow Banner and the Bang-na-mi (邦納密) company of the Plain Red Banner. The Chosŏn captives and Han Chinese were handed over to the Board of War so that they could be returned to their original masters.<sup>61</sup>

The fact that both the Qing and Chosŏn courts paid so much attention to relatively a small number of individuals suggests that the repatriation of these groups of borderland residents might have stood as a symbol of subjecthood and jurisdiction.<sup>62</sup> From the Chosŏn perspective, the legitimacy of the court, which arose in part from its ability to protect its subjects, was at stake. From the perspective of Qing, with its economy still largely based on the spoils of war and then in the middle of an all-out war with the Ming state, it was the economic and military foundation

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<sup>60</sup> CWS Injo 41: 15b (18.11.3=12/15/1640).

<sup>61</sup> QSL Taizong 53: 717a (CD 5.12.26=2/5/1641); CWS Injo 41: 18a (18.11.15=12/27/1640), 41: 23a (18.12.9=1/19/1641), 41: 26a (18.12.20=1/30/1641); SYIG 2: 370 (*gengchen*.12.16=1/26/1641), 372 (*gengchen*.12.25=2/4/1641).

<sup>62</sup> I thank Victor Lieberman for making this observation.

of the state that was at stake. Inggūldai's mission to Ŭiju had the immediate effect of taming the Chosŏn court, which became a more cooperative partner overall, and especially in returning people the Qing court claimed as its subjects. The Chosŏn sources from 1641 to 1644 record numerous instances of this sort.

## 2. Chosŏn Cooperation (1641-44)

As we have seen above, the Chosŏn court effectively decided to give up on the Jurchens and the Han Chinese runaways to focus on Chosŏn runaways, whose protection was a top priority of the court. In fact, I have not been able to find any instance in which the Chosŏn state failed to send back Han Chinese runaways after 1640. In 1641, for example, eight Han Chinese runaways were returned to Shenyang as soon as they were discovered. In 1644, nine Han Chinese escaping from Shenyang were sent back.<sup>63</sup>

This attitude is in line with how the Chosŏn court dealt with the new problem of Ming subjects entering the Chosŏn domain. In 1637, the Qing state had forced the Chosŏn state to cut off all ties to the Ming as a Qing tributary state and to treat Ming forces as enemy forces.<sup>64</sup> Over the next few years, the Qing state required the Chosŏn state to provide manpower, ships, and resources for Qing campaigns against the Ming, and it repeatedly warned the Chosŏn state against maintaining relations with the Ming state. The Chosŏn court accordingly decided on and

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<sup>63</sup> SYIG 2: 388 (*xinsi*.3.5=4/14/1641), 397 (*xinsi*.4.28=6/6/1641), 408 (*xinsi*.7.4=8/10//1641), 447 (*xinsi*.10.21=11/23/1641; *xinsi*.10.22=11/24/1641), 451 (*xinsi*.11.9=12/11/1641; *xinsi*.11.10=12/12/1641); SYIG 3: 294 (*renwu*.6.4=6/30/1632; *renwu*.6.9=7/5/1642), 324 (*renwu*.11.5=11/26/1642), 325 (*renwu*.11.6=11/27/1642), 398 (*guiwei*.9.3=10/15/1643); CWS Injo 42: 33a (19.9.17=10/21/1641), 45: 28b (22.5.14=6/18/1644).

<sup>64</sup> CWS Injo 34: 46a (15.4.24=5/18/1637), 36: 9b (16.1.25=3/10/1638), 36: 32b-33a (16.4.17=5/30/1638), 37: 9a (16.7.28=9/6/1638).

maintained a policy of minimizing contact with Ming ships in the Chosŏn seas and not allowing Ming ships to land on the peninsula.<sup>65</sup>

The Chosŏn state, however, like most premodern states, did not have a state apparatus adequate to control its borderlands. Indeed, as Eric Tagliacozzo and Adam McKeown have shown, border control has been a challenging task even for modern colonial empires and nation-states.<sup>66</sup> Its subjects, despite official state policy, often escaped the reach of the state and interacted with Ming ships. Ming ships also often evaded the Chosŏn authorities, landing on Chosŏn islands for extended periods of time. The Chosŏn court, moreover, revealed its ambivalence about cutting off all ties with the Ming court by secretly communicating with Ming ships, even sending a monk to the Ming and receiving an official lateral communication from the Ming official Hong Chengchou (洪承疇; d. 1665).<sup>67</sup>

It was in this context that the Chosŏn court faced the complicated question of what to do with Han Chinese castaways from Ming China. In 1641, a Ming ship was shipwrecked off an island in Chŏlla (全羅) province, and six sailors survived. Even though they wished to be returned to Ming, the Border Defense Command (*pibyŏnſa*) recommended sending them to

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<sup>65</sup> CWS Injo 38: 16a (17.2.24=3/28/1639), 38: 17a-b (17.3.11=4/13/1639), 40: 12a-b (18.2.13=4/3/1640), 40: 21b (18.4.23=6/12/1640), 41: 2a-b (18.7.11=8/27/1640), 41: 16a-b (18.11.7=12/19/1640), 42: 21a (19.5.19=6/26/1641), 42: 22a (19.5.26=7/3/1641), 42: 28b (19.7.12=8/18/1641), 42: 31b (19.9.1=10/5/1641), 42: 33b (19.9.21=10/25/1641).

<sup>66</sup> Eric Tagliacozzo, *Secret Trades, Porous Borders: Smuggling and States along a Southeast Asian Frontier, 1865-1915* (New Haven: Yale University Press, 2005); Adam M. McKeown, *Melancholy Order: Asian Migration and the Globalization of Borders* (New York: Columbia University Press, 2008).

<sup>67</sup> CWS Injo 36: 33b-34a (16.4.19=6/1/1638), 37: 19a (16.8.23=9/30/1638), 39: 11b (17.8.15=9/12/1639), 39: 16b (17.9.16=10/12/1639), 42: 31a (19.8.25=9/29/1641), 42: 32a (19.9.10=10/14/1641), 42: 39a-b (19.12.29=1/29/1642), 43: 18a (20.9.7=9/30/1642); On Hong Chengchou, see ECCP, 358-60.



Qing, reasoning that the Qing court knew everything that happened within Chosŏn. The king gave his assent, and the sailors were all sent to Shenyang.<sup>68</sup>

Indeed, the Qing state did come to learn that the Chosŏn state had been maintaining communications with the Ming state, especially after the surrender of Hong Chengchou in 1642. Hong Taiji condemned the Chosŏn king in an edict and ordered him to send the provincial officials responsible to Fenghuangcheng so that they could be tried by Inggŭldai and the Chosŏn crown prince. The details of the trial will be discussed in the section below, but it eventually resulted in the imprisonment of the chief state councilor (*yŏngŭijŏng*), Ch'oe Myŏng-gil (崔鳴吉; 1586-1647), in 1643.<sup>69</sup> After this trial, the Chosŏn state maintained a more proactive policy on Ming ships. Later in the same year, Chosŏn forces engaged nine Ming ships in battle off the shores of P'yŏngan province, killing many Ming soldiers and capturing nine. The Chosŏn court decided to send them to Shenyang. Upon their arrival in Shenyang, two of them who turned out to be runaways from Qing were decapitated, while seven other Ming subjects were sent to Qing state farms. The Qing court praised the king for performing his duty as a tributary ruler and bestowed 500 taels of silver on him, proving that the Chosŏn court had made the right decision.<sup>70</sup>

In a comparable manner, the Chosŏn court readily complied with Qing requests to find and send Jurchens residing in the Chosŏn domain. The court's concern with filling the Qing quota, which was handed down to local officials, even resulted in ordinary Chosŏn subjects

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<sup>68</sup> TMGC 9: 9; CWS Injo 42: 37a (19.11.23=12/25/1641).

<sup>69</sup> QSL Taizong 64: 884a-885b (CD8.3.3=4/20/1643); CWS Injo 43: 22a-b (20.10.12=11/4/1642), 43: 24a (20.10.18=11/10/1642), 43: 34b-35b (20.11.25=1/15/1643), 44: 3a-4b (21.1.23=3/13/1643), 44: 11a-b (21.3.25=5/12/1643).

<sup>70</sup> CWS Injo 44: 28b (21.8.18=9/30/1643), 44: 32b (21.9.14=10/26/1643), 44: 35b-36a (21.10.8=11/18/1643); QSL Shizu 2: 34b (CD8.9.3=10/15/1643), 34b-35b (CD8.9.15=10/27/1643).

being sent to Shenyang. Some of these cases have been vividly recorded in *Simyang ilgi* (瀋陽日記), written by the Chosŏn officials serving Crown Prince Sohyŏn in Shenyang. In 1642, for example, the Chosŏn court sent a Chosŏn man to Shenyang in a case of misidentification. Even though this man claimed that he was a Chosŏn subject after his arrival in Shenyang, he soon heard about the benefits of bannerman status from some Jurchens who had been incorporated as new Manchus. In the end, he claimed that his marriage to a naturalized Jurchen woman also made him a Qing subject, and the Qing authorities accepted his story without even verifying his claim.<sup>71</sup>

The repatriation of the Jurchens would continue until May 1644, when the Qing court promulgated an edict to King Injo in the name of the newly enthroned Shunzhi emperor:

“[Regarding] the Warka people in the east who have not been sent from your domain yet, our imperial father [Hong Taiji] thought that there was no difference (*wuyi*) whether they were in your country (*er Chaoxian*) or in our country (*wo guo*). [He] had long wanted to stop it, but never issued the edict . . . let sending of these people permanently stop (*yong xing tingzhi*).”<sup>72</sup>

With the beginning of a full-on Qing conquest of China Proper, the obsession of the Qing court might have shifted from the Qing-Chosŏn borderland.

When this edict was being promulgated, in fact, 14 Jurchens sent out by the Chosŏn court were approaching the Yalu River on their way to Shenyang. The Chosŏn court promptly turned them around, and they remained Chosŏn subjects.<sup>73</sup> For the borderland Jurchens, the line had been drawn once and for all: Jurchens already incorporated as Manchu bannermen on the Qing

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<sup>71</sup> SYIG 3: 326 (*renwu*.11.12=12/4/1642), 330 (*renwu*.i11.8=12/29/1642).

<sup>72</sup> QSL Shunzhi 4: 52b-53a (SZ1.4.11=5/16/1644); CWS Injo 45: 19b (22.4.15=5/20/1644), 45: 22a (22.4.26=5/31/1644).

<sup>73</sup> CWS Injo 45: 19b (22.4.15=5/20/1644).

side of the river would remain Qing subjects, whereas Jurchens who remained on the Chosŏn side of the river would remain Chosŏn subjects.

### 3. *Qing Repatriation of Chosŏn Subjects (1637-44)*

We have seen how the Qing state successfully pressured the Chosŏn government to return the runaway Qing subjects and the Jurchens remaining in the Chosŏn domain from 1637 to 1644. Korean scholars of the Qing invasions of Chosŏn have focused on this problem for a long time. Their analyses tend to focus on the avarice of Qing armies fixated on capturing as many captives as possible and thus emphasize the economic aspect of the “returner” problem.<sup>74</sup> This narrative conforms with the general Qing military strategy up to 1644 that focused on “hit-and-run raids . . . for loot, bounty, slaves, and livestock.”<sup>75</sup>

Despite its merits, this narrative tends to obscure the genuine Qing interest in maintaining the demarcation between Qing and Chosŏn subjects. Here, I will show how the Qing state kept up its end of the bargain from the February 22, 1637, ceasefire agreement. For one, the Qing acknowledged the transformation of the status of Chosŏn subjects as of February 22, 1637. Before February 22, the Qing state saw Chosŏn subjects as subjects of an enemy state who could be captured and incorporated as slaves into the Qing state. Hong Taiji’s edict to the Board of Rites on August 10, 1637, illustrates that perception. Recollecting the war, Hong Taiji contrasted the Chosŏn state, which had sinned against him, and the Qing soldiers, who had performed meritorious service for him. In letting the Qing soldiers capture Chosŏn subjects, Hong Taiji had

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<sup>74</sup> Han Myŏng-gi, *Chŏngmyo, pyŏngja horan kwa Tongasia*, 395-446; Kim Chong-wŏn, *Kŭnse Tong Asia kwangyesa yŏn’gu*, 165-215.

<sup>75</sup> Wakeman, Jr., *The Great Enterprise*, 303-6.

simply punished the Chosŏn state and rewarded the Qing soldiers.<sup>76</sup> With King Injo's surrender and the establishment of a tributary relationship between the two states, however, Chosŏn subjects were transformed into tributary subjects.

About two weeks after he surrendered to Hong Taiji, King Injo entrusted the crown prince, who was traveling as a hostage to Shenyang with the Qing forces, with the mission of obtaining the release of the Chosŏn subjects who had been captured after the ceasefire. The Qing court complied with this request and on at least 16 separate occasions repatriated at least 64 Chosŏn subjects captured after the ceasefire.<sup>77</sup>

Qing acknowledgement of the "legal" transformation of Chosŏn subjects from enemy subjects to tributary subjects was reaffirmed in the summer of 1637, when Qing forces conquered the Ming outpost in Kado (Pidao) with the help of some Chosŏn troops. When Hong Taiji learned that some Chosŏn subjects had been captured on the island, he promptly repatriated them to P'yŏngan province.<sup>78</sup> Again in 1643, the Qing state repatriated 16 Chosŏn soldiers who had escaped from the Ming garrison in Ningyuan. These soldiers, originally part of the Chosŏn contingency aiding in the 1640 Qing campaigns against Ming, had been shipwrecked and drifted to Ningyuan, where they were forced to serve in the Ming garrison until their escape.<sup>79</sup>

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<sup>76</sup> QSL Taizong 36: 466b-467b (CD2.6.20=8/10/1637).

<sup>77</sup> SYIG 1: 288 (*dingchou*.2.11=3/7/1637), 300 (*dingchou*.4.13=5/7/1637), 302 (*dingchou*.i4.1=5/24/1637), 304 (*dingchou*.i4.10=6/2/1637), 304-5 (*dingchou*.i4.17=6/9/1637), 310 (*dingchou*.5.24=7/15/1637), 311 (*dingchou*.6.4=7/25/1637), 312 (*dingchou*.6.7=7/28/1637; *dingchou*.6.8=7/29/1637), 314 (*dingchou*.6.20=8/10/1637, *dingchou*.6.24=8/14/1637), 315 (*dingchou*.6.25=8/15/1637; *dingchou*.7.1=8/20/1637; *dingchou*.7.2=8/21/1637), 316 (*dingchou*.7.4=8/23/1637; *dingchou*.7.7=8/26/1637), 317 (*dingchou*.7.12=8/31/1637; *dingchou*.7.17=9/5/1637), 384 (*wuyin*.9.13=10/19/1638).

<sup>78</sup> QSL Taizong 35: 455a-b (CD2.5.20=7/11/1637).

<sup>79</sup> CWS Injo 46: 37b-38a (23.5.25=6/18/1645).

The other general policy that the Qing adopted to maintain the demarcation between Qing and Chosŏn subjects was not accepting Chosŏn defectors after the ceasefire. In early 1638, a few Chosŏn captives who had fled to Chosŏn in the summer of 1637 came back to Shenyang with six of their relatives from Chosŏn. The Qing authorities arrested these six and repatriated them to Chosŏn under imperial order despite their wish to submit to Qing.<sup>80</sup> In 1640, King Injo requested that the Qing Board of Revenue repatriate 20 Chosŏn subjects who had fled to Yechun (也春; later Huncun). The Board of Revenue investigated the matter and determined 14 of them to be Warka who had fled to Chosŏn and come back and six of them to be Chosŏn subjects. Hong Taiji ordered the Board to repatriate the six Chosŏn subjects.<sup>81</sup>

## **B. 1645-1690s**

### *1. Imperial Lessons: All the Emperor's Men*

As pressure from the Qing state tapered off with the Qing conquest of China Proper, the Chosŏn state reverted to passive cooperation in the repatriation of runaway Qing subjects. As for the runaway Chosŏn captives, the Chosŏn state developed a general policy of repatriating them only when the Qing state made specific requests for repatriation.

As of 1645, for example, 24 runaway Chosŏn captives were detained in P'yŏngan province in case the Qing court requested their repatriation. With no such request forthcoming, the Chosŏn court decided to release some of them and hand them over to their relatives. In 1647,

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<sup>80</sup> SYIG 1: 350 (*wuyin*.1.19=3/4/1638); CWS Injo 36: 17a (16.2.12=3/27/1638); *Tongmun hwigo* (TMHG hereafter) *pyŏlp'yŏn* 3: 39a-b (biao by Injo; CD3.9.17=10/23/1638).

<sup>81</sup> TMHG *pyŏlp'yŏn* 3: 43a-b (Board of Revenue to Injo; CD5.6); QSL Taizong 52: 689b-690a (CD5.6.17=8/4/1640)

the nine of the 24 who had no relatives to claim them were released as well.<sup>82</sup> In contrast, in late 1653, the Qing Board of Rites specifically named two runaway Chosŏn captives to be repatriated to Qing. The Chosŏn state repatriated them the following year, but it is doubtful that it would have taken any action without such a specific request from the Qing state.<sup>83</sup>

This sense of complacency was shattered in 1666. It all started with a Chosŏn captive named An Ch'u-wŏn (安秋元), who escaped from 27 years of servitude in Shenyang and Beijing and made it to the Chosŏn domain in 1664. He still remembered the names of his father and grandfather as well as where he used to live before he was captured as a 13-year-old boy during the 1637 war. Instead of repatriating him, the Chosŏn court decided to move him to his hometown in Kyŏnggi (京畿) province, even providing him with food and clothing. Upon his arrival at his hometown, however, An discovered that all his family members had died. After spending about a year and half in his hometown with no means of livelihood, An decided to make his way back to the Qing domain. He was arrested in Fenghuangcheng (鳳凰城), and his case was eventually reported to Beijing.<sup>84</sup>

The Qing court sent two officials from the Board of Revenue to Hanyang to investigate this and other unrelated incidents, and the envoys brought An (known as Xiao Er 小二 in Qing) along with them. Clearly realizing that the Qing court took this case seriously, King Hyŏnjong (顯宗; r. 1659-74) and his ministers had many discussions about damage control before the arrival of the Qing envoys. After all, the court had made a conscious decision not to repatriate

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<sup>82</sup> CWS Injo 46: 60b (23.7.23=9/12/1645), 48: 18b (25.5.8=6/19/1647)

<sup>83</sup> TMGC 9: 23.

<sup>84</sup> CWS Hyŏnjong 9: 10a (5.8.12=10/1/1664), 11: 34a (7.1.15=2/18/1666).

An, so it concocted a more acceptable answer: The court had originally meant to memorialize the emperor after letting An see his family, but he had unexpectedly escaped before that could happen. This answer, however, was not enough to satisfy the Qing envoys, who kept reminding the Chosŏn ministers that Hong Taiji's February 1637 edict had strictly forbidden the hiding of runaway captives.<sup>85</sup> The trial reached its climax when the Qing envoys declared the guilt of the Chosŏn high ministers:

The [chief] envoy [Lei-hu] said: "As high ministers, they are responsible for governing. Yet they did not memorialize the emperor when a Qing subject (Ch. *Shangguo zhi ren*, Kr. *Sangguk chi in*) fled here and even shielded him, letting him stay for three years . . . This is a grave crime that should be punished by death (Ch. *siliu*, Kr. *sayul*)." The king immediately stood up and kowtowed toward the north, saying: "This is my crime (Ch. *yu zhi zui*, Kr. *yŏ chi chŏe*). How dare I not ask the emperor for my punishment (Ch. *qingzui*, Kr. *ch'ŏngjoe*)?" The vice envoy [Mušu] also stood up and said: "We will inform the emperor upon our return about the king shouldering the blame. But today we are here to deliberate on the crimes of the ministers." . . . The king said: ". . . How could the ministers' crimes this time deserve death?" The envoy responded: "Hiding a Qing subject, what kind of crime is it?" . . . The king said: "The whole world belongs to the emperor. How can not reporting on one runaway lead to discussion of death?"<sup>86</sup>

This dialogue is interesting because it shows two different perspectives on the status of An Ch'u-wŏn/Xiao Er. From the king's perspective, or at least the perspective he decided to adopt in this political crisis, An had simply moved from one part of the Qing empire to another, so the crime of hiding him could not be that serious. After all, the Qing court had used this

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<sup>85</sup> The Qing envoys were Lei-hu (雷虎), a vice minister (*shilang*), and Mušu (穆舒), a bureau director (*langzhong*). CWS Hyŏnjong 12: 33a-b (7.5.18=6/20/1666), 12: 37b (7.6.26=7/27/1666), 12: 39b-41a (7.7.10=8/10/1666), 12: 41a-42a (7.7.12=8/12/1666); TMHG 64: 1a-b (edict to Hyŏnjong; KX5.5.13=6/15/1666), 2b-7a (zouben by Hyŏnjong; KX5.9.20=10/17/1666).

<sup>86</sup> CWS Hyŏnjong 12: 43a-44a (7.7.17=8/17/1666).

rationale in its 1644 decision to exempt the Chosŏn court from finding and sending Warka people in Chosŏn to Qing. The Qing envoys, however, rejected the king's claim. Xiao Er, as a Qing subject, was the Qing emperor's property. The Chosŏn king and the ministers had thus committed a grave crime by hiding imperial property. This joint trial eventually resulted in an adjudication that sentenced King Hyŏnjong to a fine of 5,000 taels of silver, which marked the first time that the Qing judiciary carried out such a punishment against a Chosŏn king. The king and his ministers were humiliated by this outcome, which they considered to be the worst affront to the Chosŏn court since King Injo's personal surrender to Hong Taiji at Samjŏndo.<sup>87</sup>

The Qing state had finally taught an imperial lesson to the Chosŏn state. From then on, the Chosŏn state never failed to send back a runaway Chosŏn captive. In 1668, a runaway named Hong Nu-p'i was captured in P'yŏngan province. Despite identifying him as a "returner," the Chosŏn court immediately decided to send him away. In 1669, a man named Kim Tae-sŏn and a man named Ch'oe Kil entered the Chosŏn domain on separate occasions. Even though the Chosŏn court interviewed Ch'oe, who had fled from Mongolia, to get information about the Mongols, it sent both from Ŭiju to Fenghuangcheng. Again, although the court recognized both individuals as "returners," it had decided that they could not "return" to Chosŏn.<sup>88</sup>

This conceptual shift within the Chosŏn court from "returners" to "Qing subjects" reached the next level in 1675, when a man named An Tan was captured in Ŭiju after crossing the Yalu River. Now, the Chosŏn court identified An Tan as "one Qing subject (Ch. *Qing ren*, Kr. *Ch'ŏng in*) who called himself a returner." This linguistic shift foreshadowed An's fate.

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<sup>87</sup> TMHG 2b-7a (zouben by Hyŏnjong; KX5.9.20=10/17/1666); CWS Hyŏnjong 13: 19a-20a (8.1.12=2/4/1667).

<sup>88</sup> CWS Hyŏnjong 15: 3a (9.6.18=7/26/1668), 16: 50a (10.5.17=6/15/1669), 17: 31b (10.9.30=10/24/1669), 17: 35b (10.10.17=11/10/1669).



After An's capture, the Ŭiju prefect immediately informed Qing envoys who happened to be staying in Ŭiju, and the envoys in turn sent An to Fenghuangcheng. Even though An lamented that he was being sent to his death, the Chosŏn court had finally been forced to admit that these "returners," as Qing subjects, could not return home anymore.<sup>89</sup>

This lesson applied to Han Chinese runaways as well. In 1675, three Han Chinese reached the Tumen River, begging for rice and expressing their wish to take refuge in Chosŏn. The local official declined the request and sent them away. In 1680, a Han Chinese crossed the Tumen River and entered Hamgyŏng province, saying that he had escaped from his cruel master and refusing to go back. The Chosŏn court appointed an officer to repatriate him to Huncun (琿春). When the Qing officer in Huncun refused to accept the Han Chinese, the Chosŏn officer persuaded him by saying that this matter would be memorialized to the emperor. The last episode is especially telling, because it shows how much initiative the Chosŏn state was taking in repatriating the Han Chinese runaways by this time.<sup>90</sup>

The changing geopolitics in China Proper introduced a new group of people as potential Qing subjects: Han Chinese castaways in the Chosŏn domain. With the death of the Ming Chongzhen (崇禎; r. 1628-44) emperor and the Qing conquest of Beijing in 1644, the Qing declared the end of the Ming dynasty and claimed, as its successor dynasty, the former Ming domain and former Ming subjects. This, however, was a claim also set forth by various Southern Ming regimes: the Hongguang regime (1644-5) based in the Yangzi region, the Longwu regime (1645-6) based on the southeastern coast, and the Yongli regime (1646-62) based in Lingnan and

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<sup>89</sup> CWS Sukjong 3: 25b-26a (1.4.6=4/30/1675); TMGC 9: 33.

<sup>90</sup> CWS Injo 42: 33a (19.9.17=10/21/1641), 45: 28b (22.5.14=6/18/1644); CWS Sukjong 3: 59b-60a (1.5.28=6/21/1675), 9: 10a (6.3.16=4/14/1680); QSL Shizu 49: 391a (SZ7.5.21=6/19/1650).

then the southwest. The Qing conquest of China Proper, therefore, was as much about military victories as it was about incorporating former Ming subjects and lands into its state. As a sign of submission, all the men incorporated into the Qing state were required to wear their hair in Manchu style, shaving their foreheads and braiding the remaining hair into queues.<sup>91</sup>

This competition over the legitimacy of succession became a concrete problem for the Chosŏn state in the form of Han Chinese castaways. In 1644, a ship sailing from Guangdong to Nagasaki was shipwrecked off an island in Chŏlla province. The Chosŏn court recognized the extreme difficulty of dealing with the 52 castaways who had survived, especially considering the war-torn condition of China Proper at that moment. To further complicate the matter, earlier in the same year, the Chosŏn court had received requests from the Tokugawa shogunate (1600-1868) to send people shipwrecked in Korea to Japan so that the Japanese authorities could find and punish Japanese Catholic fugitives hiding amongst them. In the end, the Chosŏn court decided to hand them to authorities on Tsushima Island, the hub of Chosŏn-Tokugawa relations, reasoning that they were bound for Nagasaki anyway. The shogunate thanked the Chosŏn court, saying that there were indeed five Catholics among them. It requested that the Chosŏn court investigate foreign ships and repatriate castaways to Japan in the future, and the Chosŏn court agreed to do so. The Chosŏn court did not report any of this to the Qing court.<sup>92</sup>

Soon, the Chosŏn court was faced with another decision. In 1647, a ship sailing from Fujian was shipwrecked off Kyŏngsang (慶尙) province, and 51 merchants onboard survived. From Xu Sheng, the owner of the ship, the Chosŏn court learned about the fall of the Hongguang

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<sup>91</sup> Wakeman, Jr., *The Great Enterprise*, 225-680; Lynn A. Struve, *The Southern Ming, 1644-62* (New Haven: Yale University Press, 1984); Jerry Dennerline, "The Shun-chih Reign," in *The Cambridge History of China, Volume 9, Part 1: The Ch'ing Empire to 1800*, ed. Willard J. Peterson (New York: Cambridge University Press, 2002), 73-119.

<sup>92</sup> TMGC 9: 14; CWS Injo 45: 29b-30a (22.5.21=6/25/1644), 45: 41b-42a (22.8.8=9/8/1644), 46: 10a-b (23.3.7=4/3/1645), 46: 36a-b (23.5.21=6/14/1645).

regime, the enthronement of the Prince of Tang as the Longwu emperor, and the Qing conquest of nine Ming provinces. A discussion ensued within the Chosŏn court about what to do with them. On one hand, Qing envoys were on their way to Hanyang at that moment. On the other hand, the Chosŏn court had already promised to repatriate castaways to Japan. In the end, the Chosŏn court decided to hand over the castaways to the envoys so that they could be brought to Qing.<sup>93</sup>

What happened in 1650 made it clear that the Chosŏn court had made the right choice in sending the Fujianese merchants to Qing. In 1649, the Kyŏngsang naval commander captured a foreign ship passing through Chosŏn waters. On board were merchants from Shanxi, Henan, and Hubei provinces, then firmly under Qing rule, who were headed to Japan. The Chosŏn court handed them over to Qing envoys on their way back to Beijing, and it also memorialized the Qing court about its worries that Japan, which had been acting suspiciously over the years, would be angered by the repatriation of these Han Chinese merchants to Qing. In its response the next year, the Qing court made its position on this issue clear. The Shunzhi emperor sent Qing envoys to investigate the officials responsible for memorializing, with an edict that asked: “The [Chosŏn] officials who reported, do they wish to make Han Chinese into Japanese and give them to Japan? Or do they think the Ming state still exists? Or do they wish to seize and send Our Han Chinese (*zhen zhi Hanren*) to Japan? . . . All Under Heaven (*Tianxia*) has already been unified, and the populace (*yizhao*) has all returned to the registers and maps (*gui bantu*).”<sup>94</sup>

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<sup>93</sup> CWS Injo 48: 27a-b (25.7.18=8/18/1647), 28b-29a (25.8.3=9/1/1647), 35a (25.9.14=10/11/1647), 38a (25.10.16=11/12/1647).

<sup>94</sup> QSL Shizu, 47: 376b-371a (SZ7.1.11=2/11/1650), 378a-b (SZ7.1.28=2/28/1650), 395a (SZ7.7.20=8/16/1650); CWS Hyojong 1: 33b (0.7.16=8/23/1649), 3: 17a-b (1.3.7=4/7/1650), 3: 17b-20a (1.3.8=4/8/1650), 3: 20a-21a (1.3.9=4/9/1650), 3: 21b (1.3.13=4/13/1650), 5: 3a-4a (1.8.27=9/22/1650).

This was another imperial lesson from the Qing court: All Han Chinese people belonged to the Qing emperor now, and all Han Chinese shipwrecked in Korea had to be sent to Qing. The Chosŏn court applied this new lesson on the definition of Qing subjecthood in future cases. In spring 1652, 28 Han Chinese merchants from Suzhou drifted to Korea. They had originally been subjects of the Hongguang emperor but had been sojourning in Vietnam since the fall of the regime. Just a few months before, they had shaved their foreheads and set sail from Japan to go back to China. Weakened and broken from their ordeal, however, they now pleaded with the Chosŏn court to send them back to Japan. In spite of this, the Chosŏn court decided to repatriate them to Beijing. The reaction from the Shunzhi emperor made it clear that the Chosŏn court had made the right choice. In an edict, he remarked that these Han Chinese were all “Our subjects (*zhen zhi chizi*)” and ordered them to be returned to their places of origin.<sup>95</sup>

In 1667, the Chosŏn court sent Han Chinese castaways from Taiwan to Beijing despite their wish to be returned to Japan or to be allowed to sail on their own. Their claim that they were subjects of the Yongli emperor and the fact they had not shaved their foreheads aroused some protest within the court and much protest outside the court about the court’s decision, but it was not enough to counter the court’s concern over possible Qing retaliation. Also, even though the Chosŏn court did not know of Yongli’s death in 1662, it knew enough to speculate that these castaways were not Yongli’s subjects.<sup>96</sup> Indeed, the exchange between the Chosŏn court and the castaways makes it clear that they were under the jurisdiction of Zheng Jing (鄭經; 1642-81), the son of Zheng Chenggong (Koxinga), who ruled Taiwan.<sup>97</sup>

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<sup>95</sup> CWS Hyojong 8: 35b-36a (3.3.30=5/7/1652), 3.6.14 (7/19/1652); QSL Shizu, 68: 537a-b (SZ9.9.15=10/17/1652).

<sup>96</sup> CWS Hyŏnjong 14: 2a-b (8.6.21=8/10/1667), 14: 2b-3b (8.6.23=8/12/1667), 14: 9a (8.7.14=9/1/1667), 14: 21b (8.9.22=11/7/1667), 14: 23a-b (8.10.3=11/18/1667), 14: 40b (9.3.4=4/14/1668).

<sup>97</sup> On the Zheng regime, see Tonio Andrade, *How Taiwan Became Chinese: Dutch, Spanish, and Han Colonization in the Seventeenth Century* (New York: Columbia University Press, 2008), 208-245; Xing Hang, *Conflict and*

Not all Han Chinese castaways were repatriated to Qing, however. In 1670, for example, a provincial official in Cheju allowed a group of Han Chinese castaways to sail away. In 1677, the Chosŏn court employed two Han Chinese castaways as language teachers for their interpreters, emphasizing that they were subjects of the Ming dynasty.<sup>98</sup> But in any case, the Qing forces finalized the conquest of the former Ming domain by suppressing the Rebellion of the Three Feudatories (1673-81) and then conquering Taiwan in 1683. All Han Chinese who found their way to the Chosŏn domain were treated as Qing subjects from then on. In that sense, we could argue that Hong Taiji's desire to delineate a clear boundary between Qing subjects and Chosŏn subjects was only achieved in the 1680s. As long as there was the smallest hope for Ming restoration, a concept of Ming subjects distinct from Qing subjects could persist from the Chosŏn perspective. When even that faint hope disappeared, the Chosŏn court turned to other ways, mainly ritual, to commemorate the fallen imperial house of Ming.<sup>99</sup>

## 2. *Giving Back What Belonged to the Chosŏn King*

From 1645 to the end of the seventeenth century, the Qing state maintained the policy begun in 1637 of not incorporating Chosŏn subjects into the Qing state. During the Qing conquest of China Proper, the Qing state repatriated Chosŏn soldiers who submitted to Qing forces. In the summer of 1645, for example, the Qing state repatriated two Chosŏn soldiers

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*Commerce in Maritime East Asia: The Zheng Family and the Shaping of the Modern World* (New York: Cambridge University Press, 2016); and ECCP, 108-111.

<sup>98</sup> CWS Hyŏnjong 18: 29a-b (11.7.11=8/25/1670); CWS Sukjong 6: 19b (3.3.22=4/23/1677).

<sup>99</sup> JaHyun Kim Haboush, "Contesting Chinese Time, Nationalizing Temporal Space: Temporal Inscription in Late Chosŏn Korea," in *Time, Temporality, and Imperial Transition: East Asia from Ming to Qing*, ed. Lynn A. Struve (Honolulu: University of Hawai'i Press, 2005), 115-41; Bohnet, "Migrant and Border Subjects in Late Chosŏn Korea," 216-225, 326-335.

escaping from Southern Ming forces on an island in the Bohai Sea.<sup>100</sup> In the winter of 1646, the Qing Board of Revenue again repatriated 64 Chosŏn soldiers, who had been captured in Shandong, under an imperial order, which reasoned that they should be sent back to Chosŏn now that the Central Plains (*Zhongyuan*) had already become Qing domain (*ru bantu*).<sup>101</sup>

The Qing state also consistently turned away Chosŏn border residents who wished to defect to Qing. In 1648, for example, a 15-year-old boy crossed the Yalu River and arrived in Fenghuangcheng to follow the Qing official Gŭlmahŭn (Chŏng Myŏng-su) to Beijing. Gŭlmahŭn arrested and repatriated him to Chosŏn.<sup>102</sup> In 1661, when an unnamed Ŭiju resident arrested in Fenghuangcheng expressed his wish to defect (*tou chong*), the Qing court again repatriated him to Chosŏn.<sup>103</sup> In 1666, another Chosŏn subject named Ch'oe Sun-il (崔順一) was arrested in Fenghuangcheng. Even though he wished to defect as well, the Qing court repatriated him to Chosŏn.<sup>104</sup>

Finally, the Qing state also found and repatriated members of the Chosŏn tributary mission who remained in the Qing domain after the mission's completion. In 1661, Ch'oe Tŏk-sang (崔德尙), a servant accompanying the Chosŏn tributary mission to Beijing, ran away from the mission in Xingshan (杏山) and hid at the house of a Qing subject. He was arrested and

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<sup>100</sup> CWS Injo 46: 37b-38a (23.5.25=6/18/1645).

<sup>101</sup> TMHG 65: 1b (zi from Board of Revenue to Injo; SZ2.10.5=11/22/1645).

<sup>102</sup> CWS Injo 49: 16a-b (26.i3.28=5/20/1648). On Gŭlmahŭn (Chŏng Myŏng-su), see Kim Sŏn-min (Seonmin Kim), "Chosŏn t'ongsa Kulmahun, Ch'ŏngyŏk Chŏng Myŏng-su," *Myŏng-Ch'ŏngsa yŏn'gu* 41 (2014): 37–65.

<sup>103</sup> TMHG 50: 1a-b (zi from the Board of Rites to Hyŏnjong; SZ18.4.12=5/10/1661).

<sup>104</sup> CWS Hyŏnjong 11: 27a (6.12.17=1/21/1666), 12: 26a (7.3.25=4/28/1666); TMHG 50: 16a-17a (zi from the Board of Rites to Hyŏnjong; KX5.2.27=4/1/1666).

repatriated to Ŭiju.<sup>105</sup> In 1663, another Chosŏn subject who had been separated from the tributary mission due to illness was arrested in Guangning (廣寧) and repatriated to Ŭiju.<sup>106</sup>

### *3. Between Imperial Subjects and Tributary Subjects*

From the discussion above, it has become clear that the Qing and Chosŏn states came to a shared understanding of the demarcation between Qing subjects and Chosŏn subjects. Was subjecthood in Qing-Chosŏn relations, then, a status that could not be transferred at all? In short, an official transfer was only possible by a Qing imperial order. Here I will provide two examples to show how the theoretically universal nature of the Qing emperorship could enable the transfer of subjecthood between the Qing imperial state and the Chosŏn tributary state.

The first example is that of Princess Ŭisun (義順; d. 1662), a collateral member of the Chosŏn royal family. In 1650, the Qing regent Dorgon sent envoys to Chosŏn to choose a Chosŏn princess for him to take as his wife. The Chosŏn court selected Princess Ŭisun and sent her to Beijing to be married to Dorgon. She was soon widowed, however, as Dorgon suddenly died on the last day of 1650. After Dorgon was posthumously condemned and stripped of his rank less than three months after his death, she was married to Bolo (博洛; 1613?-52). By 1652, she had been widowed a second time and began her solitary life as a widow in the Qing court. In 1656, her father, sent to Beijing as an envoy, requested during a banquet that he be allowed to take his daughter home with him. The Shunzhi emperor eventually granted his approval, noting

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<sup>105</sup> TMHG 65: 1b (zi from Board of Rites to Hyŏnjong; SZ18.i7.8=9/1/1661).

<sup>106</sup> TMHG 65: 2b-3a (zi from Board of Rites to Hyŏnjong; KX2.10.1=10/31/1663).

that his universal love (*bo'ai*) knew no boundary between the inner and the outer (*neiwai*). Princess Ŭisun could now return “home” as a Chosŏn subject.<sup>107</sup>

The second example is that of Ming-a-na (明阿納). In 1681, Ming-a-na, a Manchu officer in Ningguta (寧古塔), petitioned Langtan (郎談; 1634-95), the vice commander-in-chief (*fudutong*) of the Manchu Plain White Banner, on the matter of his family. According to him, his father Er-ji-ken (爾濟肯) had been abducted by a Chosŏn subject as a child and gotten married in Chosŏn, and Ming-a-na himself had been born there. In 1637, he and his father returned to Qing as Qing subjects, but his mother was not allowed to come with them since she was a Chosŏn subject. His parents were barely 20 years old then, and neither of them had remarried though almost 50 years had passed since they parted. Now Ming-a-na was requesting that Langtan allow his family to be reunited. Langtan memorialized the Kangxi emperor (r. 1662-1722), recommending that the Chosŏn king find Ming-a-na's mother and send her to Ningguta. The Kangxi emperor approved the recommendation, and Ming-a-na's mother, Aehyang (愛香), was eventually sent from Kyŏnghŭng (慶興; in Hamgyŏng province) to Ningguta to be reunited with her family.<sup>108</sup>

In both cases, there was a transfer of subjecthood on the virtue of family ties and the universality of imperial rule. Princess Ŭisun returned home as a Chosŏn subject, while Aehyang was reunited with her family in Ningguta as a Qing subject. This transfer of subjecthood makes bare the fundamentally flexible nature of the delimitation between Qing imperial subjects and

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<sup>107</sup> QSL Shizu, 49: 391a (SZ7.5.21=6/19/1650), 98: 762b (SZ13.2.19=3/14/1656); On Dorgon's posthumous condemnation, see Wakeman, Jr., *The Great Enterprise*, 892-902. On the lives of Qing imperial women, see Evelyn S. Rawski, *The Last Emperors: A Social History of Qing Imperial Institutions* (Berkeley: University of California Press, 1998), 127-59.

<sup>108</sup> QSL Shengzu 98: 1241b-1242a (KX20.11.25=1/3/1682); TMGC Sukjong 8; TMHG 65: 8a (zi from the Board of Rites to Sukjong; KX21).



Chosŏn tributary subjects. We need to remember, however, that the Qing emperor remained the final authority that decided on this transfer. We have already seen how both states could invoke family ties and universal imperial rule in their claims over people. In the end, however, the Qing state could back up its asserted claims, whereas the Chosŏn state could not as in the case of An Ch'u-wŏn. The Qing emperor, as the ruler of a theoretically universal empire, reserved the right to determine and maintain the line between Qing imperial subjects and Chosŏn tributary subjects. This line could be crossed on rare occasions, but only on imperial terms. In short, there was a fundamental hierarchy between imperial subjecthood and tributary subjecthood. This same asymmetry can be found in the issue of territorial and other boundaries, which will be discussed in the next section, as well as in the issue of jurisdiction over interstate crimes, which is the topic of chapter three.

### **III. The Making of a Territorial Boundary**

#### **A. 1637-1690s: From a Potentiality to a Reality**

The effort to maintain a territorial boundary between the two states continued under the new tributary relationship. As mentioned above, this tributary relationship was based on the reaffirmed agreement that the Yalu River served as the territorial boundary between the two states.

Between 1637 and 1644, Hong Taiji launched several campaigns against the peoples in today's Heilongjiang (黑龍江). The Qing presence north of the Tumen River grew as new towns were built as the headquarters for these expeditions. The official Qing-Chosŏn interactions across the Tumen River grew accordingly. What happened on Xiongdao (熊島) Island, an island

near Kyŏnghŭng, in 1639 is a good example. On Hong Taiji's orders, the Chosŏn state sent an expedition to the island against some Kurka (庫爾喀) who resisted Qing rule. After this expedition and Qing expeditions on nearby islands, the Qing state relocated some captives to the newly founded town of Yechun (也春) in the lower part of the Tumen River, later to be renamed Huncun (琿春).<sup>109</sup>

From then on, Yechun became the center of Qing-Chosŏn interaction across the Tumen River. The main issue was the lack of food in Yechun. From 1640 to 1644, Manchus from Yechun came to Kyŏnghŭng and other Chosŏn towns south of the Tumen River on at least four separate occasions to look for food. From the beginning, the Chosŏn court recognized this as a security problem. In 1641, it requested that the Qing court stop Qing subjects from crossing the Tumen River, reasoning that even though the two states were one family now (*yijia*), each domain had its boundaries (*jiexian*). Hong Taiji, while blaming the Chosŏn state for the incidents, did acknowledge that such trespassing should be banned thereafter.<sup>110</sup> As Yi Hwa-cha has shown, Chosŏn subjects also crossed the Tumen River to enter the Qing domain during this period. She sees in communications between the Qing and Chosŏn states regarding these incidents of river crossing the development of a mutual understanding between the Qing and Chosŏn courts that the Tumen River also served as a territorial boundary between the two states.<sup>111</sup> The two states, in short, came to regard the Yalu and Tumen rivers as territorial boundaries between their domains.

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<sup>109</sup> Kye Sŭng-bŏm, *Choson sidae haeoe p'abyong kwa Han-Chung kwan'gye*, 222-238; QSL Taizong 46: 611b-612b (CD4.5.4=6/4/1639), 49: 650b-651a (CD4.10.6=10/31/1639); CWS Injo 40: 10a (18.2.5=3/26/1640).

<sup>110</sup> CWS Injo 40: 10a (18.2.5=3/26/1640), 40: 11a-b (18.2.12=4/2/1640), 42: 6a (19.2.13=3/23/1641), 43: 1a (20.1.2=1/31/1642), 45: 42a (22.8.8=9/8/1644); QSL, Taizong 54: 722b-723a (CD6.1.10=2/19/1641)

<sup>111</sup> Yi hwa-cha (Li Huazi), *Cho-Ch'ŏng kukkyŏng munje yŏn'gu*, 51-56.

This mutual understanding, however, did not transform these natural frontiers into borders overnight. The life cycle of borders proposed by Michiel Baud and Willem van Schendel is instructive here. According to them, the borderland grows from its infant stage, when the recently drawn border is more of a potentiality than a social reality, into an adolescent stage, when the border has become an undeniable reality but still with a collective memory of the pre-border period. In the 1640s and the 1650s, Qing-Chosŏn territorial boundary was still in its infant stage.<sup>112</sup> Many residents of the Qing-Chosŏn borderland, accordingly, did not acknowledge these boundaries and continued crossing them freely. In 1649, two Chosŏn subjects were arrested in Ningguta after handing meat and rice to a Qing subject named Lai-da-hu (賴達胡). Even though both the Qing and Chosŏn courts reiterated the principle that territorial boundaries should not be easily crossed, these three borderland residents had most likely known one another and been in contact for some time.<sup>113</sup> A homicide case in 1654, which will be discussed in more detail in chapter three, shows multiple crossings of the Tumen River in both directions. First, two Kurkas from Yechun crossed the Tumen River and bought two oxen at Kyŏngwŏn (in Hamgyŏng province). Then, when they did not return from their trip, their relatives and neighbors launched an investigation, following the footprints left in the snow. At the place of the crossing, they found the footprints of Chosŏn subjects who had logged trees on the Qing side of the river. Convinced that these Chosŏn subjects had killed the two Kurkas, the search party crossed the river to demand justice from the Kyŏngwŏn magistrate.<sup>114</sup> Clearly, these frontier residents were crossing the Tumen River on a regular basis.

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<sup>112</sup> Michiel Baud and Willem van Schendel, "Toward a Comparative History of Borderlands," *Journal of World History* 8, no. 2 (1997): 211–42.

<sup>113</sup> TMHG 49: 5a-b (zi from the Board of Revenue to Injo; SZ6.1.10=2/20/1649).

<sup>114</sup> TMHG 49: 23b-26a (zi from the Board of Rites to Hyojong; SZ11.12); CWS Hyojong 15: 16b (6.9.2=10/1/1655).

As we will see below, both Qing and Chosŏn states sought to stop unauthorized crossing of the rivers by severely punishing both trespassers and the local officials who had jurisdiction over them. Over time, such state-driven measures helped the territorial boundaries evolve from their infant stage to their adolescent stage, where they would come to be considered an undeniable reality for authorities of both states and for many residents.<sup>115</sup> Take a scene from 1661 involving the repatriation of Yu Kwi-kŭm (劉貴金) and another ginseng gatherer, for example. The Qing authorities from Fenghuangcheng stood on the Qing side of the Yalu River, while the Chosŏn authorities from Ŭiju stood on the Chosŏn side. The two parties looked at and conversed with each other from their respective sides, with neither party crossing the river during the repatriation process.<sup>116</sup> To the local officials in the borderlands, territorial boundaries had become a reality that could not be violated. As more and more borderland residents were punished for crossing the boundary, these boundaries would become more of a reality for the residents as well.

## **B. 1700s-1840s: An Early Modern Borderland**

What did that reality, then, look like in the early eighteenth century? An interstate homicide case in 1710 is instructive, as it shows both the reality and the limits of the Qing-Chosŏn boundary. This case, discussed in more detail in chapter three, started when a group of Chosŏn subjects led by Yi Man-ji (李萬支) crossed the Yalu River in pursuit of ginseng. On the

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<sup>115</sup> Baud and Van Schendel, "Toward a Comparative History of Borderlands," 213-25.

<sup>116</sup> TMHG 50: 2a-5a (zi from King Hyŏnjong to the Board of Rites; SZ18.11.1=12/21/1661).

Qing side of the river, they pillaged a tent set up by Qing ginseng gatherers, killing five of them in the process.

By then, the notion that the two rivers served as the territorial boundary between the two states had become common knowledge in both the Qing and Chosŏn courts. In June 1711, for example, the Kangxi emperor reacted to the report on the Yi Man-ji case with the following remark: “Northwest of the Yalu River is the Chinese domain, [and] southeast of the river is the Chosŏn domain. [We] take the river as the boundary . . . Southwest of the Tumen River is the Chosŏn domain, [and] northeast of the river is the Chinese domain. [We] also take the river as the boundary. That part is all already clear.”<sup>117</sup> It is hard to imagine a clearer affirmation of the Qing-Chosŏn territorial boundary. Moreover, this was a view that the Chosŏn court came to share as well. The following comment by King Sukjong (肅宗; r. 1674-1720) in his January 1715 lateral communication to the Qing Board of Rites was a standard phrase used by Chosŏn kings when discussing the boundary between the two states: “The northern region of our small state borders the great [i.e. Qing] state and is separated by only small bodies of water, which serve as the boundary.”<sup>118</sup>

This territorial boundary between the two states, however, was not a clear-cut border in the modern sense. First, up to 1712, there had been no formal agreement on what exactly constituted the territorial boundary between the Qing and Chosŏn domains. The Qing court, in fact, had shown an interest in delineating the Qing-Chosŏn territorial boundary from the late seventeenth century. As is well known, Kangxi was an early modern ruler with a deep interest in cartography, an interest that culminated in several empire-wide projects such as the *Da Qing*

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<sup>117</sup> QSL Shengzu, 246: 440b-441a (KX50.5.5=6/20/1711)

<sup>118</sup> TMHG 48: 12a-13a (zi from King Sukjong to the Board of Rites; KX53.12.15=1/20/1715)

*yitongzhi* (大清一通志) and the so-called “Kangxi Jesuit Atlas” (*Huangyu quanlan tu*). In the context of this chapter, this resulted in Qing officials being dispatched to Manchuria to gather information for these projects.<sup>119</sup> To do so, however, the Qing court needed cooperation from the Chosŏn court, and the Chosŏn court was in general against sharing geographic information on the Chosŏn side of the borderlands. It was not until 1711, amidst the Yi Man-ji case, that the Kangxi emperor could force the Chosŏn court to participate in an interstate survey mission to delineate the Qing-Chosŏn territorial boundary.

Second, as Peter Sahlins has shown, natural frontiers, while often serving as interstate boundaries in early modern Europe, also left much room for ambiguity and negotiation.<sup>120</sup> In this borderland, the main source of ambiguity lay in the area between Yalu River and the Tumen River. As Kangxi continued in his June 1711 edict from above, “the area between the Yalu River and the Tumen River, however, is not clearly known.”<sup>121</sup> From Kangxi’s perspective, lawlessness stemmed from geographic ambiguity, and this mission would once and for all eliminate that ambiguity. What lay between the Yalu River and the Tumen River? The Changbai (長白) Mountains, from which both rivers flowed, stood here. During this delineation process, representatives of both states agreed that the Yalu and Tumen Rivers had constituted the territorial boundaries for a long time.

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<sup>119</sup> Laura Hostetler, *Qing Colonial Enterprise: Ethnography and Cartography in Early Modern China* (Chicago: University of Chicago Press, 2001), 33-80; Mark C. Elliott, “The Limits of Tartary: Manchuria in Imperial and National Geographies,” *The Journal of Asian Studies* 59, no. 3 (2000): 619-24; Yi Hun, “Ch’ŏng ch’ogi Changbaeksan t’amsa wa hwangjegwŏn,” *Tongyangsahak yŏn’gu* 126 (2014): 235–75; Bai Hongye and Li Xiacong, *Kangxi chao Huangyu quanlan tu* (Beijing: Guojia tushuguan chubanshe, 2014).

<sup>120</sup> Sahlins, *Boundaries*, 35-60; Peter Sahlins, “Natural Frontiers Revisited: France’s Boundaries since the Seventeenth Century,” *The American Historical Review* 95, no. 5 (1990): 1423–51.

<sup>121</sup> QSL Shengzu, 246: 440b-441a (KX50.5.5=6/20/1711)

The problem lay with the delineation of the mountains in between. The Chosŏn court had already concluded before the mission that the Chosŏn representatives should claim all land south of Heaven Lake (天池) at the peak of the Mount Paekdu (白頭) as part of the Chosŏn domain. The representatives, headed by translator Kim Chi-nam (金指南; b. 1654), did exactly that, arguing that the land south of the lake had been in the Chosŏn domain from the beginning of the Chosŏn dynasty in the late fourteenth century. The Qing representatives, headed by the Hunter Ula (Ch. *dasheng wula*, Ma. *butha ula*) supervisor-in-chief Mu-ke-deng (穆克登), acquiesced, and the interstate mission went on to search for the heads of the Yalu and Tumen Rivers and erect a stele on the site of the riverheads just south of the Heaven Lake. The stele read: “[From here], west is the Yalu and east is the Tumen.”<sup>122</sup> For the time being, the two rivers had been confirmed as the boundaries, and the Changbai Mountains had been divided for the first time.

As Seonmin Kim has shown, however, the joint survey of the Changbai Mountains did not transform the Qing-Chosŏn borderlands into bordered lands. In fact, the exact delineation of the boundaries was not originally even on the Qing agenda. The very act of surveying the Changbai Mountains, rather than the outcome of the delineated boundaries, was the more important goal to the Qing court. The Chosŏn court, on the other hand, had been anxious to establish the exact location of the two riverheads for fear of losing part of its domain. In fact, when the Chosŏn officials recognized an error in the location of the Tumen riverhead, there was much debate within the court on how to proceed. Soon, however, the Chosŏn court came to realize that the Qing court was uninterested in the exact location of the boundaries. The stele

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<sup>122</sup> Yi hwa-cha (Li Huazi), *Cho-Ch'ŏng kukkyŏng munje yŏn'gu*, 129-170; Kang Sŏk-hwa, *Chosŏn hugi Hamgyŏng-do wa pukpang yŏngt'o ūisik* (Seoul: Kyŏngsewŏn, 2000), 31-73. On the Hunter Ula, see Jonathan Schlesinger, *A World Trimmed with Fur: Wild Things, Pristine Places, and the Natural Fringes of Qing* (Stanford: Stanford University Press, 2017), 68-74

itself was small and of inferior quality, and there were even mistakes in the characters inscribed on it. Mu-ke-deng himself showed much indifference about the exact location of the stele, and there is no evidence that the exact location of the stele was reported to the Kangxi emperor. Moreover, the Qing court did not engage in another geographical survey of the Changbai Mountains until the second half of the nineteenth century. The joint survey of the Changbai Mountains thus did not result in the modern border between the two states, nor was that the goal of the survey.<sup>123</sup>

After the joint survey, the Yalu and Tumen Rivers still constituted the territorial boundary between the Qing and Chosŏn domains. The Qing and Chosŏn states, however, were going in two different directions on how to regulate the territorial boundaries between their domains. The Chosŏn state preferred to keep the status quo of leaving the Qing side of the borderlands empty. In 1714, right after the joint survey of the Changbai Mountain, Chosŏn officials in Kyŏngwŏn noticed some Qing subjects building houses and farming just two or three *li* (i.e. between a kilometer and a mile) away from the Qing shores of the Tumen River. The Chosŏn court asked the Qing court to take action on this case. The Chosŏn court portrayed the current situation as the ideal situation. From its perspective, because the land outside the Willow Palisades, which separated much of Manchuria from China Proper and Chosŏn, had been left empty, there existed no motley throng (Kr. *honjap*, Ch. *hunza*) of Qing and Chosŏn subjects in the borderland. The Chosŏn court went on to portray what could happen if the land between the Willow Palisades and the rivers were populated. It would result in a situation where the smoke from both sides of the rivers converged and where the sounds of chickens and dogs could be

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<sup>123</sup> Seonmin Kim, "Borders and Crossings: Trade, Diplomacy and Ginseng between Qing China and Choson Korea" (Ph. D. dissertation, Duke University, 2006), 110-145.



heard across the rivers. If the rivers froze, the boundaries would become meaningless and people would freely cross them. The Qing court agreed with this view, ordering the Ningguta military governor (*jiangjun*) to destroy the houses and making it illegal to build houses and farms near the rivers in the future.<sup>124</sup>

The Chosŏn court used this precedent in similar cases going forward. In 1748, local officials in Kyŏngwŏn again detected a few Qing subjects building houses and farming a few *li* east of the Tumen River.<sup>125</sup> In 1840, local officials in Kanggye (江界; in P'yŏngan province) detected yet more Qing subjects building houses and farming in two different locations just a few *li* from the Yalu River.<sup>126</sup> In 1845, a similar incident was observed in Kanggye again, but with more people building houses and farming as close as 1 *li* from the Yalu River.<sup>127</sup> In all these cases, the local Chosŏn officials, along with interpreters, stood on the Chosŏn side of the river and talked to the Qing subjects on the Qing side of the river. When the attempt at persuasion inevitably failed, the Chosŏn court would again ask the Qing court for action, citing the 1714 precedent. The Qing court responded by ordering the Shengjing and Ningguta military governors to take action against these Qing criminals.

Two Shengjing military governors in the first half of the eighteenth century, however, did not see the status quo as ideal and pushed for more Qing military presence along the Yalu River. In 1731, the Shengjing military governor Nasutu (那蘇圖; d. 1749) saw the current state of the

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<sup>124</sup> TMHG 48: 12 a-13a (zi from Sukjong to the Board of Rites; KX53.12.15=1/20/1715), 13b-14a (zi from the Board of Rites to Sukjong; KX54.2.21=3/26/1715), 14b-15a (zi from the Board of Rites to Sukjong; KX54.10.25=11/20/1715).

<sup>125</sup> TMHG 48: 35b-37a (zi from Yŏngjo to the Board of Rites; QL13.7.9=8/2/1748).

<sup>126</sup> TMHG *wŏnp'yŏn sok kanggye* 1: 1a-2a (zi from Hŏnjong to the Board of Rites; DG22.4.21=5/30/1842).

<sup>127</sup> TMHG *wŏnp'yŏn sok kanggye* 1: 12b-13b (zi from Hŏnjong to the Board of Rites; DG26.5.28=6/21/1846).

Yalu borderlands as inadequate, with brigands taking advantage of the numerous waterways and lack of supervision near the Yalu River to roam around freely. Nasutu proposed tackling this problem by building a guard post in Hu'ershan (虎耳山) near the river and permanently stationing ships in Mangniushao (莽牛哨) on the river. The Yongzheng emperor, however, remarked that the Chosŏn court needed to be consulted on the matter as the said locations bordered (*lian jie*) Chosŏn. The Chosŏn court, in its reply, requested that the Qing court keep the status quo. If the proposal were to materialize, it reasoned, the tents and ships from both sides of the river would be linked. The shallow body of water would not be a sufficient boundary then, and trespassing and criminal activity would increase rather than decrease, making it more likely for the Chosŏn king to sin against the Qing emperor. The Yongzheng emperor sided with the Chosŏn court and ordered Nasutu to put a stop to his plan.<sup>128</sup>

In 1746, the Shengjing military governor Daldangga (達爾黨阿; d. 1760) came up with a similar but more sophisticated plan. Aware of his predecessor's failure, Daldangga went into detail in his explanation on why the status quo would not do, including the availability of ginseng in the area that was the source of problems. He even predicted the opposition from the Chosŏn court and argued that the status quo was actually bad for the border defense of the Chosŏn state. Furthermore, he proposed stationing ships on the western shore of the Yalu River, which was within the Qing domain, and tried to construct it as a purely domestic issue. The Chosŏn court should be merely notified, rather than consulted, about this matter. The Qianlong emperor granted his approval. As expected, the Chosŏn court opposed the move, using similar logic as before. The Qianlong emperor, while acknowledging that the new garrison would be

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<sup>128</sup> TMHG 48: 16 a-b (zi from the Board of Rites to Yŏngjo; YZ9.5.7=6/11/1731), 16b-17b (zi from Yŏngjo to the Board of Rites; YZ9.6.23=7/30/1731), 18a-b (zi from the Board of Rites to Yŏngjo; YZ9.9.14=10/14/1731).

built within the Qing boundary (*jiezhi yinei*) and thus had nothing to do with the Chosŏn boundary (*yu Chaoxian bianjie wushe*), saw how the close distance between the two shores of the river, which at times were only one or two *li* apart, could make the king worry about being held responsible for his subjects trespassing and causing problems in the future. Here again, the Qing emperor sided with the Chosŏn court and maintained the status quo.<sup>129</sup>

Seonmin Kim points out that these two events show that border security and the clear delineation of boundaries were apparently less important to the Qing court than was the maintenance of the tributary relationship with the Chosŏn state.<sup>130</sup> She goes on to argue that the establishment of the modern border was impossible under the tributary relationship: “All of the conditions—including a natural environment that promoted easy trespassing, a long history of coexistence between the Manchus, Chinese and Koreans along the border, and relatively loose surveillance in the border areas—were beyond what the tributary relations could transform.”<sup>131</sup>

The maintenance of the tributary system leads us to another crucial point that discouraged the formation of a clear Qing-Chosŏn border. After Hong Taiji proclaimed himself an emperor in 1636, the Qing state in theory became a universal empire. This theoretical universality of the Qing empire became more of a reality as the Qing conquered Beijing in 1644, finalized the conquest of the former Ming domain in the 1680s, and secured a final victory over the Zunghars in the 1750s. This universality was paired with a universal worldview that looked at “All Under Heaven (*Tianxia*)” as belonging to the Qing emperor. In such a worldview, no territorial

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<sup>129</sup> TMHG 48: 19b-26b (zi from the Board of Rites to Yŏngjo; QL11.7.24=9/9/1746), 26b-28a (zou by Yŏngjo; QL11.4.19=6/7/1746); *Junjichu Manwen lufu zouzhe* (MWLZ hereafter) 03-0107-334-005 (Bandi; QL11.8.30=10/14/1746).

<sup>130</sup> Kim, “Borders and Crossings,” 110-145.

<sup>131</sup> Kim, “Borders and Crossings,” 144.

boundaries between the Qing empire and its tributary neighbors could be a permanent feature. This worldview is demonstrated nicely in the Yongzheng emperor's quotation from the Book of Odes (*Shijing*): "There is no land under Heaven that does not belong to the king (*putianzhixia, mofei wang tu*)."<sup>132</sup>

Even though this "*Tianxia*" worldview was better maintained obviously in theory than in practice, there were many ways that the Qing emperor could invoke this worldview in relation to Chosŏn Korea. For example, as we will see in chapter three, various Qing emperors drew on this worldview, which saw no distinction between Qing and tributary states, in extending imperial pardon toward Chosŏn subjects convicted of crimes against the Qing state. As mentioned above, the 1644 Qing decision to stop repatriation of the Warka also originated from this worldview. If the emperor really ruled All Under Heaven, what difference did it make whether the Warka lived in the Qing domain or the Chosŏn domain?<sup>133</sup> Even the Chosŏn court would invoke this worldview when needed, as King Hyojong did in 1666 in defense of his ministers who did not memorialize on the escape of An Ch'u-wŏn. What difference did it make whether An was in the Qing domain or the Chosŏn domain? He was living in All Under Heaven either way!

In that sense, the clear delineation of boundaries was not in the best interest of the Qing court either, for it could go against the universality and elasticity of the empire that was at the heart of Qing rule. This was especially true in relatively secure borderlands like the Qing-Chosŏn one. In 1637, the Qing-Chosŏn borderland was still close to the heart of the nascent Qing empire. In 1644, as the Qing conquest of China Proper began, this borderland became a secondary concern. By the 1680s, when the Ming-Qing transition had been completed, the Qing-Chosŏn

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<sup>132</sup> QSL Shizong, 81: 74a (YZ7.5.21=6/17/1729)

<sup>133</sup> QSL Shizu 4: 52b-53a (SZ1.4.11=5/16/1644); CWS Injo 45: 22a (22.4.26=5/31/1644).

borderland no longer posed a security concern for the Qing state. Rather, the focus had moved to other borderlands such as the Qing-Russia borderland and the symbolic significance of the Manchu motherland. Notably, the Qing court actively sought to delineate the territorial boundaries in these borderlands and protect its territorial domain in its negotiations for the Treaty of Nerchinsk in 1689.<sup>134</sup>

#### **IV. Other Boundaries: Sartorial, Environmental, Linguistic**

The territorial boundary was not the only boundary that existed in the Qing-Chosŏn borderland. Borderland residents, when they crossed the territorial boundary, were often crossing the sartorial, environmental, and linguistic boundaries of this borderland as well. The rich ethnographic information contained in my sources shows that these boundaries variously defied, ignored, and acknowledged the territorial boundary.

##### **A. Sartorial Boundary**

First, there was the sartorial boundary. Soon after the Manchus conquered Beijing in 1644, they began requiring all Qing subjects to shave their foreheads and wear the queue. Throughout the dynasty, this hairstyle remained one of the most conspicuous symbols of Qing rule over its subjects. Mark Elliott, for example, sees the queue, along with the separate Manchu cities, as one of the two most enduring and obvious manifestations of Qing rule. Philip Kuhn also stresses the symbolic importance of the queue to the Qing regime.<sup>135</sup> Moreover, Qing officials

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<sup>134</sup> Peter C. Perdue, "Boundaries and Trade in the Early Modern World: Negotiations at Nerchinsk and Beijing," *Eighteenth-Century Studies* 43, no. 3 (2010): 341–56; Elliott, "The Limits of Tartary."

<sup>135</sup> Elliott, *The Manchu Way*, 89; Philip A. Kuhn, *Soulstealers: The Chinese Sorcery Scare of 1768* (Cambridge, MA: Harvard University Press, 1990), 58-9.

were required to wear Manchu-style clothing, and many commoners had also adopted Manchu-style clothing by late Qing.<sup>136</sup> Meanwhile, Chosŏn sartorial style, which was close to that of the Ming, had not undergone this transformation. This was a source of pride for Chosŏn literati, who liked to point out the “barbarity” of Qing fashion and lament the loss of “civilization” in China Proper in their travels to Beijing. The implication, of course, was that Chosŏn was the true heir to and the center of Sinic civilization following the Qing conquest of China Proper.<sup>137</sup>

For the borderland residents, this meant that they would stand out in the foreign domain due to the sartorial boundary between Qing and Chosŏn subjects. In fact, many trespassers were arrested exactly because of these sartorial idiosyncrasies. In 1711, a Chosŏn subject in Kapsan (甲山; in Hamgyŏng province) reported to local authorities about three men wearing different styles (Kr. *poksaek*, Ch. *fuse*) of clothing, and these Qing subjects were promptly arrested.<sup>138</sup> When the officials in Onsŏng (穩城; in Hamgyŏng province) arrested Kim Si-jong (金時宗) and one other Chosŏn subject in 1739, for example, their Qing-style (Kr. *sangguk*, Ch. *shangguo*) clothing was noticeable.<sup>139</sup> In one homicide case in 1764, this sartorial boundary gave clues to the identities of the murderers. When the Qing authorities found the corpse of a Manchu soldier near Fenghuangcheng, the existence of Koryŏ-style straw sandals (*Gaoli suo chuan caoxie*) and

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<sup>136</sup> Edward Rhoads, *Manchus and Han: Ethnic Relations and Political Power in Late Qing and Early Republican China, 1861-1928* (Seattle: University of Washington Press, 2001), 60-61.

<sup>137</sup> For one such example, see Pak Chiwŏn, *The Jehol Diary*, trans. Yang-hi Choe-Wall (Folkestone: Global Oriental, 2010).

<sup>138</sup> TMHG 61: 1a-2a (zi from King Sukjong to the Board of Rites; KX50.9.9=10/20/1711).

<sup>139</sup> TMHG 55: 7b-10b (zi from King Yŏngjo to the Board of Rites; QL4.6.29=8/3/1739)

the handle of a Koryŏ-style sickle (*Gaoli lian daoba*) near the corpse proved a breakthrough in the investigation.<sup>140</sup>

At the same time, this sartorial boundary was flexible. After all, all one had to do was to change one's appearance at the outset. I have found at least three cases in which Chosŏn subjects tried to pass as Qing subjects by crossing the sartorial boundary. In early 1813, a Chosŏn subject named Kim Ch'i-yŏ crossed the Yalu River and joined Qing ginseng gatherers. Four months later, he began to wear Qing attire and went on to reside in the Qing domain for more than three years before his arrest.<sup>141</sup> In 1830, two Chosŏn subjects fraternized with a group of Qing subjects in Jilin. One of them gave the Chosŏn subjects clothes to wear in exchange for ginseng, and another shaved their foreheads (*tifa*) for them.<sup>142</sup> In an extreme case, one Chosŏn subject who entered the Qing domain in 1830 at the age of six ended up becoming a Buddhist monk in 1838 before being arrested in 1841.<sup>143</sup> This crossing of the sartorial boundary was not limited to Chosŏn subjects. Iacobus Zhou Wenmo (周文謨; 1752-1801), a Qing subject and the first Catholic missionary to Chosŏn, adopted the Chosŏn hairstyle and attire soon after he arrived in Chosŏn in 1795. As the queen regent Chŏngsun (貞純; 1745-1805) remarked, Zhou was dressed like a Chosŏn subject in all manners when he gave himself up to the Chosŏn authorities.<sup>144</sup>

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<sup>140</sup> TMHG 59: 13b-15b (zi from the Shengjing Board of Rites to King Yŏngjo; QL29.1.2=2/3/1764). Koryŏ and Chosŏn were often interchangeable terms in Chinese sources.

<sup>141</sup> TMHG wŏnp'yŏn sok pŏmwŏl 1: 3a-b (zha from the Shengjing military governor to the Ŭiju magistrate; JQ22.6.29=8/11/1817), 3b-5b (zi from Sunjo to the Shengjing military governor; JQ22.11.21=12/28/1817).

<sup>142</sup> TMHG wŏnp'yŏn sok pŏmwŏl 1: 12a-14a (zi from the Shengjing Board of Rites to Sunjo; DG11.11.18=12/21/1831).

<sup>143</sup> TMHG wŏnp'yŏn sok pŏmwŏl 1: 17a-19b (zi from the Shengjing Board of Rites to Hŏnjong; DG21.i3.15=5/5/1841), 19b-21a (zi from Hŏnjong to the Shengjing Board of Rites; DG21.7.12=8/28/1841).

<sup>144</sup> CWS Sunjo 3: 48b-49a (1.10.27=12/2/1801).

## B. Environmental Boundary

Second, there was the environmental boundary. Due to a variety of reasons, such as state policies on the environment and market demand that could impact the actions of borderland residents as well as the natural environments themselves, the ecology of the Qing and Chosŏn sides of the borderland differed.<sup>145</sup> At least, the residents of the borderlands who trespassed into the other domain in pursuit of profit seem to have perceived such a difference.

Some of these residents explicitly acknowledged this difference. In 1647, 23 hunters led by Kim Ik-kyŏm (金益謙) explained that they went hunting on the Qing side of the Tumen River because there were more animals there than on the Chosŏn side.<sup>146</sup> In 1661, Kim Hyo-sin (金孝信) and other ginseng gatherers acknowledged that they crossed into the Qing domain because there was not enough ginseng on the Chosŏn side.<sup>147</sup> Similarly, Kim Sun-jŏng (金順丁) and others confessed in 1762 that they had crossed into the Qing domain when they could not find ginseng even deep in the mountains on the Chosŏn side.<sup>148</sup> In 1662, Pak Yong-ŏp explained that he had to cross the Yalu River because there were no trees on the Chosŏn islands.<sup>149</sup>

Even without such explicit acknowledgements, in many cases of trespassing, which will be discussed in more detail in chapter three, we can see that crossing the territorial boundary also

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<sup>145</sup> For the environmental history of the region, see Schlesinger, *A World Trimmed with Fur*, 55-91 and David A. Bello, *Across Forest, Steppe and Mountain: Environment, Identity, and Empire in Qing China's Borderlands* (New York: Cambridge University Press, 2016), 63-115

<sup>146</sup> CWS Injo 48: 37b-38a (25.10.9=11/5/1647).

<sup>147</sup> TMHG 49: 47b-49a (zi from Hyŏnjong to the Board of Rites; SZ17.12), 49a (zi from the Board of Rites to Hyŏnjong; SZ18.1.17=2/15/1661).

<sup>148</sup> TMHG 58: 3a-5a (zi from Yŏngjo to the Board of Rites; QL27.6.6=7/26/1762).

<sup>149</sup> TMHG 50: 7a-9a (zi from the Board of Rites to Hyŏnjong; KX1.3.23=5/10/1662).



involved crossing the environmental boundary. Some of these trespassers saw environmental resources to be exploited on the other side of the territorial boundary and clearly viewed their act of crossing more as an entrance into a new ecological domain than a territorial encroachment.

### C. Linguistic Boundary

We know of all these instances of trespassing only because these trespassers were arrested and punished for their acts, leaving behind them a trail of historical documents. This is where our third boundary, that of language, comes in. An inability to completely cross this linguistic boundary was in fact the main reason behind the arrest of these trespassers. Kim Ch'i-yŏ, for example, was arrested because he could not speak Chinese (*guanhua*) even after more than three years of residence in the Shengjing area.<sup>150</sup> Part of the reason that Zhou Wenmo gave himself up was that he could not move around freely due to his imperfect Korean language skills. He could not cross the linguistic boundary even after seven years of residence in Chosŏn.<sup>151</sup>

Of course, there were those who did cross this boundary. Kim Si-chong, for example, testified about a Qing subject named Wang Gaoshi who could speak Korean (Kr. *Chosŏn ō*, Ch. *Chaoxian yu*).<sup>152</sup> The story of the Chosŏn subject who became a Buddhist monk in Jilin is even more fascinating. This man, who had lived in the Qing domain since the age of six, became a slave in a Manchu household in Huncun in 1830. In 1838, he took the name Pahai after escaping from the household. Later he became a monk and took the Buddhist name Jiekun. He seems to have experienced no linguistic difficulty. His crossing of the linguistic boundary was so

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<sup>150</sup> TMHG wŏnp'yŏn sok pŏmwŏl 1: 3a-b (zha from the Shengjing military governor to the Ŭiju magistrate; JQ22.6.29=8/11/1817).

<sup>151</sup> CWS Sunjo 2: 46b-47a (1.3.15=4/27/1801).

<sup>152</sup> TMHG 55: 7b-10b (zi from Yŏngjo to the Board of Rites; QL4.6.29=8/3/1739).

complete that we never even learn what his original Korean name was.<sup>153</sup> And in most other cases where subjects of both states were interacting together, we must assume that they had some means of crossing this linguistic boundary.

## **V. Conclusion**

In this chapter, we have seen how two wars between Qing and Chosŏn resulted in a 1637 ceasefire agreement delineating the subjects and domains of the two states. The Qing rulers had just carved out a frontier khanate after decades of state-building and campaigns against the neighboring Ming, Mongol, and Chosŏn polities. Therefore, they were dedicated to protecting their hard-won territorial domain and subjects against what they perceived as economic encroachments from neighboring rulers.

This context influenced how both states maintained this delineation in two main ways. The first, subjecthood, concerned runaway slaves from the Qing domain and Jurchen residents in the Chosŏn domain. The Chosŏn state, which initially protected these people, gradually succumbed to Qing pressure to send them back, acknowledging the Qing definition of the boundary between imperial and tributary subjects. This acknowledgment is also seen in the second issue, territorial delineation. The two states agreed to acknowledge the Yalu River and the Tumen River as a natural territorial boundary between them. That shared understanding culminated in the 1710s in an interstate survey and the delineation of the Changbai Mountains.

The Qing-Chosŏn borderland, as a result, came to show a higher level of delineation of subjects and domains than in other borderlands. As we will see in chapter three, this historical

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<sup>153</sup> TMHG wŏnp'yŏn sok pŏmwŏl 1: 17a-19b (zi from the Shengjing Board of Rites to Hŏnjong; DG21.i3.15=5/5/1841), 19b-21a (zi from Hŏnjong to the Shengjing Board of Rites; DG21.7.12=8/28/1841).

context was also responsible for the more routine procedures of interstate trials in this borderland. In comparison, as we will see in chapter six, the Qing-Kokand borderland was more of an open frontier. With the Qing notion of an unbounded empire during the height of imperial expansion, there was never a serious attempt at interstate delineation of the boundaries, and movement across the borderland was relatively free. The Qing-Vietnam borderland, as we will see in chapter four, occupied an intermediate position between these two extremes.

The Qing-Chosŏn borderland, however, shared three important characteristics with the other two borderlands. First, there were multiple and shifting conceptions of boundaries, which encompassed more than the concepts of persons and space. Second, the relationship between the Qing empire and tributary states was asymmetrical. Finally, as a result, both Qing imperial and tributary sovereignties were fundamentally elastic. In the chapters to follow, we will see in more detail how this early modern worldview in Qing-centered Asia defies post-Westphalian norms of inter-state equality and non-interference in the internal affairs of fellow states.

## CHAPTER III.

### Criminalizing and Punishing Borderland Activities:

#### Qing-Chosŏn Interstate Law, 1630s-1840s<sup>1</sup>

##### I. Introduction

###### A. Qing and Chosŏn Judiciaries

Before we delve into Qing-Chosŏn interstate law, it will be useful to give a brief overview of the histories of the Qing and Chosŏn judiciaries. In both states, we see a drive toward the systematization of operational laws into written laws by the end of the seventeenth century. The Qing state promulgated the first edition of the Qing Code (*Da Qing lü*) in 1646. The compilers of the first edition took the Ming Code (*Da Ming lü*) as its basis, adopting most of its statutes (*lü*) while changing much of its substatutes (*li*) to fit the needs of the time. The next two editions (1725, 1740) continuously focused on integrating operative substatutes into the Qing Code. For administrative law, Qing officials at first used the Ming administrative code (*Da Ming huidian*) but gradually found it to be inadequate and outdated for the needs of the new dynasty. The first edition of the new administrative code (*Da Qing huidian*) was promulgated in 1690, and two more editions appeared in the eighteenth century (1732, 1764) and the nineteenth century (1818, 1899) before the dynasty ended in 1912.<sup>2</sup>

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<sup>1</sup> For transliteration of Chinese terms, I have followed the pinyin system, and for Korean, the McCune-Reischauer Romanization.

<sup>2</sup> Zheng Qin, "Pursuing Perfection: Formation of the Qing Code," trans. Guangyuan Zhou, *Modern China* 21, no. 3 (1995): 310–44; Macabe Keliher, "Administrative Law and the Making of the First Da Qing Huidian," *Late Imperial China* 37, no. 1 (2016): 55–107; Derk Bodde and Clarence Morris, *Law of Imperial China* (Cambridge, MA: Harvard University Press, 1967), 52-75.

The Chosŏn state, for its part, had adopted the Ming Code as its basic code at the beginning of the dynasty in 1392 and kept it as the basic legal code throughout the rest of the dynasty. The Chosŏn state made the changes to its legal code by incorporating case law into supplementary legal references such as *Kyŏngguk taejŏn* (1485), *Sok taejŏn* (1744), and *Taejŏn t'ongpy'ŏn* (1785). Other than the publication of the references, the Chosŏn state in the late seventeenth and eighteenth centuries also sought to be more systematic in its legislation by citing the Ming Code on a more regular basis, promulgating special laws, and unifying procedures in general.<sup>3</sup>

In short, both the Qing and Chosŏn judiciaries, from their common heritage of the Ming statutory tradition, were moving toward a more routine and systematic statutory basis. Moreover, that meant that they shared a set of not only basic legal concepts and assumptions but also specific statutes and substatutes. As we will see below, these legal commonalities formed the basis from which Qing-Chosŏn interstate law developed from the second half of the seventeenth century. Before we get to that point, however, let us first look at operational interstate law between 1637 and 1645, when the historical context of constant warfare between Qing and Ming states made the development of routine Qing-Chosŏn interstate law unlikely.

## **B. Operational Interstate Law: 1637-1645**

We observed a general tendency to draw a line between the domains and peoples of the Qing and Chosŏn states in chapter two. This drive did not apply to the Qing and Chosŏn judiciaries. From 1637 to 1645, the Qing judiciary penetrated deeply into the Chosŏn judiciary,

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<sup>3</sup> William Shaw, *Legal Norms in a Confucian State* (Berkeley: Center for Korean Studies, University of California, 1981), 3-42.

intervening in and sometimes usurping the Chosŏn judiciary when considering any incident that it deemed went against Qing interests. Gertraude Roth Li, in her description of Manchu state-building before 1644, has credited Nurhaci with “creating a Manchu nation-at-arms.”<sup>4</sup> We can extend this observation to this period, when Hong Taiji had transformed Nurhaci’s frontier khanate into an imperial state and was engaged in an all-out war against the Ming empire. Hong Taiji was the military officer who stood atop the Qing empire-at-arms, to which Chosŏn now belonged to as a tributary state, and he ruled his empire through military-like discipline.

In fact, the Qing-Chosŏn tributary relationship was established on the understanding that the Chosŏn state had sinned against the Qing state by breaking off the interstate relations established in the 1627 ceasefire and raising an army to prepare for a possible Manchu invasion. Hong Taiji, in his edict of February 22, 1637, repeatedly mentioned King Injo’s crimes (*zui*) and his need to repent and start anew (*huiguozixin*). The ceremony of surrender on February 24, 1637, concretized this acknowledgement. King Injo (仁祖; r. 1623-49), as a guilty (*youzui*) man, was not allowed to come out of the main gate of Namhan Fortress and had to make his way out of the west gate. Neither was he allowed to wear the royal robe (Kr. *yongp’o*, Ch. *longpao*)—he was instead dressed in a plain blue robe, shorn of all insignia. It was in this state, stripped of all signs of his royal authority, that Injo kowtowed to Hong Taiji and formally showed his submission.<sup>5</sup>

Furthermore, the Qing state gave this admission of guilt material representation, ordering that a trilingual (Manchu, Mongol, and Chinese) stele be installed at the site of King Injo’s

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<sup>4</sup> Gertraude Roth Li, “State Building before 1644,” in *The Cambridge History of China, Volume 9, Part 1: The Ch’ing Empire to 1800*, ed. Willard J. Peterson (New York: Cambridge University Press, 2002), 27.

<sup>5</sup> QSL Taizong 33: 430b-431b (CD 2.1.28=2/22/1637), 431b-433a (CD 2.1.30=2/24/1637); CWS Injo 34: 20a-21a (15.1.28=2/22/1637), 34: 23a-24a (15.1.30=2/24/1637).

submission as a permanent reminder of Hong Taiji's imperial grace. Now known as the Samjōndo stele (*Samjōndo bi*) in Korea for its location, this stele served as the physical manifestation of the Chosŏn guilt that formed the basis of the Qing-Chosŏn tributary relationship. In fact, one line from this stele reads: "The small state [i.e. Chosŏn] has sinned against the supreme state [i.e. Qing] for a long time."<sup>6</sup>

Moreover, someone had to be punished before this "fresh start" began. As a requirement for the ceasefire, Hong Taiji ordered King Injo to send a few of the officials responsible for breaking the Qing-Chosŏn alliance to the Qing camp, adding that he had originally intended to kill all Chosŏn officials. The Chosŏn court ended up sending three officials, Yun Chip (尹集; 1606-37), Oh Tal-che (吳達濟; 1609-37), and Hong Ik-han (洪翼漢; 1586-1637), to Mukden, known as Shenyang (瀋陽) in Ming times. Accused of taking sides with Ming, breaking the alliance, and raising an army against the Qing, these officials were decapitated.<sup>7</sup> Subjects of Chosŏn, now a tributary state of the Qing empire, were to see this execution as a warning to not go against Qing interests.

The Qing state, in the person of the Qing emperor Hong Taiji, monopolized the right to decide what actions went against Qing interests and to criminalize such actions. Of course, this demonstrates the tautological quality of many charges labeling certain actions crimes against the

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<sup>6</sup> The full title of the stele is "stele [commemorating] virtues of the Great Qing emperor (Ch: *Da Qing huangdi gongde bi*; Ma: *daicing gurun i enduringge han i gungge erdemui bei*)" The draft of the text was first written by two Chosŏn officials in Classical Chinese in late 1637 and then modified by the Qing minister Fan Wencheng (1597-1666) in Mukden in early 1638. The Chinese inscription was completed in between late 1639 and early 1640, and then it was translated into Manchu and Mongol by the three *baksi* who had come with the Qing envoy Mafuta. Pae U-sŏng, *Chosŏn kwa Chunghwa: Chosŏn i kkum kkugo sangsang han segye wa munmyŏng* (P'aju: Tolbegae, 2014), 33-47. The Manchu transliteration of the text can be found in Sŏng Paek-in, "Samjōndobi manjumun," *Tonga munhwa*, no. 9 (1970): 117-48.

<sup>7</sup> CWS Injo 34: 21b-22b (15.1.29=2/23/1667), 34: 33b-34a (15.3.5=3/30/1637), 34: 45b (15.4.19=5/13/1637); QSL, Taizong 33: 430a-b (CD2.1.28=2/22/1637), 34: 440b (CD2.3.1=3/26/1637), 36: 465a-466b (CD2.6.19=8/9/1637), 37: 492a-494a (CD2.7.26=9/14/1637).

state.<sup>8</sup> Some of these actions were perennial issues such as ginseng gathering in the Qing domain by Chosŏn subjects. As ginseng was a lucrative commodity highly prized by the early Qing state, the Qing state deemed this activity a violation of its territorial boundary as well as of its economic prerogatives.<sup>9</sup> Between 1642 and 1645, the Qing court asserted jurisdiction over at least three groups of Chosŏn subjects gathering ginseng in the Qing domain. In 1643, for example, 36 Chosŏn ginseng gatherers from Kanggye were arrested while gathering ginseng. In response, the Qing court sent two envoys to try the officials of Kanggye.<sup>10</sup> In 1645, separate groups of Chosŏn subjects from far northern P'yŏngan and Hamgyŏng (咸鏡) provinces were arrested for gathering ginseng in the Qing domain. The Qing court sent three envoys to Hanyang (漢陽), the Chosŏn capital, to investigate the criminals and the local officials responsible.<sup>11</sup>

Other actions were specific to the period in question, when the Qing and Ming states were engaged in a full-blown war. The Qing court, for example, considered Chosŏn communications with the Ming state to be criminal. In 1641, the Qing court sent two *baksi* to Ŭiju (義州), P'yŏngan, to investigate a case involving a Chosŏn military officer named Ch'oe Hyo-il (崔孝一; d. 1644). He had defected to Ming with his family in 1639 and had kept in touch with his relatives remaining in Ŭiju.<sup>12</sup> In 1642, Hong Chengchou (洪承疇; d. 1665), a Ming minister who had recently defected to Qing, informed the Qing court of communications that he

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<sup>8</sup> I thank Pär Cassel for making this observation.

<sup>9</sup> Seonmin Kim, "Ginseng and Border Trespassing Between Qing China and Chosŏn Korea," *Late Imperial China* 28, no. 1 (2007): 33–61.

<sup>10</sup> CWS Injo 44: 33b (21.9.21=11/2/1643).

<sup>11</sup> CWS Injo 46: 9a-b (23.3.1=3/28/1645).

<sup>12</sup> CWS Injo 42: 35b-36a (19.11.9=12/11/1641), 42: 37a (19.12.8=1/8/1642).



had received from Chosŏn officials in the past, which was described in chapter two. Hong Taiji sent four high officials—Inggŭldai (英俄爾岱; 1596-1648), Cergei (車爾格; d. 1645), Garin (剛林; d. 1651), and Lošo (羅碩; n.d.)—and the Chosŏn crown prince Sohyŏn (昭顯; 1612-45) to the Qing border city of Fenghuangcheng (鳳凰城) for a joint investigation of P’yŏngan provincial officials.<sup>13</sup>

The Qing court considered unsatisfactory Chosŏn performance in campaigns against Ming forces to be a crime as well. Hong Taiji’s November 1640 edict condemning the ten crimes of King Injo, discussed in chapter two, is a good example. Three of the crimes listed had to do with the insufficiency of the Chosŏn war effort: not sending cavalry, delay in the sending of ships, and delay in sending of the horses.<sup>14</sup> This performance issue extended to the battlefield as well. In 1641, for example, two Chosŏn soldiers fighting as part of the Chosŏn contingency of the Qing campaign in Jinzhou (錦州) were disciplined by a Qing supervisor for their performance on the field. One soldier, who removed the bullets from his gun and fired empty shots at Ming forces, was beheaded, and the other soldier, who fired shots and, perhaps intentionally, missed his targets, was beaten.<sup>15</sup>

The Qing judiciary assumed full jurisdiction over Chosŏn subjects it targeted in such ways. In the trials held in the Qing domain, the Qing judiciary left no room for the Chosŏn judiciary to intervene. A case in 1639 involving two members of the Chosŏn crown prince’s retinue in Mukden is instructive. The case started with them accusing two Qing interpreters of

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<sup>13</sup> QSL Taizong 63: 860a-864a (CD 7.10.6=10/29/1642); CWS Injo 43: 22a-b (20.10.12=11/4/1642), 43: 24a (20.10.18=11/10/1642), 43: 24a-b (20.10.19=11/11/1642), 43: 24b-25a (20.10.20=11/12/1642), 43: 35b (20.11.29=1/19/1643).

<sup>14</sup> QSL Taizong 53: 706a-707a (CD 5.10.15=11/27/1640).

<sup>15</sup> CWS Injo 42: 16b (19.5.4=6/11/1641).

demanding and receiving bribes from the Chosŏn court, a practice that Hong Taiji had explicitly prohibited. These interpreters, such as Gŭlmahŭn (d. 1653), a former Chosŏn subject by the name of Chŏng Myŏng-su (鄭命壽) who was captured by the Jurchens during the 1627 war, were in the service of high-ranking officials such as Inggŭldai. The Qing Board of Punishments eventually concluded that these Chosŏn subjects had made false accusations (*wugao*) and put them on a trial. Even though the crown prince requested that they be sent to Chosŏn to be tried there, the Qing officials in charge claimed that Chosŏn subjects were also “our subjects” (*wu min*) and thus must be punished by “our law” (*wu fa*). They were strangled to death in Mukden.<sup>16</sup>

The Qing judiciary reserved full jurisdiction over trials held in the Chosŏn domain as well. Those Qing officials who were sent to the Chosŏn domain, as Hong Taiji’s representatives, largely made unilateral legal decisions and imposed them on the Chosŏn judiciary. The *baksi* sent to Ŭiju in 1641, for example, decided that Hwang Il-ho (黃一皓; 1588-1641), who was serving as the Ŭiju prefect in 1639, was guilty of not chasing after Ch’oe Hyo-il when he defected to the Ming and of releasing his Ŭiju relatives. They paid no attention to King Injo’s plea that Hwang be spared, or at least be strangled to death, instead beheading him alongside Ch’oe’s 12 relatives in Ŭiju.<sup>17</sup>

The Chosŏn court was keenly aware of this judicial monopoly. In 1643, for example, when the two Qing envoys investigating the case of the Kanggye ginseng gatherers asked King Injo what he wished to do with the local officials, the king replied that he dared not decide and

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<sup>16</sup> CWS Injo 38: 8b-11b (17.2.6=3/10/1639), 38: 14a-b (17.2.9=3/13/1639). On Gŭlmahŭn, see Kim Sŏn-min (Seonmin Kim), “Chosŏn t’ongsa Kulmahun, Ch’ŏngyŏk Chŏng Myŏng-su,” *Myŏng-Ch’ŏngsa yŏn’gu* 41 (2014): 37–65.

<sup>17</sup> Injo 42: 35b-36a (19.11.9=12/11/1641), 42: 37a (19.12.8=1/8/1642).

withdrew from the decision-making process. The envoys commented that the officials deserved death but eventually pardoned them with the application of imperial clemency. As we will see below, this use of Qing imperial amnesty toward Chosŏn subjects would become a routine feature of Qing-Chosŏn interstate law.<sup>18</sup> In 1645, the three envoys sent to Hanyang interrogated P'yŏngan and Hamgyŏng ginseng gatherers and officials who had jurisdiction over them with high ministers of Chosŏn. After King Injo expressed his wish to follow their adjudication, however, the envoys adjudicated on the case on their own.<sup>19</sup>

Perhaps most distressing to the Chosŏn court, the Qing judiciary could target any person of Chosŏn for punishment, including the king. Hong Taiji's November 1640 edict, discussed above, highlighted this fact by listing ten crimes of King Injo, which centered on the theme of disobedience and violation of imperial orders (*wei ming*). Even though Inggŭldai and other Qing officials sent to Ŭiju did not go as far as trying Injo himself, this edict perpetuated the notion that the Qing emperor could pronounce the Chosŏn king guilty. In that context, what ensued in Ŭiju is not surprising. The Qing officials summoned a few top Chosŏn ministers to Ŭiju to learn the identities of those who had openly espoused anti-Qing sentiments. When the names of two current officials and three literati were produced, the envoys brought these five back to Mukden to be tried there. These five anti-Qing individuals were eventually imprisoned in Ŭiju in 1642.<sup>20</sup>

In the 1642 trial in Fenghuangcheng involving communications between Chosŏn officials and Hong Chengchou, chief state councilor Ch'oe Myŏng-gil (崔鳴吉; 1586-1647), the highest ranking Chosŏn official, as well as six current and former top officials were eventually

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<sup>18</sup> CWS Injo 44: 36b-37a (21.10.10=11/20/1643).

<sup>19</sup> CWS Injo 46: 9a-b (23.3.1=3/28/1645).

<sup>20</sup> QSL Taizong 53: 706a-b (CD5.10.15=11/27/1640), 53: 716b-717a (CD5.12.26=25/1641); CWS Injo 41: 12b (18.10.15=11/27/1640), 41: 25b-26a (18.12.20=1/30/1641), 42: 2b-3a (19.1.20=3/1/1641), 43: 1b (20.1.6=2/4/1642).

implicated. Ch'oe was accused of sending a monk and an official letter to the Ming official Hong Chengchou, while the others were accused of committing anti-Qing acts, such as not using the Qing reign title in their writings. The Qing court ordered the Chosŏn court to send them to Mukden. After their trial there, Hong Taiji eventually decided to pardon two officials who were related to King Injo by marriage, fine three officials originally sentenced to death, and imprison two in Mukden.<sup>21</sup>

The Qing monopoly of interstate jurisdiction lasted for less than a decade. What happened during this brief period, however, had far-reaching consequences for Qing-Chosŏn legal interactions in the future. Whereas the Qing state sought to delineate the domains and peoples of the Qing and Chosŏn states during this period, there was no corresponding effort to delineate the judiciaries of the two states. Rather, there was more of an effort to use law as a political tool to impose its will on the Chosŏn state, leaving much room for interstate cooperation but even more room for Qing judicial domination. That set the tone for one of the two characteristics we will see below for Qing-Chosŏn interstate law: asymmetry in the relationship between Qing and Chosŏn judiciaries. Hong Taiji's ability to create new precedents, which could be applied to everyone in the Chosŏn domain including the king and then become the norm in future legal interactions, was only the clearest expression of this asymmetry.

## **II. The Incorporation of Chosŏn as a Qing Judicial Province: 1646-1690s**

From 1646, when the Qing forces had already conquered Beijing and defeated the first and most significant Southern Ming regime in Nanjing, the frequency and degree of Qing

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<sup>21</sup> QSL Taizong 63: 860a-864a (CD7.10.6=10/29/1642); CWS Injo 43: 22a-b (20.10.12=11/4/1642), 43: 24a (20.10.18=11/10/1642), 43: 24a-b (20.10.19), 43: 24b-25a (20.10.20), 43: 35b (20.11.29=1/19/1643).

judicial intervention over the Chosŏn judiciary gradually decreased. Moreover, the operational interstate law that fit the exigencies of the total war between Ming and Qing gradually gave way to a more routine and shared process of handling Chosŏn subjects accused of committing crimes in the Qing domain. In this section, I will reconstruct this process stage by stage to draw attention to not only the aspect of asymmetry mentioned above but also the character of interstate collaboration.

### **A. From the Arrest to the Decision in Beijing**

The first stage of any given case was naturally detection of criminal activities and arrest of suspects. During this period, there were 16 trespassing cases in which Chosŏn subjects made unauthorized trips to the Qing domain, and Qing authorities made the initial arrest on 12 of these occasions. In some cases, these Chosŏn subjects were arrested red-handed. As in the previous period, some were arrested while gathering ginseng, such as Sim Hyang-ŭi (沈向義), who was arrested in the Shengjing region in 1652.<sup>22</sup> Chosŏn subjects also pursued other forms of profit. In 1647, for example, Kim Ik-kyŏm (金益謙) and 22 Chosŏn subjects from Hamgyŏng province were arrested in the Ningguta (寧古塔) region while hunting with fowling pieces.<sup>23</sup> In 1662, Pak Yong-ŏp (朴龍業) and another Chosŏn subject from Ŭiju were arrested in Fenghuangcheng while logging.<sup>24</sup> In other cases, the Chosŏn subjects were arrested simply for entering the Qing domain without authorization.

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<sup>22</sup> TMHG 49: 6b-7a (edict to Hyojong; SZ9.11.7=12/7/1652).

<sup>23</sup> CWS Injo 48: 37b-38a (25.10.9=11/5/1647), 49: 7a (26.3.6=3/29/1648); TMHG 49: 3b-4a (zi from the Board of Revenue to Injo; SZ5.1.15=2/8/1648).

<sup>24</sup> TMHG 50: 7a-9a (zi from the Board of Rites to Hyŏnjong; KX1.3.23=5/10/1662).

Much less often, on four occasions, Chosŏn authorities made the initial arrest of trespassers. In two cases, they had detected the criminal activities first and then arrested the suspects. In 1660, for example, Kim Hyo-sin (金孝信) and 13 soldiers from Kanggye crossed the Yalu River to gather ginseng in the Qing domain and were attacked by Qing subjects, suffering three casualties. Despite the attempts by the Kanggye officials to cover up the matter, King Hyŏnjong (顯宗; r. 1659-74) eventually discovered the truth and arranged for the arrest of all 11 criminals and the responsible officials.<sup>25</sup> In the other two cases, the Qing authorities had detected the criminal activities and ordered the Chosŏn authorities to make the arrest. In 1685, for example, Han Tŭk-wan (韓得完) and 30 Chosŏn subjects crossed the Yalu River to search for ginseng and came across a Qing imperial cartographic mission led by a high-ranking banner official, the assistant commandant (*xieling*; rank 2b) Le-chu (勒楚). The two sides exchanged fire in the confusion, and this encounter resulted in the injury of several Qing subjects and the death of one Chosŏn subject. The Qing court ordered the Chosŏn court to arrest the criminals in preparation for a trial.<sup>26</sup>

During this period, the illicit trade by Chosŏn subjects traveling as members of the tributary missions emerged as the other category of Chosŏn crime in Qing. Unsurprisingly, considering the nature of the crime, the suspects were arrested in the Qing domain in all 13 cases. Sometimes, the arrest happened in Beijing, where the Chosŏn subjects engaged in private

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<sup>25</sup> CWS Hyŏnjong 3: 54b (1.12.4=1/4/1661); TMHG 49: 47b-49a (zi from Hyŏnjong to the Board of Rites; SZ17.12)

<sup>26</sup> TMHG 51: 3b-4a (zi from the Board to Sukjong; KX24.9.29=10/26/1685), 4a-b (edict to Sukjong; KX24.10.6=11/2/1685).

trade. In 1646, for example, an interpreter named Pak Sŏn (朴璇) was arrested in Beijing for selling ginseng.<sup>27</sup> In 1663, two servants were arrested in Beijing while selling 100 marten pelts<sup>28</sup>

More often, however, the arrest happened in Fenghuangcheng, where all the members of the Chosŏn tribute missions had to have their baggage checked before returning to Chosŏn. The list of goods detected and confiscated hints at the variety of illicit goods and the size of the trade. That possession of some of the goods led to confiscation or arrest is predictable. In 1657, for example, Kim Ch'u-ip (金秋立) and four Chosŏn subjects were arrested for possession of saltpeter (*yanxiao*).<sup>29</sup> In 1660, Kim Ik-tong (金益同) was found to be in possession of four Qing horses and arrested.<sup>30</sup> In 1661, Pak Sŏng-sŏn (朴成善) was arrested for carrying 20 *jin* of copper.<sup>31</sup> The reasons other goods were illicit, as will be explained before, are not as straightforward. In 1670, Yang Chŏng-ch'an (梁廷燦) was arrested for his purchase of Sima Guang's history book *Zizhi tongjian* (資治通鑒).<sup>32</sup> In 1677, Sin Haeng-gŏn (慎行建) was arrested for carrying maps of various Qing provinces.<sup>33</sup>

Whether the arrest was made in the Qing domain or the Chosŏn domain, the case moved on to the next stage, the initial interrogation. If the arrest was made in the Qing domain, the suspects were transferred to the office of the military governor in Mukden or Ningguta (Jilin

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<sup>27</sup> TMHG 63: 1a (zi from the Board of Revenue to Injo; SZ3).

<sup>28</sup> CWS Hyŏnjong (4.2.11=3/20/1663); TMHG 63: 30a-b (zi from the Board to Hyŏnjong; KX2).

<sup>29</sup> TMHG 63: 5a-b (edict to Hyojong; SZ14.2.18=4/1/1657).

<sup>30</sup> TMHG 63: 18b (zi from the Board of Rites to Hyŏnjong; SZ17).

<sup>31</sup> TMHG 63: 19a-20a (zi from the Board of Rites to Hyŏnjong; SZ18.2.3=3/3/1661).

<sup>32</sup> TMHG 64: 8a (zi from the Board of Rites to Hyŏnjong; KX9.2).

<sup>33</sup> TMHG 64: 10a-11a (zi from the Board to Sukjong; KX16.4.8=5/9/1677).

after 1676) for personal interrogation by the military governor. If the arrest was made in the Chosŏn domain, the suspects were transferred to the office of the Ŭiju magistrate or the office of the provincial governor in Pyongyang (平壤) or Hamhŭng (咸興) for personal interrogation by the head official there. Either way, the news of the arrest and the initial interrogation would reach one of the Six Boards in Beijing via a lateral communication (z) from the Qing military governor or the Chosŏn king. Beginning in 1654, these lateral communications were bound to reach the Board of Rites, who had come to hold jurisdiction over all Chosŏn matters.

Because of this chain of communication, the decision on what to do with these suspects was made by the Qing court in Beijing rather than the Chosŏn court in Hanyang. In general, the Qing court had three options. The first option was to decline to assert jurisdiction, which happened on four occasions. In three trespassing cases, the Qing court saw no criminal intent and simply chose to repatriate the suspects: an unnamed man from Ŭiju who sought to defect to the Qing in 1661, Ch'oe Sun-il (崔順一) who tried to defect in 1666, and an unnamed woman who claimed to have gotten lost in the same year.<sup>34</sup> These cases again show the Qing dedication to the maintenance of the boundary between Qing imperial and Chosŏn tributary subjects. In the fourth case, a 1699 case involving the purchase of some books by Cho Chon-byŏk (趙存璧), the Board of Rites merely reminded King Sukjong (肅宗; 1674-1720) of a prohibition on the purchase of history books by members of the tributary missions.<sup>35</sup>

The second option was pardoning the Chosŏn suspects, which also happened on four occasions. The pardon could come in the form of a general amnesty. In 1649, the Board of

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<sup>34</sup> TMHG 50: 1a-b (zi from the Board to Hyŏnjong; SZ18.4.12=5/10/1661), 16a-17a (zi from the Board of Rites to Hyŏnjong; KX5.2.27=4/1/1666), 17b-18b (zi from the Board of Rites to Hyŏnjong; KX5.2.27=4/1/1666).

<sup>35</sup> TMHG 64: 19b-20a (zi from the Board to Sukjong; KX38.5.9=6/6/1699). The Board reasoned that even though these books were not technically history books (*shishu*), some books contained passages having to do with history.



Revenue recommended pardoning two Chosŏn subjects, who were arrested in Ningguta after visiting their friend Lai-da-hu (賴達胡) and giving him meat and rice, in light of a new general amnesty (*enshe*) and received the approval of the imperial regent Dorgon (多爾袞; 1612-50).<sup>36</sup> As Brian McKnight has pointed out, amnesty in Chinese law was considered an act of grace that could only emanate from the emperor. The application of amnesty itself, then, can be understood as an act of asserting jurisdiction.<sup>37</sup> In the three other cases, the Kangxi (康熙; r. 1662-1722) emperor pardoned the suspects individually. In the 1663 case mentioned above involving the sale of 100 marten pelts, the Kangxi emperor ordered the two servants to be pardoned despite the Board of Rites' recommendation that the king hold a trial and report back.<sup>38</sup> In two cases involving trespassers, Kangxi gave specific instructions that the trespassers not be punished while ordering their repatriation, perhaps in consideration of their circumstances: Cho Ye-nam (曹禮男) in 1685 because of his insanity, Ŏm Kwi-hyŏn (嚴貴玄) and two others in 1699 for having been driven by famine.<sup>39</sup>

Most commonly, and most importantly for our discussion, the Qing court also chose the third option of initiating a trial of these Chosŏn subjects as criminals of the Qing court. This decision effectively turned Chosŏn into a Qing judicial province, as the Chosŏn judiciary was positioned as the lower court to the Qing judiciary throughout the duration of the trial. In the section below, I will describe this process in detail.

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<sup>36</sup> TMHG 49: 5a-b (zi from the Board of Revenue to Injo; SZ6.1.10=2/20/1649).

<sup>37</sup> Brian E. McKnight, *The Quality of Mercy: Amnesties and Traditional Chinese Justice* (Honolulu: University Press of Hawaii, 1981), ix-xii.

<sup>38</sup> TMHG 63: 30a-b (zi from the Board of Rites to Hyŏnjong; KX2).

<sup>39</sup> TMHG 51: 1a-b (zi from the Board of Rites to Sukjong; KX24.2.14=3/18/1685); TMHG j. 52: 41b-42a (zi from the Board to Sukjong; KX38.10.16=12/6/1699).

## B. The Trial: From Formal Interrogation to Adjudication

During this period, the Qing court chose to prosecute Chosŏn subjects as criminals of the Qing court on 23 occasions. In 12 cases, the Qing court sent high-ranking officials to Hanyang, the Chosŏn capital, for trials in conjunction with the Chosŏn court. There, the two judiciaries collaborated to interrogate the criminals and adjudicate the cases. In 11 cases, the Qing court delegated to the Chosŏn court either the interrogation of the criminals or the interrogation and the adjudication, with the Qing court reviewing the terms of adjudication and making the final decision.

### 1. Joint Trials in Hanyang

Considering the historical context, the joint trial in Hanyang may be considered as a diplomatic weapon to subdue the Chosŏn state and survey its internal affairs. After all, the Chosŏn state had only submitted to Qing rule after two military invasions, and as many scholars have pointed out, anti-Qing sentiments abounded not only within the Chosŏn court but also among the wider community of Confucian literati.<sup>40</sup> Moreover, the Qing state during this period was competing with multiple actors to assert its political authority over China Proper and beyond: the Southern Ming regimes and bandits until the 1660s, and the Three Feudatories, the Zheng regime, the Zunghars, and the Russians from the 1670s to the 1690s.<sup>41</sup> In fact, we have

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<sup>40</sup> Jahyun Kim Haboush, "Dead Bodies in the Postwar Discourse of Identity in Seventeenth-Century Korea: Subversion and Literary Production in the Private Sector," *The Journal of Asian Studies* 62, no. 2 (2003): 415–42; Chŏng Ok-cha, *Chosŏn hugi Chosŏn chungghwa sasang yŏn'gu* (Seoul: Ilchisa, 1998), 9-25.

<sup>41</sup> On the Qing relations with the Russians and the Zunghars in the last three decades of the seventeenth century, see Peter C. Perdue, *China Marches West: The Qing Conquest of Central Eurasia* (Cambridge, MA: Belknap Press of Harvard University Press, 2005), 133-208. On the Southern Ming regimes, see Lynn A. Struve, *The Southern Ming, 1644-62* (New Haven: Yale University Press, 1984). On the Qing victory over the Three Feudatories and the Zheng

one direct piece of evidence that shows the Qing court using the joint trial as a diplomatic weapon. In August 4, 1680, when the Kangxi emperor asked his ministers whether he should send officials to Hanyang for a joint trial over the case of Pak Si-ung and two other Chosŏn subjects logging trees on the Qing side of the Tumen River. Songgotu (索額圖; d. 1703) answered that Chosŏn needed to be disciplined (*chengchuang*) for trying to stir up trouble (*shengduan*) during the Chakhar prince Burni's rebellion in 1675.<sup>42</sup>

There is, however, much to be gained when we go past the façade of the joint trials as mere excuses for the Qing assertion of political authority over the Chosŏn state and focus on the praxis of the trials themselves. First, the joint trial, which occurred 12 times during this period, was reserved for the crimes deemed most serious by the Qing court, which usually resulted in capital punishments for the principals. Second, the joint trial was a collaborative effort between the Qing and Chosŏn judiciaries at every stage of the joint trial.

The alleged criminal activities that resulted in a joint trial in Hanyang can be categorized into three groups. The first group involved trespassing by Chosŏn subjects in pursuit of profit: three cases involving the gathering of ginseng, three cases involving the felling of trees, and one case involving hunting. As mentioned above, the Qing state was particularly sensitive about this encroachment on its territorial and economic prerogatives. Moreover, the specific circumstances of a few cases seem to have justified Qing fear of and suspicion about these activities. Three of the cases, for example, had resulted in violent encounters between Qing subjects and Chosŏn subjects. In 1654, two Kurkas on their way back from purchasing two oxen from Kyŏngwŏn

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regime, see Jonathan D. Spence, "The K'ang-Hsi Reign," in *The Cambridge History of China, Volume 9, Part 1: The Ch'ing Empire to 1800*, ed. Willard J. Peterson (New York: Cambridge University Press, 2002), 136-50.

<sup>42</sup> This referred to the attempt by the Chosŏn state in 1675 to buy some copper coins from the Qing state to use as currency. It is unclear why Songgotu saw it as an act of "stirring trouble." Yi hwa-cha (Li Huazi), *Cho-Ch'ŏng kukkyŏng munje yŏn'gu* (P'aju: Chimmundang, 2008), 78-83.

(慶源), Hamgyŏng, were found dead north of the Tumen River, with the footprints of Kim Ch'ung-il (金忠一) and other Chosŏn loggers nearby.<sup>43</sup> In 1685, there was the Han Tŭk-wan case involving an attack on a Qing cartographic mission. In 1690, Im In (林仁) and six others who crossed the Tumen River to gather ginseng eventually raided a tent set up by Qing ginseng gatherers and killed one of them.<sup>44</sup> In one case, it was the possible collusion of Chosŏn local officials that alarmed the Qing state. In the Pak Yong-ŏp case (1662) mentioned above, the Board of Rites officials discovered on the bodies of the arrested Chosŏn loggers a permit with the seal of the Ŭiju magistrate.<sup>45</sup>

The second group involved the purchase of saltpeter and sulfur, which could be used in the production of gunpowder and were thus prohibited for export. We have already looked at the arrest of Kim Ch'u-ip and four others in possession of saltpeter in 1655. What made this case even more problematic was the intervention by the Chosŏn chief envoy Yi Yo (李滄; 1622-58), Prince Inp'yŏng (麟坪大君), who tried to conceal the matter using his position but failed. This turn of events led to a joint trial in Hanyang.<sup>46</sup> The discovery of sulfur in the baggage of Hŏ Yong (許龍) and Ŏn Nam (彦男) in 1663 and the discovery of saltpeter in the baggage of Ch'oe Sŏn-il (崔善一) in 1666 also resulted in joint trials in Hanyang.<sup>47</sup>

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<sup>43</sup> TMHG 49: 23b-26a (zi from the Board of Rites to Hyojong; SZ11.12).

<sup>44</sup> TMHG 52: 12a-13a (zi from Sukjong to the Board; KX29.9.15=10/16/1690), 14a-15b (zi from Sukjong to the Board; KX29.11.21=12/21/1690).

<sup>45</sup> TMHG 50: 7a-9a (zi from the Board of Rites to Hyŏnjong; KX1.3.23=5/10/1662).

<sup>46</sup> TMHG 63: 5a-b (edict to Hyojong; SZ14.2.18=4/1/1657).

<sup>47</sup> TMHG 63: 30b (zi from Hyŏnjong to the Board; KX2), 63: 31a (edict to Hyŏnjong; KX2.9.19=10/19/1663), 64: 1a-b (edict to Hyŏnjong; KX5.5.13=6/15/1666).

The third group involved two cases that targeted the Chosŏn court at large, both of which have been examined in chapter two. To recap, one case involved a 1650 memorial by King Hyojong (孝宗; r. 1649-59) that expressed his worry about returning Han Chinese castaways to Beijing instead of the Japanese hostel (*waegwan*) in Tongnae (東萊). The other case involved the sheltering of the runaway slave An Ch'u-wŏn/Xiao Er in the Chosŏn domain from 1664 to 1666. The Qing court sent officials to Hanyang to determine the responsible party in the Chosŏn court and punish them.

All 12 instances of the joint trial, then, involved the cases that grabbed the attention of the Qing court because of the nature of the purported criminal activities. As we will see below, the Qing officials who arrived in Hanyang came with the understanding that these were capital punishment cases. But that did not mean that the Qing officials could always impose their will in these trials. Joint trials, despite their beginning as a political tool by the Qing state, created the space for the most protracted and intimate legal interactions between the Qing and Chosŏn states. The representatives of the Qing judiciary came into direct contact with the Chosŏn subjects involved, and they collaborated with the representatives of the Chosŏn judiciary in almost all stages of the trials.

The Qing officials sent to Hanyang to participate in joint trials were all high-ranking bannermen. This conforms to Ku Pŏm-jin's recent study, in which he has shown that Qing envoys to Chosŏn were almost always chosen from bannermen officials of rank 3 or higher, whereas the envoys to Vietnam and Ryukyu, the other "model tributaries," were chosen from bannermen and Han officials of rank 5 or lower.<sup>48</sup> These Qing envoys collaborated with Chosŏn

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<sup>48</sup> Ku Pŏm-jin, "Ch'ŏng ūi Chosŏn sahaeng insŏn kwa "Taech'ŏng cheguk ch'eje," *Inmun nonch'ong* 59 (2008): 1-50.

high ministers in interrogating suspects. Even though the list of ministers who participated differed slightly for each trial, the following ministers were usually present: three state councilors, ministers of the six ministries, the chief or second minister of the State Tribunal (*ũigũmbu*), heads of the censorate (inspector-general and censor-general), and other officials from the Ministry of Punishments.<sup>49</sup> The king's participation was often required as well. In 1686, for example, when King Sukjong failed to participate in the interrogation of criminals, the Qing envoys complained that they could not proceed on their own without Sukjong's involvement as the imperial edict was clear that they were to "investigate with the king (*yu wang tong cha*)."<sup>50</sup> Their plea eventually prompted Sukjong to participate in the trial.<sup>50</sup>

Also, in all cases the Chosŏn king and the Qing envoys adjudicated these cases together, and this process was often full of negotiation and compromise on both sides. This joint adjudication process is how the Chosŏn ministers avoided death sentences in the 1650 case involving Hyojong's memorial. We see the Qing envoys asking King Hyojong how he wished to adjudicate, to which the king replied he dared not speak his mind. The envoys, however, were adamant that the king could not shift his responsibility (*tuiwei*) for adjudicating and pressed the king for his opinion. Hyojong responded that banishment would cause enough suffering for the ministers, and the envoys conformed to his wishes by sentencing the ministers to banishment to Ŭiju.<sup>51</sup> Similarly, in the An Ch'u-wŏn case, after King Hyŏnjong shouldered the blame, Lei-hu (雷虎; n.d.) and other envoys asked how the king wished to adjudicate the case. Hyŏnjong, commenting that there are many punishments less severe than capital punishment, urged the

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<sup>49</sup> CWS Hyojong 10: 1a-b (4.1.1=1/29/1653), 15: 16b (6.9.2=10/1/1655); CWS Hyŏnjong 5: 25a-26a (3.5.16=7/1/1662); TMHG 49: 26b-30a (memorial by Hyojong; SZ12.4.12=5/17/1655).

<sup>50</sup> CWS Sukjong 16: 53a-55a (11.12.1=12/26/1685).

<sup>51</sup> CWS Hyojong 3: 20b-21a (1.3.9=4/9/1650).

envoys to decide on one. The envoys complied with the king's wish by sentencing the state councilors to cashiering and banishment.<sup>52</sup>

The Pak Yong-ŏp case (1662) provides an even more vivid example of the joint adjudication process. King Hyŏnjong and his ministers, intent on saving the Ŭiju magistrate Yi Si-sul (李時術; 1606-72) from the death penalty, did not wish to list his name at the beginning of the memorial to the Qing emperor. They argued that his name should be moved down, since he was sentenced to a lighter punishment (death by strangulation) than the two criminals (death by decapitation). The chief envoy, however, opposed the move, remarking that all three committed capital crimes anyway and that there was no need to dwell on the minor details. He did not change his mind until Yi Si-sul's son gifted him a precious sword called the seven star sword (七星劍) and the Chosŏn court gave the Qing interpreters 200 marten pelts and more than 1,000 taels of gold.<sup>53</sup>

Many aspects of the negotiation in these cases highlight both the common ground and differences between Qing law and Chosŏn law, providing a useful material for a comparative study of early modern East Asian law. The Kim Ch'u-ip case (1657) is one example. After sentencing the criminals in possession of saltpeter, the Qing envoys and King Hyojong moved on to discuss the guilt of the chief envoy Yi Yo. First, Qing envoys asked the king how one punished a *taegun*, to which King Hyojong answered there was no precedent. Then, the envoys asked what kind of title *taegun* was, to which the king answered it was equivalent to the Qing title of *qinwang* (Prince of the First Degree), for whose punishment there must be a precedent.

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<sup>52</sup> TMHG 64: 2b-7a (zouben by Hyŏnjong; KX5.9.20=10/17/1666); CWS Hyŏnjong 13: 43a-44a (7.7.17=8/17/1666).

<sup>53</sup> CWS Hyŏnjong 5: 24b-25a (3.5.15=6/30/1662), 27a-b (3.5.19=7/4/1662), 29a-b (3.5.22=7/7/1662), 29b-30b (3.5.23=7/8/1662).

Finally, the envoys explained that there were three ways of punishing a *qinwang* in Qing law. There was fine, removal of title, and fine and removal of title. Hyojong left the decision to the envoys, who settled on the fine of 2,000 taels of gold.<sup>54</sup>

In the Han Tŭk-wan case (1685-86) as well, King Sukjong and the envoys had a lengthy discussion on how to adjudicate this unprecedented case. The envoys asked the king whether Chosŏn law had a more severe sentence than capital punishment. The king replied that the criminals' families could be punished (Kr. *yŏnjwa*, Ch. *yuanzuo*) and their property confiscated (Kr. *chŏngmol*, Ch. *jimo*), and the chief criminals were sentenced accordingly. Adjudication on the Samsu (三水) garrison commander (*ch'ŏmsa*), who had already committed suicide, is also interesting. Envoys asked Sukjong how he would adjudicate if the garrison commander were alive, and Sukjong answered that he would add house arrest (Kr. *wiri anch'i*) on top of banishment. On their way back to Qing, however, the envoys realized that there was no statute for house arrest in the Qing Code and changed the sentence to 100 strokes of beating by heavy bamboo and banishment of 3,000 *li*.<sup>55</sup>

When we look at the terms of adjudication, we can again see how seriously the Qing court took these cases. Out of 12 cases, all 10 cases involving regular Chosŏn subjects (i.e. who were not ministers) resulted in capital sentences for the chief criminals. For trespassing cases in pursuit of profit, the usual terms of adjudication were capital punishments for the chief criminals, various degrees of penal punishments for the local officials directly involved, and cashiering and demotion for negligent local and provincial officials. In the Pak Yong-ŏp case (1662-63), for example, King Hyŏnjong and the envoys sentenced the two criminals to death by decapitation.

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<sup>54</sup> CWS Hyojong 18: 23b-24a (8.4.2=5/14/1657).

<sup>55</sup> CWS Sukjong 16: 53a-55a (11.12.1=12/26/1685), 16: 55b (11.12.5=12/30/1685).



They also sentenced Yi Si-sul, the Ŭiju magistrate, to death by strangulation for having authorized the logging in that case.<sup>56</sup> In the Pak Si-ung case (1680-81), using the Pak Yong-öp case as precedent, the king and the envoys sentenced the three criminals to decapitation, the local garrison commander to cashiering and banishment of 3,000 *li*, and three local and provincial officials to cashiering and demotion.<sup>57</sup>

Unsurprisingly, homicide cases resulted in even harsher adjudication. The Han Tük-wan case (1685-86) serves as an example. Han and the five others who had fired shots at the Qing cartographic mission were sentenced to immediate decapitation, enslavement of their wives and children, and confiscation of property. Kim T'ae-söng (金太成) and 21 others who had not fired shots were sentenced to immediate death by decapitation. The Huju (厚州) garrison commander, who had jurisdiction over the criminals, was sentenced to 100 strokes of beating by heavy bamboo and banishment of 3,000 *li*, while the Samsu magistrate (*kunsu*) was cashiered and sentenced to banishment of 2,000 *li*. Four other local officials and three provincial officials were cashiered or demoted for their negligence.<sup>58</sup> The Im In case (1690-92), which took the Han Tük-wan case as precedent, resulted in similar terms of adjudication.<sup>59</sup>

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<sup>56</sup> TMHG 50: 9a-11a (memorial by Hyönjong; KX1.7.26=9/7/1662).

<sup>57</sup> CWS Sukjong 10: 22a (6.i8.14=10/6/1680); TMHG 50: 24b-28a (Sukjong; KX19.11.27=1/16/1681).

<sup>58</sup> CWS Sukjong 16: 53a-55a (11.12.1=12/26/1685); TMHG 51: 9a-20a (Sukjong; KX25.1.28=2/20/1686); QSL Shengzu 125: 329b (KX25.4.5=4/27/1686), 126: 337b-338a (KX25.i4.12=6/2/1686). The Huju commander had already committed suicide, so the adjudication was given merely as a statutory punishment.

<sup>59</sup> TMHG 52: 22a-34a (Sukjong; KX30.i7.7=8/30/1691). Im and the other criminal who fired shots were sentenced to immediate death by decapitation, enslavement of wife and children, and confiscation. Im Kye-sön (林戒先) and three others who did not fire shots were sentenced to immediate death by decapitation. The Kyöngghümg magistrate (*pusa*), who had jurisdiction over them, was cashiered and sentenced to banishment of 2,000 *li*, while four other local and provincial officials were cashiered or demoted for their negligence.

Moreover, even though the two joint trials over the Chosŏn ministers did not result in capital sentences, the Qing envoys firmly stated that the ministers responsible deserved death in both cases. In 1650, the Qing envoys concluded that Yi Kyŏng-sŏk (李景奭; 1595-1671) and Cho Kyŏng (趙綱; 1586-1669) were responsible for drawing up the highly inappropriate memorial on the repatriation of Han Chinese castaways. Yi, as the chief state councilor, had shouldered the blame, whereas Cho had overseen the Ministry of Rites (*yejo*), in charge of all tributary matters, when the memorial was drawn up. The envoys sought to execute the two for their crimes.<sup>60</sup> We have also seen in the An Ch'u-wŏn case (1664-66) how adamant envoys were in seeking death penalties for the ministers who had hidden a Qing subject and thus broken the 1637 agreement between the two states.<sup>61</sup>

These two cases, however, did not result in capital sentences for the ministers due to the joint adjudication process. In the Yi Kyŏng-sŏk case, Hyojong and the envoys settled on the sentence of life exile to Ŭiju. This was a compromise between Hyojong's position that a life exile would be a sufficient punishment and the envoys' position that this punishment will eventually result in death anyway. In the An Ch'u-wŏn case, Hyŏnjong shouldered the blame after the envoys sought capital punishments for the officials. The envoys then asked how the king wished to adjudicate the case, to which the king replied that it was up to the envoys to choose from the many statutes below capital punishment. The envoys complied with the king's wish by sentencing the state councilors to cashiering and life exile.<sup>62</sup>

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<sup>60</sup> CWS Hyojong 3: 17b-20a (1.3.8=4/8/1650), 20b-21a (1.3.9=4/9/1650).

<sup>61</sup> CWS Hyŏnjong 13: 41a-42a (7.7.12=8/12/1666), 43a-44a (7.7.17=8/17/1666).

<sup>62</sup> TMHG 64: 2b-7a (Hyŏnjong zou; KX5.9.20=10/17/1666); CWS Hyojong 3: 20b-21a (1.3.9=4/9/1650); CWS Hyŏnjong 13: 43a-44a (7.7.17=8/17/1666).

Despite its collaborative nature, the joint trial was a burden on the Chosŏn judiciary. Its representatives were forced to collaborate with the representatives of a foreign judiciary for the duration of the trial. Even the Chosŏn king, normally at the apex of the Chosŏn judiciary, had to consider the legal opinions of the Qing representatives in adjudicating cases involving his own subjects. As we will see a little later, this asymmetric cooperation continued in the next stage, judicial review, as the Chosŏn king was required to present the result of the joint trials in a memorial to the Qing emperor. The king's terms of adjudication were subject to review by the Qing judiciary, with the result that the king lost his authority to have the final judgment on his subjects.

## *2. Trials in Hanyang by the Chosŏn Judiciary*

Compared to the situation seen above, the 11 trials in Hanyang by the Chosŏn judiciary gave the Chosŏn state a lot more room to maneuver. A careful look at these cases, however, shows that Chosŏn jurisdiction over these criminals was still circumscribed in these cases. To begin with, the Chosŏn king's authority to try his subjects now emanated from the Qing emperor rather than from himself. These Chosŏn subjects had become criminals against and of the Qing emperor. This acute sense of limited authority is well illustrated in King Hyojong's 1654 lateral communication (*zi*) to the Qing Board of Rites after his initial investigation for the murder of the two Kurkas: "They are all criminals of the [Qing] court (*chaoting fanren*), so I dare not judge and decide [on my own] and will respectfully wait for [your] decision."<sup>63</sup>

Second, the imperial decision often gave the king only a partial authority to try Chosŏn subjects. In four cases, the Qing court delegated the Chosŏn judiciary with the interrogation of

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<sup>63</sup> TMHG 49: 26a-b (*zi* from Hyojong to the Board of Rites; SZ12.4).

the suspects and then the Qing judiciary with adjudication. The first such case occurred in 1646, when the Qing Board of Revenue delegated to King Injo the task of punishing Pak Sŏn for selling ginseng in Beijing. King Injo found two applicable statutes from Chosŏn law: one on smuggling prohibited goods proscribing death by strangulation, and the other on selling Chinese goods (Kr. *Tang hwa*, Ch. *Tang huo*) at the border proscribing 100 strokes of beating by heavy bamboo and penal servitude. Injo asked for an imperial decision on which statute to apply, and the Qing court settled on the lighter punishment of beating and penal servitude.<sup>64</sup> Even though we see no explicit citation of this case as a precedent, three future cases involving the illegal purchase of goods were resolved in the same way: Yang Chŏng-ch'an's purchase of *Zizhi tongjian* in 1670, Sin Haeng-gŏn's possession of Qing maps in 1677, and Chang Ch'an (張燦)'s purchase of *Da Ming yitongzhi* (大明一統志) in 1691.

In all three cases, the Board of Rites seems to have consulted a section in the yet to be published the Kangxi edition of the *Da Qing huidian* as the statutory basis. This section prohibited the selling of items such as history books and military equipment to members of the tribute missions in Beijing.<sup>65</sup> Then the Board would memorialize the Kangxi emperor on the incidents with the recommendation that the Chosŏn king investigate the incident and memorialize the emperor. With imperial approval, the king would interrogate the suspects and memorialize the emperor, again noting that he would wait for the imperial decision and thereby expressing his limited legal authority.<sup>66</sup> Upon the arrival of the memorial in Beijing, the Qing

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<sup>64</sup> TMHG 63: 1a (zi from the Board of Revenue to Injo; SZ3), 1a (SZ3; zi from Injo to the Board of Revenue), 1a-b (SZ3; zi from the Board of Revenue to Injo).

<sup>65</sup> *Da Qing Huidian* (Kangxi edition), 73: 12b-13b. On the Kangxi edition of the *Da Qing huidian*, see Keliher, "Administrative Law and the Making of the First *Da Qing Huidian*."

<sup>66</sup> TMHG 64: 8a-10a (Hyŏnjong zou; KX9.3.16=5/5/1670), 13b-15a (Sukjong zou; KX16.5.12=6/11/1677), 18b (zi from Sukjong to the Board; KX30).

Board of Rites and the Kangxi emperor would adjudicate the case. In 1670, the Kangxi emperor applied the general amnesty to pardon Yang and the three envoys. In 1677, Kangxi approved the Board's recommendation that Sin be cashiered and sent into military exile on the Chosŏn border and the three envoys be cashiered. In 1691, Kangxi approved the Board's adjudication based on the 1677 precedent that Chang be sent into military exile to the border but pardoned the envoys from being cashiered.<sup>67</sup> Thus, and this is a crucial point, the Chosŏn king had been deprived of his authority to sentence his own subjects.

Third, even in the seven cases where the imperial decision gave the Chosŏn king full judicial authority, the Qing court portrayed this delegation of duty as an exception. In two cases, the Chosŏn king seems to have been given that authority because of the minor nature of the crime. For Kim Ik-tong's purchase of four horses in 1660, the Qing Board of Rites noted that it was a crime punishable by beating with heavy bamboo, citing a statute found in both the *Da Ming Huidian* and the Kangxi edition of the *Da Qing Huidian*. Hyŏnjong sentenced Kim to 60 strokes of beating by heavy bamboo and put his name on the list for life exile and penal servitude (Kr. *p'yŏnbae*, Ch. *bian pei*). Regarding Chang Hyŏn (張炫)'s purchase of 25 fireworks (*huapao*) in 1691, the Board again noted that even though it was related to purchasing saltpeter or sulfur, it was not the same as purchasing military equipment (*junqi*). Sukjong demoted and transferred Chang in response. In both instances, the Board simply allowed the Chosŏn king punish the criminals and conclude the case.<sup>68</sup>

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<sup>67</sup> TMHG 64: 10a (zi from the Board to Hyŏnjong; KX9), 16a-b (zi from the Board to Sukjong; KX16.7.20=8/20/1677), 18b-19a (zi from the Board to Sukjong; KX30).

<sup>68</sup> TMHG 63: 18b (zi from the Board of Rites to Hyŏnjong; SZ17), 63: 18b-19a (zi from Hyŏnjong to the Board; SZ17), 64: 19a (zi from the Board of Rites to Sukjong; KX30), 64: 19a (zi from Sukjong to the Board of Rites; KX30).

For the remaining five capital punishment cases where the king was given full authority to try his subjects, the Qing court presented this as an act of imperial grace. In November 1660, Yi Ch'öl-sō (李哲瑞) was arrested in Fenghuangcheng for carrying 2 *jin* and 10 *liang* of sulfur with him. By January 1661, the Board of Rites had proposed sending officials to Hanyang following the Kim Ch'u-ip precedent (1657) and obtained imperial approval. Before the officials could set out, however, the Board received reports on the arrest of two other groups of Chosŏn suspects: a report from the Shengjing military governor Ukuri (吳庫禮; d. 1665) on the arrest of Pak Sŏng-sŏn, and a report from King Hyŏnjong on the arrest of Kim Hyo-sin and 10 trespassers. When the Board again recommended sending officials for the joint trials over these three cases, the Kangxi emperor changed his earlier position and ordered King Hyŏnjong to investigate and adjudicate the cases and then memorialize on the results. The Qing sources represented this decision as an unprecedented act of imperial grace (*en*) and virtue (*de*).<sup>69</sup>

Lastly, the king's legal position in the above cases was comparable to that of the highest Qing provincial officials. In the Qing appellate system, provincial officials on their own could confirm all penal servitude (*tu*) and life exile (*liu*) cases not involving homicide. But they had to report all capital punishment and homicide cases to the Board of Punishments, where they would be reviewed by the Board, the Three Judicial Offices (*sanfasi*), and the emperor.<sup>70</sup> Likewise, the Chosŏn king's sentencing in capital punishment cases involving his subjects was subject to review by the Qing judiciary. It is to this review process that we turn now.

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<sup>69</sup> TMHG 49: 47b-49a (zi from Hyŏnjong to the Board of Rites; SZ17.12), 19a-20a (zi from the Board of Rites to Hyŏnjong; SZ18.2.3=3/3/1661); QSL Shengzu 2: 67b-68a (SZ18.5.25=6/21/1661).

<sup>70</sup> Bodde and Morris, *Law of Imperial China*, 113-143.

### C. The Review by the Qing Judiciary

Two features of the review process vividly highlighted the asymmetry between the Qing and Chosŏn judiciaries. First, the Qing judiciary monopolized the review process and thus the final authority over these cases. Second, the Qing judiciary sometimes claimed jurisdiction over even the Chosŏn king, the head of the Chosŏn judiciary, by discussing and imposing disciplinary sanctions over him.

#### *1. The Qing Monopoly over the Review Process*

The first record of this Qing review comes from 1653. After Sim Hyang-ŭi was arrested in Shengjing and then interrogated in Beijing in 1652, the Qing Board of Rites came to recognize that there were more ginseng gatherers who had not been arrested and arranged for a joint trial in Hanyang. When King Hyojong memorialized the Shunzhi emperor with the terms of joint adjudication, Shunzhi entrusted the Three Judicial Offices with the review of the adjudication and himself made the final decision on the adjudication.<sup>71</sup>

Afterwards, review of the king's adjudication became a regular fixture in the trials of Chosŏn criminals. The Three Judicial Offices reviewed the king's adjudication of the Kim Ch'ung-il case (1656), the Kim Ch'u-ip case (1657), the Yu Kwi-kŭm case (1662), the Pak Si-ung case (1681), the Han Tŭk-wan case (1685), and the Im In case (1691).<sup>72</sup> The Board of Punishments sometimes acted on its own, reviewing the king's adjudication of the three cases

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<sup>71</sup> TMHG 49: 6b-7a (edict to Hyojong; SZ9.11.7=12/7/1652), 9b (Hyojong zou; SZ10.1.22=2/19/1653), 12a-13b (zi from the Board of Punishments to Hyojong; SZ10.4.26=5/22/1653); CWS Hyojong 9: 70a (3.12.18=1/17/1653).

<sup>72</sup> TMHG 49: 12a-13b (zi from the Board of Punishments to Hyojong; SZ10.4.26=5/22/1653), 49: 36b-39a (zi from the Board of Rites to Hyojong; SZ13.3.15=4/9/1656), 50: 5b-6a (zi from the Board to Hyŏnjong; KX1.3.5=4/22/1662), 50: 30b-31b (zi from the Board of Rites to Sukjong; KX20.3.28=5/15/1681), 51: 29b-32a (zi from the Board to Sukjong; KX25.i4.15=6/5/1686), 52: 35a-36b (zi from the Board to Sukjong; KX30.10.26=12/15/1691), 63: 17a (zi from the Board of Rites to Hyojong; SZ14).

from 1661: the Kim Hyo-sin case, the Chang Yu-sin case, and the Pak Sŏng-sŏn case.<sup>73</sup> When these offices memorialized the emperor on the results of the review, the emperor would then revisit the case one last time. As in other legal cases in the Qing judiciary, the imperial review here was final, and this final decision was relayed to the Chosŏn king via a lateral communication from the Qing Board of Rites with an order to carry out the terms of the imperial judgment.

The king's ruling usually was not changed drastically during the reviews in Beijing. In Yu Kwi-kŭm case (1661-2), for example, the king's adjudication was unchanged after the appellate review by the Three Judicial Offices and the imperial review.<sup>74</sup> Even when the reviews changed the ruling, the changes always resulted in lesser, rather than harsher, punishments for the criminals. For example, we have seen how King Sukjong and the Qing envoys originally sentenced both the six principals and the 22 accessories to immediate decapitation for the Han Tŭk-wan case (1685-6). In his final review, the Kangxi emperor saved the lives of the 22 accessories by commuting (*jiandeng*) their death sentences.<sup>75</sup> So the terms of review were often in favor of the Chosŏn criminals. Still, the Qing monopoly of the review process is significant for a few reasons. Most importantly, this monopoly could put the Chosŏn king, the top of the Chosŏn judiciary, in a position inferior not only to the Qing emperor but also to the various Qing metropolitan offices.

## 2. *How to Punish a Tributary King*

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<sup>73</sup> TMHG 63: 23b-25b (zi from the Board of Rites to Hyŏnjong; SZ18.7.6=7/31/1661).

<sup>74</sup> The following was the adjudication: death by decapitation for the three criminals, cashiering and banishment for the garrison commander, and cashiering for the magistrate. TMHG 50: 2-6.

<sup>75</sup> TMHG 51: 29b-32a (zi from the Board to Sukjong; KX25.i4.15=6/5/1686).



The inferior position of the Chosŏn king, itself the manifestation of the asymmetry in Qing-Chosŏn relations, was most vividly illustrated in the many discussions within the Qing court on whether and how to punish the Chosŏn king. Broadly speaking, the Qing court sought to punish the Chosŏn king for one of these two reasons: the king's negligence as a tributary king or the king's mishandling of a trial.

The first record of such discussion stems from the review of Kim Ch'ung-il case in 1656. The Three Judicial Offices, in their review, saw some mishandling of the case and recommended disciplinary sanctions (*yichu*) on King Hyojong and the Chosŏn officials who had participated in the initial interrogation. The Shunzhi emperor approved the review, delegating the task to the Board of Punishments. The Board, in turn, found that there was no precedent for punishing the king and officials of Chosŏn and asked for imperial instruction: Should the Board of Personnel, with jurisdiction over Qing officeholders, or the Board of Rites, with jurisdiction over Chosŏn affairs, handle the case? Shunzhi entrusted the Board of Rites with the task, and the Board soon recommended the following disciplinary sanctions: a fine of 1,000 taels of silver and other materials for the king, and demotion and cashiering for the officials. Even though Shunzhi eventually pardoned them (*mian yi zui*), this case created an important precedent.<sup>76</sup>

Most importantly, the Qing Board of Rites had acquired jurisdiction over the king of Chosŏn for future reviews. From this point on, the Qing Board of Rites would routinely reassert its jurisdiction over the Chosŏn king by discussing the guilt of the Chosŏn king. In its review of the Pak Si-ung case (1681), for example, the Board recommended a fine of 10,000 taels of silver for Sukjong. In reviewing the Im In case (1691), the Board again recommended the same fine for Sukjong. Even though the Kangxi emperor eventually pardoned Sukjong in both cases, we see

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<sup>76</sup> TMHG 49: 36b-39a (zi from the Board of Rites to Hyojong; SZ13.3.15=4/9/1656).

here a clear demonstration that the Qing judiciary had the power to punish and pardon the Chosŏn king.<sup>77</sup>

Moreover, the Qing judiciary did punish the Chosŏn king on several occasions. As we have seen in chapter two, King Hyojong was fined 5,000 taels of silver in 1667 for hiding An Ch'u-wŏn/Xiao Er, a Qing runaway slave and a former Chosŏn subject, in his domain. Here it might be interesting to compare this case with a similar case that concerned Prince Shang Kexi (尚可喜; 1604-76) and Prince Geng Zhongming (耿仲明; d. 1649). When the Qing court discovered in 1649 that the princes' subordinates had harbored about one thousand runaway banner slaves, the Board of Punishments recommended that the princes be stripped of their titles and each pay 5,000 taels of silver.<sup>78</sup> This comparison is interesting in two ways. First, it shows how seriously the Qing court took the issue of harboring runaway banner slaves in the early years of the dynasty. Second and more pertinently, it shows how thin the line between a Qing feudatory prince and a Chosŏn tributary king was at times, at least as it concerned attempts by the Qing emperor to discipline its clients and thus regulate these patron-client relationships.

That was not the last time that the king of Chosŏn was fined, either. In a 1685 edict on sending imperial envoys to Hanyang for a joint trial in the Han Tŭk-wan case, the Kangxi emperor explicitly stated that the envoys were to discuss the king's own culpability. Indeed, the imperial envoys recommended to the emperor on their return to Beijing that the king should be fined 20,000 taels of silver. Both the Board of Rites and the emperor upheld this

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<sup>77</sup> TMHG 50: 29b-30b (zi from the Board of Rites to Sukjong; KX20.2.12=3/31/1681), 52: 16b-17b (zi from the Board to Sukjong; KX30.6.21=7/16/1691).

<sup>78</sup> Even though the Shunzhi emperor eventually decided to just fine them to 4,000 taels of silver each, Geng had already committed suicide without waiting for the verdict. QSL Shizu 46: 366b-367a (SZ 6.9.13=10/18/1649), 373a (SZ 6.11.27=12/30/1649), 47: 378a (SZ 7.1.25=2/25/1650); ECCP, 416-7, 635-6.

recommendation, and King Sukjong became the second and last Chosŏn king to be fined by the Qing judiciary.<sup>79</sup>

Why is this significant? The Chosŏn judiciary could not punish the Chosŏn king, for he stood on top of the judiciary. In that sense, the fact that the Qing judiciary could punish the Chosŏn king is the most vivid affirmation of Qing judicial superiority. Indeed, if the Chosŏn king himself could be punished by the Qing judiciary, what subjects of his could avoid the reach of Qing jurisdiction? During the seventeenth century, Chosŏn was incorporated as a Qing judicial province whenever the Qing court decided to prosecute Chosŏn subjects as its criminals. Even though the Chosŏn judiciary came to gain a larger role in these trials in the eighteenth century, with many procedures becoming routinized, this asymmetry between the two judiciaries would always remain at the heart of this interstate jurisdiction over Chosŏn subjects.

### **III. Chosŏn between Asymmetry and Judicial Independence: Eighteenth Century**

Perhaps the most striking judicial characteristic of interstate jurisdiction over Chosŏn subjects during the eighteenth century is the routinization of judicial procedures. Many developments in the Qing-Chosŏn interactions from the second half of the seventeenth century contributed to this trend.

The first development was the increasing concern on the part of both judiciaries about the statutory basis for decisions. During the early decades of joint jurisdiction, reports of adjudication often simply stated criminals had been sentenced to certain punishments according to statutes (Kr. *yul*, Ch. *lü*). Starting in the mid-seventeenth century, however, we begin to see

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<sup>79</sup> TMHG 51: 4a-b (edict to Sukjong; KX24.10.6=11/2/1685), 51: 20b-22b (zi from the Board to Sukjong; KX25.2.6=2/27/1686), 52: 1-2; QSL Shengzu 124: 315b (KX25.2.3=2/24/1686).

citation of specific statutes and substatutes, first in the review by the Qing judiciary and then gradually in the king's adjudication. In 1656, for example, the Three Judicial Offices explicitly cited the first edition of the Qing Code in their review of the king's adjudication on the Kim Ch'ung-il. It was basically an exercise in trying to find sections from the Qing Code that corresponded to the king's sentencing on the criminals.<sup>80</sup> Beginning in the late seventeenth century and throughout the eighteenth century, we see more and more cases of adjudications and reviews that had solid statutory bases, whether explicitly cited or not. This concern for statutory bases might have to do with the systematization of operational laws into written law in both states, as discussed in the beginning of the chapter.

The second and more explicit development that contributed toward the routinization of the interstate judicial procedures was an increasing use of precedents. In my sources, the Qing Board of Rites made the first explicit use of a precedent in 1661, when it recommended holding a joint trial in Hanyang for the Chang Yu-sin case by using the Kim Ch'u-ip case (1657) as a precedent.<sup>81</sup> In the same year, the Chosŏn court used the Kim Ik-tong case from the previous year as a precedent in sentencing Chŏng Tu-sŏng (鄭竇性) to the same punishment as Kim Ik-tong. In both cases, the criminals had illegally bought horses and were sentenced to 60 strokes of beating by heavy bamboo and banishment.<sup>82</sup> From then, we see a steady use of precedents in the initiation, adjudication, and review stages of the cases throughout the rest of the century. By the eighteenth century, when the Qing court became aware of at least 20 cases of possible criminal

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<sup>80</sup> TMHG 49: 36b-39a (zi from the Board of Rites to Hyojong; SZ13.3.15=4/9/1656).

<sup>81</sup> TMHG 63: 19a-20a (zi from the Board of Rites to Hyŏnjong; SZ18.2.3=3/3/1661).

<sup>82</sup> TMHG 63: 20a-23b (zi from Hyŏnjong to the Board of Rites; SZ18.3.27=4/25/1661).

activities by Chosŏn subjects, one would be hard pressed to find a single case that did not include a discussion of precedents at some stage.

## **A. The Continued Operation of Asymmetric Joint Jurisdiction**

### *1. Chosŏn as a Qing Judicial Province in the Eighteenth Century*

In the eighteenth century, as in the previous century, reports of the arrest of Chosŏn suspects eventually reached the Qing emperor. Unlike in the previous century, however, some of these reports bypassed the Qing Board of Rites. In the nine cases in which the initial arrest was made in the Chosŏn domain, the Chosŏn king always first notified the Qing Board of Rites via lateral communications (*zi*). In the eleven cases in which the initial arrest was made in the Qing domain, however, the Qing military governors bypassed the Board of Rites and directly memorialized the Qing emperor. This had to do with the development of the Qing palace memorial (*zouzhe*) system, in which top provincial officials could directly report to the Qing emperor and build a personal relationship with him, from the late Kangxi period to the early Qianlong period.<sup>83</sup>

Regardless of whether the Board of Rites or the military governors memorialized the emperor, they regularly invoked precedents in their recommendations to the emperor. In April 1704, for example, King Sukjong reported to the Board of Rites on the arrest of Kim Ye-jin (金禮進) and nine other Kyŏngwŏn residents who had crossed the Tumen River twice, robbed

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<sup>83</sup> Silas Hsiu-liang Wu, "The Memorial Systems of The Ch'ing Dynasty (1644-1911)," *Harvard Journal of Asiatic Studies* 27 (1967): 7-75; Beatrice S. Bartlett, *Monarchs and Ministers: The Grand Council in Mid-Ch'ing China, 1723-1820* (Berkeley: University of California Press, 1991); Mark C. Elliott, "The Manchu-Language Archives of the Qing Dynasty and the Origins of the Palace Memorial System," *Late Imperial China* 22, no. 1 (2001): 1-70.

Qing subjects, and killed four of them. The Board, noting the severity of the crime and invoking the similar Im In case (1691) as a precedent, recommended sending envoys to Hanyang for the trial of the criminals and the investigation into the king's culpability.<sup>84</sup> In 1734, the acting Shengjing military governor Haiŕeo (海壽; n.d.) directly reported to the Yongzheng emperor on the arrest of Sŏ Kwi-gang (徐貴江) in a palace memorial. Noting that Sŏ had merely gotten lost, Haiŕeo recommended simply repatriating him to Chosŏn according to precedent.<sup>85</sup>

Out of the 20 cases reported, the Qing court asserted no jurisdiction in six cases, including the Sŏ Kwi-gang case mentioned above, by simply repatriating the Chosŏn suspects. In 14 cases, the Qing court asserted jurisdiction by four methods: the king's trial subject to review by the Qing judiciary (seven), joint trial in Fenghuangcheng (three), adjudication by the Qing court (three), and pardon (one). In the first two methods, it was the Chosŏn king who adjudicated on the case and memorialized the Qing emperor on the result, and in his adjudication, he regularly invoked precedents as bases for his sentencing of the criminals. In his adjudication in the Kim Ye-jin case (1704), for example, Sukjong noted that there were three precedents to choose from. Eventually, he settled on the most recent precedent of the Im In case (1691) in his adjudication.<sup>86</sup>

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<sup>84</sup> TMHG 53: 1a-2a (zi from Sukjong to the Board of Rites; KX43.2.27=4/1/1704), 2a-3a (zi from the Board of Rites to Sukjong; KX43.4); QSL Shengzu 216: 185b-186a (KX43.4.9=5/12/1704).

<sup>85</sup> TMHG 55: 1a-2a (zi from the Shengjing Board of Rites to Yŏngjo; YZ12.2.8=3/12/1734); MWLZ 03-0172-0833-001 (Haiŕeo et al; YZ11.11.18/11.12.7). Sŏ in fact gave a false name to Qing authorities initially: Piyoo Hai Cang (票海常).

<sup>86</sup> Kim Ye-jin and two principals were sentenced to immediate death by beheading, enslavement of wife and children, and confiscation. Six accessories were sentenced to immediate death by beheading. Two magistrates and one subarea commander were sentenced to cashiering and life exile of 2,000 li. One magistrate, one subarea commander, and provincial governor and military commander were sentenced to cashiering or demotion and transfer. CWS Sukjong 39: 66a-67b (30.7.20=8/20/1704); TMHG 53: 4b-19b (Sukjong zou; KX 43.8.27=9/25/1704).

While this routinization of the judicial procedures brought a sense of predictability for the Chosŏn court, it also had the effect of solidifying the inferior position of the Chosŏn judiciary vis-à-vis its counterpart. After all, the precedents had been inherited from the seventeenth century, when Chosŏn had been frequently incorporated as a Qing judicial province. Thus, the collaborative but asymmetric relationship between the two judiciaries during interstate trials of Chosŏn suspects continued in the eighteenth century. Moreover, the routinization had its limits as well, as the Qing court retained a monopoly over the creation of new precedents.

## *2. The Qing Monopoly over the Creation of Precedents*

The Qing monopoly over the creation of precedents was perhaps the most vivid demonstration of the asymmetry between the Qing and Chosŏn judiciaries. While both sides could draw on the same repertoire of precedents, the Chosŏn judiciary was firmly bound within existing precedents. In contrast, the Qing judiciary was fully capable of creating and imposing new norms on the Chosŏn judiciary.

The instatement of the joint trial in Fenghuangcheng offers a good example of this process. In December 1710, the Chosŏn court became aware of a borderland homicide case when some Qing subjects came to the P'yŏngan border town of Wiwŏn (渭原) to avenge the death of five of their comrades at the hands of Yi Man-gŏn (李萬建) and eight other Wiwŏn residents. The Chosŏn court, recalling the Kim Ye-jin case narrated above, decided that it was better to take the initiative and immediately reported to the Board of Rites on this case without having arrested and interrogated all the suspects. This case, however, did not result in a trial by the Chosŏn king as in the Kim Ye-jin case. In Beijing, the Kangxi emperor was more interested in the identities of the Qing subjects killed. Noting that the Chosŏn envoy reporting on the case did

not know much about those murdered and that Shengjing officials had not reported to the court on the case, Kangxi decided on a novel procedure: one official from the Qing Board of Rites, one Shengjing official, and one Chosŏn official would meet in Fenghuangcheng for a joint investigation of the case.<sup>87</sup>

As this type of trial was unprecedented, the Kangxi emperor continuously created precedents throughout the trial. When the Qing officials selected for the joint investigation asked for imperial instruction, Kangxi ordered them to investigate the scene of the crime with the Chosŏn official to determine whether it lay in the Qing or the Chosŏn domain. After the joint investigation was concluded, the Chosŏn official in charge was to bring the criminals back to Hanyang, where the king was to conclude the case. This created a precedent for adjudicating this novel form of trial.<sup>88</sup> Two future cases—the Kim In-sul case (1750) and the Cho Cha-yŏng case (1757)—would take this case as the precedent for holding a joint trial in Fenghuangcheng.<sup>89</sup>

Kangxi created yet another precedent during the adjudication process. Among the principals in this case were two groups of brothers: Yi Man-gŏn and three of his brothers, and Yi Sŏn-ŭi (李先儀) and two of his brothers. Yi Man-gŏn's father, surely knowing that he would be left without sons if this case followed its normal course, pled for mercy when the Qing officials were passing through Wiwŏn during their investigation. The Qing official in charge, Butha Ula supervisor-in-chief Mu-ke-deng (穆克登), expressed sympathy for the accused. Thus, upon his

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<sup>87</sup> TMHG 53: 27b-29a (zi from Sukjong to the Board; KX49.11.26=1/14/1711), 29a-b (zi from the Board to Sukjong; KX50.2.14=4/1/1711); QLS Shengzu 245: 429a (KX50.1.21=3/9/1711), 431b (KX50.2.9=3/27/1711); CWS Sukjong 49: 27b-28a (36.11.9=12/28/1710).

<sup>88</sup> TMHG 53: 32b-33a (zi from Mu-ke-deng et al to Sukjong; KX50.5.29=7/14/1711), 35b (zi from Chang-tai et al to Sukjong; KX50.8.13=9/25/1711); QSL Shengzu 246: 441b (KX50.5.5=6/20/1711).

<sup>89</sup> TMHG 56: 17a-b (zi from the Board of Rites to Yŏngjo; QL15.3.14=4/20/1750), 57: 5a-7a (zi from the Board to Yŏngjo; QL22.5.18=7/3/1757).



return to Beijing, Mu-ke-deng mentioned what he regarded as special circumstances surrounding this case to the Kangxi emperor. Kangxi, noting that there was a Qing statute on sparing one of the brothers to remain home and serve his parents if all were condemned to death, ordered King Sukjong to apply this statute in his adjudication of the case. Sukjong complied, sparing Yi Man-gŏn (李萬建) and Yi Chun-wŏn (李俊元).<sup>90</sup>

The creation of new precedents reached its height under the Qianlong (乾隆; r. 1736-95) emperor, which is unsurprising given Qianlong's penchant for starting new projects. In 1740, for example, the institution of the Autumn Assizes was introduced into the Chosŏn judicial system during the review of the Kim Si-jong (金時宗) case. This case involved Kim Si-jong and five other residents of Onsŏng (穩城), Hamgyŏng. They had repeatedly crossed the Tumen River and fraternized with Qing hunters from 1737 until their arrest in 1739 by Onsŏng authorities. Upon receiving the report from King Yŏngjo (英祖; r. 1724-76), the Board of Rites cited the Kim Se-jŏng precedent, which will be discussed below, to put Yŏngjo in charge of the trial. Yŏngjo sentenced everyone except for Chŏng Man-t'ae (鄭萬泰), who had cooperated with the Onsŏng authorities in the arrest of his accomplices, to immediate death by beheading.<sup>91</sup>

When the Three Judicial Offices, the Board of Personnel, and the Board of War reviewed Yŏngjo's adjudication on the case, however, they deemed Yŏngjo's sentencing of immediate beheading for Kim Si-jong and four others to be too harsh. Under Qing law, there were two categories of capital punishments: immediate execution (*lijue*) and deferred execution (*jianhou*).

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<sup>90</sup> TMHG 53: 36a-37a (zi from the Board to Sukjong; KX50.9.17=10/28/1711), 38b-42b (Sukjong zou; KX50.10.29=12/8/1711); QSL Shengzu 247: 450b (50.9.6=10/17/1711); CWS Sukjong 50: 5b-6a (37.8.18=9/30/1711).

<sup>91</sup> TMHG 55: 7b-10b (zi from Yŏngjo to the Board of Rites; QL4.6.29=8/3/1739), 10b-11b (zi from the Board of Rites to Yŏngjo; QL4.10.3=11/3/1739), 11b-12b (zi from Yŏngjo to the Board of Rites; QL5.2.12=3/9/1740).

The Autumn Assizes (*qiushen*) were the institution for those sentenced to deferred execution. Every autumn, the emperor and his officials would review the cases and put the criminals into four categories: deferred execution, worthy of compassion, remaining at home, and deserving of capital punishments.<sup>92</sup> The Qing offices, reasoning that the five Chosŏn criminals had neither robbed nor killed anyone, instead sentenced them to death by strangulation after the Autumn Assizes. The Board of Rites, however, soon realized in its communications with the Chosŏn envoy in Beijing that the Autumn Assizes did not exist in Chosŏn and thus the criminals would simply be executed after autumn. The Board, finding that doing so would go against the imperial will of saving lives as well as the law (*lüli*), recommended that these Chosŏn criminals be handled in the Qing Autumn Assizes of the next year. It made the further recommendation that this case serve as a precedent for the future cases. The Qianlong emperor approved both suggestions, creating another new precedent in Qing-Chosŏn interstate law.<sup>93</sup>

This case served as a precedent for all future cases that resulted in Chosŏn criminals going through the Autumn Assizes: The Yi Un-gil case (1747-53), the Kim Sun-jŏng case (1761-78), the Pak Hu-ch'an case (1762-78), and the Kim Pong-su case (1764-77). The application of Autumn Assizes was more than a simple importation of a Qing legal device into the Chosŏn judiciary. Even though the Chosŏn subjects remained imprisoned in Chosŏn for the duration of Autumn Assizes, they were put under the firm hold of the Qing judiciary every fall. Kim Sun-jŏng and five others, for example, received fourteen stays of execution (*huanjue*) in a row before they were finally pardoned. Waiting for the imperial decision on their lives every fall for more

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<sup>92</sup> Bodde and Morris, *Law of Imperial China*, 134-43; M. J. Meijer, "The Autumn Assizes in Ch'ing Law," *T'oung Pao* 70 (1984): 1-17; Zheng Qin, *Qingdai sifa shenpan zhidu yanjiu* (Changsha: Hunan jiaoyu chubanshe, 1988), 171-204.

<sup>93</sup> TMHG 55: 12b-16b (zi from the Board of Rites to Yŏngjo; QL5.i6.22=8/14/1740); JJCD 001122 (ti by Board of Punishments et al; QL5.i6.2/5.i6.8).

than 10 years, they could not have helped but notice their status as criminals of the Qing emperor.<sup>94</sup>

The creation of new precedents could even result in an almost total abrogation of Chosŏn jurisdiction over its own subjects. In 1764, the Qing authorities in Shengjing discovered Chosŏn-style straw sandals near the dead body of a bannerman soldier (*pijia*). Their investigation led to the uncovering of an interstate smuggling ring consisting of residents in the Shengjing-P'yŏngan borderland. The Board of Rites in Shengjing, having secured the names of the possible Chosŏn suspects through the interrogation of the Qing suspects, requested that King Yŏngjo have the Ŭiju prefect escort seven suspects to Fenghuangcheng for an initial investigation there and for further trial in Shengjing. Yŏngjo declined politely, reasoning that there was no precedent for sending Chosŏn criminals to Fenghuangcheng without an imperial edict. Following precedents, however, Yŏngjo assured he would make all necessary preparations for the joint trial in Fenghuangcheng while awaiting an edict, and the local officials in Ŭiju produced the chief suspects Kim Pong-su (金鳳守) and Kim Se-ju (金世柱) under the royal order. The Board of Rites in Shengjing, in return, asked the king three more times to hurry up the process, indicating in its fourth request that it had indeed obtained an imperial edict on how to proceed with the case.<sup>95</sup>

This edict proclaimed that there would be no joint trial in Fenghuangcheng. The authorities in Shengjing had concluded that this case, as a homicide case involving a bannerman, could not be compared to previous cases that were jointly tried in Fenghuangcheng. The Board

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<sup>94</sup> TMHG 59: 12a-13a (zi from the Board of Rites to Chŏngjo; n.d.); *Neige Manwen tiben* (MWTB hereafter) 02-02-026-001844-0014 (Šuhede et al; QL29.9.10=10/5/1764).

<sup>95</sup> TMHG 59: 13b-15b (zi from the Shengjing Board of Rites to Yŏngjo; QL29.1.2=2/3/1764), 15b-19a (zi from Yŏngjo to the Shengjing Board of Rites; QL29.1.12=2/13/1764), 24a-b (zi from the Shengjing Board to Yŏngjo; QL29.2.27=3/29/1764); MWLZ 03-0181-2066-030 (Šetuken, Wešengge, Yungning; QL28.12.29/29.1.18).

of Rites and the Qianlong emperor agreed with the recommendation and sent a bureau director (*langzhong*) from the Board of Punishments to Shengjing to try the criminals with the Shengjing authorities. Yǒngjo, oblivious to that decision, hurriedly appointed a commissioner and sent the two criminals to Shengjing for a joint trial. The Chosŏn commissioner was then sent back to Chosŏn, leaving behind only the functionaries and the criminals. The Qing authorities sentenced Kim Pong-su to death by decapitation after the Autumn Assizes and Kim Se-ju to death by strangulation after the Autumn Assizes using a Qing statute on intentional homicide, and the adjudication was confirmed during the review processes.<sup>96</sup>

Both criminals were kept as prisoners in Shengjing until the Autumn Assizes of 1764, which resulted in the execution of Kim Pong-su in Shengjing and the staying of execution for Kim Se-ju. We learn about Kim Se-ju's fate in the Autumn Assizes of 1769 and 1773, when he received stays of execution. From a 1777 lateral communication from the Shengjing Board of Rites to King Chǒngjo (正祖; r. 1776-1800), we learn that Kim Se-ju finally died in a Shengjing prison after surviving 13 Autumn Assizes in a row while being kept as a prisoner. Now the body was being returned to Chosŏn.<sup>97</sup> Only death freed Kim from the reach of Qing jurisdiction and returned him as a Chosŏn subject. This case reminds us that procedures in these interstate legal cases, however routinized they might have become by the eighteenth century, could not be taken for granted in an asymmetric relationship where the Qing court maintained a monopoly over creation of new precedents.

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<sup>96</sup> TMHG 59: 25b-26b (zi from Yǒngjo to the Board of Rites; QL29.3.7=4/7/1764), 27b-28a (zi from the Board of Rites to Yǒngjo; QL29.3.27=4/27/1764), 28a-29a (zi from the Shengjing Board to Yǒngjo; QL29.5.7=6/6/1764), 29a-32b (zi from the Board of Rites to Yǒngjo; QL29.6.5=7/3/1764); MWLZ 03-0181-2079-046 (Šetuken, Wešenge, Yungning, Coociowan; QL29.3.28/29.4.7), 03-0181-2081-007 (Šetuken et al; QL29.4.19=5/19/1764).

<sup>97</sup> TMHG 59: 34b-36a (zi from the Shengjing Board to Yǒngjo; QL29.10.9=11/2/1764), 43a-44a (zi from the Shengjing Board to Chǒngjo; QL42.2.17=3/25/1777); MWTB 02-02-026-001867-0011 (Liu Tongxun et al; QL34.9.8=10/7/1769), 02-02-027-001898-0008 (Guwamboo et al; QL38.9.8=10/25/1773).

## B. Roots of Chosŏn Judicial Independence

### 1. *Using Routinization of the Procedures to Chosŏn's Benefit*

Was the Chosŏn court, then, a passive victim of Qing legal interference without any agency? Not quite. Even though the Chosŏn court did not have power to create new precedents, it could compete with the Qing court within the realm of precedents. The Chosŏn court knew the precedents at least as well as, if not better than, the Qing court, and it was often able to use the routinization of the procedures to its advantage by finding and presenting the precedents that had worked in its favor in the past. Precedents could be what James Scott has termed “weapons of the weak” for the Chosŏn court.<sup>98</sup>

The Chosŏn court found one such precedent in the Kim Ye-jin case (1704). We have seen above how the Board of Rites invoked the Im In precedent (1691) to recommend sending officials to Hanyang for a joint trial of Kim Ye-jin and other criminals. The Kangxi emperor, however, did not follow the Board's recommendation. Instead, noting Sukjong's usual respectfulness and his prompt reporting of the case, he let Sukjong adjudicate on the case.<sup>99</sup> This was the first time that the Chosŏn king was put in sole charge of adjudicating a homicide trial, and the Chosŏn court was fully aware of that significance. Sukjong, in consultation with the State Council, the State Tribunal, and the Ministry of Punishments, decided to use the Im In case

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<sup>98</sup> James C. Scott, *Weapons of the Weak: Everyday Forms of Peasant Resistance* (New Haven: Yale University Press, 1985).

<sup>99</sup> TMHG 53: 2a-3a (KX43.4; zi from the Board of Rites to Sukjong), QSL Shengzu 216: 185b-186a (KX43.4.9=5/12/1704).

instead of the Han Tūk-wan case (1686), which had resulted in harsher sentencing in the end, as the precedent.

The king's adjudication was as follows: immediate death by beheading, enslavement of wife and children, confiscation of properties for Kim Ye-jin and two others who had participated in the killing; immediate death by beheading for six other trespassers; cashiering and life exile of 2,000 li for two magistrates and one subarea commander (*manho*); cashiering for a governor, a military commander, and a subarea commander; and demotion and transfer for a magistrate. When Sukjong's thorough memorial on the trial, 30 pages long, arrived in Beijing, the Kangxi emperor instructed the Board of Rites and the Three Judicial Offices to review the case. In their review, they recommended that the adjudication should stand and that Sukjong should be spared from a discussion of his culpability. In his final decision, Kangxi commuted the sentencing on the four trespassers from death and the sentencing on the two magistrates and one subarea commander from life exile. He also accepted the recommendation on not discussing Sukjong's culpability.<sup>100</sup>

In this case, the Chosŏn court had achieved two important goals: avoiding a joint trial in Hanyang and avoiding a discussion of the king's culpability. Unsurprisingly, the Chosŏn court sought to use this case as a precedent whenever relevant. The Kim Se-jŏng (金世丁) case is a perfect example. In October 1733, the Chosŏn court became aware of a case of mass trespassing that involved the murder and robbing of Qing subjects by Chosŏn subjects and reported to the Qing Board of Rites. In Beijing, there ensued an intense debate between the Chosŏn envoys and the Board officials on which precedent to invoke. The Board officials wished to invoke the Im In

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<sup>100</sup> TMHG 53: 4b-19b (Sukjong zou; KX 43.8.27=9/25/1704), 20b-22a (zi from the Board to Sukjong; KX43.11.6=12/2/1704); QSL Shengzu 218: 204a (KX43.11.22=12/18/1704), 205a (KX43.11.26=12/22/1704); CWS Sukjong 39: 66a-67b (30.7.20=8/20/1704).

precedent (1690), which would have resulted in a joint trial in Hanyang and the discussion of King Yǒngjo's culpability. Despite the protest from the Chosŏn envoys, the Board recommended that the guilt of Yǒngjo be discussed after the arrest and interrogation of all the criminals. With the approval of the Yongzheng (雍正; r. 1723-35) emperor, this case seemed to be headed in the direction of the Im In case.<sup>101</sup>

The Chosŏn court did everything in its power to prevent that from happening. First, it produced a most thorough report, which ran 33 pages long and included testimonies from all 28 criminals and the four officials who had jurisdiction over them. It even divided the criminals into three categories, ready-made for adjudication: three who led the murder and plundering of Qing subjects, 17 accomplices, and nine who merely entered the Qing domain. Second, Sŏ Myŏng-gyun (徐命均; 1680-1745), the Chosŏn envoy who carried this memorial to the Board of Rites, intensely lobbied on the behalf of his king. In the end, Sŏ succeeded in persuading the Minister of Rites San-tai (三泰; d. 1758) and his subordinates to cite the Kim Ye-jin precedent in their memorial to the Yongzheng emperor. When Yongzheng finally approved the Board's recommendation that the king adjudicate the case and that he be exempt from discussion of his guilt according to the Kim Ye-jin precedent, the Chosŏn court could celebrate its successful manipulation of the system.<sup>102</sup>

## *2. Increasing Role of the Chosŏn Judiciary*

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<sup>101</sup> TMHG 54: 9b-10b (zi from Yǒngjo to the Board of Rites; YZ11.11.21=12/26/173310b-12a (zi from the Board of Rites to Yǒngjo; YZ12.2.21=3/25/1734); CWS Yǒngjo 37: 37b-38a (10.3.11).

<sup>102</sup> TMHG 54: 12a-27a (zou by Yǒngjo; YZ12.7.2=7/31/1734), 28b-29b (zi from the Board of Rites to Yǒngjo; YZ12.11.20=12/14/1734); CWS Yǒngjo 39: 20b-21a (10.12.11=1/4/1735); XKTB 02-01-02-2374-007 (Yun Too et al; YZ13.11.16=12/29/1735).

The Kim Ye-jin precedent provided another lesson to the Chosŏn court of the eighteenth century: Chosŏn initiative in the detection of criminal activities, arrest of criminals, and initial interrogation was likely to result in a bigger role for the Chosŏn judiciary in the ensuing interstate trial. The December 1710 discussion within the Chosŏn court after the arrest of Yi Man-ji (李萬枝) and Yi Man-sŏng (李萬成) provides a glimpse into that realization. After discussing the precedents for trespassing cases that had resulted in deaths of Qing subjects, the court concluded that the Kim Ye-jin precedent showed the wisdom of taking the initiative and reporting to the Qing court right away.<sup>103</sup> This trend continued throughout the eighteenth century, during which the Chosŏn court made the initial report in nine of 17 trespassing cases. Even more strikingly, the Chosŏn court made the initial report in five of six homicide cases. This initiative by the Chosŏn court in the eighteenth century is especially striking when compared to its passivity in the previous century.

The Qing court responded by giving a bigger role to the Chosŏn judiciary in handling the Chosŏn subjects suspected of engaging in criminal activities in the Qing domain. First, the use of joint trial decreased dramatically. Throughout the whole century, there were only three cases that were resolved by joint trials, as compared with 12 joint trials from 1646 to 1699. Moreover, all three joint trials took place in Fenghuangcheng instead of Hanyang, to the relief of the Chosŏn court. The joint trial in Hanyang was a highly burdensome event for the court in a few ways. The entire upper echelon of the Chosŏn court, including the king, was expected to participate in the trial, which could last weeks. Moreover, the trial often placed significant stress and financial burden on the court. Faced with a situation in which its prerogative to adjudicate on cases was shared with Qing envoys, the Chosŏn court often resorted to bribing the Qing envoys for ideal

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<sup>103</sup> CWS Sukjong 49: 27b-28a (36.11.9=12/28/1710).



terms of adjudication, as we have seen in the Pak Yong-ŏp case of 1662. Instead of joint trial, now the norm in the interstate trials of Chosŏn suspects committing crimes in the Qing domain was trial by the Chosŏn king subject to the review by the Qing judiciary.

Second, the Qing court during this century showed a generally more relaxed attitude about acts of trespassing that were not followed by further transgressions such as ginseng gathering. In addition to the initiative by the Chosŏn court, two interrelated factors may explain this shift. Manchuria in the eighteenth century was not as strategically important as it had been in the seventeenth century, when Qing rule over China Proper was still tenuous and the Russian threat loomed large in northern Manchuria. With the suppression of the Revolt of the Three Feudatories in 1681 and the signing of the Treaty of Nerchinsk in 1689, however, the Qing court might have felt more secure about its Manchurian frontier.

Moreover, the secure Qing rule also resulted in a shift in the attitude of the Qing court towards the Chosŏn court. With the threat of Ming loyalism a distant memory, the Qing court began to see the past Chosŏn loyalty to the Ming court in a more favorable light. In November 1706, for example, the Kangxi emperor issued an edict in which he praised Chosŏn's unswerving loyalty towards Ming and named Chosŏn "a state of propriety and righteousness (*liyi zhi bang*)"<sup>104</sup> This transition is in line with the changing perceptions of the Qing court towards Ming loyalists. As Frederic Wakeman Jr. has pointed out, the Qing dynasty had generated its own loyalists by the 1670s. With the martyrdom of the Ma lineage in 1677 in Guangxi, "history had finally come full circle, and the Qing was now fully paired with the Ming, both successor and

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<sup>104</sup> QSL Shengzu 227: 225a-b (KX45.10.23=11/27/1706).

equal to it.” In this new context, Ming loyalists and Chosŏn could be praised for their universally Confucian virtue of loyalty.<sup>105</sup>

Due to all these factors, the Qing court in the eighteenth century moved away from asserting jurisdiction in cases in which Chosŏn subjects entered the Qing domain in dire circumstances such as poverty. For example, in October 1714, Shengjing authorities arrested a Chosŏn subject named Kwak Man-guk (郭萬國) near the Yalu River. When the interrogation in Shengjing revealed that Kwak was a poor orphan who had crossed the Yalu River in search of food, the Shengjing Board of Rites notified the Board of Rites in Beijing with the recommendation Kwak be returned to Chosŏn with the Chosŏn tributary embassy. With imperial approval, Kwak was handed over to the Chosŏn embassy in February 1715.<sup>106</sup> In November 1729, Ningguta authorities arrested Sin Chŏng-yong (申丁龍) and six Chosŏn subjects who were hunting near the Tumen River. The Qing court of the seventeenth century would have certainly deemed this a criminal activity, as we have seen in the 1648 joint trial in the Kim Ik-kyŏm case. Yet the Ningguta military governor and the Board of Rites now merely recommended repatriating these Chosŏn subjects and received the imperial approval.<sup>107</sup> The Chosŏn court executed the repatriated criminals in both cases without any interference from the Qing court.<sup>108</sup>

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<sup>105</sup> Frederic Wakeman, Jr., *The Great Enterprise: The Manchu Reconstruction of Imperial Order in Seventeenth-Century China* (Berkeley: University of California Press, 1985), 1123.

<sup>106</sup> TMHG 53: 47a-48a (zi from the Board of Rites to Sukjong; KX54.2.24=3/29/1715).

<sup>107</sup> TMHG 49: 3b-4a (zi from the Board of Revenue to Injo; SZ5.1.15=2/8/1648), 54: 1a-2b (zi from Yŏngjo to the Board of Rites; YZ7.10.12=12/2/1729), 54: 2b-4a (zi from the Board of Rites to Yŏngjo; YZ7.12.25=2/12/1730), 54: 4b (zi from the Ningguta military governor to Yŏngjo; YZ8.2.17=4/4/1730).

<sup>108</sup> TMHG 53: 48a-49a (zi from Sukjong to the Board of Rites; KX54.4.20=5/22/1715), 53: 49a (zi from the Board of Rites to Sukjong; KX54.6.21=7/21/1715), 54: 5b-7a (zi from Yŏngjo to the Board of Rites; YZ8.6.27=8/10/1730); CWS Sukjong 56: 12a (41.9.16=10/12/1715).

This trend continued through the early years of the Qianlong reign. For example, Shengjing authorities arrested 20 Chosŏn subjects near the Yalu River in 1740, while Ningguta authorities arrested 25 Chosŏn subjects near the Tumen River in 1741. In both cases, the military governors determined that these were poor people who had trespassed in search of food. The Board of Rites agreed with that assessment. In its recommendation for the latter case, the Board remarked that all these cases had to do with the Chosŏn subjects fleeing for their lives (*taosheng*) and repatriating them would show the imperial virtue of saving lives (*haosheng zhi de*).<sup>109</sup> The transition of Chosŏn from an enemy state, to be surveyed and punished for its collusion with Ming, to a loyal tributary state had finally made an impact on interstate jurisdiction over Chosŏn trespassers. No longer subjects of a disloyal tributary ruler, these trespassers were now fully worthy of imperial benevolence.

#### **IV. The Abandonment of Jurisdiction over Chosŏn Criminals: 1800s-1840s**

In the above section, we saw two facets of Qing jurisdiction over Chosŏn criminals in the eighteenth century: an asymmetric relationship between Qing and Chosŏn judiciaries coexisting with an increasing role for the Chosŏn judiciary. Here, we are going to turn to the first half of the nineteenth century. For this period, my sources show at least ten cases of Chosŏn subjects being arrested in the Qing domain. Unlike in the seventeenth and eighteenth century, however, the Qing court did not assert jurisdiction in any of these cases, simply repatriating the suspects to Chosŏn without any instruction. Let us look at these cases in more detail to see what had changed.

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<sup>109</sup> TMHG 55: 25a-26b (zi from the Shengjing Board of Rites to Yŏngjo; QL5.10.15=12/3/1740), 30b-33b (zi from the Board of Rites to Yŏngjo; QL6.9.21=10/30/1741); QSL Gaozong 128: 871a (5.10.3=11/21/1740), Gaozong 150: 1159a-b (6.9.15=10/24/1741); MWLZ 03-0172-0450-001 (Ertu et al; QL5.10.3/5.10.13).

We see continuities with the previous century in five cases. In three cases, the Qing frontier officials determined the trespassing had been accidental. In 1805, for example, Ch'oe Tōng-nae (崔德來) and five others were arrested on the Qing side of the Yalu River. When the interrogation in Shengjing revealed that they had accidentally trespassed while rafting along the Yalu River and hunting squirrels, the Shengjing authorities repatriated the six Chosŏn subjects, simply memorializing the Jiaqing (嘉慶; r. 1796-1820) emperor and notifying King Sunjo (純祖; r. 1800-34) of the repatriation.<sup>110</sup> In two similar future cases, Chosŏn subjects were repatriated in a comparable manner. In 1827, two Chosŏn subjects from Musan (茂山), Hamgyōng, were arrested in Jilin after getting lost while hunting. The Jilin military governor Fugiyūn (富俊; d. 1834) sent them to the Shengjing Board of Rites for repatriation and then memorialized the Daoguang (道光; r. 1821-50) emperor about it.<sup>111</sup> In 1846, Kim Sang-sil (金上實) and one other Kanggye resident were arrested in Shengjing after getting lost while collecting firewood. The Shengjing authorities simply repatriated them to Chosŏn without even memorializing the Daoguang emperor.<sup>112</sup>

Two cases involved trespassers who were deaf and/or mentally challenged. In 1824, a man named Kim Chin-sōng (金振聲) was arrested in Fenghuangcheng. As there was no way to interrogate him in Fenghuangcheng due to his deafness, the Shengjing authorities ordered the Fenghuangcheng garrison commandant (*chengshouwei*) to communicate with the Ŭiju

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<sup>110</sup> TMHG *wǒnp'yǒn sok, pǒmwǒl* 1: 1a-2b (zi from the Shengjing Board of Rites to Sunjo; JQ10.10.29=12/19/1805).

<sup>111</sup> JJCD 056523 (Fugiyūn; DG7.7.26/7.8.10); TMHG *wǒnp'yǒn sok, pǒmwǒl* 1: 7b-9b (zi from the Shengjing Board to Sunjo; DG7.8.9=9/29/1827).

<sup>112</sup> TMHG *wǒnp'yǒn sok, pǒmwǒl* 1: 21a-b (zi from the Shengjing Board to Hōnjong; DG26.9.29=11/17/1846).

magistrate. When the communication revealed Kim's identity, the Shengjing authorities repatriated him and memorialized the Daoguang emperor.<sup>113</sup> In 1834, an unnamed deaf woman was arrested in Fenghuangcheng. When a similar procedure ascertained the woman's identity, the Shengjing authorities again repatriated her and memorialized the Daoguang emperor.<sup>114</sup> In short, the act of trespassing in the above five cases was deemed to be unintentional, which might have resulted in the same outcome of simple repatriation in the eighteenth century.

The remaining five cases, however, all involved activities by Chosŏn subjects that would have been considered criminal in the previous century. As such, they show definite signs of changes in the Qing policy towards interstate crimes in this borderland. In three cases, the Chosŏn subjects in question trespassed into the Qing domain and thereafter engaged in illicit activities there. In 1817, Kim Ch'i-ryŏ (金致礪) was arrested in Jilin after crossing into the Qing domain in 1813, fraternizing with Qing ginseng gatherers, and becoming an adopted son of a house slave surnamed Xu and adopting the name Xu Jing (徐鏡). Lu-cheng (祿成; d. 1828), the Jilin vice commander-in-chief (*fudutong*), recommended in his memorial that the Board of Punishments try Kim. The Jiaqing emperor, however, ordered in an edict that Kim be repatriated to Chosŏn to be handled by the king due to Chosŏn's respectfulness.<sup>115</sup> This imperial decision stands in stark contrast to the previous Qing sensitivity about Chosŏn ginseng gatherers in the previous centuries.

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<sup>113</sup> CWS Sunjo 27: 1b-2b (24.1.18=2/17/1824), 7b-8a (24.6.13=7/9/1824); TMHG *wŏnp'yŏn sok, pŏmwŏl* 1: 5a-7a (zi from the Shengjing Board to Sunjo; DG4.4.28=5/26/1824).

<sup>114</sup> JJCD 067495 (Boohing et al; DG14.3.20/14.3.29); TMHG *wŏnp'yŏn sok, pŏmwŏl* 1: 15b-16a (zi from the Shengjing Board to Sunjo; DG14.4.10=5/18/1834).

<sup>115</sup> JJCD 051625 (Lu-cheng; JQ22.5.11/22.5.24), 052262 (Fugiyŏn et al; JQ22.7.2/22.7.13); TMHG *ws, pŏmwŏl* j. 1: 3a-b (zha from the Shengjing military governor to the Ŭiju magistrate; JQ22.6.29=8/11/1817); CWS Sunjo 20: 32a-b (17.11.10=12/17/1817).

The next two trespassing cases show that the Kim Ch'i-ryŏ case was not an anomaly. In 1831, Chang Ho-gyŏng (張豪京) and his son were arrested in Jilin after gathering ginseng, hunting, fraternizing with Qing ginseng gatherers, and even having their heads shaved, thus falsely proclaiming themselves to be Qing subjects. While emphasizing that the Changs should be executed, the Jilin military governor Fugiyŭn sent them to the Shengjing Board of Rites for repatriation and memorialized the Daoguang emperor.<sup>116</sup> In 1841, a Chosŏn subject who had entered the Qing domain in 1830 as a five-year old boy and was living as a monk by the dharma name of Jiekun (戒坤) was arrested in Jilin. As in the previous case, the deputy Jilin military governor Weikin (惟勤; 1788-1863) was concerned more with the Qing subjects who had associated with Jiekun, simply recommending the repatriation of Jiekun in a memorial that sentenced the Qing collaborators. With imperial approval, Jiekun was repatriated.<sup>117</sup>

Two final incidents involved Chosŏn subjects engaged in the illegal purchase of metal goods, which was an offense punishable by death in the previous centuries. Here as well, there was only minimal involvement from the Qing court. In 1808, a routine check at Fenghuangcheng revealed 4 sets of the *Records of the Grand Historian (Shiji)*, 32.5 *jin* of copper products, and two and a half *jin* of iron products among the baggage of the Chosŏn embassy. The Board of Rites, while noting this was prohibited, recommended that Chosŏn be exempted from a thorough investigation (*mian shenjiu*). The Jiaqing emperor gave his approval.<sup>118</sup> In 1812, the same routine

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<sup>116</sup> TMHG *wŏnp'yŏn sok, pŏmwŏl* 1: 12a-14a (zi from the Shengjing Board to Sunjo; DG11.11.18=12/21/1831), 14a-b (copy of the edict from the Board; DG11.11.21=12/24/1831); QSL Xuanzong 201: 1152b-1153a (11.11.19=12/22/1831).

<sup>117</sup> TMHG *wŏnp'yŏn sok, pŏmwŏl* 1: 17a (zi from the Board to Hŏnjong; DG21.4.7=5/27/1841), 17a-19b (original memorial by the Board of Punishments).

<sup>118</sup> TMHG *wŏnp'yŏn sok, pŏmgŭm* 1: 6b (zi from the Board to Sunjo; JQ13.2.7=3/3/1808), 6b-7b (original memorial by the Board of Rites; 13.2.7=3/3/1808).

search found 105 pairs of iron scissors and one iron shovel in the baggage of the Chosŏn embassy. The Board of Rites, noting the prohibition and the precedent from four years before, again recommended letting the Chosŏn king handle the matter on his own.<sup>119</sup>

In short, the Qing court did not assert jurisdiction in any of these ten cases. There was no directive from the Qing court on how to handle the repatriated suspects, and thus the Chosŏn suspects were outside the reach of the Qing judiciary once they were repatriated to Chosŏn. One episode from the Kim Sang-sil case (1846) clearly demonstrates this point. In their lateral communication to King Hŏnjong (憲宗; r. 1834-49), Shengjing authorities expressed the opinion that the repatriated Chosŏn subjects should be forgiven due to the accidental nature of their trespassing. In his reply, however, Hŏnjong flatly stated that the criminals could not be pardoned and merely reported on their execution in Ŭiju.<sup>120</sup> This scene warrants further analysis. The Chosŏn king and Shengjing officials were on an equal footing, sending lateral communications to one another. Shengjing officials, lacking active involvement by the Qing court, had no authority over the Chosŏn king.

In short, the Chosŏn court had finally achieved judicial independence in the first half of the nineteenth century. The Qing claim of jurisdiction over Chosŏn subjects, then, had come full circle. Whereas the Qing court had criminalized any Chosŏn action it deemed to be against its interests between 1637 and 1645, now the Qing court chose not to claim Chosŏn subjects as its criminals. Chosŏn subjects were to remain Chosŏn subjects, to be tried in the Chosŏn domain by the Chosŏn judiciary. In the following chapters, we will observe this major shift in the Qing-

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<sup>119</sup> TMHG *wŏnp'yŏn sok, pŏmgŭm* 1: 8b (zi from the Shengjing Board to Sunjo; JQ17.9.6=10/10/1812), 8b-9b (original memorial by the Board of Rites; JQ17.6.23=7/31/1812).

<sup>120</sup> TMHG *wŏnp'yŏn sok, pŏmwŏl* 1: 21a-b (zi from the Shengjing Board to Hŏnjong; DG26.9.29=11/17/1846), 21b-22b (zi from Hŏnjong to the Shengjing Board; DG27.2.3=3/19/1847); CWS Hŏnjong 14: 1b (13.1.23=3/9/1847)

Vietnam and Qing-Kokand borderlands as well. In the first half of the nineteenth century, there was a general pattern of imperial retreat in all three borderlands.

## **V. Personal Jurisdiction over Qing Criminals: 1630s-1840s**

### **A. Chosŏn Jurisdiction over Qing Subjects in Theory**

What did the Qing court expect the Chosŏn court to do when Qing subjects entered the Chosŏn domain without authorization? As early as 1646, the Qing court made it clear that the Chosŏn state was to arrest and repatriate Qing subjects who had reached the Chosŏn domain without authorization so that they could be tried and punished by the Qing judiciary.<sup>121</sup> This principle was reaffirmed in 1694, when a Chosŏn interpreter in charge of repatriating a Qing trespasser to Fenghuangcheng lost him on the way. The Qing Board of Rites demanded that the king punish this translator for his negligence.<sup>122</sup>

Other cases involved seafarers. Unlike Chosŏn trespassers, Qing trespassers often came by sea, especially after the Qing maritime ban (*haijin*), enforced in part to pressure the Zheng regime in Taiwan, was lifted in 1684. Most of the Qing fishermen who made their way to the Chosŏn seas were from Shengjing and Shandong, and they were after the sea cucumbers and fish available off the west coast of Korea.<sup>123</sup> As the frequency and scale of these fishing expeditions increased, some of these fishermen even landed in the Chosŏn domain in search of water. The Chosŏn court became increasingly concerned and repeatedly appealed to the Qing court for some

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<sup>121</sup> TMHG 60: 1a-b (zi from the Board of Revenue to Injo; SZ3).

<sup>122</sup> TMHG 60: 3a-6b (zi from the Board of Rites to Sukjong; KX33.i5.8=6/29/1694).

<sup>123</sup> Nam I-sŭl, Kangŭi yŏn'gan Ch'ŏnggugin ŭi haeyangbŏmwŏl kwa Cho·Ch'ŏng yangguk ŭi taeŭng," *Myŏng-Ch'ŏngsa yŏn'gu*44 (2015): 191–239.



action. As a result, a protocol for Qing subjects who sailed near the Chosŏn domain was established by 1701. The Chosŏn judiciary was to search for appropriate information recorded on the manifest (*chuanpiao*) and report to the Qing Board of Rites with that information so that the Board could forward it to the local officials.<sup>124</sup>

Qing subjects continued to sail in Chosŏn waters. As the Chosŏn court saw this action as a trespassing of sorts, it repeatedly requested that the Qing court prohibit Qing subjects from sailing into Chosŏn seas. The Qing court, in response to these requests, granted the Chosŏn state more and more jurisdiction over Qing subjects in this situation. In 1711, in response to a request made in 1710, the Qing court gave the Chosŏn state the authority to arrest these Qing sailors and repatriate them (*buhuo jiesong*). If unable to arrest them, the Chosŏn state could also fire upon these ships to drive them away (*fang pao quzhu*).<sup>125</sup> In September 1712, in response to a request made earlier in the same year, the Kangxi emperor issued an edict that authorized the Chosŏn state to kill Qing subjects in the Chosŏn seas during pursuit and to repatriate those who were captured alive. These people who had violated law (*weijin*) and secretly sailed across Chosŏn's maritime boundaries, the emperor reasoned, were bandits (*zeikou*) and not to be treated as Qing subjects.<sup>126</sup> Much as pirates have been considered the “enemy of all” in Western legal and political thought, these treacherous people did not deserve to be treated as Qing subjects but rather as “universal foes.”<sup>127</sup>

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<sup>124</sup> TMHG 60: 10a-12a (zi from the Board of Rites to Sukjong; KX40.9.25=10/26/1701).

<sup>125</sup> TMHG 60: 34b-36a (zi from Sukjong to the Board of Rites; KX49.10.29=12/19/1710), 36a-37a (zi from the Board of Rites to Sukjong; KX50.2.18=4/5/1711).

<sup>126</sup> TMHG 61: 2a-3a (zi from Sukjong to the Board of Rites; KX51.6.9=7/12/1712), 3a-4b (zi from the Board of Rites to Sukjong; KX51.9.13=10/12/1712); QSL Shengzu, 250: 483a (KX51.8.27=9/27/1712).

<sup>127</sup> Daniel Heller-Roazen, *The Enemy of All: Piracy and the Law of Nations* (New York, NY: Zone Books, 2009).

In 1723, the Qing court went as far as granting the Chosŏn judiciary jurisdiction over some Qing subjects. In an edict, the Yongzheng emperor declared that Qing subjects who possessed documents and had caused no trouble in the Chosŏn domain were to be repatriated as before. Those without documents who had caused trouble in the Chosŏn domain, however, were to be punished by Chosŏn according to its law (*zhao yi lü*). Yongzheng was careful to emphasize that such punishment would not be unauthorized punishment (*sixing zhizui*) of Qing subjects by the Chosŏn king, as it would be in accordance with his edict.<sup>128</sup> In theory, then, Qing jurisdiction over Chosŏn subjects was matched by Chosŏn jurisdiction over Qing subjects by 1723.

## **B. Chosŏn Jurisdiction over Qing Subjects in Practice**

But how did Chosŏn jurisdiction over Qing subjects work in practice? In short, it was virtually non-existent. Most importantly, we see no record of Chosŏn authorities killing Qing subjects in pursuit or of the Chosŏn judiciary openly trying Qing subjects according to Chosŏn law. From the 1640s to the 1840s, Chosŏn authorities consistently resorted to either driving Qing subjects away from the Chosŏn domain or arresting and repatriating them, effectively giving up any claim of jurisdiction over Qing subjects who had committed crimes in the Chosŏn domain. During that period, Chosŏn authorities arrested and repatriated Qing subjects who entered the Chosŏn domain without authorization on at least 16 occasions. More often, Chosŏn authorities stopped at driving Qing subjects away or simply releasing them after their arrest.

Moreover, local and provincial Chosŏn officials often even refrained from using force to engage Qing subjects because of their fear that Qing subjects might be hurt or killed in the

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<sup>128</sup> TMHG 61: 14a-15a (zi from the Board of Rites to Kyŏngjong; YZ1.1.19=2/23/1723); QSL Shizong, 2: 53a (KX61.12.11=1/17/1723).

process. Such was the case even when Qing subjects openly defied the Chosŏn authorities. In 1733, for example, local authorities in Wiwŏn, P'yŏngan, executed a Chosŏn smuggler. Soon afterwards, a group of Qing subjects entered Wiwŏn and kidnapped three Chosŏn soldiers as hostages, demanding that the Chosŏn state pay the money that the dead smuggler had owed them. Instead of acting, the P'yŏngan governor Kwŏn I-jin (權以鎭; 1668-1734) merely recommended sending a lateral communication (*zi*) to the Board of Rites, which the Chosŏn court did. In the communication, King Yŏngjo merely explained that local officials could not capture the criminals because the incident had happened at night and because they dared not enter the Qing domain in their pursuit.<sup>129</sup> In 1735, a group of Qing fishermen landed on an island in the west coast province of Hwanghae (黃海) and kidnapped two soldiers. When the local garrison commander approached them and demanded the return of the soldiers, these fishermen beat him almost to death. When this was reported to King Yŏngjo, he lamented that the local officials had failed to engage them with force as the Kangxi emperor had allowed.<sup>130</sup> In 1738, when six Qing ships came near another garrison in Hwanghae, the local garrison commander led a group of Chosŏn soldiers to drive the ships away. Then, suddenly, 400-odd Qing subjects disembarked and attacked them, killing two soldiers.<sup>131</sup> The picture that appears here is hardly that of Chosŏn jurisdiction over these Qing subjects.

For its part, the Chosŏn court routinely requested that the Qing court prohibit Qing subjects from trespassing into the Chosŏn domain. The Qing court, while promising the arrest

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<sup>129</sup> CWS Yŏngjo 34: 6a (9.4.16=5/29/1733), 34: 12b (9.5.8=6/19/1733), 35: 4a (9.7.10=8/19/1733), 36: 16a-b (9.11.4=12/9/1733); TMHG 62: 1a-2a (*zi* from Yŏngjo to the Board of Rites; YZ11.5.29=7/10/1733).

<sup>130</sup> CWS Yŏngjo 40: 30b (11.5.25=7/15/1735).

<sup>131</sup> TMHG 62: 23b-25b (*zi* from Yŏngjo to the Board of Rites; QL3.7.16=8/30/1738).

and punishment of these criminals, often responded that the Chosŏn court should follow imperial edicts when handling these incidents. In 1738, for example, the Board of Rites observed that the Chosŏn state, instead of just reporting on these incidents, should arrest and punish these criminals as previous edicts had instructed.<sup>132</sup> In fact, the Chosŏn failure to take a stern stance against these criminals even led the Qing court to openly rebuke the Chosŏn court. In 1727, for example, the Chosŏn state arrested and repatriated Guo Lianjin (郭連進) and other Qing subjects who were gathering ginseng in the Chosŏn domain. In his January 2, 1728, edict, the Yongzheng emperor stated that the Chosŏn state was at fault here. Recalling that both his father and he himself had given the Chosŏn king jurisdiction over these criminals, the emperor blamed the Chosŏn king for providing a place of refuge for Qing criminals by being lax and timid. If the Chosŏn state failed to capture Qing criminals in the future, the king would have to punish his officials for negligence and the Qing court would punish the king for his inability to obey and carry out imperial orders as a tributary king (*fan wang buneng zunzhi feng xing*).<sup>133</sup>

Here, it might be worth noting that the Chosŏn king was the only tributary ruler who was explicitly authorized to arrest and even punish Qing criminals in his domain. Indeed, there was one instance in which the Chosŏn state did try and punish a Qing subject on its own. However, the circumstance surrounding this case makes it obvious that it was an extraordinary case. In 1801, during the first large-scale governmental purge of Catholics, Iacobus Zhou Wenmo (周文謨; 1752-1801), the first Catholic missionary to Chosŏn, who had lived in the Chosŏn domain for the previous six years, gave himself up to the Chosŏn authorities. There was a heated and lengthy discussion within the court on what to do with Zhou. In the end, the court decided

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<sup>132</sup> TMHG 62: 25b-26a (zi from the Board of Rites to Yŏngjo; QL3.9.28=11/9/1738).

<sup>133</sup> QSL Shizong 63: 970b-971a (YZ5.11.21=1/2/1728).

not to repatriate Zhou for two reasons. First, the time spent on the whole repatriation process would slow down the purge. Second, Zhou possessed sensitive information, such as knowledge of widespread anti-Manchu sentiment within Korea, and therefore posed a security threat. Thus, he was beheaded less than a month after his arrest.<sup>134</sup>

In its memorial to the Qing court, the Chosŏn court carefully presented the turn of events that led to Zhou's execution. Even though there was a discussion on including the 1733 edict by the Yongzheng emperor, which authorized the Chosŏn state to kill Qing criminals, the Chosŏn court chose not to cite that edict.<sup>135</sup> Instead, the Chosŏn court argued that it had executed Zhou as a Chosŏn criminal who had led a heretical sect within the Chosŏn domain. The court simply did not know that Zhou was a Qing subject until after his execution, since he was indistinguishable from other Chosŏn subjects in his speech and attire. In fact, the Chosŏn court had known that Zhou was a Qing subject, and Zhou had only limited fluency in the Korean language. The reaction from the Qing court was something of an anticlimax, for it simply praised the king for exterminating bandits within his domain.<sup>136</sup> In any case, it is doubtful that the Chosŏn court would have made the decision to execute Zhou had he not been so embroiled in the high politics of the Chosŏn court and posed such a threat to the security of the Chosŏn state. Indeed, if this case shows anything, it is the unwillingness of the Chosŏn state to openly assert jurisdiction over Qing subjects.

In short, there was a deep disjunction between theory and practice in Chosŏn jurisdiction over Qing subjects. Even as the Qing state portrayed Qing subjects in the Chosŏn domain as

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<sup>134</sup> Takemichi Hara, "Korea, China, and Western Barbarians: Diplomacy in Early Nineteenth-Century Korea," *Modern Asian Studies* 32, no. 2 (1998): 393-401.

<sup>135</sup> CWS Sunjo 3: 47a-48b (1.10.27=12/2/1801).

<sup>136</sup> Hara, "Korea, China, and Western Barbarians," 393-401.

bandits and authorized the Chosŏn state to punish or kill them, the Chosŏn state kept seeing traces of Qing subjecthood in these “bandits.” As a result, the Chosŏn state kept treating Qing criminals in its domain as Qing subjects rather than criminals, with the result that the Qing subjects enjoyed what amounted to extraterritoriality in the Chosŏn domain. Here, we see another manifestation of judicial inequality between the Qing judiciary and the Chosŏn judiciary.

## **VI. Conclusion**

In this chapter, we have seen how interstate jurisdiction over Chosŏn criminals developed over time. This jurisdiction was collaborative but also asymmetric. Even though the two judiciaries cooperated in arresting and repatriating borderland criminals as well as sometimes in trying and punishing them, it was a cooperation based on the premise of asymmetry. In all cases in which interstate trials over Chosŏn criminals occurred, the Qing judiciary remained the higher court to a Chosŏn judiciary forced to play the role of the lower court. As we have seen above, we may trace the roots of this asymmetry in the historical context of the early decades of Qing-Chosŏn interstate relations, when Qing was fighting a war of survival against the Ming state, various Southern Ming regimes, and the Three Feudatories. In contrast, while the Qing judiciary granted the Chosŏn judiciary jurisdiction over Qing subjects committing crimes in the Chosŏn domain, the Chosŏn judiciary never asserted that jurisdiction in practice.

While that asymmetry was a constant feature of Qing-Chosŏn interstate jurisdiction, the characteristics of this asymmetry changed over time. During the seventeenth century, when the Qing rule over Manchuria and China Proper was still being consolidated, Qing legal intervention in trials over Chosŏn criminals was consistent and piercing. Very often, the Qing state chose to assert jurisdiction over Chosŏn subjects arrested under suspicion of committing illegal acts

against it. When it did so, the Qing state delegated a bigger role to the Qing judiciary than to the Chosŏn judiciary. In the eighteenth century, with Qing imperial might at its height and more initiative from the Chosŏn state over its borderland criminals, interstate legal procedures became more routinized. This routinization gave a bigger role to the Chosŏn judiciary, which could compete with the Qing judiciary in the use of precedents. At the same time, asymmetry remained because the Qing emperor, most notably the Qianlong emperor, remained the sole authority who could create precedents. In the first half of the nineteenth century, however, Qianlong's successors refrained from asserting jurisdiction over Chosŏn subjects. This imperial retreat in the first half of the nineteenth century is something we will see in the Qing-Vietnam borderland and Qing-Kokand borderland.

## CHAPTER IV.

### Drawing and Maintaining Boundaries in the Qing-Vietnam Borderland, 1660s-1840s<sup>1</sup>

#### I. Introduction: Ming-Qing Transition in the South and Southwest, 1644-1661

Korea and Vietnam were two model tributaries of Qing, and yet their paths to incorporation into the Qing tributary world could not have been more different. Indeed, a cursory look at Vietnam's relations with Ming and Qing will reveal more differences than similarities in these two sets of interstate relations. For one, Chosŏn (1392-1897), despite the widespread political and social crises that arose from its wars with Japan (1592-98), Jin (1627), and Qing (1636-37), was a remarkably durable polity that survived for more than five centuries. It was also the only regime within the Korean Peninsula that was recognized as a tributary state by Ming and Qing. In the region that constitutes today's Vietnam, on the other hand, the existence of multiple regimes was the norm from the sixteenth to the eighteenth centuries. Behind the conventional dating of the Lê dynasty (1428-1788) lay the complex geopolitics of state competition and interstate recognition within the Ming and Qing tributary world orders.<sup>2</sup>

More specifically for the period under discussion, Qing-Vietnamese tributary relations must be examined within the regional context of the Ming-Qing transition. As many scholars have noted, Lynn Struve and Frederic Wakeman foremost among them, the Qing conquest of

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<sup>1</sup> For transliteration of Chinese terms, I have followed the pinyin system, and for Vietnamese the Romanized Quoc-ngu. Abbreviations used in the footnotes are as follows: *QSL* (*Qing shilu*), *GZD* (*Gongzhong dang zouzhe*), *JJCD* (*Junjichu dang zouzhe*), *MQSL* (*Ming Qing shiliao*), *SLXK* (*Shiliao xunkan*), *SZTWJ* (*Sizhitang wenji*), *DSZ* (*Daitsu shiki zensho*), *KVTC* (*Khâm định Việt sử thông giám cương mục*).

<sup>2</sup> For a general history of Sino-Vietnamese relations, see Yamamoto Tatsurō, ed., *Betonamu Chūgoku kankeishi: Kyoku shi no taitō kara Shinfutsu sensō made* (Tokyo: Yamakawa Shuppansha, 1975) and Yu In-sŏn (Insun Yu), *Pet'ŭnam kwa kŭ iut Chungguk: Yanggukwan'gye ŭi ōje wa onŭl* (Seoul: Changbi, 2012).



Beijing in 1644 was just the beginning of the Ming-Qing transition. That observation holds true for the Qing-Vietnamese relationship as well. The political situation in the 1640s and 1650s was complicated by the presence of and competition between multiple regimes on both sides of the Qing-Vietnamese borderlands. On the Chinese side, the Qing regime and various Southern Ming regimes were just beginning their competition for the Mandate of Heaven to rule over the former Ming territory. Even after defeating the Hongguang regime, based in the Yangzi region, in 1645 and the Longwu regime, based on the southeast coast, in 1646, the Qing regime still had to fight the Yongli regime for control of the Liangguang (Guangdong and Guangxi) and Yun-Gui (Yunnan and Guizhou) regions. These were the regions that bordered Vietnam, and the Yongli regime survived in this region until 1659, when it fled into Burma from Yunnan.<sup>3</sup>

In 1644, three regimes coexisted on the Vietnamese side: the Mạc (莫; 1527-1677) regime in the far northern highlands of Cao Bằng, which bordered Guangxi; the restored Lê (黎; 1428-1789) regime under the military control of the Trịnh (鄭; 1545-1787) lords in the historical heartland of northern Vietnam, with its capital at Thăng Long (昇龍), today's Hanoi; and the Nguyễn (阮; 1558-1777) regime occupying today's central Vietnam, then considered the southern frontier, with its capital in Phú Xuân (富春), today's Huế. Among these, the Mạc and Lê regimes had longstanding tributary relationships with Ming as of 1644. The Mạc regime had been founded by Mạc Đăng Dung (莫登庸; 1483-1541), who started off as a minister of the Lê court, usurped the throne by killing Lê Cung Hoàng (黎恭皇; r. 1522-27) in 1527, and established a tributary relationship with Ming China in 1528. This relationship entered a new

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<sup>3</sup> Lynn A. Struve, *The Southern Ming, 1644-62* (New Haven: Yale University Press, 1984); Frederic Wakeman, Jr., *The Great Enterprise: The Manchu Reconstruction of Imperial Order in Seventeenth-Century China* (Berkeley: University of California Press, 1985), 319-1127.

stage in 1539, when Mạc Đăng Dung surrendered to the Ming amidst rumors of a Ming campaign against his “illegitimate” regime. The Ming court accepted this surrender in 1541, downgrading Vietnam from a tributary state (*guo*) to a tributary polity (*dutongshi si*) and the Vietnamese ruler from a king (*wang*) to a 2b-rank *dutongshi*.<sup>4</sup> This put Vietnam in an inferior position to other tributary kingdoms such as Chosŏn.

This new dynasty, however, did not last long. The Lê restoration movement, led by two military families, the Trịnh and the Nguyễn, eventually succeeded in driving the Mạc out of Thăng Long in 1592. In re-establishing tributary relations with Ming, however, the Lê regime was forced to compromise on two fronts. First, at the insistence of Ming provincial officials, the Lê regime allowed the Mạc regime to survive as a regional regime based in Cao Bằng (高平) in the Ming-Vietnam borderland. The Mạc had already appealed the Ming state for protection, and a desire to have a buffer zone in this borderland might have provided another impetus for the Ming state. Second, despite the restoration of the Lê dynasty, the downgraded tributary status of the Vietnamese ruler remained in place. When the Lê tributary mission arrived in Beijing in 1597, the Ming court refused the Lê request for royal investiture, instead granting Lê Thế Tông (黎世宗; r. 1573-99) the title of *dutongshi* as well. Thus, within the Ming tributary system, these two Vietnamese regimes held equal tributary status.<sup>5</sup> Meanwhile, the Nguyễn regime in the south had no tributary relationship with Ming and had still not succeeded in establishing one with Qing by the time it met its demise in 1777 at the hands of the Tây Són.

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<sup>4</sup> Kathlene Baldanza, *Ming China and Vietnam: Negotiating Borders in Early Modern Asia* (New York: Cambridge University Press, 2016), 86-90; K. W. Taylor, *A History of the Vietnamese* (New York: Cambridge University Press, 2013), 242-9; Yu In-sŏn, *Pet'ŭnam kwa kŭ iut Chungguk*, 208-23.

<sup>5</sup> Niu Junkai, *Wangshi houyi yu panluan zhe: Yuenan Moshi jiazhu yu Zhongguo guanxi yanjiu* (Guangzhou: Shijie tushu chubán Guangdong youxian gongsi, 2012), 21-44.

The Ming-Qing transition in the southwest altered the power balance between the Mạc and the Lê. In 1646, the Lê court decided to send a tributary mission to the last Southern Ming court of the Yongli emperor/Prince of Gui (r. 1646-62). The Yongli court recognized this gesture of allegiance and granted Lê Thần Tông (黎神宗; r. 1619-1643, 1649-1662) the title of King of Annam (*Annan guo wang*). Annam, it should be mentioned, was another name for Vietnam that originated when Vietnam was a province of the Tang dynasty (618-907). Because of its meaning—“pacified south”—Annam was used more often as an exonym than an endonym. Though the Mạc regime continued in Cao Bằng, the Lê ruler now enjoyed a higher tributary status than the Mạc ruler. This new arrangement lasted until 1659, when the Qing forces drove the Yongli emperor into exile in Burma. Sensing the final downfall of Southern Ming, both Vietnamese regimes acted. The Mạc regime submitted to the Qing governor-general (*zongdu*; rank 2a) of Liangguang in 1659, while the Lê regime sent a tributary mission to the Qing court in Beijing later the same year.<sup>6</sup>

By 1661, the Qing court in Beijing had decided to follow the Southern Ming precedent. Like the Southern Ming, it recognized both Lê and Mạc rulers as tributary rulers: the Lê ruler as the Annam King and the Mạc ruler as the Annam *dutongshi*.<sup>7</sup> In short, the Qing court had inherited these Vietnamese tributary states from its Ming and Southern Ming predecessors, a fact noted by Ku Pöm-jin in his comparative analysis of Qing envoys to Chosŏn and Vietnam. Thus,

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<sup>6</sup> Yu In-sŏn, *Pet`ünam kwa kũ iut Chungguk*, 224-9; QSL Shizu, 127: 988a (SZ16.8.8=9/23/1659), 130: 1008b (SZ16.12.20=1/31/1660), 140: 1079b (SZ17.9.1=10/4/1660).

<sup>7</sup> QSL Shengzu, 2: 58a-b (SZ18.4.5=5/3/1661), 61b (SZ18.4.21=5/19/1661), 62a (SZ18.4.23=5/21/1661), 62a-b (SZ18.4.24=5/22/1661), 68a (SZ18.5.27=6/23/1661) .

as Ku has shown, the historical contexts in which Qing incorporated Chosŏn and Vietnam into its tributary order were fundamentally different.<sup>8</sup>

For the purposes of this study, this difference materialized in three main ways. First, there was no Qing invasion to induce Vietnamese submission, and consequently there was no ceasefire agreement stipulating the terms of interstate conduct, especially on the issues of boundaries and jurisdiction. Second, the Qing state in 1661 was in a more advanced stage of empire-building than when it drew up the treaty with Chosŏn in 1637. As an imperial successor to Ming, Qing of 1661 was finalizing its conquest of China Proper and actualizing its claim on the former Ming domain and subjects. There was thus much more room for a universal worldview in Qing-Vietnam relations from the beginning. Third, unlike the Qing-Chosŏn borderland, the Qing-Vietnam borderland was not the Manchu homeland, where Manchu state-building had incorporated the potential elements for what Richard White calls the “middle ground.”<sup>9</sup> Rather, this borderland formed a part of what James Scott calls “Zomia,” populated by hill peoples fleeing from state-making projects in the lowlands.<sup>10</sup> As we will see below, the combination of these three factors would result in more ambiguity in the various interstate boundaries along the Qing-Vietnam borderland than in the Qing-Chosŏn borderland.

## **II. Territorial Boundary**

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<sup>8</sup> Ku Pŏm-jin, “Ch’ŏng ūi Chosŏn sahaeng insŏn kwa ‘Taech’ŏng cheguk ch’eje,” *Inmun nonch’ong* 59 (2008): 1–50.

<sup>9</sup> Richard White, *The Middle Ground: Indians, Empires, and Republics in the Great Lakes Region, 1650-1815* (New York: Cambridge University Press, 1991), 50-93.

<sup>10</sup> James C. Scott, *The Art of Not Being Governed: An Anarchist History of Upland Southeast Asia* (New Haven: Yale University Press, 2009), 1-39.

### A. 1660s-1720s: Centralization Efforts by Qing and Lê States

As hinted above, the Qing-Vietnam borderland of 1661 was an untamed frontier from the perspectives of Thăng Long and Beijing, far outside the reach of both states. First, much of the region was controlled by regimes not under the direct control of central Qing and Vietnamese states. On the Qing side, Yunnan and Guangdong, two of the three provinces bordering Vietnam, were ruled by two Han Chinese princes who had won the region for the Qing court: Wu Sangui (吳三桂; 1612-78) and Shang Kexi (尚可喜; 1604-76). These princes ruled their domains as autonomous fiefdoms, with authority tax their subjects and with every intention to pass their fiefdoms down to their sons. In fact, Geng Jimao (耿繼茂; d. 1671), the third such prince, was able to pass his title and fiefdom of Fujian to his son Geng Jingzhong (耿精忠; d. 1682).<sup>11</sup>

This was a situation that the Kangxi (康熙; r. 1662-1722) emperor, who spent the first seven years of his reign fighting the Oboi regency for personal control over the central government, was unwilling to let continue. When Kangxi tried in 1673 to resettle Wu Sangui, Shang Kexi, and Geng Jingzhong to Manchuria, these three rebelled against Qing rule. Thus began the Rebellion of the Three Feudatories (1673-81), which leaned heavily in favor of the feudatories until 1676. From 1677 to 1681, however, Qing forces were able to hold their ground and eventually reconquer the former fiefdoms of the feudatories.<sup>12</sup>

On the Vietnamese side, the coexistence of the Lê/Trịnh and Mạc regimes, both recognized as tributary polities by Beijing, resulted a situation of split sovereignty. This was

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<sup>11</sup> On the Three Feudatories, see Liu Fengyun, *Qingdai sanfan yanjiu* (Beijing: Zhongguo renmin daxue chubanshe, 1994). On Wu Sangui, see ECCP, 877-80. On Shang Kexi, see *ibid.*, 635-6. On the Gengs, see *ibid.*, 415.

<sup>12</sup> Jonathan D. Spence, "The K'ang-Hsi Reign," in *The Cambridge History of China, Volume 9, Part 1: The Ch'ing Empire to 1800*, ed. Willard J. Peterson (New York: Cambridge University Press, 2002), 125-50.

particularly problematic for the Trịnh ruler Tạc (鄭柞; r. 1657-82), as the Trịnh regime and the Nguyễn regime were in the middle of an all-out interregional war that K. W. Taylor calls the “Fifty Years War” (1627-73).<sup>13</sup> As Nurhaci and Hong Taiji worried about the unfriendly Chosŏn regime on their flank before campaigning against Ming forces, Trịnh Tạc also sought to secure his northern flank by personally leading a successful campaign against Mạc Kính Vũ (莫敬宇; r. 1638-77)’s forces in 1667.

What appeared to be an easy military victory, however, turned into an interstate diplomatic issue. This event will be described in detail below, so here I will present just a summary. Mạc Kính Vũ, driven out of Cao Bằng, fled to Yunnan to seek Qing assistance. The Qing court eventually sided with Mạc Kính Vũ, ordering Lê Huyền Tông (黎玄宗; r. 1663-71) to return Cao Bằng to Mạc Kính Vũ and live in peace. The Trịnh/Lê regime was forced to return four subprefectures (*châu*) of Cao Bằng to the Mạc regime but bided its time until another chance came to annihilate the Mạc. Taking the Rebellion of the Three Feudatories mentioned above as the perfect occasion, Trịnh Tạc sent out another successful campaign against the Mạc regime in 1677. This campaign and the Qing approval of it in 1679 left the Trịnh/Lê regime as the only tributary polity in today’s northern Vietnam.<sup>14</sup>

By 1681, then, both central governments had eliminated regional competitors. This new setting, however, did not automatically extend the reach of the states into this frontier. That was because of the second factor behind borderland ambiguity and complexity: the presence of native chieftains (Ch. *tusi*, Vn. *thổ ty*) at the local level. For centuries, because of the limited reach of

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<sup>13</sup> Taylor, *A History of the Vietnamese*, 258-318.

<sup>14</sup> Chin Keiwa (Chen Ching-Ho), ed., *Daietsu Shiki Zensho: Kōgōbon*, Đại Việt Sử Ký Toàn Thư (DSZ hereafter), (Tokyo: Tōkyō Daigaku Tōyō Bunka Kenkyūjo Fuzoku Tōyōgaku Bunken Sentā, 1984), 3: 982-3, 987-8, 1008-9; *Khâm định Việt sử thông giám cương mục* (KVTC hereafter), *chính biên* 33: 19a-20a, 22b-23a.

both states in the borderland, states often had to rule these areas indirectly via indigenous leaders. These leaders would pledge allegiance to imperial courts and be recognized as native chieftains with ranks within the imperial bureaucracy and a hereditary right to rule over their domains, which were incorporated into the administrative system of central states but always distinguished from regular administrative districts. In short, this was a tributary system on a smaller scale, one that was based on the patron-client relationship often found in mainland Southeast Asia and similar to the one that Ming and Chosŏn states maintained with Jurchen tribes.<sup>15</sup> These rulers, who were overwhelmingly of Tai origins and called *chao* (lord), ruled over domains called *muang* (kingdom, domain). Within their domains, these lords were “local emperors,” to use Jennifer Took’s term, regarded as supreme rulers by the people under their rule.<sup>16</sup>

The Yongzheng (雍正; r. 1723-35) emperor, Kangxi’s successor, was not a ruler who could tolerate such irregularities. As many scholars such as Miyazaki Ichisada, Madeleine Zelin, and Beatrice Bartlett have noted, Yongzheng was a ruler driven by statist ideals who sought to strengthen the central government control over the provinces as well as to centralize and bureaucratize his domain.<sup>17</sup> It is not surprising then that this centralization drive reached the Qing-Vietnam borderland through the *gaitu guiliu* policy, which aimed to replace the hereditary

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<sup>15</sup> John Herman, *Amid the Clouds and Mist: China’s Colonization of Guizhou, 1200-1700* (Cambridge, MA: Harvard University Asia Center, 2007), 103-43; Wu Yongzhang, *Zhongguo tusi zhidu yuanyuan yu fazhan shi* (Chengdu: Sichuan minzu chubanshe, 1988), 157-220.

<sup>16</sup> Jennifer Took, *A Native Chieftaincy in Southwest China: Franchising a Tai Chieftaincy under the Tusi System of Late Imperial China* (Leiden: Brill, 2005), 90-122; David K. Wyatt, *Thailand: A Short History*, 2nd ed. (New Haven: Yale University Press, 2003), 6-10.

<sup>17</sup> Madeleine Zelin, “The Yung-Cheng Reign,” in *The Cambridge History of China, Volume 9, Part 1: The Ch’ing Empire to 1800*, ed. Willard J. Peterson (New York: Cambridge University Press, 2002), 183-229; Miyazaki Ichisada, *Yōsei Tei: Chūgoku no dokusai kunshu* (Tokyo: Iwanami Shoten, 1950); Beatrice S. Bartlett, *Monarchs and Ministers: The Grand Council in Mid-Ch’ing China, 1723-1820* (Berkeley: University of California Press, 1991), 17-134.

native chieftains with regular imperial bureaucrats. This policy was the brainchild of the famously activist official Ortai (鄂爾泰; 1677-1745), who along with Yongzheng directed what C. Patterson Giersch calls “new frontier militarism.” The Qing state during the Yongzheng reign put more and more of these native domains under its direct administration by asserting more control over native chieftains and confiscating the territories of those who resisted the reform.<sup>18</sup>

We will discuss the success of *gaitu guiliu* in more detail below. Here, it is enough to emphasize that some of the Qing native domains affected by this policy bordered Vietnamese native domains on the other side of the borderland. In short, it is in the context of centralization efforts by both the Qing and Vietnamese states that the interstate delineation efforts first arose in the 1720s.

## **B. Drawing and Marking the Territorial Boundary: 1720s-1750s**

As is well known, the concept of a linear border separating two states is a modern concept. Recent studies, as noted in chapter two, have complicated the notions of territoriality and national borders, showing how historical processes shaped frontiers and introducing fresh theoretical perspectives.<sup>19</sup> The territorial boundary in the Qing-Vietnam borderland from the late seventeenth century to the mid-nineteenth century was similarly complicated. If we too take a step back and do not assume a clear border between these two entities, we see that the two states and their subjects conceptualized the territorial boundary in their own ways. At times these views conflicted.

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<sup>18</sup> C. Patterson Giersch, *Asian Borderlands: The Transformation of Qing China's Yunnan Frontier* (Cambridge, MA: Harvard University Press, 2006), 43-6.

<sup>19</sup> Peter Sahlins, *Boundaries: The Making of France and Spain in the Pyrenees* (Berkeley, CA: University of California Press, 1989); Thongchai Winichakul, *Siam Mapped: A History of the Geo-Body of a Nation* (Honolulu: University of Hawaii Press, 1994).



As mentioned above, Qing-Vietnamese tributary relations were not established through an interstate agreement that drew territorial boundaries between imperial and tributary domains. In fact, delineation of territorial boundaries at the interstate level, involving both central courts, did not happen until the 1720s. This interstate delineation process, which happened over three stages, would end up being the only instance of delineation that involved both the Qing and Vietnamese states. As this process illustrates many of the characteristics of the Qing-Vietnamese territorial boundary, it deserves a close analysis.

The first stage of the delineation process began in 1724, when Yunnan provincial officials put forward a proposal for developing a copper mine known as Dulong (都龍) in Qing and Tụ Long (聚龍) in Vietnam. According to Vũ Đường Luân, Tụ Long/Dulong was one of the most productive copper mines in early modern Asia, with an annual output of 220 to 280 tons in the late eighteenth century. Even though it is unclear how much copper was being produced in 1724, the prospect must have been enticing to Yunnan provincial officials, who were looking for additional sources of revenue, such as taxes on salt and tea, to supplement the rising cost of administration that came with frontier militarism.<sup>20</sup>

The initial investigation of the locale by the Kaihua (開化) regional commander (*zongbing*), however, revealed that this valuable mine belonged to Vị Xuyên (渭川) subprefecture, today's Tuyên Quang. According to the memorial by Yun-Gui governor-general Gao Qizhuo (高其倬; d. 1738), the Duzhou (賭咒) River, 240 *li* south of the prefectural city of Kaihua, had served as the boundary between Kaihua and Vị Xuyên in the Ming period. During

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<sup>20</sup> Vũ Đường Luân, "The Politics of Frontier Mining: Local Chieftains, Chinese Miners, and Upland Society in the Nông Văn Vân Uprising in the Sino-Vietnamese Border Area, 1833–1835," *Cross-Currents: East Asian History and Culture Review* 3, no. 2 (2014): 355; Giersch, *Asian Borderlands*, 46-58.

late Ming, however, the Vietnamese state had encroached on the Ming domain by installing garrisons and renaming a small stream 120 *li* north of the Duzhou River as the Đổ Chú (the Vietnamese pronunciation of Duzhou) River. Further, continued Gao, the Qing state had lost more of its domain in 1683, as the Vietnamese state further encroached on the six villages south of the Mabai Garrison (馬伯汛), which lay 40 *li* north of the Đổ Chú River. As a result, the current Kaihua-Vị Xuyên boundary lay 160 *li* north of the original boundary at the Duzhou River and 80 *li* south of Kaihua city. Gao Qizhuo recommended rectifying this situation by restoring the old territorial boundary at the original Duzhou River. Even though he had notified Lê Dụ Tông (黎裕宗; r. 1705-29) of Qing territorial claims, Gao anticipated resistance from Vietnam due to the great profits that Vietnam reaped from the mines.<sup>21</sup>

Unlike Gao Qizhuo, who claimed the former Ming domain in Yunnan as the Qing domain, the Yongzheng emperor felt the Đổ Chú River should serve as the boundary for two reasons. First, Vietnam had possessed the disputed region during late Ming, and thus the “encroachment” had not begun during “our dynasty” (*wo chao*). Here, we see the timeless question of whether a dynastic succession represents a continuation or a fresh start. From Gao Qizhou’s perspective, Ming-Qing succession was incomplete without reassertion of control over the entire former Ming domain. We might recall how the Northern Song failure to conquer the so-called “sixteen prefectures” and the Ordos region provided a source of anxiety to the court that saw it as a sign of unfinished dynastic succession.<sup>22</sup> Yongzheng, on the other hand, was

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<sup>21</sup> QSL Shizong, 31: 479b-481a (YZ3.4.22=6/2/1725); John E. Wills, Jr., “Functional, Not Fossilized: Qing Tribute Relations with Đại Việt (Vietnam) and Siam (Thailand), 1700-1820,” *T’oung Pao* 98, no. 4–5 (2012): 457-64.

<sup>22</sup> Charles Hartman, “Sung Government and Politics,” in *The Cambridge History of China, Volume 5: Sung China, 960–1279 AD, Part 2*, ed. John W. Chaffee and Denis Twitchett (New York: Cambridge University Press, 2015), 27-9.

content to see dynastic change as a fresh start, marking his current dynasty as distinct from the Ming dynasty.

Second, Yongzheng stressed that Vietnam had been a respectful tributary state of “our dynasty.” In his view, it was unseemly for the Celestial Empire (*Tianchao*) to compete with a small state (*xiaobang*) over small land (*chicun zhi di*). Also, he considered both Qing and Vietnamese subjects to be his subjects (*chizi*) and thus had the wellbeing of all of them in mind.<sup>23</sup>

Gao Qizhuo followed the imperial instruction. He again notified Lê Dụ Tông of Qing territorial claims and then ordered the Kaihua regional commander to erect boundary markers around Xielu, one of the six villages mentioned above, as well as to build houses and station troops there. Yongzheng received Gao Qizhuo’s memorial on this in the spring of 1725, around the same time he received a memorial from Lê Dụ Tông. In his memorial, Lê Dụ Tông claimed that 40 some years had already passed since the current territorial boundary had been set at the small stream near the Mabai Garrison (Mabai River hereafter). The west of the river belonged to Kaihua prefecture, whereas the east of the river belonged to the Tụ Long village (*xã*) of Vị Xuyên. After receiving both memorials, Yongzheng again reiterated his principle of universal emperorship. He ordered Gao Qizhou to withdraw troops from the disputed region and to begin negotiations for marking the territorial boundary.<sup>24</sup>

The second stage of the delineation process thus began in November 1725. The following personnel were involved in the negotiation: the Guangnan (廣南) prefect Pan Yunmin (潘允敏) on the Qing side; court officials Hồ Phi Tích (胡丕績) and Vũ Công Tể (武公宰) on the

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<sup>23</sup> QSL Shizong, 31: 479b-481a (YZ3.4.22=6/2/1725).

<sup>24</sup> On *xã*, see Insun Yu, “The Changing Nature of the Red River Delta Villages During the Lê Period (1428-1788),” *Journal of Southeast Asian Studies* 32, no. 2 (2001): 151–72.

Vietnamese side. The main issue now had become the status of the six villages, as each side claimed them as its own. The Qing rested its claim on the facts that elders of these villages remembered providing provisions to Kaihua prefecture and that the villagers had once all shaved their heads and worn the queue (*titou bianfa*). The Vietnamese side countered with the fact that villagers now wore Vietnamese attire, grew their hair in topknots (*chuiji*), and walked barefoot (*tuxian*). Here, we are reminded of the importance of the sartorial boundary that we saw in chapter two. The queue, for the Qing state, was the most visible sign of Manchu ethnic sovereignty and Qing subjecthood. The Vietnamese state also saw the hairstyle and the attire as a marker of subjecthood. But the walking barefoot part also reminds us that this borderland remained its own region, far from the cultural and sartorial norms of the metropolises.<sup>25</sup>

By now, Ortai had replaced Gao Qizhuo as the Yun-Gui governor-general. As we saw above, he was one of the two driving forces behind Qing frontier militarism in the region. In line with his general stance of frontier activism, Ortai repeatedly recommended to the Yongzheng emperor that the Đổ Chú River, which was south of the six villages, should stand as the territorial boundary and obtained imperial permission for this, thus settling the six villages as Qing property. Moreover, in August 1726, Ortai started the construction of a border gate near the Đổ Chú River and stationed 40 troops there. Despite the 5,000 Vietnamese troops stationed nearby, construction was completed by November 1726. Next to the gate stood a stele that marked the Qing territorial claim: “Every village within the upper reaches of the river belongs to China (*Zhongtu*); foreigners (*waiyi*) must not trespass or invade.” The erection of the border gate, however, did not conclude the matter. The Vietnamese actively contested continued Qing claims

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<sup>25</sup> DSZ 3: 1058-60; KVTC, *chính biên* 35: 29a-30a.

over the six villages, now reified by the gate and stele. The delineation process moved on to its third and final phase.<sup>26</sup>

In the first half of 1727, the Vietnamese court tried repeatedly to send a memorial stating its position to the Qing court. Ortai, however, turned it away and instead suggested to the Yongzheng emperor that a punitive campaign against Vietnam must be sent if the Vietnamese court did not renounce its claim on the six villages. Yongzheng was more cautious and sent an edict that was delivered to a Vietnamese native official (土目) in August 1727. This official, however, refused to accept the edict because he had been prohibited from receiving edicts or lateral communications without the king's order. Incensed by this insolence, Ortai kept pushing for a campaign against Vietnam.

Yongzheng, however, again emphasized his obligation as a universal ruler by granting the disputed land in which the six villages lay to Lê Dụ Tông. Meanwhile, in Vietnam, the court had also decided to accept the edict and sent envoys, who arrived in Beijing by March 1728. The document (*biao*) presented by the envoys was respectful and submissive in requesting the return of the disputed land to Vietnam. Yongzheng responded by sending imperial envoys to Thăng Long with an edict that granted that wish. Lê Dụ Tông received the edict in June 1728, and two steles, one on each side of the Mabai River, north of the six villages, were erected to mark the territorial boundary in November 1728. The steles recounted the delineation process and noted that the north bank of the river belonged to the Qing domain and the south to the Vietnamese

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<sup>26</sup> Yu In-sŏn (Insun Yu), "1720-yŏndae Ch'ŏng kwa Pet'ŭnam Le wangjo kan ũi Unnam pyŏn'gyŏng yŏngyugwŏn nonjaeng," *Tongyangsahak yŏn'gu* 124 (2013): 155–74.

domain. This boundary (*bianchui*), it was said, would remain secure forever (*yonggu*), never to be replaced (*fu ti*).<sup>27</sup>

This case of the Kaihua-Vi Xuyên boundary delineation is remarkable in so far as it resembles in several respects the modern concept of the international border. First, there is the use of rivers as natural borders. The principle of a river serving as a natural boundary between the two states had been well established in maps and written material by the Ming period and was still valid as of 1728.<sup>28</sup> Second, and relatedly, the linear concept of the territorial boundary seems to have prevailed. Both the boundary set in 1726, on the Đổ Chù River, and the boundary set in 1728, on the Mabai River, took the rivers as linear boundaries separating two domains. Third, the delineation of the boundary was accompanied by an impulse, mainly on the Qing side, to mark the boundary in a physical form. Thus, the Qing state built a border gate and a stele in 1726. In 1728, the Qing state led the erection of steles on both sides of the boundary. The boundary, which had existed textually in gazetteers and naturally in the form of the river, had now been marked physically with stele.

An event in 1750-1751 further illustrates the “modern” characteristics of the Qing-Vietnamese territorial boundary. In winter 1750, the Guangxi governor (*xunfu*; rank 2b) Šulu (舒輅; d. 1752) began to plant *jinzhu*, a kind of local bamboo known for its strength and thorns, in the Guangxi-Vietnam borderland as a physical marker of demarcation. When Šulu recommended that his successors continue this project, the Qianlong (乾隆; r. 1736-95) emperor gave his approval, and newly appointed Guangxi governor Dingcang (定長; 1705?-68) continued

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<sup>27</sup> KVTC, *chính biên* 37: 3b-7b; Sun Hongnian, *Qingdai Zhong Yue guanxi yanjiu: 1644-1885* (Ha'erbin: Heilongjiang jiaoyu chubanshe, 2014), 201-219.

<sup>28</sup> On natural frontiers in early modern Europe, see Peter Sahlins, “Natural Frontiers Revisited: France’s Boundaries since the Seventeenth Century,” *The American Historical Review* 95, no. 5 (1990): 1423–51.

the work. In 1751, however, two separate reports from Pingxiang (憑祥) and Siling (思陵), both native departments (*tuzhou*) in Taiping (太平) prefecture, Guangxi, grabbed the attention of Guangxi provincial officials. According to these reports, some unruly Vietnamese had destroyed the bamboo fences planted there. As these bamboo fences were originally planted to delineate the boundary between Guangxi and Vietnam, this was considered a serious affront to Qing border security.<sup>29</sup>

Further investigation by the Zuojiang (左江) censor, however, showed Qing subjects to be at fault. Apparently, local leaders in these two departments had planted the bamboo fences beyond the boundary to occupy tracts of land belonging to their Vietnamese neighbors. Those Vietnamese implicated were only trying to protect their property when they burned down the bamboo fences. A trial personally attended by the top echelon of Guangxi provincial officials ensued. Two people in Pingxiang—Li Zikun (李滋坤) and Zhang Shangzhong (張尚忠)—and two people in Siling—Luo Fuli and Huang Qingmao—were found guilty of illegally occupying foreign land and fabricating reports to local authorities. Li and Zhang were banished to a place far from Guangxi, while Luo was sentenced to penal servitude in Chengdu and Huang to forty strokes of heavy bamboo and penal servitude of three years at a distance of 1,000 *li*. The Vietnamese lands illegally occupied were returned to their owners, the plan to use bamboo fences for boundary delineation stopped, and many local officials punished for their negligence.<sup>30</sup>

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<sup>29</sup> JJCD 006966 (Dingcang; QL16.i5.22/16.6.19), 007001 (Dingcang; QL16.i5.28/16.6.25); QSL Gaozong, 387: 88b-89a (QL16.4.29=5/24/1751), 393: 163a-164a (QL16.6.26=8/17/1751).

<sup>30</sup> JJCD 007153 (Chen Dashou; QL16.7.24/16.9.1); GZD 403000392 (Su-chang; 16.8.21=10/9/1751), 403000461 (Dingcang; 16.9.1=10/19/1751), 403000628 (Su-chang; 16.9.21=11/8/1751), 403000659 (Su-chang, Dingcang, Yue Zhonghuang; 16.9.27=11/14/1751); SLXK, 10: 332a-333a (Dingcang; QL16.7.26=9/15/1751), 13: 456a-458b (Sinju and Dingcang; QL16.12.19=2/3/1752); QSL Gaozong, 399: 257a-b (QL16.9.30=11/17/1751), 401: 280a-b (QL16.10.28=12/15/1751), 402: 286a-b (QL16.11.7=12/24/1751).

From the outset, it is striking that the Qing state made a conscious effort to delineate a visible boundary between the two states by building bamboo fences on the Guangxi-Vietnamese boundary. Clearly, Guangxi provincial officials felt the need to separate the two domains by physically marking the boundary between them. The physical transformation of the boundary, at the same time, presupposed the existence of a territorial boundary between Guangxi and Vietnam. At the local level, there clearly existed a boundary separating the Qing and Vietnamese domains, and it only needed to be marked physically. Also striking is the Qing respect for Vietnamese territoriality. The way that the Qing state swiftly and firmly punished its subjects for violating the Vietnamese domain is indicative. That the Qing recognized its interstate territorial boundary with Vietnam will be even more clear in chapter four, where we will see how seriously the Qing state took border security and punished Qing and Vietnamese subjects who violated the territorial boundary.

Qing recognition of this boundary was connected to its respect for Vietnamese territoriality in cases beyond the punishment of Qing subjects illegally erecting fences. On several occasions, as already noted, the Qianlong emperor decided against sending troops into Vietnam out of consideration for what he recognized as a small country (*xiao guo*) that had been respectful and submissive (*su cheng gongshun*). In 1748, for example, Qianlong rejected Ts'ereng (策楞; d. 1756)'s recommendation for a punitive expedition against Vietnam for its failure to hand over a criminal suspect: "How could the Celestial Court, as a big state, create difficulties for a small state in desolate frontiers?"<sup>31</sup> In 1753, the Qianlong emperor justified his decision against sending soldiers to capture Bàn Đạo Kiềm (盤道鉗) with similar language:

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<sup>31</sup> *QSL*, Gaozong, 315: 184b-185a (QL13.5.29=6/24/1748).



“[We] are afraid that Vietnam will be restless if Qing (*neidi*) sends out soldiers for [his] arrest.”<sup>32</sup>

Vietnam, after all, was an important tributary state that had been respectful in its conduct towards the Qing state. In principle, its territoriality was to be respected.

However, we must also note the lack of a systematic interstate delineation of the territorial boundary in this borderland. Kaihua-Vị Xuyên comprised only a small portion of Yunnan-Vietnam territorial boundary. The Guangxi-Vietnam delineation project, while wider in its scope, was a unilateral project stemming from Guangxi provincial officials that was eventually canceled. This lack is especially striking when compared to the Qing-Chosŏn borderland, where constant interstate handlings of trespassers and an interstate delineation in the 1710s had established a high degree of territorial delineation by early modern standards.

### **C. Remaining Flexibility and Ambiguity of Territorial Boundaries**

The Qing-Vietnamese territorial boundary was further complicated by two factors: the flexible and asymmetric conception of boundaries in the Qing imperial worldview as well as the survival of native chieftaincies in the borderland.

#### *1. Between Imperial and Tributary Boundaries: Flexibility and Asymmetry*

The idea of universal rulership was inherent in Qing-Vietnamese tributary relations. As we saw above, the Yongzheng emperor used this rationale to justify his decision to “grant” the disputed land in the Kaihua-Vị Xuyên borderlands to Vietnam: “We rule the entire world (*huanqu*). Every state (*bang*) that submits is my domain (*wu tu*). Why must [We] dispute over this trifling land of 40 *li*?” Yongzheng reiterated this point later in the same edict: “[If] this land

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<sup>32</sup> QSL, Gaozong, 441: 742a (QL18.6.23=7/23/1753).

of 40 *li* is in Yunnan, it is Our inner domain (*neidi*). [If] in Vietnam, it is still Our outer vassal (*waifan*). There is no difference whatsoever.”<sup>33</sup> In short, the Qing emperor was the universal ruler over All Under Heaven (*Tianxia*), including tributary domains. In this conception, the territorial boundary between the Qing imperial domain and the Vietnamese tributary domain was meaningless. As such, Qing-Vietnam territorial boundaries were bound to be more flexible and ambiguous than today’s national borders.

This flexibility was manifested in the Qing perspective that the Qing-Vietnam boundary was not inviolable. Security considerations or imperial propriety overrode respect for Vietnamese territoriality on several occasions, and the Qing state did not hesitate to send its representatives into the Vietnamese domain in those cases. In 1750, a local native official (*tumu*) named Li Shichang (李世昌) led an authorized mission from Yunnan to apprehend Qing fugitives hiding in Vietnam. The official and his underlings were successful in their mission, capturing six fugitives led by Yi Changliao (矣常料), but faced difficulties when they tried to enter Guangxi from Vietnam. Reviewing the case afterwards, both the Guangxi governor and Qianlong commented that they were on a legitimate mission and should not have been stopped at the border. The local Guangxi officials were punished for their negligence. This case shows that both the Yunnan local official who authorized the mission and the top echelon of the Qing state saw nothing wrong with this encroachment into the Vietnamese domain. Furthermore, there is no indication in the sources that Vietnam was even consulted about this cross-border mission.<sup>34</sup>

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<sup>33</sup> QSL, Shizong 65: 998b-1001a (YZ6.1.28=3/8/1728); Wills, Jr., “Functional, Not Fossilized,” 461.

<sup>34</sup> QSL, Gaozong, 363: 1002a-1003a (QL15.4.26=5/31/1750).

In the 1760 Quan Tam (郡尋) case, discussed in more detail in chapter five, the Qianlong emperor rebuked Ai-bi-da (愛必達; d. 1771) for his decision not to send his soldiers beyond the territorial boundary to chase the Vietnamese bandits who had raided Qing border towns. Apparently, Ai-bi-da had feared that doing so would alarm the Vietnamese. Qianlong dismissed this fear: “Those entering (i.e. Vietnamese bandits) dared to encroach on the imperial boundary, and yet those chasing [them] (i.e. Qing soldiers) would not dare cross the foreign boundary?” Hot pursuit was allowed, since the matter at hand was defense of the imperial system (*tizhi*).<sup>35</sup> The imperial system was clearly more important than Qing respect for Vietnamese territoriality in this case.

Qianlong’s recognition of two separate territorial boundaries is also worth noting. Accustomed to modern borders as we are, we often tend to think of one border dividing two states. To Qianlong, however, the Qing-Vietnam boundary had two sides: one for entering Qing and one for entering Vietnam. At least from his point of view, the only flexible boundary was the one for entering Vietnam. The boundary for entering China was inflexible and inviolable. Frontier security was clearly connected to imperial decorum (*titong*) in Qing eyes. It was for this reason that the Qianlong emperor explicitly commanded his provincial officials not to let a single foreigner inside China whenever there were disturbances on the frontier.

The clearest connection between Qing “territoriality” and imperial decorum is perhaps seen in Ts’ereng’s secret memorial of 1747 regarding the Hoàng Phúc Ve case, also discussed in more detail in chapter five: “[This case] indeed concerns Vietnamese [soldiers] pursuing bandits unable to differentiate between [Qing soldiers and the bandits] in the darkness and

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<sup>35</sup> QSL, Gaozong, 609: 845a-b (QL25.3.24=5/9/1760).

unintentionally killing [a Qing soldier]. But as it is a matter of frontier security and thus a matter of imperial decorum, regarding this case as an accident might slacken our defense against foreigners.”<sup>36</sup> Here again, there is a subtle distinction in how the Qing state viewed the territorialities of the Qing and the Vietnamese states. The Qing state respected but could violate Vietnamese “territoriality” periodically, while it expected Vietnam to respect Qing “territoriality” always. This hierarchy of flexible and inflexible boundaries is a perfect manifestation of what Brian Womack has described in historical relations between China and Vietnam as “the politics of asymmetry.”<sup>37</sup> This asymmetry would remain for the duration of Qing-Vietnamese tributary relations, which did not formally end until 1885 with the signing of the Treaty of Tianjin that ended the Sino-French War (1884-85).<sup>38</sup>

## 2. Remaining “Middle Ground”: The Survival of Native Chieftaincies

Furthermore, as recent scholarship has shown, the *gaitu guiliu* policy did not fundamentally change the structure of power relations in provinces such as Yunnan and Guangxi. Unlike Harold Wiens’s classic narrative, in which *gaitu guiliu* represented the final turning point of “China’s march toward the tropics,” C. Patterson Giersch has shown that frontier militarism during the Yongzheng reign was much more ambiguous and less successful than previously thought. The trend of direct administration was spotty at best, and fiscal and security concerns forced the Qing state to retreat from it on a periodic basis. As a result, many native domains in

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<sup>36</sup> QSL, Gaozong, 301: 945a-b (QL12.10.29=12/1/1747).

<sup>37</sup> Brantly Womack, *China and Vietnam: The Politics of Asymmetry* (New York: Cambridge University Press, 2006).

<sup>38</sup> On the Sino-French War, see Lloyd E. Eastman, *Throne and Mandarins: China’s Search for a Policy During the Sino-French Controversy, 1880-1885* (Cambridge, MA: Harvard University Press, 1967).

Guangxi and Yunnan remained as such until the end of the Qing period. In fact, many survived the fall of the Qing dynasty and lasted into the Republican period (1912-49).<sup>39</sup>

On the Vietnamese side as well, native chieftains seem to have retained relative autonomy until the beginning of the French colonization of Tonkin. The presence of subprefectures (*châu*), administrative areas ruled by native chieftains who reported directly to provincial governors, in far northern Vietnam throughout Lê, Tây Sơn, and Nguyễn periods is evidence of that autonomy.<sup>40</sup> It is telling that even the Minh Mạng (明命; r. 1820-41) emperor of Nguyễn dynasty, who could be considered the Vietnamese counterpart of Yongzheng in his centralizing zeal, left the subprefectures intact.<sup>41</sup>

The survival of these native chieftainships contributed to the complexity of the Qing-Vietnam borderland in more than one way. Many of these Tai lords maintained multiple tributary relationships, further complicating the idea of the linear territorial boundary between the Qing and Vietnamese domains. According to Giersch, for example, it was typical for the Tai domains in the China-Burma borderland to pay tribute to both Burmese and Chinese rulers, giving rise to the common expression, “The Chinese as father, the Burmese as mother.” According to Thongchai Winichakul, this was practice widespread across mainland Southeast Asia, where small polities often paid tribute to multiple overlords as a strategy for survival. Thus, shared sovereignty and multiple sovereignty were widespread, so much so that there were even words

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<sup>39</sup> Herold J. Wiens, *China's March Toward the Tropics* (Hamden, CN: Shoe String Press, 1954); Giersch, *Asian Borderlands*, 58-61; Took, *A Native Chieftaincy in Southwest China*, 226-57.

<sup>40</sup> Jean Michaud, *“Incidental” Ethnographers: French Catholic Missions on the Tonkin-Yunnan Frontier, 1880-1930* (Leiden: Brill, 2007), 19-39

<sup>41</sup> On Minh Mạng, see Alexander Barton Woodside, *Vietnam and the Chinese Model: A Comparative Study of Vietnamese and Chinese Government in the First Half of the Nineteenth Century* (Cambridge, MA: Council on East Asian Studies, Harvard University, 1971) and Choi Byung Wook, *Southern Vietnam under the Reign of Minh Mạng (1820-1841): Central Policies and Local Response* (Ithaca: Southeast Asia Program Publications, 2004).

for polities that paid tribute to two or three overlords. As in the Siamese borderlands, this situation would not change until the Qing state had to negotiate with the French colonial state in Vietnam at the end of Sino-French War (1884-1885).<sup>42</sup>

More to the point of this chapter, let us look at the “six *muang* (六猛)” that caused a territorial dispute between Qing and Vietnamese states in the late eighteenth and early nineteenth centuries. Between 1781 and 1782, the Yun-Gui governor-general Fu-gang (富綱; d. 1800) received lateral communications from Lê Hiến Tông (黎顯宗; r. 1740-86) on illegal occupations of ten Vietnamese subprefectures by Qing native chieftains. From the Qing perspective, however, these subprefectures were none other than the six Qing native domains of Mengsuo (猛梭), Mengla (猛辣), Mengnong (猛弄), Menglai (猛賴), Mengdou (猛蚪), and Mengding (猛丁). Located between the Lishe River (禮社江) and the Bafa River (巴發河) in Jianshui (建水) county, these native domains collectively known as “six *muang*” had come under Qing control as early as 1658 and were under the jurisdiction of Lin’an (臨安) prefecture, their payment of grain tribute to the Qing state well-documented. Based on this evidence, Fu-gang and the Qianlong emperor rejected Lê Hiến Tông’s request for territorial delineation in this region.<sup>43</sup> Similar requests by a Vietnamese official of Hung Hóa (興化) in 1806 and by the Minh Mạng emperor in 1830 were rejected on similar grounds.<sup>44</sup>

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<sup>42</sup> Giersch, *Asian Borderlands*, 36-8; Thongchai, *Siam Mapped*, 81-94.

<sup>43</sup> GZD 403042330 (Fu-gang; 47.8.22=9/28/1782), 403042698 (Fu-gang; 47.10.8=11/12/1782); QSL, Gaozong 1164: 607a-608a (QL47.9.13=10/19/1782); *Lin’an fuzhi* (1799 edition), 18: 961-6.

<sup>44</sup> QSL, Renzong 156: 5a-b (JQ11.1.8=2/25/1806); QSL, Xuanzong 178: 789a-b (DG10.10.24=12/8/1830); Yamamoto Taturō, ed., *Betonamu Chūgoku kankeishi*, 512-31.

From nationalist perspective, it would be tempting to try to determine which state was in the right during these disputes. In fact, the more relevant point is that the Qing refusal to acknowledge this as an issue prevented the delineation of an interstate boundary that the two states could agree on. Moreover, when we look at the issue from the perspective of the “six *muang*,” we discover that they belonged to the loose federation of Tai polities known as *Sip Song Chau Tai* (the Twelve Tai Cantons). This federation, with its center at Muang Lai (Qing’s Menglai and today’s Lai Châu), had historically paid tribute to various overlords such as Luang Prabang, Burma, China, and Vietnam. The existence of such an ambiguous and flexible political federation in the Qing-Vietnam borderland, unsurprisingly, made the task of drawing and maintaining a clear territorial boundary between two states impossible. In fact, *Sip Song Chau Tai* was even recognized by the French colonial government and survived as a political entity until 1954.<sup>45</sup>

In short, the situation in this borderland stands in stark contrast with the situation in the Qing-Chosŏn borderland. As we have seen in chapter two, the historical context of early Qing state-building forced the Qing and Chosŏn states to negotiate and delineate the interstate territorial boundary from the 1620s to the 1710s and to continue maintaining it from this period onward. In contrast, the survival of the native domains as the “middle ground” and the emerging Qing imperial universalism made the Qing-Vietnam borderland much more ambiguous and complex. As the next section will show, we can see a similar trend in the boundaries between subjecthoods as well.

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<sup>45</sup> Jean Michaud, “The Montagnards and the State in Northern Vietnam from 1802 to 1975: A Historical Overview,” *Ethnohistory* 47, no. 2 (2000): 333–68.

### **III. Subjecthood**

Again, unlike the Qing-Chosŏn tributary relationship, the Qing-Vietnamese relationship was not founded on a treaty defining who was a subject of which state and stipulating protocol for repatriation of foreign subjects. The lack of an interstate agreement meant that the boundary between Qing imperial subjects and Vietnamese tributary subjects was an uncertain one. This fuzziness came to the fore whenever the subjects of one state sought refuge in the domain of the other state. Each decision on whether to accept or turn away these refugees served in effect to define a boundary between the subjects of the two states. Sometimes the boundary was drawn and maintained. Other times, the boundary was negated or overlooked. In what follows, I will compare how the Qing and Vietnamese states handled all sorts of emigrants from the other state and show asymmetry and elasticity as two defining characteristics of imperial and tributary subjecthood.

The Qing state gradually developed two general policies on the Vietnamese subjects who crossed into the Qing domain. The Qing state could either repatriate the Vietnamese subjects as foreign subjects or grant refuge to the Vietnamese subjects as universal subjects. These two policies, in turn, represented the two facets of the Qing emperor: one as the ruler over Qing subjects and the other as the universal ruler of “All Under Heaven.” These two aspects are in line with what Kathlene Baldanza sees in the case of Ming-Vietnamese relations: Ming as a bounded China and Ming as an expansive empire.<sup>46</sup>

#### **A. Repatriation of Vietnamese Subjects as Foreign Subjects**

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<sup>46</sup> Baldanza, *Ming China and Vietnam*, 92-6.



Repatriation of Vietnamese subjects happened on a regular basis under various circumstances. The Qing state identified some of these Vietnamese subjects as fugitives on the run from the Vietnamese judiciary and emphasized both their foreignness and their criminality as the reason for their repatriation. This repatriation of fugitives will be discussed further in chapter five, which looks at interstate judiciaries and jurisdictions between Qing and Vietnam.

A careful look at the sources, however, makes it clear that these Vietnamese subjects were being repatriated regardless of their criminality. Starting in the early Qianlong period, the Qing state began to see far northern Vietnam as a region plagued with warfare due to frequent clashes between Vietnamese government forces and regional bandits and rebels. Whenever Qing officials in provinces bordering Vietnam—Yunnan, Guangxi, and Guangdong—detected signs of trouble on the other side of the boundary, they allocated additional troops to the border passes connecting the two states. These passes, often collectively called “three gates and hundred passes” (*san guan bai ai*) in Guangxi, were meant to regulate the movement of borderland residents going in and out of the Qing domain. As will be shown in more detail in chapter five, the Qing state was particularly concerned about Qing subjects entering northern Vietnam to join the fighting there or even to start trouble there in some cases. But gradually, the Qing state came to be equally concerned about Vietnamese subjects entering the Qing domain.

In 1755, for example, the Liangguang governor-general Yang Yingju (楊應琚; d. 1767) came to identify the illegal movement of borderlands people as the root of trouble: “Two prefectures of Tai[ping] and Zhen[’an] border Annam. Treacherous bandits (*jian fei*) of that country entering the interior (*neidi*- i.e. Qing domain), the treacherous Han (*Hanjian*) from the interior going [to Annam] to cause trouble, [these] all cause quarrels and troubles.” Yang’s

solution was to block all the gates and passes except for the two gates and one pass in Taiping: Ping'er Pass (平而關), Shuikou Pass (水口關), and Youcun Pass (油村隘).<sup>47</sup>

As was the case for most premodern states, however, the Qing state did not have sufficient physical presence in these borderlands to block Vietnamese immigrants. Provincial officials were the first to recognize these limits. The stock phrase “three gates and hundred passes”, for example, was usually paired with the length of the Guangxi-Vietnam boundary these passes were guarding: 2,000 *li* (approximately 1,152 km). Because of this weak state presence in this borderland, it was hard to differentiate between fugitives on the run from the Vietnamese judiciary and displaced people merely escaping intolerable socioeconomic circumstances at home. The best option in such a situation would have been the arrest and repatriation of all Vietnamese subjects in times of trouble in far northern Vietnam.

Indeed, Vietnamese subjects often were repatriated in times of warfare in far northern Vietnam. From 1740 to 1742, provincial officials of Guangxi were carefully observing the rebellion of Vi Phúc Quan (韋福琯), a native official of Lộc Bình (祿平), against the Lê/Trịnh court. Worried about the conflicts in Cao Bằng and Lạng Sơn (諒山) spilling over into southern Guangxi, Guangxi officials gave strict orders for border defense and deployed additional troops to the interstate boundary. Even though the rebellion was suppressed by early 1742, many residents of Lạng Sơn, the region that had seen most of the fighting, had already lost their means of livelihood and were suffering from hunger. They thus fled to various regions of Taiping prefecture to beg for food. Guangxi officials identified them as victims of famine (*jimin*) in need of assistance and treated them humanely. The old, the weak, the sick, and the hungry were fed

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<sup>47</sup> QSL, Gaozong 479: 1191b-1192a (QL19.12.30=2/10/1755).

and cared for. Those who could still walk were provided with food and traveling expenses. In the end, however, they were all returned to Lạng Sơn.<sup>48</sup>

Similarly, the arrest of Đinh An (丁安) and eleven other Vietnamese subjects in Zhen'an (鎮安) prefecture, Guangxi in 1779 occurred during a rebellion led by the native chieftain Hoàng Văn Đồng (黃文桐). Initial interrogation by local officials revealed that Đinh An was the concubine of the Bảo Lạc (保樂) native chieftain Nùng Hậu Đông (農候冬) and that she had fled an attack led by Dong's male cousin. Further interrogation by provincial officials led them to conclude that these Vietnamese subjects had indeed entered the Qing domain because of hard times (*bei nan*). They had neither committed crimes (*fanzui*) nor been involved in the rebellion. The Qianlong emperor agreed with this assessment but ordered the provincial officials to proceed with caution. They were to send a lateral communication to Lê Hiến Tông on the situation, escort Đinh An's party to the Zhennan Gate (鎮南關), and hand them over to the Vietnamese officials only after this story had been ascertained (*xunwen qushi*).<sup>49</sup>

The Qing concern for border security became even more pronounced in the first half of the nineteenth century. Communications between Qing provincial officials and the Daoguang (道光; r. 1821-50) emperor from 1833 to 1835 provide perhaps the clearest example of this. Beginning in 1833, memorials on the rebellion of Nông Văn Vân (農文雲; d. 1835) reached Beijing from Yunnan and Guangxi. Daoguang maintained a consistent and clear-cut policy of closing the interstate boundaries. If Vietnamese rebels and governmental soldiers reached the border in their fight, the border officials were to expel or intercept them. They were prohibited

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<sup>48</sup> QSL, Gaozong 167: 125b (QL7.5.29=7/1/1742), 168: 136a-b (QL7.6.12=7/13/1742).

<sup>49</sup> QSL, Gaozong, 1089: 631b-632a (QL44.8.24=10/3/1779); JJCD 024553 (Li Shijie; 44.8.6/44.8.24); GZD403046108 (Guilin and Li Shijie; QL44.10.20=11/27/1779); DSZ 3: 1191-2; KVTC, *chính biên* 45: 16a-17b.

from letting even one Vietnamese subject in. Daoguang also warned the border officials against acting in pursuit of fame and causing trouble. They were prohibited from rashly killing even one Vietnamese subject and from accepting any request from the Vietnamese state for military assistance. Warfare and disorder, Daoguang reasoned, were common in Vietnam, and the Celestial Court (*Tianchao*) should pay no attention.<sup>50</sup> As we will see below, this was very likely a reaction against the imperial overreach of the Qianlong period. Daoguang and his predecessor the Jiaqing (嘉慶; r. 1796-1820) emperor presided over an empire-wide retreat from the active frontier policies pursued under the Qianlong emperor, which had demonstrated the physical and political limits of Qing imperial power to his successors.<sup>51</sup>

In any case, border officials followed Daoguang's instructions. In January 1834, for example, the Taiping prefect during his tour of inspection discovered and detained 100-some people trying to climb up the walls of Shuikou Pass. According to an investigation by the prefect, local Hakkas had recognized some of them, and they all turned out to be foreigners (*yiren*) who had joined Nông Văn Vân's rebellion. With the rebellion collapsing, they had plotted to enter the Qing domain by pretending to be Qing subjects (*zha chong neidi minren*). The prefect turned away these rebels by threatening to hand them over to Vietnamese officials if they did not leave. About two months later, the same prefect arrested two groups of six Vietnamese subjects after receiving a request for the repatriation of fugitives from the Lạng-Bằng (Lạng Sơn and Cao Bằng) governor. Upon their arrest, one group of the Vietnamese subjects, who had already shaved their foreheads, claimed to be Qing subjects trading in far northern Vietnam but were

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<sup>50</sup> QSL, Xuanzong, 242: 619a-620a (DG13.8.1=9/14/1833), 243: 648a-649a (DG13.9.18=10/30/1833), 245: 690a-691a (DG13.11.12=12/22/1833); JJCD 064592 (Ilibu; DG13.6.10/13.8.1), 065136 (Lu Kun; ?/JQ13.9.19), 065742 (Lu Kun; DG13.10.21/13.11.12).

<sup>51</sup> Alexander Woodside, "The Ch'ien-Lung Reign," in *The Cambridge History of China, Volume 9, Part 1: The Ch'ing Empire to 1800*, ed. Willard J. Peterson (New York: Cambridge University Press, 2002), 293-309.

soon recognized by the other Vietnamese group. All 12 were handed over to Vietnamese officials at the Youcun Pass. In total, the authorities in Taiping and Zhen'an prefectures had detained and repatriated 88 Vietnamese subjects by the spring of 1835.<sup>52</sup>

Border security aside, Qing policy also sought as a matter of ethnic and territorial demarcation to maintain the boundary between Qing subjects and Vietnamese subjects. Vietnamese subjects belonged in the Vietnamese domain, and as such should be returned there. The Nguyễn Ngọc Hán (阮玉漢) case perfectly illustrates this dividing line. In 1751, Nguyễn Ngọc Hán and three other Vietnamese subjects were transferred from Guangnan prefecture, Yunnan, to Guishun (歸順) department, Guangxi, for their repatriation to Vietnam. An inquiry by the Guishun department magistrate before their repatriation at Shuikou Pass, however, revealed some inconsistencies. Two of them were actually from Fuzhou native department (土富州), Yunnan. While the two others claimed that they were Vietnamese subjects, their claim was also dubious because their foreheads were shaven (*titou*). Convinced that these were not Vietnamese subjects, Guangxi provincial officials sent them back to Yunnan for further investigation and memorialized on this case. The Qianlong emperor showed his frustration at this report and ordered Yunnan and Guangxi provincial officials to answer the one and only question that really mattered: Were they foreigners or Qing subjects (*shi yi shi min*)?<sup>53</sup>

Yunnan provincial officials came up with a definitive answer, drawing from the original report from the Guangnan prefect and a new report from the Yunnan administrative commissioner (*buzhengshi*). It turned out that Nguyễn Ngọc Hán was a Vietnamese native

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<sup>52</sup> QSL, Xuanzong 251: 810b-811a (DG14.4.29=6/6/1834), 265: 76a (DG15.4.23=5/20/1835); JJCD 066772 (Qi Gong; ?/DG14.1.22), 067768 attachments (Hui-ji; DG14.3.24/14.4.27).

<sup>53</sup> QSL, Gaozong 396: 203b-204a (QL16.8.3=9/21/1751)

chieftain of Dong Bon (董奔) who had fled an attack led by his male cousin, while the other three were his retainers. When the prefect told them to go back to Dong Bon, they had pleaded with him, saying that they would be killed the moment they returned. Taking a pity on their situation, the prefect had transferred them to Guishun so that they could be handed over to Vietnamese officials in Cao Bằng. As for the hair, Hán and one of his retainers had shaved their foreheads to take refuge in the Qing domain. The other two retainers were indeed of Fuzhou origin, but their families had lived in Dong Bon for four or five generations already. The prefect had confirmed this fact by personally visiting the village from which they originated. In short, they were foreigners, not Qing subjects (*shi yi fei min*), and it was as foreigners, i.e. Vietnamese, that they were handed over to Vietnamese officials at Shikou Pass in 1752.<sup>54</sup>

In one case, Vietnamese subjects had entered the Qing domain against their will. In 1738, local officials in Qiongzhou (瓊州) prefecture, Guangdong, today's Hainan Island, discovered that local Hakkas were trafficking Vietnamese people. The Liangguang governor-general Omida (鄂彌達; 1685?-1761) turned his attention to not only the criminals but also the victims. He ordered local officials to take care of those trafficked while notifying Lê Ý Tông (黎懿宗; r.1735-40) of the incident via a lateral communication. These victims were then sent back to Vietnam with food and travel expenses for their return home.<sup>55</sup>

From the cases above, we can see that the Qing state repatriated these Vietnamese subjects who entered the Qing domain regardless of their circumstances. In the cases above,

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<sup>54</sup> QSL, Gaozong, 402: 284a-b (QL16.11.1=12/18/1751); JJCD 007431 (Šose; QL16.9.26/16.10.29), 007436 (Su-chang et al; QL16.10.1/16.10.30), 007437 (Su-chang and Dingcang; ?/QL16.10.30), 007805 (Sinju; QL16.12.19/17.1.22), 008075 (Dingcang; QL17.2.24/17.3.19); GZD 403000658 (Šose and Ai-bi-da; QL16.9.26=11/13/1751).

<sup>55</sup> QSL, Gaozong 70: 120b-121b (QL3.6.1=7/17/1738).

whether fugitives, refugees, or victims, these displaced Vietnamese people were all foreign subjects of Vietnam to the Qing state. As foreign subjects, they were returned where they belonged.

## **B. Vietnamese Subjects as Universal Imperial Subjects**

When the Qing state repatriated Vietnamese subjects to Vietnam, it was treating them as foreign subjects who belonged to a foreign state. The Qing state, however, did not always repatriate Vietnamese subjects who entered the Qing domain. At least as often, the Qing state intervened on behalf of Vietnamese subjects by granting them protection, either temporarily or permanently. In doing so, the Qing state was treating these Vietnamese subjects as universal imperial subjects of the Qing emperor. These seeming dualities show the elasticity inherent within tributary subjecthood.

### *1. Tributary Rulers*

Most notably, the Qing state intervened on behalf of its tributary rulers who stood on the losing side of regime changes within Vietnam and requested Qing assistance. As I hinted above, the first Vietnamese tributary ruler to ask for such assistance was Mạc Kính Vũ. In 1667, Trịnh Tạc, the head of the Trịnh family that held the actual power in the Lê court in Thăng Long, personally led a campaign against the Mạc regime in Cao Bằng. Mạc Kính Vũ and his followers, overwhelmed and driven out of Cao Bằng, fled to Yunnan. There, Mạc Kính Vũ memorialized on the incident to the Kangxi emperor, who initially arranged for Mạc Kính Vũ and his followers to be settled (*anzhi*) in Nanning (南寧) prefecture, Guangxi. At this point Lê Huyền Tông also

memorialized the Kangxi emperor, presenting this campaign as revenge (*fuchou*) against the usurper Mạc Đăng Dung and his descendants.<sup>56</sup>

The Qing court did not find Lê Huyền Tông's explanation satisfactory and decided to intervene on behalf of Mạc Kính Vũ. In an edict issued to Lê Huyền Tông, the Qing court ordered the Lê regime to cease hostilities and return the land and people of Cao Bằng to Mạc Kính Vũ so that each Vietnamese tributary regime could defend its own domain and live in peace (*ge shoutu ansheng*). The imperial reasoning was threefold. First, Mạc Đăng Dung's usurpation had happened a long time ago. Second, Mạc Kính Vũ had submitted to Qing rule even before Lê Huyền Tông and had received the post of *dutongshi*. Third, Lê Huyền Tông should have memorialized and waited for imperial decree before campaigning against the Mạc.<sup>57</sup>

The Qing envoys who carried the imperial edict to Thăng Long came back with Lê Huyền Tông's memorial the next year. The Lê regime had agreed to return four subprefectures (*châu*) of Cao Bằng—Thạch Lâm (石林), Quảng Nguyên (廣源), Thượng Lang (上琅), and Hạ Lang (下琅)—to Mạc Kính Vũ. The Lê regime must have realized the delicate situation in which the Qing-Mạc tributary relationship had placed it, as it also requested that Mạc Kính Vũ be put under the Lê jurisdiction (*guishu*). As per the recommendation of the Board of War, in charge of dealing with the Mạc regime because of the military post the Mạc rulers had received, the Qing court approved the Lê request. We do not know what exactly that process entailed, but the Mạc regime was able to survive as a regional regime until 1677 because of this Qing intervention.<sup>58</sup>

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<sup>56</sup> DSZ 3: 982.

<sup>57</sup> QSL, Shengzu 25: 355b-356a (KX7.4.22=6/1/1688).

<sup>58</sup> QSL, Shengzu 30: 407a (KX8.6.13=7/10/1669); DSZ 3: 987-8; KVTC, *chính biên* 33: 22b-23a.



Neither the Mạc regime nor the Lê regime was happy with this stalemate. In 1673, Mạc Kính Vũ memorialized the Kangxi emperor to ask for further Qing intervention. By his account, his old domain (*gutú*) also included two subprefectures—Bảo Lạc (保樂) and Thất Nguyễn/Nguồn (七源)—and 12 villages (*xã*) that had not been returned from the Lê regime. He was now requesting that the emperor issue an edict for Lê Huyền Tông to return these regions. The Qing Deliberative Council (*yizheng wang dachen*), however, recommended taking no action. Mạc Kính Vũ had not mentioned these regions when he sought refuge in 1667, and this was a foreign (*waiguo*) matter that had long since been concluded (*jie'an yijiu*). No further Qing intervention followed. The next year saw the new Lê ruler Gia Tông (嘉宗; r. 1671-75), requesting that Cao Bằng, which he called his territory (*chen jiangtu*), be returned to him. Seemingly aware that this request would not be granted without the dissolution of the Qing-Mạc tributary relationship, he presented evidence of Mạc insolence: an oath by Mạc Kính Vũ's father that contained words disobedient to Qing (*ni Tianchao zhi yu*). The Qing court, in the end, rejected this evidence for being old and unclear. Thus, the stalemate continued.<sup>59</sup> This stalemate presents unmistakable evidence of split sovereignty in northern Vietnam at the time, where two tributary regimes continued in an uncomfortable coexistence.

The Lê/Trịnh regime, however, was determined to obliterate the Mạc regime and bided its time, as discussed above. Taking advantage of the civil war in the southern half of the Qing realm during the Rebellion of the Three Feudatories (1673-1681), the Trịnh sent out another successful campaign against the Mạc in 1677. However, this campaign was not reported to the Qing court until 1679, when Lê Hy Tông (黎熙宗; r. 1676-1705) sent a tributary mission

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<sup>59</sup> QSL, Shengzu 42: 556b (KX12.4.12=5/27/1673), 45: 595b-596a (KX13.1.21=2/26/1674), 46: 602a-b (KX13.2.13=3/19/1674).

congratulating the court on the suppression of the Three Feudatories. Moreover, Hy Tông accused Mạc Kính Vũ of betraying the imperial grace and collaborating with Wu Sangui, while he himself remained loyal to the Qing. Now that the rebellion had been suppressed, Hy Tông continued, he was sending a tribute mission to Beijing. Moreover, much as the Qing court had suppressed Wu Sangui, the Lê ruler reported that it had suppressed the rebel (*nidang*) Mạc Kính Vũ. This time, the Qing court did not object to the campaign, thereby approving, *ex post facto*, the campaign that had already happened two years ago and putting an end to the Qing-Mạc tributary relationship.<sup>60</sup>

The Mạc family, however, had not disappeared. In 1682, Mạc Kính Quang (莫敬光), Mạc Kính Vũ's younger brother, entered Guangxi province and sought refuge there along with hundreds of his family members. The Guangxi governor Hao Yu (郝浴; 1623-83) remarked that there was no sign they had committed any wrongdoing. The Board of War, which had received an imperial order to deliberate on the matter, dwelled on these conflicting reports and eventually recommended two things. First, Mạc Kính Vũ should be punished for aiding Wu Sangui's rebellion. But as he had already died by then, abolishing his tributary post would be enough. Second, as Mạc Kính Quang had led his family members, handed in the tributary seal, and surrendered, he should be pardoned. But as they were foreigners (*waiguo zhi ren*), it was inappropriate to let them stay in the Qing domain (*neidi*). So Guangxi provincial officials should send them back to Vietnam with a lateral communication (*zi*) to the king to settle them there instead of killing them. These recommendations were approved by the Kangxi emperor and some 350 people were repatriated to Vietnam via the Zhennan Pass by June 1683.<sup>61</sup>

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<sup>60</sup> QSL Shengzu, 86: 1094b-1095a (KX18.11.21=12/23/1679).

<sup>61</sup> Yu, *Pet'ūnam kwa kǔ iut Chungguk*, 229-233; QSL Shengzu, 102: 24b-25a (KX21.4.10=5/16/1682), 111: 131b (KX22.7.24=9/14/1683); DSZ 3: 1010-1; KVTC 34: 13a-16a.

What had happened? Why were the Mạc refugees allowed to take refuge in the first instance and not in the second? I believe that the answer comes down to the peculiar historical situation of the dual tributary relationship that the Qing state had maintained with two separate Vietnamese regimes. In the first instance, Mạc Kính Vũ was given refuge in the Qing domain as a tributary ruler. Furthermore, the Qing court even felt compelled to intervene on his behalf against another Vietnamese tributary ruler, Lê Huyền Tông. In the second instance, however, that dual tributary relationship had formally met its end as the Board of War had decided to strip Mạc Kính Vũ of his tributary post. Now there remained only one tributary ruler in Vietnam, a situation that turned these Mạc refugees from loyalists of a tributary ruler into mere “foreigners” who could not stay in the Qing domain. From now on, the Qing state would only recognize one regime in Vietnam as a tributary regime, but this was not to be the last time that the Qing state intervened on behalf of a tributary regime in Vietnam.

The next tributary ruler to ask for Qing assistance was Lê Duy Kỳ (黎維祁; 1765-93). Lê Duy Kỳ was the crown prince of the Lê court during the Tây Sơn Uprising (ca. 1773-89) that ousted both the Nguyễn regime of southern Vietnam and the Lê/Trịnh regime of northern Vietnam. In 1788, the displaced members of the Lê court, including Lê Duy Kỳ’s mother and sons, came to the Guangxi-Vietnam boundary asking for Qing protection. The Qing sources portray a dynamic scene, where the Lê loyalists, with Tây Sơn soldiers in hot pursuit, swam across a river to avoid capture and received temporary shelter from the Taiping, Guangxi, prefectural authorities.<sup>62</sup>

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<sup>62</sup> QSL Gaozong 1307: 592b-594a (QL53.6.17=7/20/1788).

The Liangguang governor-general Sun Shiyi (孫士毅; 1720-96) and the Qianlong emperor, however, did much more than give them protection, launching a military campaign against the Tây Sơn regime under the pretext of restoring the tributary royal house of the Lê. As is well-known, the seemingly successful campaign ended disastrously for Qing when Tây Sơn forces under the command of Nguyễn Huệ (阮惠; 1753-92) routed the Qing troops around the Lunar New Year of 1789. This is where the story ends for most studies of Qing intervention against the Tây Sơn regime.<sup>63</sup> The story of what happened to the Lê loyalists after the failure of the Qing intervention, however, has not received as much attention. As far as I know, Sun Hongnian, a leading scholar of Qing-Vietnamese relations, is the only one to have analyzed the topic in any detail. My analysis below builds on his excellent study, but also utilizes Qing archival materials that he did not use.<sup>64</sup>

In February 1789, the defeated Qing forces and the Lê loyalists were hurrying back into Guangxi. Lê Duy Kỳ and 20-some of his followers, including his mother and son, for example, had reached the Zhennan Pass on February 1. They were temporarily placed in Nanning by the Guangxi governor Sun Yongqing (孫永清; 1732?-90) until the Qianlong emperor ordered them to be moved to the provincial capital of Guilin (桂林).<sup>65</sup> As more reports of the retreat piled up, Qianlong showed a keen interest on the whereabouts of two other groups of Lê loyalists in a

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<sup>63</sup> Truong Buu Lam, "Intervention Versus Tribute in Sino-Vietnamese Relations, 1788-1790," in *The Chinese World Order: Traditional China's Foreign Relations*, ed. John King Fairbank (Cambridge, MA: Harvard University Press, 1968), 165–79; Fuma Susumu, "Ming-Qing China's Policy toward Vietnam as a Mirror of Its Policy towards Korea: With a Focus on the Question of Investiture and 'Punitive Expeditions,'" *Memoirs of the Research Department of the Toyo Bunko* 65 (2007): 22-7; George E. Dutton, *The Tây Sơn Uprising: Society and Rebellion in Eighteenth-Century Vietnam* (Honolulu: University of Hawai'i Press, 2006), 43-56.

<sup>64</sup> Sun, *Qingdai Zhong Yue guanxi yanjiu*, 296-302.

<sup>65</sup> QSL, Gaozong 1321: 867b-869a (QL54.1.25=2/19/1789), 874a-b (QL54.1.27=2/21/1789); GZD 403056233 attachment (Sun Yongqing; QL54.1.10=2/4/1789).

February 24 edict: “Who else has exerted himself like Phan Khải Đức (潘啟德)? And where are the long-time Lê ministers (*jiu chen*) such as Nguyễn Huy Túc (阮輝宿), Nguyễn Đình Mai (阮廷枚), Lê Quynh (黎炯) right now? Investigate whether they have accompanied all the others entering the pass and memorialize.”<sup>66</sup>

Phan Khải Đức was the Tây Sơn governor of Lạng Sơn who had surrendered to Qing forces and had acted as a guide for them.<sup>67</sup> “Long-time Le ministers,” on the other hand, were those who had followed the Lê cause even before the Qing invasion. Nguyễn Huy Túc and Lê Quynh, for example, had led the Lê royal family and 60-some people to Taiping prefecture, Guangxi, to seek assistance from the Qing state.<sup>68</sup> Nguyễn Huy Túc, in particular, was so pleased by the Qing decision to send out an army against the Tây Sóns that he wrote a poem entitled “Pleased that the Qing Troops Have Crossed the Border and Are Coming to Our Assistance.”<sup>69</sup> These two groups of Lê loyalists had joined the Qing/Lê cause under different circumstances, but neither group could have expected to fare well in Vietnam under Tây Sơn rule. Qianlong seems to have been aware of this situation.

In a March 27th edict, Qianlong first expressed his wish to settle the loyalists in the Qing domain. The loyalists like Đức, who had exerted themselves (*chuli*) in the campaign, would be given rank buttons (*dingdai*) and employed (*luyong*) by the Qing state. Other loyalists who

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<sup>66</sup> QSL, Gaozong 1321: 877b-878b (QL54.1.30=2/24/1789). Le Quynh’s name is also spelled as 黎炯.

<sup>67</sup> QSL, Gaozong 1307: 592b-594a (QL53.6.17=7/20/1788), Gaozong 1311: 689a-690a (QL53.8.27=9/26/1788), 1312: 710a-b; JJCD 039032 (Phan Khải Đức; QL53.8.1/?), 039049 (Ngô Xưa 吳初; n.d.); GZD 403054916 (Fu-gang; QL53.9.4), 403055133 (Fu-gang; QL53.9.28).

<sup>68</sup> QSL, Gaozong 1307: 592b-594a (QL53.6.17=7/20/1788), 595a-596a (QL53.6.19=7/22/1788); GZD 403054179 and JJCD 038887 (Sun Yongqing; 53.6.1/53.6.17); GZD 403054215 and JJCD 038890 (Sun Shiyi; 53.6.7/53.6.26).

<sup>69</sup> Liam C. Kelley, *Beyond the Bronze Pillars: Envoy Poetry and the Sino-Vietnamese Relationship* (Honolulu: University of Hawai’i Press, 2005), 20-1.

lacked such achievements but still wished to become Qing subjects (*neidi minren*) for fear of persecution by the Tây Sơn would be provided with food and resettled. In the coming months, communications between Qianlong and Fuk'anggan (福康安; d. 1796), the new Liangguang governor-general, worked out the details of the resettlement plan. All Lê loyalists who had entered the Qing domain after the failed Qing campaign were resettled in Guilin and other cities in Guangxi, with housing and expenses provided. Those loyalists with merits were given posts in the Green Standards, the secondary Qing military organization composed of non-bannermen, without actual responsibilities. Đứơc, for example, received the 4a rank of brigade vice commander (*dusi*).<sup>70</sup>

As the Qing state and the Tây Sơn state negotiated for the establishment of a new tributary relationship, however, the presence of the Lê loyalists in Guilin emerged as a thorny issue. Nguyễn Huệ, the Tây Sơn ruler, expressed his concern about the proximity of Guangxi to far northern Vietnam, where Lê loyalists were still leading attacks against his regime. To accommodate the Tây Sơn ruler, Qianlong ordered Lê Duy Kỳ to wear the queue and Qing attire. He also made sure the Tây Sơn tribute envoys would see Lê Duy Kỳ in this new sartorial persona, so that they could see that Lê Duy Kỳ had absolutely no intention of returning to Vietnam. In fact, other Lê loyalists had already adopted the queue, and it served as the most physical manifestation of their new membership in the Qing state. These loyalists, as Qianlong emphasized, had now become common subjects (*qimin*) of the Qing state.<sup>71</sup>

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<sup>70</sup> QSL, Gaozong 1324: 919b-920b (QL54.3.1=3/27/1789), 1326: 953a-954a (QL54.4.8=5/2/1789), 957b-958a (QL54.4.14=5/8/1789); JJCD 039008 (Fuk'anggan; QL54.3.22/54.4.8).

<sup>71</sup> QSL, Gaozong 1328: 978b-981a (QL54.5.3=5/27/1789), 1329: 995b-996b (QL54.5.23=6/16/1789), 1342: 1201a-b (QL54.11.8=12/24/1789).

By December 1790, when Nguyễn Huệ had already been established as the tributary king of Vietnam, Qianlong seems to have accepted the Tây Sơn position that the existence of Lê loyalists in Guilin posed a problem. Qianlong expressed in his edict to the Grand Council that Guilin's proximity to Vietnam raised the possibility that the Lê loyalists would cause trouble in the borderland. As a result, a new settlement plan had emerged by the spring of 1791. Members of the Lê royal family, Lê loyalists who had held ranks in Vietnam, and Lê loyalists who had received posts in the Green Standards were to be incorporated as Hanjun bannermen in Beijing, with Lê Duy Kỳ and prominent officials serving as hereditary banner officers. This group comprised about 160 refugees out of about 360 refugees in Guilin. The remaining 200 or so refugees were to be sent to four provinces far from Vietnam—Jiangnan, Zhejiang, Anhui, and Sichuan—to be enlisted in the Green Standards commands under provincial officials.<sup>72</sup>

Under this new plan, the Lê refugees were more thoroughly incorporated into the Qing state. The refugees in Beijing became members of the Hanjun Bordered Yellow Banner and put under the jurisdiction of Gingiyan (金簡; d. 1794), the commander-in-chief (*dutong*) of that banner.<sup>73</sup> Refugees settled in provinces were put under the jurisdiction of provincial officials. For example, Sun Shiyi, now the Sichuan governor-general, enlisted them under the governor-general's command (*dubiao*) and rented them government land. Sun's comprehensive planning was praised by the Qianlong emperor.<sup>74</sup> The Jiangsu governor Fusung (福崧; 1747-93), on the other hand, was rebuked by Qianlong for his plan of settling the refugees in three separate areas:

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<sup>72</sup> QSL, Gaozong 1342: 1202b-1203a (QL54.11.10=12/26/1789), 1344: 1227b-1228b (QL54.12.11=1/25/1790), 1346: 9a-b (QL55.1.8=2/21/1790), 1348: 36a-b (QL55.2.5=3/20/1790), 1348: 44a-b (QL55.2.15=3/30/1790); JJCD 040994 (Fuk'anggan; n.d./QL54.6.22).

<sup>73</sup> QSL, Gaozong, 1363: 289a-b (QL55.9.25=11/1/1790), 1364: 298b (QL55.10.1=11/7/1790), 1364: 304a-b (QL55.10.8=11/14/1790); JJCD 044200 (Gingiyan; QL55.5.19/n.d.).

<sup>74</sup> JJCD 044823 (Sun Shiyi; 55.6.22/55.7.10); QSL, Gaozong 1358: 202b (QL55.7.10=8/19/1790).

Nanjing, Suzhou, and Anhui. These refugees, Qianlong reasoned, would have to be settled together where provincial officials were stationed so that they could be constantly supervised. Qianlong also faulted Fusung for merely providing these displaced people with food and living expenses. It was, Qianlong stressed, not a long-term solution (*fei jingjiu zhi fa*).<sup>75</sup> Qianlong ordered other provincial officials to follow Sun's examples. As the Qianlong emperor had previously emphasized in a fall 1790 edict, the goal was to settle the refugees together for constant supervision and to provide them with a permanent means of livelihood.<sup>76</sup>

Almost as soon as they had been settled in Beijing and the provinces, some of the refugees voiced their desire to return to their homeland. The first such request came in late autumn 1790 from Cao Xuân Vương (高春旺) and other refugees settled in Sichuan. Knowing that Nguyễn Huệ had become a tributary king, they wished to follow him and be reunited with their family members who remained in Vietnam. The emperor, considering this a reasonable request, ordered other provincial officials to inquire whether there were refugees under their jurisdictions who wished to return to Vietnam. Those who wished to stay could stay as Qing subjects, whereas those who wished to return to Vietnam could return as Vietnamese subjects.<sup>77</sup>

Further investigation indeed revealed more refugees who wished to return to Vietnam: 81 in Beijing, 23 in Jiangnan, 14 in Anhui, and 59 in Zhejiang. Many refugees, however, remained as Qing subjects. In Jiangnan, for example, 47 refugees were reportedly content with their current lives and stayed, as opposed to 23 who returned. While coordinating their return to Vietnam via Guangxi, Qianlong also had Fuk'anggan, the Liangguang governor-general, relay an

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<sup>75</sup> JJCD 045243 (Fusung: QL55.8.16/55.8.27); QSL, Gaozong 1361: 254b-255a (QL55.8.27=10/5/1790).

<sup>76</sup> QSL, Gaozong, 1361: 247b-248a (QL55.8.22=9/30/1790); JJCD 045190 (Langg'an: QL55.7.30/55.8.19), 046001 (Zhu Gui; 55.10.29).

<sup>77</sup> QSL, Gaozong 1362: 274a-275a (QL55.9.14=10/21/1790); JJCD 045384 (Sun Shiyi; QL55.9.7/55.9.14).



imperial message to Nguyễn Huệ: Nguyễn Huệ, as the king of these returners, was to treat these people with kindness unless they caused further trouble. If they did, the king did not need to worry about the fact that they had once lived in Qing. He could deal with them accordingly without reporting to the Qing court. This message clearly showed the transfer of subjecthood that was happening with the repatriation.<sup>78</sup>

The refugees who stayed in the Qing domain lived as Qing subjects for the next 13 years, subject to Qing law. In summer 1791, for example, Gingiyan investigated the Vietnamese bannermen under his jurisdiction regarding Lê Duy Kỳ's request to be settled in four far northern provinces (Cao Bằng, Lạng Sơn, Tuyên Quang, and Hưng Hóa) of Vietnam, a request recalling a similar Mạc request more than a century ago. Gingiyan identified Hoàng Ích Hiều (黃益曉) and three other bannermen as the instigators behind this request and recommended exiling them to Ili (伊犁), Xinjiang to serve as soldiers. He also identified 20 other bannermen as troublemakers and recommended settling them in places like Nanjing. The Qianlong emperor approved his recommendation.<sup>79</sup> In 1803, Lê Quynh and Lý Bình Đạo (李秉道) of the Firearms Brigade (*huoqiying*), were arrested for unauthorized travel from their residence in Landianchang (藍靛廠), Beijing, to Zhuozhou (涿州) department, Shuntian, where Lê Quynh's son was staying as a member of the Vietnamese tribute mission. As these two had already been arrested and pardoned once in 1800, the Jiaqing emperor put the Board of Punishments in charge of their interrogation. When the Board concluded that their regimental commander (*canling*) had granted

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<sup>78</sup> QSL, Gaozong 1363: 289a-290a (QL55.9.25=11/1/1790), 1364: 308a-b (QL55.10.13=11/19/1790); JJCD 045643 (Haining; QL55.9.26/55.10.8), 045683 (Sun Shiyi; 55.10.7/55.10.13).

<sup>79</sup> QSL, Gaozong, 1377: 483a-b (QL56.4.20=5/22/1791), 494b-495a (QL56.4.29=5/31/1791).

them permission without reporting his superiors, the refugees were reinstated in the Firearms Brigade.<sup>80</sup>

The second and final repatriation of these expatriate Vietnamese occurred later in the same year. By then, Vietnam had gone through another regime change. The new ruler was Nguyễn Phúc Ánh (阮福映; 1762-1820), the only surviving member of the Nguyễn clan destroyed by the Tây Sơn and the future Gia Long (嘉隆; r. 1802-20) emperor. He had defeated the Tây Sơn regime and established a tributary relationship with the Jiaqing emperor, and in fact the tributary mission mentioned above had been sent by Nguyễn Phúc Ánh. Obviously aware of this regime change, Lê loyalists in Qing began to express their wish to return to Vietnam and bring Lê Duy Kỳ's skeleton with them, a wish approved by the Jiaqing emperor.<sup>81</sup>

The Qing court paid their travel expenses and took administrative steps, such as releasing the loyalists who had been exiled to places like Ili and Heilongjiang, to facilitate their repatriation via Guangxi. One episode during that process is notable for illustrating the extent to which these refugees had been immersed in their local societies. According to a 1804 memorial by the Guangxi governor Beling (百齡; d. 1816), the refugees from Nanjing had brought the servants they had purchased in Nanjing to Guangxi, prompting Beling to intervene and redeem the contracts of the servants. The Jiaqing emperor was dismayed by the fact that these people, who he specifically called foreigners now, had been able to buy servants in the first place and then tried to take them back to Vietnam. An act presumably unproblematic when the loyalists

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<sup>80</sup> QSL, Renzong, 65: 869a (JQ5.i4.4=5/27/1800), 117: 563b-564a (JQ8.7.30=9/15/1803), 118: 568a (JQ8.8.15=9/30/1803); MWTB 02-02-022-001507-0002 (Booning et al; JQ8.9.28=11/12/1803).

<sup>81</sup> QSL, Renzong 115: 528b-529a (JQ8.6.26=8/13/1803), 120: 606a (JQ8.9.10=10/25/1803), 123: 651b (JQ8.11.8=12/21/1803).

were living as Qing subjects had become problematic now that they were returning as Vietnamese subjects.<sup>82</sup>

The Qing intervention on behalf of Lê Duy Kỳ shows how far the Qing state could go in the name of protecting its tributary ruler. The Qing first took in Le refugees and gave them a place of refuge. There was a precedent for this, as Kangxi had also given this level of protection for Mạc Kính Vũ. But then the Qing went as far as launching a large-scale military campaign against the Tây Sơn regime in the name of the Lê restoration. The only precedents for this came from the Ming period, when the Yongle (永樂; r. 1403-1424) emperor launched a campaign against the Hồ regime and incorporated Vietnam as a Ming province and when the Jiajing emperor (嘉靖; r. 1522-1567) seriously contemplated a campaign against the Mạc regime.<sup>83</sup> When the Tây Sơn campaign failed, Qing acknowledged the Lê loyalists' precarious situation and took in hundreds of them, protecting them as Qing subjects for 13 years. This was certainly unprecedented, but then Qianlong was not one to shy away from creating new precedents.

Indeed, there is reason to think Qianlong's actions widened the scope of Qing intervention on behalf of tributary rulers. When the Tây Sơn regime was on the verge of falling to the Nguyễn regime led by Nguyễn Phúc Ánh, for example, the Jiaqing court briefly entertained the idea of intervening on the behalf of the Tây Sơn regime. In an August 15th, 1802, edict to the Grand Council, the Jiaqing emperor made it clear that Nguyễn Quang Toản (阮光纘; r. 1792-1802), the second Tây Sơn ruler, was to be settled in the Qing domain following the precedent of Lê Duy Kỳ if he surrendered to the Qing. If he asked for military assistance,

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<sup>82</sup> QSL Renzong 126: 700a-b (JQ9.2.13=3/14/1804), 130: 752a-b (JQ9.6.3=7/9/1804).

<sup>83</sup> John K. Whitmore, *Vietnam, Hồ Quý Ly, and the Ming (1371-1421)* (New Haven: Yale Center for International and Area Studies, 1985); Baldanza, *Ming China and Vietnam*, 77-110.

however, provincial officials were to memorialize and wait for imperial decision.<sup>84</sup> In the end, the Tây Sơn regime perished without asking for Qing assistance, but the very discussion of its possibility within the Qing court is significant. We could even extend this line of thinking to see Qianlong's actions as providing an early modern precedent for the Qing decision to intervene on the behalf of Vietnam in the Sino-French War.

As Truong Buu Lam has pointed out, Qing justified its decision to send troops to Vietnam by portraying the restoration of Lê Duy Kỳ to the Vietnamese throne as a tribute obligation. I agree with Lam's observation: "In short, the principle of 'Heaven has divided up territories but not peoples' . . . gave China a highly flexible tool with which to conduct her external relations. She could recognize independent rulers because territories could be independent, but she could also intervene whenever and wherever she judged it necessary because the Chinese emperor was responsible for all the peoples under Heaven and because their rulers were viewed as his appointed representatives."<sup>85</sup>

This observation highlights the universal worldview of *Tianxia* that provided China a highly flexible tool in its relationship with tributary states. Having a tool and wielding it, however, are two different matters. Without an emperor who was willing to use this tool, the flexibility remained on the level of discourse and theory. In that sense, it is not surprising that the Qianlong emperor, whose universal pretensions have been examined by many scholars, used this tool to intervene on the behalf of the Lê loyalists to an unprecedented degree.

In fact, the use of this tool during the Qianlong period was not limited to tributary rulers. The Qing state during the Qianlong reign used it on a regular basis to intervene on the behalf of

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<sup>84</sup> QSL, Renzong, 101: 348b-349a (JQ7.7.18=8/15/1802).

<sup>85</sup> Truong Buu Lam, "Intervention Versus Tribute in Sino-Vietnamese Relations, 1788-1790," 179.

Vietnamese subjects and give them refuge, much to the dismay of the Vietnamese state. In these cases, Vietnamese subjects were treated as universal subjects who formed a part of the Qing-centered universe called *Tianxia* (All Under Heaven) and thus had a patron-client relationship with the Qianlong emperor, who stood on top of that universe.

## 2. *Tributary Subjects*

My analysis here again builds on Sun Hongnian's study. I do so by looking at Chinese- and Manchu-language palace memorials not consulted by him. In addition, I go beyond just detailing how the refugees became "Vietnamese diaspora (*Yue qiao*)" in China as Sun did to focus on the unilateral decision by the Qianlong court to transform Vietnamese tributary subjects into Qing imperial subjects. More specifically, I argue that the ambiguous nature of imperial and tributary sovereignties as well as the elastic boundary between them created the space in which such a transfer of subjecthood could take place.

The first such case happened in 1739, when Yunnan provincial officials were observing the rebellion in Vietnam of He Trường (矣長), who had gone so far as to call himself a king. The initial report from Yunnan provincial officials merely noted that they were defending the passes and that they had sent a lateral communication to Lê Ý Tông, reassuring him that they would not help He Trường. This defensive border policy pleased the Qianlong emperor. The second report from Yunnan, however, surprised the emperor. Apparently, Yunnan provincial officials, seeing no end to this rebellion, had sent out a public note (*bangwen*) to the rebels guaranteeing they would not die upon surrender. The rebels, in turn, had accepted the offer and surrendered to Yunnan border officials. In reporting their surrender, the Yunnan governor-general Qing-fu (慶復; d. 1749) justified his action by employing a humanitarian rhetoric that perfectly captures

the elasticity of imperial sovereignty: “The Celestial Court’s benevolence extends everywhere (*Tianchao gu wubu bian zhi ren*).” The Qianlong Emperor was greatly displeased with this turn of events, noting that Vietnam was an outer tributary (*waifan*) and that the bandits posed no actual threat to Yunnan. He stressed that there was no need for Qing-fu to “accept the rebels (*pan*) of that state and forgive the enemies (*chou*) of that state.” But he also added that now that the rebels had surrendered, Vietnam could not interfere (*buneng guowen*).<sup>86</sup>

Qing-fu, apparently sensing this imperial displeasure, interrogated the rebels and recommended extraditing them to Vietnam. As we saw above, however, Qianlong had already acknowledged the acceptance of the rebels as a *fait accompli*. Now he insisted that the case could be concluded in the Qing domain, as Vietnam was a vassal state (*shuguo*) and the guilt of these rebels had already been determined. The Grand Council agreed with this imperial assessment, emphasizing the fact that the provincial officials had already vouched for the lives of the rebels. If they were extradited, they would surely die, and provincial officials would have broken their own promise.

Adjudication on this case placed the rebels in three distinct categories: 11 main culprits who had actively participated in the rebellion, 21 confederates coerced into joining the rebellion, and five who had never agreed to surrender to the Qing state. The adjudication and review processes for the principals are especially interesting because they show their position somewhere in between being criminals of the Qing court and foreign subjects. Qing-fu, in his original adjudication, sentenced them to a hundred blows of heavy bamboo and three years of penal servitude according to a Qing statute on rebellion. The Board of Punishment, however,

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<sup>86</sup> QSL, Gaozong 93: 443b (QL4.5.30=7/5/1739), 97: 471b-472b (QL4.7.26=8/29/1739); MQSL, *geng bian* 1: 44a-51b (jietie by Qing-fu; QL6.5.7=6/19/1741).

commuted their sentence in consideration of their “foreignness” to forty days in the cangue, forty blows of heavy bamboo, and life under surveillance by local officials in Guangdong and Sichuan. Among the 21 accomplices, Qing subjects were sent back to their native places in Guangnan and those from Vietnam relocated to various places in Yunnan. The five Vietnamese subjects who refused to surrender were all repatriated to Vietnam to be handled as Lê Ý Tông wished.<sup>87</sup>

This episode is interesting in at least three ways. First, it is striking that the Yunnan provincial officials even thought about granting amnesty to foreign rebels based in a foreign domain. They justified their action by citing the need to protect the Qing borderland and the universality of imperial benevolence, and here we see yet another instance where imperial agenda overruled concern for the tributary sovereignty of Vietnam. Second, the Vietnamese subjects who surrendered, because of the offer of partial amnesty, became “naturalized” as subjects of the Qing state and punished as such, while those who did not surrender remained Vietnamese subjects and were repatriated. In this way, the episode reveals an interesting point of intersection between tributary sovereignty and imperial sovereignty that resulted in a transfer of subjecthood. Third, there is the interesting assumption that the Vietnamese state could not interfere with its own subjects receiving imperial protection, a clear show of interstate asymmetry.

Indeed, our next case shows how seriously the Qing state took that assumption. When the Mạc refugees were sent back to Vietnam in 1682-1683, a few members of the Mạc family escaped and settled in Sicheng (泗城) native department in the Guangxi-Vietnam borderlands.

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<sup>87</sup> QSL, Gaozong 103: 550b-551a (QL4.10.21=11/21/1739), 118: 729a-730a (QL5.6.11=7/4/1740), 128: 873b (QL5.10.10=11/28/1740), 147: 113a (QL6.7.20=8/30/1741); MQSL, *geng bian* 1: 44a-51b (jietie by Qing-fu; QL6.5.7=6/19/1741).

The habitation of the Mạc family there under the protection of the Sicheng native chieftain grabbed the attention of the Yongzheng court in 1728 due to the Mạc cross-border activities against the Lê regime. Instead of sending these Mạcs back to Vietnam, the court first planned to resettle them in Nanjing and then decided to let them stay in Sicheng. The Sicheng Mạcs, however, kept engaging in cross-border activities against the Vietnamese state. The Qing authorities seem to have relocated some members of the Mạc family to Anhui in 1741, but some Mạcs remained in Sicheng and kept causing trouble.<sup>88</sup>

In 1751, however, a Mạc Thành Trần (莫成陳) was arrested by Vietnamese authorities and confessed that his family members lived in Sicheng. Later that year, when Nguyễn Ngọc Hân and others were being handed over to a Vietnamese official, this Vietnamese official presented the Qing officials with a document requesting the investigation of the Sicheng Mạcs. The Qianlong emperor, after reading memorials from Guangxi, flatly refused this request, saying that Sicheng Mạcs were Qing subjects (*neidi baixing*). Su-chang (蘇昌; d. 1768), the acting Liangguang governor-general, agreed with the imperial assessment by calling the Mạcs Qing subjects (*Tianchao chizi*). Following the imperial instruction, Guangxi provincial officials ordered the Vietnamese officials to never bring up this issue again. This is another episode that highlights the transfer of subjecthood from Vietnam to Qing, a transfer that was understood by the Qing court to be inviolable.<sup>89</sup>

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<sup>88</sup> Niu, *Wangshi houyi yu panluanzhe*, 135-59; Alexander Ong, “Royal Refuge and Heterodoxy: The Vietnamese Mac Clan in Great Qing’s Southern Frontier, 1677-1730,” James A. Anderson and John K. Whitmore, eds., *China’s Encounters on the South and Southwest: Reforging the Fiery Frontier over Two Millennia* (Leiden: Brill, 2015), 273-285; QSL, Gaozong 201: 593b (QL8.9.30=11/15/1743), 203: 623b-624a (QL8.10.30=12/15/1743), 402: 284a-b (QL16.11.1=12/18/1751).

<sup>89</sup> QSL, Gaozong 402: 284a-b (QL16.11.1=12/18/1751); JJCD 007437 (Su-chang and Dingcang; n.d./16.10.30), 007787 (Su-chang; QL16.12.17/17.1.15), 007944 (Su-chang and Dingcang; QL17.1.13/17.2.22).



Our next case further highlights the permanent transformation of Vietnamese subjects from foreign subjects to universal subjects and then eventually Qing subjects. In May/June 1769, Hoàng Công Toàn (黃公纘), with over 400 followers, arrived in Pu'er (普洱) prefecture, Yunnan, after having been driven out of Luang Prabang by Trịnh troops. In Pu'er, he asked for asylum, claiming to be descended from the Mạc family. The initial Qing reaction was ambivalent. In his first edict on the matter, the Qianlong emperor reflected that on principle these people should not be allowed refuge, since they were subjects of a respectful and submissive tributary state. At the same time, he reasoned, refusing these people who have come to submit in a dire situation would be against the principle of “treating all peoples equally” (*yishitongren*). In short, this dilemma brought to the fore the ever-shifting and elastic status of tributary subjects: Should they be treated as foreign subjects or universal subjects? Qianlong decided to accept them on a temporary basis until Lê Hiến Tông could be consulted on the matter.<sup>90</sup>

Soon, however, the Qing court decided on its own. Just ten days after his first edict, Qianlong issued another edict in which he presented a hypothetical rebuttal to Lê Hiến Tông's request for repatriation of Hoàng Công Toàn and his followers: “Your state is a vassal (*fanchen*). Your subjects (*shuren*) are no different from registered Qing subjects (*neidi bianmeng*).” His opinion was shared by the grand councilor Fuheng (傅恆; d. 1770), who argued that the principle of unbounded imperial benevolence should be a sufficient answer for any possible inquiry or protest from Vietnam. After all, if the king were to label these people rebels (*panni*), the Qing court would be forced to decide between rejecting a tributary king's request and sending these people to certain death. Within a month, the Qing court decided to settle Hoàng Công Toàn as a

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<sup>90</sup> QSL, Gaozong 834: 130b-131a (QL34.5.4=6/7/1769).

native chieftain (*tusi*) in Pu'er. At this point, the transformation of these Vietnamese subjects from foreigners to Qing subjects was complete.<sup>91</sup>

By late 1770, the news that these people had been settled in Pu'er had reached the Lê court, and Lê Hiến Tông began to request that the Qing state repatriate these rebels to Vietnam. The Qing state repeatedly refused Vietnamese demands on two main grounds. First, the Vietnamese state was faulted for not requesting repatriation as soon as Toản and his followers had entered the Qing domain and instead waiting till they had already been settled. Second, it was inappropriate for Lê Hiến Tông, a tributary king, to make such a demand of Qing (*xiang neidi suoqu*). The language contained in Lê Hiến Tông's lateral communications was also deemed drastic (*guoji*).<sup>92</sup> The information contained in the second lateral communication from Hiến Tông, however, led to a revelation that Hung Hóa (興化) officials had already demanded from Lin'an officials the repatriation of this group between November and December of 1769. In response, Lin'an officials had falsely claimed that Toản and his followers had never entered Yunnan, without reporting this interaction to their superiors. This information in effect invalidated the grounds for the Qing refusal to send Toản and his followers back to Vietnam.<sup>93</sup>

At this point, in summer of 1771, the Qing state made the curious choice of relocating Toản and his followers rather than repatriating them to Vietnam. First, Toản and 125 of his

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<sup>91</sup> QSL, Gaozong 834: 140a-141a (QL34.5.14=6/17/1769), 836: 167b-168a (QL34.6.15=7/17/1769); JJCD 010184 (Fuheng, Arigün, Agüi; n.d./QL34.7.14).

<sup>92</sup> QSL, Gaozong, 870: 669b-670a (QL35.10.10=11/26/1770), 878: 762b-763a (QL36.2.13=3/27/1771), 878: 764b-765a (QL36.2.14=3/28/1771); JJCD 012621 (Agüi and Jangboo?; QL35.9.24/35.10.9), 012624 (Yengišan et al; n.d./QL35.10.10), 013171 (zi from Lê Hiến Tông to Li Shiyao; QL35.12.6=1/21/1771).

<sup>93</sup> QSL, Gaozong 880: 792-793a (QL36.3.14=4/28/1771), 882: 814a-b (QL36.4.6=5/19/1771); JJCD 013174 (Zhang Yanlie to Hung Hóa governor; QL35.1.24=2/19/1770), 013342 (Hung Hóa governor; n.d.), 013403 (Li Shiyao; QL36.1.27/?), 013662 (Jangboo; QL36.3.1/36.3.15), 013771 (Jangboo; QL36.3.20/36.4.6), 013879 (Jangboo; QL36.4.7/36.4.18), 013880 (Jangboo; QL36.4.7/36.4.18).

followers were moved from Pu'er to the Yunnan provincial capital of Kunming (昆明) on the grounds that Pu'er was too close to Vietnam and too desolate. Jangboo (彰寶; d. 1777), the Yunnan governor and acting Yun-Gui governor-general, who coordinated this move, then memorialized the Qianlong emperor with his plan of moving Toản's group to Urumchi (烏魯木齊), Xinjiang. Qianlong commended his plan as being well thought out, and steps were taken to relocate Toản and his followers from Kunming to Urumchi. The journey itself took more than half a year, with the Toản's band finally arriving at Urumchi in February 1772.<sup>94</sup> Throughout the whole planning and relocation process, Lê Hiến Tông continued requesting their repatriation. His requests, now deemed to be more "polite," were not rebuked but were still refused. The Qing state reasoned that these people were settled far away from Vietnam and that they were no different from Qing subjects and as such out of Hiến Tông's reach. In the end, the Qing state stopped even responding to Hiến Tông's demands, citing his "persistence in error."<sup>95</sup>

Hoàng Công Toản and his followers made Urumchi their permanent home. Upon their arrival at Urumchi, they were settled in a place called Tudunzi (土墩子). Every household was given 30 *mu* of government land and provided with housing, horses, farming tools, and seeds.<sup>96</sup> The continued habitation of this group in Urumchi is confirmed in 1777 and 1804. In 1777, we see two palace memorials from the Urumchi commander-in-chief Sonomcering (索諾木策凌; d.

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<sup>94</sup> QSL, Gaozong, 880: 793a (QL36.3.14=4/28/1771), 884: 846a-b (QL36.5.6=6/18/1771), 888: 891b-892b (QL36.7.5=8/14/1771), 892: 970a-b (QL36.9.11=10/18/1771), 897: 1055b-1056a (QL36.11.19=12/24/1771), 904: 84a-b (QL37.3.13=4/15/1772), 938: 641a-642a (QL38.7.5=8/22/1773).

<sup>95</sup> JJCD 013980 (Lê Hiến Tông to Li Shiyao; QL36.4.24), 014372 (Li Shiyao; QL36.6.12/36.7.5), 014501 (Jangboo; QL36.7.6/36.7.20), 015684 (Lê Hiến Tông; QL36.10.13), 016825 (zi from Lê Hiến Tông to Li Shiyao; QL37.1.4).

<sup>96</sup> QSL, Gaozong 893: 996a-b (QL36.9.30=11/6/1771); JJCD 014967 (Wu-da-shan; QL36.9.21/36.9.30), 015923 (Wen-shou; QL37.1.19/37.1.28), 015997 (Wen-shou; n.d./QL37.2.8), 016032 (Ba-yan-bi and Mingšan; QL37.1.25/37.2.15), 016462 (Ba-yan-bi and Mingšan; QL37.3.13/37.3.30).

1782) that mention this group. In a July 30th memorial, Sonomcering writes about sending 61 Vietnamese to Ili to work on a military farm there. In the second memorial near the end of the year, Sonomcering reports on the death of Hoàng Công Toàn. In an edict to the Grand Council, Qianlong reaffirmed that these people were no different from common people (*qimin*). But since Hoàng Công Toàn had always acted as their head (*touren*), his male heirs could inherit that title.<sup>97</sup> In 1804, while the Lê refugees were being repatriated to Vietnam for the second and last time, the Urumchi commander-in-chief sent a lateral communication to the Board of Punishments on whether 22 households of the relocated Vietnamese should also be repatriated. In the end, the Jiaqing emperor decided that their situation was different from that of the Lê refugees. From Jiaqing's understanding, Hoàng Công Toàn had been the enemy of the Lê house, and Nguyễn Phúc Ánh, an old minister of the Lê house and the new Vietnamese king, would not look upon these people favorably. The commander-in-chief was not to bring up the issue to the Vietnamese and to dissuade them if they wished to return to Beijing. This is the last we hear of them from the Qing records.<sup>98</sup>

What do these cases tell us about subjecthood? First, we see just how far the Qing state could encroach upon the sovereignty of Vietnam by accepting enemies of the Vietnamese state as refugees and eventually as its own subjects. He Trường, for example, had called himself a king and was leading an open rebellion against the Lê/Trịnh court. Even though there were Qing subjects among the ranks of the rebels, the rebellion took place solely within the Vietnamese domain. And yet the Yunnan governor Qing-fu made an offer of amnesty to the rebels simply

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<sup>97</sup> QSL, Gaozong 1046: 1011a (QL42.12.3=1/1/1778); Zhongguo diyi lishi dang'anguan and Zhongguo bianjiang shidi yanjiu zhongxin, eds., *Qingdai Xinjiang Manwen dang'an huibian* (Guilin: Guangxi shifan daxue chubanshe, 2012), 129: 257-8 (Sonomcering; QL41.6.16/41.7.10)

<sup>98</sup> QSL, Renzong 133: 804a-b (JQ9.8.6=9/9/1804).

because he wished to secure the Qing frontier. Lê Ý Tông was never consulted about this matter and was only notified after the fact.

Likewise, Hoàng Công Toàn and his followers were granted asylum in Qing territory and eventually became naturalized, even though they were rebels from Lê/Trịnh point of view. Vietnam was never consulted about this process, and repeated requests from the Lê court for the repatriation of these rebels were only met with scoffing and rebuke from the provincial officials and the Qing emperor. Lê Hiến Tông's demand itself was considered improper, and the language used in his communications even more so. In these two cases, Vietnam was essentially deprived of the chance to punish its own rebellious subjects.

Second, these cases show that the Qing state looked at Vietnamese subjects as both Vietnamese subjects and universal (*Tianxia*) subjects. When the Qing state repatriated Vietnamese subjects, it was highlighting Vietnamese subjects as the rightful subjects of their king. Yet when the Qing state accepted Vietnamese fugitives as Qing subjects, it was treating them as universal subjects deserving imperial benevolence, since “all peoples should be treated equally” (*yishitongren*). Indeed, the Qing did not hold a monopoly over this multifaceted and elastic space of imperial and tributary subjecthood. If we step back from the courts in Beijing and Thăng Long, we can see how borderland residents could find niches in this imperial space for their own benefit. Refugees of the Lê court, for example, ceased to be Vietnamese subjects and were instead given new life as Qing subjects when they wished to be. When some of these refugees decided that it was in their best interest to cease being Qing subjects, they successfully appealed to be turned back into Vietnamese subjects.

Third, it is interesting that all the most extreme cases of Qing intervention in the name of tributary duty happened during the Qianlong period. Even though the Jiaqing emperor briefly

entertained the idea of accepting Tây Sơn refugees as Qing subjects, it never happened. In fact, the Qing state during the Jiaqing and Daoguang reigns was qualitatively different from the Qing state during the Qianlong reign in its approach to Vietnamese subjects. As we have seen, Qianlong's empire emphasized both the "foreignness" and the "universality" of Vietnamese subjects. Jiaqing's and Daoguang's empires, on the other hand, seem to have emphasized the foreignness of Vietnamese subjects over the universality. Even though there are only a few recorded instances of repatriation, the sources during the Jiaqing and Daoguang eras are replete with specific imperial instructions on not accepting the surrender of Vietnamese subjects and instead turning them away from the border. As Alexander Woodside pointed out, imperial overreach during the Qianlong period might well have pointed out the limits of imperial sovereignty over tributary subjects to rulers in the following periods.<sup>99</sup>

### **C. Qing Sojourners in the Vietnamese Domain**

As we have seen in the cases above, the Qing-Vietnamese territorial boundary was more porous than the authorities of either state would have liked. The Vietnamese state policy towards Qing subjects made this border even more accessible. Throughout the Lê, Tây Sơn, and Nguyễn periods, the Vietnamese state provided space for Qing subjects to live in the Vietnamese domain as sojourners. This resulted in a frequent and sustained influx of Qing sojourners engaging in economic activities in the Vietnamese domain throughout the Qing period. To be sure, as we will see in chapter five, the Vietnamese state repatriated Qing sojourners who caused trouble in Vietnam or Qing fugitives who could be easily identified. Still, it was their criminality, not their foreignness, that resulted in the repatriation.

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<sup>99</sup> Woodside, "The Ch'ien-Lung Reign," 293-309.

After the Ming-Qing transition, there emerged two main categories of Chinese residing in Vietnam from the perspective of the Vietnamese state. The first category was Ming loyalists known as Minh hương (明香, “Ming incense”) They were partially assimilated, having been allowed to marry Vietnamese and not having adopted Qing hairstyle and attire. The second category was unassimilated Qing sojourners, who were variously called bắc nhân (北人, “northern people”), Thanh nhân (清人, “Qing people”), or khách nhân (客人, “guest people”). They were also further categorized into their places of origin in Qing, living in their own native place communities under their own chiefs. As a whole, however, these sojourners were distinguished from their Vietnamese neighbors because of their hairstyle and attires and were not allowed to marry Vietnamese subjects.<sup>100</sup> To a large degree, the distinction between these two groups continued under the Tây Sơn and Nguyễn dynasties as well, although the exigencies and limited state apparatuses of both states meant that this distinction was crossed every now and then.<sup>101</sup>

It is not my purpose here to provide a comprehensive analysis of Qing sojourners in Vietnam. I will merely emphasize how the presence of Qing sojourners in Vietnam resulted in a significant divergence between the two sets of Qing-Vietnamese boundaries we have talked about in this chapter: territorial and subjecthood. Qing authorities were aware of and uneasy about this disjunction. As Giersch has shown, Qing officials in the Yunnan-Burma borderland feared that the crossing of geographical boundaries would result in a crossing and muddling of cultural boundaries. The Han migrants who had crossed those boundaries, in their mind, were

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<sup>100</sup> Charles Wheeler, “Identity and Function in Sino-Vietnamese Piracy: Where Are the Minh Hương?,” *Journal of Early Modern History* 16, no. 6 (2012): 503–21.; Ch’oe Pyŏng-uk (Choi Byung Wook), “19segi Pet’ūnam ūi tanilminjok mandŭlgi,” *Tongbuga yŏksa nonch’ong* 23 (2009): 73–97

<sup>101</sup> Dutton, *The Tây Sơn Uprising*, 196-211; Woodside, *Vietnam and the Chinese Model*, 261-81.

most likely to turn against imperial interests and commit treason, and they were thus called “Han traitors” (*Hanjian*).<sup>102</sup>

Such fear was present in Qing-Vietnam borderland as well, and the Qing authorities saw their worst fear materialize in Tang A'ai (唐阿矮). Tang was a Qing subject who had moved to southwestern Vietnam in 1773. There he had married a Vietnamese woman and raised a family. After the Tây Sơn takeover, he changed into Vietnamese dress and received a title from the Tây Sơn regime to work as a local official. Following the Tây Sơn civil war in 1783, Tang encountered 24 Chinese sailors who had been arrested by local Vietnamese officials. Tang, wishing to make a fortune by selling the cargo on their ship, conspired with three of the sailors. He helped the sailors escape, take the ship, and head to Macao to sell off the goods. Tang and the sailors met their demise after returning to Chenghai (澄海) county, Guangdong, in early 1784, as the owner of the ship and cargo proceeded to bring a case against them to the Chenghai magistrate.<sup>103</sup>

This incident astonished the Qing court and led Qianlong to comment: “It is impossible to seal off Han traitors going beyond the border completely. But Tang A'ai, as a Qing subject, has dared to receive a false foreign title, get married and birth a daughter, and engage in plundering this ship . . . The circumstances are indeed hateful.” Tang, in short, was the epitome of a Han traitor who had betrayed his political loyalty and cultural roots. He reminded the Qing authorities of the dangers that crossing a geographic boundary might engender. Guangdong officials accordingly sentenced Tang to immediate death by beheading and exposure of his head in Macao

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<sup>102</sup> C. Pat Giersch, “‘A Motley Throng’: Social Change on Southwest China’s Early Modern Frontier, 1700-1880,” *Journal of Asian Studies* 60, no. 1 (2001): 67–94.

<sup>103</sup> JJCD 035844 (Bayansan and Li Tianpei; QL49.2.10/n.d.), 036196 (Šucang and Sun Shiyi; n.d./ QL49.i3.15).



to serve as a warning. The Board of Punishments, Three Judiciaries, and Qianlong all affirmed the original adjudication.<sup>104</sup> From the perspective of the Qing judiciary, Tang was executed as a subject-turned-traitor. After all, as Lauren Benton remarks in her chapter on treason law, “in most situations only a subject could commit treason.”<sup>105</sup>

But did Tang, who had a family in Vietnam, cut off his queue, and worked as a local official in Vietnam, really consider himself a Qing subject? Or did Zhou Gui, whose case we will examine in chapter five, really consider himself a Qing subject after living in Vietnam all his life? It is true that both Tang and Zhou came to be identified as Qing subjects who had turned on the imperial state and died as traitors. But the Qing-Vietnam borderland, even more than the Qing-Chosŏn borderland, was full of people constantly on the move, and it is questionable whether they saw themselves as living in a binary world neatly divided between Qing and Vietnam. Their personal histories point to the very complicated nature of “cultural” boundaries and the repertoire of options such areas provided for one’s self-identity. It is important to keep in mind that subjecthood was only one of many ways one could identify oneself and that subjecthood as a status was neither fixed nor straightforward. Forgetting this would give subjecthood a very state-centered and juridical status, an undue importance that might not reflect the lived experiences of people inhabiting the Qing-Vietnam borderland. As Giersch pointed out, cultural complexity and ambiguity were the norm in Qing’s Yunnan frontier.<sup>106</sup>

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<sup>104</sup> Three sailors who were complicit in the plundering of the cargo, were sentenced to immediate death by strangulation. Ten others who participated in dividing up the booty were sentenced to penal servitude. QSL, Gaozong 1200: 44a-b (QL49.3.4=3/24/1784). 1202: 85b-86a (QL49.i3.15=5/4/1784), 1205: 128a-b (QL49.4.28=6/15/1784); MQLS geng bian 1: 95b-97b (Board of Punishments; QL49.i3.20/49.i3.23).

<sup>105</sup> Lauren Benton, *A Search for Sovereignty: Law and Geography in European Empires, 1400-1900* (New York: Cambridge University Press, 2010), 64.

<sup>106</sup> Giersch, *Asian Borderlands*, 187-206.

#### IV. Conclusion

To sum up, the Qing-Vietnam borderland remained very much a “middle ground.” As we saw in chapter two, the nature of the Qing state as a frontier khanate in 1637, when it forced the Chosŏn state to accept its terms of delineation on subjects and domains of the two states, contributed a great deal to the destruction of this middle ground in the Qing-Chosŏn borderland in the rest of the seventeenth century. Transfrontiersmen in this borderland—including borderland Jurchens, Chosŏn prisoners of war, Han Chinese refugees—now had to be incorporated as either Qing or Chosŏn subjects, leaving little room for ambiguity between the two state spaces. This delineation of peoples was accompanied by territorial delineation based on the natural frontiers of the Yalu and Tumen Rivers, which culminated in interstate delineation of the Changbai Mountains in the 1710s.

In the Qing-Vietnam borderland, however, several factors led to the survival of this middle ground. First, there was a situation of split sovereignty resulting from existence of regional regimes on both sides of the borderland: the feudatories of Wu Sangui and Shang Kexi on the Qing side, and the Mạc regime on the Vietnamese side. Second, even after centralization efforts by both central governments eliminated these regional rivals, there remained numerous local native domains ruled by hereditary Tai lords on both sides of the borderland. Even the famous *gaitu guiliu* policy of the Yongzheng reign did not result in the full incorporation of these native domains into the Qing state space. After all, as James Scott has shown, these native domains formed a part of “Zomia,” at the periphery of nine modern states and at the center of none. Third, the emergent perspective of Qing as an expansionist, universal empire coexisted

with a view of Qing as a bounded state, adding to the complexity and elasticity of territorial and jurisdictional boundaries in this borderland.

As we will see in chapter six, the Qing-Kokand borderland was even more of an open frontier, where movement of borderland residents was relatively free and territorial delineation was kept at a minimum. Then, we can say that the Qing-Vietnam borderland occupied an intermediate position between the fairly well-delineated Qing-Chosŏn borderland and the zonal Qing-Kokand borderland. All three borderlands, however, had these characteristics in common: multiple and shifting conceptions of boundaries, an asymmetrical relationship between Qing and tributary state, and an elasticity of imperial and tributary sovereignty that resulted from the first two characteristics. The implications of these characteristics will be discussed in more detail in the conclusion of this dissertation.

## CHAPTER V.

### Jurisdictions in the Qing-Vietnam Borderland, 1660s-1840s<sup>1</sup>

#### I. Introduction

There is a large gap in the scholarship on the tributary relationship between Qing and Vietnam. Among historians of Vietnam, there is a tendency to underplay the inequality of the relationship and emphasize Vietnamese “autonomy.” Insun Yu’s recent monograph on the history of the Sino-Vietnamese relationship is a good example, where the central theme is that of Vietnamese autonomy in the face of Chinese aggression.<sup>2</sup> This tendency, of course, should be examined within its historical context. French colonial historiography, best exemplified by Henri Maspero (1883-1945), was happy to justify French rule over Indochina with the “little China” theory that depicted Vietnam as a smaller and less successful imitator of its bigger neighbor China. The image of an autonomous Vietnam is understandable when seen against this historical baggage.<sup>3</sup>

Meanwhile, as discussed throughout this dissertation, historians of China have paid little attention to the praxis of the tributary relationship between Qing and its three “model” tributaries: Chosŏn, Vietnam, and Ryukyu. Neither John Fairbank’s model of “tributary system”

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<sup>1</sup> A portion of this chapter was previously published as Jaymin Kim, “The Rule of Ritual: Crimes and Justice in Qing-Vietnamese Relations During the Qianlong Period (1736-1796),” in *China’s Encounters on the South and Southwest: Reforging the Fiery Frontier over Two Millennia*, ed. James A. Anderson and John K. Whitmore (Leiden: Brill, 2015), 288–319. I have since then revised and rewritten that part of the chapter in its entirety.

<sup>2</sup> Yu In-sŏn (Insun Yu), *Pet’ŭnam kwa kŭ iut Chungguk: Yangguk kwan’gye ūi ōje wa onŭl* (Seoul: Changbi, 2012).

<sup>3</sup> Liam C. Kelley, *Beyond the Bronze Pillars: Envoy Poetry and the Sino-Vietnamese Relationship* (Honolulu: University of Hawai’i Press, 2005), 9-17.

nor the critiques of it by various scholars have had much to say about these model tributaries.<sup>4</sup> As a result, in much scholarship to date, the relationship between Qing and its “model” tributaries appears as one in which the ritualistic (i.e. theoretical) hierarchy had almost no impact on what was in fact an equal relationship between two sovereign states. As we have seen in the previous chapters, however, the hierarchy in the tributary system had many real-life implications on issues of boundaries, subjecthood, and jurisdiction.

This chapter, along with chapter four, is in conversation with a recent attempt by scholars to revisit the Sino-Vietnamese tributary relationship by taking a serious look at its praxis. John Wills Jr., in a diversion from his usual focus on Qing-European tributary relationships, has examined how Qing maintained its tributary relationships with Vietnam and Siam. Liam Kelley, by studying the poetry of Nguyễn Vietnamese tributary envoys to Qing, has shown that these envoys accepted their kingdom’s position as a vassal state within the wider “Sinitic” cultural world. Kathlene Baldanza has shown how two visions of China—an unbounded China and a bounded China—manifested themselves in Ming relations with Lê Vietnam.<sup>5</sup>

This chapter is also in dialogue with Qing legal history. Since the opening of the archives in the People’s Republic of China and Taiwan in the 1980s, the field has seen much growth. The availability of rich archival materials has allowed Qing legal historians to use these legal cases as

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<sup>4</sup> John King Fairbank, “A Preliminary Framework,” in *The Chinese World Order: Traditional China’s Foreign Relations*, ed. John King Fairbank (Cambridge, MA: Harvard University Press, 1968), 1–19.; John E. Wills, Jr., *Embassies and Illusions: Dutch and Portuguese Envoys to K’ang-Hsi, 1666-1687* (Cambridge, MA: Council on East Asian Studies, Harvard University, 1984).; James L. Hevia, *Cherishing Men from Afar: Qing Guest Ritual And the Macartney Embassy of 1793* (Durham, NC: Duke University Press, 1995).

<sup>5</sup> John E. Wills, Jr., “Functional, Not Fossilized: Qing Tribute Relations with Đại Việt (Vietnam) and Siam (Thailand), 1700-1820,” *T’oung Pao* 98, no. 4–5 (2012): 439–78.; Kelley, *Beyond the Bronze Pillars*; Kathlene Baldanza, *Ming China and Vietnam: Negotiating Borders in Early Modern Asia* (New York: Cambridge University Press, 2016).

a gaze toward the lower strata of Qing society.<sup>6</sup> These archival materials, however, have not been fully utilized to re-examine old questions of Qing jurisdiction over foreigners before the imposition of extraterritoriality via unequal treaties. Part of the problem lies in our conceptual habit of equating foreigners with Westerners, at least in the context of Qing jurisdiction over foreigners. Of course, there are exceptions. Pär Cassel, for example, has looked at how Qing and Japan, far from being mere victims of extraterritoriality, willingly participated in mixed courts on their soils and established mixed courts in each other's domain.<sup>7</sup>

Keeping all this in mind, this chapter seeks to analyze Qing-Vietnam interstate law in practice from the 1660s to the 1840s. R. Randle Edwards, in his pioneering study, emphasized three sets of basic principles of Qing border control law: territory and territorial sovereignty; impartiality, reciprocity, and equality in Qing foreign relations; and centralization and bureaucratization of the Qing border control system.<sup>8</sup> Impartiality, reciprocity, and equality seem indeed to have been the assumption behind the mutual repatriation of fugitives between the Qing and Vietnamese states. But when we go beyond the initial repatriation, we see a fundamental asymmetry that existed between the Qing and Vietnamese judiciaries in how these cases were handled.

In what follows, I will look at how each of the two states handled fugitives and criminals from the other state. Beginning with the mutual repatriation of fugitives, we go on to examine Qing-Vietnamese interstate jurisdiction over Vietnamese criminals as well as interstate

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<sup>6</sup> Matthew H. Sommer, *Sex, Law, and Society in Late Imperial China* (Stanford: Stanford University Press, 2000), 1-17.

<sup>7</sup> Pär Kristoffer Cassel, *Grounds of Judgment: Extraterritoriality and Imperial Power in Nineteenth-Century China and Japan* (New York: Oxford University Press, 2012).

<sup>8</sup> R. Randle Edwards, "Imperial China's Border Control," *Journal of Chinese Law* 1 (1987), 34-42.

jurisdiction over Qing criminals. The picture of Qing-Vietnamese interstate jurisdiction that emerges is one of asymmetry and elasticity. The ritualistic hierarchy between the Qing empire and the Vietnamese tributary state had tangible consequences when their judiciaries encountered each other, consequences that from the perspective of modern Westphalian sovereignty encroached severely on Vietnamese sovereignty.

## **II. Mutual Repatriation of Fugitives**

Unlike in the Qing-Chosŏn case, where the two states agreed on mutual repatriation of trespassers in 1637, Qing and Vietnamese states had no written agreement on how to handle repatriation. As a result, repatriation of fugitives in the Qing-Vietnam borderland was a much less routine and more varied process than in the Qing-Chosŏn borderland. To explore this further, I will first look at a few cases of Qing repatriation of Vietnamese refugees. Next, I will examine Qing expectation of Vietnamese repatriation of Qing fugitives and refugees and look at cases where these expectations went both met and unmet. Finally, we will circle back around and ponder what this tells us about interstate relations between Qing and Vietnam, namely the asymmetry in the repatriation process.

### **A. Qing Repatriation of Vietnamese Fugitives**

As briefly discussed in chapter four, the Qing state identified some Vietnamese subjects entering the Qing domain as fugitives on the run from the Vietnamese judiciary. Such identification played a key part in Qing decisions on how to handle these Vietnamese subjects and thus had a direct impact on the fates of these people. Often, the Qing state repatriated those it

identified as fugitives. In making the decisions to repatriate, the Qing state emphasized both their foreignness and their criminality as the reason for their repatriation.

An early case from 1671 provides a good example of the Qing rationale for repatriation. That year, a Vietnamese subject named Nguyễn Phúc Lộc (阮福祿) sought refuge in Yunnan. Details are murky on the exact circumstances, but the Yun-Gui (Yunnan and Guizhou) governor-general who memorialized on this incident identified Lộc as a criminal on the run (*youzui tao lai*) from a tributary state (*shuguo*). Noting that it was inappropriate to take him in (*bubian shouliu*), the governor-general suggested returning Lộc to Vietnam to be punished there. The Kangxi emperor approved this suggestion, and Lộc was repatriated to Vietnam and executed there. Given the timeline, this so-called Nguyễn Phúc Lộc was most likely Ma Phúc Điện (麻福淀), who had led a rebellion in Tuyên Quang (宣光) in fall 1669 along with his father and brother, fled to the Qing domain in summer 1670 upon the defeat of the rebel forces, and then been repatriated and executed in Vietnam in fall 1671.<sup>9</sup> In this case, we see the governor-general emphasizing both the foreignness of tributary subjects in general and the criminality of Lộc to justify his decision to repatriate Lộc.

By 1773, repatriation of Vietnamese fugitives was common enough that a protocol had emerged. That year, Bác Tam (博三) and his family members tried to enter Yunnan from Bảo Lạc (保樂) in far northern Vietnam and were at a border post in Guangnan (廣南) prefecture. Their interrogation revealed that Tam had helped his lord, Nguyễn Ngọc Huân (阮玉勛), in causing trouble and being lawless (*shengshi bufu*) in Vietnam. Yun-Gui governor-general

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<sup>9</sup> QSL, Shengzu 35: 478a (KX10.4.1=5/9/1671); Chin Keiwa (Chen Ching-Ho), ed., *Daietsu Shiki Zensho: Kōgōbon* (Tokyo: Tōkyō Daigaku Tōyō Bunka Kenkyūjo Fuzoku Tōyōgaku Bunken Sentā, 1984) (DSZ hereafter), 3: 988-91, 992.



Jangboo (彰寶; d. 1777) noted that it was inappropriate to allow them to remain in the Qing domain (*bubian rongliu neidi*) and recommended sending them back to Vietnam. The Qianlong emperor approved this recommendation, and Tam and his family members were repatriated to Vietnam. The repatriation followed the protocol: They were sent to Guangxi, with the Vietnamese ruler Lê Hiến Tông (黎顯宗; r. 1740-86) notified in advance so that his officials could receive them at the Guangxi-Vietnam border.<sup>10</sup>

Sometimes the repatriation of Vietnamese fugitives followed explicit requests for repatriation by the Vietnamese court. In 1779, for example, Lê Hiến Tông sent lateral communications (*zi*) to the Liangguang (Guangdong and Guangxi) and Yun-Gui governors-general, notifying them of his plan to suppress a rebellion led by a native chieftain named Hoàng Văn Đồng (黃文桐) and requesting the repatriation of the rebels in case they fled to the Qing domain to hide there or surrendered at a border pass. In making this request, Lê Hiến Tông cited several precedents, including the repatriation of Bác Tam and his family members mentioned above.<sup>11</sup> Qianlong endorsed Lê Hiến Tông's request, and periodic searches by officials in Yunnan and Guangxi ensued. In August 1780, officials of Kaihua (開化) prefecture, Yunnan, arrested 18 fugitives, including Hoàng Văn Dong's sixth son, his daughter-in-law, and his deputy. According to precedent, they were sent to Guangxi and handed over to Lê officials on the Guangxi-Vietnam border.<sup>12</sup>

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<sup>10</sup> QSL, Gaozong, 929: 496a (QL38.3.22=4/13/1773); JJCD 024355 (Li Zhiying's copy of *zi* from Le Hien Tong; QL44.6.24=8/5/1779); DSZ 3: 1190-3.

<sup>11</sup> QSL, Gaozong 1087: 607b-609a (QL44.7.27=9/7/1779); JJCD 024355 (Li Zhiying's copy of Le Hien Tong's *zi*; QL44.6.24=8/5/1779), 024893 (Guilin; QL44.8.22/44.9.22), 026080 (copy of Le Hien Tong's *zi*; n.d.); GZD 403038867 (Li Zhiying; 44.6.24/44.7.27); DSZ, 3: 1191-2.

<sup>12</sup> JJCD 026152 (Li Zhiying; QL44.12.29/45.1.28), 027282 (Šucang; 45.5.16/45.6.8); 027633 (Fuk'anggan; 45.6.24/45.7.13), 028134 (Bayansan; 45.7.29/45.9.4).

It should be noted here that there is a strong possibility that the repatriation of these fugitives would have happened regardless of the request from Lê Hiến Tông. Li Shiyao (李侍堯; d. 1788), the Yun-Gui governor-general, had already stated in his initial memorial on the Hoàng Văn Đòng rebellion: “Every criminal fleeing from that state [i.e. Vietnam] must be arrested without exception . . . If [they] are bandits of that state (*gai guo feitu*), [they] should be promptly sent back according to precedent (*ji ying zhaoli fahuan*).”<sup>13</sup> In any case, the language used by both states as well as their cooperation make it clear that the repatriation of Vietnamese fugitives was a customary practice that happened on a regular basis.

## **B. Vietnamese Repatriation of Qing Fugitives**

The Qing state seems to have expected the Vietnamese state to reciprocate by repatriating Qing fugitives that entered the Qing domain. A 1666 edict issued in the name of the Kangxi emperor to Lê Huyền Tông (黎玄宗; r. 1662-1671) illustrates Qing expectations. This edict first reiterates the contents of a report from the Liangguang governor-general Lu Xingzu (盧興祖; d. 1667). According to Lu’s report, Qing pirates led by Yang Er (楊二) and others were taking refuge in northern Vietnam and being supplied with ships and weapons by a local official there. When Lu sent officials to arrest them, they were met with closed fences and were fired upon as if they were from an enemy state (*diguo*). The edict then orders Lê Huyền Tông to do two things: first, extradite the pirates and their family members to the Liangguang governor-general; and second, punish the Vietnamese official for aiding the rebels and defying Qing authorities. Failure to do so, the edict concluded, might result in warfare (*sheng bing duan*).<sup>14</sup>

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<sup>13</sup> QSL, Gaozong, 1086: 594b (QL44.7.15=8/26/1779)

<sup>14</sup> QSL, Shengzu, 19: 270a-b (KX5.5.15=6/17/1666); DSZ 3: 982.

This edict shows that the Qing state expected the Vietnamese state to arrest and extradite Qing fugitives, or at least to aid in such arrests. The fact that this edict had to be issued in the first place, however, shows that the Qing state could not take Vietnamese cooperation for granted. Yang Er was never extradited to the Liangguang governor-general, for Yang Er was none other than Yang Yandi (楊彥迪; d. 1688), a transfrontiersman with his own sphere of influence in the Gulf of Tonkin area. His band of “pirates” kept harassing the coast of Guangdong until as late as 1681, when they attacked Hainan Island, before finally leaving this sea frontier for another frontier further south. Indeed, Yang Yandi is better known today for his subsequent submission to the Nguyễn lords based in central Vietnam and his role in securing the Mekong Delta area for their regime.<sup>15</sup>

The Yang Yandi episode, then, highlights the gap between Qing expectations and Vietnamese performance regarding repatriation of fugitives. In the following sections, I will first show the instances where the Qing expectations were met. I will then show the instances where the various Vietnamese regimes were either unable or unwilling to meet the Qing expectations. Finally, I will discuss what this says about asymmetry and elastic sovereignty.

### *1. Repatriation of Qing Fugitives*

In several instances, Qing fugitives were repatriated according to Qing expectations. For example, in 1753, Qing authorities in Dongguan (東莞) county, Guangdong, cracked down on a group of bandits and arrested some 170 of them. Some who escaped, however, made their way

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<sup>15</sup> Robert J. Antony, “‘Righteous Yang’: Pirate, Rebel, and Hero on the Sino-Vietnamese Water Frontier, 1644-1684,” *Cross-Currents: East Asian History and Culture Review* 3, no. 2 (2014): 319–48; QSL, Shengzu 96: 1209a (KX20.5.14=6/29/1681)

into the Vietnamese domain. Even though the details are murky, it seems that a local Vietnamese official named Phan Hoãng Diệu (潘宏耀) coordinated with (*xietong*) Qing authorities on the arrest of these Qing fugitives. Reporting on the arrest of the fugitives, Liangguang provincial officials recommended to the Qianlong emperor that Phan Hong Dieu be rewarded for his sincere service (*shixin xiaoli*).<sup>16</sup>

Even the dynastic transition in Vietnam from the Lê/Trịnh regime (1592-1788) to the Tây Sơn regime (1788-1802) did not change Qing expectations. In 1791, for example, a Qing crackdown on a group of pirates in Yazhou (崖州) department, Guangdong, revealed that many pirates were based in Quảng Nam (廣南), on the south central coast of modern Vietnam. Fuk'anggan (福康安; d. 1796), the governor-general of Liangguang, made two formal requests to Nguyễn Huệ (阮惠; r. 1788-92), the Tây Sơn ruler, to capture these pirates if possible or else drive them back toward the Qing seas. Huệ, recently recognized by the Qing court as the king of Annam, put on a show of cooperation by entrusting his trusted general Ngô Văn Sở (吳文楚; d. 1795) with the task. Soon, a Tây Sơn officer named Lê Văn Nhận (黎文認) came to Guangdong to hand over two pirates and report on the killing of 20 more. The extradited pirates were promptly executed, and Nguyễn Huệ, Sở, and Nhận were all rewarded by the Qianlong emperor for their service to the Qing state.<sup>17</sup>

What the Qing court did not realize, however, was that the Tây Sơn court was the sponsor of these pirates. In other words, these pirates, while fugitives from the Qing perspective,

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<sup>16</sup> QSL, Gaozong 430: 622-623a (QL18.1.9=2/11/1753), 431: 638a (QL18.1.30=3/4/1753), 435: 684a (QL18.3.29=5/2/1753).

<sup>17</sup> QSL, Gaozong, 1370: 380b-381a (QL56.1.9=2/11/1791), 1372: 419b-420a (QL56.2.14=3/18/1791), 1380: 517a-518a (QL56.6.4=7/4/1791), 1381: 531a-b (QL56.6.22=7/22/1791), 1388: 634b-635a (QL56.10.3=10/29/1791).

maintained patron-client relations with Tây Sơn ruler Nguyễn Huệ. As such, the Qing court could not count the Tây Sơn court as a reliable partner in repatriating these pirates. In the next section, I will analyze the dynastic transition from the Tây Sơn regime (1788-1802) to the Nguyễn regime (1802-1945) with a focus on this issue.

## *2. From Tây Sơn Dereliction of Duty to Nguyễn Cooperation*

Thanks to Dian Murray's work on the pirates of the South China Coast, we now know a good deal more about the relationship between these pirates and the Tây Sơn regime than did the Qing court of 1791. However, the Qing court gradually learned of Tây Sơn complicity in this piracy problem. As the Qing court learned more, it became increasingly frustrated with the Tây Sơn regime. Analyzing this Qing change of attitude will reveal that, from the Qing perspective, repatriation of fugitives was a major duty of a tributary state like Vietnam. We will start, though, by examining the roots of piracy in this time and place.

Because of geographical and economic factors that made piracy lucrative, pirates had always been active on a large scale in Sino-Vietnamese waters, with Giang Bình (江坪) acting as headquarters. Until 1790, however, piracy was still more of a survival strategy employed by residents of these waters on a short-term basis. The impetus for the growth of piracy had to come from outside, and the Tây Sơn uprising acted as the catalyst for the spectacular increase in piracy from 1790 to 1810. The Tây Sơn state sponsored the Chinese pirates in a systematic manner, providing them with a safe headquarters and protected bases of operation and establishing patron-client relations with pirate leaders through the granting of noble statuses and military ranks. By the mid-1790s, piracy in these waters had become a full-time career for many, and its

system was so well established that it went on to survive even after the defeat of the Tây Sơn regime by the Nguyễn regime.<sup>18</sup>

By 1796, provincial officials of Guangdong and Fujian were already suspecting Tây Sơn complicity in the piracy. In a November 1796 memorial, for example, Liangguang governor-general Giking (吉慶; d. 1802) reported how the pirates were hiding in Vietnam. Instead of asking the new Tây Sơn ruler, Nguyễn Quang Toàn (阮光纘; r. 1792-1802), for their repatriation, however, Giking suggested concealing the matter from him in case he was the one hiding them.<sup>19</sup> These suspicions deepened as more pirates were interrogated and more evidence accumulated. A month later, for example, Qing provincial officials found the seals granted to pirate leaders by Nguyễn Quang Toàn.<sup>20</sup> After this point, even Tây Sơn gestures of cooperation, such as the repatriation of 63 pirates from Giang Bình in summer 1797, could not completely erase the Qing court's distrust.<sup>21</sup>

By 1801, the evidence against the Tây Sơn regime was irrefutable. The surrender of Chen Tianbao (陳添保), one of the chief pirate leaders, was a watershed moment in that sense. Chen, upon his surrender, handed over seals and edicts that he had received from the Tây Sơn rulers and confessed to having received a military rank from Nguyễn Huệ. Reports on this matter caused the final shift of attitude in the Qing court, as can be seen in a December 1801 edict to the Grand Council. In the edict, the Jiaqing emperor commented that the Tây Sơn court had been

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<sup>18</sup> Dian Murray, *Pirates of the South China Coast, 1790-1810* (Stanford, CA: Stanford University Press, 1987), 6-56.

<sup>19</sup> QSL, Renzong 11: 173b-174a (JQ1.11.21=12/19/1796).

<sup>20</sup> QSL, Renzong 13: 192b-193a (JQ2.1.9=2/5/1797).

<sup>21</sup> QSL, Renzong 17: 225a-b (JQ2.5.1=5/26/1797), 18: 239b (JQ2.6.15=7/9/1797); GZD 404002334 (Giking; JQ2.4.16=5/12/1797), GZD 404002368 (Zhang Chengji; JQ2.4.24=5/20/1797), GZD 404002481 (Zhang Chengji and Chen Dawen; JQ2.5.16=6/10/1797).

responsible for piracy from the very beginning. Given the imperial favor Nguyễn Huệ had received from the Qianlong emperor, Jiaqing stressed, this behavior was even more reprehensible. Even though this type of behavior should be punished with a punitive expedition, Jiaqing also noted that the Tây Sơn regime was on the brink of destruction by Nguyễn Phúc Ánh (阮福映), the last descendant of the Nguyễn lords that had ruled southern Vietnam before the Tây Sơn brothers. Thus, there was no need for a campaign, but neither was there a need to communicate with Nguyễn Quang Toản for him to repent and change his ways.<sup>22</sup>

Indeed, the Tây Sơn regime soon collapsed, and Nguyễn Phúc Ánh, the future Gia Long emperor (嘉隆; r. 1802-20), began negotiating with the Jiaqing emperor for the establishment of a tributary relationship. Significantly, one of the first things that the Nguyễn lord did upon the collapse of the Tây Sơn regime was to repatriate Mo Guanfu (莫觀扶) and two other pirate leaders to Guangdong. In a September 1802 edict responding to this turn of events, the Jiaqing emperor contrasted the Tây Sơn rulers and Nguyễn Phúc Ánh. Tây Sơn rulers, despite their positions as tributary kings and despite many edicts, had not only failed to capture and repatriate pirates but also had given them refuge and ranks. Now, Tây Sơn ruler Nguyễn Quang Toản had abandoned his state and lost the seal (*chiyin*) that his father had received from the Qianlong emperor. Nguyễn ruler Nguyễn Phúc Ánh, on the other hand, had respectfully handed over the seal of the Tây Sơn state as well as capturing and repatriating these pirates. Nguyễn Phúc Ánh, Jiaqing remarked, understood the principle of “serving the great” (*shi da*) and was completely sincere in his behavior.<sup>23</sup>

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<sup>22</sup> QSL, Renzong 89: 172b-173a (JQ6.10.18=11/23/1801), 90: 199b-200b (JQ6.11.14=12/29/1801); GZD 404006211 (Giking and Hüturi; JQ6.9.23=10/30/1801), GZD 404006453 (Giking and Hüturi; JQ6.10.22=11/27/1801).

<sup>23</sup> QSL, Renzong 102: 361a-362b (JQ7.8.6=9/2/1802); GZD 404008517 (Giking and Hüturi; JQ7.7.14=8/11/1802).

Of course, it was in the Nguyễn lord's interest to go after these formidable allies of the Tây Sơn regime in the first place, but his continued campaign against the pirates as well as his repatriation of Qing pirates pleased the Qing court. The repatriation of 11 Qing pirates to Guangdong by a Nguyễn official in September 1802, for example, was met by positive reaction from Guangdong provincial officials and the Jiaqing emperor.<sup>24</sup> By August 1803, the Qing court had recognized Nguyễn Phúc Ánh as the king of Việt Nam (Ch. *Yuenan*), beginning a new tributary relationship between the Qing court and the Nguyễn court.<sup>25</sup> The establishment of this relationship marked the return to the status quo from the Qing perspective. The Qing state could again expect a certain level of cooperation from the Vietnamese state regarding Qing fugitives entering the Vietnamese domain.

Three events during the Jiaqing and Daoguang (1821-1850) reigns illustrate this point. In 1808, the Qing state was still suppressing the pirate confederation organized by pirates formerly in the service of the Tây Sơn regime. In accordance with imperial edicts requesting assistance, the Nguyễn court captured and repatriated 50 some pirates to Guangxi.<sup>26</sup> In 1833, while the Guangdong provincial officials were suppressing Sino-Vietnamese pirates based in the Gulf of Tonkin, the Nguyễn state answered a request from Lu Kun (盧坤; 1772-1835), the Liangguang

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<sup>24</sup> GZD 404008714 (Giking; JQ7.8.11=9/7/1802), 404008752 (Giking; JQ7.8.16=9/12/1802), 404009181 (Giking and Hūturi; JQ7.9.7=10/3/1802), 404008978 (Giking and Hūturi; JQ7.10.11=11/6/1802).

<sup>25</sup> QSL, Renzong, 115: 528b-529a (JQ8.6.26=8/13/1803). The state title of Việt Nam was a compromise between Nguyễn Phúc Anh, who wished to name his state Nam Việt, and the Jiaqing emperor. See Baldanza, *Ming China and Vietnam*, 1-11.

<sup>26</sup> QSL Renzong 199: 646b-647a (JQ13.7.27=9/17/1808), 201: 678a-b (JQ13.9.21=11/9/1808); GZD 404011878 (Wu Xionguang and Sun Yuting; JQ13.8.29=10/18/1808), 404012311 (Wu Xionguang and Sun Yuting; JQ13.10.27=12/14/1808).



governor-general, for coordinated action against these interstate pirates and for the repatriation of pirates who were hiding in Vietnamese waters.<sup>27</sup>

Finally, in 1843, the Nguyễn state captured Jin Erji (金二紀) and seven other Qing pirates who had drifted into Vietnamese seas and repatriated them to Guangdong, even without a request from the Qing state. There seems to have been an economic motive, as the Nguyễn official in charge of the repatriation demanded the privilege of duty-free trade in Guangdong and that demand was granted.<sup>28</sup> Similarly, Choi Byung Wook, in a recent study, has shown that the annual Nguyễn “court vessel journeys” to Guangzhou from the 1820s to the 1840s constituted the second route of interstate Qing-Nguyễn interactions along with the Nguyễn tributary visit to Beijing.<sup>29</sup> In light of the emphasis that the Nguyễn court put on the official voyage to Guangzhou, this repatriation could have served as an excuse for another voyage to Guangzhou and the economic, social, and political opportunities that came with it.

Whatever the motive was, the Nguyễn repatriation of Qing fugitives fulfilled the Qing expectation that a proper tributary ruler would repatriate Qing fugitives within his domain. The Qing state, for the most part, itself repatriated Vietnamese fugitives within the Qing domain. As far as repatriation of the fugitives is concerned, there existed reciprocity and symmetry between the two states. As we will see, however, interstate jurisdiction over Qing criminals and Vietnamese criminals was in an asymmetric relationship. In the next two sections, I am going to demonstrate that asymmetry by first showing how the Qing state sought to retain its monopoly

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<sup>27</sup> QSL Xuanzong 230: 440b-441b (DG13.1.18), 233: 484b-485b (DG13.3.1), 234: 505b-506b (DG13.3.25); JJCD 063000 (Lu Kun and Zhu Guizhen; DG13.3.4/13.3.25).

<sup>28</sup> QSL Xuanzong 395: 1090b-1091a (DG23.i7.23=9/16/1843), 395: 1093b (DG23.i7.28=9/21/1843), 401: 4b (DG24.1.8=2/25/1844).

<sup>29</sup> Ch'oe Pyŏng-uk (Choi Byung Wook), “19-segi Pet'ŭnam kwansŏn ūi Kwangdong wangnae simal,” *Tongnam Asia yŏn'gu* 21, no. 3 (2011): 1-42.

on jurisdiction over Qing criminals and then illustrating how the Qing state did not acknowledge the Vietnamese monopoly on jurisdiction over Vietnamese criminals.

### III. Personal Jurisdiction over Qing Criminals

#### **A. “Extraterritoriality” of Qing Subjects in the Vietnamese Domain**

As we saw above, the Qing state sought to monopolize control over its subjects by requiring the Vietnamese state to repatriate Qing fugitives. The Qing state had a similar expectation for Qing subjects who committed crimes in the Vietnamese domain. Even as it recognized that the crime had taken place outside its domain, the Qing state still insisted that the proper thing for the tributary ruler of Vietnam to do was to repatriate these Qing subjects to be tried and punished by the Qing judiciary. In short, the Qing state emphasized the personal principle of jurisdiction and insisted on maintaining jurisdiction over its subjects even beyond its territorial boundaries. As we will see below, this Qing expectation often met with the cooperation of various Vietnamese regimes that maintained tributary relations with Qing from the 1660s to the 1840s.

##### *1. Vietnamese Repatriation of Qing Criminals*

For the most part, Vietnamese regimes from the 1660s to the 1840s did not openly claim jurisdiction over Qing subjects who committed crimes in the Vietnamese domain. After arresting Qing subjects suspected of criminal activities, Vietnamese authorities would first interrogate them to determine their culpability. Those who were deemed innocent or petty criminals were released. Those found guilty, however, were repatriated to three Qing provinces bordering

Vietnam—Guangdong, Guangxi, and Yunnan—with Qing provincial officials notified in advance. By repatriating these criminals, the Vietnamese state surrendered jurisdiction, as it had no way of participating in the trials of the Qing suspects turned over to the Qing state. The Qing state usually did notify the Vietnamese state of the outcome of the trials, but even that could not be taken for granted. We might even venture to say that Qing subjects enjoyed an extraterritorial status in Vietnam during the period in question.

Such a status is even more astounding when we consider the wide range of criminal activities that Qing subjects were engaged in the Vietnamese domain. The details of the illicit activities in which Qing subjects engaged in the Vietnamese domain reveal the Vietnamese state's tenuous reach over this borderland. As we have seen in chapter four, this was a borderland that belonged to the region known as “Zomia,” the highland region at altitudes above 300 meters stretching all the way from the Qing-Vietnam borderland to northeastern India. As James Scott has shown, this is the largest remaining region of the world outside the reach of the modern nation-state, populated by those who made the political choice of leaving the state cores of lowland river valleys. It is no wonder then that the Qing-Vietnam borderland, part of this Zomia, was much farther outside the reach of state cores than the Qing-Korea borderland.<sup>30</sup>

At one extreme, there were Qing subjects involved in rebellions against the Vietnamese court or in banditry. In 1753, Lê Hiến Tông repatriated Yang Xingxiu (梁行修) for his role in a rebellion against the Lê/Trịnh regime.<sup>31</sup> In 1758, Lê Hiến Tông repatriated Zhang Funeng (張甫能) and Wang Budu (王布督), bandit leaders based in far northern Vietnam. While thirty-some

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<sup>30</sup> James C. Scott, *The Art of Not Being Governed: An Anarchist History of Upland Southeast Asia* (New Haven: Yale University Press, 2009).

<sup>31</sup> QSL, Gaozong, 445: 793a (QL18.8.20=9/16/1753).

subordinates of theirs had also been arrested and interrogated, the Vietnamese court had freed them with only a light warning, considering them unwilling accomplices.<sup>32</sup> In 1763, a group of bandits led by Yang Yadao (楊亞道) was apprehended by Vietnamese authorities for robbing and murdering three Qing subjects in the Vietnamese domain the year before. Lê Hiến Tông repatriated them to Guangxi in 1764.<sup>33</sup> These instances of repatriation are remarkable due to the nature of these acts—violence aimed against the Vietnamese state—as well as the fact that both banditry and rebellion were punishable by death under Lê law.<sup>34</sup>

Violence was an endemic part of this borderland. One phenomenon of violence that became commonplace in eighteenth-century South China was large-scale armed feuds (*xiedou*) between groups organized along the lines of ethnicity, lineage, and other markers of identity.<sup>35</sup> When Qing sojourners from this region came to Vietnam searching for work, they sometimes recreated these feuds in their host society. Events in Tống Tinh (送星), a silver mine in the far northern province of Thái Nguyên (太原), provide perfect examples. Vietnamese sources depict a world of anarchy and violence at Tống Tinh, where some 10,000 Qing subjects sojourned. Most of these miners came from Chaozhou (潮州) and Shaozhou (韶州) prefectures in Guangdong, and fighting and killing among them was commonplace. The Vietnamese court, however, did not intervene as long as they paid their taxes. In 1767, however, following the

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<sup>32</sup> QSL, Gaozong, 567: 195a-b (QL23.7.26=8/29/1758).

<sup>33</sup> QSL, Gaozong, 715: 973b (QL29.7.16=8/13/1764); GZD 403018071 (Su-chang; QL29.6.13=7/11/1764).

<sup>34</sup> Nguyễn Ngọc Huy and Tạ Văn Tài, *The Lê Code: Law in Traditional Vietnam* (Athens, OH: Ohio University Press, 1987), Volume II: 23, 239, 242, 249.

<sup>35</sup> Stevan Harrell, “From Xiedou to Yijun, the Decline of Ethnicity in Northern Taiwan, 1885-1895,” *Late Imperial China* 11, no. 1 (1990): 99–127; Liu Guoliang, *Zuqun xiedou zhong xingfa quanwei de xukong: Yi Hainan Lizu zuqun xiedou weili* (Beijing: Falü chubanshe, 2013).

proposal of the Thái Nguyễn official Ngô Thì Sĩ (吳時仕; 1726-80), the Vietnamese state began to intervene more actively in the lives of these miners.<sup>36</sup>

The very same year, in 1767, an armed conflict among Qing miners at Tống Tinh grabbed the attention of Vietnamese authorities. The attack, led by Zhang Renfu (張任富) and involving more than 100 miners, had left Gu Lao'er (古老二) and eight people dead, with even more injured.<sup>37</sup> The year 1774 saw an even bigger and more fatal feud among the Qing miners at Tống Tinh. According to the Vietnamese sources, this was a dispute between the two main lineages of the Qing miners: the Zhang and the Gu. The details of the previous case suggest some continuity, and we may assume that this was an ongoing conflict at this mine. The Vietnamese authorities apprehended 18 miners, including Zhang Deyu (張德裕), Li Qiaoguang (李喬光), and Gu Tangyu (古宇湯), as the main instigators and expelled all Chinese workers from the mine. Reports from Liangguang and Yunnan record about 2,000 miners in all returning there due to this case.<sup>38</sup> In both cases, Lê Hiến Tông repatriated the main instigators to Guangxi.

Other criminal cases point to the high mobility of this Qing sojourner community in northern Vietnam. A murder case from 1775 provides a vivid portrayal of this community. Li Qizhen (黎奇珍), a long-time sojourner in Lạng Sơn (諒山), the far northern Vietnamese province bordering Guangxi, visited a fellow sojourner named Xie Ganru (謝幹孺) to collect his debt. When the two got in an argument, Xie accused Li of having kidnapped Lin Yamei (林亞妹), Li's new wife, and threatened to report this to the Vietnamese authorities. In fact, Lin

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<sup>36</sup> Wills, Jr., "Functional, Not Fossilized," 467-70; DSZ 3: 1163-4.

<sup>37</sup> GZD 403023764 (Li Shiyao and Junggin; QL32.12.22=2/10/1768).

<sup>38</sup> QSL, Gaozong, 988: 187a-189b (QL40.8.8=9/2/1775); DSZ 3: 1181.

had fled her abusive husband in Guangxi and married Li while staying at the house of Ma Ya'er (馬亞二), another Guangxi native. Li, enraged and terrified by Xie's threat, killed Xie after plotting the murder with a few friends and ambushing Xie on the road. This case was reported to the local official in Văn Uyên (文淵), and two relatives of the victim also visited the official to help with the investigation. Li and the two relatives of the victim were sent to the Lạng Sơn governor for interrogation. Afterwards, Li was repatriated to Guangdong by the command of Lê Hiến Tông. Lin and Ma were also arrested after evading Vietnamese authorities for a year and repatriated.<sup>39</sup>

Vietnam detected other crimes committed by Qing subjects as well. In 1762, for example, Li Guang (李光) and Li Shijue (李仕爵) were arrested in Vietnam after extorting money from various people on the pretense that they were on official Qing business. They were repatriated to Guangxi by a local Vietnamese official.<sup>40</sup> In 1773, Huang Longyun (黃龍雲) and two others entered the far northern province of Hưng Hóa (興化) pretending to be *yamen* (government office) runners from the Yunnan surveillance commissioner's office on a mission to arrest two Qing fugitives. After extorting money from several groups of people, they were arrested and interrogated. He Wanzhu (何萬珠) and Cai Xinrui (蔡辛瑞), who were implicated in a separate extortion case, were also arrested and interrogated. All five criminals were repatriated to Shuikou Gate (水口關) at the Vietnam-Guangxi border at the order of Lê Hiến Tông.<sup>41</sup> Shortly

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<sup>39</sup> QSL, Gaozong, 993: 264b-265a (QL40.10.20=11/12/1775); SLXK, 25: 913a-914b (Li Shiyao; QL40.i10.16=12/8/1775), 40: 725-6 (Li Shiyao; QL40.10.10=11/2/1775), 40: 726-32 (Xiong Xuepeng; QL40.11.21=1/11/1776).

<sup>40</sup> GZD, 403018940 (Xiong Xuepeng; QL27.i5.22=7/13/1762).

<sup>41</sup> QSL, Gaozong, 937: 609b-610a (QL38.6.17=8/5/1773), 940:703a-704a (QL38.8.11=9/26/1773); GZD 403026943 (Jangboo and Li Hu; QL38.11.1=12/14/1773).

afterwards, Yao Guoqin (姚國欽) and nine others were arrested in Hung Hóa after rescuing Qing criminals in the custody of Sơn La (山羅) authorities by force, a flagrant show of disrespect to the Vietnamese judiciary. All ten were repatriated to Guangdong.<sup>42</sup>

## 2. *Qing Fugitives from Vietnamese Law Apprehended in the Qing Domain*

At this point, it is worth emphasizing that the Qing and Vietnamese judiciaries had major disagreements in their legal interpretations of the movement of people across the state boundaries. The Vietnamese state did not view the migration of Qing subjects into Vietnam as an illegal act. In fact, the cases above paint a picture of vibrant Qing sojourner communities in far northern Vietnam during the eighteenth century. This view conforms with Li Tana's recent study on northern Vietnam, in which she considers mountain market towns in the Qing-Vietnam borderland as well as maritime networks.<sup>43</sup> If these sojourners did not cause trouble, they seem to have been able to live their lives in northern Vietnam without much interference from the Vietnamese state. The level of freedom accorded to them even prompted one Lê official to comment, regarding the Qing miners at Tống Tinh: "Guest people, that is, Qing subjects, shave their heads, wear their attire, and return home after gathering silver, contributing nothing to our state."<sup>44</sup> It was not until they committed crimes that they were considered criminals to be repatriated to Qing.

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<sup>42</sup> QSL, Gaozong, 948: 844b-845a (QL38.12.5=1/16/1774); GZD 403026961 (Li Shiyao and De-bao; QL38.11.2=12/15/1773).

<sup>43</sup> Li Tana, "Between Mountains and the Sea: Trades in Early Nineteenth-Century Northern Vietnam," *Journal of Vietnamese Studies* 7, no. 2 (2012): 67–86.

<sup>44</sup> DSZ 3: 1181.

As Philip Kuhn and Diana Lary pointed out in their studies on migration in Chinese history, however, Qing law considered all intentional crossing of boundaries not endorsed by the state to be illegal.<sup>45</sup> Thus, the Qing judiciary considered all movement of Qing subjects into Vietnam without prior authorization as illegal. As a result, some Qing sojourners who eluded the Vietnamese judiciary were arrested by Qing border officials on their way back into the Qing domain. The Qing judiciary handled these cases unilaterally, even though the criminal activities had happened within the Vietnamese domain.

Because of the legal discrepancy, the Qing judiciary sometimes got its hands on otherwise innocent travelers who had committed no criminal acts in Vietnam. For example, in the Zhang Funeng case (1758), even though the subordinates of Zhang and Wang Budu were released by the Vietnam judiciary, the Qianlong emperor still considered them bandits who could not be allowed to stay in Vietnam. Thus he ordered the Yun-Gui governor-general Li Shiyao to notify Lê Hiến Tông to arrest and repatriate them to Guangdong. There they would be tried and sent to Barkol (巴里坤), Xinjiang, and a few other places to be put under the strict supervision of local officials. While the sources do not tell us whether this repatriation ever happened, these conflicting legal views across the boundary highlight the interaction between the two different legal interpretations.<sup>46</sup> In short, the Qing court always expected to get its way in trying and punishing its own subjects.

A case in 1738 provides another example of unilateral action by the Qing judiciary. This case involved some Hakkas living in Qiongzhou (瓊州) prefecture, Guangdong—today's Hainan

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<sup>45</sup> Philip A. Kuhn, *Chinese Among Others: Emigration in Modern Times* (Lanham, MD: Rowman & Littlefield, 2008), 17-25; Diana Lary, *Chinese Migrations: The Movement of People, Goods, and Ideas over Four Millennia* (Lanham, MD: Rowman & Littlefield, 2012), 75-89.

<sup>46</sup> QSL, Gaozong, 567: 195a-b (QL23.7.26=8/29/1758).



Island—kidnapping and trafficking in Vietnamese men, women, and children. As Li Tana has pointed out, traffic in slaves was a mainstay of regional trade in the waters of the Gulf of Tonkin area in the twelfth and thirteenth centuries.<sup>47</sup> This illicit trade seems to have continued onto the eighteenth century. After being reported to on the matter, the Qing court took charge of the trial, not notifying Lê Ý Tông (黎懿宗; r.1735-40) until after the trial, even though these criminals had committed crimes against Vietnamese subjects on Vietnamese soil.<sup>48</sup>

We do have one case that suggests Vietnamese jurisdiction over Qing subjects was a possibility, at least in the mind of one Qing official. In 1742, Ye Zhen (葉蓁) and Zhou Laoliu (周老六) were arrested while trying to enter Guangxi from Lạng Sơn. Tan Xingyi (譚行義; d. 1753), the provincial military commander (*tidu*) of Guangxi, accused them of training Lạng Sơn rebels led by the Lộc Bình (祿平) native official Vi Phúc Quan (韋福瑄) and recommended that they be either executed at the border or sent to Vietnam to be tried there.<sup>49</sup> The Qianlong emperor, however, ignored Tan's recommendation, instead delegating the trial to the Liangguang governor-general and the Guangxi governor. After interrogation, they determined that the two suspects had not played significant roles in the rebellion and released them.<sup>50</sup>

Tan Xingyi's suggestion was an exception. The norm for Qing criminals arrested in the Qing domain continued to be their trial and punishment by the Qing judiciary. In 1743, Zhou Daonan (周道南) and two other Qing subjects were arrested in Guangxi after helping Mạc

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<sup>47</sup> Li Tana, "A View from the Sea: Perspectives on the Northern and Central Vietnamese Coast," *Journal of Southeast Asian Studies* 37, no. 1 (2006): 86-8.

<sup>48</sup> QSL, Gaozong, 70: 121a-b (QL3.6.1=7/17/1738).

<sup>49</sup> QSL, Qianlong, 168: 136a-b (QL7.6.12=7/13/1742); Yang Xifu, *Sizhitang wenji* (SZTWJ), 5: 14-6

<sup>50</sup> QSL, Gaozong, 173: 227a (QL7.8.30=9/28/1742); SZTWJ, 5: 14-6.

Khang Võ's (莫康武) rebellion in Bảo Lạc. After the initial interrogation by Yang Xifu (楊錫紱; 1701-68), the Guangxi governor, they were kept in prison so that they might be tried after more arrests were made.<sup>51</sup> Later the same year, Lu Ying (盧英) and Lin Pengming (林鵬鳴) were arrested in Guangxi after having served as officials for the Vietnamese rebel He Duong (矣揚). They were imprisoned until their confederates were arrested so that all might be tried together.<sup>52</sup> In 1776, 72 natives of Chaozhou (潮州) prefecture, Guangdong, led by Li Aji (李阿集) were arrested in Guangdong after serving Nguyễn Nhạc (阮岳; 1753-93), the eldest Tây Sơn brother, in the Tây Sơn uprising and engaging in piracy against the Lê/Trịnh troops.<sup>53</sup>

In all cases, there was neither a Vietnamese request for the extradition of these Qing criminals nor any suggestion for their repatriation from among the Qing provincial officials and the Qing court. In short, the norm was clearly Qing monopoly on jurisdiction for Qing criminals who committed crimes in the Vietnamese domain whether they were apprehended in Qing or Vietnamese domains.

## **B. Imperial Justice for All: Between Summary Executions and Regular Trials**

The Qing monopoly of jurisdiction over Qing criminals, however, did not result in leniency. In his study on Qing jurisdiction over Europeans in Guangzhou and Macau, R. Randle Edwards pointed out that even Europeans were generally satisfied with Qing handling of cases

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<sup>51</sup> QSL, Gaozong, 193: 482a (QL8.5.29=7/20/1743); SZTWJ, 5: 26-7.

<sup>52</sup> QSL, Gaozong, 199: 562b-563a (QL8.8.29=10/16/1743).

<sup>53</sup> QSL, Gaozong, 996: 314a-b (QL40.11.7=12/28/1775). It is interesting to note that the Qianlong emperor and his officials believed Nguyễn Nhạc to be a member of the Nguyễn lords (*chua*) of Đàng Trong (塘中; also known as Cochinchina), as they were not yet aware of the new developments regarding the Tây Sóns.

involving Chinese perpetrators.<sup>54</sup> Likewise, the Qing state made sure that its subjects committing crimes in Vietnam would meet swift justice in a manner that served as a warning to future criminals and reassured the Vietnamese state. This imperial justice was served in two main ways: summary executions and regular trials.

### *1. Summary Executions*

In the Zhou Daonan case (1743), summary execution happened because of a miscommunication between the central and provincial governments. When Guangxi governor Yang Xifu reported to the Qianlong emperor on the interrogation of the culprits, who had confessed their involvement with the rebellion of Mạc Khang Vĩ, and recommended having them locked up for further interrogation, Qianlong instructed Yang to make an example out of them with heavy punishment without dragging the case on. Yang mistakenly took it as an order for immediate execution of the culprits and had them beaten to death in Sicheng (泗城) and Zhen'an (鎮安) prefectures without a proper trial. Qianlong later called it a “grave error” on Yang’s part, remarking that he simply meant to speed up the regular judicial process under Qing law.<sup>55</sup>

In all other cases ending in summary execution, however, we can see the Qing state intentionally deciding to execute the Qing subjects who had committed crimes in Vietnam without regular trials. By looking at the Qing rationale for these summary executions, we can see

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<sup>54</sup> R. Randle Edwards, “Ch’ing Legal Jurisdiction over Foreigners,” in *Essays on China’s Legal Tradition*, ed. Jerome Alan Cohen, R. Randle Edwards, and Fu-mei Chang Chen (Princeton: Princeton University Press, 1980), 255-9.

<sup>55</sup> QSL, Gaozong, 193: 482a (QL8.5.29=7/20/1743), 199: 560b-562a (QL8.8.29=10/16/1743), 202: 603b-604a (QL8.10.6=11/21/1743).

the ways that the Qing state conceptualized these interstate cases as fundamentally different from regular criminal cases. As Derk Bodde and Clarence Morris have noted, procedures governing capital cases were not applicable to those cases deemed “outside the law.”<sup>56</sup> Prominent examples of cases outside the law were those involving large-scale banditry, piracy, and rebellion, a categorization which has parallels in many other judicial systems as well.<sup>57</sup>

Take, for example, the Yang Xingxiu case (1753). When Bandi (班第; d. 1755), the acting Liangguang governor-general, reported to the Qianlong emperor on the arrest and extradition of Yang from Vietnam and his plan to escort Yang to Guangdong for a trial, Qianlong specifically ordered Bandi to execute Yang immediately following his repatriation (*jie dao shi ji ying zhengfa*). He gave two reasons. First, immediate execution would also serve as a warning to Qing subjects against crossing into Vietnam and causing trouble. Second, it would appease Lê Vietnam, which had always been respectful and submissive and had now extradited this criminal, not daring to kill him. Since the people of Vietnam were not familiar with the Qing Code (*lǐli*) and thus lacked a deep understanding of the Qing judicial process, immediate execution would suit this occasion better.<sup>58</sup> In fact, this was not entirely true, as both the Lê Code and the Qing Code were based on the Ming Code. But in any case, this was Qianlong’s rationale.<sup>59</sup>

The Qianlong emperor also specifically ordered the summary execution of the culprits in the Zhang Funeng case (1758). Qianlong first praised the action of Lê Hiến Tông: “The king did

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<sup>56</sup> Derk Bodde and Clarence Morris, *Law of Imperial China* (Cambridge, MA: Harvard University Press, 1967), 142-3.

<sup>57</sup> Daniel Heller-Roazen, *The Enemy of All: Piracy and the Law of Nations* (New York: Zone Books, 2009).

<sup>58</sup> QSL, Gaozong, 445: 793a (QL18.8.20=9/16/1753).

<sup>59</sup> Nguyễn, *The Lê Code*; Yu, *Law and Society in Seventeenth and Eighteenth Century Vietnam*.

not immediately punish them and repatriated them to await imperial justice. He should be commended for being so respectful and submissive.” Then Qianlong instructed Li Shiyao, the acting Liangguang governor-general, to appoint an official to oversee the execution of the culprits on the Qing-Vietnam border in the presence of the Vietnamese official who escorted them.<sup>60</sup>

The Qing rationale behind the summary execution of these criminals resembles the Qing attitude towards Qing fishermen from Shengjing and Shandong who caused trouble in the Chosŏn waters. In chapter three, we saw how the Kangxi and Yongzheng emperors considered these fishermen no longer Qing subjects but bandits instead, free to be arrested and punished by the Chosŏn judiciary in theory, though in fact they were always returned to Qing for punishment. Similarly, the Qing sojourners in Vietnam seem to have crossed the line that separated bandits from regular criminals by leaving the Qing domain in an illicit manner and further engaging in criminal activities in a foreign domain.

## 2. Regular Trials

More often, though, these criminals went through the regular judicial process. Qianlong’s August 13, 1764, edict to the Grand Council regarding the Yang Yadao case is perhaps the most elaborate imperial rationale for punishing criminals according to law (*mingzheng dianxing*). As such, it is worth quoting at length: “Qing subjects (*neidi minren*) committing robbery in foreign domains (*yi jing*) cannot escape their crime. But [they should] only be punished in the Qing domain (*neidi*) according to law (*an lü*) and cannot be just executed where they committed

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<sup>60</sup> QSL, Gaozong, 567: 195a-b (QL23.7.26=8/29/1758).

robbery.” He further reasoned that following the usual legal procedures would reinforce Qing law (*guofa de shen*) and acquaint foreigners with imperial justice for future cases of the sort. In insisting on a regular trial, then, Qianlong was asserting at least two judicial principles. First was the principle of personal jurisdiction: Qing criminals, wherever they may have committed their crimes, should only be punished by the Qing judiciary. Second was the principle of routinization. The trial of Yang Yadao and his followers would follow the established Qing judicial process.<sup>61</sup>

What, then, did that process look like? First, the criminals were tried in the provinces of their origin. Often, the provincial officials in charge delegated the initial interrogation to their subordinates before personally interrogating the culprits themselves. In the Zhang Renfu case (1767) above, the culprits were interrogated first by the Guangdong judicial commissioner before they were personally interrogated by Li Shiyao and Junggin (鐘音; d. 1778), the Liangguang governor-general and the Guangdong governor, respectively.<sup>62</sup> In the Yao Guoqin case (1773), the culprits were tried by the surveillance commissioner and provincial administration commissioner of Guangdong first and then by Liangguang governor-general Li Shiyao and Guangdong governor De-bao (德保; 1719-89).<sup>63</sup>

After personal interrogation, the provincial officials would adjudicate on the case. The Qing Code often served as the statutory basis for terms of adjudication. In the Zhang Renfu case above, for example, Li Shiyao and Junggin used two different statutes in the Qing Code to sentence Zhang Renfu to immediate death by beheading, six accomplices to enslavement in Urumchi (烏魯木齊), Xinjiang, and seventeen other accomplices to penal servitude according to

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<sup>61</sup> QSL, Gaozong, 715: 973b (QL29.7.16=8/13/1764).

<sup>62</sup> GZD 403023764 (Li Shiyao and Junggin; QL32.12.22=2/10/1768).

<sup>63</sup> GZD 403026961 (Li Shiyao and De-bao; QL38.11.2=12/15/1773).

the same statute. In sentencing Zhong Nanhua and eleven other accomplices to 100 strokes of beating by heavy bamboo and three years of banishment, however, Li Shiyao and Junggin used the precedent of the Zhang Shanlong (張善籠) case, which I have been unable to verify from my sources.<sup>64</sup> Precedents, however, did often provide statutory bases for these trials on Qing criminals.

Reflecting the Qing sensitivity towards unsanctioned cross-boundary movement, Qing provincial officials habitually sentenced the Qing subjects who committed crimes in Vietnam more harshly than was called for in the Qing Code and precedents. In the Yao Guoqin case (1773), for example, Li Shiyao and De-bao applied a statute on associating with foreign countries or the Miao and engaging in illegal activities to sentence Huang Wenxiang (黃文詳) and seven other accomplices to penal servitude. For the chief criminal Yao Guoqin, however, they mused that Yao's status as a national university student (*jiansheng*) made his crime of secretly entering a foreign domain and causing trouble particularly heinous. As a result, they asked for imperial approval for Yao's immediate execution, explicitly acknowledging that this was a harsher punishment than prescribed by the statute on injuring people that they used in their adjudication.<sup>65</sup>

We see a similar development in the Li Qizhen case (1774-1775), where Li had murdered a man who accused him of having acquired his wife through kidnapping. When Lin Yamei, the wife, and Ma Ya'er, their friend, were repatriated, they and the two relatives of Xie Ganru, the victim, were all summoned to Guangdong to be interrogated personally by Liangguang

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<sup>64</sup> GZD 403023764 (Li Shiyao and Junggin; QL32.12.22=2/10/1768).

<sup>65</sup> The sources do not tell us how the Board reviewed Li's adjudication. See QSL, Gaozong, 948: 844b-845a (QL38.12.5=1/16/1774); GZD 403026961 (Li Shiyao and De-bao; QL38.11.2=12/15/1773).

governor-general Li Shiyao. When Li's interrogation produced confessions that corroborated the original investigation made by Lê Hiến Tông, Li memorialized the Qianlong emperor on his adjudication. Here again, while Li Shiyao followed a statute in the Qing Code in his sentencing of Lin Yamei, he recommended a harsher penalty than usual for Ma because of the nature of his "heinous" crime. Even though Li used the same statute in sentencing Ma, his adjudication of 100 strokes of beating by heavy bamboo and enslavement in Heilongjiang was more severe than 100 strokes of beating by heavy bamboo and life exile of 3,000 *li* dictated by the statute.<sup>66</sup>

Because of specific circumstances of the criminal activities, ruling by analogy was also common. The Qiongzhou Hakkas who were arrested in 1738 for trafficking Vietnamese slaves into the Qing domain were punished in this manner. Because there was no specific statute that could be applied to this case, a statute on kidnapping within China Proper was cited to sentence all criminals to 100 strokes of beating by heavy bamboo and banishment of 3,000 *li*.<sup>67</sup>

Sometimes, the emperor himself devised policies for specific cases from the very beginning of the trial. In these cases, imperial edicts outlining these policies acted as the statutory basis for adjudication. It is tempting to see these as instances of "qadi justice," which Max Weber saw as the antithesis of rule of law, where the dispensation of justice depended on the whim of the judge. As Philip Huang noted, however, it might be more fruitful to go beyond the dichotomy of formalistic and rational "rule of law" and substantive irrational "Oriental despotism." Huang himself took up Weber's idea of "substantive rationality" in conceptualizing

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<sup>66</sup> Li Shiyao sentenced Lin to death by strangulation after the Autumn Assizes by using the statute on a wife fleeing from her husband and then remarrying. QSL, Gaozong, 993: 264b-265a (QL40.10.20=11/12/1775); SLXK, 25: 913a-914b (Li Shiyao; QL40.i10.16=12/8/1775), 40: 725-6 (Li Shiyao; QL40.10.10=11/2/1775), 40: 726-32 (Xiong Xuepeng; QL40.11.21=1/11/1776).

<sup>67</sup> QSL, Gaozong 70: 121a-b (QL3.6.1=7/17/1738).



the Qing legal system, where routinization and imperial authority could coexist.<sup>68</sup> As we saw in chapter three, for example, routinization and imperial ability to create precedents could coexist in interstate law in the Qing tributary world. In any case, we see within these imperial edicts a general drive to make the punishment fit the crime. Two cases from the 1770s provide good examples.

The first example is the case involving about 2,000 miners from the Tóng Tinh mine (1775). For this case, the Qianlong emperor set a general course of action for provincial officials in response to a report that about 320 miners, who had been expelled from the mine by the Vietnamese state, had returned to Guangxi. First, they were to interrogate these miners and separate the criminals who had caused trouble (*qixin zishi zhi fan*) from those driven by poverty (*wuchu mishi*). The trouble-causing criminals were to be handled according to law (*anlü banli*), whereas the others would be settled in various places. They could not be settled in Guangdong or Guangxi, however, as they would revert to their old ways. Instead, they would be sent out to Xinjiang, the Central Asian frontier that was the most recent addition to the Qing empire, to work on military farms (*tun zhong yingsheng*).<sup>69</sup>

In the end, more miners were apprehended after their return to Qing, and about 2,000 miners in all were interrogated by provincial officials. Li Shiyao, the Liangguang governor-general, categorized the miners into four groups and accorded them punishments commensurate with their crimes. 63 miners who had caused trouble (*zishi*) were sent to Ili (伊犁), Xinjiang, to be given as slaves to soldiers stationed there. Another 903 miners who were deemed rough and

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<sup>68</sup> Max Weber, *The Religion of China: Confucianism and Taoism*, trans. Hans H. Gerth (New York: Free Press, 1951); Philip C. C. Huang, *Civil Justice in China, Representation and Practice in the Qing* (Stanford: Stanford University Press, 1996), 223-34.

<sup>69</sup> QSL, Gaozong, 985:149a-150b (QL40.6.28=7/25/1775), 986: 159a-160a (QL40.7.9=8/4/1775).

fierce (*guanghan*) were sent to Urumchi and a few other places to work on military farms (*tuntian chuli*). Further, 807 traders who merely happened to be near the mine were sent to four provinces (Jiangsu, Anhui, Zhejiang, and Henan) to be settled far away from the Qing-Vietnam borderland. Lastly, 208 people who had a permanent residence and means of livelihood were returned to their native places (*yuanji*). Notably, the provincial officials in charge of relocating these people were given imperial orders to arrest those who escaped on the way to their assigned locations and execute them on the spot.<sup>70</sup>

The second example of a policy derived for a specific case is the Li Aji case (1775-1776), where 72 Chaozhou natives had been arrested for serving the Tây Sơn regime. From the outset, the Qianlong emperor ordered Li Shiyao to interrogate the offenders and punish them according to their different degrees of guilt. Those who had a hand in robbing and killing were to be executed immediately. The rest were divided into three groups: those to be sent to Ili as slaves for the Oirats, those to be sent to Urumchi and other places as slaves for the soldiers there, and those to be relocated to provinces outside of Guangdong. Here again, Qianlong ordered the provincial officials to kill on the spot those trying to escape.<sup>71</sup>

Here, it is worthwhile to recall briefly from chapter four how Hoàng Công Toản (黃公纘) and his followers were accepted as Qing subjects and then relocated to Xinjiang. Here, we again see the Qianlong emperor employing a similar tactic to achieve peace in the Qing-Vietnam borderland: relocation of the troublesome borderland residents to Xinjiang, the newest Qing borderland and the farthest from the Qing-Vietnam borderland. The shuffling of its subjects from

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<sup>70</sup> QSL, Gaozong 988: 187a-189b (QL40.8.8=9/2/1775), 989: 210a-b (QL40.8.30=9/24/1775), 992: 248a-b (QL40.10.2=10/25/1775), 994: 281a-b (QL40.i10.5=11/27/1775).

<sup>71</sup> QSL, Gaozong 996: 314a-b (QL40.11.7=12/28/1775), 998: 353b-354a (QL40.12.9=1/29/1776).

Southeast Asia to Central Asia over the distance of thousands of miles says something about the extraordinary size of the Qing empire and the continental scale of the Qing imperial worldview.

What happened after the original adjudication? As mentioned in chapter three, a regular criminal case in the Qing judiciary went through the appellate system. To recap, cases in which punishment was heavier than penal servitude or cases involving homicide were automatically sent to the Board of Punishments for review, while death penalty cases were sent further up to the Three Judicial Offices and the emperor for review.<sup>72</sup>

In these cases, the original adjudication was reviewed by metropolitan offices designated by imperial command. In the Li Guang case (1762) involving extortion, for example, Qianlong delegated the review of the Guangxi governor's adjudication to the Grand Council and the Board of Punishments.<sup>73</sup> For the Huang Longyun and He Wanzhu cases (1773), another extortion case, the adjudication by Yun-Gui governor-general Jangboo and Yunnan governor Li Hu (李湖; d. 1781) was reviewed by the Three Judicial Offices.<sup>74</sup> The emperor reviewed the adjudication for a final time in both cases, and the imperial review was then sent down to the provincial officials so that they could mete out the sentences. This could be a protracted process. The adjudication on the Yang Yadao case was reviewed first by the Board of Punishments and then by the Qianlong

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<sup>72</sup> Bodde and Morris, *Law of Imperial China*, 113-22.

<sup>73</sup> GZD, 403018940 (Xiong Xuepeng; QL27.i5.22=7/13/1762).

<sup>74</sup> Huang Longyun was sentenced to immediate death by beheading according to a statute on spreading hereadical words and agitating feelings. Liu Mingdeng and Wang Yiguan were also sentenced to immediate death by beheading but according to a statute on entering the Miao region without authorization and engaging in bullying. He Wanzhu and Tang Qingbai, He's relative, were sentenced to immediate death by beheading according to a statute on privately entering a foreign domain and, whereas Cai Xinrui was sentenced to death by beheading after the Autumn Assizes according to the same statute. QSL, Gaozong, 937: 609b-610a and 940: 702b-704a; GZD 403026943 (Jangboo and Li Hu; QL38.11.1=12/14/1773), 403026944 (Jangboo and Li Hu; QL38.11.1=12/14/1773).

Emperor, with the result that more than a year had passed between the initial report on their repatriation and their final execution.<sup>75</sup>

As we saw above, one of the main concerns of the Qing state in punishing these criminals after regular trials was to reassure the Vietnamese state of imperial justice. The most common way of reassuring the Vietnamese tributary state was by carrying out the execution in presence of Vietnamese officials. Thus, as soon as the sentence of immediate death by decapitation for Li Guang and Li Shijue was confirmed in 1762, the criminals were escorted to the Shuikou Gate, while Lê Hiến Tông was notified of the execution schedule and instructed to send his official to the Shuikou Gate. The execution took place on June 17th, 1762, outside the Shuikou Gate.<sup>76</sup> For the Yang Yadao case, the Qing judiciary went one step further. The confirmation of the sentence was followed by the escorting of the criminals to the region of Vietnam where they had committed banditry. The three criminals were executed there in presence of Vietnamese officials and subjects, with their heads displayed as a warning to residents on both sides of the border.<sup>77</sup>

### *3. Qing Monopoly of Jurisdiction*

From above, we can see that the Qing state recognized the interstate dimension of these cases. Whether the Qing criminals were punished through summary executions or regular trials, the Qing state recognized the special nature of Qing subjects committing crimes against Vietnamese subjects and/or in the Vietnamese domain. At the same time, the fact remains that these trials were largely unilateral affairs. As soon as the Vietnamese judiciary repatriated Qing

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<sup>75</sup> QSL, Gaozong, 715: 973b (QL29.7.16=8/13/1764); GZD, 403021266 (Song Bangsui; QL30.8.24=10/8/1765).

<sup>76</sup> GZD, 403018940 (Xiong Xuepeng; QL27.i5.22=7/13/1762).

<sup>77</sup> QSL, Gaozong, 715: 973b (QL29.7.16=8/13/1764); GZD, 403021266 (Song Bangsui; QL30.8.24=10/8/1765).

subjects, the Qing judiciary retained its personal jurisdiction over Qing subjects, with no input from the Vietnamese judiciary.

#### **IV. Jurisdiction over Vietnamese Criminals: Between Personal and Territorial Principles**

How, then, did the Qing court deal with Vietnam subjects who committed crimes in the Qing domain or against Qing subjects? As we will see below, the Qing court saw such Vietnamese subjects as its criminals, whose trials and punishments could be determined by the Qing judiciary.

##### **A. Personal Jurisdiction: Repatriation of Vietnamese Criminals**

As we have already seen in chapter three, the Qing prohibition against illegal travel applied to foreigners as well. Consequently, all Vietnamese subjects found in the Qing domain without prior authorization from the Qing state were considered criminal suspects. Upon initial arrest, Qing authorities would interrogate Vietnamese subjects to determine whether they had engaged in further illicit activities while in the Qing domain.

The Qing judiciary repatriated Vietnamese subjects deemed to have harbored no criminal intent. In 1754, Hoàng A Xã (黃亞社) and six other Vietnamese subjects were arrested while performing music and begging for food in Lingyun (凌雲) county, Guangxi. An initial interrogation by the Lingyun authorities revealed all of them to belong to a family originally from Cao Bằng (高平), a Vietnamese province bordering Guangxi. After entering the Qing domain in 1745 to take refuge from the internal strife in Cao Bằng, this family had been wondering about and begging in the Qing borderland for the past nine years. Lingyun authorities concluded that there was no sign that they had engaged in any criminal activity. Agreeing with

this assessment, Guangxi provincial officials decided to repatriate them, merely noting that it was inconvenient to allow these Annamese foreigners (*Annan yi min*) to stay in the Qing domain any longer. Thus, the repatriation of these people was arranged according to precedent, with the Taiping (太平) prefect handing them over to the Cao Bǎng governor at the Shuikou Gate.<sup>78</sup> From this use of precedents, we can tell that the Qing-Vietnamese repatriation process had become a routine matter by 1754.

Not all such cases were so straightforward. In 1778, authorities in Xunhua (宣化) county, Guangxi, arrested two suspicious-looking men named Trần Đình Huyền (陳廷暄) and Nguyễn Văn Phú (阮文富). Upon interrogation by the Xunhua magistrate, they claimed to be servants of the Vietnamese envoy Hồ Sĩ Đống (胡士棟; 1739-85). According to their story, they were told to go back to Vietnam when the tributary embassy entered the Qing domain because the quota for the number of attendants had already been filled. Because they missed their master, the story continued, they had snuck into the Qing domain after shaving their heads (*titou*) and changing into Qing attire (*gaihuan neidi fushi*). To confirm this story, the Xunhua magistrate brought them to the envoy Hồ Sĩ Đống, who recognized them. This case could well have ended here, with the two men returning to Vietnam with the embassy, but this investigation did not satisfy Guangxi governor Wu Hubing (吳虎炳; d. 1779). Afraid that there was more to this incident, he summoned the culprits to interrogate them personally and reported the incident to the Qianlong emperor.<sup>79</sup>

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<sup>78</sup> GZD 403007190 (Li Xiqin, Yang Yingju, and Shi Hongyun; QL19.7.8=8/25/1754).

<sup>79</sup> GZD 403034542 (Wu Hubing; 43.4.2=4/28/1778), JJCD 019529 (Wu Hubing; 43.4.2/43.5.2).

What happened next reveals the two options available to the Qing judiciary regarding Vietnamese subjects deemed to have engaged in criminal activities. In an edict promulgated in reaction to Wu Hubing's palace memorial, Qianlong expressed his displeasure with the initial investigation in Xunhua. He doubted that these two men, who changed their appearance and trespassed into the Qing domain, harbored no criminal intent. According to him, these two could have just concocted a story while meeting with the Vietnamese envoy, since the magistrate had no way of understanding the Vietnamese language. In another edict to the Grand Council, Qianlong even voiced his suspicion that these two might be spies (*jianxi*) from Vietnam. Most importantly, Qianlong decided to exert Qing jurisdiction over this case: "Even if there is no other circumstance, [they] must be retained in the Qing domain (*neidi*) to be punished (*zhi*) according to their crimes (*zui*)."<sup>80</sup> Even though he did add that Lê Hiến Tông should be notified about this, there is no doubt that Qianlong was asserting the principle of territorial jurisdiction here.

Further interrogation by Wu Hubing and his subordinates confirmed Qianlong's suspicion about Trần Đình Huyền and Nguyễn Văn Phú. Even though it was true that they were servants of the Vietnamese envoy Hồ Sĩ Đống, they had entered the Qing domain in pursuit of profit rather than pure devotion to their master. Moreover, they had been aided by Zhou Gui (周貴), whom Wu identified as a Qing subject (*min ren*) but whose great-grandfather had settled in Lạng Sơn. Offering guidance for money, Zhou had shaved the heads of Huyền and Phú, dressed them in Qing attire, and led them personally into the Qing domain. Even though Zhou was still at large, Wu Hubing adjudicated on this case. Wu's adjudication here showed all the characteristics from cases involving Qing subjects committing crimes in Vietnam. Wu used a statute in the Qing

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<sup>80</sup> Gaozong 1056: 109b-110b (QL43.5.2=5/27/1778).

Code on privately going beyond the frontiers into a foreign domain in analogy to sentence Huyên and Phú to death by strangulation after the Autumn Assizes. For Zhou Gui, Wu used a precedent from 1764 on intentionally guiding a runaway bandit and sentenced him to immediate death by strangulation. Moreover, Wu requested imperial permission for the immediate execution of Huyên and Phú so that this case could serve as a warning.<sup>81</sup> There could not be a clearer demonstration of Qing territorial jurisdiction than Wu's adjudication.

It was at this point that Qianlong changed his mind. In his rescript to Wu's memorial, Qianlong transferred the case to the Board of Punishments to be reviewed. In an edict to the Grand Council on Wu's adjudication, Qianlong mused that it was Zhou Gui, not the two Vietnamese criminals, who was the main culprit. He also commented that the guilt of the two criminals, while serious, did not merit death. And then he announced what had purportedly been his intention all along: "We . . . originally wished to let these two men return to Annam (*fahui Annan*) and order the king to punish [them] himself (*zixing zhizui*)." Qianlong asserted this would constitute an act of imperial grace for the traditionally respectful and submissive tributary king of Vietnam. Even if Qianlong's pronouncement was not sincere, this episode still reveals the second course of action that the Qing state could take: repatriating criminals to Vietnam to be punished there.<sup>82</sup>

It is tempting to see the trial of Trần Đình Huyên and Nguyễn Văn Phú as a mere front when we consider that the final imperial approval to repatriate them was given after Lê Hiến Tông had arrested Zhou Gui in Vietnam and agreed to send him to Qing. In fact, Qianlong specifically praised Lê Hiến Tông's action as proper before ordering Wu Hubing to repatriate the

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<sup>81</sup> JJCD 020256 (Wu Hubing; 43.6.15/43.i6.16); *Da Qing huidian shili* (Jiaqing edition) 640: 19b-20a.

<sup>82</sup> QSL, Gaozong, 1061: 179a-180a (QL43.i6.16=8/8/1778), JJCD 020256 (Wu Hubing; 43.6.15/43.i6.16).



Vietnamese criminals to be punished by the king. Was it merely a case of exchanging criminals to be tried in their respective states? While we may never learn the answer to this question, the fact remains that the Qing judiciary was fully capable of asserting jurisdiction in this case.<sup>83</sup> Also, as we will see below, there were a few cases in which the Qing judiciary did follow through and assert jurisdiction over Vietnam subjects.

## **B. Qing Jurisdiction over Vietnamese Criminals: Territorial Jurisdiction and Beyond**

### *1. Extradition of Vietnamese Criminals*

Even when Vietnamese criminals were not arrested in the Qing domain, the Qing judiciary could still try to exert jurisdiction over them by asking the Vietnamese judiciary for their arrest and extradition. It is true that the Qing judiciary had to rely on the cooperation of its Vietnamese counterpart. As we have seen in chapter three and above, such cooperation could not be taken for granted, which made this process more of a two-way negotiation than a one-way imposition. As we will see below, however, the Qing state could use a combination of forceful and conciliatory gestures to bring about the extradition of the Vietnamese criminals to the Qing domain.

In 1753, for example, authorities in Kaihua prefecture, Yunnan arrested a group of Qing subjects who were distributing printed pamphlets urging people to join a fight against the Lê/Trịnh regime. Interrogation by Kaihua authorities revealed that a group of Yao bandits based

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<sup>83</sup> QSL, Gaozong, 1065: 243b-244b (QL43.8.24=10/14/1778), 1086: 594a-595a; JJCD 020744 (Wu Hubing; 43.7.7/43.8.24), 021028 (Wu Hubing; 43.9.9/43.9.24), 022049 (Wu Hubing; 43.11.10/43.12.15), 022409 (Wu Hubing; 43.12.17/44.1.9); GZD 403036201 (Wu Hubing; 43.9.9=10/28/1778), 403037245 (Wu Hubing; 43.12.17=2/3/1779).

in far northern Vietnam was recruiting fighters from among Qing subjects in Kaihua. Astonished that these bandits would ignore the clear boundary between the inner (*nei*, i.e. Qing) and outer (*wai*, i.e. Vietnam) domains, Yun-Gui governor-general Šose (碩色; 1687?-1759) reported this matter to the Qianlong emperor and vowed to get to the bottom of it.<sup>84</sup> Further arrests and investigations followed, but to Šose's dismay, the Yao bandits, including a ringleader named Bàn Đạo Kiềm (盤道鉗), had already fled back to Vietnam. In his reaction to this report, the Qianlong emperor commented that to ignore the matter just because the bandits were in Vietnam would be improper. Then he commanded Šose to communicate with Lê Hiến Tông on their arrest and extradition: “Bàn Đạo Kiềm, originally of Giao Chỉ (*Jiaozhi*), has been lawless in your domain and collaborating (*goujie*) with Qing bandits . . . If Qing dispatches troops to arrest [Ban], [we are] afraid that your state will be disturbed (*gaiguo buwu saodong*). You should pursue and capture [Ban] in haste.”<sup>85</sup> Lê Hiến Tông responded to this thinly-veiled imperial threat, arresting and extraditing Kiềm and Đặng Thịnh Vương (鄧盛王) to Yunnan along with their family members.<sup>86</sup>

In 1760, a group of Vietnamese *sha* bandits (*sha fei*) led by Quan Tam (郡尋) attacked two Yunnan border towns in Yuanjiang (元江) prefecture and returned to Vietnam when Qing soldiers finally came to the rescue. Ai-bi-da (愛必達; d. 1771), the Yun-Gui governor-general, sent a lateral communication to Lê Hiến Tông ordering him to arrest and extradite these bandits. In his memorial to the Qianlong emperor, Ai-bi-da claimed that Vietnam would be apprehensive

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<sup>84</sup> QSL, Gaozong 437: 702b-703a (QL18.4.30=6/1/1753).

<sup>85</sup> QSL, Gaozong 441: 742a (QL18.6.23=7/23/1753).

<sup>86</sup> QSL, Gaozong, 459: 963b (QL19.3.20=4/12/1754); GZD 403005702 (Šose; 19.1.21=2/12/1754), 403006376 (Ai-bi-da; 19.i4.1=5/22/1754).

if he sent out his troops beyond the interstate boundary to chase the bandits. This was not a satisfactory justification to Qianlong, who rebuked Ai-bi-da: “Those entering [i.e. Vietnamese bandits] dared to encroach on the imperial boundary (*gan yue Tianchao zhi jie*), and yet those chasing [them] [i.e. Qing soldiers] would not dare cross the foreign boundary (*bu gan wen waiyi zhi jie*)?”<sup>87</sup> In the end, even though no troops were dispatched from Yunnan, Lê Hiến Tông had ordered the Hưng Hóa governor Đinh Văn Thản (丁文坦) to arrest Quan Tam. A year and a half later, Quan Tam was finally captured in Vietnam, and Lê Hiến Tông extradited him to Yunnan.<sup>88</sup> These two cases show that dispatching troops into the Vietnamese domain was a viable option from the Qing perspective.

In one case, the Vietnamese judiciary almost refused to hand over the suspects. Referred to as the Hoàng Phúc Vệ (黃福衛) case after the name of the main culprit, it started one night in October 1747 when some Vietnamese soldiers approached a border patrol in Guishun (歸順) department, Guangxi, in pursuit of bandits. A few Qing soldiers at the patrol station heard the commotion outside, and a confusing skirmish ensued in the dark, leaving two Qing soldiers dead. Memorials from Guangxi provincial officials all recognized this as an accident. Liangguang governor-general Ts'ereng (策楞; d. 1756), however, still decided to request Lê Hiến Tông for the arrest and extradition of those responsible for the killing according to the precedent set by the Phạm Thuần Hậu (范純厚) case in 1746.

I have been unable to find trial records on the Phạm Thuần Hậu case itself, so the details of this precedent are murky. Apparently, though, the Vietnamese criminals led by Phạm Thuần

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<sup>87</sup> QSL, Gaozong, 609: 845a-b (QL25.3.24=5/9/1760).

<sup>88</sup> QSL, Gaozong, 631: 44b (QL26.2.29=4/4/1761), 645: 223b (QL26.9.30=10/27/1761).

Hậu had injured Qing soldiers and robbed Qing subjects. Lê Hiến Tông eventually arrested and extradited them to Qing, and they were summarily executed on the border. Even though these two cases were not exactly comparable, Ts'ereᅅg explained his decision in the following way: “[This is] a matter of border post (*bian'ai*) and thus of imperial propriety (*Tianchao titong*). Therefore it is inappropriate to regard it as an accident (*wu*).”<sup>89</sup>

But in the Hoàng Phúc Vệ case, four months passed without any sign of extradition. The Qianlong emperor, exasperated, even suggested that Ts'ereᅅg should have kept a few Vietnamese subjects who had come to a Guangxi border post to lodge a complaint on a totally unrelated issue as hostages until the killers were produced. When three more months passed, Ts'ereᅅg recommended in a palace memorial making a show of force if the suspects were not delivered within the next months. His suggestion, however, met with the disapproval of the emperor, who urged caution.<sup>90</sup>

Soon after, a lateral communication from Lê Hiến Tông arrived. Citing the investigation by his officials, Hiến Tông emphasized the accidental nature of the killing. He also argued that following the Phạm Thuần Hậu precedent was unfair, since that case involved pirates who had deliberately committed criminal acts. Appealing to the concept of “treating all peoples equally” (*yishitongren*) and asking for mercy, the king sent 100 taels of silver as compensation instead of extraditing the culprits. We have seen a few cases where the Qing emperor invoked this principle for more favorable results to Vietnamese subjects. But as we have seen in chapter two and as we will see in chapter six, the Qing state did not react well to the appropriation of this imperial rhetoric by its tributaries. In response, Guangdong governor Šulu (舒輅; d. 1752), who was

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<sup>89</sup> QSL, Gaozong 301: 945a-b (QL12.10.29=12/1/1747); JJCD 001492 (Ts'ereᅅg; 12.10.21/12.11.22).

<sup>90</sup> QSL, Gaozong 309: 50b-51a (QL13.2.24=3/22/1748), 315: 184b-185a (QL13.5.29=6/24/1748).

filling in for Ts'ereᅇg at the time, gave Hiểᅇn Tôᅇg an ultimatum. Calling Hiểᅇn Tôᅇg's action extremely improper (*shu fei li*), Šulu asserted that Hiểᅇn Tôᅇg had one month to produce the criminals. In the end, Hiểᅇn Tôᅇg extradited three soldiers who had participated in the killing of the two Qing soldiers to Guangxi.<sup>91</sup>

This case offers a point of comparison to the Lady Hughes case of 1784 in many aspects. First, there is the accidental nature of the killing. The Lady Hughes case started when an honorary salute from a British merchant ship accidentally killed a Qing sailor and wounded another. Qianlong's invocation of the principle of collective responsibility is the next point of similarity. As in the above case, Qianlong held the entire British merchant community in Guangzhou (Canton) responsible, and it ultimately surrendered the culprit under imperial threat. As we will see below, however, the fates of the Vietnamese soldiers and the British gunner would diverge widely.<sup>92</sup>

Perhaps taking this case as a lesson, the Vietnamese judiciary acted much more quickly in a later case of a similar nature. In 1750, a Qing native soldier (*tulian*) from Yunnan named Yi Nian (矣念) crossed into the Vietnamese domain to collect firewood. There he encountered Vietnamese soldiers who had been chasing *sha* bandits (*sha fei*). Since Yi Nian was wearing attire like that worn by the bandits, Vietnamese soldiers mistook him for a bandit and killed him. Even though Yi Nian had died in the Vietnamese domain by mistake, Yun-Gui governor-general Šose made an extradition request to Lê Hiểᅇn Tôᅇg. A Vietnamese soldier named Nguyễn Thế Khôi (阮世魁) was eventually, although with less drama and delay, extradited to Yunnan by a

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<sup>91</sup> QSL, Gaozong, 329: 458a-b (QL13.11.27=1/15/1749); JJCD 003185 (Yue Jun; 13.i7.30/13.9.9), 003315 (Yue Jun; n.d.), 003688 (Yue Jun; 13.10.28/13.12.3), 003739 (Šulu; ?/13.12.13), 003849 (Šulu; n.d.), 003852 (Šulu; n.d.).

<sup>92</sup> Edwards, "Ch'ing Legal Jurisdiction over Foreigners," 238-43; Li Chen, *Chinese Law in Imperial Eyes: Sovereignty, Justice, and Transcultural Politics* (New York: Cambridge University Press, 2016), 25-68.

Vietnamese official.<sup>93</sup> This case shows just how far the reach of Qing jurisdiction could extend over Vietnamese subjects. In making the extradition request, Šose was going even beyond the principle of territorial jurisdiction. Although the criminal act had happened in the Vietnamese domain, the Qing judiciary claimed jurisdiction because the victim was a Qing subject. We might also briefly contrast the Qing nonchalance toward its subjects crossing into the Vietnamese domain to collect firewood with the Qing sensitivity toward Chosŏn subjects logging trees in the Qing domain.

One case from 1763-1764 provides another interesting example. In 1763, Chen Guojian (陳國監) and some 20 Qing subjects from Qinzhou (欽州) department, Guangdong, were robbed by pirates while fishing in the Vietnamese waters near Giang Bình, which borders Qinzhou. Two Qing subjects drowned during this encounter. Even though Qing soldiers from the nearby garrison witnessed the interaction and chased away the pirates, the offenders got away in the end. When the subsequent investigation by local officials revealed that the pirates were Vietnamese subjects who had sailed from Yên Quảng (安廣) on the northeastern coast of Vietnam, Liangguang governor-general Su-chang (蘇昌; d. 1768) took steps to ascertain two key facts: the location of crime and the subjecthood of the culprits. Even when the investigation by his subordinates revealed that the robbery had happened in the Vietnamese domain (*yi jing*) and that there were no Qing subjects among the pirates, Su-chang still demanded that Lê Hiến Tông arrest and extradite the Vietnamese pirates according to the precedent set in the Phạm Thuận Hậu case.<sup>94</sup>

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<sup>93</sup> QSL, Gaozong, 387: 85b-86a (QL16.4.22=5/17/1751); SLXK 40: 1457a-b (Šose; 18.5.29=6/30/1753).

<sup>94</sup> QSL, Gaozong, 700:832b (QL28.12.9=1/11/1764); GZD 403016250 (Su-chang; 28.11.7=12/11/1763).

Again, this is an extraordinary request that went beyond the principle of territorial jurisdiction. How was this position justified? Fortunately for us, Su-chang defended his position at length in his palace memorial. Su-chang did acknowledge that this was a case of foreign pirates (*yi fei*) committing robbery in the foreign domain (*yi jing*). Thus, this could not be on the same level as if these pirates had entered the Qing domain. At the same time, Su-chang emphasized that the victims were Qing subjects. That fact alone, he argued, made this case a matter for the imperial system (*Tianchao tizhi*). Su-chang got his answer from Lê Hiến Tông within three months. Đỗ Kiên Nhất (杜堅一) and 26 pirates had been arrested and confessed to everything, and Lê Hiến Tông would extradite them via the Shuikou Gate.<sup>95</sup>

From the above, we can see that Qing jurisdiction over Vietnamese subjects was based first on the concept of territorial jurisdiction. Unlike in the Qing-Chosŏn borderland, where decades of close interaction between the two courts beginning in the 1630s had created a joint jurisdiction over Chosŏn subjects, the Qing jurisdiction here was mostly unilateral. We can also see that Qing jurisdiction over Vietnamese subjects was much more comprehensive and elastic than the territorial principle of jurisdiction. In the end, all it took to trigger extradition to Qing was for the Qing to construct a certain act by Vietnamese subjects as a crime against the Qing imperial system. Here, we may again recall the early phase of the Qing-Chosŏn legal interactions we saw in chapter three, where any Chosŏn action that the Qing state deemed to be against its interest was constructed as a criminal act and punished as such.

## 2. Qing Handling of Extradited Vietnamese Criminals

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<sup>95</sup> GZD 403016250 (Su-chang; 28.11.7=12/11/1763), 403016748 (Su-chang; 28.12.29=1/31/1764), 403017243 (Su-chang; 29.3.4=4/4/1764).

What happened to these extradited Vietnamese criminals? Some went through an expedited judicial process due to security concerns. In the Đỗ Kiên Nhất case (1763-4), Lê Hiến Tông was the first to suggest immediate execution. In his lateral communication to Su-chang, the Liangguang governor-general, Lê Hiến Tông requested that the 27 extradited pirates be executed on the border according to the Phạm Thuận Hậu precedent, which had been invoked for the extradition process. Su-chang, in turn, recommended executing the Vietnamese pirates immediately after the initial trial for security reasons. Waiting for the appellate review on the case before executing this multitude of criminals, Su-chang reasoned, would leave them at the border passes (*guankou*) for too long. The Qianlong emperor approved Su-chang's request, reasoning that "cases handling foreign bandits and criminals (*waiyi feifan*) cannot be handled in the same way as [those of] the interior (*yu neidi butong*)."<sup>96</sup>

Others were punished after a proper trial. Bàn Đạo Kiên and Đặng Thịnh Vượng, the Vietnamese subjects involved in Yao banditry, as well as their family members, went through a regular judicial process after their extradition in 1754. They were all interrogated by Yun-Gui governor-general Šose. Kiên and Vượng were found to be guilty of plotting a rebellion, collaborating with Qing subjects, and recruiting followers in the Qing domain. Accordingly, Šose sentenced Kiên to death by slicing (*lingchi*), the harshest punishment in the Qing Code, and Vượng to immediate execution by beheading, with both their heads to be displayed as a warning to borderland residents. Their family members, however, were found to have played no role in this affair, and Šose recommended sending them back to Vietnam. Šose's adjudication on

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<sup>96</sup> QSL, Gaozong, 707: 900b (QL29.3.24=4/24/1764); GZD 403017243 (Su-chang; 29.3.4=4/4/1764).



the case, in turn, was reviewed and then affirmed by both the Board of Punishments and the Qianlong emperor.<sup>97</sup>

Going through the regular judicial process could make a crucial difference in whether a Vietnamese criminal lived or died. The Hoàng Phúc Vê case (1747-1749), in which Qing soldiers were mistakenly killed during an accidental skirmish, is perhaps the perfect example. As we have seen above, Lê Hiền Tông requested a pardon for the three culprits even as he was extraditing them to Guangxi. The Qianlong emperor, however, rejected that request and ordered Guangxi provincial officials to proceed with the trial. A crime of this nature, Qianlong reasoned, could not be pardoned, and only after the adjudication would there be a possibility of mitigating the sentence as a special imperial favor. Provincial officials, accordingly, interrogated the criminals and then sentenced all of them to death using specific statutes and substatutes in the Qing Code. Hoàng Phúc Vê and Lý Phúc Trị (李福治), the two soldiers behind the killing, were sentenced to immediate death by beheading according to a substatute on soldiers on campaigns violating law and acting recklessly, with the execution to take place on the border. Nùng Công Phai (農公派), who had cut off the head of a dead Qing soldier, was sentenced to beating and banishment according to a statute on the mutilation of a corpse.<sup>98</sup>

This adjudication was reviewed and confirmed by the Board of Punishments. In his final imperial review, the Qianlong emperor reiterated that these two criminals deserved death. Citing the accidental nature of the crime and the proper conduct of Lê Hiền Tông as grounds for

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<sup>97</sup> QSL, Gaozong, 459: 963b (QL19.3.20=4/12/1754); GZD 403005702 (Šose; QL19.1.21=2/12/1754), 403006376 (Ai-bi-da; QL19.i4.1=5/22/1754). On death by slicing, see Timothy Brook, Jérôme Bourgon, and Gregory Blue, *Death by a Thousand Cuts* (Cambridge, MA: Harvard University Press, 2008).

<sup>98</sup> QSL, 333: 579a-b (QL14.1.29=3/17/1749); JJCD 003739 (Šulu; n.d./13.12.13), 003921 (Wei Wenju; 13.11.25/14.1.21).

leniency, however, Qianlong commuted the death sentences and allowed for their repatriation so that Lê Hiến Tông could punish the criminals on his own.<sup>99</sup> Again, this case offers a very interesting counterpart to the Lady Hughes case, in which the surrendered British culprit was summarily executed. Although the nature of the incident was similar, the result could not have been more different. It was from that point on that the British in Guangzhou refused to submit to Qing jurisdiction.<sup>100</sup> We may remember from chapter three and from above that Chosŏn and Vietnam, both tributary states represented by tributary kings, had more regular systems of interstate law with Qing, with the result that their subjects often had an advantage in the outcome of the trials.

The Nguyễn Thế Khôi case (1751-53), in which a Qing subject collecting firewood in the Vietnamese domain was accidentally killed by the Vietnamese soldier Khôi, was resolved in an analogous manner to the Hoàng Phúc Vệ case. After his extradition to Yunnan, Nguyễn Thế Khôi was tried by Šose and sentenced to death by strangulation after the Autumn Assizes. Šose's adjudication was reviewed and confirmed by the Board of Punishments. Again, however, in his final imperial review, the Qianlong emperor pardoned Nguyễn Thế Khôi from death and allowed Lê Hiến Tông to punish him on his own, citing three factors as grounds for leniency. First, the Qing soldier was in the Vietnamese domain and wearing the same outfit as the *sha* bandits, so Khôi's action was truly accidental. Second, Vietnam had always been a proper tributary state. Third, the Vietnamese official had been prompt in extraditing Khôi. In the end, Nguyễn Thế

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<sup>99</sup> QSL, 341: 715b-716a (QL14.5.20=7/4/1749); JJCD 004006 (Šulu; n.d./QL14.2.17), 004081 (Šose; QL14.2.3/14.3.6).

<sup>100</sup> Edwards, "Ch'ing Legal Jurisdiction over Foreigners," 238-43; Li Chen, *Chinese Law in Imperial Eyes*, 25-68.

Khôi was returned to Vietnam, where he was punished by 40 strokes of beating by a copper club and cashiered according to Vietnamese law.<sup>101</sup>

As in the Trần Đình Huyền case (1778) of the two men claiming to be heartsick for their master, the envoy Hồ Sĩ Đống, however, it is important not to look at these cases as evidence of the Vietnamese judiciary working independently from the Qing judiciary in practice. We need to remember that the repatriation of these Vietnamese criminals was always portrayed as an act of mercy based on the merits of Vietnam as a tributary state. It was not something that the Vietnamese judiciary could take for granted, as is evident from the above cases in which the Qing judiciary did punish Vietnamese subjects. Rather than looking at the resolution of these cases through a dualistic prism of myth and reality, it would be more fruitful to see both imperial and tributary jurisdiction as elastic, the very character that allowed for ample room for variation in the resolution of cases.

## **V. Conclusion**

What can we learn from the interstate legal cases discussed above? The empirical evidence we have from these cases points to the asymmetric status of the Qing and Vietnamese judiciaries when they interacted. Vietnam was, with or without prompts from Qing, giving up its territorial jurisdiction when it repatriated Qing criminals committing crimes on its soil. Vietnamese repatriation of the Qing criminals also meant that the Qing state could maintain jurisdiction over its own subjects even beyond its borders. The Qing state saw that very jurisdiction as something that was inviolable.

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<sup>101</sup> QSL, Gaozong, 387: 85b-86a (QL16.4.22=5/17/1751); SLXK 40: 1457a-b (Šose; QL18.5.29=6/30/1753).

On the other hand, the Qing state perceived the jurisdiction of the Vietnamese king as something that could be given or taken away by the Qing emperor. When the Qing state tried Vietnamese subjects accused of committing crimes against Qing subjects or on Qing soil, it was essentially taking from the Vietnamese king his jurisdiction over his own subjects. In a sense, then, when the Qing state sent Vietnamese criminals back to Vietnam to be tried and punished there, it was only giving back what it had taken.

What we see here are two judiciaries, normally independent of each other, interacting in an asymmetric, hierarchical manner in cases of interstate crime. It is significant that the Vietnamese act of conceding jurisdiction was considered “proper” and “respectful” by the Qing state. Even though we see no treaty or written agreement between the two states on matters of interstate jurisdiction, the Qing and Vietnamese states seem to have shared a set of ideas and practices that were decidedly Qing-centered and mutually binding. This asymmetry and inequality were at the heart of the Qing-Vietnamese relationship, which was but one manifestation of the rule of ritual built into the Qing tributary world. Rather than being merely metaphysical, ritual could have very real consequences in this early modern East Asian world.

## CHAPTER VI.

### Territorial and Personal Boundaries in the Qing-Kokand Borderland, 1760s-1840s

#### I. Introduction

##### A. Qing Conquest of Xinjiang

The Qing conquest of Xinjiang came in three phases. The first phase began in 1755, when the Qianlong emperor (r. 1736-95) sent 50,000 soldiers against the Zunghars led by Dawaci (達瓦齊; r. 1752-55). The Zunghar state, by then, had been suffering from ten years of internal division after the death of the last Zunghar khan Galdan Tseren in 1745. In fact, leading the Qing campaign against Dawaci was Amursana (阿睦爾撒納; d. 1757), the former ally of Dawaci who had submitted to the Qing in 1753. Mainly due to this internal division, the Qing achieved an easy and swift victory over its archnemesis: Dawaci was captured in Ush (烏什), escorted to Beijing, and then coopted into the Qing nobility. What was the Qing state to do with Xinjiang? Despite Amursana's demand that he become khan of the Zunghars, Qianlong had a coherent policy of divide and rule. He planned to divide northern Xinjiang, the center of the Zunghar Khanate also known as Zungharia, among four different rulers including Amursana. Southern Xinjiang, also known as Altishahr ("six cities") and the Tarim Basin, was to be ruled by the brothers Burhan al-Din and Khoja-Jahan, khojas of the Naqshbandi Sufi order whose family had ruled the region before the Zunghars.

The second phase of the Qing conquest began with Amursana's "rebellion" in October 1755. Unhappy with Qianlong's rejection of his demand, Amursana decided to build a khanate

for himself by attacking the Qing forces stationed in Ili (伊犁). Even though Amursana's revolt coincided with the revolt of the Khalkha prince Chingünjav in Mongolia, there was little coordination between the two forces. This lack of coordination would doom both revolts, and the Qing forces were again in control of Zungharia by 1757. Even though Amursana escaped the Qing forces by fleeing to Russia, he died from smallpox in Tobolsk in September 1757. The third phase of the Qing conquest began with the rebellion of the Khoja brothers in Altishahr, which lasted from 1757 to 1759. Thus, by 1759, the Qing state had conquered both Zungharia and Altishahr, which it had planned to rule indirectly through clients.<sup>1</sup>

## B. Qing Xinjiang

Upon its conquest, the Qing state did not incorporate Xinjiang as a regular province in the model of the *junxian* system, subdivided into prefectures and counties. Rather, the administration of the region was an amalgam of different systems—military, *beg*, *junxian*, and *jasak*—coexisting with one another in three regions of Xinjiang: Altishahr, often recorded in Qing sources as *Huibu* (回部; Muslim region) or *Nanlu* (南路; Southern route); Zungharia, often recorded in Qing sources as *Zhunbu* (准部; Zunghar region) or *Beilu* (北路; Northern route); and Eastern March (eastern Xinjiang).<sup>2</sup> Because this study concerns Qing relations with other Central Asian polities, which most often affected Altishahr and, to a degree, Zungharia, I will limit the present survey to those two regions.

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<sup>1</sup> Peter C. Perdue, *China Marches West: The Qing Conquest of Central Eurasia* (Cambridge, MA: Belknap Press of Harvard University Press, 2005), 256-301.

<sup>2</sup> James A. Millward, *Beyond the Pass: Economy, Ethnicity, and Empire in Qing Central Asia, 1759-1864* (Stanford: Stanford University Press, 1998), 150-1.

The military was the most important administrative system in Xinjiang from the perspective of the Qing court, to the extent that Joseph Fletcher has even characterized Xinjiang as a huge garrison under the command of the military governor (*jiangjun*) stationed at Ili in Zungharia. Assisting the military governor were the councilors (*canzan dachen*). Two were stationed in Zungharia, one each in Ili and Tarbagatai. The councilor stationed in Altishahr, often in Kashgar (喀什噶爾) but sometimes in Yarkand (葉爾羌), oversaw Altishahr. Reporting to the councilor were the superintendents (*banshi dachen*) stationed in other major cities of Altishahr and the commandants of the forces (*lingdui dachen*) stationed throughout Xinjiang. Answering to all the officials mentioned above, often collectively called *ambans* (Ch: *dachen*, meaning high officials), were military personnel of the Eight Banners (*baqi*) and Green Standards (*luying*).<sup>3</sup>

Because of the linguistic and cultural gaps between the residents of Xinjiang and the Qing officials stationed there, however, the Qing state incorporated local Muslim elites (*beg*) into its bureaucracy for day-to-day administration of the region, instituting what is often called a *beg* system. At the top of this system were the *hakim beg*, the governor in charge of a city, and the *ishikagha beg*, the assistant governor. Below them were the *begs* whose duties were more specialized, such as the *shang beg* (commerce) and the *qadi beg* (the sharia). These *begs* held Qing bureaucratic ranks ranging from the 3rd to the 7th. Some of them, especially those from Eastern March who had helped the Qing conquest of Xinjiang and their descendants, even held the titles of imperial nobility (*jue*). The court also allowed the *begs* to participate in tributary missions to Beijing (*rujin*) on a regular basis. In these ways, the *begs* and the *ambans* gradually developed an interdependent relationship. Even though the prerogative to memorialize the

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<sup>3</sup> Millward, *Beyond the Pass*, 20-43; Joseph Fletcher, "Ch'ing Inner Asia c. 1800," in John K Fairbank, ed., *The Cambridge History of China, Volume 10, Late Ch'ing, 1800-1911, Part 1* (New York: Cambridge University Press, 1978), 35-106.

emperor was often limited to the *ambans*, they were expected to work in tandem with the *begs* in important matters. Especially in the matters of foreign relations, as we will see in detail below, the *ambans* depended almost entirely on the *begs* to engage in diplomacy and intelligence gathering.<sup>4</sup>

During the 1757-59 Qing campaign against the Khoja brothers (Burhān al-Dīn and Khōja-Jahān) in Altishahr, several Central Asian rulers came to the Qing generals in charge to submit to Qing rule. Among them were the rulers of oasis polities such as Irdana Beg (額爾德尼; r. 1751-70), the ruler of Kokand (Ma: Hoohan; Ch: 霍罕), and the rulers of nomadic tribes such as two Kirghiz (Ma: Burut; Ch: 布魯特) chieftains named Mahmud Quli and Hajji Biy (阿濟比).<sup>5</sup> From the Qing perspective, these newly submitted polities did not qualify as “states” (Ch: *guo*; Ma: *gurun*) comparable to Chosŏn Korea or Lê/Nguyễn Vietnam. They were outer tribes (*tulergi aiman*), dwelling in pastures (*nukte*), and most importantly, ruled and represented by *begs* and *biis*, not kings. The Qing state treated the rulers of such “tribes” as equals of Xinjiang *begs* and subordinate to the Qing *ambans* stationed in Xinjiang. Korean and Vietnamese kings, we might recall, communicated with Qing provincial officials on an equal footing.

Even though Qing regarded Kokand and the Kirghiz as belonging in the same category, there was a substantial difference between the two polities. For one, though Mahmud Quli and Hajji Biy had claimed rule over the Eastern and Western Kirghiz, this was a wildly exaggerated

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<sup>4</sup> L. J. Newby, “The Begs of Xinjiang: Between Two Worlds,” *Bulletin of the School of Oriental and African Studies* 61, no. 2 (1998): 278–97; Kwangmin Kim, *Borderland Capitalism: Turkestan Produce, Qing Silver, and the Birth of an Eastern Market* (Stanford: Stanford University Press, 2016) is a recent study that recognizes a much bigger role that the *beg* played in Qing Xinjiang.

<sup>5</sup> Newby, *The Empire and the Khanate*, 21-44.



claim due to the structure of Kirghiz society. The Kirghiz were pastoral nomads who were divided into tribes (Ma. *aiman* or *otok*), themselves ruled by several different chieftains. In contrast, Kokand was a centralizing polity based in the urban centers of Fergana Valley and was at least nominally under one ruler. By the early nineteenth century, centralizing efforts by Kokand rulers had advanced to the point that they could style themselves as khans ruling over a khanate. This difference would come to play a significant role in Qing relations with its Central Asian neighbors, as Kokand would emerge as the regional player competing with Qing for control over territory and peoples, forcing the Qing state to retreat from its conception of Qing Xinjiang as unbounded and unlimited. The real losers in this contest, however, were the Kirghiz tribes, whose pastures were vulnerable to attempts to regulate and control the steppe frontiers by Qing, Kokand, and then Russian states.<sup>6</sup>

## **II. Territorial Boundaries**

### **A. Karun: The Clearest Territorial Marker**

#### *1. The Karun as the Border Post*

Even though historians have moved away from the modernist concept of sharply defined borders when looking at premodern and early modern state formation and interstate relations, there is still a tendency to look for physical markers of boundaries or documented evidence of

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<sup>6</sup> Russian attempts to colonize the steppe are most well-documented. Cf. Willard Sunderland, *Taming the Wild Field: Colonization and Empire on the Russian Steppe* (Ithaca: Cornell University Press, 2004); Michael Khodarkovsky, *Russia's Steppe Frontier: The Making of a Colonial Empire, 1500-1800* (Bloomington: Indiana University Press, 2002).

them, whether textual or cartographic.<sup>7</sup> In that sense, it is not surprising that the boundaries of the Qing empire in Central Asia are most often equated with the *karuns* (Ch: *kalun*), Qing border posts in Central Asia. The *karuns* were always manned by bannermen and often worked as the boundary distinguishing between what lay within the *karun* line (*ka nei*) and what lay outside (*ka wai*).<sup>8</sup>

According to Ma Changquan's comprehensive study of the *karun*, the *karun* developed as a military institution in Manchuria before the Qing conquest of China proper. Its original role included patrol of the borderlands, prevention of foreign invasions, suppression of internal upheaval, and preservation of peace in the borderlands. By the time *karun* made their way to Xinjiang, their role had been expanded to encompass non-military affairs such as the supervision of trade, management of tribal and foreign affairs, information gathering, and prevention of trespassing.<sup>9</sup> Locally, a *karun* was managed first by the *amban* in charge of the district and then by the Ili military governor, the highest-ranking official in Xinjiang. In Beijing, the Lifanyuan, often translated as the Court of Colonial Affairs but understood more accurately in its Manchu rendition *tulergi golo be dasara jurgan* (Ministry That Rules Outer Provinces), oversaw administration of *karuns* across the entire Qing domain.

One of the most crucial functions of *karuns* in Xinjiang was regulating the movement of people and goods by functioning as border checkpoints for people entering and leaving the area inside the *karuns*. Let us look at one example from 1762. Qing personnel at the Šatu (沙土)

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<sup>7</sup> For one example, see Jordan Branch, *The Cartographic State: Maps, Territory, and the Origins of Sovereignty* (New York: Cambridge University Press, 2015).

<sup>8</sup> This inner-outer distinction was one of the roles played by the Great Wall. See Owen Lattimore, *Inner Asian Frontiers of China* (New York: American Geographical Society, 1940) and Arthur Waldron, *The Great Wall of China: From History to Myth* (New York: Cambridge University Press, 1990).

<sup>9</sup> Ma Changquan, *Qingdai kalun zhidu yanjiu* (Ha'erbin: Ha'erbin chubanshe, 2005), 36-64, 144-189.

karun in Ush checked the baggage of some Kirghiz who had traded in Ush and found that they had bought 14 matchlocks, side swords, and suits of cotton armor. Yungking (永慶; d. 1805), the Ush superintendent, confiscated these weapons, reimbursed the Kirghiz, and memorialized the Qianlong emperor. This report caused Qianlong to order a collective investigation throughout Altishahr on whether the trade in weapons between Altishahr Muslims and Kirghiz had been banned during the Zunghar period and how the Qing state should regulate this trade.

Investigation by Altishahr *ambans*, who consulted the Muslim *hakim begs* and Kirghiz chieftains, revealed that there was no law prohibiting sales of weapons by Altshahr Musliims to people of outer tribes (*tulergi aiman*) in the regions bordering Kirghiz pastures (Kashgar, Yengisar, Yarkand, Aksu, and Ush). Even the inspection of possessions was a new practice introduced by the installation of the *karuns* in Xinjiang. These officials, therefore, proposed banning the sale of weapons like flintlocks and putting the *hakim begs* of these regions in charge of inspection. The emperor approved this recommendation.<sup>10</sup>

This series of events shows how the Qing conquest of Xinjiang gradually distinguished Xinjiang from its neighboring regions. First, installation of the *karuns* demarcated a physical boundary between Xinjiang and its neighboring regions. Second, this physical demarcation was accompanied by the new custom of inspection of people and goods. Finally, this new custom would give rise to a body of codified regulations that prohibited the movement of certain people and commodities in and out of Qing Xinjiang. Below and in chapter seven, we will encounter further examples of these historical developments.

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<sup>10</sup> Zhongguo diyi lishi dang'anguan and Zhongguo bianjiang shidi yanjiu zhongxin, eds., *Qingdai Xinjiang Manwen dang'an huibian* (Guilin: Guangxi shifan daxue chubanshe, 2012) (QXMDH hereafter) 67: 439-443 (Yunggui, Sinju, Haiming, Emin Khoja, Iletu, Hokijung; QL27.8.9/QL27.9.11); *Qing shilu* (QSL hereafter), Gaozong 663: 416b-417a (QL27.i5.18=7/9/1762), 670: 491b (QL27.9.10=10/26/1762).

## 2. *The Karun Line as an Administrative Division*

As L. J. Newby has shown, however, the *karuns* did not represent the territorial limits of the empire, at least in the early decades after the conquest.<sup>11</sup> Most importantly, the Qing state more than once refused requests from Kokand to delineate territorial boundaries between Qing and Kokand at the *karun* line of Kashgar. In early 1763, for example, Irdana Beg sent an envoy to Kashgar to express his desire to delineate the boundary between Altishahr and Kokand at the Kashgar Mountains, at the feet of which stood the *karun* line in Kashgar. The Qianlong emperor considered this an insolent request that compromised Qing territoriality in Central Asia and blamed Irdana Beg's attitude on the supposedly soft language of Kashgar superintendent Yunggui (永貴; d. 1783).<sup>12</sup>

Moreover, the Qing government in Xinjiang engaged in many official activities beyond the *karuns*. Most obviously, Qing troops in Xinjiang went on seasonal patrols to lands outside the *karun* line. Troops stationed in Ili, for example, patrolled the Kazakh pastures beyond the *karun* line every year, usually departing in the seventh month of the lunar year and returning in the ninth month of the lunar year.<sup>13</sup> They also patrolled the Kirghiz frontier annually, usually departing in the fifth month of the lunar year and returning in the seventh month of the lunar year.<sup>14</sup> Troops stationed in Kashgar, for their part, patrolled the lands outside the *karun* line that

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<sup>11</sup> Newby, *The Empire and the Khanate*, 31-32.

<sup>12</sup> Ibid, 33-6; QXMDH 60: 302-6 (Yunggui, Yangsangga; QL28.1.17/28.2.17).

<sup>13</sup> Jin Noda, *The Kazakh Khanates Between the Russian and Qing Empires: Central Eurasian International Relations during the Eighteenth and Nineteenth Centuries* (Leiden: Brill, 2016), 260-303.

<sup>14</sup> QXMHD 224: 95-6 (Narsungga; JQ14.3.25/14.4.26).

connected to various Kirghiz pastures and areas under Kokand control.<sup>15</sup> Ush troops in four karuns west of the city patrolled the Kirghiz pastures outside the karuns every spring and fall.<sup>16</sup>

Finally, the *karun* line, like any administrative creation, could be modified over time according to the needs of the Qing state. Benjamin Levey documents one example of such modification in his dissertation. He writes that the Qing court implemented a “flexible *karun* regime” in 1767 in response to the continuous problem of Kazakhs crossing the *karun* line in pursuit of their seasonal migration routes. Instead of driving away all Kazakhs found inside the *karun* line, which had been the official policy up to that point, the court first decided to allow the Kazakhs to spend winters inside the *karun* line if they paid 1 percent of their livestock as taxes. The court showed the administrative nature of the *karun* line with its next decision. By moving its *karun* line inwards between late fall and spring, the court would allow the Kazakhs to spend the winter technically “outside” the *karun* line, although they still had to pay the 1 percent tax. In the summer, the Kazakhs would have to leave, the *karuns* would move back to their original line.<sup>17</sup>

## **B. Qing Xinjiang as a Zunghar Inheritance**

Another reason we cannot equate the *karun* line with the Qing territorial boundary in Xinjiang is the Qing imperial pretension to universal rule. As we have seen in chapters two and four, two visions of the Qing realm coexisted: a vision of a bounded Qing domain and a vision of an unbounded “All Under Heaven” (*Tianxia*). The balance between these two visions leaned

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<sup>15</sup> QXMDH 67: 319 (Nasiton et al; QL29.3.10/29.4.11).

<sup>16</sup> QXMDH 105: 308-9 (Antai, Tusangga; QL37.2.30/37.3.25).

<sup>17</sup> Benjamin Samuel Levey, “Jungar Refugees and the Making of Empire on Qing China’s Kazakh Frontier, 1759-1773” (Ph. D. dissertation, Harvard University, 2014). 198-208.

decidedly toward this second vision during the 1750s and 1760s. This was the height of Qing expansionism, with the defeat of its archnemesis, the Zunghars, followed by the conquest and incorporation of Xinjiang into the Qing realm. The empire now was a qualitatively different empire from that of the 1630s and the 1640s, when Qing was establishing a tributary relationship with Chosŏn as a frontier khanate trying to protect its hard-won territory and subjects, and from that of the 1660s and the 1670s, when Qing was establishing a tributary relationship with Lê Vietnam as a successor state to Ming trying to inherit former Ming territory, subjects, and tributaries.

As many scholars have noted, the Qianlong emperor was intensely proud of this imperial expansion and extremely self-conscious of his place in the history of Chinese dynasties and on the world stage. Thus, the conquest of Xinjiang was followed by the writing of official histories, the erection of stelae in Xinjiang and elsewhere in the imperial realm, the production of copperplate engravings, and the publication of geographic and linguistic surveys of the region, all of which celebrated the unique historical achievement of the conquest and the universality of Qing rule.<sup>18</sup>

On a more practical level was the Qing claim to all former Zunghar lands. It is true, as Benjamin Levey has demonstrated, that the Qing empire did not lay claim to the former Zunghar lands under Russian control.<sup>19</sup> It is also true, however, that Russian expansion into Central Asia was fairly limited in the eighteenth century. Before the nineteenth century, Russia was busy

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<sup>18</sup> Mark C. Elliott, *Emperor Qianlong: Son of Heaven, Man of the World* (New York: Pearson Longman, 2009), 86-106; Perdue, *China Marches West*, 409-94; Enoki Kazuo, "Researches in Chinese Turkestan during the Ch'ien-Lung Period, with Special Reference to the Hsi-Yü-T'ung-Wen-Chih," *Memoirs of the Research Department of the Toyo Bunko* 14 (1955): 1-43; Takata Tokio, "Qianlong Emperor's Copperplate Engravings of the 'Conquest of Western Regions,'" *Memoirs of the Research Department of the Toyo Bunko* 70 (2012): 111-23.

<sup>19</sup> Levey, "Jungar Refugees and the Making of Empire on Qing China's Kazakh Frontier, 1759-1773," 185-191.

transforming its steppe frontier with the Nogays, the Kalmyks, and the Small Horde and Middle Horde of the Kazakhs, far from the Qing *karun* lines.<sup>20</sup> There was no “Russian Turkestan” until 1867, when the Russian state created a new Governor-Generalship from recently conquered lands.<sup>21</sup> As a result, many of the limits that the Qing empire claimed in theory and reinforced in practice lay well beyond the *karuns*.

Lake Issyk Kul (Ma: Temurtu Noor; Ch: 特穆爾圖諾爾) in today’s Kyrgyzstan was one such territorial limit. During an imperial audience in 1758, Kirghiz envoys requested that the Qianlong emperor grant the Kirghiz their old pasture (*jiu youmu*) at Issyk Kul. Qianlong initially rejected the request. To the Kirghiz envoys, he explained that since Issyk Kul had long belonged to the Zunghars, the Kirghiz could not still regard it as their domain. To Jao Hūi (兆惠; d. 1764) and Fude (富德; d. 1776), generals stationed in Ili, the emperor revealed other reasons behind his refusal: Issyk Kul was close to Ili and might even have suitable land for military farming (*tuntian*), thus it could not be given away easily (*duan bu qing yu*). Five years later, Qianlong was still concerned about the possibility that Issyk Kul might be occupied by non-Qing peoples. Responding to Tulbingga (圖爾炳阿; d. 1765)’s memorial from Ush regarding a rumor that some Kirghiz and Kazakhs might have moved to Issyk Kul, Qianlong reaffirmed his Issyk Kul policy. Recollecting his previous edict to Ili military governor Mingšui (明瑞; d. 1768), which had ordered that the Qing troops patrolling the Chu (吹) and Talas (塔拉斯) regions in today’s

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<sup>20</sup> Khodarkovsky, *Russia’s Steppe Frontier*; Allen J. Frank, “The Qazaqs and Russia,” in *The Cambridge History of Inner Asia: The Chinggisid Age*, ed. Nicola Di Cosmo, Allen J. Frank, and Peter B. Golden (New York: Cambridge University Press, 2009), 363–79.

<sup>21</sup> Richard A. Pierce, *Russian Central Asia 1867-1917: A Study in Colonial Rule* (Berkeley: University of California Press, 1960), 17-45.

Kyrgyzstan drive away any Kirghiz and Kazakhs residing there, Qianlong ordered the same procedure for Issyk Kul. Any Kirghiz and Kazakhs found living there were to be expelled.<sup>22</sup>

Even in 1778, by which time Kazakhs had already been allowed to spend winters in Issyk Kul, Qianlong sought to reaffirm the Qing claim on Issyk Kul by firmly declining the request of Kirghiz chieftain Ma-mu-bo-te (瑪木伯特) to move to Issyk Kul. Reasoning that the Kirghiz, who often trespassed and farmed within the Qing domain, were not to be compared to Kazakhs, he expressed his worry that the Kirghiz might become entrenched in Issyk Kul. If this request were to be granted, he predicted, these Kirghiz would plant seeds in spring, harvest the fields in fall, and find an excuse in the winter weather to stay there all year.<sup>23</sup> Whether or not his comment on the more agrarian and sedentary lifestyle of the Kirghiz is valid, here we can see Qianlong drawing a distinction between seasonal pasturing and permanent settlement. Outer tribes were not to settle permanently in the Qing domain, which lay well outside the *karun* line.

At-Bashi (阿特巴什) in today's Kyrgyzstan, on the other hand, was determined to lie outside Qing territorial limits. In 1760, a *mahacin* (瑪哈沁; a Zunghar fugitive) testified that 1,000 or so Kirghiz households had moved to At-Bashi. This At-Bashi, according to a Qing officer of Oirat (the Qing designation for former Zunghars) heritage, was originally a Zunghar pasture. If this were true, Qianlong reasoned, since the former pastures (*jiu youmu*) of the Zunghars were all his domain (*jie wo bantu*), this would constitute trespassing (*yu yue*) on the part of the Kirghiz. In Beijing, Khoja Si Bek (霍集斯; d. 1781), the former Ush governor under the Zunghars who had defected to the Qing, gave a different testimony. According to him, At-

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<sup>22</sup> QSL, Gaozong 572: 264a-b (QL23.10.4=11/4/1758), 690: 732a-b (QL28.7.8=8/16/1763), 691: 750b-751a (QL28.7.28=9/5/1763), 696: 801a-b (QL28.10.2=11/6/1763).

<sup>23</sup> QSL, Gaozong 1059: 154a-155a (QL43.6.19=7/12/1778).



Bashi was originally a Kirghiz pasture before the Zunghars took it away from them, and the Kirghiz had been living there for three or four years already after the Qing pacification of Zungharia. Qianlong ordered the Ili officials Šuhede (舒赫德; 1710-77) and Agūi (阿桂; 1717-97) to investigate the matter thoroughly and memorialize on it. The reinvestigation revealed that At-Bashi was not listed on a map of Issyk Kul compiled by Fude because it was far from Ili. Interrogation of more Oirats also revealed that it indeed was a Kirghiz pasture that had been occupied by the Zunghars. At-Bashi, thus, was determined to lie outside the Qing territorial limits in Xinjiang.<sup>24</sup>

### **C. The Imperial Retreat: From the “Old Boundaries” to the Karun Line**

As we have seen above, and as we will see in more detail below, Kirghiz migration networks across Central Asia, which more often defied than acknowledged Qing notions of territorial boundaries, were mostly beyond Qing control. The Qing state, regardless of the fact it was the regional hegemon in the eighteenth century, did not have enough personnel or developed institutions to control its borders in any systematic manner. In fact, we now know from recent studies that even modern colonial and national states have had immense difficulties in exerting control over various borderland groups and their movements across the borders.<sup>25</sup>

Kokand expansionism in the first half of the nineteenth century was also mostly beyond Qing control and resulted in shifting boundaries in and around Qing Xinjiang. In the 1830s and 1840s, Kokand embarked on territorial expansion on all fronts in its quest for trade monopoly in

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<sup>24</sup> QSL, Gaozong 617: 942b-943a (QL25.7.19=8/29/1760), 617: 946a-b (QL25.7.26=9/5/1760).

<sup>25</sup> For one example, see Eric Tagliacozzo, *Secret Trades, Porous Borders: Smuggling and States along a Southeast Asian Frontier, 1865-1915* (New Haven: Yale University Press, 2005).

eastern Central Asia. To the north, Kokand encroached on the Chu and Talas regions. To the south, Kokand moved on to the Pamir Mountains and Sariqol. Importantly for our discussion, these were the regions claimed by the Qing court that lay outside the *karun* line. As Newby has noted, the Daoguang (r. 1821-50) court was intent on avoiding confrontation with Kokand, choosing to focus solely on defending the *karun*. The Kokand expansion and the Qing response to it during this period effectively delineated the territorial boundary between Qing Xinjiang and Kokand at the *karun* line. As attested by Newby, “despite their scattered locations, unconnected by road, river or mountain, the *karun* were gradually becoming synonymous with the concept of a territorial boundary.”<sup>26</sup>

That is not to say that the Daoguang court openly acknowledged Kokand sovereignty over these regions. On the one hand, the Daoguang emperor did instruct his Xinjiang officials to exhort the Kokand ruler to maintain the “old boundaries (*jiu jie*)” whenever reports on Kokand territorial expansion arrived at Beijing. On the other hand, the Daoguang emperor was quick to point out to his Xinjiang officials that their business lay within the *karun* line, not beyond it. Thus, the Qing court of the first half of the nineteenth century acknowledged the *karun* line as the *de facto*, if not *de jure*, territorial boundary between its domain in Xinjiang and the Kokand domain.

### **III. Subjecthood: “Outer Tribes” and the Meaning of *Albatu***

Further complicating this already complex interplay between different notions of territorial boundaries, there existed multiple, flexible, and changing boundaries between Qing

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<sup>26</sup> Newby, *The Empire and the Khanate*, 207.

subjects and non-Qing subjects in Qing Central Asia. The status of the Kirghiz offers a perfect example of this flexibility and elasticity.

English-language scholarship on Qing imperialism has seen remarkable growth in depth and breadth in the past two decades. Among its many contributions, it has shown us that we cannot equate the Qing empire, with all its Inner Asian characteristics and pluralities, with the modern Chinese nation-state. Despite this acknowledgement, however, there is still a tendency in the field to unconsciously set the spatial and conceptual limits of the Qing empire at the national borders of the PRC and ROC. Thus, even though we see the Qing empire as an imperial state, we tend to focus more on Qing imperial projects inside today's "Chinese" borders and pay less attention to Qing imperial projects outside those borders.

The Qing policy towards the Kirghiz is one of these understudied topics. The lack of available sources has played a part. Though Nicola Di Cosmo looked at Qing-Kirghiz relations in two pioneering studies, he was limited to the Manchu-language palace memorials from 1806 to 1807.<sup>27</sup> With the recent publication of the 283-volume collection of Manchu-language palace memorials from Xinjiang, which is the main source of materials used in this chapter and chapter seven, we can begin to look at the development of the Qing Kirghiz policy over a longer period. In this section, I will use Qing-Kirghiz relations as a case study of tributary subjecthood in Qing Central Asia.

### **A. Kirghiz near the *Karun***

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<sup>27</sup> Nicola Di Cosmo, "Reports from the Northwest: A Selection of Manchu Memorials from Kashgar (1806-1807)," *Papers on Inner Asia* 25 (1993), 1-97; Nicola Di Cosmo, "Kirghiz Nomads on the Qing Frontier: Tribute, Trade, or Gift Exchange?" in *Political Frontiers, Ethnic Boundaries and Human Geographies in Chinese History*, ed. Nicola Di Cosmo and Don J. Wyatt (New York: RoutledgeCurzon, 2003), 351-72.

In his seminal 2005 book, Peter Perdue analyzed how the Qing state systematically incorporated Qinghai (Kokonor) into its empire during the Yongzheng (r. 1723-35) period. A key point of the incorporation was organizing the Mongols “into fixed ‘tribes,’ defined as territorially and administratively circumscribed units, with leaders appointed by the state.”<sup>28</sup> Following the conquest of Xinjiang, we see the Qing state repeating that process, albeit on a much smaller scale and less thoroughly, with the Kirghiz who lived near the *karun*.

### *1. Granting of Fixed Pastures*

Many Kirghiz chieftains came to submit to Qing rule after the Qing conquest of Xinjiang in 1759. Of interest to us are the Kirghiz chieftains who submitted with hundreds of households and requested to be given pastures. When the Altishahr authorities reported these requests to him, Qianlong almost always accepted these Kirghiz groups and settled them near the *karun*. In the spring of 1761, for example, Hibcak (希布察克) Kirghiz chieftain Emur Bii (額穆爾比) submitted with 400-some households and was given Hūdusun as his personal pasture.<sup>29</sup>

In theory, and often in practice during the Qianlong period, these Kirghiz chieftains had to ask permission from the Qing *amban* who had jurisdiction over them to move to different pastures. In 1771, for example, the Hibcak imperial guardsman Esen (額森) came to Kashgar to request a new pasture due to hostilities within his current pasture. The Kashgar *amban* instructed the *hakim beg* Gadaimet to investigate the truth of the matter, and Gadaimet’s report matched

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<sup>28</sup> Peter C. Perdue, *China Marches West: The Qing Conquest of Central Eurasia* (Cambridge, MA: Belknap Press of Harvard University Press, 2005), 312.

<sup>29</sup> QSL Gaozong 632: 50b (QL26.3.2=4/6/1761), 633: 70a-b (QL27.3.29=4/22/1762); QXMDH 50: 351-60 (Haiming; QL26.2.25/26.3), 51: 262-4 (Šuhede and Iletu; QL26.5.22/26.6.26), 53: 217-8 (Yunggui and Iletu; QL26.10.23/26.11.29).

Esen's story. Esen's request to move to a new pasture was eventually approved by the *amban* and the emperor.<sup>30</sup> In 1792, Cirik (齊哩克) and Hūšici (呼什齊) chieftains came to Ush to request relocation due to the growth in their numbers. Their request to Ush superintendent Funišan (富尼善; d. 1802) to use Sepurbai, unoccupied land outside the Baši Yahama (巴什雅哈瑪) karun, as their new pasture was approved.<sup>31</sup>

While it is true that requests for relocation were often approved by the Qing authorities, those who relocated without permission could be censured and punished, at least in principle, for doing so. In 1767, for example, when Yarkand authorities became aware of the relocation of the Hara Hibcak Kirghiz chieftain Tilyance from his pasture at Tagaram, the superintendent Jinggeri (旌額理; d. 1771) and the *hakim beg* Emin Khoja ruled that Tilyance must remain in Tagaram as his father Gadai Bii had originally been instructed.<sup>32</sup> As we will see below, in 1765 and 1783, the unsanctioned relocation of two Hūšici chieftains—Narabatu and his cousin Berke respectively—to the Kokand domain prompted an uproar within the Qing court.<sup>33</sup> Qianlong's plan to punish them severely to make an example out of these cases, however, was unsuccessful due to lack of cooperation on the part of Kokandi rulers.<sup>34</sup>

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<sup>30</sup> QXMDH 100: 290-3 (Fusembu, Tusangga, Suldei; QL36.6.2/36.7.5).

<sup>31</sup> QXMDH 195: 107-10 (Funišan; QL57.3.16/57.4.14).

<sup>32</sup> QXMDH 86: 202-6 (Jinggeri, Emin Khoja; QL32.11.11/32.12.13).

<sup>33</sup> QSL, Gaozong 744: 186a-b (QL30.9.5=10/19/1765), 748: 237a-238a (QL30.11.12=12/23/1765), 749: 245a-b (QL30.11.22=1/2/1766); QXMDH 75: 46-51 (Mingšui, Agūi, Yunggui, Emin Khoja, ?; QL30.7.9/30.7.28), 75: 280-5 (Bekun; QL30.8.10/30.9.6), 75: 417-22 (Mingšui, Agūi, Emin Khoja; QL30.8.29/), 76: 40-1 (court letter from Fuheng et al to Mingšui et al; QL30.9.5), 76: 55-62 (Mingšui, Agūi, Yunggui, Emin Khoja; QL30.9.7/9.28), 76: 301-3 (Yunggui; QL30.10.12/30.11.12), 76: 309-13 (Agūi, Yunggui, Emin Khoja; QL30.10.16/30.11.12), 76: 395-400 (Agūi, Yunggui, Emin Khoja; QL30.10.24/30.11.22)

<sup>34</sup> QSL, Gaozong 1189: 900b-901a (QL48.9.22=10/17/1783), 1189: 901a-b (QL48.9.24=10/19/1783), 1189: 902a-b (QL48.9.25=10/20/1783), 1189: 903a-b (QL48.9.26=10/21/1783), 1199: 33b-34b (QL49.2.20=3/13/1784); QXMDH 157: 52-4 (letter from Usihada to Narbuta; QL48.9.10), 157: 191-8 (Booceng, Dunfu; QL48.10.4/48.11.1), 157: 302-8 (Booceng, Dunfu; QL48.10.18/48.11.11), 158: 41-4 (Cokto, Falingga; QL48.11.13/48.12.3), 159: 159-82 (Cokto; QL49.1.25/49.2.19), 159: 417-9 (Narbuta's letter to Cokto; QL49.2).

The Altishahr *ambans*, in fact, were specifically charged with administration of the Kirghiz living near the *karun* under their jurisdiction. Until 1777, all Kirghiz tribes were under the jurisdiction of Kashgar (*geren aiman i burut sebe gemu kasigar i harangga obufi*), with the Kashgar *amban* making a seasonal (*forgon aname*) report to the Board of Work. Starting in 1777, the Ush *ambans* were put in charge of the two groups of Kirghiz living near Ush and began to make seasonal reports to the Board of Work on those groups.<sup>35</sup>

## 2. Granting and Inheritance of Rank Buttons and Feathers

The Qianlong emperor built a personal relation with Kirghiz chieftains by bestowing buttons (Ch: *ding*; Ma: *jingse*) and feathers (Ch: *ling*; Ma: *funggala*) that they could wear on their hats to indicate their ranks within the Qing bureaucracy. The privilege of wearing these buttons and feathers put the Kirghiz chieftains on a level with the local Muslim elites who were given posts as various *begs*. The *beg* posts had ranks corresponding to those of the regular Qing bureaucracy, with the *hakim begs* of the biggest Altishahr cities at rank 3. All these *begs* had the privilege of wearing buttons and feathers corresponding to their posts.<sup>36</sup>

Moreover, these buttons and feathers could be inherited with imperial approval as a sign of succession. The earliest record I have found for inheritance of buttons and feathers comes from 1762. After the death of the Hibcak chieftain Emur Bii in 1761, the Kashgar *ambans* Yunggui and Iletu (伊勒圖) recommended to Qianlong that Emur Bii's brother Murut should be put in charge of Emur Bii's pasture and people. With imperial approval, Murut came to Kashgar

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<sup>35</sup> QXMDH 133: 398-402 (Cokto, Šutai; QL42.11.16/42.12.13).

<sup>36</sup> L. J. Newby, "The Begs of Xinjiang: Between Two Worlds," *Bulletin of the School of Oriental and African Studies* 61, no. 2 (1998): 278–97.

with Emur Bii's rank 3 button, which was then awarded to Murut as a sign of succession. With this case, the inheritance of buttons and feathers was linked to the succession of chieftaincy from the Qing perspective.<sup>37</sup>

Because of this practice of inheritance and succession, noble lines arose among the Kirghiz that were comparable to the lines of Xinjiang *begs*. The line of the Cungbagaši (充巴噶什) chieftain Awal (阿瓦勒) is a good example. After his initial submission, Awal exerted himself by herding government livestock and assisting Qing troops in the suppression of the 1765 Ush Rebellion.<sup>38</sup> When Awal died in 1783, the Qianlong emperor allowed his son Bošihūi (玻什輝) to succeed Awal and inherit his rank 3 button, peacock feather (*hualing*), and garden.<sup>39</sup> Bošihūi outdid his father during his own lifetime, receiving a rank 2 button for his help in managing a large-scale Kirghiz horse robbery case in 1790.<sup>40</sup> By the time Bošihūi died in 1811 at 49 years of age, according to Kashgar *ambans* Tiyeebo (鐵保) and Hafungga (哈豐阿), he “took care of all Kirghiz tribes living outside the [Kashgar] *karun* (*karun i tule de tehe geren aiman i burut sebe bargiyatame kadalara*).” Bošihūi's oldest son Suranci (蘇蘭奇) was allowed to succeed him.<sup>41</sup>

In general, the *ambans* did not play a decisive role in choosing successors. In most cases, their role was limited to confirming the favored successor within the tribe. At the same time, the

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<sup>37</sup> QXMDH 54: 80-2 (Yunggui, Iletu; QL26.12.8/27.1.10), 57: 12-5 (Yunggui, Iletu; QL27.i5.24/27.6.27).

<sup>38</sup> QSL Gaozong, 694: 776a (QL28.9.3=10/9/1763); QXMDH 64: 30-1 (Yunggui, Yangsangga; QL28.7.28/28.9.3), 64: 32-4 (Yunggui, Yangsangga; QL28.7.28/28.9.3), 75: 46-51 (Mingšui, Agūi, Yunggui, Emin Khoja, ?; QL30.7.9/30.7.28), 75: 386-9 (Mingšui, Agūi, Yunggui, Emin Khoja; QL30.8.27/30.9.18).

<sup>39</sup> QSL Gaozong, 1189: 902b-903a (QL48.9.26=); QXMDH 157: 329-32 (Booceng, Dunfu; QL48.10.21/48.11.21), 158:g 413-5 (Booceng, Dunfu; date?).

<sup>40</sup> QSL Gaozong 1346: 15a-16a (QL55.1.14=2/27/1790); QXMDH 187: 339-40 (Mingliyang; QL54.12.18/55.1.14).

<sup>41</sup> QXMDH 228: 148-52 (Tiyeebo, Hafungga; JQ16.8.18/16.9.20).

*ambans* did try to inform themselves about succession patterns. For example, the death of the Edegene (額德格納) rank 3 *bii* Ajibii (阿濟比) in 1780 was reported to the Kashgar *ambans* in 1781 by Ajibii's second son Yeltiyebai (葉爾鐵拜) and four of Ajibii's *ahalakci* (Ch. 阿哈拉克齊: a title of minor Kirghiz chieftains). Perhaps because of Ajibii's importance, the Kashgar *ambans* ordered an investigation from the top echelon of the *bii* and *beg*: Kashgar *hakim beg* Osman, Hibcak rank 2 *bii* Akim, and Cungbagaši rank 3 *bii* Awal. When their report confirmed the report of the Edegene *ahalakci* that Yeltiyebai was supported by his people, Yeltiyebai was allowed to succeed Ajibii and inherit his button and feather.<sup>42</sup>

This practice of asking for imperial permission for succession was not limited to the *biis* and *ahalakcis* who held the most prestigious buttons and feathers. Minor *biis* and *ahalakcis* who held buttons of rank 6 or gold buttons also diligently came to ask for imperial permission in the succession of positions and inheritance of these imperial gifts. Interestingly, even those chieftains who had not received any buttons and feathers would come to the nearest *amban* to report on the succession. In 1775, for example, Monggoldor *bii* Haraci's sons Akyol and Jail came to Ush to report on the death of Haraci and the wish of the tribe to make Akyol his successor, even though Haraci had held no button and feather during his lifetime.<sup>43</sup>

### 3. Regulated Trade with Qing Xinjiang

The Kirghiz near the *karuns*, then, constituted a buffer between the settled regions of Xinjiang within the *karun* line and the various peoples residing beyond. As such, the Kirghiz near the *karuns* interacted with the Xinjiang Muslims on a regular basis. In that sense, it is not

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<sup>42</sup> QXMDH 146: 334-8 (Gingfu, Dunfu; QL46.5.20/46.i5.22).

<sup>43</sup> QXMDH 125: 177-9 (Cokto, Nomcin; QL40.8.7/40.8.29).



surprising that periodic memorials from the Kashgar or Ush *ambans* on the state of the regions under their jurisdiction employed the stock phrase “Muslims and Kirghiz living together in harmony.”<sup>44</sup>

Already in 1762, there were reports of land transactions between Yengisar (英吉沙爾) Muslims and Kirghiz who had been given lands west of Yengisar as pastures. When disputes between these two groups arose over the issue, the representatives of these groups—Hibcak chieftain Akim and Yengisar *hakim beg* Sultanhojo—turned to Kashgar *ambans* for mediation.<sup>45</sup> Other types of commercial transaction between Kirghiz and Xinjiang Muslims were also common. For one thing, the Kirghiz sent periodic envoys to Kashgar and Ush, and they were often allowed to conduct duty-free trade of horses and other goods that they brought with them. They were also allowed to conduct trade with residents of Kashgar and Ush at regular intervals. This trade was regular enough that both parties could trade on credit, which sometimes led to violent encounters requiring Qing intervention. A murder case in 1794 provides a good example. Cungbagaši Kirghiz Abulaka and Seti had drawn up a contract with a Kashgar cloth weaver named Iburaim. Despite their advance payment, Abulaka and Seti found that Iburaim had no cloth product to give them, and a dispute arose over the unfulfilled contract obligations. The dispute turned violent when Iburaim killed Abulaka, and Seti escaped to report the incident to the Kashgar authorities. Iburaim was eventually executed at the Kashgar bazaar in front of Kirghiz merchants, while Seti was reimbursed for his loss.<sup>46</sup>

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<sup>44</sup> QXMDH 72: 394-6 (Nasiton; QL30.i2.23/), 134: 261-4 (Cokto, Šutai; QL43.2.12/43.3.11).

<sup>45</sup> QXMDH 54: 369-70 (Yunggui, Iletu; QL27.1.19/).

<sup>46</sup> QXMHD 201: 64-6 (Yungboo, Iskandar, Fan Giyan Jung; QL59.4.4/59.4.29).

The 1794 regulations on the Xinjiang Muslims trading beyond the *karun* also show that the Kirghiz living near the *karun* line held a different position from outer tribes who lived far beyond the *karuns*. In his proposal, the Kashgar councilor Yungboo (永保) allowed Xinjiang Muslim traders to go as far as the pastures of certain Kirghiz tribes: the Cungbagaši, Edegene, Sarbagaši (薩爾巴噶什), Buku (布庫), and Cirik. These traders, however, were not allowed to enter more distant Kirghiz pastures.<sup>47</sup>

#### 4. Kirghiz Services and Rewards

These inner Kirghiz also performed many services for the Qing state in Xinjiang and received rewards for their services. In this capacity, they frequently interacted with the bannermen *ambans* and Muslim nobles of Xinjiang. As such, they formed an important and understudied part of Qing rule in Xinjiang.

Some Kirghiz participated in various building projects. In 1761, for example, Kashgar superintendent Šuhede (舒赫德; 1710-77) sent Kirghiz residing in Yengisar and Sarikol to Isil Kul to erect a stele commemorating the Qing conquest of Xinjiang. The Hibcak chieftain Akim was put in charge of this work.<sup>48</sup> In 1793, a 100-year-old Kirghiz named Jontomas was granted a gold button for building a bridge on the Naryn River.<sup>49</sup>

Other Kirghiz were responsible for taking care of government livestock. In 1763, Kashgar *ambans* put the Hibcak chieftain Akim and the Cungbagaši chieftain Awal in charge of

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<sup>47</sup> QSL, Gaozong 1464: 557a-558a (QL59.11.1=11/23/1794).

<sup>48</sup> QXMDH 51: 79-80 (Šuhede; QL26.4.21/26.5.24).

<sup>49</sup> QXMDH 199: 30-2 (Minghing, Iskandar, Fan Giyan Jung; QL58.7.12/58.8.16), 200: 160-2 (Yungboo, Iskandar, Fan Giyan Jung; QL58.11.27/).

herding government livestock. From then on, we see periodic records of the Kirghiz fulfilling this role. In 1767, for example, Akim's brother Yaksa was rewarded for herding government livestock along with 15 of his subordinates. In 1769, Hibcak chieftain Esen was rewarded for herding government livestock. From a memorial in 1776, we also learn that Kirghiz pastured government horses outside the *karun* line that year, following precedent.<sup>50</sup>

One of the most important services these Kirghiz provided was military. During the Ush rebellion of 1765, many Kirghiz helped Qing troops put down the rebellion. The Sarbagaši chieftain Cirikci, for example, informed Xinjiang officials how Ush Muslims were propagating “false rumors” to draw supporters among Sarbagaši Kirghiz, and he was entrusted with their capture. Hearing that these Muslims were doing the same thing in the pasture of the Monggolor Kirghiz, Cirikci sent three of his brothers to capture them. They captured two of these Muslims and handed them over to Bekun, the Kashgar superintendent. As far as Xinjiang authorities were concerned, Kirghiz service during this campaign was comparable to the service provided by Xinjiang Muslims. Thus, the list of meritorious individuals during the campaign drawn up for the Qianlong emperor included both Xinjiang Muslims and Kirghiz.<sup>51</sup>

From the Qing perspective, then, the services of and the rewards for the Kirghiz and Xinjiang Muslim nobles were comparable. An episode of Kirghiz succession in 1782 even shows family connections between these two groups. In September 1782, Noigūt rank 3 *bii* Osman, who had just succeeded his father Eimer, died of headache and dysentery. Maimat Sedik, Eimer's only son, was only two years old, but Noigūt chieftains wished to have him succeed his

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<sup>50</sup> QXMDH 64: 32-4 (Yunggui, Yangsangga; QL28.7.28/28.9.3), 85: 91-2 (Cokto, Bekun; QL32.i7.29/32.9.2), 129: 145-6 (Yade, Šemboo; QL41.5.25/).

<sup>51</sup> QXMDH 73: 103-5 (Bekun; QL30.3.16/30.4.10), 73: 143-4 (Bekun; QL30.3.26/30.4.23), 75: 46-51 (Mingšui, Agūi, Yunggui, Emin Khoja; QL30.7.9/30.7.28), 75: 360-4 (Mingšui, Agūi, Yunggui, Emin Khoja; QL30.8.27/30.9.18), 75: 386-9 (Mingšui, Agūi, Yunggui, Emin Khoja; QL30.8.27/30.9.18).

father. It is in this petition that we see Osman's impressive family network. Osman's father-in-law was Akim, the leading Kirghiz noble at the time, and his maternal uncles were Yarkand *hakim beg* Setib Aldi (色提巴爾第) and Aksu *hakim beg* Akbek, Xinjiang Muslim nobles. Perhaps due to these connections, Maimat Sedik succeeded Osman and inherited his rank 3 button and peacock feather.<sup>52</sup>

## B. Kirghiz on the Move

### 1. Relocation as "Kirghiz Nature"

Kirghiz nomads were, by definition, a mobile people. Even at the height of the Qing Kirghiz policy during the Qianlong reign, there was no systematic attempt to turn the Kirghiz into a settled population. Indeed, a focal point of Qing Xinjiang policy was distinguishing Kazakh and Kirghiz nomads from settled populations of Kokand and Xinjiang, ruling each group in a distinct manner. This was in line with Qing imperial rule in general, which differentiated the borderlands from China Proper and ruled each borderland in a manner that suited the local conditions. The Qing state, as a result, was often forced to accept the Kirghiz migratory tendency as Kirghiz "nature."

In spring of 1762, the Baskis *bii* Murat (伊穆喇特比), who had come to Kashgar to submit to Qing rule in 1761 and had just been settled in Aksai (阿克賽) with his 300 households, sent an envoy to Kashgar to give a report. He had apparently sent 200 households under three of his *ahalakci* to Yasai (雅賽) to farm there in summer and return to Aksai in winter. Kashgar

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<sup>52</sup> QXMDH 151: 329-32 (Cokto, Falingga; QL47.5.17/47.6.16), 152: 408-12 (Cokto, Falingga; QL47.9.9/47.10.8), 153: 376-9 (Cokto, Falingga; QL47.11.18/).

councilor Iletu was disturbed by this report of unauthorized movement outside the pasture assigned to this group of Kirghiz and asked the Baskis envoy for the true reason of relocation. The envoy replied that Yasai merely was their old pasture, and that it was just a case of confused Kirghiz being unaware of regulations (*kooli*). In contrast to Iletu's grave concern, however, Qianlong's response in the rescript was nonchalant: "How is this important?" He elaborated on his position in an edict. The Kirghiz, according to him, were ignorant and only followed water and grass (*wei zhi shuicao zhi li*). Applying Qing regulations (*neidi dingzhi*) would only make them unnecessarily apprehensive. Besides, he continued, Yasai was only one postal station (*zhan*) away from Aksai. He instructed Yunggui, the Kashgar superintendent, and Iletu to not be sticklers in future cases of Kirghiz relocating for different pasture as long as the new pasture was not too far off. Qianlong turned out to be right in the short run, as these Baskis households returned to Aksai after the harvest.<sup>53</sup>

This exchange is significant in two ways. First, from Iletu's position we see an attempt by the Qing state to regulate nomadic behaviors and put nomads in fixed pastures. Qing history is indeed full of precedents in which such attempts were successful. The Khalkha Mongols, for example, were transformed from "foreign state" (*tulergi gurun*) to "outer province" (*tulergi golo*) after the Dolon Nor assembly of 1691. Khalkha leaders were given fiefs and Manchu noble titles, and Khalkhas were enrolled in banners that were linked to separated territories with no freedom of movement.<sup>54</sup> From Qianlong's position, however, we also see an admission from the

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<sup>53</sup> QXMDH 53: 211-4 (Yunggui and Iletu; QL26.10.23/26.11.29), 54: 26-8 (Yunggui and Iletu; QL26.11.29/27.1.3), 54: 126-7 (Yunggui and Iletu; QL26.12.20/27.1.11), 54: 228-34 (Yunggui, Iletu; 26.12.29/27.1.29), 55: 252-6 (Iletu; QL27.3.8/27.4.9), 55: 436-40 (Iletu; QL27.4.4/27.5.6), 58: 282-3 (Yunggui and Iletu; QL27.9.25/?); QSL, Gaozong 658: 366b-367a (QL27.4.8=5/1/1762).

<sup>54</sup> Charles R. Bawden, *The Modern History of Mongolia* (New York: Praeger, 1968), 39-8; Yi Sön-ae, "Oeguk(tulergi gurun) esö oebön(tulergi golo) ūro," *Myōng-Ch'ōngsa yōn'gu* 43 (2015): 129-69; Perdue, *China Marches West*, 175-80.

Qing state that Kirghiz incorporation into the Qing empire was incomplete at best. Second, we see how these two positions were reconciled: a conditional acceptance of Kirghiz nomadism. If the Kirghiz did not relocate too far from their original pasture, they were not to be interfered with. This is one of the most perfect illustrations of the ambiguous status of the Kirghiz within the Qing empire as an outer tribe (*tulergi aiman*), intermediate between foreign state and outer province.

*(B) Relocation as Betrayal of Imperial Grace*

In other cases, however, Kirghiz relocation was constructed as an act of betrayal that went against imperial grace. The relocation of Hūšici bii Narabatu in 1765 prompted a unanimous uproar within the Qing court. There seem to have been two main reasons. First, Narabatu was fleeing instead of relocating, with an intention never to return to his old pasture. Narabatu and his cousins Berke (博爾克) and Ebaidula (額拜都拉) were all prominent Hūšici Kirghiz chieftains. Narabatu had a suspicion that Ebaidula, whose pasture lay close to where the Qing generals suppressing the Ush Rebellion of 1765 were stationed, would be put in charge of the tribe afterwards. Thus, he attempted to incite Ebaidula to move to Kokand, but to no avail. Fearing that his plan was going to be revealed, Narabatu led 200 households in a flight from his pasture to Kokand. This, from the Qing perspective and perhaps in Narabatu's own, was not a mere nomadic migration. Second, from the Qing perspective, the illegality of Narabatu's action was only aggravated by the imperial grace accorded to him in the past. Narabatu, as mentioned above, had come to Kashgar to submit to Qing rule and been granted a pasture only three years prior. He had also been rewarded, along with his cousin Berke, for his service in the suppression

of the Ush Rebellion. Both these reasons made Narabatu's action "hateful" (*kewu*), and Qianlong was determined to capture Narabatu and bring him to justice to warn all the Kirghiz.<sup>55</sup>

Thus, Qianlong made the following orders to Ili officials. If the Edegene Kirghiz, who lived between Narabatu's pasture and Kokand, arrested Narabatu and handed him over, the officials were to punish Narabatu immediately. If Narabatu made his way to Kokand, the officials were to demand that Kokand ruler Irdana Beg return Narabatu. In the end, Narabatu was accepted into Kokand by Irdana Beg. The report from Edegene Kirghiz that Narabatu and Irdana were pasturing together at Ak Horhan (阿克霍爾罕), which lay between Osh and Margilan, turned out to be true despite Irdana Beg's denial. Even when Xinjiang officials promised that Irdana could keep Narabatu's people and possessions if Narabatu was returned, and could expect further rewards, Irdana kept evading the issue, even suggesting that he had rebuked Narabatu to return to his pasture in person and had no idea what had happened afterwards. In the end, Qianlong's plan to make an example out of this case was unsuccessful.<sup>56</sup>

Could these Kirghiz who betrayed imperial grace ever return to imperial grace? We do not know what would have happened had Narabatu come back to submit to Qing rule again, but we do know what happened to some of his followers who returned to their old pasture. In 1772, seven years after Narabatu's migration to Kokand, his people were in disarray. He had died of illness by then, and the 200-some households had dwindled to 50-odd households, barely getting

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<sup>55</sup> QXMDH 75: 46-51 (Mingšui, Agūi, Yunggui, Emin Khoja; QL30.7.9/30.7.28), 75: 280-5 (Bekun; QL30.8.10/30.9.6), 76: 40-1 (court letter from Fuheng et al to Mingšui et al; QL30.9.5); QSL, Gaozong 744: 186a-b (QL30.9.5=10/19/1765).

<sup>56</sup> QXMDH 75: 417-22 (Mingšui, Agūi, Emin Khoja; QL30.8.29/), 76: 40-1 (court letter from Fuheng et al to Mingšui et al; QL30.9.5), 76: 55-62 (Mingšui, Agūi, Yunggui, Emin Khoja; QL30.9.7/30.9.28), 76: 301-3 (Yunggui; QL30.10.12/30.11.12), 76: 309-13 (Agūi, Yunggui, Emin Khoja; QL30.10.16/30.11.12), 76: 395-400 (Agūi, Yunggui, Emin Khoja; QL30.10.24/30.11.22; QSL, Gaozong 744: 186a-b (QL30.9.5=10/19/1765), 748: 237a-238a (QL30.11.12=12/23/1765), 749: 245a-b (QL30.11.22=1/2/1766).

by under the joint leadership of his wife Aifuliyat, his son Mamut, and his brother *ahalakci* Baidolot. When their return to the Hūšici Kirghiz who had stayed was reported to Ush superintendent Antai (安泰), they were allowed to live with their old tribesmen. Narabatu's line, however, was not to enjoy its old prestige. The current leaders of the pasture—rank 6 Šukur and rank 6 Arbas—convinced Antai that Mamut, despite being 20 years of age, was not a capable leader and continued to oversee the pasture.<sup>57</sup>

In 1783, it was Narabatu's cousin Berke that led hundreds of households away from his pasture and migrated to Kokand. After receiving initial reports from Kashgar superintendent Booceng that he had sent envoys to Kokand to demand Berke's return and also dispatched troops to chase after Berke, Qianlong thought Booceng had overreacted. He reasoned that the Kirghiz, like Kazakhs, liked to move around and could not be compared with Xinjiang Muslims (*fei neidi Huimin kebi*). Qianlong, however, soon changed his position and ordered the Ili military governor Iletu and Ush councilor Cokto to take over. If Narbuta Beg, the Kokand ruler, were to comply and give up Berke, then they were to send Berke to Beijing. If Narbuta were to resist, however, Iletu and Cokto were to select one imperial bodyguard (*shiwei*), one Muslim *beg*, and one Kirghiz *bii* and send them to Narbuta's pasture (*youmu*) to put more pressure on Narbuta.<sup>58</sup>

Booceng's envoys to Kokand came back with a letter from Berke. In this letter, Berke explained his reasons for moving away from his pasture. According to him, his people had recently been broken in two because of Maimat and Šukur, two of his *albatu* (subject, client). He reported the matter to the Ush *hakim beg*, but the *hakim beg* drove him away without reporting it

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<sup>57</sup> QXMDH 107: 400-3 (Antai; QL37.7.24/37.8.20).

<sup>58</sup> QSL Gaozong: 1189-900b-901a (48.9.22=10/17/1783), 901a-b (48.9.24=10/19/1783), 902a-b (48.9.25=10/20/1783), 903a-b (48.9.26=10/21/1783); QXMDH 157: 52-4 (letter from Usihada to Narbuta; QL48.9.10).



to the *ambans*. The *amban* Falingga had also rented camels from him without returning them to him. Then, he concluded the letter by using the universalistic rhetoric of the Qing empire to his own advantage: “That land is the great lord’s land, and this land is also the great lord’s land (*tubai ba oci, amba ejen i ba, ubai ba oci, inu amba ejen i ba*).”

Qianlong did not accept this appropriation of imperial rhetoric, and we might recall from chapter two that Qing imperial envoys sent to investigate the An Ch’u-wǒn/Xiao Er case did not accept the Chosŏn king’s similar invocation of imperial rhetoric. But pursuit of Berke was put on hold because of the upcoming winter. During the winter of 1783-1784, the Ush *amban* reviewed the situation of Hūšici Kirghiz. As Berke had stated in his letter, the tribe indeed seemed to have split in half. Berke had led about 300 households away, but 400 households and 1,000 people led by three chieftains holding rank 6 buttons and blue feathers (*lanling*)—Maimat, Šabak, and Šukur—had stayed in their original pasture. They were the ones who initially reported on Berke’s flight from the pasture, and they were granted rank 5 buttons and peacock feathers for their loyalty.<sup>59</sup>

With the spring of 1784 came an envoy from Narbuta Beg. Contrary to Qing expectations, the envoy came not with Berke but with Narbuta’s request that Berke be forgiven and allowed to stay in Kokand. The next envoy from Narbuta asserted that Narbuta had personally rebuked Berke to return to his own pasture. Xinjiang officials, however, knew from Kirghiz informants that Berke was still in Kokand. Xinjiang officials repeatedly demanded that Narbuta send Berke back, even suggesting that Narbuta could have all of Berke’s people and

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<sup>59</sup> QXMDH 157: 191-8 (Booceng, Dunfu; QL48.10.4/48.11.1), 157: 302-8 (Booceng, Dunfu; QL48.10.18/48.11.11), 158: 41-4 (Cokto, Falingga; QL48.11.13/48.12.3).

belongings if he just returned Berke. But these demands, lacking military pressure, proved to be ineffective.<sup>60</sup>

Again, we do not know what would have happened to Berke had he returned to his pasture, but all Kirghiz who had followed Berke were allowed to submit to Qing rule again upon their return. In the fall of 1784, for example, Aliyarbek came to Ush with 100 households to submit to Qing rule. The Ush *amban* gave Hakšan's Hara Bulak to Aliyarbek as his pasture and even provided him with livestock. In the summer of 1785, Berke's own brother Ebeidula (額貝都拉; most likely Ebaidula 額拜都拉 mentioned above) came to Aksu to submit to Qing rule because of harassment by Narbuta Beg. Ebeidula and his people were allowed to live with Hūšici Kirghiz under the leadership of Maimat and Šukur. In 1792, Berke's cousin Edegene (額德格訥), who had escaped Berke's pasture with his own household to be rid of Berke's tyranny, was allowed to live with Hūšici Kirghiz under Maimat (邁瑪特). He was even given the option of learning to handle the affairs of the tribe and regaining his button if he proved his merit. Even as late as 1800, Maltapar, who had previously held a rank 5 button and peacock feather, and his three households were settled with the Hūšici Kirghiz according to precedent.<sup>61</sup>

### C. The Failure of the Qing Kirghiz Policy and the Retreat of the Empire

This close relationship between Qing Xinjiang and the Kirghiz, however, had all but disappeared by the end of the Jiaqing reign (1796-1820). As is often the case, there were both

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<sup>60</sup> QXMDH 159: 159-82 (Cokto; QL49.1.25/49.2.19), 159: 417-9 (Narbuta's letter to Cokto; QL49.2); QSL, Gaozong 1199: 33b-34b (49.2.20=3/11/1784).

<sup>61</sup> QXMDH 165: 158-66 (Hailu, Kingioi; QL49.9.15/49.10.7), 165: 166-8 (Hailu, Kingioi; QL49.9.15/49.10.7), 167: 428-30 (Hailu; QL50.4.10/50.5.6), 168: 279-83 (Booceng, Dafu, Osman; QL50.6.13/50.7.16), 196: 114-8 (Funišan; QL57.6.24/57.7.22), 196: 119-20 (Funišan; QL57.6.24/57.7.22), 211: 27-30 (Durgiya; JQ5.9.3/5.9.30); QSL, Gaozong 1230: 499b-500a (QL50.5.5=6/11/1785), 1409: 943b-944a (57.7.22=9/8/1792).

internal and external factors. The internal factor was the deteriorating patron-client relationship between the Qing emperor and the Kirghiz chieftains, which Onuma Takahiro has called “*ejen-albatu* relationship” (master-subject relationship).<sup>62</sup> Starting from the 1780s, a series of prominent Kirghiz chieftains met their downfall and left a power vacuum within the inner Kirghiz society. The fall from grace for these chieftains resulted more from imperial mismanagement than from their own actions, although fault can certainly be attributed to the chieftains in some cases. We see this, for example, in the story of Akim’s downfall.

Between 1760 and 1784, the Hibcak *bii* Akim was by far the most influential Kirghiz client of the Qianlong emperor. In 1760, Akim was awarded the rank 2b post of grand minister assistant commander of imperial guardsmen (Ch: *sanzhi dachen*; Ma: *sula amban*) for his service during the Qing conquest of Xinjiang. In 1761, he was appointed as the *hakim beg* of Tasimilik (塔什密里克), located between Kashgar and various Kirghiz pastures. He also acted as the representative of the Kirghiz near the *karun*.<sup>63</sup> His brothers too were showered with honors and responsibilities. Esen, who initially claimed to the Qing authorities that he was one of Akim’s brothers, attained a rank 3 button as well as the title of imperial guardsman (Ch: *shiwei*; Ma: *hiya*) for his role in the suppression of Ush rebellion in 1765. Bakti, another of his brothers, rose to wear a rank 4 button and the title of imperial guardsman in 1770. He was also put in charge of Sarikol, a mountainous region that lay outside the *karun* in Yengisar. After Bakti’s death in 1774,

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<sup>62</sup> Onuma Takahiro, *Shin to Chūō Ajia sōgen: Yūbokumin no sekai kara teikoku no henkyō e* (Tokyo: Tōkyō Daigaku Shuppankai, 2014), 93-7.

<sup>63</sup> QSL, Gaozong 596: 638b-639a (QL24.9.4=10/24/1759), 620: 975a-b (QL25.9.11=10/19/1760), 629: 18b-19a (QL26.1.29=3/5/1761).

his son Kucuk (昆楚克) was allowed to succeed him and inherit his button and feather but with one degree's reduction in rank.<sup>64</sup>

However, he met his downfall in 1784, when he and Yengisar *hakim beg* A-li-mu (阿里木) brought a formal accusation against the Kashgar *hakim beg* Osman (鄂斯璠) before Kashgar councilor Booceng (保成; d. 1798), claiming that Osman had collaborated with Sarimsaq, the only living son of Burhan al-Din, who had rebelled against the Qing in 1757. When Booceng decided this was a false accusation, Qianlong ordered him to arrest and escort all the accusers to Beijing so that he could get to the bottom of this affair. Once they arrived, they were tried by the Grand Council and the Lifanyuan. The interrogation revealed that Akim's brother Emur (額穆爾), not Osman, had been secretly communicating with Sarimsaq, and Akim, who had falsely accused Osman to cover up his brother's crime, was sentenced to death. Emur was sentenced to immediate death by beheading. Akim and A-li-mu were also sentenced to immediate execution, but the Qianlong emperor changed Akim's sentencing to death by beheading after the Autumn Assizes because of his previous service and old age.<sup>65</sup>

Because of Akim's position at the top of Qing Kirghiz society, what happened to Akim the individual is almost less interesting than what happened to Kirghiz institutions. Qing Kirghiz leadership obviously could not stay with Akim's family any longer. A Hibcak chieftain named Doliyan (多連) was instead appointed as acting *hakim beg* of Tasimilk.<sup>66</sup> Doliyan eventually

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<sup>64</sup> QXMDH 75: 46-51 (Mingšui, Agūi, Yunggui, Emin Khoja; QL30.7.9/30.7.28), 98: 416-8 (Kicengge, Emin Khoja; QL35.12.28/36.1.25), 121: 151-4 (Cokto, Mahingga, Fusembu, Yade, Šuboo; QL39.9.19/39.10.15), 122: 160-2 (Fusembu, Šuboo; QL39.12.26/40.1.26).

<sup>65</sup> QSL, Gaozong 1203: 87b-88b (QL49.i3.16=5/5/1784), 1203: 92b-93b (QL49.i3.23=5/12/1784), 1206: 137a-139b (QL49.5.7=6/24/1784), 1207: 154a-157a (QL49.5.20=7/7/1784), 1207: 162b-163a (QL49.5.24=7/11/1784), 1207: 168a-169a (QL49.5.27=7/14/1784).

<sup>66</sup> QSL, Gaozong 1206: 137a-139b (QL49.5.7=6/24/1784), 1206: 140a (QL49.5.8=6/25/1784), 1207: 168a-169a (QL49.5.27=7/14/1784), 1209: 205b-206a (QL49.6.24=8/9/1784).

came to replace Akim as the top Kirghiz leader in front of the Kirghiz *biis* and *ahalakcis* assembled at the order of Kashgar *ambans*.<sup>67</sup> Even though he seems never to have risen to Akim's stature, Doliyan had attained a rank 3 button and a peacock feather by the time of his death in 1792. His button and peacock feather, along with the properties he had accumulated during his tenure, were transmitted to his son Turdimaimet (圖爾第邁莫特).<sup>68</sup>

Turdimaimet did even better, receiving a rank 2 button at some point. In 1815, however, he was implicated in the Ziyā al-Dīn uprising of 1815, in Tasimilik, by the Ili general Sungyun (松筠; 1754-1835). Even though a retrial by Cangling (長齡; 1758-1838), the new Ili general, proved his innocence, Turdimaimet had already been executed by slicing after a perfunctory trial. Turdimaimet's position as the head *bii* of Hibcak (*Xibuchake zong bi*) was abolished as it was not a regular position whose vacancy needed to be filled.<sup>69</sup> Thus, two Kirghiz chieftains who had enjoyed the highest standing within Qing Kirghiz society fell from power, and the Qing state made inadequate efforts to fill the resulting vacuum with new clients. Indeed, the degree of Qing mishandling of the Turdimaimet case is astounding.

This is where we turn to Jahāngīr Khoja's conquest of western Altishahr in 1826, a turning point in the Qing Kirghiz policy, as indeed it was in many other aspects of Qing policy in Xinjiang. As Newby has shown, it was precisely the Kirghiz chieftains who had been mistreated by the Qing authorities who rallied behind Jahāngīr: family members of Turdimaimet; Suranci,

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<sup>67</sup> QXMDH 165: 192-8 (Booceng, Dafu, Osman; QL49.9.19/49.10.19), 306-8 (Booceng, Dafu; QL49.10.9/49.11.12).

<sup>68</sup> QXMDH 195: 173-5 (Minghing, Mingliyang; QL57.4.2/57.i4.3), 175-6 (Minghing, Mingliyang; QL57.4.2/57.i4.3).

<sup>69</sup> Newby, *The Empire and the Khanate*, 73-84; QSL Renzong, 310: 115b-116a (JQ20.9.9=10/11/1815), 312: 153b-155b (JQ20.11.27=12/27/1815); 313: 164b (JQ20.12.11=1/9/1816); 315: 185b-186a (JQ21.1.22=2/19/1816); 317: 205b-206a (JQ21.3.10=4/7/1816); 322: 261b-262a (JQ21.9.22=11/11/1816).

whose intelligence on Jahāngīr's plan was met by a rebuke instead of a reward from Kashgar officials; and the Sayak chieftain Tāriq, whose family members had been massacred by Qing troops in 1825. Kwangmin Kim has also argued that Jahangir led a coalition of people who were dispossessed and uprooted by Qing authorities and the Altishahr *begs*.<sup>70</sup>

Jahāngīr's conquest of western Altishahr and the Qing reconquest brought about a radical change in Qing Kirghiz policy. First, there was a shift in the classification of the Kirghiz. While there remained "loyal" Kirghiz beyond the *karuns*, now the dividing line was between the Kirghiz inside and outside the *karun* line, instead of between the Kirghiz near and far. This pattern of Qing retreat from Kirghiz affairs conforms with Newby's observation on the general Qing retreat towards the *karuns* in the first half of the nineteenth century.<sup>71</sup> Second, the number of "loyal" Kirghiz chieftains plummeted, as these figures bear out: Nine paid tribute visits to Kashgar in Qianlong year 35 (1770-71) and ten in Jiaqing year 5 (1800-01), but in Daoguang year 10 (1830-31), none at all came. In fact, Kirghiz chieftains stopped visiting Kashgar altogether, the last recorded visit being from February 12, 1826. It must be noted that the tribute visits to Ush by the chieftains living inside the karun did continue. Even there, however, the list is limited to a few chieftains of two Kirghiz tribes: Cirik and Hūšici.<sup>72</sup> More importantly, the Daoguang emperor made virtually no effort to recruit new Kirghiz chieftains as his new *albatu*, paving the way for first the Kokand and then the Russian incorporation of the Kirghiz outside the *karun*.

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<sup>70</sup> Newby, *The Empire and the Khanate*, 84-94; Kim, *Borderland Capitalism*, 90-125.

<sup>71</sup> Newby, *The Empire and the Khanate*, 207.

<sup>72</sup> QXMDH 247: 131-2 (Mukdembu, Šurhašan; DG6.1.6/6.2.9).

#### **IV. Conclusion**

In this chapter, we have seen how the expansionist, universalist view of Qing Xinjiang in the eighteenth century was gradually replaced in the first half of the nineteenth century by a view of Qing Xinjiang bounded by the *karun* line. In conclusion, let us compare Qing imperial retreat in Xinjiang with what we found in the Qing-Chosŏn and Qing-Vietnam borderlands. Here, I will give one example for each borderland to illustrate this point.

In the Qing-Chosŏn borderland, as we saw in chapter three, the Qing state asserted jurisdiction over Chosŏn subjects who committed crimes on Qing soil on a regular basis from the 1630s to the second half of the eighteenth century. Whichever form the trial took, the Chosŏn judiciary was incorporated as a lower court to the Qing judiciary for the duration of the trial, with the Qing metropolitan judiciary reviewing the terms of adjudication and the Qing emperor providing the final verdict. In the first half of the nineteenth century, by contrast, the Qing state did not assert jurisdiction over Chosŏn subjects, but simply repatriated them with no instruction for Chosŏn authorities on how to proceed with the trial.

In the Qing-Vietnam borderland, as we saw in chapter four, one perennial issue of contention during the Qianlong reign was the Qing acceptance of Vietnamese refugees, whether temporary or permanent, into the Qing domain as universal subjects. The well-known Qing campaign against the Tây Sơn regime began when the Lê royal family was given refuge in Guangxi and ended when the Lê loyalists were incorporated as Qing subjects in Beijing and in a few other provinces, for example. In the Jiaqing and Daoguang reigns, however, the imperial reaction towards news of turmoil in northern Vietnam was one of caution. Qing troops were forbidden to enter the Vietnamese domain, and all Vietnamese subjects seeking refuge or assistance were to be turned away.

In all three borderlands, then, we see a shift from a more universal Qing empire to a more bounded Qing empire. Even though we will need to learn more about the empire-wide situation in the first half of the nineteenth century to make a firm conclusion, I think we can make at least one observation here. Qianlong's empire, with its universal pretensions and expansionist ethos, was, in some ways, fundamentally different from the empire of his successors. Qianlong's grandiose imperial projects may have highlighted for his successors, as Alexander Woodside has shown, the physical and political limits of imperial power—to put in vernacular terms they may have gotten spooked.<sup>73</sup> In that sense, is it possible that the 1840s does not constitute as much of a watershed in Qing foreign policy and modern Chinese history as we have previously thought? Based on the evidence presented in this dissertation, I think we can make an argument that the Qing state in the first half of the nineteenth century was making a decisive move away from being a universal empire in praxis. Of course, this trend was to be coupled with the other trend that began in the 1840s: colonial encroachment by Western and Japanese empires.

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<sup>73</sup> Alexander Woodside, "The Ch'ien-Lung Reign," in *The Cambridge History of China, Volume 9, Part 1: The Ch'ing Empire to 1800*, ed. Willard J. Peterson (New York: Cambridge University Press, 2002), 230–309.



## CHAPTER VII.

### Judiciaries and Jurisdictions in the Qing-Kokand Borderland, 1760s-1840s

#### I. Introduction: On Kokand “Extraterritoriality”

In American historiography, the First Opium War (1839-42) served as the starting point for what Paul Cohen calls the “China’s response to the West” framework of interpreting modern Chinese history.<sup>1</sup> In mainland China, the modern history of China still begins with the First Opium War and the Treaty of Nanjing (1842), the first of many unequal treaties imposed by Western and Japanese colonial empires on Qing China (1636-1912) continuing into the Republican period (1912-1949). Arguably the most important feature of these unequal treaties was the extraterritoriality enjoyed by foreigners on Chinese soil. From the modern perspective of public international law, extraterritoriality was a fundamental encroachment on Westphalian sovereignty, and the international relations scholar Turan Kayaoğlu goes so far as to posit it as the foundation of Western “legal imperialism” in his comparative study of extraterritoriality in Japan, the Ottoman empire, and China.<sup>2</sup>

Due to the centrality that extraterritoriality is accorded in modern Chinese historiography, Qing relations with Kokand (1709-1876) have received some attention from historians of Qing. Joseph Fletcher was the first to notice similarities between the 1835 Qing settlement with Kokand and the Treaty of Nanjing, observing that the settlement gave Kokand subjects in Qing Xinjiang full extraterritoriality by giving Kokand *aqsaqal*, the heads of Kokand merchant

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<sup>1</sup> Paul A. Cohen, *Discovering History in China: American Historical Writing on the Recent Chinese Past* (New York: Columbia University Press, 1984), 9-55.

<sup>2</sup> Turan Kayaoğlu, *Legal Imperialism: Sovereignty and Extraterritoriality in Japan, the Ottoman Empire, and China* (New York: Cambridge University Press, 2010).

communities, jurisdiction over Kokand subjects in Qing Xinjiang. From his view, this settlement was China's first "unequal treaty."<sup>3</sup> L. J. Newby, more recently, has challenged Fletcher's interpretation: "[T]here is little to suggest that the Qing court had wittingly conceded anything that might be termed extraterritoriality, in the modern sense. What it had done was to afford, or re-afford, to Khoqand [Kokand] several privileges which the empire had traditionally employed to regulate relations with foreign traders."<sup>4</sup>

Neither scholar, however, has conducted a careful analysis of how the Qing state in Xinjiang handled criminal activities by Kokand subjects before and after 1835. As in the Kirghiz case, the lack of available sources has played a part. When Fletcher was writing in 1978, none of the mainland Chinese archives were available to foreign scholars. Newby has made use of many Chinese-language palace memorials from the First Historical Archives in Beijing but only a limited number of Manchu-language palace memorials. With the recent publication of the 283-volume collection of Manchu-language palace memorials from Xinjiang, we now know that most palace memorials from Xinjiang were written in Manchu only and never translated into Chinese.<sup>5</sup>

Using this newly available body of materials, we can begin to look at the Qing judicial interaction with Kokand subjects in practice. In this chapter, I will revisit this issue of Kokand extraterritoriality by exploring two different areas of intersection between the Qing judiciary and

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<sup>3</sup> Joseph Fletcher, "The Heyday of the Ch'ing Order in Mongolia, Sinkiang and Tibet," in *The Cambridge History of China, Volume 10, Late Ch'ing, 1800-1911, Part 1*, ed. John K. Fairbank (New York: Cambridge University Press, 1978), 375-85.

<sup>4</sup> L. J. Newby, *The Empire and the Khanate: A Political History of Qing Relations with Khoqand, C. 1760-1860* (Leiden: Brill, 2005), 199.

<sup>5</sup> Zhongguo diyi lishi dang'anguan and Zhongguo bianjiang shidi yanjiu zhongxin, eds., *Qingdai Xinjiang Manwen dang'an huibian* (Guilin: Guangxi shifan daxue chubanshe, 2012) (QXMDH hereafter).

Kokand subjects. First, I will analyze how the Qing state dealt with Kokand subjects who had been arrested for engaging in illicit activities. This analysis will show that Kokand “extraterritoriality” was merely one of the possibilities afforded by elasticity in the Qing imperial worldview from the very beginning of Qing rule over Xinjiang. It will also show that the notion of territorial jurisdiction loomed large within those possibilities. Next, we will turn to Qing jurisdiction over Kirghiz criminals, who often but not always targeted for robbery Kokand merchants on their caravan journeys between Kokand and Qing Altishahr (southern Xinjiang). This will show that Qing took its role as a protector of long-distance caravan merchants seriously, which necessarily took Qing jurisdiction beyond the *karuns* at times.

## **II. Qing Jurisdiction over Kokand Subjects: Between Extraterritorial and Territorial**

Kokand merchants had been residing in Xinjiang for a while before Qing conquest of the region—at least since the time of the Zunghars. In 1759, when Qing troops entered Yarkand during a campaign against the Khoja brothers’ rebellion, they found some Kokand merchants residing in the city. These merchants had semi-permanent residence in major Altishahr cities such as Kashgar and Yarkand, and they engaged in seasonal caravan trade that linked Altishahr with its surrounding regions. Jao Hūi (兆惠; d. 1764), the Qing general in charge of the campaign, and Emin Khoja (額敏和卓; d. 1777), who was well on his way to becoming the most influential *beg* in Qing Xinjiang, decided to maintain the status quo and let Kokand merchants maintain their residence in the city.<sup>6</sup>

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<sup>6</sup> QXMDH 41: 223-4 (Jao Hūi, Emin Khoja; QL24.9.15/24.10.10).

In the context of this study, Kokand subjects were distinct from Chosŏn and Vietnamese subjects in two main ways. First, as already mentioned, Kokand subjects had a semi-permanent residence in Xinjiang that was sanctioned by the Qing state. Chosŏn and Vietnamese subjects, on the other hand, either travelled as members of tributary embassies to Beijing or maintained illicit residence in the Qing domain. Second, Kokand subjects shared many religious and linguistic affinities with the Altishahr Muslims of the Qing domain, whereas Altishahr and China Proper were culturally and institutionally very distinct. To give just two examples, the Qing state ruled the Altishahr Muslims indirectly through local Muslim elites who were given posts as various *begs*. The *beg* posts had ranks corresponding to those of the regular Qing bureaucracy, with the *hakim begs* (Muslim governors) of the biggest Altishahr cities at rank 3. But unlike the regular members of the Qing bureaucracy, they were regional bureaucrats who could not serve outside Xinjiang.<sup>7</sup> Moreover, the non-*beg* Muslims could not sport queues, which were arguably the most important marker of Qing subjecthood in China Proper. This semi-permanent residency and the ambiguous status of Altishahr were frequently factors behind Qing decisions on whether or not to assert jurisdiction over Kokand criminals.

In fact, Qing law in Xinjiang showed characteristics of legal pluralism. As Sally Merry has noted, legal pluralism was originally a concept developed in the colonial context, where colonial law and customary law coexisted. Subsequently, however, it has developed into a concept that can describe other relations between dominant and subordinate groups as well.<sup>8</sup> This concept is useful in studying empires, “polities that maintain distinction and hierarchy as they

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<sup>7</sup> L. J. Newby, “The Begs of Xinjiang: Between Two Worlds,” *Bulletin of the School of Oriental and African Studies* 61, no. 2 (1998): 278–97.

<sup>8</sup> Sally Engle Merry, “Legal Pluralism,” *Law & Society Review* 22, no. 5 (1988): 869–96.

incorporate new peoples,” in the words of Jane Burbank and Frederic Cooper.<sup>9</sup> Qing, as an early modern empire, certainly fit this mold of an “empire of difference” and showed many signs of legal pluralism.<sup>10</sup> Separate legal codes for different groups of subjects existed, of which those for the Altishahr Muslims and those for the Mongols have received some attention. Moreover, there are sections in the Qing Code (*Da Qing lǐli*) and the Collected Institutes (*Da Qing Huidian*) that were geared to specific groups of subjects such as bannermen.<sup>11</sup>

In the following section, I will show that Qing legal pluralism applied to Kokand subjects in Xinjiang as well. “Extraterritoriality” was one of the possibilities that awaited Kokand suspects under the legally pluralistic Qing regime in Xinjiang. As I will demonstrate with actual legal cases, Kokand subjects could be handled by not only their own *aqsaqals* but the *hakim begs*. But at the same time, the Qing state did not hesitate to try and punish Kokand subjects involved in cases that it deemed serious.

When we look at actual cases, we begin to see that there existed a realm of “customary law” for minor criminal offenses committed by Altishahr Muslims and Kokand subjects in Qing Xinjiang, especially in its early decades. These were cases that posed only minor concern for the Qing *amban*, the bannermen officials who oversaw the affairs of Altishahr, or for the Qing court in Beijing. The Qing state was often willing to let the Kokand merchant community in Xinjiang

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<sup>9</sup> Jane Burbank and Frederick Cooper, *Empires in World History: Power and the Politics of Difference* (Princeton: Princeton University Press, 2010), 8.

<sup>10</sup> Karen Barkey, *Empire of Difference: The Ottomans in Comparative Perspective* (New York: Cambridge University Press, 2008).

<sup>11</sup> For Qing legal pluralism in general, see Pär Kristoffer Cassel, *Grounds of Judgment: Extraterritoriality and Imperial Power in Nineteenth-Century China and Japan* (New York: Oxford University Press, 2012), 15-27. For the code for the Mongols, see Dorothea Heuschert, “Legal Pluralism in the Qing Empire: Manchu Legislation for the Mongols,” *The International History Review* 20, no. 2 (1998): 310–24. For the code for the Altishahr Muslims, see Wang Dongping, *Qingdai Huijiang falü zhidu yanjiu (1759-1884nian)* (Ha’erbin: Heilongjiang jiaoyu chubanshe, 2003), 25-62 and Huan Tian, “Governing Imperial Borders: Insights from the Study of the Implementation of Law in Qing Xinjiang” (Ph. D. dissertation, Columbia University, 2012), 29-76.

or the Kokand state itself handle these minor cases involving Kokand subjects. The most common such crime was tax evasion. As discussed in chapter six, the *karun*, or the guard post, acted as a kind of a border checkpoint. The Qing *karun* personnel would inspect the baggage of Kokand merchants passing through and tax them according to the inventory. Some, unsurprisingly, sought to bypass the *karun* when entering and leaving Qing Xinjiang and thereby avoid paying customs.

In 1767, for example, a group of Kokand and Kashgari merchants used a small mountain road near the Akdaši *karun* to avoid paying taxes at the *karun* but were soon detected and arrested by Muši *karun* personnel. Upon being escorted to Kashgar, the merchants were first interrogated by two mid-level officials and then by the Kashgar *ambans* Iletu (伊勒圖; d. 1785) and Cin Hūwang (秦璜; n.d.). In the end, the *amban* decided to tax the goods that these merchants were carrying according to the set rates (5 percent on goods going out of the *karun* and 1/30 of the value for the goods coming in). In their adjudication, however, the *amban* made a distinction between the four Kokand merchants and six Kashgari merchants. They decided to hand over the Kokand merchants to the Kokand merchant community in Kashgar so that they could punish them heavily (*sede afabufi ujeleme isebuhe*). As for the Kashgari merchants, the *amban* ruled that they should be sent to the bazaar for heavy punishment and be put in cangues for a month as a warning to other Muslims. In justifying this adjudication, they stated simply that Kashgari merchants could not be compared to Kokand merchants.<sup>12</sup>

The subsequent tax evasion cases, however, make it clear that this was not an instance of extraterritoriality. In 1775, for example, Jamba and other Kokand merchants were arrested after

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<sup>12</sup> QXMDH 88: 128-31 (Iletu, Cin Hūwang; QL33.5.15/33.6.17).

attempting to evade taxes. According to the precedent set in the above case, the Kashgar *ambans* Šemboo (申保; d. 1781) and Šuboo (淑寶; n.d.) taxed their goods at the set rate of 1/30 of the value. In contrast to the case above, however, they let Gadaimet (噶岱默特; d. 1775), the *hakim beg* of Kashgar, handle these Kokand criminals. The sources merely mention that Gadaimet gathered people at the bazaar and punished the five Kokand criminals severely as a warning to the populace.<sup>13</sup>

In 1789, two Kokand merchants were arrested after sneaking past the Šatu (沙土) *karun* with 60 horses they had bought at a Sarbagashi Kirghiz pasture. They were sent to Ush along with their belongings. According to the Ush superintendent Minghing (明興; d. 1807), there existed a different precedent on tax evasion: taxing the goods at 10 percent, fining the Kokand merchants, and giving them a warning.<sup>14</sup> The next year, in 1790, another tax evasion case in Kashgar was handled according to this precedent.<sup>15</sup>

Our next case involves both Kokand subjects and the *karun* personnel and greatly interested both the Qing *amban* and the Qianlong emperor (r. 1736-95). This case is illuminating for showing the Qing self-conception of its jurisdiction over Kokand subjects in Xinjiang and warrants a close analysis. In March 1794, Qing authorities in Kashgar noticed an inconsistency in the amount of merchandise that Awas and other Kokand merchants had brought into Kashgar. The report from the *karun* had noted they had 32 bundles of merchandise, but they had appeared in Kashgar with only 30 bundles. This inconsistency led to an interrogation of the merchants, who confessed that they had collaborated with *karun* personnel to underreport the amount of

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<sup>13</sup> QXMDH 125: 241-3 (Šemboo, Šuboo; QL40.8.18/40.9.19).

<sup>14</sup> QXMDH 185: 425-9 (Minghing; QL54.6.28/54.7.27).

<sup>15</sup> QXMDH 190: 261-5 (Mingliyang, Funišan; QL55.12.5/56.1.8).

their merchandise. They had originally brought 40 bundles of goods with them, declared only 32 bundles at the *karun*, and hid two more bundles before declaring their goods to the Kashgar authorities.<sup>16</sup>

The letter from the Kashgar *ambans* Yungboo (永保; 1747?-1808), Fan Giyan Jung, and Iskandar (伊斯堪達爾; d. 1811), who concurrently served as the *hakim beg*, to the Kokand ruler Narbuta Beg (r. 1763–99) illustrates a range of possible actions that the Qing state could take. The *ambans* emphasized that these merchants had done more than simply evade taxes by collaborating with *karun* personnel, underreporting the amount of their goods, and further hiding their goods. Their original plan had been to parade them to the various *karuns* to serve as a warning to the personnel there, put them in cangues (*amba selhen*) along with Qing personnel, and punish them with life exile (*falabume icihiyaha*) afterwards. But then the Kokand *aqsaqal* (*hūdai da*) Namajan intervened on their behalf, continually kowtowing for mercy. This led the *ambans* to finally decide to simply drive the merchants away from the *karuns* and permanently ban them from Xinjiang. The *ambans* concluded the letter by exhorting Narbuta Beg to instruct his merchants clearly so there would be no future infractions.<sup>17</sup>

This letter and the Qianlong emperor's reaction to the palace memorial by the Kashgar *ambans* show the deep interest of the Qing state in this case. The imperial response to all the previous palace memorials on tax evasion had been the default imperial response of “noted” (*saha*). This time, however, Qianlong carefully reviewed the terms of adjudication for the

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<sup>16</sup> QXMDH 201: 1-6 (Yungboo, Iskandar, Fan Giyan Jung; QL59.3.9/59.4.13).

<sup>17</sup> QXMDH 201: 6-10 (Kashgar amban to Narbuta Beg; n.d.); On Narbuta Beg, see Scott C. Levi, “The Ferghana Valley at the Crossroads of World History: The Rise of Khoqand, 1709-1822,” *Journal of Global History* 2, no. 2 (2007): 225–32.



complicit *karun* personnel.<sup>18</sup> Similarly, in previous cases, the Qing *ambans* had not bothered to communicate with the ruler of Kokand. This case also raises the option the Qing state had to assert jurisdiction over Kokand subjects, and that is where I will turn next. Below, I will show that there existed a realm of cases, ones the Qing state deemed important, in which that option was taken.

The Qing state did not hesitate to assert jurisdiction over Kokand subjects for these serious illicit activities. Jade smuggling was one such activity. The year 1778 saw the exposure of the most famous jade smuggling ring in Qing history, run by the Yarkand superintendent G'aopu (高樸; d. 1778). Scholars have already examined this case in detail, and I will briefly summarize their findings here. This case came to light when Yarkand *hakim beg* Setib Aldi exposed G'aopu's jade smuggling ring to the Ush councilor Yunggui (永貴; d 1783). G'aopu apparently had collaborated with Yarkand *begs* and merchants from Suzhou (蘇州), Jiangsu, collecting jade from a mountain in Yarkand without authorization and smuggling it to Suzhou, almost 5,000 kilometers away, for sale there.<sup>19</sup> The uncovering of this smuggling ring caused quite an uproar within the Qing court for its wide scale, both geographically and financially, and the main culprits were severely punished. G'aopu, for one, was executed in Altishahr, and his corpse was barred from China Proper as an extra measure of punishment. Many Altishahr

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<sup>18</sup> QSL Gaozong 1450: 338a-b (QL59.4.13=5/11/1794)

<sup>19</sup> Preston M. Torbert, *The Ch'ing Imperial Household Department: A Study of Its Organization and Principal Functions, 1662-1796* (Cambridge, MA: Council on East Asian Studies, Harvard University, 1977), 136-71; James A. Millward, *Beyond the Pass: Economy, Ethnicity, and Empire in Qing Central Asia, 1759-1864* (Stanford: Stanford University Press, 1998), 180-91.

Muslims, merchants from China Proper, and personal servants of G'aopu were also executed for their role in this affair.<sup>20</sup>

What interests us here, however, is the fact that a Kokand merchant named Abula (阿布拉) was implicated in this case. We first hear about him in 1783, five years after the exposure of the smuggling ring. We learn that this Abula had been sentenced to death in 1778 and in 1783 was still imprisoned in Beijing. The sentence would never be carried out, as the Kokand ruler Narbuta Beg successfully interceded on Abula's behalf through his envoy Obulkesama (鄂布勒克色木), who was in Beijing for an imperial audience. Qianlong granted Narbuta's request that Abula be returned to Kokand and constructed this as an act of imperial grace. Abula's crime, Qianlong began, deserved a capital punishment, but the execution had not been carried out because Abula was an ignorant Muslim in a remote region (*bianyuan wuzhi Hui ren*). This act of pardoning Abula and returning him to Kokand, Qianlong continued, was an extraordinary grace that could not be requested again (*gewai kuan dian, fei ke lü yao*). Narbuta was to take care of Abula after his return so that he would not cause more trouble and to do the same for the rest of his subjects.<sup>21</sup> We might note the similarity between the language here and the cases involving Vietnamese criminals we looked at in chapter five: the extension of a special imperial grace and the charge to manage his subjects better in the future.

Jade smuggling would turn out to be a perennial problem in Qing Xinjiang, and in spite of Qianlong's charge, participation in this illicit business by Kokand subjects did not stop after

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<sup>20</sup> QSL Gaozong 1067: 270a-b (QL43.9.16=11/4/1778), 1067: 271a-271b (QL43.9.17=11/5/1778), 1067: 272b-273b (QL43.9.19=11/7/1778), 1067: 274a-275a (QL43.9.20=11/8/1778), 1067: 286a-b (QL43.9.28=11/16/1778), 1069: 318b (QL43.10.19=12/7/1778), 1070: 350a-352a (QL43.11.7=12/25/1778).

<sup>21</sup> QSL, Gaozong 1172: 725a (QL48.1.15=2/16/1783), 1173: 728b-729a (QL48.1.20=2/21/1783); QXMDH 156: 195-9 (Booceng, Dunfu; QL48.7.14/48.8.15).

Abula's pardon. The very next year, the Kokand subject Maimadimin was arrested in Kashgar for jade smuggling. Kashgar superintendent Booceng (保成; d. 1798), recalling previous edicts, sent Maimadimin to Beijing to be tried and punished there.<sup>22</sup> In 1786, another jade smuggling ring was detected in Ili when the Kokand merchant Karabai was discovered with 23 uncut pieces of Persian jade. The Ili *amban* entrusted brigade commander (*youji*; rank 3b) Hailongga and *hakim beg* Akbek, who had arrested Karabai, with the initial interrogation of Karabai. Their interrogation and the *amban*'s personal interrogation revealed that Karabai had been commissioned by two Hui Muslims (*hoise irgen*, i.e. Muslims from China Proper) and one Xinjiang Muslim. Karabai's employers were also brought in and corroborated Karabai's testimony. The *amban* claimed to follow "rules" (*kooli*) in his adjudication. The Hui were to be sent to the Shaan-Gan governor-general, Karabai was to be beaten with 40 lashes, and the Xinjiang Muslim was to be beaten with 30 lashes. Akbek was put in charge of Karabai's punishment.<sup>23</sup> Even though it is unclear what the *amban* meant by "rules" here, one thing is clear from the examination of these three jade smuggling cases: The Qing state was fully willing and able to try and punish Kokand subjects who had committed serious crimes.

Qing-Russia trade was another serious matter that led the Qing state to assert jurisdiction over Kokand subjects. As mentioned in chapter two, Russia was the first European state to sign a treaty with the Qing state. This Treaty of Nerchinsk (1689) was followed by the Treaty of Kyakhta (1727), which among other things designated Kyakhta as an official Qing-Russia trade site. As was often the case with Qing foreign trade, politics and trade were intertwined. The Qing

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<sup>22</sup> QXMDH 161: 166-7 (Booceng, Dafu; QL49.4.14/49.5.6), 161: 409-11 (Booceng to the Grand Council; QL49.4.22=6/9/1784).

<sup>23</sup> QXMDH 173: 298-305 (G'udung; QL51.6.9/51.7.8).

state often used closure of the trade as a political weapon against the Russian state, shutting down the trade on three separate occasions: 1764-8, 1779-80, 1785-92.<sup>24</sup> The closing of the official trade, however, had the unintended impact of further encouraging an already vibrant black market. In 1765, there were already reports of large-scale smuggling. A Qing subject named Zhao Li (趙立), for example, was arrested while transporting 20 carts full of Russian pelts.<sup>25</sup>

The eighteenth-century Qing state was a Eurasian empire, and as Matthew Mosca has shown, it was keenly aware of Eurasian interconnections both within and beyond its domain.<sup>26</sup> Thus, efforts by the Qing state to crack down on illicit trade had empire-wide ramifications. During the third Kyakhta embargo, which lasted from 1785 to 1792, the Xinjiang officials and then the Qing court became aware of the role of Kokand subjects as middlemen in this illicit trade. In October 1790, for example, four Kokand merchants were arrested at the Šatu *karun* for bringing pelts from Russia.<sup>27</sup> To uphold the Russia embargo, the Qing state in these cases did not hesitate to try and punish Kokand subjects.

During the third Kyakhta embargo, smuggling centered on rhubarb. Though rhubarb is mainly used in cooking these days, it was prized for its perceived medicinal benefits as laxative in seventeenth- and eighteenth-century Europe. Among its many varieties, the Chinese variety was considered the “true rhubarb.” Russia had a virtual monopoly on this variety in the European

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<sup>24</sup> Mark Mancall, *Russia and China: Their Diplomatic Relations to 1728* (Cambridge, MA: Harvard University Press, 1971), 236-265.

<sup>25</sup> QSL, Gaozong 734: 88a-b (QL30.4.14=6/2/1765), 738: 131b-132a (QL30.6.6=7/23/1765)

<sup>26</sup> Matthew W. Mosca, “The Qing State and Its Awareness of Eurasian Interconnections, 1789-1806,” *Eighteenth-Century Studies* 47, no. 2 (2014): 103–16.

<sup>27</sup> QXMDH 189: 413-6 (Ioiki; QL55.9.26/55.10.25).

market, which made the rhubarb trade extremely profitable for the Russian state.<sup>28</sup> The Qing state, aware of the Russian demand for this rhubarb, was determined to teach the Russian state an imperial lesson by cutting off its supply. Thus, authorities in Xinjiang began investigating the alternate routes through which rhubarb could flow into the Russian domain. Kokand merchants constituted one of those routes.

Indeed, an investigation in Aksu during January 1789 revealed a shocking amount of rhubarb in the city. Rahamet (喇哈默特) and eight Kokand merchants had 7,080 *jin* (a *jin* is approximately 1.3 pounds) of rhubarb on them, while Ma Chengxiao (馬成孝) and four merchants from China Proper had 840 *jin* of rhubarb on them—more than 10,000 pounds in all. This report worried the Qianlong emperor, who feared the rhubarb could find its way into Russia via Kirghiz or Kokand and effectively nullify his embargo.<sup>29</sup> Further reports on the discovery and confiscation of rhubarb piled up from other regions of Xinjiang. In Kashgar, six Kokand merchants and seven Kashgar merchants were found with 4,000 or so *jin* of rhubarb on them. In Urumqi, around 5,000 *jin* of rhubarb was found on Hami merchants, who had carried it from Suzhou (肅州), Gansu.<sup>30</sup>

Qianlong's initial instructions on how to punish rhubarb smugglers, in an edict on January 29, 1789, shows two lines of delineation among the culprits. Kokand "foreigners" were to be distinguished from Qing subjects in general. After having their rhubarb confiscated, they would be punished (*zhizui*) by the Xinjiang authorities and then expelled from Xinjiang. Qing

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<sup>28</sup> Clifford M. Foust, *Rhubarb: The Wondrous Drug* (Princeton: Princeton University Press, 1992), 34-45, 136-57; Matthew P. Romaniello, "True Rhubarb?: Trading Eurasian Botanical and Medical Knowledge in the Eighteenth Century," *Journal of Global History* 11, no. 1 (2016): 3-23.

<sup>29</sup> QXMDH 183: 436-40 (Fusung; QL53.12.8/54.1.4); QSL Gaozong 1320: 853a-854a (QL54.1.4=1/29/1789).

<sup>30</sup> QSL, Gaozong 1321: 856b-866b (QL54.1.22=2/16/1789), 1323: 909b-910b (QL54.2.26=3/22/1789).

subjects, on the other hand, were to have their rhubarb confiscated and then punished within the Qing domain. Among the Qing subjects, however, was another distinction. Qianlong ordered Altishahr Muslims to be first sent to Urumqi to be interrogated by Urumqi military lieutenant-governor (*dutong*) Šanggan (尚安) and then to Lanzhou (in Gansu) to be punished by the Shaan-Gan governor-general Leboo (勒保). Qing subjects from China Proper (*neidi*), on the other hand, were to be sent directly to Lanzhou to be interrogated and punished by Leboo. By March 22, 1789, when Qianlong crafted an edict to be promulgated throughout Xinjiang, Qianlong reinforced the boundary between Qing subjects and Kokand subjects. Here, Qianlong declared that these Kokand subjects might not have known the prohibition well and thus would be let off lightly with simple confiscation of goods. In the future, however, all Kokand subjects arrested smuggling rhubarb would be sent to China Proper (*neidi*) to be punished severely (*zhong zhizui*).<sup>31</sup>

Some of his Xinjiang officials, however, still put emphasized in their trials the difference between Altishahr Muslims and Qing subjects from China Proper. Aksu superintendent Fusung (福崧; 1747-93), in his March 8, 1789, adjudication, recommended that Kokand subjects be warned and expelled and that Altishahr Muslims be punished by being put in cangues for two months. In his response on April 4, Qianlong emphasized the status of Altishahr Muslims as Qing subjects: “Those Muslims of cities such as Kashgar, Yarkand, Ush, and Aksu are the same as merchants from China Proper (*yu neidi shangmin xiangdeng*).” Altishahr Muslims, as Qing subjects, were ordered to be sent to Leboo for punishment.<sup>32</sup> The Kashgar councilor Mingliyang

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<sup>31</sup> QSL Gaozong 1320: 853a-854a (QL54.1.4=1/29/1789), 1323: 909b-910b (QL54.2.26=3/22/1789).

<sup>32</sup> QXMDH 184: 217-21 (Fusung; 54.2.12/54.3.8); QSL Gaozong 1324: 928b-929b (54.3.8=4/3/1789).

(明亮; 1736-1822) further emphasized the affinity between Kokand subjects and Altishahr Muslims in his March 20 adjudication, in which he recommended a month in cangues and expulsion for Kokand subjects and two months in cangues for Kashgar Muslims. Calling this adjudication an erroneous mistake (*cuomiu*), Qianlong commented: “Kashgar Muslims have received Our favor for many years and are no different from commoners of China Proper (*yu neidi minren wuyi*). [They] cannot be compared to Kokand Muslims (*fei Anjiyan Huimin kebi*).” Again, he ordered Mingliyang to send Kashgar Muslims to Leboo for punishment, even though Mingliyang’s adjudication on the Kokand merchants was approved.<sup>33</sup>

Fluctuations in the boundaries among Kokand subjects, Altishahr Muslims, and Qing subjects from China Proper did not stop there. From palace memorials by Leboo, we find that among those Leboo tried and punished were Kokand subjects. Indeed, Leboo’s logic during this trial shows the fundamentally flexible nature of Kokand subjecthood. In his May 23, 1789, adjudication, Leboo ruled that Yu-su-pu (玉素普), although a Kokand subject, had lived in Kucha for a long time and thus was no different from Kucha Muslims. Based on this collapsing of the boundary, Leboo used a statute from the Qing Code on non-manifest theft to sentence Yu-su-pu to death by strangulation after the Autumn Assizes.<sup>34</sup> Kokand subjects, at different junctures, were and were not comparable to Altishahr Muslims. This collapse between imperial and tributary subjecthood shows the remarkable reach of Qing jurisdiction and the elasticity of Qing imperial sovereignty. The fate of Yu-su-pu is unclear from my sources. The last time we

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<sup>33</sup> QXMDH 184: 305-7 (Mingliyang, Behing; 54.2.24/54.3.19); QSL Gaozong 1325: 938b-939a (QL54.3.19=4/14/1789).

<sup>34</sup> GZD 403057036 (Leboo; QL54.4.29=5/23/1789).

hear about him is July 18, 1789, when Leboo reported to the Qianlong emperor that Yu-su-pu was being escorted to Beijing.<sup>35</sup>

Illicit forms of boundary crossing, which from the Qing perspective could broadly be construed as aiding and abetting treason, constituted another type of serious crimes. A case in 1786 is instructive. In 1786, some Altishahr Muslims were suspected of communicating with Sarimsaq (薩木薩克; 1755-1809). Sarimsaq, as mentioned in chapter six, was the son of Burhan al-Din (布拉呢敦; d. 1759), who with his brother Khoja-Jahan (霍集占; d. 1759) rebelled against Qing in a bid to establish an independent regime in Altishahr. After the suppression of the rebellion and death of his father in the 1750s, Sarimsaq had been living in exile in various Central Asian cities.<sup>36</sup>

Here again, what interests us is a Kokand subject, one Idzibasār, who was suspected of being complicit. Even though interrogations in Kashgar revealed that Idzibasār was not actually involved in the affair, Kashgar councilor Mingliyang judged him to be guilty of not reporting on the case when he first became aware of it. While noting that Kokand subjects residing in Yarkand, Kashgar, Aksu, and Ush were handled by their *aqsaqal* (*hūdai da*), Mingliyang still insisted on trying and punishing Idzibasār. In his adjudication, Mingliyang reached a compromise between the nature of the crime, which warranted a sentence of life exile, and the nature of the culprit, who was of an outer tribe (*tulergi aiman*) with no knowledge of the law in China Proper (*dorgi ba i fafun kooli be sarkū*), by sentencing Idzibasār to wearing a cangue for three months. Afterwards, the Kashgar *aqsaqal* Rudzihūli was instructed to drive him away from

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<sup>35</sup> GZD 403057469 (Leboo; QL54.i5.26=7/18/1789)

<sup>36</sup> Saguchi Tōru, “The Revival of the White Mountain Khwājas, 1760 to 1820 (from Sarimsāq to Jihāngīr),” *Acta Asiatica* 14 (1968): 7-12.



the Qing domain (*musei jecen ci bašame tucibufi*) back to his “original pasture” (*da nukte*). The Qianlong emperor, using a familiar rhetoric of imperial benevolence, pardoned Idzibasar, merely expelling him from Xinjiang.<sup>37</sup> Here again, we might recall that the Qing court has used this “foreign” ignorance of Qing law as a justification for not using regular Qing legal procedures in punishing Chosŏn and Vietnamese subjects—when it so chose.

The next case of boundary crossing happened in 1824. Hai Changlu (海常祿), a Green Standard soldier stationed in Kashgar, deserted his post and was soon arrested by Qing soldiers who had been tipped off. Hai was in possession of two copies of the Quran and foreign attire at the time of his arrest, and this transformed the case from an attempt at simple desertion to defection to a foreign state. Interrogation revealed that Hai had frequented the market in the Kashgar Muslim city and often read scriptures with Kokand subjects there. At some point, he conceived the idea of changing his attire and secretly leaving the *karun* in the direction of Kokand. The Kashgar *ambans* Yong Kin (永芹; 1769-1826) and Bayanbatu (巴彥巴圖; d. 1825) tried Hai Changlu and the Kokand subject involved in this defection attempt. Even though the Kokand ruler Muhammad Ali Khan (r. 1822-42) sent envoys to Kashgar to insist that the Kokand suspect should not be handled in the Qing domain (*buying neidi banli*), Yong Kin and the Daoguang emperor (r. 1821-50) seem to have pressed on with the case.<sup>38</sup>

As our last “serious” cases are from 1840, this is a good place to pause and ponder the implications of the 1835 Qing-Kokand agreement, which purportedly gave Kokand subjects in Xinjiang full extraterritoriality. We have seen above that something comparable to

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<sup>37</sup> QXMDH 174: 448-9 (Mingliyang; QL51.9.8/51.10.5), 175: 416-8 (Booceng; QL51.11.12/51.12.14).

<sup>38</sup> QXMHDH 245: 137-45 (Yong Kin, Bayanbatu; DG4.7.21/4.i7.25); QSL, Xuanzong 73: 167b-168a (DG4.9.6=10/27/1824), 83: 331b-332a (DG5.5.27=7/12/1825).

extraterritoriality existed for Kokand subjects who committed minor crimes even before 1835. For more serious cases, however, we saw Qing jurisdiction asserted over Kokand subjects time and time again. Our next cases, then, are a good opportunity to observe how the extraterritoriality granted by the 1835 agreement worked in practice.

These cases take us back to the First Opium War. As David Bello has shown in his 2005 book, opium was “an empirewide crisis that spread among an ethnically diverse populace and created regionally and culturally distinct problems of control for the Qing state.”<sup>39</sup> One of these regions was Xinjiang. By January 1840, Xinjiang authorities had alerted the Daoguang emperor about opium being carried into Xinjiang by Central Asian and South Asian merchants, and the emperor declared that the ban on opium would apply to Xinjiang as well. From then on, all foreign merchants carrying opium into Xinjiang would have it confiscated and be expelled from Xinjiang, never to be allowed back.<sup>40</sup>

From then on, Xinjiang authorities accelerated their crackdown on the possession of opium by foreign merchants. Here, in accordance with the focus of this chapter, I will look at Kokand merchants in possession of opium. In Khotan, there were two instances in which Kokand merchants voluntarily handed over opium. In January 1840, Khotan superintendent Da-ming-a (達明阿; n.d.) memorialized the Daoguang emperor on how the Kokand *aqsaqal* had handed over about 540 taels (*liang*, approximately 1.3 ounces) of crude opium once he had learned about the ban on opium through the *hakim beg*. Da-ming-a, consulting the new statute on the opium ban, asked for imperial instruction on whether these Kokand merchants should be pardoned

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<sup>39</sup> David A. Bello, *Opium and the Limits of Empire: Drug Prohibition in the Chinese Interior, 1729-1850* (Cambridge, MA: Harvard University Asia Center, 2005), 1.

<sup>40</sup> *Ibid.*, 177-205; QSL Xuanzong 329: 1182b-1183a (DG19.12.23=1/27/1840).

according to the stipulation on giving oneself up within the time limit (*xian nei zishou*). The Daoguang emperor allowed Da-ming-a to pardon them. Four months later, four Kokand merchants arrived at a *karun* in Khotan in possession of crude opium. At the *karun*, they heard about the new ban on opium and gave up their opium to the authorities there. Da-ming-a, again, asked to pardon them according to the new statute. Daoguang approved this suggestion as well and proclaimed a new procedure for opium in Xinjiang. From then on, all opium discovered in northern Xinjiang (*beilu*) was to be sent to Ili so that officials there could verify and destroy it. All opium discovered in southern Xinjiang (*nanlu*, i.d. Altishahr), on the other hand, was to be sent to Yarkand.<sup>41</sup> In this latter stipulation, we see the lingering possibility of Qing jurisdiction over Kokand subjects. Even if the 1835 agreement had technically granted Kokand subjects in Xinjiang extraterritoriality, Qing cooperation on that matter seems far from a foregone conclusion in 1840.

### **III. Qing Jurisdiction over Kirghiz Nomads**

As Lauren Benton and Adam Clulow have shown, protection was an important part of interpolity law in the early modern period: “The discourse of protection—what we call ‘protection talk’—represented a basic currency of interpolity relations, pervading the language of treaties, diplomatic correspondence, tribute ceremonies, appeals for military assistance, voyage narratives, and petitions from individual subjects to sovereigns.”<sup>42</sup> This element of protection was an important part of interstate jurisdiction between Qing and Kokand states as well. In fact,

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<sup>41</sup> GZD 405003491 (Daming’a; DG19.12.13=1/17/1840); QSL Xuanzong 330: 15b (DG20.1.29=3/2/1840), 334: 76b (DG20.5.20=6/19/1840).

<sup>42</sup> Lauren Benton and Adam Clulow, “Empires and Protection: Making Interpolity Law in the Early Modern World,” *Journal of Global History* 12, no. 1 (2017): 74.

as Scott Levi has shown, caravan traders and rulers in Central Asia had a symbiotic relationship. Caravan traders provided revenue for Central Asian rulers. Central Asia rulers, in turn, provided many services for the merchants to promote long-distance caravan trade. They built and maintained infrastructure essential for this trade: roads and caravanserais. More importantly for our purpose, they ensured the safety of travel, protecting the merchants with laws and soldiers.<sup>43</sup>

In the Qing-Kokand context, this usually meant protecting Kokand traders from Kirghiz robbers. Qing provided for the safety of traders with periodic patrols of trade routes by *karun* personnel. Moreover, Qing took a proactive role in recovering stolen goods belonging to Kokand merchants, sometimes even bringing Kirghiz culprits to justice. In this section, we will approach Qing-Kokand interstate jurisdiction from two perspectives. First, we will look at the symbiotic relationship between the Qing state and Kokand merchants in Xinjiang by analyzing how Qing provided legal protection to Kokand merchants even beyond the *karuns*. Second, we will look at the ways in which Qing asserted jurisdiction over Kirghiz nomads and compare them with the ways in which Qing asserted jurisdiction over Kokand subjects in the previous section.

### **A. Qing Protection of Caravan Merchants**

As we have seen in chapter six, pastures of various Kirghiz tribes lay between Kokand and Altishahr. Kokand and Altishahr merchants had to pass through these pastures on their commercial trips and were frequent targets of robbery by Kirghiz tribesmen. Interestingly, it seems to have mattered little to the Qing state whether the victims of these robberies were Kokand subjects or Altishahri Muslims. Instead, the Qing *ambans* in Altishahr understood these

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<sup>43</sup> Scott C. Levi, *Caravans: Indian Merchants on the Silk Road* (Gurgaon: Allen Lane, 2015), 10-26, 51-86.

robberies as attacks on innocent Muslim merchants by unruly nomadic Kirghiz, offering equal protection to all who were robbed.

Robbery by Kirghiz presented itself as the major problem in the earliest years of Qing rule in Xinjiang. In January 1761, two separate cases of Kirghiz robbery from 1760 were resolved. The first case involved Kirghiz nomads from Sayak and Sarbagashi tribes who had robbed 30 or so Altishahr and Kokand traders in Chongbagashi pasture within the *karun* line during the winter of 1760. Haiming (海明; d. 1772), the official in charge of Kashgar (*Kashiga'er banshi dutong shilang*; this was before the superintendent became an official position), entrusted a subordinate officer with the investigation. This officer contacted Sarbagashi *bii* Mingilha, who then captured chief criminal Ma-er-ka-bai (瑪爾喀拜) and accomplice Sha-ba-tu (沙巴圖) and sent them to Kashgar. In Kashgar, Haiming and his subordinate officials got the robbers to confess their crimes and assented to the earnest request of the Muslim crowd for their punishment. The chief criminal, Ma-er-ka-bai, was promptly beheaded, with his head publicly displayed, while his accomplice Sha-ba-tu had his finger cut off “according to the Muslim law (*zhao Hui fa*).” The stolen goods in their possession were returned to the merchants.<sup>44</sup>

The second case involved the Chongbagashi chieftain Umer Bii (烏默爾比), who robbed Kokand merchants outside the *karun* line in the summer of 1760. This had happened while another Chogbagashi chieftain, Awal, was on his way back from his imperial audience in Beijing, and Umer Bii had already fled by the time Awal came back to the Chongbagashi pasture. Awal cooperated with Qing officials as soon as he returned and succeeded in arresting

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<sup>44</sup> QSL, Gaozong 628: 7a-b (QL26.1.13=2/17/1761).

Umer Bii and other robbers, eventually bringing Umer Bii's band to Kashgar. In Kashgar, Haiming initially thought that this case was somewhat different from the Ma-er-ka-bai case because the location of robbery lay outside the *karun* line. Thus, he recommended a lighter punishment, requesting that Umer Bii be stripped of his rank and title (*zhixian*) and be handed over to either the Chongbagashi chieftain Awal Bii or the Hibcak chieftain Akim. In other words, Umer's punishment would be handled by Kirghiz chieftains.

Qianlong found this suggestion inappropriate. As Ma-er-ka-bai had already been executed, Qianlong reasoned, Umer deserved death as well, and letting him off this way would be overly lenient. As for letting Kirghiz chieftains handle this trial, Qianlong saw no reason to do so: "Chonggabashi [sic] Kirghiz belong to Kashgar and are different from foreign Muslims (*Chonggabashi zhi Bulute nai Kashiga'er suoshu, yu waifan Hui ren bu tong*)." Thus, asserting direct jurisdiction in the case was perfectly acceptable. Qianlong concluded his edict by ordering that Umer and his accomplices be sent to Beijing for a trial there. In Beijing, the Board of Punishments was put in charge of the trial, and its adjudication was approved by the emperor: life exile to a malarial place for Umer and enslavement for the women in his family. The women in his family were distributed among the *hakim begs* of various places and Awal Bii.<sup>45</sup>

In the two cases above, we can already see two different perspectives on asserting jurisdiction on Kirghiz crimes. The first, represented by Haiming, sought to limit assertion of jurisdiction to crimes committed within the *karun* line. The second, represented by the Qianlong emperor, did not see the *karun* line as representing the limit of Qing jurisdiction over Kirghiz criminals. As we will see below, these two perspectives coexisted throughout the reign of the

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<sup>45</sup> QSL, Gaozong 628: 7b-8a, (QL26.1.13=2/17/1761), 639: 143a-b (QL26.6.27=7/28/1761), 658: 363b-364a (QL27.4.6=4/29/1762); QXMDH 50: 368-70 (Haiming; QL26.2.25/26.3.19), 51: 266-9 (Šuhede, Iletu; QL26.5.22/26.6.26), 51: 270-1 (Šuhede, Iletu; QL26.5.22/26.6.26), 52: 223-4 (Grand Council; QL26.7).

Qianlong emperor (1736-95). Gradually, during the reigns of the Jiaqing (1796-1820) and Daoguang (1821-50) emperors, however, the first perspective would come to dominate Qing policy in Xinjiang. More importantly, however, this shows the Qing commitment to the protection of caravan commerce that transcended the boundaries delineated by the *karuns*. We might see this as another manifestation of the universalist imperial jurisdiction of the Qianlong reign.

For now, though, let us focus on more cases of Kirghiz robbing merchants. In the second half of the eighteenth century, both Qing protection of merchants against Kirghiz robbers and Qing assertion of jurisdiction over these robbers were constant features of Qing jurisdiction in the region. In the eighteenth century, Qing proved its role as the legal protector of commerce against Kirghiz robberies outside the *karun* line in three main ways. First, Qing *ambans* facilitated the recovery of stolen goods and their return to the victims. Second, Qing *ambans* asserted direct jurisdiction over the Kirghiz robbers, personally trying them and punishing them in their cities. Third, Qing *ambans* asserted jurisdiction by proxy, letting the Altishahr *begs* and Kirghiz chieftains try and punish the robbers.

The first of these was arguably the most important. In fact, bringing robbers to justice seems to have been secondary to recovering stolen goods sometimes, when both Kokand merchants and Altishahr *ambans* focused on the return of goods to their owners. In the summer of 1762, a case of Kirghiz robbing Kokand merchants came to the attention of Kashgar officials when the Kokand envoy Babasik (巴巴什克) reported to Kashgar *hakim beg* Gadaimet on how the Sarbagashi Kirghiz had robbed seven Kokand merchants of 80 horses at a place called Tuguruk Tala. Gadaimet then reported the incident to Kashgar *ambans* Yunggui and Iletu, who in turn entrusted Gadaimet with the investigation. Gadaimet sent *begs* under his command to the

Sarbagashi pasture to inquire after the Kirghiz there, and they returned with 55 horses and a report from a Saru *bii* named Šabtu, who confessed that one of his men was responsible for the robbery. Back in Kashgar, Yunggui and Iletu were troubled by the fact that only 55 of the 80 horses had been recovered. Their subsequent interview of the Kokand merchants revealed that they were uncertain about both the robbers' identity and the number of horses stolen. The *ambans* subsequently rebuked the merchants for their fuzzy reporting and then let them return to Kokand. It is telling that the main concern of the *ambans* here was not punishing the robbers but recovering the stolen goods.<sup>46</sup>

Again, in 1768, Kirghiz of the Edegene and Kartigin tribes robbed 74 Kokand merchants. The Kashgar *ambans* entrusted the following Kirghiz chieftains with the recovery of the plundered goods: Edegene *biis* Ajibii and Hūsibii, Hūsibii's son Šabtu, and Kartigin *bii* Samanci. Of 300-some horses stolen, Edegene chieftains successfully recovered 68 horses and brought them to Kashgar, where the horses were handed to the Kokand *aqsaqal* Rudzihūli. Even though this resulted in a discussion on the limited number of horses that had been recovered, there was no mention of punishing the Kirghiz robbers.<sup>47</sup>

Second, as shown in the Umer Bii case above, the Qing *ambans* asserted full jurisdiction in cases that it deemed more important. As the cases below will show, however, such assertion of full jurisdiction required the cooperation of the Altishahr *begs* and Kirghiz chieftains who were responsible for investigating the cases. In 1772, a group of Kashgar and Kokand merchants who were robbed by Kirghiz at Isilik made a report to Ush authorities. As the initial interrogation of

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<sup>46</sup> QXMDH 57: 290-3 (Yunggui, Iletu; QL27.7.18/27.8.19), 58: 338-43 (Yunggui, Iletu; QL27.10.5/27.11.10), 60: 178-80 (Yunggui; QL27.12.28/28.1.30); QSL, Gaozong 674: 540b-541a (QL27.11.10=12/24/1762).

<sup>47</sup> QXMDH 91: 204-11 (Antai, Cin Hūwang; QL34.1.17/34.2.20), 91: 211-22 (Antai, Cin Hūwang; QL34.1.17/34.2.20).



the victims had identified two Cirik Kirghiz and one Monggoldor Kirghiz, Ush superintendent Antai put Kirghiz imperial guardsman Esen (rank 3) and Aksu *mirab beg* Markatula (rank 5) in charge of the investigation. Esen and Markatula came back with the criminals after about a month of investigation. In the meantime, they had personally gone to the pastures of Cirik and Monggoldor tribes. In those pastures, they had summoned the *biis* of the tribes and interrogated suspects, which eventually led to the arrest of and confession by 11 Monggoldor robbers and two Buhu robbers (for a reason unknown to me at this point, Buhu and Sarbagashi were interchangeable terms in these sources). At that point, Antai personally reviewed and adjudicated the case.<sup>48</sup>

One robbery case in 1790 was notable for its scale. Kirghiz under the rule of Cakar Sayak (察喀爾西雅克) *ahalakci* Jampolat (占頗拉特) had stolen about 1,000 horses from groups of Kokand and Kashgar traders. Upon receiving a memorial on the arrest of the robbers, the Qianlong emperor noted that even though Kirghiz committing robbery was an ordinary matter (*changshi*), it was unusual (*hanyou*) for them to assemble in such large numbers as to be able to steal so many horses. Unless they were punished, Qianlong concluded, other incidents might follow.<sup>49</sup>

The robbers who had already been arrested were thus tried and punished. Jampolat, however, was to remain imprisoned in Kashgar until his sons could arrest the robbers who had gotten away. Other Kirghiz who had been arrested and proven to be innocent over the course of the trial also remained imprisoned in Kashgar until further imperial instruction arrived. Judemiši

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<sup>48</sup> QXMDH 108: 64-6 (Antai; QL37.8.6/37.9.1), 108: 324-9 (Antai; QL37.9.11/37.10.10).

<sup>49</sup> QXMDH 187, 339-40 (Mingliyang; QL54.12.18/55.1.14, 340-2 (Mingliyang, Behing, Iskandar; QL54.12.18/55.1.14); QSL, Gaozong 1346: 15a-16a (QL55.1.14=2/27/1790).

(珠德彌什), one of these Kirghiz prisoners, bribed a prison guard and attempted to escape but failed and was rearrested. Kashgar councilor Mingliyang and others escorted Judemiši to Shaan-Gan governor-general Leboo and sentenced him to exile and hard labor (*faqian chongdang kuchai*). Qianlong bristled upon learning of this ruling, and his reaction clearly shows the priority he placed on punishing Kirghiz for these criminal behaviors. Judemiši, Qianlong stated, even though he was found innocent and should have been sent back to his pasture, was still in custody and should have abided by the law and waited quietly (*shoufa jinghou*) for the imperial instruction. By attempting to escape, Qianlong continued, Judemiši had committed a hateful (*kewu*) crime and should have been executed right after his capture so that tribes in Xinjiang would all know the seriousness of the laws (*Xinjiang ge buluo ren deng gong zhi faling yansu*). Qianlong ordered Mingliyang to execute Judemiši immediately and to inform the Kirghiz of the real reason behind his execution: his flouting of law and discipline (*muwufaji*), not the robbery he did not commit.<sup>50</sup>

Third, Qing also asserted jurisdiction over Kirghiz criminals by proxy, essentially delegating the entire judicial process to Altishahr *begs* and Kirghiz chieftains. The first such instance I have found is from 1773. It began like those cases in which the Qing state asserted full jurisdiction. Once the Kokand and Altishahr victims of robbery pointed out that the culprits belonged to five Kirghiz tribes (Sayak, Buku, Adak, Sarbagashi, and Cirik), the Kashgar *ambans* appointed a Kirghiz chieftain (Esen) and a Muslim *beg* (*mituwali beg* Hütuluktus) as investigators. These investigators went to Kirghiz pastures and worked in concert with Kirghiz *biis* to find the criminals responsible for the robbery. Once the criminals were produced and

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<sup>50</sup> QXMDH 187, 446-8 (Mingliyang, Behing, Iskandar; QL55.1.26/55.2.29), 189: 6-12 (Mingliyang, Iskandar, Behing; QL55.6.2/55.6.29), 189: 70-4 (Mingliyang, Iskandar, Behing; QL55.6.18/), 189: 214-7 (Mingliyang, Iskandar, Behing; QL55.8.8/55.9.10), 190: 101-4 (Mingliyang, Behing; QL55.10.21/55.11.23).

confessions gained, however, the investigators allowed the Kirghiz *biis* and *ahalakci* to try and punish these criminals on their own. Ringleader Adzak Baimurat was beheaded, while his lieutenant Baiir had his arm cut off at the shoulder. Their 37 accomplices were beaten with 50 lashes.<sup>51</sup>

In 1776, five Kashgar Muslims were robbed by seven people at a place called Layanggar Tiyeriyek. They came to Ush to report on the robbery and testified that the robbers were Kirghiz, judging by their speech. The Ush *amban* deputed Ush *hakim beg* Alahuli and two Kirghiz chieftains (Cirik chieftain Esen and Hūšici chieftain Maimat) with the investigation, and they were soon joined by Hūšici *bii* Berke's brother Arbas. After an extensive investigation, they found in the Hūšici tribe seven robbers, interrogated them one by one, and then punished them on their own. The two main culprits had their limbs severed, and five accomplices were each whipped 60 to 80 times. The worth of the stolen goods was calculated and reimbursed to the owners, and the chieftains of the tribe were warned and rebuked by the investigators.<sup>52</sup>

In 1781, three Kokand merchants who resided in Aksu came to Ush to report that they had been robbed near the pasture of the Solton Kirghiz. As usual, the Ush *ambans* entrusted the investigation to Kirghiz chieftains and Muslim *begs*. Of the four investigators, Cirik imperial guardsman Esen (rank 3) headed the investigation, as he outranked the others. This is another detail that shows that the rank buttons given to Kirghiz chieftains, discussed in chapter six, were not devoid of meaning to the Qing state in Xinjiang. In any case, the investigators went to the Solton pasture, where the chieftains were notified and shown a letter with the seal of the *ambans*. The Solton chieftains soon produced 30-some robbers, and a trial took place on the spot. Three

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<sup>51</sup> QXMDH 115: 191-3 (Fusembu, Suldei; 38.8.21/38.9.24).

<sup>52</sup> QXMDH 129: 323-9 (Cokto, Šutai; 41.6.25/41.7.25).

main culprits had their limbs cut off, and the accomplices were beaten hard according to their degrees of guilt. The investigators warned the chieftains to not let this happen again, then came back to Ush to report to the *ambans*. The *ambans* also got a letter from Solton *bii* Niša on the trial, which they noted in their memorial to the Qianlong emperor was identical to Esen's report.<sup>53</sup>

In the nineteenth century, however, both Qing protection of caravan merchants and Qing assertion of jurisdiction over Kirghiz robbers became rarer, then nonexistent. Several factors that may have led to this development have already been mentioned in chapter six and above: expansionism of the Khanate of Kokand, which strengthened its quest for jurisdiction over caravan merchants; Qing imperial retreat to the *karun* line as the territorial and personal boundary between Qing and its neighbors; and the breakdown of the Qing Kirghiz policy. Significantly, however, both Qing protection of merchants and Qing jurisdiction over Kirghiz who committed crimes within the *karuns* continued into the first half of the nineteenth century. This is where we turn next.

## **B. Qing Assertion of Jurisdiction over Kirghiz Criminals within the *Karun***

Throughout the period in question, Xinjiang officials were decisive and swift in asserting jurisdiction over Kirghiz who committed crimes within the *karun* line. Often, such criminal acts were robberies committed by Kirghiz who slipped past the *karun*. Unsurprisingly, it was often the Qing *karun* personnel who detected such criminal acts. In 1763, for example, the personnel at the Arho *karun* detected and arrested a Kirghiz named Cinasi, who had stolen a horse from a Kashgar Muslim. The *karun* officer sent Cinasi to Kashgar, where the *ambans* first deputed their

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<sup>53</sup> QXMDH 145: 195-200 (Šemboo, Falingga; QL45.12.26/46.1.23).

subordinate officials to interrogate Cinasi. After the initial interrogation by the subordinate officials, the *ambans*, along with the top Kirghiz chieftain Akim and the *hakim beg* Gadaimet, personally interrogated Cinasi. Concluding that Cinasi's crime was very hateful (*ubiyada*), the *ambans* decided to punish him in a way that would serve as a warning. Cinasi was taken to the bazaar and executed there, in front of the area Kirghiz populace that had gathered at the command of the *ambans*. His *ahalakci* (the Kirghiz title for minor chieftains) Baraši was pardoned because of his old age.<sup>54</sup>

In 1769, personnel at the Cikman *karun* arrested Chongbagashi Kirghiz Baimet after his act of robbery in the Togusak village of Artusi and sent him to Kashgar. This case was handled in a comparable manner as the Cinasi case. Subordinate officials—bureau vice director (*yuanwailang*; rank 5b) Gilyangga and subprefectural magistrate (*tongpan*; rank 6a) Yungliyang—conducted the initial investigation. Then Kashgar *ambans* Antai (安泰; d. 1775) and superintendent Cin Hūwang (秦璜; n.d.) interrogated Baimet personally and adjudicated on the case. In their adjudication, they relied on two factors. First was the precedent established in the Cinasi case, where immediate execution at the bazaar served as a warning to the populace. Second was what they called “Muslim custom.” Combining these two factors, they sentenced Baimet to be hanged immediately at the bazaar in accordance with “Muslim custom” (*hoise i kooli songkoi lakiyame bucebuki*).<sup>55</sup> Here, barely 10 years after the Qing conquest of Kashgar, we see use of precedents in trying Kirghiz criminals committing crimes within the *karun* line.

The next case, in 1772, also clearly shows the continued use of precedents. This case involved Turdu and two other Chongbagashi Kirghiz who stole five horses in a Cirik pasture and

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<sup>54</sup> QXMDH 63: 244-51 (Yunggui, Yangsangga; QL28.6.27/28.7.29).

<sup>55</sup> QXMDH 91: 322-6 (Antai, Cin Hūwang; QL34.1.27/34.2.30).

were arrested at Yustu Artuši *karun* on their way back to their own pasture. The case was again handled in an analogous way: transfer of the criminals to Kashgar, initial interrogation by subordinate officials, and personal interrogation and adjudication by the *ambans*. Here again, Kashgar councilor Fusembu (福森布, 富森布) and superintendent Suldei (蘇爾德) used the Baimet precedent to sentence these three Kirghiz to immediate execution at the bazaar, reasoning that Kashgar was at a western extremity of the empire (*wargi dubei jecen*).<sup>56</sup>

Interestingly, Xinjiang authorities sometimes even asserted jurisdiction over crimes that happened among the Kirghiz themselves within the *karun* line. In 1781, for example, Noigüt *bii* Eimer reported to Aksu *hakim beg* Akbek on an uncontrollable servant of his named Niyasbaba who had originally been given to him by Akim in 1772. Now Eimer was requesting that Niyasbaba be sent back to Akim. When Akbek reported this matter to the Ush *amban*, Niyasbaba was brought to Ush and first interrogated by subordinate officials and Akbek and then personally interrogated by the *amban*. Taking into consideration his behavior under Eimer, and perhaps his history of following the Khoja brothers in their rebellion, the Ush *amban* sentenced Niyasbaba to exile in Yunnan's miasmatic (i.e., malarial) region.<sup>57</sup> Here, we are reminded of Vietnamese refugees who were settled in Xinjiang as Qing subjects. The Qing-Vietnam borderland and the Qing-Kokand borderland lay at the opposite extremes of the transcontinental imperial domain.

In 1795, when A-yu-ta-si (阿玉塔斯) and four other Kirghiz stole government horses in Ili, a banner officer arrested them in their own pasture and brought them back to Ili. Booning (保寧; 1734?-1808), the Ili military governor, interrogated them and adjudicated the case. A-yu-ta-

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<sup>56</sup> QXMDH 105: 251-4 (Fusembu, Suldei; ?/QL37.2.26).

<sup>57</sup> QXMDH 147: 44-8 (Cokto, Falingga; QL46.i5.22/46.6.21).

si, as the ringleader, was immediately executed. The four accomplices were sentenced to exile to a miasmic place (*fawang yanzhang difang*). This adjudication was approved by the emperor.<sup>58</sup>

Here we might pause and reflect on the statutory basis of these trials. In the second half of the eighteenth century, Kirghiz crimes within the *karun* line were commonplace, but most of them were petty crimes involving a few destitute Kirghiz. Because they happened often enough, previous cases could be used as precedents in adjudications of new cases. Reflecting the legally pluralistic nature of Qing rule in Xinjiang, however, a strict application of the Qing Code (*Da Qing lili*) on Kirghiz criminal cases seems to have been discouraged. In the 1764 case involving false information on the killing of Qing troops by Kirghiz, Yangsangga (揚桑阿; n.d.), the Kashgar superintendent, tried to use the Qing Code to punish Cirikci, the source of the false information. When Cirikci came to Kashgar to admit his guilt in making a false report, Yangsangga used a Qing statute on making a false report to reprimand him and send him back. Qianlong found Yangsangga's handling very inappropriate. When a man of an outer tribe (*waibu zhi ren*) heard news and promptly reported Qing authorities, that should be considered as a respectful and submissive (*gongshun*) behavior. Because of a stickler like Yangsangga, Qianlong mused, Kirghiz chieftains like Cirikci might not report on real news out of fear in the future. Qianlong thus ordered Yangsangga to relay the imperial message to Cirikci that the fault here lay with officials, not Cirikci, and that Cirikci should report all the news immediately regardless of its truth.<sup>59</sup>

In the first half of the nineteenth century, we see a dramatic increase in the scope of Kirghiz criminal activities within the *karun* line. Of course, petty crimes persisted. For example,

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<sup>58</sup> QSL, Gaozong 1469: 620a-b (QL60.1.27=2/16/1795).

<sup>59</sup> QSL, Gaozong 712: 946b (QL29.6.5=7/3/1764).

in 1837, Sa-er-bai (薩爾拜) and two other Kirghiz entered Sha-er-ya-si (沙爾雅斯) *karun* in Ili and stole five horses and six cows.<sup>60</sup> Just the next year, Tu-lu-du (圖魯都) and six other Kirghiz rode past a *karun* in Ili and stole 20 camels from a Mongol pasture.<sup>61</sup> In 1845, two groups of Kirghiz robbers stole livestock inside the *karun* line. Tui-hun-bai (推渾拜) and two other Kirghiz came inside the *karun* line at Ili and stole 65 horses from an Oirat pasture. In another case, Tuo-hu-za-ke (托呼雜克) and four other Kirghiz stole nine horses from the same pasture.<sup>62</sup>

A robbery case in 1839, however, represented a new kind of criminal case that worried Qing authorities in Xinjiang because of the large scale and because they resulted in Qing deaths. Even though the exact number was not given because they were never captured, these Kirghiz robbers had come in large numbers (*chengqun*). Moreover, their crime was not limited to stealing livestock inside the *karun*. When Qing troops gave them chase after their theft, they engaged the Qing troops and even killed three Qing soldiers. Even after they had been driven away, they came back again and stole about 100 horses from the government ranch in a clear show of defiance.<sup>63</sup>

Things got worse in the 1840s, as both large-scale Kirghiz raids and Kirghiz killings of Qing soldiers became increasingly common. In 1845, 200-some Hibcak Kirghiz forcefully entered Tu-mu-shu-ke (圖木舒克) *karun* in Yengisar and killed Qing soldiers in the process.<sup>64</sup> In

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<sup>60</sup> GZD 405012671 (Teišumboo; DG17.6.21=7/23/1837); QSL, Xuanzong 299: 647b-648a (DG17.7.20=8/20/1837).

<sup>61</sup> GZD 405002057 (I Šan, Tondobu, Hūwašabu; DG18.11.4=12/20/1838).

<sup>62</sup> GZD 405009465 (Saingga, I Šan; DG26.8.29=10/18/1846).

<sup>63</sup> GZD 405002488 (I Šan et al; DG19.1.9=2/22/1839; only the last two pages preserved); QSL, Xuanzong 319: 988b-989a (DG19.2.12=3/26/1839).

<sup>64</sup> QSL, Xuanzong 417: 225a-b (DG25.5.2=6/6/1845); GZD 405007327 (I Ging, Saishiyaletai; DG25.4.1=5/6/1845), 405007345 (Buyantai; DG25.4.5=5/10/1845).



1846, another group of Kirghiz robbers engaged Qing soldiers, killing some in the process.<sup>65</sup> In short, we see the same imperial retreat at work here that we witnessed in chapter six. The Qing troops in Xinjiang were having greater difficulties maintaining order within the *karun* line, let alone beyond.

Second, we see the Qing state, perhaps in reaction to this increase in large-scale and fatal Kirghiz raids, asserting jurisdiction in those cases in an even more systematic manner. In 1821, for example, Kashgar councilor Ulungga (武隆阿; d. 1831) proposed applying the procedure for cases of *kaici* (開齊) encroachment in Ili for cases of *kaici* encroachment in Kashgar. *Kaici* is a Manchu word that means a boundary between two patrol areas. Combined with the Manchu word *jugūn*, meaning road, it was used to denote patrol route.<sup>66</sup> The Daoguang emperor approved this suggestion. As the nature of the crimes in both cases was identical, he reasoned, adjudication should also be identical. In short, the *ambans* in charge were to sentence those who encroached on the *kaici* in the future to banishment. Then they were to send the criminals to the Shaan-Gan governor-general so that he could decide on the location of their eventual banishment, while also notifying the Board of Punishments and the Lifanyuan in the capital for the case to be reviewed.<sup>67</sup>

In 1830, *kaici* encroachment cases were further codified through a tea smuggling case involving a Qing subject from China Proper, an Altishahr Muslim, and two Kirghiz. Yang Shengfa (楊生發), a Qing subject from China Proper, had brought tea to Kashgar and traded

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<sup>65</sup> QSL, Xuanzong 433: 421b-422a (DG26.8.24=10/13/1846); GZD 405009297 (Saishiyatai, Jiming; DG26.7.18=9/8/1846).

<sup>66</sup> Akira Yanagisawa, "Some Remarks on the 'Addendum to the Treaty of Kiakhta' in 1768," *Memoirs of the Research Department of the Toyo Bunko* 63 (2005): 65–83.

<sup>67</sup> QSL, Xuanzong 22: 396a (DG1.8.7=9/2/1821).

with Hu-da-ba-er-di (胡達巴爾底) and A-bu-du-er-ha-li (阿布都爾哈里), two Kirghiz who had secretly entered the *karun* (*touyue jin ka*) with silk, pelts, and gold thread (*jinxian*). Altishahr Muslim A-ba-si (阿巴斯) had acted as a middleman, hiding the smuggled goods and selling the tea on the market. After the trial, Yang was sentenced to penal servitude in a far frontier, the two Kirghiz were sentenced to penal servitude in a miasmatic place in either Liangguang or Yun-Gui, and A-ba-si was sentenced to penal servitude in a far frontier. All four were to wear cangues for three months at the site of the crime before their banishment so that their case might serve as a warning.

More importantly, this case was codified as a precedent for all future cases where merchants traded with Kirghiz trespassers in places like Kashgar. All those who carried weapons would be executed, and the rest would be sentenced to penal servitude according to the statute on private trade with the Miao. If the merchants carried tea, a Qing state monopoly, they would be sentenced to penal servitude in a miasmatic region according to the statute on private tea trade with foreigners. Those merchants who carried the goods outside the *karun* line or the Kirghiz who entered the *karun* line to trade were to be sentenced to penal servitude in a miasmatic region in Liangguang or Yun-Gui.<sup>68</sup>

It is not surprising, then, that all cases of Kirghiz crimes within the *karun* line were handled in an extremely routinized way after 1830. By 1837, Teišumboo, the Ili military governor adjudicating on the Sa-er-bai case, could already state that precedents for trying Kirghiz criminals who had encroached on the *kaici* and stolen livestock had long been on record. He immediately executed Sa-er-bai, the chief criminal, in the market so that this case could serve

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<sup>68</sup> QSL, Xuanzong 164: 542b-543a (DG10.1.18=2/11/1830); *Xing'an huilan* 12: 899-901.

as a warning. He sentenced the two accessories to penal servitude in a miasmic place. According to precedent (*zhaoli*), he tattooed them and sent them to Gansu so that the Shaan-Gan governor-general could pick the place for their penal servitude.<sup>69</sup> The Ili authorities handled the Tu-lu-du case the next year in the same way. Tu-lu-du, as the chief criminal, was immediately executed in the market. Three accessories who had been arrested with Tu-lu-du were tattooed and sent to Gansu for eventual penal servitude in a miasmic place.<sup>70</sup>

Saingga, the Ili military governor, and I Šan, the Ili councilor, also had plenty of precedents to consult when adjudicating on the two robbery cases from 1845. In adjudicating on the Tui-hun-bai case, they looked at a Mongol statute (*Menggu li*) that dealt with Kazakhs entering the *karun* line without permission and committing robbery. They also noted how all previous cases of Kirghiz robberies had been handled according to this statute. Tui-hun-bai was escorted to the market and immediately executed there. They applied the same statute in the Tuo-hu-za-ke case, tattooing Tuo-hu-za-ke and sending him to the Shaan-Gan governor-general for eventual penal servitude in a miasmic region.<sup>71</sup>

#### **IV. Conclusion**

Overall, we can see that the Qing state treated Kirghiz criminals and Kokand criminals in very different ways even though Kirghiz and Kokand both were classified as “outer tribes” (*tulergi aiman*). As we have seen in chapter six, the Qing state in Xinjiang had in mind different degrees of “outer tribe” subjecthood as well as different degrees of Qing imperial subjecthood.

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<sup>69</sup> GZD 405012671 (Teišumboo; DG17.6.21=7/23/1837).

<sup>70</sup> GZD 405002057 (I Šan, Tondobu, Hūwašabu; DG18.11.4=12/20/1838).

<sup>71</sup> GZD 405009465 (Saingga, I Šan; DG26.8.29=10/18/1846).

Likewise, Qing law in Xinjiang distinguished between various types of territorial and personal jurisdiction, making it hard for one to talk of extraterritoriality in a definitive sense. A more fruitful approach, as I have suggested throughout this chapter, is to see Qing Xinjiang as a legally pluralistic regime with many options from which the state could choose.

As “outer tribes,” both Kokand and Kirghiz lay between the status of “outer state” (*tulergi gurun*) and “outer province” (*tulergi golo*). As Nicola Di Cosmo has pointed out and as I have shown above, some of these Kirghiz were clearly closer to the status of “outer province” than other “outer tribes” such as Kokand. It is not surprising, then, to see that the Qing assertion of jurisdiction over Kirghiz nomads was both more routine and more complete than that over Kokand subjects. Similarly, the existence of these “outer tribes” in and around Xinjiang shows us that the category of Qing subjecthood was neither singular nor fixed. Take Altishahr Muslims for example. As James Millward has shown, Altishahr Muslims were distinguished from “regular Qing subjects” from China Proper.<sup>72</sup> As we have seen above, however, if the distinction is between “regular Qing subjects” and Kokand Muslims, Altishahr Muslims approximated more closely the status of “regular Qing subjects.” On yet another level, Altishahr Muslims and Kokand Muslims constituted the category of Muslim merchants in distress when set against “nomadic” Kirghiz robbers.

Of course, this flexibility decreased over time as the Qing state had to compete with the Kokand state in the first half of the nineteenth century and then with the Russian state in the second half of the nineteenth century. As we have seen in chapter six, the Qing state retreated to the *karun* line in its definition of territorial boundaries and subjecthood. The Qing assertion of jurisdiction over criminals from “outer tribes” and offer of protection to merchants also retreated

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<sup>72</sup> Millward, *Beyond the Pass*, 194-231.

to the *karun* line. Moreover, based on the increased intensity of Kirghiz robberies inside the *karun* line and the increased demands of the Kokand state for extraterritoriality, the Qing state of the nineteenth century seems to have struggled to maintain its jurisdiction even within the *karun* line. This, in fact, was only a preview of things to come. From 1864 to 1877, the Qing state totally lost control over Altishahr as the Altishahr Muslims and Chinese Muslims (Tungans) rebelled against the state and a young Kokand officer named Yaqub Beg established an independent regime in modern Xinjiang.<sup>73</sup> Even after the Qing reconquest of the region, Xinjiang would remain a colonial frontier contested between the Russian/Soviet empire, the Qing/Chinese empire, and the emergent Uyghur nation for seven decades.<sup>74</sup>

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<sup>73</sup> Kim, *Holy War in China: The Muslim Rebellion and State in Chinese Central Asia, 1864-1877* (Stanford: Stanford University Press, 2004).

<sup>74</sup> David John Brophy, *Uyghur Nation: Reform and Revolution on the Russia-China Frontier* (Cambridge, MA: Harvard University Press, 2016).

## **CHAPTER VIII.**

### **Conclusion**

Throughout this dissertation, we have seen different ways interstate interactions have manifested in three Qing borderlands in terms of boundaries, subjecthood, and jurisdiction. To conclude this dissertation, I will adopt a comparative perspective. First, I will compare the three borderlands studied in this dissertation, highlighting their differences as well as similarities. Then, I will compare the Qing empire with two contemporary Eurasian empires: Romanov Russia (1613-1917) and the Ottoman Empire (1299-1922). The comparison with Russia will focus on Qing-Russian imperial competition from the mid-seventeenth century to the second half of the nineteenth century. The comparison with the Ottoman Empire, on the other hand, will focus more on the general features of imperial rule.

### **I. Comparing Borderlands**

The three borderlands studied in this dissertation each represent Qing's Northeast Asian, Southeast Asian, and Central Asian borderlands. In that sense, it is not surprising that each borderland manifested characteristics of boundaries, subjecthood, and jurisdiction that were distinct to that borderland.

#### **A. Differences**

First, the historical context behind the establishment of each tributary relationship was vastly different. To take the relationship with Qing as the common denominator, each relationship was formulated in one of three distinct stages of Qing empire-building. Chosŏn became the first Qing tributary state after a protracted process that lasted for more than four

decades and involved two wars. After the first war in 1627, the Jin and Chosŏn states agreed to recognize each other as legitimate states on equal footing. This relationship, however, barely lasted a decade, as conflicts between the two states over the territorial boundary and the subjecthood of certain borderland people mounted. After its self-professed transformation in 1636 from a frontier khanate to an empire with universal aspirations, Qing waged another war against Chosŏn in December 1636 to force Chosŏn's entry into the new Qing tributary world. Qing's easy victory made Chosŏn the first Qing tributary state in February 1637.

Lê Vietnam, on the other hand, became a Qing tributary state in the 1660s, after Qing had driven the last Ming claimant out of China Proper and inherited two Vietnamese polities—the Lê/Trịnh regime in northern Vietnam and the Mạc in far northern Vietnam—from its imperial predecessor Ming. The establishment of the tributary relationship here did not involve a war or a formal interstate agreement on the delineation of the domains and subjects of the two states. Lastly, Kokand entered the Qing tributary world at the height of Qing expansion in the 1750s. Perhaps due to the corollary imperial self-confidence, the Qing court of the 1750s did not recognize Kokand as a state represented by a king, as Chosŏn and Vietnam were. Instead, it was regarded as an “outer tribe” (*tulergi aiman*) ruled by a chieftain (*beg*), comparable in status to Xinjiang *begs* but subordinate to the Qing officials stationed in Xinjiang. Korean and Vietnamese kings, on the other hand, interacted with Qing provincial officials on equal footing.

Second, distinct chronological and regional contexts further contributed to different contours of the three sets of tributary relations. Despite its self-proclamation, the Qing court in 1637 still ruled over a regional polity that it had carved after decades of state-building and campaigns against Ming, Chosŏn, and various Mongol polities. As such, it above all sought to protect its newly acquired territories and subjects. These imperatives governed the ways the Qing

and Chosŏn polities handled two recurrent issues. The first issue was subjecthood. Qing claimed three groups of people—Jurchens residing in the Chosŏn domain, Han Chinese refugees, and former Chosŏn subjects captured and enslaved during the two wars mentioned above—as its subjects. The Chosŏn state initially protected these people, thus passively competing with Qing imperial claims. After Qing pressures gradually intensified, however, Chosŏn gave up its claim over Jurchens and Han Chinese refugees. The sporadic Chosŏn protection of former Chosŏn subjects continued until 1666, when the Qing court taught the Chosŏn court an imperial lesson by fining King Hyŏnjong (r. 1659-74) for hiding a former Chosŏn subject. Humiliated by this outcome, the Chosŏn state never failed to send back runaway Chosŏn captives from then on, labeling them as “Qing subjects” rather than “returners” as it previously had done. The line between Qing imperial subjects and Chosŏn tributary subjects had finally been drawn.

This acknowledgment also influenced the second issue, territorial delineation. At the outset of the tributary relationship in 1637, both states agreed to consider the Yalu River as the interstate territorial boundary. As the Qing presence north of the Tumen River grew, both states came to regard these two rivers as the interstate territorial boundary. After decades of state-driven measures banning the unauthorized crossing of the rivers, the notion of the territorial boundary had become common knowledge in this borderland. This transformation culminated in a 1712 joint survey and demarcation of the Changbai Mountains, the grey zone that lay between these two rivers. As a result, the Qing-Chosŏn borderland came to exhibit a much clearer level of delineation of boundaries than did Qing frontiers with Vietnam or Kokand.

The Qing-Vietnam borderland in the 1660s, on the other hand, was still an untamed frontier from the perspectives of Qing and Lê Vietnamese courts, ruled by autonomous (in Vietnam) or semi-autonomous (in Qing) regimes at the regional level and by hereditary native



chieftains at the local level. It was not until the 1720s, when both Qing and Vietnamese courts had eliminated regional competitors and were pursuing centralization policies, that the issue of interstate demarcation was even brought up in the Kaihua-Vị Xuyên borderland. While remarkable in its modern characteristics, such as the use of rivers as natural borders and the linear conceptualization of the boundary, this demarcation took place in a small portion of Yunnan-Vietnam territorial boundary and did not result in the systematic interstate delineation that we saw in the Qing-Chosŏn borderland. The Qing-Vietnamese territorial boundary was further complicated by two factors. First, native chiefdoms in the borderland survived well into the nineteenth century. These polities were only indirectly ruled by either state and constituted a “middle ground,” which had been eliminated in the Qing-Chosŏn borderland. Second, the consolidation of Qing rule over China Proper in the 1680s gave rise to the Qing perception of its realm as unbounded and universal, which came to coexist with the early seventeenth-century view of a bounded Qing realm.

The coexistence of these universal and bounded worldviews manifested itself in at least two ways. First, the Qing state often encroached on the Vietnamese domain in cases concerning security and imperial prestige. There existed not one but at least two territorial boundaries in this borderland: one for entering the Qing imperial domain and the other for entering the Vietnamese tributary domain. The Qing state did not respect these boundaries equally. Second, asserting its theoretical claim to rule over “all peoples under heaven,” the Qing often accepted Vietnamese tributary refugees as Qing imperial subjects. This transformation of subjecthood was not limited to tributary Vietnamese rulers on the losing side of civil wars but also ordinary Vietnamese subjects. The Qing-Vietnam borderland remained very much a “middle ground,” occupying an

intermediate position between the well-delineated Qing-Chosŏn borderland and the zonal and fluid Qing-Kokand borderland.

The Qing-Kokand borderland, as mentioned above, was incorporated into the Qing domain during the height of imperial expansion in the 1750s. Here, an imperial vision of unbounded and unlimited frontier initially overshadowed the more linear and modest administrative boundaries of *karun* (guard post) lines. Moreover, the Qing state allowed Kokand caravan traders to reside in Xinjiang on a semi-permanent basis, as was the custom prior to the Qing conquest, even as it restricted the movement of Xinjiang Muslims beyond the *karun*. The existence in this region of nomadic Kirghiz tribes, some of whom moved freely between Kokand and Qing, further defied an easy demarcation of peoples and domains. The Qing state, consistent with its expansive late seventeenth-century self-image, tolerated this ambiguity until the death of the Qianlong emperor in 1799. But his successors, recognizing the imperial overreach of the Qianlong reign (1736-95), gradually retreated to rely on fixed *karun* lines as the Qing-Kokand boundaries.

Third, the different contours of interstate relations finally gave rise to different protocols of interstate relations. The Chosŏn court, for example, had early and frequent legal interactions with the Qing court, which jealously protected its interests by investigating and punishing Chosŏn subjects who illegally entered the Qing domain or engaged in illicit activities on Qing soil. This produced a joint jurisdiction, wherein Qing and Chosŏn judiciaries cooperated based on routine procedures drawn from precedents. Whether it took the form of the joint trial or the trial by the Chosŏn king subject to Qing reviews, the trial of Chosŏn criminals involved protracted interactions between the representatives of Qing and Chosŏn judiciaries. As some of these interstate trials even predated the compilation of Qing legal codes, results of the early trials

were often used as legal bases in later trials. This form of joint jurisdiction is something not found in the other two borderlands, where interstate trials often were improvisational and unilateral.

The Qing-Vietnam borderland, for example, was farther from the administrative centers of both states and saw only sporadic attention to interstate crimes until the early eighteenth century. With the Qing attempt in the 1720s to replace some native chieftains with Qing bureaucrats, however, interstate crimes began to receive more scrutiny. Compared to the Qing-Chosŏn interstate jurisdiction, interstate jurisdiction in this borderland lacked clear precedents stipulating protocols of joint jurisdiction. As a result, it was less routine, improvisational, and unilateral than the one in the Qing-Chosŏn borderland. For example, mutual repatriation of fugitives, while still considered the norm, happened on a much less regular basis. The Qing state, continuing the trend of accepting Vietnamese refugees as imperial subjects, often gave refuge to Vietnamese fugitives. On the Vietnamese side, most notably, the Tây Sơn regime (1778-1802) was the patron of pirates from South China and shielded them from the Qing judiciary on a regular basis.

## **B. Commonalities**

But more important than their differences are four characteristics these borderlands had in common. First, the cases examined here show multiple, flexible, and shifting forms of jurisdiction in the Qing borderlands. This jurisdiction could be shared, given up, or transferred. The Qing-Chosŏn borderland, with many instances of joint trials and general cooperation between Qing and Chosŏn judiciaries, shows the clearest examples of shared interstate jurisdiction. The Qing-Vietnam borderland, on the other hand, points to instances where

jurisdiction was given up or transferred. When the Qing state asserted jurisdiction over Vietnamese subjects, that jurisdiction operated on fluctuating degrees of territorial and personal jurisdiction. When the Qing state pressured the Vietnamese state to extradite Vietnamese suspects or tried and sometimes even punished Vietnamese suspects in the Qing domain, the territorial principle of jurisdiction prevailed. On the other hand, when the Qing state decided to repatriate the Vietnamese suspects to be punished by their own king, the personal principle of jurisdiction prevailed.

From this understanding of flexible and elastic interstate jurisdiction, we can reappraise the 1835 Qing-Kokand agreement, which scholars have interpreted as the first unequal treaty signed by Qing that accorded extraterritoriality to foreign subjects residing in the Qing domain. In fact, as I have shown in chapter seven, the 1835 agreement was merely a continuation and affirmation of a Qing policy that dated back to the 1760s in Xinjiang and to the 1630s in other borderlands. The Qing state was willing to let the Kokand merchant community in Xinjiang or the Kokand state itself handle minor criminal cases involving Kokand subjects. But in cases that it deemed to be important such as large-scale smuggling or aid to rebellions by Xinjiang Muslims, the Qing state did not hesitate to assert jurisdiction over Kokand subjects. “Extraterritoriality” was merely one of these multiple and shifting versions of jurisdiction in Qing borderlands.

Second, one can also see a fundamental asymmetry between the Qing empire and its tributary states. Within Qing-Chosŏn interstate jurisdiction, the Chosŏn judiciary always acted as the lower court to the Qing judiciary. The Qing judiciary retained a monopoly over reviewing the terms of adjudication, and as a result, made all final decisions. Moreover, while the Chosŏn judiciary knew the precedents at least as well as the Qing judiciary, the Qing emperor reserved

the authority to create precedents. This asymmetry resulted in situations where Chosŏn kings no longer had the final authority over their own subjects and were sometimes even liable to be punished by the Qing judiciary. Finally, the Chosŏn judiciary, in contrast to its Qing counterpart, never asserted formal jurisdiction over foreigners entering its territory, merely repatriating Qing subjects in its territory in response to ad hoc Qing demands. In short, the Qing emperor remained the sovereign who created precedents, made the final decision and, to borrow Weber's definition, had a monopoly on the legitimate use of force within his domain.

In the Qing-Vietnam borderland, the Qing state sought judicial monopoly over its subjects by expecting the Vietnamese state to repatriate Qing fugitives unconditionally, even as it often refused to repatriate Vietnamese fugitives. This asymmetric sense of jurisdiction extended towards Qing subjects committing crimes in Vietnam. For the most part, Vietnamese regimes from the 1660s to the 1840s did not openly claim jurisdiction over Qing subjects who committed crimes in the Vietnamese domain, simply repatriating them with or without prompt from Qing. As it had no way of participating in the trials of the repatriated Qing suspects, the Vietnamese state essentially surrendered its jurisdiction and ensured that the Qing state would retain its jurisdiction over Qing subjects. At the same time, the Qing state saw Vietnamese subjects committing crimes in the Qing domain or against Qing subjects as its criminals, whose trials and punishments were to be determined by the Qing judiciary.

Third, these two characteristics made both imperial sovereignty and tributary sovereignty elastic. Terms such as quasi, shared, and layered can cover some of these aspects, but they still posit full, Westphalian sovereignty as the norm. A conventional account of sovereignty attributes this modern conception to the Peace of Westphalia in 1648. This concluded the Thirty Years War and is the source from which the principles of inter-state equality and non-interference emerged

as the norms of international relations in Europe. As recent revisionist views have shown, however, Westphalian sovereignty is closer to an ideal type than a reflection of historical realities even in the context of early modern and modern European history. A better way to understanding this situation is to see both imperial and tributary sovereignties as elastic. By elastic, I mean sovereignty that encompassed degrees of sovereignty ranging from, from a modern perspective, partial to full and beyond full.<sup>1</sup>

And herein lies my answer to Rockhill's question on whether Korea was a sovereign state or not. The elasticity within the Qing tributary world meant that a tributary state like Korea did not have a fixed status as either "an integral part of the Chinese empire" or "a sovereign state enjoying absolute international rights." Elastic sovereignty, in contrast, encompassed all these fluctuating degrees of sovereignty within its praxes. Such elasticity left a large repertoire of historical precedents to draw from, which both colonial and nationalist historiographies have been happy to pick and choose to give simple and convenient answers to Rockhill's question: Korea and Vietnam as little Chinas or as sovereign states.

Fourth, there was a general trend of imperial retreat in all three borderlands. While asymmetry was a constant feature of Qing-Chosŏn interstate jurisdiction, the characteristics of this asymmetry changed over time. During the seventeenth century, when Qing rule over Manchuria and China Proper was still being consolidated, Qing legal intervention in trials over Chosŏn criminals was consistent and piercing. When it intervened, the Qing state also delegated

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<sup>1</sup> Stephen D. Krasner, *Sovereignty: Organized Hypocrisy* (Princeton: Princeton University Press, 1999); Luke Glanville, *Sovereignty and the Responsibility to Protect: A New History* (Chicago: University of Chicago Press, 2014); Turan Kayaoglu, "The Extension of Westphalian Sovereignty: State Building and the Abolition of Extraterritoriality," *International Studies Quarterly* 51, no. 3 (2007): 649–75; Anthony Clark Arend, "The Evolution of International Law," in *The Cambridge World History, Volume 7: Production, Destruction and Connection, 1750–Present, Part I: Structures, Spaces, and Boundary Making*, ed. J. R. McNeill and Kenneth Pomeranz (New York: Cambridge University Press, 2015), 285–305.

a bigger role to the Qing judiciary than to the Chosŏn judiciary. In the eighteenth century, with Qing imperial might at its height and more initiative from the Chosŏn state in confronting its borderland criminals, interstate legal procedures became more routinized. This routinization gave a bigger role to the Chosŏn judiciary, which could compete with the Qing judiciary in the use of precedents. In the first half of the nineteenth century, however, Qianlong's successors refrained from asserting jurisdiction over Chosŏn subjects. This imperial retreat in the first half of the nineteenth century is something we observed in the other borderlands as well. In the Qing-Vietnam borderland, to give one example, we see something akin to a non-interference policy in repeated edicts from the Jiaqing and Daoguang emperors to focus on the defense of the border posts and pay no attention to events outside the border. In the Qing-Kokand borderland as well, these emperors cautioned Xinjiang officials from meddling in matters beyond the *karun* line.

In these three borderlands, then, we see examples of pluralistic interstate jurisdiction, asymmetry in imperial-tributary relations, elastic sovereignty, and nineteenth-century Qing imperial retreat. Together, these commonalities show an early modern worldview that defies the post-Westphalian norms often posited as the natural norms of international relations: inter-state equality and non-interference in the internal affairs of fellow sovereign states. This is a worldview Qing might have shared with other early modern empires such as Russia and the Ottomans. It is to early modern imperial comparison that I turn next.

## **II. Comparing Early Modern Empires**

In the past two decades, the fields of Qing, Russian, and Ottoman history have gone through an “imperial turn.” Galvanized by the new imperial history that sought to neutralize the stark distinction between European (national) metropolises and (colonial) peripheries by replacing

the nation with the empire as the basic unit of historical analysis, the scholars in these fields have been re-envisioning these histories in imperial rather than national terms. To use Russian history as an example, the imperial turn has allowed historians of Russia to adopt a wider Eurasian perspective as well as to move away from considering 1917 as a radical, complete historical break. Indeed, growing works on the imperial dimensions of the Romanov dynasty and the Soviet Union have pointed out the imperial continuities between two imperial regimes. Based on these exciting new works, it is now possible for the historian to take the next step and compare these early modern empires.<sup>2</sup>

Comparing these empires is my answer to Dipesh Chakrabarty's call to "provincialize" Europe. Rather than comparing Qing to the more well-known cases of the British and French empires, which are often used as the standards of imperial comparison and thus inadvertently become the center of historical analysis yet again, I follow the comparative approaches of Victor Lieberman and Dominic Lieven. Lieberman, in his two-volume magnum opus, has shown that long-term trends of integration were common across Eurasia from c. 800 to 1830. His comparative framework, which put mainland Southeast Asia at the center of his Eurasian analysis, made this discovery possible. Similarly, in a 2001 monograph widely considered to have played a significant role in the "imperial turn" in the historiography of Russia, Lieven approached the theme of empire from a Russia-centered perspective, comparing Russia with three imperial competitors: the British Empire, the Ottoman Empire, and the Habsburg Empire.<sup>3</sup> As I will show below, Qing was another imperial competitor of Russia worth considering.

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<sup>2</sup> Alan Mikhail and Christine M. Philliou, "The Ottoman Empire and the Imperial Turn," *Comparative Studies in Society and History* 54, no. 4 (2012): 721–45; Durba Ghosh, "Another Set of Imperial Turns?," *The American Historical Review* 117, no. 3 (2012): 772–93; Michael David-Fox, Peter Holquist, and Alexander M. Martin, "The Imperial Turn," *Kritika: Explorations in Russian and Eurasian History* 7, no. 4 (2006): 705–21.

<sup>3</sup> Dipesh Chakrabarty, *Provincializing Europe: Postcolonial Thought and Historical Difference* (Princeton: Princeton University Press, 2000); Victor Lieberman, *Strange Parallels: Southeast Asia in Global Context, c. 800-*



## A. Qing and Russia as Imperial Competitors

Russia is perhaps the most obvious choice for comparison with the Qing case. Most importantly, Romanov Russia and Qing were in direct and indirect imperial competition for most of their existence. More than anything, it was the hunt for fur in Siberia that put the two empires in initial contact. The Cossacks, with political backing from the Russian court and the economic support of the Stroganovs, spearheaded a spotty but speedy Russian colonization of Siberia that was supported by rivers and forts. By the 1650s, they reached the Amur River area, and their attempt to subjugate the local tribes, some of whom were tributaries of the Qing court, resulted in the first military conflicts between the two states.<sup>4</sup>

At the core of the conflict lay the issue of the patron-client relationship. In this scarcely populated region far from both imperial centers, control over people was far more important than control over territory. For Russia, control over the people of the region was important because their fur tribute (*iasak*) was so profitable for the court. For Qing, the economic aspect seems to have been less significant than retaining the loyalty of the Amur natives and thus securing the northern frontier of its homeland.<sup>5</sup> This obsession with such a small number of people suggests

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*1830, Volume 1: Integration on the Mainland* (New York: Cambridge University Press, 2003); Victor Lieberman, *Strange Parallels: Southeast Asia in Global Context, c. 800-1830, Volume 2: Mainland Mirrors: Europe, Japan, China, South Asia, and the Islands* (New York: Cambridge University Press, 2009). D. C. B. Lieven, *Empire: The Russian Empire and Its Rivals* (New Haven: Yale University Press, 2001).

<sup>4</sup> Loretta Eumie Kim, "Marginal Constituencies: Qing Borderland Policies and Vernacular Histories of Five Tribes on the Sino-Russian Frontier" (Ph. D. dissertation, Harvard University, 2009), 70-129; John F. Richards, *The Unending Frontier: An Environmental History of the Early Modern World* (Berkeley: University of California Press, 2003), 517-46; Gwenn A. Miller, *Kodiak Kreol: Communities of Empire in Early Russian America* (Ithaca: Cornell University Press, 2010), 11-27; Morris Rossabi, *China and Inner Asia: From 1368 to the Present Day* (New York: Pica Press, 1975), 95-103.

<sup>5</sup> Kim, "Marginal Constituencies," 40-70; Yuri Slezkine, *Arctic Mirrors: Russia and the Small Peoples of the North* (Ithaca: Cornell University Press, 1994), 11-31; Andrey V. Ivanov, "Conflicting Loyalties: Fugitives and 'Traitors' in the Russo-Manchurian Frontier, 1651-1689," *Journal of Early Modern History* 13 (2009): 333-58.

that the competition over these people might have been more valuable to Qing as a symbol of Qing subjecthood in general, as we saw was the case in the Qing-Chosŏn borderland in chapter two.

By the 1680s, Qing and Russian courts had come to know more about their counterparts. For one, each realized that the troops they were fighting in the Amur region had been sent by imperial courts in Beijing or Moscow. For example, the Qing court previously had not realized that the Russian court had sent both the troops in the Amur region and several envoys to Beijing. Moreover, the expansion of the Zunghar Khanate, led by Galdan Boshogtu Khan (r. 1678-97), in Central Eurasia posed a security threat to the Qing court that worried about the rise of a powerful nomadic confederacy that could challenge its hegemony. These factors, combined with the Russian desire for access to the Chinese market, made negotiations between the Qing and Russian states possible. These negotiations, which used Jesuits as intermediaries and Latin as the official language, resulted in the 1689 Treaty of Nerchinsk. As Peter Perdue has pointed out, this treaty excluded the interests of the Mongols in general and specifically those of the Zunghar Khanate. The subsequent Treaty of Kyakhta in 1727 reaffirmed the shared interests of the Qing and Russian empires against those of the Zunghars. It further delineated the boundaries between the peoples and domains of the two empires while stipulating that there was to be no Russian support for the Zunghars in future conflicts between Qing and the Zunghars.<sup>6</sup> While the final Qing victory over the Zunghars in the 1750s was of course contingent on many factors and not a

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<sup>6</sup> Mark Mancall, *Russia and China: Their Diplomatic Relations to 1728* (Cambridge, MA: Harvard University Press, 1971), 141-265; Matsuura Shigeru, "The Qing Surveys of the Left Bank of the Amur after the Conclusion of the Treaty of Nerchinsk," *Memoirs of the Research Department of the Toyo Bunko* 68 (2010): 1-28; Peter C. Perdue, "Boundaries and Trade in the Early Modern World: Negotiations at Nerchinsk and Beijing," *Eighteenth-Century Studies* 43, no. 3 (2010): 341-56; Peter C. Perdue, *China Marches West: The Qing Conquest of Central Eurasia* (Cambridge, MA: Belknap Press of Harvard University Press, 2005), 161-73, 240-55.

foregone conclusion by the 1720s, these treaties certainly paved the way for the future Qing and Russian conquests in Central Eurasia.

In the 1750s, Qing finally succeeded in vanquishing the Zunghars. With the Qing incorporation of the region known as Xinjiang today, Qing and Russia came to share a new borderland in Central Asia. Benjamin Levey and Noda Jin have shown how the two states approached this new inter-imperial borderland. The two states in the 1750s and 1760s generally respected the territorial claims of the other state. For example, even though the Qing court laid claim to all the lands that had ever been controlled by the Zunghars, it was careful not to encroach on Russia's Central Asian frontier, which was protected by a set of fortresses known as the "Irtysh Line." In fact, however, much of the Qing-Russia borderland in Central Asia was occupied by Kazakh and Kirghiz nomads. The imperial competition for control of people began anew within this context, and the Kazakhs were at the heart of this competition. According to Noda Jin, however, there was a key difference between the Russian and Qing approaches. In short, Russia sought to incorporate Kazakhs as Russian subjects, whereas Qing focused on controlling nomadic Kazakh behaviors for frontier security but effectively considered them "foreigners."<sup>7</sup>

But as we have seen in chapter six with the Qing Kirghiz policy, especially during the Qianlong reign, there are some important parallels between Qing and Russian policies towards Central Asian nomads. The most important parallel is the patron-client relationship that both courts maintained with various nomadic chieftains. In the absence of full-scale colonial

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<sup>7</sup> Benjamin Samuel Levey, "Jungar Refugees and the Making of Empire on Qing China's Kazakh Frontier, 1759-1773" (Ph. D. dissertation, Harvard University, 2014), 185-92; Jin Noda, *The Kazakh Khanates Between the Russian and Qing Empires: Central Eurasian International Relations during the Eighteenth and Nineteenth Centuries* (Leiden: Brill, 2016), 101-143, 260-303.

administration, both states chose this form of indirect rule as a viable alternative. The fact that a few Kazakh khans sought and received investitures from both Qing and Russian courts highlights this imperial parallel. The second parallel is the attempt to criminalize certain forms of violence that worked against imperial interest. Both Qing and Russian states, conforming to the standards expected of Central Asian rulers, promoted caravan trade by protecting the merchants from Kazakh and Kirghiz raiding and punishing these nomadic bandits. Moreover, neither state would tolerate nomadic violence directed against the state apparatus, most notably the guard posts. The guard posts show the third parallel: the fundamentally military characteristic of imperial rule. Even Russia hesitated to introduce regular bureaucracy in its Central Asian frontier. In the case of Small and Middle Hordes of the Kazakhs, it was not until the 1820s that administrative change transformed the character of Russian rule in the region, which was driven by the new civil authority and the seizure of land from Kazakhs to support European settlers.<sup>8</sup>

Moreover, this imperial competition continued into the second half of the nineteenth century and onward. Russia's Central Asian conquests in the second half of the nineteenth century made Russia the imperial successor to Qing in many parts of Central Asia. And yet, as David Brophy has demonstrated brilliantly in his recent monograph, Xinjiang remained a frontier "structured by the interplay of imperial and spiritual loyalties, institutions of autonomy and extraterritoriality, and negotiations between rulers and ruled."<sup>9</sup> At the same time, the "modern" Russian colonial rule in the second half of the nineteenth century was not fundamentally unlike

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<sup>8</sup> Martha Brill Olcott, *The Kazakhs*, 2nd ed. (Stanford: Hoover Institution Press, 1995), 28-99; Michael Khodarkovsky, *Russia's Steppe Frontier: The Making of a Colonial Empire, 1500-1800* (Bloomington: Indiana University Press, 2002), 146-83; Virginia Martin, *Law and Custom in the Steppe: The Kazakhs of the Middle Horde and Russian Colonialism in the Nineteenth Century* (Richmond, Surrey: Curzon, 2001).

<sup>9</sup> David John Brophy, *Uyghur Nation: Reform and Revolution on the Russia-China Frontier* (Cambridge, MA: Harvard University Press, 2016), 1.

the “early modern” Qing imperial rule in certain places. Russian policy towards the Kirghiz tribes provides a good example. As Tetsu Akiyama has shown, the authority of Kirghiz chieftains (*manap*) did not deteriorate under the Russian rule. The Russian allocation of pastureland to each chieftain resembles the Qing allocation of pastureland to Kirghiz near the *karun* that I have described in chapter six. Moreover, the chieftains proactively collaborated with the imperial state, using Kokand and other tribes as bargaining chips and refusing to serve as administrators without loss of authority.<sup>10</sup>

Indeed, a multitude of possibilities was still present in Central Asia of the late nineteenth and early twentieth centuries. Many connections that existed between Xinjiang and the Ottoman Empire, recently highlighted by Brophy and Kim Ho-dong, point to one of these possibilities. The Ottoman Empire, which was trying to position itself as the protector of Muslims worldwide after its loss of Muslim territories and subjects to Russia, seems to have struck many Xinjiang Muslims as a more attractive alternative to Russia and China.<sup>11</sup> It is to the Ottoman case that we turn now.

## **B. Qing and Ottoman: From Victims of Imperialism to Empires**

The phrases “sick man of Europe” and “sick man of Asia” can serve as a point of departure in comparing the Qing and Ottoman empires. By the second half of the nineteenth century, both the Qing and Ottoman empires had suffered defeats by European powers and were experiencing political and economic instability. Indeed, the Qing state would fall in 1912, and

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<sup>10</sup> Tetsu Akiyama, “Nomads Negotiating the Establishment of Russian Central Asia: Focusing on the Activities of the Kyrgyz Tribal Chieftains,” *Memoirs of the Research Department of the Toyo Bunko* 71 (2013): 141–58.

<sup>11</sup> Brophy, *Uyghur Nation*, 86-113; Ho-dong Kim, *Holy War in China: The Muslim Rebellion and State in Chinese Central Asia, 1864-1877* (Stanford: Stanford University Press, 2004), 146-55.

the Ottoman state would follow suit just after a decade.<sup>12</sup> This has led historians of China to look at Qing as the last premodern Chinese dynasty that failed to keep up with the West, which made the leap to modernity thanks to transformative processes of the Industrial Revolution and the French Revolution. The corollary view was that China had to be awakened by the Western impact that started with the First Opium War (1839-42). The prevailing question then became when China began to decline in comparison to the West, and there was not much impetus to consider the possibility that Qing had ever been a success story. As discussed in the introduction, New Qing History has done much to counter this view and show Qing as a successful early modern empire.

One can see a similar development within Ottoman historiography. The conventional historiography of the seventeenth- and eighteenth-century Ottoman Empire focused more than anything on the theme of decline. The classical age or the golden age of the Ottomans was considered to have ended around 1600, from which point the empire experienced unstoppable decline in almost every aspect of its rule. This decline seemed to be most clearly reflected in the long-term trend toward the decentralization of Ottoman rule, in which the Ottoman court in Istanbul gradually lost control over provincial power-holders who created regional dynasties in the Balkans, Anatolia, and the Arab provinces. Of course, there is a mismatch between this picture of inevitable doom and the resilience of an empire that went on to survive for 322 more years. More recently, scholars have abandoned the decline thesis almost wholly by paying more attention to the longevity of the Ottoman Empire as well as to continuities between the periods before and after 1600. To give one example of this reorientation, scholars are beginning to look

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<sup>12</sup> Turan Kayaoğlu, *Legal Imperialism: Sovereignty and Extraterritoriality in Japan, the Ottoman Empire, and China* (New York: Cambridge University Press, 2010).

at localization of Ottoman rule not as a process of decentralization but rather a process of “Ottomanization,” an expansion of Ottoman political forms at the provincial level.<sup>13</sup>

Findings in these recent works on Ottoman historiography point to a few similarities that the Ottoman Empire shared with Qing. First, both empires were fundamentally pluralistic. New Qing History, as mentioned throughout this dissertation, has emphasized the need to recognize Qing as a multiethnic and multicultural empire. By doing so, it has shown the striking diversity of regions and peoples that came under Qing rule as well as the flexibility of Qing rule over its domain and subjects. This acknowledgement is in sharp contrast with the earlier perspective that regarded Qing as the last premodern Chinese dynasty. According to this view, the Manchu ruling group conquered China Proper, inherited Ming institutions and norms of governance without much innovation, and gradually became Sinicized. By focusing on the intermediate zones of the Qing domain, rather than the core zone of China Proper, New Qing History has shown Qing distinctiveness in comparison to Ming. This Qing innovation was most evident on the Inner Asian frontiers of the Qing domain, most of which had never come under Ming rule.

The Ottomans ruled over a pluralistic empire as well. The Ottoman Empire was multi-confessional from its beginning. Even though Muslims became the majority group beginning in the sixteenth century, Greek Orthodox and Armenian Christians constituted the majority in some parts of the empire. These three groups, along with the Jews, formed the core of the millet system that arranged for the coexistence of plural confessional groups within Ottoman society. Ottoman law reflected this pluralism as well by combining the Islamic law (*şeri'at*) with the

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<sup>13</sup> Mikhail and Philliou, “The Ottoman Empire and the Imperial Turn”; Dina Rizk Khoury, “The Ottoman Centre Versus Provincial Power-Holders: An Analysis of the Historiography,” in *The Cambridge History of Turkey, Volume 3: The Later Ottoman Empire, 1603–1839*, ed. Suraiya N. Faroqhi (New York: Cambridge University Press, 2006), 135–56.

*kanun*, operational law based on custom and the commands of the sultans. Just as Qing was more than a Confucian state, the Ottoman Empire was more than an Islamic empire. Stretching over three continents, the Ottoman Empire was a multiethnic empire as well. Turks never constituted a majority of the imperial population at any point in Ottoman history. In fact, the Ottoman elites were cosmopolitan and did not even consider themselves Turks, which among them was a pejorative term referring to uncultured residents of the hinterland.<sup>14</sup>

Second, the ruling houses of both empires were products of the post-Mongol steppe legacy, which took different forms in various parts of Eurasia. They were classic examples of what Joseph Fletcher called “transplantation of the nomadic grand khan in the soil of a settled empire,” which combined “the centralized personal power of the nomadic polity at its height and the massive stability of the agrarian socioeconomic order.”<sup>15</sup>

In the Qing case, much of the Jianzhou Jurchen and early Manchu state-building took the form of direct competition with various Mongol polities. One polity of note was the Chakhar confederacy under the leadership of Ligdan Khan (r. 1604-34), who sought to revive the glory days of the Mongol Empire. For both Nurhaci and Hong Taiji, a central goal was countering Ligdan Khan’s influence among the Eastern Mongols through military campaigns and, more importantly, building alliances with various Mongol princes. Indeed, it is telling that Hong Taiji did not proclaim himself a universal emperor until after he defeated the Ligdan Khan and

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<sup>14</sup> Yi Ŭn-jŏng (Eunjeong Yi), “‘Ta chonggyo·ta minjok·ta munhwa’ chŏgin Osūman cheguk ũi t’ongch’i chŏlyak,” *Yŏksa hakpo* 217 (2013): 155–84; Giancarlo Casale, “The Islamic Empires of the Early Modern World,” in *The Cambridge World History, Volume 6: The Construction of a Global World, 1400–1800 CE, Part 1: Foundations*, ed. Jerry H. Bentley, Sanjay Subrahmanyam, and Merry E. Wiesner-Hanks (New York: Cambridge University Press, 2015), 323–44; Gilles Veinstein, “Religious Institutions, Policies and Lives,” in *The Cambridge History of Turkey, Volume 2: The Ottoman Empire as a World Power, 1453–1603*, ed. Suraiya N. Faroqhi and Kate Fleet (New York: Cambridge University Press, 2012), 322-6.

<sup>15</sup> Joseph Fletcher, “Turco-Mongolian Monarchic Tradition in the Ottoman Empire,” *Harvard Ukrainian Studies* 3/4 (80 1979): 237.



acquired from him the imperial seal of the Yuan dynasty. The Mongol legacy was central to Qing empire-building.<sup>16</sup> In the Ottoman case, the House of Osman was a product of the Turco-Mongol legacy that had prevailed in the western half of Eurasia. The early Ottoman rulers started their political career as a modest Turkic principality in fourteenth-century Anatolia. As peripheral members of the Eurasian Turco-Mongol legacy, their early history was filled with successful attempts to ally with, restrain, and eventually control other nomads of Anatolia.<sup>17</sup>

Third, both courts claimed universal rulership that, at least in theory, framed their relations with other polities and power-holders as hierarchical and asymmetric. As we have seen throughout this dissertation, Qing tributary praxis demanded that tributary rulers acknowledge a fundamental asymmetry between themselves and the emperor in establishing and maintaining tributary relations. This asymmetry manifested itself in various instances in which the domains, peoples, and jurisdictions of Qing imperial and tributary states came into contact.

At the outset, the Ottoman case would seem to be somewhat different. For one, the Ottoman Empire experienced significant military setbacks from its European neighbors much earlier than Qing did. Parallel to that development was the rise of a more reciprocal, European-style diplomacy, beginning with the Treaty of Karlowitz (1698) with the Habsburgs.<sup>18</sup> At the same time, we must remember that this treaty-based diplomacy coexisted with the much older Ottoman tradition of capitulations (*ahidname*). Capitulations, as Edhem Eldem points out, were

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<sup>16</sup> Nicola Di Cosmo and Dalizhabu Bao, *Manchu-Mongol Relations on the Eve of the Qing Conquest: A Documentary History* (Leiden: Brill, 2003); Johan Elverskog, *Our Great Qing: The Mongols, Buddhism, and the State in Late Imperial China* (Honolulu: University of Hawai'i Press, 2006).

<sup>17</sup> Joseph Fletcher, "Turco-Mongolian Monarchic Tradition in the Ottoman Empire"; Rudi Paul Lindner, *Nomads and Ottomans in Medieval Anatolia* (Bloomington: Research Institute for Inner Asian Studies, 1983).

<sup>18</sup> Virginia Aksan, "War and Peace," in *The Cambridge History of Turkey, Volume 3: The Later Ottoman Empire, 1603–1839*, ed. Suraiya N. Faroqi (New York: Cambridge University Press, 2006), 81–117.

not bilateral treaties but were gifts from the Ottoman sultan to the foreign ruler that provided a legal framework for that ruler's subjects. As such, they represented not proto-colonial concessions of commercial and legal privileges but rather asymmetric relations between the Ottoman sultan and foreign rulers. Indeed, the 1740 capitulations to France were the first to recognize fully and explicitly a foreign ruler as the sultan's equal.<sup>19</sup> Thus, there was still room for the eighteenth-century Ottoman court to preserve at least the ideal of universal rulership in its relations with other polities.

When we hold up this Ottoman situation against Qing tributary praxis, the picture becomes even more comparable. First, we might recall Qing's 1835 "capitulations" to Kokand. In chapter seven, I have cautioned against taking the 1835 agreement between Qing and Kokand as the prototype of the system of unequal treaties that later enmeshed Qing and then Republican China (1912-49).<sup>20</sup> Still, there is no question that the 1835 agreement was reached at a moment of weakness for Qing, a context that granted many privileges to the khan of Kokand and gave him much room to maneuver. The fact that these "capitulations" could be covered within the rubric of tributary relations has often been considered evidence of the illusionary nature of the Qing tributary system. But as I have stressed throughout the dissertation, it is also a testimony to elasticity and flexibility of the Qing tributary world. Second, the Qing court was also capable of complementing its tributary relations with other mechanisms of interstate relations. Again, the

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<sup>19</sup> Edhem Eldem, "Capitulations and Western Trade," in *The Cambridge History of Turkey, Volume 3: The Later Ottoman Empire, 1603–1839*, ed. Suraiya N. Faroqhi (New York: Cambridge University Press, 2006), 289-97, 319-21.

<sup>20</sup> On the treaty system, see John K. Fairbank, "The Creation of the Treaty System," in *The Cambridge History of China, Volume 10: Late Ch'ing, 1800-1911, Part 1*, ed. John K. Fairbank (New York: Cambridge University Press, 1978), 213–63. Okamoto Takashi, *Zokoku to jishu no aida: kindai Shin-Kan kankei to Higashi Ajia no meibun* (Nagoya: Nagoya Daigaku Shuppankai, 2004), provides a careful analysis of the transition from the tribute system to the treaty system with a focus on Qing-Korean relations.

Russian case is instructive. In times of imperial competition, Qing was more than happy to sign two equal treaties with Russia to achieve its geopolitical goals in Central Eurasia.

### **III. Conclusion**

In this dissertation, I have placed Qing China in a global context by constructing a connective history of Asia and a comparative history of Northeast Asian, Southeast Asian, and Central Asian borderlands. As I have shown throughout this work, there is much to be gained from looking at the Qing empire beyond today's Chinese borders. Qing had clear agendas as an imperial power when dealing with its smaller tributary states, and these agendas must be examined alongside Qing imperial projects within today's Chinese borders.

I have also briefly compared the Qing empire with Romanov Russia and the Ottoman Empire, a step toward further integrating China and the world as units of historical analysis. Comparison with Russia focused on the historical contexts of imperial competition between the two states. Most notably, the comparison of how Qing and Russia ruled their Central Asian frontiers highlighted many similarities that, at times, defied a sharp distinction between early modern empires and modern colonial empires. Comparison with the Ottoman case pointed out three overall commonalities between the two empires: pluralistic characteristics, a common post-Mongol steppe legacy, and hierarchical frameworks of interstate relations.

To conclude this dissertation, then, I will return to questions I raised in the introduction. To what extent and in what ways did Qing China's official self-representation as a universal empire ruling "All under Heaven (*Tianxia*)" influence practical interactions along imperial frontiers? And how were the frontiers themselves perceived? Far from being a mere illusion with only symbolic importance, Qing claim to universal sovereignty had life-and-death consequences

for many borderland residents. At the one extreme, the Qing court could execute Chosŏn trespassers as its criminals. At the other extreme, Vietnamese refugees could save their lives by manipulating this concept to become Qing imperial subjects. Likewise, there was no one way to perceive these frontiers. In each frontier, both the Qing state and the tributary state had their own ideas on where the boundaries between their subjects and domains lay. These views variously defied, ignored, and acknowledged one another.

How did Qing conceptualize the East Asian political world? And how did Qing rulers understand “sovereignty?” The Qing conceptualization of this political world evolved over time. In 1637, Qing perceived it as a world of lands and peoples belonging to different rulers, although it sought to wrestle more of these lands and peoples away from other rulers. By the 1680s, this worldview of Qing among other states had come to coexist with a more universal worldview of unbounded Qing. By the 1750s, at the height of imperial expansion, Qing almost equated its imperium with this political world. By 1800s, the empire had retreated from its borderlands and saw itself as bounded once again, at least in practice. The coexistence of and tension between these different worldviews corresponded to the multiple Qing understandings of sovereignty, which made both imperial and tributary sovereignty fundamentally elastic.

Finally, how did the views of Qing and its tributaries compare with norms of sovereignty and territoriality in post-1648 Europe—and in non-European “world empires” other than China? Indeed, what is an “empire?” The tributary praxes we have seen in this dissertation defy the norms of sovereignty and territoriality in post-1648 Europe. Recent studies have shown the two tenets of Westphalian sovereignty—interstate equality and non-interference—as norms that were often violated even in early modern and modern Europe. Even with that revised view, the Qing tributary world differed from post-1648 Europe in so far as that asymmetry and elastic

sovereignty were norms that were often manifested in practical interactions. Indeed, comparisons with Russia and the Ottoman Empire have shown the norms of asymmetry to have been present in Russian and Ottoman worldviews as well. At the same time, the fact that Russia and Qing could interact on an equal basis highlights the flexibility of imperial systems. An empire, whose “center exercises political control through hierarchical and quasi-monopolistic relations” over peripheries, was also capable of identifying and recognizing another imperial center. But an empire without its inferiors cannot remain an empire, and that is why it always needs its asymmetric and hierarchical relations with its “others.”<sup>21</sup>

Indeed, this is exactly what Qing was able to do from the 1630s to the 1790s. In 1637, Qing needed to incorporate Chosŏn as an inferior other into its new tributary world. Otherwise, its self-transformation from a Jin khantate to a Qing empire would not have had much geopolitical currency. By the 1660s, Qing had succeeded in crushing the last of the Southern Ming regimes. This act in the Qing imperial drama, however, was not finalized until Qing claimed its inheritance of the Ming tributary states, as when it established tributary relations with two Vietnamese regimes. By the 1750s, Qing had incorporated regions and peoples never controlled by its Ming predecessor. This exceptional Qing success had its tributary counterparts as well, as the Qianlong emperor established tributary relations with Central Asian rulers who had been members of the Ming tributary world. Qing was able to thrive as an empire by maintaining the asymmetry of tributary relations and manipulating elastic sovereignty in the borderlands.

This success, of course, would not last forever. The disintegration of the Qing Kirghiz policy in the first half of the nineteenth century, along with other signs of imperial retreat in all

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<sup>21</sup> Karen Barkey, *Empire of Difference: The Ottomans in Comparative Perspective* (New York: Cambridge University Press, 2008), 9.

three borderlands around this time, was a sign of things to come. No longer able to manipulate asymmetry in tributary relations and elastic sovereignty in the borderlands as well as it once had, Qing had begun its decline as an imperial power. The challenges mounted by Western and Japanese colonial empires in the second half of the nineteenth century accelerated this decline, but the stage was already set.

## APPENDIX

### Chinese Characters

Annan/An Nam	安南
baixing	百姓
bangwen	榜文
banshi dachen	辦事大臣
bantu	版圖
baqi	八旗
bian'ai	邊隘
bianyuan	邊遠
buhuo jiesong	捕獲解送
buzhengshi	布政使
canling	參領
canzan dachen	參贊大臣
chaejo chi ũn	再造之恩
changshi	常事
chaoting	朝廷
Chaoxian/Chosŏn	朝鮮
châu	州
chengchuang	懲創
chengqun	成群
chengshouwei	城守尉
chizi	赤子
chōmsa	僉使
chuanpiao	船票
chuhoe in	走回人
chuli	出力
cuomiu	錯繆
Da Ming lǜ	大明律
Da Qing lǜli	大清律例
dachen	大臣
diguo	敵國
ding	頂
dingdai	頂戴
dubiao	督標
dusi	都司
dutong	都統
dutongshi si	都統使司
dutongshi	都統使
fa	法

fahui	發回
fang pao quzhu	放炮驅逐
fanren	犯人
fei li	非禮
feitu	匪徒
fudutong	副都統
fushi	服飾
gaitu guiliu	改土歸流
ganzhi	干支
Gaoli/Koryō	高麗
ge shou fengjiang	各守封疆
gewai	格外
gongshun	恭順
goujie	勾結
guanghan	獷悍
guanhua	官話
guankou	關口
guo	國
haijin	海禁
Hanjian	漢奸
hanyou	罕有
haosheng zhi de	好生之德
hualing	花翎
Huangyu quanlan tu	皇輿全覽圖
huanjue	緩決
huanqu	寰區
Hui fa	回法
huidian	會典
Huimin	回民
huoqiying	火器營
hyanghwa	向化
jian fei	奸匪
jiandeng	減等
jiangjun	將軍
jianhou	監候
jiansheng	監生
jianxi	奸細
Jiaozi/Giao Chi	交趾
jimin	飢民
jimo	籍沒
jin	斤



Jin	金
jue	爵
junqi	軍器
junxian	郡縣
kalun	卡倫
kalun	卡倫
kebi	可比
kewu	可惡
kunsu	郡守
kwanch'alsa	觀察使
langzhong	郎中
lanling	藍領
li (distance)	里
li (substatute)	例
liang	兩
Liangguang	兩廣
libu	禮部
lifanyuan	理藩院
lijue	立決
ling	翎
lingchi	凌/陵遲
lingdui dachen	領隊大臣
liu	流
lü/yul	律
lüli	律例
luying	綠營
manho	萬戶
mian shenjiu	免深究
min	民
Ming	明
minren	民人
mu	畝
neidi	內地
nianhao	年號
pibyönsa	備邊司
pijia	披甲
qimin	齊民
Qing	清
qinwang	親王
qiushen	秋審
rujin	入覲

san guan bai ai	三關百隘
Sanfasi	三法司
sanzhi dachen	散秩大臣
sha fei	沙匪
shangguo/sangguk	上國
shangmin	商民
she	赦
shengduan	生端
shi da	事大
Shiji	史記
Shijing	詩經
shiwei	侍衛
shuguo	屬國
shuicao	水草
suoshu	所屬
taegun	大君
taejǒn	大典
Tang hwa	唐貨
taosheng	逃生
Tây Sơn	西山
Tianchao	天朝
Tianxia	天下
tiben	題本
tidu	提督
titong	體統
titou	剃頭
tizhi	體制
tongpan	通判
tu	徒
tuiwei	推諉
tulian	土練
tumu	土目
tuntian	屯田
tusi/thỏ ty	土司
tuzhou	土州
ũigũmbu	義禁府
waegwan	倭館
waibu	外部
waifan	外藩
waiguo	外國
waiyi	外夷

wang	王
weijin	違禁
wiri anch'i	圍籬安置
wuyi	無異
wuzhi	無知
xā	社
xiangdeng	相等
xiaobang/sobang	小邦
xieling	協領
xietong	協同
xunfu	巡撫
yamen	衙門
yanxiao	鹽硝
yejo	禮曹
yi fei	夷匪
yi jing	夷境
yichu	議處
yili	儀禮
yiren	夷人
yishitongren	一視同仁
yizheng wang dachen	議政王大臣
yǒngǔijǒng	領議政
youji	游擊
youmu	游牧
yuanji	原籍
yuanwailang	員外郎
yuanzuo	緣坐
Yun-Gui	雲貴
zeikou	賊寇
zhaoli	照例
zhengfa	正法
zhixian	職銜
zhizui	治罪
Zhongtu	中土
Zhongyuan	中原
zishi	滋事
zishou	自首
ziwen	咨文
zixing zhizui	自行治罪
zongbing	總兵
zongdu	總督

zouzhe  
zui

奏折/摺  
罪

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