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## Death Sentences In The Great Qing, 1744-1840: Critical Note On Civilization In Comparison With England And Wales

Moulin Xiong

*Institute of Criminal Law, Law School, Southwestern University of Finance and Economics*

Ren Liu

*Law School, Sichuan Agricultural University*

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**DEATH SENTENCES IN THE GREAT QING, 1744-1840:  
CRITICAL NOTE ON CIVILIZATION IN COMPARISON WITH ENGLAND  
AND WALES**

*Moulin Xiong\**  
*Ren Liu†*

ABSTRACT

Over the last centuries, the view on the death penalty in Qing China has been distorted, presenting a picture of abusive brutality and excessive cruelty, and thus was used as the critical pretext to establish immune extraterritorial jurisdictions. Nevertheless, the existing comments are more literary embellishments without empirical evidence, and few comparative and historical perspectives have been utilized to clarify the truth. In this study, we mined annual death sentence numerical data for the period 1744 to 1840 from official archives and literatures, deciphering the capital crimes in detail and ascertaining the longitudinal trend with population statistics. To reassess the profile of capital law and justice, we carefully reviewed the previous literatures and conducted a comparative analysis of key aspects in Qing China and in England and Wales. Using multiple analytical strategies, the study revealed the following in Qing China: (a) about 20% of death sentence cases resulted in execution and 80% in suspended or nominal sentences; (b) on average, 3183.78 cases were death sentences in a country with a population of about 400 million; (c) the death sentence rate steadily decreased from 1.20 to 0.73 per 100,000 population; and (d) the majority of capital crimes concerned

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\* Ph.D. in Law, Professor and chair at the Institute of Criminal Law, Law School, Southwestern University of Finance and Economics. Email: xiongmoulin@swufe.edu.cn. His research mainly focuses on criminal law, death sentence, wrongful conviction, sentencing equilibrium using international, comparative, and empirical approaches.

† Ph.D. in Law, Assistant Professor, Law School, Sichuan Agricultural University. The Authors are deeply grateful to Bin Liang, Hong Lu, and Liqun Cao for their comments during the earlier analytical presentation in the first ACCCJ online conference, and also extend gratitude to Haibo He for his reminder regarding death reform in England and Wales. All translations between Chinese and English in this Article are by the Authors unless otherwise indicated.

homicides and killings in fights, while only about 10% involved robbery. During the same period, England and Wales were bloody codeless countries with death sentence and execution rates that were at least three to nine times higher than in Qing China, and capital crimes mainly involved property crimes. This study's conclusion, therefore, is that Qing China was very lenient in terms of codification and capital justice in comparison with England and Wales. Flowing with "anti anti-orientalism", we argue that the erroneous picture should be discarded and appeal for historical China's contribution to the heritage of global law and justice to be recognized.

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## INTRODUCTION

Despite centuries of cultural exchange, the Sino-Western civil war has never ended. Western writers have described China as an uncivilized country, and their criticisms targeted the law and use of the death penalty during the Great Qing period. Consequently, it has been difficult for the Qing dynasty to escape the profile of a “despotic government,” as advocated by Montesquieu in *The Spirit of Laws*.<sup>1</sup> Montesquieu argued that China was a lawless country where everything was based on “rites” and “habits of morality.”<sup>2</sup> Tales about China in the eighteenth and nineteenth centuries consisted of subjective speculations,<sup>3</sup> distorted pictures,<sup>4</sup> and hearsay tales with sentimental exaggerations.<sup>5</sup> As a result, books by sinologists and travelers frequently described China’s death penalty as inhuman, lawless, cruel, barbarous, unjust, despotic, pernicious, and absurd.<sup>6</sup>

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<sup>1</sup> CHARLES DE MONTESQUIEU, *THE SPIRIT OF THE LAWS* 102 (1750).

<sup>2</sup> *Id.* at 430-31.

<sup>3</sup> See Song-Chuan Chen, *Strangled by the Chinese and Kept ‘Alive’ by the British: Two Infamous Executions and The Discourse of Chinese Legal Despotism*, in RICHARD WARD, *A GLOBAL HISTORY OF EXECUTION AND THE CRIMINAL CORPSE* 210 (2015) [hereinafter Chen, *Strangled*].

<sup>4</sup> See GEORGE HENRY MASON, *THE PUNISHMENTS OF CHINA: ILLUSTRATED BY TWENTY-TWO ENGRAVINGS: WITH EXPLANATIONS IN ENGLISH AND FRENCH* 1-54 (1801); Shiming Zhang, *Painting and Photography in Foreigners’ Construction of an Image of Qing Dynasty Law*, 12 *FRONTIERS HIST. CHINA* 32-74 (2017).

<sup>5</sup> See LI CHEN, *CHINESE LAW IN IMPERIAL EYES: SOVEREIGNTY, JUSTICE, AND TRANSCULTURAL POLITICS* 174-75 (2016) [hereinafter CHEN, *IMPERIAL EYES*]; Li Chen, *Law, Empire, and Historiography of Modern Sino-Western Relations: A Case Study of the Lady Hughes Controversy in 1784*, 27 *LAW & HIST. REV.* 18-22 (2009) [hereinafter Chen, *Law, Empire, and Historiography*].

<sup>6</sup> See, e.g., EDWARD HARPER PARKER, *CHINA, PAST AND PRESENT* 379 (1903); GEORGE ERNEST MORRISON, *AN AUSTRALIAN IN CHINA* 232 (1918); HENRY NORMAN, *THE PEOPLE AND POLITICS OF THE FAR EAST* 229 (1895); JOHN BARROW, *TRAVELS IN CHINA* 367-74 (1806); JOHN FRANCIS DAVIS, *THE CHINESE: A GENERAL DESCRIPTION OF THE EMPIRE OF CHINA AND ITS INHABITANTS* 235 (1836); MRS. GRAY, *FOURTEEN MONTHS IN CANTON* 426-29 (1880); SAMUEL WELLS WILLIAMS, *THE MIDDLE KINGDOM* 409-12 (1848); THOMAS TAYLOR MEADOWS, *DESULTORY NOTES ON THE GOVERNMENT AND PEOPLE OF CHINA, AND ON THE CHINESE LANGUAGE* 172-74 (1847); WALTER HENRY MEDHURST, *THE FOREIGNER IN FAR CATHAY* 180 (1873).

Additionally, the Chinese people were compared to “pigs”<sup>7</sup> and “sheep”<sup>8</sup> in the context of capital punishment.

Voltaire did not agree with Montesquieu; rather, he appraised the death warrants of emperors in the Imperial Qing<sup>9</sup> and commented that “almost all Montesquieu’s quotations are false.”<sup>10</sup> However, given the orthodoxy of rites controversy, Voltaire’s positive words had no chance of correctly representing the death penalty in China. Instead, those with groundless apprehensions and speculations about China took advantage of the current, self-centered Europeanism to promote Western cultural superiority to continue the denigration of the far Eastern giant. George Thomas Staunton noticed that European elites illustrated tyrannical corporal punishment in China, using the distorted drawing, *Punishment of China*, to represent a cruel and barbaric execution. He published his translation of the *Ta Qing Lue Lee* (the Qing Code) to resurrect the view that China’s legal system and the use of the death penalty in Chinese law were civilized. Representing “a fundamental turning point in terms of both cultural history and the history of comparative law,”<sup>11</sup> Staunton witnessed “many of the unnecessary provocations, groundless apprehensions, and embarrassing discussions” and thus tried to adjust “false or imperfect notions of the spirits of the laws.”<sup>12</sup> He revealed a different perspective of the Qing Code, namely the leniency, mitigation, and favorable exceptions to the death penalty contained within it.<sup>13</sup>

Despite the clarifications made by Staunton, the anonymous editor, Francis Jeffrey, subjectively commented that the Code had “excessive and unprofitable accuracy,” “barbaric regularity,” and “excessive and atrocious severity.”<sup>14</sup> John Francis Davis insisted that

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<sup>7</sup> NORMAN, *supra* note 6.

<sup>8</sup> *Decapitated by Dozen*, ST. LOUIS DAILY GLOBE DEMOCRAT, July 13, 1877.

<sup>9</sup> See CESARE BONESANA DI BECCARIA, AN ESSAY ON CRIMES AND PUNISHMENTS: WITH A COMMENTARY BY M. DE VOLTAIRE (1767).

<sup>10</sup> M. De Voltaire, *Answer to Counsellor Linguet, on Montesquieu and Grotius*, ANN. REG. 166, 166-167 (1777).

<sup>11</sup> LAW, JUSTICE AND CODIFICATION IN QING CHINA: EUROPEAN AND CHINESE PERSPECTIVES, XIII (Guido Abbattista ed., 2017).

<sup>12</sup> See GEORGE THOMAS STAUNTON, *TA TSING LEU LEE*, xxxiii (1810).

<sup>13</sup> *Id.* at xx-xxxiii.

<sup>14</sup> Francis Jeffrey, *Ta Tsing Leu Lee*, XVI EDINBURGH REV. 476, 483-88 (1810) (reviewing GEORGE THOMAS STAUNTON, *TA TSING LEU LEE* (1810)).

whereas those charged of treason were afforded “every possible safeguard” in England, in China, such persons were subject to “remorseless and unrelenting cruelty and injustice.”<sup>15</sup> Unlike Medhurst, Davis did not see the truth “that both kindness and cruelty, gentleness and ferocity” each had “its place in the Chinese character,”<sup>16</sup> nor did he find what Staunton did through careful inspection, namely that the Qing Code had almost entirely abandoned “that part of its outward and apparent character.”<sup>17</sup> In fact, Davis “really knew no Chinese, and he was honest enough to confess it himself,”<sup>18</sup> and while he spoke Mandarin and could perhaps read a novel written in that dialect,<sup>19</sup> that would hardly qualify him as an interpreter of the law. In contrast with Davis, Samuel Wells Williams provided a somewhat impartial assessment, arguing that “the infliction of barbarous punishments . . . is not allowed or practised in China” and that the charge of “[s]heer cruelty, except in cases of treason against the emperor” could not be made against the Qing Code as a whole.<sup>20</sup> However, Williams still criticized the shortage of law in certain areas and described parts of the Qing Code as “dead letters,”<sup>21</sup> while defending “extraterritoriality as a means of bringing law and order to a ‘state of nature’ in the Sino-foreign contact zone.”<sup>22</sup> Davis’s and Williams’s view of the Qing Code as uncivilized can be attributed to their lack of knowledge of the code, while pressure from political, diplomatic, and commercial representatives likely prevented them from acknowledging the civilization in China. Undoubtedly, their speculations were biased.

It is definitely very hard to offer precise evidence to draw conclusions on the civilized or uncivilized nature of the Qing Code. Nevertheless, examining the legal history of the Qing Empire from a comparative perspective may be helpful to provide some essential information on the topic. To achieve this purpose, we first introduce

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<sup>15</sup> DAVIS, *supra* note 6, at 235-36.

<sup>16</sup> MEDHURST, *supra* note 6, at 181.

<sup>17</sup> STAUNTON, *supra* note 12, at xxvii.

<sup>18</sup> KU HUNG-MING, *THE SPIRIT OF CHINESE PEOPLE: WITH AN ESSAY ON CIVILIZATION AND ANARCHY* 125-26 (1922).

<sup>19</sup> *Id.*

<sup>20</sup> WILLIAMS, *supra* note 6, at 306-07.

<sup>21</sup> *Id.* at 408.

<sup>22</sup> CHEN, *IMPERIAL EYES*, *supra* note 5, at 66 (footnote omitted).

our findings, which are based on data mainly mined from the First Historical Archive of China (FHAC) as well as from other studies to make up for missing years in the FHAC. We then examine death sentences or executions in England and Wales and compare these with China at the relative stages to reach an impartial conclusion. We aim to answer the following questions: (a) how many death sentences were pronounced; (b) what was the principal component of capital crimes in the Qing Empire during that period; (c) were the number of death sentences pronounced in Qing China more or less than the corresponding number in England and Wales; (d) what significant commonalities and differences may be observed between China and England and Wales and what interpretation can be drawn? Being legal historians and comparative legalists, our contribution to the literature mainly stems from our empirical investigation into capital justice in the Great Qing and our comparative analysis based on impartial evidence, which will hopefully provide guidance to others on conducting transnational studies of legal history prior to the global village era. Furthermore, our efforts may also enlighten researchers in other countries (e.g., India, the successor states of the Ottoman Empire, and countries across Asia) and encourage them to explore their native legal heritage, particularly in earlier periods when there was no intervention from Western imperialism.

#### I. THE DISTORTED PICTURE OF THE DEATH PENALTY IN THE QING EMPIRE

The picture of Qing China's legal system as uncivilized reflected a distorted view originating from the rites controversy between Chinese civilization and Catholic rites based on Eurocentric religious standards. However, the issue is highly contentious because there is no direct evidence and human science is not like natural science, where a definitive yes or no answer can be given. The distorted picture of the death penalty in the Great Qing may add some evidence to examine why Western commentators used to issue biased comments. Our retrospective examination of the comments made on the legal system and capital justice in the Qing Empire throughout the nineteenth century revealed some features of these writers.

The first outstanding feature is that these anti-Qing Empire writers were non-legalists who stayed in China for only a few years and whose knowledge of the Chinese language was problematic. For instance, despite Meadows's declaration on his "practical knowledge of the (Chinese) language,"<sup>23</sup> the period between him commencing his study of the Chinese language (November 1841) and completing his book (June 1846) was only 5.5 years.<sup>24</sup> The second feature is the excessive attention these writers gave to the crimes of treason, parricide, rebellion, robbery, homicide, and piracy.<sup>25</sup> Most of these crimes were far more severe than the most common capital crimes in ancient China. The third unforgivable feature is that hearsay from friends, speculation, and secondhand accounts formed the basis of most of the news reports in the Peking Gazette.<sup>26</sup> For example, all of physician Dr. Berncastle's descriptions of capital punishment were based on hearsay or the speculative stories of his friend, the Reverend T. Ball.<sup>27</sup> The fourth important characteristic is that the reports focused on local justice in Canton,<sup>28</sup> the area where foreigners were confined under the Canton System, and thus were hardly representative of the whole empire. As Sir James Graham commented in a UK parliamentary debate in 1840, "Our intercourse being restricted to a single port, public opinion with regard to that great empire was formed with reference to Canton alone."<sup>29</sup>

A final but very important feature is that the writers paid much more attention to the overexaggerated *lingchi*, translated as "lingering

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<sup>23</sup> MEADOWS, *supra* note 6, at viii.

<sup>24</sup> *Id.* at vii-xiii.

<sup>25</sup> See, e.g., DAVIS, *supra* note 6, at 235-46; PARKER, *supra* note 6, at 386-87.

<sup>26</sup> See, e.g., MORRISON, *supra* note 6, at 231; PARKER, *supra* note 6, at 386-87; WILLIAMS, *supra* note 6, at 409-10.

<sup>27</sup> See JULIUS BERNCastle, A VOYAGE TO CHINA 163-67 (1850).

<sup>28</sup> Because Canton, and particularly the capital Guangzhou, was the center of overseas trade before the Opium War, nearly all the reports and correspondence were exclusively about the local justice of Canton. See, e.g., FREDERICK WELLS WILLIAMS, THE LIFE AND LETTERS OF SAMUEL WELLS WILLIAMS, L.I.D. MISSIONARY, DIPLOMATIST, SINOLOGUE III-VI (1899).

<sup>29</sup> HC Deb (7 Apr. 1840) (53) col. 670.



death,"<sup>30</sup> "death by slicing,"<sup>31</sup> or "death by a thousand cuts."<sup>32</sup> Compared to decapitation and strangulation, images of *lingchi* featured in most of the works on the death penalty.<sup>33</sup> For instance, Henry Norman used a copy of a photograph of a *lingchi* execution taken by a British captain and a story from the Peking Gazette to represent the brutal nature of capital justice in China in the 1890s, where the decapitation was compared to "splitting a turnip."<sup>34</sup> However, the problem is that this picture was a fake one, simply because "[a] foreigner would have great difficulty in getting allowed to be present at an execution,"<sup>35</sup> let alone take a picture. Although Norman stated that nobody could claim to have an adequate and accurate appreciation of the Chinese character if they had not witnessed a Chinese execution, the truth was that no foreigners witnessed executions in person because the Chinese had "a great and not unnatural objection to the presence of foreigners on such occasions."<sup>36</sup> Also, most European and Chinese officials denied "that the cruel punishment [*lingchi* was] ever carried out."<sup>37</sup> Furthermore, *lingchi* was not one of the five penalties or "standard forms of death"<sup>38</sup> in the Qing Code and thus was rarely used in practice. Most of the descriptions of *lingchi* in the books produced by foreigners have been demonstrated to be an assumed and prejudiced European cultural fetish that did not reflect regular justice in the Chinese Empire.<sup>39</sup>

Although not every manuscript or report possessed the above-mentioned features, many of them did. Undoubtedly, these prejudices emerged as a groundless but emotional response to the decapitations carried out against foreigners in the following cases: *Success* (1780),

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<sup>30</sup> ERNEST ALABASTER, NOTES AND COMMENTARIES ON CHINESE CRIMINAL LAW 57 (1899).

<sup>31</sup> DERK BODDE & CLARENCE MORRIS, LAW IN IMPERIAL CHINA 93 (1967).

<sup>32</sup> TIMOTHY BROOK ET AL., DEATH BY A THOUSAND CUTS 2 (2008).

<sup>33</sup> See Harry S. Parkes & Frank Parish, *Public Executions at Canton*, in TRANSACTIONS OF THE CHINA BRANCH OF THE ROYAL ASIATIC SOCIETY 44 (1851-52).

<sup>34</sup> NORMAN, *supra* note 6, at 224-29.

<sup>35</sup> BERNCastle, *supra* note 27, at 167.

<sup>36</sup> NORMAN, *supra* note 6, at 225.

<sup>37</sup> PARKER, *supra* note 6.

<sup>38</sup> BODDE & MORRIS, *supra* note 31.

<sup>39</sup> See BROOK et al., *supra* note 32, at 243-45.

*Lady Hughes* (1784), and *Terranova* (1821).<sup>40</sup> Notably, Li Chen challenged these distorted irrational comments against capital justice in the Empire and even criticized the crimes deemed deserving of the death penalty in the motherlands of the writers.<sup>41</sup> A professional and careful author, particularly a barrister, who conducted further research would not have made the erroneous comments that these non-legal professionals did. Ernest Alabaster made a rare effort in his *Commentaries on Chinese Criminal Law* to provide a balanced assessment, stating that “the Code—when its procedure is understood—is infinitely more exact and satisfactory than our own system, and very far from being the barbarous cruel abomination it is generally supposed to be.”<sup>42</sup> Nevertheless, his voice came late and was ineffective at a time when concerns about Chinese law were only a pretext for commercial benefit and war and reflected the prejudiced and blind imperialism of the Whigs.<sup>43</sup> His voice was also in part offset by the public’s lack of hunger for knowledge, which meant that people were more likely to read attractive simple tales. The Western writers were pretty much successful in their purpose when the Opium War between the United Kingdom and the Qing Empire broke out in 1840 to protect the commercial interests of the Far Eastern Company.<sup>44</sup> The conspicuously lawless and brutal voices of criticism against Qing China paved the way for the construction of an immune extraterritorial jurisdiction on July 22, 1843.<sup>45</sup>

Was the Qing Empire a barbarous or cruel civilization? Was Europe a paradise of civilization during the same period? And were

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<sup>40</sup> See Chen, *Strangled*, *supra* note 3, at 199-219; see also Chen, *Law, Empire, and Historiography*, *supra* note 5, at 2-4; CHEN, *IMPERIAL EYES*, *supra* note 5, at 2, 25-68; see also G. W. KEETON, *THE DEVELOPMENT OF EXTRATERRITORIALITY IN CHINA* 39-41 (1928); Joseph Benjamin Askew, *Re-visiting New Territory: The Terranova Incident Re-Examined*, 28 *ASIAN STUD. REV.* 351 (2004); William J. Donahue, *The Francis Terranova Case*, 43 *HISTORIAN* 211-24 (1981).

<sup>41</sup> See CHEN, *IMPERIAL EYES*, *supra* note 5, at 35-36; see also Chen, *Law, Empire, and Historiography*, *supra* note 5, at 12-16.

<sup>42</sup> ALABASTER, *supra* note 30, at LVIII-LXIII.

<sup>43</sup> See William Christie, “*Prejudice against Prejudices*”: *China and the Limits of Whig Liberalism*, 24 *EUR. ROMANTIC REV.* 509, 510 (2013).

<sup>44</sup> See, e.g., JULIA LOVELL, *THE OPIUM WAR: DRUGS, DREAMS AND THE MAKING OF CHINA* 21-52 (2011); PETER LOWE, *BRITAIN IN THE FAR EAST: A SURVEY FROM 1819 TO THE PRESENT* 14 (1981).

<sup>45</sup> See KEETON, *supra* note 40, at 87-88, 174-75.

Western societies more civilized than Eastern societies? The process used to explore these questions is crucial to the answers produced. Only in recent years have a very limited number of studies fought back against the erroneous voices of the past. For instance, after reviewing works from the seventeenth to nineteenth centuries, Li Chen published his influential views to defend the civilized nature of the Qing Code and the use of the death penalty in China.<sup>46</sup> Timothy Brook and others took a fresh look at the Western literatures from an impartial perspective and conducted a comparison of the death penalty in China and Western society.<sup>47</sup> Authors can comment impartially on the death penalty in China only when they have an understanding of both Western society and ancient China. As Chin Kim and Theodore R. LeBlang stated, "At first blush, it appears to be a world of cruel and harsh punishment where the death penalty was readily employed and not so readily challenged. In practice this was not the case."<sup>48</sup>

While we acknowledge the breakthrough in previous literatures in clarifying the Western distortion, there is a real need to offer more sound and fundamental material to echo their argument from a comparative and historical perspective. In this study, we mined the official records on death sentences in the Qing Empire from 1744 to 1840 to empirically redraw the picture of capital justice in China prior to the Opium War and to dispel the misunderstanding that China was uncivilized. We focus on the period prior to 1840 for two reasons: (1) the Opium War and the later Taiping Rebellion may have changed the whole death penalty system in the Qing Empire;<sup>49</sup> and (2) England and Wales (our comparative counterpart) began to radically reform the use of the death penalty in the 1830s.<sup>50</sup> Therefore, our research

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<sup>46</sup> See CHEN, *IMPERIAL EYES*, *supra* note 5, at 117-19.

<sup>47</sup> See BROOK et al., *supra* note 32, at 9-28.

<sup>48</sup> Chin Kim & Theodore R. LeBlang, *The Death Penalty in Traditional China*, 5 GA. J. INT'L & COMPAR. L. 77, 104-05 (1975).

<sup>49</sup> See BODDE & MORRIS, *supra* note 31, at 111; Li Xiuqing, *Nineteenth-Century Western Perspectives on Chinese Justice: An Analysis of The Chinese Repository (1832-1851) and The China Review (1892-1901)*, in *LAW, JUSTICE AND CODIFICATION IN QING CHINA* 139, 153 (Guido Abbattista ed., 2017); Zhang Lihong & Dong Neng, *The Great Qing Code in Comparative and Historical Perspective*, in *LAW, JUSTICE AND CODIFICATION IN QING CHINA* 155, 157 (Guido Abbattista ed., 2017).

<sup>50</sup> See BRIAN P. BLOCK & JOHN HOSTETTLER, *HANGING IN THE BALANCE: A HISTORY OF THE ABOLITION OF CAPITAL PUNISHMENT IN BRITAIN* 51-57 (1997).

questions might be better explored with empirical data from the Qing Empire.

## II. DEATH PENALTY OF GREAT QING IN PREVIOUS LITERATURES

### A. Types of Death Sentence

The number of death sentences must be related to the legislation regarding the types of capital punishments and proceedings in the Qing Empire. Previous studies introduced some of the essential death sentence procedures but were very unclear about the types of death penalty imposed and thus misguided readers about the Qing Code. We will not discuss death penalty legislation in this Article; rather, we will provide a simple review that may help our readers understand the death sentence in the Qing Empire.

Only two formal types of death sentences—strangulation and decollation—were introduced in the *Five Punishments* article of the *General Law (mingli)* division of the Qing Code.<sup>51</sup> However, this article does not provide the entire profile of capital punishment in the Great Qing because most articles about the types of death sentences were legislated in other specific divisions of the Qing Code.<sup>52</sup> Apart from the two formal types of death sentences (strangulation and decollation), five specific types of capital punishment concerning nominal, suspended, immediate execution, and *lingchi* death sentences were extensively mentioned in six specific divisions of the Code: Civil (*li*), Fiscal (*hu*), Rites (*li*), Military (*bing*), Criminal (*xing*), and Public Works (*gong*).<sup>53</sup> In other words, the Qing Code actually stipulated seven types

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<sup>51</sup> See STAUNTON, *supra* note 12, at 2; WILLIAM C. JONES, *THE GREAT QING CODE* 34 (1994).

<sup>52</sup> See Moulin Xiong (熊谋林) & Ren Liu (刘任), *Daqing Diguo Sixing Wenmingkao : Jiyu Lüli de Shuju Chongge* (大清帝国死刑文明考:基于律例的数据重格) [*The Civilization of Capital Punishment in Imperial Qing: A Recognition of Data on Leu and Lee*], 40 *HEBEI FAXUE* (河北法学) 31 (2022).

<sup>53</sup> *Id.* at 36-39; Dongfang Min (闵冬芳), *Qinglü Zhongde Sizui Lümu Ji Gelei Sizui Shuliang Xiaozhang Shusxi* (清律中的死罪律目及各罪死罪数量消长述析) [*An Analysis of the Increase and Decrease in the Death Penalty Articles and the Death Penalties in Qing Code*], 23 *FAZHISHI YANJIU* (法制史研究) [J. LEGAL HIST. STUD.] 261-70 (2013).

of capital punishment for offenders sentenced to death when considering whether an execution should be carried out, whether the execution should be carried out without delay, and the method of execution.<sup>54</sup> These capital punishment types were: (1) “nominal strangulation” (*zafan jiao*) and (2) “nominal decollation” (*zafan zhan*), which were impossible to execute in any way; (3) “strangulation with suspension” (*jiao jianhou*) and (4) “decollation with suspension” (*zhan jianhou*), which were almost inexecutable death sentences and had to be submitted for retrial at the Autumn Assizes; (5) decollation with immediate execution (*zhan lijue*) and (6) strangulation with immediate execution (*jiao lijue*), which were executable offenses but had to wait for a centralized review by the Ministry of Punishment (*xingbu*, also translated as Ministry of Justice) and a grant by the emperor; and (7) *lingchi*, which was an informal type of execution and thus was not stipulated in the *General Law*.<sup>55</sup> In addition, for a few capital crimes, the Qing Code stipulated public hanging of the head after decollation (*xiaoshou*) as a secondary measure.<sup>56</sup>

The official version of the Qing Code listed the articles on the seven types of capital punishment and provided the total number of subtypes in Volume 46: *Summary*; the code was edited and completed at the beginning of the fifth year of the Qianlong era (1740).<sup>57</sup> Although Staunton translated every article of the Qing Code, his translation was based on a nonofficial book, *Note of the Entire Ta Qing Leu Lee*, which was published and edited by an unknown governor in 1799.<sup>58</sup> The original Chinese book Staunton used for his translation may have deleted the most important subsection: *Summary*, an appendix of all capital crimes which listed every article on the seven types of capital punishment.<sup>59</sup> Accordingly, Staunton’s translation ended at the seventh division of the *Law Relative to Public Works*, appended with his own translation of other material, while omitting all the Lee articles

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<sup>54</sup> See Xiong & Liu, *supra* note 52, at 31-33; Min, *supra* note 53.

<sup>55</sup> See Xiong & Liu, *supra* note 52, at 31-33; Min, *supra* note 53.

<sup>56</sup> See ALABASTER, *supra* note 30, at 59-60.

<sup>57</sup> See TAO TIAN (田涛) & QING ZHENG (郑秦), DA QING LÜ LI (大清律例) [TA QING LEU LEE] 859-906 (1999); GUI A (阿桂), DA QING LÜ LI (大清律例) [TA QING LEU LEE] 6, 343-506 (2015).

<sup>58</sup> See STAUNTON, *supra* note 12, at lxiii.

<sup>59</sup> Xiong & Liu, *supra* note 52, at 31; TIAN & ZHENG, *supra* note 57.

(*liwen*, precedents or affirmed judicial interpretations) that originated from case verdicts.<sup>60</sup> Furthermore, Staunton failed to recognize that the Chinese version of the Qing Code that he used for translation was not an official version.

The use of nonofficial versions of the Code for translation was the critical reason why the Western literatures miscomprehended the Qing Code. All of the English publications either did not notice or ignored the appendix with the list of articles and subsection numbers in the official Qing Code. Thus, the earlier non-legalist commentators such as Davis mistakenly believed that there were three types of death penalties in China, namely: strangulation, decollation, and *lingchi*. However, the same commentators ignored the large number of cases that carried a suspended strangulation or decollation sentence under specific articles of the Qing Code.<sup>61</sup> Half a century later, Alabaster noticed the coexistence of suspended death sentences and executed death sentences in the Qing Code and that the former seldom led to actual executions.<sup>62</sup> William C. Jones's translation of the Qing Code was based on a version of the code contained in the *Du Li Cun Yi* of Xue Yunsheng in an edition of Tsing-chia Huang, simply because he believed that this version is the closest thing "we have to an annotated edition of the code."<sup>63</sup> However, despite making a very careful translation, Xue did not follow the official version of the Qing Code as his book was academic in nature. According to our observations on the recent edition of Xue's book,<sup>64</sup> he deleted the subsection detailing capital crime statistics for each type of death penalty. Similar to Xue's book, Jones's translation failed to report the appendix with statistics and the list of seven types of capital crimes. Furthermore, like Staunton, Jones continuously deleted all of the Lee articles.<sup>65</sup>

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<sup>60</sup> See Xiong & Liu, *supra* note 52, at 26.

<sup>61</sup> See DAVIS, *supra* note 6, at 241.

<sup>62</sup> See ALABASTER, *supra* note 30, at 61-63.

<sup>63</sup> See JONES, *supra* note 51, at 29.

<sup>64</sup> See XINGQIAO HU (胡星桥) & DENG YOUTIAN (邓又天), *DULI CUNYI DIANZHU* (读例存疑点注) [NOTE OF DU LI CUN YI] 892-94 (1994).

<sup>65</sup> See *id.*

### B. Number of Capital Crimes

How many offenses were punishable by the death penalty under Qing China law? There are statistics that can be used to try and answer this question, but for more than a century the figures have been misunderstood. In his 1906 memorial to the throne *Repealing Nominal Capital Crimes to Exile and Service* (*xuni sizui gaiwei liutuze*), Shen Jiaben claimed that the rules on capital crimes had significantly increased from 239 real and 36 nominal capital crimes during the reign of Emperor Shuanzhi to more than 840 crimes in the *Leu* (*liuwen*, the Code articles themselves) and Lee in force in 1906, and that the extent of this proliferation meant that none of the statistics from previous eras reached the levels found in the early twentieth century.<sup>66</sup> Inclining toward reform of the traditional law as the principal guideline in the late Qing dynasty, Shen addressed and explained the essentialness of controlling the number of crimes punishable by death, and reforming the penal system from both the internal and external perspective in two aspects.<sup>67</sup> On the one hand, Shen argued, European and American countries and Japan had replaced brutal capital punishments with more lenient punishments,<sup>68</sup> and their penal codes contained no more than thirty capital crimes.<sup>69</sup> On the other hand, Shen argued, the number of capital crimes in the Qing Code was higher than the number of capital crimes in the Zhou dynasty (200), the Han dynasty (409), the Wei dynasty (230), and, in particular, the Zhenguan era of the Tang dynasty (60).<sup>70</sup> As a reformer of Chinese law and a proponent of imitating Western law, Shen was certainly influenced by the Western comments on the cruelty of the Qing Code. However, he failed to understand the real situation and the historical evolution of the death penalty in Western society. One of the biggest mistakes made by Shen was possibly that in presenting his numbers, he ignored that most

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<sup>66</sup> JIABEN SHEN (沈家本), *LIDAI XINGFA KAO* (历代刑法考) [CRIMINAL LAW IN DYNASTIES] 2028-29 (1985).

<sup>67</sup> See Xiong & Liu, *supra* note 52, at 51-52 (2022); XINGDONG HU (胡兴东), *ZHONGGUO GUDAI SIXING ZHIDUSHI* (中国古代死刑制度史) [HISTORY OF CHINA'S ANCIENT DEATH PENALTY SYSTEM] 427-28 (2008).

<sup>68</sup> SHEN, *supra* note 66, at 2028.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.* at 1247-48.

capital crimes were deduced by the Lee, which was not the Leu in the Qing Code itself but the precedents “summarized from concrete cases”<sup>71</sup> or supplementary “further explanations.”<sup>72</sup> In other words, the number of capital crimes in the Leu must have been less than the indicated number (840) and possibly even no more than the number in previous dynasties.

About half a century later, Bodde and Morris also cited a figure for types of capital crimes to explain the great “increase” in such crimes in the Qing Code.<sup>73</sup> They cited the extreme number given in the *Collected Institutes of the Great Ch’ing Dynasty (Ta Qing Hui Dian)* to indicate 813 crimes punishable by death.<sup>74</sup> Nevertheless, this number was problematic because it still ignored the basic difference between the Leu and the Lee, the mistake made by Shen Jiaben. Failing to understand the real number of capital crimes, Bodde and Morris continued to cite the number of capital offenses during the Tang, Song, Yuan, and Ming dynasties given in Shen’s *The Figures for the Death Penalty (sixing zhishu)*,<sup>75</sup> and they compared these figures with the more than 300 capital crimes in eighteenth-century Britain to address the proliferation of capital crimes in the Qing Empire.<sup>76</sup> They noticed that the sharp increase in crimes punishable by death reflected “a possibly different basis for the compilation,” and argued that the “discrepancy was well explainable by the tremendous proliferation of sub-statutes.”<sup>77</sup> However, they still used the number to address the proliferation of capital crimes in the Qing Code and thus misguided readers across the world.

But what was the real number of capital crimes in the Qing Code? A serious verification and restatement of the situation is critical for a historical legal retrospective in order to understand capital justice in the Great Qing. We extracted data on the number of capital crimes and their legislative forms from two critical studies by Min Dongfang<sup>78</sup>

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<sup>71</sup> Zhang & Dong, *supra* note 49, at 157.

<sup>72</sup> ALABASTER, *supra* note 30, at XLIII.

<sup>73</sup> BODDE & MORRIS, *supra* note 31, at 103.

<sup>74</sup> *Id.* at 102-04.

<sup>75</sup> See SHEN, *supra* note 66, at 1248-49.

<sup>76</sup> See BODDE & MORRIS, *supra* note 31, at 103.

<sup>77</sup> *Id.*

<sup>78</sup> Min, *supra* note 53, at 274-75.



and Hu Xingdong.<sup>79</sup> Given that vital information on capital crimes was not available in the English literature, we carefully reviewed the number of capital crimes in the Leu and Lee to redraw the profile of the death penalty in China from 1740 to 1899.

As we show in Table 1, although the computed sum of all capital crimes increased from 444 in 1740 to 813 in 1899, the numbers in the Leu and Lee category and the types of death penalty respectively tell a completely different story. First, it is very clear that from 1740 to 1899, the number of capital crimes in the real code, the Leu, did not change at all, remaining at 191 throughout this period, while the number of articles in the Lee doubled.<sup>80</sup> Second, of the capital offenses regulated by the Leu, only forty-five concerned the death penalty with immediate execution, twenty-three concerned decapitation, eleven concerned strangulation, and eleven concerned *lingchi*, in contrast to the hundreds of capital crimes in the Qing Code.<sup>81</sup> Third, more than two thirds of the capital crimes in the Qing Code, whether regulated by the Leu or Lee, were either suspended death penalty crimes with a low possibility of offenders being executed or nominal death penalty crimes with no chance of offenders being executed.<sup>82</sup> From the cells in Table 1, we can see that these three features in the Qing Code did not change from the first 1740 code to the latest version covering the Lee in the ninth year of the Tongzhi era (1870) or the version in the twenty-fifth year of the Guangxu era (1899) with missing information about the Lee.

We do not deny the increase of capital articles in the Lee, but this increase is not about the increase of capital rules in the Qing Code itself. This phenomenon is well explained by the argument that “[t]he law never changes, the (sub) statutes adapt the law to the time and circumstance”.<sup>83</sup> The soaring number of articles in the Lee was an accumulative outcome of the existence of government; also, new but different cases in terms of details called for more guidance due to the

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<sup>79</sup> See HU, *supra* note 67, at 393-427.

<sup>80</sup> See Min, *supra* note 53, at 274-75.

<sup>81</sup> *Id.*; see Xiong & Liu, *supra* note 52, at 36-37.

<sup>82</sup> See HU, *supra* note 67, at 57-67; ALABASTER, *supra* note 30, at 61-63.

<sup>83</sup> ALABASTER, *supra* note 30, at XLV.

absence of applicable details in the Leu.<sup>84</sup> Given that the Leu itself did not change, the only way to solve new complicated cases was to deduce the verdicts given in other similar cases. Min Dongfang indicated that there were only 28 Lee that acted as interpretative sub-rules in the third year of the Shunzhi era, but this number increased to 206 in the third year of the Yongzheng era.<sup>85</sup> In the 1740 Qing Code, there were 243 specific rules regarding capital offenses deduced by Lee, but that number more than doubled to 581 in the 1870 version. Comparing the number of articles in *Ta Qing Huidian* (813) and in Shen Jiaben's memorial (840) with the fixed 191 in Leu, the extra 622 or 629 articles were the number of Lee in the Qing Code. Zhang and Dong even indicated that the total number of Lee reached 1,456 articles in 1761 and a maximum of 1,892 articles in 1863.<sup>86</sup>

In sum, both Shen Jiaben and Bodde and Morris argued that the picture of the proliferation of capital crimes in the Qing Code was wrong. As indicated in Table 1, alternatively, Min revealed that capital crimes in the Leu, including immediate execution and suspended execution crimes, decreased from 195 in the Qing Code of the third year of the Shunzhi era (1646) to 191 in the third year of the Yongzheng era (1725).<sup>87</sup> The 1740 Qing Code kept this number, and the figure did not change thereafter. During the Qing period, only forty-five capital offenses with immediate execution were retained in the Leu itself from 1646,<sup>88</sup> representing a very small proportion of all capital crimes. The earlier number of 195 capital crimes before 1725 and the unchanged number thereafter, 191 in the Leu itself, indicate the considerable stability and leniency of the legal system in the Qing Empire.

### C. Number of Death Sentences

Brian E. McKnight was a pioneer in empirically investigating the number of death sentences in China via legal records in the

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<sup>84</sup> See Li Lü (吕丽), *Lun Da Qing Lü Li "Yi Li Fu Lü" de Tili Yuanze* (论《大清律例》“以例辅律”的体例原则), [On the Stylistic Principle of "Supplementing the Leu with Lee" in the Great Qing Code], 4 JILIN UNIV. J. 38 (1999).

<sup>85</sup> See Min, *supra* note 53, at 262-65.

<sup>86</sup> See Zhang & Dong, *supra* note 49, at 157.

<sup>87</sup> See Min, *supra* note 53, at 274.

<sup>88</sup> *Id.* at 274-75.

archives. He extracted data on death sentence numbers in the Sung dynasty between 968 and 1261 from diverse archive sources and found that the total number fluctuated from 389 to 5,789 persons in the Northern Sung and from sixteen to 324 persons in the Southern Sung.<sup>89</sup> As regards the number of executions in the Sung era, McKnight revealed that about nine to ten percent of the total number of offenders sentenced were executed, while 90% of those sentenced to death were spared as the final review process altered or commuted the punishment.<sup>90</sup> Regarding the number of death sentences in the Qing era, apart from the exaggerated picture of capital crime, we could not find any death sentence numbers in Shen Jiaben's books.

In the 1990s, a few studies mined the records in the official archives to decipher the number of death sentences. Their data source was mainly the annual statistics based on the number of death sentences given in the counties or districts of China that were approved by the higher justice in each province and then submitted to the Ministry of Punishment for the emperor's consent.<sup>91</sup> The Ministry of Punishment computed the numbers and completed annual statistics based on their record of motions and then reported these to the emperor in a document entitled *Ministry of Punishment Statistics Yearbook of Strangulation and Decapitation Motions for Murder and Robbery and Miscellaneous Crimes in Each Province (xingbu huiti gesheng tijie jiaozhan mingdao deng an shumu qingche)*, also called, Case Summary Books or Yellow Books (*huangce*).<sup>92</sup> While the existing studies noticed these numbers, a large vacuum remains in regard to deciphering the real capital justice system in the Qing Empire via an examination of the number of death sentences. In the meta-analysis shown in Table 2, we report some essential information mined from the previous research.

In the Chinese literature, Jiang Qiao was the first to offer data on the number of death sentence motions, covering a sixteen-year

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<sup>89</sup> See BRIAN E. MCKNIGHT, *LAW AND ORDER IN SUNG CHINA* 466-67 (1992).

<sup>90</sup> *Id.* at 467-68.

<sup>91</sup> SILU NA (那思陆), *QINGDAI ZHONGYANG SIFA SHENPAN ZHIDU* (清代中央司法审判制度) [CENTRAL JUDICIAL ADJUDICATION SYSTEM IN THE QING DYNASTY] 107-42 (2004).

<sup>92</sup> Zhiwu Chen et al., *Social-Economic Change and Its Impact on Violence: Homicide History of Qing China*, 63 *EXPL. ECON. HIST.* 10 (2017).

period from the ninth year of the Qianlong emperor (1744), when there were 1,998 cases, to the fifty-fifth year (1789), when there were 3,307 cases.<sup>93</sup> In this study, he revealed a fluctuating time wave of yearly death sentence numbers and a dissymmetric distribution of cases in the provinces.<sup>94</sup> Sichuan, Zhili, Guangdong, and Shanxi were the four provinces with the highest number of cases, while Guizhou, Yunnan, Guangxi, and Gansu were the four provinces with the least cases, all having less than 100 cases.<sup>95</sup> The majority of the death sentences (69.99%) were for killings in a fight, followed by robbery (15.12%), homicide (9.34%), offending accusation (5.49%), rape and adultery (4.28%), and salt smuggling (0.14%) (see Table 2).<sup>96</sup> Despite Jiang's breakthrough in revealing death sentence numbers in the Qianlong era, he defined the number of death sentences only in comparison to general population figures (*minren*), while failing to state whether those sentences were the number of executed sentences or suspended sentences or whether both were included. Similar to Jiang, Min Dongfang simply reported an appendix table of the death sentence statistics for a twenty-four-year period during the Qianlong era consisting of total numbers and miscellaneous numbers for six categories.<sup>97</sup> In her study, she selectively reported the geographic distributions in nineteen provinces for a six-year period,<sup>98</sup> but she did not offer details as to the data source nor answer the question as to whether the numbers included executions or sentence motions only.

In the foreign language literature, utilizing data from microfilm kept by the Genealogical Society of Utah, James Z. Lee illustrated the available data on annual numbers of capital punishment sentences between 1760 and 1903, covering the Qianlong to Guangxu

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<sup>93</sup> Qiao Jiang (江桥), *Qianlongchao Minren Sixing Anjian de Chubu Tongji Yu Fenxi* (乾隆朝民人死刑案件的初步统计与分析) [*Primary Statistics and Analysis of Death Sentenced Cases Committed by the General Public in Qianlong Era*], 3 MANXUE YANJIU (满学研究) [J. MANOLOGY RES.] 146 (1996) [hereinafter Jiang, *Primary Statistics*].

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> *Id.* at 149.

<sup>97</sup> See DONGFANG MIN (闵冬芳), QINGDAI DE GUYI SHAREN ZUI (清代的故意杀人罪) [MURDER IN QING DYNASTY] 184-89 (2015) [hereinafter MIN, MURDER].

<sup>98</sup> *Id.*

eras. Although Lee only reported annual death sentence numbers for seventeen years prior to 1840, his study showed that death sentence numbers fluctuated from 2,589 to 4,894 persons between 1760 and 1840, with a mean of 3,352 cases per year.<sup>99</sup> In a closer examination of death sentence motions to the Emperor Qianlong, he found that of the 2,142 cases submitted by sixteen provinces between 1738 and 1740, 35.8% of the motions were for immediate executions (*qingshi*), 56.5% were for suspended death sentences (*huanjue*), and 7.6% were for forgivable commutations (*kejin*).<sup>100</sup> In contrast to Jiang and Min, Lee systematically introduced the death sentence in the Qing Empire to French readers, indicating that about a third of death sentences would lead to executions and two-thirds would not for various reasons.<sup>101</sup> Lee's research made significant contributions to show that the death sentence numbers for China included suspended and commuted executions as well as actual executions and that the execution rate was far lower than the death sentence rate.

Zhiwu Chen and others explored some features of capital cases in their social economic history research on homicide in the Great Qing.<sup>102</sup> Focusing on the relationship of social economic change and violent crime, they did not analyze the annual number of death sentences across the country. Nevertheless, they reported a figure with five subdivisions for thirty-nine sets of annual statistics and offered a file of supplementary material that included fifty-one sets of annual statistics on death sentence motions nationwide taken from the Case Summary Books between 1744 and 1898, and eighty-two sets of annual statistics on executions taken from the Qing Chronicles between 1736 and 1849.<sup>103</sup> We reanalyzed their data from the Excel files and looked again at the details of death sentences for the purposes of our research. As shown in Table 2, we obtained thirty-two sets of annual statistics on death sentences nationwide between 1738 and 1840, and seventy-

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<sup>99</sup> See James Z. Lee, *Homicide et peine capitale en Chine à la fin de l'empire; Analyse statistique préliminaire des données* [*Homicide and Capital Punishment in China at the End of the Empire: Preliminary Statistical Analysis of Data*], 10 ÉTUDES CHINOISES 119-20 (1991).

<sup>100</sup> *Id.* at 121.

<sup>101</sup> *Id.* at 118-21.

<sup>102</sup> See Chen et al., *supra* note 92, at 8-25.

<sup>103</sup> *Id.* at Appendix B Supplementary Material.

three sets of annual numbers prior to 1840 regarding affirmed executions in Qiushen (Autumn Deliberations) and Chaoshen (Imperial Court Deliberations). After recomputing Zhiwu Chen's datasets, we found a mean of 3040.06 for total death sentence cases nationwide, but only 640.47 executions (21.07%) were affirmed.<sup>104</sup> Among all the death sentence cases, killings in a fight (ordinary conflict-led killings) accounted for 73.06% (2,221) of cases.<sup>105</sup> There was a regional imbalance in case numbers, with Sichuan, Zhili, Guangdong, and Shanxi having far more cases than Yunan, Guizhou, and Gansu.<sup>106</sup> Zhiwu Chen's findings using multiple data sources echoed previous findings, but more importantly they indicated a declining trend in the number of annual death sentence cases, particularly after the 1820s.<sup>107</sup>

Utilizing capital crime statistics between the years 1744 and 1903, Liying Li examined national crime patterns in late imperial China and investigated how the patterns related to macro socio-economic conditions and rapid changes.<sup>108</sup> Despite declaring a dataset covering seventy-four years with seven incomplete years,<sup>109</sup> the source of Li's data was not clear, and eight annual numbers between 1744 and 1840 were identified as erroneous numbers.<sup>110</sup> Ignoring these drawbacks, her research echoed previous findings that the number of death sentences fluctuated in terms of longitudinal trend and unequal provincial distribution and that killings in affrays made up the majority of cases, followed by robbery and other crimes.<sup>111</sup> However, her discussion and conclusion on the relationship between demographic factors and upward trends in crimes, and the correlation between economic conditions and property crimes might not

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<sup>104</sup> *Id.*; see *infra* Table 2.

<sup>105</sup> See Chen et al., *supra* note 92, at Appendix B Supplementary Material; see also *infra* Table 2.

<sup>106</sup> See Chen et al., *supra* note 92, at Appendix B Supplementary Material; see also *infra* Table 2.

<sup>107</sup> Chen et al., *supra* note 92, at 11; see Lee, *supra* note 99.

<sup>108</sup> Liying Li, *Sociological Explanations of Crimes in Late Imperial China: 1744-1903*, 19 INT'L J. COMPAR. & APPLIED CRIM. JUST. 107-26 (1995) [hereinafter Li, *Sociological Explanations*].

<sup>109</sup> *Id.* at 111.

<sup>110</sup> *Id.* at 113.

<sup>111</sup> *Id.* at 112-19.

adequately explain capital punishment in the Qing Empire because she ignored the capital crimes in the Qing Code itself, used many imprecise annual numbers of death sentences, and did not consider population statistics.<sup>112</sup> As we explore later, the death sentence rate was clearly on a downward trend between 1744 to 1840. Meanwhile, the stable small proportion of robbery cases were a result of property crimes rarely being considered capital offenses in the Qing Code.<sup>113</sup>

In addition, Sun Jiahong explored the number of suspended death sentence cases (*jianhou*) heard at the Autumn Assizes (*qiushen*) from the nineteenth to the sixtieth year of the Qianlong era.<sup>114</sup> In his research, he revealed that across the nation, an average of 2,664.6 new cases each year were submitted to the Autumn Assizes for further trial.<sup>115</sup> In contrast with the death sentence numbers and the proportion of death sentence suspensions found in other studies, the numbers in Sun's book are very critical and echo the finding that most death sentences were suspended.<sup>116</sup> Simply, we could pair the statistics on the annual number of cases submitted to the Autumn Assizes in Sun's book and the annual number of death sentences cited in other studies to compute the profile of death sentence cases. After excluding two paired strange values, we found that about four fifths of the submitted death sentences were suspended, while about one fifth led to immediate execution.<sup>117</sup> Further evidence can be found in Zhang Ning's article; his research indicated that suspended death sentences accounted for about 32,132 cases in total and 2,295 cases on average per year in the Autumn Assizes between 1771 and 1784.<sup>118</sup> Ignoring the specific difference in numbers between Sun and Zhang,

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<sup>112</sup> *Id.* at 119-20.

<sup>113</sup> See JONES, *supra* note 51, at 516.

<sup>114</sup> See JIAHONG SUN (孙家红), QINGDAI DE SIXING JIANHOU (清代死刑监候) [THE STUDIES OF DEATH PENALTY AFTER ASSIZE IN QING DYNASTY] 332-33 (2007).

<sup>115</sup> *Id.*

<sup>116</sup> See Lee, *supra* note 99, at 118-21; Chen et al., *supra* note 92, at Appendix B Supplementary Material.

<sup>117</sup> See *infra* Table 2; see also SUN, *supra* note 114, at 332-33.

<sup>118</sup> See Zhang Ning (张宁), *Qingdai de Dashe Yu Sixing—Zhidu Ji Shijian Zhongde Fa Yu Fawai* (清代的大赦与死刑—制度及实践中的法与“法外之仁”) [*Amnesty and the Death Penalty under the Qing Dynasty: Between the Legal System and Political Practice of “Benevolence outside of the Law”*], 28 FAZHISHI YANJIU (法制史研究) [J. LEGAL HIST. STUD.] 95 (2015).

both studies echoed the structure of the numbers found in other studies about the death sentence in the Qianlong era or later.

In general, a meta-analysis of the number of death sentences found in previous studies revealed a body of solid evidence to disprove the brutal or cruel implementation of the death penalty in the Qing Empire. For instance, Jiang revealed that the death sentence case rates per 100,000 people between the ninth and fifty-fifth year of the Qianlong era only ranged from 1.071 to 1.644.<sup>119</sup> Although some of the numbers in previous studies in the French, English, or Chinese literatures echo each other, the issue of capital punishment in the Great Qing, as well as the background and importance of the numbers, has yet to be thoroughly discussed. Our contribution is not limited to verifying the previous numbers through archive files; rather, we present additional details to complete an impartial assessment of the death sentence in the Qing Empire from both an empirical and a comparative perspective.

### III. DATA AND METHODOLOGY

#### A. Data Collection

The previous studies provided enough clues to trace the history of the death sentence in the Great Qing. We followed these clues to locate multiple historical archives of official files and mine statistical data on death sentence numbers. One of the key sources of death sentence motions is kept at the FHAC, located in Beijing.<sup>120</sup> The FHAC scanned and transferred more than ten million books of archives into electronic files, and the public can access basic information on the archives online by searching keywords, titles, authors, years, and so on.<sup>121</sup> The FHAC archive system does not support online overviews of content. However, appointments to visit

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<sup>119</sup> See Jiang, *Primary Statistics*, *supra* note 93, at 147.

<sup>120</sup> See *Ben Guan Jianjie* (本馆简介) [*Introduction of the Archives*], FIRST HIST. ARCHIVES CHINA, <https://www.fhac.com.cn/about/introdction.html> (last visited Sept. 30, 2022).

<sup>121</sup> See *Guancang Dangan Jieshao* (馆藏档案介绍) [*Introduction of Archives Files*], FIRST HIST. ARCHIVES CHINA, [www.fhac.com.cn/search\\_catalogues.html](http://www.fhac.com.cn/search_catalogues.html) (last visited Oct. 7, 2022).



the archive can be made over the phone.<sup>122</sup> After a very careful discussion on strategies, we settled on a three-step strategy to mine data on the death sentence in the Great Qing from the FHAC.

First, we established a series of keywords to obtain the reference numbers and titles of annual death sentence files, such as: “motion,” “yellow book,” “murder and theft” (*mingdao*), “list book” (*qingce*), and so on. During this stage, we took one month to search files using every keyword and to record the relevant reference numbers and titles we harvested, while filtering out hundreds of thousands of other irrelevant files with annual death sentence numbers. Second, Author Ren Liu flew to Beijing to view the contents of files inside the archives. It took the Author another month and a series of repeat appointments to manually copy the target files with the assistance of the obtained reference numbers or titles. Although the official files could be viewed, taking pictures, scanning copies, or taking out files as Word documents was not allowed because electronic devices cannot be brought into the FHAC. Thus, the Author had to type words into the archive’s computer to complete a manual copy of the content one file at a time, save the file as a secondhand PDF, and then print out the file. Each day, Author Ren Liu sent the secondhand PDF to Author Moulin Xiong’s mailbox for repeat verification. Third, the Authors read the printed PDF files and mined the number of death sentences and other details in each archive and then inputted these into Excel and transferred them into *Stata* software to set up a dataset for analysis. From this process, we obtained 56 archive years from 1744 to 1840 (i.e., from the ninth year of the Qianlong era to the nineteenth year of the Daoguang era), providing data on annual death sentence cases covering a period double or triple that in previous studies and thus helping us to construct a more detailed timeline from a historical and legal perspective.

Although the annual numbers of death sentences in this study are considerable, we still missed about 40 annual archives for unknown reasons. In an effort to explore years other than those covered by the FHAC, we attempted to search for more data on annual

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<sup>122</sup> See *Yuyue Chadang Xuzhi* (预约查档须知) [*Rules of Appointment to Visit Archives*], FIRST HIST. ARCHIVES CHINA, <https://www.fhac.com.cn/service.html#service1> (last visited Oct. 7, 2022).

death sentence cases in the Qing Empire. Luckily, we found another data source covering an extra three years, specifically 1751 (sixteenth year of Qianlong era), 1774 (thirty-ninth year of Qianlong era), and 1795 (sixtieth year of Qianlong era), from the Ming Qing Archives (*mingqing dangang*).<sup>123</sup> In addition to the numbers we obtained from the archive, we also consulted six extra annual statistics mentioned in Min Dongfang<sup>124</sup> and Jiang Qiao.<sup>125</sup> However, we based our figures on Min's numbers because many of the numbers in Jiang's article were identified as errors.<sup>126</sup> Additionally, the numbers for three years are available in James Lee's and Chen Zhiwu's articles.<sup>127</sup> But, we referred to Chen's annual numbers because Lee did not offer specific numbers in five classifications of capital crime (*see* Table 2). All of the annual numbers in Chen's article were the same as those we obtained from the FHAC, except for the three years not covered in our dataset. Although it might have been helpful to add the annual numbers for two years revealed in Liying Li's article, namely, 3,425 cases in 1801 and 4,319 cases in 1804, we did not utilize her numbers in our analysis because of the unverified data source and the many drawbacks in terms of preciseness that we identified.<sup>128</sup> In total, we obtained annual death sentence numbers for 68 years from data we considered to be reliable. Regarding the verification of our data, we list the reference numbers for files covering 56 years from the FHAC archives, files covering three years from the Ming Qing Archives, and material covering another nine cited years from the past literature in this Article's Supplementary File. We can assure readers that the data for 68 years that we present in this Article represents the most data available at present.

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<sup>123</sup> WEIREN ZHANG (张伟仁), MING QING DANGAN (明清档案) [MING QING ARCHIVES] A179-93 (1989); WEIREN ZHANG, MING QING ARCHIVES A224-29 (1990); WEIREN ZHANG, MING QING ARCHIVES A271-114 (1994).

<sup>124</sup> *See* MIN, MURDER *supra* note 97, at 184.

<sup>125</sup> *See* Jiang, *Primary Statistics*, *supra* note 93.

<sup>126</sup> *See* MIN, MURDER *supra* note 97, at 184.

<sup>127</sup> *See* Lee, *supra* note 99; Chen et al., *supra* note 92, at Appendix B Supplementary Material.

<sup>128</sup> *See* Li, *Sociological Explanations*, *supra* note 108, at 113.

### B. Motion Review

In traditional China, one of the most significant features of the capital justice system was the very restricted procedural rules for a centralized review (*fuzhou*). Under this review system, death sentences that were adjudicated in prefectures or counties, and upheld by provincial higher courts, had to be further motioned to the emperor for approval, and executions would not be allowed until they had been ratified by the emperor.<sup>129</sup> Understanding the motion review process for death sentences and executions is important to the meaning and validity of annual death sentence statistics.

According to the statute on awaiting the emperor's ratification of the death sentence for an offender sentenced to death (*siqiu fuzhou daibao*) in the Qing Code, all capital case motions had to be sent to the emperor for final review, with the exception of cases involving the ten wrongs (*shie*) and robbery (*qiangdao*).<sup>130</sup> If any execution violated the centralized review procedure, even if the execution was proper, the local judiciary would be punished by being beaten with a heavy (*zhang*) or light (*chi*) bamboo stick.<sup>131</sup> If an intentional erroneous execution of an innocent person was carried out without submitting the case for a centralized review and the emperor's ratification, the same "entire punishment" was "reversed" to condemn the responsible officials according to the rule of "reversal of a false judgment."<sup>132</sup> Despite the Qing Code including words about execution without delay (*juebu daishi*), the Lee articles clearly indicated that every case involving murder and robbery had to be submitted to the emperor for ratification, and that treason offenses must be submitted to the emperor after execution.<sup>133</sup> So, even with this rule, execution without delay was very rare in the Qing Dynasty, and such executions were

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<sup>129</sup> See BODDE & MORRIS, *supra* note 31, at 114-17; Chen et al., *supra* note 92; NA, *supra* note 91.

<sup>130</sup> See NA, *supra* note 91, at 135-42; ALABASTER, *supra* note 30, at 21-29; BODDE & MORRIS, *supra* note 31, at 132-34; Ning, *supra* note 118, at 59.

<sup>131</sup> JONES, *supra* note 51, at 400-01; STAUNTON, *supra* note 12, at 460-61.

<sup>132</sup> JONES, *supra* note 51, at 381; STAUNTON, *supra* note 12, at 450.

<sup>133</sup> See TIAN & ZHENG, *supra* note 57, at 601.

also under the emperor's warrant in special times of war and in certain areas.<sup>134</sup>

There is no doubt that either immediate executions or suspensions of executions had to be memorialized by the provincial justices,<sup>135</sup> and no one would violate the fundamental and critical power of emperor with regard to control over death sentences. Regarding the review process, Alabaster found that the Ministry of Punishment had four important duties of superintendence and revision. First, the Ministry accepted a copy of the report (*jietie*) of a death sentence motion when the provincial governor submitted it to the emperor.<sup>136</sup> Second, professional officers in the Ministry reviewed the case or remanded it to the lower provincial judiciary when a significant inappropriateness of the death sentence was identified.<sup>137</sup> Third, it reported the decision it made, solely or in conjunction with the Judicial Committee (*dalishi*) and Censorate (*duchayuan*), to the emperor via a memorial.<sup>138</sup> Fourth, it made a due record of the decision of the emperor's review.<sup>139</sup>

We noticed some evidence to further demonstrate clearly the role performed by the Ministry of Punishment. On the one hand, the death motion review process was directly set out in the official history of the Qing Empire, clearly indicating that "all capital cases outside the capital province Zhili were reviewed and reported by the Ministry of Punishment."<sup>140</sup> On the other hand, all of the files with annual statistics of death sentence motions sent to the emperor for review in our dataset were reported by one or several heads of the Ministry of Punishment, including the Minister or the Deputy Minister of

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<sup>134</sup> Ruicheng Wang (王瑞成), *Jiudi Zhengfa Yu Qingdai Xingshi Shenpan Zhidu—Cong Wanqing Jiudi Zhengfa Zhizhi de Zhenglun Tanqi* (就地正法与清代刑事审判制度—从晚清就地正法之制的争论谈起) [*Execution without Delay and Criminal Trial in Qing Dynasty: Discussion of the Contentious Execution without Delay in Late Qing*], *JINDAISHI YANJIU* (近代史研究) [MOD. CHINESE HIST. STUD.] 212 (2005).

<sup>135</sup> See NA, *supra* note 91, at 135-42; BODDE & MORRIS, *supra* note 31, at 132-34; Ning, *supra* note 118, at 59.

<sup>136</sup> See ALABASTER, *supra* note 30, at 22.

<sup>137</sup> *Id.* at 23-25.

<sup>138</sup> *Id.* at 22, 25.

<sup>139</sup> *Id.* at 25.

<sup>140</sup> ERXUN ZHAO (赵尔巽), *QING SHI GAO* (清史稿) [QING HISTORY MANUSCRIPT] 4206 (1976).

Punishment, and the Grand Secretary of State as the chief administrator of penal affairs (*see* Table 3). Because the annual file was submitted to the emperor to provide him with information on capital or vital issues (*gongshan huangce jincheng yulan*), none of the reporters would dare to change or fake the numbers. Accordingly, we have no reason to doubt the veracity of the annual statistics computed by the Ministry of Punishment.

In general, the Ministry of Punishment was the principal in the process of reviewing motions on death sentences in the Qing Dynasty. Each decision on capital punishment after a trial and confirmed by the provincial judiciary had to be reviewed firstly by the Ministry of Punishment; then, the Ministry, on its own or in conjunction with two other boards as the Three Law Ministries (*sanfasi*), gave its decision and, using professional, tidy, and simple narratives, submitted this to the emperor for ratification.<sup>141</sup> Whether the review was conducted by the Ministry of Punishment alone or in conjunction with others, the centralized death sentence motion review process assisted the emperor to make his final decision.<sup>142</sup> The whole story of the review process is beyond the scope of this Article, but a simple introduction to it is undoubtedly helpful as it shows that every death sentence was recorded in the central government records.

### C. Annual Statistics

Given the traditional and specific death sentence review rule, the death sentence numbers in the archives provide valid data for analysis purposes. The annual collection of official records on the death sentence in the Qing dynasty was launched nationwide in the ninth year of the Qianlong era.<sup>143</sup> On December 1<sup>st</sup>, 1744, the throne monitor (*jiancha yushi*) in Henan, Peng Zhaozhu (1699-?), issued a royal memorial to Qianlong in which he suggested collecting two sets of national annual statistics on vital issues, one regarding natural disasters and harvests to be collected by the Ministry of Household (*hubu*) and another regarding capital cases to be collected by the

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<sup>141</sup> *See* NA, *supra* note 91, at 135-42.

<sup>142</sup> *See id.*

<sup>143</sup> *See* Chen et al., *supra* note 92, at 9.

Ministry of Punishment at the end of the year.<sup>144</sup> Regarding the annual statistics on death sentences nationwide, his memorial particularly called for the Ministry of Punishment to compute and report both the total number and the specific numbers for each crime for the previous year, such as: robbery (*qiangdao*), rape and adultery (*jianyin*), salt smuggling (*yanxiao*), homicide (*mougusha*), killing in a fight (*dousha*), and offending accusation (*ganming fanyi*).<sup>145</sup>

On March 10, 1745, the first annual statistics report on death sentence motions submitted for review from January to December in the ninth year of the Qianlong era (1744) were submitted jointly by the head of the Ministry of Punishment, Lai Bao, and other officers.<sup>146</sup> In this report, the total number of death sentence motions from all provinces was 1,998 (*jian*), including: 340 for robbery, 104 for rape or adultery, 2 for salt smuggling, 185 for homicide, 1,256 for killing in a fight, and 56 for offending accusations.<sup>147</sup> All 56 annual reports we searched, mined, compiled, and submitted in March or early April of the following year, which abided by the royal tradition to hear the annual vital issues of last year in March.<sup>148</sup> We mined all of the annual total numbers and the details on the six categories from the archives. It should be noted that the years given in this Article are the years to which the annual statistics apply (motion) rather than the dates of the reports (*huizou*), which were compiled in the following year (year +1).

Regarding the definition of annual number, as we mentioned above, the numbers in this Article relate only to death sentences motioned by primary provincial decisions rather than either ratified or unrati ed decision of the emperor after death sentence reviews. We

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<sup>144</sup> Peng (彭肇洙), *Zhouchen Yining Huxing Erbu Guanyu Minsheng Fengshu Zhongda Zhishi Nianzhong Huizou Yuanyoushi* (奏陈宜令户刑二部关于民生风俗重大之事年终汇奏缘由事) [*Memorial Suggestions on ordering the Two Ministries of Household and Punishment to Complete Annual Statistics of Civil Habitual and Vital Issues at the End of Year, December 1, the Ninth Year of Qianlong*] (1744).

<sup>145</sup> *Id.*

<sup>146</sup> Bao Lai (来保), *Tiwei Huibao Xingbu Qianlong Jiunianfen Gesheng Tijie Mingdao Deng Anjian Shumushi* (题为汇报刑部乾隆九年份各省题结命盗等案件数目事) [*Report Ministry of Punishment Statistical Yearbook of Nationwide Motions for Murder and Robbery and Miscellaneous Crimes in the Ninth Year of Qianlong March 10, the Tenth Year of Qianlong*] (1745).

<sup>147</sup> *Id.*

<sup>148</sup> See Peng, *supra* note 144.

noticed that the official report of annual statistics in three years mentioned mercy (*shemian*) or commutation (*jiandeng*), but these cases were not excluded from the annual statistics but instead were included as original motions (*yizhao yuanli*).<sup>149</sup> Given the low execution rate of death sentences presented in the literatures, the numbers of executed and nonexecuted cases in the annual statistics were reasonable. For example, Li's finding that "about 70 percent of all adulteresses were given a capital sentence, i.e., either immediate or delayed death sentences"<sup>150</sup> helped us to conclude that suspended death sentences were included in the annual statistics.

It should be also noted that the statistical unit of death sentences is the number of cases (*jian*) rather than the number of persons (*ren*). Although the unit has little effect on the annual numbers since the odds of the number of cases and the number of persons being different are very low, we must introduce the real details of death sentences to better understand capital justice in the Qing Empire. For instance, Zhang Ning introduced a memorial by a governor of Sichuan in which 24 motioned cases involved 27 offenders, while another 20 executed cases involving 29 persons in Guangdong were approved in the first year of the Qianlong era.<sup>151</sup> Thus, the number computed by number of persons was about 1.13 to 1.45 times greater than that

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<sup>149</sup> See Kedun A (阿克敦), *Tiwei Huiti Qianlong Shiyi Nia Gesheng Tijie Mingdao Deng Anshi* (题为汇奏乾隆十一年各省题结命盗等案事) [*Report Statistical Yearbook of Nationwide Motions for Murder and Robbery and Miscellaneous Crimes in the Eleventh Year of Qianlong, March 12, the Twelfth Year of Qianlong*] (1747); Kedun A (阿克敦), *Tiwei Huiti Gesheng Qianlong Shiwu Nianfen Tijie Mingdao Deng Anjian Shumushi* (题为汇题各省乾隆十五年题结命盗等案件数目事) [*Report Statistical Yearbook of Nationwide Motions for Murder and Robbery and Miscellaneous Crimes in the Fifteenth Year of Qianlong, March 26, the Sixteenth Year of Qianlong*] (1751); Mida E (鄂弥达), *Tiwei Huiti Qianlong Ershi Nianfen Gesheng Tijie Qiangdao Jianying Yanxiao Mousha Dousha Deng Anjian Shumu Shiyong Dengshi* (题为汇题乾隆二十年各省题结强盗奸淫盐枭谋杀斗杀等案件数目事由等事) [*Report Statistical Yearbook of Nationwide Motions for Robbery, Rape, Salt Gangster, Murder, Killing in Fight and Miscellaneous Crimes in the Twentieth Year of Qianlong, April 5, the Twenty-First Year of Qianlong*] (1756).

<sup>150</sup> Liying Li, "They Are Expendable" *Adultery and Homicide in Late Imperial China*, 23 INT'L J. COMPAR. & APPLIED CRIM. JUST. 267 (1999) [hereinafter Li, "They Are Expendable"].

<sup>151</sup> See Ning, *supra* note 118, at 84-88.

computed by number of cases. Although historical analyses of legal matters are difficult because of data loss, we utilized the best available data from 200 years ago to draw our conclusions. We hope our limited informed assumptions (when no data existed) does not negatively impact this Article.

#### D. Analytical Strategies

In this study, we set up two schedules for our analysis of death sentences in the Great Qing prior to the Opium War. Any comment given by a commentator from one country on another country's brutal and cruel use of the death sentence must be seen as a dual comment indicating that the commentator regards their country as civilized and the other country as uncivilized. Thus, to enable us to make impartial comments, we first conducted an analysis of the death sentence in Qing China only, and then conducted a comparative analysis with England and Wales.

In our analysis of the death sentence in the Qing Empire, we strived to numericize the real situation regarding capital justice via indicators from the archive records in the context of the Qing Empire nationwide. We used four specific approaches to present our mined data. We started by examining the annual total number of death sentences between 1744 and 1840 in order to observe the original numbers and trends (Figure 1). Second, to strengthen our data regarding the trend in annual death sentences, we produced a death sentence rate per 100,000 people and then utilized the first time series to observe the change in number in comparison with the previous year (Figure 2). Third, to better understand the longitudinal trend, we produced two tables to show death sentence statistics for each decade (Table 4) and differences among emperors (Table 5). Fourth, we examined the specific distribution of numbers in six categories to reveal which types of capital crimes formed the main part of death sentence cases (Table 6).

Following our analysis of capital justice in Qing China, we conducted a comparative numeric analysis of capital justice in the Qing Empire and in England and Wales (Table 7). We gathered data on the number of death sentences, the total number of executions, and the proportion of capital crimes from a range of studies. Next, we



concluded the relative level according to the population of England and Wales. England and Wales had no nationwide statistics until 1805,<sup>152</sup> so it is difficult to identify the precise number of people sentenced to death. Nevertheless, we first used Gatrell's numbers on capital convictions and executions between 1805 and 1840.<sup>153</sup> To determine the number of death sentences handed down prior to 1805, we reviewed Richard Clark's book, *Capital Punishment in Britain*, tracking the number of executions between 1760 and 1799,<sup>154</sup> and we estimated the number of death sentences on the basis of the known number of executions and the average rate of executed death sentences. According to Gatrell's estimation, "some 35,000 people were condemned to death in England and Wales between 1770 and 1830," while about 7,000 persons were hanged without the "king's prerogative of mercy."<sup>155</sup> In other words, the average death sentence/execution ratio should be 5:1, and therefore we can estimate the number of death sentences if we know the number of executions. Given the obstacles regarding nationwide data, we also used numbers from the Old Bailey, the academic and judicial center of capital punishment in England and Wales, between 1701 and 1834 to verify our comparison.<sup>156</sup>

Despite the limited records tracking the death penalty in England and Wales, we were able to reach an impartial comparative conclusion. According to the population statistics, the Great Qing was an affluent and large country with a massive population, 166.8 million and 410.8 million in 1744 and 1840, respectively,<sup>157</sup> while England and Wales at that time was an island country with a population of over 6.5

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<sup>152</sup> See V. A. C. GATRELL, *THE HANGING TREE: EXECUTION AND THE ENGLISH PEOPLE 1770-1868* 813 (1994).

<sup>153</sup> *Id.* at 814-15.

<sup>154</sup> See RICHARD CLARK, *CAPITAL PUNISHMENT IN BRITAIN* 84-91 (2009).

<sup>155</sup> GATRELL, *supra* note 152, at 40.

<sup>156</sup> *Id.* at 813-15.

<sup>157</sup> See Tao Jiang (姜涛), *Qingdai Renkou Tongji Zhidu Yu 1741-1851 Nianjian de Zhongguo Renkou* (清代人口统计制度与1741-1851年间的中国人口) [*Population Survey in Qing Dynasty and Populace Statistics in 1741-1851*], 5 *JINDAISHI YANJIU* (近代史研究) [MOD. CHINESE HIST. STUD.] 26 (1990) [hereinafter Jiang, *Population Survey*].

million in 1750 and 15.9 million in 1841.<sup>158</sup> Utilizing multiple sources of population estimates for England and Wales and the Great Qing for the same period, we computed the average level of death sentence cases per a population of 100,000 in each decade to reconstruct our conclusion (Table 7). Given that the annual numbers in the Great Qing were not continuous because of missing years, our analysis is based on the descriptive approach rather than the inferential approach.

## V. DEATH SENTENCES IN THE GREAT QING

### A. Annual Numbers

As shown in Figure 1, the annual number of death sentence cases and its first time series offer rich information about capital justice in the Great Qing, while Table 4 provides simple but essential indicators of annual death sentences denoted by mean, median, interquartile range, standard deviation, minimum, and maximum for every decade. However, as full consideration of all relevant information is needed to provide a complete picture, we explain our findings across figures and tables.

We drew three important conclusions about the annual number of death sentences in the Great Qing. First, as Figure 1 shows, cases in total generally increased from a minimum of 1,902 cases in 1748 to a maximum of 4,894 cases in 1821 with a mean of 3,183.78 cases and a median of 3,151.5 cases per year. In each decade respectively described in Table 4, the mean number of annual statistics fluctuated from 2,087.60 to 4,229.75 cases with an interquartile range (IQR) of 94.50 to 727 cases. Second, the number of death sentence cases basically formed a reverse U-shape curve showing only gradual growth from 1,998 in 1744 to 3,008 cases in 1840. 1821 was a turning point because case numbers sharply decreased. In each decade up to the 1820s, there is a stable increase from a mean of 2,087.60 and a median of 2,160 cases in the 1740s to a mean of 4,229.75 and a median of 4,176.5 cases in the

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<sup>158</sup> See *Estimated Population of England and Wales 1570-1750*, VISION BRITAIN THROUGH TIME, [https://www.visionofbritain.org.uk/census/GB1841ABS\\_1/6](https://www.visionofbritain.org.uk/census/GB1841ABS_1/6) (last visited Sept. 30, 2022); *Area, Houses and Persons*, VISION BRITAIN THROUGH TIME, [https://www.visionofbritain.org.uk/census/GB1841ABS\\_1/3](https://www.visionofbritain.org.uk/census/GB1841ABS_1/3) (last visited Sept. 30, 2022).

1820s. But then, the figures drop to a mean of 3,039.38 and a median of 2,986 cases in the 1830s. Third, the fluctuations in the death sentence numbers after 1821 are much more obvious than in the previous years. One critical piece of evidence is that the IQR between 1821 and 1830 reached a maximum of 727, almost double that of the previous decades and nine times that in the 1790s. In contrast with the unstable numbers in the Daoguang and Jiaqing eras, the death sentence numbers in the Qianlong era were stable, with a standard deviation of less than 300 cases, particularly in the first decade and the last 20 years of Qianlong's reign.

According to our further computation in Table 5, the mean of death sentence cases in the Qianlong era was 2832.3, while the corresponding figures for the Jiaqing and Daoguang eras were 3754.33 and 3634.56, respectively, or 800 more cases on average. As to the reason why there was a stable increase in death sentence numbers in most years from the Qianlong era to the Jiaqing era and then a sharp decrease in the Daoguang era, we speculated that periods of warfare and literary inquisitions (*wenziyu*) contributed to the increase.<sup>159</sup> On the other hand, periods of peace and Western influence might be the critical reasons for the decrease. As an "old man with ten military successes," Qianlong had a mission to protect the Great Qing from separatism, as his predecessor had already expanded the empire.<sup>160</sup> Thus, the periods of war during the Qianlong era might explain the very stable increase.<sup>161</sup> Taking the first sharp increase from about 2,000 in the early 1750s to 3,152 in 1758 as an example, the Zunghar rebellion in Northwestern China might be the reason for this increase.<sup>162</sup> The literary inquisition involving more than 80 influential cases in the Qianlong era led to many poets being sentenced to death by

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<sup>159</sup> See Li, *Sociological Explanations*, *supra* note 108, at 110, 121; LUTHER CARRINGTON GOODRICH, *THE LITERARY INQUISITION OF CH' IEN-LUNG* (1935).

<sup>160</sup> Joanna Waley-Cohen, *Commemorating War in Eighteenth-Century China*, 30 *MOD. ASIAN STUD.* 869 (1996); Yingcong Dai, *Qing Military Institutions and Their Effects on Government, Economy, and Society, 1640-1800*, 1 *J. CHINESE HIST.* 329, 332 (2017).

<sup>161</sup> See Waley-Cohen, *supra* note 160, at 869-70; JOANNA WALEY-COHEN, *THE CULTURE OF WAR IN CHINA: EMPIRE AND THE MILITARY UNDER THE QING DYNASTY* 19-22 (2006); Yingcong Dai, *A Disguised Defeat: The Myanmar Campaign of the Qing Dynasty*, 38 *MOD. ASIAN STUD.* 145 (2004)

<sup>162</sup> See Dai, *supra* note 160, at 331; Waley-Cohen, *supra* note 160.

strangulation, and the number of such cases was far more than in the reigns of other emperors.<sup>163</sup> Regarding the sharp downturn after 1821, this was the year that the Emperor Daoguang's reign began and *Terranova*, the so-called "accidental death" case occurred.<sup>164</sup> In contrast with the periods of war in the preceding Qianlong and Jiaqing eras, the first half of Daoguang's reign prior to 1840 was a very peaceful time.<sup>165</sup> Thus, the peaceful time in Daoguang's reign paved the way for a significant reduction in death sentences, although the later reduction may also have been due to Western imperialist pressure.

To summarize, the annual number of death sentences in most of the years we studied was about 3,000, which was even less than in the Northern Song,<sup>166</sup> in particular during the first decade of the Qianlong era and the second decade of the Daoguang era. Again, we must state that our figures relate only to death sentence cases, and the number of executions represents only the tip of the iceberg of the annual death sentence statistics. Further research is needed to explore the reason for the change in the death sentence trend, but this was not the main purpose of this study.

#### B. Computed Rate

The death sentence numbers must be interpreted with the relevant population statistics as a large population should mean more death sentences. However, without empirical observation, one cannot prove this nor describe the level at which both population and number of death sentences change. Thus, an analysis based upon population might be very different from the annual number itself. In this section, we put death sentences in the context of estimated population to construct a standard death sentence rate per a population of 100,000 and to depict the trend by the time series (*see* Figure 2). The answer we

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<sup>163</sup> QINGCHAO WENZIYU DANG (清朝文字狱档) [LITERAL INQUISITION ARCHIVE IN QING DYNASTY] 1045-51 (2011); JONATHAN D. SPENCE, *TREASON BY THE BOOK* (2006).

<sup>164</sup> Askew, *supra* note 40, at 351-65; Donahue, *supra* note 40, at 216-18.

<sup>165</sup> *See* Christine Moll-Murata & Ulrich Theobald, *Military Employment in Qing Dynasty China*, in *FIGHTING FOR A LIVING: A COMPARATIVE STUDY OF MILITARY LABOUR 1500-2000* 355-57 (Erik-Jan Zürcher ed., 2013).

<sup>166</sup> *See* MCKNIGHT, *supra* note 89, at 466.

obtain might be beneficial to generating some very critical features of the Qing Empire in the context of a transnational comparison with England and Wales. As indicated in Figure 2, we suggest some critical features to offer further reflections on the death sentence in the Qing Empire.

First, the death sentence rate in the Great Qing ranged from 0.62 to 1.64 cases per 100,000 people, with a mean of 1.18, a standard deviation of 0.22, and a median of 1.20 cases. Second, in terms of trend, the rate generally decreased from 1.20 in 1740 to 0.73 in 1840, with a particularly significant reduction after 1820.<sup>167</sup> Looking at the whole period, the death sentence rate in the 1830s was only half that in the 1750s, decreasing from about 1.6 death sentences to 0.7 death sentences per 100,000 people. Third, the first change in the death sentence rate indicated a very stable and gradual decrease in the investigated years. About 21 years fluctuated by more than  $\pm 0.1$  cases per 100,000 people, while 80% of fluctuations were located within  $\pm 0.1$  cases. By contrast, a few radical changes were found between 1755 and 1758: 1755-56 and 1757-58 respectively witnessed a 0.35 and a 0.50 increase in cases, while 1756-57 witnessed a 0.5 decrease due to an abrupt increase of 3.5 million in the population in 1857. Similarly, a sudden increase by 47 million in the population in 1774-76<sup>168</sup> and a decrease by 28 million in 1777-78 caused a radical U-shaped change in the death sentence rate. Fourth, the death sentence rates in the Qianlong and Jiaqing eras were significantly higher than the rate in the Daoguang era (*see* Table 5). On average, the rate was 1.27 cases per 100,000 population for the Qianlong era and 1.19 cases per 100,000 people for the Jiaqing era, while the corresponding rate for the Daoguang era was 0.93 cases. As indicated in Table 5, the first difference in the Daoguang era clearly indicated a negative number (-162.33) and rate (-0.05), while a one-way analysis test for each paired emperor demonstrated a significantly lower ( $p=0.000$ ) death sentence number and rate during the Daoguang era compared with the Qianlong and Jiaqing eras.

Although it is impossible to precisely explain the reason for these death sentence trends, one thing we can be fairly certain of is that the decrease in annual death sentence numbers was not due to

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<sup>167</sup> See Jiang, *Primary Statistics*, *supra* note 93, at 147.

<sup>168</sup> See Jiang, *Population Survey*, *supra* note 157, at 49.

population decreases. During the studied period as a whole, there was a solid reduction in both the number and rate of death sentences along with the rise in population. As Figure 2 indicates, despite the population tripling from 1744 to 1840,<sup>169</sup> the number of death sentences only increased by 50.55%.<sup>170</sup> This combination of rapid population growth and a decrease in the number of death sentences led to the death sentence rate decreasing from 1.20 (maximum 1.64 in 1758) to 0.73 during the same period.<sup>171</sup> The reduction in the total number of death sentences and the rate reduction can be seen more clearly in the Daoguang era. Thus, one conclusion that can be drawn is that the Qing empire did not prevent the trend of killing a few to killing far fewer.

### C. Capital Sentence Crimes

One might speculate what proportion of death sentences could be deciphered by the specific type of capital crimes. While previous studies have reported some features in regard to specific crimes, the situation from the Qianlong to the Daoguang era still requires investigation. In this section, we report the general trend and figures for every decade over a 68-year period. As Table 6 indicates, several features emerged from our analysis.

First, most capital crimes were very serious violent crimes because they involved the death of the victim. Killings in fights accounted for most death sentences, representing 72.4% of capital cases on average. In contrast to our speculation, homicides did not account for the biggest proportion of capital crimes, representing only 8.04% of capital cases on average. These two types of violent crimes accounted for about 80% of capital crimes, the percentage increasing from 75.52% (65.61% and 9.91%, respectively) in the 1740s to 85.42% (80.69% and 4.73%, respectively) in the 1830s.

Second, property crimes such as robbery accounted for 10.27% of death sentence cases, while 0.1% of the cases involved gangsters violating the state's monopoly of the salt business. According to the

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<sup>169</sup> *Id.* at 49-50.

<sup>170</sup> See Jiang, *Primary Statistics*, *supra* note 93; Chen et al., *supra* note 92, at Appendix B Supplementary Material; Lee, *supra* note 99, at 119; Li, *Sociological Explanations*, *supra* note 108, at 113.

<sup>171</sup> See Jiang, *Population Survey*, *supra* note 157, at 49-50.

robbery rule in the Qing Code, robbers taking money from victims or causing injuries must be beheaded, while the punishment for attempted robbery was exile to a maximum of 3,000 miles away.<sup>172</sup> It is noticeable that theft of money or livestock was not a crime punishable by death under the Qing Code.<sup>173</sup>

Third, sexual crimes such as rape and adultery accounted for a small portion of death sentence cases, representing 3.65% of cases on average. Rape and intercourse with relatives were strongly prohibited and punishable by capital punishment in the Great Qing.<sup>174</sup> According to the sexual crime rule, rape was punishable by at least a suspended strangulation sentence, but the punishment for adultery and infidelity, depended on who the perpetrator had a sexual relationship with.<sup>175</sup> Engaging in heterosexual intercourse with relatives was punishable by beheading according to the relative adultery rule in the Qing Code.<sup>176</sup> According to Li's research, despite these rules on sexual crimes, only 35.7% of adulterers were sentenced to immediate beheading or strangulation.<sup>177</sup>

Fourth, only 5.43% of death sentences on average were for offending accusations (or making false accusations) based on the Confucian principle that offspring had no right to accuse their elders and wives had no right to accuse their husbands.<sup>178</sup> According to the offending accusation rule in the Qing Code, offspring or wives who made false accusations against their (or their husband's) parents and grandparents would be strangled, but false accusations against others was not a capital crime.<sup>179</sup>

Apart from the above findings on these six types of crimes, our evidence on death sentence crimes also revealed some vital information on non-death-sentence crimes. Although there were

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<sup>172</sup> See JONES, *supra* note 51, at 246; STAUNTON, *supra* note 12, at 280.

<sup>173</sup> See TIAN & ZHENG, *supra* note 57, at 391-96; JONES, *supra* note 51, at 251-54; STAUNTON, *supra* note 12, at 284-88.

<sup>174</sup> See Vivien Ng, *Sexual Abuse of Daughters-in-Law in Qing China: Cases from the "Xing'an Huilan"*, 20 FEMINIST STUD. 381 (1994).

<sup>175</sup> See JONES, *supra* note 51, at 347; STAUNTON, *supra* note 12, at 404.

<sup>176</sup> See JONES, *supra* note 51, at 349-52; STAUNTON, *supra* note 12, at 405-10.

<sup>177</sup> See Li, "They Are Expendable", *supra* note 150, at 267-69.

<sup>178</sup> Frederic Constant, *Accusation and Social Hierarchies: Legal Coherence and the Establishment of Categories in Chinese Legal Science*, 11 J. COMPAR. L. 51 (2016).

<sup>179</sup> See JONES, *supra* note 51, at 322; STAUNTON, *supra* note 12, at 371-372.

plenty of nominal capital rules in the Qing Code, only a few of them were actually applied to crimes.<sup>180</sup> This means that Qing China was the same as the People's Republic of China: In reality, only a small proportion of capital crimes stipulated in the Qing Code were considered to be death sentence offenses in judicial practice.<sup>181</sup> The structure of capital crime in the Qing Empire revealed in this Article shows that violent crime against the individual constituted the main part of death sentence cases, while property-based robbery constituted only a very small part of such crimes.

VI. A COMPARISON OF THE GREAT QING AND ENGLAND AND WALES

A. Bloody Codeless Proliferation versus Code Stability

The legal system in the United Kingdom in the eighteenth century is usually labeled the Bloody Code, but we would rather call it "bloody codeless," "Bloody Acts," or "Bloody Bills." Unlike the code-based law country in the Great Qing, there was no criminal code at all throughout the history of England and Wales.<sup>182</sup> One of the most vital features of English criminal law was to pad many acts with capital crimes over the centuries. In addition to 41 types of "aggravated execution and post-execution punishment advocated for murderers and property offenders between 1694-1752,"<sup>183</sup> a very conservative estimate is that 200 to 300 capital crimes were added by the end of the eighteenth century,<sup>184</sup> not to mention unknown crimes from earlier

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<sup>180</sup> See Xiong & Liu, *supra* note 52, at 30-36.

<sup>181</sup> See Moulin Xiong, *The Death Penalty after the Restoration of Centralized Review: An Empirical Study of Capital Sentencing*, in DEATH PENALTY IN CHINA 225-30 (Liang Bin & Lu Hong eds., 2016).

<sup>182</sup> See Harry O'Sullivan & David Ormerod, *Time for a Code: Reform of Sentencing Law in England and Wales*, 19 EUR. J.L. REFORM 285, 295-96 (2017); Roscoe Pound, *Codification in Anglo-American Law*, in THE CODE NAPOLEON AND THE COMMON LAW WORLD (Bernard Schwartz ed., 1956).

<sup>183</sup> PETER KING, PUNISHING THE CRIMINAL CORPSE 1700-1840: AGGRAVATED FORMS OF THE DEATH PENALTY IN ENGLAND 32 (2017).

<sup>184</sup> See BLOCK & HOSTETTLER, *supra* note 50, at 21; BODDE & MORRIS, *supra* note 31, at 103.



times.<sup>185</sup> Among these acts, rigid and fixed bloody acts simply laid down the death penalty for a broad range of property crimes, including very minor offenses or crimes associated with people struggling to survive.<sup>186</sup> In an earlier debate in 1832, William Ewart indicated that in 1830, the number of capital sentences for crimes in England amounted to nearly 1,400 and the number of capital sentences with respect to property crimes amounted to 1,108.<sup>187</sup>

Given the wide-ranging scope of capital offenses in England, from the beginning of the nineteenth century, many politicians strived to repeal these acts.<sup>188</sup> In 1810, Sir Samuel Romilly proposed to repeal three property capital offenses: stealing five shillings (Shoplifting Act), stealing property amounting to 40 shillings in a dwelling house (Larceny Act), and stealing property amounting to 40 shillings on board a vessel (Act passed during reign of George II).<sup>189</sup> However, the House of Lords rejected the bills, although they were passed in 1811.<sup>190</sup> As politician Sir Thomas Fowell Buxton indicated on May 23, 1821, the eighteenth century witnessed a four-fold increase in the criminal law, but only three acts were legislated prior to 1700 among 20 volumes of penal statutes.<sup>191</sup> However, it should be noted that this is not to say that executions were rare in previous centuries: Henry III (1509-1547) alone hanged over 72,000 people during his reign in the name of the law, accounting for “approximately 3.5% of the population of England”.<sup>192</sup> Although the discussion on the capital crimes in the Larceny Act began in the first decade of the nineteenth century, it took almost another half century for most of the capital property offenses

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<sup>185</sup> See *Timeline of Capital Punishment in Britain*, CAP. PUNISHMENT UK, <https://www.capitalpunishmentuk.org/timeline.html> (last visited Sept. 30, 2022).

<sup>186</sup> See BLOCK & HOSTETTLER, *supra* note 50, at 20-21.

<sup>187</sup> See HC Deb (27 Mar. 1832) (11) col. 949.

<sup>188</sup> See *Timeline of Capital Punishment in Britain*, *supra* note 185; GATRELL, *supra* note 152, at 48, 58-60, 774; KING, *supra* note 183, at 153-54.

<sup>189</sup> HC Deb (17 Feb. 1813) (24) col. 562.

<sup>190</sup> *Id.*; see COUNCIL LEGAL EDUC., CENTURY OF LAW REFORM 45 (1901).

<sup>191</sup> HC Deb (23 May 1821) (5) col. 902 (“Of the twenty bulky volumes of the statutes on your table, three contain the statutes prior to the year 1700; for all the rest, we are indebted to the industrious spirit of legislation which has prevailed in later times.”).

<sup>192</sup> P. Stride & K. Lopes Floro, *Henry VIII, McLeod Syndrome and Jacquetta’s Curse*, 43 J. ROYAL COLL. PHYSICIANS EDINBURGH 353 (2013).

to be abolished in England.<sup>193</sup> Under the 1861 Criminal Law Consolidation Act, the number of capital crimes was reduced to four: murder, high treason, arson in a royal dockyard, and piracy.<sup>194</sup>

But why, starting in the 1810s, were many capital crimes, particularly property offenses, repealed in the nineteenth century? The translation of *Ta Qing Leu Lee* published in 1810 might undoubtedly have shocked legislators and politicians in England. When they observed a code with high restrictions on capital offenses in its articles and rules, they may have thought that the oriental Qing Empire was far more civilized than their own country. The Qing Code contained very restrictive rules on capital execution articles and many suspension articles, and under the code, no property crimes, such as theft and fraud, would simply result in a death sentence.<sup>195</sup> In terms of a legislative comparison, it is very clear that many of the capital crimes in England did not exist in the Qing Code. One very critical piece of evidence is the information on the distribution of death sentences recorded in the archives, which shows that most capital crimes involved the killing of the victim and that very few capital crimes were robberies in the Qing period. In fact, the capital crime system in the Qing Code was rooted in the Tang dynasty which, compared to England and Wales during the period under study, was far more civilized.

#### B. Progressive Versus Conservative Killing

The Bloody Assizes were a significant feature in seventeenth century England: one of “the cruelest and most bloodthirsty jurists,” George Jeffreys (1645-1689), executed about 150 to 320 persons within one month in London.<sup>196</sup> During the period 1735 to 1799, there were a total of 6,233 confirmed executions, and on average about 100 persons were executed every year, and another 241 possible execution cases

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<sup>193</sup> See CLARK, *supra* note 154, at 135-6; COUNCIL LEGAL EDUC., *supra* note 190, at 45-46.

<sup>194</sup> CLARK, *supra* note 154, at 155; COUNCIL LEGAL EDUC., *supra* note 190, at 46.

<sup>195</sup> See Xiong & Liu, *supra* note 52, at 59-60.

<sup>196</sup> Arthur W. Machen, *The Bloody Judge, Sir George Jeffreys (1645-1689)*, 11 EXPERIENCE 38, 39-40 (2001).

were recorded in 10 assize circuits of England and Wales.<sup>197</sup> From 1715 to 1799, there were 104 executions per year on average, with the actual number varying from about 60 to a high of 231 per year from 1783 to 1787, because soldiers returning from defeat in the American Revolution prompted the increased use of the death penalty.<sup>198</sup> From 1800 to 1827, 2,340 people were hanged, with an average of 80 executions per year and a peak of 219 in 1801.<sup>199</sup> From 1828 to 1836, only 408 executions were recorded in England and Wales; during this period, most convictions for property offenses no longer resulted in execution and murder became the principal capital offense.<sup>200</sup>

It should be noted that these numbers were only the “executions without mercy”;<sup>201</sup> the number of death sentences must be higher than this. Between 1760 and 1830, for example, four jurisdictions (Cornwall, Kent, Lancashire, and Oxfordshire) in England sentenced 3,811 persons to death but executed only 679, 82.18% being pardoned.<sup>202</sup> During the same period in Wales, the Court of Great Sessions passed 762 death sentences and carried out 101 executions, or about one execution per 7.5 sentences.<sup>203</sup> At the same time, 651 death sentences were passed in the Chester Court of Great Sessions, but only 12.29% of these sentences were executed.<sup>204</sup> In a parliamentary debate in 1837, Lord John Russell stated that the total number of capital sentences was 523 in 1835 and 494 in 1836, but the numbers executed were only 34 and 17, respectively.<sup>205</sup>

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<sup>197</sup> *English & Welsh executions by Court Circuit 1735 - 1799.*, CAP. PUNISHMENT UK, <http://www.capitalpunishmentuk.org/circuits.html> (last visited Sept. 30, 2022).

<sup>198</sup> *Executions Yearly by Sex in England and Wales, 1715-1799*, ACROSS WALLS, <https://www.acrosswalls.org/datasets/executions-england-wales-before-1800/?otxkey=datasets-executions-england-wales-before-1800> (last visited Sept. 30, 2022).

<sup>199</sup> *1800 - 1827 Public Executions.*, CAP. PUNISHMENT UK, <http://www.capitalpunishmentuk.org/1800.html> (last visited Sept. 30, 2022).

<sup>200</sup> *1828 - 1836 Public Executions.*, CAP. PUNISHMENT UK, <http://www.capitalpunishmentuk.org/1828.html> (last visited Sept. 30, 2022).

<sup>201</sup> See GATRELL, *supra* note 152, at 813-16.

<sup>202</sup> JOHN WALLISS, *THE BLOODY CODE IN ENGLAND AND WALES, 1760-1830* 37 (2018) [hereinafter WALLISS, BLOODY CODE].

<sup>203</sup> *Id.* at 18-58.

<sup>204</sup> John Walliss, *Crime and Justice in Georgian Cheshire: The Chester Court of Great Sessions, 1760—1830*, 6 J. ON EUR. HIST. L. 38, 52-53 (2015).

<sup>205</sup> See HC Deb (23 Mar. 1837) (37) col. 711.

To gain a better understanding of the death rate, we used the number of death sentences and executions for England, Wales, and the Old Bailey, which comprised about 23% of death sentences in England and Wales and which was cited in Gatrell's work,<sup>206</sup> to redraw the trend and establish a level of comparison with the Qing Empire. In addition to the death sentences in the Qing Empire, we retrieved information on the number of executions as supplementary evidence on death sentences from James Z. Lee and Zhiwu Chen.<sup>207</sup> As shown in Table 7, we completed a comparison of the death sentence rates between the Great Qing and England and Wales by decade; execution rates were not the central focus of this Article but were used as relevant evidence to support the argument on comparative death sentence rates. The range of the death sentence rate per 100,000 population in any decade was computed based on the available data on population and the average number of death sentences in each subcategory (*see* Note of Table 7). Given that discrete decennial investigations of the population in England and Wales did not begin until 1801, we used the closest year to estimate the population in the first and last year of the decade and thus computed the range of death sentence or execution rate. While Gatrell reported the five-year range for total number of death sentences,<sup>208</sup> we computed the average number based on the available year. The Old Bailey jurisdiction tried cases from London and Middlesex until 1834, so we used the population figure for London and Middlesex to calculate the death sentence/execution rate. As indicated in Table 7, the data revealed the following information.

First, the national and local Old Bailey rates demonstrate that more people were sentenced to death in England and Wales than in Qing, China at this time. Between 1800 and 1840, the death sentence rate per a population of 100,000 in England and Wales was at least three to nine times that in Qing, China. For instance, between 1805 and

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<sup>206</sup> *See* GATRELL, *supra* note 152, at 815.

<sup>207</sup> In fact, we mined all data on annual executions from the Qing Chronicles, but we do not want to discuss executions further in this Article because it is very complicated to discuss in detail. Although both studies revealed conflicting information for some years and differed in terms of total years covered, the data was basically the same. *See* Lee, *supra* note 99; Chen et al., *supra* note 92, at Appendix B Supplementary Material.

<sup>208</sup> *See* GATRELL, *supra* note 152, at 813-15.

1810, about 3.65 to 4.18 persons per 100,000 were sentenced to death in England and Wales, while the corresponding rate for China was only 1.21 cases per 100,000 on average. Between 1821 and 1830, a total of 11,899 death sentences produced an estimated 8.56 to 9.93 death sentences per 100,000 people in England and Wales. In contrast, despite 33,838 death sentence cases in eight years during the same period, the death sentence rate in Qing, China was only 1.11 cases per 100,000 people. In other words, using population-based rates, the death sentence rate in England and Wales was nine times that in Qing, China. Examining the earlier period between the 1760s and the 1800s, we used the execution numbers given in Clark's book, *Capital Punishment in Britain*, to infer the number of death sentences,<sup>209</sup> multiplying the number of executions by five (a reciprocal of a 20% execution rate based on Gatrell's estimation).<sup>210</sup> The rough estimation revealed a rate of 3.91 persons sentenced to death per 100,000 between 1761 and 1770 at the Old Bailey and 4.50 to 9.60 persons prior to 1800 in England and Wales. Nevertheless, the corresponding rate in Qing, China was only about 1 case per 100,000 people between the 1750s and the 1790s, decreasing from 1.38 to 1.10 cases during this period.

Second, the execution rates clearly revealed a higher death sentence rate in England and Wales. Over comparable periods, the execution rate in England and Wales was three to five times that in Qing, China. Before the 1800s, the execution rate in England and Wales was basically equal to the death sentence rate in the Qing Empire.<sup>211</sup> Notably, however, most of the death sentences in the Great Qing were nonexecutable suspended death sentences or nominal death sentences; thus, the execution rates in England and Wales per 100,000 were significantly higher than those in Qing, China. Taking the period from 1805 to 1810 as an example, 892 persons were executed during this time in England and Wales, which equates to 0.74 to 0.88 executions per 100,000 people on average. In contrast, 6,432 people were executed in Qing, China in the nine-year period from 1801 to 1810, representing an execution rate of 0.22 persons per 100,000 population. In the early

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<sup>209</sup> See CLARK, *supra* note 154, at 84-95.

<sup>210</sup> *Id.* at 40; GATRELL, *supra* note 152, at 814-15.

<sup>211</sup> For the number of capital convictions and executions in Old Bailey from 1701-1800, see GATRELL, *supra* note 152, at 813-14. For the number of execution in Old Bailey or England and Wales, see CLARK, *supra* note 154, at 72-91.

1760s, at least 246 executions were recorded at the Old Bailey,<sup>212</sup> while the minimum estimated execution rate was 1.89 executions per 100,000. During the same period, 5,326 people were executed in Qing, China between 1761 and 1770, representing an estimated execution rate of 0.26 executions per 100,000.

Third, there was a downward trend in the proportion of executions in England and Wales and the Old Bailey, while in Qing, China, the proportion of executions remained relatively stable at around 20%.<sup>213</sup> England and Wales witnessed a very sharp transformation between the 1810s and 1820s, with the proportion of executions falling from 15.9% to 4.2%.<sup>214</sup> Indicating that a low execution rate was only a reality after 1810. In the earlier period between 1749 and 1772, for instance, 71.50% of death sentences were carried out: “the number of persons convicted of capital crimes was 428 of whom 306 were executed.”<sup>215</sup> Furthermore, the local statistics for the Old Bailey clearly indicate a gradual decrease in the proportion of executions, decreasing from a high of 58.3% in the 1760s to 2.8% in the 1830s until the 1834 abolition reform.<sup>216</sup> By contrast, ignoring the negligible difference of unit between case and person, the percentage of executions in the Great Qing remained around 20 percent during most of the period 1760 to 1840.

In general, our conclusion seems to be very simple and straightforward: the capital justice system in England and Wales was far more abusive and progressive than its counterpart in the Qing Empire. The number of death sentences and the relevant sentence and execution rates in both countries offer more objective and impartial evidence upon which to base a conclusion than any literal argument or decorative embellishment. A further exploration of executions is still needed, but this goes beyond the scope of this study.

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<sup>212</sup> See GATRELL, *supra* note 152, at 814.

<sup>213</sup> See SUN, *supra* note 114; Lee, *supra* note 99; Chen et al., *supra* note 92, at Appendix B Supplementary Material.

<sup>214</sup> See GATRELL, *supra* note 152, at 814.

<sup>215</sup> See BLOCK & HOSTETTLER, *supra* note 50, at 43.

<sup>216</sup> See GATRELL, *supra* note 152, at 814.

### C. Commonalities Versus Differences

Apart from the number of capital crimes and the number of death sentences and executions, what comparative conclusions can be drawn from our study of capital crimes in terms of commonalities and differences between England and Wales and Qing, China? A very simple comparison indicates who would be sentenced to death in each country. For a further comparison, we mined data and literature regarding capital crimes in England and Wales to compare these with capital crimes in the Great Qing. Table 6 and Table 8 provide some essential information on this.

Regarding the commonalities, in both England and Wales, and Qing China, we found a very similar phenomenon of “an eye for an eye” to get revenge on a violent offender for taking a life. We are not able to precisely indicate the number of homicides, the number of death sentences, and the rate of death sentences and executions in England and Wales. Nevertheless, John Walliss indicated that “some 1345 persons were charged with murders between 1810 and 1829 in England and Wales, only a quarter of whom (339) were capitally convicted. Almost all of those who were sentenced to death, however, were subsequently executed.”<sup>217</sup> The execution data somewhat supports the argument that “the punishment for anyone convicted of murder, even members of the nobility, was execution by hanging.”<sup>218</sup> It was not strange to find that, under the bloody Murder Act, “of the 170 people convicted of murder and sentenced to dissection and anatomization between 1752 and 1832 in London, only 12 people were pardoned.”<sup>219</sup> The high execution rate might reveal that murder was a crime that carried a high possibility of execution in England and Wales. This highly echoes the data on violent crime in Qing China, which shows that murders and killings in fights constituted a major part of capital crimes (*see* Table 6). Of course, there must be further differences of rules on death sentences and executions for violent crimes. In regard to the capital crime of murder itself, the basic purpose of the Murder Act of England and Wales was to “better

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<sup>217</sup> *See* WALLISS, BLOODY CODE, *supra* note 202, at 61.

<sup>218</sup> SARAH TARLOW & EMMA BATTELL LOWMAN, HARNESING THE POWER OF THE CRIMINAL CORPSE 87 (Owen Davies et al. ed., 2018).

<sup>219</sup> *Id.* at 96.

prevent the horrid crime of murder," which was shared by Qing China.<sup>220</sup>

As for the differences, we found two very significant ones in both countries. First, the role of property crimes was quite different. In contrast to Qing China, where most of the death sentences were for violent crimes, the principal capital offenses in England and Wales were property offenses.<sup>221</sup> According to McGowen, more than two hundred offenders were executed during the forgery epidemic of the Bank of England between 1797 and 1821 because the corporation "operating as a private prosecutor, [brought] over two thousand offenders to trial."<sup>222</sup> The same may be true for small property offenses, such as theft from a dwelling house. Before William Ewart introduced a bill to repeal capital punishment for theft from a dwelling house to the value of five pounds and for horse, sheep, and cattle stealing, there were 3,178 death sentences for these offenses out of a total of 9,316 cases between 1825 and 1831 in England and Wales, and 70% of these small-value offenses led to execution.<sup>223</sup> When most capital statutes were finally repealed in 1837, murder became the principal capital offense, and the number of people sentenced to death dropped from 438 in 1837 to 56 in 1839.<sup>224</sup> Second, we also found differences between the Great Qing and England and Wales in terms of the categories of crime punishable by death. For example, adultery and making false charges against elders and husbands were capital crimes in the Great Qing but not in England and Wales. Although these ritual and moral based crimes in Qing China reflected the strong influence of Confucian values in Chinese culture, they mostly carried a nominal death sentence with suspension under the Qing Code and the real reason for carrying out the death sentence in such cases was involvement in a homicide.<sup>225</sup>

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<sup>220</sup> *Id.* at 87.

<sup>221</sup> See WALLISS, BLOODY CODE, *supra* note 202, at 68-77, 142-47; GATRELL, *supra* note 152, at 40.

<sup>222</sup> Randall McGowen, *Managing the Gallows: The Bank of England and the Death Penalty, 1797-1821*, 25 LAW & HIST. REV. 241, 243 (2007).

<sup>223</sup> See BLOCK & HOSTETTLER, *supra* note 50, at 47.

<sup>224</sup> See GATRELL, *supra* note 152, at 42-43.

<sup>225</sup> See Li, "They Are Expendable", *supra* note 150, at 267-69.



To offer further observations on capital convictions in England and Wales, we carefully retrieved death sentence and execution numbers from John Walliss's book, *The Bloody Code in England and Wales, 1760-1830*, and attempted to revise the distribution of capital convictions in England and Wales to gain a comparative perspective.<sup>226</sup> Walliss's data indicated that between the years 1760 and 1830, 10,068 people were found guilty of offenses; 10,006 sentences were passed in four selective county assizes in England and 1,017 people were found guilty, while 931 were sentenced to death, transportation, prison/hard labor, or some other form of punishment.<sup>227</sup> As Table 8 indicates, 31.16% of sentences (3,811 persons) were the death penalty and 17.82% of the offenders sentenced to death (679 persons) were executed in England. One of the very significant findings in Walliss's study is that 91.24% of death sentences and 75.70% of executions related to property offenses: a quarter (869 persons) of death sentences and 12.06% (62 persons) of executions were for horse, cattle, and sheep stealing.<sup>228</sup> Another feature of capital justice in England was that few of those found guilty of rape (only 0.71%) were sentenced to death in England.<sup>229</sup> In the Court of Great Sessions in Wales during the same period, 91.08% (694 persons) of death sentences and 55.45% (56 persons) of executions related to property offenses. Although more than 80% of death sentences were pardoned during this period, it was very clear that death sentences and executions were mainly for property-related crimes in England and Wales.<sup>230</sup>

Observing the objective death sentence data in Table 6 and Table 8, we are for the first time able to reveal the vital commonalities and differences between Western and Eastern society using critical evidence. The nature of the use of the death sentence must be attributed to the law and culture in a society. Comparing England and Wales, and the Qing Empire, we can see that in the former, most of the death penalty rules legislated in the bloody acts concerned offenses against property, whereas in the latter, the rules regarding property

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<sup>226</sup> See WALLISS, BLOODY CODE, *supra* note 202, at 37-158.

<sup>227</sup> *Id.* at 34-37, 107-11.

<sup>228</sup> *Id.* at 68-72.

<sup>229</sup> *Id.* at 66.

<sup>230</sup> *Id.* at 147.

offenses (without violence) in the Qing Code did not mention the death penalty at all.<sup>231</sup> Executing the poor was a marked feature in England and Wales that did not change until the death penalty reform of the 1830s.<sup>232</sup> Despite the Poor Laws introduced between 1597 and 1834 to relieve poverty and provide an allowance system,<sup>233</sup> the criminal justice system in England and Wales ironically became a means of extinguishing the poor via the death sentence while protecting the property of the rich. For example, despite regional disequilibrium, the circuit of Middlesex witnessed “large rises in the execution rate for property crime”,<sup>234</sup> increasing from 2 to 9 persons per 100,000 between 1753 to 1795. In contrast, most of the criminals who were sentenced to death were those found guilty of intentional murder or killing someone in a fight in Qing China.<sup>235</sup>

In fact, England and Wales was not unique in having a bloody capital justice system. We have collected some evidence regarding more countries in Continental Europe and the United States. Unfortunately, we had no space to report these findings in this Article. However, our comparative perspective based on evidence from England and Wales should help readers and the academic community to gain an impartial picture of capital justice in the Qing Empire. We believe the evidence revealed in this Article is undoubtedly sufficient to provide Western commentators with the true picture. The capital justice system in the Qing Empire was neither brutal nor cruel but rather a highly civilized legal system and at least no worse than that of past Western society.

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<sup>231</sup> See Xiong & Liu, *supra* note 52, at 39-40, 59-60; JONES, *supra* note 51, at 237-67; STAUNTON, *supra* note 12, 269-302.

<sup>232</sup> GATRELL, *supra* note 152, at 40.

<sup>233</sup> GEORGE R. BOYER, AN ECONOMIC HISTORY OF THE ENGLISH POOR LAW, 1750 – 1850 9 (1990).

<sup>234</sup> Peter King & Richard Ward, *Rethinking the Bloody Code in Eighteenth-Century Britain: Capital Punishment at the Centre and on the Periphery*, 228 PAST & PRESENT 159, 172 (2015).

<sup>235</sup> See Li, *Sociological Explanations*, *supra* note 108, at 114-15; Lee, *supra* note 99, at 122; Chen et al., *supra* note 92, at Appendix B Supplementary Material.

CONCLUSION: REVISION OF THE DISTORTED PICTURE THROUGH ANTI  
ANTI-ORIENTALISM

Two idioms should be noted in any unbiased cross-national research: “the pot calling the kettle black” and “knowing yourself and your counterpart prevents a fall in battle.” The two idioms address the danger of making an accusation without having a “mirror” to look at oneself, because the mirror could reveal that the real monster might be not the accused, but oneself. With such a fundamental step-forward strategy, we conducted this comparative legal study to complete a scientific and impartial comparison between the Qing Empire and England and Wales. Our critical empirical findings started with a reintroduction to capital crimes in the Qing Code. Distinguishing the exaggerated distorted and brutal picture of 840 capital crimes from the 45 capital crimes punishable by immediate execution in the *Leu*, we provided a very different story of capital crimes in the Great Qing. We conducted a careful review of the literature and used statistical data from archives and multiple other sources to formulate our empirical findings and to argue, from the comparative perspective, that capital justice in the Great Qing was civilized.

The Western literatures used to exaggerate and distort the picture of the death penalty in the Qing Empire with an imperialist and European bias, but an empirical, historical, and comparative analysis of the law using archive data showed that this picture was based on speculative comments. As Donald Clarke commented in his *Anti Anti-Orientalism* article, “the political imperative of anti-Orientalism takes precedence over all.”<sup>236</sup> Therefore, given China’s legal heritage to the world and its increasing integration into global society, healthy exchanges between legal historians should avoid biased methodological errors. As Thomas Buoye indicated, “comparative studies of legal systems in the West have largely ignored China’s rich legal heritage”.<sup>237</sup>

In contrast to the distorted picture of the Qing Empire as a barbarous civilization, the multiple translations of *Ta Tsing Leu Lee* in

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<sup>236</sup> Donald Clarke, *Anti Anti-Orientalism, or is Chinese Law Different?*, 68 AM. J. COMPAR. L. 55 (2020).

<sup>237</sup> Thomas Buoye, *The Great Qing Code*, 53 J. ASIAN STUD. 1242 (1994) (reviewing WILLIAM C. JONES, *THE GREAT QING CODE* (1994)).

the eighteenth and nineteenth centuries paved the way for the global transformation of capital legislation and judicial practice. The influence of the Qing Code on most countries in continental Europe can be traced back to the 1730s, when the code was first translated into Russian and then into French, Italian, and Spanish in that order.<sup>238</sup> What we cannot ignore is that the real power of Far Eastern civilization accelerated the steps toward the abolition of capital punishment and the evolution of the legal system in global society. Even today, we still find that Western criminal law inherited some of its criminal rules from the Great Qing or traditional China. As Bodde and Morris concluded, “In some respects, the law of imperial China was more humane and intelligent than its Western counterpart.”<sup>239</sup> We had no more space to trace how the Qing Code helped Beccaria to launch the campaign for the abolition of the death penalty, but we cannot ignore the Qing Code’s impact on England and Wales. In the same year Staunton published his translation, Romilly gave his famous speech in the House of Commons on February 9, 1810, on repealing capital punishment for small-value property crimes.<sup>240</sup> Was this just coincidence, or was he influenced by Staunton’s translation? The answer is not as important as the time itself. Obviously, the serious restriction of capital justice to the most violent offenses in the Qing Code provided critical evidence to support the abolition of the death penalty for small-value property crimes and other offenses that affected the poor in England and Wales. As one UK parliamentarian stated, China was a country where “all the conveniences and many of the luxuries of life [existed] when Europe was still sunk in barbarism, and when the light of knowledge was obscure in this western hemisphere.”<sup>241</sup>

The classical portrayal of imperial China as a tyrannical and cruel culture has gradually been challenged in many ways. Legal historians and sociologists have noted that the modern conflict in Sino-Western communications stemmed from a miscomprehension

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<sup>238</sup> See LAW, JUSTICE AND CODIFICATION IN QING CHINA: EUROPEAN AND CHINESE PERSPECTIVES, *supra* note 11, at XIII; CHEN, IMPERIAL EYES, *supra* note 5, at 125-32; JONES, *supra* note 51, at v.

<sup>239</sup> See BODDE & MORRIS, *supra* note 31, at 41.

<sup>240</sup> See HC Deb (9 Feb. 1810) (15) col. 369.

<sup>241</sup> See HC Deb (7 Apr. 1840) (53) col. 670.

regarding culture and law and subsequently they have tried their best to clarify things via factual data. Following the traces in previous studies, this Article has attempted to offer critical evidence to explore capital justice in the Qing Empire. We did not want to interpret legislative capital crimes in this Article because these must be discussed in the context of traditional Chinese law. We invite more scholars to explore the legislative rules, legal traditions, and criminal justice in the Qing Empire, with a comparative perspective on the global evolution of capital punishment.

#### FIGURES & TABLES

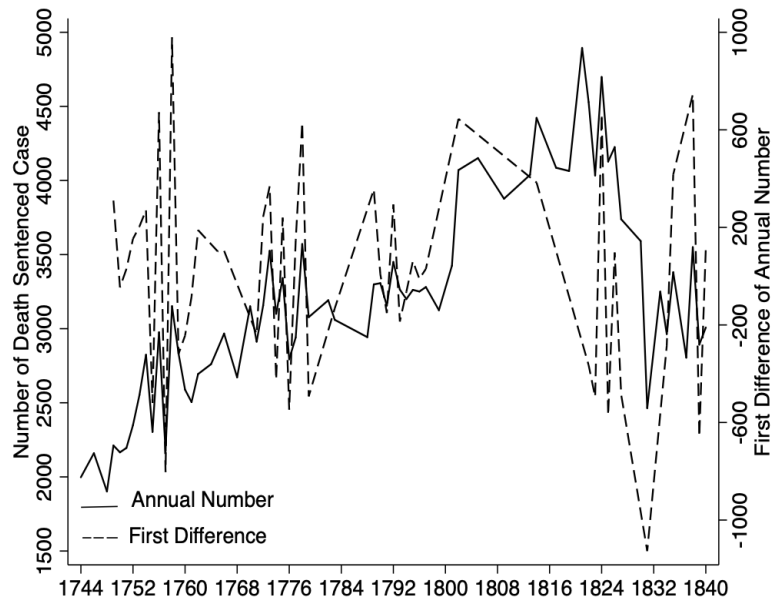


Figure 1. Number of Annual Death Sentence Cases in the Great Qing, 1744-1840

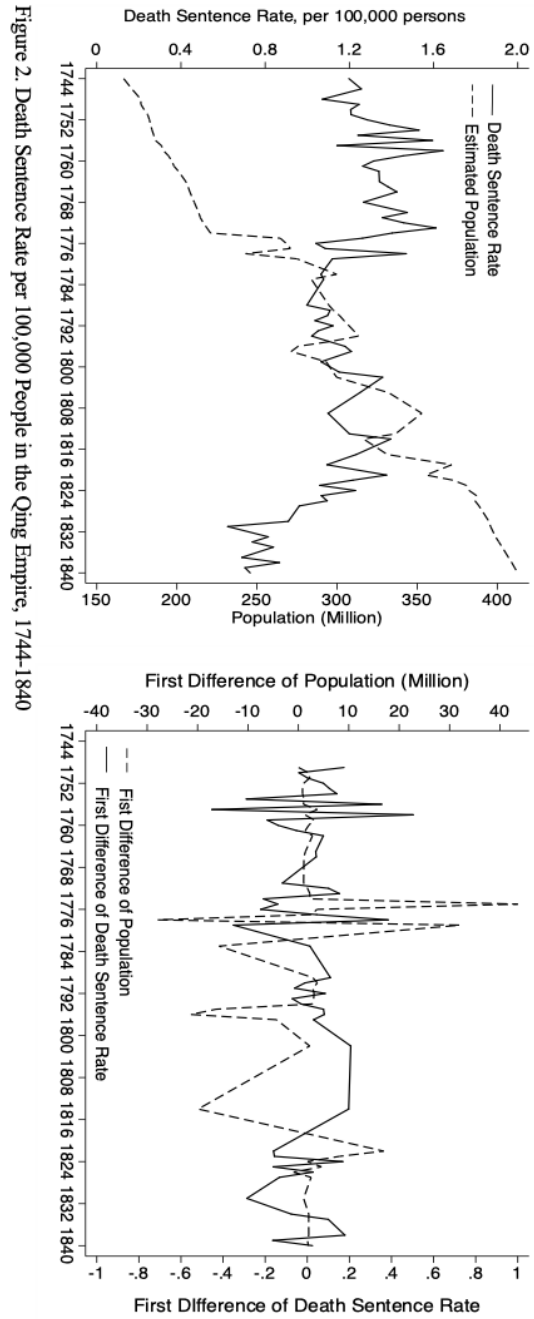


Figure 2. Death Sentence Rate per 100,000 People in the Qing Empire, 1744-1840

Table 1. Number of Capital Punishment Articles in the Ta Qing Leu Lee, 1740-1899

Type	Qianlong 5 <sup>th</sup> (1740) <sup>ab</sup>		—32 <sup>nd</sup> — (1767) <sup>b</sup>		—53 <sup>rd</sup> — (1788) <sup>b</sup>		Jiaqing 6 <sup>th</sup> (1801) <sup>b</sup>		Tongzhi 9 <sup>th</sup> (1870) <sup>b</sup>		Guangxu 25 <sup>th</sup> (1899) <sup>c</sup>	
	Total	Lee	Total	Lee	Total	Lee	Total	Lee	Total	Lee	Total	Lee
NS	6	5	1	6	5	1	6	5	1	6	5	1
ND	7	5	2	8	5	3	8	5	3	6	5	1
SWS	145	60	86	180	60	120	189	60	129	213	60	153
DWS	139	76	63	159	76	83	161	76	85	179	76	103
SWIE25	11	14	43	11	32	45	11	34	57	11	46	83
DWIE103	23	81	135	23	112	136	23	113	160	23	137	202
<i>Lingch</i> <sup>i</sup>	17	11	6	17	11	6	17	11	6	21	11	10
Sum	442	191	253	548	191	357	562	191	371	644	191	453

Note: NS (nominal strangulation); ND (nominal decollation); SWS (strangulation with suspension); DWS (decollation with suspension); SWIE (strangulation with immediate execution); DWIE (decollation with immediate execution).  
Sources: <sup>a</sup> HU (2008); <sup>b</sup> Min (2013); <sup>c</sup> BODDE & MORRIS (1967).

Table 2. Meta-Analysis of Death Sentences in Qing Empire, 1744-1840

Analysis	Jiang Q.	Min D.	Lee J.	Chen Z. et al.	Li L.
Year range (A.D.)	1744-1789	1744-1789	1760-1840 <sup>b</sup>	1738-1840 <sup>d</sup>	1744-1840
Total number of years	16	24	17 <sup>b</sup>	32	38 <sup>f</sup>
Annual executions (%)	—	—	760 (22.3)	640 (21.07) <sup>e</sup>	3158 <sup>f</sup>
Annual death sentences	2806	2704	3352 <sup>b</sup>	3040	1068(68.3) <sup>g</sup>
killing in a fight, n (%)	1964 (69.99)	1938 (70.12)	—	2221 (73.06)	1571(2.3) <sup>g</sup>
robbery	297 (15.12)	284 (10.29)	—	303 (9.97)	103(9.67) <sup>g</sup>
homicide	262 (9.34)	259 (9.38)	—	238 (7.83)	103(9.67) <sup>g</sup>
offending accusation	154 (5.49)	123 (4.45)	—	161 (5.30)	68.2(5.4) <sup>g</sup>
rape & adultery	120 (4.28)	156 (5.65)	—	113 (3.72)	48.7(4.5) <sup>g</sup>
salt smuggling	4 (0.14)	4 (0.15)	—	3 (0.10)	2.1(0.1) <sup>g</sup>
Provincial rank, n (%)					
ranked 1st on average	Sichuan 284(10.12)	Sichuan 334(10.12) <sup>a</sup>	Henan 96(12.57) <sup>c</sup>	Sichuan 368(12.11)	Sichuan 329(13.54) <sup>g</sup>
ranked 2nd .....	Zhili 247(8.80)	Guangdong 274(8.28) <sup>a</sup>	Shandong 88(11.52) <sup>c</sup>	Zhili 243(7.99)	Zhili 199(8.21) <sup>g</sup>
ranked 3rd .....	Guangdong 228(8.13)	Zhili 260(7.87) <sup>a</sup>	Jiangsu 81(10.60) <sup>c</sup>	Guangdong 228(7.50)	Shanxi165(6.81) <sup>g</sup>
ranked 4th .....	Shandong 219(7.80)	Shanxi 241(7.30) <sup>a</sup>	Sichuan 71(9.29) <sup>c</sup>	Shanxi 213(7.01)	Henan 164(6.76) <sup>g</sup>
ranked 16th .....	Guizhou 85(3.03)	Yunnan 63(1.90) <sup>a</sup>	Guizhou 28(3.66) <sup>c</sup>	Guizhou 101(3.32)	Guizhou 82(3.39) <sup>g</sup>
ranked 17th .....	Guangxi 61(2.17)	Gansu 67(2.02) <sup>a</sup>	Guangxi 19(2.49) <sup>c</sup>	Guangxi 82(2.70)	Guangxi 61(2.50) <sup>g</sup>
ranked 18th .....	Yunnan 61(2.17)	Guangxi 72(2.18) <sup>a</sup>	Jiangxi 13(1.70) <sup>c</sup>	Yunnan 79(2.60)	Yunnan 60(2.48) <sup>g</sup>
ranked 19th .....	Gansu 45(1.60)	Guizhou 91(2.76) <sup>a</sup>	Yunan 6(0.78) <sup>c</sup>	Gansu 66(2.17)	Gansu 56(2.31) <sup>g</sup>

Note: <sup>a</sup> Number of Provincial rank contained only six years (i.e., the 9th, 18th, 25th, 35th, 42nd, and 55th years of the Qianlong era).

<sup>b</sup> Original range 1760-1903; we mined 13 annual numbers between 1760 and 1840.

<sup>c</sup> Mentioned death sentences with immediate execution only, 1738-1740.

<sup>d</sup> Original range regarding death sentence numbers recorded in Yellow Book involved 51 years from 1744 to 1903.

<sup>e</sup> Original range 1738-1849 with 82 years; we mined annual number of affirmed executions for 73 years prior to 1840.

<sup>f</sup> Original range 1744-1903 with 67 years; we mined annual number of death sentences for 38 years between 1738 and 1840.

<sup>g</sup> Author did not report annual number for specific types and provinces; we used the provincial mean between 1744 and 1903.

Sources: Chen et al. (2017); Jiang (1996); Lee (1991); Li (2011); Min (2015).



Table 3. Authorship of Annual Statistics on Death Sentences Mined from the FHAC Archive and Ming Qing Archive, n=59

Emperor	Name Pingyin (Chinese)	Position	Year Range	Total
Qianlong (1735-1794)	Lai Bao (来保)	MOP	1744	1
	A Kedun (阿克敦)	DMP/MOP	1746, 48-53	7
	A Ligun (阿里衮)	DMP	1754	1
	E Mida (鄂弥达)	MOP	1755-58, 60	5
	Shu Hede (舒赫德)	MOP/GSSAPA	1762, 73-76	5
	Liu Tongxun (刘统勋)	GSSAPA	1764-65, 68, 71-72	5
	Ying Lian (英廉)	MHCPA	1777	1
	De Fu (德福)	MOP	1778	1
	A Gui (阿桂)	GSSAPA	1783, 88-94	8
Jiaqing (1795-1820)	A Gui (阿桂)	GSSAPA	1795-96	2
	He Shen (和珅)	SSAPA	1797	1
	Cheng De (成德)	MOP	1799	1
	Dong Gao (董浩)	GSSAPA	1801-02, 09, 13-14	5
	Zhang Xun (章煦)	GSSAPA	1817	1
	Dai Junyuan (戴均元)	GSSAPA	1819	1
Daoguang (1821-1840)	Na Yancheng (那彦成)	MOP	1821	1
	Dai Junyuan (戴均元)	GSSAPA	1822	1
	Tuo Jing (托津)	GSSAPA	1824, 27	2
	Jiang Youxian (蒋攸铻)	GSSAPA	1825-26	2
	Lu Yingpu (卢荫溥)	GSSAPA	1830-31	2
	Wang Ding (王鼎)	GSSAPA	1833-35, 37-39	6

Note: MOP: Minister of Punishment (*xingbu shangshu*); DMP: Deputy Minister of Punishment (*shuli xingbu shangshu*); GSSAPA: Grand Secretary of State Administration on Penal Affairs (*daxueshi guanli xingbu shiwu*); MHCPA: Minister of Household/Chief of Penal Affairs (*hubu shangshu jianguan xingbu shiwu*).

Table 4. Annual Statistics of Death Sentences in Qing Empire, 1744-1840 (Unit: Case)

Year Range	Available N.	Mean	Median	IQR	SD	Min	Max
1744-1750	5	2087.60	2160	168	131.66	1902	2212
1751-1760	10	2594.90	2571	529	341.37	2173	3152
1761-1770	7	2801.86	2761	295	212.60	2505	3151
1771-1780	9	3157.89	3101	400	271.11	2794	3571
1781-1790	5	3160.2	3192	239	157.36	2943	3307
1791-1800	8	3248.63	3256.5	94.5	98.74	3125	3450
1801-1810	4	3880.75	3973.5	459.5	324.85	3425	4151
1811-1820	4	4152.50	4075	203	180.73	4038	4422
1821-1830	8	4229.75	4176.5	727	454.75	3591	4894
1831-1840	8	3039.38	2986	466.5	345.56	2464	3550
Total	68	3183.78	3165.5	381.5	264.73	1902	4894

Table 5. Average Number of Death Sentences and Rates During Reigns of Three Emperors

Emperor ( <i>year, n</i> )	Mean of Population		Mean of Death Sentence			Mean of Death Sentence Rate	
	(100,000)	<i>Sig.</i> <sup>a</sup>	Number	<i>Sig.</i> <sup>a</sup>	F.D. <sup>b</sup>	Rate	<i>Sig.</i> <sup>a</sup> F.D. <sup>b</sup>
Qianlong ( <i>1744-1794, 40</i> )	2275.59	*** <sup>c</sup>	2832.30	*** <sup>c</sup>	32.81	1.27	0.00
Jiaqing ( <i>1795-1819, 12</i> )	3146.27	*** <sup>d</sup>	3754.33		222.00	1.19	*** <sup>d</sup> 0.12
Daoguang ( <i>1820-1840, 16</i> )	3928.80	*** <sup>c</sup>	3634.56	*** <sup>c</sup>	-162.33	0.93	*** <sup>c</sup> -0.05
Total	2818.22		3183.78		4.33	1.18	0.00

Note: <sup>a</sup> Significance test by one-way analysis of variance; <sup>b</sup> mean of first difference; <sup>c</sup> significant difference between Qianlong and Jiaqing; <sup>d</sup> significant difference between Jiaqing and Daoguang; <sup>e</sup> significant difference between Qianlong and Daoguang.

\*\*\*  $p=0.000$ .

Table 6. Distribution of Death Sentence Cases in Six Categories, 1744-1840

Year Range	N	Robbery mean (%)	Rape & Adultery mean (%)	Salt Smuggling mean (%)	Homicide mean (%)	Killing in Fight mean (%)	Offending Accusation mean (%)	All mean
1744-1750	5	283.40 (13.58)	98.20 (4.70)	2.20 (0.11)	206.80 (9.91)	1369.6 (65.61)	127.40 (6.10)	2087.60
1751-1760	10	294.20 (11.32)	123.50 (4.75)	2.10 (0.08)	275.4 (10.59)	1756.6 (67.56)	148.10 (5.70)	2594.90
1761-1770	7	254.86 (9.10)	126.00 (4.50)	4.86 (0.17)	235.86 (8.42)	2022.1 (72.17)	158.14 (5.64)	2801.86
1771-1780	9	280.44 (8.88)	132.33 (4.19)	6.56 (0.21)	257.67 (8.16)	2305.2 (73.00)	175.67 (5.56)	3157.89
1781-1790	5	355.40 (11.25)	120.40 (3.81)	3.80 (0.12)	282.00 (8.92)	2248.00 (71.13)	150.60 (4.77)	3160.20
1791-1800	8	333.50 (10.27)	122.13 (3.76)	4.63 (0.14)	267.25 (8.23)	2358.25 (72.59)	162.88 (5.01)	3248.63
1801-1810	4	427.75 (11.02)	155.00 (3.99)	3.00 (0.08)	322.50 (8.31)	2756.75 (72.04)	215.75 (5.56)	3880.75
1811-1820	4	551.25 (13.28)	132.75 (3.20)	3.75 (0.09)	361.75 (8.71)	2842.00 (68.44)	261.00 (6.29)	4152.50
1821-1830	8	400.75 (9.47)	111.63 (2.64)	1.63 (0.04)	275.63 (6.52)	3184.50 (75.29)	244.38 (5.78)	4229.80
1831-1840	8	250.13 (8.23)	60.00 (1.97)	0.00 (0.00)	143.63 (4.73)	2452.38 (80.69)	133.25 (4.38)	3039.38
1744-1840	68	326.99 (10.27)	116.21 (3.65)	3.25 (0.10)	255.84 (8.04)	2307.48 (72.40)	173.38 (5.43)	3183.78

Table 7. Death Sentences and Executions in England and Wales and the Qing Empire, 1750-1840

Year	England & Wales			Old Bailey (London & Middlesex)			Qing Empire								
	Death Sentence n total pop. per 100,000	Execution n pers. range <sup>e</sup>	% Exe.	Death Sentence n pop. per 100,000 <sup>d</sup>	Execution n pers. year	% Exe.	Death Sentence n total pop. per 100,000	Execution n pers. mean	% Exe.						
1751-1760	—	—	—	168	—	98	58.3	25949	1.38	3037 <sup>h</sup>	0.27	19.5			
1761-1770	3350 <sup>a</sup>	4.50-4.95 <sup>a</sup>	670	0.90-0.99	—	509	3.91 <sup>e</sup>	246	1.89 <sup>e</sup>	48.3	19613	1.36	5326	0.26	19.0
1771-1780	4250 <sup>a</sup>	5.35-5.70 <sup>a</sup>	850	1.07-1.14	—	815	—	325	—	39.9	28421	1.30	3353 <sup>i</sup>	0.28	21.2
1781-1790	7640 <sup>a</sup>	8.30-9.60 <sup>a</sup>	1528	1.76-1.92	—	1188	—	501	—	42.2	15801	1.07	4156 <sup>i</sup>	0.23	21.9
1791-1800	1760 <sup>a</sup>	6.60-6.75 <sup>a</sup>	352 <sup>a</sup>	1.32-1.35	—	780	—	193	—	24.7	25989	1.10	5526 <sup>k</sup>	0.21	18.9
1801-1810	2224 <sup>b</sup>	3.65-4.18	354 <sup>b</sup>	0.58-0.66	15.9	826	4.21-4.91 <sup>f</sup>	96	0.49-0.57 <sup>f</sup>	11.6	15523	1.21	6432 <sup>i</sup>	0.22	18.4
1811-1820	8613	7.19-8.49	892	0.74-0.88	10.4	1731	7.30-8.82 <sup>f</sup>	225	0.95-1.15 <sup>f</sup>	13.0	16610	1.22	3037 <sup>m</sup>	0.20	16.6
1821-1830	11899	8.56-9.93	671	0.48-0.56	5.6	1587	5.60-6.70 <sup>f</sup>	185	0.65-0.78 <sup>f</sup>	11.7	33838	1.11	5387	0.14	12.7
1831-1840	6165	3.88-4.44	258	0.16-0.19	4.2	428	3.10-3.78 <sup>g</sup>	12	0.04-0.09 <sup>g</sup>	2.8	24315	0.75	5321	0.13	17.5

Note: <sup>a</sup>Estimated number of death sentences via the execution number utilizing the ratio 5:1; <sup>b</sup>Only 1791 and 1793 available; <sup>c</sup>Only 1805-1810 available; <sup>d</sup>Estimated Population of England and Wales, 1570-1750; <sup>e</sup>[https://www.visionofbritain.org.uk/census/GB1841ABS\\_1/6/](https://www.visionofbritain.org.uk/census/GB1841ABS_1/6/); <sup>f</sup>England & Wales - Population Estimate 1700 - 1801; <sup>g</sup><https://1841census.co.uk/1570-1750-estimated-population/>; <sup>h</sup>Comparative Population of Great Britain, 1801-1840; <sup>i</sup>[https://www.visionofbritain.org.uk/census/GB1841ABS\\_1/3/](https://www.visionofbritain.org.uk/census/GB1841ABS_1/3/); <sup>j</sup>We used population number in 1760 introduced by "A Population History of London"; <sup>k</sup><https://www.oldbaileyonline.org/Population-history-of-London.jsp>; and 1801-1841 population from "Victorian London Population-Census-1841"; <sup>l</sup><https://www.victorianlondon.org/population/census1841.htm>; Middlesex used the number in "Comparative Population of Great Britain, 1801-1840"; <sup>m</sup>Refers to estimated population of London in 1760 and Middlesex in 1750; <sup>n</sup>Given the absence of population statistics in 1810, 1820, 1830, and 1840, range of years in the upper level replaced by 1811, 1821, 1831, and 1841 respectively; <sup>o</sup>Estimated sentence and execution numbers between 1831 and 1834; <sup>p</sup>Six years in total because of missing data; <sup>q</sup>Five years in total; <sup>r</sup>Six years in total; <sup>s</sup>Nine years in total.

Sources: Chen et al. (2017); CLARK (2009); GATRELL (1994); Lee (1991).

Table 8. Number and Percentage of Persons Tried for Different Crimes in Selective Court Assizes of England and Wales, 1760-1830

	England <sup>a</sup>				Wales <sup>b</sup>							
	Death Sentence		Execution		Death Sentence		Execution					
	n	%	n	%	n	%	n	%				
total	3811	100	679	17.82	3132	82.18	762	100	101	13.25	660	86.61
murder	—	—	94	13.84	—	—	—	—	—	—	—	—
infanticide	—	—	8	1.18	—	—	—	—	—	—	—	—
rape	27	0.71	12	1.77	—	—	—	—	—	—	—	—
property offenses	3477	91.24	514	75.70	2963	94.60	694	91.08	56	55.45	638	96.67
burglary	786	22.61	104	20.23	682	86.77	145	20.89	23	41.07	122	84.14
highway robbery	617	17.75	184	35.80	433	70.18	21	3.03	4	7.14	17	80.95
horse stealing	403	11.59	41	7.98	362	89.83	166	23.92	13	23.21	153	92.17
sheep stealing	390	11.22	18	3.50	372	95.38	175	25.22	6	10.71	169	96.57
monetary offenses	211	6.07	66	12.84	145	68.72	8	1.15	3	5.36	5	62.50
housebreaking	358	10.30	18	3.50	340	94.97	62	8.93	2	3.57	60	96.77
larceny in a dwelling house	293	8.43	11	2.14	282	96.25	36	5.19	1	1.79	35	97.22
larceny	147	4.23	22	4.28	125	85.03	20	2.88	0	0.00	20	100.00
fraud and forgery	124	3.57	37	7.20	87	70.16	16	2.31	3	5.36	13	81.25
cattle stealing	76	2.19	3	0.58	73	96.05	33	4.76	0	0.00	33	100.00
robbery	22	0.63	5	0.97	17	77.27	8	1.15	1	1.79	7	87.50
larceny from the person	17	0.49	1	0.19	16	94.12	1	0.14	0	0.00	1	100.00
receiving stolen goods	2	0.06	0	0.00	2	100.00	—	—	—	—	—	—
other	31	0.89	4	0.78	27	87.10	—	—	—	—	—	—

Note: <sup>a</sup> England consisted of four English County Assizes: Cornwall, Kent, Lancashire, and Oxfordshire.  
<sup>b</sup> Wales Court of Great Sessions, involving Brecon, Chester, Carmarthenshire, and North Wales.  
 Source: WALLISS (2017).

**Supplementary File: Annual Statistics on Death Sentence Mined from Archives and Literatures, 1744-1840**

Report no. (Emperor)	Report (A.D.)	Motion (A.D.)	Total (Case)	Number for Six Categories						Archives/Literature Source	
				Robbery	Rape & Adultery	Salt Smuggling	Homicide	Killing in Fight	Offending Accusation		
1	QL 9th	1745	1744	1998	340	104	2	185	1256	111	FHAC, 02-01-007-016426-0004
2	QL 11th	1747	1746	2160	300	110	2	214	1396	138	FHAC, 02-01-007-016932-0012
3	QL 13th	1749	1748	1902	217	98	3	197	1257	130	FHAC, 02-01-007-017214-0005
4	QL 14th	1750	1749	2212	287	79	3	233	1481	129	FHAC, 02-01-007-017345-0011
5	QL 15th	1751	1750	2166 <sup>a</sup>	273	100	1	205	1458	129	FHAC, 02-01-007-017593-0001
6	QL 16th	1752	1751	2196	272	87	1	192	1505	139	ZHANG, 1989: A179-93.
7	QL 17th	1753	1752	2349	251	119	2	192	1659	126	FHAC, 02-01-007-017989-0032
8	QL 18th	1754	1753	2553	304	124	4	268	1695	158	FHAC, 02-01-007-018089-0012
9	QL 19th	1755	1754	2824	350	170	1	311	1849	143	FHAC, 02-01-007-018336-0018
10	QL 20th	1756	1755	2304	248	117	2	206	1613	118	FHAC, 02-01-007-018491-0009
11	QL 21st	1757	1756	2976	278	132	0	288	2107	171	FHAC, 02-01-007-018564-0018
12	QL 22nd	1758	1757	2173	270	110	1	248	1412	132	FHAC, 02-01-007-018926-0012
13	QL 23rd	1759	1758	3152	368	132	1	436	2019	196	FHAC, 02-01-007-019139-0009
14	QL 24th	1760	1759	2883 <sup>bc</sup>	304	130	4	336	1949	160	MIN, 2015: 184.
15	QL 25th	1761	1760	2589	297	114	5	277	1758	138	FHAC, 02-01-007-019330-0018
16	QL 26th	1762	1761	2505	247	88	4	217	1825	124	MIN, 2015: 184.
17	QL 27th	1763	1762	2694	211	120	2	235	1994	132	FHAC, 02-01-007-019883-0010
18	QL 29th	1765	1764	2761	257	129	8	279	1928	160	FHAC, 02-01-007-020068-0008
19	QL 30th	1766	1765	2863 <sup>b</sup>	264	138	6	245	2017	193	FHAC, 02-01-007-020145-0001
20	QL 31st	1767	1766	2967 <sup>abc</sup>	303	141	5	219	2138	161	MIN, 2015: 184.
21	QL 33rd	1769	1768	2672	213	132	4	199	1969	155	FHAC, 02-01-007-021082-0019
22	QL 35th	1771	1770	3151	289	134	5	257	2284	182	MIN, 2015: 184; Jiang, 1996: 146.
23	QL 36th	1772	1771	2913	285	113	6	282	2062	165	FHAC, 02-01-007-021457-0013

24	QL 37th	1773	1772	3157	246	127	5	245	2354	180	FHAC, 02-01-007-021878-0007
25	QL 38th	1774	1773	3525	313	158	9	267	2588	190	FHAC, 02-01-007-022027-0009
26	QL 39th	1775	1774	3101	245	132	6	201	2357	160	ZHANG, 1990: A224-9.
27	QL 40th	1776	1775	3341	320	143	9	255	2414	200	FHAC, 02-01-007-022348-0007
28	QL 41st	1777	1776	2794 <sup>b</sup>	293	123	5	229	1993	151	FHAC, 02-01-007-022580-0008
29	QL 42nd	1778	1777	2941 <sup>b</sup>	245	115	10	231	2154	186	FHAC, 02-01-007-022720-0017
30	QL 43rd	1779	1778	3571 <sup>b</sup>	284	169	6	321	2605	186	FHAC, 02-01-007-023115-0009
31	QL 44th	1780	1779	3078	293	111	3	288	2220	163	MIN, 2015: 184; Jiang, 1996:146.
32	QL 47th	1783	1782	3192	281	124	2	324	2287	174	MIN, 2015: 184; Jiang, 1996:146.
33	QL 48th	1784	1783	3060 <sup>a</sup>	306	120	2	319	2141	172	FHAC, 02-01-007-023660-0012
34	QL 53rd	1789	1788	2943	387	110	3	267	2054	122	FHAC, 02-01-007-024092-0009
35	QL 54th	1790	1789	3299	396	119	6	244	2396	138	FHAC, 02-01-007-024145-0005
36	QL 55th	1791	1790	3307	407	129	6	256	2362	147	FHAC, 02-01-007-024290-0008
37	QL 56th	1792	1791	3156	326	125	4	251	2294	156	FHAC, 02-01-007-024417-0003
38	QL 57th	1793	1792	3450	368	135	9	292	2473	173	FHAC, 02-01-007-024423-0015
39	QL 58th	1794	1793	3264	309	128	3	269	2388	167	FHAC, 02-01-007-024740-0016
40	QL 59th	1795	1794	3200	308	124	5	251	2339	173	FHAC, 02-01-007-024746-0004
41	QL 60th	1796	1795	3262 <sup>a</sup>	341	134	8	265	2349	165	ZHANG, 1994: A271-114.
42	IQ 1st	1797	1796	3251	347	124	3	267	2358	152	FHAC, 02-01-007-025264-0024
43	IQ 2nd	1798	1797	3281 <sup>b</sup>	353	107	4	267	2383	167	FHAC, 02-01-007-025385-0028
44	IQ 4th	1800	1799	3125	316	100	1	276	2282	150	FHAC, 02-01-007-025649-0029
45	IQ 6th	1802	1801	3425	353	152	1	268	2462	189	FHAC, 02-01-007-025909-0001
46	IQ 7th	1803	1802	4070	404	142	3	330	2975	216	FHAC, 02-01-007-025971-0018
47	IQ 10th	1806	1805	4151	514	185	5	355	2838	254	Lee, 1991: 119; Chen et al., 2017.
48	IQ 14th	1810	1809	3877	440	141	3	337	2752	204	FHAC, 02-01-007-026914-0034
49	IQ 18th	1814	1813	4038	531	115	4	410	2751	227	FHAC, 02-01-007-027448-0015
50	IQ 19th	1815	1814	4422	646	151	4	416	2905	300	FHAC, 02-01-007-027654-0011
51	IQ 22nd	1818	1817	4086 <sup>b</sup>	517	137	3	327	2841	261	FHAC, 02-01-007-028185-0019

52	DG 24th	1820	1819	4064	511	128	4	294	2871	256	FHAC, 02-01-007-028354-0021
53	DG 1st	1822	1821	4894	540	136	2	346	3608	262	FHAC, 02-01-007-028754-0025
54	DG 2nd	1823	1822	4529	494	125	2	344	3279	285	FHAC, 02-01-007-028914-0021
55	DG 3rd	1824	1823	4034	423	115	2	250	2892	262	Lee, 1991: 119; Chen et al, 2017.
56	DG 4th	1825	1824	4698	481	102	2	312	3500	301	FHAC, 02-01-007-029219-0004
57	DG 5th	1826	1825	4128	360	121	3	289	3099	256	FHAC, 02-01-007-029358-0008
58	DG 6th	1827	1826	4225	381	132	2	251	3210	249	FHAC, 02-01-007-029546-0010
59	DG 7th	1828	1827	3739	312	103	0	256	2856	212	FHAC, 02-01-007-029553-0011
60	DG 10th	1831	1830	3591	215	59	0	157	3032	128	FHAC, 02-01-007-030148-0021
61	DG 13th	1832	1831	2464	163	60	0	141	1982	118	FHAC, 02-01-007-030330-0010
62	DG 14th	1834	1833	3250	294	47	0	152	2631	126	FHAC, 02-01-007-030531-0011
63	DG 15th	1835	1834	2964	263	64	0	155	2352	130	FHAC, 02-01-007-030949-0031
64	DG 16th	1836	1835	3381	284	68	0	160	2702	167	FHAC, 02-01-007-031157-0003
65	DG 17th	1838	1837	2805	207	52	0	142	2295	109	FHAC, 02-01-007-031433-0017
66	DG 18th	1839	1838	3550	322	78	0	156	2818	176	FHAC, 02-01-007-031581-0036
67	DG 19th	1840	1839	2893	242	62	0	130	2335	124	FHAC, 02-01-007-031730-0019
68	DG 22nd	1842	1840	3008	226	49	0	113	2504	116	Lee, 1991: 119; Chen et al., 2017.

Note: <sup>a</sup> We offered the complete numbers in contrast with Li's description of incomplete numbers.

<sup>b</sup> We adjusted the erroneous numbers introduced by Li and Jiang.

<sup>c</sup> Zhixun Chen et al. indicated numbers 2882 and 2954 in the Qianlong 24th and 31st year respectively.

Source: The First Historical Archive of China; Chen et al. (2017); Jiang (1996); Li (2011); Lee (1991); MIN (2015); ZHANG (1989, 1990, 1994).