Confucian Gender in the Courtroom:

Gender Roles and Confucianism in Qing Dynasty Homicide Cases

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I hereby declare upon my word of honor that I have neither given nor received unauthorized help on this work.

Confucianism was the reigning philosophy of the Qing Dynasty during their rule of China. Its most notable aspect was its emphasis on familial relationships and power dynamics within the home and state. Men acted as the "outside" helper and the face of the family in the public eye, whereas women acted as the "inner" helper and dealt with everything within the home. Married couples often lived with the husband's parents, which were to be respected by the wife. These dynamics, associated with gender, not only altered how families interacted in and out of the home— but also how the courtroom worked. Homicide was not uncommon within families. The strict gender roles in the family played a role in punishing homicides and the reason for murder.

Homicide rulings in the Qing dynasty courtroom had several categories that defined the punishment. These categories acted as guidelines for each case and a provincial judicial commissioner would determine the best fitting punishment. Premeditated and sudden–intent homicide (*Mousha* and *Gusha*) was punished by decapitation, while accidental manslaughter was more up to the judge's discretion.[1] A Board of officials on criminal law would overlook the ruling and either raise it to higher judicial powers, including the emperor, or agree to the commissioner's sentencing.[2] Serious offenses were investigated by the local magistrate, the judicial commissioner, the provincial governor, and sometimes sent to the Emperor.[3] Precedence would determine the means of punishment for a majority of cases. Intent was an important aspect of determining the ruling for each case.

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[1] Jennifer M. Neighbors, *A Question of Intent: Homicide Law and Criminal Justice in Qing and Republican China,* (Leiden: Brill, 2018), 229; While technically the official punishment of accidental manslaughter (*Wusha*) was beheading or strangulation, a majority of the cases studied instead are punished with penal servitude or blows with heavy bamboo.

[2] M. J. Meijer, *Murder and Adultery in Late Imperial China,* (Leiden: Brill, 1991), 3.

[3] Meijer, *Murder and Adultery*, 4.

The first group of cases analyzed involve a husband killing his wife or concubine, directly or indirectly. Case 167.5 involved two men, Su Jung-Kuei and Hsu Hsien, who beat their wives to death after they reviled and physically pushed their parents-in-law.[4] While the normal statute of killing by beating to death is strangulation, the statute for killing a wife who reviles a parent-in-law is one hundred blows of heavy bamboo.[5] This was the original sentence for both men, however, since neither mother-in-law made a formal accusation of what happened, the Board reversed the decision to make the punishment strangulation.[6] This is because the Board determined that there may have been ulterior motives, and the husbands may have created false evidence.[7] Case 167.11 refers to a man named Chang K'ai-P'eng killing his concubine by beating and starving her after she insulted his parents, resulting in her death.[8] The statute for punishment for beating a concubine to death is three years of penal servitude and one hundred blows of heavy bamboo for killing her after she reviled his parents.[9] Because the death was a result of her reviling his family, he was sentenced to the bamboo strikes.[10] Although the act of starving his concubine took a long time and was not a result of sudden anger like in case 167.5, Chang was sentenced to the bamboo strikes instead of three years of penal servitude because the homicide involved family relationships.[11]

The difference in punishment between the two cases is a result of the roles of a wife versus a concubine. Because wives were a more "important" role in the family, their lives are valued more in court and their murderers have a higher punishment.[12] Both of these cases also

[4] Derek Bodde and Clarence Morris, *Law in Imperial China*, (Cambridge: Harvard University Press, 1967),
[5] Bodde and Morris, *Law in Imperial China*, 343.
[6] Bodde and Morris, *Law in Imperial China*, 343.
[7] Bodde and Morris, *Law in Imperial China*, 343.
[8] Bodde and Morris, *Law in Imperial China*, 344.
[9] Bodde and Morris, *Law in Imperial China*, 344.
[10] Bodde and Morris, *Law in Imperial China*, 345.
[11] Bodde and Morris, *Law in Imperial China*, 345.
[12] Bodde and Morris, *Law in Imperial China*, 346.

show the importance of the husband's parents within the family and how their rank outweighs that of the wife. If a man kills his wife for no reason, then the punishment is death; whereas if he kills her for speaking badly or hurting his parents, the punishment is only one hundred blows of heavy bamboo.[13] Family relationships were the most important ties of respect, so a man's intent being to punish his wife for insulting his parents altered his sentence. Similarly, the punishment for killing a concubine for no reason is three years servitude, while Chang's punishment for killing his concubine after she insulted his parents was one hundred blows.[14] Both cases show the Qing dynastic court's upholding of Confucian roles regarding the family and how familial relationships take precedence over all others. While husbands murdering wives was a common parallel in homicide cases involving the family, parents murdering their children or children-in-law also was prevalent.

In cases involving a female murderer killing someone within the family, covering up an adulterous relationship was most often the motive. In Qing Dynasty China, illicit sexual intercourse was punishable by seventy to eighty strokes of heavy bamboo.[15] While men were permitted to have concubines, there were strict rules that made a concubine "culpable" or not. Qing dynasty legal codes had several elaborations on law regarding adultery to prevent faked fornication, since the sentencing of a husband killing a wife or concubine for adultery was less severe than that of a man killing his wife without cause.[16] Men who killed the both adulteress and her paramour at the scene of the crime were absolved of all charges, with investigation occurring if one died and one survived.[17] All sex outside of a marriage between a heterosexual

[13] Bodde and Morris, *Law in Imperial China,* 343.
[14] Bodde and Morris, *Law in Imperial China,*
[15] Meijer, *Murder and Adultery,* 42.
[16] Meijer, *Murder and Adultery,* 41.
[17] Meijer, *Murder and Adultery,* 42.

couple was considered illicit, though not necessarily adultery.[18] Illicit sex was considered a prime motivator for female killers, who were often interrogated on their sexual history in court.[19] Women were most often the ones accused of sexual misconduct because they were not permitted to have concubines or lovers of that nature. As such, most adultery statutes involve how to punish a woman for an affair. The statute for adultery when the husband is tolerant, the punishment is ninety blows of bamboo for all involved.[20] Homicide due to adultery was most often between husband, wife, and a paramour, but several murders between parent and a child-in-law were also to cover up illicit affairs.

Case 160.15 was a premeditated homicide in which a man named Ma T'ung-kuei murdered the father-in-law of his lover, Mrs. Liu nee Yang.[21] The original sentencing was decapitation after the assizes, the punishment for an adulterous couple murdering a woman's husband.[22] The sentencing was raised to the throne because, in the Board's words, the father-in-law being killed is worse than the husband being killed. Similarly, Mrs. Liu received a heavier punishment than the original sentencing. Liu was sentenced to being sliced to death, one of the heaviest punishments someone can face.[23] Slicing to death is the punishment for an adulteress who kills her husband, though Liu did not directly murder her father-in-law.[24] Her being punished as though she did shows how important the father-in-law was in the family hierarchy. Mrs. Liu's punishment being much harsher than Ma's also exhibits how murder inside the family unit was more significant than murder between two outsiders. Liu was only an accomplice, but

[18] Stephanie M. Painter, *Women's Violent Crime and a Crisis of Weak Patriarchy in Late Imperial China*, (Chicago: University of Chicago Press, 2023), 58.
[19] Painter, *Women's Violent Crime,* 83.
[20] Bodde and Morris, *Law in Imperial China*, 321.
[21] Bodde and Morris, *Law in Imperial China*, 322.
[22] Bodde and Morris, *Law in Imperial China*, 323.
[23] Bodde and Morris, *Law in Imperial China*, 323.
[24] Painter, *Women's Violent Crime,* 272.

she was sentenced heavier than the actual murderer because she betrayed someone who is hierarchically above her within the most sacred social structure.

The power dynamic between the wife and her in-laws is exemplified further when the wife is not the adulteress. In Case 159.1, a woman named Mrs. Chiao accidentally killed her daughter-in-law after the two got in a fight regarding Mrs. Chiao's adultery.[25] The precedence for an elder planning and killing their adult child or child-in-law to cover up adultery would be the average decapitation for homicide; however, since Mrs. Chiao did not plan to kill her daughter-in-law, the sentence was "one degree higher" than the statute for beating a daughter-in-law to death without cause.[26] She was officially sentenced to one hundred blows of heavy bamboo and life exile, the heaviest punishment possible for the crime, with the inability to pay it off in any way.[27] The crime was seen as deserving this heavier punishment because it was a result of Mrs. Chiao's adultery. Adultery was one of the morally worst crimes a person could commit in Confucian society because it violated the sacred relationship between a woman and the family that "took her in."[28] It played a major part in investigating intent and punishment.

The homicide cases 159.1 and 160.15 show the power structure between wife and her husband's family. Liu's role in the family unit is below that of her in-laws, which in turn meant that she was punished harsher for conspiring their death. Mrs. Chiao killed her daughter-in-law with a fire poker but was punished much less harshly than Liu. Some of the difference is the distinction between premeditated and unpremeditated murder. Liu did plan the death of her father-in-law, though she did not carry it out herself; while Chiao got in a fight that resulted in

[25] Bodde and Morris, *Law in Imperial China,* 315.
[26] Bodde and Morris, *Law in Imperial China,* 316.
[27] Bodde and Morris, *Law in Imperial China,* 316.
[28] Painter, *Women's Violent Crime,* 55.

manslaughter. Premediated homicide is punished more severely than accidental, so it follows that Liu's sentence would be harsher. Since she was technically only an accomplice, Liu should have been strangulated compared to Ma's decapitation, but since she was killing her father-in-law to cover up adultery, her role within the house resulted in her being sentenced to the highest degree. Adultery does play a factor in both sentences, but since Liu is a lower position and killed someone of higher standing within the house, her crime is "worse." These cases depict the strict law of filial piety in Confucian society. Family hierarchy was the most important set of relationships within society, so breaking those bonds with homicide was viewed as a heinous crime, especially when done by the wife. As the inner helper, a young woman is expected to care for and respect her in-laws. Killing them is the ultimate disrespect to the concept of filial piety and as a result is punished much more harshly than a mother-in-law killing her daughter. Gender is not so specified as man versus woman, though sex plays a huge part in the organization of roles. Sex and age work together to create a strict and complex system that is reflected in law.

Men killing their wives and concubines in a fit of anger compared to premeditated and unpremeditated killing committed by women having different punishments also displays the differences in gender in Qing law. For killing a concubine, Chang of case 167.11 was only sentenced to one hundred strikes with heavy bamboo. His method of murder, tying up and starving her, indicates his intent to kill even if it was not necessarily premeditated. Mrs. Chiao, though committing a very similar crime of killing without intent by beating to death, was punished harsher with an additional exile. This was due to the reason being adultery, but what furthers the difference in gender relating to punishment is that Chang was also committing adultery, but legally. Concubines and sex outside marriage is technically illicit sex, but because a man is doing it, and the concubine is "culpable" it is not punished under the law. Daughters

selling themselves as concubines to prevent their family falling into poverty were praised as "filial daughters."[29] In 1789, the Qianlong Emperor loosened laws on trafficking, including concubinage– citing it as a way for the richer to "[share] their means with the poor."[30] Women who sold themselves as concubines to help their husbands or families from starving were seen as filial.[31] Since a woman's job was an "inner helper" to the family, she would be the one to sell herself into a new family. Contracts made a concubine considered "viable," which determined the punishment of her murderer.[32] Since women would be sent to households and not vice-versa, women were most often concubines that would be accepted into a household, even if begrudgingly. As such, they were considered part of the household dynamic. Since the legality of concubines were ambiguous at worst, especially if contracted, a man having multiple lovers was acceptable. A woman taking any lover who is not her husband was punished severely with one hundred blows of bamboo, the same punishment Chang received for murdering someone. The sentence a woman gets for adultery being the same as what a man gets for killing his concubine shows the gap in respect between husbands and wives. Mrs. Liu from case 160.15 received the highest punishment of any of the four cases: slicing to death. Though her crime was the only one judged as premeditated, she still would not have received such a sentence had she not killed her father-in-law to cover up adultery.

The men from case 167.5 beat their wives to death for supposedly insulting their parents in law, but only because the mothers did not submit a formal complaint the two were sentenced to strangulation. Had they, their original sentencing of one hundred blows would have been

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[29] Hsieh Bao Hua, *Concubinage and Servitude in Late Imperial China* (Lanham: Lexington Books, 2014), 11.

[30] Hua, *Concubinage and Servitude,* 19.
[31] Hua, *Concubinage and Servitude,* 13.
[32] Hua, *Concubinage and Servitude,* 21.

followed through. Both cases show the hierarchy of husbands over wives and parents over children. Had there been proof that the reason for the two husbands killing their wives was the wives insulting their mothers-in-law, the punishment would have been the same as the punishment for adultery. Because there was no concrete proof, they were sentenced to the killing of their wives without reason. A mere insult to their parents preventing a death sentence shows how low wives were in the family hierarchy, as does Liu's sentencing for convincing her lover to kill her father-in-law. The involvement of parents drastically changes the outcome of a case. Similarly, Chang of case 167.11 would have been sentenced to three years of penal servitude for killing his concubine had she not insulted his mother. Because she did, his sentence was instead one hundred blows. Family involvement in cases took priority over most other factors.

Gender roles in Late Imperial China were rooted in the family unit. Confucianism's filial piety was the driving factor of most social interaction, especially inside the home. As a result, gender roles were not only designated by sex but what relation a person had to the family. Since a wife was the outsider coming in and a woman, she was the lowest of the hierarchy. The parents of the husband, as his elders, were the highest standing. These roles, based on gender and age, were monumental in determining Qing law in the late eighteenth and early nineteenth centuries. Homicide law precedent was primarily based on if the crime was between family members and which ones were killed. Husbands killing their wives mattered less than a wife killing her husband; and a mother killing her daughter-in-law was less severe than a daughter killing her mother-in-law. Confucian gender ideas influenced what people were sentenced for and how.

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