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THE POWER OF MERCY: AMNESTY POLICIES IN FUGITIVE CASES IN THE QING DYNASTY

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Abstract A new statute, "Hiding New and Old Fugitive Slaves of Manchus," was added to the first version of the Qing code in 1647, and this statute surprisingly regulated that any offenders would be excluded from any amnesties. This is especially noteworthy because, according to both Ming and Qing codes, only severe crimes, such as treason and rebellion, were excluded from any amnesties. Previous scholars have not considered why the statute excluded any amnesties, nor have they analyzed how this amnesty policy was implemented in practice. This article contends that the exclusion did not arise from Manchu tradition. Instead, it was an exceptional response to the norms of amnesties in the Ming and Qing codes. Because the fugitive problem, involving slaves of Manchus fleeing from the banner system, endangered Manchus' interests, the Qing court was compelled to exclude fugitive criminals from amnesties. However, the Qing court did not strictly apply the amnesty policy of this statute. Criminals in fugitive cases were sometimes pardoned because of amnesties during the Dorgon regency period. Dorgon, Shunzhi, Oboi, and Kangxi all initially excluded those harboring fugitives from amnesties, but later changed their amnesty policies in this regard. Even though the crime of harboring fugitives became a permanent symbol of Manchu rule and was recorded in every emperor's enthronement edict from Kangxi to Xuantong, the Qing court gradually came to accept norms concerning amnesties as practiced in Han society and treated fugitive cases as ordinary court cases during and after the Kangxi emperor's reign.

Keywords amnesty policies, fugitive slaves, fugitive law, Manchu, Qing dynasty

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INTRODUCTION

During the Qing dynasty (1644–1911), Manchus, an ethnic minority from northeast China, ruled China. In order to rule the millions of people constituting the Han population, Manchus in many ways adopted Ming institutions. The first version of the Qing code, promulgated in 1647 (hereafter the Shunzhi Qing code), is considered almost a copy of the Ming code. However, a new statute in the Shunzhi Qing code, "Hiding New and Old Fugitive Slaves of Manchus" 隐匿满洲逃亡新旧家人, marked a significant difference between the Qing and Ming codes.[1] This statute excluded offenders in fugitive slave cases from any amnesties.[2] This was a noteworthy exception since, according to the amnesty statute on "Crimes That Shall Not Be Pardoned under the General Amnesty" 常赦所不原 in both the Ming and Qing codes, only severe crimes with some of which being committed deliberately, such as treason, rebellion or homicide, were excluded from general amnesties.[3] Moreover, no other statutes or substatutes that dealt with specific crimes in the Ming and Shunzhi Qing codes stipulated that offenders were excluded from amnesties.[4]

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[1] ZHENG Qin, 顺治三年律考 (*An Examination of the Qing Code of the Third Year of the Shunzhi Reign Version*), 18(1) 法学研究 (Chinese Journal of Law), 148–149 (1996). ZHENG Qin & ZHOU Guangyuan, *Pursuing Perfection: Formation of the Qing Code*, 21(3) Modern China, 318–319 (1995). HU Xiangyu, "逃人法"入顺治律考——兼谈"逃人法"的应用 (*A Study on Adding the Fugitive Regulations to the Qing Code: And Talking about the Application of the Fugitive Regulations*), 3 清史研究 (The Qing History Journal), 111–112 (2012).

[2] Ganglin ed. 大清律集解附例 (*Statutes of the Great Qing with Collected Commentaries and Appended Substatutes*), Columbia University East Asia Library (New York), at Vol. 4: 7–9 (1646).

[3] JIANG Yonglin trans. *The Great Ming Code / Da Minglü*, University of Washington Press (Seattle), at 27 (2005). See Ganglin, Id. at Vol. 1: 20. WANG Hongzhi & LI Jianyu eds. 顺治三年奏定律 · 大清律集解附例 (*The Code Commissioned in 1646 Statues of the Great Qing with Collected Commentaries and Appended Substatutes*), in 中国珍稀法律典籍续编 (*A Continued Compilation of Chinese Rare Legal Codes*), Vol. 5, Heilongjiang People's Publishing House (Harbin), at 134 (2002).

[4] Even statutes that dealt with crimes such as treason or rebellion did not state that any offenders would be excluded from amnesties — such provisions were in the statute on "Crimes That Shall Not Be Pardoned under General Amnesty." See JIANG, Id. at 154–155. See Ganglin, fn. 2 at Vol. 18: 1–2. There were articles in both Ming and Shunzhi codes stating that certain penalties would be enforced with no prospect of amnesties, for example, stipulations from statutes on "Families of Those Punished by Life Exile" 流囚家属, "Incorrectly Deciding Penalties before Amnesties" 赦前断罪不当 and on "Hearing That There Will Be Amnesties and Deliberately Committing Crimes" 闻有恩赦而故犯. These stipulations dealt with certain categories of crimes or penalties, not specific crimes. See JIANG, Id. at 26, 239. See Ganglin, fn. 2 at Vol. 1: 19–20; Vol. 28: 23–24.

Furthermore, the amnesty statute on "Crimes That Shall Not Be Pardoned under the General Amnesty" granted the emperor the power to issue decrees of amnesty that could temporarily pardon certain crimes or allow for lighter penalties. This provision confirmed the emperor's "arbitrary power" in not being bound by provisions of the code — he was the one person above any laws. The amnesty policy in the fugitive statute, of course, was never intended to confine the exercise of the emperor's power. It thus raised an interesting question. Did the emperor pardon crimes in fugitive slave cases or reduce the penalties? If the emperor did pardon crimes in fugitive slave cases, it showed he was willing to disregard the amnesty policy in the fugitive statute. This turn would raise a further question as to why the fugitive statute excluded criminals from amnesties in the first place. The application of the amnesty policy in the fugitive statute deserves further study.

Previous scholars have not considered these questions. Some scholars have considered that, because slaves played an important role in Manchu society and many slaves escaped from the banner system, the Qing court added this fugitive statute to the Qing code to deter slaves from attempting to escape.[5] HU Xiangyu has claimed that the fugitive statute derived from Manchu law, and he also has noted the fact that its amnesty policy differed from amnesty policies embodied in the Ming and Qing codes.[6] Previous scholars, however, have not analyzed whether the policy that offenders in fugitive slave cases be excluded from amnesties was from Manchu tradition or whether it was an exceptional intervention to deter slaves from escaping after 1644. Furthermore, it can be asked whether the Qing court ever excluded criminals in fugitive slave cases from any amnesties.

Through drawing on both Qing archives and official texts, this article seeks to address these various questions. It compares the differing amnesty policies in the fugitive statute and other articles of the Qing code, analyzes the amnesty policies in practice, and traces the discrepancies between Han and Manchu legal principles as revealed through changes in the amnesty policies regarding fugitive slaves. This article contends that the amnesty policy in the fugitive statute was not a Manchu tradition. Rather, it was exceptional in relation to the norms of amnesties in both the Ming and Qing codes. Because the fugitive problem, involving slaves of Manchus fleeing from the banner system, endangered Manchu interests, the Qing court was compelled to exclude fugitive cases from amnesties. However, the Qing court did not apply this statute strictly. During the reigns of regent Dorgon and Shunzhi, criminals in fugitive cases sometimes either received reduced penalties or were granted amnesties. Even though the crime of harboring fugitives was

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[5] SU Yigong, 明清律典与条例 (*Codes and Substatutes in the Ming and the Qing Dynasites*), China University of Political Science and Law Press (Beijing), at 156, 159–160 (2000). HU Xiangyu, *The Evolution of Early Qing Regulations on Fugitive Slaves*, 46 Modern China, 3–4, 8–9 (2020), available at https://journals.sagepub.com/doi/full/10.1177/0097700419890391 (last visited Dec. 16, 2019).

[6] See HU, Id. at 9, 11.

recorded in enthronement edicts and had become a permanent feature of the Qing court from the Kangxi emperor's reign (1661–1722), with every emperor refusing to pardon the crime of harboring fugitives in his enthronement edict, the Qing court gradually came to accept norms concerning amnesties as practiced in Han society where the fugitive problem was much less important. This article thus seeks to explore how specific Manchu concerns concerning the application of amnesties influenced regulations on fugitives and how those concerns had a steadily diminishing effect on enforcing exclusions.

In this article, "fugitives" refer to banner slaves who had escaped from the banner system during the early and middle Qing dynasty. Amnesties included two types. In one type, the emperor granted pardons or reduced penalties for certain groups of criminals in response to good events (such as a major victory in war) or bad events (such as natural disasters). In the other type, the emperor reduced or quashed penalties for specific criminals regardless of the codified laws. In both types of amnesties, criminals might either receive reduced penalties or be fully amnestied. In all cases, the decision to issue an amnesty came from the emperor. The term *she* 赦 in Chinese often fits the first definition of amnesty.[7] The second type of amnesty 减免 reflected the emperor's "arbitrary power," although, as this article demonstrates, while the emperor's decision to reduce penalties might go beyond the law, such a decision was always conditioned by social realities and Qing ideologies. The distinction between the two types of amnesty was not always clear. For example, according to the regulations of the Summer (or Hot Weather) Assizes in the Shunzhi period, criminals liable for punishment through being beaten using light stick could be forgiven and those liable for punishment through penal servitude or exile could be punished at one less severe degree. However, for criminals facing capital punishment, only cases deserving of compassion and doubtful cases would be reconsidered case by case by the Three High Courts of Justice 三法司 (Board of Punishments 刑部, the Censorate 都察院, the Grand Court of Revision 大理寺) and only the emperor could make the final judgments.[8] Numerous grand amnesties 大赦 showed a similar mechanism.

I. SPECIFICITIES OF THE AMNESTY POLICY IN THE FUGITIVE STATUTE

It was exceptional that the Shunzhi Qing code excluded fugitive cases from any amnesties. This amnesty policy violated established principles concerning amnesty in both the Ming and Qing codes applied in the Shunzhi period. First, there was already a statute in both the Ming and Qing codes that dealt with regular runaway slaves. This statute, "Receiving and Retaining Lost or Stray Male or Female Children" 收留迷失子女,

[7] Brian McKnight, *The Quality of Mercy: Amnesties and Traditional Chinese Justice*, University of Hawaii Press (Honolulu), at xi (1981).

[8] Id. at 103–104. AKAGI Mieko, 论清代前期的热审制度 (*On the Summer Assizes in the Early Stage of the Qing Dynasty*), 10 法律史评论 (*Legal History Review*), 7, 12 (2018).

dealt with stray children, including both commoners and slaves. It stipulated that if persons hid stray persons (including slaves and commoners) in their home, they would be punished by receiving 80 blows of the heavy stick, and that if persons took runaway slaves as their slaves, they would be punished by penal servitude for two years as well as with 80 blows of the heavy stick.[9] It is particularly noteworthy that this statute did not mention any amnesty policies, and that the punishments for harboring fugitives were much less severe than those stipulated in the fugitive statute. Second, the amnesty policy in the fugitive statute violated the amnesty principles stipulated in the amnesty statute on "Crimes That Shall Not Be Pardoned under the General Amnesty" in both the Ming and Qing codes. This amnesty statute stated that in cases of "true crimes" 真犯, such as any of the Ten Abominations, theft, arson, forcible robbery 强盗, kidnapping or kidnapping and selling or seducing persons, knowing the circumstances of a crime and deliberately releasing criminals, conniving with criminals, and hiding or guiding criminals [to escape], offenders should not be pardoned regardless of an amnesty. In a further precision, it was explained that anyone who was punished because of crimes deliberately undertaken should not be pardoned despite an amnesty. Through this logic, it was reasonable that fugitive slaves were excluded from grand amnesties. However, this amnesty statute also stated that offenders who negligently or mistakenly committed crimes or who were punished through implication in the crimes of others could be pardoned under an amnesty.[10] The fugitive statute conflicted with these provisions, as those harboring fugitives in fugitive cases were all excluded from amnesties even if they did not know the fugitive slaves' identity. Even worse, a person might not have known whether his or her neighbors had harbored a fugitive slave, but could still be implicated, and this type of crime was excluded from amnesties if the neighbors had indeed harbored a fugitive slave.

The amnesty policy in the fugitive statute was in line with the statute's other specificities that reflected the statute's Manchu roots.[11] ZHENG Qin has claimed that the statute revealed the importance of the issue of runaway slaves for Manchu rulers.[12] The fugitive statute treated the crimes in fugitive cases as unpardonable, as severe as any of the crimes of the Ten Abominations because slaves played such an important role in Manchu society. According to the fugitive statute, harborers who hid or accommodated fugitive banner slaves were punished by decapitation and confiscation of family property (family members were considered property) and the neighbors of those harboring fugitive slaves who did not disclose relevant information were sentenced to exile to a frontier area as well as having to undergo 100 whip lashes, but fugitive slaves themselves received the lesser punishment of only 100 whip lashes (and would be returned to their owners). This

[9] See JIANG, fn. 3 at 72. See Ganglin, fn. 2 at Vol. 4: 6.

[10] See JIANG, Id. at 27. See WANG & LI, fn. 3.

[11] See HU, fn. 5 at 9–10.

[12] See ZHENG & ZHOU, fn. 1 at 319.

statute violated the Han legal principle of proportionality between crime and punishment embodied in both the Ming and Qing codes.[13] As Manchus needed slaves, the statute treated harborers rather than slaves as the principal culprits. Since slaves were the property of their owners (Manchus), it was understandable that the statute punished these dehumanized slaves relatively lightly. In summary, as a legal provision developed from pre-1644 Manchu society, the fugitive statute served the interests of Manchus, representing a specific legal response to distinctive Manchu concerns within the Qing code.

II. AMNESTIES AND FUGITIVE CASES BEFORE 1644

However, pre-1644 sources demonstrate that it was not a tradition to specifically exclude fugitive cases from amnesties in Manchu society, as pre-1644 grand amnesties did mention fugitive cases but never excluded them from the amnesty.

According to the *Shilu* 实录, Hong Taiji issued six grand amnesties, and the Shunzhi emperor issued one before Qing troops took Beijing in 1644. Four of them mentioned fugitive cases. The first grand amnesty was issued in 1636, and it stipulated that if persons hid persons and properties 人口财物 they had to return the persons or properties to their original owners and they (the harborers) would not be charged with a crime.[14] One year later, another grand amnesty also stipulated that if a fugitive was recognized by another person, the fugitive should be returned to his or her owner and the other person would be exempt from punishment.[15] A grand amnesty in 1640 clearly stipulated that crimes of harboring and stealing would all be pardoned.[16] The three other grand amnesties issued by Hong Taiji did not mention fugitive cases at all.[17] In October 1643, in order to celebrate Shunzhi's enthronement, the Qing court issued a grand amnesty and clearly stipulated that the crime of harboring would be pardoned and that if fugitives were recognized by their original owners and returned to their original owners, the slaves would be exempted from penalties.[18] None of these grand amnesties excluded fugitive cases. Four of them positively exempted either harborers or fugitives from punishments — these facts indicated that fugitives were an issue in Manchu society.

In legal cases found in archives, it was not unusual for criminals to receive lighter penalties or to be exempted from penalties. Previous scholars have noted that the

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[13] See HU, fn. 5 at 10.

[14] 太宗文皇帝实录 (*Veritable Records of the Taizong Emperor*), in 清实录 (*Veritable Records of the Qing Dynasty*), Vol. 2, Zhonghua Book Company (Beijing), at Vol. 28: 369 (1985).

[15] Id. at Vol. 37: 487.

[16] Id. at Vol. 53: 707–708.

[17] Id. at Vol. 52: 697–698; Vol. 63: 865; Vol. 64: 885.

[18] 世祖章皇帝实录 (*Veritable Records of the Shizu Emperor*), in 清实录 (*Veritable Records of the Qing Dynasty*), Vol. 3, Zhonghua Book Company (Beijing), at Vol. 1: 33 (1985).

Manchus did not decree codified laws before 1644 and that the emperor (or khan) played an important role in adjudicating cases.[19] As far as fugitive cases are concerned, HU Xiangyu has documented that the emperor often reduced penalties for both harborers and fugitives.[20] In other words, fugitives and harborers were not unpardonable criminals.

In short, Manchus did not exclude crimes involving fugitive cases from amnesties before 1644. On the contrary, fugitives and those harboring them were often exempted from punishment through grand amnesties, and both types of offense could receive reduced penalties in practice.

III. AMNESTIES AND FUGITIVE CASES DURING THE DORGON REGENCY (1644–1650)

Even though the Qing dynasty in 1644 was under the regency of Dorgon (1612–1650) and Jirgalang (1599–1655), Dorgon was the more powerful of the two. It was under Dorgon's authority that the Qing court decided to add the fugitive statute to the Qing code, but the amnesty policies regarding fugitive cases were never unchanging during this period.

In June 1644, in order to win sympathy and gain legitimacy among the newly conquered Han population, the Prince Regent Dorgon issued an edict to pardon all criminals. It stated that crimes committed before June 6, 1644, regardless of whether they had occurred in Beijing or in other regions, whether they were severe or trivial, whether they had been disclosed or not and whether the cases had been adjudicated or not, should all be pardoned. This amnesty edict made no mention of fugitive cases.[21] Since Qing troops had entered Beijing only a few days beforehand, pacifying the Han population had become the most immediate task and the fugitive issue was not on Dorgon's agenda.

The Qing court soon changed its amnesty policy towards fugitive cases, with the new policy regulating that harborers would be pardoned only under certain conditions. In celebrating the Shunzhi emperor's enthronement in Beijing (he had already been enthroned in Shengjing in 1643), the Qing court issued an edict pardoning most categories of crimes committed before October 30, 1644. Similar to the amnesty statute in the Ming code, this edict excluded crimes such as intentional homicide, treason, rebellion, and capital crimes related to the Ten Abominations from pardoning, but it clearly stated that criminals who had harbored governmental or commoners' properties, persons or livestock were permitted to voluntarily confess their crimes and that such persons would be pardoned after their confession. Equally importantly, the edict also stated that if the

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[19] ZHOU Yuanlian & ZHAO Shiyu, 皇父摄政王多尔衮全传 (*A Comprehensive Biography of Father of the Emperor, Prince Regent Dorgon*), Jilin Literature and History Press (Changchun), at 323 (1986). ZHANG Jinfan & GUO Chengkang, 清入关前国家法律制度史 (*An Institutional History of the Qing Juridical System before 1644*), Liaoning People's Publishing House (Shenyang), at 442, 594 (1988).

[20] See HU, fn. 5 at 6–7.

[21] See 世祖章皇帝实录 (*Veritable Records of the Shizu Emperor*), fn. 18 at Vol. 6: 68.

harborers were exposed by others, their crimes would be excluded from the amnesty.[22] Harborers in fugitive slave cases were subject to this provision. This was noteworthy, since previous amnesty policies had never specified situations in which harborers in fugitive cases were not to be pardoned. This amnesty policy was in accordance with the provisions in the fugitive statute, which stated that harborers would not be penalized if they confessed.[23] The enthronement edict and Dorgon and Jirgalang's edicts indicated that the fugitive issue had become a key issue in Qing politics shortly after the Qing court established itself in Beijing.[24] On May 10, 1645, the Qing court issued an edict of grace 恩诏 towards people in newly conquered regions such as Shaanxi Province, which reiterated the amnesty policy for harborers contained in the enthronement edict.[25]

As greater numbers of banner slaves fled from the banner system, the Qing court promulgated new regulations on fugitive slaves in June 1646.[26] The Qing court then subsequently revised these 1646 regulations on fugitive slaves, creating a fugitive statute that was added to the first version of the Qing code in 1647.[27] As discussed, the fugitive statute included a provision that excluded criminals in fugitive slave cases from amnesties, although, in one case from July 1646, officials had stated that harboring fugitive slaves was a crime excluded from the amnesty.[28]

Dorgon was not restricted by the amnesty policy in the fugitive statute. On December 24, 1648, just over a year after the promulgation of the Qing code, the Qing court issued an edict stating that if a fugitive slave voluntarily returned before October 6, 1649, any harborer or neighbor of a harborer would be exempt from penalties (fugitive slaves themselves were not mentioned); if a fugitive slave returned on or after October 6, 1649 or was revealed by others before that date, the case would be excluded from the amnesty — all such criminals would be punished as the fugitive statute and other fugitive regulations stipulated.[29] Even though this amnesty restricted the scope of pardons in fugitive cases, it

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[22] See 世祖章皇帝实录 (*Veritable Records of the Shizu Emperor*), Id. at Vol. 9: 93–94.

[23] See Ganglin, fn. 2 at Vol. 4: 8.

[24] See 世祖章皇帝实录 (*Veritable Records of the Shizu Emperor*), fn. 18 at Vol. 7: 76–77; Vol. 8: 86.

[25] Id. at Vol. 15: 135–136. An edict was issued in 1647 after the Qing court pacified Zhejing and Fujian provinces, which stipulated that if powerful persons and others 势豪人等 in the local communities there accepted to submit harbored persons or properties 投献产业人口, they would be permitted to confess and they would be pardoned after confession; if they were disclosed by others, they would be excluded from amnesties. This amnesty policy continued when the Qing court issued an edict concerning the newly conquered Guangdong Province in 1647. The principle here was similar to that in the enthronement edict, but the target was different, probably because fugitive slaves were not a problem in South China. Id. at Vol. 30: 249, 251; Vol. 33: 272–273.

[26] Id. at Vol. 26: 218–219.

[27] See HU, fn. 5 at 8–9.

[28] 内阁大库档案 (*Grand Secretariat Archives*), at the Institution of History and Philology, Academia Sinica (Taipei), at 087563 (cited with file number).

[29] See 世祖章皇帝实录 (*Veritable Records of the Shizu Emperor*), fn. 18 at Vol. 41: 328, 330.

did pardon criminals (harborers and their neighbors) under certain conditions.

The harsh fugitive statute, including its amnesty policy, was in fact provisional. The Qing court revised the fugitive regulations on fugitive slaves in April 1649, and the new regulations significantly reduced the penalties for harborers and their neighbors. If a fugitive returned voluntarily, or a harborer returned a fugitive, nobody would be punished; if a fugitive slave was disclosed by others, the harborer would be exiled, and his neighbors would be punished with 30 blows of the heavy stick 责三十板.[30] This revision indicated that the Qing court did not punish criminals in fugitive cases as severely as the fugitive statute stipulated. According to the 1649 fugitive regulations, harboring a fugitive slave was not a capital crime. In line with this tendency, a grand amnesty on September 5, 1650 did not exclude fugitive cases.[31] In other words, all criminals in fugitive cases were pardoned.

In legal cases from this period, it was not unusual for harborers to receive reduced penalties. For example, a widow ZHANG Shi 张氏 had married a fugitive slave in 1646. In 1648, the situation was disclosed after the fugitive had been caught by his master. The Board of Punishments stated that ZHANG Shi had violated the Qing code and should be sentenced to decapitation. However, the Board suggested sentencing her to 40 blows of the heavy stick 责四十板 because she was an ill-informed and elderly woman 老妇无知. The Board's sentence was approved by the emperor (or the Prince Regent).[32] This was not a unique case. Both the Board of Punishments and the emperor exempted female harborers from the death penalty either because they were ill-informed[33] or elderly and ill-informed.[34]

The Board of Punishments also exempted elderly male harborers from the death penalty, and the emperor always approved the reduced sentences. Both SUN De 孙德 and TIAN Shenghua 田圣化 harbored fugitive slaves in 1647. The Board of Punishments initially sentenced SUN De to decapitation, but stated that because TIAN Shenghua was more than seventy he would be exempt from the death penalty. The Board's sentence was approved by the emperor.[35] In other such cases, elderly harborers were also exempted

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[30] See 世祖章皇帝实录 (*Veritable Records of the Shizu Emperor*), Id. at Vol. 43: 345–346.

[31] 大清诏令八卷 (*Edicts of the Great Qing, Eight Volumes*), in 续修四库全书 (*Continuation to the Complete Library in the Four Branches of Literature*), Vol. 458, Shanghai Classics Publishing House (Shanghai), at 465 (2002).

[32] 内阁题本—北大移交题本 (*Grand Secretariat Routine Memorials — Routine Memorials Transferred from Peking University*), at the First Historical Archives of China (Beijing), at 2087-9 (cited with file number).

[33] Id. at 2087-22.

[34] Id. at 2087-27.

[35] Id. at 2087-4.

from the death penalty.[36]

In some cases, the emperor exempted harborers from the death penalty without explanation, but the reasoning for the exemptions was almost always self-evident. In 1648, WANG Kaijiang 王开江 harbored a fugitive woman who had been his former wife. The Board of Punishments stated that WANG "knows the sentiment between husband and wife but does not care about the law" and initially sentenced WANG to decapitation. On receiving the Board's recommendation, the emperor said that "WANG Kaijiang is to be exempt from the death penalty and be beaten with 40 blows of the heavy stick." The emperor further stated that both WANG and his wife ZHANG were to become slaves and serve ZHANG's master.[37] In another 1648 case where a civilian had harbored his brother (a fugitive slave), the harborer was sentenced to decapitation by the Board of Punishments, but the emperor also exempted him from the death penalty.[38] In these two cases, the harborers and the fugitives had close personal or familial relationships. These cases were exceptions, as both the Board of Punishments and the emperor usually sentenced to death those harborers who had very close relationships, such as parent-children or husband-wife relationships, with fugitive slaves. These exceptions reflected the emperor's arbitrary power — he could change the sentences proposed by the Board of Punishments regardless of the stipulations of the fugitive statute.

In short, even though it was during the Dorgon regency that the Qing court established the fugitive statute and added it to the first version of the Qing code, grand amnesties in this period seldom fully excluded criminals in fugitive cases. Harborers were often singled out in these amnesties, but they were either completely exempted from punishments or were pardoned under certain conditions. In practice, it was not unusual for the emperor and the relevant sentencing authorities to reduce the penalties for harborers.

It is also important to note that, even though the fugitive statute stated that criminals in fugitive slave cases were excluded from any amnesties, only harborers (and sometimes harborers' neighbors) were mentioned in the above amnesties. In line with the regulations on fugitive slaves that imposed differing punishments on fugitive slaves and their harborers, the Qing amnesty policies under the Dorgon regency also tended to punish harborers more harshly than fugitive slaves. Since harborers were generally Han and fugitive slaves were the property of Manchus, the exclusion of harborers from the amnesties reflected the Manchu character of Qing rule. That is, protecting the slaves of Manchus was more important in the adjudication of fugitive cases than other possible

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[36] Id. at 2087-15; See 内阁大库档案 (*Grand Secretariat Archives*), fn. 28 at 087732, 087736.

[37] See 内阁题本—北大移交题本 (*Grand Secretariat Routine Memorials — Routine Memorials Transferred from Peking University*), fn. 32 at 2087-10.

[38] See 内阁大库档案 (*Grand Secretariat Archives*), fn. 28 at 087737.

considerations.

IV. AMNESTIES AND FUGITIVE CASES UNDER JIRGALANG AND SHUNZHI

After the regent Dorgon died on the last day of 1650, the Shunzhi emperor nominally assumed power but in reality Manchu nobles headed by Jirgalang ruled the realm from 1651 to 1652 because the emperor was too young, being less than fifteen years old. Even though the Qing court did not change the regulations on fugitive slaves until 1652, Jirgalang did change the amnesty policy toward fugitive cases in 1651 and tended to punish harborers more harshly. On February 1, 1651, the Qing court issued a grand edict of grace to celebrate the Shunzhi emperor's personal rule 亲政, which included a grand amnesty that nonetheless excluded the crime of harboring fugitive slaves.[39] In another grand amnesty issued on October 5, 1651, the Qing court reaffirmed that the crime of harboring fugitive slaves was excluded from the amnesty.[40]

When the Shunzhi emperor began to rule directly, both the fugitive regulations and the amnesty policies on fugitive cases underwent considerable change. After vigorous debate between Manchu and Han officials, the Qing court revised the regulations on fugitive slaves in October 1654 and these regulations imposed harsh penalties on criminals in fugitive cases, especially on harborers.[41]

When the emperor issued a grand amnesty on August 4, 1654, he continued Jirgalang's policy on fugitive cases and excluded harborers.[42] Soon after, Shunzhi issued a new grand amnesty on December 24, 1654, which specified that harborers were to be pardoned if they had committed the offense before the day the amnesty was proclaimed and their cases had not been concluded.[43]

During the Summer Assizes period in 1655, the emperor sometimes mitigated the death penalty for harborers. On July 27, 1655, the Three High Courts considered a case in which a Han commoner YE Da 叶大 hid a fugitive. Han and Manchu officials in the Three High Courts expressed differing opinions concerning YE Da. The Manchu officials wanted to sentence YE Da to strangulation after the assizes in accordance with the fugitive law (the law itself was not cited). The Han officials, however, argued that because YE Da had not known the fugitive's identity when he had accommodated him, YE Da's situation deserved sympathy. The Han officials further stated that, according to the regulations of the Summer Assizes, cases involving those guilty of serious crimes (*zhong fan*) 重犯 but deserving of compassion should be sent to the emperor for

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[39] See 世祖章皇帝实录 (*Veritable Records of the Shizu Emperor*), fn. 18 at Vol. 52: 410.

[40] Id. at Vol. 59: 469–470.

[41] See HU, fn. 5 at 12–19.

[42] See 世祖章皇帝实录 (*Veritable Records of the Shizu Emperor*), fn. 18 at Vol. 84: 662–663.

[43] Id. at Vol. 87: 684.

consideration. The Han officials suggested exile to Ningguta as a punishment as well a beating of 40 blows of the heavy stick. Shunzhi approved the punishment proposed by the Han officials and exiled YE Da to Ningguta.[44]

On August 26, 1656, Shunzhi issued a grand amnesty that dramatically changed the amnesty policies on fugitive cases. The amnesty specified that fugitives, harborers, and any criminals involved in fugitive cases were not to be pardoned. This was noteworthy, because previous amnesties from Jirgalang's time in power onwards had only excluded harborers, whereas this amnesty excluded fugitives and other implicated criminals. This amnesty showed that the Shunzhi emperor wanted to treat fugitives and their harborers proportionately — for the first time, fugitive slaves were excluded from the amnesty.[45]

However, it is particularly noteworthy that, even though harborers were to be punished by strangulation after the assizes in accordance with the precedents set in 1654 and that their final sentence would be decided at the Court Assizes 朝审, the emperor permitted the execution of very few harborers (perhaps none, although this is not completely clear) from 1655 to 1657. First, the emperor suspended the Autumn Execution 秋决[46] in 1655 and 1656.[47] Second, the emperor decreed a grand amnesty on January 19, 1657, which reduced punishments by one degree for those who had received a death penalty after the assizes and were categorized as deserving execution 情实 during the Court Assizes.[48] Harborers were also to receive one degree less severe punishment in accordance with this amnesty. The legal cases examined showed that in applying this amnesty, harborers were sentenced to exile instead of strangulation after the assizes.[49] All harborers, regardless of whether their cases had been reconsidered during the Court Assizes in 1655 and 1656, received a punishment one degree less severe than that of the death penalty.

The emperor soon revised the regulations on fugitive slaves and new regulations reduced the penalties for harborers. Instead of receiving a death sentence, harborers were to be enslaved and their faces tattooed.[50] To that extent, the emperor thus became more lenient towards harborers.

The emperor issued another amnesty on April 23, 1657, which excluded fugitives,

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[44] See 内阁大库档案 (*Grand Secretariat Archives*), fn. 28 at 087597.

[45] See 世祖章皇帝实录 (*Veritable Records of the Shizu Emperor*), fn. 18 at Vol. 102: 793–795.

[46] Criminals who received the death penalty would normally be executed in the coming autumn (or winter) season after reviews — this was known as the Autumn Execution. Most of these criminals would have had their sentences reviewed at the Autumn Assizes 秋审 or Court Assizes 朝审.

[47] See 世祖章皇帝实录 (*Veritable Records of the Shizu Emperor*), fn. 18 at Vol. 93: 731; Vol. 104: 811.

[48] Id. at Vol. 105: 816. Deserving execution was one of the outcomes of the Court Assizes. If the emperor approved this decision, the criminal would be executed.

[49] *E.g.* 内阁大库档案 (*Grand Secretariat Archives*), fn. 28 at 117519.

[50] See 世祖章皇帝实录 (*Veritable Records of the Shizu Emperor*), fn. 18 at Vol. 107: 838–839.

harborers, and any implicated criminals in fugitive cases.[51] However, the emperor subsequently tended to strictly implement the current regulations on fugitive slaves, and this was the last amnesty during the Shunzhi period that excluded fugitives, harborers, and implicated criminal in fugitive cases. The emperor showed his preferences in relation to fugitive cases by issuing a new amnesty on December 1, 1657, which *did not exclude any criminals in fugitive cases*.[52] Another amnesty on February 4, 1658 continued this approach towards criminals in fugitive cases.[53] The above two amnesties revealed that the Qing court, therefore, did not treat crimes related to fugitive slaves as unpardonable.

A grand amnesty from March 6, 1660 did not mention harborers or implicated criminals in fugitive cases (they thus would be pardoned as the amnesty stated), but specified that third-time fugitives would be exempt from the death penalty if they had fled before the amnesty day; if they had fled up to three times after this amnesty, they would be sentenced to death.[54] This amnesty appears to have been the last grand amnesty during the Shunzhi reign. Overall, Shunzhi tended to protect harborers by pardoning them in accordance with specific amnesty provisions.

V. AMNESTIES AND FUGITIVE CASES AFTER SHUNZHI

After the Shunzhi emperor died, four regents including Oboi took charge of the state, and the period from 1661 to 1669 has generally been known as the Oboi regency. According to the edict to celebrate the enthronement of the Kangxi emperor in 1661, the Qing court excluded crimes such as the Ten Abominations and the crime of harboring fugitives from the grand amnesty.[55] For the first time, the crime of harboring fugitives was put at the same level as crimes in relation to military secrets. This first grand amnesty indicated there was going to be a change in policy toward harborers during the Shunzhi reign.

However, the approach adopted in that initial amnesty proved to be an exception during the Oboi regency. In 1665, the Qing court issued a grand amnesty following an earthquake, which did not exclude any criminals in fugitive cases. Harborers and criminals implicated in the crime of harboring were all to be pardoned. Furthermore, the amnesty even reduced the penalties for fugitives.[56] The Qing court issued a grand amnesty on August 25, 1667 when Kangxi personally and nominally assumed power 亲政. This amnesty did not exclude any criminals in fugitive cases and even stated that "the crimes of fugitives were originally unpardonable, and now they will all be pardoned." Another grand amnesty on January 9, 1668 specified that crimes in relation to fugitives

[51] Id. at Vol. 108: 847.

[52] See 大清诏令八卷 (*Edicts of the Great Qing, Eight Volumes*), fn. 31 at 494–495.

[53] See 世祖章皇帝实录 (*Veritable Records of the Shizu Emperor*), fn. 18 at Vol. 114: 890.

[54] Id. at Vol. 131: 1014–1015.

[55] See 大清诏令八卷 (*Edicts of the Great Qing, Eight Volumes*), fn. 31 at 503.

[56] Id. at 508–510.

逃人事情 would be pardoned.[57] Historians generally agree that Oboi continued to dominate the Qing court until his arrest by the Kangxi emperor in 1669. The three above-mentioned amnesties pardoned criminals in fugitive cases — an indication that Oboi was of one mind with his predecessors in applying amnesty policies regarding fugitive cases.

Kangxi issued a grand amnesty on December 17, 1669, very shortly after he had Oboi arrested. It is interesting to note that this amnesty excluded harborers and implicated criminals in fugitive cases, although it appears to be the last amnesty to exclude harborers (and implicated criminals) in fugitive cases during Kangxi's reign. On June 22, 1670, the emperor issued his second grand amnesty which specified that "those who harbored fugitives and who were implicated in fugitive cases will all be pardoned."[58] From the sources, this appears to have been the last grand amnesty to mention fugitive cases in the Kangxi period, and it should be noted that it explicitly pardoned harborers.

It may seem surprising, therefore, that when the baby Puyi was enthroned in 1908, a grand amnesty was issued that excluded not only crimes such as the Ten Abominations and crimes in relation to military secrets but also the crime of harboring fugitives.[59] This amnesty policy was no different from that of the Kangxi emperor's enthronement edict issued in 1661. According to the *Shilu* 实录, all other post-Kangxi emperors excluded the crime of harboring fugitives from the grand amnesty in their enthronement edicts. The words of the amnesty policy in enthronement edicts from Qianlong to Guangxu were the same as those in the Kangxi enthronement edict: Crimes in relation to military secrets and the crime of harboring fugitives were not pardoned.[60]

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[57] Id. at 514, 517.

[58] 内秘书院档 (*Archives of the Inner Chancellery*), at the First Historical Archives of China (Beijing), at 07-05-05 (cited with file number).

[59] 宣统政纪 (*Records of Politics during the Xuantong Reign*), in 清实录 (*Veritable Records of the Qing Dynasty*), Vol. 60, Zhonghua Book Company (Beijing), at Vol. 2: 28 (1987).

[60] 高宗纯皇帝实录 (*Veritable Records of the Gaozong Emperor*), in 清实录 (*Veritable Records of the Qing Dynasty*), Vol. 9, Zhonghua Book Company (Beijing), at Vol. 2: 159–160 (1985). 仁宗睿皇帝实录 (*Veritable Records of the Renzong Emperor*), in 清实录 (*Veritable Records of the Qing Dynasty*), Vol. 28, Zhonghua Book Company (Beijing), at Vol. 1: 72 (1986). 宣宗成皇帝实录 (*Veritable Records of the Xuanzong Emperor*), in 清实录 (*Veritable Records of the Qing Dynasty*), Vol. 33, Zhonghua Book Company (Beijing), at Vol. 3: 112 (1986). 文宗显皇帝实录 (*Veritable Records of the Wenzong Emperor*), in 清实录 (*Veritable Records of the Qing Dynasty*), Vol. 40, Zhonghua Book Company (Beijing), at Vol. 2: 82 (1986). 穆宗毅皇帝实录 (*Veritable Records of the Muzong Emperor*), in 清实录 (*Veritable Records of the Qing Dynasty*), Vol. 45, Zhonghua Book Company (Beijing), at Vol. 6: 168 (1987). 德宗景皇帝实录 (*Veritable Records of the Dezong Emperor*), in 清实录 (*Veritable Records of the Qing Dynasty*), Vol. 52, Zhonghua Book Company (Beijing), at Vol. 3: 116 (1987). The Yongzheng emperor also issued a grand amnesty when he was enthroned, but the content of the amnesty was not clear. However, it can be safely concluded that the amnesty also excluded crimes of harboring fugitives since the emperor said that he simply issued an amnesty in accordance the "precedents" 例. 世宗宪皇帝实录 (*Veritable Records of the Shizong Emperor*), in 清实录 (*Veritable Records of the Qing Dynasty*), Vol. 7, Zhonghua Book Company (Beijing), at Vol. 1: 38; Vol. 2: 55–56 (1985).

The amnesty exclusion stated in the enthronement edicts regarding harboring fugitives was not typical of Qing amnesty policies, because other amnesties after the Kangxi reign usually did not mention crimes in relation to fugitive cases.[61] Besides the enthronement edicts, there appear to have been only two other amnesties that excluded the crime of harboring fugitives. One was issued in 1894 in order to celebrate the Empress Dowager's title of honor[62] and the second was issued in 1904 in order to celebrate the Empress Dowager's birthday.[63] Furthermore, excluding the crime of harboring fugitives from the amnesty, especially during the late Qing dynasty, would seem anachronistic since by that time fugitives did not pose a serious problem. Moreover, harboring fugitives was not a major crime.[64] The fact that excluding the crime of harboring fugitives from amnesties in enthronement edicts had become a tradition in the Qing dynasty indicated a fixing in ritual of an older understanding concerning the fugitive problem that derived from early Qing politics: Every new emperor had to emphasize and reenact what had become a nominal symbol of Manchu rule.

CONCLUSION

Excluding criminals in fugitive cases from amnesties was not a pre-conquest Manchu tradition. Instead, the amnesty policies towards fugitive cases showed that excluding harborers from amnesties was a provisional reaction to the fugitive problem from 1644 to

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[61] See 高宗纯皇帝实录 (*Veritable Records of the Gaozong Emperor*), in 清实录 (*Veritable Records of the Qing Dynasty*), Vol. 15, Zhonghua Book Company (Beijing), at Vol. 490: 159 (1986). 仁宗睿皇帝实录 (*Veritable Records of the Renzong Emperor*), in 清实录 (*Veritable Records of the Qing Dynasty*), Vol. 29, Zhonghua Book Company (Beijing), at Vol. 149: 1043 (1986). 宣宗成皇帝实录 (*Veritable Records of the Xuanzong Emperor*), Id. at Vol. 10: 200. 文宗显皇帝实录 (*Veritable Records of the Wenzong Emperor*), Id. at Vol. 74: 961. 穆宗毅皇帝实录 (*Veritable Records of the Muzong Emperor*), in 清实录 (*Veritable Records of the Qing Dynasty*), Vol. 51, Zhonghua Book Company (Beijing), at Vol. 373: 938 (1987). 德宗景皇帝实录 (*Veritable Records of the Dezong Emperor*), in 清实录 (*Veritable Records of the Qing Dynasty*), Vol. 55, Zhonghua Book Company (Beijing), at Vol. 266: 567 (1987).

[62] 德宗景皇帝实录 (*Veritable Records of the Dezong Emperor*), in 清实录 (*Veritable Records of the Qing Dynasty*), Vol. 56, Zhonghua Book Company (Beijing), at Vol. 347: 446 (1987).

[63] However, harboring fugitives was not unpardonable in implementing this amnesty. LIU Jinzao ed. 清朝续文献通考 (*Sequel to Comprehensive Examination of Literature of the Qing Dynasty*), The Commercial Press (Beijing), at 10015–10016 (1955).

[64] According to the 1743 督捕则例, the punishments for harborers ranged from beatings with heavy bamboo to penal servitude for three years. See 督捕则例 (*Regulations on the Bureau of Discipline and Supervising on Arrests*), reprint in 续修四库全书 (*Continuation to the Complete Library in the Four Branches of Literature*), Vol. 867, Shanghai Classics Publishing House (Shanghai), at 494 (2002). In 1800, one regulation stated that a harborer should receive a punishment one degree less severe than that of a fugitive. See 清会典事例 (*The Collected Institutes and Precedents of the Great Qing Dynasty*), 光绪朝 (Guangxu edition), Zhonghua Book Company (Beijing), at Vol. 855: 1280 (1991). Whereas fugitives were punished by lashing with a whip, harborers were punished by beating with heavy bamboo. In terms of punishment type, therefore, the crime of harboring fugitive was not considered a major crime in the late Qing dynasty.

1647, because of the severity of the fugitive problem at that time. The fugitive statute in the Qing code was short-lived and Dorgon did not apply the amnesty policy as set out in the fugitive statute. Both the regulations on fugitive slaves and the amnesty policies towards fugitive cases changed often during the personal rule of Shunzhi, which indicated a degree of internal disagreement in the Qing court regarding these matters. After Shunzhi's death, harborers were initially excluded from amnesties by both the Oboi regency and the Kangxi emperor, but subsequently the amnesty policies of the fugitive statute were not applied.

Beginning with the Shunzhi emperor's enthronement in Beijing in 1644, Dorgon, Shunzhi, Oboi and Kangxi all initially excluded harborers from amnesties, but they all eventually changed their amnesty policies toward harborers. The only exception was Jirgalang who strictly excluded harborers from amnesties, most likely due to his greater Manchu orientation, but he ruled for less than three years and his authority was not comparable to either his predecessors or successors. This phenomenon concerning initial exclusion and subsequent leniency towards harborers revealed that Qing rulers first had to satisfy Manchu interests but that, in the long run, they had to take into account the interests of the Han population. Even though the crime of harboring fugitives became a permanent symbol of Manchu rule and was recorded in every emperor's enthronement edict from Kangxi (Shunzhi's enthronement edict of 1644 also excluded harborers who did not voluntarily confess their crime) to Xuantong (1909–1911), the Qing court changed the regulations on fugitives in accordance with social realities. Over time, the highlighting of crimes concerning fugitive cases as excluded from amnesties became simply a nominal part of Qing enthronement edicts, providing a good example of the decline of the specific Manchu character of Qing law.