AGE, YOUTH, AND INFIRMITY IN THE LAW OF CH'ING CHINA*

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I. INTRODUCTION

Probably the most conspicuous single Confucian influence on imperial Chinese law is the principle of legalized inequality. Prior to the revolution of 1911, Chinese law endlessly differentiated its treatment according to individual rank, relationship, and specific circumstance. Entire social groups—notably the officials—enjoyed special legal privileges differentiating these groups from the great mass of commoners. Punishments were carefully graduated according to the social status of the wrongdoer and his victim. Especially within the family, hierarchy was highly stressed: an offense by a junior family member against a senior was punished more severely than the same offense committed outside the family, and *much* more severely than the same offense committed by a senior family member against a junior.¹

In the world of today, although the disastrous consequences of forced social inequality remain only too apparent, the *theory* at least of legalized inequality is no longer openly espoused save in a few countries. By saying this, I mean in no way to suggest that instances of sanctioned inequality never occur, even today, in Western law systems. Of course they do, as, for example, in laws of the sort providing harsher punishment for killing a policeman or other upholder of state authority than for an ordinary homicide. Nowhere as much as in pre-republican China, however, has the principle of legalized differentiation according to rank, relationship, and specific circumstance been so deliberately, systematically, and conspicuously enshrined. This

* This Article is to be included in a forthcoming volume entitled CHINA'S LEGAL TRADITION (J. Cohen, R. Edwards & Fu-mei Chen eds.). It is slightly abbreviated here, in particular, by omission of Appendices 3-6. In the forthcoming volume, these will include a List of References and a Glossary, providing the Chinese characters for all Chinese authors, titles, and terms cited in the text.

For permission to publish it in advance of the volume, grateful acknowledgement is made to Professor Cohen. The Article was originally prepared for the Conference on "History of Chinese Law" held in Bellagio, Italy, in August 1969, in which my close colleague and friend, Clarence Morris, also participated. For extensive and helpful comments and suggestions, I am much indebted to several of the conference participants, but above all to Mr. Edwards as an editor of the forthcoming volume.

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¹ For a detailed discussion, see D. BODDE & C. MORRIS, LAW IN IMPERIAL CHINA, EXEMPLIFIED BY 190 CH'ING DYNASTY CASES 29-38 (1967).

fact is not surprising in view of the enormous emphasis on hierarchical differentiation which has always characterized Confucian social thinking.

Before patting ourselves on the back, however, we should remember that there is a second side to the Confucian coin of hierarchy: Confucian particularism, when coupled with Confucian humanitarianism, leads to special legal provisions concerning weaker members of society who are guilty of crime. These are notably women, the aged, the young, and the infirm. In the codes of successive dynasties, women are discussed separately from the rest, and we shall not consider them in this study except for a few brief remarks in the concluding section. The other three categories, however, have been treated as a single unit in the codes since the earliest surviving T'ang Code of A.D. 653 and probably before. This makes it appropriate for us to study them jointly; the more so as apparently no comprehensive study of all three of them has yet been made.² Our study will be restricted to the Ch'ing dynasty (1644-1911), focusing on the Ch'ing Code of 1740, and on forty relevant cases of Ch'ing date (the great majority belonging to the early decades of the nineteenth century).

A. *The Statutes*

As arranged in the Ch'ing Code, the major laws dealing with the aged, the young, and the infirm comprise a single statute and nine sub-statutes under section 22 ("Monetary Redemption Permitted to the Aged, the Young, and the Infirm"), followed in section 23 ("Wrongdoing Committed Prior to Becoming Aged or Infirm") by one more statute without sub-statutes. Both statutes (but not the sub-statutes) are accompanied by an imperially-sponsored and therefore equally authoritative Official Commentary. Translations of the statutes, of the Official Commentary for the first statute but not the second, and of four out of the nine sub-statutes (the rest being irrelevant for our purpose), will be found in Appendix 1.

This Appendix also provides dates of origin for each item. The statutes themselves, with only trifling verbal changes, date back to the T'ang Code of 653, and their Official Commentary conforms closely to the corresponding passages of commentary found in the Ming Code of 1397 (the dynastic code immediately preceding the

² Special legal provisions for the treatment of the aged and the young existed already during the Han dynasty (206 B.C.-220 A.D.), and have been examined in 1 A. HULSEWÉ, *REMNANTS OF HAN LAW* 298-302 (1955). The third category, that of the infirm, has been studied with special reference to mental infirmity in Bünger, *The Punishment of Lunatics and Negligents According to Classical Chinese Law* in 9 *STUDIA SERICA* 1-16 (1950). Dr. Bünger's thesis is discussed at text accompanying notes 29-31 *infra*.

Ch'ing). As for the nine sub-statutes, the earliest (number 3) ultimately derives, with some verbal changes, from a passage of commentary in the corresponding section in the T'ang Code; the next earliest (number 1) is a replica of a sub-statute in the Ming Code; the remaining seven are all Ch'ing creations, variously dating from 1673 to 1818.

Of the nine sub-statutes, only the seventh (especially the second paragraph, dealing with homicide committed by children aged eleven to fifteen) is cited frequently enough in the forty cases discussed below to render it a really significant Ch'ing addition to legal theory on age, youth, and infirmity.³ The fifth sub-statute⁴ has some importance in that it restricts, for the period following its promulgation in 1745, the scope of legally defined "infirmity." For the most part, however, the Ch'ing jurists, like their predecessors, rely primarily for their handling of age, youth, and infirmity cases on what the all-important initial statute says on this subject.

On reading the statute and its commentary, we find that age and youth are each discussed under three levels or grades. Arranged in ascending order of importance, the levels begin with ages 70-79 (first degree of age) and 11-15 (first degree of youth); then come 80-89 (second degree of age) and 8-10 (second degree of youth), followed by 90 and above (third degree of age) and 7 and below (third degree of youth). For physical impairment there are only two levels or degrees. The first, "infirmity" (*fei chi*), is the correlate of the first degrees of age and youth, while the second, "incapacity" (*tu chi*), is the correlate of the higher two degrees of age and youth lumped together.

The extent of privilege granted to an offender varies not only according to his age or infirmity level, but also according to the seriousness of his offense. For certain major crimes—notably rebellion and treason—no privilege at all is accorded except possibly for children of seven years or less; the text is not explicit at this point. In most instances, however, the offender is permitted to substitute a payment of money (monetary redemption) for the statutory punishment. The sums involved (unspecified in this section of the Code) are relatively trifling: only 0.525 taels (ounces of silver), for example, for a capital offense. In certain instances, exemption from punishment is granted without the need for monetary redemption at all. However, as we shall see in detail later, the according of these privileges is by no means

³ The implications of this sub-statute are analyzed in detail at text accompanying notes 13-18 *infra*.

⁴ See text following note 25 *infra*.

invariable or automatic, but has to be individually determined in each case. In capital cases it almost always requires either the submission of a special petition to the throne for clemency or, less frequently, favorable judgment at the Autumn Assizes held annually in Peking.⁵

Why did the Chinese thus single out the aged, young, and infirm for special legal treatment? Two possible answers, the one pragmatic, the other moralistic, emerge from the forty legal cases whose analysis will form the main body of this study.⁶ In case 18 (dated 1792) the following practical justification for granting clemency to aged wrongdoers is found: "Their powers have already declined so that they are not in a position to repeat their offense. Hence clemency is especially applied to them." In case 21 (dated 1827), on the other hand, the special kinds of treatment accorded to the three categories of wrongdoers are described as "all of them examples of extra-legal humanity (*jen*).⁷ By "extra-legal" the writer certainly does not mean that the special kinds of treatment are in any way illegal. All he wants to say is that they are exceptions to ordinary legal procedure, being determined by a special group of laws whose promulgation has been motivated by considerations of humanity. He would not deny that within the particular social sphere covered by these particular laws, they operate just as regularly and "legally" as do the laws not motivated by such special considerations.

That Confucian humanitarianism was in fact the dominant and original reason why, long before the Ch'ing dynasty, the Chinese promulgated special laws on age, youth, and infirmity, becomes apparent as soon as we compare the Ch'ing Code's major statute on the

⁵ In addition to sections 22 and 23 of the Ch'ing Code, which are by far the most important pronouncements on the legal status of the aged, the young, and the infirm, there are a very few, relatively minor, further statements occurring elsewhere in the Code. They include: (1) that persons belonging to the second degree of age, youth, or infirmity, and by extension, the third degrees of age and youth, may not, except in cases of treason and a very few other major listed crimes, personally bring accusations to court against other people, though relatives may be delegated to do so on their behalf, TA CH'ING LÜ-LI HUI-T'UNG HSIN-TSUAN [COMPREHENSIVE NEW EDITION OF THE GREAT CH'ING CODE] 3021 (Taipei ed. 1964) [hereinafter cited as CODE]; TA TSING LEU LEE, BEING THE FUNDAMENTAL LAWS . . . OF THE PENAL CODE OF CHINA § 339 (Taipei ed. G. Staunton transl. 1966) [hereinafter cited as Staunton]; 2 LE CODE ANNAMITE, NOUVELLE TRADUCTION COMPLÈTE 445 (Taipei ed. P. Philastre transl. 1967) [hereinafter cited as Philastre]; MANUEL DU CODE CHINOIS § 1511 (Shanghai ed. G. Boulais transl. 1924) [hereinafter cited as Boulais]; (2) that prisoners belonging to the first degrees of age, youth, or infirmity (and by extension those of the higher degrees as well) are to have their fetters regularly washed, their sleeping mats aired, and to be supplied with warm beds in winter and cooling drinks in summer, CODE 3550; 2 Philastre 650-51; (3) that prisoners belonging to the first (or higher) degrees of age, youth, or infirmity are not to undergo judicial torture, and those belonging to the second (or higher) degrees are not to be accepted as witnesses, CODE 3561; Staunton § 404; 2 Philastre 656; Boulais § 1681. It should be noted that the work by Philastre, despite its title, is actually a translation of much of the Ch'ing Code, because the Annamite Code which it covers is very largely a word-for-word reproduction of the edition of the 1740 Ch'ing Code then current.

⁶ See note 9 *infra* & accompanying text.

subject (section 22) with its earliest surviving legal counterpart, that in the T'ang Code of 653. We at once see that whereas the texts of the two statutes themselves are almost word-for-word identical, the officially-compiled commentary on the T'ang statute is considerably longer than the corresponding Ch'ing Code's Official Commentary. In part, the reason for the T'ang commentary's greater length is that, unlike its Ch'ing counterpart, it goes to some pains to explain *why* monetary redemption may properly be granted to wrongdoers who are aged, young, or infirm. In so doing, it repeatedly introduces the words "compassion" (*chin*) and "love" (*ai*) into its discussion. But the real clincher—one that takes the humanitarian concept all the way back to classical Confucianism—is the fact that the T'ang commentary supports its argument by quoting the following passage from the opening chapter of the *Li chi* or *Record of Rites*: "A person of eighty or ninety is called a venerable greybeard (*mao*). A person of seven is called a child deserving of pity (*tao*). A child deserving of pity or a venerable greybeard, even though they may have committed a crime, are not to be subjected to punishment." This *Li chi* passage, as cited by the T'ang commentary, is made even stronger by deliberately changing the *Li chi*'s original phrase, "committed a crime," into "committed a capital crime."⁷

B. *The Cases*

The great advantage of working with Ch'ing law, and the reason why that dynasty (1644-1911) is the subject of our inquiry, is that its law can be checked against a large body of actual cases. Most notable of the Ch'ing casebooks is the *Hsing-an hui-lan* or *Conspectus of Penal Cases*.⁸ The three component divisions of the *Conspectus* (the *Hsing-an hui-lan* or HAHL proper, the HAHL Supplement, and the HAHL New Supplement) contain reports of over 7,600 cases which came to the Board of Punishments in Peking from lower judicial levels and were adjudicated by the Board. Their time span is 1736-1885, though more than three quarters of them belong to the first three decades of the nineteenth century.

Within this huge body of cases covering the entire gamut of the Ch'ing Code, forty are relevant to our interest. Thirty-eight of them appear in section 14 of the *Conspectus* (entitled, like its Code counter-

⁷ See 2 T'ANG LÜ SHU-YI [T'ANG CODE WITH COMMENTARY], bk. 4, art. 2, at 2-5 (Taipei ed. 1955) [hereinafter cited as T'ANG CODE]. The *Li Chi* quotation the translation of which has been modified by the author may be found in J. LEGGE, *THE LI KI* [RECORD OF RITES], in 27 THE SACRED BOOKS OF THE EAST 66 (F. Müller ed. 1885).

⁸ The *Conspectus* is analyzed in D. BODDE & C. MORRIS, *supra* note 1, at 144-59. One hundred ninety cases from the *Conspectus* have been translated in *id.* 203-489.

part, "Monetary Redemption Permitted to the Aged, the Young, and the Infirm"), followed by two more in section 15 ("Wrongdoing Committed Prior to Becoming Aged or Infirm"). A list of the entire forty, with full data about source, date, and locale, will be found in Appendix 2.⁹ The total time span is 1788-1881, but thirty-two of the cases belong to the twenty-nine year period of 1809-1837. Geographically, the cases cover all of the provinces of China proper except Kansu. In addition, for greater China, they cover Mukden and Heilungkiang in Manchuria, Chahar in Inner Mongolia, and Urumchi in Sinkiang.

Among the forty cases, fifteen have to do with youth, nine with age, and another fifteen concern infirmity. The single one remaining¹⁰ does not really belong to this section at all—its concern is not the killer but his youthful victim—but it is of great importance for all of the cases involving age, because it establishes definitive legal criteria for measuring human age. Therefore it can logically begin our discussion.

The case is one in which the murderer, an adult, strangled the small son of a neighbor on a date corresponding to March 6, 1810. This was less than ten full years after the birth date of the victim, which was November 7, 1800. The governor-general who reported the case to Peking therefore made the almost unprecedented suggestion that the killer, on the basis of this reckoning, should be sentenced to immediate decapitation, this being the statutory penalty for the premeditated murder of a child of ten or less.

I say "almost unprecedented" because, as we shall see in the concluding section, the governor-general based his recommendation upon a single earlier case. According to traditional Chinese reckoning, an individual begins his life at the moment of conception and therefore is conventionally considered to be one year old at birth. Furthermore, for the sake of convenience in maintaining the official population records (based on a lunar and therefore a fluctuating calendar), the in-

⁹ No doubt the forty could be supplemented by a few others if one were willing to search for all references to the subject that may be scattered among the more than 7,600 other cases in the *Conspectus*. I doubt, however, that such enormous effort would markedly alter the picture provided by the main body of forty cases. Among these forty, those belonging to section 14 of the *Conspectus* should, strictly speaking, be designated as cases 14.1, 14.2, 14.3, etc., but for reasons of simplicity they will be referred to merely as cases 1, 2, 3, etc. To distinguish the two in section 15, these will be referred to in full as cases 15.1 and 15.2. It should be noted that sections 14 and 15 of the *Conspectus* are identical in title and subject matter with sections 22 and 23 in the Ch'ing Code (see Appendix 1), despite the differences in numbering. The discrepancy arises from the fact that only 270 out of a total of 436 sections in the Code are covered by cases in the *Conspectus*, plus the fact that in the present study, as in D. BODDE & C. MORRIS, *supra* note 1, the sections in the *Conspectus* have been numbered consecutively and therefore differently from their counterparts (also consecutively numbered) in the Code.

¹⁰ This is case 25. The case has already been discussed more briefly in 1 Philastre 190-91.

dividual is said to become two years old at the first lunar New Year following his birth; thereafter he, like everyone else, acquires an additional year with each successive New Year.

The murder victim, then, for purposes of vital statistics, became two years old on February 13, 1801, this being his first New Year, and he became eleven on the New Year of 1810, which that year fell on February 4, a little over a month prior to his death on March 6 of that year. This is the reckoning used by the Board of Punishments to reject the governor-general's proposed judgment. For the murderer the difference was of crucial importance, for by changing the victim's official age from less than ten to barely eleven, it also changed the murderer's penalty from immediate decapitation to decapitation after the assizes, thereby making possible (though by no means certain) a further reduction of penalty at the Autumn Assizes to a sentence of life exile.

The Board argued that if, as suggested by the governor-general, permission were given to correlate the precise solar-based ages of individuals with the fluctuating lunar calendar, endless confusion would result. The emperor, in an imperial rescript, further supported the Board's ruling with a sociological argument. If, he wrote, the governor-general's decision were followed, "it is to be feared that offenders would participate in deliberate deception and embellishment, and that officials would shift high and low ages around and give increase to corrupt practices."¹¹

The governor-general, as part of his argument, had pointed out that a legal year, as defined in the Code, has 360 days,¹² and that this definition seriously conflicts with age reckoning based on the lunar calendar. To this the Board replied that the 360-day year is legally used only to calculate relatively short-term time spans such as the deadline set for arresting a criminal or for paying a tax. Never is it used to calculate human age, for which the only basis of reckoning is the date in the lunar-based sixty-year cycle under which an individual's birth is recorded in the population and tax registers of his local district. The governor-general should in fact have known as much, because the Board was citing at this point the statement contained in the statute which defined the legal year.

This case illustrates how complexities were constantly creeping into the Chinese bureaucratic system—caused in this instance by the need to reconcile a fluctuating lunar calendar with a fixed solar reckoning. It also illustrates the need of the Chinese state—no doubt psycho-

¹¹ See case 25.

¹² For this statute, see CODE 553; Staunton § 41; 1 Philastre 271.

logical as well as actual—to deal institutionally with individual differences by subsuming them under a universal bureaucratic model. Finally, the case is important for our understanding of the composition of Chinese age groups as legally defined, for from it may be seen that legally speaking, people in China passed from childhood to adulthood (Chinese age sixteen) and from adulthood to old age (Chinese age seventy) anywhere from a year to two years earlier than did their counterparts in the West.

Thus the Chinese system of reckoning gave Chinese society a smaller proportion of “young” people and a larger proportion of “old” than would have been possible under Western reckoning. The net result is that the laws on youth and age, although ostensibly designed to protect the two age groups equally, actually applied to, and therefore were important for, a relatively broad sector of aged people as against a relatively narrow sector of the young, legally defined. This fact harmonized well with the traditional Confucian veneration of age and emphasis on filial piety. No doubt too it provided a psychological counterbalance to the biological forces of high rates of birth and early death which in China, as in other pre-industrial societies, favored the development of a predominantly youthful population.

II. TREATMENT OF THE YOUNG

Of the fifteen cases having to do with the young,¹³ all but the final two are based on the important seventh sub-statute in section 22 of the Code: the first eleven cases on its second paragraph, the next two on its first. What makes the seventh sub-statute significant is that, with respect to young persons guilty of homicides punishable by death, it widens the scope of allowable clemency as defined in the main statute under section 22. Under the statute itself, only those capital offenders who belong to the two higher degrees of youth, age, or infirmity are eligible for clemency. The sub-statute, however, lays down circumstances under which capital offenders belonging to the first degree of youth (but not to the first degrees of age or infirmity) also become eligible. The importance of this provision is shown by the fact that homicide is a primary factor in all of the youth cases to be discussed, but in only about a fourth of the age and infirmity cases.

The seventh sub-statute states, under its vital second paragraph, that if a child of eleven to fifteen (first degree of youth) has been provoked by a person four or more years older than himself into fight-

¹³ They are cases 1-13, 22 and 24. The first of them, under the designation of case 14.1, has already been translated in D. BODDE & C. MORRIS, *supra* note 1, at 229-31.

ing that person and thereby killing him, he may have a petition submitted to the throne on his behalf requesting clemency for his offense of killing in an affray, the normal penalty being strangulation after the assizes. (Once submission of the petition has been approved by the Board of Punishments, approval of the petition itself is normally routine.) The precedent justifying this sub-statute is the Ting Ch'i-san case of 1732. Ting was a boy of fourteen who, while carrying baskets of earth, was bombarded with earth clods by another boy four years his senior until, under provocation, he threw clods back, one of which hit and killed the other boy. Ting's trial resulted in his being accorded imperial clemency, and in the end he was allowed monetary redemption. (Incidentally, it is somewhat curious that in this case precedent had to wait more than four decades before finally becoming enshrined as a sub-statute in 1779.)

Among the eleven cases, several not only cite the prototype case of Ting Ch'i-san but also cite and state the essential facts of later case precedents. Putting together the cases proper and the precedent cases cited therein, we find an even balance between cases in which clemency is accorded and cases in which it is not—eight of each.¹⁴

The wording of sub-statute 7, coupled with what is said in the cases, makes it evident that for a youthful killer to be accorded clemency, he must have been provoked by the behavior of his subsequent older victim in a way deemed by the courts to be "unreasonable" (*li-ch'ü*), "abusive" (*ch'i* and compounds of this word), or "vicious" (*ch'eng-hsiung*).¹⁵ The foregoing terms, despite frequent mention in the cases, are nowhere explicitly defined. Therefore, we have to deduce their meaning from the objective facts narrated in the cases.

The first term, *li-ch'ü*, "unreasonable," serves to describe the initial act of the older person (the person who is later killed) in response to the initial act of the child who later kills him. In all of these cases it is always the child who initiates the chain of action leading to tragedy. Never is it his victim. The meaning of *li-ch'ü* becomes clear in cases 4 and 6. In the latter case, a boy of fourteen drains the water from an irrigation ditch which he shares with a much older man in order to catch a fish he sees in it. The older man objects and a quarrel ensues in which the older man raises his hand to strike the boy. Before he can actually do so, however, the boy runs off with the older man in

¹⁴ Clemency is accorded in cases 1, 8-9, 10 (twice, because two separate though parallel cases are involved), and 11, as well as in two precedents cited in case 10. Clemency is denied in cases 2-7, as well as in two precedents cited in case 4.

¹⁵ A further clause in the same sub-statute provides clemency if the homicide has been committed unintentionally in sport, but, strangely enough, none of the cases invokes this clause.

pursuit. As he runs, the boy picks up a stone and throws it at the older man, killing him. The Board finds that the older man's reviling of the boy and his attempt to halt the boy's action were motivated by a reasonable fear that the irrigation ditch would dry up. Thus it did not constitute "unreasonable" (*li-ch'ü*) conduct. The Board therefore denies clemency to the boy.

In case 4, a youth of over nineteen tries unsuccessfully to borrow money for wine from a boy of fourteen. The two quarrel and the youth dies. The Board finds that this quarrel, being limited to verbal wrangling, did not constitute unreasonable (*li-ch'ü*) conduct on the part of the victim. It therefore denies clemency to his killer. (We shall discuss shortly the actions that followed the initial verbal wrangling.)

Li-ch'ü is essentially a negative term; it tells us only that the victim's initial reaction was (or was not) "unreasonable." To get a more positive picture of how the victim then and later acted, we must turn to a second group of interrelated terms. They are "abusive" (*ch'i*), "abusive and insulting" (*ch'i-wu*), and "abusive and bullying" (*ch'i-ling*). The idea basic to all of them is that the older person takes advantage of his seniority to browbeat, bully, oppress, ridicule, or cheat the child.

The central word *ch'i* is well illustrated in case 9 where, during the teacher's absence, a schoolboy of twelve plays a game of hitting fists with a classmate of sixteen. By hiding a bamboo sliver in his hand, he hurts the older boy's finger. An altercation ensues in which the older boy first strikes and hurts the younger boy's shoulder and then, by holding the younger boy from behind, forcibly covers the latter's mouth to prevent him from making an outcry. The younger boy seizes a paper knife with which he stabs and kills the older one. In its judgment, the Board holds that the older boy, by striking the younger one and then covering his mouth from behind, was guilty of taking advantage of his own age to abuse (*ch'i*) the younger boy. It therefore grants the latter monetary redemption.

The third term, "vicious conduct" (*ch'eng-hsiung*), is close to *ch'i* and its compounds (it could easily have replaced *ch'i* in the case just cited), but its emphasis is upon the act of physical violence per se rather than, as with *ch'i*, upon the fact that the act is directed against a younger person. Its meaning emerges clearly in case 11, where a boy of fourteen, working as a farmhand, asks his employer for his wages. The latter refuses, and in the resulting altercation he seizes and twists the boy's queue in order to strike him; the boy, out of fear, draws a knife with which he kills the older man. The Board adjudges the seiz-

ing of the queue to constitute vicious conduct (*ch'eng-hsiung*) and so allows the boy to petition for clemency.

In all the cases clemency is granted only when the victim had committed actual physical violence against his youthful killer; mere reviling and the like is insufficient cause in itself. The pattern becomes less clear, however, in those cases which deny clemency. In several of them the Board indulges in what, to some, may seem like judicial hair-splitting to prove that what appears to be violent behavior is really not and therefore does not justify clemency.

In case 2, for example, the older person (aged twenty-one) asks the younger one (aged fourteen) for some of his sugarcane and is refused, whereupon the older strikes the younger on the left arm. The Board explains that the blow was made only in sport (*hsi*), and therefore does not constitute abuse and insult (*ch'i-wu*). Accordingly, clemency is refused to the boy for his act of killing the older person.

In case 3, a boy of fifteen becomes angered at a man (age not given but obviously mature) who, on hearing the boy's widowed mother lamenting the difficulty of living as a widow, suggests remarriage. In the resulting quarrel between the boy and the older man, the latter attacks the boy with a stool but is persuaded by a bystander to stop before he actually inflicts injury. The boy then kills the would-be suitor. The Board holds that the older man's acts did not constitute abuse and bullying (*ch'i-ling*)—presumably, though we are not told so, because his use of the stool inflicted no actual injury. Therefore, the Board rules that the case is not analogous to that of Ting Ch'i-san and that the boy does not deserve clemency.

In case 4 (the case involving a dispute over money for wine, mentioned above), the older man, following the initial verbal wrangling, pushes the boy to the ground and then, upon the latter's getting up and cursing him, picks up a stone. Before he can use it, however, the boy stabs him with a knife. The Provincial Court of Kuangsi, from which the case originates, thinks that the two acts of pushing to the ground and picking up a stone constitute vicious conduct (*ch'eng-hsiung*). It therefore recommends clemency. The Board of Punishments, however, in what may seem to some an arbitrary ruling, decides that inasmuch as no concrete injury resulted from either act, and the situation was not really dangerous, no actual "viciousness" was evident.

Finally, in case 5, a boy goes to glean what is left of tea growing on the mountain plot of another person. He encounters the owner and a quarrel follows during which the owner seizes the boy with the intent of stripping the boy of his clothes. However, the owner does not actu-

ally strike the boy, and when the latter tries to tear himself away, the older man falls and loses his life. The Board, because the victim did not strike the boy, refuses to find that his conduct was either abusive and insulting (*ch'i-wu*) or vicious (*ch'eng-hsiung*), and thus denies clemency to the boy. The circumstances in this case seem at first sight very similar to those in case 1, in which a boy who is gleaning soy beans likewise becomes embroiled with the bean grower, who chases, catches, and beats the boy, who in response fatally stabs the grower with a sickle. Contrary to its judgment in the tea case, however, the Board finds the bean grower's treatment of the boy to have been both vicious and abusive and insulting. Therefore it accords clemency to the boy.

A possible clue to these different holdings may lie in a statement in case 1 that the gleaning of soy beans by poor people is a recognized practice, as against the absence of a comparable statement in the other case, where, instead, the Board charges the youthful tea gleaner with having violated propriety. Probably more decisive, however, is the act of beating in case 1 as against its absence in case 5. In the latter, the Board obviously does not regard the attempt to strip the boy of his clothes as comparable to a beating. The net result is a judgment of clemency in case 1 and its denial in case 5.

In all of these cases except the one discussed first (case 2, in which the older person is said to have struck his later killer in sport only), the intent of the victim is ignored and judgment rests entirely or at least heavily upon a narrow definition of the physical act performed by the subsequent victim. This mechanistic approach runs counter to the interest in intent found in some other categories of cases—for example, in those many homicide cases not involving age differences in which careful distinction is made between premeditation, intent, negligence, and so on.

Four of our cases are of special interest because they involve a problem of measuring or balancing: how to adjudicate a situation in which a minor kills another person who is either aged or infirm or a woman and who, therefore, like the boy, enjoys a privileged status, though one different in category. Two such situations are presented jointly in case 10, in which the victims are respectively a woman and a man who is over seventy. In both instances, despite these circumstances, clemency is allowed because each of the victims struck his or her killer. In case 6, on the other hand, clemency is denied to the killer of a man of seventy-six not because of the man's age but because the man raised his hand with intent to strike but, inasmuch as the boy ran away, was unable to effectuate the blow. Finally, in case 7, the Board

angrily rejects the suggestion of a provincial court that a boy who killed a blind man (the details are not given) should be accorded clemency. The implications of these and other examples of "balancing" cases will be examined further in the concluding section.¹⁶

So far we have been discussing the eleven cases whose judgment invokes the second paragraph of sub-statute 7. Two other cases, 12 and 13, have to do with the first paragraph of the same sub-statute, in which a petition for pardon is to be allowed for a child of seven or under guilty of homicide. In case 12, originating in northern Manchuria, a Manchu boy of six quarrels with another Manchu boy of nine and kills him with a knife. The sub-statute granting petition for pardon is held applicable. Case 13, probably the most tragic of all our youth cases, concerns a boy of seven who, carrying a pair of scissors, runs out on the street to play. His married sister calls him to bring the scissors back and he, probably in a fury (though this is not stated), throws them toward her. By mischance (*wu*), he hits and kills a boy of six who just then is running toward the sister.¹⁷ The offender's father, tortured by fear that his only son might have to pay with his life (*ti ming*) for the other boy's death, hangs himself. Again the Board holds the sub-statute to be applicable, so that the son receives no punishment for either of the homicides.¹⁸

III. TREATMENT OF THE AGED

Among the nine cases involving the aged,¹⁹ the first four together with two precedent cases cited in case 14 concern men belonging to the second or higher age level (80-89) who are guilty of homicide. Unlike the youth cases, in which none of the killings was premeditated, some of the murders committed by the oldsters are quite lurid affairs. In each instance, nevertheless, the relevant statute (section 22 of the Code) permits reduction of punishment first from the statutory death penalty to exile and then, by means of monetary redemption, from exile to no penalty at all. Perhaps the most striking is case 17, in which

¹⁶ See text accompanying notes 45-46 *infra*.

¹⁷ The word *wu* has the technical meaning of intending to injure or kill a particular person and by mischance injuring or killing someone else instead. See D. BODDE & C. MORRIS, *supra* note 1, at 197. Use of the word here probably means that the culprit was trying to hit his sister with the scissors.

¹⁸ Two other youth cases, 22 and 24, will be omitted from our exposition because they are largely procedural and have little legal interest.

Incidentally, the term used in describing the father's act in this case—*ti ming*, "to requite life"—has considerable philosophical interest. As a technical term, it probably reflects the ancient Chinese belief that the taking of life disrupts the balance of the universe, and that therefore another life must be exacted or required in return in order to restore this balance. See D. BODDE & C. MORRIS, *supra* note 1, at 182.

¹⁹ Cases 14-19, 26, 15.1, and 15.2.

the offender induces several persons to join together to murder a distant nephew, then instigates a member of his clan falsely to accuse an outsider of the crime, and finally flees before he can be arrested. On being captured three years later, his sentence, for having fled, is increased from decapitation after the assizes (the standard penalty for his offense) to immediate decapitation. A general imperial amnesty at this time, however, reduces the added punishment once more to decapitation after the assizes. Then the fact that he is eighty (we are not told whether he had just become eighty or was already so at the time of his crime) enables him to escape punishment completely through redemption.

Two other cases, 15.1 and 15.2, are based on the principle that wrongdoers who become aged or infirm only after their offense comes to light are to be judged in the same manner as if they had already been aged or infirm at the time of the offense. This principle is formulated in general terms in section 23 of the Code and, with special reference to offenders sent to Peking for trial, in sub-statute 2 of the preceding section. In case 15.1, a licentiate is sentenced to military exile for having written a composition on behalf of his son at the civil service examinations; by the time he is ready for exile, he has reached the age of seventy. In case 15.2, the instigator of a fatal group affray is sentenced to exile. Though only sixty-seven at the time of the offense, delay in deciding the case, caused by the Board's reversal of the provincial sentence, brings him to seventy by the time he is ready for exile. Both he and the licentiate of the preceding case are allowed monetary redemption.

The three remaining cases indicate that age is by no means an invariable protection against punishment. Case 19, perhaps the most poignant in the age category, is based upon sub-statute 8 in section 22, under which redemption may not be accorded a second time for a deliberate offense to any aged, young, or infirm person who has already been granted it for an earlier offense. The case concerns a man who in 1754, when he was forty-three, was convicted of theft. His sentence included, as in normal in theft cases, tattooing of the word "thief" on his right forearm. An imperial amnesty released him, however, before he had completed his sentence, and allowed the tattoo then to be removed. Decades later, in 1781, he was again convicted of theft, and this time, having become seventy, was permitted redemption. This enabled him to escape all usual punishment on this second occasion, including reimposition of the tattoo. Then in 1788 when he was seventy-seven, poverty forced him to come to Peking in search of relatives.

Failing to find them but seeing a bin of rice outside a grain shop, he stole several pints and was caught.

The Board of Punishments begins its judgment by admitting that his act, being motivated by poverty and suffering, differed from those of "thieves who bore holes and scale walls" (professional thieves). Nevertheless, continues the Board, the act was deliberate. Hence, under the sub-statute, the redemption enjoyed by the offender in 1781 may not be repeated. The redemption of that year had cancelled out the punishment for that particular theft, thus enabling the new theft of 1788 to be counted as calling for a second rather than a third punishment. The thief should now be sentenced, as if for a second punishment, to the wearing of the cangue and reimposition of the tattoo. The Board further warns that yet another theft will be considered a third offense and will incur the appropriate increased punishment.

Though the humanity and effectiveness of this judgment may be questioned, it at least rests firmly on statutory law. The next two cases, on the other hand, run counter to the literal wording of the primary statute that persons of seventy "are to be given monetary redemption" for offenses punishable by exile or less. This counter indication strongly suggests that, at least as far as the Board was concerned, this statute functioned more as a sanction for discretionary lenience than as an absolute imperative.

In case 26, dated 1809, a district magistrate of over seventy has been found guilty of juggling government funds to the tune of 18,000 taels, the penalty for which is military exile. The Board cites a precedent case of 1804 in which a district magistrate, sentenced to penal servitude for an unspecified offense, was, although over seventy, denied redemption on the ground that he was still "basically flourishing" (*pen jung*), that is, he was still in good physical health. The present case is held by the Board to be sufficiently similar to the 1804 precedent to justify a similar denial of redemption. Nevertheless, an unexpected quirk enables the juggler of 18,000 taels to enjoy a happier fate than that of the stealer of several pints of rice in the just mentioned case 19. The Board points out that the juggler's offense was committed prior to a New Year's Day proclamation of imperial clemency of the present year. The net result is that the denial of redemption, though inherently correct, has now lost its validity and therefore, the Board concludes, the sentence should be revised (that is, clemency should be granted).

The last and perhaps most arbitrary of the Board's rulings in cases of this category is case 18, concerning a man of seventy sentenced to exile for having incited litigation. This crime was regarded

with particular horror by the authorities.²⁰ The persons who indulged in it (stigmatized as "litigation tricksters") were men of some education who prepared legal petitions or otherwise helped illiterate or semi-literate persons in rural areas in legal matters. In a Confucian society which possessed no formal legal profession and traditionally regarded the growth of litigation as a symptom of moral decay, these men were apparently viewed as destructive of social stability. Concerning the offender in case 18, the Board writes: "Although old in years, his mental capacities (*chih lü*) have not declined, so that if permitted monetary redemption and the good fortune of escaping punishment, he would still remain able to stir up the ignorant country folk. This is not the way to give warning to rascally agitators or to bring cessation to litigation."²¹ The Board goes on to say that occasional precedents (which it does not specify) are known in which aged persons guilty of crimes entailing either military or ordinary exile have been denied redemption. Similar denial should therefore be made in the present case.²²

IV. TREATMENT OF THE INFIRM

The fifteen cases in this section are not easy to discuss, because several of them do not fall into readily discernible legal patterns. A few, because they involve obscure procedural technicalities, will be excluded from the discussion.²³ The atmosphere of the section differs sharply from that of the two other categories owing to the large number of non-commoners who figure in it: officials in six cases, a provincial military graduate in another, and a Mongol bannerman in yet another.²⁴ One almost wonders whether, in the legal world, infirmity was not predominantly an upper-class phenomenon.

The infirmities themselves are few in kind. Those of the leg or foot, with nine cases, are by far the most common; we read about frozen feet, numbed legs, cramps in the legs, paralysis of the legs, or simply inability to use the legs—some of the medical terms are hard

²⁰ Cases 203.2, 203.4-5, and 203.7 in D. BODDE & C. MORRIS, *supra* note 1, at 413-17.

²¹ This is the same case in which the Board, as quoted at text following note 6 *supra*, justifies redemption for the aged on the ground that "their powers have already declined so that they are not in a position to repeat their offense." This pragmatic explanation is probably a distortion of the original motivation.

²² This case, dated 1792, is almost surely the unmentioned precedent for the equally arbitrary denial of redemption to the aged "litigation trickster" who appears in case 203.5 dated 1820 in D. BODDE & C. MORRIS, *supra* note 1, at 415-16. It should be noted that in all of the translated "trickster" cases, note 20 *supra*, the statutory punishment of military exile is at least reduced to three years of penal servitude, in contrast to its retention (for unexplained reasons) in the present case.

²³ The fifteen are cases 20-21, 23, and 27-38. The excluded cases are 23, 30, and 33.

²⁴ The six official cases are 27-30 and 37-38. The provincial military graduate appears in case 34 and the Mongol bannerman in 36.

to identify.²⁵ The next largest group is of partial or total blindness, with four cases (28-29, 32, and 36). Then come hand injuries (cases 20, 35, 37), dumbness (case 20), and a peculiar but unexplained "frequent state of incapacity" (case 34), conceivably epilepsy.

The limited variety of infirmities reflects the limited range allowable in the Ch'ing Code. Two grades or degrees are defined in the statute under section 22. The first or lower degree is *fei chi*, translated here "infirmity" in apposition to the higher degree which follows. The Official Commentary defines it as "blindness in one eye or loss of one limb and the like." The second and higher degree is *tu chi* (incapacity), which the Official Commentary defines as "blindness in both eyes or loss of two limbs and the like." "And the like" does not greatly extend the allowable varieties of infirmity or incapacity.²⁶ In fact, sub-statute 5, promulgated in 1745, nullifies the Official Commentary's inclusion of blindness of one eye under infirmity by explicitly denying that such blindness can actually serve as a legal ground for claiming redemption.

The Official Commentary's definitions of infirmity and incapacity reproduce without change the corresponding definitions in the commentary on the Ming Code of 1397. Both sets of definitions, in their very restricted enumeration of possible varieties of infirmity and incapacity, represent a sharp break with earlier dynastic codes, all heavily dominated by the T'ang legal tradition. This becomes apparent if we compare the Ming and Ch'ing definitions with the much broader formulations found both in the T'ang Code of 653 and in the lesser regulations of the same dynasty known as *ling*, "ordinances."²⁷

The T'ang legal definition for infirmity (*fei chi*), as given in these two bodies of law, does not restrict the term to the Ming-Ch'ing requirement of loss of a single limb. It also lists the breaking of a thigh-bone or a vertebra, as well as dumbness and dwarfishness. The only respect, in fact, in which the Ming-Ch'ing definition is broader than the T'ang is the former's inclusion of blindness in one eye under infirmity. The absence of this item from the T'ang definition may conceivably have encouraged the Ch'ing jurists, after having initially accepted the Ming "one eye" definition for their own Official Commentary, to add later in 1745 a sub-statute nullifying this provision. On the other hand, irrespective of T'ang precedent, the promulgation of the sub-statute

²⁵ See cases 21, 23, 27, 30-31, 33, 35, 37-38.

²⁶ See text accompanying notes 32-33 *infra*.

²⁷ See 2 T'ANG CODE, *supra* note 7, bk. 22, art. 13, at 102, and 4 *id.*, bk. 29, art. 6, at 74. Both passages are actually citations of a single definition contained in the ordinances. See NIDA NOBORU, TÖRKY SHÜI [THE T'ANG ORDINANCES RE-COLLECTED] 228 (1933).

accords well with a later tendency, discernible in some of the cases discussed below, to restrict the scope both of infirmity and incapacity.

Concerning the second degree, incapacity (*tu chi*), the T'ang legal sources not only define it as loss of two eyes or two limbs (the Ming-Ch'ing definition) but also mention "loathsome disease" (nature unspecified but probably leprosy), severing of the tongue which renders speech impossible, and destruction of the male or female generative organs which prevents procreation. In addition, loss of all ten fingers is considered incapacity because it prevents the victim from holding things and therefore is comparable to the loss of two limbs.²⁸

Quite remarkable is the T'ang legal recognition not merely of physical but also of mental ailments as valid criteria for determining infirmity and incapacity. Indeed, two degrees are specified by the legal sources: feeble-mindedness (*ch'ih*) under infirmity, and insanity (*tien-k'uang*) under incapacity.²⁹ Dr. Büniger has demonstrated that in T'ang times the feeble-minded and the insane were not held legally responsible for their actions, and that this situation apparently persisted at least through the Sung dynasty (960-1279).³⁰

With the narrowing of the stipulated criteria for infirmity and incapacity in the Ming and Ch'ing codes, however, the terms for feeble-mindedness (*ch'ih*) and insanity (*tien-k'uang*) disappeared entirely from these codes. The complete absence in our cases of any mention of mental illness confirms the conclusion that the Ch'ing Code's clauses on infirmity and incapacity were intended to deal only with physical and not mental ills.³¹ In the Ch'ing Code, to be sure, insanity continues to be discussed in a single section under homicide. No crimes other than homicide are considered, and less stress is laid on the insane person himself than on the responsibility of his family or the local authorities to confine him if he is dangerous. In contrast to the T'ang distinction between feeble-mindedness (*ch'ih*) and in-

²⁸ See 3 T'ANG CODE, *supra* note 7, bk. 21, art. 2, at 82; 3 *id.*, bk. 21, art. 4, at 84; 3 *id.*, bk. 22, art. 13, at 102; NIDA NOBORU, *supra* note 27.

²⁹ For *ch'ih*, see 4 T'ANG CODE, *supra* note 7, bk. 29, art. 6, at 74, and, for *tien-k'uang*, NIDA NOBORU, *supra* note 27. Büniger, *supra* note 2, at 4, interprets *ch'ih* in the T'ang Code passage as combining with the next word in the text, *ya*, to form a compound, *ch'ih-ya*, which he translates "imbecility" (my "feeble-mindedness"). This is surely wrong, for *ch'ih* by itself means feeble-mindedness, while *ya* is an entirely separate word meaning "dumbness." Shen Chih-ch'i, in his 1715 commentary on the Ch'ing Code (comment on statute in section 22, CODE 409-10), reproduces the major T'ang definition of infirmity and at the same time suggests some items of his own such as *lung*, "deafness." Of course, as a private commentator, his interpretation of the Ch'ing Code remained suggestive only and did not, like the Official Commentary, carry any judicial authority. Significantly, Shen groups *ya* with *lung* in his list, and in so doing places it *before* rather than after *ch'ih*. Thus there is no doubt that he regards *ch'ih* and *ya* as two separate ailments.

³⁰ Büniger, *supra* note 2, at 4-5.

³¹ The author cannot readily agree with Dr. Büniger, therefore, when he says, concerning this radical change, that "the alterations did not touch the basic principle of exempting lunatics from punishment." *Id.* 7.

sanity (*tien-k'uang*), the Ch'ing Code employs a single generalized term, *feng ping* (mental illness). Yet despite this reduced concern with insanity, the Code still gives some very limited support to Dr. Büniger's general thesis that lunatics were not held responsible for their acts in classical (by which he really means pre-republican) Chinese law. Thus for an insane person guilty of a single homicide, the Code provides no punishment other than confinement by his relatives or the local authorities; in addition, a monetary payment must be made by the relatives to the victim's family for funeral expenses. However, should the homicide be of two or more persons, the Code then somewhat inconsistently shifts its stand by sentencing the insane killer to strangulation (or sometimes decapitation) after the assizes.³²

How the Ch'ing jurists restricted the legal scope of infirmity is illustrated by case 20, in which a governor recommends monetary redemption for unspecified offenses committed by two offenders, one of them dumb since infancy, the other lacking his left hand. The Board recognizes the latter as infirmity but rejects dumbness on the ground that it does not interfere with movement and therefore cannot be compared to loss of a limb. In so doing, the Board runs counter not only to the governor but also to what is said in the Shen Chih-ch'i private commentary of 1715 on the Code. For there, as we have seen,³³ dumbness appears in a list of named infirmities, most of them (including dumbness) going back to the T'ang Code. Of course the Board has good statutory justification for its action. Dumbness is nowhere named as an infirmity in the text proper of the Code, and Shen Chih-ch'i's commentary, influential and widely read though it was, remained a privately written and therefore necessarily non-authoritative work.

The limitations found in three other cases seem more arbitrary. In case 37, a district magistrate suffers paralysis after being sentenced to exile, but the Board finds that the paralysis affects only the offender's left hand and foot and concludes that this is not enough to support a plea of infirmity (*fei chi*). The judgment seems clearly at variance with the definition in the Official Commentary ("loss of one limb and the like"). It should be noted that the word "loss" (*che*), though narrowly definable as "to snap, to break off," should not on that account be understood as referring here solely to a broken or amputated limb. In the context of the statute it plainly includes any

³² For the several Ch'ing sub-statutes on insanity, see CODE 2535-42; 2 Philastre 226-27; Boulais §§ 1287-90. The corresponding section in the *Conspectus*, see note 8 *supra* & accompanying text, contains 43 cases on insanity which would be well worth studying. They occur in 15 HSING-AN HUI-LAN [CONSPICUOUS OF PENAL CASES], bk. 32, at 20b-28b (Shanghai ed. 1886) (42 cases); 33 HSÜ-TSENG HSING-AN HUI-LAN [SUPPLEMENT TO THE CONSPICUOUS OF PENAL CASES], bk. 9, at 10b (1886) (one case).

³³ Note 29 *supra*.

injury or illness which renders the limb unusable. This is confirmed by case 27, where the Board rules that a cramp in the left leg which prevents walking is to be accounted infirmity.

In case 32 an uncle sentenced to penal servitude for beating an alcoholic nephew to death has suffered partial blindness in both eyes for more than ten years. The Board concludes that such blindness, not being total, is not enough to constitute incapacity (*tu chi*). Fortunately for the offender, however, it *is* enough to be accounted infirmity, which is all he needs to be granted redemption for his particular crime.

The third example is case 34, involving a provincial military graduate's son who is subject to a "frequent state of incapacity" (*tu chi*), possibly epilepsy, as suggested earlier. This son joins the father in committing vicious acts against two other men, apparently including acts of sadism toward the men's wives and daughters. When the two criminals are given military exile, the Board firmly denies redemption to the son, pointing out that his incapacity is only sporadic and thus in no way excuses his vicious behavior between seizures.

Four of the official cases (27-29 and 38) illustrate the fact that the procedures which normally favor officials over commoners in legal proceedings may on occasion serve to their detriment. In each of the four, the circumstances are such that, if the officials had been commoners, they would have been permitted immediate redemption. As officials, however, all the various steps involved in their trial and sentence require imperial ratification. This means that redemption may not be granted except through a special petition to the throne. The end result is of course the same as it would have been for a commoner, but it requires a longer time.

Case 21 is interesting because it raises the question of something like double jeopardy—or perhaps it would be better to term it double punishment. A man who has been sentenced to military exile for plundering is granted redemption on grounds of incapacity (*tu chi*) because rheumatism has deprived him of the use of both legs. Following his release, however, medication by his father proves so effective that he regains the ability to walk as before. The question now raised is whether, as someone no longer incapacitated, he should at this point be sent into exile. The Board's reply is to cite the analogy of the wrongdoer who, as the only adult son of aged parents, has had his sentence commuted from exile to bambooing and wearing of the cangue for a set period so that he may thereafter remain at home to care for his parents.³⁴ The Board points out that such a wrongdoer,

³⁴ For cases exemplifying this injection of filial piety into law, see D. BODDE & C. MORRIS, *supra* note 1, at 223-27.

even should his parents die, does not on that account go into exile. The fact that he has worn the cangue for the stipulated period means that the law of the nation (*kuo fa*) has been applied to him. Hence there is no further offense for which he has to be punished. By the same token, a person who has been granted redemption on grounds of incapacity, even should the incapacity subsequently be cured, may not properly be subjected a second time to restraint by the law (*sheng yi fa*). The thinking and phraseology in this case of 1827 have a remarkably modern ring.

Case 31, which involves an offender who is *both* aged and incapacitated, illustrates the greater importance attached to the second degree of infirmity (incapacity) as against the first degree of age (seventy). It also demonstrates (as do cases 18-19 and 26 in section III) that the granting of redemption on grounds of age is by no means automatic or invariable. The offender, a man of seventy, has been sentenced to exile for having induced another man to plunder. Despite his age, redemption is initially denied him on the stated grounds that he has been guilty of leading many people into capital crimes. While in prison awaiting final judgment, however, he suffers cramps in both legs which reduce him to a state of incapacity. Therefore the same governor who had initially recommended against redemption now speaks in its favor. In both statements the governor is actually ignoring the relevant statute in section 22, one clause of which prescribes redemption for persons of seventy who have been sentenced to life exile or less, while another clause prescribes complete exemption from punishment, without the need for monetary redemption at all, for any incapacitated person whose offense is neither capital, nor an act of robbery, nor the infliction of physical injury upon another.³⁵ The Board, nevertheless, goes along with the governor's recommendation. Its reasoning is that the offender deserves strict treatment, and that the governor has correctly upheld such treatment by first opposing redemption when it was theoretically possible and then recommending it when in fact it was no longer necessary.

In case 35 there is the problem of weighing one kind of incapacity against another: a man kills someone who is incapacitated in both legs, and then himself becomes incapacitated by suffering burns on both hands. Because the two kinds of incapacity are of equal weight, the Board allows redemption despite the fact that the incapacity caused by burning took place only after the crime.³⁶

³⁵ See Appendix 1.

³⁶ This and similar "balancing" cases will be discussed further in the concluding section to this Article. See text accompanying notes 45-46 *infra*.

Finally, case 36 is probably the most pathetic of the infirmity group even though not legally important. A member of the Bordered Red Mongol Banner who has been a guard at one of the city gates of Peking wounds his superior gate captain in a quarrel. For this heinous crime he is sentenced to deportation as a slave, but an imperial rescript reduces the sentence to lifetime wearing of the cangue while uninterruptedly patrolling the nine city gates of Peking. After twelve years of this, the Board is informed that the man has become completely blind and can no longer patrol. The case, presumably because it concerns a Mongol guard, is passed by the Board without judgment to the Court of Revision. Though we are not told the outcome, it seems probable that clemency was granted.

V. CONCLUSIONS

We have said nothing so far about the social composition of the cases, other than noting the high incidence of officials in infirmity cases. Social origins are rarely specified in cases from the *Hsing-an hui-lan* unless they involve officials, monks, bannermen, or other special groups. Often, however, deduction is possible. For example, when we are told in case 6 that two persons shared an irrigation ditch, it is reasonable to suppose that both were peasants. Even so, however, fifteen of the cases are peopled by social "unknowns."³⁷ Officials constitute the largest identifiable category, with seven cases—all of them infirmity cases except for one (case 26) which falls under age.³⁸ Socially close to the officials are the non-official members of the gentry who appear in five cases.³⁹ A single case (11) concerns a dispute between a rural landlord and his agricultural worker. With the latter may be grouped six peasant cases, four of which fall under youth and the others under age.⁴⁰ The remaining groups are those of urban dwellers (cases 13, 19, 32), Manchus and Mongols (cases 12, 30—also an official case—and 36), and women involved in treason (case 23). Keeping in mind that the great bulk of the fifteen "unknown" cases probably concern ordinary people precisely because their social composition is unspecified, we may conclude that officials and gentry probably constitute little more than one third of all participants.

Turning to the procedural aspects of the cases, out of the forty,

³⁷ Cases 2, 4, 7-8, 10, 14-15, 17, 20-22, 25, 31, 33, 35.

³⁸ Cases 26-30, 37-38.

³⁹ Cases 9, 18, 24(?), 34, 15.1.

⁴⁰ Cases 1, 3, and 5-6 (all youth); 16 and 15.2 (age). It is conceivable, though improbable, that 15.2, which concerns the reclamation of alluvial land, should be classed as landlord rather than peasant.

no less than eight, or twenty per cent, cite earlier cases as precedents.⁴¹ This very high percentage contrasts with the just over eight per cent of translated cases in *Law in Imperial China* in which precedents are cited.⁴² The disparity suggests that sharp variations in the citation of precedents may be expected in different sections of the *Hsing-an hui-lan*.

Two precedent citations are of particular interest because of the way the Board rejects them after they have been submitted from lower judicial levels. In case 15.1, dated 1821, the reporting governor cites a precedent case of 1743 involving a Buddhist monk. The Board of Punishments, in its reversal of the governor's decision, rejects the precedent out of hand as too old and therefore "unsuitable to cite as a basis." Again, in case 25 (dated 1811), which we have discussed previously,⁴³ the governor-general proposed that the age of a murdered boy be calculated according to his actual date of birth instead of by conventional cyclical dating. He justified this unusual suggestion by citing another murder case of 1802 in which, apparently, the Board had actually accepted this unorthodox procedure for determining the age of the victim. The Board of the 1811 case, replying somewhat impatiently to the governor-general, comes up with a surprising admission. The 1802 case, it says, "was previously wrongly judged and may not be adduced for comparison."

A higher court which invariably, or almost invariably, left unchanged the decisions appealed to it from lower courts might quite properly be accused of judicial slackness. Evidence of the conscientiousness with which the Board of Punishments approached its work lies in its high percentage of reversals of provincial decisions: ten out of the forty cases.⁴⁴ In another three cases (8, 15, 24), the Board's own judgments as reached at the departmental or lowest level are in turn reversed at higher levels within the Board (the Board's Directorate or the Statutes Commission).

Besides rejecting unsuitable precedents, the Board does not hesitate to correct factual errors made on the provincial level. In case 20, it corrects the governor when the latter attributes to the Code's Official Commentary a statement actually deriving from the unofficial Shen

⁴¹ The distribution of precedents is: *youth cases*, nos. 4, 6, 10; *age cases*, nos. 14-15, 26, 15.1. A precedent is also cited in case 25 (the case on determining age, separately discussed at text accompanying notes 10-11 *supra*). Excluded from this calculation are the six youth cases (1-3, 5, 7-8) which cite the Ting Ch'i-san precedent, because this citation does not represent their own words but is an integral part of the relevant sub-statute (no. 7 in section 22) which they are quoting.

⁴² See D. BODDE & C. MORRIS, *supra* note 1, at 179-80.

⁴³ See text accompanying notes 10-12 *supra*.

⁴⁴ They are cases 4-5, 7, 20, 25, 29-30, 37, 15.1. and 15.2.

Chih-ch'i commentary of 1715. In case 35, the governor vaguely attributes to "the statutes and sub-statutes" a passage reading: "A petition for clemency may not be filed for a totally blind person who kills another totally blind person." The Board, while supporting the governor's general recommendation of monetary redemption, points out that no such passage exists in the Code. However, even the Board seems to be remiss in another (largely procedural) case (23), where it fails to adduce any quoted statute or sub-statute to back up its decision.

Seven cases, all discussed earlier, are of interest because in each of them the offender and his victim are both members of privileged (though usually differing) groups. In sections 22 and 23 of the Code, only the legal treatment of aged, young, or infirm *wrongdoers* is discussed; nothing is said about situations in which *victims* as well as wrongdoers happen to hold privileged status. In view of the strong Chinese penchant for the quantification of justice, however, one might suspect that in such cases the court would implicitly take into account, and mutually balance, the respective degrees of privilege of offender and victim. This assumption is in fact supported by the findings in the seven "balancing" cases. The general principle emerging from them is that, granted the objective circumstances are such as would otherwise justify an appeal for clemency, then such clemency is to be accorded to an offender only if his privileged status equals or exceeds that of his victim.

The principle is most discernible when both parties belong not only to the same category of privilege but to the same degree within that category, or at least to adjoining degrees. Thus in cases 12 and 13, clemency is granted to a child of six (third degree of youth) who kills a child of nine (second degree of the same), and also to a child of seven who kills a child of six (both degree 3). The same thing happens in case 35, where the killer and his victim, though suffering from different kinds of incapacity, both belong to the same degree within that category (two burned hands as against two incapacitated legs); this balance permits the killer to receive clemency.

In the next case (10), despite differences in category, the degrees within the two categories balance. This case actually involves two separate but parallel cases. In one of them, a boy whose age is unspecified but obviously, in view of the context, belongs to the 11-15 year group (first degree of youth), kills a man who is a little over seventy (first degree of age). The even balance between the two permits clemency for the boy.

The other part of case 10 is more complex because it concerns a

boy of thirteen who kills a married woman of unspecified age. The legal status of women as against that of the aged, young, and infirm is not spelled out in the Code, where women are discussed in a separate section. However, the Code's most important statement which throws light on this point (hedged, to be sure, by some exceptions) is that women, if guilty of offenses punishable by exile or less, are eligible for monetary redemption. The same provision, of course, applies to the first degrees of youth (11-15), age (70-79), and infirmity.⁴⁵ Moreover, the Code's redemption fees for women are generally roughly equivalent to those specified for the other three categories. It is evident, therefore, that women guilty of less than capital crimes are, in the Code, implicitly regarded as comparable in status to persons belonging to the first degrees of the three categories.⁴⁶ It logically follows that the boy who has killed the woman in our case 10 is granted redemption.

Case 7 is a single but dramatic example of what happens when the statuses of killer and victim fail to balance. A boy belonging to the first degree of youth has slashed to death a man blind in both eyes (second degree of infirmity). On the grounds that the boy has suffered abuse and insult (*ch'i-wu*) from the older man, the provincial court recommends clemency. The Board, however, sharply rejects the recommendation, remarking that the victim's incapacity, that of total blindness, eliminates any reason for showing compassion toward his killer.

The one exception to the principle of balance in our seven cases—and even it is not a true exception—is case 6. This is the irrigation ditch case previously discussed, in which a boy of fourteen (first degree of youth) kills a man of seventy-six (first degree of age). Despite the balance, clemency is denied because, in the Board's opinion, it is not justified by the other circumstances of the case. It will be remembered that the Board adjudges the old man's conduct not to have been "unreasonable" (*li-ch'ü*) on grounds that he merely raised his hand to strike the boy but before he could effectuate the blow the boy had run away. This judgment, though no doubt technically correct, raises the question of whether the Board may not have been subconsciously influenced in favor of the old man by the traditional Chinese respect for age.

⁴⁵ For the laws on women, see CODE 383-89; Staunton § 20; 1 Philastre 172-76; Boulais §§ 127-30.

⁴⁶ When it comes to capital cases the situation changes: no monetary redemption is then normally available to women in contrast to its availability for the first degree of youth, within limitations laid down in the seventh sub-statute under section 22. Among the cases translated from the *Hsing-an hui-lan* in D. BODDE & C. MORRIS, *supra* note 1, there are five in which women receive death sentences with no indication of redemption being permitted. They are 160.15 (death by slicing?); 224.22 and 262.3 (immediate decapitation); 172.4 (immediate strangulation); 159.3 (decapitation after the assizes).

This is one of several hair-splitting decisions which may seem to some to come closer to the letter of the law than to its spirit. Others in the youth category occur in case 2, in which the blow given by the later victim (a youth of twenty-one) to his later killer (a boy of fourteen) is said to have been delivered in sport only and therefore not to constitute vicious conduct (*ch'eng-hsiung*); case 3, in which the older man attacked the boy with a stool but did not actually inflict injury; case 4, in which the older man did in fact push the boy to the ground but likewise inflicted no injury; and case 5, in which the tea owner tried to strip the younger boy of his clothes but did not actually strike him and therefore was adjudged innocent of vicious conduct.⁴⁷ In all these cases clemency is denied. The same is true of old age case 19, where the Board refuses clemency to the impoverished thief of seventy-seven on the technically correct but morally dubious ground that he had already been accorded clemency for a theft seven years earlier.

Four other cases seem demonstrably at odds with the Code or with other cases. In case 26, we find clemency being denied to a man over seventy on the sole stated ground that despite his age, his physical condition was still "basically flourishing." This argument, of course, has no statutory basis. In case 18, clemency is similarly denied to a "litigation trickster" of seventy on the ground that, as demonstrated by his activities, he is still too mentally vigorous, and therefore dangerous, to deserve clemency. In case 31, a man of seventy is at first denied redemption in a situation where he is eligible for it, and then, when he becomes incapacitated, is allowed redemption although, as an incapacitated person, redemption is no longer needed in order to free him from punishment. Finally, in case 37 it is denied that paralysis affecting both the left foot and the left hand constitutes infirmity, although, according to statute, "loss" of merely *one* foot or hand constitutes infirmity. As we have already seen,⁴⁸ the word "loss" in this context has a broad connotation which would certainly include paralysis.

As against these decisions which seem to err on the side of over-severity, there are occasional judgments which seem to lean the other way. Notable is case 17,⁴⁹ in which a man of eighty, guilty of having induced others to murder a distant nephew, and of then having instigated someone to make a false accusation, and finally of having been a fugitive from justice for three years, is saved by the fortuitous

⁴⁷ In this last case, as already seen, text preceding note 16 *supra*, another factor was possibly present as well; but the failure to strike was probably decisive.

⁴⁸ Text following note 33 *supra*.

⁴⁹ Text accompanying note 19 *supra*.

occurrence of an imperial amnesty. After the amnesty, because of his age, he is permitted to escape all remaining punishment through monetary redemption.

Whether we agree with these decisions or not, they clearly confirm the observation made earlier that the Board of Punishments enjoyed considerable discretion in deciding how and why the laws on age, youth, and infirmity were to be applied. Despite the seemingly categorical wording of the laws, there was nothing automatic in their functioning. Their purpose was to provide fixed legal guidelines by which favorable legal treatment could be extended in a controlled manner to certain categories of wrongdoers deemed by Confucian morality to be especially deserving of such treatment. In every individual instance, however, it remained the task of the courts, and especially the Board of Punishments, to determine whether or not a given wrongdoer did in fact fit into one of the privileged categories, and if he did, whether his own motivation and the circumstances of his case justified extending to him personally the special legal treatment intended for his category. It was in making these individual assessments that the courts, even when holding to the letter of the law as they usually tried to do, could on occasion reveal what seems to be ignorance, prejudice, or misunderstanding.

Some degree of whim and error is inevitable in every legal system. On the whole the Board of Punishments, once we recognize its frame of reference, would seem to have been reasonably successful in applying to these forty cases a Confucian humanity directed within legal channels. By compiling all instances of granting or denying clemency as recorded not only in the cases proper but in the precedent cases cited in many of them, we arrive at the following table:⁵⁰

<i>Category of cases</i>	<i>Clemency granted</i>	<i>Clemency denied</i>
Youth	11	8
Age	8	4
Infirmity	10	4
Totals	29	16

Thus clemency is granted in nearly two-thirds of the 45 instances

⁵⁰ The breakdown into specific cases is as follows:

Clemency granted: (a) *youth cases:* 1, 8, 9, 10 (two main cases and two cited precedents), 11-13, 22; (b) *age cases:* 14 (main case and two cited precedents), 15-17, 15.1, 15.2; (c) *infirmity cases:* 20, 21, 27-29, 31-33, 35, 38.

Clemency denied: (a) *youth cases:* 2, 3, 4 (main case and two cited precedents), 5-7; (b) *age cases:* 18, 19, and one cited precedent each in 26 and 15.1; (c) *infirmity cases:* 20, 30, 34, 37.

in which the question of either granting or withholding it arises.⁵¹ In the modern world such a proportion would probably be regarded by many as inadequate, but in the still relatively stable Chinese society of the early nineteenth century it could be pointed to as a reasonable exemplification of the triumph of juridically controlled Confucian benevolence over Legalist sternness. I think these cases confirm on the whole the favorable evaluation of Ch'ing legal procedure made by my colleague Clarence Morris in commenting on the 190 cases translated in *Law in Imperial China*. "The few cases in our collection," he writes, "that can be viewed as instances of judicial whim are not surprising. More significant is the general conclusion that Ch'ing penal procedure was systematic, reasoned, and an ongoing effort to effectuate a few important policies; only rarely were these policies ignored."⁵²

APPENDIX 1

THE CH'ING CODE'S ARTICLES ON AGE, YOUTH, AND INFIRMITY

SECTION 22¹

Monetary Redemption Permitted to the Aged, the Young, and the Infirm

*Statute*²

All offenders aged seventy or above or fifteen or below, or suffering from an infirmity (*fei chi*) [*Official Commentary*: blindness in one eye or loss (*che*) of one limb and the like] are, if guilty of an offense punishable by life exile or less, to be given monetary redemp-

⁵¹ It is not always easy to decide whether a case really supports clemency or not. In case 26, for example, the Board, after stating that clemency is inherently inappropriate, points to an imperial New Year's proclamation as bringing a change into the situation. The unstated implication is that, because of this extraneous factor, the sentence will in fact be changed. In view of this ambiguity, I have excluded the case from the statistics.

⁵² D. BODDE & C. MORRIS, *supra* note 1, at 541. What the policies were is summarized by Professor Morris in the subsequent paragraphs.

¹ One statute and nine sub-statutes. Square brackets are used to enclose the comments of the Official Commentary on the statute, as well as any additional phrases inserted by the translator for greater clarity. Only sub-statutes relevant to the present study have been translated. Others are briefly summarized within square brackets. The dates of promulgation provided below for each statute and sub-statute are based on HSÜEH YÜN-SHENG, TU-LI TS'UN-YI [CONCENTRATION ON DOUBTFUL MATTERS WHILE PERUSING THE SUB-STATUTES], bk. 4, at 1a-10a (1905).

² CODE 409-10; Staunton § 22; 1 Philastre 185-86; Boulais § 131. The main text goes back unchanged to the Ming Code of 1397, and with only slight changes to the T'ang Code of 653. The Official Commentary—first published in 1646 and revised in 1740—is a slight modification and rearrangement of that in the Ming Code.

tion. [*Official Commentary*: This statute does not apply to persons guilty of a capital offense, nor to those deserving of exile because of their vicarious responsibility in cases of rebellion or treason, nor to those who, being guilty of preparing magic poison, or dismembering a living person, or killing three members of a single family, have had their punishment [of death] reduced to exile because of an amnesty. Monetary redemption will be allowed to all other persons, they being guilty of injuring someone's person or property. It applies equally to those guilty of offenses punishable by military exile or by ordinary exile.]

Persons aged eighty or above or ten or below, or who are incapacitated (*tu chi*) [*Official Commentary*: through blindness in both eyes or loss (*che*) of two limbs and the like], if guilty of a homicide [*Official Commentary*: premeditated, intentional, or committed in an affray] for which the punishment is death [*Official Commentary*: either decapitation or strangulation], will have a recommended sentence for their offense submitted to the throne and await judgment. [The usual result is a reduction from death to a lower punishment. *Official Commentary*: This statute does not apply to those guilty of rebellion or treason.] If they have committed robbery or have injured someone [*Official Commentary*: but are not guilty of a capital offense], they too are to be given monetary redemption. [*Official Commentary*: This means that, inasmuch as they have inflicted injury or loss upon another person, they are not to be wholly exempted from punishment. Nevertheless, they are still to be permitted redemption.] For all offenses other than the foregoing, they are not to be held responsible at all. [*Official Commentary*: This means that, aside from those homicides which call for capital punishment, for which a petition is submitted to the throne, or aside from robbery or physical injury, for which there is to be monetary redemption, they are not to be judged guilty of any other offense.]

Persons aged ninety or above or seven or below, even though guilty of a capital offense, are not to suffer any punishment. [*Official Commentary*: This statute does not apply to persons of ninety or above who are guilty of rebellion or treason.] If these persons have been instigated by someone, the instigator will be tried for the offense. If there is property to be restored, he who has received the property is to restore it. [*Official Commentary*: This means that persons of ninety or above or seven or below are all deficient in their mental powers and physical strength. Thus if they have been instigated by someone, it is the instigator who is to be tried for the offense. Or if there has been a robbery and another person has received and made

use of what has been taken, it is that other person who is to make restitution. If, however, the aged or young person has himself made use of it, it is from him that restitution is to be demanded.]

Sub-statute 1³

[Concerning exemption of the aged, young, or infirm, once they have been granted redemption, from wearing the cangue or undergoing bamboosing.]

Sub-statute 2⁴

If, either at the capital or in the provinces, among those offenders currently on trial whose cases do not require to be memorialized [via the Board of Punishments to the throne for final judgment], there are persons who are aged, young or infirm, they are always to be adjudicated [at the lower judicial level] in accordance with the statute [on the aged, young and infirm]. If, among the cases which are tried in the provinces and *do* require to be memorialized [to the throne for final judgment], some of the offenders are actually aged, young or infirm, the governors-general or governors of the said provinces are carefully to examine and receive the certified and sealed statement from their subordinate local official and, on its basis, to submit a memorial asking for monetary redemption according to statute. If in reality, however, the offenders are not aged, young or infirm but, because of favoritism, their cases have been memorialized [to Peking] with a request for exemption from punishment, the officials who have thus memorialized and the governor-general or governor are then [to have the facts of their involvement in the affair] transmitted to the Board [of Civil Office] for judgment. But if, among offenders arriving [from the provincial courts] to the Board [of Punishments] for adjudication, there are some who declare that they are [now] aged or that, while en route, they became infirm, and if examination indicates that they actually are aged, or infirm, they are then to be permitted monetary redemption.

Sub-statute 3⁵

[Concerning persons who instigate a child of seven to strike his parents or a man of ninety to kill his child or grandchild.]

³ CODE 412; 1 Philastre 187; Boulais § 132. Initially taken from a sub-statute in the Ming Code; revised in 1740.

⁴ CODE 412-13; 1 Philastre 187. Initially promulgated in 1673; revised in 1725 and 1740.

⁵ CODE 413; 1 Philastre 187-88. Derived in the first instance from a private commentary on the Ming Code, but, with slight changes, going back from it to the Official Commentary on the T'ang Code of 653.

Sub-statute 4⁶

[How cases of the aged, young or infirm are to be handled at the Autumn and Court Assizes.]

Sub-statute 5⁷

Any person who has lost the sight of one eye, if he has committed an offense punishable by military or ordinary exile, penal servitude, or bamboosing, will in none of these instances be permitted monetary redemption on grounds of infirmity. He who, by beating another person, causes him to lose the sight of one eye, will be punished according to statute.

Sub-statute 6⁸

[Classification at the Autumn Assizes of incapacitated persons who are guilty of a capital offense.]

Sub-statute 7⁹

A child of seven or below, if he has killed someone, is permitted, according to statute, to have a petition presented to the throne for remission of punishment. A child of eight to ten, if during an affray he has committed homicide, is permitted the same privilege provided the victim is four or more years older than the offender. But if the age difference is only three years or less, the sentence will, as in ordinary cases, be that of strangulation after the assizes, without the privilege of submission to the throne of a special request for clemency.

If a child of eleven to fifteen, on being abused (*ch'i*) and insulted (*wu*) by someone older than himself, strikes that person and thereby causes his death, it should then be determined whether the deceased was four or more years older than the offender and, if this be the case, whether the deceased had displayed unreasonable (*li-ch'ü*) or vicious (*ch'eng-hsiung*) conduct toward the offender, or whether the latter's homicidal act had been done unintentionally in sport. If one or the other be so, a petition may then be submitted to the throne requesting clemency, in accordance with the holding in the case of Ting Ch'i-san.

⁶ CODE 413; 1 Philastre 188. Promulgated in 1740.

⁷ CODE 413-14; 1 Philastre 188; Boulais § 133. Promulgated in 1745.

⁸ CODE 414; 1 Philastre 188, with considerable changes. Initially promulgated in 1774; revised in 1803.

⁹ CODE 414-15; 1 Philastre 188; Boulais § 134. Based on a case of 1732; initially promulgated in 1779; revised in 1806.

*Sub-statute 8*¹⁰

All offenders aged seventy or above or fifteen or below, or suffering from an infirmity are, if guilty of an offense punishable by life exile or less, to be permitted monetary redemption on a single occasion; their exercise of this privilege will be noted in the record made of the case. If after this first redemption they again commit an offense, at this point, provided the offense was committed deliberately, and aside from cases in which they have been only indirectly or by mistake involved in the offense, for which redemption will still be permitted, they will then be subjected to full punishment as provided by statute, without being permitted monetary redemption a second time.

*Sub-statute 9*¹¹

[Concerning false accusations made by persons who are aged or infirm.]

SECTION 23¹²

Wrongdoing Committed Prior to Becoming Aged or Infirm

*Statute*¹³

Any offender who was not yet aged or infirm when he committed his offense but who has become aged or infirm by the time the offense comes to light, will be tried according to the laws on age and infirmity. The same principle will apply if he becomes aged or infirm in the course of undergoing penal servitude. [*I.e.*, he will be permitted redemption for the term of penal servitude still remaining to be served.]

Any offender who was an infant or a youth when he committed his offense but has attained adulthood by the time the offense comes to light, will be tried according to the laws on infancy and youth.

¹⁰ CODE 415-16; 1 Philastre 188-89; Boulais § 135. Initially promulgated in 1759 for insertion in section 404 of the Code; transferred to the present section in 1788.

¹¹ CODE 416; briefly mentioned in 1 Philastre 189. Promulgated in 1818.

¹² One statute and no sub-statutes. The main text goes back unchanged to the Ming Code of 1397 and from there to the T'ang Code of 653. The Official Commentary has been left untranslated because it is lengthy and adds nothing significant.

¹³ CODE 419; Staunton § 23; 1 Philastre 191-92; Boulais § 136.

APPENDIX 2

TABLE OF *HSING-AN HUI-LAN* CASES ON THE
AGED, THE YOUNG, AND THE INFIRM¹

SECTION 14

Monetary Redemption Permitted to the Aged, the
Young, and the Infirm

CASE No.	DATE	LOCALE	TYPE OF CASE	SOURCE
				HAHL
1	1826	Kiangsu	Memorandum	4.4/1a-b
2	1814	Kiangsi	Memorandum	4.4/1b
3	1812	Szechuan	Memorandum	4.4/1b-2a
4	1816	Kuangsi	Memorandum	4.4/2a-b
5	1817	Kiangsi	Memorandum	4.4/2b
6	1803 ²	Kuangsi	Memorandum	4.4/2b-3a
7	1813	Shensi	Leading Case	4.4/3a
8	1830	Kuangtung	Memorandum	4.4/3a-b
9	1798	Szechuan	Memorandum	4.4/3b-4a
10	1812	Chihli	Memorandum	4.4/4a-b
11	1812	Szechuan	Memorandum	4.4/4b
12	1812	Heilungkiang	Memorandum from the Department for Mukden	4.4/4b
13	1823	Honan	Leading Case	4.4/4b-5a
14	1804	Mukden	Memorandum	4.4/5a
15	1820	Chihli	Memorandum	4.4/5a-b
16	1815	Shantung	Leading Case	4.4/5b
17	1822	Fukien	Leading Case	4.4/5b
18	1792	Kueichou	Memorandum	4.4/5b-6a
19	1788	Peking	Memorandum	4.4/6a
20	1794	Yunnan	Memorandum	4.4/6a-b
21	1827	Shantung	Memorandum	4.4/6b-7a

¹ Only 270 of the 436 sections of the Ch'ing Code are represented by cases in the *Hsing-an hui-lan* (HAHL). This is why sections 14 and 15 of the HAHL below correspond, despite the differences in numbering, to sects. 22 and 23 of the Code in Appendix 1. In the right-hand column, the annotation HAHL 4.4/1a-b means that the case in question occurs in the fourth *t's'e* (volume) of the HAHL proper, *ch'üan* (book) 4, at 1a-1b.

² The date of case 6 (1803) is surely in error because the case cites as a precedent another case which it dates 1812 and which is the same as case 10, wherein the date of 1812 is confirmed. Possibly the erroneous date for case 6—the eighth year of Chia-ch'ing (1803)—is a misprint for eighteenth year (1813).

CASE No.	DATE	LOCALE	TYPE OF CASE	SOURCE
22	1820	Kiangsi	Memorandum	4.4/7a
23	1815	Urumchi	Memorandum from the Department for Shensi	4.4/7a-b
24	1799	Kiangsi	Memorandum	4.4/7b-8a
25	1811	Chihli	General Circular	4.4/8a-9b
26	1809	Yunnan	Memorandum	4.4/9b-10a
27	1818	Yunnan	Memorandum	4.4/10a
28	1828	Kuangsi	Memorandum	4.4/10a-b
29	1829	Kiangsu	Memorandum	4.4/10b
30	1830	Chahar	Memorandum from the Department for Shansi	4.4/10b-11b
31	1832	Hunan-Hupei	Memorandum	4.4/11b-12a HAHL Supplement
32	1824	Peking	Leading Case from the Department for Mukden	29.2/13a
33	1827	Anhui	Leading Case	29.2/13a-b
34	1830	Kueichou	Leading Case	29.2/13b
35	1837	Shantung	Memorandum	29.2/13b
36	1836	Peking	Memorandum from the Department for Kuangtung	29.2/13b-14a
37	1834	Kueichou	Memorandum	29.2/14a HAHL New Supplement
38	1881	Shensi	Leading Case	37.2/2b

SECTION 15

Wrongdoing Committed Prior to
Becoming Aged or Infirm

				HAHL
1	1821	Kiangsu	Memorandum	4.4/12a-b
2	1826	Chekiang	Memorandum	4.4/12b