

# Ethnic Distinctions, Legal Connotations: Chinese Patterns of Boundary Making and Crossing

SAGE Open  
July-September 2021: 1–13  
© The Author(s) 2021  
DOI: 10.1177/21582440211043930  
journals.sagepub.com/home/sgo  
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## Abstract

This study analyzes, from a comparative and historical perspective, the clash between state statutory law and native customary law and the consequential effects of that rivalry on ethno-legal categories. It adopts a long-term perspective on Chinese society, with a particular focus on its history over the last three centuries. Although the imperial Chinese state had a centralized legal code, many non-Han subjects followed different legal standards and systems. Such conditions became the basis of legal pluralism and the structural constraint for full-fledged legal uniformity. It is argued that state-imposed ethnic categories in China have been institutionalized to determine those who should be protected, or even privileged, by their own native law. This is especially true during the alien dynasties of conquest, which purposely emphasized the principle of personal law to preserve legal prerogatives of ruling ethnicity. Similarly, indigenes on the frontier carried a variety of legal exemptions on grounds of the principle of territorial law. Such conditions could leave room for individual agency and provide incentives for both acculturated Han settlers and sinicized indigenes to claim native status. Several examples, including an 18th-century homicide case in China's southwestern frontier, substantiate how individuals manipulated their ethnicity for their self-advantage and how these behaviors complicated the personality and territoriality principles of imperial law. In this sense, ethnic law served as an institutionalized distillation of ethnic group boundaries, which were realigned by shifts in self-identity. The legacy of China's imperial practices of particularistic jural relations continues today.

## Keywords

empire, ethnicity, legal pluralism, native chieftaincy, China, frontier society, boundary-making, boundary-crossing

## Introduction

All great empires in history were extensive but not intensive; they ruled but did not administer the affairs of society at large. This was especially true beyond the core or the metropole. Numerous comparative and historical studies on the loosely-bounded frontiers, *limes*, since Weber (1978 [1922]) have discussed the existence of *de facto* independent local self-rule to accommodate ethnic, religious, administrative, fiscal, and legal diversity. Sociological research on the judicial system of empires has focused on theoretical abstraction (Eisenstadt, 1963) and conceptual debates—sometimes problematizing the perspective of the Weberian tradition (Lai, 2015; Marsh, 2000). However, they have paid relatively little attention to examining the actual application of imperial law. Meanwhile, most historical and anthropological studies, including those mentioned in this study, have analyzed legal plurality and hybridity largely based on the compilation of statutes, precepts, and cases. These works elucidate the specific imperial context in certain areas and periods, but they do not tend to jump into theoretical and comparative discussions at the broader and more macro level.

This study aims to integrate these two scholarly traditions to contribute to a better understanding of law and society under imperial rule. To begin, I emphasize that, as the empire-building projects entailed coming to terms with multilayered heterogeneity, historical empires invariably needed to adopt particularistic—often ethnic—elements in conjunction with universalistic legal systems. The imperial government often recognized that particularistic law could take precedence over the dynastic legal code. Such conditions became the basis of legal pluralism—a situation where “two or more legal systems coexist in the same social field” (Merry, 1988, p. 870), and the structural constraint for full-fledged legal uniformity irrespective of individual status in kinship, ethnicity, and territorial affiliation. The role of an imperial state was to regulate both the validity of the special

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laws modeled on such characteristics as political, ethnic, occupational, or religious denomination and the extent of their application.<sup>1</sup>

Therefore, this study analyzes, from a comparative and historical perspective, the clash between state statutory law and native customary law and the consequential effects of that rivalry on ethno-legal categories. It adopts a long-term perspective on the Chinese empire, with a particular focus on its history over the last three centuries. By doing so, this would contribute to broadening the scope of comparative studies on the legal pluralism of empires in the early modern world. To date, there have been few attempts to conceptualize legal pluralism in imperial settings through a comparative lens, especially under patrimonial empires, such as the Byzantine, Iranian, Ottoman, Romanov, Mughal, Abyssinian, and Chinese empires. For instance, a notable work edited by Benton and Ross (2013) covered a wide range of legal pluralism in European “colonial powers,” often considered as overseas empires, but included only one case from “continental empires”—the Ottoman Empire (Barkey, 2013). Given that the Chinese state is the example *par excellence* of judicial plurality, considering its duration and extent, this study aims to offer some useful conceptual frameworks applicable and comparable to other empires.

Although from inception, the imperial Chinese state had a centralized legal code (Bodde & Morris, 1967), many non-Han subjects followed different legal standards and systems. As will be discussed in detail later, the situation was particularly salient during the period of alien conquest dynasties, like the Liao, Jin, Yuan, and Qing, which account for much of Chinese history after the 10th century, when the ruling regime was ethnically framed and consequently privileged under the state legal and judicial system. Under this condition, there was a tendency to cross ethnic boundaries; for instance, some Han Chinese assimilated to a ruling class so that their ethnic self-identity became somewhat closer to Mongols during the Yuan (Guida, 2018; Serruys, 1957) or Manchus during the Qing (Campbell et al., 2002).

This was also true along the frontier, where a variety of native polities endured with their own legal codes and administrations. The state differentiated between ethnic categories not so much to identify those who would be discriminated as to decide those who should be protected, or even privileged, on the grounds of their native customary legal practices. I will demonstrate that being recognized as a non-Han indigene carried a variety of legal exemptions, including judgment by state law. Such a boundary-making condition provided an incentive for a Han to claim non-Han status and, as a result, led to ethnic identity reconstruction and realignment in the frontier regions. As Wimmer (2013) aptly argues, institutional rules provide incentives to pursue certain types of boundary-making strategies rather than others, and because of institutional incentives, ethnic differences become an important matter. Hence, it was not unlikely for the

colonial settlers to have strong motivation to pass for native indigenes and that was one unintended consequence of the state’s favoritism toward native tribesmen over Han frontiersmen. As will be explored in the conclusion of this study, China’s contemporary policy of preferential treatment resembles, to some degree, such imperial practices. Its result is also similar to that in China’s imperial past. As a groundbreaking field study on Yi people in southwest China reports, the children of minority-Han couples in some areas “always take the minority nationality” (Harrell, 2001, p. 290). This is not an aberrant case. A recent study by Jia and Persson (2021) demonstrates that choosing to be non-Han is widely common in today’s China.

This study argues that what happens in China’s frontier society has *not always* been simply state-sponsored colonization favoring Han newcomers and a one-way sinicization process (Ho, 1998). This paper will neither deconstruct the longstanding consensus in scholarship that those who are indigenous or unassimilated to the Sinic culture have been subject to prejudice and discrimination, nor argument that the Chinese state has backed colonial settlers when resource conflicts ensued. There is overwhelming evidence confirming the role of the state in supporting the Chinese colonial enterprise that continues today (Giersch, 2006; Gladney, 2004; Herman, 2007). As a result, the Han Chinese encroachment through mass migration, closely linked with pushing for administrative centralization, has undoubtedly forged numerous revolts, uprisings, and conflicts from the Ming dynasty to the present (Jenks, 1994; McMahon, 2002; Sautman, 2006; Shin, 2006). Some scholars even depict this situation as “the Guizhou killing fields” during the late imperial period (Woodside, 2007, p. 15) or “cultural genocide” in Inner Mongolia, Tibet, and Xinjiang today (Bulag, 2002). It is also apparent that the Chinese states have developed and implemented what Harrell (1995) and Schluessel (2020) call “civilizing projects” toward peripheral peoples. Likewise, one of the major characteristics of this state-led project is the ethnographic representation of peripheral indigenes as uncivilized, inferior, and backward (Hostetler, 2001; Teng, 2004). Such depictions are instrumentalized to legitimize and consolidate rules over minority regions.

However, while recognizing the vulnerability of frontier natives whose autonomous status has been frequently threatened, this study attempts to point out the opposite tendency with regard to ethno-legal boundaries—the process of desinicization and the protection of local legal standards. To do so, it further explicates the conditions and instances of boundary-crossing under the circumstances of nebulous and porous intergroup boundaries. This study will contribute to our understanding of this *relatively less* discussed aspect of the expansion of Chinese ecumene.

This paper proceeds as follows in five sections. Section one begins with a conceptual framework of legal diversity along the lines of ethnic distinctions in the imperial state, focusing on China. I then examine the two principles of ethnic

**Table 1.** Schematic Typology of Ethnically Framed Legal Pluralism.

Territorial dimension	Personal dimension			
	Han vs. Han	Non-Han vs. Non-Han		Han vs. Non-Han
		Same ethnicity	Different ethnicities	
Interior/Center	Case I	Case II	Case III	Case IV
Exterior/Periphery	Case V	Case VI	Case VII	Case VIII

jurisdiction: the personality principle and the territoriality principle. Section two elaborates on a sociological rule of experiences that the members of the foreign ruling group could enjoy favorable legal treatments on the basis of the personal principle of law. Section three discusses how the Chinese state—more specifically, the Qing state—applied the territorial principle of law. In section four, I use several legal documents from the Qing period, including an 18th-century homicide case in China's southwestern frontier, to illustrate how individuals could manipulate the personal and territorial principles of imperial criminal law. In the last section, I summarize the major characteristics of ethnic legal jurisdiction in imperial China and their implications for understanding present-day conditions.

### Legal Pluralism in Multiethnic Empires

Ethno-legal heterogeneity in imperial settings took place under two opposing conditions: a military conquest of the frontier over the center and a territorial expansion of the hegemonic center into the periphery. On the one hand, it was common that tribal confederations on the periphery infiltrated and dominated the imperial center. The ruling people (*Herrenvolk*) of dualistic nomad-sedentary empires (i.e., the Arab, Turkic, Mongol, Timurid, Mughal, and Manchu empires) were of foreign origin. Their numbers were far fewer than those of conquered natives. As a small minority, these rulers deliberately differentiated their own kind from the settled subjects and intentionally imposed special provisions and treatments to keep their socio-political supremacy. On the other hand, both continental and overseas empires grew by expansion from a metropolitan core, which usually triggered massive colonial settlements. The periphery was marked by differences in relation to the center—by ethnicity, custom, language, religion, ecology, and economy. Such an environment, in turn, created a variety of administrative, judicial, and fiscal arrangements as a practical way of securing the dominion and integrity of the empire. Therefore, the effective legitimation of the imperial state remained spatially mosaic or loosely affiliated through the recognition of the notion of universal emperorship like the Son of Heaven and the Tsar. If the political dependencies were fully incorporated into the central state and their inhabitants were governed, registered, sentenced, and taxed as well or badly as the subjects in the regular

provinces, the center-periphery relationship then became not so much imperial as national (Suny, 2001, p. 25).

These two imperial conditions of foreign conquest and territorial-colonial expansion were closely associated with two types of legal considerations along ethnic lines: personal and territorial. The principle of personality of the law meant that individuals were subject to the law of their place of origin (*terre natale*) or ethnic background, rather than to any general dynastic legal code (Wood, 1998). Everyone was entitled to be judged by one's tribal customary law.<sup>2</sup> Law under this principle of personality protected the privilege of the person as a member of a specific group. This situation became salient not only in Europe when Burgundians, Franks, and Visigoths dominated native Romans during the early Middle Ages (Fouracre, 1998; Guterman, 1961, 1966; Wood, 1998) but also in China when the Khitans, Jurchens, Mongols, and Manchus ruled native Han Chinese. Meanwhile, the pure type of territorial law (*lex terrae*) refers to a specific legal system confined within the respective territorial limits regardless of ethnic background. This principle of territoriality of the law could be applied to internal ethno-religious enclaves, peripheral colonies, and foreign vassals, all of which were not fully integrated with the patrimonial bureaucracy in the center.

The interaction and intersection of these two principles are essential to comprehend the characteristics of ethno-legal institutions and their application in imperial China, where the scope of particularistic legal relations was wide and the government paid special attention to the ethnically framed legal cases. Table 1 presents the ideal-types of intersection between personal and territorial laws, considering the following hypothetical cases: What law should be applied if a Korean kills a Korean in the dynasty's capital (Case II)? What if a Manchu bannerman murders a Han commoner within the banner garrison inside China proper (Case IV)? What if a Mongol robs a Tibetan in Qinghai (Case VII)? What if a Han merchant rapes a Miao woman in the Miao realm of Guizhou (Case VIII)?

More challenging cases occurred when one or both litigants had an ambiguous identity. What if there is a brawl between a Han civilian and a fairly "sinicized" indigene in an area under native jurisdiction in Yunnan (Case V or Case VIII)? What if a Yi kills an ostensibly "localized" Han migrant in southern Sichuan (Case VI or Case VIII)? What if there is a fight between a "sinicized" Mongol and a Mongol

from Mongolia in Hebei (Case II or Case VI)? Under these circumstances, the coexistence of personal and territorial principles of law might present individuals with opportunities and motivations to manipulate their ethnicity to their advantage. Examples of such strategic behavior, similar to what von Benda-Beckmann (1981) calls “forum shopping,” will be presented later in this paper.

## The Personality Principle of Ethnic Jurisdiction

The official imposition of the individual-based “ethnic” law can be traced at least back to the Tang dynasty (618–907). Statute 48, “Crimes Committed against Each Other by Unassimilated Aliens” (*huawairen xiang fan*), of the Tang Code laid down that alien subjects inside China proper could employ their own laws if an offense involves persons of the same ethnicity (Johnson, 1979, p. 252). For example, if a Korean kills a Korean in the Tang capital, Chang’an (present-day Xi’an), the case should be adjudicated by Korean customary law (Case II in Table 1). Meanwhile, during the Tang and Song periods, when a foreigner who lived in a foreign community (*fanfang*) committed an offense against local Chinese, the case that was not very serious was left to a perpetrator’s foreign leader (*fanzhang*) to decide according to their own law (Case IV in Table 1) (Edwards, 1980, p. 224).

The Tang Code further stipulated that if a foreigner kills a foreign subject from another country, the case should be judged by Tang law (Case III in Table 1). The rationale was that since these people are of non-Chinese origin, their laws vary. Statute 36 of the Ming Code on unassimilated aliens (*huawairen you fan*), which was later copied in the Qing Code, also followed this principle on the basis that if an alien from the east (*dongyi*) has a legal suit against another from the west (*xirong*), these two litigants can be judged no other way but by Ming law (Su, 1996, p. 147). The Ming state also considered aliens who were permitted to settle and had submitted to the emperor as the emperor’s subjects, whom the emperor should treat impartially (Jiang, 2011, pp. 123–132; see also Shin, 2020). In this all-embracing conception of peoplehood, ethnicized legal boundaries were cleared because, as long as they accepted the emperor’s imperial authority, these people were Chinese without regard to their ethnic backgrounds. Hence, it can be inferred that a crime involving different non-Han ethnicities in China’s heartland, at least in principle, had been judged by imperial code ever since the Tang.

In addition, there was another guiding principle in Chinese legal tradition: The functioning law was largely determined by the ethnicity of the victim rather than the offender. According to the Qing regulation, for instance, if both Mongol and Han were robbed inside China proper, the ethnicity of the one suffering the greatest loss was to determine the operative law (Heuschert, 1998, p. 319). From a comparative perspective, this practice was not uniquely

restricted to China. Similarly, in medieval Eastern Europe, if a citizen of Kotor murdered a foreigner in Kotor, Montenegro, an application of punishment was prescribed according to the laws of the city from which the victim originated (Živković, 2014, p. 108).

China’s conquest dynasties—the Khitan Liao (907–1125), the Jurchen Jin (1115–1234), the Mongol Yuan (1206–1368), and the Manchu Qing (1644–1911)—commonly reinforced the personality of law. Based on the person’s tribal genealogy or membership in the elite hereditary military organization, they separated the dominant conquerors from the regular administrative system. This particularistic reference to ethnic affiliation benefited the ruling minority. In the early period of the Liao, if a Khitan killed a Han Chinese, he had to pay a fine; however, if a Han killed a Khitan, he was sentenced to death. Even when the Liao government began to apply Chinese law, basically the Tang Code, to the Khitans in 994, it was still restricted to a Khitan criminal who had committed the unpardonable “ten most serious crimes” (*shi’e*), such as plotting rebellion or treason (Wittfogel & Feng, 1949, p. 231). A similar situation continued during the Jin dynasty in which the ruling ethnicity, Jurchen, possessed legal privileges by protecting its own customary law originating from Manchuria, while adopting the Tang Code to adjudicate native Chinese disputes (Franke, 1981).

Given that the Mongol conquerors, ever since Chinggis Khan, insisted on their superior position, Mongol subjects enjoyed certain exemptions and exceptions under state legislation. According to the Great *Yasa* (code), the offender who wished to evade capital punishment for murder could pay the blood money, which was forty golden coins (*balish*) in the case of a Muslim victim and one donkey for a Han Chinese victim (Ch’en, 1979, p. 52). Further, when a Mongol and a Han fought, the Han subject could not hit back but was only allowed to report the incident to the authority. If he hit back, he lost his right of appeal and was punished (Ch’ü, 2011, p. 273). Similarly, in 1302, a decree was issued to stipulate the guidelines of tattooing as a form of retaliatory punishment for robbers and thieves. If a Mongol committed such a crime, however, the offender should not be dealt with pursuant to these regulations (Ch’en, 1979, p. 67).

The Yuan state also established a system of joint courts, where interethnic disputes could be considered and settled by a mixed group of representatives from different jurisdictions (Ch’en, 1979, pp. 80–88). While the Mongol residents in China proper would be tried before the regular civil officials in such serious criminal cases as those involving murder, robbery, and the counterfeiting of money, the presence of representatives of the Mongol authorities was required. Subsequent Ming and Qing dynasties inherited the institution of combined tribunals to administer the trial of mixed cases (Cassel, 2003, pp. 162–163). Statute 364 of the Ming Code, entitled “Coordinating Litigation Involving Military Personnel and Civilians” (*junmin yuehui cisong*), prescribed that such cases must be tried by both military and civilian



authorities together (Jiang, 2005, p. 201). In the Ming Code, there were no explicit considerations of the principle of personal law by ethnicity. However, the Manchu rulers of the Qing, who inherited the Ming Code, had added several statutes to this statute, which preserved their own interests in the supremacy of the Eight Banner system—the elite military organization divided by ethnicity (Cassel, 2012, p. 21).

The Qing rulers, who faced the question of ethnic governance from its very beginning, made a distinction between Manchu and Han: The former had a more favorable legal status than the latter. An offender from the Manchu royal family was tried by the Imperial Clan Court (*Zongrenfu*), according to its own legal code. In addition, according to the 1646 Qing Code, Manchu offenders were not tried by the regular legal institution but by campaign commanders, generals, or the Punishment Office of the Imperial Household Department (*Neiwufu*). The later Qing Code further specified a distinctive legal identity for Eight Banner offenders: They were not to be tried by prefect or county magistrates but by special administrators (Cassel, 2003; Elliott, 1990, pp. 43–44). All had the privilege of reducing or changing a punishment. Bannermen could be punished by beating, but not by imprisonment or banishment. They were instead ordered to wear a cangue (*jia*), a moveable pillory, for a number of days proportionate to the length of the sentence for imprisonment or banishment (Ch'ü, 2011, p. 275). Some of these privileges, however, did not apply to Han Chinese bannermen (*Hanjun*), but were reserved exclusively for Manchu bannermen (Im, 1993, pp. 122–125). Manchu bannermen were imprisoned or banished like the rest of the Qing subjects only after their names were removed from the official Banner record. This form of legal inequality remained until the last days of the Qing dynasty. There was a case where two bannermen were found guilty of cutting down trees in the Imperial Tomb enclosures. A Han bannermen had his name taken off the Banner lists and was decapitated, while his Manchu accomplice had his name removed but instead of execution was banished to a distant place (Punishment of Bannermen 1883).

Furthermore, we can build up a sociological theory of ethno-legal systems under alien regimes from a historical and comparative perspective. The judicial inequality in conquest dynasties of China displays a remarkable parallel with the way alien conquerors presided over natives in medieval Europe.

According to Salic law (*Lex Salica*), a Frank who robbed a Roman did not pay as large a sum as the Roman who robbed a Frank; the robbery of a Frank by a Roman was punished under the Frankish law (Guterman, 1966, p. 282). This implies the subordination of Romans under Salic law and the situation of legal inequality. Franks paid less for wrongdoings committed against Romans, but Romans had to compensate Franks in full (Bothe, 2018). Under the Frank aegis, many non-Frankish groups, such as Burgundians, Goths, Alemanni, Bavarians, and Saxons, in the Carolingian Empire

also enjoyed the privilege of their own private laws, and their mutual relations were ruled by a set of principles applied by mixed tribunals (Fouracre, 1998; Guterman, 1961, p. 131). These tribunals look structurally isomorphic to the institution of joint court during the Yuan and Qing. Likewise, the English law of the King's court after the Norman Conquest absorbed the principle of personal law to maintain the privilege of the conquering group.

Even in Europe, the triumph of the principle of isonomy, formal legal equality, over the particularistic mode of law-making was new in modern times (Kim, 2000). In other words, it was the revolutionary period of the 18th century that produced a type of legislation that sought to extirpate every form of legal particularism modeled on the *divisio personarum*—the division in terms of personal status. However, similar changes did not occur in late imperial China, as the Qing judicial system operated through particularistic legal codes with status-based applicability. As will be discussed, the application of regional special law was also extensive in China's frontiers, where the ethno-culturally defined categories of settlers and natives often constituted one of important *divisiones personarum*.

## The Territoriality Principle of Ethnic Jurisdiction on the Qing Frontier

The imperial state in China acknowledged the authority of the native customary law to stabilize social order in the exterior regions. The practice of semi-autonomous indirect rule spanned the entire imperial history (Took, 2005): from the “dependent states” (*shubang* or *shuguo*) of the Qin and Han, through the “loose-rein” (*jimi*) prefectures of the Wei, Tang, and Song, to the “hereditary native officials” (*tusi* or *tuguan*) of the Yuan, Ming, and Qing. Indeed, China's contemporary ethnic policy of “regional autonomy” (*quyu zizhi*) is not a mere adoption of the Soviet model: although it held influence over Chinese communists, they eventually rejected the Soviet-style federation model in 1949 (Lee, 2019). It can be regarded as a reconfiguration of traditional Chinese practice, especially during the Qing. Today's territorial inheritance from the Qing dynasty that forged a “Greater China” roughly corresponds to the present-day Chinese geo-body. The expansion of the Qing complicated the ethno-territorial affairs in dealing with demands of autonomy for previously independent polities, which still remains a major contemporary challenge in China.

The Qing government issued several law codes for the Miao, Mongol, Muslim, and Tibetan subjects in the frontier regions, named *Miaojiang shiyi*, *Menggu lili*, *Huijiang zeli*, *Fan li tiaokuan*, and *Lifanyuan zeli*. They alluded to enormous temporal and regional variations in judicial administration and complexities in dispute settlement with reference to demarcating ethnic lines.

In Xinjiang, the bureaucracy of the *begs* (officials) and the *akhunds* (imams) determined local court cases by the

prevailing Hanafite legal tradition. Disputes arising between Muslim and Han Chinese—especially in cases involving Han perpetrators and native victims—were settled according to Muslim law (Millward, 1998, pp. 121–122; Schluessel, 2017). In Kashgar, prior to the “liberation” by the People’s Liberation Army in 1949, the administration of Islamic *shari’a* law by the *qazi* (judges) courts was dominant and these religious courts effectively regulated daily life (Dillon, 2014). Although the *shari’a* courts and Islamic jurisprudence were eliminated in the 1950s, the influence of *shari’a* persists today among numerous Muslim groups across China (Erie, 2018). Meanwhile, the pre-1949 relative non-interference policy still made attempts to implement assimilative policy. Starting from the late 19th century, the Qing state formally provincialized this area in 1884 by renaming it Xinjiang—literally, new territory (Millward, 2007, pp. 136–148). The Xinjiang government proactively launched a regime of sociomoral rectification aimed at transforming the local population by teaching or enforcing Confucian societal norms and ritual practices, called *li*. Turkic-speaking Muslims understood this law-like concept to be Chinese *shari’a* (Schluessel, 2020, pp. 25–47).

In southwest China, the code differentiated along ethno-political lines between “wild” (*sheng*) and “mature” (*shu*) Miao and Fan natives (Fiskesjö, 1999).<sup>3</sup> Mature natives—meaning, familiar to Han Chinese—were more sinicized, allowed to take the civil service examinations in some cases (Chang, 1955, pp. 80–81; McMahon, 2008), and generally subject to the provisions of the imperial code (Su, 1993). In 1665, for example, the governor of Guizhou, Yang Maojin, required all the native chiefs to report all crimes and their legal resolutions to the provincial authorities. He distinguished between mature Miao and wild Miao, insisting that mature Miao cases of theft be judged according to the rules regarding regular Han civilians.<sup>4</sup> Likewise, according to the statute of 1701, a mature Miao who harms or kills someone should be punished by Chinese law (*min li*), and a wild Miao by Miao law (*Qing huidian shili*, 1991 [1899], p. 993). For administrators and their subjects, the legal arrangement between state law and native law played an important role in demarcating group boundaries.

However, such diverse judicial arrangements changed substantially as provincial authorities increasingly sought to integrate, regulate, and replace native legal processes. This trend was part of a larger administrative expansion called *gaitu guiliu*, which replaced hereditary local chiefs with court-appointed officials and brought their population under regular jurisdiction. Administrative reform steadily began during the early Ming period and forcefully continued in 1601, after the rebellion of Yang Yinglong—the *tusi* of Bozhou in today’s Guizhou (Herman, 2007; Jiang, 2018; Shin, 2020, p. 214). Then, it accelerated in the 18th century (Giersch, 2006; Took, 2005). By the late 18th century, the provincial areas under native jurisdiction in Yunnan and Guizhou had withered down from one-half to one-quarter

and from two-thirds to one-third, respectively (Lee, 1982, p. 728). While the overall trend was an increasing state control over the judicial process and administration, the immediate result of these efforts was an assortment of different legal arrangements throughout the southwestern frontiers.

Some native groups continued their own legal system even after they had formally converted to regular administration. This was partly due to the language barrier. For example, in the Zhenyuan Prefecture of Guizhou during the mid-18th century, district officials had to rely on indigenous Miao chiefs who spoke the Han language (*Hanyu*) to manage legal cases. Without their reports, the Qing officials had no way of finding out the facts in any case. Thus, the judicial administration in this area was the following: “The Miao who can speak Chinese are appointed as village heads. If any civil or criminal case occurs before them, they should first investigate and then report to the higher authorities” (Aibida, 1968 [1749], p. 97). Other nominally independent native administrations used dynastic codes and Chinese courts instead of native ones. In most cases, local chiefs shared legal administration with their provincial authorities. Sometimes, the provincial authorities were in charge of civil law, whereas the native authorities were in charge of criminal administration.<sup>5</sup> Other times, this was reversed. There was no common pattern beyond the increasing penetration of the state. In other words, although local situations varied, the Qing court unequivocally increased provincial intervention and regulation, gradually restraining even those regions that kept their own law codes and means. For example, in Guizhou, though native chiefs had the right to try murder cases, the Qing government decided the time to investigate.<sup>6</sup>

The consolidation of the state code at the expense of native ones was most conspicuous in two legal domains. One was the fiscal law, where the imperial government sought to impose similar institutions and methods of social mobilization, revenue extraction, and redistribution. The other was the criminal law, especially capital punishment, where the state developed complicated procedures (Bodde & Morris, 1967, pp. 131–134) to concentrate juridical administration in the central court and under the personal authority of the emperor (Lee, 1991). The degree to which an area was integrated with the rest of the empire can be measured according to whether it followed the dynastic fiscal law and capital criminal law. As previously noted, Chinese courts also recognized the validity of native law concerning capital crimes on the basis of the personality principle of law. Its application varied depending on the ethnicity or locality of the victim and offender.

It is important to note that, despite its interventionist aims, the Qing government still tolerated the legitimacy of native customary laws on capital crimes. In comparison with imperial law, which generally required execution or exile for homicide offenders, many native codes permitted a variety of monetary or financial commutation (Sutton, 2003). This

reflects the principle that a human life has a compensatory value, payable in full if a person is killed, or proportionately for injury or insult. This practice also functioned as an ultimate way of disentangling the myriad threads of interclan vengeance, demonstrated in the customary clan law on homicide in traditional Liangshan Nuosu Yi society (Qubi & Ma, 2001). Tracing back to the Warring States period, there is documented evidence of this local custom in southwest China.<sup>7</sup> It was extensively recorded in late imperial times. As an example, Gao Qizhuo, Governor of Hunan, memorialized in 1737, “In the three sub-prefectures (*ting*) of Qianzhou, Fenghuang, and Yongsui, if a Miao kills a Han, he should be punished according to the state law” (see Case VIII in Table 1). He continued, “If a Miao kills a Miao, however, the family of the deceased would prefer to follow Miao customary practice, which entitles them “bone price” (*gujia*), instead of Qing law. As a result, the family needs not even report the murder to the regular administrative officials” (Case VI in Table 1) (*Hunan Tongzhi*, 1820, 64.24a-b).

The bone price convention here resembles the tradition of *wergeld* (man price or blood money) in early Germanic law. In contrast, just as the late imperial Chinese law, the Roman law since the time of the Twelve Tables made no relevant statutory provision for compensatory payments in the settlement of homicide cases (Bothe, 2018, p. 347; Guterman, 1966, p. 279). Therefore, the conflict of laws in both late imperial China and early medieval Europe could occur in a major case involving diverse ethno-cultural backgrounds. This led to the question of determining the operative law between a standard code and a tribal code.

A more substantial point of comparison is that both Germanic barbarians and non-Han individuals received certain legal prerogatives by way of applying civilized law for minor cases and native law for major ones. In China, the Board of Punishments concerning interethnic crimes in the western Sichuan part of eastern Tibet made a decision in 1738 to apply the Qing Code for less severe offenses and the native code for more serious ones. It ruled, “in criminal cases that involve both Han Chinese and Golok Tibetans (*Guoluoke fanren*), if they are cases of fighting and plundering, they should be then decided by the regular code. If they are cases of murder and robbery, they should be decided by the native code” (Wang, 1991, p. 411). Similarly, in lawsuits between Romans and Goths under the Visigoths, Gothic law was employed in criminal cases, including homicides, while litigation among Romans was settled by the Roman laws in civil cases. The Merovingian dynasty adopted the analogous practice that criminal cases between Franks and Romans were settled by Frankish Salic law; civil cases were settled among Romans by Roman laws (Guterman, 1966, pp. 278, 282).

Finally, due in part to the governmental strategy of solving population pressure in the heartland, the period from the 18th century onward saw a marked rise in mass migration to the frontier (Lee & Wang, 1999, pp. 113–118). This

movement subsequently caused frequent disputes between settlers and indigenes (Jenks, 1994; McMahon, 2008; Sutton, 2006). As a method to pacify its ever-expanding frontier, the Qing government made decisions that in some instance colonial settlers should receive severe punishments. This was especially true for Han troublemakers called “evil Han” (*Hanjian*), who entered indigenous areas without official permission. The level of punishment applied to them could be even more severe than the level applied to local indigenes. The underlying rationale was that the people dared not court trouble, unless an evil Han provoked it. The following two cases manifest this consideration.

Guizhou Governor Aibida reported in 1749 that Chen Junde refused arrest and hurt others after raping a Miao woman named Aniao. The Board of Punishment issued an order, based on the Qianlong Emperor’s idea, that Chen should be executed at the spot of his crime and the announcement be made known in the area (Xue, 1970 [1905], p. 711).

Another case, also in Guizhou, happened in 1768. Yang Guochen went to the Miao area to sell licenses for cloth merchants. He was accused as the “evil Han” and was to be punished harshly and the Miao buyers, considered to have been cheated, were beaten by sticks as a warning rather than punished by state law. The Qianlong Emperor, who aimed to underscore his benevolent application of law toward the outer regions, issued an announcement to make Miao people feel grateful and keep them in awe (Cheng, 1988, p. 78).

The conciliatory policy illustrates one of the twin pillars of the grand strategy of the Chinese empire—the dual use of kindness and sternness (*enwei bingyong*), a blend of leniency and brutality. The Qing state policy aimed at social control in frontier regions emphasized the following two guidelines in the Sacred Edict promulgated by the Kangxi Emperor (r. 1661–1722): “being meddlesome (*duoshi*) is worse than doing nothing” and “it is valuable to avoid trouble” (Cheng, 1988, pp. 7, 12). The practical, ad hoc solution to pacify the frontiers was to draw out diverse but inconsistent regulations to accommodate different groups. As a result of such judicial inconsistencies, it can be argued that exploitative loopholes existed and ethnic boundaries between settlers and indigenes became nebulous and fluid.

## Crossing Ethnic Boundaries

As a rule, socio-political transformations in a colonizing society facilitate ethnic mixing, which inevitably creates intermediate zones where official ethnic categories are contested, and a person’s ethnic membership is negotiated and reframed. It was not uncommon in late imperial Chinese society for Han to claim to be native. Such an intriguing desinicization process became conspicuous when the imperial law was not applied to distinctly “ethnic” groups and when special legal provisions were given only to them. Accordingly,



the personality principle of Chinese law often resulted in legal conflict that required considerable adjudication by the emperor and his magistrates.

In late imperial southwest China, as some colonial migrants became increasingly acculturated to indigenous society, there was a puzzling question of what kind of law, state or customary, should be applied. Some Han subjects, who were supposed to be adjudicated by state law, voluntarily switched their status to native to either get a lighter punishment or to receive monetary compensation (*wergeld*).

One such example is from southern Sichuan. On 17 October 1732, there was a legal dispute in a capital case, one that could be treated either as Case VI or Case VIII in Table 1. It was directly reviewed by the Yongzheng Emperor (r. 1722–1735).

The deceased victim, Huang Lianqing, was a settler who emigrated from Shanxi Province to Jianchang Prefecture (present-day Liangshan Yi Autonomous Prefecture) in Sichuan in 1725. Upon his arrival, he gave the local native chief, Jia Niugeng, some chickens, clothes, and money. Jia, in turn, gave Huang a native-style name and assigned him land. Huang made his living mainly by traveling around the local countryside to sell sweetmeats. On 29 August 1731, he got into a drunken brawl with two local people who killed him. The killers, in accordance with the local native code, paid Huang's widow twenty cows, six bolts of cloth, and twelve taels of silver.<sup>8</sup> However, Jia overturned this initial settlement when the case came before him. Jia claimed that, as Huang was originally an immigrant from Shanxi, the case should be judged by the state law, so he needed to turn the killers over to the Qing authority for execution. Huang's widow, however, refused to accept Jia's decision, as she wished to keep her compensation. She therefore appealed to her case up the administrative ladder to Beijing. In 1732, it came before the emperor who succinctly responded in his vermilion rescript, "Although she is from Shanxi, if she prefers to be a native, let her keep her compensation."<sup>9</sup>

According to the Yongzheng Emperor, in this case, ethnicity was a matter of self-selection, not personal history, family heritage, or population registration. Native identity was open even to first-generation migrants from Shanxi. Perhaps the predilection of Huang's widow, who insisted on receiving *wergeld* according to the native customary law, was not aberrant.

On the other hand, some Han criminals also tried to pass as non-Han to receive a milder sentence, a situation that challenged local magistrates. Having deliberated a memorial from Shen Mengxi, the provincial judicial commissioner (*anchashi*) of Guangxi, the Board of Punishment issued an ordinance in 1760 against criminals in the Miao territory (*Miaojiang*) who were supposed to be sentenced to exile or military service. This order, subsequently emended in 1763 and finalized in 1801, states that if a Han commoner makes a false claim (*niecheng*) to be a "native Miao" (*tumiao*, actually indicating either a Yao or Zhuang person) to avoid banishment and wearing a cangue, that person must be punished

by state law and must wear a cangue for 1 month before banishment. If an offense deserves a capital punishment of beheading or strangling, the judicial official must file evidence. Once the fabrication of identity is found, the offender must be punished according to the sub-statute of the imperial code (Xue, 1970 [1905], p. 147). The Qing officials were generally strict with ethnic divisions when applying punishments; however, there was a situation in Guangxi, where some Han subjects willingly switched their status to get lighter punishments.

Such opportunistic behaviors were also evident among the sinicized natives who were barely distinguishable from Han commoners. In 1758, Wu Shaoshi (1699–1776), the judicial commissioner of Yunnan, ordered that all the native murder cases be forwarded to the provincial government for inspection because he suspected subjects would undermine the justice process by manipulating their ethnic identity. He reported:

Six or seven-tenths of the natives involved actually can speak Chinese and behave just like any Han people. Only in two or three-tenths of the cases were the natives totally incapable of speaking Chinese. As a result, the regular courts could have judged many of these cases, which were judged by the native chiefs ostensibly because of language barriers. Moreover, the statutes distinguish non-Han from commoners (*minren*) because they are supposedly different. Their capital crimes are, therefore, often commuted to exile instead of execution. (. . .) My understanding is that there are more than forty non-Han groups living in Yunnan under native chief rule. While some continue to wear braided hair, wild clothes, and cannot speak Chinese, many of them have become acculturated as they mostly eat, dress, talk, and act just as Han people do in the interior. They intermarry and intermix with the civilians. It would be unfair for us to continue to allow them to commute execution to exile. If a native is exactly the same as a regular civilian, but is treated differently by the law, that would look like requiring different punishments for the same crime. As a result, the acculturated natives not only have less respect for the law, but they are perpetually distinguished from the regular civilians.<sup>10</sup>

Being non-Han indigenous in Yunnan, according to Wu Shaoshi, meant holding a legal privilege to curtail punishment, which inadvertently sustained the persistence of ethnic boundaries. He claimed that taking a person's ethnic status into account would cause legal injustice that deviates from the Confucian principle of jural uniformity stipulated in the *Zuozhuan*: "to inflict different penalties on parties guilty of the same offense is improper punishment" (Legge, 1872, p. 428).

Similarly, elsewhere in Qing society, people constructed and reconstructed their ethnic self-identity to take advantage of specific situations. For example, the bannermen in Manchuria often claimed different banner status to obtain state land and state subventions. Depending on the circumstances, some Han bannermen adopted Manchu-style naming practices and claimed multiple ethnic identities during



their lifetimes (Campbell et al., 2002). In the civil service examinations, some Han candidates in western Hunan (*Xiangxi*) in the early 19th century pretended to be Miao because it was much less competitive to pass the local county exam through a special quota for Miao candidates, as part of a preferential policy to achieve Confucian transformation (McMahon, 2008). Meanwhile, many Yi people in southern Sichuan, who were not permitted to take the examinations in the early and mid-Qing, covertly attempted to participate. They also brought a lawsuit in a provincial court to redress such institutional discrimination. Eventually, they received an ethnic quota, so they did not have to conceal their identity to climb the ladder of success (Harrell, 2001, p. 156). As was the case in Hunan Miao territory, the policy change may have led some Han candidates in this region to claim Yi ethnicity.

These instances of blurring ethnic boundaries were not just from Han to non-Han and from non-Han to Han, but also from one non-Han group to another. In November 1807, a reported robbery resulted in confusion because the Mongols in the eastern Tibetan part of Qinghai-Sichuan border region wore Tibetan attire. This implies that Mongols and Tibetans were judged by different criminal laws, which raised the perplexing question of whether this case should be considered Case VI or Case VII (see Table 1). The Jiaqing Emperor (r. 1796–1820), who felt it was hateful to forget one's origins (*wangben*) by abandoning traditional Mongol attire, thought such confusion was intolerable. Therefore, he ordered an investigation into the Mongol household registers to detect Mongol escapees who were smuggled into Tibet proper. He commanded that the Mongol princes take immediate action (Cheng, 1988, pp. 168–169). In this case, the Qing court sought to demarcate the ethnic boundaries between indigenes and others. One possible rationale for insisting on a strategy of ethnic distinction was to eliminate any possibilities where transethnic coalescence would generate unified marauding groups at the border. As Oidtmann (2016, pp. 58–59) illustrates, Mongols in 19th-century Qinghai sometimes disguised themselves as Fan (Tibetans) by wearing Fan hats and coats when they went out on raids with both “wild” Fan and other immigrants including Hui Muslims.

To conclude, the judicial realities of the Chinese empire on the margins were far more complex than in the heartland. Such nebulous circumstances left loopholes where individuals could enjoy certain freedoms to claim membership in an ethnic group they wished to be. Hence, when Huang Lianqing's widow favored monetary compensation according to native customary law over the death penalty in the case of her husband's murderers, the Yongzheng Emperor approved her petition. However, if it invoked trouble or confusion, the statesmen tended to be strict with ethnic boundaries. This is well illustrated by the examples of the Jiaqing Emperor, as well as by judicial commissioners like Shen Mengxi in the peripheral province. In contrast, provincial authorities, such as Wu Shaoshi in Yunnan, sought to achieve legal uniformity by nullifying ethno-legal

boundaries. Legal standards and applications varied with ethnicity; however, such imperial practices commonly reflect the most important goal of Qing colonial governance: pacifying the perilous frontier.

## Summary and Discussion

State-building in imperial China facilitated the construction of ethnicity and the persistence of ethnic cleavages that singled out differences and determined social status and privileges. Ethnic law, in particular, served as an institutionalized distillation of ethnic group boundaries, which were realigned by shifts in self-identity.

This paper discusses how the plurality and complexity of the Chinese legal system can be associated with ethno-cultural diversity and administrative flexibility. One of the principles regarding legislation was that different punishments were made for the same kind of crimes committed by different ethnicities. This particularistic legal arrangement was based on the two coexisting principles of ethnic jurisdiction—personality and territoriality. In the history of alien regimes, it was the conquering group who enjoyed many legal privileges. The native Han Chinese were often, but not always, discriminated against by the ruling ethnicity. The state also organized many native polities on the frontier into semi-independent local administrative units that still had a substantial degree of fiscal and legal autonomy. Accordingly, what characterized the Chinese legal system was that both aliens and ethnic non-Han subjects were entitled to special provisions or preferential exemptions. Such an institutional arrangement provided opportunistic incentives to manipulate official ethnicity from Han to non-Han. Thus, the state-sponsored legal inequality among ethnic groups left room for individual agency.

Some documented legal cases presented here reveal that ordinary people sought to negotiate their ethnic status with government representatives, including the emperor himself. Several studies have elucidated that Chinese peasants, who sought recourse in the local courts, had active agency to settle their disputes and protect their rights in civil cases (Marsh, 2000; Zheng, 2001). I further suggest that this could be extended to serious criminal cases, including homicide, in the frontier region where ethnicity as an officially recognized *divisio personarum* became an “option” for individuals subject to legal proceedings. I show that some Han perpetrators would pretend to be non-Han in the hopes of a less severe punishment. Meanwhile, some Han victims and their families would claim to be non-Han to gain monetary compensation according to local customary law. The classic and contemporary theories of ethnic group boundaries (Barth, 1969; Wimmer, 2013) suggest that the processes of interactions among groups facilitate conditions cause changes in individual and group identity. Under such circumstances, people develop numerous strategies to cross existing boundaries. In this sense, future research should delve into the

porous, multifaceted nature of ethnicity in China that goes beyond the conventional view—the thesis of sinicization or Chinese-ization (see for example, Joniak-Lüthi, 2016). Furthermore, there is value in examining the historical and contemporary processes of making and blurring ethnic boundaries in Chinese society.

The legacy of China's imperial practices of particularistic jural relations among different ethnicities continues today. The situation somewhat resembles other post-imperial states, such as Ethiopia (Epple & Assefa, 2020). The ethnic policies of the People's Republic, including the classification of nationalities, implementation of ethnic regional autonomy, and preferential treatments, reveal the resilience of the traditional policy in at least two dimensions.

First, by legalizing ethnic law and minority rights, the current Chinese state has applied some special provisions and exemptions to non-Han individuals (Millward, 2007, p. 278; Sautman, 1999). Just as in the past, the contemporary imposition of the law of ethnic minority status leaves room for both individual and local government agencies to manipulate an official ethnic status to seek preferential treatment and benefits. The size of non-Han groups, especially Manchu (Bai, 2005) and Tujia (Brown, 2002), increased drastically in the 1980s mainly because more than 10 million people previously registered as Han “restored” their status through re-registration. China's ethnic policies also led to the popularity of choosing minority status for children in interethnic marriage (Harrell, 2001, pp. 277, 290; Jia & Persson, 2021).

Second, several legal articles involve the principle of territorial law. For example, Article 90 of the Criminal Law reads: “Where the provisions of this law cannot be completely applied in national autonomous areas, the people's congresses of the autonomous regions or the provinces concerned may formulate adaptive or supplementary provisions.” Likewise, Article 75 of Legislation Law was amended in 2015 and currently stipulates: “The people's congresses of the national autonomous areas have the power to formulate autonomous regulations (*zizhi tiaoli*) and separate regulations (*danxing tiaoli*) on the basis of the political, economic, and cultural characteristics of the local nationality or nationalities.” In addition, the policy of “Two Less One Relax” (*liangshao yikuan*), implemented since 1984, orders officials to treat minorities with more lenience: to arrest less, criminalize less, and apply lighter punishments (Liang, 2013, pp. 188, 201). As with the previously discussed cases in the Qing, the punishment of Han can be relatively stricter, which causes some Han people to feel discriminated against. Accordingly, there are some critiques of the “Two Less One Relax” policy in China because it inadvertently fosters a sense of resentment and interethnic disharmony. However, it should also be recognized that, as the policy climate has changed after the 9/11 incident, security overrides leniency when minorities are convicted as terrorists or spies. The state can mete out harsh punishment or the death penalty in cases of national security. Such cases, except for preferential legal treatment, have been officially justified since the 2010

Supreme People's Court announcement of a new criminal policy called “combining leniency and severity” (*kuanyan xiangji*), which avoids being unduly severe and being unduly lenient. Thus, China's governing principle of ethnic jurisdiction in this century marks a striking parallel to the previously discussed historical practices of applying carrot and stick measures judiciously.

Further, the implementation of “one country, two systems” for Hong Kong and Macau, to some degree, follows the imperial policy of “one country, many systems” that permits a high degree of self-governance. Yet, this arrangement is temporary and likely to follow the pattern of the late imperial period—the trend of increasing control over judicial matters. We have already seen numerous cases in which autonomous rights are limited or suspended, in the name of national security and public safety.

Taking these elements together, China can be positioned as an “imperial nation,” currently located at the midpoint of the empire-nation continuum (Lee, 2011). The crux of the empire is the politics of difference (Burbank & Cooper, 2010), while the nation-state is modeled on the nexus of “one nation, one people, one jurisdiction” (Wimmer, 2004). As the system of legal pluralism continues, the principle of legal equality in a single nation-state has not yet been realized. In this sense, China as an imperial nation struggles with issues akin to those in the past. Today's disputes and conflicts often evolve from the question of what legal standards should be applied. As Erie (2018) illustrates, for instance, the clashes between *shari'a* law and state law lead to serious controversies regarding whether the principle of personality attached to Chinese Muslims should prevail wherever they go. In addition, even if the Chinese government has implemented Autonomous Regions and Special Administrative Regions based on the principle of territoriality, the efficacy of such a policy toward borderlands is far from certain.

The dilemma of China's current policy is that achieving the goal of ethnic equality through special treatments would deepen ethnic division and sacrifice legal uniformity. This is why some influential scholars in China recently proposed the “second-generation” ethnic policy aiming at promoting interethnic cohesion and depoliticizing ethnicity (Ma, 2007). They regard the present mosaic of multiple groups and patchwork systems as susceptible to conflict and dismemberment, as occurred in the Soviet Union—another “imperial nation.” However, advocacy for intergroup fusion, more specifically the ethnic melting pot, meets with strong oppositions both inside and outside China (Elliott, 2015; Leibold, 2013). The recent trend of “becoming national,” vindicated by proponents of the “second-generation” ethnic policy, has gone hand-in-hand with the gradual eclipse of minority autonomy after the golden age of the 1980s, when exacerbated interethnic tensions erupted into nativist uprisings and protests in Tibet and Xinjiang. Further, the recent anti-extradition law amendment bill movement in Hong Kong is an outstanding case of fiercely resisting an ever-increasing integrative thrust from Beijing. The nationalizing state and its discontents

would motivate anyone who seeks to identify an origin and find a viable solution to examine the traditional Chinese strategy with regard to legal practices, not only among people in the border zone but also of non-Han subjects in the heartland.

This study limits the oversimplistic discussions on China's center-periphery relationship today. It bears further investigation, delving deeper into more delicate comparisons between imperial and post-imperial China that sharply differentiate between consistencies and changes. Another intellectual frontier needs to be investigated to place China in a global context, especially in the rapidly emerging scholarship of global legal pluralism (Berman, 2020), which has generally tended to focus on post-colonial multi-cultural nation-states. Although continental world-empires and overseas colonial powers are ideal-typically different, the legacy of European colonialism may also leave nebulous ethno-legal boundaries that create a porous zone for individual agency. There can be some instances where people willingly switch their identity to aboriginal or indigenous to seek personal benefit. This paper opens up new avenues of inquiry about such identity shifts across the world and how identity shifting has been instrumentalized over time.

### Acknowledgments

I would like to thank James Z. Lee who first invited and encouraged me to delve into this topic. Dwight Davis and many anonymous reviewers meticulously read the earlier drafts and gave me invaluable constructive comments. However, all errors and omissions are mine alone.

### Declaration of Conflicting Interests

The author declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

### Funding

The author disclosed receipt of the following financial support for the research, authorship, and/or publication of this article: This work was supported by the Ajou University research fund.

### Ethical Approval

This article does not contain any studies with human participants performed by the author.

### Informed Consent

This article does not involve human subjects.

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### Notes

1. In late imperial China, different occupational groups also had different legal standards depending on, among other

things, if they were court peasants, military households, noble households, serf households, and entertainer households (*yuehu*).

2. According to Weber (1978 [1922], p. 696), the individual carried his *professio iuris* with him wherever he went.
3. In this paper, southwest China, broadly defined, includes Guizhou, western and southern Hunan, western and southern Sichuan, Yunnan, and Guangxi. The terms "Miao" and "Fan" used in the late imperial period are generic ethnonyms for various indigenous groups in southwest China and the Sino-Tibetan frontier, respectively.
4. *Qing shilu* (Veritable records of the Qing dynasty) *Shengzu*, 16.2a-3a, dated 21 August 1665.
5. Traditional Chinese legal authorities indeed had no explicit notion of "civil" as opposed to "criminal" law, what we treat as civil cases were regarded by magistrates as "minor matters" (Marsh, 2000, p. 286). This paper, however, employs a conventional dichotomy of civil and criminal for convenience.
6. *Qing shilu* (Veritable records of the Qing dynasty) *Shizong*, 75.26a, dated 29 December 1728.
7. According to the fourth century geographical treatise *Huayang guozhi*, Qin Zhaowang (306–251 B.C.) made a treaty with the people of Ba and Shu in present Sichuan and carved it in stone, exempting them from the land tax and permitting them to pay a fine in cases of murder.
8. See Qubi and Ma (2001) for a detailed discussion of native Yi customary law codes on homicide offenses. This also alludes to the penetration of the silver economy in this region. One tael (*liang*) of silver is approximately equivalent to 38 g.
9. National First Historical Archives, Beijing: 2-39-12 document dated 29 August 1732.
10. National First Historical Archives, Beijing: 4-894-1 document dated 7 November 1758.

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