

Imperial China's Border Control Law

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INTRODUCTION

The passage of persons, things, and even ideas across China's land and sea boundaries was subject to a comprehensive network of rules promulgated by the Qing state (1644-1911) and its predecessors. This intricate regulatory system was of functional importance in the management of China's relations with foreign countries, and it offers rich food for comparative thinking about the evolution of rules for interstate conduct. Yet this normative system has largely escaped study, in part because law was never highly regarded by the official chroniclers of Chinese history and in part because the rules themselves are widely scattered throughout the numerous compendia of laws and regulations. This article will introduce and examine the border control regulations and procedures of the Qing Dynasty. Selected cases will be used to illustrate the dynamic process of interstate law-making in China's relations with some of its East Asian neighbors in the later imperial era.

This article has two principal aims. One is to survey the laws on boundary regulation and show that some of the basic operating principles and procedures which developed during the Imperial era resemble concepts or practices separately developed in the West. The other principal aim is to provide historians of China's foreign relations with a key to the maze of interlocking rules and regulations which established the framework governing Qing foreign relations. This article also illustrates how Qing officials applied the often conflicting mandates emanating from the ideology of the tribute system, on the one hand, and the stipulations in the regulations of the "Six Boards"¹ on the other.

Close study of the records of imperial China's foreign relations does not support the thesis that China in the past always dictated the terms of its relations with other states, as suggested by the traditional "tributary system" model.² Rather, this record reveals a complex

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1. The "Six Boards" were the principal executive organs of the Qing state: the Boards of Civil Appointments, Revenue, Rites, War, Punishments and Public Works.

2. THE CHINESE WORLD ORDER 1-19 (J. Fairbank ed. 1968). *See also* the seminal study

mixture of rules and practices, some reflecting the hierarchal presuppositions of the tribute model, others representing *ad hoc* working compromises between China and other countries. Yet another category of rules and practices appears to have been grounded in shared notions of fairness, equality, reciprocity, and mutual respect for "territorial sovereignty."³ Indeed, Qing boundary rules and cases spanning more than one hundred years indicate that substantive equality and reciprocity, coupled with Sinocentric hierarchy in form, were the dominant characteristics of the border control system, at least with regard to Qing relations with Korea, Vietnam, Siam and Burma.

This essay will focus on Qing relations with these four countries, with occasional references to the treatment of Western traders, missionaries, and diplomats. Qing relations with Russia,⁴ the Mongol tribes and other nomadic and semi-nomadic peoples on China's inner Asian frontier will not be examined in detail here in order to isolate and examine interstate norms that developed in a more or less "pure" East Asian setting.

The article is divided into four sections. The first introduces basic concepts and principles. The second discusses sources of Qing law. Sections three and four survey the border control rules dealing with the passage of persons, things and ideas across China's national frontier.

I. QING BORDER CONTROL LAW: BASIC CONCEPTS AND PRINCIPLES

The core concepts and principles governing the enactment and application of Qing border control law are introduced under three topical headings: territory and territorial sovereignty; impartiality, reciprocity, and equality in Qing foreign relations; and the centralization and bureaucratization of the Qing border control system. These concepts and principles represent the Chinese self-image and do not always conform to the actual Qing practice. Nevertheless, they constitute the chief guidelines for the behavior of the Qing court and local officials. Moreover, these basic doctrines were regularly and publicly invoked by the Chinese authorities, helping to shape rules and procedures accepted on both sides of the Chinese boundary. In other

of the tributary system under the Qing in S.Y. TENG & J. FAIRBANK, CH'ING ADMINISTRATION: THREE STUDIES 107-218 (1961).

3. "Territorial sovereignty" as used in this article means that a government claims, and is allowed by other states, authority over all persons and activities within its borders. It is not used with the full meaning of the term in contemporary international usage.

4. For a comprehensive study of the establishment of the Sino-Russian treaty system, see M. MANCALL, RUSSIA AND CHINA: THEIR DIPLOMATIC RELATIONS TO 1728 (1971).

words, these notions were fundamental in the evolution of what might be termed an indigenous East Asian system of international law.

A. Territory and Territorial Sovereignty

Did the Qing authorities have any idea of fixed national boundaries serving as political-legal dividers between two sovereign states? The answer is unequivocally affirmative. Indeed, it might well have been taken for granted, given China's long existence as a bureaucratic state with powers of government delegated to civil and military officials with precisely defined powers over a given territorial area. Yet, some scholars have questioned whether imperial China's foreign relations were significantly influenced by a notion of national powers and responsibilities based on a territorial principle. Thus, it seems appropriate to illustrate this point.

The heavily documented record of Qing foreign relations with its East Asian neighbors contains numerous references to exact national boundaries.⁵ For example, in a dispute arising in 1805 involving conflicting territorial claims between China and Vietnam, the Chinese Governor-General stated that the area in dispute had long since been a part of Chinese territory (*jiu li bantu*).⁶ Furthermore, he continued, the Chinese had twice previously, in 1782 and 1792, rejected requests from the King of Annam⁷ to demarcate the border (*shenhua bianjie*); in those earlier cases the Chinese Governor-General had noted that "the national boundary along the border of Yunnan Province is demarcated by nature, rendering it unnecessary to delineate it anew" (*Yunnan yanbian jiangjie tianran panfen, wu suo yong qi shenhua*).⁸

In a similar dispute with Burma two years later (1807), the same Governor-General stated in a communication to the Burmese King that the Sino-Burmese "boundary is quite clear" (*jiangjie shenming*); he attributed an erroneous claim by a Burmese local official to his "ignorance of the boundary between China and foreign countries." (*buzhi Zhongwai jiaojie*).⁹ And, in a continuing dispute with Burma over this area, in 1809 the Chinese Emperor stated that the frontier

5. Several different terms were used to denote the meaning of China's national boundary as a fixed line: *bianjie*, *jiaojie*, *jiangjie*, *dingjie* and *dijie*.

6. 1 *Qingdai Waijiao Shiliao: Jiaqingchao* [hereinafter WS:JC] [Historical Materials Concerning Foreign Relations in the Qing Period: the Jiaqing Reign] 41a (1931), (photo reprint [hereinafter WS Reprint] 93 (1968)).

7. 39 *Da Qing Huidian* [hereinafter HD] [Collected Statutes of the Qing] 2a-b (1899), reprinted with *Da Qing Huidian Shili* [hereinafter HD:SL] [Administrative Statutes with Precedents of the Great Qing Dynasty] in 1 *Da Qing Huidian* (photo reprint [hereinafter HD Reprint] 93 (1963)).

8. 1 WS:JC, *supra* note 6, at 42a (WS Reprint 95).

9. 2 WS:JC, *supra* note 6, at 7a (WS Reprint 133).

regions (*bianjiao difang*) have fixed boundaries (*sheyou dingjie*) and he flatly rejected the suggestion by a Burmese local official that the area in dispute was under the joint jurisdiction of China and Burma (*jun-xiang guanxia*).¹⁰ An imperial edict in 1808, forwarded to the Governor-General of Liangguang (Guangdong and Guangxi) for him to transmit to the British troops who at the time were illegally occupying China's territory of Macao, is even more explicit on the question of national borders: "Both China and foreign countries have definite boundaries." (*Zhongguo waifan ziyou yiding jiangjie*).¹¹

The same border conflict literature contains ample references by the Chinese emperor or his high officials to the term "territory." Various expressions were used to denote the idea of a finite land and water area under the exclusive control of the central political authority of a country. Indeed, the Chinese character for "country" (*guo*) contains elements representing people (a mouth), defense forces (a spear) and land enclosed on all sides by a boundary line.

The Qing archives contain voluminous official records reporting the handling of cases involving violation of China's territorial sovereignty. In these documents we find unmistakable indications that the Qing authorities regarded their political and military authority to be rooted in the right to control a geographic area within precisely known parameters. For example, in a case noted above, the British invaded Macao on the pretext that they were protecting its Portuguese residents from French conquest. In response to the British action, the Emperor and the Liangguang Governor-General issued a succession of irate edicts and memorials. They declared that the Portuguese in Macao "are living in Chinese territory" (*zai Zhongguo difang juzhu*),¹² and that "Macao is the territory of the Celestial Empire" (*Aomen xi Tianchao dijie*).¹³ They charged that the English warships clearly understood the waters around Macao to be "Chinese sea" (*Zhongguo haimian*).¹⁴ These documents emphatically conclude that the landing of British troops in Macao constitutes "unauthorized intrusion into Chinese territory" (*shanru neidi*).¹⁵

Perhaps the clearest statement of the concept of territoriality in Qing usage is the following passage from an edict issued by the Qianlong Emperor in 1793, in which he rejects the English request for cession to them of two Chinese islands to serve as trade depots:

10. 3 WS:JC, *supra* note 6, at 1a (WS Reprint 239).

11. 2 WS:JC, *supra* note 6, at 28b (WS Reprint 176).

12. *Id.*

13. 3 WS:JC, *supra* note 6, at 2b (WS Reprint 242).

14. 2 WS:JC, *supra* note 6, at 29b (WS Reprint 178).

15. 2 WS:JC, *supra* note 6, at 31a (WS Reprint 181).

The border of the Chinese Empire is very strictly delineated. Foreigners have never been allowed to violate the border in the slightest way. . . . Every foot of land in the Celestial Empire belongs to a territorial district with precisely demarcated boundaries. Even islands and reefs must be carefully identified as to location and must be governed by and belong to a specific territorial unit of government. . . . [I]f every Western government trading with China made such a demand, it would be impossible for the Celestial Empire to comply.¹⁶

Both the explicit nature of these references and their context demonstrate that the authors of the statements regarded the rulers of given territory as exclusively sovereign over it. This is further demonstrated in several ways: by numerous cases in which Chinese officials protest intrusions by foreign troops or warships onto Chinese soil or into the Chinese "internal sea" (*neiyang*); by exercise of unilateral control over the conditions of alien entry into and exit from China; by imposing controls on the foreigners' claim of extraterritorial right to exercise criminal jurisdiction over crimes committed by aliens on Chinese soil; and by a stated policy denying to Chinese civil or military officials the authority to intervene in matters outside Chinese territory. These points are discussed and documented in Sections III and IV.

Not only was travel across national land and sea boundaries subject to documentary controls, internal travel was subject to the same strict regulation. The diary of the Japanese monk, Ennin, who travelled to China during the 9th century A.D., demonstrates that even at that early date travellers from district to district within the country were required to possess travel documents that were carefully scrutinized at barrier stations on the district boundary.¹⁷

B. Impartiality, Reciprocity, and Equality in Qing Foreign Relations

The suggestion that the principles of impartiality, reciprocity, and equality influenced Qing foreign relations may come as a surprise to those who have accepted the view that imperial China had a superiority complex. This inflated self-image, some have argued, rendered China incapable of accepting an international system founded on relations between equal sovereign nation states. Although the Sinocentric world view of the hierarchal tribute system did contribute to China's

16. 23 *Yue Haiguan Zhi* [hereinafter YHZ] [Gazetteer of Guangdong Maritime Customs] (photo reprint) 10a-b (1968).

17. ENNIN'S DIARY (E. Reischauer trans. 1955).

reluctance to enter the "family of nations," also important was its policy of preferring minimal trans-border activity to avoid disruption of the domestic political and social order. In handling those interstate contacts which it could not avoid, however, the Qing Emperor and his high officials often took pains to emphasize China's adherence to the principles of impartiality, equality, and reciprocity.

The expression commonly used in Qing documents by officials stressing China's policy of impartiality is "to regard all with equal benevolence" (*yishi tongren*). Usually employed when the Qing authorities were refusing a request by one country for special favors,¹⁸ the phrase *yishi tongren* was also used to declare a policy of treating aliens equally with Chinese subjects in a 1772 case in which the Chinese Emperor gave asylum to 400 Annamese refugees.¹⁹ On several occasions, the Qing authorities based their refusal to be drawn into quarrels between two other countries on their long-standing policy of impartiality, claiming to be "not biased toward one or the other" (*liang wu pianxiang*),²⁰ "not in the least biased" (*hao wu pianxiang*),²¹ or "not making the slightest differentiation in treatment" (*hao wu qubie*).²² In declining to get involved in such foreign conflicts, the Chinese government proclaimed a policy of non-interference (*bing bu guowen*) in other countries' problems.²³

At least one document states that the Qing might intervene and take sides in a war if one state were a tributary of China and one not.²⁴ Actual practice suggests, however, that even in such a case China might be reluctant to become involved. In 1801, the Qing

18. For example, in 1807 the Qing authorities refused a Burmese request to give them military aid against Siam. 2 WS:JC, *supra* note 6, at 4b (WS Reprint 128). This principle was also invoked at a 1759 meeting where the restrictive Canton System trade regulations were explained to European merchants by the imperial commissioner who had been sent to investigate their complaints. He noted that "the Celestial Empire treats all barbarians alike," a message that brought little comfort under the circumstances. 1 A DOCUMENTARY CHRONICLE OF SINO-WESTERN RELATIONS (1644-1820) (L.S. Fu ed.) [hereinafter A Documentary Chronicle] 221 (1966).

19. 511 HDSL, *supra* note 7, at 20a-b (15 HD Reprint 11,866). Another phrase connoting equal treatment was used by the Qianlong Emperor in 1737 in ordering succor to foreigners shipwrecked in Chinese waters: "China does not discriminate in the least between Chinese and foreigners" (*neiwai bingwu qishi*).

20. From an edict declining involvement in the conflict between Nongnai and Annam. 1 WS:JC, *supra* note 6, at 4b-5a (WS Reprint 20-21).

21. From a later edict (1808) drawing a comparison between Franco-Portuguese hostilities and the Burma-Siam war. 2 WS:JC, *supra* note 6, at 28b (WS Reprint 176).

22. 2 WS:JC, *supra* note 6, at 4b (WS Reprint 128).

23. From an edict of 1808, *supra* note 21, disclaiming any interest in distant European squabbles between Portugal and France. 2 WS:JC, *supra* note 6, at 28b (WS Reprint 176).

24. From an 1807 memorial of the Governor-General of Yungui (Yunnan and Guizhou provinces), reporting that he had transmitted to the Burmese envoy the Emperor's decree rejecting the Burmese request for military aid on the ground that the Celestial Empire does not

Emperor invoked the impartiality principle in refusing a request from the rebel chief, Nongnai,²⁵ for military assistance against the King of Annam.²⁶ However, the Emperor did indicate that he would provide asylum to the rebel and his dependents if Nongnai were to be defeated.²⁷ Aside from the principle of impartiality, another good reason for Qing neutrality in the Annam civil war was that only two decades previously Chinese troops had in fact intervened there in an earlier instance of civil strife in order to protect its vassal, the King of Annam. The Chinese troops were trounced by the rebel leader who then acceded to the Annamese throne and became the properly submissive vassal of Beijing.²⁸

The principle of reciprocity is implicit in several policies and practices regularly followed by the Qing border control administration. For example, all foreign nationals who accidentally wandered across the border or were shipwrecked on China's shores were fed, clothed and returned to their own country at the expense of the Chinese government.²⁹ The Chinese authorities expressed the hope that other countries would show the same consideration to Chinese subjects in distress.³⁰ Chinese records report many cases where Siam,

take sides in a conflict between two of its vassals. 2 WS:JC, *supra* note 6, at 4b (WS Reprint 128).

25. A city-state in southern Annam, the modern city of Saigon, now Ho Chi Minh City. The rebel leader did, in fact, succeed in defeating the King of Annam in 1803. He then changed the name of the country to Vietnam and was recognized by the Chinese Emperor as the new King. 7 *Qingshi* [History of the Qing] 5,759 (1961).

26. 1 WS:JC, *supra* note 6, at 5a (WS Reprint 21).

27. *Id.*

28. Lam, *Intervention Versus Tribute in Sino-Vietnamese Relations*, in *THE CHINESE WORLD ORDER*, *supra* note 2, at 170-72.

29. This policy has deep roots in Chinese history. It was formally enacted as a binding principle of Qing foreign relations law in an imperial edict issued in the first year of Qianlong (1735), 513 HDSL, *supra* note 7, at 14a-b (15 HD Reprint 11,886) and 270 HDSL 4a-b (11 HD Reprint 8,666). Relevant provisions are set forth in 186 *Libu Zeli* [hereinafter LZ] [Regulations of the Board of Rites] 1a-2 (Beijing, 1841) (2 photo reprint [hereinafter LZ Reprint] 1092-93 (1966)); for an English translation of the pertinent provision from the *Qianlong Collected Statutes*, see *THREE STUDIES*, *supra* note 2, at 145. For cases involving the application of this policy, see 1 A DOCUMENTARY CHRONICLE, *supra* note 18, at 107, 111, 167, 170, 175-76 and 197. See also 2 H. MORSE, *THE CHRONICLES OF THE EAST INDIA COMPANY TRADING TO CHINA 1635-1834* 327 (Reprint edition, 1966) reporting on a case in which six English sailors who deserted their ship on the coast of Fujian Province in 1799 were fed by the local Chinese authorities for 120 days and then returned to the head of the British merchant community in Canton; see STAUNTON, *TA TSING LEU LEE* 520 (London, 1810) for an appended translation of an edict from the Liangguang Governor-General to the English regarding an 1805 English shipwreck in which the ship was plundered and its crew robbed. The Governor-General promised to make every effort to recover the property and punish the thieves.

30. 39 HD, *supra* note 7, at 13b-14a (1 HD Reprint 43), translation in *THREE STUDIES*, *supra* note 2, at 145; see also 186 LZ, *supra* note 29, at 1b (2 LZ Reprint 1092) and a 1689 edict from the Chinese Emperor to the Korean King, 510 HDSL, *supra* note 7, at 17b (15 HD Reprint 11,853), directing the King both to allow all Chinese merchant ships blown to Korea

Korea, Liuqiu³¹, and Annam repatriated shipwrecked Chinese and were rewarded with presents from the emperor.³²

The principle of reciprocity is the basis for China's traditional practice with respect to the exercise of criminal jurisdiction and extradition.³³ Although the actual Qing alien jurisdiction policies fluctuated, they generally reflected a tacit understanding with neighboring countries that the latter would handle like cases in like manner. It was also a common practice for China to extradite criminals to Korea, Vietnam, and Burma and to ask the kings of those countries to do the same.³⁴ This policy apparently was applied even to genuine political refugees, with the exception of the 1772 Annamese case mentioned above. Thus, in 1779-80 and in 1812, leaders of defeated political factions were sent back with their families to Annam.³⁵

The principle of reciprocity was also invoked implicitly by the Jiaqing Emperor in the following excerpt from an 1808 edict addressed to the British forces who had illegally invaded China's territory of Macao:

After all, can you think of any instance in which Chinese warships have sailed across the outer ocean to occupy territory belonging to your country?³⁶

Needless to say, the British would have been hard put to answer in the affirmative.

C. Centralization and Bureaucratization of the Qing Border Control System

Management of foreign relations in the Qing Dynasty has several

to sell their goods and return home and to report the particulars to Beijing. A subsequent edict, in 1722, directs the Korean King to conform to the established rule of sending back Chinese ships if they possess a license; if not, the King should try and sentence them "according to Korean law," submitting the provisional sentence to the Chinese Emperor for approval, 629 HDSL 4b-5a (17 HD Reprint 13,361-62).

31. See Sakai, *The Ryukyu (Liu-ch'iu) Islands as a Fief of Satsuma*, in *THE CHINESE WORLD ORDER*, *supra* note 2, at 112-34.

32. 513 HDSL, *supra* note 7, at 12b-28a (15 HD Reprint 11,885-93).

33. For a comprehensive analysis of the Qing law on alien jurisdiction and the evolution of limited jurisdiction over Westerners in the pre-Opium War period see Edwards, *Ch'ing Legal Jurisdiction Over Foreigners*, in *ESSAYS ON CHINA'S LEGAL TRADITION* 222 (J. Cohen, R. Edwards, and F.M. Chang Chen eds. 1980).

34. For example, see five edicts from the Chinese Emperor to the kings of Korea, Burma, and Vietnam between the years 1801 and 1812, in 1 WS:JC, *supra* note 6, at 9b-10b (WS Reprint 30-31), 2 WS:JC, *supra* note 6, at 6a-7b (WS Reprint 131-34), 2 WS:JC, *supra* note 6, at 15a-b (WS Reprint 149-50), 2 WS:JC, *supra* note 6, at 15b-18b (WS Reprint 150-56), and 4 WS:JC, *supra* note 6, at 3a-4a (WS Reprint 363-65).

35. 4 WS:JC, *supra* note 6, at 3a-4a (WS Reprint 363-65).

36. 2 WS:JC, *supra* note 6, at 28b (WS Reprint 176).

features in common with that in the People's Republic of China today. One is the strict control of movement either way across China's borders. Another feature made possible by the restriction on traffic is the fact that the highest echelons of the government are informed about, and often participate in handling, even relatively minor matters pertaining to foreigners. In Qing practice this meant that the responsible military and civil officials in direct control of border areas lacked discretion to take decisive action pending instructions from the emperor.³⁷ They had to conform closely to the prescriptions of the numerous rules and regulations governing frontier defense. Local officials along the frontier would report (*bing*) incidents to the governor and governor-general, who would investigate and then memorialize the emperor. If the matter appeared simple, the governor-general's initial memorial would propose a resolution, and the emperor would issue an edict of approval, with or without amendments. If the matter required communication with the king of a neighboring country, the governor-general's memorial to the emperor would enclose a draft (*wengao*) communication (*zhaohui*) from himself to the king,³⁸ and the emperor would deliberate with his chief advisers in the Grand Council (*Junjichu*) and would transmit an edict to the governor-general via the Grand Council. Despite the fact that Beijing's prior approval was required for all major decisions in cases involving the national frontier, such as the British invasion of Macao in 1808, the governors-general, who were known as the "high ministers responsible for sealing the frontier" (*fengjiang dali*), were often impeached and subjected to criminal sanctions if the incident turned out badly. This usually resulted from a delay in reporting. Wishful thinking often led the provincial officials to suppress information about troublesome problems, hoping that they would somehow disappear before the central government discovered them. In the case of the British invasion of Macao, which had lasted far too long to suit the Emperor, Governor-General Wu was tried and sentenced to banishment to Yili for delaying his initial report and for failure to take resolute steps to expel the British.³⁹ Wu received no credit for the fact that his patience and his use of the denial of trade to the British con-

37. This discussion of the Qing decision-making procedure in cases involving frontier defense is based primarily on hundreds of cases in the *Huidian Shili* (HDSL), *supra* note 7, and the *Qingdai Waijiao Shiliao: Jiaqing Chao* (WS:JC) *supra* note 6. Reference to virtually any of the specific cases cited in the footnotes to this article would illustrate how the process worked in concrete instances.

38. For example, see the draft communication from the Governor-General of Yungui to the King of Burma in 1807, in 2 WS:JC, *supra* note 6, at 6a-7b (WS Reprint 131-34).

39. 3 WS:JC, *supra* note 6, at 16 (WS Reprint 269).

tributed to their eventual withdrawal from Chinese territory without the loss of a single Chinese life.

Substantive rules governing China's foreign relations accorded neighboring countries more or less equal treatment with China, but in communications protocol the foreign king acknowledged his status to be inferior to the Chinese emperor, at least as reflected in the Chinese documents. Foreign kings wishing to communicate with China had to forward their communications via the nearest Chinese governor-general, and replies were sent through the same official. Despite this evidence of formalistic subordination, the governors-general's communications to the foreign kings were usually couched in the most respectful terms, referring to the other country as "your honorable country" (*guiguo*).⁴⁰ Moreover, instead of ordering or directing the Burmese King to comply with the Emperor's wishes, the Yunnan-Guizhou Governor-General politely requested (*qing*) him to comply.⁴¹

II. QING LEGAL SOURCES

Rules pertaining to border control administration are located in several official compendia, reflecting the involvement of many branches of the bureaucracy, civil as well as military, in supervising frontier relations. The official description of the functions and powers of all governmental offices, including those responsible for frontier affairs, is contained in the *Da Qing Huidian* (The Collected Statutes of the Qing).⁴² Official diplomatic missions and all related correspondence were initially placed under the primary jurisdiction of the Board of Rites (*Libu*).⁴³ In 1790, however, jurisdiction over tribute system communication with all foreign countries except Korea (which remained under the Board of Rites), Russia and Mongolia (both of which were under the Court of Colonial Affairs (*Lifanyuan*)) was transferred to the Imperial Household (*Neiwufu*).⁴⁴ The Board of Rites was also responsible for supervising trade between China and Korea.⁴⁵ The Collected Statutes of the Qing assigned to the Board of Revenue (*Hubu*) authority over foreign trade tariff policy and admin-

40. For such a reference in an 1805 communication to the King of Vietnam see 1 WS:JC, *supra* note 6, at 42a-b (WS Reprint 95-96); for a similar reference in a communication to the King of Burma in 1807, see 2 WS:JC, *supra* note 6, at 6a (WS Reprint 131).

41. 2 WS:JC, *supra* note 6, at 7a (WS Reprint 133).

42. See *supra* note 7.

43. 39 HD, *supra* note 7, at 2a-4a (1 HD Reprint 407-08).

44. See 171 LZ, *supra* note 29, at 3b (2 LZ Reprint 1027); 39 HD, *supra* note 7, at 9b (1 HD Reprint 411); and 514 HDSL, *supra* note 7, at 8b-9a (15 HD Reprint 11,897).

45. 184 LZ, *supra* note 29, at 1a (2 LZ Reprint 1088); 185 LZ 2b (2 LZ Reprint 1091). See also 39 HD, *supra* note 7, at 12b (1 HD Reprint 412).

istration.⁴⁶ Principal authority for maintenance of the border control scheme was assigned to the Board of War (*Bingbu*).⁴⁷ Since civil officials shared with military officials responsibility for enforcement of border regulations, the Board of Civil Appointments (*Libu*) was also given certain functions pertaining to frontier officials.⁴⁸ Finally, as suggested by its name, the Board of Punishments (*Xingbu*) was responsible for determination of guilt and application of appropriate criminal sanctions for the violation of any statute carrying a criminal penalty, including certain border regulations.

Another important Qing compilation, the *Da Qing Huidian Shili* (Collected Qing Statutes with Precedents) is a rich collection of abridged case reports, memorials, and edicts illustrating the evolution of the law of all the boards.⁴⁹ It is a compact legislative history of the Qing dynasty, arranged according to the chief substantive functions of the Six Boards and other central government agencies.

Each of the Six Boards and other central government agencies compiled a compendium of regulations that it had promulgated in order to execute its assigned functions; upon approval by the emperor, such regulations became binding law. Since the Board of Punishments was the principal law enforcement organ, it is natural that the body of penal regulations it enforced, called *Da Qing Lüli* (Statutes and Sub-statutes of the Qing)⁵⁰ was the most comprehensive of all the

46. 17 HD, *supra* note 7, at 5b-6a (1 HD Reprint 181); 23 HD, *supra* note 7, at 10b-12a (1 HD Reprint 242).

47. 49 HD, *supra* note 7, at 9a-14a (1 HD Reprint 513-15).

48. 11 HD, *supra* note 7, at 2a (1 HD Reprint 1127), setting forth disciplinary sanctions for officials who accept bribes to allow persons to leave China illegally. *See also* 11 HD, *supra* note 7, at 4a (1 HD Reprint 128) for a list of six regulations relating to border defense.

49. *See supra* note 7. For materials relating to border control, under the section concerning the Board of Civil Appointments, *see* 119 HDSL, *supra* note 7, at 22b-23a (8 HD Reprint 6681-82), and 119 HDSL 1a (8 HD Reprint 6671); under the section dealing with the Board of Rites, *see* 511 HDSL 9a to 514 HDSL 1a (15 HD Reprint 11,856-97); under the Board of War, *see* 627 HDSL 1a to 631 HDSL 1b (17 HD Reprint 13,329-89); and under the Board of Revenue, *see* 774 HDSL 1a to 776 HDSL 20a (19 HD Reprint 14,925-15,956). It should be stressed that the *Huidian Shili* does not set forth the binding law in force at any particular point in time. For such law, one must look at the regulations (*zeli*) of the board or boards with jurisdiction over the subject matter.

50. The most useful single source for the study of Qing penal law is *Duli Cunyi* [Concentration on Doubtful Matters While Perusing the Sub-Statutes] (C.C. Huang ed. 1970) [hereinafter DC]. This work contains the complete text of the Qing Penal Code, and provides the date of origin of each *li* (sub-statute) in the Qing Penal Code and an expert analysis of its purpose, ambiguities, degree of obsolescence and standard interpretation. In addition, it furnishes valuable cross references to related statutes, not only in the Qing Penal Code but also in other administrative compendia. An especially handy feature of the later edition is that numbers have been added for each statute and sub-statute, greatly facilitating the use of the earlier cross references. All references this paper makes to articles in the Qing Penal Code will cite the article number and volume and page number to the DC. Another valuable source for study of Qing penal law is the *Da Qing Lüli Huitong Xinzuan* [hereinafter HX] [New Complete

compendia of ministry-issued regulations. Aside from its own rules, it incorporated explicitly or implicitly many of the regulations of the other boards. This compendium is often referred to as “*The Qing Code*,” but a search for authoritative law on a given subject can not stop with the penal code. In pursuit of the governing law on border control, or any other subject, one must look at the regulations issued by the other ministries with jurisdiction over the relevant subject matter. Thus, for our purposes, we must also examine the disciplinary regulations of the Board of Civil Office,⁵¹ the regulations of the Board of Revenue,⁵² the Board of Rites,⁵³ the Board of War,⁵⁴ the Imperial Household⁵⁵ and the Court of Colonial Affairs.⁵⁶

The task is further complicated by the existence of certain imperial case decisions which were explicitly designated as binding law for handling similar cases in the future. For example, some decisions bore the appellation “general circular” (*tongxing*), which means that

Revised and Annotated Qing Penal Code] (1873), (photo reprint, 1964) [hereinafter HX Reprint], a private edition containing cross references, case summaries, and excerpts from leading private commentaries to the code.

51. *Qinding Jiaqing Libu Chufen Zeli* [hereinafter LCZ] [Disciplinary Regulations of the Board of Civil Appointments for the Jiaqing Period], especially 36 LCZ, dealing with coastal defense, and 37 LCZ, dealing with border trade; see also *Qinding Chongxiu Liubu Chufen Zeli* [hereinafter CZ] [Imperially Endorsed and Revised Disciplinary Regulations of the Six Boards, Guangxu period] (1887) 38 CZ 1a to 40 CZ 7b, reprinted as Item 332 of 2 *Jinda Zhongguo Shiliao Zongkan* [Compendium of Modern Chinese Historical Materials] [hereinafter CZ Reprint] 757-806 (1969). These are the Board of War sections of the CZ, dealing with military weapons, coastal defense, and harbor defense.

52. See, for example, *Qianlong Hubu Zeli* [Regulations of the Board of Revenue: Qianlong Period]. 55:1a-b contains regulations prescribing a tariff exemption for tribute trade; 57:1a-5b deals with enforcement of customs laws for ordinary trading vessels; 58:5a-7a sets forth prohibitions pertaining to customs administration. For a later edition of the Board of Revenue regulations, see *Qinding Hubu Zeli: Dongzhi Ban* [hereinafter HBZL] [Regulations of the Board of Revenue: Dongzhi Period] 38 HBZL 11a-19a, 41 HBZL 20a-39a, 42 HBZL 44a-47b, 90 HBZL 58-63, (photo reprint, 1968) [hereinafter HBZL Reprint], (6 HBZL Reprint 2769-85, 2973-3011; 7 HBZL Reprint 3103-10 and 12 HBZL Reprint 6131-41).

53. See 171 LZ, *supra* note 29, 1a to 172 LZ 22b, 185 LZ 1a to 187 LZ 3a for the regulations of the Reception Department. For an English translation of the 1690 Kangxi and the 1764 Qianlong versions of these regulations, see THREE STUDIES, *supra* note 2, at 135-45. For the comparable provisions in force during the Daoguang period (1821-1850), see 2 LZ Reprint 1026-44 and 1091-94.

54. See 11 *Qinding Qianlong Zhongshu Zhengkao* [Regulations of the Board of War: Qianlong Period] 1-48 for defense of passes and fords, including rules governing ocean patrols, and *Qinding Daoguang Zhongshu Zhengkao* [hereinafter ZZ] [Regulations of the Board of War: Daoguang period] 22 ZZ 1a to 23 ZZ 41a (5 ZZ Reprint (1972)). See also *Bingbu Chufen Zeli* [Disciplinary Regulations of the Board of War] sections entitled *Guanjin* (Prohibitions Relating to Passes) and *Haijin* (Prohibitions Relating to the Ocean).

55. See 4 *Zongguan Nei wufu Tang Xianxing Zeli* [Current Regulations of the Imperial Household Office], which contains rules governing the reception of tribute gifts from foreign countries.

56. See *Lifanbu Zeli* [Regulations of the Court of Colonial Affairs] section entitled *Bianjin: Eluosi Shili* [Frontier: Russian Affairs].

they were to be communicated promptly to all offices with powers of criminal adjudication (*wenxing yamen*) for their compliance.⁵⁷ Some, but not all, "general circulars" were incorporated into the text of the Qing penal code during the revisions which occurred roughly once every five years.⁵⁸ Even those "general circulars" not so incorporated apparently retained their binding force indefinitely. In addition to the "general circular" problem, some imperial edicts disposing of individual cases conclude with the order "Let this serve as a permanent rule" (*yong zhuo weili*).⁵⁹

Locating these two types of binding rules is a difficult process. Many are contained in collections of central government directives compiled by provincial governments.⁶⁰ Others may be found in unofficial collections of case decisions,⁶¹ or in annotated private editions of the Qing penal code.⁶² Moreover, although the Qing adjudication process required courts of first instance to base their decisions on the appropriate statute drawn from the comprehensive network described above, in instances where no law directly governed the facts of the case it would be referred to higher authorities. They would either recommend following an established case decision (*cheng'an*) or would in effect create new law by drawing comparisons between the present case and previously decided ones.⁶³ Accordingly, the histo-

57. D. BODDE AND C. MORRIS, *LAW IN IMPERIAL CHINA* 152 (1967); see also Chang Chen, *Provincial Documents of Laws and Regulations in the Ch'ing Period*, 3 *QINGSHI WENTI* 6:28,31-32 (1976).

58. *LAW IN IMPERIAL CHINA*, *supra* note 57, at 152.

59. For instance, the 1787 edict establishing a fixed procedure for rescue and repatriation of shipwrecked aliens contained this injunction. 513 *HDSL*, *supra* note 7, at 14a-b (15 *HD* Reprint 11,886). See discussion, *supra* note 31.

60. See generally Chang Chen, *supra* note 57.

61. Decided cases were not officially published, but several excellent collections based on official archives were compiled by retired officials. Richest in both quantity and quality are the four sets of cases in the *Xing'an Huilan* [Conspectus of Criminal Cases], containing cases decided between the 1790s and the 1880s. For a discussion of these and other Qing case collections, see *LAW IN IMPERIAL CHINA*, *supra* note 57, at 144-59; and see also Chang Chen, Book Review, 29 *HARVARD JOURNAL OF ASIATIC STUDIES* 276-77 (1969) (reviewing *LAW IN IMPERIAL CHINA*). Hundreds of additional case reports are also contained in other unclassified documentary collections, such as the *Da Qing Lichao Shilu* [Veritable Record of the Successive Qing Dynastic Reigns], the *Ming-Qing Shiliao* [Historical Materials of the Ming and Qing Dynasties], the *Junjichu* [Grand Council] archives, and the *Qingdai Waijiao Shiliao*, *supra* note 6.

62. See *supra* note 50; and see Chang Chen, *supra* note 61, at 282-83.

63. For example, in an 1805 memorial to the Emperor reporting its investigation and provisional sentencing of a Western missionary, Adeodato, who was charged with subverting popular morality and with illegal communication in a foreign language with other countries, the Board of Punishments notes the lack of a specific provision on Catholicism in the penal code: "[In the absence of a directly controlling statute] naturally we should follow the imperial edicts disposing of Catholic cases arising in 1784 and 1785." 1 *WS:JC*, *supra* note 6, at 25b-26 (*WS* Reprint 62-63). For a discussion of the limited conditions under which a decided

rian of Chinese law must carefully search case collections for decisions that may be pertinent to his area of interest.

III. SUBSTANTIVE LAW FOR QING FRONTIER CONTROL: PERSONS

When the Qing Dynasty succeeded the Ming it perpetuated China's long established bureaucratic system of government, including the norms for border security. Although the Qing authorities found it necessary, as had their predecessors, to change their border laws in response to changing circumstances (*yinshi zhiyi*), these changes all took place within the conceptual parameters and political priorities discussed in Section I. This section provides a survey of the basic substance of Qing law regulating human traffic across the frontier as that law had evolved up until the broadside shock of the Opium War and its aftermath, the "unequal treaty system" imposed by the Western powers.⁶⁴

Movement across China's sea frontier was generally prohibited between 1668 and 1684 due to the continuing harassment off the coast by Ming loyalists based in Taiwan.⁶⁵ After 1684 sea travel was placed on the same basis as passage across the land frontier. Individuals with a legitimate purpose, such as trade or fishing, could go abroad provided they complied with the border control procedures summarized below.

A. Going to Sea — Licensing and Passport Procedures

Persons wishing to travel beyond China's inner ocean (*neiyang*) into the outer ocean (*waiyang*) either for the purpose of fishing or trade had to obtain a license (*chuanzhao*) for their ship as well as an individual passport (*yaopai*) for each person on board.⁶⁶ Unless they already owned a ship, the first step was to report (*chengbao*) to the

case (*cheng'an*) may be cited as authority, see the upper column commentary to the Qing Penal Code, 1 HX Reprint, *supra* note 50, at 762, and the pertinent sub-statute in the adjudication section of the Qing Penal Code Article 415-18 in 5 HX Reprint 3718, 5 DC, *supra* note 50, at 1277.

64. For a useful discussion of the forced exposure of the Qing government to Western concepts and practices of international law, see 1 COHEN & CHIU, PEOPLE'S REPUBLIC OF CHINA AND INTERNATIONAL LAW 5-12 (1974). See also I. HSU, CHINA'S ENTRANCE INTO THE FAMILY OF NATIONS: THE DIPLOMATIC PHASE, 1858-1880 (1960).

65. Mancall, *The Ch'ing Tribute System: An (Interpretative) Essay*, in THE CHINESE WORLD ORDER, *supra* note 2, at 63-89.

66. For a provision requiring a permit (*zhizhao*) for going to sea, see 629 HDSL, *supra* note 7, at 1a-3a (17 HD at 13,360-61); for a provision directing port officers to examine ships' licenses (*chuanzhao*), see 630 HDSL 1a (17 HD Reprint 13,367); for a rule requiring submission of ship licenses for examination by the district magistrate, see 19 HX, *supra* note 50, at 23a-b (3 HX Reprint 1717-18); for a rule requiring all laborers (*duogong*) and sailors (*shuishou*) aboard ship to carry a "waist passport" (*yaopai*) with the bearer's name, age,

district or department magistrate their desire to build a ship. Construction could begin only after the magistrate received written guarantees (*baojie*) from the boat owners' collective responsibility unit (*aojia*), the license applicants' clan head (*huzu*), the head of his neighborhood collective tax collection unit (*lizhang*) and from his neighbors (*linyong*).⁶⁷ After completion of his ship, the license applicant would again report to the magistrate, who was required to make a personal inspection of the vessel. If satisfied, the magistrate would then issue a ship license (variously referred to as *zhaopiao*, *piaozhao*, *yinzhaoh*, *chuanzhao* or *zhizhaoh*), which apparently had to be renewed each year.⁶⁸ On the face of the document, the magistrate would list the name, age, appearance and native place of each member of the crew, an inventory of all implements (*qixie*), all nails and other metal supplies, all other goods on board and the destination and purpose of the voyage.⁶⁹ The name of the ship, the number of its license and its home country were carved in big characters on the bow of the vessel.⁷⁰

appearance, and native place inscribed thereon, see 19 HX 23b (3 HX Reprint 1718). For the latter provision, see also 775 HDSL 7b-8a (19 HD Reprint 14,940).

67. These requirements are set forth in a sub-statute in Qing Penal Code Article 225-03, 3 DC, *supra* note 50, at 506-07. This law was enacted in 1703 after the Board of War had deliberated on a proposal submitted by Jin Shirong, Governor-General of Fujian and Zhejiang. See also 775 HDSL, *supra* note 7, at 6b-7a (19 HD Reprint 14,939-40), 19 HX, *supra* note 50, at 22a-b (6 HX Reprint 1715-16).

68. Qing Penal Code Article 225-03, 3 DC, *supra* note 50, at 506-07, 22 ZZ, *supra* note 54, at 51a, 41 HBZL, *supra* note 52, at 22b (6 HBZL Reprint 2978), and 19 HX, *supra* note 50, at 3a-b (3 HX Reprint 1715-16). Provisions relating to the issuance of licenses (*zhizhaoh*) to sea-going vessels are contained in 41 HBZL 20a-b (6 HBZL Reprint 2973-74); 22 ZZ, *supra* note 54, at 34a-40a also contains provisions concerning licenses for fishing and merchant vessels (including various terms for licenses, such as *chuanzhao*, *youzhao*, *shangchuan yinzhaoh* and *zhizhaoh*).

69. Qing Penal Code Article 225-03, 3 DC, *supra* note 50, at 506. See also 120 HDSL, *supra* note 7, at 3b (8 HD Reprint 6688), 163 Kangxi Shilu 6b, 39 LCZ, *supra* note 51, at 3a-b (2 LCZ Reprint 779-80) regulating the number and specifications of cannons ocean-going ships might take with them. See also 22-23 ZZ, *supra* note 54, for provisions governing inspection of merchant and fishing ships to detect prohibited export items.

70. 120 HDSL, *supra* note 7, at 3b (8 HD Reprint 6688). The coastal provinces apparently possessed authority to enact procedural rules varying slightly from those described in the text. For example, the provincial regulations (*shengli*) for Guangdong Province stipulated that all fishing boats were required to obtain licenses from the provincial financial commissioner (*sizhaoh*). 6 Yuedong Shengli Xinzuan [New Edition of Guangdong Provincial Regulations] 10a-b (1846) (2 Photo Reprint 553-54 (1968)). To obtain this license, the boat owner's collective responsibility association (*aojia*) had to submit to the district magistrate a registration, providing the name, age and appearance for the members of each fishing household plus the name, number and measurements of the fishing boats. The magistrate would then compile a master register (*zhengce*), submitting one copy to the provincial financial commissioner to obtain licenses for each ship and one copy to the port guard (*shoukou ying xun*), so that each time someone wished to leave port the individual ship license could be compared with the information in the master register. Old licenses had to be returned in the sixth month of each

Foreign ships, too, had to have a port entry and exit permit (*hongzhao*, *yinzhao* or *paizhao*) before they were permitted to enter or leave Chinese ports.⁷¹ Ships en route to Canton's port of Whampoa first had to stop at Macao and secure the entry document from the Chinese sub-prefect. Failure to get such a permit was one of the reasons the Chinese authorities cited for expelling the first British trade commissioner, Lord Napier, from Canton in 1834.⁷²

On leaving or entering port, Chinese fishing boats and merchant ships had to report for inspection (*chayan*) by the harbor security officials (*shoukou guanbian*).⁷³ If the ship's passengers and cargo did not conform to the ship's documents and the numbered register (*haobu*) held by the port officials, the captain would be interrogated on the spot (*jishi panjie*).⁷⁴ If the port official was not satisfied with the captain's story, he would turn him over to the district magistrate for criminal investigation; if the captain's story was satisfactory, a notation would be made in the register and the ship would be cleared for exit or entry.

We have noted above that the Qing central government wished to be kept well informed about all matters pertaining to the frontier. Thus, in 1728 the Emperor decreed that in the fourth month of each year the governors-general of all coastal provinces should submit to the Board of Revenue a comprehensive report of all merchant vessels leaving its ports for foreign countries; in the ninth month they should submit a comprehensive report on all trade vessels returning in that season.⁷⁵

B. Crossing the Land Frontier — Passports and Guarantees

The Qing penal code stipulated that all Chinese passing through a frontier control station must present a passport (variously called *wenyin*, *wenpiao*, *yinpiao*, *paizhao*, *zhaopiao* and *zhizhao*) issued by the

year, and new ones issued in the seventh month. No new license could be issued after the first day of the ninth month.

71. In addition to obtaining a permit to enter port, Western merchant ships arriving in Macao for purposes of trading there or in Canton were also required to register with the Chinese sub-prefect in Macao. 629 HDSL, *supra* note 7, at 5b-6b (17 HD Reprint 13,362). See also 23 ZZ, *supra* note 54, at 192a-b, 41 HBZL, *supra* note 52, at 37b-38a (6 HBZL Reprint 3008-09) for a regulation stipulating that foreign ships lacking a sealed entry permit (*yinzhao*) shall not be permitted to enter port.

72. 27 YHKC 23a-32a.

73. Qing Penal Code Article 225-23, 3 DC, *supra* note 50, at 515. This sub-statute was enacted in 1760 in response to a memorial from Li Zhiyun, Censor for Zhejiang. See also an imperial edict of 1772 concerning the licensing and port inspection procedure, 239 HDSL, *supra* note 7, at 30b (10 HD Reprint 8271).

74. 239 HDSL, *supra* note 7, at 30b (10 HD Reprint 8271).

75. 74 Yongzheng Shilu 2a-b (2 Yongzheng Reprint 1129).

district magistrate of his place of residence.⁷⁶ The person going abroad also had to present official and personal guarantees (*vinjie* and *ganjie*) to the effect that he was not a "lawless person" (*feilei*). The officer on duty (*zhirizhe*) had to examine carefully the passport to confirm the name, appearance and native place of the traveller.⁷⁷ The law also required the frontier guards to maintain and report to the Board of War at the end of each year a numbered register of all persons crossing the border.⁷⁸

C. Unauthorized Crossing of the Frontier — Prohibitions and Punishments

This impressive system of frontier control through licensing and passports, collective responsibility, and careful screening of all traffic across the borders, was reinforced by coercive sanctions for those persons who did not comply with the above described bureaucratic requirements. All unauthorized crossing of the frontier (*siyue yuanbian*) was prohibited under threat of criminal penalty.⁷⁹ The penalty varied according to the purposes and behavior of the offender. Simple unauthorized crossing, without any aggravating circumstances, was punished with one hundred blows of the heavy bamboo and three years' penal servitude. Intent, however, was required. Poor people who wandered across the frontier while searching for food in the forests were not punished.⁸⁰ Persons going abroad without authority who subsequently engaged in "traffic with foreigners" (*jiaotong waijing*) were subject to strangulation after the assizes.⁸¹ In 1740 several Chinese and Koreans were sentenced under this statute for unauthorized crossing back and forth over the frontier and for erecting and

76. Qing Penal Code Article 220-02, 3 DC, *supra* note 50, at 492, and Article 220-00, 3 DC 491. Further provisions relating to the issuance and examination of passports for persons crossing the land frontier are set forth in 19 HX, *supra* note 50, at 3a-b (3 HX Reprint 1677-78); 40 LCZ, *supra* note 51, at 61-b (2 LCZ Reprint 803-04), concerning issuance of a passport stamped by the district magistrate (*vinwen piao*); 42 HBZL, *supra* note 52, at 46a-47b (7 HBZL Reprint 3107-10); 23 ZZ, *supra* note 54, at 6a-8a concerning *yinpiao*; 23 ZZ 39a-40a, dealing with issuance of passports (*paizhao*) to Chinese merchants going to Vietnam to trade, and also governing illegal crossing of the frontier into Korea and Vietnam; 19 HX 3a (3 HX Reprint 1679), dealing with the treatment of persons leaving China without a passport (*wu wenpiao*); and 628 HDSL, *supra* note 7, at 20b (17 HD Reprint 13,355) on the use of passports (*wenpiao*).

77. Qing Penal Code Article 220-02, 3 DC, *supra* note 50, at 492.

78. *Id.*

79. The basic statute is Qing Penal Code Article 220, 3 DC, *supra* note 50, at 491, entitled *Siyue Maodu Guanjin Lü* [literally, the "Law Governing Unauthorized Transit Through Passes and Across Fords"].

80. See, for example, two 1740 cases in which the Chinese and Korean authorities each released subjects of the other country who had wandered across the border, 511 HDSL, *supra* note 7, at 9b-10a (15 HD Reprint 11,860-61).

81. Qing Penal Code Article 220, 3 DC, *supra* note 50, at 491.

living in tents.⁸² The imperial edict handing down the sentence noted that it was appropriate to apply this statute with its “mild”⁸³ punishment since no serious crime such as robbery or homicide was involved. This ruling conveys some idea of the meaning of “trafficking with foreigners” as well as the seriousness with which illegal border crossing was regarded. Aside from this basic statute, the penal code contained several other more narrowly focused statutes punishing unauthorized crossing of the border for various specific purposes. Not surprisingly, one such law made the plotting or commission of treason subject to the penalty of death by decapitation.⁸⁴

Two other statutes enacted in 1716 and 1723 prohibited Chinese subjects from fishing in Korean waters or crossing the Sino-Korean boundary river,⁸⁵ or from entering Korea to rob or pillage.⁸⁶ The penalty for violation of the first provision was military banishment within China. The other statute explicitly authorized the Korean king to execute the offender on the spot; those captured alive were to be returned to China for prosecution and punishment. These two statutes were based on a series of edicts issued to cope with what must have been a serious problem of Chinese intrusion into Korean territory. One of these edicts, handed down in 1711, declared that Chinese fishing boats that persisted in fishing in the Sino-Korean border area despite previous warnings were to be regarded as pirates and could be pursued and exterminated by the Korean king.⁸⁷

Another string of edicts beginning in 1715 and extending at least to 1842 enforced a rule, jointly established by the Chinese and Korean authorities, prohibiting residence or farming near the Sino-Korean border.⁸⁸ This rule was also set forth in a regulation issued by the

82. 511 HDSL, *supra* note 7, at 9b (5 HD Reprint 11,860).

83. Strangulation was not considered as severe a punishment as decapitation. Moreover, the death penalty administered “after the assizes” meant that the life of the condemned person might be spared after review, in contrast to the “immediate death penalty” (*li jue*).

84. Qing Penal Code Article 255-00, 3 DC, *supra* note 50, at 558-59 stipulates the penalty of death by decapitation for those traitors who “turn their backs on their own country and stealthily serve another country.” For this provision, *see also* 22 HX, *supra* note 50, at 7a-8b (3 HX Reprint 1877-80). Also of special interest is the provision in the voluntary surrender section of the Qing Penal Code stipulating that a traitor who returns to his own native place shall be given a two-degree reduction in punishment, even though he has not in fact turned himself in voluntarily, Qing Penal Code Article 025-00, 2 DC 107, in 4 HX 18a-21b (1 HX Reprint 445-52).

85. Qing Penal Code Article 225-35, 3 DC, *supra* note 50, at 519.

86. Qing Penal Code Article 225-37, 3 DC, *supra* note 50, at 520.

87. 511 HDSL, *supra* note 7, at 4a-b (15 HD Reprint 11,858).

88. For a 1750 example, *see* 511 HDSL, *supra* note 7, at 5a (15 HD Reprint 11,858). For a 1748 example, *see* 511 HDSL 12a-b (15 HD Reprint 11,862). For an 1842 example, *see* 512 HDSL 16b-17a (15 HD Reprint 11,876).

Board of Rites.⁸⁹ One edict even indicates that to prevent mutual territorial infringement and conflict along their common boundary, China and Korea maintained a "no man's land," a strip of land more than thirty miles in width running along the frontier.⁹⁰ The Chinese border officials were directed to remove forcibly all Chinese subjects who had settled as farmers within Korean territory and to demolish the huts they had erected there; none were permitted "to retain a single square inch of Korean territory."⁹¹ This sensitivity of the Chinese Emperor to the sovereign prerogatives of the Korean king over his own territory is explicitly and convincingly demonstrated by edicts of 1730⁹² and 1746⁹³ rejecting proposals by Chinese border officials to establish checkpoints on the Sino-Korean border. Even though in both cases the Korean king is reported as having "humbly requested" (*kenqing*) the Emperor to desist from establishing checkpoints, the Emperor's denial of his own border officials' proposal in effect recognized the Korean King's territorial sovereignty. The Chinese Emperor also showed deference to the Korean king with regard to his handling of Chinese who had illegally entered Korea. A 1717 edict⁹⁴ authorized the Korean king to sentence such offenders in accordance with Korean law (*zhao qi guofa shenni*); the sentence, however, had to be reported to the Emperor via the Board of Rites. Only after he issued a decree of approval could the sentence be executed. Later edicts indicate that the procedure was subsequently modified, with the Korean authorities being exhorted by the Chinese Emperor to pursue and return to China all Chinese crossing without authority into Korea.⁹⁵

As noted, the only legitimate way that Chinese could leave their country was to secure a passport permitting them to go abroad for specified purposes, including tribute system diplomacy, military missions, trade, or fishing. Permanent emigration was not a legitimate reason for exit. Nevertheless, poverty forced thousands of Chinese families from the Fujian and Guangdong coastal areas to violate the law by emigrating to Annam, Burma and Siam in search of a livelihood.

Occasional relief was granted the poor souls who were usually

89. 187 LZ, *supra* note 29, at 1b (2 LZ Reprint 1093).

90. 511 HDSL, *supra* note 7, at 11a-b (15 HD Reprint 11,861).

91. 512 HDSL, *supra* note 7, at 16b-17a (15 HD Reprint 11,856).

92. 511 HDSL, *supra* note 7, at 7b (15 HD Reprint 11,859).

93. 511 HDSL, *supra* note 7, at 11a-b (15 HD Reprint 11,861).

94. 511 HDSL, *supra* note 7, at 5b (15 HD Reprint 11,858).

95. For example, see an edict of 1744, 511 HDSL, *supra* note 7, at 10a-11a (15 HD Reprint 11,861), and an edict of 1803, 512 HDSL 4b-6a (15 HD Reprint 11,870-71).

forced to choose between death by starvation at home or the chance of death by execution for turning their back on China. Thus, an imperial amnesty was declared in 1728 to allow the return to China of those who had illegally emigrated prior to 1717.⁹⁶ Moreover, other selective exceptions were made to allow illegal emigrants to return from abroad to their native place without suffering criminal punishment.⁹⁷ The Yongzheng Emperor in 1723 displayed genuine compassion in handling the case of some Chinese who had gone abroad illegally and had returned to Canton as crew members on a Siamese trading vessel. Decreeing that they should be allowed to go back to Siam with the ship, the Emperor stated: "they have lived in that country for several generations and each have relatives, wives, and children there. It would be very harsh to force them to return to their Chinese native place. Let them return to Siam to live."⁹⁸

Such kind measures were the exception. The rule was to subject returnees to harsh treatment. Thus, in 1772 the leader of a group of illegal Chinese emigrants who had peacefully tilled land in Siam for several years until their arrest and deportation by the Siamese authorities, was sentenced to the death penalty, under a widely used penal sub-statute entitled "Collaborating with Foreigners and Cheating Them out of Their Money" (*Jiaojie Waiguo Kuangpian Caiwu*).⁹⁹ The general suspicion with which emigrants were regarded by the authorities is suggested by the fact that this statute is located in the section entitled "Interrogation of Spies" (*Panjie Jianxi*).¹⁰⁰ In many cases involving boundary disputes or the behavior of resident aliens, if the foreign country offered resistance to the Chinese authorities, and particularly when the resistance took the form of a communication written in Chinese, the Qing officials would voice the suspicion that a "Chinese traitor" (*hanjian*) must be at the root of the trouble. For

96. Edict of the Yongzheng Emperor, acknowledging the benevolent policy of his father, the Kangxi Emperor. 776 HDSL, *supra* note 7, at 14b-15a (19 HD Reprint 14,953). A similar edict was issued by the next emperor, Qianlong, in 1735. 775 HDSL 13a (19 HD Reprint 14,943). In 1754, Qianlong issued another edict authorizing the return home of any Chinese who had gone abroad to trade, regardless of how long he had been absent. 19 HX, *supra* note 50, at 30a (3 HX Reprint 1731) and 630 HDSL 6a-b (17 HD Reprint 13,370).

97. See imperial edict of 1722, in 511 HDSL, *supra* note 7, at 5b-6a (15 HD Reprint 11,858-59).

98. 511 HDSL, *supra* note 7, at 6a (15 HD Reprint 11,859). This act may have been atypical, for Yongzheng has been characterized as being basically opposed to emigration. See Mancall, *supra* note 65, at 89.

99. Qing Penal Code Article 224-00, 3 DC, *supra* note 50, at 496.

100. Qing Penal Code Article 224-01, 3 DC, *supra* note 50, at 497; 19 HX, *supra* note 50, at 4a (3 HX Reprint 1705). The split personality of these rules, concern lest foreigners be cheated by Chinese and fear bordering on paranoia at any contact between Chinese and foreigners, illustrates the "arm's length" policy regarding aliens that characterized Qing border control policy.

example, in an 1808 case where a Burmese local official submitted to the Chinese authorities a document in Chinese making the "absurd" claim that Burma and China were exercising joint sovereignty over a disputed area, the Chinese promptly demanded that the Burmese turn over the "Chinese traitor" who must have drafted the document.¹⁰¹

The persistence of the problem of illegal Chinese emigration, and a perception on the part of Qing officials that the 1772 case may have been handled in an excessively severe and indiscriminating manner, is suggested by the handling of a similar case three years later.¹⁰² In the latter case, eighteen Chinese who were apprehended on their return to China from Annam, where they had lived and worked in the mines for many years, were subjected to three different types of treatment, and the case disposition was classified as a strict regulation (*yanding zhangcheng*) for the guidance of magistrates deciding similar cases in the future: (1) Those offenders whose attitude and behavior evinced disrespect for the law (*jieaozhe*) and who thus could not be allowed to remain in China's heartland (*buke liu yu neidi*) were sent to Urumqi and other border areas to till the land; (2) drifters and persons without means of livelihood (*youshou wuyizhe*) were settled and placed under control (*ancha*) in the various provinces; (3) those persons who had committed no crime other than illegal emigration were allowed to return to their native places where they were placed under strict control (*yanxing juguan*) by the district magistrate.

Stern treatment was meted out in 1779 to a group of Chinese who had gone to Annam years before to work in the mines and had married Annamese women; they returned to China because of unrest in Annam and because of a rumor that the Chinese border might be tightly sealed.¹⁰³ The group leader was sentenced to strangulation after the assizes for an aggravated violation of the sub-statute on "hooligans illicitly crossing the frontier and remaining to trade"; the aggravating factor was marrying an Annamese woman. The other Chinese in the group were banished as slaves to Chinese troops in distant border regions. The Annamese wives were returned to the Annamese King. The memorial disposing of this case does not explain why the 1775 "strict regulation," which appears to be directly on point, was not applied in this instance. The sentences seem particularly harsh when compared with the reduced penalties granted to traitors (*pantu*) returning to China from abroad.¹⁰⁴ Presumably, by being lenient the state would receive less political dividends from poor

101. 2 WS:JC, *supra* note 6, at 15b,17a-b (WS Reprint 150,153-54).

102. 511 HDSL, *supra* note 7, at 20b-21a (15 HD Reprint 11,866).

103. 1 *Ming-Qing Shiliao*, *supra* note 61, at 8b.

104. *See supra* note 84.

emigrants then it would from rebels and traitors who might for that reason terminate their anti-state activity.

Another principle invoked by numerous imperial edicts over the centuries, and applied in China's foreign relations with Korea, Russia, Vietnam and Burma, forbade Chinese officials from crossing the border.¹⁰⁵ Although some documents suggest a "hot pursuit" exception in the case of troops following rebels fleeing across the frontier¹⁰⁶ or civil officials looking for a fugitive traitor,¹⁰⁷ the general rule was that Chinese civil and military officials had no authority beyond the frontier. All transnational official business had to be effected through request to the foreign king.

In summary, the rules barring unauthorized Chinese crossing of the national frontier are a confusing and often contradictory maze of stern prohibitions. Nevertheless, certain clear conclusions emerge. First, the principle of mutual respect for territorial sovereignty, slightly bruised in practice but always staunchly endorsed in theory, appears to have shaped both the substance of frontier control rules and the general pattern of their application. Secondly, the governing principle of absolute closure of the frontier, in the absence of specific documentary authority, remained vital throughout the pre-Opium War period; its goals of minimum traffic and maximum security for the border were promoted through published prohibitions and punishments that must have inspired considerable fear despite, or perhaps because of, the broad range of sanctions for like offenses.

105. For an 1807 case relating to the China-Burma border, see 2 WS:JC, *supra* note 6, at 6a,7a (WS Reprint 131,133); the same policy led to the impeachment of an assistant department magistrate (*zhoupan*) who, in 1808, followed a criminal suspect into Vietnam. He should have followed the correct procedure of first reporting to the governor-general, who would then get an imperial decree directing that a request be sent to the King of Vietnam to extradite the suspect. 2 WS:JC, *supra* note 6, at 15a-b (WS Reprint 149-50). See also 19 HX, *supra* note 50, at 21b-22a (3 HX Reprint 1714-15).

106. See an imperial decree of 1758 stating that Chinese soldiers may cross the Russian border when arresting obvious robbers, despite a provision in the Sino-Russian Treaty of Kiakhta of 1727 providing that neither side may violate the other's border. The Emperor interpreted the provision to mean that "[i]f the robbers have fled to so great a distance that we can no longer see their tracks and shadows, we should observe that article of the treaty and abandon the chase. However, if the robbers are still plainly in sight when they enter Russian territory, then we should follow them closely and catch them directly in order to save the time involved in sending letters to Russia and awaiting an answer." A DOCUMENTARY CHRONICLE, *supra* note 18, at 213-14.

107. The 1808 case discussed *supra* in note 105 contains language implying that the Chinese official's action might have been condoned if the person he was chasing was a traitor (*panmin*). 2 WS:JC, *supra* note 6, at 15b (WS Reprint 150).

D. Foreigners Crossing the Chinese Border — With and Without Permission

As already suggested above, the same ideal of closure applied to foreigners entering Qing China. They were allowed into the "interior" only for specified purposes. Moreover, all entering aliens were subject to documentary controls, civil escort, and military surveillance.¹⁰⁸ As we have seen, foreigners who were fugitives from their home authorities usually were apprehended by Chinese officials and returned to their own country in conformity with a customary practice of reciprocal extradition.¹⁰⁹ Foreigners who accidentally wandered into Chinese territory or were cast upon its shores by storm were cared for and returned home safely.¹¹⁰

Any aliens entering Chinese territory without authority were ordinarily deported for sanctioning by their own home authorities. In some cases, the Chinese authorities would direct the foreign king how to punish the offender. Particularly in the case of Korean offenders, the Chinese emperor sought to insure that the criminal would get the benefit of review by the emperor and, in appropriate cases, by the three high legal tribunals that each year supervised the "autumn assizes" in Beijing.¹¹¹

In cases where the Chinese authorities had doubts about whether the foreign offender would be punished properly if deported, the criminal might be tried in China¹¹² or returned home with specific instructions to his king to handle the matter strictly.¹¹³ We learn something about traditional Chinese "due process" from such a case arising in

108. For tribute mission members, see *THREE STUDIES*, *supra* note 2, at 144-45; for foreign merchants at Canton, see Edwards, *Old Canton System of Foreign Trade*, in *LAW AND POLITICS IN CHINA'S FOREIGN TRADE* 362-67 (V.H. Li ed. 1977); for control of Western priests allowed to enter Beijing to serve the emperor, see 511 HDSL, *supra* note 7, at 19a-b (15 HD Reprint 11,865).

109. See *supra* note 33 and accompanying text.

110. See *supra* note 29 and accompanying text.

111. For example, see a 1776 imperial edict commuting to banishment the death sentences of several Koreans who survived fourteen assizes reviews. 511 HDSL, *supra* note 7, at 21b (15 HD Reprint 11,866).

112. In a case decided in 1740, the Chinese Board of Punishments even went so far as to try, in absentia, a Korean who had gone back and forth across the Sino-Korean frontier without a passport and had lived with Chinese. The Korean was convicted and sentenced to strangulation under Qing Penal Code Article 220-00, which governs illegal crossing of the frontier to "traffic with foreigners." The Korean King was advised to keep the criminal in jail pending review of the case at the autumn assizes. 511 HDSL, *supra* note 7, at 9b (15 HD Reprint 11,860).

113. For a 1761 case involving a Korean offender turned over to the Korean King for trial and sentencing, subject to Chinese imperial review, approval and autumn assizes procedure, see 511 HDSL, *supra* note 7, at 15b-16a (15 HD Reprint 11,863-64).

1764.¹¹⁴ It involved several Koreans who had illegally entered China to trap mink. The Korean King proposed sentencing them to immediate decapitation. The Chinese Emperor ruled that the same offense in the future could be punished as the King recommended. However, since previous cases of the same type had not been punished so severely, to punish the present offenders with immediate death would be incorrect since they had no prior notice. It would be like "killing without first trying to educate."

Various categories of aliens were granted entry to China under conditions unilaterally prescribed by the Qing authorities. Thus, Western merchants were allowed to reside only in Macao, and seasonally in Canton, under close supervision by the Chinese civil and military officials and were prohibited from entering into contact with the Chinese populace.¹¹⁵ Western merchant ships were allowed to go up to Canton only after receiving on board a Chinese pilot¹¹⁶ and undergoing inspection by the Chinese harbor police. Warships were not allowed to enter China's "inner ocean"¹¹⁷ and foreign troops, not surprisingly, were barred from entering Chinese territory.¹¹⁸ Russian trade was restricted to the border post of Kiakhta from the mid-18th to the mid-19th Centuries¹¹⁹ and similar restrictions existed with respect to Sino-Vietnamese and Sino-Korean trade.¹²⁰

A tiny handful of Catholic priests were allowed to enter China to serve the imperial court as astronomers and mathematicians.¹²¹ They were required to carry identification cards, and for most of the Qing period they were barred from leaving Beijing, from preaching, and

114. 511 HDSL, *supra* note 7, at 17b-18b (15 HD Reprint 11,864-65).

115. See generally Edwards, *supra* note 108.

116. See a secret report (*michen*) to the Emperor from the Liangguang Governor-General in 1805, concerning foreign trade at Canton and the reorganization of the "hong merchant" control system. 4 WS:JC, *supra* note 6, at 21b-22a (WS Reprint 400-01).

117. 23 YHZ, *supra* note 16, and 240 HDSL, *supra* note 7, at 2a (10 HD Reprint 8,276).

118. See the discussion of the Chinese protest over the British invasion of Macao in 1808, *supra* note 11 and accompanying text. See also an 1812 communication the King of Siam telling him to keep his troops out of Chinese territory in the future. 4 WS:JC, *supra* note 6, at 2a (WS Reprint 361).

119. See Mancall, *supra* note 4, at 249-65.

120. Chin, *Sino-Korean Tributary Relations in the Ch'ing Period*, in THE CHINESE WORLD ORDER, *supra* note 2, at 107-09.

121. European priests desiring to go to Beijing to serve in the emperor's court had to comply with a very elaborate procedure governing entry permission, travel route, clothing, residence, and limitations on contact with the Chinese populace. 511 HDSL, *supra* note 7, at 19a-b (15 HD Reprint 11,865). See also a letter from the Qianlong Emperor to King George III of England in 1793. 23 YHZ, *supra* note 16, at 84a, English translation in J. CRONMER-BYNG, AN EMBASSY TO CHINA: LORD MACARTNEY'S JOURNAL 1793-1794 338 (1962). For a detailed statement of the rules for European employment and residence in Beijing, see the edict of the Jiaqing Emperor in 512 HDSL 3b-4b (15 HD Reprint 11,869-70).

from contact with the Chinese people.¹²² An even smaller group of Russians was permitted to reside in the "Russian Hostel" in Beijing as language students.¹²³ They too were subject to very tight restrictions on their movements and contacts. A final category of foreigners authorized to enter China were envoys with "tribute" missions.¹²⁴ These visitors were lavishly entertained at the expense of the Chinese state but were closely escorted and prevented from having contact with ordinary Chinese.¹²⁵

IV. THINGS AND IDEAS

Given the Chinese perception that they had little to gain and much to lose from free trade and unlimited exposure to alien religious and political beliefs, it is perhaps not surprising to learn that the ideal of minimum traffic extended to the regulation of the passage of things and ideas across national boundaries. Although the exact content of many of the rules changed from time to time over the two hundred years of Qing history that concern us, certain principles and even some of the substantive prescriptions remained constant.

A. Exports

Concern for border defense led the early Chinese rulers to prohibit export of books on Chinese geography.¹²⁶ This rule was enforced even to the point of confiscating an important gazetteer from the baggage of a departing Korean tribute envoy in 1691.¹²⁷ The envoy was not punished since the Chinese for millennia have customarily recognized the personal immunity of foreign diplomats.¹²⁸

Another category banned from export was history books.¹²⁹ This

122. An imperial edict of 1706 required European missionaries to obtain a certificate from the Imperial Household Office, indicating name, age, church and years of residence in China, carry it at all times and show it to district magistrates on demand. A DOCUMENTARY CHRONICLE, *supra* note 18, at 114. For edicts of 1801, 1803 and 1811, enjoining the missionaries from having contact with any Chinese other than their civil service colleagues, see 512 HDSL, *supra* note 7, at 3b-4b (15 HD Reprint 11,869-70) and 1 A DOCUMENTARY CHRONICLE, *supra* note 18, at 352 and 358. For a document setting forth the ban on preaching to Chinese, see 23 YHZ, *supra* note 16, at 2a.

123. E. WIDMER, THE RUSSIAN ECCLESIASTICAL MISSION IN PEKING DURING THE EIGHTEENTH CENTURY 112 (1976).

124. 39 HD, *supra* note 7, at 2a-15b (1 HD Reprint 407-14), 510-14 HDSL, *supra* note 7, at (15 HD Reprint 1845-99) and translation of the Kangxi and Qianlong regulations for tribute missions in THREE STUDIES, *supra* note 2, at 135-45.

125. *Id.* See also 23 YHZ, *supra* note 16, at 84a.

126. 187 LZ, *supra* note 29, at 2b (2 LZ Reprint 1094).

127. 511 HDSL, *supra* note 7, at 3a (15 HD Reprint 11,857).

128. *Id.*

129. 185 LZ, *supra* note 29, at 1a (2 LZ Reprint 1091), 187 LZ 2b (2 LZ Reprint 1094),

prohibition may seem strange to Westerners, but for hundreds of years the Chinese have considered history books to be a valuable source of political guidance, to be preserved and studied by Chinese officials but denied to potential foreign enemies. Law books, too, fell within this ban. Thus, when the British in 1805 asked for a copy of the Qing code, the request was refused.¹³⁰ Instead, the Chinese authorities provided them with a few code excerpts relating to a pending dispute over a violation of Chinese law by a British sailor. Unknown to the Chinese, however, a resident British linguist, Sir George Thomas Staunton, had acquired a copy of the penal code and also the illegal services of a competent Chinese assistant, enabling him in 1810 to produce the first major translation of Chinese laws into a Western language.¹³¹ Staunton was subsequently a great thorn in the side of the Chinese, testifying to the wisdom of the prohibition.

Military weapons and human slaves were subject to an absolute export ban; horses, cattle, military supplies, metal implements, copper, iron, and certain fabrics were subject to general export controls and could be exported only with official permission.¹³² The export of various metals was sometimes banned and sometimes permitted in limited quantities.¹³³ Cotton, silk, tea, and grains were also subject to fluctuating export controls, depending upon the Qing government's current perception of the impact of the outflow upon Chinese domestic supply and price.¹³⁴

HDSL, *supra* note 7, at 511:1b (15 HD Reprint 11,856), 775 HDSL 2b-4a (19 HD Reprint 14,937-38) and Qing Penal Code Article 225-12, 3 DC, *supra* note 50, at 511.

130. Morse, *supra* note 29, at 342-43.

131. Staunton, *supra* note 29.

132. See Qing Penal Code Articles 225-00, 3 DC, *supra* note 50, at 503; 225-03, 3 DC 506; 225-09, 3 DC 509; and 225-10, 3 DC 509.

133. For silver, see Qing Penal Code Article 225-09, 3 DC, *supra* note 50 at 509 and 40 HBZL, *supra* note 52, at 34a-b (6 HBZL Reprint 3001); for copper, see Qing Penal Code Articles 225-10, 3 DC 509, and 225-12, 3 DC 511; for edicts illustrating the changing policies with regard to control of copper exports, see 775 HDSL, *supra* note 7, at 18a (19 HD Reprint 14,945) and 776 HDSL 1b (19 HD Reprint 14,946-47).

134. See Qing Penal Code Articles 225-10, 3 DC, *supra* note 50, at 494-95, and 224-09, 3 DC 500-01; and see edicts relating to control of silk export in 511 HDSL, *supra* note 7, at 13b-14a (15 HD Reprint 11,862-63), 511 HDSL 15b (15 HD Reprint 11,863) and 630 HDSL 10a-11a (17 HD Reprint 13,372). For rice controls, see Article 225-11, 3 DC 510-11 and edicts in 775 HDSL 13a-15a (19 HD Reprint 14,943-44). See also 41 HBZL, *supra* note 52, at 24a-b (6 HD Reprint 2981), 41 HBZL 25a (6 HD Reprint 2983), 41 HBZL 28a (6 HD Reprint 2989), 41 HBZL 32a (6 HD 2997), 22 ZZ, *supra* note 54, at 47a, 22 ZZ 48b, 726 HDSL 8b-9a (17 HD Reprint 13,333), 629 HDSL 3a-3b (17 HD Reprint 13,361), 630 HDSL 1b (17 HD Reprint 13,367) and 2 CZ, *supra* note 51, at 784a. For other grains, see Article 225-11, 3 DC 510-11), an edict in 627 HDSL 8b (17 HD Reprint 13,333), 630 HDSL 2a (17 HD Reprint 13,377), 630 HDSL 22b-23a (19 HD Reprint 13,378), 775 HDSL 13a-15a (19 HD Reprint 14,943-44), 2 CZ 784a and 41 HBZL 25a (6 HD Reprint 2983). For tea controls, see Article 225-34, 3 DC 519, 630 HDSL 23a-b (17 HD Reprint 13,378) and 776 HDSL 3a-b (19 HD Reprint 14,947).

B. Imports

Consistent with the concern for security was a ban on foreign ships bringing weapons into China's internal waters. A regulation required their surrender on entry and return on departure from Chinese waters.¹³⁵ Strictly enforced in the early part of the 18th Century, this rule was later allowed to lapse. Another prohibition banned the import of opium. The principal concern over the opium trade was over the outflow of silver. An important secondary concern was for the morale of the soldiers and citizens who became addicts.¹³⁶

C. Ideas

Although no Qing law banned the export or import of ideas as such, many border control rules were essentially aimed at preventing the outflow of knowledge concerning China's political system and military security and banning the influx of heterodox religious and political concepts. Thus, the rules relating to proper procedure for communication between China and foreign countries and the laws governing heterodox religions and collaboration with aliens all served to restrict the quantity and screen the content of ideas and information passing in either direction across the Chinese frontier.

As we have seen, foreign countries could communicate with the Chinese court only by complying with a prescribed form, routing messages either from the foreign local official to the Chinese local official and up the bureaucratic ladder to the emperor, or from the foreign king in his own language to the Chinese viceroy, for forwarding directly to the emperor or via the Board of Rites. Moreover, under the Canton regulations of 1760, all mail between the European merchants in Canton and Macao and the Jesuits working in the imperial court in Beijing was supposed to be forwarded through Chinese bureaucratic channels and memorialized to the emperor.¹³⁷ Communications not couched in proper form were rejected and returned unread.

With respect to religion, aliens were allowed to retain their own beliefs and to engage in their own form of worship, but they were prohibited, under threat of harsh penal sanctions, from attempting to

135. 39 CZ, *supra* note 51, at 3a-b (2 CZ Reprint 779-80), 630 HDSL, *supra* note 7, at 15b-16a (17 HD Reprint 13,374-75) and 22 ZZ, *supra* note 54, at 43a-b.

136. 775 HDSL, *supra* note 7, at 10a (19 HD Reprint 14,941), 775 HDSL 10b (19 HD Reprint 14,941), 39 CZ, *supra* note 51, at 61 (2 CZ Reprint 785), 39 CZ 6a-b (2 CZ Reprint 785-86).

137. A DOCUMENTARY CHRONICLE, *supra* note 18, at 226, 245-47.

make Chinese converts.¹³⁸ Catholicism was considered to be a direct threat to the political order for it criticized ancestor worship, a major pillar of the social and political system.¹³⁹ Many Western Catholic missionaries were executed, imprisoned, or deported for violation of this ban.¹⁴⁰ Their followers were also severely punished. The Western priests in Beijing were also prohibited from importing and publishing Catholic religious tracts.¹⁴¹ As with other aspects of Qing foreign relations policies, control of foreign missionaries was more liberal in the early part of the dynasty and became stricter in the late 18th Century.¹⁴²

The principal Qing legal instrument for insulating the Chinese body politic from aliens was the previously cited statute prescribing heavy criminal sanctions for the offense of "collaborating with aliens" (*jiaojie waiguo*).¹⁴³ Originally aimed at preventing Han Chinese from entering tribal minority areas to cheat the local population, the statute was used widely to punish Chinese for unauthorized contact with foreigners. We have seen it applied to Chinese settlers deported from Siam to China in 1772. It was also used as the basis for applying the death penalty to Chinese who secretly wrote petitions for foreigners or who taught them the Chinese language.¹⁴⁴ A related pair of statutes is found in the section entitled "Leaking Important Military Matters" (*Louxie Junqing Dashi*). The basic statute imposes heavy penalties on anyone disclosing military secrets;¹⁴⁵ the first sub-statute under this statute prescribes the punishment of military banishment for any civilian or military personnel who, through unauthorized contact with members of a foreign tribute mission, discloses military secrets.¹⁴⁶

Aside from these principal provisions, many of the other rules

138. 3 WS:JC, *supra* note 6, at 42 (WS Reprint 321); and A DOCUMENTARY CHRONICLE, *supra* note 18, at 143-73.

139. See A DOCUMENTARY CHRONICLE, *supra* note 18, at 339-40, for a letter from a prominent Chinese Confucian scholar to a Korean scholar, in 1798, explaining why Catholicism could not be tolerated in China.

140. See A DOCUMENTARY CHRONICLE, *supra* note 18, at 299-300, 352-57, 384-85 and 396-400 for such occurrences in 1785, 1805, 1811 and 1815.

141. *Id.* at 352-57.

142. Wakeman, *High Ch'ing: 1683-1839*, in MODERN EAST ASIA: ESSAYS IN INTERPRETATION 23-25 (J. Crowley ed. 1970).

143. *Supra* note 99. For a fascinating essay on these laws from the point of view of the European community in China in the 1830's, see the essay by Morrison, 3 THE CHINESE REPOSITORY 9:421-23.

144. For example, see an imperial decree of 1759 ordering the execution of Liu Yapien for writing a Chinese language petition which a foreign prisoner submitted to the Emperor, A DOCUMENTARY CHRONICLE, *supra* note 18, at 422-24.

145. Qing Penal Code Article 202-00, 3 DC, *supra* note 50, at 462.

146. Qing Penal Code Article 202-01, 3 DC, *supra* note 50, at 463.

discussed in Sections I and III helped to keep the movement of ideas across the frontier down to a trickle. While in the short run these prohibitions may have effectively insulated China from truly undesirable foreign influences, the underlying philosophy of isolationism and the laws derived from it also denied to China the benefit of the rapid developments in scientific thought and technology taking place in the Western world. Under China's current leadership, perhaps the old legacy of the ideal of a sealed frontier will finally succumb and China will be able to participate fully in global intellectual, technological and commercial exchange.

CONCLUSION

The contention that imperial China in its foreign relations clearly acknowledged the prerogatives of rulers of sovereign territory, as well as the compelling equity of the notion of reciprocity in relations between states, indicates the need for scholars of Chinese history to take another look at the reasons for China's slow and painful entry into the modern "family of nations." Also deserving of attention are the ideal of closure and total control of cross-border traffic, and the related idea that the movement of anything at all — person, thing or idea — across the border was an important matter that had to be reported upwards and resolved only by the top leadership. The fact that these similar values have been reflected at times in the foreign policy of the People's Republic of China testifies to the deep-rooted nature of these traditional conceptions of the optimal means of insuring national security and domestic political stability.

I have provided statutory authority and extensive citation to actual case decisions to demonstrate that the Qing emperors claimed to have exact knowledge of the extent of the territory under their rule. These sources have also shown that the Chinese rulers perceived their legal authority as absolute within, but in general not extending beyond, China's national borders.

The influence of the principles of reciprocity, neutrality, and equality in the drafting and interpretation of Qing border control laws reflects both a perception of the fairness of reciprocity and a recognition of the limits of Qing power to influence events beyond its borders. Acknowledgment of equivalent rights and powers in neighboring states was, no doubt, a practical precondition for securing the cooperation of those states in enforcing China's own national policies and laws relating to frontier security.

Nothing legally moved across the Chinese border without prior official permission. Nor did any individual have an absolute right to

leave or enter Chinese territory. Violators of these prohibitions were severely punished.

Study of these attitudes and practices of the Qing rulers may even offer some insight into contemporary Chinese behavior. It can plausibly be argued that some of the present leaders of China share the Qing view that traffic across the border should be carefully screened and kept to a manageable trickle. Although China's doors now have been opened somewhat wider for foreign visitors it is unlikely that Beijing will soon endorse a policy of unrestricted entry into and exit from China. The governments of China and Vietnam are still faced with many of the same questions that plagued their predecessors two centuries ago, for example, a dispute over the location of the boundary line and over the nature of the rules governing traffic across the border.

This study, together with other recent case studies of traditional Chinese law, reminds us that the bureaucratic approach to regulatory problems, domestic and foreign, has a long history in China. Students of contemporary Chinese law should take note of the necessity to look beyond the more accessible laws and statutes to examine the internal regulations of the principal organs of the state bureaucracy.

I conclude with a parallel between the Qing border control policies we have examined and the policy recently adopted by China's current leaders to invite an infusion of Western capital, scientific thought, and technological know-how. During the Qing Dynasty prior to 1841, the only Westerners granted lawful entry into China were traders (who were restricted to Canton), the handful of tribute diplomats who went to Beijing under close escort, and the Jesuit employees of the imperial court. Foreign presence was tolerated only because the emperor found the granting of limited foreign access useful for political and scientific purposes.

Foreign ideas and customs were generally banned as a threat to the dominant Confucian ideology. These restrictive policies and laws were ultimately abolished only by superior Western economic, military, and technological might. The opening of Qing China to foreign trade and missionary activity introduced a flood of alien ideas that helped to stimulate an intellectual ferment and political action leading to the downfall of the imperial order. The intriguing question is whether today's leaders of China will be able to succeed, where the Qing rulers failed, in restricting the influence of "Western studies" to utilitarian purposes and protecting the purity of "Chinese studies" as the basis for political and social life.