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Introduction

On August 2, 1899, Luo Fenglu, Qing minister in London, wrote to the Marquess of Salisbury, British secretary of state for foreign affairs, seeking the extradition of Chung Sui-Yung (Zhong Shuiyang) from the colony of Hong Kong, for burglary, extortion, intimidation, and inciting local rebellion against the British occupation in November 1898. Chung was a native of the Xin'an (Sung-On) district, an area contiguous to the New Territories newly leased to Great Britain as an extension of Hong Kong in June 1898. Luo's intelligence and British investigations both pointed to Chung as the ringleader of a band of local rebels who opposed Britain's occupation of the New Territories. Luo complained that, in October 1898, just a month before their planned attack, the Qing government had demanded the extradition of Chung, but his case was dismissed by the police magistrate of Hong Kong on the ground that two German missionaries provided an alibi to prove that Chung had been elsewhere when the attacks occurred.[1] While this was a standard basis for dismissing such an application, Governor Henry Blake endorsed the decision on a wholly different and more far-reaching ground, namely, Chung's affiliation with Sun Yat-sen, a well-known political offender who had been wanted by the Qing government for inciting an 1895 rebellion in Canton.[2] In 1896, under what became known as the "Political Offense Exception" (POE), the British government had refused the Qing's request for the extradition of Sun, and Governor Blake applied the same approach to Chung's case. Minister Luo was troubled by the fact that a man

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of such notoriety could evade law enforcement so easily, and by resorting to the protection of the same colonial government which he sought to attack. The case, in Luo's words, "once more shows the danger of allowing Chinese criminal fugitives in Hong Kong to abuse the technicalities of British law, in order to thwart the requisitions of Chinese government for their surrender."[3]

The immediate question highlighted by this exchange revolved around the administration of criminal justice across the border between Canton and Hong Kong, a colony Britain had acquired in 1842. By treaty, the Qing government had the right to seek the rendition of fugitives from Hong Kong. Article 21 of the Treaty of Tianjin (1858) stated that: "if criminals, subjects of China, shall take refuge in Hong Kong, or on board the British ships there, they shall, upon due requisition by the Chinese Authorities, be searched for, and, on proof of their guilt, be delivered up."[4] Despite the unqualified terms of the provision, the British government, in the four intervening decades, developed a set of legal and administrative procedures to justify rejecting the Qing's requests for fugitive rendition. Of crucial importance to the Qing were criminals who were considered guilty of treason, inciting rebellion, assassination, and sometimes aggravated murder, but who were classified by British officials as "political offenders" and, on this ground, had their cases dismissed.

Luo's letter raised important issues about the interaction between international treaties and the laws of a colony when they were inconsistent with each other or diverged over time. When the Treaty of Tianjin was signed in 1858, as Minister Luo claimed, British law "made no distinction between political and non-political offenses," nor was one incorporated into the treaty it signed with China.[5] The POE was formally introduced in the Imperial Extradition Acts of 1870, and yet, well before that, the British government had used the exception to reject many such requests by the Chinese authorities.[6] Should treaties be held to mean what they meant at the time when they were negotiated, or should they cease to have a binding effect with changes in municipal laws? How should laws be administered in cases where Chinese fugitives fled to areas under foreign control, bringing about a clash between the Qing law of personal jurisdiction and the territorial sovereignty of the colony? How should states with different legal and political systems manage fugitives? These questions, which

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barely figured in the negotiations of 1858, posed enormous challenges to both governments in subsequent decades as border-crossing subjects became more numerous, mobile, and resourceful.

Another set of questions highlighted by Luo's letter is the nature of political criminals at the interstices of empires. Chung's insurrection of 1898, along with many other revolts of the 1890s, had the double characters of being both "anti-foreign" and "anti-Qing." In fact, the Qing initially took note of these insurrections because of Britain's demand for reparations for their attacks upon the British forces in Kowloon.[7] These secret societies took on the patriotic cause of coming to the assistance of the Qing in resisting foreign encroachments, but they also sponsored rebellions against the Qing. These tactics often put the Qing forces in a difficult spot: They were obligated under treaty to protect foreign interests and suppress anti-foreign revolts, but by doing so they also risked losing legitimacy and popular support, thus affirming the anti-Qing claims of the rebels. Luo argued that the strategies of Chung and his society were precisely calculated to take advantage of this imperial dilemma and escalate the conflict between empires. The British authorities, by preventing their leaders from being prosecuted on account of the "political nature" of their crimes, made the colony a haven for rebellious activities.[8]

As Luo wrote this letter in 1899, North China was on the brink of a popular anti-foreign movement led by the Boxers, setting the stage for a broad-based confrontation with foreign powers. The ruling power had recently shifted from the young, reform-minded Emperor Guangxu to his aunt, the Empress Dowager Cixi, through a bloody coup. The reform movement which the Emperor had supported (later known as the Hundred Days Reform of 1898) ended with the summary execution of six of its leaders. With the emperor under house arrest, the reformers fled into exile and continued their political movement overseas. The southern rebellions, like the ones Chung planned, exploited these converging vulnerabilities. The mobility of the reformers and revolutionaries amidst the political upheavals at the turn of the century led to a shift in the challenge over the extradition of political offenders from the southern borders to the heartland of China and Western powers, in treaty ports and foreign cities.

More broadly, the issues raised by the minister have relevance to decades well before and after the 1890s. They underscore the legal

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and territorial challenges the Qing confronted on fugitive rendition after the First Opium War, which were not foreseen by the negotiators of the Treaty of Nanjing, but came as a result of the processes set in motion by the treaties in the next few decades and larger global shifts: the implementation of consular jurisdiction, the territorialization of law in colonies and foreign settlements, changes in international norms regarding extradition, and finally, the glaring discrepancies between Chinese and Western laws regarding the treatment of alleged criminals, especially offenders whose crimes had a political nature. By early Republican China, the rise of international anti-colonial, anarchist, and Communist movements posed further complications to the established nineteenth-century protocols of cross-border justice.

The conventional narrative of the late Qing and Republican China (1860s–1930s) largely leaves to the imagination how the state dealt with those who committed political crimes. Western accounts, rife with foreign revulsion against the Qing's draconian law, give the impression that the state rarely failed to treat political offenders with extreme punishment. The government's readiness in forgoing its legal procedures in favor of local executions during periods of political unrest certainly seem to support this view, as does the Qing's court's execution of several high-profile reformers and revolutionaries in its final years.[9] And yet an examination into the diplomatic and official documents shows a different side of the story. The treaty system and the establishment of colonies, concessions, and treaty ports severely compromised the judicial sovereignty of the Qing and post-imperial regimes. These developments enabled Chinese subjects to take refuge in areas where Chinese law was off limits or could not be enforced without significant modification. These were not isolated cases but followed a clear trajectory where legal precedents created new pathways and shaped outcomes for those who came later. Although the challenge of bringing transnational fugitives to justice was common to all governments in the era of modern transportation, the problem of fugitivity were particularly acute in China between the mid nineteenth century and the mid twentieth century, and especially in cases involving political offenders.

This book examines how transborder justice worked regarding political crimes from the 1860s to the early 1930s, when the legal

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definition and laws adjudicating political crimes went through tremendous changes. These changes, as we will see, were the product of complex negotiations between Chinese and foreign diplomats, jurists, and political actors themselves over the legal boundaries of legitimate political actions; in particular, over what to do with the great discrepancies between the treatment of political crimes in Chinese law and of "political offenders" in Western laws of extradition. These questions were important because some of the best-known anti-Qing political actors were border-crossers who utilized colonial and extraterritorial spaces in China in their transformation into modern "revolutionaries" – by crossing jurisdictional borders and seeking to frame their opposition to the Qing in different conceptions of legal rights. In this contentious process, what may appear as abstruse debates over legal definitions and technicalities became focal points in the struggle for political legitimacy.

The rest of this introduction is devoted to two main purposes: setting the scene for the unfolding of this story, which largely follows a chronological order, and outlining the central arguments presented in this book. First, it provides an overview of the growing disparity in the treatment of political crimes between China and Europe in the late eighteenth and nineteenth centuries. Beginning with the observation that China and Europe treated political crimes with similar severity prior to the eighteenth century, I argue that the shifting legal norms, political values, and the technology of punishment led to a new conceptualization of political crimes in Europe. This transformation, in turn, affected the rules governing fugitive rendition and paved the way for the emergence of the POE in extradition between European states. The next section shifts its focus to China to examine how the Qing state handled rebel fugitives and political criminals who sought refuge in borderland and foreign territories through a multipronged strategy of military suppression, judicial cooperation, and a regime of meticulously quantified penalties based on the severity of crimes committed. In the third section, I examine how these strategies confronted serious challenges from the mid nineteenth century, as fugitive rendition came to be regulated by more than two dozen treaties and regulations signed with foreign powers, especially when the implementation of these treaties met growing resistance from colonial officials and foreign diplomats. The final section discusses how the

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Qing and Republican state negotiated with foreign powers over the extradition of political fugitives, and how these negotiations affected the strategies and maneuverability of rebels and revolutionaries by the late 1920s when Chinese revolutionaries had begun to take on international characteristics.

Political Crimes and the Great Divergence between China and Europe

Prior to the late 1700s, despite the different political systems of China and European countries, the treatment of political criminals was not marked by a great divergence.[10] In his classic *Soulstealers*, a study of the Qing state's response to a sorcery scare in 1768, historian Philip Kuhn, undoubtedly aware that there was no native term equivalent to "political crimes," nevertheless applied the term to "sedition in all its various guises, whether religious heterodoxy, literary innuendo, or outright revolt." He defined these crimes as acts of "transgression against the values or institutional foundations of the polity … activities [which] attacked the legitimacy of the imperial system and challenged the cosmological foundations of its sovereignty."[11] *The Great Qing Code* lists these acts under the Ten Great Abominations, extreme acts of evil violating the moral order of the empire. The first three, plotting rebellion, high treason (against the emperor), and treason (betrayal of the state), were punishable by slicing and beheading, with no possibility of amnesty.[12] The family and relatives of the perpetrators were also prescribed different degrees of punishment. In fact, Joanna Waley-Cohen has argued that collective responsibility was a more reliable indicator of which crimes were considered political in the Chinese legal tradition, as it was seen as an effective "intimidating means of trying to check a trend whose political implications were unmistakable."[13]

Before we proceed with any comparison, it should be acknowledged that applying the English term "political crime" to nineteenth-century China has both advantages and potential problems. One advantage is that it enables us to compare the perspectives of the states in response to serious threats to their existence, but the danger is equally real of imposing false equivalences and a uniform definition of political crimes in different political systems. To minimize this risk,

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this book uses terms such as "political crimes," "political offenses," or "political criminals" to refer specifically to the state's responses or behaviors towards what it deemed to be a fundamental threat. The term "crime" does not signify an endorsement of the state's value in deeming these behaviors "criminal," nor does the book seek to equate the term with a finite list of acts. As Barton Ingraham has written in his authoritative study of political crimes in Europe, "*the 'political' nature of the crimes depends on the kind of legal responses the act evokes from those in authority*. The light in which an act is seen, and the emotional response it produces, govern the way legal machinery is used upon it."[14] The state in theory could declare any kind of behavior it deemed as violating its fundamental interest as political. The relative quality of "political crimes" applies also to Qing China in, for example, the state's prosecution of large-scale corruption (a crime not included in the Ten Great Abominations) in ways similar to treason and sedition in the eighteenth century, as a radical means of checking a fundamental threat to the Qing's legitimacy.[15]

In Europe, political crimes before the nineteenth century were seen as a "breach of faith and allegiance owed to a personal monarch or lord."[16] In both France and Germany, punishments for political crimes were harsh, vague, and often arbitrary. It was only in England that a degree of procedural protection against persons accused of treason and sedition came into being in the seventeenth century, but even there, the English court criminalized its political enemies based on "compassing or imagining the death of the King."[17] In both Europe and China, laws against crimes took the form of what Michel Foucault calls "the legal or judicial mechanism," a legal code with a "binary division between the permitted and the prohibited, and a coupling, comprising the code, between a type of prohibited action and a type of punishment."[18] Punishments against political criminals, such as Emperor Qianlong's sentencing of the dissident Zeng Jing in 1736 with the method of "lingering death," and the drawing and quartering of Damiens the regicide in 1757 Paris, were highly visible and public affairs.[19] According to Foucault, "the very excess of the violence employed is one of the elements of its glory: the fact that that the guilty man should moan and cry out under the blows is not a shameful side-effect, it is the very ceremonial of justice being expressed in all its force."[20]

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European legal ideas about political crimes changed profoundly in the late eighteenth century. The new theories of social contract held that people, not monarchs, were the source of national sovereignty, limiting the authority of the government to the consent and interest of the people. It was widely believed that if the government did not exercise these functions or abused its powers, the people had a natural right to overthrow it and establish a new political order. As the monarch was no longer seen as coterminous with the state, any injuries to the monarch's body or dignity were no longer seen as attacks upon the state. The new legislation after the French Revolution classified political crimes in starkly different terms compared to the previous laws of Europe. The 1791 French criminal code, the first of its kind to incorporate liberal doctrines into criminal law, introduced new terms and categorizations to political crimes. In this redefined legal context, the abstract notion of the "state" was substituted for the monarch as the target of political crimes and given protection in the law. Among the crimes which had been broadly considered political, there came to be a differentiation between two types of acts: the crimes against the external security of the state (attacks upon its existence or its laws), and the crimes against the internal security of the state (attacks upon the government or its political institutions). Only the first category was viewed as a genuine threat to the state's survival. Crimes from the second category were not held to jeopardize the state's continued existence.[21] They were increasingly seen as not necessarily caused by a "depravity of the heart" but rather by a "man of honor and some decency."[22]

The lessening of punishments against political crimes does not mean that nineteenth-century European laws placed less emphasis on political crimes. Instead, a transformation took place in the means of and ends to punishment – its focus shifted from brutal punitive measures to more structured, corrective regimes. By the early nineteenth century most criminals were treated with corrective regimes according to an exact and meticulous timetable.[23] Legal reforms aimed at rearranging the economy of the power to punish, to render it "more regular, more effective, more constant, and more detailed in its effects."[24] The purpose of punishment was no longer to create spectacles of horror but to discipline the body of the prisoner, form new habits and behaviors, and transform the mind and the soul. The

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presence of the law was more pervasive and its uses more precise, but the mechanism of the punishment also became more hidden and internal. It is worth noting, however, that the use of torture against political enemies continued to exist, whether through colonial violence in the name of "emergency law" and "states of exception," or via the stealthy "clean techniques" developed in the early twentieth century that left no trace on the body and escaped public monitoring.[25]

Accompanying the shift in the regime of punishment were diplomatic rules concerning the extradition of individuals accused of political offenses. Legal historians have long observed that the term "political offenders" in its full legal sense was not rooted in domestic law but instead emerged from international law governing rules of extradition and asylum after the French Revolution.[26] It was also a deeply politicized category: The refusal or granting of the extradition request for political offenders was a matter of political interests, the outcomes of which often depended on the similarity of the political systems between the requesting and requested state.[27] Prior to the nineteenth century, fugitive recovery for common crimes was often not considered worthy of extradition but was instead handled by private justice. It was the political criminals who were the "most dangerous, and whose surrender was to the common interest" to European states.[28] The term "political crimes" was unknown in England prior to the French Revolution because regicides were the single most important class of criminals which entered treaties.[29] The Jacobin Constitution of 1793 was the first law offering political asylum and non-extradition of political offenders, upending the long tradition between sovereigns in signing treaties for their mutual surrender.[30] By the early nineteenth century, extradition came to be defined more and more by statutes under the scrutiny of the legislative and judiciary branches of the government, rather than being handled by the executive alone. As the principle of excluding political offenders from extradition gained traction across Europe, it helped establish an international framework in which liberal states provided protection against older, suppressive political models.[31]

These sweeping changes had the effect of making European countries, especially Great Britain, the destination of political refugees and exiles.[32] Rising public opinion sympathizing with fugitives created the expectation and moral obligations of political asylum.

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Emigres in Victorian England, ranging from French monarchists to German socialists, continued their involvement in the cultural, political, and intellectual lives of their host country.[33] The presence of the political exiles created an external community of keen observers and stakeholders who participated in the political affairs of their home countries or influenced public opinions from afar. These spaces of asylum accompanied the influence of liberalism and new technologies of punishment in limiting the severity of domestic legislation against treason, sedition, and a host of other political crimes.[34]

Although the historical experience of Europe differed from that of China, the dynamics between domestic and international laws can be used as a common lens to understand how their trajectories in political crimes diverged after the eighteenth century. Political oppositions, both in the Qing and modern Europe, often transcended state or regional boundaries, coinhabiting different legal systems and political environments. However, the scholarship on political crimes of the Qing has mostly focused on mechanisms of monarchical or bureaucratic control over political oppositions.[35] The distinction between "common" and "political" crime, in China as elsewhere, is difficult to demarcate, and many factors, such as the scale, timing, connections and networks, undoubtedly played a role in whether "common" crimes such as banditry and piracy would be considered in a political light by the state apparatus.[36] Even mundane and everyday crimes across borders not under state surveillance had the potential to strike a nerve and provoke urgent responses when they directly challenged the state's authority or disrupted its stability.

In the following sections, I provide some preliminary thoughts on how the late imperial crimes against the state – the first three of the Great Abominations – became "political offenses" in the last decades of the Qing, and how we might understand their emergence as an interplay between domestic law and a transborder phenomenon concerning law and diplomacy.

Political Crimes as a Transborder Issue in the Qing

Under a pluralistic legal system of personal jurisdiction, the rule of the Qing law largely followed people rather than being delimited by the territorial boundary of the state.[37] Although the Ming and the

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Qing states regularly regarded people who voluntarily left China as stepping "outside Chinese civilization" (*huawai zhi ren*) and thus no longer subject to its administration, they also deemed it imperative to bring back rebel fugitives or political criminals who continued to pose a threat to the state. At various times, the borderlands of southeast Asia, the northern frontiers, inner Asia, and offshore islands to the east provided places of refuge for rebels fleeing the state's persecution.[38]

The state's anxiety about rebels and fugitives on the borders underscores its recognition that the vast and ill-defined nature of China's borderlands posed a monumental challenge for state control.[39] The borderland, as Timothy Brook observes, was a "politically dangerous space where any sign of loss of sovereignty or control could be taken as evidence that the existing political order was under threat and as proof that treason was brewing."[40] Although border delineation was rarely precise prior to the late nineteenth century, the state's boundaries (both imaginary and real) functioned as a political demarcation between loyalty and treason. Migration to foreign lands was deemed a potential political threat, as the Yongzheng Emperor's edict in 1727 declared: Traders who traveled overseas were "not law-abiding subjects."[41] Unauthorized border-crossing was forbidden. Accusations of these acts could tarnish the reputation of a statesman and invite rumors and suspicion. They were acts to be avoided at all costs by men of repute and only resorted to as a means of survival. Officials put in charge of military campaigns or administrative duties at the borders received intense scrutiny for any activities of border-crossing. When the elimination of fugitive enemies became impossible, such as in the case of Zheng Chenggong, a Ming loyalist sea lord who ensconced his forces in Taiwan, the Qing implemented a draconian policy of coastal evacuation, moving all inhabitants ten miles inland.[42] The physical separation between imperial subjects and Zheng's forces, as it was believed, would starve the rebel lord of his mainland sources of supply and eliminate enemy infiltration.

The state's insistence on maintaining a physical separation between loyalty and treachery engraved the vast landscape of China with political signification in popular imagination. The contrast with Europe and the Anglo-American tradition could not be starker. Eighteenth- and nineteenth-century European thinkers often reached the height of their creativity and fame in political exile – being away and abroad

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might be a sign of temporary disgrace but by no means signaled treachery or moral deprivation. The linguistic affinity of European states and the relative ease of border crossing helped maintain a degree of cultural integration across borders, so the spread of dissident writings could find their way back into home countries and influence domestic opinions, thus bringing opposition views into conversations with the political practices of the center.[43] This was by no means smooth, swift, or peaceful – many of Europe's notable dissidents died in political exile – but with time the exchanges of ideas brought about reconciliations between the exiles and those at home, and a reshuffling of political imaginations.

Rebels and dissidents against the Chinese states faced much greater challenges in negotiating between both the physical boundaries of the states *and* the imaginary boundary between loyalty and treason. This was compounded by the unique geographical feature of China's landmass, encircled by deserts, mountain ranges, forests, and seas, making it nearly impossible for individuals to survive without joining collective action or receiving the support of foreign regimes. From the Qing state's point of view, they were political enemies who constituted threats to the throne and must be hunted down and eliminated, whether by military suppression or diplomatic negotiations (especially when sending forces across the border became too costly or impractical), and their domestic supporters and sympathizers were met with determined action. When the Southern Ming emperor Yongli took refuge in Burma after losing his stronghold in Guizhou province, the Qing court appointed General Wu Sangui to hunt down the fugitive Ming contender. Wu applied military pressure and diplomatic incentives to the king of Ava, who eventually surrendered Yongli to face execution by strangulation.[44] The archives of seventeenth- and eighteenth-century Qing state brim with accounts of campaigns against political enemies and fugitives whose forces were deemed sufficiently dangerous to warrant military measures.

It was amidst intense military campaigns against the Dzungars, a formidable confederation of the Western Mongols, that the Qing sought to stabilize its northern frontier with the Russians with an agreement on the reciprocal rendition of fugitives. The Treaty of Nerchinsk of 1689 prioritized loyalty over territorial sovereignty, and featured stipulations on the mutual extradition of "deserters,"

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showing that both empires saw "cross-border population movements as detrimental to their long-term diplomatic relations and frontier policies."[45] The 1727 Treaty of Kiakhta criminalized border crossing and a 1768 revision provided detailed procedures for the arrest, rendition, and punishments of fugitives from both sides of the border.[46] During the wars with the Dzungars in the mid eighteenth century, the Qing invoked the treaty in their request to Russia for Amursana, leader of a rebel force who had sought refuge in Siberia. The Russians, valuing Amursana's knowledge of the Qing's conquest of Dzungaria, resettled him in secret while telling the Qing that he had drowned while crossing a river (which the Qing proved false after a search party failed to find the body in the river).[47] Amursana soon died of smallpox and was buried in Russia, but Emperor Qianlong insisted on examining his corpse, and when this was refused, retaliated by placing the Russian Orthodox monks in Beijing under house arrest and threatening to cut off trade.[48] When it came to threats deemed sufficiently dangerous, the Qing state was fully determined to hunt down fugitive rebel leaders, dead or alive, even at the risk of a diplomatic crisis.

For border-crossers who did not pose an immediate threat to its existence, on the other hand, the Qing state exercised judicial flexibility. Its governance of diverse populations followed different strategies in different frontiers, often adopting a pluralistic judicial approach to allow local leaders the authority to regulate their populations according to their own laws. In this context, the Qing's approach to the repatriation of fugitives and trespassers amounts to what Jaymin Kim calls the routine exercise of "asymmetric and elastic sovereignty," supported by diplomatic agreements and customary laws. Kim shows that in the Qing's interactions with Chŏson Korea, Vietnam, and Kokand, jurisdiction of border-crossers was fluid and constantly renegotiated. Instead of blindly insisting on judicial sovereignty, the Qing often shared, gave up, or transformed judicial control of transborder subjects, but such flexibility only worked in the larger context of asymmetrical relationship between the Qing empire and its tributary states.[49]

By the early nineteenth century, this combination of rebel suppression and judicial cooperation kept rebels at a political disadvantage and physically separate from the center. These measures at the border were echoed domestically by censorship and literary inquisition

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designed to snuff out the dissemination of seditious literature, and a regime of finely graded punishments ranging from lingering death to exile and confiscation.[50] Although many sectarian rebel groups had limited mobility across jurisdictions, these mobile tactics were resorted to as a survival strategy and often used in combination with name changes for both leaders and organizations, thus obscuring the continuity of their identities over time.[51] The Qing's multipronged strategy combining military operations, jurisdictional cooperation, and domestic censorship and prosecution did not always work perfectly, but for the most part, up to the mid nineteenth century, it banished, criminalized, and delegitimized political rivals, keeping them from growing strong enough to challenge the Qing's authority.[52]

Fugitive Rendition in the Era of Extraterritoriality

In the eighteenth and nineteenth centuries, the Qing signed more than two dozen treaties with seventeen foreign states which included clauses on the delivery of fugitive criminals. These provisions largely followed the principles of personal jurisdiction. They held that the unlawful subjects of each country who took refuge in the territories of the other must be delivered up to their native authority. Each side was responsible for conducting searches and arrests within its own jurisdiction and for handing over fugitives to border officials or delegates of the other, irrespective of where the crime was committed. Fugitive rendition agreements could be broadly divided into two types, with occasional overlaps: those with neighboring states sharing existing or newly demarcated land boundaries, and those with countries whose nationals came by ships to open ports.

In cases of shared land borders in frontier areas, the treaty clauses prioritized alacrity and collaborative efforts, targeting deserters, escaped slaves or indentured servants, and those accused of common crimes such as robbery, murder, and arson.[53] For instance, the Treaty of Kiakhta authorized each party to arrest and deliver fugitives to officials stationed at the border, and – in cases of deserters and escaped slaves – to carry out immediate execution upon their capture.[54] A similar principle is also seen in the Sino-British Convention relating to Burma (1894) and the Sino-French Supplemental Commercial Convention regarding Tonkin (1895). The latter convention, in

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addition to mutual delivery of fugitives, also provided for the exercise of joint policing between the authorities along the borders.

In contrast, with far-flung Euro-American countries who established a foothold in treaty ports or, in the case of Hong Kong and Macau, a staging ground, the foreign fugitives' arrest and punishment were subject to the principle of extraterritoriality, which exempted them from Chinese law and placed them under the jurisdiction of their own representatives. As Pär Cassel has shown, the Qing's practice of delegating the jurisdiction of foreigners in foreign boats and treaty ports to their own consuls stemmed from the customary practice of legal pluralism, which it had adopted in governing an ethnically diverse empire.[55] For Chinese subjects taking refuge in ships and houses in treaty ports, the procedure outlined in these treaty clauses can be seen as reciprocal and similar to fugitive rendition along shared borders. They specified that fugitives must be searched and arrested (*chana*), and delivered to (*tijiao*) Chinese officials promptly. These rules were to be strictly enforced (*yanxing*), and any attempts at sheltering or hiding the fugitives were forbidden (*bude bihu yinni*).[56]

A comparison between these treaty clauses and Qing law regarding domestic fugitive apprehension shows that they followed similar principles. The *Great Qing Code* contains substitutes providing detailed regulations on administrative and judicial procedures involving escaped fugitives of various classes and localities, ranging from bondservants and corvée labors, to banished officials, murderers, robbers, heretics, bandits, and rebels. It also specifies punishments given to those who were deemed responsible for their escapes or failure of apprehension, including civil and military officials, clerks and runners, relatives, and neighborhood heads. A failure to apprehend the fugitives within the prescribed time limits could result in severe punishments to these responsible parties.[57] In cases of interprovincial pursuits, the responsible local officials were required to report immediately to their superiors and the corresponding officials in the nearby provinces, along with a detailed description of the fugitives' appearance, birthplace, and distinguishing marks, and severe punishments were prescribed for delays, foul play, or failure to assist.[58] The challenge of interprovincial pursuits can be illustrated by a Qianlong era scandal where several magistrates were impeached for arresting the wrong fugitives who had escaped from other areas. When these magistrates faced a petition of

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investigation, Emperor Qianlong leaned in favor of pardons, believing that "if officials are punished for making occasional mistakes, they would be too afraid to take action and simply ignore cases involving neighboring provinces."[59] Both these treaty clauses and Qing administrative laws prioritized promptness, efficiency, and judicial cooperation between government units over bureaucratic restraint and concerns for accuracy or fairness to the accused.

The differences between these fugitive rendition clauses and what Westerners would later call "extradition" – the legal process governing the "delivery of a prosecuted individual to the State on whose territory he has committed a crime by the State on whose territory the criminal is for the time staying" – are subtle but important.[60] Whereas modern extradition emerged out of territorial sovereignty, the Qing's treaty clauses were rooted in personal jurisdiction under a variety of territorial and extraterritorial practices. Different ideas held by the treaty powers regarding fugitives added to terminological confusion. Some treaties used the term "extradition" to signify the mechanism, whereby fugitives were delivered from one authority to the other.[61] But others, notably Great Britain and the US, opted for phrases such as "deliver up" or "hand over" in their treaty agreements.[62]

Furthermore, although these treaty clauses appeared mutually binding, this reciprocity was not entirely balanced. For foreign subjects under extraterritoriality, their delivery from the Chinese government to their consuls operated as a procedural handover. When foreign consuls encountered practical difficulties with law enforcement and fugitive apprehension, often due to poor staffing, they relied on the assistance of the Chinese authorities or the hiring of Chinese as constables.[63] But the transfer of the fugitive offender from the Chinese to the jurisdiction of foreign consuls was governed by the principle of extraterritoriality, leaving little room for the Qing to refuse the surrender of foreign fugitives to the consuls. British fugitives, in particular, were governed by the Fugitive Offenders Act of 1881 and the Colonial Prisoners Removal Act of 1884, which treated China "as if it were a British possession and part of His Majesty's dominions."[64]

While the transfer of foreign fugitives to consular authorities in China was procedural, for Chinese fugitives taking refuge in residences or ships owned by foreigners or colonial territories such as Hong Kong, their arrest and delivery to the Chinese government

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constituted a judicial and diplomatic process. Notably, subtle but important differences between the Chinese and Western texts on this point gave room for discrepancies in subsequent interpretations. For instance, both the Sino-British Supplementary Treaty of the Bogue (1843) and the Treaty of Tianjin (1858) stipulated that in cases where a Chinese subject took refuge in Hong Kong or a British ship, the British government required a "due requisition" and "proof or admission of their guilt." Similar language, such as "sur la preuve de la culpabilité des prévenus," can be found in treaties signed with France, Portugal, and Belgium. However, the Chinese versions of these provisions typically translated "proof of guilt" as "chaming shixi zuifan" ("investigate and ascertain that they are indeed the culprits"), which emphasized the importance of ensuring the correct identity of the individual rather than focusing on the strength of the evidence establishing guilt.[65]

Over time, the framework of personal jurisdiction came to be compromised by the territorialization of law, whereby indigenous populations gradually came to be considered as colonial subjects. Legal historian Ivan Lee has recently argued that the legal ideas pertaining to extradition and subjecthood went through periods of "inchoateness" and experimentation in Hong Kong before modern mechanisms were put in place in the 1870s.[66] In the Portuguese enclave of Macau, a similar process could be seen by the fact that, whereas the Qing magistrate from the nearby Xiangshan held the authority to enter and make arrests of Chinese fugitives in the eighteenth century, Portugal's assertion of territorial sovereignty in the late nineteenth century made the colony off-limits to Qing law enforcement.[67] After Tonkin's annexation by France in the 1880s, the Qing forces could no longer count its repatriation of Chinese fugitives, as the colonial authorities claimed exclusive territorial jurisdiction, refusing to grant consular jurisdiction to Chinese subjects in Vietnam.[68] As we shall see later, this extension took forms beyond the scenarios anticipated in the treaties, and came to include foreign settlements in treaty ports and the much more amorphous but ubiquitous enclaves established by missionaries.[69]

However, the territorialization of law was held in tension with a shared interest between Chinese and foreign authorities in managing border security, suppressing rebellions, and preventing their

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territories from becoming a refuge for fugitives. Along the colonial borders, Qing local administrations coordinated with their foreign counterparts in policing local lawbreakers and trespassers, resulting in agreements on the reciprocal rendition of fugitives across borders. In some areas, summary justice was agreed to or adopted, facilitating quick delivery without lengthy judicial proceedings. In the aftermath of the Ngụy Danh Cao uprising, the Vietnamese rebel leader surrendered himself and his forces to the French colonial authorities with a pledge of cooperation and ceasefire.[70] The French Minister, V.G. Lemaire, agreed to the Qing's extradition request on the condition that Ngụy and his two sons be exempted from the death penalty. By handing to the Qing a Vietnamese rebel leader, the French colonial government seized the opportunity to reaffirm the French interest for reciprocal extradition for future Vietnamese rebels from China.[71]

From "Rendition" to "Extradition"

The Qing saw the fugitive rendition clauses in its treaties as a reciprocal right when they granted foreigners extraterritoriality, but these rights, as they later discovered, were far from equal and reciprocal. Whilst foreign diplomats and consuls had nearly unchallenged authority to govern their own nationals in China, Qing law could not reach Chinese fugitives in colonies and foreign settlements, and requests for the surrender of the criminals were often rebuffed. The changing procedures regarding extradition between Canton and Hong Kong from the 1840s to the 1890s provide a good illustration of this. Early colonial governors resorted to what Christopher Munn has called "cheap, summary, and sharp justice," giving up Chinese pirates or fugitives to the Qing authorities. In the 1840s and 1850s, the Hong Kong authorities paid little attention to the rights of the prisoners and often handed them over without the request of the Chinese government.[72] This attitude towards rendition was largely due to the resource limitations of the Hong Kong judicial system and the belief held by the British colonial authorities that "many punishments in English law were impractical and ineffective" for Chinese offenders.[73]

These ad hoc arrangements, while they worked at the initial stage of the establishment of colonies, would later come under criticism at the

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imperial center in London. British legal historian V. E. Hartley Booth has identified 1842 and 1870 as two watershed moments in British extradition law. Prior to 1842, British treaties typically included both political and nonpolitical offenders such as murderers, thieves, and pirates, and the surrenders were made under the Crown's prerogative. This changed with the Webster–Ashburton Treaty of 1842 with the US, which set the standard for later treaties in restricting extradition to a list of crimes, and requiring a prima facie case of guilt. From 1842 to 1870, extradition treaties were incorporated into domestic law according to a cumbersome procedure, whereby each treaty was given legislative effect by Parliament. After the passage of the Imperial Extradition Act of 1870, extradition came to be governed entirely by statutory law.[74] From the 1870s onward, the British government used the word "extradition" only for the delivery of criminals to and from foreign countries, preferring "rendition" to designate the transfer between British territories.[75]

These changes led to an increasingly stringent view towards the regime of fugitive rendition that had been agreed to and signed into treaties following the two Opium Wars. It was considered both immoral and impractical for Western officials to make decisions on whether to surrender Chinese fugitives to the Qing government, as these regulations were blatantly contrary to the new ideas regarding extradition. Aside from the likelihood that the alleged offender would be subject to cruel punishment in China, it was thought that these provisions effectively required a degree of familiarity with Qing law to be satisfied that a prima facie case of guilt had been established. These new restrictions coincided with a structural change in the British Empire's attitude towards inter- and intraimperial extradition, as well as a clearer understanding of Hong Kong as a territory of exclusive British jurisdiction. The colonial government expanded its jurisdiction over the Chinese population by the establishment of the registration system and the liberal use of deportation of the unregistered and undesirable population.[76] By the 1850s, most secret society offenders (also referred to as "Triads" in Hong Kong) were dealt with according to British legal procedures, even if they were Chinese subjects.[77]

Within the British government, there was no definite agreement on whether Article 9 of the Supplementary Treaty of Bogue, or Article

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21 of the Treaty of Tianjin, both signed well before 1870, constituted "extradition." These clauses included none of the safeguards introduced in 1842 and bore little resemblance to the Extradition Act of 1870. Despite this, the British Foreign Office continued to use "rendition" and "extradition" interchangeably for criminals demanded by the Qing government, whether from London, Hong Kong, Burma, or one of the foreign settlements or leased territories in China. All FO files involving the Qing's demand for Chinese fugitives are labeled "rendition of criminals," but the term "extradition" was used liberally within their pages as well as in the index in FO 232/2 for all dispatches to and from the Foreign Office.[78] Officials were divided on how to implement these earlier treaty provisions with China without violating the empire-wide extradition practices. On the one hand, colonial officials and judicial activists saw the Qing government's use of judicial torture and execution by lingering death (often meted out to rebels) as barbarous and unacceptable.[79] They staunchly refused to deliver any fugitives under such conditions. In their view, anything short of reforming the Qing's judicial and penal processes would seriously implicate the British government as complicit in China's cruel regime of torture.

On the other hand, British diplomatic representatives in China with a deeper and more sympathetic understanding of the legal culture tended to support a continuation of existing extradition procedures. They often emphasized that European law not long before had also included similar practices. They saw these forms of punishments as an integral component of social morality and warned against overzealous meddling of the Chinese legal principles. The British Foreign Office also faced conundrums in imposing a unilateral renunciation of its treaty obligations, or even in demanding a formal treaty revision, as these moves could potentially open the door to China's quid pro quo requests to address their own grievances in fulfilling certain treaty obligations. These divergent considerations and changes within British law meant that the British government rarely understood its own position unequivocally and lacked any clear and consistent message to the Qing government articulating the basic principle underlying Britain's extradition policy.[80]

What all British officials seemed to have agreed on was maintaining a bottom line in extraditing Chinese offenders. While they were

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willing to hand back or deport miscreants and offenders of lesser crimes, there was a reluctance to extradite offenders in serious cases that could result in a death penalty. In the context of the Canton–Hong Kong border, piracy, murder, banditry, and rebellion were the most common crimes. Although the late imperial state routinely exercised caution and judicial reviews regarding the taking of life, leniency and amnesty were rarely given to perpetrators of the most heinous of the Ten Abominations.[81] These included deeds such as murdering three members of the same family and crimes which resembled "political offenses" in Western law, including treason, insurrection, and rebellion. It was of particular concern to British officials that the Qing law prescribed for these crimes *lingchi*, or death by slicing, a practice which had held fascination in British imagination thanks to the circulation of ethnographic accounts by missionaries, diplomats, and travelers.[82]

The moral indignation expressed by colonial officials refusing to cooperate with the Qing's judicial system found a more tempered response from culturally astute British diplomats who were willing to make necessary accommodations. British diplomats such as John Rutherford Alcock and Thomas Francis Wade held long negotiations with officials of the Zongli Yamen, the Qing's central office in charge of foreign affairs, to bridge the gaps between the Treaty of Tianjin and the British law of extradition. As a result of these negotiations, modifications to Article 21 were improvised and implemented by local officials without formally changing the letter of the treaty. The British government continued to sanction the extradition of criminals from Hong Kong, pending a provincial pledge not to apply torture. This would be followed by a memorial to the throne from the Zongli Yamen requesting a reduced penalty on the extradited offenders. To British officials, these pledges were easy to obtain but difficult to enforce. Frequent doubts about the local government's compliance and allegations of bad faith threatened the operation, leading to long delays, legal disputes, and temporary suspensions of extradition.

These debates and modifications of rendition procedures regarding Hong Kong found wider circulations into treaty ports. During the Taiping Rebellion, when Qing authority in Shanghai collapsed, the British Consul imposed law and order by deploying settlement police and decreed that no Chinese could be arrested without a consular

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consent. This practice persisted after peace was restored, with tacit acceptance from local Chinese authorities. By the mid 1880s, Qing requests for the arrest and delivery of Chinese offenders within the settlement required an official warrant and could only be executed by the settlement police.[83] This process, known as "treaty port extradition," drew parallels with the Hong Kong procedures, which mandated prima facie evidence of guilt, Mixed Court trials attended by both Qing officials and foreign assessors, and access to Western legal counsel for the accused.[84] The right of the Mixed Court to assume jurisdiction of all cases violating peace and order in the Settlement, as well as in political matters, was implemented in the 1900s, regardless of whether the alleged crime was committed in or outside the boundary of the Settlement.[85]

Although modern extradition treaties began to proliferate among foreign powers by the early twentieth century, they were virtually unknown to China, even after the Qing collapsed and a new republic was established in 1912.[86] Not all complaints came from China. With time, a significant number of foreigners began to take refuge in China in places far away from the jurisdiction of foreign consuls, using treaty ports or foreign-controlled railways as avenues of escape. The challenge of fugitive recovery for foreign powers was compounded by the existence of the spheres of influence held by different powers, the lack of clarity regarding whether consular authority included extradition, and the poor coordination between Chinese police and consular authorities throughout the country.[87] In 1911, F. E. Hinckley, District Attorney of the US Court for China, observed that China was the only power in the world with no extradition treaties with other states despite its vast territories and extensive intercourse with the world. Since extraterritoriality prevented China from asserting jurisdiction over subjects of treaty powers, reasoned Hinckley, it could not perform the duty of preventing its territory from becoming a refuge of lawless foreigners escaping from other lands. He proposed to fix these loopholes by expanding the authority of extraterritorial jurisdiction and equipping it with the power to enter into reciprocal extradition agreements with other treaty powers.[88]

As this book shows, from the 1860s to the 1920s, the governments in China engaged in many negotiations with foreign powers to address these issues by amending existing agreements or negotiating new

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extradition treaties to replace the mutual rendition clauses. But their efforts were unsuccessful for various reasons. While the cruel punishments in Qing law constituted one of the oft-cited reasons against sending fugitives back to China, the judicial adaptations and legal reforms undertaken by the Qing and Republican governments made "barbarity" a less compelling reason from the turn of the century onward. Contemporary scholars, both Western and Chinese, seemed to broadly agree that the strong presence of extraterritoriality constituted an underlying issue. Francis Taylor Piggott, Chief Justice of Hong Kong, argued that the lack of extradition treaties could not be solved unless the extraterritorial privileges of foreign countries were dealt with.[89] Hinckley put it even more bluntly: "The reason China has no general treaties of extradition is that in granting extraterritoriality she has engaged not to assert jurisdiction over the citizens or subjects of the treaty powers within her territories."[90] This sentiment was echoed in the British Foreign Office archives, where officials observed "legal objections to making extradition treaties with barbarian states when we already exercise extraterritorial jurisdiction."[91] Chinese legal experts likewise connected the absence of extradition treaties to extraterritoriality. In one of the first Chinese treatises on extradition, Wang Zongdan, a scholar of international law in the Republican government, explained that extradition relied on the reciprocal obligation of sovereign states to provide "mutual judicial assistance." Since foreigners were not subject to Chinese jurisdiction, foreign states did not require judicial assistance from China, thus negating the need to sign extradition treaties.[92]

The studies by Hinckley, Piggott, and Wang, though they all saw extradition and extraterritoriality as inextricably connected, differed in their underlying assumptions and motives. Hinckley adopted the view, common to an earlier generation, that China had voluntarily relinquished the jurisdiction of foreigners to their own consular courts; henceforth, the lack of extradition treaties with China called for an even more absolute and expansive conception of extraterritorial jurisdiction. On the other hand, for Piggott and more strongly for the nationalist Wang, extraterritoriality was an irregular instrument of a bygone era and must be held in restraint, or eliminated, before China could regain its right to enter into extradition treaties.

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The Political Offense Exception and the Chinese Revolutions

A paradox of the revolutionary movements of China from the late Qing to the Republic era was that they simultaneously opposed imperialism while depending on the extraterritorial privileges associated with the foreign presence. From the time of the Taiping Rebellion, it became common for rebels and revolutionaries to escape to or via foreign settlements, colonies, or frontier zones, where their rendition was governed by treaties, colonial ordinances, and land agreements. Despite the vigilance of colonial police in preventing these areas from becoming a haven for conspirators, extraterritorial and colonial spaces were nevertheless integral to the strategies of a wide range of people who risked their lives in challenging the state. As we have previously seen, prior to the mid nineteenth century, political fugitives who uprooted themselves from local society and escaped beyond the borders of the Chinese Empire could not be expected to exert a significant influence at home. But the advent of world-shrinking technologies in transportation and communication, particularly the emergence of newspapers operating under foreign protection, made it much harder for the state to hunt down its political oppositions and monopolize the discourses around them. Beginning in the 1860s, a series of high-profile extradition requests involving persons whom the Qing requested for heinous crimes came under colonial consideration as political cases, and their exposure by newspapers brought a host of legal and cultural concepts related to extradition and political crimes to public consciousness.

This dynamic, as we shall see in the book, entailed a two-way relationship. The modern regimes of extradition shaped the strategies of the opposition to the Chinese state, but the latter also affected how states negotiated extradition agreements and legislated against political offenders. This is encapsulated in debates surrounding the Political Offense Exception (POE), a standard provision in modern extradition treaties. Despite the importance of this concept in extradition and international law, the meaning of "political offense" has remained vaguely defined and in flux. At its inception, the POE originated in the early nineteenth-century breakthrough of liberalist ideology. In the next few decades, the rapid adoption of POE in international extradition treaties by liberal states led to an expansion of extradition treaties in recognition of the principle.[93] But as the main political struggles

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shifted away from liberalism to take on an anarchist, anti-colonial and anti-capitalist character towards the early twentieth century, the extradition regime established in the wake of the French Revolution faced new challenges. It became necessary to redefine the meaning of the "political" component of the POE, and to depoliticize political visions which threatened the foundations of liberal democracies and their colonial presence as "social crimes" or "terrorism." The shifting meaning of the POE was also reflected in how colonial and extra-territorial authorities responded to Chinese revolutionaries. Between 1892 and 1901, the frequency of assassination attempts on political leaders in Europe and the US surpassed any other in history.[94] The new terrorist tactics employed by revolutionaries of the 1880s and 1890s were propelled by the invention of dynamite, a new favorite among rebel groups, including Irish revolutionaries, German anarchists, and Russian nihilists.[95] These tactics would be adopted by Asian revolutionaries espousing liberal, anti-colonial, nationalist, and anarchist ideologies.[96] This global trend sparked panic and led to a major change in the legal definition and provisions for the extradition of political offenders in the name of "transnational security."[97] Prior to the 1890s, the prevalent image of the political offender was characterized by a rather romantic understanding of political criminals as "heroic figures" revolting against autocracy, their violence justified by the nobility of their liberal agenda.[98] By the turn of the century, however, governments shared the concern that the POE had increasingly offered protection to those who destabilized the fragile world order.[99]

This is reflected in one aspect of how the POE was implemented: an increased adoption of the so-called *attentat clause* in new extradition treaties signed between European states. Although it originated in the Franco-Belgian treaty in 1856 to rectify the inability of the French government to recover a would-be assassin of Emperor Napoleon III, the clause did not become widely accepted until the 1890s.[100] It had the effect of creating an "exception to the exception," excluding "attacks against the lives of a head of state or their family members" from the protection of the POE. The exact formulation of the clause differed in individual treaties; the more encompassing interpretations provided for the exclusion of attacks on public officials from the exception.[101] As a result of these changes, the image of the political offender became more narrowly defined by the first decade of the

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twentieth century. In numerous extradition deliberations, the application of the POE hinged upon whether the defense could identify the criminal as one espousing liberal ideology or who had represented a political party on a national scale. For instance, the Russian extradition treaty with the US, negotiated in 1887, provided that "the murder or manslaughter, comprising the willful or negligent killing, of the sovereign or chief magistrate of the State, or any member of his family, as well as attempts to commit, or participation in, the said crimes, shall *not* be considered an offense of a political character."[102] Under this clause, Russian revolutionaries and assassins hiding in the US became extraditable for committing "homicides," a common crime included in most extradition treaties. The attentat clause was also included in the treaties between the US and Brazil (1898), Mexico (1899), Belgium (1901), Denmark (1902), Spain (1904), and Portugal (1908), and nearly all new treaties signed by the major powers in the 1910s and 1920s included this clause.[103]

All of these debates suggest that we cannot treat the POE as having a fixed quality but must examine the nuances of the treaty language and the political context for their application. The larger shifts in extradition norms, coinciding with the downfall of the Qing in 1911, produced a curious outcome. Throughout the 1910s and 1920s, the main difficulty with fugitive recovery was no longer the differences between China and the West over legal norms and procedures, as it had been in the Qing, but between the state apparatus of all powers and revolutionaries espousing radical anti-imperial visions. As nationalist, anarchist, socialist, and later communist revolutionaries developed transborder connections and drew an ever wider global network, the dominant legal thinking regarding extradition procedures also changed to facilitate transnational police cooperation.

The book shows that the concept of "political offenders" in the modern Chinese context did not originate from within Chinese law. It was during the extradition battles in relation to important political figures that the officials in the Qing government first came into contact with this Western concept and legal practices surrounding it. Likewise, it was through the press coverage of extradition and political offenders that the Chinese public and scholars of international law first became familiar with these concepts and began deliberating on legal reforms. The term "political offenders" (*zhengzhi fan*) has

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remained ill-defined and is mostly used by the opposition of the state to challenge the state's legitimacy and to highlight its suppression of civil liberty.

After the Qing fell in 1911, the political dynamics between the Republican state and its oppositions changed quickly as a result of both internal and global shifts. The onslaught of anti-imperial, nationalist, and Bolshevik challenges prompted Western states to hastily abandon the POE in extradition in all but name. It was only in the context of transnational cooperation in the fight against Communism, along with the nationalist movement to recover judicial sovereignty, that the Republican state achieved a measure of success in negotiating for the recovery of fugitives from territories under colonial jurisdiction. To the extent that Chinese political oppositions relied upon the legal spaces afforded by legal imperialism, they were also vulnerable to the varied legal geography of China under imperialism. From this perspective, this book nudges towards a transborder and legal perspective of China's revolution in the early twentieth century, as well as the state's response in the form of legal and judicial reform.

Outline of the Chapters

This study consists of six main chapters, arranged chronologically from the mid 1860s to the early 1930s. I have chosen to follow the sources of tension fault lines, and change rather than adopt a strictly diplomatic or legal lens in my narration, because a multipronged approach better highlights the evolving nature of extradition and the concept of political offense. Readers might find my choice of start and end points – from the 1860s to the early 1930s – somewhat unconventional, as it does not align neatly with regime changes or the creation and abolition of extraterritoriality. I focus on this time frame because this was the period when extraterritoriality and colonialism interfered with the jurisdiction of political crimes in China most intensely, and when extradition rules with regard to political offenders were in their greatest flux. After the Mixed Courts came under the control of the Republican government in the late 1920s, the pluralistic legal spaces that allowed political opponents to maneuver in semicolonial spaces were gradually eliminated, reducing the effects of extraterritoriality and colonialism on the adjudication of political crimes.

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Even before the outbreak of the war with Japan in 1937, an impending anticipation of national crisis had led to a series of revisions in the emergency laws targeting collaborators and conspirators with the Japanese.[104] Wartime justice upended the category of "political offenders" as well as extradition norms which had struggled to take root in China, as regimes in alliance routinely used extradition for political and military purposes. Because wartime emergency regulations superseded diplomatic norms and interstate relationship under international law, the ending of extraterritoriality in 1943 had virtually no impact on the extradition process, nor did it lead to the signing of extradition treaties between China and foreign states, contrary to the hopes of jurists and diplomats in the 1910s–1920s.[105] For these reasons, the history of extradition, political crimes, and transborder fugitivity after 1937 is not a subject covered in this book, although it is a topic deserving of a separate treatment.

Chapter 2 argues that the controversies surrounding fugitive rendition began as a conflict between treaty obligations and colonial law in Hong Kong. At the center of this conflict was the definition and punishment of a class of criminals whom the Qing wanted for having been involved in the Taiping Rebellion. With the trial of one of the Taiping leaders, the Political Offense Exception found its way into the implementation of Article 21 of the Treaty of Tianjin, with a significant impact on the Qing's governance and jurisdiction of cross-border crimes.

The delicate post-Taiping compromises collapsed in the face of divergent priorities and competing interests between British diplomats, the Hong Kong administration, and local Chinese officials. Chapter 3 examines the breakdown of the Treaty of Tianjin regime of extradition and competing jurisdiction between the Hong Kong colonial government and the Canton provincial government over a mobile population. As the legal loopholes and inconsistencies of the extradition regime came to be utilized by the local population, diplomats and state officials hastily convened to rectify the inconsistency between the Sino-Western treaties on extradition and the legal orders of colonies, but the results were mixed and ad hoc accommodations continued.

Chapters 4 and 5 examine the effects of the Sino-French (1884–85) and Sino-Japanese (1894–95) Wars on jurisdictional politics between China and foreign colonies, concessions, and territories. Chapter 4

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contrasts two images of the West widely held by the Chinese population, characterized by their enlightened law, on the one hand, and as imperial intruders trampling on Qing law, on the other. In the mid 1880s, Hong Kong and Canton administrators dealt with rebel fugitives in the aftermath of the Sino-French War through the passage of the Chinese Extradition Ordinance of 1889 as a local solution to the extradition conundrum, but with numerous drawbacks revealing the substantive injustice of the operation. The resulting weakening of the Qing's legitimacy further destabilized the fragile legal order, giving rise to widespread rebellious sentiments during and after the Sino-Japanese War, a war fought with gentry funds, local recruits, and secret society connections. In just a few years, rebel groups utilized the different concepts of law between the Hong Kong and Canton border to gain protection and strengthen their legitimacy.

Chapter 5 focuses on China's negotiations with the US and Britain on the extradition of rebels in the aftermath of the Sino-Japanese War. Of particular interest to the Qing was a man called Sun Yat-sen, a China-born émigré to Hawaii and a medical doctor in Hong Kong. Inspired by the Taiping Rebellion and a mixture of Western ideologies, Sun led an uprising in Canton in the wake of the Sino-Japanese War, but escaped to Hong Kong, Japan, the US, and England after its failure while facing extradition back to China. It was during this period that Sun reinvented himself from a rebel leader to a liberal Christian revolutionary and gained fame and sympathy as a "political offender" persecuted by the Qing. This chapter evaluates the Qing government's relationship with political criminals in the context of the Sino-Japanese War and examines how its defeat in the war led to the failure in the negotiation of extradition treaties between China and the treaty powers.

Chapter 6 examines how the POE became widely known and used by revolutionaries based in treaty ports, colonies, and foreign capitals to gain protection for a wide range of anti-Qing and anti-imperialist activities from 1901 to 1911. In response, under the influence of Japanese legal scholars, the Qing drafted a new penal code that closely resembled the Meiji Penal Code and undertook an ambitious project to reform its criminal justice system.

After the Qing fell in 1911, the Beiyang government faced challenges from a wide range of political opponents, who took refuge in

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treaty ports and foreign consulates. Chapter 7 examines the Beiyang government's negotiations for juridical sovereignty and how this affected the status of political enemies facing extradition. The formal analysis of the book ends in 1930, after the abolition of the Mixed Courts restored jurisdiction of political criminals to the Chinese government.

Chapter 8 reflects upon China's partial recovery of its judicial sovereignty over its citizens in treaty ports and foreign concessions and the political ascendency of a one-party system under Chiang Kai-shek. It argues that extraterritoriality and colonial law had a profound effect on the political trajectory in twentieth-century China because they gave rise to a capricious legal environment in the name of "rule of law," but which was ultimately beyond the dictates of courts and judges. The political crises in China must be understood within the context of changes in domestic and international law adjudicating crimes and extradition demands, and this knowledge should inform how we see China's ongoing legal disputes and amendments to its extradition procedures.

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