

## THE FAILURE OF "CONFUCIAN" FAMILY VALUES

During the eighteenth century, what is generally termed "Confucianism" was a diverse range of values understood and practiced quite differently by people at various social levels and of diverse ethnic or regional backgrounds. Highly educated and philosophically minded men debated the fundamental nature of humanity and of goodness itself: Were human beings intrinsically good, or were they self-centered and destructive? What was the origin of social discord and acts of violence in society? What is the role of education in the formation of a morally upstanding individual? All had studied the same classics of the Confucian tradition, but many thinkers by this time concluded that the real meanings of these teachings had been lost through the ages and so set out to rediscover the original standards through careful philological research on early texts.<sup>1</sup> Even so, the elite generally shared with commoners a concern for family hierarchy and harmony. Brothers should live together or at least cooperate peacefully; men and women should maintain proper distances between each other; wives and their mothers-in-law should work together in harmony.

The cases in this section demonstrate behavior that was far from these ideals and thus a threat to the Confucian orientation of all members of the judicial administration. Minor disputes might lead to civil lawsuits over property, failure to fulfill the terms of contracts, and other matters that sound

familiar today.<sup>2</sup> When frustrations reached the boiling point and conflict erupted, these situations could lead to murderous violence.

### CASE 11

#### *Li Er and Li San: Two Pecks of Beans (Fengtian, 1738)*

*In this case, a simple dispute between brothers resulted in a homicide. It seems to have been fully settled when the brothers' mother intervened to beg for leniency from the court. Her pleas were initially successful; after consideration of the family's circumstances, the youthful Qianlong emperor sent the case back to the Three Judicial Offices for their recommendation on sentencing, which most likely deviated from published statutes on the side of mercy. Reasons for doing so are spelled out clearly in the report: having a male to carry on sacrifices to the deceased members of the paternal line was so important that it took precedence over normal punishments even for killing a brother.*

*The review process for this case differed from standard procedure because both perpetrator and victim were Han bannermen (qiren).<sup>3</sup> Cases involving bannermen went from the local level directly to Beijing, where they were reviewed by officials in the Board of Punishments. The first section of this report is from the local report. It begins with an outline of the facts of the case and the procedures followed when the homicide was initially reported: the magistrate of Ningyuan Department in Fengtian had gone with the coroner to Mayitun (Ant Farm Station) to inspect the body. They discovered a massive gash on the deceased, a cut high on his upper right thigh and lower belly, 3.3 cun long, 1.3 cun wide, and more than 5 cun deep. As soon as they had heard the wife of the deceased crying out, the local wardens had rushed to the scene and apprehended Li San. The following is the testimony of the murdered man's widow.*

*The testimony of Ms. Bo: "The deceased Li Er was my husband. This year, he was thirty-five sui in age. Li San is my husband's own brother. On the fifth of the ninth month of this year [September 28, 1737], we divided households to live separately, but there were two pecks of beans that we didn't divide.<sup>4</sup> They were left in Li San's house. On the twenty-first of the tenth month [December 12] of this year, Li San came to our house.<sup>5</sup> My husband and he sat together on the kang drinking, and they brought up the division of those beans. He asked Li San for them, but Li San refused to give him any. It was*

just then that I went out to look for firewood, so I don't know why the two of them started fighting, but when I got back inside the house, my husband had already been stabbed by Li San and had fallen to the floor. I asked my husband what had happened, but he could no longer speak. I started screaming for the constable from the farm garrison to come and arrest Li San. I never thought that my husband would die early the next afternoon. This is the truth."

*The following sections of the report were drafted at the Board of Punishments.*

When the documents, principals, and evidence all arrived at the Board, I intensely interrogated Li San: "To which banner do you belong? How old are you this year? For what reason did you and your older brother become such enemies that you would stab him to death? With whom did you plot this affair? Who helped you out? Answer all my questions truthfully."

Accordingly, he testified: "I am thirty-two *sui* this year, and I am a farmworker [*zhuangding*] of the Plain White Banner under the manor head [*zhuangtou*] Li Fangxu on the Manor of the Fourth Prince of the Blood [*Sige Guanling*].<sup>6</sup> Li Er, the deceased, was my own older brother. On the fifth of the ninth month, we divided our households to live separately. But there were two pecks of beans left in my house that we did not divide. On the afternoon of the twenty-first of the tenth month, I went to my older brother Li Er's house, and we started drinking together. My brother brought up the beans, and he asked me for them. I told him that our mother had wanted to sell those beans to buy cloth. The beans were already sold, and she had bought several lengths of cloth. Then my brother got mad and started a quarrel, and because I was drunk, I said a couple of things back to him. My brother then pushed me down on the *kang* and began to beat me. In the heat of the moment [*yishi qingji*], I grabbed the little knife my brother wore at his side with my left hand, intending to scare him into letting loose so I could get free and run away. I never thought that I would stab him in the right thigh near the groin and that he'd die on the afternoon of the next day.

"Normally, my brother and I got along well; there was no enmity at all between us. It was all because we had been drinking and he began to beat me that I panicked. I intended only to scare him into letting go; I never thought that I would stab him and that he would die. Squeeze me to death and it'll still be the same story. How could I have had the heart to plot to kill my own brother?! I beg you to look at all the facts. No one plotted with me.

and no one helped me. This is the truth." His testimony was unchanged, without variation, even when interrogated under torture.

Just as I was drafting a *MEMORIAL* suggesting punishment, on Qianlong 2.11.28 [January 17, 1738], Ms. Wang, the mother of Li San, submitted a petition, which read:

"This woman's husband died long ago, leaving me with two sons, Li Er and Li San. I raised these orphans to adulthood, and now I am seventy-two *sui* in age. Li Er is already dead. Li San is all I have left for support, to care for me in old age and to bury me when I am gone. If he were sent to his death and joined his elder brother, then I would have no one to turn to for support and to bury me. That would be most lamentable. Not one drop of our blood have my two sons passed on. If both of my sons were lost, then the sacrifices for my husband's line would be extinguished from that point onward."

Thereupon, on Qianlong 2.12.2 [January 21], the Board transmitted a memorandum to the general at Fengtian, instructing him to ascertain Ms. Wang's age and whether or not she had only two children, the brothers Li Er and Li San, and whether Li Er and Li San had any children. He instructed the neighbors, clan elders, and wardens to file reports, to be corroborated and sealed by the local officials and transmitted to this board. Subsequently, on Qianlong 3.3.18 [May 6, 1738], in accordance with the memorandum submitted by the general at Fengtian based on reports from the deputy commander of Jinzhou stating that Batai, Major Commander of the Middle and Rear Garrisons, had submitted a report stating that he had questioned Li San's clan members and their neighbors in the village, the local corporal, the wardens of their ten-family groups, and others.<sup>7</sup> The report stated that Li San's mother, Ms. Wang, is sixty-one *sui* in age and had in fact only two sons, the brothers Li Er and Li San. Li Er, now deceased, has three sons, the eldest of whom, Gansheng, is fifteen *sui* in age. The second son, Yinger, is five *sui*, and the third, Shou'er, is two *sui*. Li San's son is named Haiqing and is three *sui* in age. These facts are hereby affirmed. During interrogation, Ms. Wang claimed, "I am sixty-one *sui* this year," and all her other details agreed with the reports submitted by her clan members and others.

I have sought out the true facts of the matter in order to make a clear report, and on the basis of my findings from all the facts submitted to this board, your subject concludes in the case of Li San, a farmhand of the Plain White Banner under the manor head Li Fangxu in the Manor of the Fourth Prince of the Blood, who stabbed to death with a knife his own elder brother Li Er, to wit: Li San and Li Er were normally on good terms with no enmity



between them. On Qianlong 2.9.5, they divided their households to live separately, leaving only two pecks of black beans as undivided property stored at Li San's house. On 10.21, Li San went to Li Er's house, and they drank wine together until both reached a state of inebriation. Li Er demanded the stored beans; Li San responded that, in accordance with their mother's instructions, the beans had been sold for cash to buy cloth. Li Er became angry and began to quarrel with him; Li San answered him back. Li Er then forced Li San down onto the *kang* and struck him. Because he was being beaten, Li San panicked and with his left hand drew the small knife Li Er had been wearing on the right side of his body, intending to frighten his elder brother into releasing him so that he might escape. Without intending to, he stabbed Li Er in the right thigh near the lower belly, and it entered into his [brother's] intestines. Li Er was critically wounded, and on the following day, he expired. During interrogation under torture of the aforementioned offender, he adhered to his previous testimony without any alterations.

Upon inspection of the laws, according to the statement that "when younger brothers and sisters injure their own elder brothers or sisters and the result is death, they are to be beheaded without distinction between leaders and followers," Li San is by law sentenced to execution without delay.<sup>8</sup> Upon further consideration, it was found that statutes under this statute specify that "for those who have fathers and mothers, when a younger brother kills his own elder brother and the family has no other males, the law allows him to be spared in order to care for his relatives. For those persons who have no fathers or mothers, or because of disputes over property, or for some other reason, the family has others who can continue the sacrifices after the death, then the sentence is to be fixed in accordance with the statutes." The statutes stipulate that the sentence, if there is no dispute over property or other matters, or if, in a moment of struggle during which they are striking each other, the elder brother is done to death, and the father and mother are already deceased and there are no other brothers or other persons to carry on the family sacrifices, then the local officials are to be commanded to ascertain the facts and report on their investigations with the neighbors, clan members, and local warden, with seals from the local officials to attest to the facts of the offense committed by the said offender. Having received such clarification, I submit this MEMORIAL requesting YOUR SAGELY BENEVOLENCE that the aforementioned offender's life might be spared in order to continue the family sacrifices, that his sentence might be reduced to wearing a cangue for three months with an additional forty strokes of the heavy bamboo so that he may continue the family sacrifices. Furthermore,

the annotation to the statute stipulates that "Seventy is considered elderly, and those over sixteen are to be considered adults."<sup>9</sup> At present, Li Er's son is already fifteen, and his mother, Ms. Wang, is only sixty-one *sui*. Having heard these facts, together with those given above, the Board recommends and entreats YOUR MAJESTY'S keen perception to command that the Board's recommended punishment be carried out. Your subject and others dare not unilaterally decide and thus respectfully submit this MEMORIAL requesting YOUR COMMAND.

The memorial is dated Qianlong 3.10.15 (November 26, 1738) and signed by Xideshen as prefect of Fengtian along with five other officials. The Qianlong emperor's decision is written on the cover of the document in red: "Let the Three Judicial Offices review the punishment and submit a memorial with their decision."

#### NOTES

Source: *Neige tiben Ming'an Douou lei*, Bao [Grand Secretariat routine memorials, Homicides from Affrays, Packet] 106, Qianlong 3.10.15 (November 26, 1738).

1. For introductions to these debates, see Mote, *Imperial China*, 928–35; Theiss, *Disgraceful Matters*, 30–33; and Guy, *Emperor's Four Treasuries*, chapters 2, 3.
2. On civil law and prosecution in late imperial China, see Allee, *Law and Local Society*; Watt, *District Magistrate*; and Bernhard and Huang, *Civil Law*.
3. See appendix 1 for an explanation of the social organizations termed "banners." Han bannermen were tied to the land and could be severely punished if they left.
4. By custom, all brothers received equal portions when the family property was divided. See Wakefield, *Fenjia*.
5. This year had an intercalary ninth month, a *runyue*, hence the relatively long period of time between the dates.
6. For a discussion of the Manchu bannermen's manor system of landholding in Manchuria, see Reardon-Anderson, *Reluctant Pioneers*, 29–34. The "manors" were actually scattered plots of farmland that were allocated to individual families to till; levies on the land were collected for the benefit of Manchu nobles. I am grateful to Steven Miles for this reference.
7. Manchu banner manors were regularly farmed by ten men and their families, one of whom would be designated as the manor head.
8. Article 318 of the Qing penal code is being cited here. See Jones, *Great Qing Code*, 303.
9. These ages are stipulated in Article 22 of the Qing penal code as bases for con-