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## **The Making of Qing Administrative Law**

When thinking about the Manchus and their Qing dynasty a question always arises: how did they do it? How did the semi-nomadic Manchus organize themselves, combine with settled agrarian Chinese, and form one of the land based empires in history? More so, how did they rule this empire for so long as an ethnic minority? These have been some of the most enduring questions in Sinology, and until recently they were answered by giving deference to the power of Chinese culture. The Manchus were able to conquer and rule, it was thought, because they were Sinicized. By becoming Chinese they could govern Chinese populations through the institutions of Chinese government.

More recent scholarship on Manchu ethnicity has undermined this explanation. The old analysis of Manchu conquest and rule by way of adopting Ming institutions and Chinese practices are no longer tenable in light of research showing the importance of Manchu language, identity, and customs that persisted throughout the course of the Qing.<sup>1</sup> Now knowing that the Manchus carved out a unique identity and developed new ruling practices, it must be explained how they organized politics and ran an ethnically diverse administration. There was a dual presidency of Manchu and Chinese in each of the six administrative boards, for example. There was also rule over non-Chinese populations, conquest of previously untouchable territory, and innovations in ruling institutions. The legal code could not just be copied from the Ming, for new rules and regulations were drawn up to run this new kind of state. Furthermore, new

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<sup>1</sup> Three key works of the New Qing History are Pamela Kyle Crossley, *A Translucent Mirror: History and Identity in Qing Imperial Ideology* (University of California Press, 1999); Mark C. Elliott, *The Manchu Way: The Eight*

organizational standards were created, and a system instituted for its operation. New methods of recruitment needed to be devised, different languages employed and standardized, and behavioral codes rethought for the different classes and groups. What were these unique Manchu institutions and the laws that organized them?

In exploration of these developments, this paper looks at the construction and codification of administrative rules in the early Qing dynasty, culminating in the publication of the statutes and codes, or *Da Qing Huidian*, in 1690. Contrary to prevailing views that the Qing *Huidian* was a copy of the Ming *Huidian* produced in a single act by the Kangxi emperor, this paper argues that Qing administrative structures and regulations developed over the span of about sixty years in response to the immediate political and administrative needs of the Qing state. It is argued below that the *Huidian* was the product of a concerted effort by Qing state-makers to develop a code that captured the organization and practices of Qing society and politics.

The paper first looks at how Qing officials made use of the Ming *Huidian*. Through a survey of contemporary documents, this part finds that the Ming code served as a convenient standard for administrative organization and procedure, as well as provided guidance in areas of state sacrifice and foreign affairs. The next section explores the shortcomings of the Ming *Huidian* and highlights three key concerns of Qing actors, as they expressed in the documents: it could not account for the structure of Manchu political organization, it did not provide regulation for different political actors and ethnic groups, and new types of foreign relations needed to be accounted for.

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*Banners and Ethnic Identity in Late Imperial China* (Stanford University Press, 2001); Evelyn S Rawski, *The Last Emperors: A Social History of Qing Imperial Institutions* (University of California Press, 1998).

## HOW QING OFFICIALS USED THE MING *HUIDIAN*

The Ming *Huidian* offered a standard for Qing officials in administrative and personnel affairs. It provided a point of reference on how to organize the state, operate the administration, uphold protocol for hierarchical order, and conduct foreign affairs.

### *Administrative organization*

The Ming *Huidian* served as the guide and model for the structure and organization of the administration of the Qing state. Take for example the number of administrative servants in government offices. Qing officials found in the Ming *Huidian* the regulation of six in each office, which the Qing Board of Revenue referenced and implemented in mobilizing required service for the state.<sup>2</sup> Furthermore, the *Huidian* served as the standard for any dispute or problem that arose in such arrangements, as it did with the Inner Court Proclamations Office in the early Shunzhi years. In the eighth month of 1644 (Sz1.8.28), Wu Zanyuan, the office drafter in charge of affairs, found his office understaffed and officials overworked. He turned to the Ming *huidian* on the number of personnel in each office to make the argument for more people, memorializing that he had looked up in the *Huidian* and found that according to regulation his office was short two people. He asked that an order be sent to the appropriate board to “look at the *Huidian* and grant the additional personnel so that we can operate as a single body.” The imperial rescript confirmed the complaint and ordered to “follow the old precedent and amend [the situation] by adding [personnel].”<sup>3</sup> Here both officials and emperor turned to the Ming *Huidian* for reference on the structure of the administration, and used the statutes in the *Huidian* as the means to resolve discrepancies and disputes.

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<sup>2</sup> The numbers, service, and the Board of Revenue reference are discussed in a memorial by Inner Court Proclamations Office secretary Wu Zanyuan. GSA 185048-023.

This trend continued throughout the early Shunzhi period as the administration grew and positions needed clarification. In the second year of the Shunzhi reign, the Supervising Secretary of the Rites Office of Scrutiny, Liang Weiben, wrote to warn that the six offices of scrutiny over the six boards were in disarray. He urged ordering the personnel office to “look up in the *Huidian* the specific duties and positions, and to clearly lay them out in regulation.”<sup>4</sup> Again, the *Huidian* served as the point of reference for the organization of offices and personnel.

### *Administrative practice*

In the same way that the *Huidian* served as the point of reference on how to set up an administrative structure, it was similarly drawn upon as a model for how that structure should work. Three key areas of Qing administrative activity in the seventeenth century relied on the *Huidian*, as reflected in a survey of documents from the period: general administrative procedure, such as paperwork and filling vacancies; taking leave of office to care for sick parents; and honoring the dead.

*Procedure.* The *Huidian* informed Qing officials on the day-to-day activity of government. How to write official documents, for example. In 1656, the Board of Rites deliberated on a memorial from the Zhejiang Provincial Military Commander complaining about the improper use of documents among officials in the provincial offices. Inferiors were writing to superiors with improper address and under the auspices of document titles reserved for equals, he said. The Board of Rites consulted the *Huidian* and found that when a Provincial Military Commander communicates with the Magistrate he should use the form of an “order” (*diewen*), and when a Magistrate communicates with a Provincial Military Commander he should use the form of a

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<sup>3</sup> GSA 185048-023.

<sup>4</sup> SL, p. 175.1. For another case involving the imperial guard see SL, p. 660.1-2.

“report” (shenwen). This became the form accepted by the actors and enforced by the Board of Rites.<sup>5</sup> Similarly, in 1662 there was confusion about who was supposed to use a summary (huangtie) at the end of a memorial and when it was appropriate. The Personnel Office of Scrutiny suggested following regulations laid out in the *Huidian*, whereby officials of the third rank and above did not need to use a summary if they were not reporting on corruption and the memorial “contained only a few characters.”<sup>6</sup>

*Posthumous honors.* A second aspect of administrative activity that relied on the Ming *Huidian* was the occasion and procedure of granting posthumous honors, especially during the course of the civil war in the Shunzhi years. After much outcry over the means of honoring, in 1660 a standard for granting such ceremonial privileges had been worked out based on the Ming *Huidian*. In the fourth month, the Board of Rites promulgated an order about what ranks and positions would receive what kind of sacrificial service in death. Nine stipulations framed this code, each one corresponding to a set of ranks and positions, with each of the nine stipulations weighing the positions and ranks of officials so as to hierarchically organize social stations according to the *Huidian* and assign the appropriate kind of interment and sacrifice that would be received in death.<sup>7</sup>

*On filial piety.* Officials often found themselves in the position of needing to serve both the state and their filial obligations, and they turned to the *Huidian* when a contradiction in these duties arose. According to Confucian practice, one should care for one’s sick or frail parents, which necessitated taking leave from office. In the early Shunzhi reign this problem mounted and continued requests by officials led to a long sixteen-page memorial in 1654 by the Shandong governor, Geng Dun, on the need for clarification. The occasion for the discussion was a request

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<sup>5</sup> SL, p. 821.1.

<sup>6</sup> GSA 167265-017.

for leave by Zhang Wanxuan, a vice director in the Board of Punishments, in order to care for his 80 year old sick mother. Anyone with parents over 70 should be allowed to care for them, Geng wrote, quoting a *Huidian* regulation that allowed an official take leave from office to attend to his parents. “According to the *Huidian* he should be allowed to go,” Geng wrote.<sup>8</sup>

These three kinds of administrative activity—administrative procedure, death rites, and filial piety—are representative of the uses of the *Huidian* as frequently mentioned in the existing documents. They comprise some of the key operations of the bureaucracy and concerns of officials, and show the importance of an administrative code to guide these actions. For Qing officials, the Ming *Huidian* was the standard on important administrative issues: how to fill vacancies when officials go on leave? Look it up in the *Huidian*. When should a summary of a memorial be written? Check the *Huidian*. What to do when an official’s parents are sick or dying? How to honor the dead? The *Huidian* was the point of reference.

### *Sacrifice*

State sacrifice was a third area of activity for which Qing sovereigns and officials consulted the Ming *Huidian*. The earliest sources we have that refer to the *Huidian* in connection with the sacrificial system of the Qing are from 1659, and they appear then in discussions to systematize practices. Documents clearly show Qing officials drawing on the Ming *Huidian* to help standardize their annual sacrifices.<sup>9</sup> In 1660, officials pointed out that the routine ceremonies and sacrifices differed from those of previous dynasties and recommended that the annual sacrifices to various deities be performed together rather than separately and at random. This suggestion

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<sup>7</sup> SL, p. 1034.2-1035.1.

<sup>8</sup> GSA 085442.

<sup>9</sup> For some examples see SL, p. 984.2, Sz16.7.bingxu; KXHD 718.3064-3065; SL, p. 50.2-51.1, Sz18.2.yisi. Also see KXHD 719.3241.

was implemented and the imperial order on the matter decreed to “follow the *Huidian* in holding combined sacrifices every autumn and spring at the suburban altars.”<sup>10</sup> Two months later, the Board of Rites clarified that under “the combined ritual system as outlined in the *Huidian*,” there are twenty-four altars that require sacrifice once a year. The memorial went on to say that after dividing the suburbs into four quadrants, the combined sacrifice stopped, but that this year it would begin again with the deities all receiving worship together at the respected altars.<sup>11</sup>

### *Foreign relations*

The Ming *Huidian* served as a guide for the early Qing in conducting affairs with rulers whom the Qing had no prior interaction. The *Huidian* here offered a reference on how to receive the ambassadors from east and southeast Asian states, the tribute that should be received, and the gifts given in return. In 1653, the Qing court reported that the Ryukyu prince had sent a tribute mission and had the intention to exchange the old Ming chops for new ones.<sup>12</sup> This caused some confusion in the Qing court on what was to be expected: what gifts should the mission bear? How should they be received? And who were these people and their king, anyway?<sup>13</sup> For answers, Qing officials turned to the Ming *Huidian*, which contained information about Ryukyu and the previous missions to China.<sup>14</sup> By all accounts, this facilitated a successful interaction between the young Qing dynasty and the Ryukyu kingdom, resulting in the exchange of chops, the reception of tribute and giving of gifts, and a banquet hosted by the Board of Rites.<sup>15</sup>

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<sup>10</sup> SL, p. 1021.1-2.

<sup>11</sup> SL, p. 1034.1.

<sup>12</sup> SL, p. 605.2.

<sup>13</sup> These questions are discussed in SL, p. 267.2.

<sup>14</sup> BDTB 02-01-02-2182-002.

<sup>15</sup> For the record of this mission, in addition to the above sources, also see SL, p. 644.2; SL, p. 652.1; SL, p. 667.1; SL, p. 667.2.

The use of the Ming *Huidian* in these four areas of activity—administrative organization, administrative operations, ritual sacrifice, and foreign relations—helped define the organization of the Qing state. The *Huidian* provided a standard for the organization of personnel and the proper activities officials undertook in the capacity of the social positions occupied. The *Huidian* laid out the hierarchical structure of the state and how officials should operate within that structure, providing details on down to the number of corvee clerks to be had for each government department. Officials thus referenced the *Huidian* as a reliable standard to clarify routine practices and make the system formal and more predictable. For ritual sacrifice and foreign affairs, the *Huidian* performed a similar function for Qing officials. In short, the *Huidian* offered a standard by which to organize actors hierarchically, and instructed in how to behave both individually and in relation to each other.

#### THE NEED FOR A QING *HUIDIAN*

Despite their constant reference to the *Huidian*, Qing officials also found this Ming code to have acute shortcomings. It was old, for one. It was produced almost a hundred years prior by a different state with different issues and concerns. Society and politics had changed since then. The Qing state was different from the Ming in both structure and organization. It had officials from multiple ethnic groups. It had a military system organized around permanent mobilization. It had different relations with different states. These were all issues that the Ming *Huidian* could not speak to, and which demanded revisions in a code of statutes. Most immediate, however, was the need to coordinate the Qing system of ranks, titles, and positions with a code that gave expression to the interests and ideals of Qing elites. This is seen across three fields of

documentary evidence: the structure of the administration; the operations of the administration; and in foreign relations.

*Administrative organization*

One of the main shortcomings of Ming *Huidian* was that it was based on the Ming administrative structure, which was neither reflective nor fully instructive for Qing governance. Most immediately, the Ming *Huidian* offered no rules for the multiethnic composition of the Qing state. Unlike the ethnically homogenous Han Chinese Ming government, the Qing also employed Manchus, Mongols, and Hanjun in addition to Han Chinese. These latter groups were awarded special treatment and consideration, and thus new rules were needed to account for their activity and privileges.

The Board of Personnel put this in concrete perspective around 1652, when it pointed out the fact that the Ming *Huidian* was insufficient for staffing the government. “The *Huidian* does not account for the Manchu system of officials,” the Board wrote, emphasizing that “each department has a certain number of Manchu, Mongol, and assistants of positions of high and low ranks.” These positions although already filled, still needed clear outline in the code, and a request was sent up to the inner court,<sup>16</sup> where Grand Secretary Fan Wencheng worked on finding the proper translation of names for administrative positions. In a memorial on the translation office names, Fan listed out eight Manchu positions and the corresponding Chinese, which, he said, “can be used in a revision of the *Huidian*, as well as in memorials.”<sup>17</sup>

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<sup>16</sup> This issue is discussed at the beginning of a memorial by Fan Wencheng in 1652. See GSA 006609.

<sup>17</sup> GSA 006609.

*Administrative practice*

In the same way that the Ming *Huidian* fell short in accounting for the administrative organization of the Qing state, it also failed in many areas for use in the operations of the Qing state. For each area of administrative activity that the *Huidian* was consulted upon, it was also found lacking and unable to account for the issue at hand. In administrative practice, the *Huidian* came up short in dealing with officials and in managing corruption.<sup>18</sup> In posthumous honors, the standard were found askew for the Qing system of ranks and positions. And the precedents in filial piety and mourning were found to either be dated and impractical, or completely lacking in application to Manchu practices.

*Administrative procedure.* One of the main issues officials of the early Qing grappled with in running the state was standardized procedure for dealing with personnel problems. This ranged from appointments to corruption, many of the immediate situations for which the *Huidian* failed to address. In 1660, for example, the Board of War attempted to follow the *Huidian* in replacing imperial guards, but found that doing so would offend the Manchu system of ranks. If it filled the position according to Ming precedent, then the guard would be a lower rank than what the Manchu system of ranks demanded. The Shunzhi emperor replied, “The imperial procession guard all serve in the inner court and have a heavy responsibility. For Manchu officials they must have a rank of duke, earl, or count [i.e. above first rank].” With the *Huidian* under question, the matter was left unresolved in the interim and sent to a council for discussion.<sup>19</sup>

The lack of clarity in administrative procedure hampered the bureaucracy. In 1666, Palace Academy for the Advancement of Literature official Xiong Yifu memorialized on the corruption

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<sup>18</sup> There is also a case in 1654 of the need to include regulations on military pay and equipment for the banner system. The Board of Personnel requested the court revise the *Huidian* regulation with the banners in mind. GSA 121826.

<sup>19</sup> SL, 1046.1. For a similar case involving the Hanlin academy see GSA 163987.

and exploitation occurring in the provinces by officials as a result of the lack of clear laws. He requested that the emperor investigate all the governors-general and governors, and to promote those with merit and excise those found to be corrupt.<sup>20</sup> “I beg that the council discuss a system and put together a *Huidian*,” he wrote. “Superiors will follow the way and inferiors will adhere to the law.”<sup>21</sup>

*Posthumous honors.* Posthumous honors were another shortcoming. Although the Ming *Huidian* provided a standard practice for granting posthumous honors and the funerals and sacrifices that were associated with those honors, it contained a number of important discrepancies, which Qing officials quickly pointed out. The appropriate internment and ceremony for the various ranks, for example. The problem with trying to follow the Ming *Huidian* to the letter was that the ranks and titles of the Ming did not correspond to those of the Qing. Or worse, they were not standardized to begin with. As an official from the Board of War put it in a memorial, “The funerary honors to be given to those who have died in battle as recorded in the *Huidian* are not uniform.” At issue for the Board of War here was to clarify the practices of internment for the different ranks and to set that down in law.<sup>22</sup>

*Filial piety.* In the Shunzhi and Kangxi reigns, Board officials were inundated with requests to honor ancestors in ways that were not always in accord with the *Huidian*. In some cases, the Boards insisted on following the *Huidian*, as shown in the previous section, but in others they opted to write new precedent. In 1654, for example, a Jiangxi circuit attendant requested that his birth mother also receive his existing rank and honors. The Board of Personnel checked the *Huidian* and found that if the first wife of the father is still alive then any secondary wives cannot be honored. Based on the *Huidian*, the Board recommended not to grant the request. The

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<sup>20</sup> SL, p. 307.2-310.2.

<sup>21</sup> QSG p. 9891, liezhuan 49.

Shunzhi emperor intervened, however, responding, “Although this is following the administrative system, the *Huidian* was edited the early Wanli years of the previous Ming and there were many codes that were not provided...”<sup>23</sup> The regulation on the matter was subsequently changed and the Ming precedent scrapped.<sup>24</sup> Further changes to mourning rites were also necessary, especially as it pertained to non-Han Chinese officials. Given that the Ming *Huidian* contained no code on how officials of the banners were supposed to mourn, a standard had to be created. The boards deliberated and determined that capital officials should continue to follow the existing practice of mourning for a month, no matter if Manchu, Mongol, or Hanjun. When this period was complete, they should return to their duties but continue to observe mourning rites when at home for three years. Those in the garrisons or for officials sent out to provincial posts, in case of a parent’s death they would follow the existing practice. If the parent was in the capital then the official would be allowed to return and given a half a year for mourning. This practice became the official regulation and was codified.<sup>25</sup>

### *Foreign relations*

Even in foreign relations the Ming *Huidian* came up short. By the early Kangxi reign, the Qing had firmly established itself in the region, attracting missions from states for which the *Huidian* contained no precedent. In 1668, for example, the Board of War reported that other unnamed foreigners appeared on the coast wishing to offer tribute gifts and trade at the borders. Lacking any precedent, the case was sent to the Board of Rites, which checked the *Huidian* but found no system of tribute or trade for the new comers, and thus referred to the Dutch trade in 1663 and

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<sup>22</sup> GSA 163883.

<sup>23</sup> SL, p. 636.2.

<sup>24</sup> KXHD 712.535-548.

<sup>25</sup> SL, p. 87.1-2.

the Siam trade in 1664. Because trading relations with both of these states ended in 1666, the Board recommended to not receive tribute from the foreigners in question, nor allow them to conduct trade.<sup>26</sup> This decision was not made based on the Ming *Huidian*, however, for the Ming *Huidian* lacked any precedent and thus could provide no guidance for the Qing in this situation. Rather, the Qing Board of Rites referred to the more recent cases of Qing dealings with foreign states. They had begun to form their own precedent and now built upon it.

The shortcomings of the Ming *Huidian* resulted in the formation of new regulations. In the Qing state, new regulations were needed in order to account for the positions of non-Han Chinese officials and for new positions in the administration. Similarly, the operations of this administration required new regulations in areas of procedure, posthumous honors, and filial piety that were in accord with contemporary practices among all ethnic groups of the Qing state. In foreign relations, the Qing also found the need to revise the Ming code to account for changing circumstances and to open new relations. Each of these areas reflected the interests of the Qing state in aligning code with the hierarchical organization of the sociopolitical order. Sometimes new code was required, at other times a standardization of practices was needed.

## CONCLUSION

In 1684, Kangxi ordered the compilation of a Qing *Huidian*. There is little indication of why it was decided that the time had finally come for a new *Huidian*. No documents or records remain that discuss the logic behind the timing. Historians can but speculate on the reasoning for the date of the order. Officials had petitioned three different emperors over the past fifty years for such a *Huidian* and received only more codes in return. One possible explanation is that the end

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<sup>26</sup> SL, p. 354.1.

of hostilities ushered in new administrative mechanisms.<sup>27</sup> The date of the edict does coincide with the end of military operations. In 1681, the three feudatories revolt was put down, and two years later the last of the anti-Qing aggressors holding out on Taiwan had finally surrendered. This left the Manchus in 1683 as the undisputed rulers of China, a position that would be further legitimized with a collection of statutes and laws. Furthermore, now that offices and personnel were not engaged in war-time operations, the large number of officials necessary for collection and compilation could be spared.

What can be said is that the Kangxi *Huidian* was the architecture of the Qing administration. Developed in concert with the formation of the Qing state, the rules and regulations for administrative procedure as codified in the *Huidian* lay the basis for Qing governance and rule. These laws knitted together disparate ethnic and class groups in a unified political body and invested them with the common interest and goals of the military and bureaucratic operations of running an empire. As detailed above, the key provisions of this task, which were embodied in the regulations, were administrative organization and procedure. Having inherited a bureaucratic body and its administrative knowledge from the Ming, the Qing used the Ming rules as a guideline for dealing with the immediate issues of administrative organization and day-to-day operations. Qing officials constantly found these rules lacking or unsuitable, however, and called for both revisions to the regulation and the production of a new code. In administrative organization, the inclusion of Manchu, Mongols, and Hanjun in addition to Han Chinese in the Qing administration presented an administrative problem not addressed in the Ming code, as did the employment of the imperial relatives. In procedure, issues over different kinds of officials receiving honors and taking leave often arose as a key issue, for which clear standards were

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<sup>27</sup> Expanding record keeping operations began about a decade earlier with the initiation of the court diaries in 1670 and the publication of the *Zhongshu zhengkao* in 1672.

requested. This especially pertained to particular Qing institutions, such as the banners, over which arose discrepancies in practice for bannermen in the capital and provinces. As the political relations were further clarified in the structure of the state, the protocol for these immediate issues were worked out in a way that corresponded to the relations of power and the hierarchies established. The regulations formed were then codified into administrative law and published in the Kangxi huidian in 1690.

#### ABBREVIATIONS

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| BDTB | Beida yijiao tiben, First Historical Archive, Beijing.           |
| GSA  | Neige daku (Grand Secretariat Archive). Academia Sinica, Taipei. |
| KXHD | Kangxi <i>Huidian</i> . Taipei: Wenhai Publishing, 1992.         |
| QSG  | <i>Qing shigao</i> , Academia Sinica online database.            |
| SL   | <i>Qing Shilu</i> , Academia Sinica online database.             |