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CHAPTER 3:

EVOLUTION OF THE CANTON GUARANTY SYSTEM

The rules used to manage China's maritime foreign trade with the West began to be assembled shortly after completion of the Manchu conquest. They were formulated in a time of trade liberalization, after a forty year period of conquest, during which the maintenance of internal order was a major concern of the new rulers. This process, which took place principally between 1684 and 1780, produced a set of governing regulations with layers of official supervision which came to be known as the Canton System. The system evolved through experiments and a series of crises between and among national officials, local officials, Chinese merchants, and Western trading firms operating on the China coast. At its core, the Canton System was founded upon reliance by the Qing state on a group of official merchants (*guan shang*) who had specific duties to and ties with the government.

3A. Official Management of Maritime Foreign Trade

Close relations between powerful local officials and the leading foreign trade merchants dates from the earliest days of the Qing. During the conquest period, local officials were interested in maintaining internal order and in securing trade revenues, either through direct participation in trade or by licensing and taxing official merchants.¹ Merchants wanted protection, and to increase their own profits by controlling parts of the trade.² Various types of favored relations between officials and merchants accordingly developed during these years. Certain merchants associated with the transitional princes of the coastal provinces of Guangdong and Fujian came to be known as "King's Merchants" by foreign traders.³ The Dutch term used to describe these official merchants was "factoor," which can mean either an agent or an active partner in partnership (with a governmental sponsor).⁴ In Guangdong Province, long before the 1683 adoption of "open door" policies by the Kangxi Emperor, Shang Kexi, the "Prince Pacifier of the South" (*ping nan wang*), recognized official merchants (*guan shang*), who paid for the privilege of trading with foreigners. Shang Kexi's official merchants collected customs taxes, which were forwarded to Beijing.⁵ During the period of his control, Shang Kexi had considerable indirect and direct involvement in trade from Canton and Macao and accumulated an enormous personal fortune, then estimated at one million taels (\$1,388,889).⁶ When the princes were abolished in 1681, patronage shifted. The leading foreign trade merchants now became associated with new official patrons, i.e., the "Tartar-General's Merchant," the "Viceroy's Merchant," and so forth. In the early 1700's, several "Emperor's Merchants," associated with Beijing patrons including the future Yongzheng Emperor, attempted to involve themselves in and to assert seasonal or product monopolies of foreign trade with the West in several coastal cities, including Canton.⁷

This close relationship, at first evidenced by the use of trading names which emphasized the merchant's tie with a leading official, was always at the heart of the Canton System. Over the years, it changed in several ways. For the merchants, their choice of a trading name was both an important expression of brand identity and a key marketing device in dealing with Westerners who did not speak Chinese. In the early 1700s, that brand identity shifted from the former connection with a



Figure 2. Shang Kexi, The Prince Pacifier of the South.
(From Johann Nieuhof, *Die Gesantschaft der Ost-Indischen Gesellschaft in der Vereinigten Niederländern an der tartarischen Cham und nunmehr auch sinischen Keiser*, Amsterdam, 1666, reproduced from Lach & Kley, *Asia in the Making of Europe*, Volume III, Book Four, plate 323.)

specific individual patron (i.e., a prince) to status group membership (i.e., one of the official merchants). In their trading names, the hong merchants came to generally adopt the suffix “qua” (*guan*, as in *guan shang*), indicating official merchant status.⁸ Examples include the trading names Beau Khequa (Li Guanghua of the Ziyuan hong) (d. 1758), Puankhequa I (Pan Zhencheng of the Tongwen hong) (1714-1788) and Howqua II (Wu Bingjian of the Yihe hong) (1769-1843). Invocation of a specific champion quickly became obsolete.⁹ Thus “qua,” denoting official status, became a core statement of brand identity among the hong merchants of Canton. Hong merchants also established official status connections through the purchase of civil rank. In the early days of the trade, when such ties had more business significance, local Europeans often added the prefix “Mandarin” to the trading names of hong merchants who held official titles.¹⁰ In hong merchant portraits, badges of purchased official titles, such as embroidered square surcoat decoration, hat, or button are commonplace.

All of the leading hong merchants held official titles.¹¹ According to scholar Ann Bolbach White, more than half of all of the individual heads of hong firms purchased official title and rank.¹² Puankhequa I purchased a title, and was awarded the Blue Sapphire Button of a third rank official in about 1780 for military campaign contributions.¹³ Eequa (Wu Zhaoping of the Fengtai hong), Wayqua (Ni Hongwen of the Fengjin hong) (purchased *Jiansheng* title), Yngshaw (Yan Shiyong of the Taihe hong), and Kewshaw (Zhang Tianqiu of the Yuyuan hong), each purchased titles and degrees.¹⁴ The senior hong merchants Howqua II, Mowqua II and Puankhequa III all proudly held *hualing* -- peacock feathers -- conferred as a special reward for their 1832 public service contributions for the suppression of a Yao rebellion in Guangdong Province.¹⁵

Each such transaction tied the official merchant more closely to the supervising Qing officials. The merchant thus became explicitly linked in and beholden to a chain of command that ran from the Emperor in Beijing down to the individual hongs in Canton. The purchase contributed to the coffers of the state. As the purchase was almost always of an expectant or honorary title, no duties devolved on the purchaser. Yet the acquisition of title raised the status of the titled merchant in local Canton society, and its loss carried great social stigma.¹⁶

The administration of China's foreign trade with the West was supervised by civil officials, who were appointed by and reported to Beijing. Key officials were the Governor-General (also known as the Viceroy), the Governor and the Hoppo. Their offices were all located at Canton. These officials were assisted by the *weiyuan* (a military official attached to the Hoppo), by their respective staffs, by military officers posted to Canton, and by district (*xian*) magistrates in matters of local administration.¹⁷ Jurisdiction was divided by district among the magistrates of Nanhai district (Canton), Panyu district (including Whampoa) and Xiangshan district (including Macao), with the respective magistrates sometimes acting jointly in judicial matters involving foreign trade.¹⁸

Most important in the daily management of trade was the Commissioner of the Guangdong Province Maritime Customs, the official Western traders called the Hoppo. The Western term is a corruption of part of the Hoppo's Chinese language title: *Duli Guangdongsheng Yanhaidengqu Maoyishuiwu Hubufensi* (Commissioner of the Board of Revenue [*Hu Bu*], in Charge of the Customs Duties on the Trade of the

Maritime Area of the Province of Guangdong).¹⁹ First appointed at Canton in 1684, the Hoppo played a key role in the management of maritime foreign trade under the Qing Dynasty. The post of Hoppo was typically held by an ethnic Manchu, on a one year assignment from Beijing. In the years after 1750, this increasingly regularized post was exclusively held by members (*baoyi*) of the Imperial Household Department (*neiwufu*), appointed from and reporting directly to the Imperial Court in Beijing. The Canton customs administration, known as the *yuehaiguan*, eventually consisted of five sub-stations and some sixty collection points.²⁰ The Hoppo stood at the top of a large bureaucracy which was in constant contact with the Chinese and foreign traders. As described by Dilip Basu, the Canton Customs administration:

“was led by a head clerk (*jincheng*) who presided over upwards of two hundred writers (*danshu*). On the seventh moon of every year, they drew lots as to who should be deputed to the seventy-odd customs houses in the province. The losers remained to act as tide-waiters, examining goods daily brought up to or sent down from Canton. The Hoppo usually did all his business through the head clerk who often bought the office for a five year tenure. He acted as the Hoppo’s alter ego, charging a Hongist \$1,000 to get an appointment with the Hoppo. Next to the head clerk, were three accountants with five in the office of records, ‘each of whom has to pay a fee of two or three hundred dollars.’ The Hoppo’s Customs House posse consisted of seven head runners who required ‘seven or eight hundred dollars to get this appointment.’ Each head runner had thirty assistants under him. Every year the two hundred-plus among them drew lots ‘to ascertain who shall be sent to the outer customs-houses, who shall go to watch alongside the ships, and be, what is at Whampoa called, Hoppo-men, and who shall attend daily at the shipping off or receiving goods at the Hong.’ Then there were numerous personal servants and attendants at the Hoppo’s establishment. Their number varied ‘according to the number of persons recommended by the various official men in Canton, who have dependents to be provided for.’ There were four ‘superior ones’ (*dangshang*) who received duties and four ‘personal confidants’ (*qinxin*) who went around inspecting customs-houses for the Hoppo. No doubt each and every one of these jobs yielded a handsome amount in perquisites and profits.”²¹

The Hoppo's close Beijing connections, notably the personal privilege of being able to present memorials directly to the Emperor, gave him considerable independent power. These Court links are said to have given the Hoppo functionally equal status with the Governor-General (*zongdu*) (of the provinces of Guangdong and Guangxi) and the Governor (*fuyuan*) (of the province of Guangdong).²² The original function of the Governor-General was military. Like the Hoppo, the Governor-General was typically an ethnic Manchu. He served as supreme commander of the forces maintaining order in his viceroyalty. While civil affairs were supposed to be handled by provincial Governors, Governors-General often became involved in such matters.²³ Between 1750 and 1792, the Governor-General of Guangdong and Guangxi was co-supervisor of the Guangdong Maritime Customs, but he rarely interfered with customs matters.²⁴ When problems with foreigners arose, initial decision was reserved to ethnic Manchu officials. Thus, when the armed frigate *Sea Horse* (Captain Panton) arrived at Canton from Madras in September 1779 seeking to collect debts from hong merchants, the matter came

before Governor Li Zhiying, a Manchu bannerman and Imperial Household Department member. Governor-General Yang Jingsu (Han Chinese) was excluded.²⁵

3B. The Security Merchant System and Origins of Collective Responsibility

The activities of security merchants or *fiadors* are recorded in the 1720s, but are believed to be of earlier origin, possibly derived from trade at Macao.²⁶ The practice was initiated at Canton in the 1730s, a period during which officials sought to improve their control of foreign trade. In order to strengthen official control, Weng Eang Cheong observes, "the Hoppo, perhaps unintentionally, had to strengthen the merchants' control of the foreigners and the trade."²⁷ As of the 1730s, hong merchants made their commitment to stand security by a written contract delivered to the Hoppo after the measurement (for tax purposes) of each arriving foreign ship.²⁸ By about 1735, foreign traders at Canton were required to engage a hong merchant to stand as security for each ship.²⁹ These security merchants (*bao shang*) were given a monopoly of the ship's business, were bound to assure orderly trade and the good conduct of its crew, and were held liable as guarantor for full payment of all import and export duties on the ship's cargo.³⁰ This monopoly was porous within the guild. Foreign merchants often traded with other hong merchants (who would sometimes make payment to the original security merchant), as is evident from the pattern of purchases among various hong merchants seen during the controversy over liability for the purchase cost of "singsongs" in 1754 (discussed at page 54.

The security merchants were licensed by the government. Little is known about the definition and form of this license right. No license records have survived. The license seems to have been a non-transferable personal right, granted to one man,³¹ to operate a non-limited liability enterprise as a hong or security merchant. Its issuance appears to have involved written undertakings by the licensee, specific commitments made to the state. This is evidenced by amendments, as when the hong merchants were compelled over strong protest to assume collective responsibility for debts in 1780, and in entrance terms, as when the five new hong merchants of 1782 agreed to guarantee each other (because the incumbents refused to do so) and in the 1760 registration rules for five merchant groups of outside shopmen.

License issuance was tightly controlled by the Canton officials. One reason was that the licensee merchants were expected to perform security duties for the state (risk management). A second reason was the revenue the state received upon the issuance, transfer, assignment or withdrawal of license rights. The amount of these fees varied with the strength of the applicant and the circumstances of the moment, but the amounts involved were significant. Admission fees ranged from \$30,000 to \$80,000, and are said to have reached as high as \$200,000 in some cases.³² Transfer or assignment fees ranged from \$30,000 to \$100,000 to the high of \$500,000 charged to Howqua II (Wu Bingjian) for license transfer to his son in 1826.³³ Withdrawal or retirement was almost impossible. Yanqua was allowed to retire in 1804, fee unknown. Puankhequa II is said to have paid \$500,000 in 1807 for permission to retire, but the authorization granted him was later revoked.³⁴ Licensing fee revenues were shared among the Governor-General, the Governor, the Hoppo, and their assistants. The Hoppo and Governor-General are said to have received the

largest share.³⁵ It has been argued that the issuance of hong licenses was motivated primarily by fee revenues, as evidenced by a concentration of license issuance among just a few Hoppo, many of whom had reached Canton indebted to the Imperial Household Department. Of the thirty-six hong merchants licensed between 1760 and 1843, twenty-nine were licensed during the terms of office of only six Hoppo (of the thirty who held office in this period).³⁶ For various reasons, including but not limited to these fees, there was a sharp decline in the quality of the licensees accepted during these years. Scholar Kuo-tung Ch'en accordingly observes that "over time those who were appointed came from lower and lower strata of society: a number of Hong merchants made in the course of the nineteenth century, or their partners, had been opium-dealers, linguists, compradores, and even a domestic; similar backgrounds cannot be found for the Hong merchants of the eighteenth century."³⁷

The security merchant system (*baoshang zhidu*) received its original imperial approval in 1745, on a memorial submitted by Governor-General and Hoppo Ce Leng (a Manchu). In approving the system, the Qianlong Emperor directed that the security merchant group should be limited to wealthy and respectable men, to safeguard the payment of state revenues they were required to guarantee.³⁸ The timing of approval suggests that national security concerns were directly involved. Reports of a Dutch massacre in 1740 of some 10,000 ethnic Chinese at Batavia had horrified China. Proposals to impose economic sanctions against the Dutch by closing or restricting foreign trade had been made and seriously considered in Beijing. The Qianlong Emperor rejected sanctions in 1742 after careful consideration. During this volatile period, the Hoppo cautioned two Dutch ships that it would be wise to trade at Macau to avoid trouble at Canton.³⁹

The foreign trade monopoly of the licensed hong merchants was defined a decade later in three edicts issued jointly at Canton in May 1755 by Governor-General Yang Yingzhu, Governor Honian and Hoppo Li Yongbiao.⁴⁰ A parallel edict, issued in January 1758, enforced the monopoly by requiring European ships to trade exclusively at Canton.⁴¹ The occasional practice of issuing joint edicts by the three senior Canton officials manifested their combined resolve and the importance of the subject matter. The two exceptions to the new monopoly rules were at Macao and Xiamen (Amoy), where foreign trade was permitted to be conducted, but only by the Portuguese and Spanish respectively.⁴² These edicts, and other measures defining hong merchant responsibilities which were put in place during the period roughly from 1735 through 1758, are properly viewed in the context of controls that were imposed on the Hoppo during the same period.⁴³ The Canton System was being regularized on direction from above. As Weng Eang Cheong observes, "[a]fter 1760, the emphasis of the [Hoppo's] function shifted to the interpretation and enforcement of laws and guidelines to the system."⁴⁴ In the first half of the eighteenth century, foreigners were able to obtain personal audiences with the Hoppo at his residence in Canton. From the 1750s forward, access to the Hoppo was channeled through the hong merchants or linguists who received and transmitted foreign petitions.⁴⁵

As of 1755 the hong merchant monopoly of maritime foreign trade, which had begun as seasonal rights purchased by leading merchants and had since evolved into an informal combination of the merchant elite, was formally recognized

without time limit.⁴⁶ The 1755 edicts maintained the existing three-tiered structure of the outer seas merchant (*waiyang hang*) guild. The thirteen merchants of the first and second tiers had the exclusive right to trade with foreigners under the state enforced monopoly, becoming known collectively as the *yang hang* (foreign [trade] firms).⁴⁷ The six senior merchants of the first tier also had the right to serve as security merchants for foreign ships, evidently in order of seniority. These senior merchants -- Beau Khequa, Chai Suequa, Chetqua, Chai Hunqua, Sweetia and Puankhequa -- now came to be called capital merchants by foreign traders. The seven junior merchants of the second tier were allowed to trade and ship abroad, but not to secure foreign ships.⁴⁸

Each arriving vessel was assigned by the Hoppo to a hong merchant, who was to serve as its security merchant. As new business tended to be welcome, the assignments were generally accepted, but refusal was possible as in the 1754 general refusal to secure incoming EIC ships carrying singsongs in their cargo. Assignments were usually made according to a seniority list, with the turn to secure going first to the senior merchants.⁴⁹ Assignments of EIC ships, which had once been negotiated, evolved over time into an agreement under which security merchants were assigned to EIC vessels in rotation.⁵⁰ The cargo of a foreign ship could be sold to any of the hong merchants, although it became customary to pay the vessel's security merchant the fixed sum of \$700 for his expenses and risk.⁵¹ It was the duty of the hong merchants to cause foreigners whose vessels they secured to comply with the rules of the Canton System. The hong merchants could be and were punished for infractions by Western traders whose vessels they secured, variously fined or imprisoned or both, depending on the gravity of the offense. Their role was thus "quasi-diplomatic," in Weng Eang Cheong's apt phrasing.⁵² When the system worked, the hong merchants themselves and all the various Chinese engaged in dealings with foreigners were supposed to report any untoward activity they observed. As described by Jacques M. Downs,

"Thus the comprador collected information from his coolies, cooks, guards, and the shroff and reported to the linguist, who, in his turn, informed the mandarin. In this way local officials had a reporting service that delivered data independently of the Cohong."⁵³

Collective responsibility for debt among the Canton hong merchants makes its first appearance in 1754-1755. The burden varied among the three tiers of the guild. The senior merchants of the first and second tiers were made subject to limited collective responsibility. The capital merchants of the first tier were collectively liable, among their own group only, for customs duties due to the state but not paid by any member of the group.⁵⁴ The exact date when the first tier was made collectively liable for unpaid customs duties is uncertain.⁵⁵

The second imposition of collective financial responsibility concerned the heavy cost of subsidizing opulent imported gifts sent by the Canton officials to Beijing. When an uproar arose among the security merchants, who were outraged by the excessive burden they were forced to bear individually for the purchase of "singsong" curiosities, Hoppo Li Yongbiao directed in 1754 that this expense would henceforth be shared collectively.⁵⁶ The word "singsong" is a pidgin English term used to describe European luxury objects such as musical boxes, mechanical toys, clocks and watches which were sent as official gifts to the Court in Beijing.⁵⁷ Many

of these elaborate presents, notably mechanical clocks produced in London, have survived. They are popular exhibits at the Forbidden City today, much as they were delighted upon two centuries ago. These objects were a matter of immediate interest to the Hoppo upon the arrival of any Western trading ship, and the selection of singsongs and direction to the security merchant to acquire desired objects was an official priority.⁵⁸ Their acquisition was originally funded with a general levy on foreign trade. Over time, the Hoppo shifted to a system of coerced purchase directly from the hong merchant who secured the ship that had the desired object on board, sometimes paying as little as 25% of cost.⁵⁹ This penalized the security merchant responsible for a vessel with “singsongs” in its cargo, for that merchant alone paid the great part of the purchase cost of these gifts.⁶⁰ The high cost of these prized objects, which in the case of the British EIC came to China exclusively as the private venture cargo of its officers, became a management problem for the EIC which grew concerned that the expense of buying private cargo from its own ships might ruin the hong merchants.⁶¹ The hong merchant body was openly restive about this unequal and unpredictable burden by the early 1750s.⁶² In 1754, four merchants refused to serve as securities for six British EIC ships, due to potential losses on the inbound “singsong” cargo they carried. Tsai Suequa alone said that he might be willing to secure these vessels, but only temporarily and jointly with other merchants who did significant trade with the secured ships.⁶³ The Hoppo responded in August 1754 by directing that the burden would be shared, presumably among the first and second tier hong merchants only.⁶⁴

Collective liability for foreign debts -- unlimited in amount -- was imposed on the third tier shopkeepers under the 1755 edicts. In order to be allowed to trade with foreigners, shopkeepers had to register in groups of five with the Nanhai *xian* magistrate. Registration required the written commitment, from all members of each five person group, that each would be jointly liable for any unpaid foreign debts of other members of the five person registered group.⁶⁵ The officials declared that their concern was that the shopkeepers were not always truthful in their dealings with foreigners, but they were also concerned that Western trade was increasingly being conducted outside the guild. It was believed, correctly, that much of this traffic was not being reported and that customs duties were being evaded.⁶⁶ Repeated crackdowns on shopkeepers sought to protect the hong merchant trade monopoly, to suppress or inconvenience smuggling, and to defend the collection of maritime customs revenues.

It is unclear whether the 1755 regulation imposing collective responsibility on registered third tier shopkeepers was enforced. It is not known if any shopkeeper was ever held collectively liable for debt, whether for customs duties or for amounts due to foreign traders. Nor is it known how long and how carefully, if at all, the 1755 shopkeeper registration regulations were observed. By definition, the debts for which the shopkeepers might be held collectively responsible were small. This was inherently a minor business. The Canton officials would soon be required to devote much more attention to the substantial debts incurred by merchants of the first and second tiers of the outer seas merchant (*waiyang hang*) guild.

3C. The Formal Regulation of Maritime Foreign Trade

The European trading corporations chafed under the restrictions of the Canton System. The monopoly regulations of the 1755 edicts were found particularly

irksome. Foreigners saw the new rules as tending to increase their costs, including official exactions levied on the trade.⁶⁷ The British EIC repeatedly protested to the Canton authorities, and certain of its officers came to believe that its petitions might be more successful if they could only reach the Emperor's attention.

The British East India Company tried in 1757 and again in 1758 to reopen trade up the coast at Ningbo, where it had done business as recently as 1736. It hoped to take advantage of lower customs duties and reduced inland goods transportation costs available at that port.⁶⁸ This initiative was favored by domestic Ningbo interests, but they lost out in Beijing to a range of economic,⁶⁹ internal order,⁷⁰ and partisan concerns which favored concentrating and managing China's Western trade at Canton in the south.⁷¹ Efforts were thereafter made to discourage foreign trade at Ningbo, starting with sharp increases of customs fees.⁷² The Qianlong Emperor issued edicts in December 1757 and January 1758 first closing Ningbo to European trade, and then expelling the British.⁷³ British representatives at Canton were given a written "obligation" in which they were asked to agree not go to Ningbo in the next season, which they refused to sign.⁷⁴

The British EIC decided in 1758 after further unsuccessful local protests to directly petition the Emperor in Beijing.⁷⁵ A petition was prepared, in formal Chinese, seeking the right to trade at ports other than Canton, and detailing a string of grievances with trading conditions at Canton including the unsettled debts of the first tier hong merchant Beau Khequa (Li Guanghua of the Ziyuan hong) who had died insolvent in 1758.⁷⁶ The petition was placed in the hands of James Flint, a Chinese speaking EIC employee, who sailed north on a small 70 ton snow ironically named *Success* (which was lost at sea with all hands on its return to Canton).⁷⁷ Turned away at Ningbo, Flint continued north to the port of Tianjin, about seventy miles from Beijing, where he presented the petition to local officials on 21 July 1759.⁷⁸ The first memorial reporting his appearance, sent to Beijing on 23 July by Zhili Province Governor-General Fang Guangcheng, commented that Flint "is an insignificant barbarian from a small country; if there does not really exist an injustice, how would he dare to bother us with his petition?"⁷⁹ An edict to the Grand Council, issued the same day by the Qianlong Emperor, reported that the incumbent Hoppo Li Yongbiao had been ordered removed from office and that senior officials had been dispatched to go quickly to Canton and conduct a careful joint investigation. "This affair concerns the foreign barbarians, and the prestige of the empire is involved. You must investigate thoroughly in order to manifest imperial justice."⁸⁰ Flint himself traveled back to Canton by courier horse with one of the investigating officials.⁸¹

The official investigation, conducted from September through November 1759, focused on public corruption and on identifying the Chinese who had prepared the petition presented by James Flint. Liu Yabian, a minor Sichuan trader who was indebted to the British EIC, was identified as translator. Liu was publicly executed on 6 December 1759 pursuant to Imperial edict. James Flint was ordered imprisoned at Macao for three years, and then forever banished from China.⁸² These punishments reflected the severe violation of Chinese law involved in an attempt to communicate directly with the Emperor in Beijing.⁸³ Incumbent Hoppo Li Yongbiao and his *weiyuan* were impeached for corruption and removed from office. Property found in the Hoppo's official mansion was confiscated.⁸⁴ This discipline is said to

have had the effect of finally stamping out any further direct participation by officials in the trade.⁸⁵ The politically well-connected Governor-General Li Shiyao, who had advised the Court early in August 1759 that there would be no further troubles with foreigners and that their “speech and manner were respectful and obedient,” remained at his post and was appointed acting Hoppo.⁸⁶ The investigating officials proposed some administrative reforms to be made to Chinese procedures and changes in port charges at Canton, but little came of them.⁸⁷

The lasting consequence of James Flint's 1759 petition was a tightening and formalization of the rules of the Canton System. On 28 March 1760, “Regulations for the Control of Trade at Canton” (the *fangyi zhangcheng*) were announced at Canton.⁸⁸ These regulations, which were at once a restructuring and a codification of existing practice, had been solicited and approved by the Qianlong Emperor.⁸⁹ Translations of the 1760 Regulations are attached to this study as Appendix A (a modern translation by Lo-shu Fu) and Appendix B (a contemporary translation prepared for the British EIC).⁹⁰ Together with orders issued jointly by the Hoppo and the Governor-General, the 1760 Regulations formalized security merchant control duties and improved the competitive position of the outer seas merchant guild (the *waiyang hang*). Collective responsibility for customs duties not paid by an individual merchant was now applied to the full guild (no longer just among the upper tier members).⁹¹

The 1760 Regulations dealt with the thorny issue of hong merchant debt by declaring foreign loans to be illegal. “If the people of this Country do hereafter on any pretence whatsoever take up money of Foreigners, he [the Emperor] requires that they should be severely punished . . . and that all the Goods also of those who borrow money be Confiscated.”⁹² All accounts between foreign traders and hong merchants were required to be settled before a foreign ship left Canton.⁹³ The regulation directed prosecution of violations of the loan ban under “the law by which we punish criminals who communicate with a foreign country, borrow money or hold their goods or money without payment”⁹⁴ -- the Qing Code statute under which many hong merchants were ordered banished to Ili in distant Xinjiang.⁹⁵ The confiscation penalty, which the regulation provided for separately and in addition to punishment under the statute, created confusion. Debtors usually had little left to “confiscate.” Did the confiscation provision give the government the right to seize *the debtor's* last remaining assets, in derogation of the rights of other creditors? Or did it mean that *the interest of the foreign lender* in a loan made in violation of the law was subject to forfeiture⁹⁶ -- either by being voided (held unenforceable) or by being taken by the Qing government (“confiscation”)? Chinese officials stated in 1779⁹⁷ and again in 1780⁹⁸ that European loans were subject to forfeiture under the 1760 Regulations as approved by the Emperor, but the threatened penalty was never enforced.⁹⁹

Also in question is whether the 1760 loan ban was violated by the mere act of borrowing money from a foreigner, even though the loan was being repaid. The answer to this question seems to be no. First, the applicable statute punished nonpayment. Second, the ban itself was modified -- changed to a cap of 100,000 taels (\$138,889) -- by an imperial edict issued in 1794 in the case of Gonqua (Shi Zhonghe, also known as Shy Kinqa II, successor head of the Eryi hong). As of 1794, only debts in excess of 100,000 taels required immediate payment.¹⁰⁰ Although

hong debts after 1794 often exceeded 100,000 taels, no hong merchant was ever punished simply for being so indebted (although many were). As of 1815, the disclosure of debts and a plausible payment plan seem to have been all that was required for a Chinese debtor to be in technical compliance with the loan ban.¹⁰¹ Payment default, not the loan itself, triggered the severe penalties provided for under the “cheating foreigners” statute.

As a practical matter, there would have been little upside for the Canton official who acted to enforce the loan prohibition against foreign lenders during the period of the Canton Guaranty System, 1780-1842. As discussed in Chapter Two (see page 27) customs taxes were collected and remitted to Beijing on a *quotum* basis, and if there was a material deficiency, officials had to pay it out of their own pocket. This was perhaps the principal risk involved in holding public office in imperial China. In this context enforcement of the loan ban, while theoretically possible, became problematic. The consequences of enforcement were potentially ruinous, to the system and to the official personally. First, the mere refusal to enforce foreign loans would have brought an uproar from the foreign community at Canton. The foreigners had come to view the collective guaranty of hong merchant debt as a cornerstone of the Canton System. For their part, Qing officials long used relief under the collective guaranty as a means of placating the restive Western traders. While loans to hong merchants were unlawful, the officials enforced them nevertheless, if sometimes with a lecture about the need to respect Chinese laws. Foreign traders would have taken any change as an abrogation and might have been expected to respond sharply. A stoppage of foreign trade might be expected, as happened in 1829-1830. Second, any stoppage of trade would reduce the amount of collected taxes flowing to Beijing, with the enforcing official liable for the deficiency. Personal financial ruin was thus a possible consequence that had to be considered in deciding whether to actively enforce the loan ban. Third, many years' experience had shown that when the foreign trade of Canton was interrupted, unemployment soared and social disorder followed. The domestic order consequences of trade interruption may have been the most frightening prospect that officials weighed in considering enforcement of the loan ban. Collectively, this range of dismal prospects may have suppressed any inclination to enforce the loan prohibition the officials continued to proclaim to all concerned. It was safer, indeed almost the only viable choice for Qing officials at Canton, to ignore the foreign loan problem and leave it for a later day. There was plenty of money on the Canton waterfront. Officials who chose not to stir up trouble could draw their share and move along quietly to another posting. The risk of substantial personal liability if there was a disruption of trade, and the ability to do well for the moment while hoping that problems might solve themselves with time, discouraged enforcement of the loan ban against foreign lenders.

Under the 1760 Regulations, foreign merchants were barred from sending messages into the interior of China, or adopting any means of determining inland commodity prices.¹⁰² Administrative enforcement of this rule is said to have barred the hong merchants, as well, from further direct contact and negotiation with inland suppliers.¹⁰³ Foreigners were prohibited from hiring Chinese servants, except “the Established Linguists and Compradores.”¹⁰⁴ This enforced a prior rule that foreigners were not allowed to study or translate Chinese, except in the imprecise pidgin language form used by the merchants and licensed linguists.¹⁰⁵ These

Chinese restrictions on communication by foreigners can be compared to an existing rule, imposed by the Hoppo in 1731 on foreign request, which prohibited the hong merchants from communicating directly with Western firms in Europe. The earlier rule had its origins in foreign complaints about the repeated efforts of Tan Hunqua (Chen Fangguan) to complain directly to the EIC and VOC about alleged overpricing and kickbacks in contracts made between other hong merchants and local representatives of the European firms. Paul Van Dyke sees the 1731 communication rule as “one of the first policies to clearly lay down the foundation of the system that disadvantaged Chinese merchants in international trade compared to their foreign counterparts.”¹⁰⁶

When resident at Canton, under the terms of the 1760 Regulations, foreign traders had to reside at properties owned and maintained by hong merchants.¹⁰⁷ In the off-season, foreign traders were still required to leave, but they were now officially permitted to stay at Macao as an alternative to traveling all the way home.¹⁰⁸ Provincial coastal defenses were ordered strengthened, to prevent further disorders. Contingents of troops near the foreign anchorage at Whampoa were ordered to be increased, and were directed to stand constantly on duty from the arrival through the departure of the foreign ships. The Panyu district (Whampoa) magistrate, charged with keeping the foreigners in order, ultimately assessed and collected a weekly fee from the trade for these ongoing control efforts.¹⁰⁹

The provisions barring foreigners from lending money to hong merchants, and requiring the foreigners to reside at Canton in properties owned by hong merchants, ended the occasional former practice of hong merchants mortgaging real property as security for foreign loans. While such loans continued to be made, the ban on the transfer or mortgage of hong properties was respected, presumably because the Nanhai magistrate would no longer accept the necessary mortgage documents for filing. This meant that the loans foreigners extended to hong merchants after 1760 were entirely unsecured (without lien protection).¹¹⁰

Five in number, the 1760 Regulations are the earliest promulgated form of the “Eight Regulations,” the set of rules which governed the maritime foreign trade of Canton through 1842.¹¹¹ These rules are the public face, presented openly to the Western traders, of the far larger body of laws, edicts, rules and procedures which guided the Canton officials and the hong merchants in the management of foreign trade. The Eight Regulations are only seen in histories in summary form, such as the abridged version of the 1835 regulations that William C. Hunter included in his 1882 book *The ‘Fan Kwae’ at Canton*, which is attached to this study as Appendix E.¹¹² (Complete versions of the 1831 Regulations and the 1835 Regulations are attached to this study as Appendix C and Appendix D respectively.) The shortened versions of the Eight Regulations have tended to focus on rules of personal conduct, rather than the trade regulations themselves (which were not always restated in later enactments). This abridgement process has had the effect of trivializing and sometimes producing comic effects entirely absent from the original Chinese regulations. For example, per Hunter, Rule No. 2 of the Eight Regulations (1835) provided that “Neither women, guns, spears, nor arms of any kind can be brought to the Factories.”¹¹³ This seeming equation of women with weaponry is the product of summarization, the *reductio ad absurdum* combination of two distinct parts of the original three paragraph Rule No. 2.

William C. Hunter, who had long experience at Canton as a clerk and then partner with the American firm of Russell & Co., states that the foreigners assumed that the Eight Regulations were “in force always,” although some of the rules “came to be disregarded by the foreign community.” He recounts that the Eight Regulations “were now and then brought to the Factories by a Linguist, as an intimation that they were not to be considered a ‘dead letter.’”¹¹⁴ The Chinese authorities admitted that some of these rules were being ignored by all concerned. The 1831 version of the “Eight Regulations” opens with the statement that “through length of days they [the 1760 Regulations] have gradually been neglected and the execution of them relaxed.”¹¹⁵ The 1835 enactment, produced four years later, refers to the rules of 1760, 1810 and 1831, adding that “during the length of days they have been in operation, either they have in the end become a dead letter, or there have gradually sprung up unrestrained offenses.”¹¹⁶ Some of the rules, such as the bans on collecting inland price information and on learning Chinese, would have been fairly easily evaded and also difficult to enforce.¹¹⁷

R. Randle Edwards, a historian of Chinese law, states that the “Eight Regulations” “were not simply posted on the wall in the Chinese language but were delivered, translated, and fairly well understood by the European community. . . . Comparison of some of these translations with the original Chinese documents reveals that most of the translations are faithful renderings of the original; some are superbly done.”¹¹⁸ While this is true, the regulations were neither modern in style nor models of clear presentation. The trade regulations reached the foreigners in the elaborate form in which they had been presented to the Emperor for approval, framed as a Memorial to the throne, with a preamble, with explanations and reports of official investigation, and often with what might otherwise be considered strictly internal directives to Chinese civil and military officers (for example, coastal defense directives in Rule No. 5 of the 1760 Regulations). The regulations are thus typical of legal enactments in imperial China, having been framed from the perspective of the state, either from within looking out (“barbarian merchants”) or from the top looking down (“for them to obey and act accordingly”).¹¹⁹ Penalties to foreigners that might result from the violation of particular rules may be suggested, but they are rarely provided for in detail, and often no penalty for violations appears at all. No fixed order is observed in the various iterations of the regulations. Given rules appear and disappear in different versions, with rules which were not repeated still remaining effective. The rule prohibiting foreign debt is unusual as it appears in most versions, albeit continually renumbered (Rule No. 3 in 1760, No. 2 in 1831, and No. 7 in 1835). Yet even in the 1835 Regulations it appears only as an allusion in a separate rule (“or incur debts to the barbarians”), not as a full restatement. Nor was there a consistent number of rules. The number eight (of trade regulations), as with the number thirteen (of licensed hong merchants), appears to represent little more than the use of a number considered auspicious in Chinese tradition. The “thirteen hong” only rarely attained the number of thirteen.¹²⁰ The “Eight Regulations,” as revised from time to time, also rarely -- if ever -- stood at that number.

The personal conduct and residence components of the “Eight Regulations,” which increased with the passage of time, loom large in the popular memory of the Canton System. The foreign traders found them particularly irksome.¹²¹ Today they might be thought of as akin to school dormitory (parietals) or “nanny state” rules. The Qing state acted like an overprotective parent, and the foreign trader children

showed no gratitude whatsoever. The foreigners were not allowed to enter the city of Canton. During the trading season of about four to five months they were confined to a foreign enclave on the waterfront at the Western edge of the city, with the exception of escorted visits to parks, not more than three times monthly, and sometimes to hong merchant residences by permission.¹²² Their river travel was closely monitored, although foreign officers in properly flagged service boats were usually permitted to pass through the customs checkpoints without inspection.¹²³ Foreigners were originally prohibited from hiring any Chinese employees, except "the Established Linguists and Compradores,"¹²⁴ but were later allowed to hire up to eight registered servants per factory property to perform specified duties.¹²⁵ With the passage of time, more personal conduct rules were added, prohibiting women from visiting the foreign factories,¹²⁶ restricting boating on the river,¹²⁷ barring use of sedan chairs,¹²⁸ and so forth. The foreign traders muttered about and ignored or evaded these rules as best they could. They were inconveniences which burdened a trade that was profitable for the foreign merchants, and generally well managed.

The American China trader Robert Bennet Forbes, writing at the end of 1831, praised the Canton System by comparison with the London alternative. "[W]ho would barter the present free trade in all descriptions of goods for a regular commercial system of duties, entries, permits, etc., myriad of forms, like those in London? The facilities of trade have always been remarkable here and those who have had most experience are perfectly willing to put up with a continuation of the same."¹²⁹ Business went on.

Under the regime of the 1760 Regulations, the competitive position of the hong guild was strengthened against the Western merchants. It was now officially recognized as an independent body, the *gonghang* (or Cohong).¹³⁰ Little is known of the details of its internal organization. Some contemporary Westerners spoke of the hong merchants acting through the Cohong of 1760 in a 'corporate capacity.' This did not signify a legally independent corporate body in the modern sense, but simply that the Cohong acted as a unified body which set prices and maintained collective discipline in dealings between its members and the Western firms.¹³¹ The hong merchant scholar Weng Eang Cheong describes the Cohong of 1760 as having been

"more like an exclusive club, with members paying different fees for different classes of membership entitling them to different privileges in the trade. Privileges could be inherited by succeeding heads of the firms as in corporate membership, but the shares were not negotiable in the open market."¹³²

A French correspondent, writing in December 1760, stated that ownership of the Cohong was held in 75 shares priced at 1,000 taels (\$1,389) each, for an initial capitalization of 75,000 taels (\$104,167). Puankhequa I, who became Chief Merchant, held twelve shares.¹³³ The new body of about ten became known as the *waiyang hang* merchants, all of whom were eligible to serve as security merchants. Those merchants who would not accept the terms of the Cohong were forced into the non-Western trading *bengang hang* or *fuchao hang* or made to retire entirely.¹³⁴ Ton Anqua, who strongly opposed the Cohong, was arrested by the Governor-General, and finally ordered to move with his family back to Quanzhou in Fujian



Figure 3. Chinese people reading notices posted on a wall. Sketch by George Chinnery, October 1841. (Private collection. Photograph by courtesy of the Martyn Gregory Gallery, London.)

Province.¹³⁵ The only criterion for nomination to the guild was that a prospective merchant must be “rich and financially sound” (*yinshi*), as previously.¹³⁶ As under the 1755 regulations, shopkeepers were still excluded from the hong merchant monopoly of the principal articles of trade. Shopkeepers could trade only in less important articles such as porcelain and silk fabric.¹³⁷

Puankhequa I, who became Chief Merchant, was a driving force behind the creation of the Cohong of 1760. The EIC believed that he was motivated by his own debts, which had grown large by the late 1750s.¹³⁸ Puankhequa I had close influence with Governor-General Li Shiyao and a deep distrust of foreigners dating to having seen Chinese abused by the Spanish when he traded in the Philippines.¹³⁹ Governor-General Li Shiyao is said to have received a cut from the increased revenues enjoyed by the new Cohong, and presumably the new Hoppo Yu Bashi did as well.¹⁴⁰ A footnote to the British EIC translation of the 1831 Regulations, inserted by Morse, mentions a “tradition” that Governor-General Li Shiyao “had a share in Puankhequa’s house.”¹⁴¹

The foreign community vigorously protested against the introduction of the Cohong of 1760. Western company representatives variously complained, negotiated and stalled, delaying the landing of their inbound cargoes. The Chinese stood firm, maintaining a united front and insisting upon uniform prices.¹⁴² By the middle of August 1760 Hoppo Yu Bashi demanded to know why the foreign ships had not yet begun to unload. He stated “that the new procedure had been approved by the Emperor, and that conformity was imperative.” The Hoppo added, perhaps fatefully, that “the Association was designed to make the Merchants jointly answerable for every trouble, great or small, that the Europeans might occasion.”¹⁴³ The foreign community finally landed their cargoes and traded, thus accepting the new terms upon which the Canton trade would be conducted thereafter.¹⁴⁴

During the same time period in which the Chinese government promulgated the 1760 Regulations and recognized the Cohong of 1760, the unpaid debts of the deceased Ziyuan hong merchant Beau Khequa were finally resolved. It is unclear from surviving records precisely when and how this occurred.¹⁴⁵ Beau Khequa’s British EIC debt had stood at 50,000 taels (\$69,444) on his death in 1758.¹⁴⁶ In proceedings before the Nanhai and Panyu magistrates, the Taihe hong merchant Sweetia -- who had traded on joint account with Beau Khequa -- was held liable for half of the debts of his deceased sometime joint venture partner. This liability arose either from Sweetia’s relationship with the deceased hong merchant as joint venture partner, or from the deceased’s occasional practice of acting as joint guarantor with other merchants in connection with specific business that they transacted. The hong merchant Chowqua paid off Beau Khequa’s 10,600 tael (\$14,722) mortgage loan to the EIC in January 1759 and various foreign creditors accepted private settlements. Sweetia agreed to assume additional debt in exchange for new business with foreign firms, and to maintain good customer relations.¹⁴⁷ The entire hong merchant body was ordered by the government to pay tea duties owed by the Ziyuan hong, funds for which had been advanced by the EIC but diverted by the failing firm and not paid to the state. The hong merchants raised these funds through an *ad hoc* surcharge on the trade. This levy is considered to have been a prototype for the later surcharge in support of the Consoo Fund that was established in 1780.¹⁴⁸ The

Ziyuan hong settlements piled more debt onto Sweetia's already weak Taihe hong, which owed creditors 118,800 taels (\$165,000) as of 1759. Sweetia then died in 1761. The burden of this debt and its accumulating interest contributed directly to the 1780 failure of the Taihe hong under successor proprietor Yngshaw (Yan Shiying).¹⁴⁹

A pattern in hong merchant debt cases, which recurs in cases after 1780, is evident in the 1759-1760 resolution of debts of Beau Khequa's Ziyuan hong. First, most of the hong's debt was not "paid" at all but rather was assumed (with the burden of paying interest) by another hong merchant. Second, that debt assumption was tied to the transfer of existing contracts between the debtor and foreign firms to the assuming hong merchant (aiding the rescuer).¹⁵⁰ Third, the dead weight of this assumed and still interest bearing debt then became a material factor in the later failure of the rescuer.

The merchants of the 1760 Cohong stood their ground and maintained price unity for several years. While the guild enjoyed some trading prosperity, most of its members remained in difficult financial condition, burdened with old debt. An employee of the British EIC noted in 1761 that "[m]ost of the merchants are considerably in our debt."¹⁵¹ Some borrowed still more from foreigners, and at high interest, despite the stern prohibitions of the 1760 Regulations.¹⁵² These debt problems received little official attention, except in 1762 and 1764 when the Hoppo suspended trade until guild debts were cleared, which of course did not really happen. Records that the Canton officials allowed inland tea merchants to contract directly with foreigners in 1764 for as much as 30% of that year's business, in breach of the Cohong monopoly, are a strong indication of instability (i.e. the licensed merchants lacked the capital to complete that year's tea contracts on their own).¹⁵³ Hong merchant debt to private Western creditors continued to grow and be ignored through the late 1770s, although many of the creditors were closely affiliated with European trading companies at Canton and should have understood the consequences.¹⁵⁴

Just ten years after the organization of the Cohong of 1760, it was dissolved at the behest of Puankhequa I, its original proponent and leader. Puankhequa told the British EIC in 1768 that he would buy all of its cotton that season at a higher price than that set by the Cohong, as he had been unable to persuade his colleagues to raise the price to be paid by the guild.¹⁵⁵ In 1771, Puankhequa procured the formal dissolution of the body. The EIC advanced 100,000 taels (\$138,889) to Puankhequa which he used to motivate Governor-General Li Shiyao to this purpose.¹⁵⁶ After dissolution, the right to serve as security merchant was now extended to all viable hong merchants, who would be assigned to vessels by seniority by the Hoppo.¹⁵⁷ While this ended the former priority rights of the capital (senior security) merchants, that priority meant little in practice. Of the original six, most had died, failed or withdrawn from trading by 1771.¹⁵⁸ Although dissolution of the Cohong was hailed as a success by the British EIC, its historian Earl Pritchard instead records the 100,000 tael bribe as having accomplished a "disaster" for EIC interests. The dissolution of the Cohong of 1760 "broke the bargaining power of the Hongists, prices decreased, and the demands of the officials fell upon the merchants individually instead of collectively."¹⁵⁹ These destabilized market conditions led directly to the "Chinese debts" crisis of 1779-80, and spectacular hong merchant failures in its wake.¹⁶⁰

The difficult post-Cohong decade of the 1770s was marked by several hong failures, which were brought before the local magistrates and resolved according to Chinese law. The hong merchant body had no liability for the debts of Sy Anqua (Seunqua II) whose Zhufeng hong was determined to be insolvent early in 1775, or for the debts of Coqua whose Guangshun hong failed in 1778. In both cases, assets were liquidated and applied first to the payment of arrears of customs duties due to the government, and then to the claims of foreign creditors. The business of the Zhufeng hong was determined to be viable. Governor-General Li Shiyao directed Sy Anqua (Seunqua II) to continue trading for the benefit of creditors and to pay 192,018 taels (\$266,692) in allowed foreign claims over ten years without interest. The foreign loans were not confiscated, nor were the foreign lenders otherwise punished by the Chinese officials. Only one 10% installment was subsequently paid. When foreign creditors later complained of nonpayment the Canton authorities noted their procedural failure to either acknowledge or accept the payment plan, but expressed hope that when the young Cai Zhaofu (later Seunqua III) "grows up and gains money by his business, he shall pay his father's debts."¹⁶¹ Net assets of the hong merchant Coqua after liquidation and payment of his customs duty debt stood at under 14,400 taels (\$20,000), as against 1,028,239 taels (\$1,428,110) in creditor claims. The EIC's 11,530.630 tael (\$16,015) claim was a small part of this total. The hong merchants resisted EIC efforts to persuade them to assume Coqua's debts in proportion to their business with the Company, but agreed that the merchant who took up Coqua's EIC business might become liable for those debts. The hong merchant Munqua (Cai Shiwen of the Fengyuan hong) took on and satisfied Coqua's EIC debts over two years, contributing to the imminent failure of his own Fengyuan hong. As in the 1775 Sy Anqua case, the EIC and other foreign creditors failed to participate or assert claims in the 1778 proceedings on debts of Coqua's Guangshun hong. This was later found to constitute a waiver of their rights as creditors.¹⁶²

A pivotal moment came in 1776-77, when the EIC pressed to collect another relatively small debt -- 11,725.75 taels (\$16,286) owed by Wayqua (Ni Hongwen of the Fengjin hang). The Fengjin Hong was originally a *bengang* hong, but was licensed as an outer seas hong after the 1771 dissolution of the unified Cohong. The EIC's repeated attempts to collect this debt, starting in the spring of 1772, resulted in a late 1776 report from Governor Li Zhiying to the Board of Punishments in Beijing. The Governor advised that Wayqua had been deprived of his purchased *Jiansheng* title, and punished by beating.¹⁶³ The Governor saw the offense as simply involving bad debt,¹⁶⁴ but the Board disagreed. As the case involved foreigners, the charge it considered applicable was the more serious crime of "collaborating with foreigners and cheating them out of their money."¹⁶⁵ The Board recommended, and the Emperor agreed, that Wayqua should be beaten, and imprisoned, and given a year to pay his debt, failing which he would be banished. In his 3 January 1777 approval edict, the Emperor dismissed Wayqua's commercial defenses to nonpayment. "Excessive borrowing is no way to cherish foreigners."¹⁶⁶ The Qianlong Emperor stressed the foreign relations importance of the matter, invoking precedents from the Han, Tang, Song and Ming Dynasties.¹⁶⁷ As foreigners were barred from presenting their grievances in Beijing, the Emperor told the Governor and the Governor-General that the duty therefore fell upon them to 'show benevolence.' The officials were ordered to be fairminded in cases involving foreigners, and not to

show partiality to Chinese parties.¹⁶⁸ “If governing officers are petty, permitting local ruffians to insult people and never giving redress for complaints that are brought to them, can [foreigners] help but despise and laugh at such a governor or governor-general?”¹⁶⁹ The Emperor criticized Governor-General Li Shiyao for his negligence in the matter. Governor Li Zhiying was reprimanded by the Board of Punishments for his handling of the case.¹⁷⁰

Wayqua was jailed and beaten in response to the Imperial edict. He died in prison at Canton on 30 June 1777, likely due to judicial beatings, before the banishment order was carried out. Relatives came forward with 6,000 taels (\$8,333), leaving a 5,725.75 tael (\$7,952) balance due to the British. Canton officials, from the provincial level down to the *xian* level, were ordered to pay the remainder out of their salaries. The officials recouped this sum from the hong merchant body.¹⁷¹ This forceful resolution, albeit in a small matter, served to encourage private British “country traders” with large claims arising from high interest loans to hong merchants to come forward.¹⁷²

3D. Debt Collection Under the Canton System

In the years after the 1759 failure of the Flint mission, the British EIC redirected its attention from improving trading conditions toward strengthening its bargaining position at Canton.¹⁷³ One of the tactics it employed was to use Chinese legal process to collect unpaid hong merchant debts, thereby seeking redress for its “trouble[s], great or small.” At least in this respect, the EIC and other foreign traders accepted Hoppo Yu's invitation and the text of the 1760 Regulations, which invited bringing infractions of the new rules to the “Knowledge of the Mandarines.”¹⁷⁴

The procedures for debt collection that were made available to Western creditors differed from the normal debt collection process available to Chinese citizens. In many ways it was a special form of justice, significantly better than most Chinese could obtain from their own officials. To the extent that they were preferred, foreign creditors either did not realize they were getting a better deal, or tended to view their preferential treatment as justified given other inconveniences of the Canton System. The foreigners certainly disliked the Chinese law that was enforced through this process. While harsh penalties for unpaid foreign debt tended to operate in their favor, Chinese rules reduced the collectability of foreign debt by requiring creditor participation in the debt process (or claims were considered to have been waived) and barring the collection of interest in excess of the principal amount of a claim (*yi ben yi li*). Twenty years after promulgation of the 1760 Regulations, as a result of the “Chinese debts” crisis of 1780, foreigners were given the further benefit of a collective guaranty of the payment of hong debt, enforced by the state against the entire hong merchant body.

In imperial China, debt might be collected either through public process, entered through the doors of the magistrate's *yamen*, or through private process, which took the form of mediation or other procedures administered by guilds or local village or family groups.¹⁷⁵ Contracts were in frequent use,¹⁷⁶ business disputes were common, and large amounts of private litigation occupied the time of Qing magistrates.¹⁷⁷

The sources of law varied. A considerable body of customary law or guild or kinship rules existed which was applied in private process.¹⁷⁸ The law that was applied in public cases included the Qing statutes, substatutes, reports of decided cases, and also imperial edicts.¹⁷⁹ The Qing statutes, notably the Qing Code (*da qing lu li*), were organized according to the departments of government and, as such, reflected the perspective of the Emperor.¹⁸⁰ Statutes (the *lu*) might be applied if they addressed the situation. Substatutes (the *li*), which were detailed rules based on prior interpretations or decisions, were instead to be applied if they more precisely addressed the problem.¹⁸¹ In all sections of the Qing Code “the arrangement is consistent: a *lu* or general law is stated and then followed by *li*, specific conditions for its application or for exemption from its provisions, and then by commentary to explain both.”¹⁸² Enforcement of the Qing Code was by specified punishments. This has caused it to be called a penal code, which is an inadequate explanation of its function, for many civil elements are included.¹⁸³ As explained by Qing Code scholar William C. Jones,

“The aim [of the drafters of the Qing Code] seems to have been to create a sort of giant grid on which any legally relevant act, such as eating another’s melons, including all the ways of varying the basic fact pattern, such as the relationship between trespasser and owner, could be located. When this was done properly, the precise punishment required would be discovered. If no punishment could be found, the act was not legally significant. This is similar to a finding in Western law that no action lay.”¹⁸⁴

The location of some statutes within the Qing Code can seem a little strange. The relatively few Articles devoted to commerce and industry are in the section of the Qing Code devoted to the Board of Revenue (*Hu Bu*). Sybille van der Sprenkel speaks of this arrangement as being “rather as if our commercial law were an appendix to the Inland Revenue Department regulations.”¹⁸⁵ The Code stood nonetheless as an integrated whole, reflecting the attitude of the Emperor in his administration of the officials who governed China. It thus was, per William C. Jones,

“in part a collection of rules that deal with particular fact situations, sometimes in great detail. Nevertheless, it is not just a compendium of rules. The rules themselves have been refined and harmonized to a considerable degree. General principles have been factored out. It is, in other words, a true code, and as such can be taken to represent the considered view of some of China’s leading jurists as to ways to think about law, to think about what law is. It was to show the way to analyze legal problems and to provide methods for applying legal rules to them.”¹⁸⁶

Local magistrates were vested by the Code with authority in debt disputes. The Code specified certain debt rules and penalties, and it regulated markets in a limited way.¹⁸⁷ At least officially, public judicial process under the Qing Code preempted local and informal dispute resolution.¹⁸⁸ In particular, it provided for severe punishment of those creditors who did not use the public process but instead attempted “self help” debt collection by using (unauthorized) violence to take property from debtors.¹⁸⁹

Public judicial process was initiated by accusation, which was made in the form of a written petition presented at the magistrate's *yamen* (office compound). The magistrate was required to investigate the facts, question the witnesses, and render a preliminary decision in the dispute.¹⁹⁰ He had to ascertain

(a) whether the defendant was in fact guilty of the action of which he stood accused (and, if so, a confession of guilt had to be extracted from him); (b) which section of the [*Da Qing Lü Li*] covered this misdeed; and (c) circumstances which were relevant to determining his degree of criminality. He then had to decide according to (b) and (c) what punishment was appropriate.¹⁹¹

Much of this work was performed by unpaid or underpaid *yamen* clerks, who were notorious throughout China for exacting heavy fees from those involved at every stage of the proceedings.¹⁹² Beating to obtain a confession was permitted, but only during trial.¹⁹³ "At the trial the parties and witnesses were flanked by guards wielding bamboo staves and other implements and were required to remain in a kneeling position on the ground before the magistrate's high bench."¹⁹⁴

"The proceeding could be quite dreadful for everyone, including the complainant. All persons concerned, including witnesses, were usually imprisoned under appalling conditions pending final conclusion of the matter. The term which when translated is the innocent word 'interrogate' often involved torture. Even the lightest punishment -- beating -- could be crippling or even fatal."¹⁹⁵

Even conscientious and even-tempered magistrates administered a law that was largely unknown to the populace governed by it. This was expressed in the saying, "Of ten reasons by which a magistrate may decide a case, nine are unknown to the public."¹⁹⁶ The preliminary decision of the magistrate, once rendered, required higher review and approval before it could become final.¹⁹⁷ If the outcome was a finding that the original accusation was false, then the punishment for the crime that was charged was to be imposed on the accuser under the principle of *fan zuo*. George Staunton, writing in 1810, viewed this sanction as similar to Western penalties for willful perjury. Sybille van der Sprenkel agrees that it at least appeared to act in the interests of justice, but submits that *fan zuo* "probably in fact worked against it, i.e. as a deterrent to denouncing the influential but no protection to those who needed it."¹⁹⁸ As she explains,

"The unavoidable consequence of a legal case once started was punishment for at least one person. It could end in punishment for the accused, if judged guilty; if he were not, punishment would be assigned to the unjustified accuser; it was also likely that witnesses would, during the course of the proceedings, incur punishment, while the magistrate was exposed throughout the case to the risk of reprimand or degradation for making a mistake in procedure or in application of the code."¹⁹⁹

From a Confucian standpoint, simply being involved in a lawsuit, even with a legitimate grievance, was somewhat disreputable, as a disruption of natural harmony was involved.²⁰⁰ The harsh treatment of participants in legal process was thus somewhat intentional, an attempt by the system itself to cause the maintenance of the condition of (at least apparent) harmony in society that was the Confucian

ideal. Confucius himself is said to have stated: "In hearing cases I am as good as any one else, but what is really needed is to bring about that there are no cases."²⁰¹ The Kangxi Emperor (reigned 1661-1722) once challenged the very ideal of justice in litigation. He had expressed concern that:

"law-suits would increase to a frightful amount, if people were not afraid of the tribunals, and if they felt confident of always finding in them ready and perfect justice. As a man is apt to delude himself concerning his own interests, contests would then be interminable, and the half of the Empire would not suffice to settle the lawsuits of the other half. I desire therefore that those who have recourse to the tribunals should be treated without any pity, and in such a manner that they shall be disgusted with law, and tremble to appear before a magistrate. In this manner the evil will be cut up by the roots; the good citizens, who may have difficulties among themselves, will settle them like brothers, by referring to the arbitration of some old man, or the mayor of the commune. As for those who are troublesome, obstinate, and quarrelsome, let them be ruined by the law-courts -- that is the justice that is due to them."²⁰²

Such was justice for the average subject of the Emperor of China.²⁰³ The lack of any reliable or convenient system for collecting debt certainly discouraged risk taking in the form of the general extension of credit, as discussed at pages 21-22 above. When a hong merchant was owed money by a foreign debtor, he had little recourse under Chinese law, and the foreigner was usually overseas. The hong merchant Conseequa thus ended up mired in disastrous litigation trying to collect from debtors in the United States, as discussed at pages 141-146, above. In an 1814 petition in which he sought assistance from the American President, Conseequa told James Madison that "[w]hen such Debtors come to, or reside in, China, he cannot claim the aid of the Laws of the Imperial Dynasty in his behalf. They prohibit such confidences, as he has placed in Subjects of the United States."²⁰⁴ Collection even by hong merchants from hong debtors was difficult. So it was that in 1767, when Puankhequa I was asked by the British EIC and agreed to pay off a debt due to the EIC from his guild colleague Conqua (Chen Shiji of the Yuanlai Hong), Puankhequa requested (and was granted) the accommodation of having the bond (promissory note) from Conqua for the amount due plus interest made payable to Mr. Robert Gordon, surgeon to the EIC.²⁰⁵ While the EIC's 1780 discussion of the Conqua note says that it arose in a "peculiar circumstance," notes payable to Europeans as designees for Chinese were drafted occasionally, and by this stratagem the sophisticated Puankhequa created an obligation that could be enforced -- by its European holder -- against Puankhequa's Chinese debtor.

Normal Chinese procedures were modified when Western creditors sought to collect debts from hong merchants. They were not "treated without any pity," but rather had their complaints heard and acted upon. Westerners who used the Chinese public debt collection process were not penalized for presenting their petitions to the wrong official in the local hierarchy,²⁰⁶ were not beaten by *yamen* staff, were not forced to kneel when present at hearings, and were not penalized if their accusations were later determined to be untrue. They were required to present an accusation, a written petition that was usually submitted to the Hoppo. In most cases, the Hoppo referred the dispute to the local magistrate with appropriate

jurisdiction for investigation and initial decision. This was usually the magistrate of the *Nanghai xian* (Canton). The initial questions considered by the magistrate -- whether the foreign petitioner had extended credit and whether the hong merchant debtor had failed to pay the debt -- were usually not a point of contention, though the true amount of unpaid debt was often disputed. After investigation, creditors and the hong debtor presented their cases at a trial before the magistrate. Process in the investigatory and trial stages of proceedings on foreign debt complaints seems to have been somewhat *ad hoc*, simpler in smaller cases and more elaborate in larger or more complicated cases.²⁰⁷ The debt complaints of Western creditors were received and adjudicated according to an established process which in many ways is comparable to the debt collection process that then existed in their home nations.²⁰⁸

Chinese creditors typically came in as participants in foreign debt cases and joined foreign creditors in demanding payment. The domestic creditors tended to have better information about the activities of the indebted firm than did the foreign petitioner. The local creditors were also in a better position to press the *yamen* clerks to forcefully investigate debtors, their relatives, or employees or other witnesses who might assist in the recovery of assets or funds. Surviving records show that it was the domestic creditors who generally pressed the *yamen* staff for the physical beating of debtors to force them to pay debts. The records do not indicate that this tactic produced appreciable added value for creditors except as a means of sometimes reaching into the pockets of horrified relatives and friends of the beaten debtors.

A critical initial determination by the magistrate concerned the solvency of the debtor, i.e., whether there was any reasonable prospect that the hong would be able to pay its debts within a reasonable time. Where the business of the indebted hong was determined to be viable, it was invariably ordered to continue trading to generate a dividend for creditors. Business goodwill or reorganization value was thus realized for creditors. Where the hong was not viable, its assets were liquidated and used to pay creditors in order of priority: customs debt first, paid to the government, and unsecured debt second, paid to foreign and domestic creditors.²⁰⁹ The magistrate also directed punishment of the debtor, meted out according to the type of offense that was found to have occurred, and the terms of repayment to creditors. Under the regime of collective responsibility, starting in 1780, the magistrate first tried to get foreign creditors and the surviving hong guarantors to reach an agreement on repayment terms. If agreement could not be reached, the magistrate imposed a repayment schedule, a series of equal annual payments by the hong merchant body, without interest. These various orders were assembled as a preliminary decision by the magistrate, which was submitted to his superiors for review and approval (or modification). Records of the hong merchant debt cases invariably reflect long periods of time during which the debtor and creditors alike waited for final judgment from Beijing.

In contemporary records, the Chinese debt process described in the preceding two pages is sometimes spoken of as involving the "bankruptcy" of the hong debtor. Historians have picked up this usage. The failed hong was certainly "bankrupt" in the sense that they could not pay their debts. The term "bankruptcy," however, implies an established public legal process for the permanent resolution of debts that brings in and binds the debtor and all affected creditors.²¹⁰ While the

Chinese process involved domestic creditors in debt cases filed by foreign creditors, it served no such public end. It was not a bankruptcy system.²¹¹ This study accordingly avoids the use of the term “bankruptcy,” and uses the terms “insolvency” or “debt” by preference.

To foreign creditors, the most important part of the magistrate’s decision was the allowance or disallowance of claims. In these often controversial rulings, the magistrate applied settled Chinese laws concerning debt. The most important of these was the rule that recoverable interest could not exceed the principal amount of the loan (*yi ben yi li*).²¹² A joint communication from the Governor and Hoppo, dated 29 February 1780, “reminded” foreigners of this provision of Chinese law.²¹³ (On at least two other occasions, in 1801 and in 1821, Canton officials provided instruction in Chinese law by having parts of the Qing Code translated into English and delivered to the local head of the British EIC.)²¹⁴ Many foreign claims were slashed under the rule of *yi ben yi li*. Full analysis of the practical consequences of the rule is beyond the scope of this study, but a few may be noted. First, the rational creditor who believed that the debtor (or guarantor) had the ability to pay a given debt had good reason under this rule to cooperate with the debtor during the period that interest was accruing but did not yet equal the amount of principal. This creditor would expect the loan to be profitable, i.e., to receive full return at the agreed interest rate, during this time period. Second, at some point as the interest total neared the Qing statutory cap this expectation of profit ceased. The prospect of loss now beckoned, if the debtor defaulted and debt collection by Chinese public process was required. This would be a real loss to the extent the creditor had other profitable uses for its funds. Third, when the amount of interest exceeded the amount of principal (the statutory cap), any hope of legal profit in return for cooperation with the debtor ceased. An economic incentive for aggressive collection efforts thus existed during the time period when the amount of accrued interest approached the principal amount cap above which there could be no recovery by legal process -- in order to liquidate and collect the loan in full. If assets were believed to exist in an amount sufficient to pay the debt in full, whether held by the debtor or by the hong merchant body as his collective guarantors, there was no incentive for further cooperation. Finally, the rule tended to promote extralegal or secret collection activity from that point forward. The creditor’s only remaining hope to collect further interest would be to collect it from the debtor through private action kept away from the magistrate and out of the knowledge of other potentially affected creditors.

In criminal matters involving foreigners, by contrast, the Qing did not assert criminal jurisdiction, except in cases in which a Chinese citizen was killed. Otherwise, as R. Randle Edwards succinctly explains, “the foreign community was held responsible for maintaining order in its ranks and the Chinese government was not particular about how it was accomplished.”²¹⁵ Where a foreigner was the victim of a crime committed by a Chinese citizen, the Qing authorities typically responded quickly and severely.²¹⁶

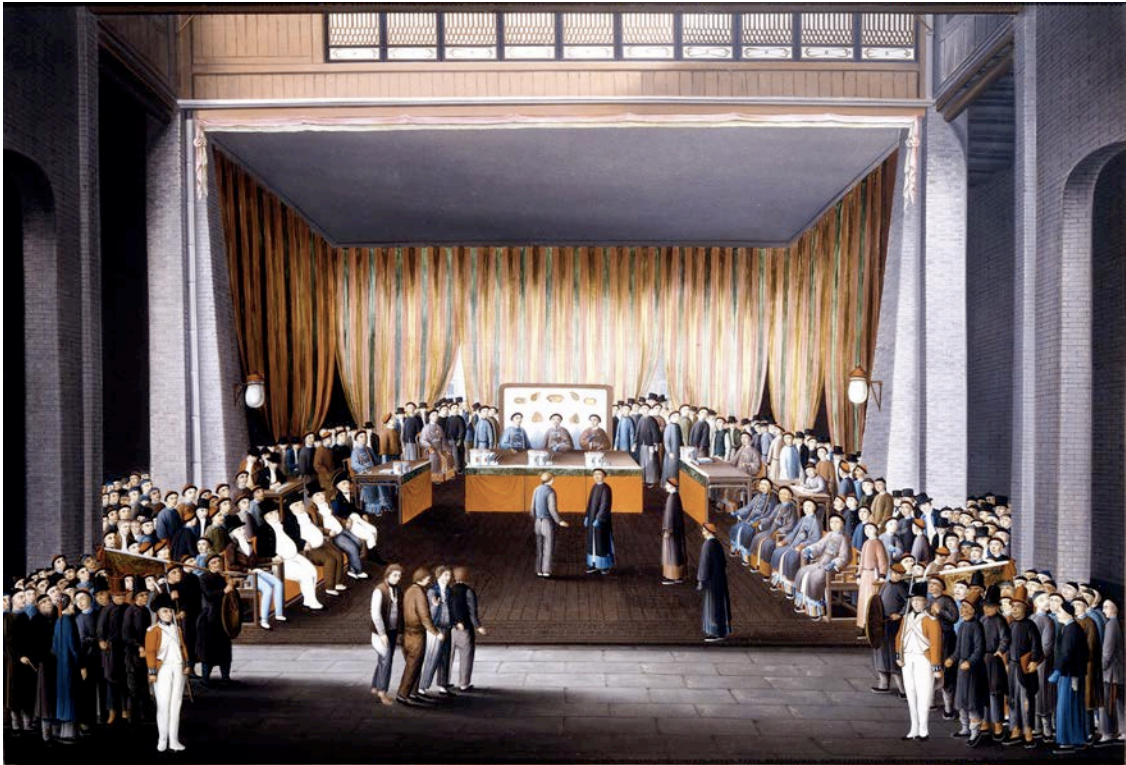


Figure 4. The trial of the Neptune sailors.
Chinese artist, ca. 1807. (Collection of Anthony and Susan Hardy. Photograph
by courtesy of the Martyn Gregory Gallery, London.)

When a Qing official was presented with a foreign petition complaining of unpaid debt owed by a Chinese citizen, the crucial question he had to address was identification of the offense to be charged under the Qing Code. When Beijing identified errors in the decisions made in hong debt cases, it was apt to be that the wrong offense had been charged, resulting in the wrong punishment. Such mistakes, and the officials who made them, were subject to correction and harsh criticism. These were crucial matters, for, as William C. Jones notes, “determination of the proper punishment was the fundamental task of the law” under the Qing Code.²¹⁷ Precisely such an imperial rebuke was issued in 1777 -- three years before imposition of collective liability among the hong merchants for the foreign debts of failed guild members -- in the relatively minor 11,725.75 tael (\$16,286) debt case of Wayqua (the Fengjin hong). Wayqua had been ordered punished for his default by beating, by being ordered to repay the debt, and by being stripped of his purchased *Jiansheng* title. Revocation of purchased official title was required when its holder was sued for debt, and Qing practice required that the disgrace be reported to the Board of Punishments in Beijing. Governor Li Zhiying accordingly reported the matter and its disposition, in which he had applied the normal bad debt penalties.²¹⁸ The Board, and the Emperor, strongly disagreed with his handling of the matter. In their view, the appropriate punishments were beating, imprisonment for one year, and banishment to Ili (in Xinjiang) if the debt had not been paid within that year. As the case involved foreigners, the applicable charge was the crime of “collaborating with foreigners and cheating them out of their money”²¹⁹ -- the same statute the 1760 Regulations specified for punishment of violations of the foreign loan ban. In his 3 January 1777 edict, quoted above (and at length in Chapter 2 at page 20), the Qianlong Emperor sharply rebuked the officials involved for their failure to apply the correct offense and penalties. The Emperor singled out the negligence of Governor-General Li Shiyao, “a remarkable performance . . . for one who had always been so diligent in the handling of barbarian affairs.”²²⁰ The Emperor emphasized the foreign relations and defense implications of the mistreatment of maritime traders to whom Chinese were indebted. The *Wokou* raids of the late Ming Dynasty, and their perceived relation to dynastic decline, stood as a living instruction to the Qing rulers of China.

The charging tension seen in the Wayqua matter haunted hong merchant debt cases through the years of the Canton System. The applicable punishments were quite different, depending on whether the matter was seen as one of common bad debt, or as involving cheating foreigners. The nature of the latter offense, as Joanna Waley-Cohen has observed, “bordered, at least, on political territory.”²²¹ The choice was stark:

Common bad debt. Such cases were prosecuted under the authority of Articles 24 and 345 of the Qing Code (concerning illegally obtained property) (*zang*), which were applied in debt cases by analogy.²²² Punishment in common bad debt cases included: a restitution order, beating, imprisonment for a half year (and/or being forced to wear the neck yoke, also called the *cangue*), with the possibility of release after the half year period if the debtor satisfied the magistrate that he truly lacked the ability to pay the debt.²²³ As noted at above, at page 71, debtors in common debt cases (such as Wayqua) were also stripped of their purchased official titles, but that disgrace occurred

as a matter of administrative practice, not as a punishment for violation of the Qing Code.

Cheating foreigners. The term “collaborating with foreigners and cheating them out of their money” (*jiaojie waiguo kuangbian caiwu*) is the short title of the *li* (substatute) that was applied in most of the hong merchant debt cases. It is found in the part of the Qing Code devoted to the Board of War, organized as the first substatute under *lu* (statute), Art. 224, entitled “Interrogating Spies” (*panjie jianxi*).²²⁴ There is no standard translation of the title of this substatute, which has been rendered in variant ways,²²⁵ such as the “law by which we punish criminals who communicate with a foreign country, borrow money or hold their goods or money without payment,”²²⁶ or the law “which punishes criminals who plot with a foreign country, borrow money or hold their goods or money without payment.”²²⁷ The punishment directed for violation of this substatute included: a restitution order; beating, imprisonment for a year, and banishment to Ili if the debt had not been paid within that year.²²⁸ Banishment to Xinjiang, itself, was an extraordinary penalty under Qing law -- ranking second only to execution.²²⁹

Some of the Canton officials believed that the penalties that were applied in common bad debt cases were proper in hong merchant debt cases as well. This was true in the Wayqua case in 1776, in the Hingtai case in 1837,²³⁰ and probably on other occasions. Leniency tended to favor domestic economic interests. Yet the 1760 Regulations and the edict in the Wayqua case, both directly issued by the Emperor, mandated the harsh punishments of a substatute that at least nominally sought to protect foreigners as a special class (penalizing “collaborating with foreigners and cheating them out of their money”). The true objective of this “protection,” however, was to prevent Chinese subjects from becoming so beholden to foreigners that they would work to advance foreign interests. In a memorial sent to the Emperor at the time of adoption of the 1760 Regulations, Li Shiyao expressed concern that indebted hong merchants tended “to be very toadying and obsequious [to foreigners] so as to invite their favour.”²³¹ An 1815 joint memorial to the throne from the Governor-General, Governor and Hoppo expressed concern about the economic consequences of the control foreign lenders achieved over “treacherous” Chinese subjects:

“As the people of Kwangtung rush towards profits like ducks, the first thing to do is to scrutinise the treacherous people of China. . . . However, now, there are ten hong merchants but only three or four are really affluent. The rest, though they are guaranteed by their colleagues, are not rich but simply hold the position as hong merchants. After they have assumed their positions, as they are incompetent in doing business, they fall into debts to the barbarians inevitably. As they owe the barbarians money, they have to buy goods on credit from merchants in other provinces in order to clear the debts owed to the barbarians. Debts accumulate and become too large an amount to be returned. Consequently, they are controlled by the barbarian merchants. The fixing of the price of goods will as a result be unfair and the merchants from the other provinces will suffer in the process. The current rule is that when foreign ships are leaving, they will receive the chop from the customs superintendent's office which will receive a note on which is

written “no debt between each other”. But this has become a formality and cannot be trusted any more.”²³²

Maintaining domestic public order was the true objective of the protection of foreigners provided in the “cheating foreigners” statute.²³³

Many Chinese hong merchant debtors were punished in accordance with the “cheating foreigners” statute during the period 1777 through 1842. Although the statute specified only one (1) set of punishments, the indebted hong merchants had actually committed two (2) distinct offenses:

being indebted to foreigners in violation of the statute (the rule of the Wayqua case); and

violating the loan ban imposed by the 1760 Regulations.

Each of these offenses specified that violations would be punished as provided in the “cheating foreigners” statute. In cases in which offenders were Chinese, this was easily accomplished. So it is that Wayqua in 1777,²³⁴ Yngshaw and Kewshaw in 1780,²³⁵ Eequa in 1791,²³⁶ Wyequa in 1796,²³⁷ Fonqua in 1809,²³⁸ Gnewqua II, Ponqua and Ashing in 1811,²³⁹ Pacqua in 1828,²⁴⁰ and Manhop II in 1828,²⁴¹ were all severely punished and ordered banished to Ili. Little is known of the fate of the hong merchants in Xinjiang except for a report that was prepared for the Qianlong Emperor in 1795. The Emperor had asked about the condition of these exiles. The local officials in Ili reported that the former hong merchants, because they were literate, had been put to work as bookkeepers in the government boatyards and were thus able to support themselves.²⁴²

The correct prosecution of foreign offenders under these rules was problematic. Violation of the 1760 loan ban, by definition, involved two parties (a foreign lender and a Chinese debtor). Yet the members of the class that stood *protected* by the criminal statute (which penalized cheating foreigners) were equally *offenders* when the 1760 loan ban was violated. There was never any doubt that the statute provided for severe punishment of Chinese subjects who violated the loan ban, but it was unclear whether the same applied to foreigners.²⁴³ Senior Canton officials stated that loans made by foreign lenders were subject to forfeiture (confiscation) as a punishment for violating the ban on loans to hong merchants. While this was said repeatedly, that stern sanction was never imposed.²⁴⁴ No foreign lender was ever penalized. The opposite took place: loans made in violation of the 1760 ban (as regularly restated in the Eight Regulations) were enforced. Not only were the loans enforced against the original debtors (who stood *in pari delicto* as equal violators of the ban) but they were enforced against other innocent members of the hong guild after 1780 as a matter of collective responsibility. The threatened penalties for foreign violations of the loan ban proved illusory, and the warnings proved meaningless as well.

Perhaps it is that the Qing Dynasty officials were caught in an enforcement dilemma not unlike that which confronted their Ming predecessors. The debts that were owed by Chinese to Japanese traders in the Ming period, which some Chinese refused to pay (provoking the *Wokou* depredations), were incurred in a foreign trade that was illegal under Ming law. Creditor and debtor alike equally violated Chinese law by engaging in this trade. In the Qing period, the debts that hong merchants

owed to Europeans were incurred through extensions of credit in violation of the 1760 ban (as restated in the Eight Regulations). Once again, creditor and debtor alike were in equal violation of Chinese law. Yet the Qing -- unlike the Ming -- permitted foreigners to collect these debts using the Chinese public debt process. The foreigners seem to have enjoyed some type of legal shelter when they came before Qing courts. We can only speculate as to the reason.²⁴⁵ Perhaps it is that the magistrates believed the foreigners were protected under the "cheating foreigners" substatute which seemed to favor them as a class in debt cases. Perhaps the increasingly common practice of delivering goods on credit (to be paid for in the future) was seen as outside the loan ban, although the delivery of goods represented an extension of credit that required the same payment in the future as a cash loan. Perhaps Qing officials recognized the heavy dependence of both the Chinese state and the Chinese economy on maritime foreign trade, and were loathe to take any action that might result in either the suspension or interruption of this internally important commerce.

Whatever its reason, the policy choice that resulted in Qing officials not only failing to enforce the loan ban they repeatedly proclaimed against foreign lenders, but actively assisting foreigners in collecting the large loans they made in violation of the ban, provided a dangerous lesson. The inference that all Chinese prohibitions were as likely to be meaningless as meaningful could be drawn from this experience. This conclusion was indeed drawn by some Western traders. This erroneous instruction in local law played at least some role in the brazen development of the opium trade in and near Canton. In 1806, a private British country trader stated that "there are few things in China that cannot be had by paying for them." Speaking of the opium trade, an employee of the British EIC said in 1835 that "It could safely be stated that there was no officer of the Canton Government whose hands were clean." The importation of opium was illegal under Chinese law. That prohibition, as with the empty prohibition of foreign loans to hong merchants, was repeatedly proclaimed to the Westerners at Canton. Opium had first been banned by an edict issued in 1729, and again by an edict issued in 1799, but the prohibition was spottily enforced, only notably in the crackdown of 1821 which drove the trade out to Linton Island. In daily practice, the opium ban was easily evaded by smuggling and functionally 'waivable' with well placed bribes. The illegal trade in opium, as with the illegal loans to hong merchants, grew large. It thrived in an atmosphere in which some foreigners believed that no prohibition imposed under Chinese law had any real meaning, except perhaps as the excuse given by officials for requests for higher fees to allow the practice to continue. This belief held sway at least until the year 1839, when Commissioner Li Zexu arrived at Canton from Beijing angry at pretty much all of the local officials and merchants and authorized to act finally and utterly to enforce the opium prohibition.²⁴⁶ The crackdown he instituted led into the First Anglo-Chinese (Opium) War of 1839-1842, which brought on the trade disruptions and the social, internal order and economic consequences the Canton officials had long sought to avoid.²⁴⁷

3E. The 1780 Crisis and Imposition of the Collective Guaranty

Starting in the 1760s, many of the hong merchants borrowed significant amounts from private Western creditors. These loans were at high interest, many from 16 to

20 percent per annum, and some at rates as high as 40 percent. More loans were made in 1773-74, when the British EIC was unable to offer bills on London to private parties. The high return on money attracted capital to Canton from as far away as France. Substantial loans were made by British and French traders and investors. The principal British creditors said that their loans were the proceeds of fortunes made in India, sent to China in order to be transferred home as EIC bills, but which had been lent to Chinese debtors as the EIC was temporarily unable to remit private funds to London by company bills.²⁴⁸ The 1775 default of Sy Anqua (Seunqua II) frightened the creditors, who refused to lend or to extend the maturity of existing loans, and tried to collect amounts then due. The debtor hong merchants found themselves in a vice. They could not pay old debts, could not make new or refinancing loans, and found it increasingly difficult to pay even basic operating expenses.²⁴⁹ According to an EIC investigation at Canton in 1779, the total debt claimed by British country traders and supercargoes representing private interests then stood at \$4,347,300.²⁵⁰ With French creditor claims, which are estimated to have exceeded \$600,000,²⁵¹ the total face amount of foreign claims against hong merchants stood at about \$5 million as the crisis broke.

Four of the principal Madras traders sent a representation to London on 17 December 1777, complaining of unpaid "Chinese Debts" and seeking active assistance from the British EIC. The traders warned of a danger of general bankruptcy among the hong merchants, and reported that the French were also seeking governmental assistance in collecting Chinese debts. On 23 December 1778, the Court of Directors in London sent instructions to the supercargoes at Canton to do all in their power, consistent with the interests of the EIC, to help collect these private debts.²⁵²

In July of 1779, the Madras creditors pressed for help from Rear Admiral Sir Edward Vernon, commander-in-chief of the British fleet in India, promising him ten percent of the amount of debt collected through his efforts.²⁵³ The Madras creditors took heart from the forceful resolution of the Wayqua case by the Qianlong Emperor and from a 1779 letter from Jean-Baptiste-Joseph de Grammont, a Jesuit missionary in Beijing, to a missionary in Macao which stated that if the Emperor knew of the debts to Europeans he would see that they were paid at once.²⁵⁴ Admiral Vernon accordingly dispatched the frigate *Sea Horse* under Captain John Alexander Panton, which reached Canton on 23 September 1779. His arrival dismayed the local EIC servants. The Supercargoes warned Captain Panton that his representation to the Canton officials would result in the bankruptcy and banishment of several hong merchants, as well as the restoration of the Cohong, but Panton intended to persist.²⁵⁵ Concerned that he was about to damage the EIC's ongoing trade, the Supercargoes presented Panton with a formal protest on 19 October 1779 warning him that he would be held responsible in damages "for all losses of Goods, Monies, demorrage [demurrage] for detention of Ships, and every ill consequence that may (and we think will) attend the present premature representation to the Viceroy of Canton for Debts owing to private Persons from the Chinese Merchants."²⁵⁶ The hong merchants sought private negotiations. They offered Panton \$40,000, unsuccessfully, to withhold his letter and remonstrance.²⁵⁷

On 22 October 1779, Captain Panton appeared before Governor Li Zhiying and Hoppo Tu-ming-a, with representatives of the major foreign trading companies.²⁵⁸

The local trading company chiefs presented a petition asking that their business not be harmed by Panton's conduct. They were asked if they had any claims to make against the debtor hong merchants, for their companies or on behalf of individual citizens of their countries, and they said no, with the exception only of the EIC.²⁵⁹ As described by Samuel Shaw,

“[H]is Excellency [Governor Li Zhiying] assured Captain Panton that proper inquiries would be made; and likewise told him, that the emperor, in 1760, having been informed of the distresses occasioned to the merchants, in consequence of borrowing money from the Europeans at a high premium, had issued an edict, forbidding such loans upon any conditions, under penalty to the European of a forfeiture of his money, and of banishment to the Chinese, -- a circumstance well known to all the Europeans and Chinese in Canton, the edict having been published in the usual manner, and translated into several European languages. He added, that, notwithstanding this flagrant violation of the emperor's edict, his Majesty should be made acquainted with the present application, and Captain Panton might come back for his answer the succeeding year.”²⁶⁰

On 6 November 1779, Captain Panton received the reply of the Governor and Hoppo, stating that “Justice [will] be done agreeable to Imperial Laws.” He departed for Madras on 8 November 1779, emptyhanded.²⁶¹ Before departure, the Captain issued a proclamation, forbidding the lending of money to the Chinese by British subjects.²⁶²

Captain John Alexander Panton was not the only foreigner who vexed the Canton authorities in 1779-80. There was also the remarkable Abraham Leslie, a junior surgeon employed by the British EIC, who had lent much of his savings to Coqua at high interest, and stood to lose \$11,000 in his insolvency. On 4 October 1779, with loaded pistols in hand, and the support of several Lascars and large dogs, he seized Coqua's hong and all its contents. Leslie posted his name above the door and raised a blue flag reading “Leslie, an English merchant, has taken possession of this hong until he is paid,” in English and in Chinese. He then remained in possession for two (2) years, refusing orders by Chinese officials to vacate the premises, and orders by the EIC to return to quarters. After debt proceedings were commenced against Yngshaw, Leslie broke the official seals that secured the door to Yngshaw's shuttered hong and seized it on 22 September 1780, now as agent for a third party creditor. Again, he posted signs, stating that possession had been taken until the creditor was paid. He took down the lanterns marked with the name of Yngshaw's hong (Taihe) and replaced them with lanterns marked with his name in Chinese. The Chinese carpenter who helped Leslie prepare the signs was put in irons for the translation offense. Leslie put up a sign in English advertising rooms for rent, the income to be applied to reduce debt, and rented a room in the Taihe hong to an English captain from a private ship. He defied Chinese and EIC demands to vacate both hong premises, and posted Laskar guards to prevent approach. The Chinese authorities grew increasingly frustrated that the British either would not or could not control their own employee. “[S]carcely a month passed in which the Chinese authorities did not demand angrily why the supercargoes did not coerce him into being obedient to the laws and doing right and justice.” At the end of 1780, the incumbent Governor, Li Hu, offered \$17,500 as a

lump sum in satisfaction of the Coqua, Yngshaw and Kewshaw debts, to induce Leslie to yield up the premises. Leslie accepted, and the money was paid through Puankhequa on 17 January 1781, but he then refused to leave. Abraham Leslie was finally arrested, delivered to Macao, imprisoned there for a period of time, and deported.²⁶³

On 29 February 1780, three months after Captain Panton returned to Madras, the Governor and Hoppo issued a joint communication:

“The Select Committee were ‘reminded’ of the Imperial Decree of the 25th year of Kienlung [Qianlong] (1760), by which the taking of loans at interest by Chinese from Europeans, or by Europeans from Chinese, was strictly prohibited under penalty of banishment (transportation) to Ili for the Chinese, and forfeiture of the loan for the Europeans; they were also ‘reminded’ of the provision of Chinese law that accumulated interest should not be allowed to exceed the original principal of a loan, i.e. that no loan should be more than doubled by interest. A statement was to be drawn up, distinguishing between money lent before and money lent after the twenty-fifth year; and efforts were to be made to effect a settlement.”²⁶⁴

All of the supercargoes and creditors claimed ignorance of the decree prohibiting foreign loans.²⁶⁵ An accounting of foreign debt, distinguishing between loans made before and after the date of the 1760 edict, was requested, and provided. At a 22 March 1780 meeting of the Hoppo and EIC representatives, the Hoppo “appeared surprised at the largeness of the Sum; which he observed greatly exceeded” the debtors’ estimates. Negotiations ensued, but the private British creditors, emboldened by armed naval support from Madras, rejected the Chinese proposals.²⁶⁶

The sums involved in the “Chinese Debts” crisis of 1779-80 were large indeed. British creditors asserted \$4,296,650 [3,093,588 taels] in claims, including substantial accrued interest. The amount of the claims of other nationals is unknown, but the claims of French citizens alone have been estimated at over \$600,000. It appears that claims of foreigners other than the British were not paid in the wake of the crisis. In the 22 October 1779 audience before Governor Li Zhiying and Hoppo Tu-ming-a, the other trading company chiefs had stated that they had no such claims. The Dutch, Danish, French and Swedish communities were dismayed that the dividend to pay claims was funded by a tax put on their trading; “for, though there were creditors of the bankrupt Chinese among their respective companies’ servants, yet they did not dare avow their claims, and of course were entirely excluded.”²⁶⁷

All the hong merchants were involved. The primary debtors were Yngshaw (Yan Shiying of the Taihe hong), Coqua, Seunqua III (Cai Zhaofu of the Yifeng hong), and Kewshaw (Zhang Tianqiu of the Yuyuan hong), who owed, respectively: \$1,354,713, \$1,151,299, \$634,784 and \$438,735 to British creditors.²⁶⁸ The Seunqua III debt was largely the original principal amount plus accruing interest brought forward from the 1775 failure of his father Seunqua II’s Zhufeng hong. Yngshaw’s hong had long struggled under the burden of debts assumed by former proprietor Sweetia in the Beau Khequa settlements of 1759-60. In addition to debt to British creditors, Yngshaw owed customs duties and \$1,300,000 to Chinese creditors.²⁶⁹ Puankhequa I paid off his \$75,672 debt on 28 February 1780.²⁷⁰

Yngshaw, Kewshaw and Munqua (Cai Shiwen of the Fengyuan hong) had their debts brought before the magistrates in 1780, in proceedings evidently instigated by Puankhequa when debt settlement negotiations stalled.²⁷¹ Puankhequa is said to have paid officials 30,000 taels (\$41,667) to speed the Yngshaw and Kewshaw matters, seeking to acquire their properties cheaply in a distress sale.²⁷² Munqua avoided bankruptcy by entering into and performing a plan under which his British creditors agreed to accept payment of their \$141,112 in claims over three years with 5% interest. Munqua then assaulted Puankhequa, unsuccessfully trying to kill him "with a dagger to the chest."²⁷³

The spectacular failures of 1780 left six surviving hong merchant firms, only four of which had appreciable business -- Puankhequa, Chowqua, Shy Kinqua and Munqua. The Canton officials put intense pressure on these merchants to agree to resolve the massive debts of their failed guild colleagues. Hoppo Tu-ming-a ordered them to come to his office, daily, waiting from morning to night, but never received by him. This was a ruinous diversion from active business. The Hoppo's deputy, the *weiyuan*, questioned the merchants over and over about paying the debts of the bankrupts. The merchants adamantly refused to do so. Their collective responsibility as security merchants was limited. They might be required to pay unpaid customs duties only, but not all debts incurred by other hong merchants. The *weiyuan*, increasingly exasperated, said he would disgrace the merchants by putting chains upon their necks unless they signed an agreement to assume these liabilities. The four merchants replied by offering to surrender their licenses and withdraw from foreign trade. The surviving records offer no further detail as to the persuasive force that was put to bear on the hong merchants in these "negotiations," but they were pressed very hard by the officials. If they did not agree, their lives would be made miserable. The four hong merchants ultimately gave in and signed an agreement assuming collective liability for foreign debts. The final terms did not represent total surrender, but they rather reflect negotiation with the Canton officials. The hong merchants agreed to accept liability for the foreign debts of failed colleagues, as demanded. For their part, the officials agreed to impose a new tax on the trade that would be used to support a newly created guaranty fund, to be maintained by the hong merchant body under state supervision. The fund was supposed to cover debt repayment on a current basis and in the future. The hope was that the burden on the guild would be minimized, with the repayment expense being passed on to foreign customers in the form of the new tax.²⁷⁴

In theory, the collective guarantee of foreign debt accomplished a Confucian ideal. Should a debt problem arise, a guaranty payment would solve it. Any occasion for dispute and legal process would be obviated, and harmony would be maintained between the Chinese and foreign trading communities. Unfortunately, the results of the actual practice of collective liability for debt did not conform with Confucian theory.

In addition to collective liability for foreign debts, which was enforced against them by the state, the hong merchants were also burdened with two other types of guaranty liability to foreign traders. The first type of guaranty was based on kinship. There was an expectation that, to the extent possible, sons, near relations, business co-venturers, and even other merchants who were close friends would step forward and pay the debts of a failed hong merchant. This was generally conceived

as a social duty. However, where property was held in common, whether in a joint venture or by a family group, collective liability might exist under Chinese law. In that situation, “the [common] debts of the father became the debts of the sons, who themselves could be held accountable for the others’ bad business dealings.”²⁷⁵ The second type of guaranty existed in the tea trade, which was the heart of the export business of Canton. Here a liberal return credit had long been customary in cases of defective or substandard teas, an effective guaranty which could be held applicable even to teas shipped years earlier. Numerous examples of this practice appear in the records of the British EIC, and also in the records of collection suits by hong merchants against American debtors.²⁷⁶ “By the mid-eighteenth century, it was generally assumed by all companies that any tea that could not sell in Europe for the normal going market prices must have been in some way contaminated when it was packed, and so the Chinese merchants must bear the loss. What this meant, of course, was that in practice, Chinese merchants guaranteed the profitable sale of every chest they sold to the companies.”²⁷⁷

In the wake of the “Chinese Debts” crisis, the claims of foreign creditors against the stricken hong merchants were decided under Chinese law. Aggressively pressed by foreign creditors, the terms of claim resolution by the Chinese authorities were firmly expressed as well. European claims against Coqua were entirely disallowed, on the basis that they had been waived by not being asserted when Coqua was petitioned against in 1779. Claims for accumulated interest were slashed, under the traditional rule capping allowable interest at no more than the original principal amount of the loan. The amount of “Chinese Debts” thus ordered repaid was about twenty percent of the face amount of stated claims.²⁷⁸ The result was reported in a 15 May 1780 joint memorial to the Emperor by Governor Li Zhiying and the Hoppo. After referral to and upon the joint recommendation of the *Li Bu* (Civil Office) and *Xing Bu* (Justice Office) in Beijing, the memorial was approved by the Qianlong Emperor on 7 July 1780.²⁷⁹ The hong merchants thus assumed approximately 600,000 taels (\$833,333) in British creditor debts of Yngshaw and Kewshaw, which they thereafter paid without interest in ten annual installments, completed in 1790.²⁸⁰

The Imperial Edict of 7 July 1780 required that in future the hong merchants should fix uniform prices and be under direct official supervision. To accomplish this, the merchants of the outer seas guild (*waiyang hang*) would henceforth meet at a stated place under the direction of the *Weiyuan*. The Hoppo's representative would have a say in prices, levies and perquisites voted at meetings, as well as access to the books of member merchants. This knowledge facilitated subsequent exactions by the Canton officials, timed “as they found the trade able to bear.”²⁸¹ Meetings of the merchants of the outer seas guild took place at their guild hall (*gongsuo*), which the foreign traders called the Consoo House, a grand building of stone and polished teak with several interior courtyards filled with flower gardens.²⁸²

The hong merchants were required to establish a fund for payment of the Yngshaw and Kewshaw debt, and other common obligations. The foreign traders called it the Consoo Fund, after the name of the guild hall where it was initially kept in specie in a chest or chests.²⁸³ The merchants of the native ports hong (*bengang hang*) were likewise ordered to establish a Consoo Fund in 1780, and it too was funded by a levy on trade. Some of these merchants incurred considerable foreign

debt, which exhausted their distinct Consoo Fund, and with that the native ports hong was ordered abolished in 1795. Individual outer seas hong merchants were subsequently ordered to pay the remaining debts of the native ports hong merchants on a rotating basis, which was done until about the year 1803.²⁸⁴

The purpose of the Consoo Fund of the outer seas guild (*waiyang hang*) was to pay charges sought by the government from the hong merchants. These included:

Payments on account of unpaid customs duties or foreign debts incurred by insolvent hong merchants;

Governmental demands for funds for public service projects, such as military defense or flood relief;

The collective obligation of all members to share in the cost of purchasing singsong curiosities as official presents for the Emperor; an

Fees, donations and gratuities paid each year to various officials.

Each hong merchant was required in 1780 to make an initial 6,000 tael (\$8,333) contribution to establish the fund. The Consoo Fund was also to receive the income stream from a set of surcharges on traded goods, which became known as the *hangyong*, or “disbursement for [hong merchant] trade.” Puankhequa, as head merchant, reported the surcharges to the EIC's Council of Supercargoes on 16 March 1781.²⁸⁵ A few years later, Hoppo Li Zhiying authorized an increase in the number of goods subject to Consoo Fund charges to sixty-nine.²⁸⁶ The only goods not subject to Consoo Fund charges were woolens, calicos and iron, articles in which Puankhequa had a near monopoly of trade and which he caused to be exempted from the levy on the trade.²⁸⁷ This list of import and export items monopolized by the hong merchants and surcharged for the benefit of the Consoo Fund was continued to the end of the hong system.²⁸⁸

In August 1780, before the Emperor's edict had arrived, Captain Panton and the *Sea Horse* once again appeared at Canton. This time Panton had been sent by Admiral Sir Edward Hughes, successor to Admiral Vernon, to press the Governor-General for “a statement of his intentions regarding the debts ‘justly due His Majesty’s subjects.’” The voyage was made in spite of the objection of the Governor and Council of Fort St. George (Madras). Captain Panton was seen in audience by the Chinese Governor-General, and he presented Admiral Hughes’ letter to him, but no explicit assurances were provided by the Chinese authorities.²⁸⁹ The “Chinese Debts” matter was soon resolved with the arrival of the Imperial Edict of 7 July 1780, discussed above. The EIC thereafter declined further requests for cooperation in the matter of the collection of these debts.²⁹⁰ Earl Pritchard summarizes the results of the unfortunate episode:

“Thanks to the Private creditors’ usurious demands backed up by gun-boat diplomacy, of the \$4,400,222 claimed by them not over \$1,198,189, slightly more than the total principal, was ever required to be paid them. Had they not called in the aid of the Navy and had they accepted the supercargoes’ advice in 1779, over twice this amount might have been realized, Yngshaw and Kewshaw saved from bankruptcy, and the establishment of the Co-hong and the Consoo fund prevented.”²⁹¹

At Canton, order finally prevailed. The two year tempest with foreign creditors concerning hong debts stood resolved. While payment was required to be made by the entire guild, it was in an amount substantially less than the total claimed to be due by foreign creditors, and was stretched over ten years without interest. A tax had been imposed on the trade to fund debt repayment and also other guild obligations to the state. The Consoo Fund, immediate recipient of the tax, existed in the form of cash in chests, secure in the guild hall. Although the fund did not have independent management, employees, or supervision, it was closely watched by the hong merchants and by the supervising Canton officials. While this new arrangement – the Canton Guaranty System -- had been imposed on the hong merchants under duress, there was reason to hope that the *hangyong* tax would cover all expenses and that little would really change. A long period of difficulties had been resolved and the future looked bright.

1 Wills, *Pepper, Guns and Parleys*, p. 42.

2 Cheong, *Hong Merchants*, p. 219; White, "Hong Merchants," pp. 38-41; Wills, *Embassies and Illusions*, p. 108.

3 Cheong, *Hong Merchants*, p. 30.

4 Wills, *Embassies and Illusions*, p. 109.

5 White, "Hong Merchants," pp. 29-30; Marks, *Tigers, Rice, Silk, and Silt*, p. 156 n.78; Hummel, *Eminent Chinese*, pp. 635-6; Spence, "K'ang-hsi Reign," p. 137.

6 Zhao, "Shaping the Asian Trade Network," pp. 131-3 and 135; Wills, *Embassies and Illusions*, pp. 42-44 and 88; Wills, *Pepper, Guns and Parleys*, pp. 108-9; Bowra, "Manchu Conquest," pp. 231 and 234.

7 Cheong, *Hong Merchants*, pp. 31-5, 59, 133, 219 and 300; Earl H. Pritchard, "Anglo-Chinese Relations During the Seventeenth and Eighteenth Centuries," *Univ. of Ill. Studies in the Social Sciences*, Vol. 17, Nos. 1-2 (March-June 1929), pp. 77-8. See Zhao, "Shaping the Asian Trade Network," p. 136 (overseas venture activities of Manchu princes).

8 Sung, "A Study of the Thirteen Hongs," p. 13.

9 Cheong, *Hong Merchants*, pp. 32, 37-8 and 107; Fairbank, *Trade and Diplomacy*, Vol. I, pp. 50-1; Sung, "Study of the Thirteen Hongs," pp. 13, 30 and 104-5.

10 Van Dyke, *Merchants of Canton and Macao*, p. 87.

11 Sung, "A Study of the Thirteen Hongs," p. 13. Sale of public titles and degrees which did not directly qualify the holder for public office, through the Contribution Office (*juannafang*) of the Board of Revenue, was formalized on a permanent basis during the Qianlong era (1736-96). See Elisabeth Kaske, "Fund Raising Wars," pp. 90-93; Elisabeth Kaske, "The Great 1830 Forgery Case: Metropolitan Clerks and Venality in Qing China" (unpublished paper presented at The Fairbank Center for Chinese Studies, October 24, 2008), pp. 3-4.

12 White, "Hong Merchants," pp. 150, 154-6 and 173-4.

13 Cheong, *Hong Merchants*, p. 162; Hummel, *Eminent Chinese*, p. 605.

14 Cheong, *Hong Merchants*, pp. 107 and n.101, 211 and 264; Ch'en, *Insolvency*, pp. 187-8 and 191. Singyquan (Wang Shengyi), an Anhwei merchant who traded with the EIC in the mid-1700s, had a purchased title as a candidate at the Imperial

College. Cheong, pp. 100 and 107 n.101. The elder brother of the Tongshun hong merchant Samqua (Wu Tianyuan), Wu Tianxian, purchased the rank of expectant daodai, and Wu Jianzhang, a near relative, purchased the academic title of Imperial College student. Chang, Chinese Gentry, pp. 155-6; Fairbank, Trade and Diplomacy, Vol. I, p. 395; Sung, "A study of the Thirteen Hong," p. 28.

15 White, "Hong Merchants," p. 149.

16 Cheong, Hong Merchants, pp. 107, 108 and 268.

17 Ch'en, Insolvency, pp. 24-9; Downs, The Golden Ghetto, p. 76.

18 Cheong, Hong Merchants, p. 194; Van Dyke, Canton Trade, p. 22; Edwards, "Ch'ing Legal Jurisdiction Over Foreigners," p. 227.

19 It is said that the term "Hoppo" was derived from "Hu Bu" (the Qing Board of Revenue). Ch'en, Insolvency, p. 24; Frederic Wakeman, Jr., "The Canton Trade and the Opium War," pp. 163-212 in John K. Fairbank, ed., The Cambridge History of China, Vol. 10, Late Ch'ing, 1800-1911, Part I (Cambridge: Cambridge Univ. Press, 1978), p. 163. In his 1887 Leiden treatise, Abram Lind offers an intriguing alternative attribution. Lind proposes that the term "Hoppo" might have derived from a Chinese term for surety, on account of the Hoppo's financial responsibility to the state for customs duties. This explanation seems unlikely, as there is little evidence of foreign trader awareness of the term Lind cites, as opposed to Hu Bu, an important national office of which there was considerable knowledge. Abram Lind Jr., A Chapter of the Chinese Penal Code (Leiden: E.J. Brill, 1887), p. 30 ("[Hu Bao] These words contain the great principle of mutual security, that pervades all Chinese institutions. I should like to make a conjecture here as to the origin of the word Hoppo, well known in English-Chinese commerce. Might not that word, denoting a magistrate, specially created for Canton, charged with the control of the commercial intercourse between foreigners and the inhabitants, owe its derivation to the above cited expression, which in Canton has the same sound of Hu po? This Hoppo formerly had to stand security to Government for the revenue derived from foreign trade (Vide Morrison »A Chinese commercial Guide 1844 p. 148) and it would not at all be improbable that the English, often hearing them spoken of as sureties (Hupo), have taken that word to denominate them."). The author is grateful to Koos Kuiper for bringing Abram Lind to his attention and for sharing Mr. Kuiper's considerable insights about this important early Leiden scholar of Chinese law.

20 Ch'en, Insolvency, p. 24; Cheong, Hong Merchants, p. 194; Zhao, "Shaping the Asian Trade Network," pp. 241 (Nationwide, "from 1685 to 1720, all 175 customs directors came from the banners, and 141 of these were Manchu. Many of these Manchu officials had served in the Ministry of War, the imperial household (neiwufu), and so on before coming to the maritime customs office.") and 243.

21 Basu, "Asian Merchants and Western Trade," pp. 268-9 (quoting from "Concerning European Ships and Trade to Canton," by a Native Chinese, translated from the original manuscript (undated), British Museum, pp. 30-38) (Pinyin Romanization has been supplied in the place of the Wade-Giles Romanization in the original).

22 Ch'en, Insolvency, p. 27; Wong, Yeh Ming-ch'en, p. 4.

23 Wong, Yeh Ming-ch'en, pp. 38 and 48.

24 Ch'en, Insolvency, pp. 27 and 408 n.58.

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- 25 Ch'en, Insolvency, pp. 198 and 408 n. 58.
- 26 Cheong, Hong Merchants, pp. 65, 104 and 92 n.51; Van Dyke, Canton Trade, pp. 11-12 and n.21 and 165.
- 27 Cheong, Hong Merchants, p. 202.
- 28 Van Dyke, Canton Trade, p. 25.
- 29 Ch'en, Insolvency, pp. 8-9 n.19.
- 30 Cheong, Hong Merchants, pp. 92 and 95; Robert Bennet Forbes, Remarks on China and the China Trade (Boston: Samuel M. Dickinson, 1844), pp. 11-12.
- 31 Ch'en, Insolvency, pp. 123, 126, 329 and 349.
- 32 Ch'en, Insolvency, pp. 123 and 317; Cheong, Hong Merchants, p. 221 ("In 1782-84, Howqua I [Lin Shimao] disbursed 84,000 taels for rejecting a chop, taking up a place in the salt gabelle, obtaining release from it, and returning to the Canton trade: roughly 21,000 taels for each wrong turn.").
- 33 The 1826 fee was occasioned by transfer of the license of the Yihe hong to Howqua's son Wu Yuanhua. The son died in 1833, triggering re-transfer of the license, additional fee unknown. Ch'en, Insolvency, pp. 123 and 126.
- 34 Ch'en, Insolvency, pp. 126, 316 and 394 n.58; White, "Hong Merchants," pp. 93-94.
- 35 Ch'en, Insolvency, p. 123; Cheong, Hong Merchants, p. 221 (dating the practice to the 1780s).
- 36 Ch'en, Insolvency, pp. 133-137 and 253.
- 37 Ch'en, Insolvency, p. 257.
- 38 Ch'en, Insolvency, pp. 10-11; Cheong, Hong Merchants, pp. 92-3, 105, 205 and 237 n.49.
- 39 Leonard Blussé, Strange Company: Chinese Settlers, Mestizo Women and the Dutch in VOC Batavia (Dordrecht, Foris Publications, 1986), pp. 94-96; Ch'en, Insolvency, pp. 10-11; Cheong, Hong Merchants, pp. 92-3, 105, 205 and 237 n.49; Jennifer W. Cushman, "Duke Ch'ing-fu Deliberates: A Mid-Eighteenth Century Reassessment of Sino-Nanyang Commercial Relations," Papers on Far Eastern History, Vol. 17, pp. 137-56 (1978), pp. 145-56; Cushman, Fields from the Sea, pp. 129-130; Edwards, "Ch'ing Legal Jurisdiction Over Foreigners," p. 227; Fairbank, Trade and Diplomacy, Vol. I, pp. 51-2; Rowe, China's Last Empire, p. 142; Van Dyke, Merchants of Canton and Macao, p. 74; White, "Hong Merchants," p. 48; Zhao, "Shaping the Asian Trade Network," pp. 137-139.
- 40 Cheong, Hong Merchants, p. 205; Pritchard, "Crucial Years," pp. 126-7; Morse, Chronicles, Vol. V, pp. 29-30 and 37-44 (Appendix AI) (text of edicts).
- 41 Cheong, Hong Merchants, pp. 101-2 (edicts closed Ningpo to European trade in December 1757 and expelled the English from that port in January 1758).
- 42 Greenberg, British Trade, pp. 46-8.
- 43 Cheong, Hong Merchants, p. 208 ("Between 1727 and 1759, through a series of impeachments, accountability had been imposed on the Hoppo in four distinct areas of his administration: illegal taxes; speculation and patronage of client-merchants; fulfillment of quota; and staff discipline. A web of controls had virtually reduced a supernumary preferment with seemingly plenipotentiary powers unrestrained by accountability, to a bureaucratic appointment with the usual checks and balances.").
- 44 Cheong, Hong Merchants, p. 231.

45 Liu Yong, "The VOC Business Culture in China: How the VOC Did Business in Canton in the Eighteenth Century," pp. 235-248 in Evert Groenendijk, Cynthia Vialle and Leonard Blussé, eds., Canton and Nagasaki Compared 1730-1830: Dutch, Chinese, Japanese Relations (Leiden: Institute for the History of European Expansion, 2009), p. 241.

46 Cheong, Hong Merchants, p. 156.

47 Cheong, Hong Merchants, pp. 31 and 95.

48 Cheong, Hong Merchants, pp. 93 and 105.

49 Cheong, Hong Merchants, p. 95.

50 Ch'en, Insolvency, p. 11.

51 Greenberg, British Trade, p. 59.

52 Cheong, Hong Merchants, pp. 102-8 and 299.

53 Downs, The Golden Ghetto, p. 78.

54 Ch'en, Insolvency, pp. 184-5.

55 Collective liability for unpaid customs duties was enforced after 1755 in the cases of Beau Khequa (1758), Yngshaw and Kewshaw (1780) and Geowqua (1798). Ch'en, Insolvency, pp. 182-3 (Beau Khequa), 206 (Yngshaw and Kewshaw) and 217 (Geowqua); Cheong, Hong Merchants, p. 158 (Beau Khequa). The date of imposition of such liability is uncertain. No provision making the hong merchants collectively liable for customs duties is found in the EIC's English language translations of the foreign trade regulations of 1755 or 1760. Morse, Chronicles, Vol. V, pp. 29-30 and 37-44 (Appendix AI) (text of 1755 edicts) and 94-98 (Appendix AK) (text of the 1760 regulations) (text attached to this study as Appendix B).

56 Morse, Chronicles, Vol. V, pp. 13-4; Cheong, Hong Merchants, pp. 156, 225 and 274; Pritchard, "Anglo-Chinese Relations," p. 116.

57 Cheong, Hong Merchants, pp. 166, 281 and 349; Van Dyke, Canton Trade, pp. 25 and 97; Morse, Chronicles, Vol. V, p. 154. The term "sing-song" was also used to describe Chinese musical stage presentations. Downs, The Golden Ghetto, p. 80; Robert Burts, Around the World: A Narrative of a Voyage in the East India Squadron (New York: Charles S. Francis, 1840), Vol. II, p. 253; Greenberg, British Trade, pp. 22-3.

58 Van Dyke, Canton Trade, p. 25; Van Dyke, Merchants of Canton and Macao, p. 98; Morse, Chronicles, Vol. V, p. 14 (in August of 1754 the Hoppo "asked as a favour that he might have a first view of the curiosities brought in the ships, and that the prices might be reasonable. He was informed in reply that the supercargoes would use their influence in the matter, but that they had no control over these curiosities, which were the private property of the officers of the ships.").

59 Cheong, Hong Merchants, pp. 166, 205, 225, 227, 255 and 281; Morse, Chronicles, Vol. V, p. 71; Lo-shu Fu, A Documentary Chronicle of Sino-Western Relations (1644-1820) (Tucson: Univ. of Arizona Press, 1966), p. 220.

60 Morse, Chronicles, Vol. V, p. 10 ("A still further disadvantage is that the Security is looked upon by the Hoppo and other Mandarines, as the only Person to procure for them any Curiosities or Merchandize brought on that Ship, and this at the moderate Rule perhaps of One fourth of what the Security pays for them.").

61 Cheong, Hong Merchants, pp. 226 and 281; Pritchard, "Crucial Years," p. 200; Morse, Chronicles, Vol. II, p. 15, Vol. V, p. 154.

62 Cheong, Hong Merchants, p. 156 n.118.

63 Morse, Chronicles, Vol. V, p. 11.

64 Morse, Chronicles, Vol. V, pp. 13-4; Cheong, Hong Merchants, pp. 156, 225 and 274; Pritchard, "Anglo-Chinese Relations," p. 116.

65 Morse, Chronicles, Vol. V, pp. 29, 39 ("that every five of them enter into written Contract to be answerable for all their transactions in trade and fair dealing jointly and Separately.") and 41-4 ("joint bonds"); Cheong, Hong Merchants, pp. 94 and 205 n.64; White, "Hong Merchants," p. 56; Pritchard, "Crucial Years," p. 127.

66 White, "Hong Merchants," p. 59 (official concern about "clandestine thieves [who] connive at the loss of the nation's taxes").

67 Pritchard, "Crucial Years," p. 127.

68 Cheong, Hong Merchants, pp. 100-1 and 255; Edward L. Farmer, "James Flint Versus the Canton Interest," Papers on China, Vol. 17, pp. 38-66 (East Asian Research Center, Harvard University) (1963), p. 44; Pritchard, "Crucial Years," p. 128.

69 White, "Hong Merchants," p. 52.

70 Officials were troubled by reports of the presence of non-European foreigners on British vessels calling at Ningbo. Furthermore, the Europeans were disruptive and seemed to require close supervision. In September 1754, not long before Flint sailed north, an English seaman had been killed by a French seaman in a brawl at Canton. The episode required official intervention, with French trade at Canton finally having to be halted on British demand until the guilty man was delivered up for imprisonment (being ultimately freed by a royal act of grace). Cheong, Hong Merchants, p. 101; Pritchard, "Crucial Years," pp. 124-5 and 129.

71 Pritchard, "Crucial Years," p. 129.

72 Cheong, Hong Merchants, pp. 101-2; Pritchard, "Crucial Years," pp. 128-9; Farmer, "James Flint," pp. 45-7 (the 1756 Ningbo customs fee increase was rumored to have been secured with a 20,000 tael [\$27,778] bribe paid by Canton merchants to Beijing officials).

73 Cheong, Hong Merchants, pp. 101-2.

74 Farmer, "James Flint," pp. 47-8.

75 Pritchard, "Crucial Years," pp. 129-30.

76 Pritchard, "Crucial Years," p. 130; Cheong, Hong Merchants, pp. 254-5.

77 Pritchard, "Crucial Years," p. 130; Farmer, "James Flint," pp. 50 and 55; Morse, Chronicles, Vol. I, pp. 301-5.

78 Farmer, "James Flint," pp. 38-66, pp. 50 and 52.

79 Quoted in Fu, Documentary Chronicle, pp. 215-6; Farmer, "James Flint," p. 53.

80 Quoted in Farmer, "James Flint," pp. 53-5.

81 Fu, Documentary Chronicle, p. 216; Pritchard, "Crucial Years," p. 130.

82 Fu, Documentary Chronicle, pp. 222-4; Pritchard, "Crucial Years," pp. 130-1; Farmer, "James Flint," pp. 54-7; Morse, Chronicles, Vol. V, pp. 81-3; White, "Hong Merchants," pp. 63-4.

83 R. Randle Edwards, "The Old Canton System of Foreign Trade," pp. 360-378 in Victor H. Li, ed., Law and Politics in China's Foreign Trade (Seattle: Univ. of Washington Press, 1977), p. 363 ("This action violated a fundamental rule of traditional Chinese foreign relations which prohibited direct foreign contact with

Peking, with the exception of envoys from tributary states, who came very infrequently in accordance with a schedule prescribed by the Chinese court.”).

84 Cheong, Hong Merchants, pp. 107, 158-9, 205, 206 (“Li’s weiyuan Ch’i Shih-san and his minions, to whom the customs and trade administration was delegated, were found to have engaged in direct trade, indulged in extortion, and [to have] made state purchases at specially low prices. Thirty years earlier, most officials were corrupt and active in the trade; and now the orthodox view was that such activities were indictable. Although Li had no part in these crimes and he pleaded ignorance, he was held responsible for the conduct of his subordinates and was dismissed.”) and 225; Fu, Documentary Chronicle, pp. 217-9; Farmer, “James Flint,” pp. 42 and 54-6.

85 Cheong, Hong Merchants, pp. 107 and 158-9.

86 Quoted in Farmer, “James Flint,” pp. 52, 55 and 40-42; Hummel, Eminent Chinese, pp. 480-2 (“At any rate, owing to the European trade, official posts at Canton were regarded for more than a century as among the most lucrative in the empire, and Li Shih-yao, being the highest official there for more than fourteen years (longer than any other Governor-General in that port in the Ch’ing period), probably amassed a fortune.”); Cheong, Hong Merchants, p. 205; Fu, Documentary Chronicle, p. 216.

87 Farmer, “James Flint,” p. 58.

88 Farmer, “James Flint,” p. 59 (received on 24 March and publicly announced on 28 March 1760); Ch’en, Insolvency, p. 185 (a copy of the text of the regulations was obtained by the EIC and translated and recorded by them on 12 April 1760); Morse, Chronicles, Vol. V, pp. 89-90 (same).

89 Ch’en, Insolvency, pp. 9-11 and 184-5; Cheong, Hong Merchants, p. 106 n.99; White, “Hong Merchants,” pp. 53 and 63; Pritchard, “Crucial Years,” pp. 131 and 133-4 (table showing various Canton regulations as of 1760 and their dates of origin); Farmer, “James Flint,” p. 58.

90 Fu, Documentary Chronicle, pp. 224-6 (modern translation of the 1760 Regulations) (text attached to this study as Appendix A); Morse, Chronicles, Vol. V, pp. 94-98 (Appendix AK) (contemporary translation of the 1760 regulations) (text attached to this study as Appendix B).

91 Ch’en, Insolvency, pp. 9-10.

92 1760 Regulations, Rule No. 3, Appendix B to this study (contemporary translation) (Morse, Chronicles, Vol. V, pp. 96) (quoted). Also, 1760 Regulations, Rule No. 3, Appendix A to this study (modern translation) (“We should forbid Chinese merchants from borrowing capital from the foreign barbarians . . . The money which they borrow should be confiscated by the government.”) (Fu, Documentary Chronicle, p. 225).

93 1760 Regulations, Rule No. 3, Appendix A to this study (modern translation) (Fu, Documentary Chronicle, p. 225) and Appendix B to this study (Morse, Chronicles, Vol. V, pp. 95-6).

94 1760 Regulations, Rule No. 3, Appendix A to this study (modern translation) (Fu, Documentary Chronicle, p. 225).

95 Cheong, Hong Merchants, pp. 159 and 255 (“credit and debts [were] prohibited on pain of banishment from Canton for foreigners and exile to Ili for the Chinese.”); Waley-Cohen, Exile in Mid-Qing China, p. 5. Although Cheong states

(in the preceding quotation) that foreigners were subject to banishment from Canton under the 1760 Regulations, this possible penalty is not found in texts of the regulations the author has seen, nor is it mentioned by other scholars. The statute under which the hong merchants were banished, "collaborating with foreigners and cheating them out of their money," applied to Chinese subjects by its terms.

96 Cheong, *Hong Merchants*, p. 159 (under the 1760 Regulations, "future debts [were] prohibited on pain of forfeiture for the foreign creditor and banishment to Ili for the local debtor.").

97 Josiah Quincy, *The Journal of Major Samuel Shaw, The First American Consul at Canton* (Boston: William Crosby & H. P. Nichols, 1847), p. 312 (Governor Li Zhiying told Captain Panton on 22 October 1779 "that the emperor, in 1760, having been informed of the distresses occasioned to the merchants, in consequence of borrowing money from the Europeans at a high premium, had issued an edict, forbidding such loans upon any conditions, under penalty to the European of a forfeiture of his money, and of banishment to the Chinese, -- a circumstance well known to all the Europeans and Chinese in Canton, the edict having been published in the usual manner, and translated into several European languages.").

98 Morse, *Chronicles*, Vol. II, pp. 53-54 (On 29 February 1780 a joint communication was received from the Governor and Hoppo in which the foreigners "were 'reminded' of the Imperial Decree of the 25th year of Kienlung [Qianlong] (1760), by which the taking of loans at interest by Chinese from Europeans, or by Europeans from Chinese, was strictly prohibited under penalty of banishment (transportation) to Ili for the Chinese, and forfeiture of the loan for the Europeans; they were also 'reminded' of the provision of Chinese law that accumulated interest should not be allowed to exceed the original principal of a loan, i.e. that no loan should be more than doubled by interest.").

99 A memorial on proposed punishments, prepared during the "Chinese Debts" crisis of 1780, suggested that foreigners who lent money to hong merchants in future should have their money confiscated and that foreign offenders should be banished ("driven out back to his own country"). Ng, "Ch'ing Management of the West," p. 156.

100 Ng, "Ch'ing Management of the West," p. 164 ("hereafter, when the hong merchants owe the barbarians money for their goods, the annual amount shall not exceed 100,000 liang [i.e. taels]. If the debt exceeds that amount, the debt will be ordered to be cleared immediately. This law is in effect starting from this year.").

101 Ng, "Ch'ing Management of the West," pp. 174 ("the handling of the present case [of the junior hong merchants] was done in accordance with this law, as the amount of debts had been investigated and arrangement had been made for their repayment. If after the time limit of six years was up, and still the debts were not cleared, then the hong merchants would be punished according to the law.") and 176.

102 1760 Regulations, Rule No. 4, Appendix A to this study (modern translation) (Fu, *Documentary Chronicle*, pp. 225-6) and Appendix B to this study (contemporary translation) (Morse, *Chronicles*, Vol. V, pp. 96-7); White, "Hong Merchants," pp. 52-53; Pritchard, "Crucial Years," p. 134.

103 Cheong, *Hong Merchants*, p. 102.

104 1760 Regulations, Rule No. 3, Appendix A to this study (modern translation) (Fu, Documentary Chronicle, p. 225) and Appendix B to this study (contemporary translation) (Morse, Chronicles, Vol. V, pp. 95-6); Pritchard, "Crucial Years," p. 134.

105 Morse, Chronicles, Vol. V, pp. 27-28; Pritchard, "Crucial Years," p. 134; Cheong, Hong Merchants, p. 107.

106 Van Dyke, Merchants of Canton and Macao, pp. 105-110 (quotation at p. 110). Although the 1731 ban on communication with European firms is said to have been on pain of death, there is no record of enforcement of the rule with this penalty. "Tan Hunqua" was also known as "Ton Hunqua." Van Dyke, Merchants of Canton and Macao, p. 104. The rule prohibiting foreigners from studying or translating Chinese had an independent basis in the Chinese concern that foreigners might coopt or control Chinese citizens with whom they had open and uncontrolled contact. See Ng, "Ch'ing Management of the West," pp. 140-1 and 170-1.

107 1760 Regulations, Rule No. 2, Appendix A to this study (modern translation) (Fu, Documentary Chronicle, pp. 224-5) and Appendix B to this study (contemporary translation) (Morse, Chronicles, Vol. V, p. 95) ("At present there are Vagabonds [i.e. persons who have not been licensed as hong merchants] who build Handsome houses to allure Strangers for which they receive great Rents, who let them do many bad things, who come and go, occasion trouble, carry on illicit trade, defraud the Customs, and commit such like disorders."); Cheong, Hong Merchants, pp. 159 and 255-6; White, "Hong Merchants," pp. 52-53. Foreigners paid rent for the 'foreign factory' properties they occupied, and sometimes acted as landlord in turn, contracting with other foreigners as subtenants. Downs, The Golden Ghetto, pp. 90-1 (boardinghouse operations); William C. Hunter, Bits of Old China (Shanghai: Kelly and Walsh Ltd., 1911), pp. 33-5 (anecdote of the termination of an unauthorized attempted subtenancy of the Canton premises of the then absent Senn Van Basel).

108 1760 Regulations, Rule No. 1, Appendix A to this study (modern translation) (Fu, Documentary Chronicle, p. 224) and Appendix B to this study (contemporary translation) (Morse, Chronicles, Vol. V, pp. 94-5; Pritchard, "Crucial Years," p. 133. See Liu, "Dutch India Company," pp. 91 and p. 169 n.2 (the off-season varied among the various European companies in the 18th century. "[G]enerally speaking, the off-season of roughly four months would start from the end of February, March, or April, and last to the end of June, July, or August.").

109 1760 Regulations, Rule No. 5, Appendix A to this study (modern translation) (Fu, Documentary Chronicle, p. 226) and Appendix B to this study (contemporary translation) (Morse, Chronicles, Vol. V, pp. 97-8) ("The Foreign Ships have a great number of People, many of them are of a wild brutish Nature, and may easily occasion trouble, The Villainous Boat Men connect themselves with them, which occasions continual disturbances."); White, "Hong Merchants," pp. 52-53; Pritchard, "Crucial Years," p. 134; Van Dyke, Canton Trade, p. 66.

110 In traditional China, land was the preferred form of security to be pledged for a loan. Van der Sprenkel, Legal Institutions in Manchu China, pp. 11, 105-7 and Appendix 2 at 133-4 (examples of deed of sale, mortgage and loan documents). Tehanqua (Teunqua I) mortgaged his Yihe hong to the EIC early in 1756. After his father's death on 3 November 1759, Teunqua II visited the EIC offices with Tinqu and paid off the mortgage by tendering 3,000 taels. Ch'en, Insolvency, pp. 307 and

432 n.199; Cheong, *Hong Merchants*, pp. 171, 253 and 187 n.126 (suggesting that the payoff was spurred by the imminent mortgage ban of the 1760 Regulations); Morse, *Chronicles, Vol. V*, p. 74. The following documents were executed and delivered in 1756 to perfect the EIC mortgage on Teunqua I's Yihe hong: (a) an assignment by Teunqua; (b) a certificate from the Nanhai Xian of the assignment; (c) the "Writing or Deeds of Yee-ho Hong"; and (d) an attested assignment of these papers by the EIC. Morse, *Chronicles, Vol. V*, p. 74 (listing documents delivered to the hong merchant mortgagor by the EIC when the mortgage was paid off).

111 Fu, *Documentary Chronicle*, p. 224 n. 180 ("The original regulations had five articles -- but article II was divisible into two articles. These regulations were repeatedly revised until there were eight of them by which China regulated foreign trade prior to the Opium War.")

112 William C. Hunter, *The 'Fan Kwae' at Canton Before Treaty Days 1825-1844* (London: Kegan Paul, Trench & Co., 1882), pp. 28-30. While Hunter does not date his abridged version, its substance is identical to the content of the translation of the 1835 Regulations in the *Chinese Repository*, Vol. 3, pp. 579-584 (April 1835). The full text of the 1835 Regulations as published in the *Chinese Repository* and of the Hunter abridgement are attached to this study as Exhibits D and E, respectively.

113 1835 Regulations, Rule No. 2, Appendix E to this study (Hunter, *Fan Kwae*, p. 28).

114 Hunter, *Fan Kwae*, p. 28.

115 1831 Regulations, Appendix C to this study (Morse, *Chronicles, Vol. IV*, pp. 293-301 (Appendix AB) (contemporary translation of the 1831 regulations)), p. 294.

116 1835 Regulations, Appendix D to this study (*Chinese Repository*, Vol. 3, pp. 579-584 (April 1835) (contemporary translation of the 1835 regulations), p. 584.

117 Basu, "Asian Merchants and Western Trade," p. 276 ("it was always possible for the foreign community to enlist the aid of a Chinese language instructor or the drafter of their petitions. In fact, the East India Company developed an elaborate intelligence-gathering apparatus which gave them access to secret documents and communications.").

118 Edwards, "Ch'ing Legal Jurisdiction Over Foreigners," p. 244.

119 1835 Regulations, Appendix D to this study (*Chinese Repository*, Vol. 3, p. 579) ("also to command the hong merchants and linguists to enjoin orders on the barbarian merchants of every nation, for them to obey and act accordingly.").

120 There were thirteen hong in the years 1808, 1809, 1830, 1836 and 1837, and fourteen hong in the year 1835. Ch'en, *Insolvency*, pp. 14-18. Weng Eang Cheong suggests that the term "thirteen hong" may have "accidental and mundane" origins, such as the fact that there were thirteen first and second tier hong merchants in 1755 when the key organizational edicts were proclaimed. However, the term is of significantly older origin. It was used, for example, by Chu Dajun (d. 1696) in his "poems on Canton," the *Guangzhou Zhuzhici*. Cheong, *Hong Merchants*, p. 95 ("erudite speculation" on origins of the number thirteen); White, "Hong Merchants," p. 15-16; Sung, "A study of the Thirteen Hong," pp. 10 (Liang Jiabin has "abundant evidence to prove that the so-called Thirteen Hong had already existed before K'ang-hsi 59 (1720) and that this year was merely the year when the merchants of the Thirteen Hong were organized collectively (Kung-hang [Co-hong]). (See Chapter 1, Section 2.)"), 24-5 and 73. See Kato Shigeshi, "On the

Hang," p. 58 ("In China at present [1936] they use such an expression as 36 hang, 72 hang, or 360 hang, when they want to refer to the great varieties of trades.").

121 Greenberg, British Trade, p. 58.

122 1835 Regulations, Rule No. 5, Appendix D to this study (Chinese Repository, Vol. 3, pp. 582-3) and Appendix E to this study (Hunter, Fan Kwae, p. 29); Edwards, "Old Canton System," p. 364.

123 1831 Regulations, Rule No. 7, Appendix C to this study (Morse, Chronicles, Vol. IV, pp. 299-300; 1835 Regulations, Rule No. 5, Appendix D to this study (Chinese Repository, Vol. 3, pp. 582-3); Van Dyke, Canton Trade, pp. 23, 117-8 and 166.

124 1760 Regulations, Rule No. 3, Appendix A to this study (modern translation) (Fu, Documentary Chronicle, p. 225) and Appendix B to this study (contemporary translation) (Morse, Chronicles, Vol. V, pp. 95-6).

125 1831 Regulations, Rule No. 3, Appendix C to this study (Morse, Chronicles, Vol. IV, p. 297; 1835 Regulations, Rule No. 4, Appendix D to this study (Chinese Repository, Vol. 3, p. 582) and Appendix E to this study (Hunter, Fan Kwae, p. 29).

126 1831 Regulations, Rule No. 5, Appendix C to this study (Morse, Chronicles, Vol. IV, pp. 298-9; 1835 Regulations, Rule No. 2, Appendix D to this study (Chinese Repository, Vol. 3, p. 581) and Appendix E to this study (Hunter, Fan Kwae, p. 28); Edwards, "Old Canton System," p. 360; Morse, Chronicles, Vol. IV, pp. 234-5 and 238.

127 1831 Regulations, Rule No. 7, Appendix C to this study (Morse, Chronicles, Vol. IV, pp. 299-300; 1835 Regulations, Rule No. 5, Appendix D to this study (Chinese Repository, Vol. 3, pp. 582-3) and Appendix E to this study (Hunter, Fan Kwae, p. 29); Morse, Chronicles, Vol. IV, p. 174.

128 1831 Regulations, Rule No. 5, Appendix C to this study (Morse, Chronicles, Vol. IV, p. 299); Morse, Chronicles, Vol. IV, pp. 235 ("that hereafter Foreigners . . . must all, as of old, walk on foot -- they must not overstep their station, or rank, and go about in chairs."), 238 and 244.

129 Quoted in Edwards, "Old Canton System," p. 369 n. 29.

130 It remains uncertain whether the Cohong of 1760 had Imperial level authorization. Ann Bolbach White could not find any evidence that Governor-General Li Shiyao had sent a Memorial to the Emperor on the subject of this merchant group. White, "Hong Merchants," pp. 53-54; Cheong, Hong Merchants, p. 126 n.99 ("Merchants and Europeans were uncertain whether the court ever approved the [Cohong] charter or knew of it. On 14 August 1760 the Dutch sought EIC support to demand to see the charter of the Co-Hong; on 16 August the EIC reported that the Viceroy, Hoppo and Governor had imperial agreement and Tinquah had misled the Europeans and himself and in defying it had courted expulsion and deportation. In July 1761 the EIC asserted the guild had been approved by the Emperor on the mandarins' advice."); Liu, "Dutch India Company," p. 96 (when the Dutch pressed this question at a 15 August 1760 meeting with the hong merchants, "the Hong merchants fell silent.").

131 At a 21 August 1760 meeting at the Dutch factory the ten hong merchants had "solemnly declared . . . that they united in a corporation to conduct all sorts of trade at the instigation of the high-ranking mandarins, but that the Dutch were still free to negotiate with those members with whom they wanted to deal. It

mattered not one jot to them whether the Dutch traded with the corporation or one particular member since all the eggs were in the one basket." Liu, "Dutch India Company," p. 98.

132 Cheong, *Hong Merchants*, p. 269.

133 Dermigny, *La Chine et L'Occident*, Vol. 2, p. 834 (lettre de Michel à Rothe, 31 Déc. 1760) ("Nos marchands hannistes forment à présent une société à laquelle on a donné le nom de Compagnie chinoise; et, quoique tout le monde soit liqué contre elle, elle subsiste toujours et n'on fait pas moins la loi. Les intéressés dans cette Compagnie, qui s'avisent de prendre le titre de Directeurs, sont Pankekoa [Puankhequa], le grand Souikoa [Sy Hunqua], Souitsia [Sweetia], Chet-koa fils du vieux Sioukoa [Chetqua], Tamkoa [Tinquua], Tsankoa, Hykoa Conscience, Foutcha [Fotia] et Fatoukoa. Les voilà selon le rang qu'ils tiennent: Pankekoa comme chef a douze parts, le grand Souykoa 10, etc. Tioukoa qui étoit aussi de la Compagnie est mort depuis peu de temps, et Fatoukoa est à l'agonie: ce n'est pas une grand perte. Nous regrettons davantage le vieux Sioukoa et le tisserand Foukien, quoiqu'ils soient remplacés, l'un par son fils et l'autre par son frère. Tantinkoa qui étoit aussi un des Directeurs a été disgrâcié et renvoyé dans son pays de Chinchiou. Ankoa s'est retiré volontairement du commerce. Le fonds de la Compagnie est de 75 actions de 1,000 taels chacune."); Cheong, *Hong Merchants*, p. 220; Van Dyke, *Merchants of Canton and Macao*, p. 116 ("Tan [or Ton] Hunqua was included as a member of the Co-hong in August 1760, but his family was now among the smallest of the licensed Hong merchants. He and Foutia were the only two members who were asked to contribute a minimum of 2,000 taels. . . . The largest houses paid 10 to 12,000 taels.").

134 Ch'en, *Insolvency*, p. 11.

135 Ch'en, *Insolvency*, p. 11 n.27.

136 Ch'en, *Insolvency*, p. 10 n.22.

137 White, "Hong Merchants," p. 56.

138 Cheong, *Hong Merchants*, pp. 254 and 257.

139 White, "Hong Merchants," pp. 53-5.

140 Cheong, *Hong Merchants*, p. 165. Yu Bashi was posted to Canton as Hoppo in 1760. Cheong, p. 209.

141 1831 Regulations, Appendix C to this study (Morse, *Chronicles*, Vol. IV, pp. 293-301 (Appendix AB), p. 294 n. 1.

142 Liu, "Dutch India Company," pp. 92-100.

143 Morse, *Chronicles*, Vol. V, p. 92; Pritchard, "Crucial Years," p. 131; Cheong, *Hong Merchants*, p. 209.

144 Morse, *Chronicles*, Vol. V, p. 93.

145 Simon Yang-chien Tsai, "Trading for Tea: A Study of the English East India Company's Tea Trade with China and the Related Financial Issues, 1760-1833" (Ph.D. diss., University of Leicester, 2003), p. 295.

146 The 50,000 tael figure may represent (more risky) unsecured debt only; it is unclear whether this total includes the balance due on a 10,600 tael mortgage loan the EIC had made to Beau Khequa in 1754. Ch'en, *Insolvency*, p. 183; Cheong, *Hong Merchants*, pp. 157-8 and 253-54; Farmer, "James Flint," pp. 52-53 (in the 23 July 1759 Memorial of Zhili Province Governor-General Fang Guangcheng, Flint is quoted as having said that "The merchant Li Kuang-hua [Beau Khequa] borrowed

more than 50,000 taels capital from me and did not return it."); White, "Hong Merchants," p. 64 (although White states that Beau Khequa died owing 50,000 taels to James Flint, the actual creditor was Flint's employer the EIC).

147 Cheong, Hong Merchants, pp. 81, 149, 158 n.23 and 254; Ch'en, Insolvency, pp. 183, 225 and 273; Morse, Chronicles, Vol. V, p. 73; Van Dyke, Merchants of Canton and Macao, p. 91. Van Dyke states that as of 1753 -- five years before Beau Khequa died -- Beau Khequa, Sweetia, Suqua and son, and Tan Anqua were operating as a consortium and had advertised that they would be standing security for each other. The 1758 determination by the Nanhai and Panyu magistrates that only the Taihe hong merchant Sweetia would be liable for the deceased's debts, and for only half of that sum, indicates either that the consortium had ceased general operation by this date or that the mutual assumption of liability by its members was less sweeping when contracts were made than in the original advertisements or solicitations to contract.

148 Ch'en, Insolvency, p.185.

149 Cheong, Hong Merchants, pp. 141, 149 and 254; Ch'en, Insolvency, p. 273 (Yngshaw (Yan Shiyong) succeeded Sweetia, who was probably his father, as proprietor of the Taihe Hong in 1762 or 1763). Neither Sweetia's "personal name nor his surname is known, but in 1753, he was listed as Gon Swetia. It is probable that . . . Sweetia was related to this successor, Yen Shih-ying. The firm was known as T'ai-Ho when it failed in 1780. Sweetia was listed fifth among the six capital merchants of 1755, which confirms earlier remarks that the firm was not rich." Cheong, p. 149.

150 Van Dyke, Merchants of Canton and Macao, p. 191.

151 Cheong, Hong Merchants, pp. 228, 245 n.154, 256 (quotation) and 261-2.

152 Pritchard, "Crucial Years," p. 200; Pritchard, "Anglo-Chinese Relations," p. 143; Cheong, Hong Merchants, p. 257 (troubled condition of the various hongts during the 1760s); Van Dyke, Canton Trade, p. 20.

153 Van Dyke, Canton Trade, p. 20.

154 Cheong, Hong Merchants, pp. 228, 245 n.154, 256 and 261-2.

155 Morse, Chronicles, Vol. V, p. 142.

156 Ch'en, Insolvency, pp. 9-11 and 184-5; White, "Hong Merchants," pp. 53 and 58; Pritchard, "Crucial Years," p. 200; Cheong, Hong Merchants, pp. 110 and 165; Farmer, "James Flint," pp. 38-66, p. 41 and 42 ("Surely, Li Shih-yao and his father must have found some way to profit from the father's position on the Board of Revenue while the son was governor-general at Canton, and Li's fondness for that position was surely the result of its money-making potential. Often the English sources contain more information on such matters, as the bribe mentioned above or the rumor recounted below that the Canton people had spent 20,000 taels at Ningpo to influence trade policy. Chinese sources offer more numerous, but usually less lurid hints of what went on beneath the surface.").

157 Cheong, Hong Merchants, p. 95.

158 Of the six capital merchants of 1755 (Beau Khequa, Chai Suequa, Chetqua, Chai Hunqua, Sweetia and Puankhequa), Puankhequa I (Pan Zhencheng of the Tongwen Hong) stood unchallenged as chief merchant as of 1771. Cheong, Hong Merchants, pp. 86, 93 and 95. Beau Khequa (Li Guanghua of the Ziyuan hong) had died insolvent in 1758. Cheong, p. 254. The Taihe hong merchant Sweetia had died

indebted in 1761. Cheong, pp. 141 and 254. The Yifeng hong merchant Chai Suequa had died in 1761 (Yokqua took over the firm but did not succeed to the right to secure ships). Cheong, pp. 84, 94, 141 and 254. The Guangshun hong merchant Chetqua died indebted on 13 March 1771 (the hong was liquidated in 1778 after the failure of his successor Coqua). Cheong, pp. 141-3, 254 and 261; Ch'en, *Insolvency*, p. 271; Pritchard, "Crucial Years," p. 202; Van Dyke, *Merchants of Canton and Macao*, pp. 97-8 and 128. The Chufeng hong merchant Chai Hunqua had withdrawn from trade in 1768, leaving his heavily indebted firm to fail in the hands of his successor Sy Anqua (Seunqua II) in 1775, the year Chai Hunqua died. Cheong, pp. 84-5, 94-5 and 260-2.

159 Pritchard, "Crucial Years," pp. 200 and 234.

160 Pritchard, "Crucial Years," p. 234; Cheong, *Hong Merchants*, p. 107.

161 Ch'en, *Insolvency*, pp. 264-5 (quotation), 409 n.68 and 422 n.30; Cheong, *Hong Merchants*, pp. 85, 88, 257 and 260; Morse, *Chronicles*, Vol. II, p. 55.

162 Cheong, *Hong Merchants*, pp. 143, 172 and 259; Ch'en, *Insolvency*, pp. 226-7, 271-2 and 409 n.69; Van Dyke, *Merchants of Canton and Macao*, Plate 10.07 (between pp. 78-9) (communication to the VOC dated 18 April 1778, in Dutch, from Ingsia (Inksja), Chowqua (Tan Tsjoqua), Monqua (Munqua) and Tsjonqua, stating that although they had delivered a sealed letter to the Governor-General and Governor in Canton three days earlier on 15 April 1778, that letter had been returned to them unopened with the explanation that a report had already been sent to the Emperor, a month previously, concerning the matter).

163 Ch'en, *Insolvency*, pp. 186-8; Cheong, *Hong Merchants*, p. 257; Pritchard, "Crucial Years," p. 201.

164 Ch'en, *Insolvency*, p. 181.

165 Ch'en, *Insolvency*, pp. 188 and 182 n.6.

166 Ch'en, *Insolvency*, p. 188; White, "Hong Merchants," p. 68.

167 This part of the text of the 3 January 1777 edict is quoted in Chapter Two, at page 20, above. Ch'en, *Insolvency*, pp. 188-9; Cheong, *Hong Merchants*, p. 262; White, "Hong Merchants," pp. 68-9; Ng, "Ch'ing Management of the West," p. 146.

168 Ch'en, *Insolvency*, pp. 188-9; Cheong, *Hong Merchants*, p. 262; White, "Hong Merchants," pp. 68-9.

169 White, "Hong Merchants," p. 69.

170 White, "Hong Merchants," pp. 67-68.

171 Ch'en, *Insolvency*, p. 190; Cheong, *Hong Merchants*, p. 262; White, "Hong Merchants," p. 67; Pritchard, "Crucial Years," p. 201; Ng, "Ch'ing Management of the West," p. 144 ("If after one year, the sum could still not be cleared, then all the officials responsible for his case, namely, the viceroy, governor, the circuit intendant (ssu-tao), the prefect of the prefecture (chih-fu), magistrate of the county (chih-chou) and the magistrate of the district (chih-hsien) had to make up for the sum by deducting proportional amount from their salaries. These officials were further ordered to announce the emperor's edict to the foreigners so that they knew their money would be repaid and could go back home.").

172 Ch'en, *Insolvency*, pp. 195 and 200.

173 Pritchard, "Crucial Years," p. 132.

174 Morse, *Chronicles*, Vol. V, pp. 95 ("If there be any who abuse the Credit given them, and are Guilty of Rogueries, and it should come to the Knowledge of

the Mandarines, they shall be severely Judged according to the laws of the Country, and punished without any Grace.”) and 92 (assertion by the Hoppo that the Cohong of 1760 had been “designed to make the Merchants jointly answerable for every trouble, great or small, that the Europeans might occasion.”); Pritchard, “Crucial Years,” p. 211 (EIC “policy of appealing to the officials when the merchants could not meet their debts”); Liu, “Dutch India Company,” p. 99 (in a 22 August 1760 communication to the Dutch from the Governor-General, Governor and Hoppo, the officials said “you should realize without entertaining a single shred of doubt that everything had been done for your own benefit; if the merchants do not behave magnanimously under the present conditions, we shall punish them severely and our unfailing scrutiny will certainly make their deeds known to us in due time [for steps to be taken].”).

175 Jerome Alan Cohen, “Chinese Mediation on the Eve of Modernization,” *California Law Review*, Vol. 54, pp. 1201-26 (1966), pp. 1216-22 and 1210-1 (private mediation sometimes occurred as part of or in tandem with public judicial process); William C. Kirby, “China Unincorporated: Company Law and Business Enterprise in Twentieth-Century China,” *Journal of Asian Studies*, Vol. 54, pp. 43-63 (1995), p. 45.

176 Madeleine Zelin, “A Critique of Rights of Property in Prewar China,” pp. 17-36 in Madeleine Zelin, Jonathan K. Ocko and Robert Gardella, eds., *Contract and Property in Early Modern China* (Stanford: Stanford Univ. Press, 2004), pp. 17-8 (“county magistrates everywhere were inundated with litigation of an economic nature.”) and 23-4 (“Contracts were commonly used in an enormous variety of transactions, including household division (fenjia), betrothal, adoption and uxorilocal marriage, purchase of real and personal property, conditional sale, purchase of people, loan agreements, promissory notes and bills of exchange, partnership agreements, employment agreements, rotating credit agreements, contracts to transport goods (especially interesting because they deal with indemnification and insurance), pooling of resources for irrigation, social welfare, group investment, and the creation of lineage trusts, pawn, and contracts to agree to accept the decision of a mediator.”); Edwards, “Old Canton System,” pp. 369-71.

177 Jones, *Great Qing Code*, p. 6; Zelin, “Critique of Rights of Property,” p. 27 (a growing body of scholarship “indicates that people in late imperial and early modern China were highly litigious.”).

178 Van der Sprenkel, *Legal Institutions in Manchu China*, pp. 80-96.

179 Jones, *Great Qing Code*, p. 2; Cushman, *Fields from the Sea*, pp. 118-9 (“Imperial edicts, which became law until countermanded, provided the emperor and bureaucracy with a flexible medium for approaching contemporary problems. An edict was authoritative only as long as it was not rescinded by succeeding edicts, unless it was incorporated into the Ch’ing Code itself. Because edicts reflected imperial policy at one particular time, they should not be cited to document policy from another period until the sources have been thoroughly searched for any later edicts that may have nullified the earlier.”).

180 Jones, *Great Qing Code*, p. 6.

181 Jones, *Great Qing Code*, p. 3 (Jones suggests the term “codified precedent” as a better translation of li, which has traditionally been translated as “substatute”).

182 Van der Sprenkel, Legal Institutions in Manchu China, pp. 59 and 131 (Appendix 1) (layout of a specimen page of the Qing Code with an explanation of its arrangement and content).

183 Jones, Great Qing Code, p. 7.

184 Jones, Great Qing Code, p. 12. See Jones, Great Qing Code, Art. 99, p. 121 (provision penalizing eating melons or other fruit without authorization).

185 Kirby, "China Unincorporated," p. 44; Van der Sprenkel, Legal Institutions in Manchu China, p. 89.

186 Jones, Great Qing Code, p. 3. See Jones, Great Qing Code, Art. 44, p. 74 (direction to decide cases by analogy from the closest provision if no statute or rule precisely addressed the matter).

187 Zelin, "Critique of Rights of Property," pp. 21-2 ("Debt is one of the few areas of civil law in which the Code specifically assigns responsibility for adjudication to the state. ").

188 Cohen, "Chinese Mediation," p. 1209 ("It is true that there was tucked away in the Official Commentary to the Ch'ing Code (ta ch'ing lu li) a provision inherited from the Ming dynasty (1368-1644) that authorized certain rural leaders and elders (li-lao) to reconcile the parties to disputes over "petty matters" such as those relating to domestic relations and real property. But all other disputes were beyond the legal competence of the local leaders and elders and were required to be brought to the county (hsien or chou) magistrate, who served as both trial judge of general jurisdiction and the national government's principal administrative officer in the area. . . . And, regardless of the nature of the dispute, once it had been brought to the attention of the magistrate, the Code precluded the local leaders from disposing of it and prohibited private settlement of any kind.").

189 "If a powerful or influential person (in regard to those who are obligated to him because of a breach of contract) does not prosecute [a matter] before the official having jurisdiction, but, enforcing his private obligation, takes the domestic animals and property of another away by force, he will receive 80 strokes of the heavy bamboo. (If he does not take excess interest, permit [the obligor] to redeem [the items taken] but [the obligee] is not to be levied on [for them].) If when the price of the (domestic animals and property that have been taken away by force) is calculated, it exceeds principal and interest, calculate the excess, (and if the punishment [for that amount as illegally obtained property] is greater than 80 strokes of the heavy bamboo), sentence for illegally obtained property [Art. 345]. (The punishment is limited to 100 strokes of the heavy bamboo and penal servitude of three years.) As (for the excessive) quantity, levy and return to (the obligor)." Qing Code, Art. 149, § 3. Jones, Great Qing Code, p. 162 (italics in the original). See also Staunton, Ta Tsing Leu Lee, § 149, p. 160. As translator Jones explains, "the interlinear commentary [included in the Qing Code] is indicated by italics within parentheses. Square brackets ([]) are used to enclose explanatory material by the translators that is not contained in the Chinese text of the Code and the interlinear commentary." Jones, p. 29.

190 Jones, Great Qing Code, pp. 9-11.

191 Van der Sprenkel, Legal Institutions in Manchu China, pp. 66-9.

192 Van der Sprenkel, Legal Institutions in Manchu China, pp. 75 and 138; Cohen, "Chinese Mediation," p. 1213.

193 Van der Sprenkel, Legal Institutions in Manchu China, pp. 66-9.

194 Cohen, "Chinese Mediation," p. 1214.

195 Jones, Great Qing Code, p. 11.

196 Cohen, "Chinese Mediation," p. 1212; Van der Sprenkel, Legal Institutions in Manchu China, p. 135.

197 Jones, Great Qing Code, p. 11.

198 Van der Sprenkel, Legal Institutions in Manchu China, p. 67 n. 1; Jones, Great Qing Code, Art. 336, pp. 317-21; Staunton, Ta Tsing Leu Lee, § 336, pp. 364-71.

199 Van der Sprenkel, Legal Institutions in Manchu China, p. 69; Jones, Great Qing Code, p. 10.

200 Cohen, "Chinese Mediation," pp. 1206-7.

201 Jones, Great Qing Code, p. 28.

202 Van der Sprenkel, Legal Institutions in Manchu China, pp. 76-7; Evariste Régis Huc, A Journey Through the Chinese Empire, Vol. 1 (New York: Harper & Brothers, 1856), pp. 124-5

203 The elites fared better. The Qing Code specifies eight classes of persons whose cases are to receive special consideration, with interrogation (i.e. beating) prohibited except after disclosure to and approval from the Emperor. Jones, Great Qing Code, Art. 3 and 4, pp. 36-38. Sybille van der Sprenkel cites a passage from the famous early Qing novel, The Dream of the Red Chamber, as evidence of the favored treatment of local elite families. In the novel, "a magistrate newly arrived at his post (and particularly conscientious since he has just been reinstated after losing a previous appointment on account of his unsatisfactory conduct) is full of zeal to arrest a murderer, until he discovers that the suspect is related to one of the families which, his staff inform him, should on no account be implicated. Every yamen, it is explained, has its 'hu kuan fu,' magistrate's protective charm, that is, a list of families who have important connections with government circles (or at least who have relatives who hold important posts elsewhere) against whom the magistrate would proceed at his peril." Van der Sprenkel, Legal Institutions in Manchu China, p. 73.

204 Petition of Conseequa, a Hong Merchant of the City of Canton in China, 10 February 1814 (contemporary English language translation). Despatches of United States Consuls at Canton, Volume I, National Archives, Washington, D.C.; published in File Microcopies of Records in the National Archives, No. 101, Roll 1; Tyler Dennett, Americans in Eastern Asia (New York: The MacMillan Co., 1922), p. 86; Fu, Documentary Chronicle, pp. 391-3 (modern translation).

205 Van Dyke, Merchants of Canton and Macao, p. 118.

206 Jones, Great Qing Code, Art. 332, p. 314.

207 As a detail, it is unclear whether the foreign creditors' initial petition stood as their "claim" against the debtor, or whether an opportunity for amendment was provided when other creditors were allowed to submit claims after a debtor was determined to be insolvent.

208 See, for example, Bruce Mann, Republic of Debtors: Bankruptcy in the Age of American Independence (Cambridge: Harvard Univ. Press, 2002); Edward J. Balleisen, Navigating Failure: Bankruptcy and Commercial Society in Antebellum America (Chapel Hill: Univ. of North Carolina Press, 2001).

209 See generally Van Dyke, *Merchants of Canton and Macao*, p. 17. There does not seem to have been a firm rule as to the priority of distribution of the proceeds of liquidation of the assets of debtors as between foreign and Chinese creditors.

210 See, for example, United States Constitution, Art. 1, § 8, cl. 4, which authorizes Congress to enact “uniform Laws on the subject of Bankruptcies throughout the United States.”

211 Lind, *Chapter of the Chinese Penal Code*, p. 19 (“A doctrine of contracts, laws on bankruptcy etc. are totally unknown.”).

212 Jones, *Great Qing Code*, Art. 149, § 1, p. 161; Staunton, *Ta Tsing Leu Lee*, § 149, p. 158; Cheong, *Hong Merchants*, p. 256; Jing Junjian, “Legislation Related to the Civil Economy in the Qing Dynasty,” pp. 42-84 in Kathryn Bernhardt and Philip C.C. Huang, eds., *Civil Law in Qing and Republican China* (Stanford: Stanford University Press, 1994), pp. 72 (Qing Code Art. 149) and 77 (origins of the statutory rule of *yi ben yi li*).

213 Morse, *Chronicles*, Vol. II, pp. 53-54; Pritchard, “Crucial Years,” p. 209 (the creditors claimed ignorance of this rule of law).

214 Edwards, “Ch’ing Legal Jurisdiction Over Foreigners,” p. 244 (in 1821, translations of the statutes on jurisdiction over aliens (*hua wairen*), homicide in a fight (*dou’ou sharen*) and policemen killing in self defense an offender resisting arrest (*gesha*) were delivered “for the instruction of the barbarian.”).

215 Edwards, “Ch’ing Legal Jurisdiction Over Foreigners,” pp. 230, 243 and 259.

216 Edwards, “Ch’ing Legal Jurisdiction Over Foreigners,” pp. 255-9.

217 Jones, *Great Qing Code*, p. 12.

218 Ch’en, *Insolvency*, pp. 181, 188 and 191.

219 Ch’en, *Insolvency*, pp. 188 and 182 n.6.

220 White, “Hong Merchants,” p. 68.

221 Waley-Cohen, *Exile in Mid-Qing China*, p. 87 (“The law under which they [the hong merchants] were sentenced penalized commercial relations with foreigners that risked inspiring unruliness and thus potentially endangering the state; after 1760 this law was extended to apply specifically to Hong merchants indebted to foreigners.”).

222 Ch’en, *Insolvency*, pp. 181 (*zang*) (loot or illicitly acquired property) and 188; Jones, *Great Qing Code*, Arts. 24 and 345, pp. 54-56 and 330-32; Pengsheng Chiu, “Refining Legal Reasoning from Precedents: Economic Crimes and Rhetoric in Ming-Qing Casebooks” (paper prepared for Annual Meeting of the Association for Asian Studies, New York City, 2003), p. 23, available at:

<http://idv.sinica.edu.tw/pengshan/OnEcoLegalReasoningdraft.pdf>

223 Ch’en, *Insolvency*, p. 181 (in 1837, Governor-General Deng Tingzhen described the law governing “*zang*” (loot or illegally obtained property) as follows: “According to the established substatute of the Celestial Empire, for the loot that should be restored to its original owner, [the offender in question] should be put in jail for the period of half a year and pressed for the restoration. If [at the expiration of that said period] it is vindicated that [the offender is] really in want of means to complete the whole, the press for recovery should cease. In the meantime, orders should be given [to the offender] to procure an affidavit [to that effect] and to file a petition for the exemption [of the remainder].”).

224 Ch'en, Insolvency, pp. 188 and 182 n.6; Edwards, "Old Canton System," p. 374 n.61; Jones, Great Qing Code, Art. 224, pp. 215-6 (substatute not reproduced); Staunton, Ta Tsing Leu Lee, § 224, pp. 237-8 (substatute not reproduced).

225 Such as, "the law governing intercourse with foreign nations and borrowing with intent to swindle, . . ." White, "Hong Merchants," p. 63 (quoting the 1760 Regulations as directing the punishment of violations per the substatute).

226 1760 Regulations, Rule No. 3, Appendix B to this study (modern translation) ("Hereafter, if anyone violates the prohibition and borrows money from the foreigners and engages in intrigue with them, he should be punished according to the law by which we punish criminals who communicate with a foreign country, borrow money or hold their goods or money without payment.") (Fu, Documentary Chronicle, p. 225) (quoting the 1760 Regulations as directing the punishment of violations per the substatute).

227 Ng, "Ch'ing Management of the West," p. 141 ("Hereafter, people who violate the prohibition and borrow money from the foreigners and conspire with them would be punished according to the law which punishes criminals who plot with a foreign country, borrow money or hold their goods or money without payment.") (quoting the 1760 Regulations as directing the punishment of violations per the substatute).

228 Ch'en, Insolvency, p. 188; White, "Hong Merchants," p. 63 ("the law governing intercourse with foreign nations and borrowing with intent to swindle, the punishment for which was exile.").

229 Waley-Cohen, Exile in Mid-Qing China, pp. 17 and 56.

230 Ch'en, Insolvency, pp. 181-2.

231 Ng, "Ch'ing Management of the West," p. 140.

232 Ng, "Ch'ing Management of the West," pp. 170-1.

233 Ng, "Ch'ing Management of the West," pp. 140-1.

234 Ch'en, Insolvency, pp. 189-90.

235 Morse, Chronicles, Vol. II, pp. 57-8.

236 Morse, Chronicles, Vol. II, p. 190.

237 Ch'en, Insolvency, p. 306; Morse, Chronicles, Vol. II, p. 271.

238 Ch'en, Insolvency, p. 322.

239 Ponqua died in prison on 15 February 1811, before the banishment order could be carried out. Ch'en, Insolvency, pp. 239-241; Cheong, Hong Merchants, p. 92 n.49; Morse, Chronicles, Vol. IV, p. 83, and Vol. III, pp. 153 and 192.

240 Morse, Chronicles, Vol. IV, p. 173.

241 Chen, Insolvency, pp. 350-1; Morse, Chronicles, Vol. IV, pp. 150 and 173.

242 Ch'en, Insolvency, pp. 208-9 and 411 n.92; Waley-Cohen, Exile in Mid-Qing China, p. 143. See Waley-Cohen, p. 55 (although banishment "theoretically involved close surveillance and labor in public works at the place of banishment, the reality was often markedly less restrictive. The individual exile tended to be left alone as long as he did not commit further crimes or attempt to escape, with the result that the boundaries between these convicts and other local residents were somewhat blurred.").

243 1760 Regulations, Rule No. 3, Appendix A to this study (modern translation) (Fu, Documentary Chronicle, p. 225); 1760 Regulations, Rule No. 3, Appendix B to this study (contemporary translation) (Morse, Chronicles, Vol. V, p. 96); Ch'en,

Insolvency, p. 184; Cheong, Hong Merchants, pp. 159 and 255; Morse, Chronicles, Vol. II, pp. 53-54; Pritchard, "Crucial Years," p. 200; Quincy, Journal of Samuel Shaw, p. 312; White, "Hong Merchants," p. 63; Ng, "Ch'ing Management of the West," pp. 59-60, 141 and 155.

244 Morse, Chronicles, Vol. II, pp. 53-54; Quincy, Journal of Samuel Shaw, p. 312; Ng, "Ch'ing Management of the West," p. 156.

245 The active enforcement of the loan ban against hong merchant debtors who defaulted in payment, and then suffered the full severe punishment specified in the "cheating foreigners" statute, shows that the loan ban was not mere "political rhetoric." But to the extent the loan ban, as proclaimed to foreigners, was revealed through inaction to be just talk, this message was taken by opium traders as a green light because they believed that prohibitions in Chinese law were meaningless. As discussed in text at pages 74-75 above, the consequences were pernicious. See Van Dyke, Merchants of Canton and Macao, p. 437 n. 20 ("Officials issued many edicts forbidding Chinese from borrowing from foreigners, but when those illegal loans were revealed, they were honoured. Thus, even though there were no specific laws to protect foreign investment capital, local practice filled in the gap and ensured repayment. . . . As late as the 1830s, Chinese officials were still warning Hong merchants not to borrow from foreigners, but all this talk was simply political rhetoric.").

246 Greenberg, British Trade, pp. 73 and 110; Charles C. Stelle, "American Trade in Opium to China, Prior to 1820," Pacific Historical Review, Vol. 9, pp. 425-444 (1940), p. 426 n.9 (prohibitory edicts); Charles C. Stelle, "American Trade in Opium to China, 1821-39," Pacific Historical Review, Vol. 10, pp. 57-74 (1941). See Morse, Chronicles, Vol. III, pp. 233-4 (when the Governor-General became upset upon being informed in 1815 that 100,000 taels (\$138,889) in bribes were being paid to squelch an imperial solvency inquiry, the British EIC recorded the following: "Altho' there is scarcely any affair that can be arranged in China without the good wishes of the Officer under whose authority the affair may be being previously purchased, still a certain form and shew of justice must be exhibited; and the bribe is neither received openly or avowedly, but is generally arranged thro' the medium of some third person. The Viceroy is stated to be extremely tenacious of these external marks of Purity, altho' it is currently said that he obtains considerable sums.").

247 Wakeman, Strangers at the Gate.

248 Pritchard, "Crucial Years," pp. 200-1 and 204; Dermigny, La Chine et L'Occident, Vol. 2, pp. 822-6.

249 Pritchard, "Crucial Years," pp. 201-2. As Pritchard elaborates, "This placed all creditors in a fright, and, as their attempts to collect debts were unavailing, they refused to lend any more money. This created a situation reminiscent of that produced by the cessation of American loans to Germany after 1929." *Id.*

250 Pritchard, "Crucial Years," p. 206 ("Of this amount \$539,224 was apparently owed to non-English in partnership with or represented by Englishmen, and \$3,808,076 was owed to English, not more than \$1,078,976 of which represented money and goods advanced. The difference represented accumulated interest compounded annually at 18 to 20 per cent. The debts were owing from one to eleven years, but most of them had been incurred within seven years."); Morse, Chronicles, Vol. II, pp. 44-5.

251 Cheong, Hong Merchants, p. 258 (French claims totaled \$617,460); Dermigny, La Chine et L'Occident, Vol. 2, p. 826 (amount of French hong merchant loans estimated at over 600,000 piasters -- each then equivalent to a Spanish dollar -- or more than 3 million livres).

252 Pritchard, "Crucial Years," pp. 203-4 and 205.

253 Ch'en, Insolvency, p. 196; Pritchard, "Crucial Years," pp. 205-6; Quincy, Journal of Samuel Shaw, p. 307 ("For these good offices, the agents engaged to give Sir Edward a tenth part of the amount recovered.").

254 Pritchard, "Crucial Years," p. 208. De Grammont (1736?-1812) was a French Jesuit who was posted as a musician and mathematician to the Imperial Court. He arrived in Beijing in September 1768, learned Manchu, and was thereafter useful in diplomatic negotiations. In 1785 he was allowed to go to Canton by the Emperor, for health reasons, but was recalled to Beijing in 1790. Lord Macartney described de Grammont as "certainly a very clever fellow [who] seems to know this country well, but as he is said to be of a restless, intriguing turn it is necessary to be a good deal on one's guard with him." J.L. Cranmer-Byng, An Embassy to China: Lord Macartney's Journal, 1793-1794 (1962); rpt., Patrick J. N. Tuck, Britain and the China Trade 1635-1842 (London: Routledge, 2000), p. 357 n.6; Pritchard, "Crucial Years," pp. 336 (same) and 343; <http://ricci.rt.usfca.edu/biography/view.aspx?biographyID=626> (database of the Ricci 21st Century Roundtable on the History of Christianity in China). During the period of his residence in the suburbs of Canton (1785-1790), according to Major Samuel Shaw, de Grammont was regarded with suspicion by both Chinese and Europeans, who "consider[ed] him as a spy from the court." Quincy, Journal of Samuel Shaw, p. 315 n.*.

255 Pritchard, "Crucial Years," p. 207; Morse, Chronicles, Vol. II, p. 47; Quincy, Journal of Samuel Shaw, pp. 310-1.

256 Pritchard, "Crucial Years," p. 207; Morse, Chronicles, Vol. II, pp. 47-8.

257 Ch'en, Insolvency, pp. 197-8 and 408 n.56; Pritchard, "Crucial Years," pp. 203-7; Quincy, Journal of Samuel Shaw, pp. 307, 310, 312-4.

258 Ch'en, Insolvency, p. 198.

259 Pritchard, "Crucial Years," p. 207; Quincy, Journal of Samuel Shaw, pp. 312-3; Morse, Chronicles, Vol. II, pp. 48-9.

260 Quincy, Journal of Samuel Shaw, p. 312.

261 Ch'en, Insolvency, p. 198; Pritchard, "Crucial Years," p. 207.

262 Quincy, Journal of Samuel Shaw, p. 312; Morse, Chronicles, Vol. II, pp. 48-9.

263 Morse, Chronicles, Vol. II, p. 66 (text quoted); Ch'en, Insolvency, pp. 207-8; Cheong, Hong Merchants, p. 259; Van Dyke, Canton Trade, p. 98.

264 Morse, Chronicles, Vol. II, pp. 53-54; Pritchard, "Crucial Years," pp. 208-9.

265 Pritchard, "Crucial Years," p. 209.

266 Morse, Chronicles, Vol. II, p. 55; Pritchard, "Crucial Years," p. 209.

267 Quincy, Journal of Samuel Shaw, pp. 314-5.

268 Ch'en, Insolvency, pp. 199, 200 and 203; Morse, Chronicles, Vol. II, p. 45.

269 Ch'en, Insolvency, p. 202.

270 Ch'en, Insolvency, p. 199.

271 Cheong, Hong Merchants, pp. 165, 167, 172 and 223.

272 Cheong, Hong Merchants, pp. 167, 223 and 242 n.116.

273 Cheong, Hong Merchants, pp. 165, 167, 172, 223 and 242 n.116; Ch'en, Insolvency, pp. 201 and 308. Cheong suggests that the change of the name of Munqua's hong, from Fengyuan to Wanhe, occurred at this time. Cheong, p. 172.

274 Ch'en, Insolvency, p. 204; Cheong, Hong Merchants, p. 260.

275 Zelin, "Critique of Rights of Property," p. 32.

276 Edwards, "Old Canton System," p. 371 (describing British EIC practice). The deposition testimony of Mr. Blight in Conseequa's United States litigation with Willings & Francis established that, with respect to the British EIC, "where the sales in England show the inferior quality of the teas, documents are sent to Canton stating their quality; and if they were inferior to the quality contracted for, they are charged back according to their quality; that is, if they appear to have been third instead of first quality, the Hong merchant is charged the difference between first and third quality, in reference to the prime cost." Mr. Kuhn testified that upon his return to Canton following the auction sale of the cargo of the Ganges at Amsterdam, he presented Conseequa with a statement of the claim of Willings & Francis for inferior quality tea provided to them by Conseequa. "Conseequa required a day or two for consideration, and for the purpose of consulting a friend, and he afterwards agreed to allow 19,000 dollars on account of this claim and another for cassia, sent in the same vessel." Willings v. Conseequa, 30 F. Cas. 55, 60-61 (C.C.D. Pa. 1816) (No. 17,767). In 1807, upon the return of William Jones's supercargo to Canton with a complaint of the "bad quality of the defendant's teas," the hong merchant Chunqua was alleged to have made an agreement "reciting this representation by Mr. Gray [the supercargo], of the bad quality of the teas; and promising to settle with the defendant [Mr. Jones], upon the same terms that other respectable houses at Canton had done; and, in case of a difference of opinion between the parties, to submit the same to arbitration." Cheongwo v. Jones, 5 F. Cas. 544, 545 (C.C.E.D. Pa. 1818) (No. 2,638) (Chunqua is plaintiff) ("This [settlement agreement] was denied by the plaintiff's counsel; and no settlement was effected by Mr. Gray, relative to the defendant's teas."). Benjamin Chew Wilcocks stated he had "known many Instances of Teas furnished by respectable merchants returned from England & those merchants obliged to refund." Deposition of Benjamin C. Wilcocks, undated, in Stephen Girard's records of the lawsuit Girard v. Biddle (commenced in the Sept. 1806 term of the Court of Common Pleas of Philadelphia County), Reel 439, Stephen Girard Papers, Estate of Stephen Girard, deceased, microfilm copies on deposit with the American Philosophical Society, Philadelphia, Pennsylvania.

277 Van Dyke, Merchants of Canton and Macao, p. 41 and Plate 08.10 (between pp. 78-9) (list dated 17 January 1801, in Dutch, of mispacked teas for which the VOC received reimbursement during the period 1780 to 1800).

278 Ch'en, Insolvency, pp. 203 and 272.

279 Ch'en, Insolvency, pp. 205-7; Pritchard, "Crucial Years," p. 210.

280 Ch'en, Insolvency, pp. 96 (Table 2.7) and 206-7.

281 A representative of the Hoppo had been attending guild meetings at least since 1762. Cheong, Hong Merchants, pp. 211 and 228; Pritchard, "Crucial Years," p. 210; Morse, Chronicles, Vol. II, pp. 58-9 (suggesting that the real powers of decision were in Puankhequa, the dominant merchant, and the weiyuan).

282 Downs, The Golden Ghetto, p. 76; Van der Sprenkel, Legal Institutions in Manchu China, p. 91 n. 1 (term gongsuo).

283 Cheong, Hong Merchants, pp. 206-7 and 262.

284 Cushman, Fields from the Sea, pp. 31 and 107. The levy in support of the Consoo Fund of the native ports hong ranged from 3% to 6% charged on selected imports and exports. Cushman, p. 31. White, "Hong Merchants," p. 90 n.12.

285 Cheong, Hong Merchants, pp. 206-7 and 262; Ch'en, Insolvency, pp. 88 and 92-102; Pritchard, "Crucial Years," pp. 140 and 210; Morse, Chronicles, Vol. II, p. 69; White, "Hong Merchants," p. 75.

286 Ch'en, Insolvency, p. 89.

287 Greenberg, British Trade, p. 52 n.3; Phipps, Practical Treatise, p. 151.

288 Ch'en, Insolvency, p. 89; White, "Hong Merchants," pp. 192-195.

289 Morse, Chronicles, Vol. II, p. 56; Pritchard, "Crucial Years," pp. 209-10.

290 Pritchard, "Crucial Years," pp. 210-1 and 240-1.

291 Pritchard, "Crucial Years," p. 211. Some of the Madras creditors also suffered terribly. Pritchard, "Crucial Years," pp. 177-8 ("Two early [country trading] firms of importance were those of Crighton and Smith and Hutton and Gordon, both of whom began business in the late 1760's. Both firms loaned money extensively to Chinese merchants, lost heavily as a result of the Hongist's bankruptcies of 1779, and shortly afterwards ceased to do business in China.") and 248 (1787 bankruptcy of hong creditor George Smith).