WRITING AND LAW
IN LATE IMPERIAL CHINA

Crime, Conflict, and Judgment

Edited by
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Seattle and London
18. Ibid., 6-3-9701. Another case, in Daoguang 21–22 (1841–42), initiated by Buddhist nuns, also shows that those in the priesthood relied on their own nasty image in their plaints. See BXDA, 6-3-9180.

19. Treatises for litigation masters consulted in this chapter include Xinjuan fajia toutanhan; Zheyu qibian, Xinke fajia xinshu, Pili shoubi, Fabi jingtianlei, Fabi tianyou, Xue’an mingyuanlu, Xiao-Cao yibi, and Zheyu mingzhu.

20. Wu Tianmin and Da Keqi’s Xinke fajia xinshu, 2.14a–14b. The model plaint is followed by a model counterplaint, which would be filed by the accused Buddhist monk and tells a story completely different from that of the model plaint. Xinke zhaixuan zengbi zhushi fajia youlan zheyu mingzhu, 2.6a–6b, and Xinke fabi tianyou, 2.13b–14a, also have similar sets of plaints and counterplaints.

21. Xinke fabi tianyou, 1.21b–22a; and Xinke fabi jingtianlei, 1.18a–18b.

22. See, for example, Ling Mengchu’s Pa’ai jingsi, story 26, in which a woman flees to a monastery, where a monk and a disciple take turns having sex with her. When she is accidentally killed, they bury her in the courtyard. After the crime is detected, the monk is beaten to death, and the disciple is exiled.

23. Kuhn, Soulstealers.

24. BXDA, 6-2-170; 6-4-381.

25. The short pornographic novel Buddhist Monks Addicted to Love (Fengliu heshang) is based on the story “Cai Yunu Takes Shelter from the Rain.” A number of crime tales include a similar story in which, however, some details were changed slightly. For example, see “Lin Hou qiu Guanyin qifu” (Lin Hou Prays to Guanyin to Request Rain), in Mingjing gong’an, juan 2, from the late Ming.


28. This is the beginning of Buddhist Monks Addicted to Love (Fengliu heshang).

29. See Brook, Praying for Power, 94–95.

30. See Kuhn, Soulstealers, 1–29.

31. For example, one collection, Gujin Lütao gong’an, includes a special section devoted entirely to stories about “licentious monks” (yinsein).

32. See Buxiangzi’s Xinjuan fajia toutanhan, 1.2b–3a.

33. In Bao Longtu pan baijia gong’an, story 56 is titled “Zhang jianseng juepei yuanfang” (Beating the rapist monk and exiling him to a remote area). James St. André discusses the collection in chapter 9 of this volume.

4  The Art of Persuasion in Literature and Law

ROBERT E. HEGEL

Acts of violence that offend moral standards and thus merit punishment figure in writings of all kinds from late imperial China. Crime reports frequently represent face-to-face confrontations, generally between interrogators and the accused. Many of these confrontations involve what appear to be oratorical positions taken by speakers who assert their innocence, or their conviction that the other is most certainly not innocent. Skillfully used rhetorical questions, often followed by aphorisms or other bits of folk wisdom, are key elements in creating such authoritative positions. But unanswerable questions and proverbs appear in other narrative situations as well, in texts not involving crimes, whenever persuasive effort is needed. What one can conclude from this apparent ubiquity in prose texts is that the rhetorical question was a standard stylistic tool known to virtually all writers, which one could safely attribute to impassioned speakers of all social levels. To indicate the prevalence of this rhetorical tool will require a brief survey of texts of several forms produced during the seventeenth, eighteenth, and nineteenth centuries. Our concern here is primarily with the writing of crime reports and writing about legal proceedings. As we can see in texts of these types, legal writers of late imperial China drew from the same rhetorical pool as did writers of fiction and prose in other forms, as self-conscious participants in the larger world of writing.

The reason for stylistic commonality within a form is that all writers followed the same models. For some forms of writing, it was obligatory to fol-
low the models; in others, writers did so simply in order that their presentations could be easily understood. A few did so in the spirit of parody. Prefatory and other paratextual materials reveal a common concern among writers over generic clarity in informal writings (for personal expression and entertainment); their aim was to elicit specific responses from intended audiences.

For writers of fiction, the models might be more or less explicitly identified, but these writers also placed implicit emphasis on controlling how readers responded to their texts. By contrast, those who worked in the Qing imperial administration had little access to the creative “space” allotted to the creative writer. Instead, numerous authoritative guidebooks provided advice, guidelines, and even samples to imitate in the drafting of judicial reports. Qing criminal case reports for the most part were written to fit preexisting formulas to a greater extent than were works of fiction; they describe crimes and criminals in generally conventional ways. The models focus on structure and how to represent the principals of a case; rhetorical style is seemingly taken for granted there, as it was by the authors of fiction and other less formal prose.

Thus, in the crafting of narrative, regardless of audience or ostensible purpose for writing, Qing period writers relied perhaps unself-consciously on common rhetorical tools—questions that preclude an answer and appeals to common knowledge—as ways to make their texts seem familiar, serious, and persuasive. Persuasion was as essential in casual or informal writing as it was in serious administrative communications; it functioned to produce complex but generally predictable responses among their respective reading communities. In many kinds of texts, writers utilized rhetorical questions to clarify standards of judgment and, frequently, to develop convincing characterization as well.

Furthermore, oratorically persuasive characters were conventionally coded as morally upright, an essential element in guiding the readings of a variety of types of texts. A similar function for rhetorical questions in diverse contexts suggests a broadly shared conception of how to build a convincing argument in writing. It also suggests a common set of models, drawn most likely from the classic texts memorized in preparation for the civil service examinations, the experience that encouraged all readers to be proficient as writers. Those models, like the canonical principles themselves, upheld the notion of a moral hierarchy in society, a point to which we will return.

Samples for this study have been drawn from a variety of texts. Crime case reports are from Routine Memorials of the Grand Secretariat’s Punishments Office of Scrutiny (Neige xingke tiben), most of which involve homicide; others are from published collections of memorials and edicts concerning the major corruption cases during the Qing. Other sources include examples of narrative literature circulating at that time; vernacular stories and novels intended for general reading audiences, or “popular fiction” (tongsa xiaoshuo); and the classical-language anecdotes, generally termed biji xiaoshuo, or informal writings, that circulated in print or in manuscript among the literati. The focus here is on the use of rhetorical questions to exemplify moral and ethical positions in narrative situations for quite different audiences.

(Ren)Wititng Judicial Reports

The ostensible purpose of the careful investigations and painstaking reasoning reflected in crime reports was to ensure that the appropriate punishment was meted out for improper behavior. On the one hand, given the emperor’s status as a human representative of the moral order of the cosmos, it was in the interests of the ruling dynasty for its people to feel that justice would be done locally in his name. On the other hand, emperors had to balance the many forces competing for their approval—and seeking to sway their opinions on cases of regional or national significance. Thus, emperors sought a variety of opinions obtained during the mandatory judicial review for all serious cases; there could be no lack of clarity in a report about causation or culpability in an offense. This explicit demand placed even more pressure on those who crafted reports or memorials to write effectively. But a secondary purpose of case reports—and their successive rewrites as they passed through the several obligatory levels of judicial review—was to verify that all the officials involved had done their job scrupulously. The magistrate and his superiors who crafted these reports had more than simply justice on their minds; they were also trying to preclude any disciplinary action against them for dereliction of duty. To do so, their characterization of every individual involved had to be clear and convincing, for the entire case depended on whether readers of the report were persuaded by the total presentation. In short, creating clearly convincing arguments was in the interests of individuals at all levels of the imperial administration.

These legal writers displayed creative genius in drafting the reports for their superiors. This is not to say that the magistrates of Qing China and their legal assistants were self-consciously fictionalizing their material. However, it is now widely recognized that they were expected to edit the relevant information very carefully for their reports. This involved the creative rewriting of the oral testimony that served as the cornerstone of every case, and they apparently
drew on the pool of common assumptions about how to create convincing stories.

Perhaps the most obvious evidence of editorial work in major criminal case reports is their standardized language format. That is, the introductory and concluding portions of reports written in the first person by various members of the judiciary all appear in standard classical style. Testimony recorded as interrogation, in contrast, appears in the official standard vernacular Chinese regardless of the language or dialect spoken by the deponent. (Written depositions appear in reports of cases involving officials or other obviously literate persons.) Likewise, Qing period guidebooks for magistrates regularly counseled these legal writers to remove all vulgarity and local dialectical expressions from recorded testimony in order to enhance its comprehensibility. Finally, it was considered mandatory that all testimony should reinforce the facts of the case as finally determined by the judicial officials themselves—and as summarized in its introduction.

One can only speculate on precisely what sort of utterances came from witnesses either after the intense, disorienting pain of torture or under immense mental pressure from the magistrate’s threats that torture might be applied. Court scribes probably edited and summarized as they took down this testimony in the first place. We do know, from cases that have been preserved in their several drafts, that oral testimony was often heavily rewritten to eliminate all irrelevant comments and to emphasize the consistency of information they conveyed.7

RHETORICAL DEFENSES

Many murder reports and other cases of similar gravity include extensive testimony—from the plaintiff, from the defendants, and from many witnesses. The standard format is a dialogue, with the judicial officer asking questions and the deponent responding with complete, consistent answers. Some of these responses seem, initially, to be oratorical gestures of defiance against authority.8 This is despite the obvious fact that the magistrate had absolute power over them in his courtroom; bailiffs stood at the ready to administer torture to any involved party who seemed to be withholding information or to be lying. After all, the responses of witnesses—the rhetorical questions they apparently fired at their interrogators—do not constitute their rhetorical strategy to save themselves; instead, these responses reveal the narrative strategies of those who compiled the case reports.

For example, when four members of a Beijing-area household were murdered in 1674, the dianshi (local sheriff) reportedly first questioned the survivors and even the neighbors about what they had seen and heard. One man responded: “Even though we are neighbors, we didn’t hear any noise at all. Their dogs are ferocious—if somebody had gotten in, wouldn’t the dogs have barked? Furthermore, [the murdered householder] Liu Er was a Bordered Red Bannerman, just like us. If we had heard something, how could we have not gone to lend a hand?!” As represented here, this neighbor was not intimidated by the interrogation; by responding with assertive questions, he appears as one who speaks with confidence and absolute conviction in his own innocence of any involvement in the crime. It seems unlikely that any real village elder would be so brash in the face of possible punishment, if his account of the events were not accepted; instead, his position is meant to be persuasive of his aloofness from the offense. His testimony should be read as part of the magistrate’s general textual strategy, designed to highlight the culpability of the individual perpetrator without involving any of his community. Whether the neighbor actually spoke those words in court is quite beside the point; he comes across to the reader as confident in the validity of his comments and in his own moral authority in expressing them. His testimony thus reinforces the magistrate’s conclusions about the case.

During his interrogation in a 1696 Shandong murder case, Magistrate Jin Yingdou of Liaocheng county received a combative response from a desperate suspect. This came after an apparently lengthy session in which both this prisoner, Ms. Li, and her erstwhile lover and former landlord, Du Huailiang, were being questioned a second time about the death of the woman’s husband, Chen Wenxian. Chen had moved himself and his wife away from Du’s house after a quarrel between the households; this physical separation of the lovers necessitated the termination of the affair. Once away from her landlord’s importuning, Ms. Li experienced intense remorse for her infidelity, she said, and realized how close she felt to her husband. However, Magistrate Jin was skeptical, and he questioned her again about the depth of her involvement with the killer: in truth, had she not plotted with him to commit the murder? She replied,

... after we moved away to live by ourselves, I felt so ashamed that I could not bear it. How could I be willing to have any contact with him again?! Furthermore, my husband and I had been married for ten years already. Seeing that we’d recently had a child, our feelings for each other were very deep. There’s no way I would get somebody to kill him. Now I charge Du Huailiang with killing my husband—I hate that Du Huailiang so much!
The case report does not state explicitly how the magistrate felt about this outburst, but his subsequent line of questioning suggests that he was not persuaded. This was because Widow Li did not file charges against her former lover until three days after the murder. When the magistrate questioned her yet again about this delay, she responded, with even more apparent urgency:

I am a woman left all alone. And at that time, I also had a fever from malaria. When finally I could get in to file the complaint, Your Honor had gone out to examine the corpses. And because I took the wrong route, I did not meet you along the way. This is why it was only on the third day that I filed the complaint.

Reviewing officials, however, revealed their feelings about the case in two ways. Hou Juguang, the prefect of Dongchang, left all of this testimony in the record as he forwarded it to the next level of review—when clearly he could have deleted or modified it, had he chosen to do so or if his own rehearing of the case had uncovered alternative accounts of the killing. Su Changchen, the Shandong provincial surveillance commissioner (anchashih), interrogated the woman again during his automatic review of the case. Her response at that time was only slightly more detailed and equally insistent. Likewise, even though both of these officials agreed with Magistrate Jin that, according to The Qing Code, Ms. Li should be strangled for her crimes, upon further consideration, her case was shown to fit nicely within the parameters of an imperial amnesty. Although her suitor should be beheaded, she should be pardoned, the Beijing officials confirmed, and the emperor agreed. And so Ms. Li had successfully been represented to her judges as deserving no punishment for the charges of murder and adultery.

Rhetorical questions in defensive testimony serve to confirm the harmony of the entire neighborhood in a 1728 case from Sining county in Sichuan. Here, the magistrate Xu Ren questioned a neighbor who lived down the street from where a murder had been committed. The magistrate began by demanding,

How far are you from the place where Ms. Zhang lived? On the twenty-third of the fourth month, whom did you see enter the Zhang house? For what reason did somebody kill Ms. Zhang? Why didn’t you even try to save her? Tell the court your reasons in detail.

With what is represented as considerable composure, the elderly Yang Gongyi replied:

The place where I live on this street is two houses away from Ms. Zhang. Because I’m getting old, I sit quietly in my house and don’t go out into the street much. On the twenty-third of the fourth month, I didn’t see anybody go toward Ms. Zhang’s house. I don’t know why it was that somebody murdered her. My nephew Yang Shandga saw Ms. Zhang’s child out in the street crying, so he picked him up and took him back home. When he couldn’t push the front door open, he went to the back door to drop him off. It was only then that he saw Ms. Zhang murdered on her bed. He screamed to the next-door neighbor Hu Gongshan to come and see. Only after he came home and told me about it did I know that somebody had killed Ms. Zhang. Since Luo Er had gone away, I told the nephew Yang Shandga to go and tell her father-in-law Luo Qisheng to come. At that time, I had no idea who had killed her—so you tell me, how I could have gone to save her?

The old man presumably was not under any suspicion, although neighbors were regularly questioned on the supposition that they might have been involved in, or at least familiar with, the daily activities of the accused. What his deposition reveals, however, is a generally harmonious neighborhood. The old people sit at leisure in their homes; when a child is found wandering in the street, a passersby will take him home and thoughtfully check on his family. Such facts reveal a society at peace, its members living responsibly with one another; it is only the inexplicable, aberrant individual who destroys this peaceful pattern by committing murder. The self-confident representation of an old man gives eloquent testimony to this ideal—and probably idealized—situation.

Why should magistrates and their secretaries include testimony from such witnesses? And why should these bystanders resort to such oratorical gestures in order to drive home their points? As suggested above, the elements of case reports necessarily reflect the assumptions of the Confucian state system for which they were written. With all its authority delegated downward from the autocratic emperor, the Qing government made regular appeals for moral rectitude on the part of all members of society, administrators as well as the citizenry. Such activities dictated the involvement of local administration in the preservation of social order through the maintenance of personal, family, and community morality.

Local administrators also performed this function through public demonstrations of legal procedures as well as public punishments of malefactors—public floggings, exposure of petty criminals in cangues, public executions,
and display of the heads of decapitated bandits and rebels—so as to remind everyone of the penalties that awaited others who made the same mistakes. Furthermore, as presumed moral exemplars in their own right, local magistrates were required to maintain social order in their districts. When order broke down, these administrators would seem to be implicated; if they were truly Good in themselves, canonical Confucian teachings would suggest that the area under their control might necessarily be orderly.44

This idealistic vision of local administration seems to explain the appearance of righteous self-assertion and self-defense in the testimony of witnesses in capital cases that were sent to the emperor for final review. These witnesses all protest their own innocence; none of them had any knowledge of antisocial or criminal behavior occurring, in effect, right next door. All blame for social disorder is thus heaped on the individual perpetrators; beyond these few sinners, the neighborhood where the crime occurred is peaceful and harmonious. By implication, then, the magistrate, like the neighbors, are all being Good, and only the perpetrator acted antisocially. Thus, it makes far greater sense to attribute these representations of resistance not to the individual deponents wishing to escape torture but to magistrates wishing to deflect all blame from themselves and onto the perpetrators alone for interruptions of social harmony. This implication would suggest a clear textual strategy on the part of the report’s compiler, the magistrate or a secretary working in his name. To that end, self-confident testimony has a role to play in the case report, and rhetorical questions help strengthen the position of those who use them.

THE RHETORIC OF INTERROGATION

Rhetorical questions regularly appear in interrogation by officiating judges as well. In examining a 1662 case of adultery between an unmarried man and a married woman, both of them Manchus, Korkun of the Gioro clan, the “grand secretary of the Board of Punishments” (Xingbu daxueshi), reportedly took a stern tone, relying on rhetorical questions to reveal the strength of his position and the utter untenability of theirs. Of the adulterer, he demanded:

Your older brother’s wife said that you slept in her house on the second and the third and that you went someplace else to sleep on the first and the fourth. On the fifth, you came over with Bisangga and asked him for two hundred cash to give to her to buy something for your child to eat. On the first and the fourth, you didn’t go to your brother’s house to sleep.

If you really haven’t had illicit sex with Bisangga, why would he be willing to give two hundred cash to buy things for your child to eat? You had illicit sex with Bisangga, and that’s the truth. Now confess.

Yet the hapless couple confessed only to a perfunctory affair when subjected to torture (by squeezing the fingers of the woman and the ankles of the man). The judge followed The Qing Code and sentenced them both to strangulation, but their execution was postponed until the aggrieved husband returned: he had the right to plead for their lives. When confronted with their guilt as adequately proved, he chose not to appeal, and they were sentenced to immediate execution.55

A STRONG ATTACK—AND A STRONG DEFENSE

Given the higher stakes involved for all concerned, it is not surprising that oratorical responses appear even more frequently in court cases of official corruption than in matters involving only common citizens at the local level. Examples abound in the texts generated by the notorious tax and relief grain scandal in Gansu during the 1780s. Wang Danwang (d. 1781) had been financial commissioner there (1774–77) and provincial governor of Zhejiang (1777–80); he was accused of misappropriating nearly a million liang of silver from famine relief and from the sale of Imperial Academy student (jiansheng) degrees.56 Wang used persuasive language in his defense to confess to certain offenses but not others. He declared, “My crimes deserve ten thousand deaths. So if in Zhejiang there are yet more cases of corruption, why should I try to prevaricate about them for his benefit?” He concluded, contritely, but with another rhetorical flourish: “These all are my crimes; what could I say in my own defense?”57 Similarly, apparently to forestall further questioning about accomplices, Liang Guan viceroy Fulehun asked plaintively, “Who would be willing to give up his own life and the lives of his family to cover up for me? [Shei shele shenjia xingming ti wo yi ni ne?]” In a written deposition, Tao Shilin explained: “… after I entered the capital and was summoned for an audience, I begged for sick leave and returned to my native place. If I had offered any bribes, then I would most certainly have expected a transfer. Why should I present a request merely for sick leave?”58

Some questions seemingly challenge the deponents on moral grounds, as if to preempt any defense on their part. A confession by Chen Huizu, the viceroy of Fujian and Zhejiang, concerning the Wang Danwang corruption case, includes the following exchange:

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Perhaps more than anything, this exchange demonstrates to the reader that the accused could offer no defense against the persuasive rhetoric of his interrogator; he could only resort to timeworn clichés in response. Or, at least, this seemed the most appropriate way, stylistically, in which to record the interview.

But the rhetorical questions of others who testified seemed to protest that their accusers were wrong, or at least misguided in their interrogation. In the 1786 corruption case of the Manchu official Fulehun, his staff member Li Shirong was to plead, "That whole time (three months of incarceration), I could not get home. How could I have transferred the goods over to him to deliver?" He continued: "I only beg that you give my wife Zhou a strenuous interrogation, and then you’ll understand. I’m already in deep trouble myself; how could I dare conceal anything else?" Certain retorts seem intended to be amusing. Zhou Jing, a kui, an official at a granary, declared: "Viceroy Wu is hard of hearing; he can’t hear clearly even if you shout at him. How could I dare to tell him about such weighty matters as these losses in a loud voice? It would reach the ears and eyes of everyone around—I’d just be bringing everything out into the light myself." However, interrogator Changlin of the Gioro clan was not convinced by his protest and ordered the man tortured.

It appears that prisoners might have relied on rhetorical questions as their last resort, as a final admission of guilt and appeal for mercy. Fulehun himself was to exclaim, "How would I still dare to prevaricate?" Another of the accused resorted to a common aphorism to explain his situation: "When the water is low, the rocks are exposed." [Shui luo shi chu.] How could I dare not tell the truth and get myself into deeper trouble?" Likewise, a third testified, "This is all due to my timidity and lack of talent; what could I say in my own defense?" And another confessed, "There’s nothing I can do to reduce my crime—why should I deceive you on this matter?" But the most poignant of these questions came from Li Shirong: "Having received such harsh interrogation, dare I still prevaricate? I beg you to release me from torture." Here, in their rhetorical questions, the deponents authoritatively establish their own guilt, contributing to the coherence of the narrative.

**PERSUASIONS FOR NEW READERS?**

In case records in which the voices represented are speaking generally to their peers rather than for their superiors, a sensitivity to oratorical positions seems even more pronounced. Such records frequently attribute rhetorical questions to judicial officers during interrogation as well as to the officials being interrogated. Legal secretaries, we can assume, transcribed and then edited testimony in these high-level trials.

But we see the same sort of rhetoric in private accounts. Writing in retrospect (from a record of the trial, perhaps) in his published collection of the cases he heard during a brief tenure as district magistrate in Guangzhou, Lan Dingyuan (1680–1733) developed his narratives using the same oratorical flourishes. In structure, his account of events follows clear temporal sequences, precisely as in a formal crime report. One example is an account in his *Luzhou Cases* (Luzhou gong' an), which Lan titled "Private Punishment in the Yunluo Inn" (*Yunluo dian sixing*). In it, Lan first summarizes the events of the case and then mentions that it had been reported to the "village headman" (xiangzhang), who duly rounded up the principals and presented his appeal to Lan as magistrate. Lan Dingyuan then tells how he set off in the middle of the night to examine the corpse, a man beaten to death by a "magistrate's clerk" (tian li) and his entourage: the helpless man had stolen some four ounces of silver from the clerk, one Li Zhenchuan from Haiyang county.

In the account, Lan is surprised to discover that the body bears many wounds: the bruise from a severe blow on the right temple and clear rope impressions on his thumbs, his head appears to have been squeezed in a bamboo hoop, and his body is covered with burns and with lacerations from having been beaten with vines. Lan writes: "I said, 'Oh my! Who could have been this perverse? No matter whether it is the clerk from a neighboring jurisdiction or some high circuit official, I will order the death of whoever could have done this! '" Thus, he combines his rhetorical question with a further exclamation so as to clarify his assessment of the gravity of this situation.

Lan is not persuaded by the clerk's testimony that a band of soldiers and their sergeant Cai Gao had helped with the beating; initially, Lan is also skep-
tical about whether this clerk could have hit the victim on the temple with enough force to cause a fatal injury, as Li claims to have done. Thus, he narrates the investigative steps that lead to his conclusion and the penalties he recommends for the culprits. However, the innkeeper's testimony utterly contradicts the version of events given by the others; instead, he recounts a sadistic beating by the clerk and his cousin, to whom he had previously promised to loan the money that had turned up missing. Lan demands of the innkeeper, "[Li] Zhenchuan, Axiang, and Awei have all given the same version. Why do you alone try to prevaricate?" The innkeeper, Xu Abing, adamantly insists on his version of the events, retorting, "As the sun is in the sky, you may squeeze me to death before I would dare lie to you. I beg you to take your time and make a careful investigation; 'when the water is low, the rocks are exposed.' If Zhenchuan's nephew did not do it, then I will pay for his life with mine." Indeed, his testimony is ultimately corroborated by Lan Dingyuan's subsequent interrogations, particularly those of the clerk whose silver had been stolen and the latter's now contrite nephew.

But Lan Dingyuan's superiors are not convinced by his account; they believe that soldiers are far more likely than any clerk and his luggage bearers to have treated the victim so barbarously. The "provincial surveillance commissioner" (Lan uses the common appellation, nienji) orders Lan to reinvestigate the case; he does, but his conclusions remain unaltered. When the commissioner threatens impeachment, Lan replies: "To take the life of an innocent man simply to protect my own reputation—how could I do such a thing?" Later, Lan defends changing his mind from his initial report to his final suggested sentence by noting, "Testimony is given by the criminal. In matters of his life or death, how could the interrogator alter the testimony? Since the testimony cannot be changed, of course the investigation report cannot be altered either." Finally, during the commissioner's interrogation, clerk Li responds: "I have worked in administrative offices for many decades; how could I not know that he who kills a person must die? Even if I received a bribe of a thousand in gold, if I could not live to enjoy it, what value would it have for me?"

In the face of this rhetorical defense, the commissioner can only concede that Lan Dingyuan's verdicts are incontrovertible, and he forwards the case to the capital for final review.

Lan presents a retelling of a 1728 case that uses precisely the same rhetorical tricks found in the case reports themselves, as well as proverbial phrases to emphasize their points. Regardless of whether Lan Dingyuan crafted this version on the basis of his original case report, his stylistic markers are unmistakably shared with official documents of that form. Given his lack of sus-

**Rhetorical Questions in Fictional Narratives**

Contemporary fiction and other informal narratives illustrate that writers of the late Ming and Qing regularly put rhetorical questions into the mouths of their characters in order to assert agency on the part of the speaker; this oratorical stance also serves to enhance the authority and individuality with which those characters speak. These characters are convinced they are right, as are similarly determined speakers in legal documents. Similar rhetorical challenges often appear in the stories about legal cases in informal bjj xiashuo collections such as the compilation of anecdotes and amusing fantasies Liaozihai's Record of the Strange (Liaozihai zhi yi), by Pu Songling (1640–1715). Pu uses this rhetorical tool flexibly. In several cases, its appearance signals resignation on the part of a character. In his famous story about the scholar who enters a wall painting in order to make love to a beautiful maiden depicted there, a monk explains: "Illusion is born in the mind. How can a poor mendicant like me explain it?" [Huan you ren sheng, pindao ren he jie?] In another, Lu, a judge from the underworld, confronts a scholar whose mortal life is drawing to an end. When the scholar asks whether the judge can save him, the judge replies: "What good are personal wishes in the face of Heaven's decree? And anyway, life and death are one in the eyes of a man of broad perspective. Why should you rejoice at life and grieve at death?" [Hebi sheng zhi wei le, si zhi wei bei?]

Sometimes his questions come across as sarcastic: in a second story, a character remarks, "The power to promote or demote is in the hands of my superiors, not with the people. If the higher-ups are pleased with someone, he's a good official. What good is love of the people for winning favor with the higher-ups?"

Other Pu Songling characters refer to commonly shared assumptions through rhetorical questions. Speaking about a betrothal, a mother says, "Now that we have made the offer, why should we go back on it?" [Ji yi you yan, nahe zhong gai?] When she describes a promising young man, a woman remarks, "What is more, young Cheng studies himself ragged night and day. Does he look like the sort to remain on the bottom for long?" [Fu qi jiu wei renxia zhe?]
One of the more outstanding writer-scholars of the Qing period is Ji Yun (1724–1805), a jinshi (presented scholar) of 1754 who in 1773 was appointed a chief compiler of the imperial manuscript library known as Siku Quanshu; he was in charge of the project until it was completed in 1783. In and out of imperial favor thereafter, in his later years, Ji Yun compiled anecdotes interpreted by some as a way both to seek solace from the vagaries of his times and to satirize pedants and his opponents in philosophical debates through allegories. They were printed in 1800 as Notes from the Studio for Careful Scrutiny (Yuewei caotang biji). In a recent study, Leo Chan asserts that Ji Yun used the collection to assert the validity of believing in spirits and ghosts. His method, Chan observes, was to argue on the basis of his own experience. In this regard, Ji Yun’s “evidence” (Leo Chan’s apt term) is testimony very similar in form to that collected in legal case reports.

Consider a situation in which acceptance of oral testimony is most clearly questioned. This is an anecdote written in the first person about a 1739 conversation Ji Yun had with two friends and fellow students. Li Yunju said that he believed ghosts and spirits exist; Huo Yangzhong scoffed at such beliefs. But after a servant told of his horrifying encounter with the dead, Huo remarked,

“I can never take what others have seen as something that I have seen myself.” To this, Li replied, “Were you to adjudicate a legal case, would you have to witness everything to believe? [Jiang shishi mudu erhou xin hua?] Or would you consider others’ testimonies? [Yi yi quzheng zhongkou hua?] Unreasonable as it is to expect to see everything that occurs, would we not accept their testimonies and take what they have seen as what we have seen? [Bu yi ren suoqian wei wo suoqian hua?]”

The people named in Ji Yun’s narratives, his characters, in effect, regularly forestall disbelief and assert the authority of their positions through the use of rhetorical questions.

A similar example can be seen in a story recounted by Fan Jiaxiang, a jinshi of 1754, about the judgment of the dead in Hell. Fan concludes: “For the enlightened resolution of difficult cases, the netherworld court is unsurpassed. For comprehensive accuracy of records, the netherworld court is also unsurpassed. In this case, the netherworld king was neither overconfident nor impatient. Is this not what makes a netherworld king a netherworld king?” [Si Mingwang suo yi wei Mingwang yu?]

By implying a comparison between the widely accepted objectivity and justice of courts in the underworld and those in reality, Fan’s sarcasm is scathing; Ji Yun probably meant it to amuse, and to provoke, his literati readers while revealing something of Fan Jiaxiang’s character. But his ironic use of a rhetorical question merely confirms the stylistic similarities between persuasive statements in records of conversations among the literati at their leisure and in their more formal writings.

Story 16 in Feng Menglong’s first collection of forty vernacular tales, Stories Old and New (Gujin xiaooshuo), printed in 1621, contains the famous tale of extreme loyalty among friends “The Chicken and Millet Dinner for Fan Juqing, Friend in Life and Death” (Fan Juqing jishi shengji jiao). After Zhang Yuanbo reads the eulogy for his friend Fan, who killed himself in order that his spirit might transcend the impossible distance to meet Zhang at the appointed time, Zhang declares to Fan’s widow: “My elder brother died for my sake. How can I live without him?” [Qi neng du sheng ye?] And then Zhang, too, commits suicide so that the friends might be buried together.

Likewise, the last story in Feng’s initial collection is one of several that present fictionalized judicial interrogations. In “Shen Xiaoia Encounters the Expedition Memorials” (Shen Xiaoia xianghui Chushi biao), when a prefect questions Shen’s wife about the disappearance of her husband, she replies, “Today, Zhang Qian was away all morning and returned with Li Wan but not my husband. If those two didn’t kill my husband, who did?” [Bushi ta mouhui le shi shuai?] If my husband was not in the Feng residence, Li Wan should have looked for him yesterday, and Zhang Qian should have been worried, too. Why did he try to pacify me with nice words?” [Ruhe jiang hao yanyu yinzhu xiaofuren?] Not surprisingly, the prefect is convinced, and he tortures the two runners to learn the truth. Throughout the story, there are numerous other rhetorical questions given in response to questioning. In many, these oratorical flourishes constitute a “parting shot,” a comment that ends both the speech and, usually, the writer’s efforts at fleshing out the character as confident in her or his own ethical position. Proverbial phrases often are employed to that same effect.

**Imperial Rhetorical Questions**

One might assume that emperors never needed to resort to rhetorical tricks in order to validate their moral positions. Yet edicts on political problems encountered by the Qianlong emperor (1711–1799, r. 1736–96) reveal that even the ultimately authoritative emperor was represented as engaging in persuasive argumentation. Curiously, perhaps, rhetorical questions appear as fre-
frequently in his writings as in texts produced by his subjects. In the Gansu corruption scandal, for example, the emperor, expressing dismay at how local officials had misrepresented natural disasters, demanded of Wang Tingzan: “How could it be, when all you had been reporting was that rainfall was so short as to constitute drought, that in this year only Gansu should have enough?” [Qiyou jinian Gansheng du duozhi zhi li?] In the somewhat later corruption case from South China, the emperor asked, with apparent exasperation, about Fulehun, “How could [his actions] escape Our penetrating scrutiny?” [An neng tao Zhenzhi dongjian hu?] Clearly, they could not. The monarch vented his frustration in a further series of rhetorical questions:

We greatly wanted [Fulehun] to succeed, and this is why We favored him with an appointment where he could prove himself in a frontier area. This is Our frustration over not achieving Our goal in that appointment. Now, since [his crime] has already been revealed, even if We do not investigate and deal with it severely, “when the water is low, the rocks are exposed.” If all he were to do is tender his resignation for transgressions, how could We grant him another appointment in the future? What would the world say about Us as a ruler? According to Yade’s memorial, this was not the only such case. Since We have treated him as a faithful servant to the point of posting him in Guangdong, how could We change Our tune and treat him differently now?

As we see from these examples—and there are innumerable others—the Qianlong emperor’s questions often took the form “How could this [rightly] be?” [Qiyou . . . zhi li?] Here, we might find the clue that reveals the strategy behind the frequent use of rhetorical questions both in fiction and in judicial presentations, the reason why persuasion is such a common element in writing in late imperial China.

As an ethical concept, li has been widely explored in past and present by administrators and philosophers, scholars of literature, and cultural historians. Especially when it comes from the imperial pen, li clearly conveys the sense of moral or ethical Principle, and thus serves as rationale for the emperor’s rule. As the Kangxi emperor sought to demonstrate with his “Sacred Edict” (Shengyu) of 1670, emperors served as the embodiment of ethical standards on Earth, the representative of Tian, the moral order of the cosmos. Imperially authored rhetorical questions asserted what was Right in a cosmic sense: When an emperor asked, “How could this rightly be?” he was clearly indicating that it could not be right, because he was right in posing the question that way. In insisting on li, emperors were demanding orthodox standards. When other writers used this phrase or posed other questions with similar connotations, then, their efforts were meant to provoke the same response in their readers: The speaker is right; what he is questioning is wrong. Only a fool, or worse, would pursue the alternative. The proof is the immediate and unanimous perception of the rightness of his position, as all can see the rocks exposed when a river’s water subsides.

When lesser writers used rhetorical questions, their aim paralleled that of the emperor. These stylistic flourishes refer to higher standards, the collective voice of the community, the values shared by writer and reader. This pervasive practice ostensibly suggests unequivocal support of a singular set of values, yet the reality is not so simple. When characters in our sample texts use rhetorical questions, their positions differ from one another in moral or ethical weight, and the arguments they seek to win have quite different aims. What draws them all together would seem to be the various authors’ desire to assert authoritative standards, positions that, like the imperial voice, cannot be questioned further. In their use here, rhetorical questions seem to preclude considerations of contingency in the statements presented. These arguments seek to forestall opposition, to elicit agreement on the basis of shared standards and shared assumptions about how to clarify what is right. This is a discourse of morality, one might say, a strategy by which to assemble authority of the sort needed to judge other people, whether they are real people accused of crime or fictional characters fabricated for a story.

And in this final regard, using questions to express the Qianlong emperor’s frustrations becomes comprehensible as well. He is in the right; an erstwhile trusted subject is in the wrong. The monarch asserts his position, and yet he seemingly begs for understanding at the same time: he, too, made mistakes here, but they were not selfish or, at the time, ill considered. Curiously, he places himself in the same rhetorical position as the one created for the abject adulteress whose husband was slain. He, like she, has now seen the proper way to act, and he speaks persuasively about how to proceed, difficult though it may be. And we readers are to be persuaded that he is justified in saying so.

**ConSIdering Audiences**

The exchanges involving rhetorical questions not only work within texts; in most cases, they must work beyond the text, to persuade the reader of the strength of the questioner’s position. This relationship can problematize any
simple ostensible meaning. Such double dialogues, within the text and between text and reader, are better understood by considering their analogue in theatrical performance. In traditional storytelling, the narrator regularly asks many questions during the presentation, but he or she never expects any verbal response from the audience. Similarly, the purpose of rhetorical questions in texts is to signal the reader that he or she is supposed to accept—without resistance—the assertion behind the question. The reader might not be immediately persuaded; indeed, the oratorical stance can signal the reader to question either the speaker taking that stance or the person addressed, or both. As does the storyteller, the writer uses tricks to assure the reader that he is in control of his material, and this control is to be appreciated.

Like the listener attending oral presentations who is talked to, but not directly to, the intended reader is clearly implicit in each of the texts examined above. Were we to look at the crime-case material from an angle suggested by theoretician and critic Michel de Certeau, we might see the yamen as a theater where fundamental social questions could be addressed. Power was clearly involved there, asserted, demonstrated, and imposed entirely by one side onto the other, wielded by the magistrates and their superiors against the accused, regardless of the prisoners’ original social status. It is useful to see in these documents a kind of textual theater in which the compelling questions are raised and played out, questions of an ethical or philosophical nature for the most part. And given their seriousness, they demand a thoughtful response on the part of the reader.

Rhetorical outbursts in crime reports seemingly challenge simple categorizations of human affairs, revealing an ironic distance between legal models and lived experience. The unruly material of everyday life is not so easily systematized (hence the constant revision of the li, or statutes, to the more general li laws of The Qing Code). Not all adulterous wives want their husbands killed. Not all bandits seek careers of crime. Not all persons accused of dereliction of duty to the state had selfishness as their motive. Writer Milan Kundera’s comments seem relevant at this point: “Irony irritates. Not because it mocks or attacks but because it denies us our certainties by unmasking the world as an ambiguity.” Rhetorical challenges appearing ironically in the mouths of witnesses and even the accused may have served to contest the penal models and had concrete ramifications in the world beyond the text. In at least a few cases (such as that of Du Huaiiang and Ms. Li above), people may have been spared from execution because the texts present their cases sympathetically in order to win the emotional support of the intended readers, the reviewing officials. And Ji Yun’s belief in ghosts could not be so easily dismissed, because of how it was represented. Nor could one leave unquestioned the assertion that the fictional Fan Juqing had no choice but to die of longing for his friend. It would appear that an oratorical position on the part of a person in a text might signal the author’s subversion of that very position.

Who were the players in this textualized theater, the combatants in this struggle over the presentation of human action and its motivations? In the archival documents, they surely did not include the accused: all authors of case records were legal professionals. We probably can also dismiss from the role of responsible author the court scribes and even the unnamed legal secretaries who worked for magistrates, prefects, and supervisory officials. These functionaries had no stake in the system or its rhetoric; they did not have to put their names on these documents, risking their careers and reputations thereby (although they were culpable for errors, they had far less to lose than did court-appointed members of the bureaucracy). The real agents in these dramas must have been the officials whose names figure prominently on them, the county magistrates and the officials above them in the judicial hierarchy, all of whom risked wealth, position, and social status if they were found to have been derelict in their duties.

The formulation presented here rests on this evidence: in most cases, the basic text of the case report was first written for, or perhaps by, the county magistrate. In order to have his “voice” heard, that is, to preclude testimony and his legal judgment being rewritten at higher levels, a magistrate had to validate his version of the events. He had to write carefully, as a ventriloquist, using the voices of others as well as speaking from his own defaced position. That is, the magistrate had to use language as dictated by custom and legal necessity, judiciously bending it as needed to shape the messy reality under his jurisdiction.

Carefully constructed argumentation in fiction and informal writings also allowed writers to present—and to challenge—dominant values. Ji Yun commented on the morality of China’s judicial system by comparing it to that of the netherworld. His political skepticism is clear. But what of Feng Meng-long’s story of friendship that results in the deaths of both friends? One might well conclude that he examines the concept in its extreme; posing the moral position so forcefully in effect renders it suspect. In each of these cases, the reader is left to decide whether the explicitly endorsed position is the right one, or whether the opposition implicit in the rhetorical challenge is more reasonable. The story becomes more than just a diversion; rhetorical questions can engage the reader in serious contemplation of the positions represented, thus adding another dimension of appeal.
CONCLUSIONS

In the examples discussed above, there is no more uniformity in language style than there is in genre of texts. The materials are in both vernacular and classical Chinese, with considerable variation in stylistic register in both. But the essential element for a powerful self-assertion or a strong self-defense in any dialogue written during the Qing period seems to be the rhetorical question, regardless of language style. In the mouths of the Qianlong emperor and other interrogators, rhetorical questions can take on a powerful authority, which presents crushing challenges to the assertions of other figures in the text. Such questions may also be used to plead one’s case, by asking for understanding of one’s (new) position. Through their use, a character may assert a moral position, which, it is hoped, thereby becomes unassailable. Assertions of authority through rhetorical questions appear alike in straightforward fictional narrative, in simulated courtroom interrogation, in official records of legal cases, and even in parodies of all of the above. In an initial sample of Qing capital murder cases, roughly 10 percent include such questions in their oral testimony, and many more examples appear in both vernacular and classical-language fiction and informal writings of the late Ming and Qing. All educated readers would have come in contact with numerous examples; as writers, they relied on rhetorical questions each time they wished to represent a strong conviction on the part of a character. And writers of a variety of social positions relied on this oratorical stance to present their views. Thus, whether in deadly seriousness or in the spirit of fun, the use of rhetorical questions reveals that the fiction of late imperial China self-consciously shares the values of the elite and even the discursive strategies of the state.

And finally, what are the origins of this widely shared rhetorical flourish? Canonical texts provide many models. There, challenging questions function, both explicitly and implicitly, just as in the many texts cited above. Confucius stated it concisely in The Analects 12:7: “To govern is to correct. If you sent an example by being correct, who would dare to remain incorrect?” [Zheng zhe, zhe geng. Yi zhi zhe, shu guan buzheng?]” Appearing in the basic texts of the education system, such examples were memorized and repeated in the civil service examinations. From there, if not directly from their classical sources, rhetorical questions made their way into every type of narrative or exposition attempted by anyone who ever studied for the examinations—which meant virtually every literate male in late imperial China.46

NOTES

1. See Will, Official Handbooks and Anthologies, section 4.1, for handbooks on law and the administration of justice.

2. See Sommer, Sex, Law, and Society, 27, for example. For studies of repeated uses of stock phrases in case reports, see Buoye, “Suddenly Murderous Intent Arose”; and especially Karasawa, “Hanasho koto.” See also Karasawa, “Rethinking Legal Case Records.”

3. On popular perceptions of whether justice was done, and efforts to protest perceived injustice, see Alford, “Of Arsenic and Old Laws”; Waley-Cohen, “Politics and the Supernatural”; and Zhou, “Illusion and Reality.”

4. Waley-Cohen, in “Politics and the Supernatural,” has demonstrated how reframing essentially the same narrative of events allowed several authors to focus the blame on one person or another in a troubling case from 1808–9. For the purpose of clarifying culpability, they referred to a variety of written or traditional sources to support their arguments. Long, “Textual Interpretation as Collective Action,” 190–92, argues that reading—of any type of text—is a social activity and must be learned. In “Rhetoric,” 204, Stanley Fish expresses the popular, negative conception of rhetoric, particularly in the United States, by stating, “rhetoric’s deficiencies are not only epistemological (sundered from truth and fact) and moral (sundered from true knowledge and sincerity) but social: it panders to the worst in people and moves them to base actions . . . .” A similar prejudice against the argumentative tricks attributed to litigation masters, or iōshi, was common enough in late imperial China; see Macauley, Social Power and Legal Culture. However, it is the positive sense of rhetoric as a tool in effective argumentation (Fish, “Rhetoric,” 206–9) that concerns us here.

5. A convenient example of a guidebook for magistrates and their clerks is Huang Liuhong (1543–1570), Fuhui quan shu; see also the translation, Huang Liu-hung, Complete Book, 342–43, and for procedure in homicide investigations, see 339–47. Yashiko Karasawa has introduced an important handbook for legal secretaries (and probably magistrates as well), Ban’an yaolu (Essentials of managing crime cases), written by Wang Youhui in 1793. Karasawa presents translations of the part of this handbook that concerns testimony in “Between Speech and Narrative,” an unpublished essay that formed the basis for his “Hanasho koto.” Pierre-Étienne Will also identifies the Ban’an yaolu as having been written for clerks; Wang Youhui was himself a highly respected legal secretary who published several other administrative handbooks. See Will, Official Handbooks and Anthologies, 163, entry for Item No. 259. This text has also been reprinted in Guan-
zhenshu jicheng. Ch’ü, Local Government, 125, 128–29, notes that the final responsibility for accuracy and completeness in case reports lay with the magistrate, who would be harshly punished for any shortcomings. See also Alabaster, Notes and Commentaries, lxxi–lxxii.

6. Karasawa goes so far as to posit vernacular fiction as a greater influence than the dialect of the Qing capital on this style of language; see his “Hanasu koto,” 212–50. However, the language of testimony is really quite impoverished compared to the language of fiction; there is no close connection between the two forms. Rather, the connection was more in general purpose than in specific detail. For a more nuanced discussion of language styles available to Ming–Qing period writers, including the broadly defined standard vernacular Chinese, see Hanan, Chinese Vernacular Story, 1–16.

7. Detailed descriptions of proceedings are found in guidebooks for lower-level legal officials such as that compiled by Huang Liu-hong; see Fukui quan shu 14.1a–9b, 369–69, and Huang Liu-hung, Complete Book, 319–27, for procedure in homicide investigations. Elaine Scarry has explored in some detail the methodology and effect of torture on the individual. Torture, such as the squeezing of ankles and legs in Qing period courtrooms, produces so much pain that its victim loses all access to language and even to the ability to think. See Scarry, Body in Pain, esp. 5–6, 12–18, 35–37. References to torture are frequent in these documents, but never, in my reading, are words attributed to a deponent during its application. Instead, although there is no effort to hide its use, references to torture serve, as here, to demonstrate the questioner’s conviction that the version of events he presents is believable. Surely all recorded testimony would appear as conventionally constructed to all readers familiar with court procedure and the effects of torture in reality. Brooks, Troubling Confessions, 63, observes that even without the application of physical pain, “confessions rarely are products of a free and rational will.” On the uses and limitations of torture during the Qing, see Ch’ü, Local Government, 125.

8. Compare the explanation of this concept offered in Metzger, “Foreword,” esp. xx; although Metzger refers primarily to twentieth-century cultural responses, he seems, appropriately, to include premodern society in his references. I am grateful to Dr. Nancy Park for her many helpful suggestions on how to read the tenor, and the implicit meaning, of recorded testimony.

9. Neige Kangxi chaotien Xingfa lei: KK 13.3.10 (April 15, 1674), Shuntianfu.

10. Neige tiben Xingfa lei, 518–46. Du had also killed his wife so that he and Ms. Li would be free to remarry. Magistrate Jin threatened torture the first time he asked Ms. Li these questions: “Bu shishuo jin yao xingshen ni le?”; on this later occasion, there was no reference to torture, and yet her response was more passion-ate. During the subsequent review by the Shandong surveillance commissioner, Ms. Li added, “Even now I regret it so much—how could I even think of doing that thing with him again?! Talking about feelings—my husband and I were married for over ten years, and we had a child. How could it be that I could have so little feelings for him that I could be willing to have somebody kill him? If I had any feelings for Du Huai liang, then I would cover up for him. How could I be willing to file charges against him? [But] I charge Du Huai liang with killing my husband—I hate that Du Huai liang so much!” In clarifying her reasons for not filing the complaint sooner, she elaborated for the surveillance commissioner: “I am a woman left all alone. And at that time I also had a fever from malaria. And my son is small. Who could I get to stand up for me?”


12. See Alabaster, Notes and Commentaries, lxxi–lxxii, on the responsibility felt to be shared by family members of the accused; Ch’ü, Local Government, 150–51, describes responsibility for knowing one’s neighbors’ business as rational for the baojia (community self-defense) system of local surveillance.

13. One need only think of the public lectures on moral topics such as those of the “Sacred Edict” (Shengyu), promulgated in 1670 by the youthful Kangxi Emperor Xuanye (1654–1722, r. 1661–1722), and of the numerous memorial arches constructed throughout the country at state expense to honor chaste widows. See Mair, “Language and Ideology”; and Mann, Precious Records, esp. 2–3, 23–24, 46.

14. As Confucius reportedly said, in Lunyu 2.19: Zi yu shan er min shan yi (Just desire the good yourself, and the common people will be good); Confucius, The Analects, 115. Hsu Daolin argues against inferring any connection between individual actions and any higher order in his “Crime and Cosmic Order,” esp. 118–23.

15. Neige tiben Xingfa lei 522–105; KK 1.10.17 (November 27, 1662); the aggrieved husband was allowed to beg for pardon on KK 2.3.9 (April 16, 1665). Presumably, the errant couple died soon thereafter; the final sentence was immediate execution, rather than a retrial during the autumn assizes. For this chance at a reduction of sentence, see Meijer, “The Autumn Assizes.” I am grateful to Nicola Di Cosmo for the romanization of these Manchu names.

16. See ECPP, 100. Mark McNicholas pursues this and similar cases in his PhD dissertation (University of California, Berkeley, forthcoming).

17. Qianlong fangkong chengban tanwu dangjun xuanbian, vol. 2, 1343, from Wang Danwang’s confession of QL 46.7.20. I gratefully acknowledge the assistance of my former students Luo Manling and Zhang Jing in locating cases for this project.

18. Ibid., 1533, memorial from Fulehu, dated QL 46.9.8.

19. Ibid., 1752, deposition by Tao Shilin attached to a memorial from Li Shiyao, QL 46.12.9.

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20. Ibid., vol. 3, 2811, interrogation attached to a memorial from the Grand Council dated QL 47.12.1 (January 3, 1783). Of Chen’s testimony, the words chosen as synopsis by the Grand Council were similar to the quotation here: “The aforementioned criminal prostrated himself on the floor and cried bitterly, and he claimed, ‘I have enjoyed the favor of The State for generations.’ I have even served as a viceroy [of Fujian and Zhejiang]. But unconsciously I have turned my back on [the Emperor’s] Favor by doing this ‘stealing like a rat’ business. But ‘Heaven’s goodness could not bear it,’ and ‘everything came to light.’ I can no longer face the world, nor is regret of any avail. My crimes deserve a thousand deaths. I only implore that His Majesty would grant me a quick execution, for in truth I have nothing to say in my own defense.’” The text leaves an obligatory space before references to the dynasty and the ruler as a sign of respect.


22. Ibid., 3536, interrogation of Zhou Jing, QL 60/10/9.

23. Ibid., 3060, Fulchun in interrogation by Agui attached to memorial of QL 51.7.1; 3063, memorial by Agui of QL 51.7.1: 3431 and 3515–16; 3085, at the end of an extended collection of depositions attached to a memorial from Agui dated QL 51.13.7.3.

24. Lan, Lushou gong’an, ed. Kuang, 123–41. For a brief biographical sketch of Lan, see ECCP, 440–41; while accompanying his cousin, successful military commander Lan Tingzheng (1664–1730), Lan was able to record copious information about Taiwan during a campaign to suppress the rebel Zhu Yigui in 1721. Because of this and his other accomplishments, Lan was presented to the Yongzheng emperor in 1728.

25. Lan, Lushou gong’an, 125, 131; compare Lan, “Lan Lu-chow’s Criminal Cases,” 196, 201. The marks on the victim’s thumbs were caused by the shuang zhiyin dao, a method of hanging a person up by his two thumbs behind his back to immobilize him for beating.

26. Lan, Lushou gong’an, 136, 139; compare Lan, “Lan Lu-chow’s Criminal Cases,” 205 and esp. 208. For other, more literal translations from Lan’s Lushou gong’an, see the two segments in “Lan Ting-yuan’s Casebook.”

27. A useful collection of these materials is Chen and Ding, Anya jian, cf. 271, 304–5, 307, 385–86, for instance; these examples are by a variety of hands. For a study of Pu Songling and his famous collection, see Zeitlin, Historian of the Strange. For a biographical sketch, see ECCP, 628–30.

28. Pu, Liaozhai, 16/9; 144/69; 1054/295–96.

29. Ibid., 513/166; 963/261.

30. ECCP, 120–23; see biographer Fang Chao-ying’s interpretation on 123.

31. Chan, Discourse on Foxes, 95.

32. Ji Yun, Yuewei caotang biji, 105–6; Chan, Discourse on Foxes, 97.


34. Feng, Gujin xiaoshuo, 262; Feng, Stories Old and New, 289.

35. Feng, Gujin xiaoshuo, 675; Feng, Stories Old and New, 744.

36. Qianlongshao chengban tanwu dang’an xuanbian, 2.1210 (memorial of Qianlong 46.6.17) and 4.2933 (edict of QL 51.5.14). For a biographical sketch, see ECCP, 369–73.

37. Examples come from an edict to his favorite minister, Heshen (1750–1799); Heshen’s memorial was dated QL 51.4.28 (June 25, 1786). Qianlongshao chengban, 4.2935. See, for example, 2.1193, 1210, 1213, 1341, 1725, 1728 and 4.2933, 2933, 3430, 3536.

38. On the “Sacred Edict,” see note 13 above. Sybille van der Sprenkel, in Legal Institutions, discusses the moral order and the imperial duty to realize it in society, 28–34; Hsu discounts such views in his “Crime and Cosmic Order.”

39. These fiction texts seemingly participate, as did popular writings on ritual, in perpetuating social hierarchy. On this, see Ebrey, Confucianism and Family Rituals, 5–6. On the assertions of relative power and authority in self-defense through rhetoric, see Foucault, Discipline and Punish, 177–84, and Bourdieu, Language and Symbolic Power, esp. 66.

40. Although, to a large extent, popular values and the values of the elite did correspond quite closely to the values of the state. For a succinct statement of this commonality, see Ebrey, Confucianism and Family Rituals, 10–11.

41. Bordahl, “Narrative Voices,” 9. In his Articulated Ladies, 214, Paul Rouzer adroitly discusses earlier (Tang period) writers who self-consciously controlled all voices within their texts in order to achieve the desired effect: to provide sexual pleasure and to control the pace at which it might be experienced. Clearly, Qing writers of crime case reports strove for a similar degree of narrative control, despite the difference in readers’ responses.

42. See Certeau, Writing of History, 244–48, a discussion of the substitution of “prepared” language for the alien words of possessed women by doctors in seventeenth-century France. Nichols, in “Foreword,” vii–viii, draws attention to the function of just this sort of rhetoric: “Fiction establishes its truth status by the way language turns back on itself, tautologically, to accomplish the expectations it seeks. The narrative need not be judged true because it corresponds to an external image of the world, but because it is consistent with the linguistic usages current in a given social context, at a given moment in time.” Clearly, all writers discussed here inherently followed this principle.
43 Kundera, Art of the Novel, 134.

44 Chiu, “Yi fa wei ming,” argues for the importance of winning cases for a legal secretary to be considered successful.

45 That rhetorical questions are a regular feature of fiction suggests that fiction—as prefaces to novels and story collections often insist—seeks to validate its existence by participating in a discourse shared with the more formal writings of the time. Given the self-consciousness with which most fiction writers of the Qing period produced their texts, this may very well have been the case. Shang “Jin Ping Mei,” 197–98, notes that the great Ming novel Jin Ping Mei cihua uses a rhetorical question made famous in the very first line of Confucius’s classic text Lunyu: Bu yi le hu . . . (Is it not a joy . . . ?). Confucius may have used the device to assert that everyone should enjoy learning and friendship. By contrast, the author of Jin Ping Mei does so repeatedly only to challenge conventional assumptions about pleasure. For the original, see Confucius, Analects, 3; Shang, 226 n. 36, cites Jin Ping Mei cihua, 24.2b, 61.71, 83.9a–b, and 99.8a. Shang also refers to Peter Rushton, The “Jin Ping Mei” and the Nonlinear Dimensions of the Traditional Chinese Novel (Lewiston, N.Y.: Edwin Mellen, 1993), 69–70, for ironic uses of this phrase.

46 Confucius, The Analects, 115. The model essay by Wang Ao (1450–1524) provides a ready example of a rhetorical question, on a quotation from Lunyu 12:9: “Baixing zu, jun shuyu buzhu?” (When the people have enough, how can the ruler alone have too little?) For Wang Ao’s text and a translation, see Elman, Cultural History, 389–90. See also Elman’s discussion of the role of memorization in education, 268–70; on canonical rhetoric, see 396–97.