WRITING AND LAW
IN LATE IMPERIAL CHINA

Crime, Conflict, and Judgment

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Introduction

Writing and Law

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When the archives of the last imperial dynasty were opened in Beijing in the 1980s, China scholars from around the world came to learn of a vast treasury of materials that even Chinese scholars had only begun to explore. By some accounts, as many as nine million records (ranging in size from single sheets of paper to numerous volumes) document the daily activity of thousands of bureaucrats, both those working in the capital and those in positions scattered throughout the vast Qing empire. The events and personages of major national importance were already well known from other, more public sources. But of particular interest among these documents were those dealing with China's common subjects, its hundreds of millions of farmers, craftsmen, laborers, and, most particularly, the women of the lower social strata. Not surprisingly, many members of these groups came to the attention of administrators only when they were involved in major crimes, when their lives figured in the case reports sent from across the country to Beijing for review.

Around the time that this archive was becoming available to Chinese and foreign scholars, other sources were also gaining academic attention. First were the legal documents found elsewhere: not all of the Qing imperial archives are still in Beijing. In the rush to protect the contents of the Qing Forbidden City (now the Palace Museum) from the Japanese invasion in the 1930s, the imperial art collection was crated and shipped away. Most of it moved from place to place on railroad cars throughout the war, and some of
this trove was later transferred to Taiwan, as Chiang Kai-shek's Nationalist Party forces retreated there in the late 1940s. Sizable quantities of documents from the imperial archives were among that collection of art. Likewise, major collections of local legal records were discovered in Sichuan and Taiwan. These documents record petty criminal activity, but far more interesting are the thousands of records of legal suits between area residents. Scholars have only begun to mine these treasures, but the views they have obtained of daily life during late imperial China—which was a very litigious society—are stunning.

During the 1980s, libraries in all parts of China (including Hong Kong and Taiwan) became more accessible to researchers than ever before. Large reprint series also made widely available books that had been virtually lost, among them works of literature, religious texts, and legal advice manuals. Through the 1980s and 1990s, scholars explored these newfound materials within disciplinary borders, but, with the turn of the new millennium, they have to an increasing extent carried on multidisciplinary and humanistic investigations of late imperial China’s documentary record. Our chapters represent just this sort of intellectual quest: they use the insights and critical approaches of a variety of disciplines to explore, in an unprecedented fashion, Qing period descriptive, narrative, and expository writing. Our materials are legal, fictional, and religious texts dating mostly from the middle of the seventeenth century to the end of the dynasty, at the turn of the twentieth century. All the chapters deal directly or indirectly with legal practice, but our shared focus is on the texts of, and about, that practice.

STUDIES OF LAW, SOCIETY, AND LITERATURE: CHINA VERSUS THE WEST

The interfaces of creative and legal writing, and their similarities, are relatively new concerns for students of China. Literature (even when conceived broadly) and legal history have been separate fields, with far more attention given to the former than to the latter, even when legal history is conceived as a branch of Chinese institutional history. Only in recent decades has legal history become an active area of China studies, and then primarily by social scientists. Few scholars have used the insights of literary analysis to examine the texts of the legal tradition, and most of them have contributed to this volume.

But beyond China studies, mentioning law and writing in the same breath is hardly a novel idea. "Law and Literature" has been an active field for academic inquiry in the United States and Great Britain for several decades; by consensus, its seminal work is James Boyd White’s book The Legal Imagination, of 1973. British students of the law take courses in this area, and many of the law reviews produced at major law schools in this country have published critical surveys of the Law and Literature movement. A growing number of important books and essay collections have been devoted to the subject. Much of the discourse of that field is instructive to the study of writing and law in late imperial China.

Initially, British and American scholars divided their studies between law in literature and law as literature. Many have examined literary texts for reflections on all aspects of the law, especially such concerns as justice and ethical standards; Western writers have often used law as an emblem of an orderly world. As Richard Posner has observed, "Law’s techniques [of argumentation] and imagery have permeated Western culture from its earliest days." (This has also been true of China, although scholars have not recognized the fact until recently.) The efforts of literary studies have been directed, it would seem, toward encouraging legal scholars (including Judge Posner) to look outside the law library for ways of understanding their profession and for better ways of carrying out their practice. But perhaps the more interesting direction has been to examine laws and especially legal opinions as texts that may profitably be subjected to the types of analysis previously reserved for literature.

This approach has led critics to deconstruct the stories told by legal writing, to reveal their assumptions, and their often unexplored implications, about human character and motivations for action. These studies have revealed a "professional voice" that budding attorneys had to learn in order to write conventional legal opinions and have explored the confusion from a variety of perspectives. Richard Weisberg, for example, has noted that even when summarizing a client's case, the Anglo-American lawyer relies on "the linguistic necessities of the formalized legal act of adversarial representation." Other scholars have demonstrated how "prescribed" conceptions of human behavior—violent actions committed by women or minority men, for example—have on occasion precluded alternative, and more authentic, descriptions of those acts. These "common knowledge" stories stem in large part from popular culture, from the conventional ways in which the causes and frequency of crime are reported in contemporary media. Such representations are directly involved in developing popular notions of deviance and identity formation as well. Reading legal documents as texts has also brought the rhetoric of legal opinions by U.S. Supreme Court justices and other judges under intense analytical scrutiny.
In more recent writing on Anglo-American laws and legal practice, the Law and Literature movement has led to the broad range of approaches referred to as “Critical Legal Studies.” Scholars in this camp use insights and methodology adapted from cultural theory. They are divided, although not to the point of mutual exclusion, between those who apply the tools of literary criticism to texts and those whose approaches are more New Historicism. These studies share a concern with the original contexts of the texts, concluding that all legal decisions and texts are dependent upon a variety of contingencies, in the production of which law also participates. Guyora Binder and Robert Weisberg have noted that “familiar myths” are often cited to explain the motivations behind laws and have concluded, “So too can we judge law aesthetically, according to the society it forms, the identities it defines, the preferences it encourages, and the subjective experience it enables. We can ‘read’ and criticize law as part of the making of a culture.” This trend applies the tools of literary criticism in order to discover the use of conventions in legal process as well as constant invention in legal exchanges. Reading itself is recognized as contingent upon a multiplicity of factors: judges’ reading of laws and opinions as well as scholars’ reading of legal history. In both cases, the conventions of reading are as significant for scholarly understanding as are the conventions of writing. In reading court reports both as social rituals and as social texts, these new legal critics discover that criminal trials frequently fail to address the psychology of the accused, or the social efficacy of the trial for public education, and thus the ability of the trial to deter further crimes. But perhaps most importantly, these legal historians decline to see law or legal practice as unchanging; they are quick to demonstrate that even central concepts are constantly being revised and can be understood only in the particular circumstances of specific times and places. The changing role of the English merchant in both social and legal terms is a relevant example for the study of China.

These trends in the critical study of Western law are reflected to one degree or another in this volume. However, these essays do not attempt to function as “forensic history”; that is, they do not refer to China’s past to solve the problems of the present, either in China or elsewhere. Nor are they deliberately comparative in nature. Although each contributor to this book does certainly have a legal tradition under whose strictures she or he lives, none makes an extensive contrastive study between the Qing penal code and Qing period legal practice and, for example, Anglo-American traditions. We have endeavored to explain our uses of English terms and concepts drawn from those traditions by indicating the specific sense of the original term for which a translation is used. Although none of our chapters attempts the sort of inquiries that engage legal scholars of Anglo-American traditions, our sensitivities as students of China based in the humanities and social sciences have helped us avoid both the politics of the legal profession and the sort of “legal orientalism” practiced by non-China specialists who often dismiss other legal systems as unworthy of serious comparison.

Given the extent of the secondary literature of the Anglo-American fields of law and literature and critical historical studies, it would be difficult to survey briefly. Central to all approaches, however, is the awareness of how deeply law is embedded—and implicated—in its social context. In this, the individual chapters are similar. Many Anglo-American legal critics focus on the recent and the contemporary; this is true in the China studies field as well. However, our concern here is limited to late imperial China, especially the Qing period, from around 1650 to the early twentieth century.

Studies of Writing and Law in Qing China

Our chapters explore not only textual representations of, and the recorded treatment received by, men of prominence who ran afoul of the law but also the experiences of women and men of lower or marginal social status in the legal system. Although we have no direct access to testimony from those who were mistreated by that system, we are not precluded from tracing patterns of social discrimination in legal texts. Thomas Buoye and others have shown that men are more likely to be identified as liable to lose control of themselves and women to be represented as rational and calculating. Several have noted that people brought to trial for major crimes such as murder during the Qing period were generally not members of China’s elite. Those writing in this field have begun to interrogate the effect of popular culture on the legal system—and the reflections of the judicial process in literary texts—as well as the ethics and politics of torture in judicial investigations and punishment of the condemned. Of course, we cannot draw upon the subsequent testimony of survivors or interview readers to gauge their understandings of fictional crime stories, as can our colleagues who study law in contemporary societies.

Studies here can be simultaneously humanistic and social scientific, without fear of compromising one allegiance for the other; our investigations are guided by the larger humanistic mission of understanding the human past in all of its complexity. We can raise questions specific to the Chinese past, such as the efficacy of obligatory judicial review of major crime cases, as well as
more general concerns for fairness and impartiality in the judgment of transgression. Our distance in time also facilitates the reconsideration of stereotypes and misunderstandings held by previous generations of scholars concerning the legal systems of old China. The following chapters thus facilitate comparative studies of unprecedented complexity with more recent systems in China and elsewhere.

Studies of writing and law in China generally focus on the Qing simply because of the wealth of available information. Pioneering students of judicial procedure initially mined summaries of difficult cases. The best known of these casebooks is the Conspectus of Legal Cases (Xing'an hualan), compiled in 1834, with supplements added in 1840 and again in 1886 to make a total of more than 7,600 cases.13 The voluminous collections of the First Historical Archives in Beijing and the Taipei Palace Museum include many thousands of original legal documents and case records.16 These texts present in detail every step of the judicial process, from the reporting of a crime to the final disposition of the sentence, as a major case was referred upward through the judicial review process from the local level to the center of power in Beijing. Moreover, access to hundreds of plaints and decisions in local historical archives, such as the Baxian Archives in Sichuan and the Dan-Xin (Tamsui-Hsinchu) Archives in Taiwan, has allowed complex understandings of lawsuits and other minor legal cases as well.

One might describe this field as still in an early stage. Basic legal texts have been located, organized, studied, and, in some cases, translated into European languages. The collaborative efforts of scholars and bibliographers on both sides of the Taiwan Strait and abroad have resulted in collections of major documents. Chang Wejen is currently editing a massive compendium of perhaps as many as eight hundred volumes of archival materials of the Ming and Qing periods to join those published in Beijing. The Qing Penal Code (Da Qing lüli), as edited by Xue Yunsheng (1820–1901), one of the last “presidents” (shangshu) of the Board of Punishments (Xingbu), in Beijing, was reprinted in 1970, and now there is a recent translation by William C. Jones, (which joins earlier efforts by Ernest Alabaster and George Thomas Staunton). The Ming Penal Code (Da Ming lü) has just appeared in an English translation by Jiang Yonglin. Reprints of memoirs and advice to magistrates by such writers as Huang Liuhong (ca. 1633–after 1705) and Lan Dingyuan (1680–1733) are a boon to those who do not have access to rare Qing editions. And Pierre-Étienne Will’s guide to administrative handbooks in circulation during the Ming and Qing provides an excellent view of what men studied in preparation for becoming local administrators and legal assistants.17 After a few pio-

neering studies that appeared during the 1950s and 1960s (by Ch’ü T’ung-tsu, Derk Bodde and Clarence Morris, and Sybille van der Sprekel), Western research on China’s premodern legal tradition languished until scholars, including Philip Huang, began to probe newly accessible archives—and to direct their graduate students to do the same. Such efforts have resulted in a flurry of excellent monographs on particular aspects of legal culture. These include recent books by Mark Allec, Jérôme Bourgon, Thomas Buoye, Valerie Hansen, Melissa Macaulay, Marinus Johan Meijer, Bradly Reed, Matthew Sommer, and Janet Theiss. In addition, William Alford, Robert Antony, Beatrice Bartlett, Jonathan Ocko, Nancy Park, Joanna Waley-Cohen, and Zhou Guangyuan have all published essential articles in the field—to list only Chinese scholars who write in English. For their part, Pengsheng Chiu and his colleagues at the Institute of History and Philology at the Academia Sinica in Taiwan have produced an impressive series of important studies of all aspects of China’s legal history, as have archivists and scholars working in the historical archives in Beijing. Their work has ranged from explorations of criminal laws, civil cases, types of offenses (adultery, murder), to those who litigated (magistrates, their “legal secretaries” [mayou], and “litigation masters” [songshi]), and to the positions of women under law. And writing in Japanese, Yasuhiko Karasawa has carried on the foundational work of Niida Noboru and others to explore the conventions in legal documents.

Official archives constitute but one source of material, of course. Recent reprints of texts of all sorts from late imperial China have been a boon to students of all historical fields. Hundreds of novels and short stories, to select only one form of writing, previously known only as entries in bibliographies are now available in libraries around the world. The opening of rare-book collections and the creation of new printed and electronic catalogs of the major library collections in China and abroad have brought to light dozens of previously overlooked titles relevant to our study, such as the fiction that Daniel Youd and Katherine Carlítz discuss in chapters 10 and 11, respectively.18 Novels, stories, and informal writings have been contrasted with courtroom procedures outlined in the plethora of handbooks for magistrates and legal secretaries. These texts complicate all previous understandings of legal practice and how people wrote about it as well as the degree to which knowledge of the law permeated late imperial Chinese society.

The study of law in China must encompass religious beliefs and practices along with legal and fictional texts. This is because the language style, documentary format, and acts of formal supplication seem to have been generally standardized, whether one was begging for the sympathetic attention and
authoritative intervention of a local magistrate or of a deity. Paul Katz demonstrates in chapter 8, for example, that people commonly filed plaintiffs in civil and divine courts simultaneously, a practice that continues in Taiwan even today. Likewise, his observations on the "continuum of justice" in late imperial China bring attention to the degree to which writers of the period simply assumed, based on recorded experience, that China’s judges could rely on supernatural aid in solving crimes. It was taken for granted that their work paralleled and complemented that of underworld judges, presuming a kind of divine justice that extended beyond the here and now.

However, this new area of China studies is not so well formulated or energetic as to be considered a "movement." The multidisciplinary approaches employed here do not share a common theory, nor do our contributions have a common agenda. There is simply too much to be discovered at this point; our diverse and separate approaches have been so wonderfully productive as to preclude even searching for any artificial limit to our project. This collection is the first attempt to bring together in one volume a representative sample of current research in this field. To that end, all of our contributors have focused on the complex discourse of the judicial system in its many overlapping manifestations.

LAW AND JUDICIAL PRACTICE IN LATE IMPERIAL CHINESE SOCIETY

Writing late in the nineteenth century, Arthur H. Smith expressed an opinion not commonly shared by other Westerners in China at the time: "One of the admirable qualities of the Chinese is their innate respect for the law. Whether this element in their character is the effect of their institutions, or the cause of them, we do not know. But what we do know is that the Chinese are by nature and education a law-abiding people." Modern socioanthropologist Arthur Wolf interpreted this quality as the result of the appropriation of religious authority by the Qing state. He observed that even though the Qing government was not able to exert substantial control locally, it "appears to have been one of the most potent governments ever known, for it created a religion in its own image." More recently, other scholars have posited a general respect for the coercive power of central authorities as the reason why China’s people were so "law-abiding." One might well take exception to Wolf’s assumption that the state had little control at the local level; numerous more recent studies indicate just the opposite.

Newer studies suggest that China’s subjects generally knew about law and, through that knowledge, were well aware of the state’s power to control their activities. More to the point, people generally understood which acts were punishable. One might posit several causes for this state of affairs.

First, China’s laws changed only gradually through time, to judge from the existing codes. During the Ming, the legal code was based on Song and Yuan predecessors; the Qing penal code was drawn directly from that of the Ming and generally only expanded upon it. The li (substantives) of The Qing Code elaborated the fundamental statutes without contradicting them, for the most part. Thus, legal codes were cumulative, apparently reflecting hoary tradition rather than the decisions of individual rulers, even though interpretations and applications varied over time. Popular, general knowledge of the laws as transmitted through oral and performance traditions, whether accurate or not, was undoubtedly cumulative as well. (Chapters 9 and 11 demonstrate that even when the judicial procedure was romanticized or fantasized, most popular literature assumed that wrongdoers would inevitably be punished, although Daniel Yould shows, in chapter 10, that fiction also celebrated those who evaded the law.)

Second, the consequences of legally punishable offenses were unambiguous. Seduction could result in a beating for the perpetrator, but the penalty for rape was strangulation. Those who plotted treason would be put to death with maximum destruction to the body ("death by slicing" [lingchi]). Punishment for injuries caused during an affray varied with the degree of relationship between those involved. Handbooks for legal secretaries and others rephrased the laws in rhyming lines using simpler language that could be repeated and memorized. Such jingles may have circulated outside the magistrate’s yamen. Common people also knew about the laws because it was the duty of local officials to publicize them: it behooved people to be informed if the magistrates were to care for the citizens of their jurisdiction appropriately. Moreover, the laws of the land simply put coercive force behind common ethical standards.

Nor was judicial procedure unfamiliar. Many plays treat courtroom scenes (often fancifully), but popular novels could be quite explicit in their representations. A case in point occurs in the Ming period Outlaws of the Marsh, or, more commonly, Water Margin (Shuihu zhu), when the burly hero Wu Song takes revenge for the murder of his elder brother, an ill-favored dwarf. The killers are his brother’s faithless wife, Pan Jintian, and her paramour Ximen Qing. When Wu Song figures this out, he files a complaint with the local magistrate. But after the official refuses to accept the case because he has been bribed, Wu Song takes matters into his own hands. First, he forces Jintian and the matchmaker who brought the pair together to make complete confes-
sions in the presence of neighbors, one of whom records the confessions, after being instructed to do so by Wu Song. Then, Wu Song slays Jinlian and tracks down and kills Ximen Qing as well.

After placing the adulterers' bloody heads before his brother's memorial tablet and offering a sacrifice of wine to his spirit, Wu Song surrenders himself to the local court. Appropriately, the magistrate reads the confessions and interrogates the matchmaker and the neighbors so as to corroborate the written record. The magistrate then goes with the coroner to examine both bodies. With the requisite procedures and forms completed, he jails both Wu Song and the matchmaker and confines the witnesses as well. Fully armed with the facts, the magistrate writes out his interpretation of the case, the zhaanzhuang, but modifies the facts to ensure that Wu Song will be treated leniently during subsequent judicial reviews. To that end, his report portrays Pan Jinlian as having forcibly tried to stop Wu Song from sacrificing to his deceased brother; during the struggle, Wu Song killed her. At that point, this revised document declares, the adulterer Ximen Qing intervened, and after a prolonged battle, he, too, was killed. At the next level of review, the charges are lightened further, and the final decision on the case, reached in the capital, focuses the blame on the matchmaker, who is to be executed slowly and painfully. Wu Song is beaten and exiled for homicides that are now considered justified, not for the carefully planned execution-style murders he actually committed.35

This story is fiction, to be sure. Scholars of China's legal administration give adequate evidence to suggest that discrepancies between the evidence and its interpretation were simply not allowed in legal cases (see chapter 5, by Thomas Buoye). But even though its hero escapes with an implausibly light sentence for a double murder, the novel reflects detailed knowledge of both the documents and the procedures involved in a major criminal case. By attributing to the judges (the magistrate, the prefect, and the capital officials) the ability to recast events in ways that can ensure moral justice, even if it requires bending the law, the novel shares with other crime tales (gong an xiaoshuo) of late imperial China the confidence that wrongdoing will always be punished and the innocent exonerated. In chapter 11, Katherine Carlitz demonstrates that Water Margin was certainly not the only late imperial Chinese novel to provide detailed—and accurate—information on court procedures. (For a discussion of the "interpretive community" for popular fiction, see chapter 12, by Jonathan Ocko.)

Knowledge of what might be called "civil law," those regulations and practices governing local disputes and minor offenses, was probably even more widespread than was familiarity with criminal procedures. There were legal specialists among the public scribes in county and market towns who drafted plaints and other documents for a fee, and printed guidebooks on how to compose legal forms could be purchased at low cost. Although most people might never sue another person themselves, legal language and procedure must have become familiar to them as word spread among relatives and friends from those who were involved in civil suits. Likewise, to judge from the research of Yasuhiko Karasawa (see chapter 3), Paul Katz (see chapter 8), and others, many learned about formal complaints from public legal hearings and religious rituals. In practice, there were no sharp divisions between personal morality, religious practice, and the political values of the state. All shared the same ethical discourse, and all were seen as interwoven, relying on a common set of standards.36 Although it has been conventional to describe pre-modern China's working masses as uneducated and thus unsophisticated, from the middle of the sixteenth century onward, travel was increasingly commonplace. Likewise, trade brought people from the countryside into contact with market town activity and merchants from smaller towns into the large urban centers. Popular entertainers wandered from cities into rural areas. Literacy spread ever further through Chinese society, and books of all kinds (including practical handbooks) were peddled to small, local market towns and sold in metropolitan book shops. Government notices generally applied everywhere and were posted in prominent places for all to read.37 In a society of this complexity, with this degree of integration, it seems logical that many of the individuals discussed in the following chapters possessed at least a working knowledge of the laws being brought to bear upon them and might have used it to their advantage.

True as all this may have been for society at large, knowledge of specific laws may not have played a significant role in shaping individual behavior or social harmony during late imperial times. In his survey of legal education during the Qing period, Chang Wejen discovered diminishing emphasis on formal education in law or legal practices among prospective local administrators (those who took the higher-level civil service examinations) and their assistants in administrative centers. In 1729, students for those degrees in government schools were required by imperial edict to study The Qing Code; for the provincial and capital examinations, they had to write five hypothetical judicial decisions. But by 1745, this requirement was altered to require argumentation on the basis of classical moral principles rather than contemporary laws. Apparently in an effort to preclude answers that might be embarrassing to the Qing regime, questions in this area were often very long.
as anxious examiners sought to shape the candidates' responses. Despite the central government's efforts to stem this weakening of legal training, law was not a serious subject in the official curriculum, Chang concludes.38

Moreover, the position of legal clerk was generally hereditary, which kept knowledge in family lines, and even legal scribes were required to write down exactly what plaintiffs had told them, making detailed knowledge of the laws irrelevant. Even the much-maligned litigation masters who made their living with clever presentations of their clients' cases neither referred to Qing law nor made legal arguments. Furthermore, "most civil matters were regulated not by positive law but by customary rules and moral principles, and traditional China's elaborate ways of teaching these rules and principles are famous." But "they were not taught as 'laws'; they were taught as norms higher than or parallel to law," Chang Wejen affirms.39

Even so, a regulation of the Board of Civil Office (Libu Zeli) stipulated that every village and town should have a hall for twice-monthly lectures on law and moral education. These presentations were to be made by elders selected by local officials, but the regulation did not indicate how the elders were to get their legal information. It may be that these lectures were never carried out regularly. And in application, laws did not always embody conventional moral principles; the contradiction between personal ethical standards and the needs of the state was an age-old concern in China.40 One might argue that a general knowledge of canonical standards for behavior did not make people law-abiding, in a modern sense, but that law confirmed those standards.

Legal secretaries employed by county magistrates were probably the only people truly knowledgeable about the laws at the local and provincial levels. These men were professionals, hired and paid by the magistrates themselves. The memoirs of Wang Huizu (1730–1807), particularly his Advice to Those Who Assist in Administration (Zuozi yaoyan), note how dangerous this position could be: Any mistake in the presentation of a legal case could bring harm to defendants and possible retribution to the magistrate's family. Thus, even though the secretary was entrusted with the drafting of important legal documents, ostensibly the local magistrate had to review every one carefully in order to protect himself from prosecution. To that end, Wang Huizu advised legal secretaries simply to memorize the entire legal code. Even so, according to Wang, the more important preparation was to read a variety of books in order to imbibite elite standards for behavior and their classical justifications—beyond the statutes and substrates. Thus, despite Chang's observation that specific legal knowledge was monopolized by a very few professionals, a variety of texts and practices contributed to a general understanding of punishable behavior—and the procedures by which legal standards were enforced—in society as a whole.33

**LEGAL ADMINISTRATIVE STRUCTURES IN LATE IMPERIAL CHINA**

The fair administration of the laws seems to have been a primary concern for bureaucrats at all levels. One might argue that this was a product of their common education in the humanistic Confucian canonical texts, but clearly, the punishments for dereliction of official duty were not lost on anyone in a position of authority.42 Nor, would it appear, was there any appreciable amount of flexibility allowed in the administrative performance of local governors. Substantial portions of The Qing Code were devoted to administrative law. It stipulated deadlines and some procedures; others were clearly prescribed by the handbooks created for that purpose, which circulated widely during the Qing.

Although specific practices are explained as relevant in chapters 3, 5, 6, and 7, a general understanding of judicial administrative structures and procedures is implied in all of them. Those structures were hierarchically and vertically arranged, from the emperor at the apex to the 1,200 to 1,300 "county magistrates" (zhixian) at the bottom, with few lateral connections. Each magistrate was appointed in the name of the emperor and represented imperial authority on the local level.43

Crime required complex official responses. Various members of the magistrate's staff were responsible for assembling all relevant information about a crime, from the first complaint, through the collection of all physical evidence, to the forensic examinations (if needed), to the arrest and detention of the accused and the assembly of relevant witnesses. Magistrates were to oversee the examination of the bodies of homicide victims so as to verify the validity of the examiners' conclusions. Then magistrates had to conduct a thorough review of all evidence, closely question all the principals and all witnesses, and reach conclusions concerning the criminal events, the motivations behind them, and the punishments appropriate to the crimes.

Trials generally were conducted in public, with the yamen open and plaintiffs, defendants, and witnesses all present. The interrogation process, whether or not it included torture, was a spectacle designed to demonstrate the power of the state and to apply the authority of the cosmic moral order vested in the magistrate by his imperial appointment. Although the guidebooks generally cautioned against it, magistrates could legally torture anyone brought

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to testify before them if the witnesses seemed reluctant to tell the truth. Torture was probably threatened more frequently than it was applied. As Buoye suggests, most major criminal cases involved people who knew one another: family members, neighbors, partners in small businesses. Thus, the details of most crimes were familiar to neighbors, who sometimes knew about dangerous situations long before violence resulted. (The local headman was responsible for reporting such situations to the magistrate before violence erupted.) Consequently, the culprits' identity was seldom at issue.\(^4\) Only in the most serious cases—of national prominence or of the most heinous acts of un filiality such as parricide—was torture used as judicial punishment before sentencing, during interrogation.\(^5\) Procedures to be followed during a trial were carefully stipulated by the penal code, and each stage of the investigation had to be completed within a specified period of time. Otherwise, the magistrate and his staff could be punished for delay. Thus, cases moved relatively quickly from the discovery of the crime through the trial process at the local level. In fact, however, only a preliminary review was carried out at the county yamen; the magistrate's findings and judgment were subjected to mandatory reconsideration at several levels of the bureaucracy.

The magistrate's report was submitted to the district (fu) administration for the requisite retrial. With the judgment of the prefect (zhifu) duly recorded, the magistrate's report was quickly forwarded, along with the defendant, while most witnesses were allowed to return home. The next level of review was the provincial surveillance commissioner (anchashi), sometimes referred to in English as the "judicial commissioner." The commissioner heard the criminal, checked his testimony against the written record, verified the accuracy of all elements, and then submitted the case to the provincial governor (xunfu) or governor-general (zongdu), the military commander of one or two provinces who simultaneously held the nominal position of censor (du yushi). The case could be reheard at this level but generally was simply passed forward to Beijing in the form of a memorial containing the magistrate's original report (along with the results of subsequent investigations, if any) and the sentences recommended by all reviewing officials.

Ostensibly, this memorial was directed to the emperor himself. However, given the number of such serious cases among China's large population, all were remanded for review to the Three Judicial Offices (Sanfasi), composed of the Censorate (Duchayuan), the Board of Punishments (Xingbu), and the Court of Judicial Review (Dalisi). Their recommendation was forwarded in a memorial to the emperor, whose decision, in his hand or at his direction, was then written on the outside fold of the document. Execution of the punishment could be ordered to take place immediately or with delay. In the majority of cases, the condemned were jailed pending review at the Autumn Assizes (Qushen). There, the question was not whether the criminals were guilty but only whether the suggested punishment was appropriate.

For delayed punishments, the case was referred back to the original provincial surveillance commissioner for reconsideration. He had to meet a strictly maintained deadline for reporting to the governor, who completed his review and passed it back to the Board of Punishments, where the highest officials of the land could debate the law before they recommended a sentence to the emperor. Or they could delay debate for another year while the criminal languished in prison. Sometimes, their indecision resulted in a lengthy prison term, but in many cases, if the appropriate punishment could not be decided upon after several successive assizes, the criminal was given some lesser punishment or was released.\(^6\) Thus, theoretically, in the majority of cases, there could be no rush to judgment that ignored the specifics of individual cases, nor would the accused lack adequate opportunities to represent his side of the story before a number of investigators.

Procedures in minor criminal or civil cases did not involve such a lengthy and repetitious review process. On certain days of each month, petitioners could submit written plaints of all sorts at the county level; scribes were available near the official yamen for those who were unable to draft their own documents. Magistrates' decisions normally were final but could be appealed to the district level of administration.\(^7\)

**WRITING ABOUT LEGAL PROCEDURES IN LATE IMPERIAL CHINA**

The case reports for major crimes, homicides, contained among routine memorials to the throne are the archival documents most frequently utilized in the following chapters. This is because they are relatively numerous, given the enormous size of China's population, even though such acts of violence occurred infrequently in any locality. These texts are also the most striking in their content: many (especially those compiled during the first half of the Qing) contain extensive testimony from all parties involved in a case. Matthew Sommer describes their appeal:

Most of the ethnographic evidence in both local and central cases can be found in records of testimony by witnesses at court hearings, including the confessions of convicted criminals. These records are probably as close as we will ever get to the "voice" of the illiterate in late imperial China.

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[However,] ... they are not verbatim transcriptions of witnesses' utterances; rather, they are summaries of testimony crafted from witnesses' answers to questions posed during interrogation. The answers were strung together in the form of a monologue in the "voice" of the witness. These statements were shaped by the priorities of the magistrate, and should not be mistaken for purely spontaneous declarations.¹⁸

Depositions not only were reformulated but were all rewritten from the deponents' original dialect into standard Chinese (guanhu or Mandarin), the language of administration throughout the realm. In this process, language was standardized, and so, to a certain extent, was what one might call the "characterization" of the deponent. That is, in order to make a clear-cut match between the criminal act described and the categories of the penal code, perpetrators frequently were described in similar, conventional terms.¹⁹ Even so, these recorded statements had to accord with the deponent's original "story": defendants were required to sign these written versions of their testimony, thereby indicating their concurrence with the content. And they would be questioned repeatedly throughout the mandatory judicial review. Although most reports were drafted by legal secretaries, any magistrate who falsified or misrepresented testimony could himself be punished.²⁰

Standardized writing has broader implications as well. In chapter 1, Maram Epstein traces the trope of the filial son as it is reproduced in routine memorials supporting recommendations of appropriate punishment for aberrant behavior, and in chapter 2, Janet Theiss examines the way in which common notions of shrewish women are drawn upon to rationalize violence between husbands and wives. But standardized language occurs not only in the reports of major cases. As with all bureaucracies, formal documents of every kind required legal language, as Pengsheng Chiu demonstrates in chapter 6. In chapter 3, Yasuhiko Karasawa explores the conventional elements in plaintiffs filed against defendants, and, in chapter 8, Paul Katz reveals the reliance on standardized diction in plaints filed with judicial gods. Mark McNicholas demonstrates, in chapter 7, how "characterization" of offenders shaped both legislation and assigned punishments.

Despite necessary standardization, there are several levels of narrative in crime reports that had their parallels in other forms of writing. The overall outline of the investigation and the trial found fictional counterparts in crime tales originally written in classical Chinese during the middle of the Ming; the genre was subsequently developed into vernacular-language stories, nov-
imperial China. Our range of topics and approaches is deliberately broad, to suggest some of the potential this field holds for further research.

NOTES

1. For brief descriptions of these collections, see Zhongguo diyi lishi dang'an guan; Zhuang, Gugong dang'an shuyao; and Ye and Eschrick, Chinese Archives, 33–45, 279–81, 327–30, 358–39.


3. See, for example, Posner, Law and Literature; Weisberg, Poetics; West, Narrative, Authority, and Law; Ward, Law and Literature; Brooks, Troubling Confessions; Morison and Bell, Tall Stories; Brooks and Gewirtz, Law's Stories; and Sarat, Douglas, and Umphrey, Law on the Screen.


5. Weisberg, Poetics, 248.

6. See, for example, the essays collected in Morison and Bell, Tall Stories: On law and literature in general, see Bell, "Teaching Law as Kafkaesque," 11–38; and Murphy, "Bursting Binary Bubbles," 57–82. On law in literature, see Robson, "Images of Law," 201–22; and Ingram, "Victorian Values," 223–43. On law as literature, see O'Donovan, "Identification with Whom?" esp. 40–48; Fox, "Crime and Punishment," esp. 145–47; and McEvoy, "Newspapers and Crime," 179, 182–84, 190. Dawson's provocatively titled "The Law of Literature: Folktale and the Law," 245–66, takes up such issues as copyright and the use of material for which there is no identification, or identifiable, author. In Narrative, Authority, and Law, West, like Weisberg in Poetics, insists on the ethical content appropriate to such research, in contrast to the rhetorical focus of Richard Posner and James Boyd White.

7. See, for example, Fisher, "Texts and Contexts"; and Binder and Weisberg, Literary Criticisms of Law. An extremely useful survey is Binder and Weisberg, "Cultural Criticism of Law"; this issue contains other essays relevant to these approaches, including "Foreword: The Arrival of Critical Historicism," by Robert W. Gordon, 1923–29. I am grateful to an anonymous reader for the University of Washington Press who pointed out these materials to me. Binder has also written an extensive critique of the "pragmatic" economic approach to the study of law upheld primarily by the prolific Judge Richard Posner in "Poetics of the Pragmatic." Binder summarizes his coauthored book Literary Criticisms of Law here as well, 1511–15 and 1521–26.

8. Binder and Weisberg, "Cultural Criticism," 1151–52. Theiss, Disgraceful Matters, an important recent study, demonstrates just this point in the Chinese context: that legal texts, in this case The Qing Penal Code, embody compromises produced to meet contemporary needs, and when the needs changed, so, too, did interpretations of the laws.


10. Ibid., 1168. In this essay, Binder and Weisberg trace the changing role of the merchant in English society by referencing a variety of studies on usury laws and laws governing commercial activity, 1201–6.


12. Surely the most thorough study of this phenomenon is Ruskola, "Legal Orientalism"; Ruskola provides a noteworthy list of recent comparative studies, 180–81. For others, see Ruskola, "Concepcionalizing Corporations and Kinship"; and William Alford, "Law, Law, What Law?"

13. See the exemplary studies cited by Ruskola in "Legal Orientalism." A noteworthy literary example is Kinkley, Chinese Justice.

14. A story in the seventeenth-century "short story" (huaben xiaoshuo) collection Even the Rocks Nod (Shi diantou), 276–309, features a woman who coolly marries and then kills her first husband's murderer, a motif that is not rare in fiction of the late Ming and Qing periods; see Carlitz, "Style and Suffering." It was based on a brief classical-language story in Feng Menglong's (1574–1646) The History of Feeling (Qingshi), according to literary scholar Hu Shiyi; cf. Shi diantou, 334–49.

15. See Bodde and Morris, Law in Imperial China, for translations and discussion of 190 out of the more than 7,600 cases from the years 1736–1885. For a description and the history of the text, see 146–51.

16. Surveys of Qing period archives and guides to their use include Bartlett, "Archival Revival"; and Park and Antony, "Archival Research"; and Telford and Finegan, "Qing Archival Materials."

17. See DLCY, Jiang, The Great Ming Code / Da Ming lu; and Jones, The Great Qing Code. Handbooks for magistrates and their assistants are listed and described in Will, Official Handbooks and Anthologies, esp. sections 2 and 4.

18. For an introduction to the reprints of popular fiction, see Hegel, "Traditional Chinese Fiction."
19. Smith, *Chinese Characteristics*, 237; quoted, along with other similar sentiments, in Wong, Huters, and Yu, "Introduction," 1. Other foreigners in China during the late nineteenth century generally held a far less positive view; in order to protect their citizens from "barbaric" Chinese legal action, England, the United States, and other countries had, from the 1840s onward, demanded extraterritoriality from China in the infamous "unequal treaties" enforced by military action. Meijer, *Murder and Adultery*, 121, suggests that if there were local objections to laws, they had no vehicle for being expressed or recorded. See Ruskola, "Legal Orientalism."


24. For a discussion of the power relations involved in verbal exchanges in judicial settings, see chapter 4 in this book.


29. *Ibid.*, 322 n. 1; see also 296–302. Chiu, "Yi fa wei ming," offers a more complex view of this question.

30. Theiss, *Disgraceful Matters*, provides an extensive discussion of the conflicts between shared moral standards, judicial decisions, and the interests of individuals and families regarding the question of female chastity.

31. Chang, "Legal Education," 319, 314; he also disputes the assertion that late imperial Chinese society was particularly litigious, 314–17. For the specific references to Wang Huizu’s ideas, see ibid., 303, 331 n. 71, 332 n. 80, 307, 333 nn. 92, 98; and Chang, "Liangmu xunli Wang Huizu."

32. For the laws concerning proper sentencing, see DQLL, Articles 29 and 409; Jones, *Great Qing Code*, 62–63, 381–92. Chang refers to the *Da Qing huidian* warning to this effect in "Legal Education," 305, with reference on 332 n. 83.

33. On the magistrate’s "path to office" and career, see Watt, *District Magistrate*, 45–77. On the magistrate’s staff, see van der Sprekel, *Legal Institutions*, 44–46. Chang gives this number of counties in his "Legal Education," 322 n. 2, contradicting van der Sprekel’s number of 1,400.


35. Comparisons might be drawn between the threat of torture in Qing judicial investigations and its punitive use in contemporary European procedures described in Foucault, *Discipline and Punish*, 32–40. Unlike Foucault’s presentation of the interrogation and use of torture in European aristocratic courts as a "joust between the accused and the interrogator," this kind of contest is not recorded in Qing court records. The contrast in power between the magistrate and the working man accused of crime was simply too one-sided.


37. For discussions of civil procedures and minor criminal investigations, see Zelin, Ocko, and Gardella, *Contract and Property in Early Modern China*; and van der Sprekel, *Legal Institutions*, 66–67.


39. See comments to this effect in Karasawa, "Hanasu koto"; Zhou, "Illusion and Reality"; Sommer, *Sex, Law, and Society*, 22; and Buoye, "Suddenly Murderous Intent Arose."

40. Wang Huizu refers to his experience writing reports as a legal secretary and concludes by warning magistrates to protect themselves by carefully scrutinizing their secretaries’ drafts. See Chang, "Liangmu xunli Wang Huizu."

41. See Hegel, "Images in Legal and Fictional Texts" and "Imagined Violence."

42. For handbooks and other retellings of crime cases, see the collections by Huang Liu Hong, *Fuhua quan shu*; and Lan Dingyuan, *Luchou gong'an*. 

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