MAGISTRATES AND THE LAW:
JUDICIAL AUTHORITY AND CAPITAL CASES
IN THE YONGZHENG ERA, 1722-1735

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Abstract

This dissertation studies the judicial authority of magistrates in Qing China between 1720-1740 in cases of homicide and other violent crimes carrying death sentences. County magistrates in eighteenth century China presided over a range of legal cases, but in capital punishment cases, their judgments were reviewed and confirmed at multiple levels of the Qing administration. Magistrates who did not adhere to strict sentencing guidelines faced censure, impeachment, and criminal charges. This study explores the ways in which magistrates navigated legal and administrative constraints to find verdicts that could satisfy both their bureaucratic superiors and local residents.

Drawing on Qing legal codes and commentaries and archival records of homicide and corruption cases, I examine magistrates’ options and possible influences on their judgments, placing their actions within the context of Qing law, administration, and society during the reign of the Yongzheng emperor (1723-1735). Magistrates’ control over the flow of information between the county and the higher levels of government, allowed them to shape the narrative of each case. Although they invoked Confucian morality and sympathy to support their judgments, I argue that magistrates’ use of narrative was a rhetorical tool, rather than an indication of their actual priorities. I also show how the administrative context of southern frontier regions gave magistrates in Taiwan and Yunnan both additional authority and closer scrutiny as a result of their presumed local knowledge and connections.

Throughout the dissertation, I examine the ways that imperial concerns about corruption placed additional pressure on magistrates to present themselves as honest, diligent, and
sympathetic in their rulings, regardless of their personal inclinations or actions in office. I also discuss the structural pressures on magistrates that made bribery difficult to avoid. Rather than viewing magistrates’ actions in moral terms, as lenient or corrupt, we can understand them as pragmatic responses to the structures of Qing law and administration. This study argues for a reconsideration of the county magistrate as a significant actor in the Qing justice system.
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Chapter One

Magistrates in the Qing

This dissertation explores judicial decision-making by county magistrates in homicide cases during the Yongzheng reign (1723-1735) of the Qing dynasty (1644-1912).

Qing county magistrates were both territorial administrators and local judges. As judges, they presided over all the legal cases in their jurisdiction, from civil matters such as landlord-tenant disputes and inheritance fights to violent crimes of armed robbery or homicide. In cases involving homicide or other deaths, the magistrate was required to oversee and participate in every step of the investigation, trial, and sentencing. His supervision of every aspect of these cases was constrained by a centralized review system that required every death sentence to be reviewed and confirmed by four additional levels of the bureaucracy, and confirmed again by the emperor himself.

This system presented an interesting contradiction between the magistrate’s largely unsupervised control of the initial process of criminal trials on the one hand, and the constraints of the review system on the other. At the local level, magistrates controlled a trial process that did not permit outside legal counsel, save for their own consultations with their personal legal secretaries. They also had recourse to physical force to back their authority; they controlled law enforcement, had largely unrestricted power to order non-fatal corporal punishment, and were permitted to use judicial torture in certain circumstances. At the same time, they did not have any formal discretionary authority over sentencing in capital cases, and their verdicts could be overturned at any level of review. Moreover, any case deemed incorrectly decided by a reviewer could result in administrative sanctions against the magistrate.
In this dissertation, I discuss some of the ways magistrates navigated the contradictions of this system and used the authority available to them at the local level to maneuver around the constraints placed by their bureaucratic superiors. When judging homicide cases, they did not have complete freedom to choose a verdict, but they could often use their position within the legal system to exert some influence over the final outcome. I examine the options—both licit and otherwise—available to magistrates in capital cases, which choices they were more likely to make, and the means by which they worked to achieve their desired outcomes. I also explore the motivations for these choices. In doing so, I hope to show that magistrates worked within and around the legal system to balance the conflicting demands of their administrative superiors, county residents, and their own personal priorities.

Magistrates in the Qing

Before examining magistrates as judges, it may be helpful to explain the broader topic of Qing magistrates and their counties. Although this dissertation is primarily concerned with the magistrate as judge, it also aims to place their judicial actions in a broader context that considers their social, administrative, financial, and other motivations alongside more narrowly-defined legal concerns. To this end, the following section provides some background information on the broader administrative and social position of magistrates.

From an administrative standpoint, a magistrate (知縣 or 知州) was the official in charge of either a county (縣) or a department (州),¹ the smallest administrative units in the civil

¹ “Department” as a translation of 州 predates the fall of the Qing dynasty. It refers to a regional administrative division, such as the French département. Qing departments were usually more strategically important regions than counties, and department magistrates had higher ranks and often higher salaries than county magistrates, but both were the same level of territorial unit and their magistrates were subject to the same degree of supervision.
administration.² There were roughly 150 departments and 1200-1300 counties in the Qing, though the exact number of changed over the course of the dynasty.³ Departments and counties varied widely in size, with some under fifty kilometers across, and others several times larger.

As the primary extension of the civil government in a county, magistrates handled a wide variety of financial, legal, and administrative affairs. A magistrate was responsible for collecting taxes and fees, overseeing the construction of public works, and managing the employees of the county yamen. He had to manage the sale, transport, and storage of grain, and use the county granary to feed people during natural disasters. He presided over all civil and criminal legal cases, conducted criminal investigations, and ordered arrests. He was also responsible for the county’s postal service, education, general social welfare, and for religious observances such as offering incense and sacrifices at the City God temple and Confucian temple.⁴ Finally, despite being a civil official, he was expected to defend the county seat against bandits and uprisings.

In English, “magistrate” usually refers to a lower-level judge, such as a justice of the peace in eighteenth century England, or the “magistrate court” that handles small claims cases in my own birth state of Georgia. “Magistrate” as a translation for the late imperial Chinese term 知縣 or 知州 dates back at least as far as the nineteenth century, when British diplomats and other observers wrote about Chinese law and society, including explanations of “that class of officers which are called chih-hsien—district magistrate, as we usually designate them.”⁵ At the

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2. County-level “departments” 州 should not be confused with “independent departments” 直隸州, which were a prefectural-level unit.
5. Byron Brenan, The Office of District Magistrate in China. (Shanghai: Shanghai Mercury Office, 1899). Standard translations for other Chinese legal words were also established during this time, such as “Autumn Assizes” for 秋審. Ernest Alabaster, Notes and Commentaries on Chinese Criminal Law, and Cognate Topics (London: Luzac & Co., 1899), 29.
time, these writers noted that Chinese magistrates had much broader legal and administrative powers than their English counterparts; British Consul-General Byron Brenan commented that “[i]n his own district the magistrate has various duties to perform, which in Western countries are entrusted to separate persons in district departments.” However, the term has remained the standard, even as translations of other titles, such as “viceroy” for 總督, have fallen out of favor.  

Magistrates’ multifaceted role in the Qing has caused them to appear across a broad range of scholarly literature on late imperial Chinese history. The two works that have focused most closely on magistrates are Ch’ü Tung-tsú’s 1962 Local Government in China Under the Ch’ing, which provided an outline of magistrates’ place in local government and different administrative duties, and John Watt’s 1972 The District Magistrate in Late Imperial China, which expanded on their role as civil bureaucrats and territorial administrators. Other works focusing on education, fiscal policy, and local administration have also contributed to our understanding of magistrates, as discussed below.

**Education**

Most magistrates qualified for office with educational credentials earned by passing different levels of civil service exams, which were the entry into both government service and elite gentry status. The exams mainly consisted of essay questions on the Confucian classics and policy. During the early Qing (including the Yongzheng reign), they also contained sections on

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6. Today, 總督 總督 is more commonly translated as “governor-general,” which is the term I use throughout this dissertation.
imperial documents and judicial terms; these were eliminated under the Qianlong emperor in 1759.⁸ Although they tested classical learning and literary skill, rather than applied administrative, legal, or financial knowledge, the civil service exams did have some relevance to magistrates’ actual work. Magistrates were responsible for overseeing local education and examinations; as Benjamin Elman noted, selecting county students for the licentiate exam involved reading and grading their qualifying essays.⁹ John Watt argued that magistrates’ classical educations and exam preparation had a broader relevance by teaching them how to articulate the prevailing political ideologies and provide critical thinking and analysis under intense pressure.¹⁰

There were three levels of the civil service exams. The first was the county, prefectural, or town-level licentiate exam. Those who passed acquired licentiate status 生員, which conferred elite social status and qualified them to take the higher-level exams.¹¹ However, licentiate status was much less prestigious than the two degrees above it; those who failed to advance to the next level of exams had to requalify every other year or risk losing their status. Those who qualified as licentiates—or who bypassed the first stage by dint of a purchased or inherited title—could take the next exam at their provincial seat. Those who passed were awarded the provincial juren 舉人 degree. Juren degrees were permanent and not ordinarily available for purchase. Although a juren degree did not guarantee the holder a position, it did qualify him for many official jobs, including that of magistrate. The final stage of was the

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11. Elman, *A Cultural History of Civil Examinations in Late Imperial China*, 141.
metropolitan exam held at the capital, where those who passed were awarded the prestigious metropolitan *jinshi* 進士 degree.

The examinations were the usual route to an official career, but not all magistrates had such credentials. Some were appointed with only licentiate qualifications, and others had only a purchased title. A few more began as clerks or other non-degreed personnel, and found themselves promoted to magistrate through meritorious service or special recommendation from a provincial official.\(^\text{12}\) Both Watt and Ch’ü noted that over ninety percent of magistrates had some form of degree, though between thirty and forty-five percent had purchased their educational qualifications.\(^\text{13}\) Of the seventeen magistrates named in this dissertation, seven held a licentiate degree, six a provincial one, and only three attained the level of metropolitan *jinshi* (the remaining magistrate’s status is unknown).

As historian Chang Wejen has pointed out, most of the required preparation for the exams did not include legal materials, instead focusing on the Confucian classics.\(^\text{14}\) In 1729, the Yongzheng emperor issued an edict adding the Qing Code to the required reading at government-sponsored schools.\(^\text{15}\) The edict was issued halfway through the Yongzheng emperor’s 13-year reign, so none of the magistrates holding office during this period would have been affected. The provincial and metropolitan exams did include some legal materials, including five sample judgments written based on a hypothetical case.\(^\text{16}\) The questions for these judgments were not always descriptions of cases—sometimes the question was simply a line

\(^{12}\) Ch’ü, *Local Government*, 20.


\(^{14}\) Wejen Chang, “Legal Education in Ch’ing China,” in *Education and Society in Late Imperial China, 1600-1900*, ed. Benjamin Elman and Alexander Woodside (Berkeley: University of California Press, 1994), 298-299.

\(^{15}\) Chang, “Legal Education in Ch’ing China,” 294.

\(^{16}\) Sample judgments were removed from the civil service exams in Qianlong 22 (1757).
from the Code. Degree candidates had to write an essay responding to the line, but would not necessarily have to produce an answer in a form that resembled a real case decision.\textsuperscript{17} The existence of the sample judgments in the civil service examinations may have provided some motivation to study the code, but legal study was not a requirement to obtain office.

Based on the lack of technical legal questions in the exams, Chang Wejen argued that officials likely had little access to legal education, and negligible legal knowledge.\textsuperscript{18} Pierre-Étienne Will’s project cataloguing handbooks and casebooks has complicated this view, uncovering a variety of magistrates’ handbooks published over the course of the Qing, instructing magistrates on the Code, trial procedure, and legal principles.\textsuperscript{19} Will has also argued that while some of these manuals simply listed introductory information, others aimed to teach specialized legal knowledge and reasoning.\textsuperscript{20} In her recent dissertation, Emily Mokros noted that the leading cases and precedents published in the Peking Gazette were another source of legal information for magistrates and their secretaries.\textsuperscript{21} Few magistrates were legal specialists, and most employed at least one private legal secretary to guide them through investigations and draft their case decisions.\textsuperscript{22} However, magistrates did have access to different materials designed to inform and educate them on Qing law.

\begin{itemize}
  \item \textsuperscript{17} Chang, “Legal Education in Ch’ing China,” 295-296.
  \item \textsuperscript{18} Chang, “Legal Education in Ch’ing China,” 295-296.
  \item \textsuperscript{19} Pierre-Étienne Will, \textit{Official Handbooks and Anthologies of Imperial China: A Descriptive and Critical Bibliography} (Leiden: Brill, Forthcoming).
  \item \textsuperscript{21} Emily Carr Mokros, “Communication, Empire, and Authority in the Qing Gazette,” (Ph.D. diss., Johns Hopkins University, 2016), 161-163.
  \item \textsuperscript{22} Li Chen, “Legal Specialists and Judicial Administration in Late Imperial China, 1651-1911,” \textit{Late Imperial China} 33, no. 2 (2012), 23.
\end{itemize}


Magistrate Careers

Obtaining a provincial or metropolitan degree qualified one for a magistrate’s appointment, but in no way guaranteed it. For the majority of counties, magistrates were appointed by the Board of Personnel directly from the pool of available candidates. After passing one or more exams or purchasing educational status that qualified one for office, a candidate could register with the Board in Beijing, where he would be placed on a list based on his educational level. Each month, a certain number of candidates would be taken from each list, based on monthly quotas. When a candidate’s name reached the top of the list and he was included in that month’s quota, he would be summoned from his home province to the capital, where candidates would draw lots for the appointments.\(^{23}\)

John Watt’s work is particularly useful for understanding the careers and demographics of most magistrates. Using gazetteers and the collected administrative regulations and precedents of the Qing, Watt traced the common career arcs of magistrates, and noted that many magistrates had spent at least seven, and often over twenty, years between passing the civil service exam and receiving their first appointment.\(^{24}\) Looking at potential ways that exam graduates spent these intervening years, Watt argued that many candidates awaiting appointment gained professional experience working in government educational posts or as private secretaries. Based on these men’s backgrounds, as well as the number of county and department posts requiring previous experience within the province, Watt estimated that at least half of all magistrates in office at a

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given time had acquired some form of administrative experience before arriving at their current posts.\textsuperscript{25}

Watt’s numbers, based on appointment records and county classifications over the course of most of the Qing dynasty, are not entirely representative of the Yongzheng reign that is the focus of this dissertation. Many of the county appointments that required an experienced candidate were created under the rule of the Yongzheng emperor, and the expansion of special appointment powers to a quarter of county appointments did not occur until the end of the Yongzheng reign.\textsuperscript{26} Watt’s estimate that at least half of all magistrates arrived at their post with administrative experience is probably high for the Yongzheng era. However, his suggestion that many magistrates may have spent years before their appointment either gaining administrative experience or studying handbooks, casebooks, and other practical manuals is a useful counterpoint to the idea that magistrates arrived in their counties without any idea how to perform their various administrative and legal duties.\textsuperscript{27}

While magistrates may not have arrived in their counties completely unprepared, they did arrive as strangers unfamiliar with the area, and many magistrates did not stay long enough to gain close familiarity with their county. The length of magistrates’s appointments was not restricted to a fixed duration, but a variety of circumstances combined to form an effective term limit of roughly five years, and few magistrates served more than three in any single county. A first-term magistrate, freshly appointed to his position, could expect to spend three years at his

\textsuperscript{25} Watt, \textit{The District Magistrate}, 55-57.

\textsuperscript{26} R. Kent Guy, \textit{Qing Governors and Their Provinces: The Evolution of Territorial Administration in China, 1644-1796} (Seattle: University of Washington Press, 2010), 100-103. The provincial appointment system is discussed more in Chapter Four of this dissertation.

\textsuperscript{27} Watt, \textit{The District Magistrate}, 57.
new post before moving. After those three years, if the magistrate had not been fired or forced to leave office for health or family reasons, he would be eligible for transfer to one of the county-level posts that required prior experience within that province. After accumulating five years of experience as a magistrate, he was eligible for promotion, though it was not guaranteed. Even if he was not immediately promoted, any magistrate that was still in the same office after five years was likely to be replaced. However, it was rare for a magistrate to last more than three years at a post, and many terms were even shorter. Watt, surveying the appointment records of seven counties, found that the average term length was between fourteen months and three and a half years.

Magistrates who had mostly positive evaluations qualified for promotion after five years of service as a county magistrate, but there was no guarantee that one would receive a promotion, or even another official appointment. Positions in the capital, which were few and far between, were usually given to men already serving in Beijing. Metropolitan officials often started with more distinguished backgrounds than many magistrates, and were able to take advantage of their time in the capital to make powerful connections. Magistrates without extraordinary evaluations or high connections, particularly those with only provincial or lower degrees, were unlikely to jump into a metropolitan seat.

Promotion to another territorial post was more likely, though still not guaranteed. A county magistrate could be promoted anywhere, but was likely to only advance a few grades in the ranking system. County magistrates might become departmental magistrates or assistant

prefects, but would only rarely move directly to governing a prefecture. When they did advance so quickly, it was usually only in a temporary promotion as an acting prefect, generally to fill a gap caused by a lack of qualified territorial officials familiar with the particular needs of that prefecture.\textsuperscript{31}

Although it was possible for a magistrate to eventually rise to prefect or higher, such career success was rare and difficult to achieve. Watt argued that county magistrates and prefects occupied different “career strata,” with limited movement from one level to the next. An official who began as a magistrate would likely end as one or, at best, an assistant prefect. Meanwhile, those whose first territorial appointment was to a prefecture could rise much higher.\textsuperscript{32}

The tendency of magistrates’ careers to stay below the level of prefect may have been the result of career tracking, but there are other possible explanations. There were over 1300 counties and county-level departments, but only around 180 prefectures. Magistrates looking to advance had over a thousand competitors at the same level. They also had fewer opportunities to interact with provincial-level officials—communications from the provincial seat were usually transmitted via the prefect—so it was harder for them to distinguish themselves to their superiors in the provincial seat and the capital. In short, a magistrate’s appointment was difficult to obtain, required years of study followed by even more years of waiting, and often ended without further promotion.

Watt was primarily interested in magistrates as local administrators, not as judges, and did not discuss how appointment patterns might affect their judicial performance. However, the arc of a magistrate’s professional experience affected the extent of his local knowledge and ties,

\textsuperscript{31} Watt, \textit{The District Magistrate}, 69-71.  
\textsuperscript{32} Watt, \textit{The District Magistrate}, 75-76.
the length of his relationships with his superiors, and the degree to which he might expect his judicial performance to impact his career. The mandatory review of all capital sentences meant that judgments in homicide, suicide, or other “fatal cases” were subject to review by prefectural, provincial, and capital officials. A magistrate’s previous official experience and evaluations could influence his credibility with his superiors, and thus affect whether his sentences were more likely to be upheld or overturned and sent back for further investigation; his record could also determine whether he faced consequences for having his decisions overturned. This dissertation thus tries to consider both the career histories of individual magistrates and their likely expectations based on the careers of other magistrates in understanding the factors influencing their case decisions.

Magistrates in the Yamen

The magistrate’s office and residence, or yamen, was located in the county seat. Inside the yamen, the magistrate managed a large staff composed of unranked personnel, his own personal staff, and part-time employees hired as needed. Administrative regulations set quotas to limit the number of employees for the different functions, but these quotas were rarely followed. In practice, even a small yamen would have over several hundred clerks, guards, runners, attendants, and specialist advisors. Busy counties could have over a thousand.33

33. Ch’ü, Local Government, 39, 58-59, 76-77. It is difficult to get an exact count of yamen employees. The quotas for each position provide a lower estimate, but quotas were usually exceeded. Employment records and government reports that list thousands of clerks and runners provide an overestimate, as they count not only actual employees, but also “nominal” clerks and runners who paid a fee to be listed as yamen staff either for the prestige of a government post or to avoid labor service requirements.
Positions in the yamen can be divided into two rough categories: local personnel, who served in their home counties; and the magistrate’s personal staff, who were hired and paid by him. Yamen personnel were government employees, but were below the nine rank system. They were divided into clerks, who handled the yamen paperwork, and runners, who provided more physical labor. Each area of administration had its own clerks to handle the documents for taxes, granaries, arrest warrants, legal depositions, and the other many functions of a yamen. “Runners” was an even broader category, including janitors, messengers, jailers, policemen, coroners, grooms, and many others. Unlike the magistrate and his personal staff, most yamen personnel worked in the same place in which they were born and raised, so most of them spoke the local language and had family in the area. Clerks and runners stayed in the county as magistrates came and went, often passing their positions down to their sons or nephews. They thus had an understanding of the area and local residents that magistrates lacked.

In addition to the permanent yamen personnel, magistrates brought their personal and household staff to the county. A magistrate’s attendants and private secretaries were employed by him, rather than the yamen, so they were usually as new to the area as he himself was, and they would leave with him when his term had ended. Attendants and secretaries were believed to have more personal loyalty to the magistrate than clerks and runners—they lacked the community ties of the yamen staff, and had stronger connections with the magistrate. Some

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35. Bradly Reed, in his study of the Ba County 巴縣 yamen personnel, observed that the clerks and runners did not directly inherit their positions from their families, as in some other counties, but kinship ties were nonetheless valuable in obtaining sponsorship for a position in the yamen. Bradly Reed, *Talons and Teeth: County Clerks and Runners in the Qing Dynasty* (Stanford: Stanford University Press, 2000), 80-82, 135-137.
household staff were old family servants, and some secretaries were members of the magistrate’s own family, sons or nephews who had yet to pass the civil service exams.\textsuperscript{36}

A magistrate’s attendants were part of his personal household, and their salaries came from his own funds, but they were also part of the official yamen administration. The yamen had specific roles for personal attendants in document processing, tax collection, granary management, and the legal system, and others. They filled a variety of messenger roles, conveying orders from the magistrate and relaying documents between the different offices and workers in the yamen. Attendants also supervised the clerks and runners, particularly in jails, granaries, and tax collection, and checked records for errors or omissions. If messages, tax funds, or prisoners had to be sent outside the county, magistrates would send personal attendants to accompany and supervise the yamen staff on the journey.\textsuperscript{37}

The demanding requirements of even the lower levels of the civil service exam and the broad variety of responsibilities of a magistrate’s position meant that few magistrates were able to develop expertise in every area of their administration. To deal with this problem, they hired advisors to provide specialized knowledge and assistance with the more technical and demanding areas of their administration, particularly law and taxation. These private advisors were part of the magistrate’s personal staff, so they were hired and paid by the magistrate himself. Unlike personal attendants, private advisors were not formally incorporated into the yamen administration. Indeed, the opposite was often true: they were forbidden from publicly participating in many of the functions of the bureaucracy. For example, while many magistrates relied closely on legal secretaries at every stage of the legal process, from initial investigation to

\begin{itemize}
\item \textsuperscript{36} Ch’ü, \textit{Local Government}, 75.
\item \textsuperscript{37} Ch’ü, \textit{Local Government}, 77-88.
\end{itemize}
the final verdict, these advisors were banned from the inquest and the courtroom. To get an accurate understanding of the investigation and trial, legal secretaries had to rely on second-hand information from the magistrate and the case documents. Legal secretaries’ handbooks also recommended that they sit in an adjacent room and listen in on trial proceedings.  

Qing officials often placed the blame for bureaucratic corruption on greedy and selfish yamen staff and personal attendants, who were thought to corrupt weak magistrates and undermine strong ones. This view was echoed in much of the scholarly literature on Qing local bureaucracy in the 1960s and 1970s.  

Ch’ü Tung-tsu characterized clerks, runners, and personal servants as incapable and unambitious, lacking the qualifications needed to obtain a more specialist yamen position, and primarily interested in illicit income.  

Ch’ü also noted the many opportunities clerks and runners had for corruption; they were the intermediaries between the magistrate and county residents, both formally—as doorkeepers, guards, and secretaries—and informally, as the first go-between in bribery negotiations. This position provided yamen personnel with many opportunities for unofficial income from adding additional fees for yamen services, overcharging and then skimming off taxes, unlawfully jailing suspects and then demanding money from the imprisoned or their families, and acting as go-betweens for bribery negotiations.  

Runners were also the ones who carried out beatings at the magistrate’s orders, and were known to threaten or administer beatings without instructions.  

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40. Ch’ü, Local Government, 196-197.  
42. Ch’ü, Local Government, 70.
clerks as deceptive and unscrupulous, responsible for tricking unwary magistrates into miscarriages of justice.\textsuperscript{43}

Much of the scholarship on Qing local administration from the past three or four decades has been concerned with reexamining and criticizing the previous conception of Qing local government as full of unscrupulous opportunists. One approach has been to address the issue of fees and fines, characterizing them as alternative funding sources rather than predation. Madeline Zelin’s study of fiscal administration in the Qing noted that county governments were only allowed to retain a small fraction of tax revenue, far less than the cost of salaries and administrative expenses.\textsuperscript{44} Levying additional fees and surcharges to cover administrative costs, salaries, or public works was illegal, but the central government assumed that any deficits were the result of embezzlement.\textsuperscript{45} Bradly Reed mounted a similar defense of yamen clerks and runners, noting that, at least in nineteenth-century Sichuan, case fees were routine and regulated, and he argued that magistrates’ condemnation of yamen staff for collection of unauthorized fees was a strategic posture that allowed magistrates to appear righteous while also continuing to use legal case fees as a source of funding for local government.\textsuperscript{46}

A second approach in critiquing the previous model of Qing county-level government has been to look at the qualifications and contributions of those involved in the local administration and justice system and characterize them as indispensable contributors to the system. Reed argued that although magistrates and other officials frequently criticized runners and clerks as

\textsuperscript{43} Watt, \textit{The District Magistrate}, 222.
\textsuperscript{44} Madeleine Zelin, \textit{The Magistrate’s Tael: Rationalizing Fiscal Reform in Eighteenth Century Ch‘ing China} (Berkeley: University of California Press, 1992), 26-43.
\textsuperscript{45} Zelin, \textit{The Magistrate’s Tael}, 39-43.
\textsuperscript{46} Reed, \textit{Talons and Teeth}, 231-235, 244-245.
corrupt and violent, yamen personnel were necessary for the functioning of the county, supplying labor and local experience that magistrates and their personal staff could not provide. The clerical positions and some of the runner positions were specialized jobs, and those who filled them had training, often since childhood, in the skills necessary to fill that position in that specific county. Daniel Asen, in his work on forensic knowledge in the Qing, found that coroners had a similar degree of professional knowledge and training.

Melissa Macauley, studying unlicensed litigation experts who wrote plaints and appeals for county residents, argued that these illicit lawyers empowered widows, tenants, and others lacking access to other methods of dispute resolution. Macauley referred to these men as “litigation masters” *songshi* 訴師, instead of “pettifoggers,” the archaic translation of their less-flattering appellation of *songgun* 訴棍.

Magistrates’ personal legal secretaries were rarely as vilified as yamen staff or litigation experts—their education, high status, and close relationships with officials insulated them from much of the scapegoating directed at others—and the scholarship has been kinder to them as well, noting the importance of their legal knowledge and local magistrates’ reliance on it. Li Chen has recently emphasized the importance of legal secretaries and expanded on their professional training and standards.

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51. The character gun 軒 originally meant “stick” or “rod,” but also has the meaning of trickster or scoundrel.
Despite the light shed on the expertise and professionalization of law enforcement, coroners, clerks, litigation experts, and legal secretaries, the magistrate himself remains a bit of a cipher. As classically-educated generalists and administrators, magistrates lacked the specialized training of many of the others involved in the legal process, and yet they bore the primary responsibility for the functioning of the local justice system. They also faced administrative sanctions for incorrectly decided cases, and both administrative and criminal penalties for judicial corruption or other malfeasance.

This dissertation aims to study the magistrate’s role in criminal punishment by looking at him as part of the broader local justice system. Instead of seeing magistrates as passive enactors of their subordinates’ expertise, I argue that they played an active role in gathering knowledge from advisors, employees, and local residents, and then worked with their legal secretaries to interpret that knowledge for their superiors. This role gave magistrates opportunities to affect the final outcomes of the capital sentences they submitted for review, but their reliance on the cooperation of professionals and county residents made them vulnerable to pressure from these groups to recommend sentences favorable to local interests.

Magistrates as Justice Heroes

Although adjudication was only one of magistrates’ many responsibilities, magistrates often appear in late imperial Chinese fiction as heroic judges. In gong’an 公案 (“court case”) fiction, magistrates, prefects, and other judicial officials play the role of “justice heroes,” solving
crimes and calling evildoers to account.\textsuperscript{54} Stories categorized as *gong’an* fiction date back at least as far as the thirteenth century and include dramas, short stories, and novels, all with a focus on legal justice and with a judicial official—usually loosely based on a historical figure—playing an important role.\textsuperscript{55}

Among these stories, the most famous and most frequently recurring character is Bao Zheng 包拯, or “Judge Bao” 包公, the hero of many dramas, stories, and novels. A collection of these stories, *Bao Longtu ba jia gong’an* 包龍圖百家公案 [The Hundred Cases of the Longtu Academician Bao], is credited with causing the late Ming boom in court case fiction.\textsuperscript{56}

Though based on a historical Song official, the fictional Judge Bao had supernatural powers of insight, could see and communicate with spirits, and even judged cases in the underworld.\textsuperscript{57} He was also famous for his disregard of rank or family ties in the pursuit of justice and for his incorruptible nature, to the extent that even today, any corrupt official who drinks from “Judge Bao’s Well” in Hefei is said to be cursed with an incurable headache.\textsuperscript{58}

The mid-late Qing saw a resurgence in the popularity of court case novels featuring Judge Bao and other protagonists bearing the names of historical officials. It is this era of court case fiction that gave us the justice hero most well-known in the West: Judge Dee. Based on Tang

\textsuperscript{54} The term “justice hero” comes from Katherine Carlitz, “Genre and Justice in Late Qing China: Wu Woyao’s Strange Case of Nine Murders and Its Antecedents,” in *Writing and Law in Late Imperial China*, ed. Katherine Carlitz and Robert E. Hegel (Seattle: University of Washington Press, 2007), 237.


\textsuperscript{56} Hanan, “Judge Bao’s Hundred Cases Reconstructed,” 301.


\textsuperscript{58} Ding Zhaoqin 丁肇琴, *Suwenxue zhong de Bao Gong* 俗文學中的包公 [Judge Bao in popular literature studies] (Taipei: Wenjin Chubanshe, 2000), 208.
official Di Renjie 狄仁傑, Judge Dee was the protagonist of the late nineteenth-century novel *Wu Zetian si da qi an* 武則天四大奇案 [Four strange cases from the reign of Empress Wu Zetian], which Dutch Sinologist Robert van Gulik (partially) translated and published as *Celebrated Cases of Judge Dee* in 1949.⁵⁹ In the 1950s and 1960s, van Gulik wrote an entire mystery series of his own based on Judge Dee and other characters from the *gong’an* novel. Other authors have written their own Judge Dee novels in French and English, and the character has also inspired a Hong Kong action movie, *Detective Dee and the Mystery of the Phantom Flame* 狄仁傑之通天帝國.

Scholars have noted—perhaps unsurprisingly—that the depiction of the legal system in such stories is not particularly faithful to the legal code or to the standards espoused by magistrates’ handbooks and casebooks. Heroic judges did not follow correct investigation procedures, particularly in the use of torture; both the late Ming Judge Bao and the late Qing Judge Dee stories featured corporal punishment and coercive interrogation techniques that violated the legal limits and guidelines in magistrates’ handbooks.⁶⁰ As the judges who directed these acts were the justice heroes of the stories, the narratives vindicated their use of torture, showing the techniques produce true confessions and ending with both local residents and the hero’s superiors satisfied with the result.⁶¹ The judge in court case fiction was harsh and unforgiving towards criminals and corruption, protecting and avenging innocent people while punishing those who abuse their power.⁶²

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⁶¹. St. André, “Court Cases from the Song and the Ming,” 201-202; Conner, “The Law of Evidence During the Ch’ing Dynasty,” 126-130.
⁶². St. André, “Court Cases from the Song and the Ming,” 206-209.
Though both casebooks and case fiction involve investigations and trials, scholars interested in comparing the two kinds of narratives note that the two treat their characters rather differently. Case fiction treats the judge as uniquely just and perceptive in a world of corrupt officials, while casebooks treat the judge as an exemplary official in a world where others can achieve—or at least strive for—similar greatness. Case fiction shows the heroic judge meting out harsh sentences, including punishments not allowed by the laws, while the judges of casebooks tend towards leniency. Despite their advocacy of extending benevolence and understanding to offenders, casebooks have a rather cynical view of humanity overall, treating local residents as greedy, litigious, and fraudulent. The litigants in court case stories are more likely to be either oppressed and wronged victims or villains who deserve their harsh punishments. The justice heroes of court case novels are fantastical creations, but they serve as a reminder that the idealized benevolent judge seen in casebooks was only one representation of the local judge in the Qing, and both kinds of literature reflected ideals rather than actual behavior.

**Views of Magistrates in Legal Scholarship**

Throughout the scholarship on Qing legal history, analysis of magistrates has often reflected broader scholarly views on imperial Chinese law, with magistrates themselves considered primarily as an expression of state or social values. Qing legal historians in the 1960s

64. St. André, “Court Cases from the Song and the Ming,” 203.
65. St. André, “Court Cases from the Song and the Ming,” 204-205.
66. St. André, “Court Cases from the Song and the Ming,” 204; Waltner, “From Casebook to Fiction: Kung-an in Late Imperial China,” 289.
were influenced by Ch’ü Tung-tsu’s idea of “the Confucianization of law,” which described Chinese law as part of a relatively static and continuous two thousand year legal tradition, one in which Confucian emphasis on social harmony and family bonds not only shaped the legal codes, but also discouraged officials from relying too heavily on codified law. Japanese scholars, while less inclined to view Chinese law as static, came to similar conclusions about the legal system as a whole, arguing that cultural distaste for formal adjudication meant that imperial Chinese law as written was rarely enforced, and that magistrates thus enjoyed a wide degree of latitude in legal matters. In the model of Confucianized law, magistrates were assumed to be mediators and enforcers of a worldview that stressed social harmony; they implemented the Confucian values of the state, rather than the law. Though these scholars’ attitudes towards imperial Chinese law was not entirely unfavorable, they conveyed an overall impression of a legal system that was irrational, arbitrary, and overly concerned with preserving morality and social harmony at the expense of impartiality and consistently-enforced standards.

Later scholars countered this impression somewhat by shifting their focus to exploring legal procedures and cases. Allison Conner examined the Qing Code, collected administrative regulations, and magistrates’ handbooks to argue that Qing law not only had clear evidentiary standards, but also a concept of a fair trial and safeguards against arbitrary officials. Investigations into some of these safeguards, including case review, appeals and petitions, and
the clemency system of the Autumn Assizes, all suggested that Qing emperors and officials tried to prevent abuses in the legal system, and that ordinary people had some expectation that the system could remedy injustices. David Buxbaum’s statement that “[t]here was much rationality in the system” articulated the underlying argument of much of the research into Qing law during the 1970s and 1980s. When scholars began to argue for a view of Qing law as rational and coherent, magistrates were recast as enforcers of the law, closely adhering to legal procedure and standards. In criminal law, the strict limits on magistrates’ judicial discretion were emphasized to demonstrate the rationality of the legal system. In civil cases, where magistrates were not subject to case review, their decisions were described as consistent with the Qing Code, not social principles.

The gradual opening of Qing legal archives in the 1970s and 1980s, first in Taiwan and later in the PRC, provided more details on the functioning of the Qing legal system and spurred interest in local engagement with it. Researchers exploring local archives from Taiwan and Sichuan uncovered records of civil disputes that they used to overturn the idea of a harmony-focused society that abhorred adjudication and to show that magistrates and county residents were much more engaged with the legal system than previously assumed. Archival

case records also allowed historians to move away from a model of timeless Confucianized law and instead study the interactions between the legal system and social change. As the focus shifted to law and society, magistrates’ decisions were primarily investigated in terms of the social values that they represented. For example, Matthew Sommer and Janet Theiss each presented magistrates’ decisions in sex-related cases as expressions of different state and social concerns about gender and family. Mark Allee discussed cases in Taiwan as a reflection of frontier society. Thomas Buoye has analyzed magistrates’ case decisions in Guangdong as expressions of Confucian views on leniency, filial piety, and patriarchy.

The different views of Qing magistrates’ role in the late imperial legal system have also influenced scholars of contemporary law in the People’s Republic of China. Margaret Woo, seemingly drawing on the older model of Confucianized law, argued that judges in contemporary China can use a great deal of discretion, in large part due to “a historical preference for informality and the continuing desire to preserve harmony.” Others, looking for institutional continuities (rather than cultural ones), have been more influenced by the model of relatively

78. Sommer, Sex, Law, and Society; Theiss, Disgraceful Matters.
79. Allee, Law and Local Society.
circumscribed judicial power. Randall Peerenboom, describing the PRC judiciary in the 1990s, noted that contemporary Chinese courts have an unusual emphasis on formal mediation in civil litigation, but he suggested that the traditional historical explanation for this preference is less likely than practical considerations that arise from the current system, such as judicial workload, the risk low-level PRC judges incur if a decision is overturned, and the difficulty of enforcing the courts’ verdicts.\(^2\) Despite this consideration of the Qing legal system, Peerenboom also used a reference to Chinese tradition to criticize the state of the judiciary, suggesting that due to “China’s long history of weak courts with little independence,” the People’s Republic will need to adopt legal practices based on international norms if it is ever to have rule of law.\(^3\) Carl Minzer linked both the PRC’s judicial disciplinary system and its petition 信訪 system to late imperial restrictions on judicial independence.\(^4\)

Scholars of both contemporary and imperial China have used Qing magistrates as a way of understanding Chinese state and society. However, the emphasis on ideals and values sets up inherent standards of comparison—to idealized Confucian officials, to international norms, to modern concepts of rule of law—that can occlude our perception of actual magistrates and their actions. Looking at magistrates can shed light on the broader legal system, including local avenues of influence on legal cases, higher-level officials’ priorities in case review, and unanticipated effects of different legal mechanisms, but to do so, we need to first examine magistrates’ own understanding of their role.

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Magistrates Beyond the Ideal

In this dissertation, I depict magistrates as actively participating in the justice system, balancing various needs, priorities, and values, and working with different forms of expertise, rather than merely enacting a set of values or serving as a figurehead for other experts. Understanding magistrates’ role in homicide and other serious criminal judgments also demonstrates the importance of looking at the Qing legal system as not only written laws, but also as a system with some room for flexibility, staffed by human beings who were not only interpreting the legal code, but also pursuing other goals, and who were willing to use that flexibility to achieve their aims.

To explore this system and magistrates’ place in it, I look at example cases drawn from official reports documenting their judgments in cases of homicide, sexual assault, and other capital crimes, either as the primary focus of the memorial or as part of an investigation into possible judicial corruption. My focus will be on understanding magistrates’ possible choices, motivations, and concerns. Most of these cases come from routine memorials 領本, reports on regular government business sent to the emperor by provincial governors and ministers in the Six Boards. The memorials I use are mainly those either referred to or submitted by officials at the Board of Punishments 刑部 (also translated as the Ministry of Justice), which supervised the Qing justice system and reviewed death penalty cases.

In the scholarly literature, Qing magistrates’ administrative and judicial duties are often considered as separate roles with little overlap. On the administrative side, the bureaucratic and financial context of local government has been explored, but the impact of this context on the legal system has only been considered in passing. Legal scholarship has examined the interplay
between Qing law and society in magistrates’ decisions, but has mainly considered the relationship between law and the civil official system in the context of the administrative burden of litigation. However, magistrates were part of a highly centralized bureaucracy, accountable to their superiors, and subject to regular performance evaluations and review of their capital case decisions. Their role as judges cannot be entirely disentangled from their role as civil administrators; each magistrate filled both roles simultaneously, and his performance in any one arena could affect his overall career.

Although bureaucratic concerns and mechanisms are important, I consider magistrates’ decisions from an institutional angle that encompasses more than just Qing administration, and places them in the context of the different systems and structures around them. In comparative politics, “institutions” can be formal rules, mechanisms for communication between government branches, and the structures of state and non-state organizations and interest groups. They can also include semi-autonomous social spheres: social arrangements that create and enforce their own rules distinct from state-enforced legislation but can sometimes be altered or preempted by the law. An institutional approach does not assume that any individual is a perfectly rational actor, or that any institution can consistently and predictably mandate specific behaviors or outcomes. Instead, it is a way of understanding the systems that create possible choices and influence preferences.

I have emphasized institutions, rather than bureaucracy, for several reasons. “Bureaucracy” implies a single unit of people with shared priorities and behaviors. In Philip Kuhn’s description, the Qing bureaucracy was a system that valued routinization, stability, patronage, and anticipating the desires of one’s superiors. As a group, bureaucratic officials were in conflict with the autocratic Qing emperor, who favored responsiveness and direct control. However, from a magistrates’ point of view, the bureaucracy was not a unified hierarchy, but a shifting set of institutions and priorities that he had to navigate. In the following chapters, I show that different institutions within and without the Qing administration interacted with magistrates and their judicial decisions in different ways, depending on the priorities of each. The relationship between the magistrates in Chapter Three and Shandong provincial officials was quite different from the one between frontier magistrates in Chapter Four and the provincial governments of Yunnan and Fujian, and these differences affected their judgements in capital cases.

I also consider institutions outside or on the edges of the formal bureaucracy. This approach has been used to study local government and society in the contemporary Peoples’ Republic of China, where the boundaries between state, party, and private are indistinct and in transition. It is also useful for examining the Qing, and placing the magistrate and his judgements in the context of his relationships with the Qing administration, the yamen, and local

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families, as well as alternate administrative arrangements particular to specific regions, such as indigenous villages along the Qing’s southern frontiers. Such mechanisms as the petition system and the special appointment of censors to monitor Taiwan, while part of Qing regulations, would be more likely considered “autocratic” tools of the emperor used to circumvent the routine system. Indigenous villages were subject to the magistrate’s jurisdiction, but were also an outside group whose own norms and priorities he had to consider. He also needed the cooperation of local residents, particularly local elites, to effectively administer the county. I have tried to understand how these different factors shaped magistrates’ possible options and influenced their choices.

As the focus of this dissertation is magistrates’ judgments in homicide and other “fatal cases” that carried a capital sentence, Qing laws and legal procedures are also prominent institutions to consider. I examine the Qing legal code both as instructions and as limits, looking for what the law explicitly permitted, required, or prohibited, and what kinds of enforcement mechanisms were provided. Rather than focusing on the interpretations of these strictures by legal writers and ministers in the capital, I explore the ways that the laws affected magistrates’ choices in the county. This approach enables me to consider the potential impact of Qing law, and the ways that different legal mechanisms could interact in ways likely unanticipated by their framers.

Thinking about the law in terms of the options available to magistrates shows how their central role during the initial investigation and trial allowed them to build case narratives out of the information they gathered. In Chapter Two, I discuss the expectations and requirements for

90. For further discussion on the category of “fatal cases,” see Chapter Two.
magistrates when they investigated, decided, and reported on “fatal” cases involving untimely human death. Magistrates were not specially trained in any area of law or forensics, but the requirement that they supervise every aspect of homicide investigation and trial meant that, as I will show, they exercised a great deal of control over the direction of the proceedings and the content of the case record. Although magistrates were not formally granted any discretion in sentencing, their control over the case and their responsibility to identify the applicable statute in their decision gave them the opportunity to craft case records that matched their preferred verdict, thus allowing them to choose among different possible sentences.

In Chapter Three, I look at magistrates’ decisions in the context of the case review system, where every capital sentence was examined at the prefectural, provincial, and metropolitan level. If upheld, the verdict advanced to the next level of review; if overturned, it was sent back to the county for reinvestigation. I treat overturned cases as a form of feedback from higher-level officials, a way for magistrates to understand the implications of different judicial decisions and arguments. Magistrates were able to incorporate that feedback in their second submission without changing the ultimate outcome of the case, often successfully. Rather than attempting to anticipate and provide the reviewers’ desired outcomes, magistrates accommodated their superiors’ priorities while persuading them to approve the decision.

To find overturned cases I read routine criminal case memorials, looking for cases that mention an overturned verdict and reinvestigation. These memorials rarely state the reasons for overturning the initial decision, but we can infer some of the possible reasons by comparing the preliminary case narrative with the final verdict and by noting the content of the second round of witness questioning. There are also some case rejection documents that were hand-copied into a
manuscript now held by the National Library in Beijing; they allow us to see some of the reasons given by a provincial judicial commissioner for overturning certain decisions. Routine memorials impeaching county magistrates also provide examples of overturned cases, as well as demonstrating some of the possible negative consequences for judgments ruled incorrect.

We can also look at case rejections and impeachments in the context of individual careers. Most of the magistrates in this dissertation have left very little in the way of personal records, but some of their basic biographical details—home county, educational qualifications, and years in office—were included in county, prefectural, and provincial gazetteers 方志. The ongoing digitization of these local histories across China has yielded an ever-growing searchable database that makes it possible to trace at least a rough outline of magistrates’ careers. By searching across multiple digitized gazetteers, we can trace the job histories of individual magistrates, even those so unremarkable that they failed to attain more than a brief mention in the compiled biographies of their home counties. These assembled career records provide additional context for understanding the actual effect of impeachments. For example, judicial bribery convictions appear to have been a career-ending offense for most magistrates, while fiscal and administrative malfeasance was not.

Chapter Four explores magistrates’ judicial practice in the particular context of Yongzheng-era frontier settlement. The 1723-1735 reign of the Yongzheng emperor saw increased Qing colonial expansion in the southwest and Taiwan, including direct governance of

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91. There are multiple digital gazetteer projects currently online; I have primarily relied on the Erudition 愛如生 database at server.wenzibase.com. This method has certain limitations: many gazetteers have not yet been digitized, some gazetteer information is incorrect or contradictory, and some magistrates have names that use very common characters or unusual variant characters, both of which make searching difficult. However, redundancy across county, prefectural, and provincial gazetteers, as well as revised editions, can fill in some of these gaps.
tribal groups, as well as changes to appointment procedures for coastal and frontier magistrates, who were put in the position of mediating not only between counties and the Qing state, but also between disparate groups of indigenous tribes and Han settlers. Magistrates in Yunnan and Taiwan were able to leverage their presumed knowledge and experience on the frontier to gain support from the provincial government for greater flexibility in criminal judgments. In the second half of the chapter, I focus on one magistrate in Taiwan, Zhou Zhongxuan, whose impeachment and trial for judicial corruption highlighted the conflicting attitudes of the emperor and the provincial administration towards frontier magistrates’ local expertise.

One topic this dissertation considers throughout is judicial corruption and the ways that magistrates attempted to assuage provincial and capital officials suspicions of bribery and misconduct. Chapter Five makes use of the different angles considered in the previous chapters, now focused directly at the issue of accepting payments to “twist the law” in criminal investigations. Combining analysis of administrative and criminal laws and impeachment procedures with case studies of magistrates, this chapter explores the incentives that shaped magistrates’ decisions in instances of judicial bribery and extortion. I analyze judicial corruption as another set of choices made by magistrates rather than as a phenomenon completely separate from their other criminal verdicts, and note that many of the same influences were present across cases, regardless of the exchange of bribe payments.

My approach involves looking at the institutional constraints and priorities that applied to magistrates, and although I aim to center the magistrate’s point of view throughout this dissertation, the nature of the local and institutional environments in which they operated provides important context for understanding their possible choices and decision-making. I have
thus tried to ground this study in a specific era and show how the context of a particular emperor and his administration reflected on the magistrates subject to his authority. The majority of the case studies and primary source material for this dissertation are from 1723-1738: the Yongzheng reign and following three years.

My focus on in the Yongzheng reign grows partly out of an interest in corruption, where the ways that the Qing state dealt with the issue changed under different emperors; Yongzheng is generally considered to have been interested in preventing corruption and willing to take harsh measures to do so. In Chapters Three and Four, we see several examples of Yongzheng actively involving himself in impeachment cases to harshly punish magistrates suspected of corruption, even when little or no evidence of actual malfeasance was found, demonstrating the way that an emperor’s priorities could have a very tangible and personal impact on individual magistrates’ lives. His successor, the Qianlong emperor, is remembered for the widespread corruption that flourished under his advisor Heshen in the later part of his 61-year reign. Nancy Park has also shown that Qianlong’s own policies around gift-giving put financial pressures on officials throughout the bureaucracy, thus encouraging the spread of bribery, extortion, and similar crimes.

The position of magistrates on the southern frontiers of Yunnan and Taiwan was also very much a product of Yongzheng’s policies. He transferred administrative and judicial power over indigenous groups in the southwest from hereditary chieftains (tusi 土司) to county

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92. For example, Zelin, The Magistrate’s Tael, 78-82.
administrations, and expanded the power of provincial governors to directly recommend experienced candidates for local positions, creating new opportunities for magistrates to position themselves as experts on frontier matters and changing their relationships with their provincial superiors. These closer ties between county and province provoked worry from the emperor about cronyism and threats to the stability along the Qing’s borders, resulting in heightened scrutiny of frontier officials at the capital level through channels such as the special censors tasked with monitoring Taiwan.95

In this dissertation, I have tried to show how magistrates’ judicial work connected to the particular policies of this era in the Qing, not only because of my interest in the Yongzheng reign, but also to draw attention to the ways that routine legal decisions were rooted in their time. Although the scholarly literature no longer treats Qing law as static and timeless, much of the field continues to focus on legal history beginning no earlier than the Qianlong reign (1735-1796) and often focusing more on the late eighteenth and nineteenth centuries. We cannot necessarily read observations of mid-late Qing law back to earlier periods.

For many topics in Qing legal history, the Yongzheng reign is a difficult period to study, due to the relative lack of source materials. The local archives of Ba County in Sichuan and Danshui-Xinzhu in Taiwan contain very few materials predating the mid-late Qianlong era, making civil cases and the details of local administration difficult to study. However, the homicide cases I study in this dissertation were sent to the capital for review and confirmation. Although the Qing central archives in Beijing and Taipei do not contain the same wealth of Yongzheng-era cases that they have for later reigns, they still contain hundreds of homicide case

95. This post was created two years before Yongzheng took the throne, and although he remained in close communication with these censors throughout his reign, the position was gradually phased out by his successor.
memorials from this era. Moreover, these memorials predate the streamlining and simplification that began in the mid-late eighteenth century. These earlier documents contain more detailed narratives of the incident, less redacted depositions, and include the questions asked of witnesses and suspects.  

I have also been able to find alternate ways of looking at local administration by reading archival records of bribery prosecutions; with their testimony from yamen and personal staff, they provide a different view into the county-level judicial process and the magistrate’s reliance on his employees.

Because I am interested in the law as Yongzheng-era magistrates may have understood it, I make use of the legal codes and commentaries that were used during the Yongzheng reign wherever available, rather than later editions. For the criminal laws in the Great Qing Code, I refer to the statutes as written in Shen Zhiqi’s 1715 commentary, which was widely-read and influential on both individual officials’ decisions as well as on later official interpretations of the Code.  

I have therefore also used his commentary as a way of understanding how magistrates and their legal secretaries might have read and interpreted the statutes. I have checked the text of the statutes in Shen’s commentary against that of the Yongzheng edition of the Collected Statutes of the Great Qing 會典, which included administrative regulations as well the criminal laws that were also listed in the Great Qing Code. I also use the Collected Statutes as a source for the substratutes and precedents in effect during the Yongzheng reign, but established after the publication of Shen’s commentary.

The use of these sources is part of my overall approach throughout this dissertation: centering magistrates’ perspectives while also understanding their place in the larger systems of Qing law, government, and society. Instead of viewing magistrates in comparison to ideals and preexisting definitions of judges—whether from western law, Qing statecraft, or Chinese literature—we should look at magistrates in their own context: the choices available to them, how they understood those choices, and how their understanding guided their actions. Doing so not only gives agency to magistrates, but also helps us better understand the structures and connections within Qing government and society.
Chapter Two

Crafting Fatal Cases

Magistrates were not trained as legal experts, but were expected to supervise every aspect of criminal and civil trials. As discussed in the previous chapter, after pursuing the rigorous classical education necessary to pass the civil service exams and obtain an official position, few magistrates had the time or resources to also become legal experts. Most were forced to rely on the expertise of their assistants, but any incompetence or malfeasance by their subordinates could also result in administrative or even criminal punishments for the magistrates, who bore the foremost responsibility for the conduct and results of the trials. Despite their lack of specialist legal knowledge, they were expected to discover the underlying truth in each case, identify the exact violations of Qing law and correctly recommend the corresponding punishments specified in the Qing Code. Magistrates were personally and professionally responsible for achieving the correct trial outcome, making them what Alison Conner called “guarantors of the correct result.”

The idea of a guarantor of trial outcome frames the magistrate as a bureaucrat, processing paperwork and ensuring quality control while the meaningful judicial work was done above and below him, by the legal experts in the magistrate’s employ and the judicial officials at the provincial and capital levels. However, this chapter will argue that the magistrate’s role as guarantor and mediator between county and administration allowed him to be actively involved

in shaping the outcome of a case. Magistrates were responsible for organizing information from each trial, and were the main conduit between their county and the higher levels of the bureaucracy. Their duties required them to sift through all of the content of the investigation and trial, select only the relevant pieces of information, and organize them into a coherent narrative that matched events to specific statutes. The process of gathering information and determining the relevance of each detail gave magistrates the opportunity to filter and shape the information in each case to support their desired outcome. The risks and responsibilities underlying their guarantor role also provided them with an authoritative voice in the trial process. This control over information and narrative was a crucial source of their discretionary powers in criminal judgments.

In this chapter, I examine magistrates’ role in investigating and trying fatal cases, focusing on where regulations and standard procedures might have granted them opportunities to exercise discretion. I will show how the structure of the Qing territorial administration and legal code, which emphasized central control and restricted local judicial authority, nonetheless created opportunities for magistrates to exercise considerable influence over the final outcome of fatal cases. The chapter also explains each step of the investigation and trial process for readers unfamiliar with the particulars of the Qing justice system. Examining the laws and regulations as written is not sufficient to understand how Qing law functioned; examination and analysis of the structural incentives presented by the legal system allow us to better understand and contextualize the actions taken by individuals within it. Thus, this chapter examines the legal and administrative structures surrounding the investigation and trial of fatal cases, to provide context for understanding the case studies in Chapters Three and Four.
Fatal Cases

The focus of this chapter and the next is on the laws and cases falling under the Qing classification of *renming* 人命 ‘human life’ or *ming’an* 命案 ‘fatal cases.’ Fatal cases involved the death of a human being, including intentional homicides, unintentional deaths resulting from violence, and deaths caused by accident or neglect. Such cases were some of the most closely scrutinized and controlled that a local magistrate was likely to encounter.\(^99\) Magistrates were subject to strict regulations and deadlines for reporting and investigation any suspicious deaths. Most violent homicide, intentional or unintentional, carried a death sentence, and thus was subject to repeated judicial review by the magistrate’s superiors. Capital cases were documented and reviewed at the prefectural and provincial level, and each case was submitted to the emperor twice: first from provincial officials for imperial approval and referral to the Three Judicial Offices 三法司, and a second time from the Three Judicial Offices for another imperial approval and confirmation of the final decision.

The centralized review system and strict procedural controls over death sentences limited magistrate options in fatal cases, leading some scholars to assume that they had little or no discretionary authority over homicide judgments.\(^100\) Others have noted that magistrates’ decisions were frequently echoed by their superiors without apparent changes or rejections, and have used this observation to suggest that the magistrate was the primary decision-making authority in a case.\(^101\) This chapter argues that neither analysis is entirely accurate. Despite the Qing Code’s restrictions on magistrates’ sentencing discretion, their control of information and

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99. Cases involving local uprisings or organized banditry were even more heavily scrutinized, but less routine than homicide.
power to determine charges and verdict granted magistrates effective say over sentencing.

However, the case review system exerted influence on sentencing even when the decision was not overturned.\textsuperscript{102}

\textit{Homicide Sentences}

In civil cases or minor criminal cases, sentences were administered without review or supervision by superior officials, allowing magistrates to modify penalties as they saw fit. A magistrate who repeatedly failed to administer any punishment or who increased the severity of a punishment to such a degree that the offender was killed or permanently injured could be impeached and investigated for negligence, corruption, or abuse, but minor adjustments to such penalties were unlikely to be noticed by prefectural or provincial officials.\textsuperscript{103} In cases where penal servitude, exile, or execution were possible outcomes, sentencing options were more limited. Technically a magistrate’s report of his decision in capital cases was a “statement of consideration” 看語, not the “statement of decision” 判語 or 審語 made in minor cases. The statement of consideration had to be confirmed by higher officials. To recommend the appropriate sentence, the magistrate had to identify the statute that best fit the crime, note any applicable circumstances that might affect the degree of punishment, and then state the corresponding penalty specified in the Code, along with any adjustments. As with all cases, the magistrate had to quote the full statute and applicable penalties.

\textsuperscript{102} Moreover, as we will see in Chapter Three, case rejections and changes were not always recorded in the final memorial record, making it harder to tell how often cases were overturned.
\textsuperscript{103} For more on impeachment and abuse, see Chapter 5
Homicide was usually a capital crime, but possible sentences—depending on the circumstances and the involvement of the accused—including beating with a heavy bamboo rod, penal servitude, exile, or execution. The Code listed criminal punishments in set increments by severity, so statutes could address mitigating or intensifying factors by simply adding or subtracting degrees of the sentence, e.g., reducing 100 blows by one degree to 80 blows, or increasing by one degree to penal servitude. “Blows with the heavy bamboo” zhang 枪 was a legal unit of measurement used to scale punishments. When administered, the actual number of blows was significantly lower: 60 zhang in the code was converted to 20 actual blows. Each additional ten zhang equaled five actual blows. 104 Any offense incurring more than 100 zhang was punished with penal servitude, exile, or execution, so the highest actual number of blows that could be administered for any crime was 40.

Harsher criminal penalties included penal servitude or military exile, with a beating administered upon arrival. Penal servitude involved forced labor at a postal station within the criminal’s home province for the duration of time specified in the sentence, ranging from one year and sixty (actually 20) blows on arrival, to three years and 100 (40) blows, with duration increasing in increments of half a year and 10 blows. Exile involved one hundred blows and lifelong banishment to another province within Qing China. Every prefecture had a corresponding exile destination prefecture for 2000, 2500, and 3000 li, specified in the “Tables of Three Degrees of Exile.” These were usually a few provinces to the west of the offender’s

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104. Shen Zhiqi 沈之奇, Da Qing lü jizhu 大清律輯註 [Compiled commentary on the Great Qing Code] (1715), 1:1b. Zhang as a unit of punishment was copied from the Ming Code. When the Qing altered the specified instrument for beating from a lighter switch to a heavier bamboo board, the amount of administered blows was reduced, but the unit remained. Bodde and Morris, Law in Imperial China, 77.
birthplace—Guangxi for those from Guangdong, Shanxi or Shaanxi for those from around Beijing.  

Most homicide statutes carried sentences of death by one of three execution methods: strangulation 絞, decapitation 斬, or lingchi (slicing) 凌遲. The method of execution was legally significant because it determined the condition of the prisoner’s corpse. Strangulation, which left an intact body for burial, was considered the lightest punishment, followed by decapitation, which severed the head from the body. Lingchi, sometimes known in the West as “death by a thousand cuts,” was the harshest punishment; it was painful, as some of the slicing occurred before death, and the prisoner’s body was dismembered after execution.

The punishments of strangulation and decapitation each had two possible modes: “delayed” (jianhou 監侯) or “immediate” (lijue 立決). These terms are somewhat misleading; all civilian death sentences were subject to the lengthy obligatory case review system, so even an “immediate” execution was held off for months until it had been reviewed and confirmed by the emperor. The actual distinction between the two categories was whether the penalty was subject to further review and possible clemency at the yearly Autumn Assizes, where delayed sentences were either confirmed, commuted, or suspended pending further review in the following year. If a convict’s execution had been suspended multiple times, it was usually commuted to exile even if the case did not clearly meet the criteria for clemency. Only a small fraction of sentences reviewed at the Assizes were actually confirmed; most capital offenders were imprisoned for

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106. Meijer, “The Autumn Assizes in Ch’ing Law,” 14. The number of suspensions that qualified one for commutation varied. Meijer suggested that ten years was the standard, but that under certain conditions a case could qualify after a single suspension. At the other extreme, Kathleen Poling found one man whose execution was suspended for twenty-two years, at which point his advanced age qualified him for clemency. Kathleen Margaret Poling, “The Performance of Power and the Administration of Justice: Capital Punishment and the Case Review System in Late Imperial China,” (Ph.D. diss., University of California, Berkeley, 2012), 102-103.
several years and then sent into exile or penal servitude. An “immediate” death sentence was carried out after capital review without waiting for the Assizes, making actual execution almost certain.

Magistrates’ ability to determine the outcome of a fatal case was often limited to giving a sentence of strangulation instead of decapitation, or delayed decapitation instead of immediate. However, the differences between the three most common death sentences—strangulation with delay, decapitation with delay, and immediate decapitation—were real and meaningful to the prisoner facing these possibilities. A sentence of immediate decapitation usually meant death within a year. Strangulation with delay did not come with a guaranteed reprieve, but prisoners had a good chance of having their sentences commuted or suspended for another year of review. Decapitation with delay also contained the possibility of clemency, albeit a reduced chance. The lives of those imprisoned, and of convicts subject to exile or penal servitude, were not pleasant ones, but many preferred them to death. Moreover, a suspended or commuted sentence held out the hope of freedom if a general amnesty was declared. For the magistrate weighing these three sentences—and for the prisoner facing them—the differences between each death penalty were much more than mere technicalities.

107. Poling, “Performance of Power and the Administration of Justice,” 100-102; Meijer, “The Autumn Assizes in Ch’ing Law.” 7. Meijer estimated that in 1812, the number of stayed executions reached 11,900, while actual executions were closer to 1,560.
108. Immediate strangulation existed as a punishment in the Code, but was quite rare.
109. General amnesties were not a frequent occurrence, but they were declared at the beginning of every emperor’s reign, and occasionally during other important events as well. Ch’ü, Law and Society in Traditional China, 215-217.
Chapter 2

Homicide Laws

Under Qing law, the severity of a fatal offense—and of its punishment—depended on the defendant’s motivations, involvement, and relationship to the victim. The Qing Code contained twenty statutes on homicide, with most statutes covering multiple separate offenses. For example, the statute on “Injuring or killing another in play, mistakenly, or through negligence” 戲殺誤殺失殺傷人 contained three sections covering accidental deaths or injuries: first, those occurring in the course of play-fighting; second, those caused by knowingly lying about the safety of a river crossing; and third, those resulting from negligence or carelessness. Most statutes also contained multiple substatutes as well, adding further specificity. The Qing Code was designed to minimize ambiguity and room for interpretation at the local level, and thus required sentencing instructions for a variety of possible circumstances.110 Deaths caused by carriage, by hunting traps, by social pressure, and by scorpions all had their own citations in the Code.

Despite the specificity of Qing criminal laws, most homicide convictions fell under a handful of statutes centered on physical fights, robbery, or adultery. To determine the nature of the crime and its corresponding sentence, a magistrate would have to answer questions about the intent of the accused: was there deliberate violence or a demonstrated intent to kill?111 Motivations involving money or illicit sex could also change the nature of the crime under Qing law, as could the familial relationship between the perpetrator and the victim.

111. I refer to the person suspected of committing a crime as “accused” or defendant” throughout this dissertation. The original Chinese is 犯 “criminal,” but translating it thus tends to create a false impression that Qing law had a built-in presumption of guilt. Alison Conner has convincingly argued that no such presumption existed. Conner, “The Law of Evidence During the Ch’ing Dynasty,” 17-27.
The presence of deliberate violence distinguished between negligent homicide, punished with beatings and fines, and unintentional homicide, punished with strangulation. Unintentional killing from careless or reckless behavior was not a capital crime. However, deaths resulting from physical fights were capital crimes, even when the altercation was only play-fighting. Unintentional killing in the course of a physical fight fell under the statute “Engaging in an affray and/or intentionally killing a person” 鬥毆及故殺人, covering both intentional and unintentional homicide. Its first provision read “In any instance of engaging in an affray and killing another, do not distinguish between hands, feet, another object, or a metal blade; sentence to strangulation pending review (at the Autumn Assizes)” 凡鬥毆殺人者不問手足他物金成刃並絞監候. The second provision read simply, “For intentional killing, sentence to beheading with delay” 故殺者斬監候. Many homicides resulted from a violent disagreement between two people, and unless the homicide was planned in advance or involved familial or spousal bonds, it would likely be sentenced according to the above statute.

Although both homicide in affray and intentional homicide were capital crimes under Qing law, the difference in degree between the two is apparent in the different forms of execution each incurred. Strangulation, despite being the slower death, was the more lenient sentence. Unlike decapitation or lingchi (slicing), strangulation left an intact corpse. Having one’s body stay in one piece even after death was sufficiently important that keeping the body together was specified in the Qing Code’s entry on strangulation. The separation of body and head was likewise specified for decapitation. Even those who were unconcerned about the

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112. Shen Zhiqi, Da Qing lü jizhu, 19:16b.
113. Shen Zhiqi, Da Qing lü jizhu, 1:2b; Timothy Brook, Gregory Blue, and Jérôme Bourgon, Death By a Thousand Cuts (Cambridge: Harvard University Press, 2008), 50-51.
state of their corpse might have had reasons to prefer a sentence of strangulation. The Code does not contain any instructions to this effect, but there is some indication that lack on intent was considered a reason to grant clemency in homicide cases, making sentences for unintentional homicide significantly more likely to be commuted to exile or penal labor at the Autumn Assizes. The distinction between intentional and unintentional homicide could have meant the difference between life and death.

For the magistrate, determining which of these two forms of homicide applied in a given case rested on establishing whether the accused had “a mind desiring to kill” 有心欲杀 at the time of the fight. The Tang Code had contained a number of ways to distinguish intent, including weapon, number and type of wounds, and length of time between injury and death, all of which were absent in the Qing Code. Magistrates could make note of any of these characteristics when deciding on the appropriate conviction, but none of these details was automatically a determining factor. This lack of specification meant that magistrates had much more flexibility in arguing for a specific sentence, particularly if they wanted to classify a homicide involving a metal blade or multiple stab wounds as “unintentional.”

In homicides with more than one assailant, the magistrate would also have to distinguish between the principal actor and any accomplices. In a case of homicide in an affray, the principal was the person who dealt the most serious injury. Anyone else who participated in the fight would also be punished, but with a reduced sentence of 100 blows. If the person convicted of causing the fatal injury was different from the one found guilty of instigating the fight, then the

instigator would be punished with exile in addition to the beating. For the magistrate, this system meant that he had to determine the primary instigator, the person who dealt the death blow, and whether that person intended to kill the victim. All of these criteria rested heavily on the testimony of any participants and observers to the incident.

Not every homicide case arose from a seemingly spontaneous disagreement. Some were planned ahead of time by those seeking revenge, money, or something else. In the Qing Code, “planned homicide” 議殺 was not necessarily punished more harshly than intentional homicide in an affray; both had the sentence of decapitation with delay. For planned homicide, however, this penalty was only a starting point, and other factors related to the crime could increase the punishment. If anyone involved in the planning or execution of a fatal attack benefitted financially from the victim’s death, their sentence was increased to “immediate” beheading 斬立決 without a chance of being spared at the Autumn Assizes. Immediate execution still required review and confirmation by each level, including the emperor, but clemency was rarely granted through routine review. Unlike in cases with delay, anyone sentenced to immediate execution would almost certainly die. Moreover, so would any accomplices who profited from the killing—unlike homicide in an affray, planned killing for gain explicitly did not distinguish between primary and secondary participants. Financial gain, whether the original motivator for the crime or an afterthought, transformed homicide from a serious crime with the possibility of redemption into something unforgivable.

116. Shen Zhiqi, Da Qing lü jizhu, 20:1a-2b.
117. Shen Zhiqi, Da Qing lü jizhu, 19:1a-b.
118. As we will see in Chapter 5, judicial malfeasance by magistrates was also punished more harshly when financial gain was involved.
Chapter 2

The Qing Code was even less forgiving towards those whose violence was motivated by illicit sex, particularly adultery.\textsuperscript{119} Late Imperial Chinese law, particularly in the Qing, criminalized a variety of sexual acts as \textit{jian 犯}, a broad term referring to sexual intercourse outside of marriage, including premarital sex and adultery (\textit{he jian 和姦} or \textit{tong jian 同姦}), rape (\textit{qiang jian 強姦}), and male sodomy (\textit{ji jian 鸡姦}).\textsuperscript{120} Most sexual intercourse outside of marriage was punishable with a heavy beating for both parties and anyone who knowingly permitted the affair (e.g., the husband of an adulterous wife). Rape was a capital offense with a sentence of strangulation for the perpetrator and no punishment for the victim.\textsuperscript{121}

In fatal cases, the inclusion of illicit sex resulted in much heavier penalties. Rape attempts that caused the death of the victim were punished with decapitation without revision.\textsuperscript{122} Homicides involving consensual adultery also had greatly increased sentences, particularly for the adulterous wife or concubine. A woman involved in an adulterous relationship who then participated in a plot to kill her husband was automatically designated the ringleader, and was punished with the harshest capital sentence: \textit{lingchi 凌遲}, or death by slicing. If the woman’s lover killed her husband without her knowledge, she would still be punished with strangulation pending review. The lover’s sentence would be beheading with delay whether he proposed the killing, wielded the weapon, or only helped in small ways.\textsuperscript{123}

\textsuperscript{119} The base statutes on violence related to illicit sex or rape were present in the Ming Code, with additional penalties to the Qing Code added throughout the eighteenth century. (Sommer, \textit{Sex, Law, and Society}, 70-71.)

\textsuperscript{120} In translations of the Qing Code and in older scholarship on Chinese law, \textit{jian} is often translated as “fornication.” I prefer to use Sommer’s more precise “illicit sexual intercourse.” (Sommer, \textit{Sex, Law, and Society}, 30-36.)

\textsuperscript{121} Qing law defined rape 強姦 very narrowly. An act of illicit intercourse was only defined as rape if physical violence had been used to overcome the victim’s resistance. Sommer, \textit{Sex, Law, and Society}, 84-93.

\textsuperscript{122} Sommer, \textit{Sex, Law, and Society}, 82-83.

\textsuperscript{123} Shen Zhiqi, \textit{Da Qing lü jizhu}, 19:7a-b.
Trial Procedure

Local magistrates in the Qing presided over every aspect of civil and criminal investigations and trials. In fatal cases, the magistrate’s decisions were subject to multiple levels of review, but he was still the primary authority over the entire process of investigation and trial within the county. He heard the initial complaint, conducted the inquest if a death was involved, examined the evidence, had suspects arrested, questioned witnesses, determined guilt, and identified the appropriate sentence according to the statutes. In short, he was not only judge, but detective and prosecutor as well. In these tasks, he was aided by his personal attendants and yamen staff. Some magistrates delegated most of these duties to their assistants, with little personal involvement, but according to Qing law, the magistrate was the primary person responsible for each of these tasks, and the person most likely to suffer administrative or criminal consequences if the tasks were handled improperly or left uncompleted.

For the magistrate, the case began when he was notified of a death. According to the Code, magistrates were expected to look into any accusation, and could face a beating or the equivalent fine for failing to do so. Moreover, their superiors faced the same punishment if they received notice of a neglected matter and did not take action themselves. In practice, a magistrate had some discretion in determining whether to investigate a death, but if he chose not to, he risked impeachment or fines if someone later complained to his superiors. If he did investigate, he would conduct a preliminary examination of the corpse as quickly as possible, collect any other physical evidence, and begin questioning witnesses. He would also send yamen runners to arrest any suspects. After the inquest, the magistrate would submit his findings to the

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124. By the late nineteenth century, the responsibility for determining which deaths required investigation had been delegated to local constables and benevolent associations. Asen, “Dead Bodies and Forensic Science,” 146-148.
prefect, who would in turn notify the provincial judicial commissioner. These superiors would review the preliminary report and note any potential problems or areas requiring careful investigation.

At the trial 审, the magistrate would question the suspects, the accusers, and any witnesses. To convict and sentence, he usually needed to obtain confessions for any criminal act related to the main case. The magistrate would identify which statutes had been violated and the sentences specified by the Qing Code. A criminal trial in the Qing considered every potential offense connected to the central offense as part of the same incident, and tried every defendant together, rather than holding separate hearings for each. The trial usually centered on one major crime and primary offender who would bear foremost responsibility, but also included any other violations connected in some way to the main incident. All of these were supposed to be determined in a single trial and reported on in one case statement. Any potential illegal behavior that came up in the investigation of the main crime had to be addressed in the magistrate’s statement. For example, in the homicide trial of Luo Shijin discussed in Chapter Four, Luo was accused of killing his lover, a married woman. Along with sentencing Luo for the homicide, the magistrate also had to address the issue of whether the woman’s husband had knowingly tolerated the affair, and also whether another neighbor had also been having an affair with the deceased.

125. The Chinese character shen 审, which can mean “try a case,” “investigate,” or “examine” (among others) appears in various references to legal procedures, including the “statement of decision” 审語 and the Autumn Assizes 秋審. It is also the word for a trial or hearing, e.g., “審後再審” “arrest after the trial” or “遠來看審” “come from far away to watch the trial.” Huang Liu Hong 黃六鴻, Fui hui quan shu 福惠全書 [Complete book of happiness and benevolence] (1694; reprint, 1893), 11:20b-21a.
After determining every conviction in the case, the magistrate would then send this decision to his superiors for review. Qing case review, labeled the “obligatory review system” by legal scholar Shiga Shuzo 滋賀秀三, began with the magistrate’s immediate superior in the prefecture. Once a case passed prefectural review, it was sent to the provincial level.\textsuperscript{126} Here there were two levels of review to pass. The first was the provincial judicial commissioner 提刑按察使司, the official in charge of all judicial matters in a given province.\textsuperscript{127} If the judicial commissioner approved the decision, he would pass it to the provincial governor and governor-general, who would usually echo the judicial commissioner’s decision.\textsuperscript{128} For cases punishable by penal servitude or less, the case stopped there. For fatal cases and others with a penalty of death or exile, the case would then be sent to the capital. If a case did not pass review at the prefectural or provincial level, it would be overturned 駁 and sent back for reinvestigation and retrial. Once the case had cleared the provincial level, it was sent to the capital. Crimes carrying a sentence of exile were sent to the Board of Punishments 刑部 for review and confirmation.

Cases involving the death penalty were sent to the Three Judicial Offices 三法司, a group of high officials from the Board of Punishments, the Censorate 都察院, and the Court of Judicial Revision 大理寺. The lead official reviewing these cases came from the Board of Punishments.\textsuperscript{129} As in the provinces, the case could be overturned by the Board or Three Offices, and sent back for revision and reinvestigation. If the decision passed this level of review, then

\begin{itemize}
  \item \textsuperscript{126} Shiga Shuzo, “Criminal Procedure in the Ch’ing Dynasty—With Emphasis on Its Administrative Character and Some Allusion to Its Historical Antecedents (I),” \textit{Memoirs of the Research Department of the Toyō Bunko} 32 (1974), 17.
  \item \textsuperscript{127} H. S. Brunnert and V. V. Hagelstrom, \textit{Present Day Political Organization of China}, trans. A. Belchenko and E. E. Moran, (Shanghai: Kelly and Walsh, 1912), 410.
  \item \textsuperscript{128} Bodde and Morris, \textit{Law in Imperial China}, 133.
  \item \textsuperscript{129} Bodde and Morris, \textit{Law in Imperial China}, 133.
\end{itemize}
any sentence below execution was confirmed and would be carried out. Death sentences required an additional confirmation by the emperor. If the sentence specified delay until the Autumn Assizes, then the sentence was postponed until the sentenced had been reviewed and confirmed an additional time by provincial officials, the Board of Punishments, and the emperor.

*Inquest*

Once the magistrate was informed of a potential homicide in his district, he was required to immediately begin investigating the death. After reviewing the village head’s report and the charges from the victim’s family, the magistrate would send yamen runners to arrest any suspects. He would also begin preparations to travel to the location of the corpse and conduct the forensic examination of the body and first round of questioning. He was expected to conduct at least two autopsies of the corpse: first, a preliminary examination (相驗 or 初驗) of the visible wounds done as soon as possible after the time of death; second, an examination of the bones and inner flesh of the decomposed corpse, conducted to confirm or clarify the findings of the initial investigation and questioning. If the findings from the first examination were inconclusive, the bones could be subjected to a second or third by either the magistrate or his superiors. Both the preliminary and any subsequent inspections were open to observers.\(^{130}\)

Forensic examination of the deceased was an important component of investigation and trial, providing both critical physical evidence and a public demonstration of the justice system in action. Within hours or days of learning of the death, the local magistrate would travel to the location of the corpse, by law kept unburied and undisturbed at the location of discovery until the

\(^{130}\) Asen, “Dead Bodies and Forensic Science,” 17.
initial inspection was concluded. The entire forensic examination was open to county residents, travelers, or any other interested persons, offering observers the chance to confirm that the procedures were conducted properly and free of corruption. In cases where the magistrate or coroner was exhibiting improper conduct, the inquest gave local residents the opportunity to observe and report possible negligence or misconduct. If anyone connected to the case disagreed with the findings, they could file a protest with the prefect, who could then order an additional examination of the body. An open inquest could reassure local residents that justice would be done.

In practice, the ability of local residents to act as a check on judicial misconduct was somewhat limited. Not every participant in a court case had the resources to travel to the prefectural seat to lodge a complaint. They could also face difficulties in watching the examination process closely enough to understand the procedure. Even if one had few qualms about standing close to a days-old corpse for an extended period of time, inquests could be disorderly and chaotic, making close observation difficult. Magistrate Huang Luihong commented in his handbook that emotions ran high during the inquests, and he recommended bringing yamen guards to prevent retaliatory violence or attempts to seize property from the accused and their families as compensation. Local observers also had to contend with the magistrate’s retinue. By law a magistrate was only allowed to bring a very small group of personnel, consisting of one coroner, one legal clerk, and two yamen runners.

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131. During the late Qing, newspapers and Western observers were also able to watch and document the process. Asen, “Dead Bodies and Forensic Science,” 40-41.
132. Huang Liuhong, Fui hui quan shu, 14:8a-9a.
so as not to overwhelm the village with an influx of bureaucrats and runners.\footnote{Qinding Da Qing huidian 欽定大清會典 [Imperially established collected statutes of the Great Qing] (1732; reprint in Da Qing Wuchao huidian, Beijing: Xianzhuang shuju, 2006), 190:25b.} However, this regulation was not always followed, and some magistrates brought over one hundred personal and yamen staff to inquests.\footnote{Ch’ü, Local Government, 119.}

Although the magistrate was responsible for conducting the examination, the physical inspection of the body was left to the coroner 仵作. Under the magistrate’s supervision, the coroner would closely examine the wounds on each side of the body. The magistrate would record the age and height of the deceased, and make a complete listing of each wound the coroner listed. The two would specify the location, size, color, and whether it was located in a “fatal” 致命 or “non-fatal” 不致命 spot.\footnote{Asen, “Dead Bodies and Forensic Science,” 47-49.} For an example of the format, here is the examination report on the body of Wu Songwu, who was fatally stabbed in 1724.\footnote{Wu Songwu was a soldier stationed in Fujian province. According to the case file, he was killed by a fellow solder in a romantic dispute. Sai-er-tu 賽爾圖, routine memorial, Yz 2.12.10 [AS 015691-001].}

“24 years old, the body is 4 chi, 2 cun tall.\footnote{Chi 尺, cun 寸, and fen 分 were the standard units of length in imperial China. In the Qing, a chi was roughly the length of a US customary foot (~12.6” or 32 cm), a cun was 1/10 of a chi, and a fen was 1/10 of a cun.} Facing upwards: Fatal wounds: A knife wound from the center of the crown of the head, an uneven line 2 cun 3 fen long, 2 fen wide. The skin was broken through to reveal the bone. There were traces of blood. Non-fatal: Knife wound in the right armpit running horizontally 2 cun 1 fen across, 2 fen deep, breaking the skin, making the bone visible, carrying traces of blood. Non-fatal: knife wound on the right leg, running horizontally 4 cun 2 fen across, 2 fen deep, shows the bone, carrying traces of blood. Facing down: fatal: knife wound at the base of the spine, 2 cun 2 fen across, 3 cun 1 fen deep, reveals the bone, carrying traces of blood.”

The terms used to describe each wound—the position on the body, the color, and the classification of fatal or non-fatal—were set words and phrases from forensics handbooks. The

\begin{thebibliography}{9}
\bibitem{133} Qinding Da Qing huidian 欽定大清會典 [Imperially established collected statutes of the Great Qing] (1732; reprint in Da Qing Wuchao huidian, Beijing: Xianzhuang shuju, 2006), 190:25b.
\bibitem{134} Ch’ü, Local Government, 119.
\bibitem{135} Asen, “Dead Bodies and Forensic Science,” 47-49.
\bibitem{136} Wu Songwu was a soldier stationed in Fujian province. According to the case file, he was killed by a fellow solder in a romantic dispute. Sai-er-tu 賽爾圖, routine memorial, Yz 2.12.10 [AS 015691-001].
\bibitem{137} Chi 尺, cun 寸, and fen 分 were the standard units of length in imperial China. In the Qing, a chi was roughly the length of a US customary foot (~12.6” or 32 cm), a cun was 1/10 of a chi, and a fen was 1/10 of a cun.
\bibitem{138} Sai-er-tu, Yz 2.12.10 [AS 015691-001].
\end{thebibliography}
classic forensics handbook, *Xiyuan jilu* 洗冤集錄 [A Collection on Washing Away the Wrongs] was written in 1247, during the Song dynasty. By the beginning of the Yongzheng reign, there were many forensics handbooks available, both annotated and expanded versions of the original *Xiyuan Lu*, and others based on it. By 1740, an official forensics manual, *Lüli guan jiaozheng Xiyuan lu* 律例館校正洗冤錄 [Washing Away the Wrongs, Edited by the Bureau of the Code], had been appended to the Qing Code. It is unclear whether this official manual was distributed before the promulgation of the 1740 Qing Code, and thus whether earlier magistrates had access to it, but even before the official edition was released, magistrates’ handbooks made explicit reference to following the forensic procedures in the original manual, and the Qing Code used the original’s list of body parts and fatal points.\(^{139}\) The *Xiyuan Lu* provided a rubric for classifying the severity and cause of wounds, and fatal potential was understood by matching the placement of an injury to one of the named locations on the checklist. The color, shape, and length of wounds informed the examiner about the weapon used and the severity.

The importance of the autopsy report and the forensic reliance on the appearance of the wounds made it necessary to begin the preliminary examination as soon as possible. Most deadlines for judicial reports were defined in terms of days passed, but the deadline for delay in an autopsy was “such that the corpse is changed” 致令屍變, a timeline that could be very short in the southern provinces or during the summer months.\(^{140}\) The Code also prohibited any attempt to move, bury, or otherwise alter the condition of a corpse before it was investigated, with punishment ranging from a beating to exile.\(^{141}\) Until the preliminary examination was conducted,

\(^{139}\) Asen, “Dead Bodies and Forensic Science,” 46n96.
\(^{140}\) Shen Zhiqi, *Da Qing lü jizhu*, 28:33b-34a.
\(^{141}\) Shen Zhiqi, *Da Qing lü jizhu*, 18:46a-b.
the corpse had to remain at the site of death or discovery. Afterwards, it could be temporarily interred, but full burial had to wait until the case was concluded.

Forensic findings were an important form of evidence in fatal cases, as demonstrated by the strict regulations surrounding both the treatment of the corpse and the examination procedures. The local magistrate faced a beating—usually converted to a fine—if he committed any of the following offenses: delaying the inquest, not personally conducting a close examination or delegating the procedure to a subordinate, allowing the initial examiner and subsequent examiners to compare notes on their autopsy findings, or making careless mistakes that resulted in confusion between severe and light wounds.\textsuperscript{142}

The autopsy and homicide weapon were the main sources of physical evidence available in most fatal cases. Although magistrate handbooks, casebooks, and fiction contained tales of elaborate detective work revealing hidden truths, the evidence magistrates provided in most homicide rulings consisted of autopsy reports, witness testimony, and the defendant’s confession.\textsuperscript{143} The \textit{Xiyuan Lu}'s methods of assessing the severity of wounds by their length, color, and placement provided an essential way of ascertaining the validity of homicide accusations. Although witness testimony and confessions were also indispensable evidence, magistrates had reason to doubt the words of any witness connected to either the accused or the victim. Defendants and their families might lie to avoid punishment, but accusers were seen as equally untrustworthy, and handbooks contained examples of fabricating accusations in order to

\textsuperscript{142} Shen Zhiqi, \textit{Da Qing lü jizhu}, 28:33b-34a.

\textsuperscript{143} Autopsy results were also a focal point of evidence in judicial review, as shown in the following chapter.
obtain compensation from the offender. Forensic evidence provided a seemingly objective metric to uncover the truth.

The forensic examination was to be jointly carried out by the magistrate and the coroner, with the coroner performing the physical tasks of the examination and loudly announcing his observations, and the magistrate closely observing both the coroner’s actions and the condition of the corpse. The actual division of duties between the two could vary widely. Some magistrates were reluctant to spend an extended period of time in close proximity to a corpse that had been exposed to the elements for hours or days, and kept their distance. Others were closely involved in the process, due to a sense of responsibility, an interest in forensics, or a lack of trust in the coroner’s honesty and expertise.

The magistrate’s official responsibility for overseeing the autopsy made him subject to impeachment and fines if the examination report was forged or improperly conducted, giving him some incentive to verify the coroner’s findings. Magistrates and coroners had little basis for mutual trust and understanding, other than a few years’ acquaintance and shared experience examining corpses. Unlike legal secretaries, the coroner was not a member of the magistrate’s personal staff. He was a local resident, with established relationships inside the county, and no preexisting connection or loyalty to the magistrate. For a magistrate opposed to corruption—or worried about the risk to his career—the coroner’s local ties and shared language with his neighbors made him suspect.

144. Huang Liuhong, Fui hui quan shu, 14:8. See also the case of Ru Lin in Chapter 5
145. Ch’ü, Local Government, 120.
146. Shen Zhiqi, Da Qing lü jizhu, 28:33b-34a.
The coroner was also suspect due to his background. The job of coroner belonged to the class of occupation attached to people of “mean” status 賤民, the same class as actors and prostitutes. Not every type of yamen runner belonged to this class—it was mostly reserved for those whose work involved close physical contact with criminals or corpses. Coroners’ mean status disqualified them from ever attaining an official position or sitting for the civil service exam. The magistrate’s qualifications for office were usually based on his educational qualifications and on the classical scholarship necessary to obtain them. The coroners’ low status not only fed fears that they were corrupt and untrustworthy, it also deprived them of any access to the kind of credentials that the magistrate had acquired, and that scholars and officials would accept as indications of intelligence and respectability. Many magistrates were inclined to doubt their coroners’ honesty and intelligence.

Although coroners had no access to scholarly education and status, they had practical experience that magistrates lacked. The extent of coroners’ knowledge and experience of forensic examination varied from county to county, but generally exceeded that of the local magistrate. Most coroners had years of both training and practice conducting autopsies, while many magistrates arrived at their county posting with no prior experience. Coroners began their careers as apprentices, and could remain at the same job for decades, accumulating hands-on experience. Magistrates had no opportunity to practice forensics before their first posting, and even experienced ones had only spent a few years in office. A magistrate in his first posting would likely lack the experience or knowledge necessary to evaluate a coroner’s skills, and the coroner had no access to credentials that a magistrate could evaluate. Qing officials did

147. Anders Hansson, Chinese Outcasts: Discrimination and Emancipation in Late Imperial China (Leiden: Brill, 1996), 49.
acknowledge the importance of this experience in contested cases, where expert coroners could be called in from other counties to examine skeletal remains.\textsuperscript{148} However, many scholarly officials and legal experts shared the low opinion of coroners as a class, viewing coroners as venial and unintelligent.\textsuperscript{149}

Magistrates had both legal and social authority that coroners lacked. Both the law and official handbooks assumed that a magistrate, armed with a copy of the \textit{Xiyuan Lu}, could detect error or fraud by a more experienced coroner. Magistrates’ authority over coroners has been characterized as an example of Qing bureaucratic control over local justice, with the magistrate representing one extension of a vast system of bureaucratic and institutional controls.\textsuperscript{150} However, magistrates also had access to knowledge and control over evidence that their superiors did not. Although the forensic investigation provided physical evidence, the decomposition of bodies meant that much of the forensic information was available only as a written record. The official record was produced by the magistrate, who had opportunities to alter the results. His account could be contradicted by complaints from the local residents involved in the trial, by the testimony of the coroner, or by subsequent forensic investigation of the bones. However, the structure of the inquest procedure granted magistrates the opportunity to make an authoritative initial claim about the physical evidence in the case, giving him access to physical evidence that decomposed before his superiors could verify his findings. Magistrates filled the gap between bureaucratic control and local access, a position which offered opportunity for influence.

\textsuperscript{148} Asen, “Dead Bodies and Forensic Science,” 84.
\textsuperscript{149} Asen, “Dead Bodies and Forensic Science,” 114; Ch’ü, \textit{Local Government}, 120. Ch’ü himself had a low opinion of coroners, calling them “unlikely to be either intelligent or skilled.”
\textsuperscript{150} Asen, “Dead Bodies and Forensic Science,” 38-43.
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Testimony and Oral Evidence

Following the inquest, the magistrate was required to report the results to his superior officials, providing the prefect and judicial commissioner with an opportunity to monitor the progress of the investigation and to give additional instructions if needed. Mandatory inquest reporting also meant that every potential homicide was recorded, making it more difficult for a magistrate to cover up deaths in his county. After sending the inquest report, the magistrate would also dispatch runners to locate and arrest the suspected killer and recover the fatal implement, if he had not already done so. For many deaths, there was very little physical evidence to be gathered, other than the corpse and the weapon. Homicides that arose from a brawl or confrontation, rather than an advance plan, rarely involved more than personal weapons, which could include farming tools, rocks, or fists. If the killing involved theft or other illicitly acquired property, then the property would also need to be located in the suspect’s possession. However, in most trials, the bulk of the evidence came from the inquest, witness testimony, and the suspect’s confession.

Confessions were a crucial part of the trial and sentencing process in Qing law. An oral or written confession was usually necessary to convict a suspect of a serious crime. Ideally, a suspect would volunteer the necessary admission, or break down and acknowledge their guilt under questioning. If they did not, the magistrate was nonetheless required to obtain a confession, using torture if necessary. A confession was not required in every case; if it was impossible to interrogate the suspect—either because the suspect belonged to an exempt category or because the suspect had successfully escaped arrest— the magistrate had to use other evidence to solve
the case.\footnote{Shen Zhiqi, Da Qing lü jizhu, 28:15a.} In that situation, the magistrate could use physical evidence, witness testimony, and the words of any accomplices to establish guilt. Confessions were important, but they did not negate the other evidence in a trial.\footnote{Alison Conner noted that both the requirement for a confession and the acceptability of using torture to extract a confession depended on the Qing standard of \textit{zhongzheng mingbai} 罪證明白 “When all the evidence is clear,” suggesting that the Qing did have standards of evidence not solely dependent on confessions. Conner, “The Law of Evidence During the Ch’ing Dynasty,” 192-193.}

\textit{Interrogation}

The magistrate personally interviewed each witness and suspect in a case and had a great deal of flexibility in both the manner and content of his questions. He could begin preliminary questioning as soon as he received report of a death. Questioning was conducted in public, first at the site of the inquest and then again at the hearing. Magistrate Huang Luihong recommended that magistrates conduct initial questioning at the site of the preliminary inquest, while the suspects were still shaken by the sight of their victim, and before the family of the deceased had time to construct fabricated charges. Trials were often conducted in public before an audience, consisting of family members and friends of those involved, interested local residents, and even travelers or traders from outside the county who wanted entertainment.\footnote{Ch’ü, Local Government, 278n75.} Some magistrates tried to keep out the general public—Huang Liuhong instructed the readers of his handbook to have the yamen runners keep “idle persons” 閒人 away from the trial.\footnote{Huang Liuhong, Fui hui quan shu, 11:22b-23a.} Others encouraged attendance at public hearings.\footnote{Ch’ü, Local Government, 278n75.} Questioning usually occurred in front of all involved parties, giving those involved in the case the opportunity to hear and respond to others’ testimony. If the

151. Shen Zhiqi, Da Qing lü jizhu, 28:15a.
152. Alison Conner noted that both the requirement for a confession and the acceptability of using torture to extract a confession depended on the Qing standard of \textit{zhongzheng mingbai} 罪證明白 “When all the evidence is clear,” suggesting that the Qing did have standards of evidence not solely dependent on confessions. Conner, “The Law of Evidence During the Ch’ing Dynasty,” 192-193.
153. Ch’ü, Local Government, 278n75.
155. Ch’ü, Local Government, 278n75.
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The magistrate was concerned about coordinated stories, he could summon witnesses to the hearing one at a time, asking each witness separately, and allowing them to confront each other only after each individual had told his or her story.\(^{156}\)

At the hearing, all questions were asked by the magistrate—neither clerks nor private individual were authorized—and the process was oral and unscripted. Before the hearing, magistrates would review the case files with their private legal secretaries and decide how to conduct the upcoming interviews, but the magistrate was expected to compose his questions directly, not read prewritten one aloud.\(^{157}\) Unlike the highly formulaic inquest report, both questions and answers could be broad and wide-ranging. At the hearing, each witness would usually confirm their name, age, home county (or banner or tribal affiliation), and relationship to the victim or defendant, and might be asked whether they had observed a pre-existing grudge between the accused and the victim.\(^{158}\) Other exchanges were open-ended, and magistrates would sometimes listen to long recollections from a witness, or even extended conversations between two.\(^{159}\)

When hearing testimony, the magistrate had wide latitude in deciding its relevancy and validity; there was no explicit ban on hearsay, speculation, or opinions. Such broad leeway was intended to provide magistrates with more opportunities to evaluate each persons’ testimony. Long stories and opposing dialogue could draw out contradictions, revealing cracks in the different stories for the magistrate to pry open with pointed questions and threatened

\(^{156}\) Conner, “The Law of Evidence During the Ch’ing Dynasty,” 61.

\(^{157}\) Huang Liu Hong, \textit{Fui hui quan shu}, j11 p21b.

\(^{158}\) The existence of a previously held grudge, and its importance in determining intent, are discussed in detail in this chapter’s section on Conviction and Sentencing.

\(^{159}\) Conner, “The Law of Evidence During the Ch’ing Dynasty,” 61-62.
repercussions. Seemingly irrelevant opinions could help the magistrate understand the character and veracity of the people involved in the case. Moreover, longer testimony allowed the magistrate to observe the facial expressions and body language of the speaker and look for indications that the speaker might be hiding information.\textsuperscript{160} There was also no one present at the hearing with the authority to overrule or contest any inappropriate questions from the magistrate. The Qing justice system did not allow legal representation, and magistrates rarely had any supervisors present at a trial. Anyone who objected to a magistrate’s questions would have to wait and petition the prefect.

Although magistrates’ broad authority to ask questions was intended to provide them with more information, this authority also allowed them to introduce details into the case record and build a narrative around the facts of the case. Depositions and confessions were edited and paraphrased records of testimony, rather than complete transcriptions, as discussed in the following section. During the public interrogation, a magistrate could elicit details that supported particular interpretations of the case. In fatal cases, the magistrate’s questions were particularly significant, because the outcome of the case rested on whether the accused had intended to kill the victim. The testimony of of the accused was important for determining his intent, but so was the testimony of witnesses. By asking witnesses about the appearance of the accused, and for their interpretations of his behavior, the magistrate could bring in additional interpretations of the behavior of the accused.\textsuperscript{161}

\textsuperscript{160} Conner, “The Law of Evidence During the Ch’ing Dynasty,” 62-63.
\textsuperscript{161} For case examples of how magistrates could elicit and include testimony that supported particular characterizations of the accused, see Chapters 3 and 4, particularly the case of Guang Wei in Chapter 4.
The Qing Code did impose one restriction on irrelevant questions, not on their content, but on the magistrate’s use of them. The statute on “Interrogating based on the accusation report” stated that:


1. In any interrogation, [the interrogating official] must probe and question based on the content of the (original accuser’s) accusation plaint. If [the official] seeks information on matters outside the original accusation to add to the charges against the accused, sentence [the official] according to the statute on intentionally increasing criminal charges (for either adding an entire new charge or for increasing lesser charges to more severe ones.) If other officials have not signed the file, they will not be charged with this offense.
2. If, because of (the matters within) the original accusation, or in the (legally) required arrests and investigations, [the official] discovers other crimes committed (by the suspect), an appropriate investigation into these matters does not violate this restriction (on intentionally increasing charges)\textsuperscript{162}

The relevancy restriction was a prohibition on adding unrelated charges to a case, meant to discourage magistrates from intimidating the suspect or witnesses into confessing—truthfully or otherwise—to other unrelated crimes.\textsuperscript{163} If the magistrate asked seemingly irrelevant questions to trap the suspect into admitting to the original charges, or simply to put the suspect off balance, there was no penalty.\textsuperscript{164}

The relevancy law was also a protection against the use of intimidation or torture to force a confession on unrelated charges. It explicitly did not apply to following up on possible criminal

\textsuperscript{162} Shen Zhiqi, \textit{Da Qing lü jizhu}, 28:18a-b.
\textsuperscript{163} Conner, “The Law of Evidence During the Ch‘ing Dynasty,” 94.
\textsuperscript{164} Shen Zhiqi, \textit{Da Qing lü jizhu}, 28:18a-b.
behavior connected to the original accusation, even indirectly. If information about criminal
activity arose in the course of investigating the original report, the magistrate was expected to
investigate that as well, and include his verdict on the newly-uncovered material in his case
report. Shen Zhiqi’s authoritative commentary on the Kangxi-era Qing Code provided two
examples of appropriate follow-up investigations. If a magistrate arrested a person for concealing
another’s crime, and upon arrest the suspect was found to be sheltering bandits in his home, the
second crime was an appropriate additional charge to investigate. If someone accused of
knowingly buying stolen goods was also found to possess a counterfeit official seal, the
counterfeit seal should also be investigated. In both examples, the additional investigation was
not a violation of the relevancy rules.

Magistrates also had few restrictions on witness selection. The substatute to the law on
“Interrogating based on the accusation report” required magistrates to only call witnesses named
in the plaint. However, unlike its parent, this provision used only the word “plaint” 状, without
specifying that it referred to the original plaint lodged by the accuser [原告人]所告本状. This
ambiguity allowed magistrates to interpret the substatute as referring to any of the written
documents attached to the case, and most magistrates were able to summon as many witnesses as
they wanted.

A few categories of people were exempt from the requirement to testify if called. The
wife, mother, children, and younger siblings of the accused would have owed him a filial duty

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165. Shen Zhiqi, *Da Qing lü jizhu*, 28:18a-b.
166. Shen Zhiqi 沈之奇, *Da Qing lü jizhu* 大清律輯註 [Compiled commentary on the Great Qing Code] (1715; reprint, 1746), 1010.
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that prevented them from being morally able to give testimony against him, and thus Qing law did not allow an official to force them to testify. The law also gave such people drastically reduced penalties for concealment of their relative’s crime.168 This protection did not prevent magistrates from calling up exempt persons as witnesses, but according to the law, a magistrate could not use beating or torture to force testimony should the exempt person refuse, and their protection from the consequences of perjury and concealment meant that the magistrate would have to be skeptical of their testimony. If a magistrate wanted to create a more positive or sympathetic view of the accused, he could use testimony from exempt family members to do so. By giving a platform to those who were expected to defend the accused, even to the point of lying to the judge, he could indirectly argue for leniency. However, the obvious unreliability of such testimony limited the usefulness of this technique.169

"Harsh Interrogation" and Judicial Torture

When conducting an interrogation, magistrates could make use of a wide variety of techniques to elicit testimony, including both verbal intimidation and physical violence. As noted above, magistrates were expected to use their questions to obtain information both from the speakers’ words and from their demeanors, so a magistrate was allowed to use threats to elicit a telling emotional reaction. Case files contain examples of threatened violence, repeated questioning, and confronting the suspect with inconsistencies in their testimony. Casebooks contain more dramatic methods, such as sending an undercover servant to find a possible

168. Conner, “The Law of Evidence During the Ch’ing Dynasty,” 52; Shen Zhiqi, Da Qing lü jizhu, 28:16a-17a.
169. For an example of a magistrate’s use of this tactic, and his superiors’ skepticism towards this testimony, see the case of Song Heyu in Chapter 3.
conspirator,\textsuperscript{170} or invoking the supernatural (either to intimidate recalcitrant suspects or for genuine guidance).\textsuperscript{171} It is unclear whether the more dramatic methods were commonly used, or if they were recounted in casebooks and case fiction for their dramatic impact. Such techniques do appear in the casebooks of famous magistrates, which suggests that these methods were acceptable, even if they were rarely used.

More violent methods of interrogation were also permitted. Slapping, beating with bamboo rods, and imprisonment in the canque were all allowed, under the direction and supervision of the magistrate.\textsuperscript{172} In some circumstances, magistrates could make use of judicial torture, or “severe interrogation,” such as the use of wooden devices to press the fingers or ankles, or forcing the suspect to kneel on an iron chain. All forms of torture were restricted, the harsher methods in particular, and none could be applied to officials and other highly-ranked people, or to the elderly, infirm, pregnant, or to children.\textsuperscript{173} Any instruments used in judicial torture had to conform to regulation dimensions.\textsuperscript{174} Of the harsher methods, only the finger pressers could be used on women. The pressers and the chain could only be used in cases involving robbery or homicide, and only if the magistrate determined that there was already clear evidence of the suspect’s guilt, but they refused to confess.\textsuperscript{175} Magistrates convicted of using torture unnecessarily, or of using unapproved methods, faced severe penalties and possible execution.

\textsuperscript{170} Lan Dingyuan 藍鼎元. \textit{Luzhou gong’an 鹿洲公案} [Collected cases of Mr Luzhou] (1712; reprint, Taipei: Wenhai chubanshe, 1971), 1:10, reprint p19.
\textsuperscript{171} Conner, “The Law of Evidence During the Ch’ing Dynasty,” 161-163.
\textsuperscript{172} Shen Zhiqi, \textit{Da Qing lü jizhu}, 28:3a-5a.
\textsuperscript{173} Shen Zhiqi, \textit{Da Qing lü jizhu}, 28:16a-17a.
\textsuperscript{174} \textit{Qinding liubu chufen zeli 欽定六部處分則例} [Imperially established disciplinary regulations of the six boards] (1892; reprint, Taipei: Wenhai chubanshe, 1969), 50:1 reprint p1047.
\textsuperscript{175} \textit{Liubu Chufen Zeli}, 50:3 reprint p1050.
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The use of torture to obtain confessions has been discussed at length by Qing historians and legal scholars, many of whom have tried to convey that it was restricted by law, approached cautiously by many magistrates, and never a settled issue in Qing legal thought.\textsuperscript{176} This careful balance of explanation without excuse is at least in part an effort to argue against nineteenth century western observers’ characterizations of Chinese law as cruel, arbitrary, and barbaric.\textsuperscript{177} However, because the threat of torture appears in some of the case studies in the following chapters, it may be useful to briefly discuss the perception of torture in the eighteenth century Qing.

Both archival records and surviving handbooks suggest that the use of judicial torture was generally discouraged by superior officials and the authors of handbooks for magistrates and legal secretaries, some advising against ever using it, and others suggesting that it be employed only cautiously and when absolutely necessary.\textsuperscript{178} Despite the encouragement to avoid severe interrogation techniques in questioning, their use was probably fairly widespread. Implicit and explicit threats of judicial torture appear in bribery and extortion cases, and county residents seemed to believe in magistrates’ willingness to carry them out.\textsuperscript{179} Judicial commissioners and other officials reviewing confessions were also aware that fear of interrogation could lead to false confessions.\textsuperscript{180} The use and frequency of torture varied between magistrates, there are often no records of whether a given magistrate used it in a particular case. However, nearly all

\begin{itemize}
\item \textsuperscript{177} Conner, “True Confessions?” 132-133.
\item \textsuperscript{178} Conner, “The Law of Evidence During the Ch’ing Dynasty,” 145-152.
\item \textsuperscript{179} For example, see the cases of Zhu Wenzhao and Wang Guoxi in Chapter 5.
\item \textsuperscript{180} For example, the case of Song Heyu in Chapter 3.
\end{itemize}
confessions and testimony were given with the possibility of torture overshadowing the process, and judicial officials were aware that this threat could complicate the reliability of testimony.

*Depositions and Confessions as Documents*

Thus far, we have discussed testimony as the oral questions and answers spoken during the trial, which was how it was experienced by those present at the hearing. For the judicial officials reviewing the case, however, testimony and confessions were written documents containing an edited and abridged record, and reviewers saw only the testimony recorded and included in the case file. The magistrate, as the official responsible for transforming the oral testimony into the written depositions, was the one person in the trial and review process who had full access to both states.

When converting oral testimony to a written confession or deposition, the magistrate was expected to redact any irrelevant details and edit the language of the confession to remove profanity and local slang. Without the original testimony, it is impossible to know the degree to which these summaries reflected the original speech in the courtroom. The language used in the confessions, while colloquial, is also fairly consistent across different provinces—the same pronouns and structure appear in the depositions of a Han man in Shandong, another Han man in Fujian, and a member of a non-Han tribe in Yunnan.\(^{181}\) Exact transcriptions of speech from three distant corners of the Qing would be unlikely to so closely resemble each other.

\(^{181}\) Xu Ben 徐本, routine memorial, QI 2.2.15 [AS 027198-001]; Sai-er-tu, Yz 2.12.10 [AS 015691-001]; Zhang Yunsui 張允随, routine memorial, QI 1.5.24 [AS 055740-001].
Confessions also often contain words or phrases that closely echo that of the Qing Code or other legal documents.\textsuperscript{182} It can be difficult to believe that rural residents without formal education would choose to explain their actions using the language of the Qing Code, especially at a time when magistrates themselves sometimes lacked extensive legal education. However, the presence of legalistic vocabulary was not necessarily due to later editing of the deposition. The defendant’s speech could also have been the result of coaching by a songshi 訴師, the underground litigation experts who could be hired to write plaints, fabricate accusations, and help with criminal defense.

Some depositions have clearly been heavily edited or even completely rewritten. Some confessions from mass trials of military criminals were created by melding several confessions into one composite, or had one confession stand in for an entire group, omitting the rest. Others were written in the third person and used literary Chinese, or a mixture of first-person colloquial and third-person literary.\textsuperscript{183} By the late Qianlong era, testimony at the county level was often streamlined and paraphrased.\textsuperscript{184} The cases discussed in this dissertation come from the Yongzheng and early Qianlong periods, and predate this streamlining. All of the testimony included in these cases used colloquial language and included the magistrates’ questions, and sometimes a second round of further interrogation.

The Qing legal system contained several mechanisms designed to ensure faithful reproduction of testimony and confessions. Questioning occurred in public, either at the site of the inquest or at the trial. Most testimony in fatal cases was given orally and recorded by a

\textsuperscript{182} Buoye, “Filial Felons,” 116.
\textsuperscript{184} Buoye, “Filial Felons,” 115-116.
deposition clerk. Witnesses would then confirm the record of their testimony by signing their name or leaving their thumbprint.\textsuperscript{185} Criminal confessions required additional confirmation—the deposition clerk was required to read confessions aloud in the courtroom, before both parties in the case, confirm their accuracy. The magistrate himself then had to complete the recording personally, rather than delegating it to a clerk, who was not considered trustworthy enough to have unsupervised access to a confirmed confession.\textsuperscript{186} In capital cases, these depositions were reviewed by prefectural, provincial, and capital officials, who could also conduct follow-up questioning if needed.

As with the rest of the investigation and trial procedure, the magistrate held responsibility for the accuracy of the depositions; if they were found to be altered, he himself could be subject to administrative or criminal punishments. If a fabricated or altered confession in a capital case was not detected until the execution had been carried out, the magistrate could be sentenced to death.\textsuperscript{187} This situation was unlikely to occur, as civilian death sentences had to be extensively reviewed, and many were then delayed until the yearly Autumn Assizes, where they were often commuted to a lesser punishment. A falsified confession that was not detected during the review process was unlikely to surface years later, unless the magistrate had been impeached over another offense and was now being thoroughly investigated. Even in that instance, fabricated testimony by itself would not actually result in a death sentence for the magistrate; officials were entitled to have criminal sentences converted into administrative sanctions that would reduce their punishment.\textsuperscript{188} Nonetheless, the existence of such heavy penalties for falsifying a
deposition, or allowing one to be altered by another through the magistrate’s neglect, was a sign of the importance the Qing legal system placed on testimony. The safeguards existed so that officials could trust that depositions were faithfully recorded and that any inaccuracies would be detected and punished.

These procedures were not designed to produce complete transcripts of each trial. The main purpose of written confessions and depositions was to provide proof that the speaker admitted to their involvement in the crime, whether as an observer, victim, or participant. Confessions were intended to prevent false accusations and convictions, so the safeguards of having testimony read aloud, signed by the witness, and then kept by the magistrate reduced the possibility of fabricated confessions. For this purpose, the suspect’s exact phrasing was not considered relevant.

For the officials reviewing cases, edited testimony excerpts served as important evidence, but did not fill the same role that live testimony did for magistrates. Provincial and capital officials seem to have been less interested in the evidence that magistrates gathered from the demeanor and interactions of the witnesses. Even in redacted form, confessions and depositions provided a way for provincial and capital judicial officials to examine testimony for contradictions, thus supplying grounds for overturning the case or for conducting one’s own interrogation.\(^{189}\)

Although their superiors often took a skeptical approach to the content of confessions, the process of documenting oral testimony nonetheless ceded significant power to the magistrate. As the first officials to conduct interrogation in any case, they were able to direct and repeat

\(^{189}\) For examples and more discussion of how judicial officials reviewed confessions and depositions, see the following chapter.
questions until each person had matching testimony. Magistrates had access to a variety of techniques to pressure witnesses, even without restoring to physical violence, and operated with no immediate oversight checking the use of leading questions or intimidation. The redaction process then allowed magistrates to highlight some details mentioned in oral testimony and exclude others entirely. Through their questions and editing, magistrates were able to produce a set of confessions and depositions that supported a unified narrative.

As with the magistrate’s control over the inquest, the judicial system did contain mechanisms to prevent—or at least reduce—the opportunity for forged or fabricated results. The openness of most trials gave those involved the opportunity to listen to testimony and compare it to the contents of the confession read aloud by the deposition clerk. If anyone disputed the results, they could travel to the prefectural or provincial capital to petition for redress, provided they had the resources to travel. The system of mandatory review also required superior officials at each level to read and examine the testimony and inquest results. Although they did not have access to unedited testimony, superior officials could and did spot discrepancies or points that seemed to contradict the magistrate’s conclusions. The magistrate’s control over the information in a case was in no way absolute. Instead, his power lay in the ability to set expectations and create a narrative.

Conviction and Sentencing

After the evidence had been examined and witnesses interrogated, the magistrate prepared to determine the guilt or innocence of each party involved in the case. As noted above, he was expected to decide whether each person involved in the trial had violated any laws,
including the rather nebulous statute against “doing what one should not” 不應為律. By choosing the most applicable statute to apply in each instance, the magistrate was also determining the sentences for each crime. For any single capital crime, magistrates had very limited discretion in sentencing. Each criminal statute had a specific penalty attached, and the magistrate’s decision had to quote the applicable law and its specified punishment when reporting his decision to his superiors.¹⁹⁰ A magistrate who failed to properly cite the statute or who recommended the incorrect sentence faced demotion or fines.

Although each statute had a fixed base sentence, many laws also specified conditions under which it could be increased or lessened in severity. Death sentences could be reduced to exile or penal servitude if any one of a number of mitigating factors were introduced; in fatal cases, these factors often involved family relationships and filial duties. A defendant with elderly and infirm parents and no brothers to care for his parents could have his execution commuted so that he could fulfill his filial duty to his parents. The penalties for certain violent crimes were reduced if the defendant was protecting his parents—or if he was punishing his wife or concubine for violence against his parents.¹⁹¹ Sentences could also be scaled up or down based on the relationship between the defendant and the victim—unintentional homicide by senior relatives against junior family was reduced from a capital crime to one punished by military exile. Even intentional killing by a senior relative was reduced from beheading to the comparatively lenient strangulation. Conversely, a junior relative convicted of the attempted homicide of their senior could be executed even if the victim survived.¹⁹²

¹⁹⁰. Shen Zhiqi, Da Qing lü jizhu, 28:39a-b.
¹⁹¹. For an example of a failed attempt to mitigate a sentence based on the defense of protecting one’s parents, see the case of Song Yi and his father’s concubine in the following chapter.
¹⁹². Shen Zhiqi, Da Qing lü jizhu, 20:25a-26a.
The status and relationships of those involved in a case could alter the degree of punishment specified or cause the incident to fall under a different statute. Intentionally stabbing an acquaintance to death would fall under the statute on “affrays and intentional homicide” 鬥毆及故殺, with an accompanying penalty of decapitation. If the victim was the perpetrator’s son, the act fell under the statute on “killing a son or grandson” 殺孫子 and was only punished with 60 blows of the heavy bamboo. In some cases, the relationship between victim and perpetrator would change the applicable statute without altering the sentence. Unintentionally killing one’s wife in an affray carried the same sentence of strangulation as affray homicide, but fell under a different statute, and so a magistrate judging the case would be required to cite the law on “a husband striking a wife resulting in death” 其夫毆妻至死 (part of the broader statute governing blows between spouses) rather than the one on affray homicide.

Part of selecting the most appropriate statute and accompanying sentence was identifying the most severe offense committed by the accused, as all lesser offenses would not be punished. Qing law had the principle of “sentencing according to the most serious” 從重論, which stated that for a given case, a person would only be convicted and sentenced by the most serious criminal action taken. According to the Qing Code, “In any case of two or more crimes, sentence according to the more serious. If the crimes are of equal degrees, sentence according to one.”

A man who was convicted of both theft and homicide in the same trial would only be sentenced for the latter. A man found guilty of two crimes punishable by forty lashes each would only receive the forty lashes once. Likewise, the length of his term of penal servitude or the distance of his exile would only be determined by a single offense, and none of these would be given if he

193. Shen Zhiqi, Da Qing lü jizhu, 1:50a-b.
was sentenced to death. Even in capital cases, the “most serious” principle could be significant; the convict would not face additional punishments before execution or while on death row, nor would he if his death sentence was reduced due to extenuating circumstances, or commuted due to an amnesty.

In some cases, particularly involving homicide or theft, another part of the sentencing procedure involved identifying the primary actor. For certain crimes involving multiple offenders, such as a large brawl resulting in unintended death, the statute required one person to be designated as the primary offender, who received a punishment more severe than those meted out to the others involved. For some offenses, the primary actor received a death sentence while accomplices were sentenced to exile or a beating. Depending on the crime, there were different rules for identifying the primary actor, each specified in the applicable statute. In a homicide planned out and committed by multiple people, the primary offender was the person who initially conceived of the homicide plan (the “initiator” 造意者), not necessarily the person who actually dealt the killing blow.

For unintentional homicides arising from a brawl, determining the principal offender was more complicated. In many ways, the statute on homicide in an affray was flexible, leaving the magistrate room to interpret events. However, when differentiating between principal and accomplices, the statute was much more specific, stating that the primary offender was the person who dealt the most serious vital blow 下手以致命傷重者, while the instigator of the fight received a lesser sentence. In a case involving multiple attackers, the Code directed magistrates to discover the primary offender based on the timing of the wounds and death. If the

194. Shen Zhiqi, Da Qing lü jizhu, 19:1a-b.
195. Shen Zhiqi, Da Qing lü jizhu, 19:16b.
victim died during the fight, then the primary offender was the last person to strike a vital blow: 如當時身死則以後下手重者當其重罪. If the victim was wounded but alive when the fight concluded, and then died after some time passed, then the magistrate was expected to determine which wounds were fatal. If the instigator also dealt a serious blow in the course of the affray, then they were the primary offender. In cases involving chaotic fights, where the magistrate was unable to determine who struck which blows, the instigator was designated the primary regardless. If the fight arose without anyone intending it ahead of time, then the first person to start fighting was the primary. The specificity in the statute made it difficult for magistrates to exercise their own judgment in assigning blame.

Identifying the primary offender was particularly important in fatal cases where only they received a death sentence. In affray homicide, the primary offender was sentenced to strangulation pending review at the Assizes, and the original planner of the fight (if a different person) was sentenced to exile. Any others involved would receive a beating. In fatal cases with multiple defendants, if the magistrate assigned primary guilt for a homicide to one who qualified for sentence mitigation, any death penalty could be avoided completely. As some of the cases in the following chapter demonstrate, the identification of the primary actor was important enough that it could become a point of contention between the magistrate and his superiors, leading to cases being overturned and sometimes further consequences as well.

Although the responsibility for citing the precise statute and applicable modifications lay with the magistrate, the actual work of identifying the laws was usually done by his private legal secretary. Navigating the complicated overlapping statutes and substatutes of the Qing Code

required close familiarity and specialized legal knowledge that most magistrates did not have
time to acquire. In civil or minor criminal cases, an experienced magistrate might be able to
announce his decision at the end of the hearing and write the report to his prefectural superior
immediately after the trial concluded. Fatal cases were subject to much more extensive review
and scrutiny, making legal secretaries’ specialized knowledge and writing skills essential in
producing a verdict that would hold up on review.¹⁹⁷

As noted in the previous chapter, legal secretaries could provide guidance throughout the
investigation and trial process, but were prohibited from being physically present during the
inquest or hearing. A secretary could assist his employer in preparing for the hearing, suggesting
particular behaviors to look for or lines of questioning to pursue, but he could not give written
questions to read aloud, nor could he personally observe or interact with anyone at the hearing.
The legal secretary became directly involved only at the end, when he helped the magistrate
decide the outcome of the case and wrote that decision into the formal “statement of
consideration” that could be sent to the magistrate’s superiors.

Review

After a magistrate (and his secretary) decided the case and completed the statement of
consideration, he would send his report—including the statement, the inquest findings, and the
confessions and depositions—to his superiors. Under the obligatory review system, the
judgements and case materials of every fatal case required confirmation by the prefect, the
provincial judicial commissioner, the provincial governor and governor-general, and the Three

¹⁹⁷ Chen, “Legal Specialists and Judicial Administration in Late Imperial China, 1651-1911,” 28-29.
Judicial Offices. Following the review process, any death sentence had to be approved by the emperor. Death sentences “with delay” underwent an additional review process at the Autumn Assizes.

The first official to review the case was the prefect. Like magistrates, prefects were territorial administrators with broad duties, rather than legal specialists, and their legal secretaries would be similarly involved in the review process. It is difficult to know how closely prefects scrutinized the cases that came before them—the routine memorials sent to the capital could omit any mention of overturned decisions. The records of judicial corruption investigations show that at least some cases did fail to pass prefectural review, leading to both an overturned case and an investigation into possible malfeasance. In other cases, the prefect’s review of a case was only superficial, and he would pass it along to his superiors without adding anything save his confirmation of the original decision. In addition to being the first reviewer of the magistrate’s judgment, the prefect was also the conduit through which his superiors would communicate their decision to overturn a case and reasons for so doing.

If the prefect approved the magistrate’s statement of consideration and documents, he would send the decision to the judicial commissioner, a provincial level official responsible for managing the legal matters of the province and directly subordinate to the governor and governor-general. We have more documentary evidence of the judicial commissioner’s active scrutiny of decisions; some routine memorials mention rejections at this level, and there is a manuscript copying the Shandong judicial commissioner’s overturned cases for one year.

198. For example, see the case of Bao Ren in Chapter 5.
199. For example, the prefect who reviewed the case Yang Naiwu and Xiaobaicai, discussed in Alford, “Of Arsenic and Old Laws: Looking Anew at Criminal Justice in Late Imperial China.”
200. For more on the judicial commissioner and overturned cases, see the following chapter.
If the judicial commissioner overturned a decision, both the prefect and the magistrate would receive a rejection statement 駁 explaining his reasons for reversal. Under most circumstances, an overturned case would then be reinvestigated and tried by the same magistrate who submitted the original, or if he had left office, by his successor. The magistrate could then either submit a new verdict, or attempt to remedy the issues raised by the judicial commissioner and resubmit his previous one. If corruption was suspected, the provincial officials could instead have the prefect or the magistrate of a neighboring county investigate, looking for both the circumstances of the case and for evidence of bribes.

A case that passed the judicial commissioner’s review was likely to also pass review by the provincial governor and governor-general. At that point, it would be sent to the emperor, who would refer it to the Three Judicial Offices, where these officials, led by a minister of the Board of Punishments, would review it again. Most cases that passed provincial review would be upheld in the capital, but the Three Judicial Offices could have priorities or legal opinions different from those in the provinces, and did overturn cases when they disagreed with the decision. They were also empowered to revise sentences without overturning the entire case.

For magistrates, the review process was fairly opaque. Magistrates could communicate with their prefectural superiors fairly easily, sending trusted underlings to the prefectural seat or even traveling there themselves. Once a case had moved to the provincial level, they had less access to it, and unless one had higher-level connections, he would have to wait months to discover whether the case had been overturned or upheld.

The magistrate risked more than embarrassment if his case judgment was later found to be in error. Pronouncing an inadequate sentence was potentially punishable by the loss of six
month’s salary, and/or a demotion. Meting out an excessive punishment was worse, and he could lose a full year’s salary or be dismissed from his post. In more serious cases, he could even face the criminal punishments he incorrectly applied or withheld. Unless evidence of corruption was found, however, magistrates could redeem any corporal punishment arising from official incompetence or neglect by paying a fine. These penalties, though seemingly severe, were not always applied. A case overturned at the prefectural or provincial level and sent back to the magistrate for reinvestigation rarely brought any negative consequences for him. Even excessive use of corporal punishment could be ignored by superior officials. For a magistrate to face severe sanctions for incompetence or neglect, he usually had to accumulate multiple infractions.

Conclusion

Qing law and the obligatory case review system placed heavy constraints on magistrates’ authority in fatal cases. Their formal ability to affect sentencing was restricted to choosing a statute with the desired penalty, or finding and applying modifiers. A magistrate could recommend leniency to an individual whose situation was accounted for in the Qing Code, e.g., commuting a man’s death sentence so that he could care for elderly parents, but the law did not grant them the power to alter sentences based on uncodified circumstances. The magistrate could note that a convicted criminal had a promising future or exhibited genuine remorse, but he was not allowed to alter sentences based on such factors. A magistrate’s power to determine

201. Shen Zhiqi, Da Qing lü jizhu, 28:21a-29b.
202. For examples of magistrates punished for incompetence and neglect, see the following chapter. For cases of magistrates punished for corruption, see Chapter 5.
sentences in fatal cases depended primarily on his ability to convince his superior officials that he had chosen the most appropriate statute for the circumstances.

However, magistrates’ control over both the procedure and the documentation of the investigation and trial process provided a form of influence that their superiors had less access to. In most fatal cases, the magistrate was the first official to investigate and make a decision about the crime. He was the official responsible for turning a crime into a case, assembling the disparate pieces of physical evidence and witness testimony and creating a narrative out of them. Each superior official to read the case afterwards, from the prefect up to the capital officials, would first hear the case through the magistrate’s framing of it. If his superiors disagreed with his framing, they could have him conduct a new investigation, or assign the magistrate of a neighboring county to do so. In either situation, the case was first filtered through the point of view of the original magistrate, allowing his view of the case to color any reinvestigation.

The strictures designed to control local investigations and reduce corruption had the effect of concentrating power on the magistrate. All physical evidence was collected under his supervision, and unlike his superiors, he had access to physical evidence while it was still fresh. He was also able to question the witnesses while their memories were recent and use his questions to prime them towards a particular narrative, and he controlled the documentation of the evidence, including editing, paraphrasing, and redacting written testimony to produce the depositions sent to his superiors. Moreover, the magistrate could organize the details of the case in the manner that best supported his decision. The higher officials reviewing the verdict and sentence could disagree with him, overturning the case and pointing out discrepancies, but that still put them in the position of responding to a crafted narrative arguing for a particular decision.
When the case was overturned, it was often sent back to the same magistrate to reinvestigate, and in those instances, he could refine his narrative further, excluding details that had disturbed the judicial commissioner, and highlighting evidence that might persuade the superior official. Taken together with his control over the evidence and his control over witnesses, a magistrate had considerable power to shape the narrative and set expectations for the case.

The power to create a persuasive narrative of a case was significant in fatal cases because of the importance of intent in homicide laws. The decision at the core of many fatal cases rested on the mindset of the suspect at the time of the homicide, an intangible factor that could be difficult to conclusively establish. Although the details of a case might contain strong indications of homicidal intent, magistrates had many strategies for interpreting events to support a more charitable view of the suspect. In the next chapter, we will look at how magistrates deployed these strategies, and their effectiveness under scrutiny.
Chapter Three
Persuading Superiors

A magistrate’s control over the outcome of a homicide case relied on his ability to create a persuasive narrative of the homicide by selectively editing the documented evidence of his investigation. By controlling the flow of information, he could persuade his superiors that he had selected the statute that most closely matched the circumstances he described. This chapter explores the ways that magistrates made use of different narrative strategies and their incentives for doing so.

The majority of fatal cases in the Qing were deaths resulting from a physical altercation involving two or more adults, whether the killing had been intended or not. In these cases, magistrates seemed to prefer verdicts of unintentional homicide or others that carried the sentence of delayed strangulation. Their statements of recommendation often displayed certain recurring elements in the descriptions of the homicide and the testimony they chose to include: the spontaneity of the fatal encounter, the reactive and defensive behavior of the accused, and any offenses or threats against their family by the victim. The narratives seemed to privilege the accused criminal’s point of view, explaining their actions as either innocuous, defensive, or in line with their filial obligations to their kin.

Previous scholarship on imperial Chinese law has argued that magistrates tended to pursue leniency in their adjudication, as part of a Confucian legal and bureaucratic system that

203. Thomas Buoye has observed that an “overwhelming majority” of the thousands of fatal cases arising from land disputes ended in a conviction for unintentional homicide. (Buoye, “Suddenly Murderous Intent Arose,” 83.). Looking at Yongzheng-era homicide cases from Fujian province, I found that sixty-five percent (25/38) were unintentional homicide cases, compared to twenty-one percent (8/38) intentional or planned. The remaining five case documents were missing the pages recording the verdict.
valued sympathy and benevolence at every level.\textsuperscript{204} The yearly review of capital cases at the Autumn Assizes, where a significant percentage of executions were stayed and commuted by the emperor, is given as one example of this benevolence.\textsuperscript{205} The irregular general amnesties, where the emperor pronounced a mass pardon for most convicts and commuted the death sentences of the remainder, is another.\textsuperscript{206} The tendency of magistrates to prefer the lesser charges in fatal cases has been linked to the perceived leniency of the Qing system, a local-level expression of the same Confucian ethos of benevolent government.\textsuperscript{207} In this view, magistrates’ narrative choices are treated as an expression of their sympathy and ambivalence toward punishments.

This chapter argues that the magistrates’ fatal case judgments were more likely motivated by pragmatic considerations and the need to balance competing priorities than by moral concerns. In the first part of the chapter, I focus on magistrates’ rhetorical techniques, arguing that their seemingly sympathetic case narratives were a rhetorical tool that used their control over case information to meet the evidential standards and other criteria of their superiors within the case review system. I look at records of four overturned judgments from Shandong province to show how these narratives displayed strategic choices, noting how magistrates crafted their initial statements, then adapted and revised them in response to criticism from their superiors. By reading case rejections as a way for higher-level officials to provide feedback and indicate their concerns about their subordinates’ conduct, I show that the attention given to the grievances of the accused allowed magistrates to defend themselves against implications that they had

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\textsuperscript{204} E.g., Ch’ü, \textit{Law and Society in Traditional China}, 262-279; Bodde and Morris, \textit{Law in Imperial China}, 41-43; Buoye, “Suddenly Murderous Intent Arose,” 68-70.
\textsuperscript{206} Brian E. McKnight, \textit{The Quality of Mercy} (Honolulu: University of Hawaii Press, 1981).
\textsuperscript{207} Buoye, “Suddenly Murderous Intent Arose”; Buoye, “Filial Felons.”
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neglected to uncover the true causes of the homicide or were credulously accepting the story of the victim’s family.

The second part of the chapter focuses on why magistrates often recommended sentences of delayed strangulation. To understand their motives, I look at examples of magistrates who were punished over their mishandling of fatal cases in different ways: failure to expose false explanations for a death, negligence in investigating suspicious deaths, excessive lateness in resolving homicide cases, and recommending an overly severe sentence. Although the charges against each magistrate differed, each case showed provincial and capital officials’ concerns that magistrates were not appropriately punishing crime, and the ways that poor performance could be treated as possible corruption.

The concept of Qing justice as an interconnected system of benevolence misses the influence of the prefectural, provincial, and capital judicial officials separating the magistrate’s initial decision from the final judgment at the Autumn Assizes. By examining the language and patterns of case rejections and impeachments, this chapter argues that pragmatic considerations and the structure of the case review system encouraged magistrates to recommend sentences of delayed strangulation rather than either non-capital sentences or more severe forms of capital punishment. The content of case narratives about unintentional homicide reflected a need to assuage higher officials’ worries about bias and corruption, regardless of a magistrate’s personal feelings towards criminal punishments.
Case Narratives and Homicidal Intent

Although a magistrate did not have the authority to alter the sentence attached to any statute, by describing the incident in a manner that supported his verdict, he could choose which law to apply in a case, thus allowing him to choose the penalty as well. The extent of this power varied, depending on the definition of each criminal offense—when a conviction relied on a concrete event, such as a broken bone or the possession of property, it was difficult (though not impossible) for the magistrate to change the applicability of the statute without fabricating or altering evidence. However, many homicide cases centered on the question of fatal intent: whether the suspect had been consciously seeking the victim’s death at the time of the attack. The intangible nature of a person’s state of mind, particularly in the past, gave magistrates the opportunity to decide between “unintentional homicide in an affray” 故殺 and “intentional homicide” 故殺, and thus between their two different sentences.

Both crimes were capital offenses, but unintentional homicide carried the lighter sentence of strangulation—lighter not only because of the cultural value of leaving an intact corpse for burial, but also because it was more likely to be commuted at the Autumn Assizes to exile, penal servitude, or a heavy payment of recompense to the victim’s family. A sentence of decapitation with delay could also be commuted, but it was less likely. Deciding between an unintentional and an intentional homicide verdict was a meaningful choice for the magistrate and was even more important to the accused. To support his decision, the magistrate needed to narrate the incident and its context in such a way that it met the criteria in the Qing Code.

In the legal codes of the Tang and Song dynasties, unintentional homicide in an affray had been distinguished from intentional homicide by meeting clear standards. If the death
occurred some time after a quarrel, or if metal blade had been used to kill, it was considered intentional. The Ming and Qing codes removed both of these markers, leaving the statute on killing in an affray without any clear checklist for differentiation. Judicial arguments about intent continued to focus on defendants’ behavior immediately before and after the homicide, on any preexisting quarrels they had with the victim, and on the presence or absence of certain weapons, but because these criteria were no longer definitive indications, they were more susceptible to magistrates’ interpretations. Incidents that would have met the Tang and Song standards for intentional homicide could be reinterpreted as unintentional under Ming and Qing law.

An important step in distinguishing between killings that were unintentional in an affray, intentional, or planned was the presence of enmity or a grudge 仇怨 between the defendant and the victim; a verdict of unintentional homicide required the absence of any longstanding feuds. Preexisting enmity was a definitive marker of intentional or planned homicide, but the concept itself was not clearly explained. Unlike in the Tang and Song codes, a recent quarrel did not necessarily meet the definition. A magistrate could rule that a fatal affray following a recent altercation was unintentional homicide by arguing that the second encounter occurred spontaneously or at the instigation of the victim, not because the defendant sought out the conflict.

Spontaneity was invoked in case narratives for both forms of homicide in an affray. Verdicts of unintentional homicide were often characterized by an unforeseen encounter, an abrupt escalation to violence, and the suddenness of the victim’s fatal or soon-to-be-fatal

209. For a detailed comparison of killing in an affray statutes and determination of homicidal intent from the Tang to the Republican period, see Neighbors, “Criminal Intent and Homicide Law,” 84-127.
Spontaneous encounters could occur between strangers, or previously friendly acquaintances, but they could also occur between two people with an unresolved conflict, if the meeting was unexpected and the conflict was not a long-standing feud. Magistrates noted spontaneity in the escalation to violence by describing how the disagreement began with verbal argument and cursing, and only became physical after tempers became heated. If the killing was accomplished with an object, rather than fists or feet, then the magistrate would need to establish an innocuous reason for the presence of the homicide weapon, lest it become an indication of preexisting violent intent. If the weapon was a farming or harvesting tool, the magistrate’s case narrative or the confession might mention that the defendant had been engaged in related labor.

The presence of blades was more difficult to justify, but magistrates often found ways. As Buoye has noted, “If the murder weapon was a knife, the magistrate might note that the killer had been peeling a piece of fruit at the time the fatal altercation began.”

Spontaneity alone could not establish that a homicide was unintentional, only that it was unplanned. To further support this verdict, a magistrate had to establish that the defendant’s behavior was reactive and defensive. If the fatal encounter was not spontaneous, then he might note that the victim had been the one to seek out the encounter. Once the conflict began, the narrative would imply that it was also the victim who had been responsible for the escalation to violence in some way, such as drawing or brandishing a weapon, or making threats. Once the conflict became physical, mutuality of the violence—an exchange of blows or a struggle over control of the weapon—could help establish lack of homicidal intent. The presence of defensive

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211. The Shandong case of Wang Zhong, later in this chapter, provides examples of both a spontaneous encounter and an innocuous explanation for the defendant’s possession of an ax.
wounds on the accused or a possible weapon in the victim’s possession could provide further support for this argument. Case narratives could also convey defensive and reactive behaviors by suggesting that the accused was protecting their family. Including mention of a stated or perceived threat against a parent or grandparent in a deposition could both explain the heightened emotions of the accused and depict them as a loyal son or grandson motivated by Confucian virtue.²¹³

The magistrate would also discuss the behavior of the accused after the fatal blow was struck. A pattern of reactive or defensive action could be emphasized by noting that the attack stopped at the victim’s first sign of serious injury or collapse. Any demonstrated effort to help the victim afterwards was another strong piece of evidence. In a Yunnan homicide case involving a husband fatally stabbing his wife, the magistrate ruled out intentional homicide based on the man’s testimony that she had been accidentally stabbed in the struggle over the knife, and the evidence that the man had fetched a doctor to treat the dying woman.²¹⁴ Another case, this one in Fujian, lacked even struggle from the victim to rule out intent. The accused and deceased had an ongoing disagreement over who had rights to land used for family tombs. When the two men encountered each other on the disputed land, one attacked the other, breaking his ankles and hitting him in the head with a rock. The accused had initiated the fight, and sustained no injuries of his own, which could have ruled out a conviction of affray homicide. Instead, the magistrate noted that he had sent his cousin to find a doctor, and had even paid seven ounces of silver for treatment. He admitted that he had sent for the doctor out of fear of the punishment for homicide,

²¹³ Buoye, “Filial Felons,” 113-117.
²¹⁴ Ortai 鄂爾泰, routine memorial, Yz 6.9.28 [FHA 02-01-02-2335-003].
not out of remorse, but the magistrate nonetheless used the action as an indication that the killing was not intentional.²¹⁵

There were, however, some circumstances that were established as almost certain indicators of a desire to kill. The existence of a long-running feud between the defendant and the victim was usually taken as a sign of intentional homicide. The use of firearms could increase the charges from accidental or play-fighting homicide to killing in an affray, and from unintentional to intentional homicide.²¹⁶ Continued or excessive force were other indicators—repeated blows against an unresisting opponent, multiple strikes at fatal points on the body, or violence that continued after the victim’s collapse were likely to result in a conviction for intentional homicide, as was a separation between the combatants followed by further violence.²¹⁷

**Spontaneity and Reaction in The Case of Mao Naozi**

The case of Mao Naozi 毛撓子 demonstrates several of the narrative elements magistrates used to support rulings of unintentional homicide: the spontaneity of the encounter, the innocuous nature of the weapon, and the sympathetic emotions of the accused. According to the case report provided by Mancheng County 滿城縣 Magistrate Yang Jinglian 楊景廉, Naozi learned that his uncle had been accidentally injured by Kang Zizhe 康子哲 in a collision.²¹⁸ Naozi went to Zizhe’s house, and finding the gates closed to him, loudly and

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²¹⁵ Huang Guocai 黃國材, routine memorial, Yz 1.4.6 [FHA 02-01-02-2295-005].
²¹⁸ Li Weijun 李維鈞, routine memorial, Yz 1.4.26 [AS 119862-001]. Mancheng County was roughly 90 miles (or 270 Chinese li 里) southeast of Beijing, in the Qing province of Zhili.
Chapter 4

publicly insulted the Kangs. The next day, Zizhe and his brother Kang Zijie then went to the Mao household. Naozi, seeing that one of them was carrying an “iron ruler” 鐵尺 (a kind of metal baton or mace), ran inside to find something he could use for self defense. According to the narrative provided by Magistrate Yang, Naozi “happened to see a small knife on the table” 適見桌上放有小刀. Naozi picked it up for protection and ran outside. When he saw Kang Zijie raising the baton, he stabbed Zijie several times, causing him to fall to the ground and die soon after.

Mao Naozi was not in immediate danger when he went inside and grabbed the knife; neither Mao nor any of the other participants in the confrontation recounted any spoken threats from the Kangs. Once Naozi went inside his house, he could have shut the gates as the Kangs had done the day before, rather than return outside holding a weapon. Naozi also had a preexisting conflict with the Kangs. In spite of these alternate explanations, the magistrate was still able to frame Mao’s behavior as motivated by self-defense, portraying Naozi as agitated and fearful, only seeing the knife by chance, and attacking only because he saw Zijie raising his baton. By emphasizing the spontaneous and reactive nature of Naozi’s actions in the case summary, the magistrate created a narrative to support his final verdict.

Magistrate Yang also used his control over witness questioning to gather evidence backing his narrative. When the magistrate questioned witnesses, he asked Naozi’s uncle directly whether his nephew’s use of the knife suggested a calmly made plan to kill. His uncle insisted that Naozi was not acting calmly, but was instead in a panic, trying to defend himself and the household. As a close relative, Naozi’s uncle was one of the protected groups mentioned in the previous chapter, who could not be compelled to testify. He could not be threatened with torture
or even pressured to resolve contradictions, and would likely not be punished for lying to protect his nephew. By soliciting a relative’s defense of Naozi’s intentions, Magistrate Yang was providing the family with a platform to defend his actions and treating their defense as evidence of his conclusion.

This case narrative was actually Magistrate Yang’s second attempt at submitting a decision after his first was overturned by the prefect, who suggested that intentional homicide was a more likely conclusion. Magistrate Yang responded by submitting a new statement of recommendation, but retaining the original verdict. Without the initial statement or the prefect’s rejection, the extent to which Magistrate Yang and his legal secretary revised the second draft is unknown. However, they did add two pieces of supporting evidence to their second attempt: Mao Naozi’s refusal to change his confession under repeated investigation, and Kang Zizhe’s agreement that there was no preexisting grudge between the two families. Emphasizing the lack of any longstanding enmity likely helped bolster the decision, and the new recommended verdict was upheld at least as far as the provincial level, where the case record ends.

**Four Overturned Cases From Shandong**

The techniques discussed above—emphasizing spontaneity, providing alternate explanations for carrying weapons, emphasizing the defendant’s filial obligations—were drawn from successful decisions. To better understand how magistrates argued for their case judgments, we also need to look at unsuccessful arguments, and how magistrates responded to feedback from their superiors.
The following four cases are drawn from a manuscript copy of case rejections sent by the judicial commissioner to prefects and magistrates in Shandong province during the first year of the Qianlong reign (1736). The official who overturned a proposed sentence sent it back to the county along the same channel of communication through which the case had arrived; when it was overturned by the provincial judicial commissioner, his rejection first passed through the prefect’s office and rebuked both officials for their mistakes. The reversal statements contained explanation for refusing to confirm the magistrate’s proposed sentence, including quotations or paraphrases of the original unsatisfactory decision and the commissioner’s rebuttal of each quoted point. These criticisms provide detailed examples of a judicial commissioner’s standards of legal reasoning—which arguments he found persuasive, and which he saw as unacceptable—and the ways in which he communicated this reasoning to the magistrates. Case rejections are a way to understand those standards that were not codified in the Qing Code or other administrative documents, but which magistrates were nonetheless required to uphold.

In the first three of these four cases, the rejection hand-copied in the manuscript has been matched with the archival record of the provincial or capital decision, which contains the verdict that successfully passed the judicial commissioner’s review. By comparing the unsuccessful arguments cited by the commissioner in his rejections with the successful arguments in the final decision, we can see how magistrates responded to feedback and adjusted their arguments. The matched cases also provide a comparison between the commissioner’s stated standards in his

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219. Qianlong yuan nian Shandong sheng xingshi anjian wenchao [Criminal cases from Shandong province in the first year of the Qianlong reign] (Undated manuscript; reprint in Ming Qing fazhi shiliao jikan, Beijing: Guojia tushuguan chubanshe, 2014).
rejections and the content of the arguments he accepted on resubmission, which can help indicate the unspoken expectations and standards for a successful verdict.

The rejections in the manuscript were almost certainly written by Huang Shulin 黃叔琳 and his secretaries during his single year as judicial commissioner for Shandong province. Huang, a metropolitan jinshi degree-holder from Daxing County 大興縣 (eastern Beijing), served in a number of capital and territorial appointments before his appointment to this post, including three years as educational commissioner of Shandong 提督山東學政, one year as a junior vice-minister of the Board of Punishments 刑部右侍郎, and four months as the provincial governor of Zhejiang. While governor, Huang was impeached for bribery and unauthorized use of torture, but was offered the chance to redeem himself by contributing money and administrative labor toward public works. He spent ten years out of office until the Yongzheng emperor’s death in 1735, when the new emperor assigned Huang Shulin to position of Shandong judicial commissioner, where Huang produced the rejections discussed here. The following year, he was promoted to Shandong financial commissioner. He left office in 1740 to observe the mourning period for his mother’s death. During this time, he was investigated for tolerating the corruption of his subordinates in Shandong, and eventually stripped of official rank and forced into retirement.220 Huang’s multiple impeachments were not unusual—during the Qianlong reign, over twenty percent of governors and governors-general were impeached for bribery, and one third of this group either remained in office or were later reappointed to new official positions.221

Huang Shulin’s decisions express only a single official’s viewpoint, but according to my research, his rejections fit the patterns of other overturned cases; he rejected rulings of unintentional homicide in an affray based on concerns that the killing may have been intentional, but then often accepted same verdicts accepted on resubmission. Additionally, because Huang only spent the one year as judicial commissioner in Shandong, the magistrates under his jurisdiction would not have had much opportunity to assess his particular requirements and preferences and try to accommodate them. When submitting their case decisions to Huang Shulin, the magistrates were writing to an unknown supervisor who had left the civil service since before any of the magistrates in these four cases had received his first county appointment, and Huang had only returned that year. As a newly-arrived judicial commissioner, Huang could stand in for magistrates’ general suppositions and predictions about their superior’s responses.

*Case: Wang Zhong and Zhang Laihe.*

As discussed above, one of the primary challenges for magistrates seeking to decide a fatal case as unintentional homicide during an affray was to explain away the presence of weapons or other potentially deadly implements. Possible strategies for the magistrate included presenting benign reasons for carrying the weapons, emphasizing the spontaneity of the fatal altercation, and raising the possibility of self defense. The following case, involving a fatal fight between two neighbors, demonstrates the use of all three of these strategies, as well as the skepticism such approaches could provoke from superior officials.
Soon after Magistrate Bo Erjian 薄而堅 arrived in Dingtao County, he began investigating a homicide case that had been left unresolved.\footnote{Yue Jun 岳濬, routine memorial, QI 1.7.27 [FHA 02-01-07-0016-007]; Yue Jun 岳濬, routine memorial, QI 1.7.27 [FHA 02-01-07-0029-001].} His predecessor, Wang Weique 王維慤, had initially investigated and provided the basic circumstances of the case: that tenant farmer Wang Zhong 王重 was accused of using an ax to kill Zhang Laihe 張來合, the cousin of Wang Zhong’s landlord.\footnote{The case makes no mention of any relationship between Magistrate Wang and suspect Wang Zhong. Wang was and is a common Chinese family name, and there is no reason to suspect that the magistrate, who necessarily came from out of province, would be related to any Wang in the county, particularly not a tenant farmer.} Magistrate Wang conducted the inquest and questioned the suspect and the family of the deceased. Laihe’s paternal uncle made the accusation against Wang Zhong on behalf of the victim’s mother, who had witnessed the violence. Wang Zhong admitted to the killing, but maintained that it was unintentional. When he drew his ax, he said, Laihe grabbed it by the blade and tried to pull it away, cutting his hand in the process. In the struggle to keep his weapon, Wang Zhong said he accidentally cut Laihe in two places, and the other man died later that night. Magistrate Wang submitted his decision of unintentional homicide in an affray to the prefect, who overturned the case, instructing the magistrate to better explain how and why the fatal argument had begun and escalated to violence. By that time, Magistrate Wang had left office and Magistrate Bo took up the case.

Bo Erjian did not have the opportunity to conduct the inquest or initial questioning, but he had an advantage over many magistrates: he had specific instructions for how to better persuade his superiors. The prefect requested additional information on the background of the conflict, and Magistrate Bo was able to elicit details from Wang Zhong that supplied a more persuasive case narrative. Under additional questioning, Wang Zhong accused the deceased of
attempted rape, stating that Laihe, the landlord’s cousin, had entered the tenant’s household and sexually assaulted Wang’s wife, but she resisted and he ran off before the act was consummated.\textsuperscript{224} When Wang Zhong returned home that evening, his wife told him of the assault, and he went to Zhang Laihe’s house but could not find him that night. Zhong told the magistrate that when he left home the following day, he only planned to cut wood and had no intention of seeking out the man who assaulted his wife. While cutting wood, he spotted Zhang Laihe, but the other man immediately ran away. When he caught up the two began yelling and cursing at each other until Zhong drew his woodcutting axe. In his testimony to Magistrate Bo, Wang Zhong maintained that he had drawn his blade only to frighten and in response to provocation—Laihe had threatened to return to rape his wife and taunted Zhong about his powerlessness to prevent it. Even then, Zhong had only intended to use the axe to intimidate, but Laihe had grabbed it, leading to the fatal struggle.

Magistrate Bo Erjian supported Wang Zhong’s testimony in his decision. According to the magistrate, Zhang Laihe’s death was not the result of a planned revenge killing, nor even a momentary homicidal impulse, but an unintentional homicide caused in the course of an affray. Unlike the other two crimes, this verdict carried the sentence of strangulation. The magistrate’s determination required accepting and including certain elements of Wang Zhong’s testimony: the blade he used to kill Zhang Laihe was an axe that was carrying to cut wood, not for violent purposes. His encounter with Laihe was coincidental, further distancing the object’s intended purpose from its eventual use. When he pursued the other man, he had not yet drawn his axe, nor did he do so until they were well into their heated argument. Finally, the injuries themselves

\textsuperscript{224} The documents specify that the rape was “uncompleted” or “unconsummated” 未成, a legal distinction that meant that penetration with the penis had not occurred. Sommer, \textit{Sex, Law, and Society}, 79-84.
were the result of self-defense after Laihe attempted to grab the blade. Using the narrative presented in Wang Zhong’s testimony, Magistrate Bo was able to explain the physical evidence and Wang Zhong’s actions in a way that did not require any intent to kill. The prefect found the new explanation persuasive, and passed the decision to the judicial commissioner.

The new statement cast Wang Zhong’s character in a more sympathetic light. The assault on his wife explained why he would initiate a confrontation with Zhang Laihe. His new testimony also included an important detail: that he had only drawn his axe after Laihe taunted him about returning to rape his wife. Laihe, as the cousin of Wang Zhong’s landlord, might have had the power to make good on his taunts, and Zhong’s alleged response—brandishing the axe as intimidation—could be seen as a defensive and protective response, rather than an escalation. The risk of this new framing was that Laihe’s alleged provocations, while making Wang Zhong seem more sympathetic, also provided ample motive for intentional homicide.

Magistrate Bo added another detail to his case report that may have been an attempt to elide the question of motive. He referred to the case as “The case of Wang Zhong killing Zhang Laihe over illicit sex” 王重因姦殺死張來合一案. 225 This evoked the law on “Killing the adulterous lover” 殺死姦夫, which exempted a cuckolded husband from punishment if he killed his adulterous wife and her lover immediately upon catching them having intercourse. 226 This statute did not apply to Wang Zhong’s case for several reasons: the statute referred to consensual adultery rather than the rape that Wang Zhong’s wife reported; it only applied to completed intercourse, excluding Laihe’s attempt; Wang Zhong did not witness the act himself, as the statute required; and instead of killing Laihe immediately upon discovery, he did not

225. Qianlong yuan nian Shandong sheng xingshi anjian wenchao, 41.
confront him until the following day. The statute was not directly applicable to the case, so Magistrate Bo Erjian could and did not sentence Wang Zhong in accordance with it. Nonetheless, the magistrate’s reference to the statute was relevant enough that it was the first issue the judicial commissioner addressed when overturning the case.

The commissioner began his rejection of the magistrate’s decision by quoting the statute on killing the adulterous lover, and noting that Wang Zhong had not killed Zhang Laihe until the day after he had heard his wife’s report. Moreover, Zhong had chased Laihe for some time. The commissioner stated that this scenario seemed to match the statute’s second provision, that if the cuckolded husband heard about the adultery, rather than observing it, and then later pursued the wife’s lover intending to kill him, he would not be spared execution, and would instead receive the penalty for intentional homicide: decapitation with delay. The commissioner also raised doubts about Wang Zhong’s intentions, noting that his initial testimony had only mentioned chasing Zhang Laihe and stabbing him. Wang’s later claims—that his blade was only drawn to intimidate and in response to provocation, and that the wounds were accidental—only surfaced during the second investigation. The commissioner asked, “If [Wang] did not intend to kill, he was carrying a staff to beat [Laihe] with. Why did he need to pursue him with a hatchet?” Having expressed his skepticism over the truth of Wang’s words, the judicial commissioner overturned the case.227

After the case was overturned, the magistrate interrogated Wang Zhong a third time, having him restate and emphasize his lack of homicidal intent. Magistrate Bo removed the detail of Wang Zhong’s pursuit from the case summary, instead simply saying that Wang Zhong

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227. Qianlong yuan nian Shandong sheng xingshi anjian wenchao, 42.
encountered Zhang Laihe while cutting wood and the two argued. The magistrate also dropped the reference to killing the adulterous lover that had offended the judicial commissioner. Neither detail appears in the routine memorial of the case sent to the capital; had the commissioner’s rejection not been recorded in the Shandong manuscript, we would likely never have learned how the case changed.

Magistrate Bo resubmitted his decision of unintentional homicide in an affray, noting that Wang Zhong repeatedly refused to change his story, and this time, the verdict was upheld. Wang Zhong was sentenced to strangulation with delay, but thanks to the general amnesty declared at the beginning of the Qianlong reign, he was not executed. His sentence was commuted to a compensatory payment for funeral expenses, which was then waived due to Wang’s poverty. In this case, the prefect’s and judicial commissioner’s rejections did not result in a different outcome from the initial decision, nor did the rejection affect Magistrate Bo’s career. He remained magistrate of Dingtao for an unusually long term of eight years, until he retired due to age and ill health.

The case of Wang Zhong demonstrates how magistrates could try several approaches at once to support a case decision, and refined their strategy after receiving feedback. Magistrate Wang Suique relied on the narrative of the struggle to support his decision of unintentional homicide, describing the scuffle over the blade to suggest that the death was unintentional. After that explanation was unsuccessful, Bo Erjian, aware of the prefect’s desire to understand the background of the conflict, provided sympathetic motives for the suspect and an innocuous explanation for his carrying a deadly blade. The second decision was more successful, reaching the provincial judicial commissioner, but Bo Erjian’s emphasis on the sexual assault undermined
his case.228 For his next submission, the magistrate streamlined his narrative, including the rape attempt as part of the context, but emphasizing the spontaneity of the argument and Wang Zhong’s repeated insistence that he did not intend to kill. In this case, overturning the verdict caused the magistrate to revise his narrative, but did not force him to change his decision.

Case: Song Heyu and his Nephew

Although intent was often the determining factor, in some fatal cases, a sentence for intentional homicide could be reduced from decapitation to strangulation with delay based on the relationships of the perpetrator and victim. In another case, a killing that arose from an inheritance dispute, there was no question about the defendant’s intent, but his role as an older male relative of the victim gave him protection from the full punishment. However, the county magistrate still faced pressure from his superiors to rule out other motives that could carry more severe sentences or implicate other people. As in the case of Wang Zhong, the case of Song Heyu shows the judicial commissioner’s skepticism toward more sympathetic interpretations of homicides, and the pressure on magistrates to only give a sentence of strangulation after the more severe possibilities had been ruled out.229

The case began when Huimin County惠民縣 Magistrate Cai Li蔡蒞 received notice that a young boy had been beaten to death by his father’s cousin, Song Heyu宋和玉.230 Although the homicide weapon—a brick—was missing, the investigation was not complicated.

228. Interestingly, adding Laihe’s rape attempt to the second case did not itself meet with skepticism or any suggestion that Wang Zhong had fabricated the accusation. It is possible that the officials in the case assumed that Wang Zhong might initially be reluctant to divulge the near-rape of his wife out of shame and fear of retaliation from his landlord, and would only be willing to do so under repeated questioning.
229. Xu Ben, Ql 2.2.15 [AS 027198-001].
230. Xu Ben, Ql 2.2.15 [AS 027198-001].
The inquest revealed that the deceased—a boy aged seven sui (six years)—had died as a result of blunt trauma. Another relative had witnessed the beating, and Song Heyu readily confessed to the killing.

The magistrate’s decision rested on the testimony of the three Song cousins: Song Heyu, the victim’s father, and the junior cousin who witnessed the killing. All three identified the cause of the attack as resentment over a somewhat convoluted inheritance dispute dating back several years. The dispute began in 1728, when the most senior of the four paternal Song cousins was still alive, but aging and childless. If he had died without direct heirs, the senior cousin’s property and position as head of the family would have passed to Song Heyu. Instead, the senior announced his intention to adopt the son of the middle cousin, bypassing Heyu and his family. Song Heyu argued strenuously against the adoption, claiming that it was a plot on behalf of the new heir’s father to seize the family assets for himself. The junior cousin convinced Heyu to give up his fight against the inheritance, assuring him that their senior’s actions sprung from genuine affection towards the child. However, the adoption left Heyu resentful and in need of income, so he left the county in search of work. When he returned six years later, the senior cousin had died, the adoption had been completed, and the family holdings were being managed by the heir’s birth father, the middle cousin. Heyu, unsuccessful in his travels, was impoverished and still resentful over his lost inheritance. Soon after his return, an intoxicated and angry Song Heyu went looking for his middle cousin, shouting about the inheritance dispute. The two briefly

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231. A note on names: the case names four paternal Song cousins: Guanyu 冠玉, Heyu 和玉, Guiyu 貴玉, and Guoyu 國玉. A name character shared across a generation of cousins is a common Chinese naming practice, but may be confusing to readers. Thus, I have chosen to refer only to Song Heyu by name. The other cousins are identified by their place in the family hierarchy. Guanyu, whose father was the eldest of the previous generation, is the senior cousin. Heyu was second in the hierarchy, as the son of the second brother. Guiyu, the victim’s father, was from the third branch, and is referred to in this section as the middle cousin or the victim’s father. Guoyu, the witness, was from the fourth branch, and I refer to him as the junior cousin.
argued with each other, but the middle cousin soon fled the increasingly heated confrontation and hid elsewhere in the family home. Heyu was unable to find his cousin to resume the argument, but while searching, he instead came upon his cousin’s other son, the birth brother of the adopted heir, playing in the courtyard.

According to Heyu’s testimony, he drunkenly decided that killing the younger son would solve the inheritance dispute. The younger son, called Shuizi, was now the only legal child of the middle cousin, and thus his heir. Heyu concluded that if he deprived his cousin of his only remaining legal son, the cousin would be forced to nullify the adoption and restore Heyu’s elder son to his birth family. Otherwise, the middle cousin would himself be without an heir. Angry and under the influence of alcohol, Heyu found no fault with his own logic. He picked up a stray brick and beat the child to death. The junior cousin testified that he heard the boy’s cries and came running to intervene, but was too late to save the child’s life. The boy’s father could provide the magistrate with no details on the killing, as he had been hiding at the time, but corroborated the story of the inheritance dispute and the events leading up to the homicide.

With a confession and two witnesses who agreed on the details, Magistrate Cai convicted Song Heyu of the intentional killing of a junior relative within the fourth degree of mourning 故殺小功堂姪. Heyu benefitted from the codification of family hierarchies in Qing law, which gave him a reduced sentence in deference to his senior position. The sentence for intentional killing was decapitation with delay, but violence against junior relatives fell under the statute on striking relatives within three degrees of mourning. The intentional killing of a junior relative

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232. The five degrees of mourning 五服 were so named because they prescribed the length and requirements of mourning dress and ritual for deceased relatives within each degree. The conviction names Shuizi’s exact relation to Heyu: tangzhi 堂姪, or male paternal cousin once removed, placing him within the fourth degree of relation.
within the third, fourth, or fifth degree was reduced to the relatively lighter sentence of strangulation with delay.

The testimony and case summary presented by the magistrate did not cast Song Heyu in a particularly flattering light. Heyu was shown to be temperamental, resentful, and drunk, and guilty of the deliberate killing of a young child. Nonetheless, the magistrate’s narrative and conclusions provided some basis for sympathy. The case presented Song Heyu’s resentment as having some legitimacy, rather than stemming from pure greed. Heyu argued that his rightful status in the family had been usurped, harming not only himself, but his sons. The victim’s father acknowledged that there was some justice to Heyu’s grievance, saying “According to the family hierarchy, [the senior cousin] should have adopted Song Heyu's son. I don't know why he didn't like his son.” Heyu portrayed his resentment as borne out of injustice and poverty, explaining, “Guiyu [middle cousin] had food and clothing and regularly went shopping at the markets. I had long been poor, with little to eat and nothing to wear, and in my heart I grew angry.”

Much like the sympathetic reading of Wang Zhong’s motives for killing Zhang Laihe in the previous case, the portrayal of Song Heyu risked invoking a more serious crime. Song Heyu’s long held resentments were a potential motive for planned homicide 謀殺. The statutes on intentional homicide applied to killings committed in the course of violent altercations, usually arising from overwhelming anger. Planned homicide involved two steps: formulating a strategy to kill another, and then carrying it out. Had Song Heyu concocted a secret plan to kill Shuizi, he would have been sentenced to decapitation with delay, not the reduced penalty for striking a junior relative. However, the descriptions of Song Heyu’s character and behavior, while unflattering, supported a more lenient interpretation of the case. The mention of previous
arguments over the issue underscored that Heyu was prone to angry outbursts rather than cold calculation. When he turned violent, Heyu’s behavior was not planned in advance, but the result of an uncontrollable temper, too much alcohol, and a spontaneous encounter with his victim. This framing of Song Heyu—short-tempered, aggrieved, and impoverished—did not excuse the crime of intentional killing, but such an interpretation did preclude the more serious potential conviction of planned homicide. Unlike Wang Zhong’s case, the question of intent was already settled, but the magistrate still needed to emphasize the coincidence and spontaneity of the fatal meeting to support his interpretation over less lenient ones.

Magistrate Cai sent his recommended decision to the prefecture, where it was upheld and sent on to Judicial Commissioner Huang, who overturned it. The commissioner doubted that the inheritance dispute was the real reason for the killing, noting that the initial argument had occurred over seven years ago. In the intervening time, Song Heyu had left the county on business, run out of money, and returned home, and while family members agreed that Heyu had reopened the argument when he returned home, it had once again been smoothed over. Moreover, in the month since the dispute had once again been seemingly laid to rest, Heyu and his cousin had drunk together without incident. Finally, even if Song Heyu had still harbored resentment over his lost inheritance, why would he kill the younger son, and not the one who had taken his place as heir? The commissioner suggested that these unresolved issues in the case pointed to other possible motives.  

The judicial commissioner framed his criticisms as critiques of work that was sloppy and rushed. In the case of Song Heyu, he suggested that Heyu had named the inheritance dispute as

the cause of his violence out of a fear of being tortured and a need to quickly come up with an excuse. The commissioner then scolded Magistrate Cai for using a forced confession and added: “In serious cases of human deaths, one must investigate and interrogate with an open mind” 人命重案自應虛衷研鞫.234 The judicial commissioner’s mention of threatened torture does not seem to come from any of the documents—he does not quote any mention of it from the confessions, and there is no indication in the final case report that torture was used or threatened against Song Heyu or any of his cousins. Nor did anyone retract his testimony when the case was reviewed. The commissioner’s suggestion that Song Heyu’s testimony was coerced seems to arise from his own skepticism about Heyu’s explanation.

In the above case of Wang Zhong, the judicial commissioner’s questions seemed to encourage a specific sentence of intentional homicide. In the case of Song Heyu, he seemed more concerned that Magistrate Cai was being insufficiently skeptical and rigorous in his investigation. The commissioner was not encouraging greater leniency; he did not disagree that Song Heyu had intentionally killed Shuizi, and thus that the lightest conviction and sentence would be strangulation with delay.235 By requiring a reinvestigation, the commissioner was opening up the possibility of a harsher sentence for Heyu or of punishment for other involved parties. However, Magistrate Cai was not instructed to seek out stricter sentences, only to more convincingly explain Song Heyu’s actions.

When Magistrate Cai reinvestigated the case, he did not change the recommended decision, but his interrogation of Song Heyu showed that the magistrate was making an effort to address the judicial commissioner’s concerns. He recorded his question as: "If Lizi was the heir,

234. Qianlong yuan nian Shandong sheng xingshi anjian wenchao, 10.
235. Shen Zhiqi, Da Qing lü jizhu, 20:25a-26a.
then what is the connection with Shuizi? There must have been another reason for you to beat him to death.” Song Heyu’s answer, as recorded by the magistrate, addresses the judicial commissioner’s concern:

Little Shuizi had no connection with the adoption. It's just that Guiyu adopted out his eldest, Little Lizi, to Guanyu's household. I really had no hatred in my heart. On that day I was drunk and wanted to argue with Guiyu, and didn't realize he was hiding from me. I was drunk and confused and had nowhere to vent my anger. As soon as I happened to see Shuizi I thought that if I killed him, Guiyu would have no sons and would naturally take Lizi back from Guanyu's household. That is why I beat Shuizi to death. There is no other reason. Until now I have been unable to explain. I am willing to recompense Shuizi with my own life.

This new conclusion, despite having the same findings as the previous one, found favor with the judicial commissioner, and the decision was eventually upheld the capital. By this point, the case was past the mandatory time limit for a decision, but because it was less than a month late, no one was impeached or punished over the delay.

In the two cases above, the judicial commissioner’s reasons for overturning the case were largely left unaddressed in the second decision, and yet the cases were upheld on resubmission. In both cases, the magistrates seemed to be seeking leniency, providing narratives that raised multiple points of sympathy for the accused. The commissioner pushed back against the sympathetic interpretations, but focused his criticisms on the possibility that the magistrates were being careless or lazy, not that they were being too lenient. Although he claimed to want more context and explanation for the events in the case, the successful decisions were the ones that streamlined and emphasized a single narrative explanation. By removing or minimizing the
specific points of contention and having the defendants restate their motives, the magistrates kept their original decisions in place.

Case: The Attempted Homicide of Li Wenyao

Magistrates did not always succeed at resubmitting their original verdict. When the judicial commissioner was dissatisfied with the narrative of the case or the interpretation of the facts, a streamlined presentation of the case might succeed. If he found fault with the interpretation of the statutes, the magistrate would have more difficulty resubmitting the judgment without making fundamental changes. This difficulty appeared in the case of Wang Zhong, where Magistrate Bo Erjian’s evocation of the law on killing the adulterous lover became one of the primary points of contention in the judicial commissioner’s rejection, even though the magistrate had sentenced Wang Zhong under a different statute. Magistrate Bo’s successful resubmission removed any reference to the contentious law. In the following case, the criticism centered on the magistrate’s interpretation of the statutes in both his first and second recommended decision, forcing him to substantially revise the convictions and sentences.

Ziyang County 漳陽縣 Magistrate Mao Ying 茅煐 investigated the case of county resident Li Wenyao 李文耀, who reported that his neighbor had attempted to kill him. According to Wenyao’s complaint, he had discovered that his wife, Ms. Li, had secretly been having a sexual affair with their neighbor, Yang Xian 楊顯. When he learned of the illicit relationship, he decided that relocating his household would end the affair by putting distance

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236. Xu Ben 徐本, routine memorial, Q1 2.3.26 [FHA 02-01-07-0045-007].
237. Ms. Li 李氏, like most women in routine memorials, is referred to only by her original surname, which in this case was the same as her husband’s.
between his wife and her lover. Before the Lis began their move, Yang Xian entered the house at night and assaulted Wenyao, first striking him with a brick and then stabbing him with a blade. Li Wenyao survived the attack and reported it to the county magistrate.

Under questioning, Yang Xian confessed to attempting homicide, explaining that he and Ms. Li had planned to get married after her husband was killed. Ms. Li also admitted to the affair, but initially claimed that she had not known of any plan to kill her husband. When the magistrate asked why she had done nothing to stop Yang Xian, she explained that in the dark, she had not recognized the attacker. Mistakenly thinking that a burglar had entered the room, she had silently fled the house to avoid being harmed herself.

Yang Xian had confessed to the attempted killing, so Magistrate Mao convicted him of assault resulting from a planned homicide, with the sentence of strangulation with delay. He did not believe Ms. Li’s claim that she was unaware of the planned attack, but because she had not participated in the assault, she was treated as “one who joined [the plot] but did not participate [in the act]” 從而不加功, which reduced her sentence to exile. Magistrate Mao referenced the adultery in his case summary, but did not cite the statute on illicit sex and homicide, which addressed killing committed by an adulterous wife or her lover, or of the adulterous couple by the cuckolded husband. Instead, the magistrate applied the ordinary statute on planned homicide. He also cited a leading case—a verdict published to help clarify a point of law—involving an adulterous wife to support his decision. \(^{238}\)

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238. *Qianlong yuan nian Shandong sheng xingshi anjian wenzhao*, 133. The only information on this leading case, “The Zhili Province Case of He Liu” 直省何六案, is in the judicial commissioner’s rebuke of Mao’s citation. The case did not become a legal precedent, and I have thus far been unable to locate the text of the case.
Chapter 4

When the judicial commissioner reviewed and overturned the case, he not only argued against Magistrate Mao’s choice of statute, but also his designation of the principal actor. The commissioner pointed out that Ms. Li’s knowledge of the plan and failure to intervene or seek help after she ran out of the house was tantamount to both knowledge of the plot and to giving assistance to the attempted homicide. The commissioner also noted that the leading case Magistrate Mao cited had not become a legal precedent, making it ineligible for citation. Moreover, the citation would not have applied to Ms. Li regardless, as it referred to an adulterous wife who was completely unaware of the attempt to kill her husband, and both the magistrate and judicial commissioner believed that Ms. Li had some knowledge of Yang Xian’s plans.

When Magistrate Mao resubmitted a decision two months later, the commissioner overturned it a second time. The suggested sentence was not mentioned in the judicial commissioner’s rejection, but the title of the case, “The case of Yang Xian planning the homicide of the husband Li Wenyao over adultery, but not killing him” makes it clear that Mao was still designating Yang Xian, not Ms. Li, as the principal actor. The judicial commissioner once again took issue with the magistrate’s interpretation of Ms. Li’s actions, arguing that she must have been aware of the plot and a participant, and pointing out a number of inconsistencies in her testimony. He concluded by scolding both the magistrate and the prefect for failing to address the issues from the first rejection.

With two rejections focusing on the guilt of Ms. Li, Magistrate Mao decided to change the focus of his judgment. The third time he submitted a decision, he labelled it “the case of Ms.

239. Qianlong yuan nian Shandong sheng xingshi anjian wencho, 135.
Li planning to kill her husband over adultery” 李氏因姦謀殺本夫. The magistrate named Ms. Li as the formulator of the plot, and convicted her according to a substatute of the law on adultery and homicide:

因姦謀殺本夫傷而不死姦婦依謀殺夫已行斬姦夫依謀殺人傷而不死從而加功滿流若
是造意依造意絞

In a plot to kill because of adultery, if the husband is injured but not killed, sentence the adulterous wife based on the statute for carrying out a plot to kill one’s husband: immediate beheading. Sentence the adulterous lover according to the statute for assisting in plotting to kill another, resulting in injury but not death: exile. If he formulated the plot, then sentence him as the planner: to strangulation.240

In this case, Ms. Li was sentenced to immediate beheading, and Yang Xian was sentenced to exile—treated as an accomplice, rather than the initiator.

This final sentence was much harsher for Ms. Li than the one originally recommended. What would have been exile became decapitation without any chance of clemency. The new sentence was not only more severe than her original, it was also more so than the penalty originally given to Yang Xian as the principal actor in the crime. The change in verdict was a positive one for Yang Xian: his possible strangulation reduced to exile. Had the original decision stood, Xian’s sentence of strangulation might have been commuted to exile at the Assizes or as part of the amnesty, but it was not assured. Where the previous decision would have resulted in one exile and one execution with the possibility of exile, the final decision resulted in one exile and one definite execution. Unlike the two previous cases, the case of Ms. Li did not end in a successful restatement of the magistrate’s original verdict. Magistrate Mao did not obtain approval for his verdict until he both changed the primary defendant of the case and increased

the overall severity of the punishments. The same judicial commissioner who was willing to eventually accept a more lenient sentence for Wang Zhong and Song Heyu insisted on applying one of the few inevitably fatal punishments to Ms. Li.

One explanation for the harsher treatment of Ms. Li is her violation of Qing sexual mores. Thomas Buoye’s research on Qianlong-era homicide cases suggested that while women tried cases of affray or intentional homicide received the same lenient characterization that male defendants had, wives on trial for killing their cuckolded husbands received some of the harshest treatment of any criminal defendants. In Buoye’s two example cases of adulterous homicide, both of the women were convicted of conspiring to murder their husbands, much as Ms. Li was. Because their husbands died, each received the sentence of lingchi (death by slicing). Comparing these cases to homicide cases where accused women had not committed adultery, Buoye argued that the unusually harsh treatment of adulterous wives in homicide cases was the result of the patriarchal values of the Qing elite, and their own anxiety over and horror of female adultery.241

The Qing Code did consider homicide by adulterous wives and their lovers to be a particularly heinous crime, one of the few homicides punished with lingchi. However, the case of Ms. Li and Yang Xian seems more complicated than an expression of patriarchal social values. Ms. Li’s case was subject to unusual scrutiny and involvement by the judicial commissioner, but she was treated sympathetically by the magistrate, who tried twice to spare her the fate of immediate execution. There are other examples of sympathy for adulterous wives as well. In the 1695 homicide trial of Du Huailiang and another Ms. Li (no known relation), Du was sentenced to beheading as the principal actor in the killing his wife and Ms. Li’s husband, while Ms. Li was

sentenced to strangulation as an accomplice. In the magistrate’s report, this other Ms. Li is presented sympathetically: the mother of a young son, filled with regret for her relationship with Du, and denying all involvement in the homicides. Her lesser sentence also qualified her for clemency under the general amnesty declared that same year.

While the judicial commissioner may have been inclined to apply more scrutiny to Ms. Li and Yang Xian’s case because of their adultery, his rebukes focused on the same points that marked his other objections. Magistrate Mao’s inappropriate citation of a leading case, like Magistrate Bo Erjian’s reference to the statute on killing the adulterous lover, was rejected as an unauthorized legal argument, and then further rejected as an inappropriate comparison. It is apparent from these decisions that magistrates were required to cite the single appropriate statute, and any other technical legal arguments were strongly discouraged. In any fatal case involving an adulterous wife, the law required her execution, even if her husband’s death was due to suicide. Under this law, Magistrate Mao had no way of extending leniency to Ms. Li without resorting to unconventional interpretations that might justify his use of a different statute entirely. With this judicial commissioner’s dim view of judicial creativity by magistrates, these strategies were unlikely to succeed. Ms. Li was not sentenced to execution because the magistrate was less sympathetic to an adulteress than a killer, but because the harsh laws on adultery and the judicial commissioner’s demand for legal simplicity left the magistrate with no way of enacting any possible sympathy. Despite the judicial commissioner’s criticisms, however,

242. This case was translated in Robert E. Hegel et al., True Crimes in Eighteenth-Century China: Twenty Case Histories (Seattle: University of Washington Press, 2009), 79-90.
243. Hegel et al., True Crimes, 88-89.
244. The case of Magistrate Bao Ren, in Chapter Five, contains an example of an overturned case that may have been subject to heightened scrutiny because of the use of sentencing by analogy.
Magistrate Mao did not receive any official admonishments for his handling of the case, and he remained in office for another five years.\textsuperscript{245}

\textit{Case: Song Yi and his Father's Concubine}

In the previous case, the magistrate seems to have attempted to shield Ms. Li from the Qing Code’s severe attitude towards women who violated patriarchal rules. Conversely, the following case features a magistrate’s invocation of family values and the right to punish women who did not conform to these values. The case of Song Yi 宋熤 killing Ms. Jiang 姜氏, his father’s concubine, has been lost from the Qing archival holdings now kept in Beijing and Taipei, and only the manuscript copy of the judicial commissioner’s rejection remains. With the original case missing, the only way to ascertain the magistrate’s arguments is to examine the judicial commissioner’s rejection of them. Through the commissioner’s criticism, we can see the magistrate’s inclusion of testimony that painted Ms. Jiang as an immoral and disrespectful concubine and Song Yi as a filial defender of his parents.

In his recommended decision, the magistrate seems to have argued that the death of Ms. Jiang resulted from an accidental overuse of force while Song Yi was striking the concubine on his father’s orders. In their testimony, Song Yi and his father both accused her of constantly berating everyone, and claimed that the beating was a just punishment for that. Song Yi also testified that she had frequently scolded his mother and refused to take any direction from her. Song Yi further claimed that, despite his outrage at this treatment of his parents, he did not lay a hand on his father’s concubine until his father ordered him to carry out the beating. This

\textsuperscript{245} Chen Gulian 陳顧聯 et al., comp., \textit{Yanzhou fu zhi} 兖州府志 [Yanzhou prefectural gazetteer] (1760; Beijing: Erudition 愛如生, 2009), digital page 869.
testimony painted Ms. Jiang as a deserving victim, and Song as a filial son whose justifiable attempt to punish her behavior and protect his parents from further insult resulted in an unintended death.  

Qing law did not extend particular leniency to those who killed their father’s concubines, even under provocation, so including details about Ms. Jiang’s disrespectful behavior could not justify a sentence other than strangulation if Ms. Jiang’s death was unintentional, or decapitation with delay if intentional. There were other possible reasons to emphasize Ms. Jiang’s conduct. As we have seen in the previous three cases, magistrates had a tendency to include extra details that conveyed their understanding of the victim’s transgressions against the accused and offered possible justifications for the killing; in this case, the details of Song Yi and his father’s testimony could imply that the violence against Ms. Jiang was an understandable reaction to her behavior.

All wives and concubines were acceptable targets for domestic violence under Qing law. According to the Qing Code, a husband faced no penalty for striking his wife unless he fractured her bones. Even if he inflicted serious injury, the sentence for striking a wife was two degrees lower than for striking an unrelated person. Both intentional and unintentional homicide of one’s wife carried the sentence of strangulation with delay. The sentence for striking a concubine was reduced a further two degrees from the penalty for striking a wife, and killing one’s concubine only carried the penalty of exile.  

247. Shen Zhiqi, Da Qing lü jizhu, 20:23a.
only be sentenced to a beating himself.\textsuperscript{248} Although Song Yi had no legal right to strike Ms. Jiang, if he was carrying out an order, then Song Yi could be seen as a filial son acting on behalf of his father, who was exercising his legal prerogative to discipline a subordinate family member.

The judicial commissioner seemed thoroughly skeptical of the entire case narrative, both the supporting depositions and the magistrate’s conclusions. The magistrate seemed to see Song Yi’s case in terms of family values, but the commissioner treated the Song family’s relationships as suspicious. He rejected Song Yi’s father’s testimony entirely, dismissing the man’s words as lies intended to lessen the charges against his son. The commissioner suggested that the depiction of Ms. Jiang as abusive and disrespectful was not only dubious, but irrelevant to her death, denying Song Yi any legitimate grievance on behalf of his mother. The explanation that Song Yi had been following his father’s command was also dismissed as a rationale; if he had been disciplining out of obedience, he would have hit her just enough to express anger, not beaten her to death with the blunt end of an axe.

The use of an axe was another focal point of the commissioner’s criticism. He repeatedly insisted that dealing multiple blows with such a weapon must have been an intentional killing, asking “Song Yi chose to take up the iron hatchet and repeatedly strike her to death, so that even her bones were broken. Beating her to death like that, how could it be that he did not desire to kill her?” and “An axe is not a lightweight tool. The crown of the head is not an easy place to strike. The blade of an axe can be used to kill, but the back of the axe-head can also be fatal. In discussing whether or not the death was intentional, how can there be a distinction between

\textsuperscript{248} Shen Zhiqi, \textit{Da Qing lü jizhu}, 19:23b-24a.
Chapter 4

the blade or the back?" The statute on killing in an affray explicitly did not make any distinctions based on weapons—intent was the sole determiner, and the choice of weapon was not necessarily an indication of homicidal intent. To the judicial commissioner, the axe did indicate an intent to kill, and he justified this interpretation by turning to the forensic inquest.

When the commissioner reminded the magistrate and prefect of Ms. Jiang’s wounds, he not only described the severity of her broken bones, he also pointed out the exact locations of her injuries: “Song Yi used an iron axe to repeatedly strike Ms. Jiang’s fatal points at her temples, crown, and forehead, to such an extent that her bones were shattered and she died immediately. How could it be that he had no intent to kill her?” The judicial commissioner’s words echoed the terminology of the inquest report; “temples” 额角, “crown” 頂心, and “forehead” 额門 were specific “fatal points” 致命 identified in the forensic handbooks and marked on the inquest form. Despite the commissioner’s choice of technical terms, Qing law did not endorse the use of fatal points to establish intent, and the statute on killing in an affray specified that no distinction was made between hands, implements, or blades. A homicide could be unintentional even when the assailant used an axe, as in the cases of Song Yi and Wang Zhong. The judicial commissioner had to present his viewpoint as common sense; the physical difficulty of lifting an axe and striking the fatal point on the head made it clear to him that Song Yi had struck the fatal blows deliberately. In this argument, the commissioner was not asserting his greater specialized knowledge over the magistrate, as he might when correcting an interpretation of the statutes, but criticizing logical reasoning.

249. Qianlong yuan nian Shandong sheng xingshi anjian wenchao, 16.
251. Qianlong yuan nian Shandong sheng xingshi anjian wenchao, 16.
The routine memorials that would have contained the final decision in the case of Song Yi are no longer extant, so we have no way of knowing whether the magistrate acceded to the judicial commissioner’s wishes and revised Song Yi’s conviction to intentional homicide, or whether he was able to reformat his decision to successfully support a verdict of unintentional homicide in an affray. Nonetheless, the judicial commissioner’s rejection of the case provides a detailed look at a magistrate’s unsuccessful attempt to harness the language of filiality to support a case decision. Along with the previous example of Ms. Li, the two cases provide contrasting examples of the different ways judicial officials engaged with the moral and social values encoded into law. When Ms. Li was on trial for violating the sexual morality laws, the magistrate attempted to downplay her violations, and the judicial commissioner pushed back to enforce the law condemning adulterous women. When Song Yi was on trial for violence against a woman, the magistrate made use of the legal and social sanctions against abusive and unfilial women to imply that Ms. Jiang’s death was accidental yet deserved. In this case, the judicial commissioner ignored the filial arguments and focused on the law of killing in an affray. The magistrates treated Confucian-derived morality as a tool to support arguments, and the judicial commissioner ignored it unless it was part of the relevant statutes, but neither side made morals their major priority.

Strategic Responses to Criticism

In the four cases above, the magistrates and judicial commissioner demonstrated conflicting priorities. The magistrates consistently showed a desire to seek the lowest capital sentence, strangulation with delay. Judicial Commissioner Huang initially rejected their
recommendation and urged them to consider a heavier penalty, but his willingness to accept the same sentence on resubmission suggests that he was not interested in severity for its own sake. Instead, he displayed a complicated and sometimes contradictory mix of priorities in his handling of overturned cases. Magistrates did not feel a need to accommodate all of the commissioner’s stated criticisms, but their resubmitted judgments showed attention to some of his specific points, as well as his broader concerns about diligence and bias.

In his responses to the preliminary inquest reports and the statements of consideration, the judicial commissioner instructed magistrates to be detailed, thorough, and persistent, using such phrases as “investigate and make clear the roots of the conflict” 究明起釁根由, “consider and verify the severity of the wounds on the corpse” 酌核屍傷之輕重, and ensure that “the words of confessions align from start to finish” 供詞終始一轍. He reminded the magistrates to investigate with an “empty mind” 虛衷 free of preconceived notions, not fishing for a desired outcome, lest the suspects feed them easy answers to forestall more thorough investigation.

The commissioner concerned himself with the magistrates’ conduct and attitude, seeming worried that they would allow laziness or prejudice to affect their work, settling for superficial and easy resolutions to the case. If magistrates exhibited tendencies towards leniency, they were not treated as expressions of compassion, but as another possible symptom of lazy investigation. In the cases of Wang Zhong, Song Yi, and Ms. Li, the commissioner concluded his lists of contradictions by accusing the magistrates and prefects of believing the defendants’ false denials, and seeking to excuse their crimes, implying that whitewashing was the only explanation for the inconsistencies. In the case of Ms. Li and Yang Xian, the commissioner also suggested that “the

magistrate and prefect wish to conclude the case, and have no intention of punishing iniquity”
該縣府有心完案無意懲奸.253

In his specific criticisms of the case decisions, the commissioner focused on consistency and a sort of common sense test for witness testimony. He noted when depositions did not match each other, but focused most of his criticism on what he himself viewed as inconsistencies between the defendants’ stated intentions and their actions. He suggested that Ms. Jiang’s death must have been intentional due to the physical difficulty of striking the fatal blows. He made a similar point about Wang Zhong’s use of an ax to strike Zhang Laihe, when he had a less dangerous stick available instead. The commissioner had no legal backing for his points, but he could present them as rhetorical questions, implying that the men’s fatal intent was simple logic. Why else would Wang Zhong use an axe instead of a staff? Wang Zhong and the magistrate did have an answer for that question: he only meant to intimidate Zhang Laihe, but the other man grabbed the blade, and fatal blows happened during the struggle for the weapon. The judicial commissioner initially rejected this explanation, but upheld it on resubmission. He applied a similar skepticism to Song Heyu’s explanation for killing his cousin’s son; it made no logical sense, so he assumed that it was covering up for other motives. It was not until the magistrate extracted a restatement of Song Heyu’s confession, including an acknowledgement by the accused that his actions were senseless and and stemmed from alcohol and anger, that the judicial commissioner accepted the story.

253. *Qianlong yuan nian Shandong sheng xingshi anjian wenchao*, 136. The character 奸 can refer to evil, immoral, or criminal behavior. It can also be used as a variant character for 奪 (rape, illicit sex), but I have not seen this use in legal documents.
The judicial commissioner also read witness testimony for evidence of preexisting enmity between the defendants and victims. After the Ming-era change to the statute on killing in an affray removed the weapon as a basis for establishing homicidal intent, magistrates were left with little direction in solving fatal cases. Judicial officials and other legal writers, noting this new difficulty, made other suggestions for determining the nature of the crime, such as looking for evidence of a preexisting grudge between those involved. In the cases of Wang Zhong and Song Yi, the judicial commissioner interpreted their conflicts with the victims as an indication of enmity and thus homicidal intent. The magistrates, however, treated the defendants’ testimony as evidence of provocation, explaining their reactions without implying a desire to kill. Initially, the commissioner rejected the magistrates’ interpretation, but he accepted it the second time, at least for Wang Zhong.

Although the provincial judicial commissioner outranked local magistrates, he faced certain disadvantages in reviewing their cases. The commissioner was in a large city, days’ travel from the case and nearly everyone involved in it. With no opportunity to directly observe the scene of the homicide, the corpse, or the initial testimony, he had only the magistrate’s and prefect’s reports to use in his review of the case. He did have the authority to interrogate the accused himself, but he seems to have preferred not to do so. Interrogation at higher levels was intended to confirm the earlier verdict or catch false confessions, not to uncover new information. The commissioner could make use of the inquest report, as he did in the case of Song Yi, but he could not conduct his own examination on an intact corpse. Some other forms of evidence, such as the presence of defensive wounds on the accused, would be gone by the time the case reached

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the commissioner. He was left with a case narrative, several edited depositions, a homicide weapon, and a detailed list of wounds. He could examine these materials for internal and logical consistency, and he could require more explanation of doubtful points, but if the magistrate could not or would not extract a confession of intentional homicide from the defendant, the judicial commissioner had few alternative methods of proving fatal intent.

When legal arguments were made, either explicitly or implicitly, the commissioner criticized any argument that went beyond a simple explanation of how the defendant’s behavior fit the cited statute. In the case of Ms. Li and Yang Xian, the judicial commissioner rejected Magistrate Mao’s reference to a leading case as invalid, even though the practice was neither explicitly permitted nor formally banned at the beginning of the Qianlong reign in 1736. Two years later, the emperor issued an edict restricting officials in the provinces from citing anything other established statutes and substatutes, and explicitly banning the use of leading cases. Provincial governors and governors-general were allowed to suggest that a decision be established as law, subject to review by the Board of Punishments, but subordinate officials could only reference precedents that had already been approved. This restriction was incorporated into the new 1740 Qianlong edition of the Qing Code, but the issue remained controversial, and the substatute was overturned three years later, making the use of leading cases permissible.

The judicial commissioner rejected Magistrate Mao’s use of a leading case and Magistrate Bo’s passing reference to the statute on killing the adulterous lover, even though neither approach was explicitly prohibited. As a specialized judicial official with experience at the Board of Punishments, Commissioner Huang likely had a more thorough knowledge of the
Code than the generalist magistrates and more resources to hire expert legal secretaries to assist him. As magistrates’ superior, Huang was also in a position to assert his greater authority over legal matters. When analyzing witness testimony, he could forcefully point out problematic issues, but had limited power to ensure a specific response. When discussing law and precedent, he could discard an entire line of argument. By choosing to criticize the magistrates’ legal arguments as well as the witness testimony, he signaled to them that nonstandard references to the Code and leading cases were an unproductive method of supporting a case decision, and both magistrates dropped the references from their subsequent statements.

Overall, Judicial Commissioner Huang seems to have prioritized decisions presenting a simplified, streamlined version of events that clearly supported conviction under a single statute. On resubmission, he often accepted restatements of the original decisions if they minimized the contradictory details, contained additional assurances from the defendants that their confessions were truthful, and removed references to other laws or cases. Although he criticized magistrates for not fully explaining the context of the incidents, his rejections show that detailed depositions and explanations did not help magistrates succeed with their decisions. Including more details provided the judicial commissioner with more contradictory points to criticize. Instead of more fully explaining or supporting their assertions, magistrates could succeed by having the defendant re-assert the truth of his testimony. When the judicial commissioner stated that it was even doubtful that Song Heyu had been intoxicated at the time of the homicide, the magistrate did not include additional testimony from witnesses about his intoxication, he simply had Heyu restate that he had been drunk and confused. Nor did Magistrate Bo provide other evidence to support Wang Zhong’s claim that he had only planned to cut wood with his axe. Despite saying
that he wanted full explanations, the judicial commissioner’s behavior suggests that he was not interested in every detail.

Rather than encouraging detailed investigation, the judicial commissioner’s behavior incentivized the appearance of diligence and thoroughness from the magistrates. By providing statements from the defendants affirming their previous explanations, magistrates did not resolve the commissioner’s previous questions. Instead, they showed their willingness to accommodate their superior’s underlying concerns, but avoided the heavy time expenditures that addressing his specific criticisms would entail. This technique was not limited to the above cases; Huang Liuhong, who served as a county magistrate in Shandong and Zhili provinces in the 1670s, recommended a similar approach in his manual *A Complete Book Concerning Happiness and Benevolence*. Huang Liuhong even suggested that magistrates deliberately add some minor “weak points” 破綻 to their statements of consideration and edited depositions. According to Huang, adding the minor flaws would provide superior officials with easy targets for their criticism, and the magistrate could quickly fix them and successfully resubmit. Otherwise, if the superior official looked for reasons to overturn the case, he might choose to criticize the use of the statutes or state that the depositions were confused and inconsistent, forcing the magistrate to redo the investigation from the beginning. 255 The need to anticipate the requirements of superior officials, who could be exacting or merely arbitrary in their criticism, was a feature of the obligatory case review system.

The review system put pressure on the judicial commissioner as well. Once he confirmed a magistrate’s verdict in a fatal case, it was passed on to the governor and governor-general for

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their review, and from there to the judicial officials in the capital. The commissioner pressured magistrates to produce case decisions that he believed would pass review by his superiors and the Three Judicial Offices. Once the magistrate produced an internally consistent case decision, the judicial commissioner could pass it to the next levels—first the provincial governor’s office and then on to the capital—without making his superiors aware of any unresolved problems in the initial overturned decision. To satisfy his superiors, the judicial commissioner did not need to insist on a case decision that answered his questions, only one that met the standards of the next level of review.

A case rejection was an opportunity for the judicial commissioner to demonstrate that he was monitoring his subordinates. If an official upheld a decision that was later found to be poorly investigated or wrongly decided, he himself faced administrative sanctions, fines, and corruption investigations. Tolerating a subordinate’s corruption or negligence meant impeachment and investigation for himself as well, so the judicial commissioner had reason to overturn any case that might indicate malfeasance. Rejecting cases with signs of poor investigation or possible corruption prevented these cases from reaching the capital, and also allowed the judicial commissioner to create a paper trail supporting his own record of diligence and alertness.

However, sending a case back for further investigation risked incurring penalties for lateness. All officials in the province shared a six-month deadline for concluding most fatal cases (four months for more serious ones involving immediate execution). Three of those months were for the magistrate, leaving the prefect, commissioner, and the duo of governor and governor general with one month each. Late cases were automatically granted a four-month extension, but
the deadline still placed the judicial commissioner under time pressure to conclude the case.\textsuperscript{256} The deadlines gave the judicial commissioner another reason to be less exacting with cases on a second or third submission, though the cases of both Wang Zhong and of Ms. Li show that the commissioner was willing to overturn cases repeatedly if he deemed it necessary.

In his rejections, the judicial commissioner did not advocate severity for its own sake, but he did indirectly encourage magistrates not to adopt the reflexive attitude toward leniency and benevolence that scholars sometimes attribute to them. When magistrates proposed sympathetic interpretations of the defendants’ actions, the judicial commissioner accused them of sloppy work, closed minds, and credulous acceptance of criminal deception. By equating less severe convictions with poor investigation, the commissioner signaled to magistrates that narratives of sympathy and leniency were suspicious and insufficiently rigorous. He also added a clear moral dimension to his standards, reminding magistrates that they must not only investigate the roots of the conflict, they must also ensure that “the villains must not escape unpunished, so the dead can rest in peace” 兇徒不至漏網而死者可以瞑目.\textsuperscript{257} When he overturned the case of Ms. Li and Yang Xian, the commissioner accused the prefect and magistrate of having “no intention of punishing iniquity.”\textsuperscript{258} Although magistrates were taught by their handbooks that leniency was a moral good, the judicial commissioner presented them with a different framework, where it meant allowing evil to go unchecked and the innocent to suffer.

\textsuperscript{256} Ch’ü, Local Government, 121-122.
\textsuperscript{257} Qianlong yuan nian Shandong sheng xingshi anjian wenchao, 15.
\textsuperscript{258} Qianlong yuan nian Shandong sheng xingshi anjian wenchao, 136.
Punishing Overturned Cases

The case review process of submission, rejection, and resubmission was a feature of the Qing criminal justice system, but it was also a channel for administrative communication between territorial officials. The superior officials involved in confirming or rejecting a verdict also had broader supervisory powers over subordinates and were responsible for monitoring their performance. Case review was one form of communication between these levels, providing the prefect, judicial commissioner, governor, and governor-general with examples of magistrates’ work outside of the scheduled audits and evaluations. A reversed judgment was also an opportunity for magistrates to receive feedback on their judicial performance and indications that their superiors might be dissatisfied.

For a magistrate’s prefectural and provincial superiors, overturning a decision was a way to give him a relatively mild reprimand for his handling of a case without necessarily subjecting him to fines or impeachment. When he received notice of the reversal, he had to read criticism and admonishments from his superiors—not only the one who overturned his verdict, but also any intermediary officials along the chain of review, each of whom received and read the rejection and any reprimands. An overturned case meant additional work, which could be a minor inconvenience to some, but a rather large burden to others. A new decision would have to be submitted relatively quickly to avoid penalties over the delay. An already overworked magistrate with too many rejected decisions adding to his responsibilities risked falling behind on his caseload, which could result in much more serious penalties.

To demonstrate some of the possible consequences magistrates might weigh when deciding fatal cases, this section looks at four different examples of impeachments precipitated
by an overturned preliminary investigation or proposed verdict. In the Qing civil bureaucracy, an impeachment occurred when the emperor received a memorial reporting an official’s misconduct or poor performance and requesting approval for the recommended administrative punishments and possibly criminal investigations as well. For a magistrate, impeachment for a relatively minor lapse might result in his being formally demoted or stripped of rank but ordered to remain at his post and continue fulfilling his duties. If he avoided future mishaps, he could regain his ranks and salary, and even be promoted.\textsuperscript{259} If the offense was more serious, the impeachment memorial might instead ask that he lose his position entirely; if he wanted to return to official service, he would have to somehow overcome the stain on his record and obtain a new appointment. In some cases, a disgraced bureaucrat with a reputation for administrative skill would be ordered to expiate his guilt by paying a large fine or contributing money and organizational labor to some difficult and onerous public works task.\textsuperscript{260} When the nature or severity of a magistrate’s offense was such that corruption or other criminal misconduct was a possibility, he would not only be removed from office, he would also be ordered to travel to the provincial seat, where he would remain under house arrest while the criminal investigation took place.

In each of the following four examples, a magistrate’s superiors used his unsatisfactory performance in handling fatal cases as the basis for his impeachment. Such an outcome was not the usual result of an overturned verdict; none of the magistrates in the five cases above seem to have suffered any repercussions from their rejected verdicts, despite the judicial commissioner’s

\textsuperscript{259} Park, “Corruption and Its Recompense,” 90-93.
\textsuperscript{260} For example, Magistrate Zhou Zhongxuan (discussed at length in Chapter Four) was ordered to give his time and money to assist with local levee repair projects in Hubei.
pointed criticisms. However, most would have been aware that if their judicial performance failed to satisfy their supervisors, the result could be loss of salary, office, or even freedom.

*Impeachment for Accepting False Explanations*

Magistrate Yan Ying 嚴英 of Tongbai County 桐柏縣 in Henan province was impeached after his verdict was overturned twice. The case began when county resident Li Yunxian 李云獻 reported his discovery of an unidentified corpse, later identified as Mao Wenjun 毛文俊, another county resident. When the magistrate investigated, the brother of the deceased reported that Wenjun had gone to the Li family residence to collect a debt and never returned. When Magistrate Yan confronted Li Yunxian with this claim, he confessed to the homicide and explained that he and his brother had killed Wenjun as punishment for having an illicit affair with Yunxian’s wife, who confessed to the adultery. Magistrate Yan accepted their explanation, and sentenced the two Li men to beating and exile according to the law on killing the adulterous lover. Henan Judicial Commissioner Nahai 納海 disagreed with the sentence and overturned the case.

The case record does not provide the commissioner’s reasons for rejection, but he likely ordered the magistrate to further investigate the issue of the unpaid money. When Magistrate Yan resubmitted the case, he replaced the conviction of killing the adulterous lover with a conviction of an unintentional killing in an affray that arose over the debt, which increased Li Yunxian’s sentence from exile to strangulation with delay.

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261. Tian Wenjing 田文鏡, routine memorial, Yz 6.8.8 [FHA 02-01-02-2332-006].
The judicial commissioner was still dissatisfied with the decision, so he and Governor-general Tian Wenjing ordered Magistrate Yuan Xu 袁頊 of the neighboring Yu Department 裕州 to reinvestigate the case. Magistrate Yuan interrogated the Li brothers, who now said that they had planned the killing ahead of time to prevent Mao Wenjun from collecting payment on Yunxian’s debt. Magistrate Yuan concluded that this constituted planned homicide for gain. He sentenced Li Yunxia and his brother to immediate decapitation under the statute, which did not distinguish between the instigator and any others who participated in the violence. Another Li cousin was convicted on a lesser charge—helping with but not receiving financial benefits from the killing—and was thus sentenced to strangulation with delay. A fourth cousin was implicated in the crime, but had passed away from an unrelated illness by the time the case was decided. The final decision did extend leniency to one person; Li Yunxian’s wife, who had recanted her admission of adultery, was judged to be acting under her husband’s orders and was cleared of any charges.

When Tian Wenjing approved Magistrate Yuan’s verdict and submitted it to the Three Judicial Offices, the governor-general also noted that Yan Ying and the prefect were to be impeached, the former for his mishandling of the case, and the latter for approving Yan’s first two sentences. The coroner was sentenced to a beating for making a false inquest report. Impeaching both the magistrate and the prefect was an unusually severe response to a single overturned case. The judicial commissioner and governor-general may have suspected that bribery was involved, given the transfer of the case to the neighboring yamen. Magistrate Yuan’s investigation only uncovered evidence of the coroner’s malfeasance, but an official impeachment would allow the governor-general to investigate further.
Impeachment for Bad Writing and Poor Investigation

The career consequences of having one’s verdict rejected ranged from personal inconvenience to serious criminal penalties. For many magistrates, it was a manageable nuisance. If the reversal was only for minor errors, the decision could be rewritten by the legal secretary and resubmitted without much additional work. If a magistrate needed to conduct further witness questioning, an additional examination of the corpse, or interrogation of the defendant, the demands on his time could increase substantially. An overworked magistrate risked falling behind in his other duties, which could lead to more mistakes, penalties for lateness, or more serious punishments. Overturned cases also created more work for his superiors. When the judicial commissioner rejected a decision, he conveyed the rebuke and new instructions through the prefect, who had to convey this message and then review the resubmitted case. Repeatedly submitting incorrect judgments could damage a magistrate’s standing with his superiors, making him more likely to be impeached and fired over errors.

A magistrate who was already struggling with his workload and having trouble completing cases on time might find that one overturned verdict too many resulted in the loss of his job, as happened to Cai Zengqin, magistrate of Jiangpu County, located across the Yangtze river from the Jiangsu provincial seat. Magistrate Cai had only been in office for a year when he was impeached for improper handling of a potential fatal case. In that short time, he had already incurred delays in multiple cases, and had several verdicts overturned or criticized for poor wording or phrasing. Magistrate Cai had passed the civil service exam at the provincial level and received a juren degree, so his literary abilities should have been

262. Zhao Hong’en 趙弘恩, routine memorial, Yz 12.2.24 [FHA 02-01-02-2405-006]. The provincial seat was located in present-day Nanjing, which has since incorporated Jiangpu County as well.
adequate, but his reports did not conform to the official standards. The governor, judicial commissioner, and prefect overseeing Cai all complained that his reports were confusing and contained contradictions. None of these problems was necessarily impeachment-worthy—as the four cases above demonstrated, contradictions and confusing points were ordinary criticisms used to overturn cases, not indications of serious issues. For Cai Zengqin, they became a problem because his superiors could use them to establish a pattern of poor performance.

The precipitating case for Magistrate Cai’s impeachment was a woman’s death that he had ruled a suicide. When Cai reported this finding, he also enclosed testimony from the woman’s father, alleging that she had been involved in a dispute that may have been connected to her death. Rather than investigate or address the possibility of violence, the magistrate included the contradicting testimony without comment, asking to rule the death a suicide and declare the matter resolved. That report, combined with his delays on other cases and previous difficulties with clarity in his communications, motivated his superiors to have him impeached. Cai was promptly cashiered, but the following investigation failed to turn up any corruption charges, and the former magistrate returned to his hometown in Fujian. Although he lived into his ninth decade, he never returned to public service.263

By submitting his judgment on the suicide to the obligatory review system, Magistrate Cai Zengqin drew his superiors’ attention to his overall performance as a magistrate, leading to his removal from office and the end of his career. He nonetheless chose to send the report, rather than taking more time to investigate or hoping that his superiors might not notice the unresolved case. Cai may have been unaware of the problems with his report, or he may have incorrectly

263. Zheng Yisong 鄭一崧 and Yan Shu 顏璹 et al., comp., Yongchun zhou zhi 永春州志 [Yongchun department gazetteer] (1787; Beijing: Erudition 愛如生, 2009), 10-1b.
guessed that the problems would lead to nothing worse than a minor reprimand. He may also have decided that submitting incomplete or unpolished work was preferable to leaving the case unresolved.

The Cautionary Tale of Wang Xijie

Unlike Cai, Magistrate Wang Xijie 王錫玠 of Cao County 曹縣 in Shandong did decide to leave cases unresolved, and was imprisoned for years as a result. The precipitating incident was similar to Magistrate Cai’s: a death that had been ruled a suicide over the protests of the father of the deceased. A county resident had reported to Wang’s predecessor that his son had been beaten to death by an acquaintance. The previous magistrate had examined the corpse, recorded that he found no marks of violence on it, and concluding that the death had been caused by drowning, he ruled it a suicide and sent his findings to his supervisors. The dead man’s father had repeatedly petitioned the judicial commissioner for further investigation, traveling the 150 miles between Cao and the provincial seat of Jinan, and eventually convinced the commissioner to reopen the case.

The new magistrate, Wang Xijie, was ordered to reinvestigate, but never submitted any new findings. Nor did he report on whether the father’s complaint was a false accusation, as a definitive ruling of suicide should have called for. The case remained open for two years, until the provincial governor and governor-general, both newly appointed to their posts, began an investigation in 1729. They discovered that Wang had also accumulated a backlog of more than

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264. Tian Wenjing 田文鏡, routine memorial, Yz 7.3.9 [FHA 02-01-03-03296-002].
265. Making false accusations was a crime, so if the father’s claim that his son’s death was a homicide was unfounded, the magistrate needed to investigate him for making a false accusation. See Yongzheng huidian, 187:37a-39a.
twenty other unsolved crimes involving banditry and homicide, as well as unresolved complaints about corruption among the yamen staff. The two reported their findings to the emperor, suggesting that Wang be removed from office for failing to close cases and discipline his runners.

Instead of approving the administrative penalties, the Yongzheng Emperor decided to make an example of the impeached magistrate. He noted that Wang had been given his post on the recommendation of Selengge 塞楞額, the former governor of Shandong. In light of Wang’s negligence, Yongzheng concluded that Selengge’s recommendation was clearly the result of “sycophancy and bribery” 鑽營賄賂, and Wang needed to be severely punished. He ordered that until all of the twenty-odd unresolved cases were resolved, Wang Xijie was to remain imprisoned in Shandong. The emperor concluded his edict by making his purpose plain: “If any of the cases still contain unclear items, then let Wang be eternally imprisoned to serve as a warning for those who are indolent, trifling, and sycophantic.”

Wang was imprisoned for at least five years, when a new governor-general wrote to the emperor. Governor-general Wang Shijun 王士俊 (no apparent relation), conveyed a request from Wang Xijie’s aging father, who asked that his only son be allowed to return home to Zhejiang province to care for him and continue the family line. The governor-general reported that all but one of Xiejie’s unresolved cases had been concluded, and the only one still open was a non-violent robbery. Yongzheng instructed the governor-general to formally submit his request as a routine memorial, and it is likely that Wang was released as a result.

266. Tian Wenjing, Yz 7.3.9 [FHA 02-01-03-03296-002].
267. Wang Shijun 王士俊, palace memorial, Yz 11.12.3 [FHA 04-01-30-0037-004].
Chapter 4

Impeachment for Excessive Severity

Magistrates also had to persuade their superiors that they were not being excessively harsh. Lenient sentences might elicit additional scrutiny and rejection from the judicial commissioner, and possibly administrative penalties, but excessive severity could lead to even more serious consequences. If a magistrate erroneously increased the charges against someone or convicted an innocent person, he could himself be sentenced to a heavy fine, the monetary equivalent of the additional punishment he had incorrectly levied.\textsuperscript{268} The same law applied to overly light sentences, but the punishment for decreasing charges 出罪 was two degrees lighter than for increasing them 入罪.

One example of a case overturned for excessive harshness is documented in the impeachment of Guichi County 貴池縣 Magistrate Zhang Mingduo 張鳴鐸 in Anhui province, who was removed from office as a result of his unsatisfactory handling of a case.\textsuperscript{269} After a group of county residents protested their taxes with public disturbance and threats of violence, Magistrate Zhang assigned the investigation to one of the yamen clerks, who arrested a local man as the ringleader. During the trial, the man presented proof that he had not been in the county on the day of the protest and claimed that his imprisonment was solely due to the yamen clerk’s personal grudge against him, but after the magistrate threatened him with torture, he confessed to inciting the incident. Magistrate Zhang sentenced him to delayed decapitation, a decision that was promptly overturned when it reached the judicial commissioner. This initial rejection did not carry any administrative penalties, only the usual work of resubmitting the case.

\textsuperscript{268} Shen Zhiqi, \textit{Da Qing lü jizhu}, 28:26a-29b.
\textsuperscript{269} Zhao Hong’en 趙弘恩, routine memorial, Yz 13.12.13 [FHA 02-01-03-032960-004].
For his second judgment, the magistrate convicted a different man of inciting the protest. The new suspect had been seen at the gathering and confessed to participating, but insisted that the idea and planning had come from a county resident named Zhang Hongyuan. Although the accused maintained that he was only an accomplice, even under interrogation, Magistrate Zhang nonetheless sentenced him to delayed decapitation as the primary offender. With no confession to support the verdict, the magistrate’s second decision did not even pass prefectural review. The prefect, after conducting his own investigation, concluded that Zhang Hongyuan bore primary responsibility for the disturbance. His recommendation that Hongyuan be sentenced to decapitation and the accomplice’s punishment be reduced to strangulation were approved by the judicial commissioner and governor and the case was sent to the capital.

After Magistrate Zhang’s second judgment was found to be egregiously incorrect, the governor and governor-general impeached him for incorrect use of the statutes, failure to quickly apprehend Hongyuan, and for determining the sentence improperly 斷罪不當. After investigating, the governor-general recommended that Zhang not only be removed, but also sentenced to a beating of sixty blows of the heavy bamboo for intentionally recommending decapitation instead of the correct penalty of strangulation 應絞而斬. Because there was no evidence of corruption on the part of the magistrate, he was allowed to redeem his beating with a fine.

Zhang Mingduo was impeached over of multiple offenses, but the charge of excessive punishment was the most serious, and thus determined his sentence. However, the governor-general also noted that the magistrate’s incorrect convictions of the first two defendants delayed the apprehension of the ringleader, and if the incorrect judgments had not been
overturned, the real culprit would have evaded responsibility for his crimes. Zhang’s most serious offense under the Qing Code was his excessive severity, but the underlying problem with his conduct was not a matter of harshness or leniency, but of carelessness, inaccuracy, and bias. The magistrate had inappropriately delegated his investigation duties, allowed a personal grudge to affect the outcome of a case, and had not appropriately punished criminals.

Bias and inaccuracy were serious flaws in judgment, both in their own right and because they could be warning signs of judicial corruption. As I will show in Chapter Five, some magistrates were bribed by the chief suspects or their families to convict another person in their stead. Erroneously convicting an innocent person or designating an accomplice as the primary offender could indicate an attempt to cover for another’s crimes, so the investigation into Zhang Mingduo’s conduct had to rule out the possibility of corruption. Because his superiors found no indication of any bribes, he was to convert his sentence of sixty blows to a monetary contribution, instead of corporal punishment, but the impeachment ended his term as Guichi magistrate, and most likely his official career.

Fear of Corruption

The four impeachments above all show a shared concern by provincial officials that the magistrates were failing to adequately address the problems of serious criminal behavior and neglecting their investigative and judicial duties. The worries underlying these impeachments are similar to Judicial Commissioner Huang Shulin’s concern that magistrates were presenting sympathetic narratives and overly light sentences because of an unwillingness to thoroughly investigate; as he reminded them, their job was to appropriately punish crime, not make excuses
for the criminals. In the four Shandong cases, the judicial commissioner’s admonishments went no further than a rebuke and instructions to repeat the process. Yan Ying, Cai Zengqin, Wang Xijie, and Zhang Mingduo were subject to more serious consequences. Examining the differences between the impeached magistrates and those whose verdicts were overturned with no further consequences can help us understand the boundaries of acceptable judicial behavior.

One distinguishing feature in the first three impeachment cases was the lack of a capital verdict. Strangulation with delay was likely to be commuted to allow the convicted person to avoid execution, but clemency was not guaranteed; it was still a capital sentence subject to the full review system. The three impeached magistrates each managed a case in such a way that, had their decision been approved, the suspects would not have risked death. Wang Xijie and Cai Zengqin avoided investigating allegations of homicide, bypassing any verdict. Yan Ying initially sentenced the two criminals under a statute that subjected them to exile rather than death. An attempt to avoid capital punishment could be a sign of bribery in the case—suspects and their families would be more likely to pay a bribe if doing so protected them from execution.

Concerns over another form of corruption—bribery within the civil bureaucracy—clearly drove the sentencing of Wang Xijie. The Yongzheng emperor assumed that the Cao county magistrate’s promotion must have been due to bribery and unjustified favoritism and sentenced him to a criminal penalty without possibility of monetary redemption, the sort of penalty that was ordinarily restricted to investigated and proven corruption convictions.²⁷⁰ Yongzheng may not have believed that Wang Xijie was guilty; he did not have the magistrate investigated further, nor did he discipline former Shandong governor Selengge for his alleged bribe-taking and

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²⁷⁰ For more on corruption convictions, see Chapter 5.
favoritism. Wang’s punishment was not only a response to one magistrate’s misdeeds, but also a warning from the emperor that he planned to treat corruption as a serious problem and punish it accordingly.

Wang Xijie was given an extraordinary punishment in order to set an example, but Cai Zengqin, Yan Ying, and Zhang Mingduo did not come through unscathed; the impeachments ended their official careers. When poor handling of a case was due to incompetence rather than bribery, provincial officials still punished it, albeit less harshly. The judicial commissioner, provincial governor, governor-general, and the Three Judicial Offices treated fatal cases as a weighty matter, in which lack of seriousness in investigation and sentencing enabled evil behavior. A magistrate’s leniency may have been an expression of a humane nature, but to his superiors, it was a potential indication of negligence or corruption, and they scrutinized fatal case judgments for any such signs. An overturned verdict gave magistrates a chance to prove themselves serious and dutiful, and their response to the rejection could help their superiors decide whether to approve the decision or begin impeachment proceedings.

Magistrates and Narrative Choices

Although the judicial commissioner applied additional scrutiny to sympathetic-seeming narratives, many magistrates continued to submit judgments that avoided the heavier sentences of delayed or immediate decapitation in favor of the comparatively light delayed strangulation. As we see in the cases above, magistrates added details sympathetic to the accused to their statements, even when such details were counterproductive. Offering justifications for the anger

271. Selengge was then a vice-minister of the Board of Works, where he remained for the rest of Yongzheng’s reign.
of the accused undermined the validity of a claim to unintentional homicide. If magistrates wished to be lenient, as some scholars have argued, then including a narrative of the defendant’s grievances would seem to undermine efforts to cast the killing as unintentional. When these details led to an overturned decision, magistrates were willing to omit the most problematic points, but continued to describe the events of each case in ways that encouraged understanding and empathy towards the defendant.

This tendency was not limited to the above cases; Thomas Buoye has found similar examples of magistrates shaping depositions to create a more sympathetic interpretation of events in Guangdong and Sichuan. Buoye argued that these magistrates were motivated by Confucian-inspired ideals, and when the defendant’s behavior could be aligned with such values, they had the legal tools and motivation to pursue leniency. For crimes that involved offenses against the Confucian family structure, such as violence by an adulterous wife against her husband or a disobedient son against his father, both the magistrate and the legal code responded with severity. However, my research shows that magistrates could also attempt to avoid the heaviest charges when the crime did violate the Confucian family hierarchy, as in the case of the adulterous Ms. Li. Moreover, Judicial Commissioner Huang’s rejections did not encourage any sort of leniency or benevolence, and in the case of Song Yi, he showed considerable skepticism when reading a narrative based on patriarchal values.

Influence on the Autumn Assizes

Buoye has suggested that magistrates provided sympathetic narratives of homicide convicts to help improve their chances at the Autumn Assizes.\(^ {275}\) Introducing mitigating factors in the case could encourage provincial officials and the Board of Punishments to recommend that the emperor commute a death sentence. Based on his extensive survey of archival homicide cases from Guangdong, Buoye argued that magistrates crafted their narratives to appeal to the Confucian sympathies of the higher officials responsible for reviewing capital sentences and recommending a final outcome at the Assizes.\(^ {276}\) Estimates of the Autumn Assizes records show that in most years, less than one third (and often below twenty percent) of the capital sentences at the Assizes were carried out.\(^ {277}\) Of those remaining, some were labelled “deserving of compassion” 可矜 and commuted, but the majority were suspended pending review in the following year.\(^ {278}\)

Magistrates may have been crafting sympathetic case narratives to take advantage of the Qing legal system’s tendency to avoid carrying out executions in routine cases. However, there are some problems with this explanation. Research into the Autumn Assizes shows that although the Assizes tended towards clemency or suspension on average, the actual proportions varied wildly by year and province. Between 1738 and 1740, the percentage of confirmed death sentences ranged from ninety-five percent in Henan province to eleven percent in Jiangxi. Commutations ranged from three to thirty-eight percent, and six provinces recommended no cases for suspension, while in Fujian, every sentence was suspended.\(^ {279}\) In some years, as little


\(^{276}\) Buoye, “Suddenly Murderous Intent Arose,” 82.


\(^{278}\) Meijer, “The Autumn Assizes in Ch’ing Law,” 7; Poling, “Performance of Power and the Administration of Justice,” 100.

\(^{279}\) Lee, “Homicide et Peine Capitale,” 121.
as eight percent of sentences were confirmed, while in others, the total could be over thirty percent. With such inconsistent outcomes, magistrates might have lacked confidence in their ability to affect a decision at the Assizes.

There is also some question as to how consistently effective an appeal to Confucian humaneness would have been. The provincial and capital records of the Autumn Assizes do not list the reasons for recommending execution, compassion, or suspension for each convict, only the outcome, making it difficult to draw conclusions about the review process in practice. Many of the archival cases that best demonstrate sympathetic narratives come from the Yongzheng and early Qianlong reigns, before routine memorials became more condensed and formulaic. During this period, the criteria for clemency at the Autumn Assizes were undergoing changes and were thus difficult to predict or strategize about. One category of suspension, “doubtful cases”可疑, was eliminated in Yongzheng 7 (1729). The two Qing Codes in effect during the Yongzheng and Qianlong reigns do not provide specific guidelines for commuting sentences, but later substrataes specified automatic clemency for a variety of capital crimes, such as killing an unfilial wife or child, unauthorized killing by a government employee, or accidental killing during play-fighting. Intentional killing and killing in an affray never qualified for automatic reduction. A magistrate’s handbook from 1794, Zhouxian xu zhi 州縣須知 [What magistrates need to know], provides some guidelines for sorting convictions of unintentional homicide in an affray. The handbook states that cases of killing in affray can qualify for suspension if the crime did not

“approach the level of intentional killing” 近故殺. Homicides involving adultery, robbery, attacking an unresisting opponent, or expressing resentments did not qualify.\textsuperscript{284} A prisoner convicted of killing in an affray could be eligible for compassionate reduction if he had not initiated the violence, only reacted, and ceased any attack after he inflicted an injury.\textsuperscript{285} The criteria this handbook gave to magistrates for assessing possible outcomes at the Autumn Assizes all involved violence that was reactive and defensive. While these criteria would have applied to some homicide cases, they also conflict with any explanation of the defendant’s motives.

One case does indicate that filial loyalty could affect sentences at the Assizes. In 1747, the Board of Punishments recommended suspending a death sentence for intentional homicide because the prisoner had acted out of filial piety, killing the victim to avenge the death of the prisoner’s father. However, the Qianlong emperor overruled the Board, stating that intentional killing could not be excused for such a reason.\textsuperscript{286} The outcome of this case suggests that filial motives may have played a part in revising sentences, but the issue was apparently not yet a settled one during the eighteenth century.\textsuperscript{287} Some magistrates during the Yongzheng and Qianlong reigns may have used sympathetic descriptions of motives in the hope of advocating for an eventual stay of execution, but they likely had additional reasons for their narratives.

Moreover, magistrates tended towards sympathetic-seeming narratives even when the sentence was immediate execution with no possibility of revision at the Assizes. When Magistrate Mao made his final ruling in the case of Ms. Li, he maintained her lack of awareness

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\textsuperscript{284} Cheng Yan, Zhouxian xu zhi, 4a:11a. \\
\textsuperscript{285} Cheng Yan, Zhouxian xu zhi, 4a:15b. \\
\textsuperscript{286} Meijer, “The Autumn Assizes in Ch’ing Law,” 16. \\
\textsuperscript{287} Guidelines published in the mid to late nineteenth century do list the defendant’s motive as a possible qualification for sentence suspension, so it seems likely that the question was eventually decided in favor of granting clemency to those with sympathetic motives. Meijer, “The Autumn Assizes in Ch’ing Law,” 16.
\end{flushright}
of involvement in planning the attempted homicide, even after pressure from his superiors caused him to sentence her to immediate decapitation. Buoye noted a similar sympathy in the homicide of Liu Sixian, who was sentenced to immediate decapitation for killing his uncle.\textsuperscript{288} Magistrates tended to present the accused in an understanding light regardless of the final outcome of the case.

\textit{Narrative to Demonstrate Understanding}

Magistrates had incentives other than sympathy to encourage them to include detailed explanations of the convict’s motives. The judicial commissioner’s admonitions to thoroughly examine each incident and uncover the root cause could have encouraged magistrates to err on the side of over-explaining the context of the homicide. Higher officials were concerned that magistrates might be naive and credulous, or careless and predisposed to accept the first excuse offered. If superior officials felt that the motives were unclear or under-explained, the case could be overturned, as with the initial conviction of Song Heyu. Providing too much additional detail also incurred the risk of an overturned decision, but including a full explanation at least allowed the magistrate to demonstrate his willingness to investigate.

A detailed explanation of motives could also help allay suspicions that a homicide accusation was fabricated, or that the magistrate had accepted a false explanation for it. In his handbook, Huang Liuhong warned magistrates that most homicide allegations were false, and urged them to guard against deception. Huang claimed that after a person died of natural causes, his family might move the corpse to an enemy’s doorway in order to support a false

\footnote{288. Buoye, “Filial Felons,” 121-122.}
He also suggested that the families of the deceased might use real or fabricated homicide charges as a pretext to loot the property of the suspect and their family.

When submitting his recommended verdict in a fatal case, a magistrate needed to offer a convincing explanation for the homicide, one that supplied a believable motive for killing. Recounting the full dispute between the accused and the victim (and the families of each) could provide evidence that the magistrate was not credulously repeating a biased story, but was instead aware of the flaws and transgressions on both sides.

Producing an explanation of the incident that higher officials would find credible required a narrative that was understanding towards the convict and made some sense of their motives. Narratives that relied on strong emotional attachments and loyalty to those within a Confucian structure of relationships were demonstrating that the magistrate had uncovered the true facts of the case. Reading about Mao Naozi’s anger on behalf of his uncle or Wang Zhong’s defense of his wife did not convince higher level officials to be lenient—or even to approve the verdict—but they did accept such emotions as an explanation for how an encounter between the accused and victim could escalate to fatal violence. When the magistrates submitted further assurances that the encounter itself had not been planned by the convicted killer, their superiors were willing to approve the judgment.

Compromise Verdicts

In addition to false accusations, the families of both the victim and the accused posed another threat to magistrates. A dissatisfied relative on either side of the case could petition to
have it reheard. Making such an appeal required certain resources—traveling to the prefectural or provincial seat could be time-consuming and expensive, and most petitioners would need to hire a litigation expert as well—but someone with the resources and motivation could sometimes persuade the prefect or judicial commissioner to reopen the investigation, as happened with the suicide that led to Wang Xijie’s impeachment and lengthy imprisonment. Aggrieved petitioners could even travel to Beijing to appeal to the emperor. Qing emperors tended to be receptive to such appeals, viewing petitions as a check on entrenched corruption at the prefectural and county level. If the complaint was accepted, the emperor would either direct the provincial governor to look into the case or directly dispatch a special investigator. Even if the petition proved to be unfounded, the magistrate could still be punished for any other violations that surfaced during the investigation, and few had such a spotless record that they wanted to encourage such close scrutiny. Aggrieved families, like superior officials, had to be convinced that the magistrate was not being biased in favor of one side or the other.

Defendants and their families had another form of appeal if petitions were unsuccessful or unattainable. Recanted confessions were grounds for a new investigation by a specially-appointed investigator (such as a neighboring magistrate), either working alone or together with the original magistrate. Recanting one’s confession could act as a check on the use of judicial torture or the threat of torture to extract fabricated testimony; a defendant could retract their confession after the case reached a higher level, overturning their conviction and allowing them to reveal the truth to a potentially more receptive audience. However, recanting

291. Ocko, “I’ll Take It All the Way to Beijing.”
292. Ocko, “I’ll Take It All the Way to Beijing.”
293. Liubu Chufen Zeli, 47:2a.
was not a guarantee of acquittal, and the retrial process could involve subjecting the defendant to torture. The possibility of experiencing further interrogation, only to receive the same sentence as before, may be one reason why most fatal cases do not involve retracted confessions, even though the defendant faced execution.

Defendants may also have maintained their confessions to avoid a harsher sentence at retrial. Strangulation with delay was seen as preferable to decapitation with delay, and may have offered better chances at the Assizes. Either was an improvement over immediate decapitation. If the suspect was faced with the threat of torture to force a confession, admitting to unintentional homicide could be a way to avoid interrogation and still maintain some hope of eventual clemency. From the magistrate’s point of view, accepting an admission to unintentional homicide meant that he could resolve the case without using torture and with less risk of recanting. A conviction of homicide in an affray may have been a compromise verdict that balanced superior officials’ concern that capital crimes be adequately punished, victims’ families’ desire for revenge or recompense, and the need to avoid retracted confessions.

**Conclusion**

Magistrates faced pressure from above and below to prosecute crime. Qing law required that they produce a conviction and prisoner for each death, or convincing evidence that no one was culpable. Magistrates were aware that delays in apprehending homicide suspects, investigating, or submitting a recommended verdict could mean fines, demotion, removal from office, and possibly even imprisonment. When he submitted his decision in a fatal case, a magistrate had to persuade his superiors that he was not being lax or corrupt in his investigation.
or final sentence. Higher officials, concerned about unchecked crime, pressed magistrates to justify their interpretations of defendants’ actions. In cases of homicide in an affray, magistrates had to convincingly account for the presence of the homicide weapon, the spontaneity of the encounter, and the defendants’ behavior afterwards to prove lack of intent and thus be allowed to give out a lesser death penalty. Efforts to avoid pronouncing any capital sentence risked anger from the victims’ families and suspicions of corruption from higher officials.

Magistrates also had reasons not to seek the heaviest penalties. False convictions or excessive sentences could also bring administrative sanctions and impeachment, as well as appeals to higher officials from the convicts and their families. The confession requirement for capital sentences gave magistrates another reason to work with the accused to avoid the most severe punishments, and to find ways of interpreting events to support the claims made in confessions. Even when lighter sentencing was not an option, magistrates still needed to corroborate the confessions and testimony; higher officials demanded an explanation of the motives and context for the crime, to ensure that the magistrate was properly investigating and that no other offenses or false accusations were being concealed. Appearing understanding toward the accused and supporting the claims made in their confessions helped magistrates create a more consistent case narrative.

Magistrates in the Yongzheng and early Qianlong reigns showed a pattern of sympathetic case narratives and a tendency to seek convictions of unintentional homicide over the more serious intentional homicide. As discussed above, they had pragmatic reasons to do so, outside of any personal or moral inclination towards compassion. Some magistrates may have been personally compassionate and sympathetic, but the demands of Qing law and of higher level
judicial officials restricted the exercise of leniency in capital cases, limiting magistrates to the choice of one death sentence over another. For the defendants and their families, this choice was of vital importance, offering a chance at survival, or at least a body for the family tombs. However, it seems an overreach to treat these limited options available to magistrates as an example of a broader leniency in the Qing legal system. Magistrates’ sentences were produced under a legal and administrative system that met apparent efforts towards leniency with skepticism and accusations of carelessness or corruption.
Chapter Four

Explaining Barbarians and Settlers

Under the Yongzheng emperor, the Qing expanded its military and civilian administrative presence along its southern and western edges in Mongolia, Tibet, the southwestern provinces of Sichuan, Yunnan, and Guizhou, and the island of Taiwan, areas that scholars have considered to be part of the Qing’s frontiers. This chapter looks at how magistrates adapted their judicial strategies in two of these regions: Yunnan and Taiwan.

Frontier regions required officials who were experienced and competent enough to deal with their additional challenges. Magistrates near the edges of the Qing empire had to govern an ethnically and linguistically heterogeneous mix of indigenous groups and Chinese settlers while also building the infrastructure of a settled county—overseeing the construction of city walls, temples, and schools, planning irrigation and flood controls, and managing the registration and cultivation of previously untilled land. Funding this development was an additional challenge; these regions had fewer people and less developed land, thus reducing two major sources of tax revenue. In recognition of the increased difficulty of frontier posts and the importance of local knowledge and experience, the Qing implemented special appointment rules that allowed provincial governors to directly nominate experienced magistrates for positions in critical areas. This new system created special relationships between frontier magistrates and their provincial

superiors, allowing these magistrates greater independence and flexibility in their administration and legal judgments.

This chapter looks at how the special appointment system and provincial officials’ concerns about the security of the frontiers gave certain magistrates the opportunity to make use of their presumed local knowledge and expertise to access new strategies and outcomes in their criminal verdicts. The first two cases in this chapter feature trials involving local indigenous people in the far southwestern province of Yunnan and the island prefecture of Taiwan, examining magistrates’ framing of local culture in their case narratives. Qing colonial expansion and changing policies in the Yongzheng reign led to a corresponding expansion of the territorial civil bureaucracy in the southwest and on Taiwan, revoking the limited local autonomy previously given to indigenous peoples under Ming and early Qing regimes and placing them under the authority of prefects and magistrates, who were then faced with the challenge of applying Qing law to societies with very different behavioral norms than those assumed by the Qing Code. Magistrates in frontier counties were allowed to incorporate descriptions of local indigenous custom into their case decisions, strengthening their narratives and expanding their sentencing options.

The second part of this chapter focuses on Magistrate Zhou Zhongxuan 周鍾瑄, using his experiences serving in Taiwan in the 1710s and 1720s to explore the different ways that Qing frontier policies and concerns could shape magistrates’ careers. Zhou is primarily known for his role in developing local infrastructure and compiling the first local gazetteer in Taiwan, and occasionally remembered as the subject of a lengthy and involved corruption trial in the early Yongzheng reign. I examine Zhou’s decision in a rape case as an example of the judicial
flexibility allowed to frontier magistrates when accommodating pressing local concerns. I argue that the impeachment and trial of Zhou for alleged bribe-taking in the case reflected a broader disagreement between the Yongzheng emperor and provincial officials over their conflicting priorities in frontier administration.

The Provincial Appointment System

The Qing defined its frontier regions in different ways. Locations at the edges of the empire were referred to using the characters bian 邊 or jiang 疆, both meaning “boundary,” “border,” or “frontier” or as 邊疆, a compound of the two. Deciding which territories belonged to the frontier and how to classify their different types was an ongoing process throughout the eighteenth century.

In the southwest, these terms included the mountains of Yunnan, Guizhou, and Guangxi, where Han people were a minority until the late eighteenth century. These provinces, as well as interior regions with Han minorities, were referred to as the “Miao frontier” 苗疆. The coastline along the southeastern provinces of Fujian and Zhejiang were “coastal frontiers” 海疆, where the local communities had business and blood ties to foreign traders and pirates. Taiwan combined characteristics of both: coastal lowlands and interior mountains, both populated by aboriginal groups.

297. The Miao are one of the People’s Republic of China’s officially recognized nationalities, but during the Qing, the term referred to many different ethnic groups in the southwest. See Hostetler, Qing Colonial Enterprise, 141-148. By 1760, some of the “Miao frontier” counties in Yunnan and Guizhou were classified instead as “Yi frontier” using the character 夷, commonly translated as barbarian. Qinding Da Qing huidian shili 欽定大清會典事例 [Imperially established collected statutes and precedents of the Great Qing] (1899), 67:26a-28a.
298. Guy, Qing Governors and Their Provinces, 260.
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Frontiers and other difficult regions required special administrative procedures. Even in the early Qing, service at posts in “border areas” 邊方 was treated differently when assessing eligibility for promotion; for magistrates and prefects, every two years of a “border term” 邊俸 counted as three, and completing one gave the official priority in new appointments over those completing “interior terms” 腹俸. These border areas included all of Yunnan, Guizhou, Sichuan, and Guangxi provinces, as well as coastal counties in Fujian and Zhejiang. In 1684, the Kangxi emperor declared what would be subsequently referred to as the “Taiwan rule” 臺灣例: all officials in Taiwan would serve for three years and be automatically eligible for priority promotion when their terms ended. Two years later, he extended the Taiwan rule to four prefectures in Guangxi.

In addition to more favorable promotion rules, magistrates’ positions in frontier counties were also subject to special appointment procedures created to deal with difficult districts. Under the Kangxi and Yongzheng emperors, new regulations were created in order to send more qualified magistrates and other officials to frontier and coastal areas by allowing provincial governors to directly recommend candidates who had exemplary records and experience within the province. This new system began in 1695, when a new administrative statute was added by the Kangxi emperor, establishing that all magistrates posted to Taiwan prefecture would be chosen by the Fujian governor from candidates with records of successful county administration.

299. Yongzheng huidian, 12:2b-3a.
300. Initially, Guangdong and parts of Hunan were also border postings, as were inland counties that were not coastal but were “near the ocean” 近海. Between 1663 and 1687, these areas were gradually reclassified as interior posts. Yongzheng huidian, 12:3a.
301. Yongzheng huidian, 12:3a.
302. Yongzheng huidian, 12:3a-3b; Guangxu huidian shili, 67:5a-5b. The earlier edition refers to this expansion as “according to the Taiwan rule” 照臺灣例.
on the mainland. In 1724, the Yongzheng emperor expanded these appointment rules, first to “malarial and miasmic” (yanzhang 煙瘴) departments in Guangdong and Guangxi, then to coastal counties and interior counties requiring special dike maintenance along their riverbanks. Three years later, five districts in Shaanxi and Gansu along the Mongolian border were added, followed by counties in the “Miao frontier” (苗疆) in Hunan, Guizhou, and Yunnan. Near the end of the Yongzheng reign, special gubernatorial selection powers extended to a variety of other “important” 要缺 and posts throughout the Qing. These appointments were still subject to imperial confirmation, but the new system gave governors significantly more control over the administration of their provinces.

For magistrates, this system opened up new avenues for career advancement, provided they could handle the challenges of their posts. Provincially-appointed magistrates were eligible for promotion after only three years of service in a critical county, a way of encouraging talented administrators to exert themselves when sent to remote and undesirable locations. The new system could also help these magistrates develop connections that could benefit their careers; they were individually selected by the governor or governor-general, and thus were likely to have stronger personal or professional relationships with their provincial supervisors. Even if a magistrate had previously had little contact with them, the nomination indicated that his superiors approved of previous work and felt that he was qualified for a difficult but rewarding post. The appointment might also bring a magistrate a degree of additional job security—the

303. *Qinding Da Qing huidian zeli* 大清會典則例 [Imperially established collected statutes and regulations of the Great Qing] (1764), 46a. For more on the history of these regulations, see Guy, *Qing Governors and Their Provinces*, 98-103.
305. *Qianlong Huidian Zeli*, 46a-b.
governor’s own reputation would be tarnished if someone he recommended was then impeached and convicted.

Even as he expanded provincial governors’ authority to select their own candidates for local posts, the Yongzheng emperor was concerned that the policy would encourage corruption and favoritism. Governors were supposed to select magistrates based on qualifications, but the emperor worried that they would nominate sycophants or the relatives of personal friends. He also feared that governors would demand bribes in exchange for appointments. Not only would this corruption result in unqualified candidates, it would also leave magistrates in debt, encouraging them to embezzle or extort money within the county.307 Appointments to the more lucrative interior counties were more desirable posts and thus at greater risk for corruption than posts on the distant frontiers, but any post offered some opportunities for illicit side income. The emperor’s concerns about abuse of provincial appointment powers led him to react strongly to any sign of corruption.

During the Yongzheng reign, many of the early counties subject to gubernatorial appointment were border regions or interior areas with high populations of Miao and other ethnic minorities.308 Even after the system expanded to cover commercial centers and other important areas, frontier counties received special consideration. The majority of provincial appointment positions were “transfer posts” 調缺, open only to men who had successfully served as magistrates within the province. In recognition of the need for local expertise and the difficulty finding qualified personnel, most frontier counties were instead classified as “petition posts” 題缺, a category that allowed the governor to select from a broader pool of candidates, provided

307. Guy, Qing Governors and Their Provinces, 100.
308. Qianlong Huidian Zeli, 8:53b-55a.
they had positive evaluations and local experience. Many of these petition posts were established to replace hereditary local chieftains, or *tusi* (see section below).

Directly appointed frontier magistrates were supposed to be selected for their local experience and knowledge. Coming from other posts inside the same province, they were more likely to have at least some familiarity with the local Chinese languages spoken in their new county, but this experience would not necessarily help with the languages of other peoples. Serving in mainland Fujian would not give a magistrate any experience with the different Austronesian languages spoken by Taiwanese aboriginal peoples, and the linguistic diversity of Yunnan is such that no amount of local experience would guarantee understanding elsewhere in the province. Even among speakers of a given Chinese variant, time spent in one county did not guarantee comprehension in its neighbor, particularly with the geographical isolation that marked most frontier counties contributing to language drift and mutual unintelligibility. Nonetheless, a magistrate with several years’ exposure to even a distant relative of the local dialect would have been better off than one who had never served near the province. The provincial appointment system gave magistrates more time to build linguistic and cultural familiarity on the frontiers.

**Frontier Magistrates and Qing Colonial Expansion**

The expansion of the direct provincial appointment system occurred while the Qing empire was itself expanding into frontier regions in the south. The governors and

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311. For a discussion of the linguistic diversity of Yunnan, see Katie B. Gao, “Dynamics of Language Contact in China: Ethnolinguistic Diversity and Variation in Yunnan,” (Ph.D. diss., University of Hawai‘i at Manoa, 2017), 5-7. For the classifications of aboriginal languages in Taiwan, see Shepherd, *Statecraft and Political Economy*, 413-416.
governors-general appointed by the Yongzheng emperor aggressively pushed policies designed to bring expand Han Chinese settlement and bring indigenous populations under direct government control in Guizhou, Yunnan, Sichuan, and Taiwan.\(^{312}\) As part of the civilian administration, magistrates on the frontiers often served in counties that had recently been “pacified,” where local government had until then been left to indigenous elites.

During the Shunzhi and Kangxi reigns, the Qing state governed non-Han peoples on its southwestern frontiers through the *tusi* system, inherited from the Ming. The *tusi*, or native chieftains, were hereditary elites descended from those whose positions were granted or confirmed by the Ming or Qing. *Tusi* were subject to the authority of the Qing and under the direct supervision of one of the Six Boards: the Board of Personnel for “civilian” native districts, or the Board of War for “military” native districts at the edge or just beyond the borders of Qing control. Civilian chieftains had a Board-appointed Chinese official placed on their staff to serve as a liaison.\(^{313}\) In areas with both Han and indigenous populations, the local chieftains had authority over their people, while magistrates and prefects governed the Han settlers. The *tusi* system underwent several revisions during the late seventeenth and early eighteenth centuries, but remained in place until 1729. Late in the previous year, Yongzheng had responded to an apparent increase in violence among the southwestern peoples by directing provincial officials to bring indigenous peoples under the governance of the main territorial administration system.\(^{314}\)

By the end of the Yongzheng reign in 1735, many ethnic minorities in the southwest were supposedly under the direct control of the Qing civilian government.

\(^{314}\) Herman, “Empire in the Southwest,” 47-48.
As the Qing tried to tighten control over the southwest, the empire was also expanding into Taiwan. The *tusi* system was never implemented on the island, but the Kangxi emperor and his officials had attempted to restrict mainland migration and keep Han settlers separate from aboriginal tribes. Under the Yongzheng emperor, the Qing government increased the number of both civilian and military officials, added new county-level administrative units, and opened up more aboriginal land for settlers to farm. Local officials also began to restrict the powers of Chinese “interpreters”—licensed middlemen who acted as tax collectors as well as translators between aboriginal villages and magistrates—and replace them with aboriginal interpreters employed by the yamen.

The colonial expansion of Qing civil government into the southwest and Taiwan created new challenges for frontier magistrates. As the local face of the colonial government, they were expected to help “civilize” the indigenous peoples in their county. They supervised the construction of the City God temples for the new county seats, bringing imperial rituals and religion to frontier counties. Counties also built charity schools and local academies to teach the Confucian classics to both settlers and indigenous people. In Taiwan, local officials distributed copies of the Four Books among aboriginal tribes, and actively recruited aboriginal students for Confucian ceremonies.

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318. Each City God was also the heavenly counterpart to the yamen official (usually a magistrate or prefect), so the city god temples extended the supernatural bureaucracy to the county as well. See Angela Zito, “City Gods and Their Magistrates,” in *Religions of China in Practice*, ed. Donald S. Lopez (Princeton: Princeton University Press, 1996), 72-74.
Frontier magistrates also became responsible for implementing the Qing judicial system in their counties, a task with its own challenges. Magistrates had to weigh several factors in cases involving indigenous people. Officials in the capital, as well as some provincial governors and governors-general, were strongly in favor of encouraging or forcing indigenous groups to acculturate. Prefects and magistrates, who had closer contact with local tribes, had complicated views on the subject; while many encouraged acculturation, some saw indigenous tribes as innocents threatened by predatory Han settlers, and some magistrates complained that yamen officials, interpreters, and other middlemen abused their positions to obstruct any efforts toward reform.321

Local officials also had worries about their own safety and the stability of the county. Frontier counties contained multiple ethnic and linguistic groups, including different indigenous tribes, as well as Han settlers from various regions within the Qing. They could be staging grounds for a variety of inter and intra-group conflicts, each with the potential to escalate to an armed uprising that could end a magistrate’s career or even his life.322 Every magistrate had to balance the conflicting needs of different local interests with the demands of his superiors, but those in frontier areas were often confronted with more explosive conflicts, and had fewer resources with which to address them.

In this challenging environment, magistrates were tasked with administering Qing law not only to settlers, but also to people who had little or no grounding in Chinese legal traditions. When investigating a case involving indigenous people, magistrates had little in the way of law

321. Shepherd, Statecraft and Political Economy, 117, 121-122.
322. For example, the Zhenyuan Prefecture uprising in Guizhou, where local Tai and hill people burned government buildings and killed the acting prefect. Giersch, Asian Borderlands, 46-50. For examples of unrest on Taiwan, see Allee, Law and Local Society, 32-51. and Shepherd, Statecraft and Political Economy, 128-132, 308-328.
or precedent to draw upon. They were expected to judge their new subjects by the Qing code and statutes, but the people involved often had very different conceptions of ordinary behavior. The importance of mindset and intent in judging fatal cases meant that magistrates had to analyze the behavior of those involved in the case for clues to their mental state, but they could not necessarily rely on the recommendations of their handbooks to evaluate evidence or determine intent when dealing with people from different ethnic and cultural backgrounds.

However, the lack of precedent or broad knowledge about indigenous peoples also provided magistrates with additional interpretive powers. Although they had little background in the cultures they dealt with, their superior officials—working miles away in the more settled prefectural and provincial seats—had even less knowledge. Magistrates’ control over the presentation of evidence could enable them to make authoritative claims about local custom and culture. Frontier magistrates dealing with indigenous tribes could make use of the narrative techniques discussed in Chapter Three in their homicide judgments, but they were also able to use their claimed knowledge of indigenous culture to further support their interpretations.

The following two cases demonstrate some of the ways that magistrates could use local custom in their case decisions. The cases come from two distant points on the Qing’s southern frontier: the southwestern province of Yunnan, and the island of Taiwan in the southeast. Despite the geographical distance and historical differences between the two regions, magistrates in both cases show a similar approach to tribal customs in legal cases.
Case: Custom and Cremation in Yunnan

The first case, from Shizong Department 師宗州 in Yunnan, illustrates some of the ways that a magistrate could introduce information about custom into his report. Discussion of non-Chinese tribal custom was interwoven throughout much of the testimony, and the magistrate evoked these customs both implicitly and explicitly in his decisions. The magistrate’s control over testimony allowed him to use witnesses as a source for his claims about cultural knowledge, providing an additional tool for interpreting intent.

In 1735, Magistrate Luo Dapeng 駱大鵬 received a report from Ms. Wang 王氏, a member of one of the local “barbarian” 夷 non-Han villages. Ms. Wang reported to the magistrate that her husband Bao Wan 抱完 had been killed by their neighbor Guang Wei 光維. She said that on the twenty fifth day of the fifth month, not long after her husband returned from a trip outside the village, their neighbor Guang Wei and his son had come to their home and fought with her husband. The two visitors were armed with small knives, and one of them stabbed Bao Wan, who died the next day.

Having received report of a homicide, the next step for the magistrate would normally have been to conduct the inquest. However, Ms. Wang reported that she and her sister-in-law had burned Bao Wan’s body soon after death, as their people’s custom required. Magistrate Luo was able to retrieve the weapon, but he had no wounds to match it against. Any evidence would have

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323. In Yongzheng 5 (1727) Shizong Department was classified as a “Miao Frontier” county and petition post. *Qianlong Huidian Zeli*, 8:53a.
324. The memorial only refers to the people of this village as yi 夷 “barbarian” (not to be confused with the Yi 彝 ethnic group).
325. The local people involved in this case were all identified as “barbarian,” but they appear to have used family names, followed by given name: e.g., Guang Wei’s son was Guang Sheng 光生. Thus, I have chosen to place a space between the first and second part of their names.
to come from the oral testimony of the two accused men, the victim’s wife and sister, and two other neighbors.

Even without an autopsy, Luo was able to arrive at a verdict without any delay. Guang Wei and his son confessed to the killing without any torture. Guang Wei explained that his grandson had died recently, and everyone in the village save Bao Wan had attended the public mourning. On the day of the homicide, Guang Wei and his son went to Bao Wan’s home to ask why he had not come to the event. The two began to argue with each other, but did not escalate to violence until Bao Wan’s household’s guard dog bit Guang Wei, who responded by drawing his knife and striking the dog. Bao Wan then drew his own knife and stabbed Guang Wei, and the two fought. At the end of the fight, Bao Wan was dead, Guang Wei was bleeding, and Ms. Wang had a small bruise on her head from a collision with Guang Wei’s son when she had tried to stop him from joining the attack on her husband.

Magistrate Luo’s report contains many of the same elements as the homicide cases in the previous chapter: attention to the grievances of the accused combined with innocuous explanations for every potentially violent action leading up to the killing. However, in this case, the explanations repeatedly referenced the “barbarian” nature of the actors. The heavy editorial hand of the magistrate (or his secretary) in translating, paraphrasing, and rewriting testimony is particularly clear in this case, where the local people are constantly referring to themselves as “we barbarians” 小的們夷人, a term that was probably not their actual preferred nomenclature. The knives carried by all three men were explained as a common local custom—according to Guang Wei’s son, “Whenever we barbarians go out, we always carry a weapon for self-defense.”
Magistrate Luo asked Ms. Wang why her husband had been carrying a blade to go meet the visitors, and she provided the same answer.

Guang Wei’s reasons for going to see Bao Wan were also explained as an ethnic custom. He explained that his people had a rule that those who did not attend a funeral were expected to kill a pig or cow to share with the mourners. He thus had a non-violent reason to visit Bao Wan’s household: to remind him of his responsibility to the community. Guang Wei added that he only asked his son to accompany him because, as the dead child’s father, his son should be present to discuss compensation. He denied that he had brought his son along as backup in case of a fight. Even when making a case for shared values, Guang Wei’s testimony highlighted his different background. He explained why he sought out Bao Wan by saying “although we are barbarians, we also want to seek reputation” 小的們雖是夷人也原要圖些體面. Although Bao Wan’s absence was not a serious matter, he was violating the social norms by being the sole member of the village not in attendance, so Guang Wei’s visit to discuss compensation was both enforcing local customs and acting in the best interests of his family, Bao Wan, and the community as a whole. By reinterpreting the actions leading up to the fatal interaction as a series of expressions of their customs, the common case elements of sympathy, reaction, and spontaneity were given new support.

In his summary of the events, Magistrate Luo continued to remind his superiors that the case involved people who were very different from themselves. He stated that a public gathering to mourn a death was “barbarian ritual” 夷禮 and that the illegal cremation of Bao Wan’s body was in accordance with “barbarian custom” 夷俗. Based on this reasoning, the magistrate found Guang Wei guilty of unintentional killing in an affray, with the recommended punishment of
strangulation pending review at the Autumn Assizes. He then noted that in the time since the killing, an amnesty had been declared to mark the ascension of the Qianlong emperor. Guang Wei was eligible for this amnesty, which would commute his death sentence to monetary recompense made to the victim’s family. Guang Wei’s son received an even lighter penalty. All witnesses agreed that the son never landed a blow on Bao Wan, so he was not guilty of joining an affray, and the magistrate accepted Guang Wei’s explanation that he had no violent intent when he went to Bao Wan’s, so his son could not be convicted of planning the affray either. His only sentence was a beating, under the statute on “doing what ought not to be done” 不應重律, for failing to stop the violence or seek help.

The magistrate also had to decide how to deal with Ms. Wang. Burning her husband’s body before it could be examined violated the law on not reporting and destroying corpses. Magistrate Luo acknowledged that she should have been questioned and sentenced for this action, but he argued that she was following the traditions of her people and thus could be forgiven (但係夷俗相沿情有可恕). The magistrate’s evidence for the necessity of cremation came from Ms. Wang, who stated, “Barbarian custom is to burn the body as soon as a person dies, without delay. If you do not cremate, the entire village will become sick. I also did not know about any inquest, so I burned the body.”

The magistrate provided no evidence for the existence of these customs other than the testimony of those involved in the case, but his decision was accepted by the prefect, judicial commissioner, and provincial governor, at which point the record ends. Even without other evidence to back his conclusions, Magistrate Luo had the advantage of a successful record and

326. Shen Zhiqi, Da Qing lü jizhu, 18:46a-b.
proven experience working in Yunnan. When the Shandong native arrived in Shizong Department, he already had four years of experience serving as a magistrate of two other counties in Yunnan. Based on his record, Luo seems to have been treated as a troubleshooter, a capable official who could be sent to a remote county when the previous magistrate died or left office for other reasons. He spent two years in Xie’e County, then moved to Taihe County, then transferred to Shizong Department when the previous magistrate left to enter mourning for a parent. 

After Shizong, Luo continued to have a successful career, serving as the prefect of Huzhou Prefecture 湖州府 in Zhejiang. He continued to be used as a substitute even as a prefect; when the prefect of Chuzhou Prefecture 處州府 retired, the governor of Zhejiang requested that Luo be transferred to fill that vacancy. Between his Yunnan experience and his reliable—if undistinguished—record, Luo’s conclusions would likely have seemed credible to his superiors, allowing him to speak authoritatively about barbarian customs to support his verdict.

In deciding this case, Magistrate Luo used the idea of that “barbarians” culturally differences should be accommodated to justify leniency for Guang Wei and his son, as well as for Ms. Wang. For Ms. Wang, custom was enough to protect her from any punishment. Guang Wei, having killed his neighbor, was not going to be able to avoid a conviction, regardless of local custom and ritual, but there was still room for leniency. By repeatedly asking multiple witnesses to explain the presence of knives and the importance of public mourning, and including their nearly identical explanations of “we barbarians do that,” Magistrate Luo created a

327. Ortai 鄂爾泰 et al., comp., Yunnan tong zhi 雲南通志 [Yunnan comprehensive gazetteer] (1736; Beijing: Erudition 愛如生, 2009), juan 14 p18a.
328. Fang Guancheng 方觀承, palace memorial, QI 13.10.1 [NPM 003411].
record in the case for his superiors to see, establishing a reason that Guang Wei could bring a
knife to angrily confront his neighbor, and yet not have any intention of killing him. Magistrate
Luo also included Guang Wei and his son’s explanation that their visit was not motivated by
resentment or anger, but was also a socially-acceptable call paid to seek compensation that, again
according to custom, was his due. Features of the case that could have been taken as clear
markers of homicidal intent—two men with a pre-existing grudge, angrily approaching the
deceased, carrying weapons—were all explained as normal behavior. With these indicators thus
explained away, the verdict became unintentional homicide, with the comparatively lighter
sentence of strangulation, rather than decapitation. Thanks to the recent amnesty, that sentence
was further lessened, and the death penalty removed.

Case: Adultery and Social Customs

The second case comes from Taiwan.\textsuperscript{329} The Qing presence on Taiwan was relatively
recent, beginning only after the defeat of the Ming loyalists on the island in 1683, and
colonization during the early eighteenth century was just beginning to stretch beyond the the
southwestern coast, centered on what is now the city of Tainan. In many ways, Taiwan was a
more challenging frontier posting than Yunnan. The entire prefecture was a transfer post, so any
magistrate posted to Taiwan had experience serving across the strait, but none on the island itself.
Time spent in mainland counties would have exposed him to the Min Nan (Hokkien) language
spoken by many of the Han in Taiwan, but not necessarily to the Hakka languages spoken by a

\textsuperscript{329} Huang Guocai 黃國材, routine memorial, Yz 3.3.29 [FHA 02-01-02-2321-007].
substantial minority of Han immigrants to the island. He would also have had little or no exposure to the many aboriginal languages spoken only in Taiwan.

Zhanghua Magistrate Tan Jingzheng 談經正 was unlikely to have had such exposure. Originally from Huguang (now Hubei) province, he obtained the juren provincial degree and was assigned to be magistrate of Pinghe County 平和縣, an inland county in Fujian. He likely had an exemplary service record there, as once his five-year term at Pinghe was up, he was sent to Taiwan to serve as the first magistrate of the newly-created Zhanghua County 彰化縣. Formerly part of Zhuluo county, Zhanghua was created in 1723 as part of the reorganization of the Taiwanese civil administration in the wake of the short-lived but disastrous Zhu Yigui rebellion. The new county was large, sparsely populated by Han, and lacking in infrastructure. There was not yet a county yamen building for the magistrate to occupy, so Magistrate Tan worked out of the Zhuluo yamen, over 60 kilometers from his county’s seat. His office location added a physical distance from the county, exacerbating the effect of language barriers and lack of familiarity. Zhanghua County was also home to over twenty aboriginal villages. The people of these villages, mostly plains aborigines from several linguistic groups, were under Qing rule. They paid taxes and were subject to the governance of the county magistrate.

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330. In 1926, roughly 15% of Han on Taiwan were Hakka, a Han subethnicity in Southern China with a language and culture distinct from the Hokkien and Cantonese around them. Both Hakka and Hokkien migrants were among the first Han settlers of Taiwan, but Hakka settlers had more difficulty becoming established, because they were more likely to be seasonal laborers and because they faced discrimination and expulsion from the Hokkien. Shepherd, Statecraft and Political Economy, 312-313.  
331. Shepherd, Statecraft and Political Economy, 198.  
332. Shepherd, Statecraft and Political Economy, 199.  
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One case that came before Magistrate Tan involved the death of Mu-guo, a local aboriginal woman and resident of Banxian 半線社, an aboriginal village inhabited by the Babuza people. The husband of the deceased reported the case to his village head, an aboriginal man named Yang-ling 楊令, who brought the matter to Magistrate Tan. Mu-guo’s husband reported that his wife and her mother had been killed by Luo Shijin 羅世錦, a Han man who lived nearby. Despite being Han, Luo Shijin was well known inside Banxian. Originally from Fujian, Shijin had been brought to Taiwan as a child by his father, who later married a local aboriginal woman. Shijin had had frequent contact with his stepmother’s tribe throughout his childhood and adolescence.

The central matter in this case—the homicide—was not complicated. Magistrate Tan conducted the inquest with the coroner, and then questioned the suspect with assistance from the Banxian village head. Luo Shijin confessed to both killings without harsh interrogation, explaining that he had been motivated by jealousy over Mu-guo, with whom he had conducted an illicit affair seven years before. During this time, he had given her gifts and helped pay her household expenses. Mu-guo had broken off the affair, but still saw Luo Shijin frequently, as he lived nearby. Shijin stated that during the current year, he tried to convince Mu-guo to resume

334. This is the Hanyu pinyin transliteration of the Chinese characters used to record her name (目嘓). As the only records I have of the people involved in this case are Qing legal documents, I will refer to aboriginal people by the pinyin of the Chinese transliteration of their names.

335. The Qing designated Taiwanese aboriginal villages as she 社, as opposed to Han villages, referred to as zhuang 庄. There was both a Banxian she and a Banxian zhuang in Zhanghua county, both located in what is now Changhua City in Taiwan. Banxian zhuang is not part of this case, so all mentions of Banxian village refer to the Babuza she. Babuza (also called Favorlang) is an ethnolinguistic category based on work by Japanese and Taiwanese anthropologists. (Shepherd, Statecraft and Political Economy, 413-416.). The case memorial refers to the people of Banxian as fan 番. Like yi 夷 in the Yunnan case, fan 番 can mean “foreigner” or “barbarian.” I have translated it as “aborigine” for two reasons: to distinguish it from yi 夷 in the previous case, and because fan 番 was used to refer to indigenous Taiwanese, who are generally described as “aborigine” in the scholarly literature.

336. For much of the Qing, it was not uncommon for Han men in Taiwan to marry women from the local plains aboriginal tribes. Only men were allowed to settle in Taiwan, and even migrants traveling illegally rarely brought their wives or daughters. (Shepherd, Statecraft and Political Economy, 143-146.)
their relationship, but she rebuffed him. When he saw her traveling in a cart with Ha-ma-nian 孩
蔴哖, an unmarried aboriginal man, Shijin decided that the two must be having an affair, and that
this was the reason he had been rejected. He told the magistrate that when he went to Mu-guo’s
house, he had intended only to confront her, but as they argued he grew angrier and attacked her
with his knife. When her mother tried to intervene, he stabbed her as well, killing both. Although
the magistrate accepted Luo Shijin’s claim that he had not initially planned to kill Mu-guo and
her mother, the killing of two unarmed women reached the standard of excessive force that often
distinguished intentional homicide, so Magistrate Tan sentenced Shijin to decapitation pending
review at the Autumn Assizes.

After sentencing Luo Shijin, the magistrate also determined the status of Mu-guo’s
husband and of Ha-ma-nian, who had to be tried for offenses related to Luo Shijin’s adultery
allegations. Mu-guo’s husband faced ninety zhang (35 blows) with the heavy bamboo rod for
knowingly allowing his wife’s adultery, while Hai-ma-nian faced the same for illicit fornication,
but both men denied any wrongdoing. In considering Hai-ma-nian’s position, Magistrate Tan
noted that among Han people, Hai-ma-nian and Mu-guo’s behavior would indicate adultery. The
two had been seen together in public multiple times, and she frequently rode next to Hai-ma-nian
in his cart. However, in the aboriginal village, Magistrate Tan noted that married women
frequently appeared in public with unrelated men, and this was not considered evidence of
adultery among the tribe. Based on this cultural difference, there was no reason to further
interrogate Hai-ma-nian, and he received no punishment. Mu-guo’s husband was thus also
cleared.
By clearing Hai-ma-nian of any charges, Magistrate Tan was showing some independence from statutory guidelines. Hai-ma-nian had denied the accusation, and the only person accusing him of an affair with Mu-guo had just been convicted of homicide—hardly the most reliable witness. However, Mu-guo was now known to be promiscuous, and the only evidence the magistrate cited in Hai-ma-nian’s favor was his tribe’s customs. Moreover, Tan did not cite anything for his decision. He did not mention any relevant law, statute, precedent, and analogy to justify it. Nor did he mention any source for his information on aboriginal customs. With no citations, the information appears based on his own knowledge.

It is possible that Tan did not cite any source for his judgment of aboriginal customs because he had none. Early Qing observers on Taiwan had the opposite impression, commenting disapprovingly about the relative promiscuity of the Babuza and other plains tribes. Arrangements with Han men, like the one between Luo Shijin and Mu-guo, are mentioned—and condemned—in the same sources.³³⁷ Luo Shijin believed that Mu-guo and Hai-ma-nian’s behavior indicated an affair, and he had grown up near Banxian, in a home with an aboriginal stepmother, so he was likely familiar with Banxian behavioral norms—almost certainly more so than Magistrate Tan. Tan’s five years of experience as magistrate of Pinghe may have given him some understanding of the Hokkien-speaking Han population, but he would not have had any opportunities to observe Taiwanese aboriginal tribes while he was on the mainland. Nor would he have been able to develop much familiarity before investigating this case. Tan had been magistrate of Zhanghua county for less than a year when he learned of Mu-guo’s death, and he had spent most of that year working out of Zhuluo to the south.

Magistrate Tan’s decision was read and approved by the prefect of Taiwan in Tainan, and then by the judicial commissioner and the governor of Fujian in Fuzhou. Each accepted the acquittal of Hai-ma-nian, based on the customs argued by a magistrate who did not speak the local language, had been in contact with this people for less than a year, and who lived and worked in a separate county. While there is no way of knowing why exactly these officials decided to support Tan’s interpretation, the larger context of Zhanghua was likely a factor.

As an administrative division, Zhanghua County was brand new. The Yongzheng emperor approved its creation in 1723, one year before Tan Jingzheng arrived, and two years before the trial of Luo Shijin and Hai-ma-nian. In 1721, a protest against the Fengshan county magistrate escalated into a rebellion. The leader, Han immigrant Zhu Yigui 朱一貴, allied with a local bandit leader and declared the movement a Ming revival. The rebellion quickly spread north, and after several military defeats the Qing officials fled to Fujian. The rebels were unable to maintain power for long, and the Qing quickly retook Taiwan with help from Hakka loyalists and plains aborigines. From the initial uprising to the capture of Zhu Yigui and an allied bandit chief, the entire rebellion lasted less than four months, but in that short time, the Qing government on Taiwan had been completely dismantled.

After the rebellion was suppressed, the territorial administration on Taiwan was reorganized, including dividing Zhuluo County in three—Zhuluo, Zhanghua, and a sub-prefecture in Danshui—as part of an attempt to prevent another rebellion. The division was proposed by Lan Dingyuan, a well-known former magistrate then serving as a censor specially tasked with monitoring Taiwan. Lan argued that even though the area did not have the

339. Shepherd, Statecraft and Political Economy, 146-149.
population or tax base to support a normal division into two counties, the large and sparsely populated region needed separate administration and increased Han settlement to prevent further rebellions or Japanese incursion. That the Yongzheng Emperor followed Lan’s recommendation suggests that he took Lan’s concerns seriously, and felt that the stability of the northern Taiwanese frontier was at risk.

Given Qing worries, Magistrate Tan’s decision to acquit Hai-ma-nian of adultery could be viewed as a concession to the Banxian village. His overall ruling on the case was likely to be well-received by the village. The two village men implicated—the husband and neighbor of the victim—had both been acquitted, and the only one punished under Qing law was a Han outsider, albeit one with close ties to the tribe. The acquittal was more than just a reprieve for two aboriginal men, it was also a sign that the new magistrate was not interested in policing the sexual behavior of the Banxian people. Outward violations of the laws on illicit sex would be investigated, but if plausible deniability was maintained, behavior that might appear to a Han observer as a clear indication of adultery—publicly traveling with another man’s wife—would not be punished.

Nor was the magistrate going to pursue potential cases of prostitution. The acquittal of Mu-guo’s husband of any charge of tolerating adultery stands in contrast to the broader legal trends in Qing China at the time. Under the Yongzheng Emperor, the state was beginning to more broadly and forcefully apply the old statute against “abetting or tolerating illicit intercourse,” and redefining it to target men who encouraged or allowed their wives to engage in

340. Shepherd, *Statecraft and Political Economy*, 147-148. Other administrative changes made to Taiwan after the rebellion are discussed in the section on Zhou Zhongxuan’s early career later in this chapter.
sex work.\textsuperscript{341} This statute would seem to encompass arrangements like the one between Mu-guo and Luo Shijin, where a Han man gave a married aboriginal woman money and gifts in exchange for sexual favors. These arrangements were common enough that early Qing observers were able to notice and record them, so while Mu-guo’s husband may have been unaware of his wife’s relationship with Luo Shijin, it is also quite possible that he knew, and maybe even tacitly or overtly approved. Rather than investigating this possibility, Magistrate Tan accepted the husband’s denial. The stricter policing of sexual morality that was taking place on the mainland was not a priority for Taiwanese aboriginal tribes.

The outcome of this case suggests a conciliatory attitude toward the aboriginal tribes in the county, but Magistrate Tan also had to please his supervisors. The higher officials might agree with Tan’s approach, but if he did not address the potential adultery-related charges in a fatal case, he risked having the case overturned. Once raised, he had to provide some sort of reason for not investigating the accusations any further or he would still appear neglectful. Stating that the behavior that raised questions was custom, rather than an indication of illegal activity, could have been a way for Tan to signal to his supervisors that he was taking the special needs of the Banxian residents into consideration, while still addressing the potential legal issues that arose when he investigated Mu-guo’s death.

Even without these considerations, there was another reason for Tan’s supervisors to accept his word on aboriginal custom. While Tan would have had few opportunities to acquire first-hand knowledge of the local tribes, he likely had more than any superior official reading his case report. The prefect was the only reviewer based on the island, and he was in the Taiwan seat.

\textsuperscript{341} Sommer, \textit{Sex, Law, and Society}, 272-274.
(today’s Tainan), far from any Babuza-speaking group. No magistrate had previously served in the new Zhanghua, and only a few more had served in Zhuluo. No one evaluating Tan’s case report would be likely to have firsthand knowledge contradicting the magistrate’s assessment, nor was there any reason to doubt his competence. To qualify for the Zhanghua county magistrate post, Tan had needed an exemplary record in mainland Fujian. His claims to local knowledge may have been tenuous, but he did have a record of administering a difficult county in the province, and that authority may have given his words extra weight with the judicial commissioner and the provincial governor, both of whom upheld his decision. Whether the Board of Punishments agreed with the provincial officials is unknown.

Deference to Local Customs

In both of the above cases, the magistrate used indigenous customs to justify rulings that were favorable to the local people under investigation. In Yunnan, Magistrate Luo Dapeng interpreted every action through the lens of “barbarians,” allowing him to create a narrative of unintentional homicide. In the magistrate’s retelling, Guang Wei’s actions leading up to Bao Wan’s death became those of a man adhering to the standards of behavior of his tribe. Ms. Wang’s cremation of her husband’s body prior to reporting his death was still illegal, but deserving of an explicit appeal for leniency, which was granted. For the two aboriginal men in Taiwan, local culture was a reason to disregard other evidence pointing to adultery, and thus to clear them of the charges. Reference to local custom, culture, and ritual could be a flexible tool for magistrates.
With cultural differences as an explanation, magistrates had another channel of information that they controlled. A magistrate’s superiors, particularly above the prefectural level, had few ways to disprove any assertion about the local tribal groups. By describing minority customs and then citing them in their final determination, magistrates were able to make an unequivocal statement about the intentions of the accused, and argue that statement from a stronger position. In fatal cases in more settled counties, higher officials could check the case narrative against their common sense intuitions about human behavior, and overturn the case if the narrative failed to make sense. When dealing with “barbarians,” superior officials had less basis for intuition.

Frontier magistrates also had longer and more positive administrative records, making them potentially more trustworthy. Most magistrates were centrally-appointed with little or no governing experience before arriving in their first yamen. The prefectural and provincial level officials reviewing their decisions had no reason to assume that a magistrate was competent and incorrupt. The magistrates in frontier and coastal counties, however, were selected by the governor and governor-general from within their province, and they had already proven themselves to be exemplary subordinates. Once the official who appointed them had left, the new governor would know that these magistrates had clean records, positive evaluations, and years of local knowledge. The special appointment system for coastal and frontier counties encouraged provincial officials to trust the magistrates they appointed. This trust could help allay some of the worries of judicial corruption and negligence that might otherwise encourage overturned cases.
The Case of Zhou Zhongxuan

The shared priorities and trust that could exist between frontier magistrates and their provincial superiors could look very different from the perspective of the capital. The second half of this chapter will examine one frontier magistrate, Zhou Zhongxuan 周鍾瑄. In his first positions in Fujian and Taiwan, Zhou demonstrated many of the traits encouraged by the direct appointment system: local knowledge, frontier expertise, ability to work with aboriginal tribes, and a positive relationship with the governor and governor-general. However, the flexibility and ties to those who initially aided Zhou in his career were later taken as warning signs of corruption by officials outside of the provincial bureaucracy, leading to his impeachment for his unorthodox sentencing in a rape case. As in the impeachment of Wang Xijie, Zhou’s handling of a legal case became a focal point for imperial worries about bureaucratic corruption. Unlike Wang Xijie, Zhou continued to receive support from newly-appointed provincial officials, even after his impeachment. The multi-year investigation and trial of Zhou Zhongxuan highlighted a broader clash of priorities between provincial officials, who valued flexible and effective governance over strict adherence to standards, and the Yongzheng emperor, who feared that corrupt officials were abusing the direct appointment system.

Early Career in Fujian and Taiwan

Zhou Zhongxuan built his career serving in Fujian and Taiwan, but he was born and raised on another frontier: Guiyang, in southwestern China. Born in 1671 or 1672, Zhou was orphaned at the age of ten and raised by his uncle. He earned a provincial juren degree in 1696,
but does not seem to have passed the metropolitan exam.\textsuperscript{342} After he finished the mourning period for his uncle in 1709, he traveled to the capital to work as a private secretary for his cousin Zhou Qiwei 周起渭, who was educational commissioner 學政 of Shuntian Prefecture, the administrative division for Beijing. Through his cousin’s connections at the Hanlin Academy, Zhou Zhongxuan found further work with two other provincial educational commissioners. One of his employers, Gao Qizhuo 高其倬, would later rise to the post of governor-general, first of Yun-Gui, and then of Min-Zhe (Fujian and Zhejiang provinces), where he would find himself investigating his former secretary.

In 1712, Zhou Zhongxuan received his first official appointment, acting magistrate of Shaowu County 邵武縣 in Fujian. After only a year in Shaowu, Zhou became the magistrate of Zhuluo County 諸羅縣 in Taiwan by gubernatorial appointment. Fujian province was short on experienced officials, and Min-Zhe Governor-general Gioro Mamboo 覺羅滿保 had to fill a sudden vacancy when the previous Zhuluo magistrate left to observe mourning for a deceased parent. According to his biography in the Guiyang gazetteer, Zhou came to the attention of Mamboo when he impressed his superior with a report criticizing a local tax levied on criminals facing execution.\textsuperscript{343} However, the governor-general may have already been favorably inclined toward the magistrate for personal reasons; Mamboo and Zhou’s cousin had both obtained their

\begin{itemize}
\item \textsuperscript{342} Some gazetteers list Zhou’s degree as a metropolitan \textit{jinshi} degree. However, the gazetteer compiled by Zhou himself lists his degree as the lower \textit{juren}. (Zhou Zhongxuan 周鍾瑄 et al., \textit{Zhuluo xian zhi} 諸羅縣志 [Zhuluo county gazetteer]) (1717; Beijing: Erudition 愛如生, 2009), 3:2a.) The Guiyang gazetteer, which includes a substantial biography of Zhou, also lists him as a \textit{juren}. (Guan Xiao 蕭琯 et al., \textit{Guiyang fu zhi} 貴陽府志 [Guiyang prefectural gazetteer]) (1851; Beijing: Erudition 愛如生, 2009), 17:5a, 76:17a.) His name is not in the index of Ming and Qing \textit{jinshi} holders. (Zhu Baozhong 朱寶炯 and Xie Peilin 謝沛霖, \textit{Ming Qing jinshi timing bei lu suoyin} 明清進士題名碑錄索引 [Index to Ming-Qing stele lists of \textit{jinshi} degrees] (Shanghai:Shanghai guji chubanshe, 1980), 2233.)
\item \textsuperscript{343} \textit{Guiyang fu zhi}, (1851), 76:21a-23a.
\end{itemize}
Jinshi in 1694 and subsequently studied together for three years as Hanlin bachelors, a special class for promising metropolitan graduates.\(^{344}\)

At the time of Zhou’s appointment to Zhuluo, it was one of only three counties in Taiwan, along with Fengshan County 鳳山縣 in the southwest and Taiwan County 台灣縣 in the center. It was the largest of the three by land area, though not population; Tan Jingzheng’s county of Zhanghua had yet to be split off and made its own district, so Zhuluo stretched from the area around the county seat—what is now Chiayi—northwards along the western coast, up to Tamsui at the northern tip of the island. Despite its large area, Zhuluo had a small tax base and there were few Han settlers. Much of the territory north of the county seat was monitored only by a series of military dispatch stations.\(^{345}\) Until 1704, it did not even house its own yamen—while the administrative buildings were under construction, civil officials ran the office out of the prefectural seat to the south, in the more populous Taiwan county. When Zhou Zhongxuan arrived, the new yamen building in Zhuluo was only ten years old, and the rest of the county was still not heavily developed.\(^{346}\)

Despite his limited governing experience, Zhou Zhongxuan proved to be a successful and effective frontier magistrate, addressing many of the challenges of a new county on the edge of the Qing territory. He was involved in planning and funding the construction of an irrigation system for reclaimed land, as well as flood management infrastructure.\(^{347}\) He supervised the

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344. Gao Qizhuo was in this same class. *Shengzu Ren Huangdi shilu* 聖祖仁皇帝實錄 [Veritable records of the Shengzu Ren (Kangxi) emperor] (1937; reprint in *Da Qing shilu*, Beijing: Zhonghua Shuju, 1986), 163:4a.
founding of the county school and the planting of bamboo thickets to protect the county seat. He also organized and oversaw the construction of the local City God temple, completed in 1715.\footnote{Guiyang fu zhi, (1851), 76:18a. The City God temple has since been rebuilt, but a figure of Zhou remains inside.} To pay for these works, Zhou raised money from local elites and donated money of his own as well. He also compiled Zhuluo’s first county gazetteer. Zhou maintained peaceful relations with the local aboriginal tribes, and expressed concern about what he saw as exploitation of aboriginal labor, writing to Governor-general Mamboo about the dangers of predatory interpreters and merchants.\footnote{Huang Shujing 黃叔璥, Tai hai shicha lu 臺海使槎錄 [A record of duty on the Taiwan sea] (1736; reprinted with added punctuation by Taipei: Taiwan yin hang, 1957), 165.} He does not appear to have received any official reprimands over the course of his five-year term as Zhuluo magistrate, and he was praised by both Mamboo and Fujian Governor Huang Guocai.\footnote{Yongzheng chao Hanwen yuzhi huibian 雍正朝漢文諭旨匯編 [Collected Chinese-language edicts of the Yongzheng reign] (Guilin: Guangxi shifan daxue chubanshe, 1999), 1:158.} In one memorial to the emperor, Huang described the magistrate as being “bright and quick-witted in handling business” 辦事明敏 and one who “sincerely cares for the people” 實心愛民.\footnote{Huang Guocai 黃國材, palace memorial, Yz 2.9.25 [FHA 04-01-30-0015-009].}

Zhou Zhongxuan’s service on the Taiwan frontier qualified him for promotion, and when he completed his term in 1719, he was transferred to Gaotang Department 高唐州 in Shandong. Departments were at the same administrative level as counties, but they were often economically or strategically important, and their magistrates were higher in rank—5b instead of 7a. After four years in Gaotang, Zhou was transferred to a position as an assistant department director 員外郎 in the Board of Personnel.\footnote{Guiyang fu zhi, (1851), 76:18a, 19b.} The new post was not an increase in rank, but places in the
metropolitan bureaucracy were prestigious and transfers from the territorial bureaucracy were difficult to obtain.

Soon after Zhou left, the Zhu Yigui rebellion revealed Taiwan’s strategic importance and the vulnerability of the territorial administration. In the wake of the uprising, the bureaucracy had to be almost completely rebuilt. Most officials on the island had either fled or been killed, and many others were deemed unfit to return to office. To restore the administrative infrastructure, the Qing needed to quickly locate qualified personnel and send them to Taiwan. Not only was nearly every official in the prefecture replaced, but several new positions were added as well; Zhou’s previous post of Zhuluo county was divided into three county-level units, creating additional vacancies. In this way, the island could be more closely monitored by civilian administrators, instead of leaving large swaths of wilderness to be watched over by only one magistrate and military dispatch stations. Taiwan was suddenly in need of qualified officials to fill these new or newly vacant positions.

For Zhou Zhongxuan, the rebellion meant a return to Taiwan. At the request of the provincial government, he was sent back to Fujian from the capital to assist in putting down the uprising. The following year, in 1722, Governor Huang and Governor-general Mamboo asked the emperor for permission to appoint Zhou Zhongxuan as the new magistrate of Taiwan County. Although this was a demotion in rank for Zhou, the appointment was an indication of the value Huang and Mamboo placed on his skills and experience. Officials in both Fujian and the capital, seeing how rapidly Qing administration had collapsed during Zhu Yigui’s rebellion, were deeply

concerned about social and military stability on the island. During Zhou’s time as magistrate of Zhulu, he had demonstrated both skill and interest in social institutions, such as the county school, the City God temple, and the gazetteer, as well as maintaining peace with the local tribes. He had also been popular in the county, an important concern following the rebellion.

*The City Wall and the Wu Su Rape Case*

Zhou Zhongxuan’s new post of Taiwan County was located in the prefectural seat. As the bureaucratic center of Taiwan, it contained the offices of the prefect, the circuit intendant, and other officials. The city was more developed than the Zhulu seat, but still lacked much of the infrastructure of an older county. One of Zhou’s responsibilities as Taiwan magistrate was to construct a wooden palisade around the county seat. None of the counties on the island had brick and stone walls, which were expensive to build, but after the Zhu Yigui rebellion, some degree of fortification was deemed necessary. The wooden fortifications around Taiwan’s county seat were less expensive than stone, but costly nonetheless, and Zhou resorted to finding alternative methods of funding construction, including converting criminal punishments to fines to pay for the wall.

In 1725, during his third year in office, Magistrate Zhou investigated a case involving the rape of a local Chinese woman. The accused rapist, a county resident named Wu Su 吳素, was a tribute student 貢生, a special licentiate status that granted the holder the privilege of studying

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356. The extent of Zhou Zhongxuan’s popularity within Zhulu or his other posts is difficult to gauge, but as I note in the sections below, Fujian Governor Mao Wenquan described him as “beloved” 愛戴 and multiple local gazetteers praised him as well.
in Beijing and exempted him from the annual recertification requirements. Until the mid-eighteenth century, tribute students were selected through local and provincial patronage from educational officials, so Wu Su was most likely wealthy and well-connected.358

While the accused was in custody, Zhou investigated and concluded that the assault had not been fully carried out, and the appropriate verdict was “unconsummated rape” 未成強姦, reducing the sentence from strangulation with delay to exile.359 Rather than exile the accused, Zhou Zhongxuan asked the Taiwan prefect for permission to convert the punishment to a heavy fine to fund the construction of the wooden palisade. With the prefect’s approval, Zhou allowed Wu Su 吳素 to avoid a beating in exchange for paying four hundred ounces of silver to fund the construction of one hundred zhang 丈 of wooden city wall (roughly 350 meters).360 Zhou’s close proximity to the prefect and circuit intendant probably worked in his favor, as he could discuss the case with them in person, and they would be able to monitor the results. Having cleared his plan with his superiors, Zhou levied the fine and oversaw the completion of the city wall, and the case seemed to be completely resolved.

That Zhou Zhongxuan received permission to alter the sentence in the Wu Su rape case shows an unusual degree of independence granted to a magistrate. Although Wu Su’s actions did not involve homicide, the crime of “forced illicit sex” did carry the death penalty. By deciding that the actual crime was “unconsummated rape,” Zhou was downgrading the charges below the threshold for capital punishment, an action that magistrates’ superiors often saw as an attempt to...
bypass review and possibly cover up malfeasance. Converting the sentence to a fine was another warning sign; the transfer of money from the accused to the yamen could facilitate the payment of a bribe. Although Zhou’s judgment contained several indications of corruption, the prefect and circuit intendant allowed him to go forward with it.

Zhou’s immediate superiors had approved the sentence, and he was well-regarded by the provincial governor and governor-general. However, as a magistrate serving in Taiwan, Zhou’s decisions were subject to scrutiny from an additional source: special inspecting censors, a supervisory office unique to Taiwan, and one that Zhou had not faced in his previous time on the island. The new censors were another administrative change made in response to the Zhu Yigui rebellion. The uprising had been caused, it was believed, by a corrupt county magistrate, but the speed with which the rebellion spread indicated that the administrative problems were not isolated to Fenghua county.\textsuperscript{361} To provide a check on administrative corruption and cronyism, the central government created a new position in the bureaucracy: Investigating Censor Inspecting Taiwan 巡視台灣監察御史, a pair of officials—one Han and one Manchu—who made yearly inspection tours of the prefecture, reporting on the condition of the government and people. They were also responsible for investigating and impeaching corrupt officials, and had the ability to directly memorialize the emperor.\textsuperscript{362} As a direct line to the emperor outside the territorial chain of communication, the Taiwan censors could counteract the risk of corruption from any provincially-appointed magistrates who gained their offices through sycophancy or bribery. Zhou was soon to be accused of both.

\textsuperscript{361} Shepherd, \textit{Statecraft and Political Economy}, 198.
\textsuperscript{362} Shepherd, \textit{Statecraft and Political Economy}, 198.
Chapter 4

The Impeachment of Zhou Zhongxuan

When the wall was completed in 1725, Taiwan Inspecting Censor Chanjibu 禪濟布 reported on the project and reviewed Zhou Zhongxuan's receipts. He made no note of any accounting irregularities at that time, and noted that that the entire city had contributed to the project. 363 Seven months later, he had a different view. The Manchu censor memorialized the Yongzheng emperor to impeach Zhou for “corruption and greed” 貪婪. According to the memorial, prefectural officials had all admonished the magistrate in the past, but the impetus for the impeachment came from Zhou Zhongxuan's judgment in the Wu Su rape case and his handling of the funds used to build the wall.

Chanjibu described the case as a clear example of judicial bribery. He stated that after Wu Su had raped the wife of a local resident, Zhou had detained him until another local student paid the magistrate 1100 ounces of silver, after which Wu Su was released. The censor noted that some money had gone to building the wall, but he received conflicting numbers from the magistrate’s records and prefect’s oral recollection of the fine amount, a discrepancy that the censor took as another indication of corruption. Chanjibu emphasized the seriousness of the charges by noting that three other rape cases had occurred in Taiwan County over the previous two months, including one by another tribute student, and warned that Zhou's corruption and leniency toward Wu Su was encouraging others to believe they could get away with lawlessness.

The Inspecting Censor recounted a series of suspicious events connected to his investigation that invoked the specter of corruption and cronyism. Chanjibu noted that the prefect had sent a message preemptively defending himself against charges of corruption and explaining

363. Chanjibu 禪濟布, palace memorial, Yz 3.03.16 [NPM 402008083].
the Wu Su fine, but then several days later came to visit the censor with a group of other local officials in tow, including the Taiwan brigade general, the circuit intendant, the Taiwan sub-prefect, and Zhou Zhongxuan. The prefect said that he wished to withdraw his previous statement and asked the censor to return the document to him. Chanjibu did not comply, and instead sent the emperor a copy of the document along with his memorial.364

Chanjibu also implicated his Inspecting Censor partner, Jing Kaoxiang 景考祥 in the potential cover-up. The Han-Manchu pair of investigating censors assigned to Taiwan could secretly memorialize the emperor individually or together, but they often wrote jointly when reporting on important matters. In this case, Chanjibu memorialized alone, explaining that his co-censor had repeatedly declined to sign off on the impeachment. He claimed that Jing had first argued that there was not sufficient evidence to impeach, and when Chanjibu showed him the accounting discrepancies, explained that Zhou's connections were too powerful to successfully impeach. Chanjibu quoted Jing as saying that when he was sent to Taiwan both Zhe-Min Governor-general Mamboo and Minister of Revenue Zhang Tingyu 張廷玉, a close advisor of Yongzheng's, had told him to look after their friend Magistrate Zhou. Jing also referred to Zhou as a "co-student" (tongmen 同門) he had not yet met, possibly due to shared patronage by one of the two officials. When Chanjibu pressed him on the matter, Jing told him that any investigation would be turned over to Mamboo and Governor Huang Guocai, who would do nothing. It is unclear whether Chanjibu was accurately quoting his partner; the two officials were already engaged in a feud that would only grow worse over time. Whether or not the conversation had

364. Chanjibu, Yz 3.10.7 [NPM 402014459].

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taken place, Chanjibu’s narration depicted an extensive web of corruption on Taiwan shielded by a network of personal ties.

Zhou Zhongxuan was unusually well-connected for a magistrate, particularly a juren holder from the far southwest. Through his cousin Zhou Qiwei, he may well have had the patronage Chanjibu alluded to in his memorial, though at the time of the impeachment, Qiwei had been dead for over ten years. However, the magistrate’s favorable reviews from his provincial superiors were probably due to more than his cousin. His initial promotions may have been the result of his family ties, but requesting that Zhou be transferred from his relatively prestigious position in the capital to a remote post on an island still recovering from a large-scale rebellion was not the sort of appointment likely to be given as a favor. Mamboo and Huang Guocai’s request that Zhou return to Taiwan suggests that they had some degree of confidence in his abilities.

The timing of the impeachment memorial suggests that Chanjibu had some concerns about Zhou Zhongxuan’s connections in the provincial seat; he waited to send it until neither Governor Huang Guocai nor Governor-general Mamboo remained in Fujian. The month before the memorial, Mamboo died in office. Instead of replacing him immediately, Yongzheng had Fuzhou Banner General-in-Chief Yi Zhaoxiong 服务 as acting governor-general until Gao Qizhuo 高其倬 could be transferred from the governor-generalship of Yun-Gui, a process that took several months. Just before Mamboo's death, Yongzheng had removed Huang Guocai as governor of Fujian and replaced him with Guizhou governor Mao Wenquan 毛文銓,

365. Yi Zhaoxiong 宜兆熊, palace memorial, Yz 3.9.8 [NPM 402020699].
366. This Gao Qizhuo was the same man who had employed Zhou Zhongxuan as a secretary, a fact that the emperor had not yet realized.
a Han bannerman of the Bordered White Banner, who arrived only days before Chanjibu impeached Zhou Zhongxuan.\footnote{Mao Wenquan’s first report as governor of Fujian was dated Yz 03.10.06, one day before Chanjibu’s impeachment memorial. See Mao Wenquan 毛文銓, palace memorial, Yz 3.10.06 [NPM 402018396]. For Mao’s banner and purchased degree status, see Yunnan tong zhi, (1736), 18:57a.}

In the summer of 1725, Zhou was serving under provincial heads who had repeatedly praised him and specifically requested him to serve under them. Five months later, neither of Zhou’s supportive superiors was in a position to influence any investigation. That Chanjibu submitted his impeachment soon after Mamboo’s death—four months after the city wall was completed and three after the Wu Su case was closed—implied that he suspected collusion from the previous provincial heads. His timing also allowed him to position his impeachment as part of a thorough cleaning after a change in governance.\footnote{For examples of similar impeachments, see the impeachment of Wang Xijie after Shandong Governor Selengge left office in Chapter 3, or the impeachment of Wang Weigan after Governor-General Tian Wenjing died in Chapter 5.}

Chanjibu recounted one other suspicious event. The night before the censor sent the memorial, Zhou Zhongxuan dispatched a subordinate to Chanjibu's home with a large gift of silver. Chanjibu’s household servant, A-er-deng-ge 阿爾登格, received a package containing three hundred sixty ounces of silver for clothing, and another thirty-six ounces for offerings, and was instructed to pass the money to his master.\footnote{Chanjibu, Yz 3.10.7 [NPM 402014459].} The timing of the delivery was suspicious; in the context of the prefect’s submitted and then withdrawn statement of innocence, Zhou Zhongxuan likely knew that he too was under investigation. Timing aside, giving presents to a superior official was technically prohibited, but it was also common.\footnote{In the following emperor’s reign, the office of Taiwan Inspecting Censor was slowly phased out, in part due to consistent allegations that the censor’s inspection tours involved a significant amount of bribe solicitation—in the words of John Shepherd, “tremendous squeeze.” Shepherd, Statecraft and Political Economy, 492n80.} Many officials gave and
received gifts without risking prosecution, and superiors often demanded them, but when a magistrate was being investigated for corruption, any exchange of valuables was likely to come under close scrutiny.\textsuperscript{371} In this instance, Chanjibu condemned Zhou’s money as a clear bribery attempt, and reiterated his own loyalty to the emperor.

Chanjibu’s memorial played on the concerns the Yongzheng emperor already had about his frontier appointments. By emphasizing Zhou’s connections to Mamboo and Zhang Tingyu, Chanjibu suggested that the magistrate’s repeated appointments to Taiwan were based on favoritism, rather than merit. The emperor had already expressed concerns about expanding gubernatorial appointments beyond Taiwan, primarily because he was worried that this would lead to incompetent or corrupt officials being appointed through connections.\textsuperscript{372} When Chanjibu quoted his partner rejecting any impeachment, he not only suggested that Zhou was being protected by Mamboo and Huang Guocai, he also hinted at a province-wide coverup of corrupt behavior. The group of civil and military officials who requested that Chanjibu withdraw Prefect Fan’s testimony appeared to be part of an organized group of corrupt officials, working together to leech off the state, and even subverting the other inspecting censor. A case of bribery thus became an embodiment of Yongzheng’s concerns around the direct provincial appointment system. The Manchu censor positioned himself in the debate as an outsider reporting directly to the emperor who could bypass the web of cronyism and reveal the truth.\textsuperscript{373}


\textsuperscript{372} Guy, \textit{Qing Governors and Their Provinces}, 100.

\textsuperscript{373} Michael Chiang argued that Chanjibu won the emperor’s favor through a shared ethnic connection and Chanjibu’s lack of an exam degree. Michael H. Chiang, “‘Evading Suspicion and Shirking Responsibility’: The Politics of Official Discord in Qing Taiwan, 1725-1726,” \textit{Sungkyun Journal of East Asian Studies} 13, no. 1 (2013), 9. However, Chiang seems to have made two errors that slightly weaken his case. Chanjibu was not the only official in the case without an exam degree; Yi Zhaoxiong, whose career began in the military, also seems to have lacked a degree, and Mao Wenguan was only a licentiate-by-purchase 監生. Additionally, Zhou Zhongxuan only attained the provincial \textit{juren} degree, not the \textit{jinshi} that Chiang assigned him.
As a magistrate, Zhou Zhongxuan was not given an opportunity to advocate directly for himself. The inspecting censors and provincial officials could communicate directly and secretly with the emperor through the palace memorial system, but low-ranked magistrates were restricted to ordinary channels. If Zhou or Prefect Fan wanted to accuse Chanjibu of misconduct, they could only submit their reports through routine memorials, which were processed slowly and read by many people. Zhou had no way of responding to Chanjibu’s accusations, except through higher officials’ defense of him, and although he had influential connections, any efforts they may have made to speak on his behalf probably only heightened Yongzheng’s suspicions of favoritism.

Further Investigation and Argument

Initially, Yongzheng seemed to take a cautious approach to the matter. He supported the impeachment, issuing an edict to remove Zhou Zhongxuan from office and take him under guard to while his belongings were confiscated and catalogued. The case was to be investigated by the incoming new Governor-general, Gao Qizhuo, and in the meantime, the emperor urged caution and fairness in the investigation.

Despite Yongzheng’s wish that his officials in Fujian would wait patiently for Gao’s arrival, the Zhou Zhongxuan case continued to cause conflict. The two investigating censors,

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375. “Yongzheng yuzhi huibian,” 1:156.
376. Chanjibu 禪濟布, palace memorial, Yz 3.10.7 [NPM 402008089]; Mao Wenquan 毛文銓, palace memorial, Yz 4.3.10 [NPM 402018419].
who had apparently been feuding for some time, impeached each other in 1726. Jing Kaoxiang accused Chanjibu of accepting gifts from various officials—including Zhou Zhongxuan—privately issuing censorate passes to local traders, and public misbehavior while drunk.\footnote{77} Chanjibu accused Jing of covering for criminals, taking bribes, and allowing the son of a friend to falsely claim to be a resident of Taiwan to take advantage of the much easier exam quotas.\footnote{78} The final straw for Chanjibu was Jing's refusal to co-sign the impeachment of Magistrate Zhou.

The new governor was also disinclined to stay quiet on the matter. Before Gao Qizhuo arrived in Fujian, Governor Mao Wenquan wrote a memorial to the emperor to support the impeached magistrate. Mao recounted descriptions of Zhou he had heard from other officials—including Jing Kaoxiang—who depicted the magistrate as a popular official, saying that “everywhere he goes, he wins the people’s hearts” 所到之處甚得民心 and that in both Zhuluo and Taiwan “everyone loves and respects him” 人人愛戴. Mao also informed the emperor that since Zhou surrendered his seal of office and was placed under guard, supportive soldiers and civilians visited him every day to bring him supplies, and there had even been constant talk of breaking Zhou out or personally accompanying him when he was taken to Fuzhou. The brigade general had to send in troops to control the situation.\footnote{79} Mao also defended Zhou against accusations of bribery, saying that a preliminary look at the account books suggested that the magistrate had used unauthorized fees and income to stabilize grain prices, not

\footnote{77} Shi Yizhi 史貽直 et al., palace memorial, Yz 7.2.8 [NPM 402007243].
\footnote{78} Chanjibu 禪濟布, palace memorial, Yz 3.12.02 [NPM 402008093].
\footnote{79} Mao Wenquan, Yz 4.3.10 [NPM 402018419].
for personal gain. Mao conceded that he had not yet conducted a full investigation of the case, but he explained that unrest among the local populace motivated him to speak.380

Governor Mao also submitted a joint memorial on the issue with General Yi Zhaoxiong, who was handling the governor-general’s duties until Gao Qizhuo could arrive. The two officials reminded the emperor that Taiwan was a “coastal frontier” 海疆 populated by migrants from many regions. These migrants, lacking home or family to stabilize them, were especially prone to agitation and incitement, making it difficult to maintain peace and stability on Taiwan. The provincial heads then criticized Chanjibu for adding to their problems: “Chanjibu does not consider the strategic importance of the frontier. He only wishes to increase Zhongxuan’s guilt.”381

Mao Wenquan and Yi Zhaoxiang, both Han bannermen without higher educational degrees, based their arguments on the special needs of a strategically important frontier region.382 Fujian’s administrators faced difficulties arising from its shifting and heterogeneous population, the large military presence meant to keep said population pacified, the relative lack of infrastructure, and the low tax base that could not adequately fund the military and development costs.383 Mao Wenquan had experience with frontier populations; his two previous posts had been as financial commissioner 布政使 of Yunnan and governor of the southwestern “Miao frontier” province of Guizhou. Yi Zhaoxiong had no previous experience in the civil administration, but he had over twenty years of military experience as an officer in the banners.

380. Mao Wenquan, Yz 4.3.10 [NPM 402018419].
381. Mao Wenquan 毛文銓 and Yi Zhaoxiong 宜兆熊, palace memorial, Yz 4.3.26 [NPM 402010705].
382. Mao was a jiansheng 監生, or “state student,” a form of licentiate that was often obtained by purchase. Yi does not appear to have had any educational qualification.
rising from the rank of captain 佐領 to banner general-in-chief of the Fuzhou garrison 福州將軍, a position he was promoted to in the wake of the Zhu Yigui rebellion.\textsuperscript{384}

According to Mao and Yi, a frontier official’s role was to provide a bulwark against the instability of the shifting population.\textsuperscript{385} Zhou Zhongxuan’s widespread popularity made him a valuable asset, and the unrest occasioned by his imprisonment was a threat. Moreover, the provincial heads did not view Zhou’s unorthodox methods of raising funds as a problem. Fujian officials had persistent difficulties collecting taxes, with roughly 30 percent of the land and head quotas remaining uncollected each year.\textsuperscript{386} If Zhou Zhongxuan was collecting funds for public use, as Mao Wenquan suggested, and was not provoking outrage from the populace or enriching himself, his methods were unimportant.\textsuperscript{387}

The Yongzheng emperor was not convinced by these arguments. He responded by rebuking Mao for having a “very biased” 甚偏 view and instructing him to wait until the case could be investigated by Gao Qizhuo.\textsuperscript{388} In response to the joint memorial, he pointed out that Chanjibu had been quietly waiting for Gao to take over the investigation and the Governor-generalship, and ordered Mao and Yi, “the both of you must obey my edict to wait calmly.”\textsuperscript{389} He criticized their handling of the unrest in Taiwan, musing that “I’m afraid that Chanjibu has indicated the actual situation, and you will have trouble hiding the true situation.”
The emperor added another line to his response, noting that he found Mao Wenquan’s entire performance since taking office to be unsatisfactory.\(^{390}\)

Gao Qizhuo reached Fuzhou in the middle of 1727, but other provincial affairs occupied the new governor-general’s time and delayed his investigation of the impeachments until 1729, when he sent his report along with apologies for his lateness.\(^{391}\) Gao, who had previously worked with Mao Wenquan in Yunnan and Guizhou, agreed with Mao's earlier conclusions about the case and sent new copies of Mao’s materials and the original memorials. Yongzheng was not impressed with this effort, which he called “laughable” 可笑.\(^{392}\) He also issued an edict condemning Gao for taking over a year to submit little more than a muddled retread of the earlier reports. By this time, Yongzheng had learned about Zhou Zhongxuan’s previous work as Gao Qizhuo’s secretary when he was provincial educational commissioner of Shanxi. The emperor concluded that Gao's sloppy work and personal conflict of interest made him unsuitable to handle this case, and ordered Gao to turn the investigation over to two other officials: the Zhejiang provincial governor and the new incoming governor of Fujian.\(^{393}\)

Although the Yongzheng emperor was concerned about unrest on the Taiwan frontier, he disagreed with his officials about the cause. After the Zhu Yigui Rebellion, provincial officials had called for more troops in Taiwan, but court officials believed that the uprising was caused by local bureaucratic corruption.\(^{394}\) The year before Yongzheng began his reign, his father, the Kangxi emperor, had created the position of Taiwan inspecting censor to penetrate protective

\(^{390}\) Mao Wenquan and Yi Zhaoxiong, Yz 4.3.26 [NPM 402010705].  
\(^{391}\) Gao Qizhuo 高其倬, palace memorial, Yz 6.4.12 [NPM 402006465].  
\(^{392}\) Gao Qizhuo, Yz 6.4.12 [NPM 402006465].  
\(^{393}\) “Yongzheng yuzhi huibian,” 7:239.  
\(^{394}\) Shepherd, Statecraft and Political Economy, 194.
networks and reveal local corruption, thus preventing another uprising. In Yongzheng’s view, Chanjibu was fulfilling his responsibility to bring any hidden problems to light before a serious problem could develop. By defending Zhou and attacking Chanjibu, the provincial officials in Fujian were contributing to the emperor’s concerns about cronyism. Rather than conveying their sense of urgency, Mao Wenquan and Yi Zhaoxiong’s memorials suggested to Yongzheng that the two had chosen sides in the conflict before a proper investigation could be completed. Gao Qizhuo, who was intended to provide an impartial investigation, instead added to the impression of bias. The provincial officials attempted to persuade the emperor by connecting the case to the challenges of the frontier, but because he saw local autonomy as a greater threat, their efforts failed to convince him.

Changes in Fujian Administration

The Zhou Zhongxuan case remained open for over three years before a final verdict was reached, an unusually long time for a corruption investigation. There were many reasons for the delay, including other investigations and audits that took priority, but the frequent turnover in the Fujian governor’s office was another contributing factor. Dissatisfied with the administration in the southeast, the emperor continued to reorganize the governorships. Mao Wenquan was officially transferred to a new post at the end of 1726, but then he was ordered to postpone his move for six months while the incoming governor served in neighboring Guangdong. Mao’s replacement, Manchu official Changlai, only spent six months in Fujian before trading places with Zhu Gang, then governor of Yunnan. Less than a year after he arrived in

395. For a comparison, the investigation of Bao Ren discussed in Chapter Five took sixteen months from the impeachment memorial to the final verdict.
Fujian from the southwest, Governor Zhu fell ill and died. He was replaced by Liu Shiming 刘世明, then governor of Gansu province and a former officer in the Green Standard army. Gao Qizhuo’s duties changed as well; Yongzheng removed Zhejiang from the governor-general’s responsibilities, announcing that Gao was not capable enough to manage two provinces.396

The emperor was dissatisfied with the overall performance of his top administrators in Fujian, both in general and in their handling of the Zhou Zhongxuan investigation, so he dispatched two officials from the capital. The first was Reader Siju 西柱, a clerical assistant who arrived in Fuzhou late in 1728 to help Zhu Gang with the case, and remained there after Zhu’s death to await his replacement.397 Siju himself was not a high-ranking official, as Yongzheng noted, but he had the privilege of submitting secret memorials directly to the emperor and could thus observe and report independently of the local bureaucratic structures.398

After Governor Zhu’s death, Yongzheng decided that the backlog of corruption investigations in Fujian required assistance beyond that of a mid-ranked clerk, and dispatched a trusted advisor: Shi Yizhi 史贻直.

Shi Yizhi's official title was “Vice-Minister of the Board of Personnel concurrently serving as Vice-Minister of the Board of Revenue” 吏部左侍郎仍兼管户部侍郎事, but Yongzheng used him as a general troubleshooter, sending him to different provinces to investigate problems and irregularities. Like Zhou Zhongxuan’s patrons Mamboo, Gao Qizhuo, and Zhang Tingyu, Shi Yizhi was a jinshi and former Hanlin Bachelor, but Yongzheng did not seem concerned that his advisor would be susceptible to influence from that direction. Shi had

397. Siju’s full title was Reader of the Grand Secretariat 内閣侍讀學士, a position ranked 4b.
398. Siju 西柱, palace memorial, Yz 6.10.20 [NPM 402022158].
already demonstrated a willingness to investigate his own patron and jinshi classmate Nian Gengyao 年羹堯, who had helped him rise to the position of vice-minister soon after Yongzheng took the throne in December of 1723. Two years later, Nian came under suspicion for corruption and for secretly corresponding with Yongzheng’s exiled brother. Shi was sent to Shaanxi to help investigate, and provided evidence that led to his former friend's conviction and execution-by-suicide in 1726.399 The assignment of Shi Yizhi to Fujian was a way for the emperor to address his concerns about corrupt networks in the province.

During these years of administrative change, Zhou Zhongxuan remained under guard. The emperor’s edict ordering him detained and brought to Fuzhou was issued in January 1726 and probably arrived in Fuzhou about a month later, so we can estimate that Zhou was arrested sometime in February or March of 1726.400 Other than Mao Wenquan’s report that soldiers and civilians brought him daily gifts of rice and firewood, we do not have any information about how he spent his time.401 He was likely kept under house arrest, and with his apparent support among provincial officials, military officers, and the general population, it seems likely that he was treated better than many impeached magistrates under investigation. The two mutually-impeached censors had also been ordered to remain the provincial seat to wait for the investigation; there is no report for Jing Kaoxiang, but Chanjibu arrived in May 1726.402

Investigation Results

401. The various gazetteer biographies of Zhou tend to skip over these three years of his life.
402. Wang Jijing 汪繼燝, Palace Memorial, Yz 4.4.16 [NPM 402019169-1].
The Zhou Zhongxuan investigation had been delayed for several years, but once Shi Yizhi arrived in Fujian, the process was concluded after only two months. Even before Governor Liu Shiming took office, Shi and Siju began investigating the charges against Zhou and the two censors. They examined the county financial records multiple times and questioned witnesses, going so far as to interrogate Chanjibu's servant under torture. In March of 1729, Shi sent the emperor a secret memorial with his conclusions, co-signed by Gao Qizhuo, Siju, and the recently-arrived Liu Shiming.\(^403\)

The report started with Zhou Zhongxuan. In the original Wu Su bribery case, the investigators sided with Zhou. They found documentation that he had informed the prefect, the circuit intendant, and the two censors of his decision to convert Wu Su’s sentence for attempted rape from exile to the payment of wall construction costs. They did not find any evidence that Wu Su had paid any additional money to Zhou or the prefect, and they were disinclined to believe Chanjibu’s accusations on the matter, as he had changed his testimony at some point during the intervening years. Looking at Chanjubu’s accusation that Zhou had paid him a bribe, the investigators confirmed that Chanjibu’s servant had received the 360 ounces of silver, but because Zhou had not indicated any ulterior motives for sending the silver, the money was brushed aside as a routine gift—prohibited, but not as serious a crime as bribery.

Along with the bribery charges, the investigators conducted a full audit of all Taiwan County yamen finances during Zhou’s three-year term (1722-1725). They were able to account for every ounce of the 19,092 ounces of silver Chanjibu accused Zhou of embezzling—the

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403. Shi Yizhi et al., Yz 7.2.8 [NPM 402007243]
majority had been used to purchase grain for the county, and the remainder had been set aside for approved and documented yamen expenses.

Even after being cleared of every serious charge Chanjibu had leveled against him, Zhou did not escape punishment. Going through the accounting, the investigators found discrepancies in the records, and evidence that Zhou had loaned out 7100 ounces of silver to local merchants at 30 percent and 20 percent interest. The money for the loans had come from a 10 percent additional charge Zhou had levied on the grain tax. Magistrates frequently resorted to similar fees and surcharges to cover their county expenses, but the practice, though widespread, was illegal. Zhou argued that the grain surcharge and interest-bearing loans were necessary to make up for budgetary shortfalls, and that he had used the funds for local development. In this case, the investigators did not accept Zhou’s explanation, noting that the yamen’s operating loss only accounted for a portion of the income, and they suspected that the additional interest charges were meant to enrich the magistrate. Because of the rule of only sentencing according to the most serious violation, the lesser offenses of giving gifts to a superior and charging interest on loans were set aside. For levying unauthorized taxes and surcharges, Zhou was sentenced to strangulation with delay.

Chanjibu did not escape unscathed either. The investigators noted that none of his accusations against Zhou had proved correct, and that no one would corroborate his story that the magistrate and prefect had tried to hide any of the accounts. They concluded that he had fabricated the evidence and deceived the emperor. They also confirmed several of Jing

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405. Shi Yizhi et al., *Yz* 7.2.8 [NPM 402007243] For the law on collecting unauthorized fees, see *Yongzheng huidian*, 29b-30a.
Kaoxiang's accusations: Chanjibu had accepted gifts from officials under his supervision, he had been publicly drunk, and he had given out official Censorate passes to his friends. More importantly, he had loaned his subordinates money to run a pawn shop, charging them usurious rate of 60 percent interest. Even though he eventually waived the interest charges, the investigators still condemned him for setting the rate and making an inappropriate loan in the first place. They also denounced his overall behavior and demeanor, and recommended that he be punished severely. Both Chanjibu and Zhou’s assets were seized for further auditing.

The investigators ruled that Jing Kaoxiang’s impeachment of Chanjibu was unmotivated by personal bias, unlike the other censor’s impeachment of him. Jing was also cleared of most of the accusations Chanjibu had made against him, save one: the investigators did conclude that he had inappropriately allowed the son of a friend from his jinshi cohort to immigrate to Taiwan to take advantage of the easier exam quotas on the island. Shi Yizhi’s conclusions satisfied the emperor, who called them “very fair” 甚公.406

The outcome of the Zhou Zhongxuan case was shaped by two different viewpoints about magisterial flexibility and governing the frontier. In his early career, Zhou benefitted from his success as a frontier magistrate and from provincial officials’ ability to retain desired personnel through direct appointment. His years on Taiwan allowed Zhou to gain trust and support from superiors who allowed the magistrate greater flexibility in his duties. In criminal cases, where divergence from standards was usually equated with either corruption or negligence, Zhou was given broad latitude. Even after the officials who appointed and promoted him left office, he

406. Shi Yizhi et al., Yz 7.2.8 [NPM 402007243]. Jing Kaoxiang and Chanjibu had been removed from office pending the investigation results, and neither appears to have returned to official service after the trial.
continued to receive support from Fuzhou. His extensive frontier experience was valued by a provincial bureaucracy that prioritized stability and security.

In their arguments to the emperor, the provincial officials who supported Zhou argued that frontier regions required special treatment. Gao Qizhuo, Mao Wenquan, and Yi Zhaoxiong emphasized the risk of an unstable population and the need to maintain peace and order. Divergence from ordinary policies were acceptable if they kept the Taiwanese population content, even if that flexibility gave rise to the appearance of corruption. A corruption investigation that led to popular unrest was dangerous and to be avoided.

Censor Chanjibu took a different approach to the frontier. He argued that corruption was itself a destabilizing threat to the frontier, and suggested that Zhou’s apparent misdeeds had caused lawlessness and unrest. His arguments were well-received by the Yongzheng emperor, whose expressed desires were for balance, thoroughness, and transparency. Yongzheng seemed less interested in the corruption case as a risk to frontier stability, and more as a threat to his broader governance principles. Chanjibu’s accusations held weight because the censor positioned himself as the emperor’s agent of transparency and anti-corruption efforts.

The investigation led by Shi Yizhi succeeded in convincing the emperor by setting aside any local considerations and presenting the appearance of a detached and impartial effort. Throughout the case, Yongzheng had consistently expressed concern that the case might be tainted by bias and favoritism, causing transgressions to remain unexposed. By punishing all three impeached officials, Shi Yizhi and the other investigators showed the emperor that they were not protecting anyone. The investigators may also have benefitted from a perceived lack of connections or regional ties. Shi Yizhi and Siju were unattached to the provincial bureaucracy
and reported directly to the emperor, and Governor Liu Shiming had only recently arrived in Fujian.

The verdict also avoided any special consideration of local needs. Unlike Mao Wenquan and Yi Zhaoxiong, the investigators did not mention the financial and administrative challenges of Taiwan. They based their arguments on witness testimony and accounting records. Much like a magistrate persuading a skeptical judicial commissioner, the investigators backed every dismissed charge by noting a steadfast refusal to confess by the accused, and added supporting witness testimony upholding the denials. The investigators did not need to obtain a confession to convict Zhou Zhongxuan of embezzlement—he never admitted to making any private profit from his surcharges—but his refusal to confess to the bribery charges was treated as exculpatory evidence. In their investigation report, Shi, Siju, and Liu relied on the narrative strategies common among magistrates: a presentation of witness testimony and documentary evidence that not only supported the final verdict, but also served as proof of the investigators’ thoroughness and honesty.

Aftermath and Legacy

Although Zhou Zhongxuan was sentenced to death by strangulation, he was not executed. Instead, he was ordered to repay Taiwan County’s tax arrears and allowed to return to official service. In 1730, only a year after his death sentence, he was promoted to prefect of Jingzhou Prefecture in Hubei. Although his reprieve from execution may have come from his connections, Zhou’s return to official service seems to indicate that the emperor did have some

407. Qing shilu, 98:303b.
appreciation of his administrative skills. In the case of impeached magistrate Wang Xijie, discussed in Chapter Three, we saw that Yongzheng viewed cronyism and sycophancy as serious problems. In 1729, the same year he pardoned Zhou, the emperor ordered Wang Xijie indefinitely imprisoned without any evidence of corruption, but because he merely gave the appearance of having obtained his appointment through flattery or bribes. Yongzheng had much stronger evidence that Zhou was relying on personal ties to shield himself, but the emperor not only kept him in the bureaucracy, he promoted him.

In 1733, Zhou was under investigation again, this time accused of improprieties in the granary accounting. His salary was dropped two ranks, but he was still not removed from official service. Instead, he was given a new task: overseeing flood relief efforts and levee repair within the prefecture. He was also ordered to contribute his own funds, both for the project and to make up the deficits. Zhou successfully managed the repairs, but failed to come up with the necessary money, and in 1734 he was once again impeached for embezzlement. When his case reached the Board of Punishments in the spring of 1735, they recommended that he be sentenced to decapitation with delay.

As in Fujian, Zhou Zhongxuan became a point of contention between superior officials who disagreed in their assessments of his character and skills, but in this case, his provincial superiors were not united in their support. In 1733, HuGuang Governor-general Maiju described him as someone who seemed talented, but who had not lived up to his potential. The emperor seemed to agree with this view, calling for the prefect to be fired and investigated. The following

408. Maiju 邁柱, routine memorial placard, Yz 12.7.12 [AS 117671-001].
409. Maiju, Yz 12.7.12 [AS 117671-001].
410. Shi Yizhi 史貽直, palace memorial, Ql 1.10.8 [FHA 04-01-01-0011-015].
411. Maiju 邁柱, palace memorial file copy, Yz 11.08.29 [FHA 03-0002-026].
year, Hubei Governor Deling 德齡 memorialized the emperor about the case, stating that he had found evidence that suggested Zhou was not at fault. However, Yongzheng responded even more negatively than he had to Mao Wenquan and Gao Qizhuo’s defenses of Zhou. He rejected the governor’s conclusions, calling Zhou “hateful” 可惡 and saying that even his slightest offenses were unforgivable. The emperor warned De that he was putting himself at risk with his sympathy for someone so far out of imperial favor.

Given Yongzheng’s expressed antipathy, it was perhaps fortunate for Zhou Zhongxuan that the emperor died in October of 1735, during the time that capital sentences were ordinarily reviewed at the Autumn Assizes. The new Qianlong emperor suspended executions and declared a general amnesty to mark his new reign. The amnesty did not automatically apply to those convicted of serious crimes, including corruption, so Zhou had only won a temporary reprieve. During the first two years of Qianlong’s reign, several officials tried to intervene on Zhou’s behalf, most notably Shi Yizhi, who had been appointed Governor-general of HuGuang in 1734. Shi pointed out that he was already familiar with Zhou Zhongxuan’s history, having led the conclusive investigation into the Fujian case. He did not try to defend Zhou’s character, but argued that his transgressions were relatively minor compared to those of many other magistrates and prefects, and that the previous governor-general, Maiju, had unfairly singled Zhou out in an environment of widespread neglect and corruption.

412. De Ying 德齡, palace memorial, Yz 12.2.16 [NPM 402001373].
413. De Ying, Yz 12.2.16 [NPM 402001373].
414. Qing emperors finalized their review of the lists of sentences for the Assizes at the end of the 8th lunar month of each year. In 1735, the 8th month ended on October 15, seven days after Yongzheng’s death.
415. Shi Yizhi, Qi 1.10.8 [FHA 04-01-01-0011-015].
Despite this new support, Zhou Zhongxuan remained sentenced to death and imprisoned in Jingzhou until 1742. During many of those intervening years, the Qianlong emperor suspended the Autumn Assizes, thus postponing all capital review and delayed executions until the following fall. In 1740, his case did come before the Assizes, but he was one of the convicts whose sentence was postponed pending further investigation.\footnote{Cui Ji, \textit{崔紀}, routine memorial, Qi 5.2.30 [AS 066266-001].} Although I have found no mention of Zhou during any other Autumn Assizes, his biography states that he was sentenced to military exile at a postal station in Inner Mongolia in 1742.\footnote{\textit{Qing shilu}, 176:31534.} Five years later, his son Zhou Mingde 周明德 requested permission to travel to the station in order to care for his father and carry out any required labor on his behalf. As the elder Zhou was now in his mid-seventies, this request was granted, and an archival document sent by the Board of War confirms that the two were allowed to return home in 1750.\footnote{Board of War 兵部, communication, Qi 15.06.02 [AS 092281-001].} Despite eight years of imprisonment followed by another eight years in exile in Mongolia, he was still in sufficiently good health that he was able to accompany his son to Suixi County in Guangdong, where Mingde served as magistrate from 1754 to 1762. The two then returned to their native province of Guizhou, and Zhou Zhongxuan died the following year at the age of 92 sui.\footnote{Guiyang fu zhi, (1851), 76:26a. In imperial China, age was counted in sui 歲. A person was 1 sui at birth, became 2 sui at their first lunar new year, and then continued to count each new year after that. Thus, Zhou Zhongxuan was either 90 or 91 when he died.}

Despite his multiple criminal convictions, Zhou Zhongxuan was largely remembered as a popular magistrate. In addition to Mao Wenquan’s report of his broad support among the Taiwanese people, Zhou was also praised by various gazetteers for both his personality and his efficacy. The gazetteer of Jiangling County 江陵縣 in his former prefecture of Jingzhou praised
him for his flood relief and repair work, using phrases such as “the people were moved by his benevolence” 民感其惠, and also suggested that he was impeached as a punishment for requesting relief.420 One from Taiwan county refers to Zhou’s “compassion and benevolence” 慈惠.421

Gazetteers were generally compiled and edited by local elites, and their opinions of magistrates did not always match the administrative record; Cai Zengqin, the magistrate impeached for his poor investigation and bad writing, is described by his hometown gazetteer as having good governance 有善政.422 However, it is noteworthy that gazetteers Zhou not just for generic virtues, but also for specific and tangible accomplishments. A Taiwan county gazetteer remembered him for his contributions to waterworks, fortifications, and—somewhat ironically—fiscal management.423 Zhou was also used as a model for others in Taiwan; the use of bamboo thickets for defense in Zhanghua County 彰化縣 is referred to as “Zhou Zhongxuan’s method” 周鍾瑄之法.424 and the biography of Cao Jin 曹謹, a Danshui subprefectural magistrate from the 1840s, contains the line “Jin’s compassion and benevolence did not compare with Zhou Zhongxuan’s, but his strong resolution and clear perception surpassed him” 謹慈惠不如周鍾瑄而強毅明察過之.425

421. Xie Jinluan 謝金鑾 et al., comp., Xuxiu Taiwan xian zhi 續修臺灣縣志 [Revised and expanded Taiwan county gazetteer] (1807; Beijing: Erudition 愛如生, 2009), 2:41b.
422. Huang Ren 黃任 and Du Changding 杜昌丁 et al., comp., Yongchun zhou zhi 永春州志 [Yongchun department gazetteer] (1757; Beijing: Erudition 愛如生, 2009).
423. Xuxiu Taiwan xian zhi, (1807), 2:41b-42a.
425. Xue Shaoyuan 薛紹元 et al., comp., Taiwan tong zhi 台灣通志 [Taiwan comprehensive gazetteer] (Undated Guangxu manuscript; Beijing: Erudition 愛如生, 2009). Original lacks pagination, digital p. 754.
Zhou’s most complete biography can be found in the gazetteer from his birthplace of Guiyang. Although Zhou’s cousin Zhou Qiwei was not particularly famous by the standards of Qing poets or officials, he was locally famous in the remote province of Guizhou, and both cousins have extensive histories. Zhou Zhongxuan’s entry depicts him as consistently virtuous and widely beloved in every post, even claiming that the people of Jingzhou blocked the streets to try to prevent his exile.426 These biographies have helped transform Zhou’s place in popular memory from that of a fairly minor official whose career ended in disgrace to a virtuous scholar who was unfairly persecuted.

In an unexpected twist, a new development in the Zhou Zhongxuan impeachment case occurred in the spring of 2015, when the Chiayi (formerly Zhuluo) City God temple commemorated its 300-year anniversary with a celebration in honor of Zhou. The Qing dynasty fell in 1912, and the Censorate with it, but Zhou Zhongxuan received a sort of posthumous rehabilitation from the Censorate’s successor agency within the Republic of China, the Control Yuan 監察院, when current head Chang Po-ya 張博雅 (a Chiayi native) attended the ceremony in her official capacity and presented the temple with a placard meant to both honor the temple and right the perceived injustice against Zhou Zhongxuan committed by a censor. At the event, Mayor Twu Shiing-jer 涂醒哲 also made reference to the impeachment and the symbolism of Chang’s attendance.427 Zhou’s role in building early Qing Taiwan seems to have

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eventually decided the Taiwan County corruption case in his favor, albeit some 250 years after his death.

Conclusion

Magistrates had to persuade their superiors that their judgments were the product of diligent investigation and thorough inquiry. Frontier magistrates, because of the particular challenges and special administrative status of their counties, could be more trusted and valued by their prefectural and provincial superiors, and could thus exercise more flexibility and independence in their judicial decisions. Administratively, frontier counties were subject to the direct appointment system, encouraging provincial officials to support their magistrates. Direct appointment required that magistrates have positive evaluations and a clean disciplinary record, thus supplying them with established credentials and reducing the need to convince their provincial superiors of their diligence and lack of corruption.

Additionally, frontier magistrates could speak authoritatively about local conditions particular to their area. Frontier counties contained populations that officials saw as less peaceful and more difficult to understand. Provincial officials were less able to make broad assumptions about the behavior of indigenous people or assess claims about local customs, giving magistrates an additional source of evidence to back their arguments. As presumed experts on indigenous peoples, magistrates could explain contradictions or suspicious behavior as cultural differences, allowing them to more leniently interpret the events of a fatal case. Magistrates could even use custom to drop minor charges entirely, either classifying something as a forgivable offense, as with Ms. Wang’s cremation of her husband, or arguing that aboriginal custom was so different
that it could not be used as evidence for a crime, as Magistrate Tan argued to dismiss adultery charges against the two Taiwanese aboriginal men.

Magistrates’ use of local knowledge in cases was effective not only because it was difficult to verify, but also because their superiors were more concerned about the security of frontier counties. The mix of indigenous tribes, unattached single men, and migrants from a variety of linguistic and regional backgrounds appeared to provincial officials to be inherently unstable and difficult to pacify. Concerns about the frontier encouraged provincial officials to allow greater flexibility by magistrates in the interests of maintaining stability and security.

When Mao Wenquan and Yi Zhaoxiong emphasized the importance of stability and the volatility of frontier people in their attempt to defend Zhou Zhongxuan, they were arguing that the Taiwan magistrate should be judged by a different set of priorities: efficacy and stability, rather than honesty and adherence to official standards.

Frontier magistrates’ status did not extend beyond their provincial administrations. The closer ties that gave frontier magistrates greater independence in their counties made them more suspicious to the emperor and outside officials such Chanjibu. Although the Yongzheng emperor acknowledged that the challenges of administering counties on the southern edges of the empire required special accommodations, he worried that provincial authorities would give in to favoritism and bias, allowing corruption to grow unchecked. When he no longer considered governors and governors-general to be trustworthy monitors for prefectural and county officials, the emperor attempted to break up networks by sending special investigators and by shifting provincial heads to different posts.
When deciding cases, magistrates had to weigh the priorities of their superiors, the requirements of the law, and the social context of the incident in their counties, as well as the possible threats of appeals or petitions. Magistrates of frontier counties had a different balance to consider; their superiors allowed them to place more weight on local conditions, and less on strict adherence to the law. Even though the emperor and officials from the capital tried to enforce more consistency, the immediacy of local needs and support from provincial superiors encouraged magistrates to adapt.
Chapter Five

Twisting the Law

The previous chapters have examined how magistrates’ decisions were affected by their superiors’ concerns about judicial bias and corruption, but have not addressed corruption directly. This chapter examines magistrates possible choices and influences when they were offered or demanded payment in criminal cases, drawing on both Qing bribery laws and records of magistrates investigated for bribery.

Much of the previous scholarship on official corruption in the Qing has dealt with elite levels, looking at the trials of provincial heads and imperial advisors whose positions and powers were very different from those of magistrates. Studies of county-level corruption have focused primarily on embezzlement and the collection of customary fees and other unauthorized levies. These works have focused on the financial pressures on local officials and their use of different illicit methods of raising funds, arguing that many acts of “corruption” by magistrates and yamen staff were widely-accepted and tacitly allowed strategies for funding local government.

Magistrates’ corruption in legal cases was treated differently from other forms of local fiscal malfeasance in both law and practice. This chapter discusses bribery and extortion in capital cases: the ways magistrates negotiated over bribes, what case outcomes they were willing to offer, and the strategies they used when attempting to achieve the promised outcomes. The chapter then explores the risks and rewards of different forms of judicial corruption, arguing that

429. Zelin, The Magistrate’s Tael; Reed, Talons and Teeth.
bribery over criminal investigations was less a product of underfunded local government, and more influenced by a magistrate’s position and authority in his yamen and his county as a whole.

Judicial Bribery

My focus in this chapter is on magistrates accepting or demanding payments in exchange for attempting to affect the outcome of legal cases, a situation that I refer to as “judicial bribery.” Corruption, bribery, and extortion are all broad concepts, so this chapter will begin by discussing some of the different ways of defining these terms. Western scholarship on corruption characterizes bribery as private influence on public office. One widely-cited definition is political scientist Joseph Nye’s 1967 description of corruption as “behaviour which deviates from the formal duties of a public role because of private-regarding (personal, close family, private clique) pecuniary or status gains; or violates rules against the exercise of certain types of private-regarding influence.”

James Scott’s *Comparative Political Corruption* expanded on that definition, expanding “private-regarding” to include political and ethnic associations, and specifying that “behavior” could also be “willful failure to act in accordance with the formal duties of a public role.”

According to Scott, large-scale corruption, where individuals or groups try to illegally influence the state’s decision-making, arises when part of the population is shut out of legal participation in governance, but is able to use financial resources to illegally achieve their desired effect. Petty corruption, including local judicial corruption, arises from

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low official salaries, a large gap between officials and the public, and a fragmented bureaucracy dominated by personal cliques.\footnote{Scott, \textit{Comparative Political Corruption}, 67-68.}

American legal scholarship also makes use of this idea of private influence intruding on public work. Judge and legal scholar John Noonan, in his massive history \textit{Bribes}, defined a bribe as “an inducement improperly influencing the performance of a public function meant to be gratuitously exercised.”\footnote{John T. Noonan, \textit{Bribes: The Intellectual History of a Moral Idea} (New York: Macmillan, 1984), xi.} By this standard, a bribe involves some form of payment, whether money, valuables, or favors, made to a public official, to affect his performance of his public duties. A bribe also has to be “improper”: illegal, immoral, or otherwise unacceptable. Judicial bribery, then, is the use of such a payment to influence judicial decisions. This emphasis on “improper” serves to distinguish bribes from gifts, a distinction Noonan called “fundamental,” adding “With bribe and gift set at polar opposites, a spectrum with shades of discrimination exists.”\footnote{Noonan, \textit{Bribes}, xi.}

The Qing Code’s definition of bribery also contained a distinction between private 私 and public 公, but the emphasis of the laws and the categorization of particular behaviors was different. There was no fundamental difference between gifts and bribes, nor between large and petty corruption in Qing law. The criminal act at the center of the Qing bribery statutes was the acceptance of money or other valuables by a government employee in exchange for consideration. This was the first offense listed in the corruption section of the Qing Code, and it also established the punishment scale by which related offenses would be sentenced. These related offenses included both crimes connected to the action of accepting payments, such as

\footnote{433. Scott, \textit{Comparative Political Corruption}, 67-68.}  
\footnote{435. Noonan, \textit{Bribes}, xi.}
making the bribe or acting as a go-between, and those that involved other forms of illegal use of office for personal enrichment, such as embezzlement or pecuniary malfeasance. These acts were also banned under the Qing code, but were sentenced according to a more lenient version of the initial punishment scale used for bribery.

Judicial bribery had the following features: an official or clerk 官吏—in this case a magistrate—accepting property from a person seeking influence 受有事人財, for the magistrate’s private benefit 私罪, in order to change his judgment in a legal matter 枉法. Each of these criteria corresponds to a specific provision in the Qing legal code.

The status of the bribe-taker affected the sentence of the bribe. Ranked officials 有緣人, such as magistrates, were punished according to the full scale of the bribery laws. Bribery offenses by unranked clerks, yamen runners, and other personnel were reduced by one degree on the punishment scale—such offenses were seen as serious, but not as the same betrayal of trust as corruption by ranked officials.436

Qing law banned the receipt of money or goods in exchange for influence under the law prohibiting officials and clerks from accepting payment: guan li shou cai 官吏受財. The word cai generally means wealth, but in the context of the Qing laws on corruption, it refers to anything of value used to influence an official’s actions.437 The same law applied whether he solicited, demanded, or passively received a payment, and also whether it took the form of money or objects (for judicial bribery cases, it was usually money). The statute did not even

437. Shen Zhiqi, Da Qing lü jizhu, 23:1a-2b; Yongzheng huidian, 180:1a, 3032; Park, “Corruption and Its Recompense,” 93.
specify that an agreement be explicit, only that the giver “have an issue” 有事 and be “using valuables to get a request carried out” by the official 以財行求.\footnote{Shen Zhiqi, \textit{Da Qing lü jizhu}, 23:9b.}

The law encompassed such exchanges as silver offered for a favor, gifts given as a thank-you, or a payoff made under threat of a beating or to avoid the use of torture during interrogation. However, the underlying approach to all of these transactions was clear from the section heading covering these laws: not “accepting payment” 受財, but “accepting ill-gotten gains” 受贓.\footnote{Shen Zhiqi, \textit{Da Qing lü jizhu}, 23:1b; \textit{Da Qing lü lì} 大清律例 [The Great Qing Code and statutes] (1740; reprinted with added punctuation by Tian Tao 田濤 and Qin Zheng 鄭秦, Beijing: Falü chubanshe, 1999), 501, 503.} The more common word for bribe, \textit{hui} 賄, is not used in the main text of the corruption laws in the 1646 Shunzhi Code, but appears in Shen Zhiqi’s Kangxi 54 (1715) commentary, and in the statutes to the 1740 Qianlong Code.\footnote{Zhang Yushu 張玉書 et al., \textit{Kangxi zidian} 康熙字典 [Kangxi dictionary] (1716), unpaginated.}

The ban on accepting payments was the primary statute against bribery and many of the laws following it based their sentences on its punishment scale, with reductions in grade based on the relative seriousness of the offense. Judicial bribery was punished according to the full scale, while embezzlement or accepting gifts unconnected to a specific matter were reduced in grade.

The act of “acceptance” was also significant. Those who offered a bribe were sentenced based on a much lower punishment scale. Magistrates could be investigated for paying bribes or accepting them—or both at the same time, as in the case of Zhou Zhongxuan in the previous chapter. Those who acted as intermediaries—assisting in negotiations or physically conveying
the money to the recipient—were sentenced according to the scale for bribery, but reduced by one degree.

Receiving a bribe for one’s private benefit (usually financial) made the crime a “private offense.” The law divided crimes committed by officials into two categories: “public offenses” *gongzui* 公罪 and “private offenses” *sizui* 私罪. Most administrative misconduct penalties were for public offenses, including neglect, delay, and mistaken judgments. Public offenses could be the result of mistakes or misconduct, so long as they were not done for the official’s personal benefit—or if they were, the connection between the action and benefit eluded the investigators. Because they ostensibly offered no private benefit to the official, they were treated as evidence of bad judgment, rather than an evil or corrupt nature, and so were punished much more lightly than private offenses. Most public offenses were punishable with fines, salary suspension, demotion, or cashiering.\(^{441}\) If corporal punishment was called for, the official could convert his beating into a fixed administrative penalty.\(^{442}\)

A private offense was one that demonstrated more than poor administrative skills; it was a criminal act that indicated serious moral failings. A private offense could be an abuse of office committed in one’s professional capacity, such as magistrate accepting bribes, though the category also applied to other serious crimes, such as assault or homicid by a sitting official. Administrative offenses were only considered to be private if investigators concluded that the acts were committed for the official’s personal gain.\(^{443}\) Private offenses were punished according to a stricter scale, resulting in higher fines and more severe demotions, but these

\(^{441}\) *Yongzheng huidian*, 150:22.

\(^{442}\) *Yongzheng huidian*, 150:22.

\(^{443}\) *Yongzheng huidian*, 150:22-23; Park, “Corruption and Its Recompense,” 90.
penalties could usually still be redeemed by paying a fine. One of the few exceptions to the redemption rules were crimes that involved illegally obtained property: bribery, extortion, or embezzlement.

Judicial bribery was also wangfa枉法, a twisting or perverting of the law. The term wangfa has been translated as “perverting the law,” (Jones) “distorting the law,” (Park) “for an unlawful purpose,” (Staunton) “causing injustice in the administration of law” (Ch’ü) and “bending the law” (Hawkes).444 The character wang枉 means to bend, twist, or make crooked, so wangfa is to twist the law, bending it to crooked ends. Shen Zhiqi’s commentary on the statute defined wangfa as:

枉者曲也謂官吏應執法乃自偏曲以徇人故曰枉法
“To twist” is to bend. It refers to officials and official staff who must enforce the law, but instead are biased and bend it to favor someone. Thus it is called “twisting the law.”445

The statute on officials receiving payments explains both the term and the method of calculating the bribe amount thus:

枉法。賄各主。者通算全科。謂受有事人財而曲法處斷者。如受十人財。一時事發。通算作一處。至科其罪。
Bribes that twist the law: for each primary offender, calculate the sentence by the total amount.
This refers to: [any official who] accepts payments from those with an issue [to discuss], and then twists the law in making judgments. If he accepted payments from ten people, and all were revealed at once, calculate the sums together and sentence him based on the total.446

445. Shen Zhiqi, Da Qing lü jizhu, 23:1b.
446. Yongzheng huidian, 181:1a-b. Punctuation from the original.
The use of words like wang枉 (twist), qu曲 (bend), and pian偏 (bias or slant) all convey the image of law as something that should be straight and true, but has been made crooked. “Wangfa” referred to the deliberate misapplication of the law to create an unfair or biased outcome.\(^{447}\) Magistrates were expected to be as unbiased as possible; as we saw in Chapter Three, they were urged to keep an open mind and not let preconceptions affect their judgment. They were also stationed far from their birthplace to avoid any favoritism or prejudice motivated by family or local ties. The Qing court saw bribery as dangerous not only because it revealed an official’s greedy and immoral nature, but also because it distorted the fairness of the law.

The statute on bribery explained wangfa as a twisting in making legal judgments, and Shen Zhiqi argued that the base meaning of the statute rested on an official’s abuse of his power to implement the law.\(^{448}\) The core definition—accepting a payment to bend a legal judgment in someone’s favor—seems to have been close in meaning to the concept that I refer to in this chapter as “judicial bribery.” However, as Shen himself noted, the sentences for other abuses of power involving money were also calculated “according to twisting the law” 以枉法論 for the purpose of assigning a punishment that corresponded to the amount of money taken.\(^{449}\)

In practice, the punishment scale from the statute was applied to many other uses of state power for personal gain. For example, the law on unauthorized collection of fees for state business 因公科斂 used the sentencing scale for twisting the law if the official pocketed the money.\(^{450}\) Bribes or thank-you gifts given to an official to mark special occasions were a tricky

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447. Shen Zhiqi, Da Qing lü jizhu, 23:1a-2b; Ch’ü, Local Government, 224n134.
448. Shen Zhiqi, Da Qing lü jizhu, 23:1a-2a.
449. Shen Zhiqi, Da Qing lü jizhu, 23:1a-1b.
450. Yongzheng huidian, 29b-30a.
a certain amount of gift-giving was expected between officials, but the practice was technically prohibited, and excessive demands for presents from subordinates could result in execution. Magistrates’ counties and departments were the lowest level of territorial administration, so they did not have the same array of subordinates to squeeze money from. Soliciting gifts or loans from county residents was illegal, though the practice was only sentenced under the scale for twisting the law if the demands involved the use of force.\textsuperscript{453}

The cases discussed in this chapter all involve magistrates accepting silver to alter their actions in criminal investigations and judgments. Some were offered payment in exchange for lighter sentences or better treatment during the investigation; others solicited the money and threatened prosecution and interrogation if they were not paid. All of these cases involved “accepting payments to twist the law,” though some of the magistrates were investigated for violations of other corruption statutes as well.

\textit{Punishment of Bribery}

Bribe-taking was a potential source of income for magistrates, but the temptation was offset somewhat by administrative and criminal punishments. In Qing law, taking bribes violated the laws laid out in the Collected Statutes of the Great Qing and in the Qing Code, as well as the administrative regulations of the Six Boards. Both administrative and

\begin{footnotesize}
\begin{enumerate}
\item For examples of the complicated distinctions between gifts, bribes, and fees received by Qing governors, see Park, “Corruption and Its Recompense,” 975-984.
\item For example, Zhejiang Governor Fusong was convicted of extorting thousands of ounces of silver from subordinates to pay for his mother’s visits to the scenic West Lake in Hangzhou. Park, “Corruption in Eighteenth-Century China,” 984.
\item Yongzheng huidian, 182:5a-5b.
\end{enumerate}
\end{footnotesize}
criminal law singled out bribery as a particularly serious crime, with severe punishments attached, and judicial bribery as one of the worst forms.

As noted earlier, bribery was a “private offense.” For a magistrate trying to decide whether to take a bribe, or already under investigation for his judicial sentencing, the distinction between private and public crimes was critical. As we have seen, every verdict and sentence a magistrate made in capital cases had to be reviewed by his superiors, and if they disapproved of his decision, he would be punished. If the judicial commissioner and governor decided he had ruled incorrectly in a case through sloppy or negligent investigation, or a poor understanding of procedure and law, then the magistrate would ordinarily face a fine, a demotion, or maybe the loss of his job, as we saw in the impeachment cases in Chapter 3. If the investigators decided that his ruling was the result of a bribe, however, then he would certainly be fired, and would also face beating, penal servitude, exile, or death, without an opportunity to redeem his punishment with fines.454

Accepting payments was therefore one of the most dangerous administrative offenses a magistrate could be charged with. Embezzlement was theoretically punished on a steeper scale—an official needed to only embezzle 40 liang 兩 (a liang, sometimes translated as “tael,” was one Qing ounce) of silver to earn a death sentence, as opposed to taking 80 ounces in bribes. This difference would seem to make bribery a slightly safer way to gain money. However, sentences of banishment or execution for embezzlement were automatically converted to additional years of penal servitude.455 Bribery convictions were not automatically commuted, so

455. Da Qing lüli huiji bianlan 大清律例彙輯便覽 [Collected guides to the Great Qing Code and substatutes] (1872; reprint, 1903), 49a; Ch’ü, Local Government, 223n133.
magistrates convicted of accepting payments had to hope that they would receive clemency at the
Autumn Assizes.

In the Qing Code and administrative statutes, possible sentences for accepting payments were divided into twelve increments and listed in order of severity. The punishment for an official would be determined by taking the cash value of the bribe, in ounces of silver, and matching it with the corresponding degree on one of two scales. If multiple payments were made in regards to a single matter (e.g., one criminal case), their values were to be added up and the total sum used to determine the correct punishment. Which of the two punishment scales used depended on the intended purpose of the bribe. The heavier of the two was reserved for payments determined to be twisting the law (wangfa).

The punishment scale for magistrates convicted of judicial bribery started at 80 blows from the heavy bamboo for taking a bribe of one ounce of silver. This sentence was slightly less harsh than it might initially seem. As noted in Chapter 2, the number of blows proscribed by the Code was automatically converted into a lower amount, the result of a change in the weight and material used to make the beating rods.456 The punishment scale for accepting payments to twist the law is on the following page, with the actual number of blows in parentheses.

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456. Zhiqi, Da Qing lü jizhu, 1:2b; Yongzheng huidian, 150:3 (2397).
Punishment for Accepting Payments to Twist the Law

Less than 1 ounce of silver: 70 (25) blows with the heavy bamboo  
1-5 ounces: 80 (30) blows  
5-10 ounces: 90 (35) blows  
10-15 ounces: 100 (40) blows  
15-20 ounces: 60 (20) blows and one year of penal servitude  
20-25 ounces: 70 (25) blows and 1.5 years penal servitude  
25-30 ounces: 80 (30) blows and 2 years penal servitude  
30-35 ounces: 90 (35) blows and 2.5 years penal servitude  
35-40 ounces: 100 (40) blows and 3 years penal servitude  
40-45 ounces: 100 (40) blows and exile to 2000 li  
45-50 ounces: 100 (40) blows and exile to 2500 li  
50-55 ounces: 100 (40) blows and exile to 3000 li  
55-80 ounces, or above: strangulation pending review at the Autumn Assizes.

In most circumstances, magistrates were exempt from beatings, even if convicted of a private offense. Bribery and embezzlement convictions were the only times they were likely to face beating without any automatic exemptions or opportunities to substitute a fine. Magistrates were responsible for sentencing and supervising the beatings of any criminals in their own counties, and so had plenty of opportunities to know what the punishment entailed. With the automatic conversion of blows, a magistrate convicted of accepting bribes totaling less than 80 ounces of silver would face at least 20 blows and no more than 40, administered with the “heavy bamboo.” The heavy bamboo was a plank of bamboo, about 65 inches (5 尺, 5 寸) long, 2 inches in diameter at the wide end, 1.5 at the narrow end, and its weight was not to exceed 1 kilogram (2 斤). It was held by the narrow end, and swung so that the wide end struck the target.457 This was not an automatic death sentence, but even 20 blows would have been painful, and 40 would have been potentially fatal.

457. Da Qing lü li (1740), 63.
Bribes paid to magistrates often exceeded twenty ounces of silver, raising the potential punishment to penal servitude, exile, or death. The heaviest punishment bribery could incur was strangulation pending review at the Autumn Assizes, though delayed death sentences rarely resulted in actual execution; the majority were either commuted or suspended for another year.  

Those that were suspended for more than ten years were routinely commuted to military exile.  

A magistrate might not be executed over a bribery conviction, but he was very likely to spend years in custody, itself a life-threatening experience. If ten years passed without execution or clemency, he would then be sent to a remote area. During the Yongzheng and early Qianlong reign periods covered by this study (1722-1740), military exile usually involved banishment to Manchuria, in the northeastern corner of the Qing empire. Exiled officials and other scholars were largely unsupervised once they arrived, and were often able to find work as language teachers and tutors for Manchu bannermen. After the Qing’s northwestern expansion in the mid-eighteenth century, magistrates were more likely to be sent to Xinjiang, where they would remain under supervision and be assigned to help with the administration of the frontier outposts. Magistrates and other officials convicted of corruption could also be banished to Mongolia and made to serve in military postal stations, as happened to Zhou Zhongxuan at the end of his career.

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462. Waley-Cohen, Exile in Mid-Qing China, 87-88.
463. Waley-Cohen, Exile in Mid-Qing China, 60.
The gradations of the punishment scale were such that in county-level judicial bribery cases, only the magistrate faced a death sentence for taking a bribe. Most of his yamen and personal staff were not ranked officials, so their sentences were automatically reduced at least degree. If they served as intermediaries in a bribery case, their punishment was reduced another degree. For purposes of sentence reduction, exile and death were each treated as a single increment, meaning that any sentence of exile would be converted to three years of penal servitude if decreased by one degree. Magistrates’ personal assistants would thus face a maximum sentence of exile for being the primary bribe-taker in a case, or penal servitude for serving as an intermediary.464

Those who offered the bribe were sentenced according to a more lenient scale, with a maximum penalty of three years of penal servitude. The scale was also more lenient in calculating the payments; it determined punishment by half of the aggregate amount of the bribes, and also distinguished between a greater range of payments, from under 1 ounce up to 500 ounces (1000 ounces in total bribes). A bribe of 80 ounces of silver would carry a penalty of strangulation for the magistrate, penal servitude for any intermediaries, and 100 (40) blows for the payor.465

Among corruption offenses, Qing law treated bribery as one of the most severe. Qing officials were willing to acknowledge that some forms of corruption were unavoidable, and could even serve some social or institutional function. They extended no such forgiveness towards bribery, which they condemned as morally reprehensible and a threat to the entire

464. Private secretaries do not seem to have taken this relatively lighter sentence as an encouragement to take the fall for their employers. Exile and penal servitude were hardly pleasant, and the threat of interrogation may have been another disincentive.
country. The language of the bribery laws, terms such as “accepting ill-gotten gains” and “twisting the law,” indicate the Qing state’s view of judicial bribery was as something immoral and corrupt. The administrative language also supports this interpretation. Memorials impeaching magistrates for bribery referred to their subjects using terms like “greedy and inferior magistrate unfit for the post” 貪劣不職之縣令, “county magistrate greedy for bribes” 貪貪之縣令, “greedy and polluted county magistrate” 貪污之縣令 (貪污 as a compound means “corruption”), and others.

**The Process of Bribery**

The corruption statutes provide some insight into the concept of bribery in Qing legal thought, but have little information about the process: how magistrates solicited or heard offers of payment, the considerations they were willing and able to offer, or their possible motivations. The laws do list the possible punishments magistrates faced, but not how they were investigated and prosecuted. Archival case records of corruption investigations can provide some of this information, describing the amounts of money changing hands, the methods of negotiation, the services offered in exchange for bribes, and how these services were delivered. Impeachments and investigation memorials also contain descriptions of the criminal cases that involved the bribes, showing the role that payment played in the initial trial, and of how the supervisory officials detected the bribery. The following three memorials contain examples of magistrates investigated for accepting payments in fatal cases. The records detail the negotiations and amounts of money changing hands, and they also provide a glimpse into the magistrates’ view of their situations.
As sources, corruption investigation records do have certain flaws. Much like fatal case memorials, investigations presented a narrative of events that were streamlined and edited to persuade their audience. The investigators were usually officials at the prefectural or provincial level, and thus they bore some responsibility for the conduct of their subordinate magistrates. Investigation reports could be confessions of one’s own negligence, an attempt to report misconduct while maintaining one’s innocence, or a way of attacking a predecessor for allowing corruption under his administration. Investigation reports also exclude any magistrates whose corruption went undetected, though some cases involve magistrates whose bribery was only investigated after impeachment over other offenses.

Despite these problems, corruption case memorials are a valuable source for understanding when and why magistrates were involved in judicial bribery and how they tried to leverage their authority in exchange for payment. The reports cite the documentation of the original criminal investigation and verdict, showing the kinds of outcomes bribes attempted to achieve. They also contain a thorough accounting of any transmitted funds, including cross-checking the reported amounts in different depositions, and tracing the movement of money from the original payor, through various intermediaries, to the magistrate. Using these reports, we can establish a rough baseline for understanding prices, expectations, and strategies on the part of magistrates and those involved in criminal cases as they negotiated over bribes.

*Magistrate Zhu Wenzhao*

Accepting a bribe to affect a criminal judgment was a lengthy and complicated affair. Whether payment discussion were first initiated by the magistrate or by the accused and their
family, both the amount of the bribe and the favor purchased were negotiated over a period of
days or weeks, a process made longer by the necessary inclusion of multiple messengers and
go-betweens. Even wealthy and influential county residents could not go directly to the yamen
and speak with the magistrate, so the first step in offering a bribe was to contact someone in the
yamen or on the magistrate’s personal staff. After contact was made, negotiations were usually
conducted through multiple clerks or yamen runners, sometimes involving private secretaries or
attendants as well.

The case record of Magistrate Zhu Wenzhao’s 朱文照 conviction for bribery contains a
detailed description of such a negotiation process.466 Zhu seems to have only had one official
post, to Wuhu County 蕪湖縣 in Anhui. The Wuhu Gazetteer noted that he came from Beijing
and held a jiansheng 監生, or licentiate-by-purchase degree, meaning two things: he had not
passed the provincial or capital exams, and he likely came from a wealthy family that could
afford to buy his degree. He was in the sixth year of his term when he was fired for accepting a
bribe.

In 1735, Zhu had been investigating the recent death of a local servant girl, Hehua 荷花.
The girl's master, Chen Maochun 陳懋淳, claimed that she had died of illness, but the coroner's
report showed the marks of severe beating, and Magistrate Zhu had ordered that Maochun and
his wife Ms. Wang be arrested and brought in for questioning. Chen Maochun was wealthy and
well-connected in Wuhu—like Magistrate Zhu, he held a jiansheng degree, as did two of his
maternal uncles. His wealth meant he was able to temporarily delay his wife’s arrest by paying
the arresting runner and jail clerk eight and ten ounces of silver respectively. However, she still

466. Zhao Hong’en 趙弘恩, routine memorial, Ql 1.9.12 [FHA 02-01-03-03324-013].
faced the possibility of a humiliating arrest and questioning, of being tortured during the interrogation process, and of exile or execution for the crime. Although there were legal restrictions on torture, and magistrates’ handbooks urged caution when interrogating women, Ms. Wang was terrified of the possibilities. She attempted suicide, but was caught before she did herself permanent harm. Maochun contacted his maternal uncle and asked him to help arrange matters to protect her from the investigation. Chen Maochun maintained that his primary concern was his wife, and he tried to take the blame for the killing upon himself. He asked his uncle to arrange for the inquest report to be altered, so that Hehua’s death could be ruled an accidental beating and attributed to him, leaving Ms. Wang completely uninvolved.

Before Magistrate Zhu learned of Maochun’s request, several stages of negotiation had to take place. First, the Chen family needed an avenue of access to the magistrate. Although the family was wealthy and educated, Chen Maochun’s uncle did not have any direct relationship with Magistrate Zhu or his staff, but he was acquainted with a yamen clerk, who referred him to the magistrate’s legal secretary, Xu Wanyu 徐萬玉. When Xu learned that Chen Maochun would be willing to offer some sort of gift in exchange for assistance in his wife’s trial, the secretary replied that Magistrate Zhu would require silver. The two then began negotiations, sending each other messages passed through the uncle. Maochun offered two hundred ounces of silver, but Xu responded that he would not even carry a message with such a low offer. The follow-up of four hundred ounces was similarly rejected. It was not until Maochun promised six hundred ounces that the secretary would agree to contact his employer.

Xu Wanyu may have pushed the price higher on his own initiative, hoping to raise his own cut of the profit, but he also seems to have had an accurate sense of the magistrate’s price.
After Xu passed the offer of six hundred ounces to his employer, Magistrate Zhu rejected it as insufficient. Through the secretary, Maochun offered to pay one thousand ounces to have the magistrate alter the inquest and make him the sole suspect. Zhu replied with a counteroffer: he demanded sixteen hundred ounces in exchange for not forcing Chen’s wife to appear in court for questioning, but flatly refused to alter the evidence or charges in the case. He would not promise that Ms. Wang would escape prosecution or punishment, or agree not to report the death to his superiors. He also refused to let Chen Maochun take sole responsibility.

Even though this price was significantly higher than the initial offer, and for far less assistance than requested, Chen Maochun agreed to the terms. He promised to give eight hundred ounces on the sixteenth of the month, and another eight hundred on the twenty-fifth. The payment was delivered to Xu Wanyu, with one of the magistrate’s household servants performing the physical labor of carrying the metal. In addition to the 1600 ounces, Xu received eighty for acting as a go-between. He kept half and split the remainder between the servant and clerk who had carried messages. When the Anhui provincial governor and judicial commissioner later investigated the case, they calculated that Chen Maochun had paid out a total of 1698 ounces of silver in bribes.

For this money, Chen Maochun was allowed to keep his wife away from the the yamen, sparing her the humiliation of appearing in public as a homicide suspect and avoiding any possibility of judicial torture. Instead of interrogating her, Magistrate Zhu had Xu Wanyu fabricate a confession, using that as the basis for the case decision.\footnote{467 The record does not say much about the content of the fabricated confession, only that Ms. Wang was not questioned and did not provide the words herself.} Despite his stated refusal to alter the verdict, Zhu also recommended a lighter sentence for Ms. Wang, convicting her of
accidentally striking a hired servant, which carried a sentence of three years of penal servitude.\textsuperscript{468} Intentionally beating a servant to death, the charge that Ms. Wang was initially suspected of, carried the penalty of strangulation after the Assizes.\textsuperscript{469}

When Magistrate Zhu submitted his verdict, the prefect overturned it. Although the reasons for reversing the decision were not recorded, inconsistencies in Ms. Wang’s “confession” was likely a factor—when Zhu resubmitted the decision, he had clerks rewrite the document. This time, the magistrate also had Chen Maochun send an empty sedan chair to the yamen, so that observers would believe that Ms. Wang had been interrogated and provided the material for the second confession. Neither tactic succeeded in convincing the prefect; the verdict was overturned a second time, and Zhu was impeached for his handling of the case.

The provincial governor convicted Zhu Wenzhao of taking a bribe of more than 80 ounces to twist the law, which ordinarily carried a sentence of strangulation with delay after the Assizes. However, Zhu qualified for clemency under the recently declared amnesty to mark the beginning of the new Qianlong emperor’s reign. Instead he was fired and permanently banned from holding office. The following year, when an audit of the county’s finances turned up deficits, Zhu was exiled. The amnesty applied only in part to Ms. Wang, whose sentence of strangulation was reduced to exile. Those involved in the bribery negotiations were also pardoned, though Chen Maochun and his uncles were stripped of their degrees.

Zhu Wenzhao’s impeachment and conviction came about through the scrutiny of the obligatory case review system. A comparison of Magistrate Zhu’s case with those in Chapter

\textsuperscript{468} As discussed in Chapters 2 and 3, status differences between the killer and victim could lessen the penalty for homicide. If the victim was a servant in one’s household, unintentional homicide through striking was reduced from strangulation to penal servitude, and intentional homicide was reduced to strangulation with delay.

\textsuperscript{469} Shen Zhiqi, \textit{Da Qing lü jizhu}, 20:20a.
Three provides some context for his overturned verdict and subsequent impeachment. The fabricated confession was likely unconvincing, thus prompting Zhu to have it rewritten and the empty sedan chair sent. However, the clerks and secretary who wrote the two confessions were the same personnel who ordinarily copied witness testimony and wrote case decisions, so they should have been able to convincingly imitate the form. As we saw in Chapter Three, magistrates’ superiors often focused on inconsistencies in confessions and depositions when overturning cases, as testimony was one of the few forms of evidence available for review. Higher officials were willing to accept newly edited confessions on resubmission, so Zhu would have reason to believe that rewriting Ms. Wang’s confession might resolve the problem, though his actions with the empty sedan chair suggest some anxiety over the matter.

Based on the other overturned cases, it seems likely that the autopsy of Hehua’s corpse presented another problem with Zhu Wenzhao’s recommended verdict. The preliminary inquest report that showed the marks of severe beating on the servant had set the homicide investigation in motion in the first place, and as the case of Song Yi killing his father’s concubine demonstrated, evidence of trauma on the “fatal points” of the corpse was treated as a strong indicator of homicidal intent. The corruption investigation found no sign that the inquest report had been altered or falsified, so the record of Hehua’s fatal injuries may have supplied more reason to overturn the verdict.

Additionally, fatal case judgments that avoided any capital sentence were often subject to closer scrutiny and more likely to be overturned, so Ms. Wang’s sentence of penal servitude for unintentional homicide of a household servant may also have convinced the prefect to overturn the case. Magistrate Zhu’s decision to convict Ms. Wang of a lesser crime would seem to conflict
with his insistence that he would not alter the verdict, but it is possible that he had intended to sentence Ms. Wang to accidental homicide before the bribe was offered. The lighter sentence was consistent with the tendency of magistrates to argue for sympathetic interpretations of the suspect’s motives and actions. Magistrate Zhu may have already been inclined to argue for a verdict of unintentional homicide. Some magistrates did apparently accept bribes that aligned with their original decisions, as Magistrate Bao Ren in the following case claimed to have done. A belief in the accuracy of his verdict would also explain why Zhu did not alter the inquest report before submitting his decision.

Magistrate Bao Ren

Magistrate Bao Ren was already under scrutiny when he arrived in Jing County 涇縣, Anhui in 1731. The magistrate, a northerner with only a purchased degree, had previously been impeached and fired from his first post as a departmental magistrate over a public offense, but the provincial governor of Anhui asked that he be kept in the province to help fill the dearth of qualified officials. When Jing County was in need of a magistrate, Bao Ren was appointed in a temporary acting capacity—a chance to make up for his earlier mistakes. He remained there for over two years, but was not able to rehabilitate his career, and his conviction for bribery in a complicated homicide case resulted in his permanent expulsion from the civil service.

The magistrate first heard of the case late in 1733, when he was informed that a local man had died from an illness and was to be privately buried. The magistrate found the information

470. Zhao Hong’en 趙弘恩, routine memorial, Yz 13.11.13 [FHA 02-01-07-13497-001].
suspect, and had the body autopsied, at which point he found signs on the corpse of a violent struggle. He interrogated the father of the deceased, who said that his son had suffered an episode of violent insanity and had to be restrained by a neighbor, Ye Ersheng 葉二昇. In the process of restraining him, the son was accidentally killed. Upon hearing this story, the magistrate sent runners out to apprehend Ye Ersheng and hold him for questioning. He was absent from his home, but the runners eventually discovered him hiding at the home of his uncle. The magistrate repeatedly questioned the father and wife of the deceased, both of whom offered the same explanation. He also interrogated Ye Ersheng, who would only admit to accidentally killing his neighbor while trying to restrain him during his fit, and refused to change his story even under torture.

Soon after his arrest, Ersheng took advantage of his family connections in the yamen, where two maternal cousins were employed as clerks. He contacted one and offered him 8 ounces of silver to contact one of the magistrate’s personal staff. Bao Ren did not have any legal secretary in his employ at the time, but the clerks were able to open negotiations with a low level personal attendant, gate porter Chen Si 陳四. After contact was made, the two cousins continued to act as intermediaries in exchange for twenty ounces of silver each. Communicating through his cousins, Ersheng and the magistrate’s porter negotiated over the bribe amount. Chen Si requested 600 ounces of silver, a demand Ersheng was unable to meet, and the two settled on 400 ounces. Borrowing from his uncles, Ersheng was able to raise the 400 ounces, but the metal was of such low purity that it was only the equivalent of 344 ounces. The porter was willing

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471. The impeachment documents in this case sometimes list the various sums that changed hands by the overall weight of the adulterated metal, and sometimes by the equivalent value in “actual silver” 實銀. Here I consistently use the amounts of “actual silver” provided by the investigators.
to accept this amount, even after he had to deduct another 20 ounces to buy the silence of another household member, a registration attendant who had overheard the negotiations.

Magistrate Bao Ren continued investigating the case. Apparently unaware of the bribery negotiations, he subjected Ye Ersheng to interrogation under torture soon after the silver had been paid. Ersheng and his cousin, understandably upset at this turn of events, confronted Chen Si, who reassured them that the magistrate would provide a lenient sentence. It was only at this point that the magistrate supposedly heard the bribe offer, asking him to cease interrogation and sentence Ersheng to accidental homicide in exchange for 215 ounces of silver. Magistrate Bao accepted the payment, and wrote a decision concluding that Ye Ersheng had not deliberately inflicted any violence on the deceased. The magistrate argued that restraining someone during a fit of insanity could not be analogized to homicide in an affray, because of the lack of harmful intent; instead he sentenced Ersheng by analogy to accidental homicide, a verdict that would allow him to redeem his punishment by paying a fine to the kin of the deceased.

Before the magistrate submitted his verdict to the prefect for review, Chen Si obtained a draft copy of the statement and gave it to Ye Ersheng, who was initially pleased to hear that he would evade capital punishment, and asked if he could soon be released from his imprisonment in the yamen. After over two months in jail, he was restless and eager to leave, and asked his cousin if he could be released in time to celebrate the lunar new year holiday with his family. His cousin refused to convey the request, saying that Ersheng could not be freed until the provincial officials had confirmed the magistrate’s sentence. He also noted that the prisoner had first gone into hiding after the death, and there was no guarantee that he would return if released. The

472. It is unclear whether Ersheng was able to read this draft himself or had to rely on his yamen clerk cousins.
argument between the two came to head when Ersheng angrily demanded his bribe money back. The clerk refused, but Magistrate Bao heard about the quarrel and began to worry that Ersheng would expose the bribe. He decided to return the bribe, and ordered Chen Si to give the money to the Ye household. Chen Si returned only the magistrate’s share of the bribe, 215 ounces.

When Ye Ersheng heard that his uncles had received the partial refund, he demanded the return of the entire sum, but his cousin conveyed Chen Si’s explanation that the remaining money had already been spent. The layers of intermediaries in the bribery negotiations worked against the best interests of both the magistrate and the suspect in this case. Ye Ersheng, still imprisoned, had no way of asking Bao Ren about his case, and grew increasingly worried that either the magistrate had mislead him about the lenient sentence or that the verdict would be overturned. His concerns motivated him to demand the return of his bribe, and when only part of the money was forthcoming, Ersheng was further convinced that he would be cheated. Magistrate Bao believed that the entire sum had been given back and the dispute was resolved, so he took no further actions to placate the angry prisoner.

Nine days after the partial refund, Magistrate Bao received word that his verdict had been overturned by the prefect. Although the steadfast refusal of the accused—even under torture—to confess to a more serious charge was often a convincing argument, the prefect nonetheless stated that the case did not seem to have been thoroughly investigated. He may have been suspicious of the use of analogy—although sentencing by analogy was permitted, magistrates’ superiors tended to be very critical of any argument based more on legal interpretation than on testimony and physical evidence. The prefect may also have overturned the decision for poor or unprofessional composition; the legal secretary Bao Ren had recently hired had not yet arrived in
the county, and the magistrate did not have any other experts who could write documents at the
time of the case.

Soon after Bao Ren learned of the overturned decision, he was removed from office over
another public offense. Having already been impeached previously, the magistrate had spent his
time in Jing County well aware of the insecurity of his position, and he later told investigators
that he had been anxious at the prospect of losing his second chance. His first term had lasted
five years, and although he was removed from the post, the governor had asked to retain him,
implying that the magistrate was at least preferable to a completely new appointee. This time,
Bao Ren did not receive another chance to redeem himself.

The new acting magistrate, Ruan Cai 阮彩, began the process of auditing his
predecessor’s accounts and clearing his unresolved cases, including Ye Ersheng’s. The new
magistrate began investigating the case, and interrogated the father of the deceased once again.
This time, the father recanted all of his previous testimony, now claiming that Ersheng had killed
his son in a fight, not while restraining him during a fit, and then had offered him 100 ounces of
silver to support the story about protecting the father when his son attacked in an outburst of
insanity.

The new magistrate then questioned Ye Ersheng, who agreed with the new testimony and
explained that he had discovered that the deceased had trespassed on his land and cut his bamboo
without permission. When he confronted his neighbor over the theft, the resulting fight had
grown violent, and Ersheng had accidentally killed the other man. Ersheng said that he
eventually persuaded the man’s father to corroborate his story, but only after he paid the
promised 100 ounces of silver. He also told the new magistrate about paying and then regaining
the bribe money, stating that he was still angry with Bao Ren for imprisoning him and using torture in interrogation. Both men insisted that their new story was true, so Magistrate Ruan sentenced the accused to strangulation with delay for homicide in the course of an affray.

Ye Ersheng, now facing strangulation with delay for killing his neighbor, had no reason not to admit to the bribe. Under Qing law, he would only be sentenced on the basis of his most severe offense in the case. Bribe-paying was a lesser crime than unintentional homicide, so Ersheng would face no additional punishment for admitting to the bribe, and doing so would allow him a measure of retribution against the man who had ordered his torture. The relative consequences of revealing the payment also suggest an explanation for why Ersheng was willing to demand a refund. When he believed that the magistrate was working towards his freedom, he had reason to stay quiet about the payment, despite his anger over being tortured. Once he became convinced that he would not escape the death penalty, he could demand the return of his bribe and threaten the magistrate with exposure. The heavy punishment for accepting a judicial bribe and the sentencing procedures that restricted further penalties offered Ersheng negotiating leverage with the magistrate, even when imprisoned and facing execution. Even the rumor of exposure was enough to convince Magistrate Bao Ren to return the money.

Bao also had to worry about incriminating testimony from his subordinates and attendants; Qing bribery law encouraged yamen and personal staff to implicate the magistrate. As unranked personnel, their sentence was automatically reduced by a grade in any bribery case, removing the possibility of a death sentence if they were convicted. If the magistrate was part of the bribery transaction, then the yamen staff would be convicted as intermediaries rather than as primary offenders, reducing their penalty by another degree to three years of penal servitude.
Unranked personnel also did not benefit from ranked officials’ protection from harsh interrogation, so they could be tortured as part of a bribery investigation. Protecting the magistrate could result in torture, while implicating him brought a reduction in one’s own sentence. The trade-off would probably have tempted even loyal attendants. Yamen staff, who had little or no previous connection with the outsider magistrates, would have little reason to protect their supervisor.

Magistrate Ruan reported both his verdict and the bribery allegations to his superiors, who ordered the magistrate and prefect to investigate. Under questioning, four members of the yamen staff and Bao Ren’s household confessed to taking bribes: Ye Ersheng’s two cousins, Chen Si, and the registration attendant Chen Si had paid for his silence. Of the four, Chen Si provided the most details about the transactions. He said that he had taken Ye Ersheng’s bribe because he believed that the man would be sentenced to accidental homicide regardless, and saw an opportunity to profit. After Ersheng was tortured, the porter worried that he would be exposed, and delivered the larger portion of the bribe to the magistrate after all.

In his own confession, Bao Ren maintained that he had already decided the verdict before he received the bribe. He defended his judgment, pointing out that Ersheng had refused to change his story under torture, and that the story had been corroborated by the father and widow of the deceased. With no evidence of violent intent in any of the matching stories, he did not believe that he could analogize the incident to killing in an affray, and he worried that doing so would result in his being impeached again. According to the magistrate, he accepted the bribe due to a momentary lapse of judgment, and returned the money once his worries about impeachment reasserted themselves. He acknowledged that he should not have taken the money,
and that the bribe offer itself should have spurred him to further investigate whether Ersheng had
paid off the witnesses. The magistrate also incorporated filial morality into his explanation,
stating that he could not believe that a father and a widow would accept money from the killer to
cover up their loved-one’s death. The magistrate presented himself as naive and not particularly
bright, rather than irredeemably corrupt.

It is impossible to know whether Bao Ren had originally intended to sentence Ye Ersheng
to accidental homicide. Doing so would have been consistent with other magistrates’ sentencing
tendencies, and the evidence that Bao Ren cited—the accused’s refusal to change his story under
repeated interrogation, the corroborating stories of the witnesses—were the arguments
magistrates used to convince their superiors in overturned cases. Bao Ren did not have a legal
secretary at the time—the investigators established that his newly-hired secretary had not arrived
until some days after the decision was submitted—so the magistrate’s ability to articulate the
legal and moral reasoning behind his verdict suggests that he had given the matter some thought.

From the perspective of the investigators, Bao Ren’s internal thought process was less
important than the external events: he had accepted payment from someone seeking
consideration in a fatal case. Had he kept the money, he would have been sentenced to
strangulation with delay, but because he returned it before he came under investigation, his
punishment was reduced two degrees, to 100 blows and three years of penal servitude. Chen Si,
who had not returned any of his silver, received the same sentence—although his crimes were
more serious, his unranked status as a member of the magistrate’s household reduced his
punishment by two degrees.473 The two yamen clerks were sentenced to penal servitude as well,

473. Yongzheng huidian, 181:20a. The Qing Code of Qianlong 5 (1740) removed this reduction for offenses
involving accepting payment for consideration in a matter.
and the attendant received a sentence of 90 blows. Ye Ersheng, already sentenced to strangulation, faced no further punishment. Everyone involved received clemency due to the general amnesty declared that year, but Bao Ren remained permanently banned from official service.

**Negotiations**

The negotiation process described in the two examples above was fairly typical of bribery cases. The accused’s family would first have to gain the ear of someone in the yamen, usually through a pre-existing social connection. County clerks and runners were usually native residents of their counties, unlike magistrates and their secretaries, so they often had blood or social ties with the families of the accused, such as Ersheng’s yamen clerk cousins, or Chen Maochun’s uncle’s connections. Clerks did not necessarily have a close enough relationship to the magistrate on their own, but if they could not put the family in touch with the magistrate himself, they could still provide introductions to someone else who did have a direct line, such as a personal attendant or private secretary. The family might also contact the jail warden, to ensure that the accused was not being mistreated, and because the warden held a supervisory position inside the yamen and dealt directly with the magistrate. If they did not have social ties to anyone in the yamen, they could sometimes hire the services of a *songshi* or “litigation master,” illegal lawyers who would give legal advice and help write plaints for a fee.

The plethora of go-betweens in bribery transactions brought along many disadvantages. Each intermediary required a payment of his own, either raising the cost for the family or cutting

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into the magistrate’s profits. They also increased the risk of detection by the officials who reviewed the magistrate’s decisions: the prefect, the judicial commissioner, and the governor. Each runner and clerk who carried messages and money was another potential informer. Although the Qing did not have a plea bargaining system where lower-level employees under investigation could inform on their superiors in exchange for a lighter sentence, the Qing laws on bribery contained strong incentives for clerks and runners to implicate their superiors, making each intermediary a potential risk to the magistrate. Passing messages through more people also increased the chance that the negotiations would be overheard, cutting into bribe profits—as happened in Bao Ren’s case—or opening the payors to further demands, as in Ru Lin’s case below. Spreading word of the bribes could also reach the family of the victim and motivate them to petition for an investigation.

The use of intermediaries did have some advantages for the magistrate. Families without resources or connections would be less likely to take up the magistrate’s time with offers he was unwilling to entertain—for Zhu Wenzhao, the bar seems to have been set quite high—and some of the preliminary negotiations were handled for him. This convenience would likely not have been enough to offset the risks, but the magistrate’s position came with certain constraints that made direct negotiations close to impossible. With the exception of officials and others holding provincial or metropolitan degrees, the yamen was closed off to non-personnel. Unless summoned for official business, most people, even wealthy licentiates like Chen Maochun and his uncle could not approach the magistrate directly. By the time he became aware of a possible bribe, the offer had to pass through the hands of someone allowed to travel in and out of the

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yamen, likely a clerk or runner. These lower-level functionaries rarely had much direct contact with the magistrate themselves, and thus would have to contact one of his personal attendants or advisors.

In addition to the above restrictions there were other barriers that kept the magistrate removed from county residents. Because of the law of avoidance that prohibited officials from serving in their home provinces, the magistrate arrived in his new post as a stranger. Without any social connections linking him to the defendants, it would be harder for either side to know whether it was safe to negotiate an illegal transaction. Even if they were willing, direct conversation could still be difficult—many magistrates came from far enough away that they were unable to understand the spoken language of their new county. Yamen runners and clerks, who usually worked in or near their birthplace, had social connections on both sides of the yamen gate, and had more regular practice communicating with magistrates and their personal staff. A magistrate who could understand the local language and was willing to open negotiations himself would still need to send emissaries, unless he wanted to draw the immediate attention of the county by visiting the defendant’s family in person. Magistrate Wang Guoxi, discussed later in this chapter, was willing to travel in an unmarked sedan chair to engage in illegal activity—visiting a prostitute on a boat—but although he was willing to engage in this reckless behavior, he nonetheless conducted his demands for judicial bribes through an intermediary.

**Magistrate Ru Lin**

In a 1729 bribery case in Gong County 鞏 in Henan, the two magistrates involved—Ru Lin 茹林 and Zuo Jiru 左繼儒—did not rely on narratives designed to convince
provincial officials that their judgments were accurate and honest. Instead, they attempted to avoid thorough scrutiny by placating the county residents involved and gaining the cooperation of the prefect through unofficial channels. The strategy was initially successful, but procedural requirements and deadlines of fatal cases made such cases difficult to hide without higher level cooperation as well, and their provincial supervisors were not amenable.

Like Magistrate Zhu, Ru Lin came from Beijing, but he did not hold only a purchased degree. He had passed both the provincial and metropolitan exams, earning him a jinshi degree. Gong was his first (and only) county-level post—close enough to his home province that he likely faced less of a language barrier than many other magistrates.

The case that ended Ru Lin’s career began before he even took office. Until he arrived in March or April of 1728, the county had been temporarily administered by Zuo Jiru, serving in Dengfeng County 登封縣, Gong County’s neighbor to the south. Magistrate Zuo had left Ru Lin an unfinished investigation of a young woman’s suicide. The deceased, surnamed Wang, had allegedly been the victim of sexual assault from a neighbor, and had hanged herself in front of his family’s doorway on March 4, 1728. Her suicide had been reported by Yao Guangxian 姚光先. Ms. Wang had been raised in the Yao household as a foster daughter and future daughter-in-law, the intended wife of Guangxian’s youngest son. Now Yao Guangxian was accusing Han Yu 韓玉, his former tenant, of causing her suicide. Sexual assault that resulted in

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477. Yang Baodong 杨保东 et al., comp., *Gong xian zhi 鞏縣志* [Gong county gazetteer] (1937; Beijing: Erudition 愛如生, 2009), 716; Zhu Baozhong, *Ming Qing jinshi timing beilu suoyin*, 1504. While Ru Lin’s unusual name and origin in Beijing suggest possible Manchu origins, the Gong County gazetteer and jinshi index list him only as a man of Wanping County. If he were a member of the Manchu or Han banners, his gazetteer listing would have given that, rather than his county.
478. Tian Wenjing 田文鏡, routine memorial, Yz 7.7.17 [FHA 02-01-02-2284-004].
479. Dates in this case have been converted from reign year and lunar month to their equivalent in the Gregorian calendar.
the victim’s suicide was a capital crime, so Magistrate Ru had to take Yao’s accusation seriously.  

Magistrate Zuo Jiru had investigated the attack several weeks earlier. Before Ms. Wang died, Yao Guangxian had already accused Han Yu of attempted rape. Guangxian claimed that Han Yu had entered the Yao family’s private quarters on February 26, while he and his wife were out of the house and sexually assaulted his son’s fiancée. As the young woman was resisting the assault, Yao Guangxian's wife returned home and intervened to protect her foster daughter. She first shouted for help, then cornered Han Yu and began berating him while she waited for others to arrive. Instead of assistance, the first person to enter the house was Han Yu's cousin Han Dian, who lived nearby. Han Dian helped his cousin escape before anyone else could arrive. The next day, Yao Guangxian said, he came to Dengfeng County to press charges.

The records of this trial and decision are lost, but according to the record of Ru Lin’s impeachment, Magistrate Zuo investigated the case and decided that since Yao’s wife had interrupted the assault before penetration had occurred, the rape had not been consummated and thus was not a capital crime. Magistrate Zuo sentenced Han Yu to time in the canque, and his cousin to a beating. Magistrate Zuo also had Yao Guangxian publicly announce that Han Yu had been punished and would no longer be allowed inside the Yao's doorway. Evicted from his room, Han Yu moved in with his cousin.

This punishment was lighter than the statutes called for. The sentence for rape resulting in penetration was strangulation after the Assizes. Unconsummated rape was reduced by one

480. Shen Zhiqi, Da Qing lü jizhu, 19:28b-29a; Sommer, Sex, Law, and Society, 70.
481. For the importance of penetration in defining the crime of rape in the Qing, see Sommer, Sex, Law, and Society, 77-78.
degree, to 100 blows with the bamboo rod and exile.\textsuperscript{482} The memorial does not say how many blows Han Yu received, but he was not exiled. There is no record of Magistrate Zuo accepting a bribe to mete out a lower punishment in this case, though it is certainly possible. By convicting Han Yu of unsuccessful rape, Magistrate Zuo Jiru removed the possibility of capital punishment, and thus his verdict was less likely to be subject to further scrutiny. Unlike Magistrate Zhou Zhongxuan, Zuo Jiru did not inform his superiors of the decision or submit the sentence for review.

Six days after the Han cousins were punished, Yao Guangxian went back to Dengfeng to report that Ms. Wang had killed herself. This story would later become more complicated during the corruption investigation the following year, when Guangxian would tell the prefect and judicial commissioner that Ms. Wang had not actually committed suicide; instead, he and his eldest son had hanged her against her will. The only explanation he would admit to was a desire to subject Han Yu to a harsher sentence, but Guangxian may also have seen this as an opportunity to dispose of the young woman who, having been sexually assaulted, was no longer a suitable daughter-in-law. By staging a suicide, Yao Guangxian could prevent the unsuitable marriage, dispose of the now unmarriageable foster daughter, punish Han Yu, and possibly receive some compensation as well.

With Ms. Wang’s death, the incident moved from being a crime of illicit sex to a fatal case, giving the new magistrate less flexibility in sentencing. He would have to report the death to his superiors and investigate the circumstances of the suicide. Magistrate Zuo began the

\textsuperscript{482} Shen Zhiqi, \textit{Da Qing lü jizhu}, 25:1a.
investigation and recorded the preliminary inquest results, but then passed the task to the newly-arrived Ru Lin.

According to the later corruption report, Magistrate Ru was investigating the suicide in April and May of 1728 when the Han family bribed him to protect Han Yu and Han Dian. Han Yu's brother and another cousin approached county clerk Li Yu  李玉 three times, giving him 12 silver ounces on each visit, until he promised to approach the county jail warden  典史 and magistrate on their behalf. At their fourth meeting, on May 19, they gave Li Yu 100 ounces to pass to Jail Warden Li Zhang  李璋 and Ru Lin. Li Yu gave the money to Li Zhang, who kept twenty of the ounces for himself and passed the remaining eighty to the magistrate. After receiving the money, Magistrate Ru summoned Yao Guangxian and his two sons to court. He gave them twenty ounces of silver and urged them to use it to find a new wife for the younger son and drop their complaint. This solution seems to have placated Guangxian, who did not press the matter further. Ru Lin reported the case as resolved to his superiors, ruling the Han cousins not culpable in the suicide. He did not submit any witness testimony or further investigation results.

The initial suicide had been reported to the prefect by Zuo Jiru, and by the time Ru Lin accepted the bribe, closed the case, and notified the prefect, more than three months had passed since the death and he had missed the June 1 deadline. Governor-General Tian Wenjing  田文鏡 reprimanded the magistrate for his lateness and ordered Ru Lin’s supervisor in Henan prefecture (now Luoyang), to investigate the delay. Tian’s reaction not inherently serious—the provincial heads were required to officially reprimand and open investigation into any official who missed a
deadline in a fatal case.\textsuperscript{483} The usual result was a ruling that the delay was less than a month, and thus the overdue officials deserved forgiveness. Ru Lin was still within the monthlong grace period, and also qualified for the extension granted when a new magistrate took over a case. The late report did mean that the magistrate’s decision would be subject to additional scrutiny; although lateness was widely expected and probably unavoidable when counties changed magistrates, there was still a mandatory investigation when the time limit was exceeded in a homicide case.

Because of the delay, Ru Lin was summoned to the prefectural seat for questioning. The prefect also had Zuo Jiru assist him in examining the overdue case. In the course of his inquiry, Magistrate Zuo questioned Yao Guangxian, who claimed that Ru Lin had been bribed to cover up the crime. At that time, neither Zuo Jiru nor Prefect Zheng Han investigated any further, nor did Magistrate Zuo include Yao Guangxian’s accusation in their report to the governor-general. Had Magistrate Zuo reported the bribery accusations, Ru Lin would likely have been investigated right away. Instead, he was merely fined for two public offenses: the delay and failing to properly investigate the case. He was also reprimanded and ordered to reinvestigate and submit a new report.

Magistrate Zuo’s silence at the time protected Ru Lin, but put Zuo himself at risk, eventually leading to his impeachment. The results of the investigation of Magistrate Zuo seem to be lost, but the Dengfeng county gazetteer has his term of service in the county ending in 1729, the same year that Ru Lin was impeached for corruption, and only a year after Zuo arrived in

\textsuperscript{483} Kun Gang 崑岡 et. al. eds. \textit{Qinding Da Qing huidian} 欽定大清會典 [Imperially established collected statutes of the Great Qing] (1899; reprint, Beijing: Zhonghua Shuju, 1991), 56:5a-b.
Dengfeng. His biography in the gazetteer for his home county of Laiyang (Shandong province) lists no other positions for him, so it is likely that the investigation ended Zuo’s career. It is possible that he too had received bribes from the Han family—he did sentence Han Yu to a lesser crime than the initial accusation called for—and that by covering up for the other magistrate, he was also covering his own tracks. He could also have received a bribe from Ru Lin himself, when the latter traveled to the prefectural seat. However, the preliminary corruption investigation, focused on Ru Lin, did not mention any bribe payments made to Zuo Jiru, and his reasons are unknown. Even without having received a bribe, Magistrate Zuo’s verdict in the initial assault case was irregular, and protecting Ru Lin helped avoid scrutiny of his own conduct, at least temporarily. Zuo may also have been reluctant to impeach a colleague, especially one from a similar background—both had metropolitan jinshi degrees, marking them as elites even among other magistrates, and both came from northeastern China.

While Ru Lin was at the prefectural seat reporting on the investigation, his uncle Ru Gengwen learned of the bribes from secretary Li Yu, the original go-between for the negotiations, and then contacted Han Yu and Han Dian. Claiming to represent his nephew the magistrate, Ru Gengwen demanded a further 124 ounces of silver. As Han Yu had not yet been officially exonerated, the Hans decided to pay and arranged to send the money through a cousin. In the midst of these arrangements, Ru Gengwen learned that his nephew had been fined over the delay, and as soon as he received his own bribe money, he immediately sent sixty ounces to Ru Lin in the prefectural seat. In the case of Bao Ren, the need to conduct all bribery transactions through multiple layers of intermediaries increased the risk of exposure and cut into the profits.

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484. Lu Ji’e 陸繼萼 et al., comp., Dengfeng xian zhi 登封縣志 [Dengfeng county gazetteer] (1787; Beijing: Erudition 愛如生, 2009), 401.
for the magistrate and his attendant. For Ru Lin, the intermediaries added additional cost for the bribe-payers. The involvement of his uncle did result in Ru Lin gaining additional income, but the extra demands were not within his control, and could have increased his risk of exposure.

Having paid his fine, Ru Lin returned to the county and re-opened the investigation. He then heard that Yao Guangxian and his son had apparently forced Ms. Wang to hang herself so that they could falsely incriminate the Hans. This new information could have been fabricated by Ru Lin in an attempt to continue to protect the Hans, and deflect attention away from his own involvement in the case. Shifting culpability to another person was another strategy magistrates made use of, especially when the new target was not in a position to contest the charges. Yao Guangxian conveniently died in county custody not long after, so he was unable to retract his testimony. However, his eldest son had given a similar confession, first to Ru Lin and later to outside investigators, and a neighbor reported that he had seen the hanging. Ru Lin himself later confessed to accepting bribes from the Hans, but not to fabricating evidence against Yao.

According to his own later statement, Ru Lin delegated the rest of the case report—writing up confessions, reporting his conclusions, and recommending sentences—to his personal legal secretary, Shen Danchu 沈旦初. It was common for magistrates to have their secretaries do this work, but unusual for a magistrate to say that the judgment under scrutiny was handled entirely by one. Doing so would not make the magistrate less likely to be convicted or reduce his sentence; as the highest official in the county, he would be designated the primary offender in any bribery case he was involved in, even if others initiated the request and wrote the

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485. There is no way to determine exactly which parts of the each investigation and judgment were handled by Ru Lin and which by Shen Danchu. In this case, Ru Lin claimed to have handled the first investigation and report himself, and only involved Shen Danchu in the second. He could have been lying to protect his assistant, but he was willing to implicate Shen Danchu in other matters.
documents. Naming his secretary as the man who actually handled the second investigation of Ms. Wang’s death would have made Ru Lin look weak and ineffective without reducing his guilt.

Shen Danchu’s involvement continued when Magistrate Ru sent the advisor to the prefectural seat to deliver the case report. Shen had another mission as well: to privately approach the prefect's legal secretary, Shen Sijing 沈思敬, and enlist his aid in dealing with the case and other county matters. Although the report does not say whether the two Shens were from the same family, and shared Chinese surnames are often not an indicator of family ties, it seems likely that these two were related. Legal expertise was often a family business, and shared kinship would explain why Ru Lin believed that his secretary could influence the prefect’s. That the magistrate sent his personal advisor, not a county employee, to meet with the prefect’s personal advisor, suggests an attempt to avoid further official scrutiny, and the later investigators viewed these negotiations as an indication of corruption.

The prefect received Ru Lin and Shen Danchu's verdict, approved it, and sent it to the office of Henan Judicial Commissioner Chen Shichui 陈世僔, in the provincial seat in Kaifeng. Chen Shichui decided that the case had still not been investigated and judged to his standards, and secretly ordered Kaifeng Prefect Deng Zichao to conduct his own investigation of the case. Deng was unable to question either Han Yu or Yao Guangxian, as both had died while in county custody, but he uncovered a copy of Yao Guangxian's earlier allegations of bribery against Ru Lin, given to Magistrate Zuo Jiru when he was investigating the delay.

Prefect Deng reported his discovery to the judicial commissioner, who then investigated further. The two interrogated the county clerk and the Han cousin who had facilitated
negotiations, both of whom confessed to acting as go-betweens. Ru Lin’s uncle and another Han
cousin also confessed to their involvement in the case. The investigators informed
Governor-general Tian Wenjing that Ru Lin had accepted bribes in the case of Han Yu and
Wang Shi. The record does not provide a detailed timeline of the prefect and commissioner’s
investigations, but they reached their conclusions roughly a year after Ru Lin’s first verdict was
overturned.

Governor-general Tian, who was well-known for his unforgiving attitude toward any
corruption among his subordinates, impeached Ru Lin on August 27 of 1729. Tian
recommended that Ru Lin and Zuo Jiru both be tried for private crimes: Ru for accepting bribes,
and Zuo for knowingly covering up his colleague’s actions and neglecting the preliminary
investigation. Prefect Zhang had also ignored signs of Ru Lin’s corruption, so Tian
recommended he be impeached and investigated as well, but the prefect presented a further
complication. Tian Wenjing acknowledged that he himself had given Zhang positive evaluations
the year before, and had requested that he remain in office as an experienced administrator. The
governor-general not only recommended that Prefect Zhang be thoroughly investigated and
severely punished, but also that he himself be impeached and investigated for unknowingly
protecting a corrupt official. The emperor approved all of Tian Wenjing’s suggestions, save for
the last. Yongzheng may have been impressed with Tian’s self-excoriation, or persuaded by his
previous record of investigation and prosecuting corruption, or he may have been disinclined to

486. Tian Wenjing’s reputation for harshness did not damage his standing with the Yongzheng emperor, and Tian
was praised and honored following his death in 1732. However, soon after Yongzheng died, Tian was widely
condemned by officials under Qianlong as a cruel and abusive official. Hummel, *Eminent Chinese of the Ch’ing
Period*, 2:720.
punish a favorite official. Whatever his reason, the emperor preemptively pardoned the governor-general and dismissed the need for any investigation of Tian Wenjing by the Boards.

Zuo Jiru and Ru Lin used several strategies to change the outcome of a case. The first strategy, Magistrate Zuo’s act of sentencing the accused to a lesser crime, may not have been in response to a bribe, but it demonstrates how he had the ability to reclassify capital cases not involving any fatalities into lesser offenses that were not subject to the extended review of homicides. The introduction of death into the case made that strategy impossible for the second magistrate involved. Ru Lin then tried two strategies of his own. The first involved the use of money to quiet the victim’s (adopted) family, which resolved the immediate problem, but not the issue of his supervisors. To deal with them, he relied on connections—and possibly bribes—to the officials above him. This worked at the prefectural level, but the multiple levels of scrutiny the case was subject to meant that it soon moved beyond Ru Lin’s abilities to affect.

Strategies

Zhu Wenzhao and Bao Ren supported their verdicts using strategies that were common among magistrates: focusing on intent and emphasizing witness testimony and confessions to support convictions for lesser degrees of homicide. Magistrates Zhu and Bao received money to convict the accused of a lesser crime, not to exonerate him entirely. In fatal cases, complete acquittal was difficult for magistrates to provide—the mandatory reporting of deaths in the county, coupled with the investigation deadlines for any possible homicide restricted their options. The obligatory case review system and the required documentation—inquest report, witness testimony, and a confession—added further complications. Magistrates’ control over
information did give them opportunities for fabrication of the inquest findings and all confessions, but only at the risk of involving more clerks and the coroner. Much of the investigation process was also conducted before an audience of witnesses and other interested residents; the preliminary autopsy and questioning was carried out at the site of the death, and trials and interrogation often had an audience as well. Observers, including the victim’s kin, would be able to contradict a fabricated record if the case had been overturned and was being reinvestigated. These complications may explain why bribed magistrates did not usually offer complete acquittal or cover-up to accused murderers. Instead, they tried a variety of strategies to ameliorate the potential consequences of a crime while reducing the likelihood of their own trial.

In non-fatal cases, bribes could buy release or concealment. For example, Magistrate Zhang Bin 張斌 was convicted of accepting money to acquit burglary suspects and for unsuccessfully pressuring the burglary victim to not report the incident to the prefect. 487 Another magistrate was fired for refusing to look into a rape case; the subsequent investigation did not find any evidence that he had taken bribes, only that the jail warden had, but the payors were able to buy temporary respite from any investigation with six ounces of silver. 488 Both cases were only investigated when the victim or their kin petitioned the prefect and neighboring magistrate; without their intervention, the incidents would have gone unreported and thus uninvestigated. The introduction of a human death changed the nature of the case, and thus of the bribery negotiations. For Magistrate Ru Lin, the initial incident of sexual assault was not reported to the prefecture, but once the victim was found dead of an apparent suicide, the

487. Zhao Hong’en 趙弘恩, routine memorial, Yz 12.2.17 [FHA 02-01-02-2287-009].
488. Zhang Tingyu 張廷玉, routine memorial, Yz 13.11.18 [FHA 02-01-02-2289-005].
attempted rape became part of a fatal case and thus subject to deadlines and further investigation by the magistrate’s supervisor.

In fatal cases, complete concealment would only be possible if the magistrate were bribed before he reported the death, which the protracted negotiations of judicial bribery made difficult. After the report was made, the magistrate was required to provide some form of resolution. When ruling on a suicide, the magistrate could argue that the death was disconnected from the assault or any other provocations given to the deceased. However, magistrates’ supervisors were often inclined to apply additional scrutiny to apparent suicides, as seen in the impeachments of Ru Lin, Cai Zengqin, and Wang Xijie. Those seemingly dead by their own hands left behind kin who might petition for further investigation, particularly when the death was connected to a sexual assault, as in the case heard by Ru Lin and Zuo Jiru. Magistrate Ru Lin addressed the threat of petitions by sharing his bribe profits with the foster family of the deceased, but his tactic did not prevent the foster father from accusing the magistrate of corruption. Ruling a death suicide was also difficult when the corpse showed injuries that did not appear to be self-inflicted.

If the inquest report listed other wounds, then a verdict of suicide was unlikely to be upheld, and the magistrate would have to find an explanation for the death that did not carry a capital sentence. The laws on accidental homicide allowed the convict to redeem his sentence through a payment of “burial expenses” to the victim’s kin. By giving the family a financial incentive to support the verdict, magistrates could reduce the risk of exposure from one source. If the wounds were such that accidental homicide was difficult to convincingly argue, unintentional homicide could be another option in certain circumstances; it was ordinarily a capital crime, but certain status relationships between the victim and perpetrator could reduce the penalty and make
unintentional homicide punishable by exile, penal servitude, or a beating. Classifying a homicide as accidental or unintentional, while not the fuller exoneration suspects may have wanted, was a more realistic outcome to offer in exchange for a bribe.

Many of those paying bribes in fatal cases seem to have generally understood these limitations. The accused and their families were willing to pay the magistrate to advocate for a lesser sentence, rather than insist on hiding any evidence of the incident or on releasing a suspect from jail without a verdict. Chen Maochun requested that his wife be spared questioning and that he be the sole accused in the trial, not to avoid trial entirely. Ye Ersheng sought a conviction for accidental homicide and an early release from jail. Those paying bribes seem to have had enough understanding of the Qing justice system to calibrate their demands and expectations to match magistrates’ discretionary powers.

The accused and their kin also understood the magistrate’s more immediate power: his control over torture, corporal punishment, and imprisonment. Both Chen Maochun and Ye Ersheng feared torture—hypothetical in Maochun’s case, actual in Ersheng’s—and were willing to pay to avoid it. Although the law limited both the implements and the allowable circumstances of judicial torture, prisoners had no immediate recourse when threatened with its use. Any petitions by kin would take days to be addressed. Petitions could be effective for those who could wait for eventual redress, such as the families of victims seeking to overturn perceived injustice or corruption, but were not an effective remedy for the immediate dangers of interrogation and prisoner abuse.

The use or threat of judicial violence against suspects could motivate the accused or their families to approach the magistrate with money in an effort to protect themselves. In other cases,
magistrates proactively threatened or employed judicial violence in the process of demanding bribes or silencing protests. The implied threat of beatings or torture in bribery cases was made explicit in cases of judicial extortion.

**Extortion**

Thus far, this chapter has focused on bribes initiated by the suspects or their families, not on cases where the magistrate demanded money at the beginning of the investigation. The following two cases involve what I refer to as “extortion”: magistrates’ demands for payment, backed with the threat of using their judicial powers to inflict beatings, torture, and possible capital punishment unless the bribes were delivered. The exact distinctions between bribery and extortion can be difficult to draw. A bribe demand backed by explicit threats is easy to label extortion, but the issue becomes less clear if the threats are implicit, or exist as an assumption in the mind of the listener.

One possible division between bribery and extortion centers on expectations and fairness. In his analysis of American judicial bribery, James Lindgren distinguished bribery from extortion based on the expected result. If the payment is made in exchange for treatment that is better than fair, it is a bribe. If the payment is made to avoid worse-than-fair treatment, then it is extortion. 489 Lindgren acknowledged that this metric allows for a considerable degree of overlap. If a corrupt judge could demand a bribe in exchange for acquittal, and threaten to convict if the

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bribe is not made, leaving the potential payor forced to choose between worse than fair treatment if he does not pay, or better than fair if he does.\textsuperscript{490}

Another distinction rests on the circumstances of the payment: who initiates the negotiation, the consideration discussed, and the position of the official. In James Scott’s model of petty corruption, he classified extortion as a demand for payment backed by threats, while bribery is a positive inducement offered in exchange for payment. Scott also suggested that the two were characteristic of different areas of government; extortion was more common in law enforcement and other offices with punitive powers, while bribery was more common in licensing and procurement offices that had rewards to offer.\textsuperscript{491} According to Scott’s model, Qing judicial bribery could be categorized as extortion, although the threat of violence was often assumed rather than stated aloud, and the payment negotiations often initiated by the payor.

Neither of the above models completely describes the Qing approach to judicial bribery and extortion. Qing law did see corruption as a distortion away from fairness; the use of words like “bias” 偏 and “bend” 曲 to explain “twisting the law” convey a sense that there was a correct judgment that had been unfairly warped.\textsuperscript{492} However, it did not differentiate between accepting and demanding a bribe when judging the magistrate’s actions; the question of force was only relevant when evaluating the payor. Qing corruption law, with its emphasis on financial gain, treated judicial extortion as the same crime as accepting bribes; both were “receiving payments to twist the law.” A magistrate faced the same punishment whether he passively received, actively negotiated for, or demanded a bribe. Whether the magistrate offered a sentence

\textsuperscript{490} Lindgren, “The Elusive Distinction Between Bribery and Extortion,” 826.
\textsuperscript{491} Scott, \textit{Comparative Political Corruption}, 66-67.
\textsuperscript{492} Shen Zhiqi, \textit{Da Qing lǜ jizhu}, 23:1b.
that was better or worse than “fair” was also unimportant; the problem was the distortion from the correct sentence, not the direction of the distortion.

The lack of distinction in the law on accepting payments did not mean that Qing law lacked a concept of extortion. There were statutes banning officials and members of their households from “demanding or borrowing other’s property” (求索借貸人財物), which included explicit demands for goods or money, as well as demands for to give indefinite interest-free loans, sell goods to the official at below market rate, or buy goods from the official at above market rate. If these demands were backed with threats or violence, the official making the demands would be sentenced according to the scale for “receiving payments to twist the law.” This statute was meant to cover the illicit receipt of property outside the realm of official favors, rather than judicial extortion, which was already covered by bribery law.

Qing law also distinguished between judicial bribery and extortion, not in judging the actions of the magistrate, but in determining the guilt of the payor. The Qing Code prohibited the paying of bribes under the statute on “using valuables to seek assistance in a matter” 有事以財請求. However, if the payor had been forced to pay the magistrate, then the payment fell under the following exception:

其官吏刁蹬用強生事逼抑取受者出錢人不坐
“In cases where the official causes difficulties, using force to create an issue, or forcibly takes, the person who gives money will not be convicted.”

Although the statute did not specify that extortion required fabricated charges, the use of “causes difficulties” 刁蹬 and “create an issue” 生事 imply fabrication, and call to mind an innocent

493. Shen Zhiqi, Da Qing lü jizhu, 23:10b-11b.
494. Shen Zhiqi, Da Qing lü jizhu, 23:10b-11b.
495. Shen Zhiqi, Da Qing lü jizhu, 23:9a.
victim embroiled in difficulties not of his own making, subject to the machinations of a greedy official. The law on extortion seems to have been aimed primarily at protecting those who were innocent of crimes. Bribe-paying to avoid the magistrate’s legitimate use of torture was not extortion, so Chen Maochun, his wife, and Ye Ersheng were all found guilty of bribery. In the following cases, the payors found innocent of the original charges were also acquitted of bribery.

Magistrate Wang Guoxi

A case from Guangdong province provides one example of how a magistrate could use his judicial authority to demand payment: turning a potential divorce case into a threatened charge of attempted homicide. Early in 1727, Chengxiang County Magistrate Wang Guoxi, a member of the Bordered Yellow Han Banner, was approached by Zhu Zhengbin, a local resident whose son sought a divorce.

As a county licentiate, Zhu Zhengbin had a measure of social status, though not at the same level as a provincial or metropolitan graduate. He also had wealth, as evidenced by the purchased licentiate status he had obtained for his son Zhu Changsheng. When Changsheng wanted to divorce his primary wife, his father used the family resources and social connections in the yamen to gain access to the magistrate. Zhengbin first contacted District Jailer Jin Daqi, who put him in touch with a yamen clerk. After paying the clerk 50 ounces of silver, Zhengbin obtained his audience with Magistrate Wang.

During his meeting with Wang, Zhu explained that his son and daughter-in-law frequently quarreled, and thus Changsheng wanted to end the marriage. Divorce was usually relatively easy for men to obtain during the Qing; wives could usually be repudiated for
committing any one of the “seven discards,” a list that included excessive talking. However, a woman who avoided all seven, or one who met certain other conditions, could not be divorced against her will. It is unclear whether Zhu Zhengbin intended to ask the magistrate to grant an illicit divorce or simply wanted to hasten the process, but Wang Guoxi treated the private meeting as an opportunity to bypass the usual complicated bribery negotiations and make a direct demand. He informed Zhengbin that he would not be granting the divorce, and furthermore, he now suspected that Zhu Changsheng and his concubine were plotting to murder the wife, and the request was an attempt at concealing their scheme. Unless the Zhu family paid 500 silver ounces, both father and son would be investigated for involvement in this planned homicide.

When Wang Guoxi sent his servant and a clerk to collect the money, Zhu Zhengbin asked for mercy and sent only 240 ounces. This sum seems to have placated the magistrate, but Zhengbin remained a target for pressure from the yamen staff; a clerk and runner visited him and successfully demanded another ten ounces for themselves, with the clerk getting four ounces and the runner six. After that, Jailer Jin Daqi requested and received an additional fourteen ounces as thanks for his initial services in contacting the magistrate.

Unlike the cases of Ru Lin, Zhu Wenzhao, or Fu Zhicheng, Magistrate Wang's payment was unrelated to any reported crime, so there was no notification at all sent to the higher levels of government. The extortion might never have been uncovered if Wang Guoxi had not come under

496. The “seven discards” (七出 in the Qing Code, but also written as 七去 or 七棄 in other sources) were a list of the seven acceptable reasons men could use to obtain a divorce. If a wife: had no sons 無子, was lascivious and wanton 淫泆, did not serve her husband’s parents 不事舅姑, talked excessively 多言, stole 盜竊, was jealous and envious妒忌, or had an incurable and malignant disease 惡疾, she could be discarded without legal penalty. However, there were also three exceptions that would prevent a divorce. If a wife had properly observed the three years of mourning for her husband’s parents 與更三年喪, had married a poor man who was now wealthy 前貧賤後富貴, or had no natal family to return to 有所娶無所歸, she could only be divorced for adultery. Yongzheng huidian, 157:20a-20b.
497. Fu Tai 傅泰, routine memorial, Yz 8 [FHA 02-01-02-2290-010].
investigation in 1728 for conspicuous “indulgence in liquor and vice” 耽酒色. Along with public drunkenness, he was accused of paying the owner of a riverboat to stay near the county seat so that Wang could repeatedly sneak into the boat in an unmarked sedan chair to buy sex from the boat master's wife. Based on Wang’s overall conduct in office, he does not seem to have been very worried about consequences, but his antics and neglect of responsibilities eventually led to his impeachment. When the investigation produced evidence that he was also embezzling grain money, Wang tried to defend himself from the embezzlement charges by saying that he had been so overwhelmed with lawsuits that he had allowed Jailer Jin Daqi to handle all criminal investigations and also the county granary accounts. The investigators were willing to believe that Jin was corrupt, and they recommended that the cases Wang named be overturned, but they still placed primary responsibility on the magistrate and convicted him of embezzlement.

Death sentences for embezzlement were automatically reduced to penal servitude, but Wang was a special case. While he was imprisoned in a separate jail for bannermen, his payments from Zhu Zhengbin were uncovered and he was then convicted of accepting payments to twist the law and sentenced to strangulation. In light of Wang’s poor record and previous admonishments, the governor recommended that his punishment be increased to decapitation with delay until the Assizes.

The Zhu family was completely exonerated by the investigation. Neither the prefect nor the judicial commissioner could find evidence of any plot to murder Zhu Changsheng’s wife. As the magistrate had initiated the demand and fabricated the charges, the payments were not treated as voluntary bribes. Zhu Zhengbin had died (apparently of natural causes), but Changsheng and
his concubine were found innocent of both planned attempted homicide and bribery and were not punished.

In the three previous bribery cases in this chapter, magistrates accepted offers of bribes from the accused, and these payments were uncovered through the scrutiny of the obligatory case review system. Wang Guoxi’s demands for bribes were not detected until he had been investigated twice over for embezzlement and moral failings. The homicide charges he threatened Zhu Zhengbin with did not involve any recorded deaths, and thus did not invite the attention of the magistrate’s superiors. Dead bodies had to be accounted for to the higher authorities, and grieving relatives placated or silenced. In the case of Magistrate Wang Guoxi, there were no fatalities or accusations from a third party, so there was no report to be scrutinized at all, or grieving relatives to protest an injustice. Zhu Zhengbin and his son could have petitioned based on the extortion, but any investigation into their petition would have also required an investigation of the planned homicide alleged by the magistrate. Zhengbin and his son thus risked interrogation and possible torture if they reported the demands by the magistrate and his staff. Wang Guoxi was not paid to make an actual crime go away, he was paid to make false crimes not be reported at all. The magistrate was able to use intimidation and the fear of judicial violence to demand bribe payments while avoiding the scrutiny of an actual fatal case.

Magistrate Fu Zhicheng

Another strategy magistrates could use to profit from their judicial power did not involve fabricating charges entirely, but instead preemptively requesting a payment before reporting the death. Fu Zhicheng 傅之誠, magistrate of Guangshan County 光山縣 in Henan, found multiple
opportunities to collect money from potential defendants. By enlisting the services of yamen runner Su Zhen 蘇珍, Magistrate Fu was able to initiate bribery negotiations himself, without waiting for an offer. As in the case of Wang Guoxi, Fu Zhicheng’s judicial corruption initially escaped the notice of his superiors, until impeachment for other offenses revealed incidents of accepting (or demanding) payment.

In one incident, Magistrate Fu was notified that a local woman had killed herself. Before the magistrate had conducted the forensic examination of the corpse, a neighbor of the deceased informed him that the woman’s suicide was the fault of her abusive father-in-law, Liu Zihou 劉子厚. Fu Zhicheng sent runner Su Zhen to the Liu household to tell Liu Zihou that he would be found guilty of causing his daughter-in-law’s suicide unless he paid the magistrate twelve ounces of silver. Zihou agreed to the payment, and Magistrate Fu ruled that no one was culpable for the woman’s death. Unlike in many cases of suicide, the man accused of causing the death was also the family patriarch, and thus there were no family members seeking to overturn the ruling. Because Magistrate Fu had initiated the bribery negotiations before conducting an inquest, he had more control over the documentation of the fatal wounds. With no aggrieved relatives or contradicting documentation, the magistrate’s superiors found nothing suspicious in the report, and the case was not reopened until Fu Zhicheng was impeached over county deficits.

The impeachment of Magistrate Fu also revealed bribe payments. County resident Li Wenxue 李文學 had discovered an affair between his wife and local resident Yan Zigui 晏子貴. Wenxue and his father complained to the magistrate and asked that Zigui be punished for illicit sexual intercourse. Magistrate Fu sent Su Zhen to Zigui, offering the same terms he had to

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498. Tian Wenjing 田文鏡, routine memorial, Yz 5.5.8 [FHA 02-01-02-2283-001].
Liu Zihou: twelve ounces of silver to evade punishment. Yan Zigui paid the money and the magistrate declined to investigate the adultery charges. When Li Wenxue and his father protested, Magistrate Fu accused the father of making a false accusation, and had him beaten.\textsuperscript{499}

The use of violence to suppress complaints or petitions was effective in this case. Wenxue and his father may not have possessed the resources to petition the prefect, or they may have feared further punishments. Without any deaths related to the adultery, the magistrate’s superiors were unlikely to hear of the case unless it was through a petition or separate investigation, and so this case was not discovered or retried until after Fu’s impeachment.

It was the investigation into Magistrate Fu Zhicheng’s deficits that turned up evidence of embezzlement, demands for gifts from county residents, unjust administration of punishments, and the two cases of accepting payments. Of these, embezzlement was the most serious charge, and so Fu Zhicheng was sentenced to decapitation after the Assizes. Embezzlement sentences were automatically converted to penal servitude, so Fu was probably not executed.

Yan Zigui was found guilty of bribery, and his payments to Fu Zhicheng were treated as voluntary, rather than extorted, but as his conviction for illicit sexual intercourse was a heavier crime than his paying 12 silver ounces in bribes, he was not punished further. The investigators also addressed the suicide of Liu Zihou’s daughter-in-law. They concluded that Liu Zihou was not responsible for her suicide, which meant that Liu Zihou’s payment was made under duress, and he was also not guilty of paying a bribe. Because Liu Zihou was acquitted of causing the suicide, the neighbor who accused Zihou of the crime was punished for making false accusations.\textsuperscript{500}

\textsuperscript{499} Tian Wenjing, Yz 5.5.8 [FHA 02-01-02-2283-001].
\textsuperscript{500} Tian Wenjing, Yz 5.5.8 [FHA 02-01-02-2283-001].
In the cases of Liu Zihou and Yan Zigui, bribery negotiations were initiated by Magistrate Fu Zhicheng and backed with the implied threat of judicial violence, but investigators only considered Liu Zihou’s payment to have been extorted. The different rulings on their two bribes would appear to bear out the implications of the statute on using property to seek assistance in a matter, that “cases where the official causes difficulties, using force to create an issue, or forcibly takes” referred only to cases where the official had fabricated the charges.

However, the legal distinction was made somewhat irrelevant by Qing sentencing procedure. Because Qing law only punished convicts for their most serious offense, those convicted of a crime would have to pay a bribe larger than the sentence they faced to worsen their prospects. The relatively lenient punishment scale for paying a bribe, which was capped at penal servitude for paying over 1000 ounces of silver, meant that most serious crimes and any capital crimes would outweigh any punishment for paying a bribe. Yan Zigui’s bribe to Magistrate Fu would only have outweighed his sentence of 100 (40) blows for illicit sex if the bribe had exceeded 200 ounces of silver. His payment to the magistrate was a criminal act, but the adultery conviction precluded any punishment for the payoff. The legal distinction between judicial bribery and extortion in Qing law existed primarily to protect those subjected to fabricated charges, and had little effect on those convicted of crimes.

*Extortion and Violence*

Although magistrates faced the same criminal charges and penalties whether they accepted a bribe offer or demanded a payment using threats, the risks of discovery were different in bribery and extortion cases. When the magistrate accepted a bribe during an ongoing
Chapter 5

investigation into a fatal case, the greatest risk came from an overturned decision and subsequent investigation by his superiors. If he initiated bribe negotiations before the preliminary report went to the prefect, he had more control over his superiors’ expectations for the outcome, reducing the chance of an overturned verdict. If the magistrate demanded a payment under threat of fabricated charges, there was no body to examine and be reported on, and thus his superiors would have no investigation to overturn. In cases where the magistrate initiated the bribery transaction, his immediate risk of discovery came not from the review system, but from exposure within the county through the petition system.

Magistrates relied on explicit and implied threats of violence to both demand bribe payments and to reduce the risk of exposure from extortion targets. The threat of prosecution, torture-based interrogation, and possible capital punishment backed the initial demand for a payment. Afterwards, those threats remained as an incentive to avoid exposing the transaction. The threat of prosecution and interrogation would remain even if the targets successfully exposed the bribery. To determine whether the payment was based on fabricated charges or an actual crime, any officials following up on extortion allegations would also have to investigate the extortion targets. Exposing the magistrate was thus not a guaranteed way to avoid interrogation and torture. Additionally, magistrates could make use of beatings and other violence to further discourage reporting, as Fu Zhicheng did to silence complaint in the adultery case above. Magistrates who initiated bribery transactions invoked their access to the violence of the justice system to back their demands, and relied on the payor’s fear to discourage exposure. In payor-initiated bribe cases, the magistrates also benefitted from fear of judicial violence and
capital punishment, but they positioned themselves as a protection against the violence of the justice system, not its agent.

Risks and Incentives of Judicial Bribery

Accepting a bribe was a calculated risk for magistrates, who had to weigh the benefits against the risks and possible consequences of impeachment. This section examines some of the factors magistrates may have considered when deciding whether to take bribes.

Magistrates seemed to be aware of the possibility of exposure, as most of the corruption cases above contains some method by which the magistrate attempted to limit detection. Zhu Wenzhao used an empty sedan chair and rewritten confession to convince his superiors of the veracity of the fabricated testimony. Bao Ren returned his share of the bribe to prevent the accused from exposing the transaction. Ru Lin paid the victim’s family—and possibly the prefect as well—to head off an investigation. Fu Zhicheng used violence against the accuser’s family to prevent further protests against his decision. Wang Guoxi seemed less concerned about detection, and relied only on threats against the payor. The magistrates were willing to accept or demand bribes, but with the possible exception of Wang Guoxi, they seemed to believe that bribery could be discovered and punished by their superiors. Bribery does not appear to have been so prevalent or accepted that magistrates felt they could engage in it with impunity.

Magistrates knew that their careers, their personal finances, and possibly their lives were at risk. There is no record of any of the magistrates in the above cases being either executed or pardoned, though death sentences were often commuted to penal servitude or frontier exile, so they may all have avoided execution. As part of corruption investigations, their property was
seized for auditing, and would not have been returned. According to Qing law, magistrates in bribery cases were not allowed their usual privilege of converting criminal sentences into fines. Even if an exception was made for an individual, he would have difficulty paying the fine—his assets were confiscated and he no longer had a job in the bureaucracy. Unlike many other forms of corruption, such as levying unauthorized fees, accepting gifts, or predatory lending, judicial bribery was a career-ending offense; none of the magistrates investigated in the five cases above seems to have held any official position after he was cashiered.

The consequences of a bribery conviction were severe, and many magistrates did not believe that the risk of exposure was negligible. Some did not seem very concerned about corruption investigations—neither Wang Guoxi nor Fu Zhicheng were particularly circumspect—but others were more cautious. Zhu Wenzhao required a large sum to affect his investigation of Chen Maochun and his wife, and refused to promise any change to the sentence. Bao Ren was sufficiently anxious about impeachment that he returned the entire sum of the bribe even before his verdict was overturned. Magistrates worried about accepting bribes would likely need a strong incentive to overcome their reservations.

*Fiscal Incentives for Corruption*

Because bribery usually involves trading influence for money or other material wealth, desire for profit or need for further income are obvious incentives. Economists and political scientists studying contemporary corruption point to institutions that offer officials low salaries but high potential for illicit income as systems that encourage corruption, particularly if officials
are expected to maintain a standard of living beyond their means.⁵⁰¹ According to this model, the Qing bureaucracy strongly encouraged some forms of corruption—officials needed illicit income not only to maintain their lifestyle, but also to pay administrative costs. In the Qing, all territorial administrators, from the magistrate to the governor-general, faced a variety of financial pressures that could put a strain on both their personal resources and those of their position, and encouraged them to try various methods of making up these deficits.

At the beginning of the Yongzheng Emperor’s reign in 1723, magistrates’ only official income was their yearly salary: 45-60 ounces of silver for county magistrates and 80 ounces per year for department magistrates.⁵⁰² This was far below their annual expenses, especially because they were responsible for many of the administrative costs of their position. Staff costs alone exceeded a magistrate’s salary by several times. Each of his two or more private secretaries would have been paid at least 100 ounces of silver out of his personal resources, and he also needed to find a way of paying the salaries and administrative expenses of yamen clerks. Yamen costs were not supposed to come out of the magistrate’s pocket, but the cost of wages and professional supplies were usually more than the amount of tax income that the the county was permitted to retain.⁵⁰³ If expenses exceeded revenue, as was common, or if disaster relief was needed, the magistrate was expected to help make up the shortfall. He was also required to make

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⁵⁰² Qinding hubu zeli 欽定戶部則例 [Imperially established administrative regulations of the Board of Revenue] (1874), 73:22a-b.

⁵⁰³ Zelin, *The Magistrate’s Tael*, 38-39. Bradly Reed’s study of the Ba County yamen in Sichuan provides one example of an alternative funding stream for yamen clerks: a regular schedule of additional fees for all legal cases. Reed argued that the fees were a necessary source of funding, not the sort of predatory corruption yamen runners were usually accused of, but under Qing law, any unauthorized fee was a form of corruption. Reed, *Talons and Teeth*, 231-235, 244-245.
financial contributions (both legal and illegal) to his superior officials. Finally, he had to support himself and his family.  

Under the Yongzheng Emperor, officials began receiving a supplemental stipend called *yanglian yin* 餉廉銀 ("silver for cultivating honesty"). This stipend, released in quarterly payments, was designed to cover yamen costs and remove any need to levy unauthorized taxes and fees, run a deficit, or take illicit money. The amount varied by location, but was many times the nominal salary. Most magistrates received between 500 and 1200 ounces per year, and a few received up to 2000. Even with this supplementary stipend, costs far outstripped income for magistrates.

With salary and stipend insufficient to make ends meet, magistrates tried to get income from other sources. Much of this income came from levying extra fees and fines on various government transactions. Some fees, such as the flat surcharges placed on grain and silver taxes, were illegal but widely practiced. Others, such as conversion surcharges, initially existed in a gray area: not explicitly prohibited, but only because the central government had not yet became aware of the practice and banned it. Magistrates were placed in the difficult position of being expected to use fines and surcharges to fund their administrations, but vulnerable to impeachment for doing so. With all forms of extra taxes prohibited in the statutes, they had no official guideline that would protect them.

Declining to levy any additional fees at all was also not a viable option, unless a magistrate had the resources to meet all extra costs himself. If his superiors discovered any

shortfalls in the county accounts, he could be impeached for the deficit. The case of Zhou Zhongxuan in the previous chapter illustrates both of these possibilities: Zhou was sentenced to strangulation for adding a 10 percent surcharge to the grain tax in Taiwan County. After he was pardoned and returned to official service, he was impeached over deficits and eventually exiled to a military post in Mongolia.

In this context, some forms of bribery and embezzlement were likely motivated by something other than avarice. There was no bright clear line between a magistrate’s personal and official finances, nor between an illegal excessive surcharge and an acceptable administrative fee. Rather than choosing whether to break corruption laws, magistrates had to choose which laws to break.

*Judicial Bribery as a Source of Income*

With a county’s annual deficits measured in hundred and thousands of ounces of silver, any amount of income would be helpful, but judicial bribery was not the most lucrative source of funding. In the cases included in this chapter, the largest bribe recorded was the 1600 ounces paid to Magistrate Zhu Wenzhao 朱文照. Most of the bribes were under 100 ounces. By contrast, magistrates impeached for embezzlement and illegal surcharges were accused of making thousands of ounces of silver through those means.\(^{508}\) Some of the difference in amounts is likely a limitation of the impeachments I use as source material—a bribery case might only have turned up evidence of that one bribe, without uncovering any other incidents. An investigation into embezzlement involved a thorough audit of the yamen financial records,

\(^{508}\) Zelin, *The Magistrate’s Tael*, 40-41.
affording investigators a better chance to catch multiple infractions. However, even when magistrates were convicted of accepting bribes in multiple cases, the amounts recorded are rarely as high as the thousands raised by illegal surcharges and embezzlement.

Overall, the amount of a bribe differed greatly across the Qing. The favors purchased were not the main factor in the cost. In the cases in this chapter, one man is recorded as paying Magistrate Ru Lin and his yamen staff 160 ounces to avoid being charged with causing a suicide while another paid Magistrate Fu Zhicheng 12 for the same reason. Magistrate Fu was also convicted for taking another bribe from a man accused of having an illicit affair. Although one man faced execution, and the other was merely trying to avoid a beating, both paid the same twelve ounces. In another county, a man paid Magistrate Zhu Wenzhao 1600 ounces just to keep his wife from being interrogated, with no promise of a lighter sentence. Bribery may have been common across the Qing, but there does not seem to be any standardization of prices, suggesting that there was not any widespread communication about appropriate amounts to pay. The secrecy may have worked in magistrates’ favor, allowing them to vary their rates based on the resources of the payor, but the lack of set prices did have the disadvantage of prolonging negotiations.

The form of judicial bribes was more consistent. According to the law, any gift of money or goods could be a bribe, but in practice, they were almost always in the form of silver, rather than copper cash or material goods. The payments usually came either from the accused or their families. In most cases, those who confessed to bribery did not state where they had obtained the silver, though one woman testified that she had sold a mule and had the proceeds delivered to the magistrate to buy her husband’s release from prison.509 The prevalence of silver as a bribe

509. An-Bu-Lu 安布祿, routine memorial, Kx 41.2.22 [FHA 02-01-02-2237-002].
payment is likely due to the process of making judicial bribes. The amount of a judicial bribe was often the result of protracted negotiations through multiple intermediaries, as is shown in the following section. Silver ounces would have been easier to negotiate than art or other valuables, which would have to be appraised.

Overall, a magistrate weighing the potential consequences of accepting a bribe had to consider several factors. A single bribe of less than 20 ounces of silver, if caught and prosecuted, would result in the loss of his job and a heavy beating. The consequences would probably not be fatal, but they would certainly be painful and outweigh any income gained. Any bribe over 80 ounces carried a sentence of strangulation with delay, and unlike an embezzlement conviction, this sentence was not automatically converted to servitude. Commutation to exile or servitude were very possible, but in no way guaranteed.

Other forms of illicit income offered larger gains and lesser risks. Customary fees—unapproved administrative taxes and surcharges levied by the yamen—were frequently overlooked by provincial officials and rarely prosecuted unless the magistrate was under investigation for deficits or other possible offenses, as in the case of Zhou Zhongxuan. These fees could provide thousands of ounces of silver, and the penalty was usually lower than for judicial bribery. If the magistrate used the money entirely for public expenses, his sentence was capped at penal servitude for collecting over 1000 ounces. He would only be sentenced on the most severe bribery scale if he had claimed to be collecting customary fees for public expenses, and then used them for personal enrichment.

Even when customary fees were used for personal gain, investigators would not necessarily prosecute the official for corruption—Nancy Park has found cases where
investigators in the capital were uncertain over whether to sentence territorial officials according to the more lenient scale for customary fees or the heavier scale for corruption. In one case, they asked the emperor to advise on how to charge a grain intendant who collected over 15,000 ounces of silver in customary fees and used them for personal expenses. In another, a prefect repeatedly demanded money from magistrates to cover personal expenses, including collecting over 400 ounces of silver from each of his magistrates in order to celebrate his father’s birthday. Capital officials did decide that the prefect should be charged with corruption, but primarily due to the large sums demanded and the purely personal nature of the gifts.\footnote{Park, “Corruption in Eighteenth-Century China,” 74-76.}

Officials could also loan money at illegally high interest rates, as both Zhou Zhongxuan and Chanjibu were convicted of doing, borrow at artificially low interest, buy and sell goods on more favorable terms than market rate, or simply seize money and goods.\footnote{Park, “Corruption in Eighteenth-Century China,” 103-104.} Unless violence was used to force agreement, the punishments for such behavior were relatively light. Although the collection of customary fees, gifts, and interest money was illegal, capital and provincial officials were more accepting of these forms of income, acknowledging that some degree of gift-giving was inevitable, and that fee-collection was necessary to pay administrative expenses.\footnote{Park, “Corruption in Eighteenth-Century China,” 74-82.} Bribery was not only a more severe criminal offense than other forms of corruption, it was also perceived as a more serious ethical and moral threat.\footnote{Park, “Corruption and Its Recompense,” 76-79.}

Looking at the costs of a magistrate’s position and the inadequacy of his official compensation, it seems clear that desire for personal enrichment was not the sole cause of corruption—many magistrates turned to embezzlement, extra fees, and other forms of corruption.
primarily to cover their living and professional expenses, or simply to balance the county books. The bureaucratic language of Qing documents described such magistrates as greedy (貪婪), but the officials supervising them recognized that some corruption was inevitable and could be excused. However, judicial corruption was different from embezzlement and extra fees. The penalties were higher, and the potential income lower. The willingness of magistrates to accept judicial bribes cannot be entirely explained either by greed or by structural financial problems.

*Local Pressure to Accept a Bribe*

In addition to personal risk and financial considerations, magistrates had to take the status of the suspects and their families into account when contemplating bribery. Chen Maochun was wealthy, and his uncle was a licentiate degree holder and friends with a yamen clerk. Ye Ersheng was also from a wealthy family and related to two yamen clerks. The elite status of the payors may have made them more sympathetic to Zhu Wenzhao and Bao Ren, both of whom also held licentiate-level degrees, but magistrates had reasons to accommodate local elites beyond shared status. As outsiders from a different province, they required the cooperation of wealthy degree-holders and their families to effectively govern their counties. Local elites provided necessary support for magistrates’ policies, as well as contributing much of the funding for public works, education, and the local militias. Even without financial inducements, magistrates had reason to accommodate them.

Chen Maochun and Ye Ersheng’s connections within the yamen may have been even more valuable than their status in the county. Local elites could provide social and financial

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support for the magistrate, but yamen personnel provided much of the actual labor of local administration. Without the cooperation of their yamen staff, magistrates would be unable to carry out any of the duties of local administration.\textsuperscript{516} When yamen staff conveyed bribes on behalf of their kin, they were using both the money and their own value to the yamen to advocate for the accused.

Even when the suspect had no close connections to the yamen, refusing bribes risked alienating both yamen staff and the magistrate’s personal attendants by depriving them of a source of income. The protracted negotiations and multiple intermediaries in most bribery transactions provided profit opportunities for personnel. In the case of Zhu Wenzhao, Chen Maochun paid a total of 38 silver ounces to three yamen employees, and another 60 ounces to the magistrate’s legal secretary and a household servant. Ye Ersheng paid a total of 48 ounces of silver to his two yamen clerk cousins and 129 ounces to the magistrate’s personal attendants. To reach Magistrate Ru Lin, the Han family paid 36 ounces to one clerk, and another 20 ounces to the jail warden. In these cases, yamen staff were earning between 8 and 36 ounces of silver for their role in the negotiations. For comparison, Bradly Reed’s estimates of annual yamen staff income from legal case fees was roughly 300-400 silver ounces a year for the head clerk, 100-200 ounces for other senior clerks, 100-200 for the yamen runners, and 30-100 ounces for chief runners.\textsuperscript{517} The amount of potential profit from a bribery in a single case would have been a significant addition to a clerk or runner’s annual income.

Bribes were an even better source of income for the magistrate’s personal employees.

The salary range of a magistrate’s secretaries was roughly similar: 40-100 ounces for writing and

\textsuperscript{516} Reed, \textit{Talons and Teeth}, 196-199.
\textsuperscript{517} Reed, \textit{Talons and Teeth}, 206-207.
regression secretaries, and 260 for legal specialists. However, private attendants and secretaries were able to trade on their direct relationship with the magistrate to negotiate on his behalf and to take a higher percentage of the total bribe amount. Magistrates would also be reluctant to alienate their personal staff, who not only provided essential labor and expertise, but were also trusted household members, specialist secretaries, or relatives.

Judicial bribery offered a significant source of income for yamen staff and personal attendants, and both groups also faced lesser sentences if convicted of bribery. As non-commissioned officials, they faced a maximum sentence of penal servitude for serving as intermediaries. Magistrates’ personal and yamen subordinates had a very different set of risk and profit calculations from magistrates, one more conducive to accepting a bribe.

Magistrates were outsiders in their counties, arriving as a stranger from another province, spending only a few years in the county, and then leaving, only to be replaced by a new magistrate. Without the assistance of yamen staff and local elites, magistrates could not collect taxes, pay for vital county services, maintain local law enforcement and defense, or adequately copy documents. Magistrates were also classically-educated generalists, often with little or no previous official experience. They had to rely on their personal secretaries and attendants, as well as the experienced yamen staff, to run the bureaucracy. Magistrates who lacked the leverage to end judicial bribery in their yamen could choose to ignore it or participate in it. Ignoring the practice could still lead to impeachment for tolerating corruption, while participating allowed the magistrate to collect additional income and accommodate local elites. For magistrates in vulnerable positions and worried about losing their jobs, such as Bao Ren, the risk of exposure

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from accepting a bribe may have seemed lower than the risks of alienating important local interest groups.

Magistrates who demanded bribes had a different balance of risk and reward. Both Zhu Zhengbin and his son were wealthy degree-holders, but Wang Guoxi was willing to threaten them with prosecution to extract payment. The list of charges against Wang Guoxi—public intoxication, patronizing prostitutes, failing to report on the granaries, and embezzlement—suggests a magistrate who was not worried about impeachment or prosecution. Magistrate Wang may have felt some protection from his status as a bannerman—members of the banners had limited immunity from beating, exile, and penal servitude.\(^{519}\) He may also have had important provincial connections, as impeached magistrate Wang Weigan (no relation) did. Wang Weigan was charged with years of abusive governance, including subjecting two petty criminals and the protesting mother of a suicide victim to fatal beatings, but was not impeached until years after the deaths, probably because of his close ties to Governor-general Tian Wenjing.\(^{520}\) Magistrates who believed that they faced less risk of impeachment or prosecution needed fewer incentives to take judicial bribes, and also had fewer reasons to seek the cooperation of local elites, two factors that could encourage extortion and violence.

**Conclusion**

Looking at the different patterns of judicial corruption, we can see that the effect of bribes on fatal cases depended on the position of the magistrate, the influence of the payor and

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520. Yue Jun 岳濬, palace memorial, Qi 1.3.4 [FHA 04-01-26-0001-025].
intermediaries, and timing of the bribe. When magistrates who were insecure in their position or generally more risk-averse accepted bribes in fatal cases, they offered sentences that avoided capital punishment but were within normal sentencing patterns, and they made use of the same evidence and strategies to support their decisions. Because these magistrates waited to receive bribe offers, rather than initiating bribery negotiations before beginning an investigation, their efforts were constrained by the scrutiny of the obligatory case review system, increasing the risks of exposure and restricting their strategies to those within their ordinary judicial powers. Although magistrates could also attempt to affect outcomes by paying bribes of their own, the requirements of the review system made this strategy less effective when a case moved beyond their immediate prefectural superiors. Magistrates who were concerned about the possibility of impeachment and prosecution could still be induced to accept bribes, not only because of high offers, but also because of the influence of high status families, their connections to the yamen, and the active involvement of yamen staff and the magistrates' personal attendants in bribery negotiations.

Other magistrates, who felt relatively insulated from impeachment or prosecution, were willing to preemptively demand bribe payments before the preliminary investigation into a death occurred, or even without any death at all. These magistrates’ belief in their job security and willingness to threaten or employ judicial violence allowed them to make demands on county residents, even those with wealth and status, with less fear of exposure. Because extortionate magistrates chose to solicit or demand bribes, they were able to fabricate charges or alter death reports before they triggered the scrutiny of their superiors.
Qing officials viewed lenient sentences as possible indicators that magistrates were being swayed by money or local influence. As the cases above show, these concerns were sometimes validated by the discovery of bribes made to affect the outcome of a fatal case. However, the law of avoidance, designed to keep magistrates free of local ties, made them more reliant on the influence and cooperation of local elites and yamen staff, creating an incentive for magistrates to be receptive to bribe offers from these groups. At the other end, magistrates who felt completely unaccountable to local residents were willing to engage in a variety of corrupt behaviors, including the use of judicial violence to demand bribes and suppress dissent.
Conclusion

County magistrates in the Qing seem to occupy a contradictory position when dealing with capital punishment cases. As the highest immediate authority inside the county, they oversaw the entire process of investigation and trial, with access to corporal punishment and even torture to enforce their control over the process. On the other hand, as the officials at the lowest level of the courts and territorial administration, their judgments were subject to close scrutiny at multiple levels of review, and compared against a legal standard that gave them no formal discretion in sentencing. In actuality, magistrates’ power to influence cases rested in their ability to persuade their superiors and control the flow of information from the local justice system, which was constrained by the need for cooperation from their personal staff, yamen personnel, and local residents. However, they were able to maneuver within and outside of the constraints of the written law to affect the final outcome of their cases, despite efforts by the Qing state to restrict them.

Magistrates’ power in capital cases came from their position as organizers of information and mediators between their county—both local society and the yamen administration—and the larger bureaucracy. Legal requirements that they supervise every aspect of criminal investigations and documentation—rules designed to prevent corruption by yamen staff—gave magistrates considerable control over the information that reached higher officials and influenced their understanding of the incidents. By looking at the records and final results of magistrates’ judgments, we can see how they exercised this power over the outcome of cases. Rather than mechanical applications of rules or straightforward attempts to satisfy reviewers, magistrates actively created narratives to persuade their superiors. When their decisions were
overturned, they sometimes altered their initial verdict, but often they only adjusted their presentation of the evidence and resubmitted the original recommended conviction and sentence. Moreover, at least some magistrates who took this approach succeeded in persuading their superiors to uphold the decision they had initially rejected.

In this study, I have focused on the ways that magistrates made use of their influence in fatal cases, looking at the outcomes they tried to achieve and the tools they employed. In the cases throughout the preceding chapters, magistrates’ decisions shared similarities both in their narrative content and in their recommended verdicts. They frequently chose to convict suspects in fatal cases of unintentional homicide or other charges that carried the sentence of strangulation pending review at the Autumn Assizes, and often avoided convictions for intentional homicide—with the attached penalty of decapitation pending review—even in cases where the forms of evidence used to determine homicidal intent—preexisting grudges, fatal wounds, carrying weapons—supported the more severe interpretation.

In their initial judgments, magistrates sometimes attempted to recommend non-capital sentences: exile, penal servitude, or beating for the primary offender in a homicide case. These decisions were more likely to be rejected by their superiors; unless the accused and victim had a familial relationship that mitigated the sentence, higher officials were skeptical of sentences that avoided capital punishment for a fatal offense. When cases were overturned, magistrates often resubmitted the same verdicts, adapting the content of the statement of recommended decision in response to the criticisms in the rejection, a strategy that was more effective with capital sentences of strangulation than lesser ones. If the second decision was rejected as well,
magistrates would adjust the verdict to accommodate their superiors’ criticisms, but the new case narratives still often included details that could support a less severe punishment.

To support their decisions and make them more likely to be upheld on review, magistrates often included certain lines of persuasion in their explanations of the case and their recommended sentences. By law, determination of homicidal intent in the Qing could not be based on the fatal implement, so judicial officials were encouraged to look for evidence of grudges or indications that the accused had sought a violent confrontation with the victim. Presenting the actions of the accused during the fatal encounter as spontaneous, reactive, defensive, and without any preexisting violent intentions was a way for magistrates to argue for a conviction of unintentional homicide, not the more serious crime of intentional homicide.

Case narratives also recounted the trespasses of the victim against the accused and their family, giving particular attention to actions that violated the family and status relationships that carried weight under Qing law. In both their descriptions and in the witness testimony that they elicited and edited, magistrates detailed any threats, insults, and violence to the defendant’s parents or grandparents or sexual assault or threats to his wife, daughter, or daughter-in-law. Where the victim was a wife or concubine killed by a family member, the magistrate included stories of her disrespectful and unfilial behavior: insulting or striking her husband’s parents, scolding her husband, and refusing to obey her superiors within the family. These portrayals could not exculpate the defendant—if anything, they weakened the depiction of the accused as a passive reactor to the victim’s escalations—but they did offer opportunities to sympathize with the accused by portraying them as another injured party, the sufferer of provocations by the homicide victim.
**Sentencing Patterns and Motivations**

One aim of this dissertation has been to distinguish between the ideologies expressed in legal writings and the actual effects of magistrates’ judgments, drawing more attention to the latter. Magistrates’ demonstrated preference for recommending delayed strangulation or exile and their use of sympathetic narratives is a pattern across fatal cases. Because these sentences were less severe than the other likely outcomes—decapitation or possibly lingchi/slicing—and because over half of all death sentences were eventually commuted during the Autumn Assizes, magistrates’ preference for strangulation appears lenient by comparison, particularly when interpreted through their seemingly sympathetic portrayals of the accused.

Because strangulation with delay was a less severe sentence than decapitation or slicing, it is tempting to view a magistrate’s recommendation as indicating a preference for leniency, but this view does not explain why one would choose strangulation over exile or penal servitude when there were homicide statutes that did offer the option. Moreover, some magistrates who following this pattern were still willing to use torture to interrogate not only the accused, but the victim’s family as well, which suggests that sympathy and humaneness were not necessarily the central motivation.

We should also draw a distinction between decisions made during the initial trial and review process and those made as part of the Autumn Assizes. Although provincial heads and Board ministers developed the lists of prisoners who merited clemency, the commutations and suspensions of the Assizes were officially decided by the emperor and carried out under his authority.\(^{521}\) Like the irregularly declared general amnesties that cleared convicts across the

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empire, the Assizes were a way for the emperor to demonstrate mercy and benevolence. That the ruler of the Qing empire retained this power should not be taken as an indication that the legal system as a whole encouraged leniency, or that lower level judicial officials had any such authority.

While the Assizes offered clemency from punishment, the case review system offered considerable resistance toward any efforts to lessen sentences. From the prefect to the Three Courts, reviewers expressed skepticism towards verdicts of unintentional or accidental homicide. Although a single overturned judgment was not a serious offense, it could lead to investigation for suspected corruption. Even if no evidence of deliberate misconduct was found, an impeached magistrate faced fines, loss of official position, and even imprisonment. Many magistrates, particularly those who already had poor evaluation records, had reason to avoid the appearance of excessive leniency.

Rather than an expression of benevolence by either an individual magistrate or the Qing legal system as a whole, sentences of strangulation can be seen as an attempt to find the most widely acceptable outcome. Magistrates’ superiors were suspicious of fatal case verdicts that did not involve capital punishment, but recommending decapitation or slicing risked incurring penalties for incorrectly increasing criminal charges. There were also certain difficulties with gaining the necessary evidence for a verdict that carried more severe penalties. Without overwhelming proof of homicidal intent, magistrates needed a confession to convict. Persuading defendants to confess to unintentional homicide, with its higher chance of clemency, would likely be easier and require less use of torture. Few were likely to be entirely pleased with the results—superior officials often seemed doubtful that the accused truly lacked violent intent, and
the defendants were not guaranteed a reprieve—but the likelihood of serious consequences for
the magistrate was minimized. Overall, there were pragmatic reasons to convict suspected killers
of unintentional homicide, rather than more or less serious offenses.

**Narrative Tools**

Reading cases in the context of the review system, we can see that some of magistrates’
narrative techniques that conveyed a sense of sympathy for the defendant were used to support
verdicts of unintentional homicide. Emphasis on the pure happenstance of the fatal
encounter—the spontaneity of the confrontation, the innocuous explanation for the presence of
the homicide weapon, the victim’s role in initiating or escalating any violence—answered the
crucial legal question of intent according to the evidence standards in the Qing Code. Including
these details allowed magistrates to support their desired outcome within the framework of
argumentation permitted by Qing law and the reviewing officials. Minimizing any suggestion of
violent intent bolstered a magistrate’s case, so he had practical reasons to do so.

Other seemingly sympathetic presentations of the accused, such as the descriptions of the
offenses committed by the victim, could imply a preexisting grudge and thus violent intent.
Magistrates included these details, even at the risk of providing their superiors with reasons to
overturn the decision, because doing so let magistrates address any concerns about their
professional conduct. Although this approach weakened the clarity of the narrative, it allowed
them to demonstrate the thoroughness of their work. Establishing that the investigation had
uncovered all of the events leading to the fatal incident was a way to convince reviewers that the
magistrate had neither neglected proper procedure nor uncritically accepted the initial complaint
and testimony from the victim’s kin. If the decision did not provide sufficient background on the
dispute, their superiors would not only overturn the verdict, but accuse the magistrate of failing
to properly uncover the true story. Threats against the defendant or his family—particularly those
whom he had a moral obligation to protect—made the case narrative seem more plausible and
complete and helped insulate the magistrate against allegations of negligence or corruption.

Frontier magistrates could draw on other arguments. Due to the direct appointment
system for critical positions, their positive records and preexisting relationships with the
provincial government gave them access to more options in dealing with homicide cases; they
had less need to persuade their superiors of their diligence and honesty in investigations and
were assumed to have some valuable regional expertise. For magistrates responsible for
governing different ethnic groups in the southwest and Taiwan, their presumed understanding of
local cultures became an additional tool for argumentation. Their asserted knowledge did not
necessarily indicate actual expertise—even newly-arrived magistrates based arguments on
custom—but the strategy could be effective because it indicated a willingness to adapt to local
conditions and work with the communities there. Provincial officials in frontier regions were
concerned that the mix of “barbarians” and recently-arrived settlers would lead to dangerous
instability, so they saw magistrates’ efforts in a positive light. However, the Yongzheng emperor
and his advisors in the capital continued to treat local accommodation as a warning sign of
corruption, exposing frontier magistrates to new risks of impeachment.

To have his decision upheld on review, a magistrate needed to strike a balance between
detail and clarity. A verdict of unintentional homicide required the magistrate to convince his
superiors that no violence been intended before the precipitating interaction began, but also
explain why an exchange that had started peaceably could escalate to homicide. The particular requirements of unintentional homicide in an affray gave magistrates reason to present an apparently sympathetic portrayal of the defendant, regardless of personal feelings or financial inducements to do so.

**Leniency and Corruption**

When discussing Qing homicide cases, and imperial Chinese law in general, scholars have tended to either look for either social and moral ideals or for corruption, treating the two as large separate categories. When fatal cases are read in the context of Qing handbooks, casebooks, and legal commentaries, magistrates’ sentencing patterns appear to be an indication of the ideals espoused in these writings: leniency, benevolence, and a paternal attitude towards county residents. In cases where the magistrate was investigated for judicial bribery, his avoidance of harsher sentences appears to be motivated by financial concerns, and his invocation of Confucian ideals or sympathy for the accused is no longer an indication of his values. Scholars have found room for nuance within these readings, noting that administrative regulations that specified penalties for overly severe sentences provided more motivation to avoid applying the most serious statutes, and that the financial pressures of local government made some forms of “corruption” unavoidable.  

The dichotomy has remained, though, obscuring consistencies across “corrupt” and “lenient” cases and inconsistencies within each of the two categories. As we saw in the overturned cases in Chapter Three, magistrates invoked Confucian values even when they did


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conclusion not closely match the incident, as when a magistrate tried to extend to Song Yi his father’s legal right to violently discipline his own concubine, a strategy emphatically rejected by the judicial commissioner. When an incident did not align with Confucian values, as in the attempted homicide of Li Wenyao by his adulterous wife’s lover, the magistrate nonetheless sought a lesser sentence, though this decision was also overturned.

In judicial corruption cases, some magistrates adhered to the “lenient” pattern, even after they explicitly refused to offer lesser charges or sentencing among the terms of the bribery agreement. Financial rewards do not seem to offer a complete explanation for their actions; judicial bribery offered higher risks, more severe consequences, and less potential profit than other forms of illicit income, and the magistrates in these cases all expressed some fear of detection. These magistrates were likely subject to many of the same pressures and motivations that were also present in cases without any apparent malfeasance. Others took a different approach, using threats of judicial violence to demand payment before any charges were formally reported to the prefecture, and showing little fear of administrative consequences. Because both their judicial conduct and overall behavior in office seemed to suggest less worry over the risks of impeachment, the financial inducements may have been more persuasive, and the need to accommodate the concerns of either superiors or local interests less so.

Concerns about bribes, undue influence, and negligence ran through the review process of the Yongzheng era. Reviewers treated inconsistencies and missing details in a case narrative as warning signs that the investigation had been superficial, and that the magistrate was either the victim of deception, or was covering up some improprieties of his own. The Yongzheng emperor was inclined to assume dishonest conduct even when no evidence of actual bribery was ever
uncovered, and could have a magistrate imprisoned under house arrest for years as a result of his suspicions. From a magistrate’s point of view, poor judicial performance could be investigated as potential corruption, making impeachment and investigation a possible outcome of any decision. Any magistrate who did not feel secure in his position was motivated to not only present a strong and clear argument for his decision, but also demonstrate his honesty and scrupulousness in the process. Corruption charges were a threat hanging over every magistrate and colored the entire capital review system.

**Accountability and Institutions**

Another way to understand magistrates’ judgments is through the lens of accountability. Accountability and independence in local Chinese courts continues to be an important issue today. As I noted in Chapter One, scholars have studied late imperial China to help better understand judicial discretion and corruption in the People’s Republic of China, debating the feasibility of judicial independence, what it would actually mean for China, and whether it is even desirable for the PRC to pursue it.523 Scholars have looked for social or cultural continuities from Ming and Qing legal traditions to the present to provide context. In this literature, Qing magistrates are framed in two ways: either as having broad latitude in bribery, mediation, and violence; or as being relatively powerless in the context of an highly centralized autocratic power.524 As we have seen in this dissertation, the actual situation was more complicated; magistrates had to accommodate multiple groups with different priorities.

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Qing magistrates were expected to care for local residents, but were formally accountable only to the emperor, the Six Boards, and their superiors in the territorial bureaucracy, in that order. In actuality, they had to consider the interests of a variety of formal and informal powers. Their adherence to their responsibilities and the law was supposed to be monitored through the case review system and regular evaluations, but these systems meant that magistrates’ careers were dependent on positive relationships with and evaluations from their provincial superiors, who frequently made demands not only in professional matters, but also personal ones. Magistrates were often in no position to refuse requests from higher officials for expensive gifts or social calls, and they had little protection from retaliation. As we saw in the case of Zhou Zhongxuan, even a magistrate with strong support at high levels could find himself imprisoned for years if others wanted him investigated.

Magistrates’ relationships with local residents and yamen staff were also complicated. Caring for the people was supposed to be a virtue in magistrates, but formally, the people had no authority to direct or manage officials’ behavior, and local interests were treated as suspect and potentially corrupting. Yamen staff and litigation experts were treated as a malign influence on both residents and officials, enabling the abuse of the legal system for frivolous or selfish reasons, but as Bradly Reed and Melissa Macauley have shown, clerks, runners, and “pettifoggers” actually served to help local people interface with and make sense of the legal system. In practice, local cooperation and money was necessary for magistrates to do their jobs, and the threat of protests, petitions, or even armed uprisings could serve as some degree of deterrent.

The tension between the formal and practical lines of power and influence in the Qing bureaucracy were also evident in the law. In the Qing legal system, serious criminal cases were seen as something that had an underlying true cause—the “roots” 根由—that could be uncovered and made clear, and preconceptions and personal or “private” 私 concerns could cloud officials’ judgment and prevent them from discovering the truth. Other considerations, such as local relationships, yamen clerks and litigation experts acting as gatekeepers and mediators, personal ties or cronyism among territorial officials, or the persuasive power of silver were all seen as negative influences that bent the law away from true.

As we have seen in the cases throughout this dissertation, the Qing bureaucracy under Yongzheng contained a variety of alternative communication pathways that were used in an attempt to evade these distortions and furnish the emperor and the Boards with a clear view of events. Routine case review remained the standard channel, but specially-appointed investigators and censors using secret memorials allowed the emperor to extend his reach past uncooperative territorial officials who protected their subordinates, while petitions allowed local residents to extend their voices past uncooperative magistrates and prefects who refused to investigate deaths.

In the contemporary PRC, the judiciary’s independence and ability to resist pressure remains a subject of concern among legal scholars, government officials, and others. Courts that either support or fail to check the actions of powerful local cadres and developers are condemned for “local protectionism” 地方保護主義, but those that try to enforce judgments against entrenched powers risk docked salaries, loss of funding, and retaliatory violence against
themselfs or their families. Scholars of contemporary Chinese law and politics have called for a Chinese judiciary that is more empowered and independent and the one hand, and yet more accountable to anti-corruption efforts on the other, and more professionally trained and educated overall. In 2014, the central government began pilot reforms aimed at addressing these issues, including centralizing judicial funding and appointments, and changing jurisdictions to reduce local pressures on the courts. These programs are still being tested and studied, so we do not know what their effects will be, but their design seems to suggest that whatever their effect on local protectionism, the intent is to make courts more accountable to the central government.

Certain institutions from the Ming and Qing appear to have persisted; the current petition system 上访 is still framed as a way of allowing individuals from rural counties to speak directly to the central government in Beijing, and punishment for incorrectly decided cases is treated as another imperial remnant. In 2015, PRC President Xi Jinping 习近平 granted a general amnesty—the county’s eighth—to celebrate the 70th anniversary of the end of the second World War. And in Chapter Four of this dissertation, we saw the head of the Republic of China (Taiwan)’s Control Yuan, Chang Po-ya, argue for an institutional continuity between her agency and the Qing Censorate, to the extent that she felt empowered to offer symbolic reparations to Zhou Zhongxuan on behalf of Chanjibu and his branch of the bureaucracy.

On the surface, the worries about protectionism and the pilot centralization of judicial power in the PRC seem like more continuities from the imperial system, springing from concerns about corruption and undue influence and their potential to cause instability. However, it is important to be cautious when looking for continuities and drawing inferences based on them. Scholars used to attribute the contemporary Chinese preference for mediation over civil litigation as an expression of millennia-old ideals about social harmony. After David Buxbaum, Philip Huang, and others working with local archives demonstrated that litigation was much more prevalent than expected, the literature on contemporary China shifted to identifying more immediate causes for both Chinese and foreign actors to choose informal arbitration: “simplicity, speed, and a lower burden of proof.”

This dissertation has focused on incentives and motivations rather than social values not because I believe that ideals are meaningless, but because I am wary of the tendency to draw contemporary parallels to the past based on the idea of cultural continuities. Institutions, values, and beliefs can carry over across regimes, and they can be deliberately invoked as well, but unless we pay attention to the possible motivations and options available to people in a system, we cannot understand their choices. Qing magistrates, despite being caught between the conflicting priorities of the provincial administrations, the Qing court, local interests, and their own individual considerations, did find ways to make meaningful choices in capital cases, using their formal and informal authority to reach verdicts that could be acceptable to both the people

in their counties and to their superiors. Magistrates were not successful in determining the outcome of every case, but they were able to use their positions to create and influence life-and-death judgments.
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揭帖, and communications 移會.

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NPM: National Palace Museum 國立故宮博物館, Taipei, Taiwan.
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