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Ka-Chai Tam

Abstract

This paper explores the favourable circumstances of the institutions that helped create a growing demand for judicial publications from the mid-Ming onwards. The increase in the legal elements of the civil service examination, especially the change in the pan test that asked the candidates to compose artificial case reports instead of straining to memorize the meaning of judicial terms, fostered a new demand for manuals and exemplary works of legal practice. Moreover, the gradual development in the Wanli period (1573-1620) of the promotion route tui zhi xingqu (Selection of talents from the pool of brilliant prefectural judges and magistrates), through which magistrates and prefectural judges could ascend to prestigious supervisory posts at court by sound judicial performance, also increased the morale of frontline officials, encouraging them to study law and make their impressive legal performance known to their superiors and to the public. Last but not least, the demands imposed on the low-level judiciary for professional and uniform judgements since the Jiajing era (1522-1567) eliminated grey areas in the application of the law, so that junior officials were left facing a more rigid legal system in which they were under greater pressure to make the right judgements. Thanks to all these newly introduced elements, the study of legal knowledge and application of the law had never been taken more seriously than in the final stage of the Ming ; the publication of judicial works of all kind, the means to acquire such knowledge, thus flourished.

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Favourable Institutional Circumstances for the Publication of Judicial Works in Late Ming China¹

Tam Ka-chai*

Abstract

This paper explores the favourable circumstances of the institutions that helped create a growing demand for judicial publications from the mid-Ming onwards. The increase in the legal elements of the civil service examination, especially the change in the *pan* 判 test that asked the candidates to compose artificial case reports instead of straining to memorize the meaning of judicial terms, fostered a new demand for manuals and exemplary works of legal practice. Moreover, the gradual development in the Wanli 萬曆 period (1573-1620) of the promotion route *tui zhi xingqu* 推知行取 (Selection of talents from the pool of brilliant prefectural judges and magistrates), through which magistrates and prefectural judges could ascend to prestigious supervisory posts at court by sound judicial performance, also increased the morale of frontline officials, encouraging them to study law and make their impressive legal performance known to their superiors and to the public. Last but not least, the demands imposed on the low-level judiciary for professional and uniform judgements since the Jiajing 嘉靖 era (1522-1567) eliminated grey areas in the application of the law, so that junior officials were left facing a more rigid legal system in which they were under greater pressure to make the right judgements. Thanks to all these newly introduced elements, the study of legal knowledge and application of the law had never been taken more seriously than in the final stage of the Ming; the publication of judicial works of all kind, the means to acquire such knowledge, thus flourished.

¹ This paper is revised and expanded from the second chapter of my Doctoral thesis, “Justice in Print: Prefectural Judges of Late Ming China in the light of *Mengshui zhai cundu* and *Zheyu xinyu*,” University of Oxford, 2009, pp. 38-63.

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Chen Qixin's Criticism of the System of Official Selection and Promotion

In March 1636, Chen Qixin 陳啓新 (dates unknown), a graduate of the provincial military recruitment examination from the Huai'an guard (Huai'an *wei* 淮安衛) in the South Metropolitan Region, presented a bold request to the Chongzhen 崇禎 emperor (r. 1628-1644) for a reform of the Ming government's personnel system. His memorial, which drew widespread condemnation, identified three "root problems" in the system of selecting and promoting civil officials in his times. If the dynasty were to be saved, Chen asserted, these root causes had to be thoroughly addressed.

The greatest evil in Chen's eyes was the civil service examination. He accused the graduates who succeeded in this system of being self-seeking men of letters who merely paid lip service to such Confucian ethics as loyalty and filial piety. As the examination was incapable of selecting men with real talent and morality, Chen concluded that the whole system should be abolished.

The second target of Chen's attack was the overwhelming emphasis on the *jinshi* 進士 qualification in the promotion of civil officials. In the second half of the Ming, the old method of selecting court officials from the pools of Students of the National University and graduates of the *juren* 舉人 status had been abandoned and the *jinshi* degree was now the only guaranteed path to obtaining key posts at court. Chen argued that since the Students and *juren* had no hope of being promoted to prestigious offices when they were placed in lower-level posts, they had no incentive to perform their duties well and were instead open to any means of acquiring a personal fortune, whether through corruption or any other sort of misdeed. How could this not undermine the rule of the dynasty? He asked.

The third problem was the practice of promoting prefectural judges and magistrates to the posts of supervising secretaries (*jishizhong* 給事中) in the Six Offices of Scrutiny (*liuke* 六科) and of censors (*yushi* 御史) in the Censorate (*duchayuan* 都察院). By the end of the Ming, many prefectural judges and magistrates were fresh graduates of the *jinshi* examinations. Their frontline judicial and administrative experience in local government was believed to have equipped them with qualities such as the ability "to understand worldly affairs and comprehend the emotions of hu-

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man beings (*tong shiwu da renqing* 通世務達人情),”² qualities deemed essential for fulfilling the duties of supervising officials. Consequently, if their performance in these local posts was satisfactory, after three to nine years of service, the next step in their career path would almost certainly be to assume the post of supervising secretary or censor. Chen’s objection to this arrangement was that since the prefectural judges and magistrates would very likely receive promotion to a position in which they supervised officials, it was unlikely that anyone would lodge a complaint against them, in order to avoid the possibility of inviting some form of revenge in the future. Thus, he reasoned, their superiors in local government and their future colleagues were unlikely to correct or confront these potential censors. In Chen’s eyes, this undermined the authority of provincial officials over their subordinates. He therefore suggested that the monopoly of prefectural judges and magistrates over supervisory posts should be ended and these posts should be opened up to other streams of junior officials at court, including palace secretaries (*zhongshu* 中書), messengers (*xingren* 行人), case reviewers (*pingshi* 評事) and erudites (*boshi* 博士). This would not only curb the arrogance of those local judicial officials who were graduates of the *jinshi* degree but would encourage them to concentrate on their primary duties and show more humility and obedience to their superiors.³

² For the benefits of selecting talent from the pool of regional frontline officials, see Lu Zhaolong’s 盧兆龍 preface to Yan Junyan 顏俊彥 *Mengshui zhai cundu* 盟水齋存牘 (Official documents preserved in the Mengshui Studio), Beijing: Zhongguo zhengfa daxue chubanshe, 2002, p. 6.

³ Although the Chongzhen emperor rejected all Chen’s suggestions, his transgression went unpunished—much to the surprise of the many court officials who launched severe attacks on Chen’s arguments as well as his audacity. More than that, he was appointed as Supervising Secretary in the Office of Scrutiny for Personnel (*like jishizhong* 吏科給事中), a prestigious post that he himself had complained was dominated by *jinshi* graduates appointed from local posts. This controversial appointment suggests that the Chongzhen emperor shared at least some of Chen’s views on the examination and personnel system. For the complete story of Chen Qixin’s memorial and the details and controversy engendered by his criticisms, see Lu Shiyi 陸世儀, *Fushe jilüe* 復社紀略 (Brief history of the Fushe), in Zhou Guangpei 周光培, comp., *Mingdai biji xiaoshuo* 明代筆記小說 (Collection of miscellaneous works from the Ming), Shijiazhuang: Hebei renmin chubanshe, 1995, vol. 12, pp. 541-549. Kazuko Ono 小野和子 analyzes Chen’s memorial in the context of court politics and literary clubs in the Chongzhen reign. See Kazuko Ono, *Mingji dangshe kao* 明季黨社考 (A

Although Chen exaggerated the extent of the problem, his criticisms nevertheless reflected a basic reality of the official selection and promotion procedures at this time as well as the practices and conditions they created. The civil service examination played a central role in official selection; *jin-shi* degree holders frequently rose from their initial local posts as prefectural judges and magistrates to the Six Offices of Scrutiny and the Censorate as well as other posts in the central government. These practices and conditions provided the backdrop against which judicial works, especially the casebooks published by contemporary judges, emerged in the late sixteenth and early seventeenth centuries.

The Reform of the *Pan* Test of the Civil Service Examination in the Late Wanli Era

One of the significant factors that contributed to the emergence of judicial publications in late Ming China was the introduction in the late Wanli era of the *pan* 判, or judicial judgement, section in the second paper of the civil service examination.⁴

After struggling to determine the imperial system of talent selection, in 1384 Zhu Yuanzhang 朱元璋 (Ming Taizu 明太祖, r. 1368-1398) eventually finalized a civil service examination that comprised three different papers. The first paper focussed on the Confucian Classics, the second on practical skills of government administration, and the third on issues of contemporary politics. Until the late Wanli era, in the second paper of the examination, candidates were required to answer a section on judicial terms (*panyu* 判語) along with one section on discourse and another on documentary style.⁵ There were always five (or five sets of) terms selected from the *Great Ming Code* (*Da Ming lü* 大明律) or the *Grand Pronounce-*

study of political factions and literary clubs in the Ming era), Shanghai: Shanghai guji chubanshe, 2006, pp. 282-284.

⁴ For the format of civil service examination of the Ming, see Benjamin A. Elman, *A Cultural History of Civil Examinations in Late Imperial China*, Berkeley: University of California Press, 2000, p. 735.

⁵ Shen Shixing 申時行, comp., *Wanli Da Ming Huidian* 萬曆大明會典 (The Wanli edition of the Collected Statutes of the Great Ming), Beijing: Zhonghua shuju, 1989, vol. 77. p. 448a; Zhang Tingyu 張廷玉, comp., *Ming shi* 明史 (Standard history of the Ming), Beijing: Zhonghua shuju, 1976, vol. 70, p. 1694.

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ment (*Dagao* 大誥) to be addressed in this test.⁶ The candidates had to identify and explain these terms in brief essays, with the aim of ensuring candidates' basic knowledge, rather than application, of the code. Recent scholarship has suggested that the introduction of this *panyu* section represented Zhu Yuanzhang's conscious effort to promote practical learning (*shixue* 實學), which had its precedent in the law examination (*mingfa* 明法) of the Tang and Song.⁷

From the mid-Tang to early Northern Song, the *mingfa* examination required the candidate to identify and explain seven articles from the code (*lü* 律) and three from the commandments (*ling* 令).⁸ This examination focussed on the contents, rather than application, of the laws, however. After 1071, when the Song reformer Wang Anshi 王安石 (1021-1086) introduced a new form of *mingfa* examination, his ally Wu Chong 吳充 (1021-1080) criticized the original form as only good for making candidates memorize the text of the laws but hardly enabling them to comprehend the codes' meaning. In the new *mingfa* examination, a test of judicial judgement (*duanan* 斷案) was incorporated.⁹

In contrast to the succeeding Song system, in the Tang there had been another test that successful candidates of the civil service examination had to take to guarantee their ability to make judgements according to the laws. To avoid years of waiting, the degree holder had to pass the Placing Examination (*shihe shi* 釋褐試) held by the Ministry of Personnel so as to get an immediate placement in the official bureaucracy. The legal test, known as the *pan*, was part of this.¹⁰ It required candidates to draft three artificial case reports according to the terms provided; each would be about 120 characters long with *jia* 甲 and *yi* 乙 designating the two parties in-

⁶ See the example of the *panyu* questions of five pairs of legal terms in 1516 in Yang Xuewei 楊學爲, ed., *Zhongguo kaoshi shi* 中國考試史 (A history of examinations in China), Beijing: Shoudu shifan daxue chubanshe, 2004, vol. 3, p. 52.

⁷ Elman, *op. cit.*, pp. 42-44.

⁸ Ouyang Xiu 歐陽修 and Song Qi 宋祁, comps., *Xin Tang shu* 新唐書 (New standard history of the Tang), Beijing: Zhonghua shuju, 1975, vol. 44, p. 1161.

⁹ Tuotuo 脫脫, comp., *Song shi* 宋史 (Standard history of the Song), Beijing: Zhonghua shuju, 1977, vol. 155, pp. 3618-3619.

¹⁰ Ouyang Xiu, Song Qi, *Xin Tang shu*, vol. 45, p. 1172.

volved in the dispute.¹¹ An exemplar of this type of report is the *Baidao pan* 百道判 composed by the celebrated mid-Tang poet Bai Juyi 白居易 (772-847).¹²

There is no surviving early Ming example of an answer to the *panyu* section, but we do know that because of its deviation from the prototype of the Tang and Song, the *panyu* test was roundly criticized in the Jiajing era by Hu Jie 胡介 (dates unknown), an expert in writing judicial rulings. In the preface to his collected artificial judgements, *Baiyi xinpan* 百一新判, published in 1559, Hu complains that the Ming government's failure to restore the original *pan* test of the Tang and Song in his own times had prevented talented men like himself from passing the examination.¹³ Hu Jie's criticism suggests that in the Jiajing era at least, while the legal examination (*panyu*) was still part of the civil service examination, its form and content were very different from the test in former periods. There is no indication in the preface whether or not Hu intended his work to provide model answers. Even if his cases did reflect the actual practice of the test in his time, however, his reports deviated from those of the Tang and also from the answers of later reigns of the Ming, when the tests were again frequently being referred to as *pan*. First, Hu's essays are nearly 250 characters long, double the length of the Tang reports as well as those from late Ming and early Qing. Second, he abandoned the Tang usage of the artificial designations *jia* and *yi*, so that this makes his reports identical with later works in terms of literary form.

As noted above, there was a trend in late Ming and early Qing literature to refer to the legal section of the civil service examination as *pan*, instead of *panyu*. While most of the works from the early Ming until at least the publication of the *Wanli da Ming huidian* in 1587 identified this legal test as *panyu*,¹⁴ the majority of the sources composed in later eras, such as

¹¹ Gu Yanwu 顧炎武, *Rizhilu jishi* 日知錄集釋 (Collected notes on the Record of Knowledge Gained Day by Day), Changsha: Yuelu shushe, 1996, vol. 16, pp. 596-597.

¹² See Bai Juyi 白居易, *Bai Juyi ji jian jiao* 白居易集箋校 (Collected works of Bai Juyi, annotated and proofread), annotated by Zhu Jincheng 朱金誠, Shanghai: Shanghai Guji, 1988).

¹³ Tam Ka-chai, "Ming Taizu *Yuzhi da gao* zai Hongwu chao yihou xingyong qingkuang xintan" 明太祖御製大誥在洪武朝以後行用情況新探 (A Re-examination of the Legal Authority of Zhu Yuanzhang's *Grand Pronouncement after the Hongwu reign*), *Journal of Chinese Studies*, 47 (2007), pp. 8-9.

¹⁴ See Wang Tianyou, ed., *Zhongguo kaoshi wenxian jicheng* 中國考試文獻集成

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the essays on the Ming examination system by Zhu Yizun 朱彝尊 (1629-1709) and the *Ming shi*, published in the High Qing, referred to it simply as *pan*.¹⁵

The reason for the revival of the term *pan* for the legal test (reverting to the term used in the tests on judicial judgement in the Tang and Song) receives no mention in Ming and Qing sources. From the Wanli era on, these two terms were clearly used interchangeably, and while some scholars referred to the *panyu* as “judicial judgements,” others identified the *pan* in the Ming as “judicial terms.”¹⁶ Given this confusion, it is not surprising that the *panyu* test has been regarded incorrectly by some modern scholars as having continued from the early Ming without any change until the Qing government’s decision in 1757 to abandon legal questions in favour of reverting to the Tang and Song requirement of metrical poetry.¹⁷

(Collection of documentary materials of examinations in China), vol. 5, pp. 197-198, pp. 278-281, and pp. 377-378; Shen Shixing, *op. cit.*, vol. 77, p. 448a.

¹⁵ See Wang Tianyou, *op. cit.*, vol. 5, pp. 194, 203, 302; Zhang Tingyu, *op. cit.*, vol. 70, p. 1694.

¹⁶ For instance, in his *Rizhilu jishi* (see n. 11), the early Qing scholar Gu Yanwu 顧炎武 (1613-1682) on the one hand labels the judicial test in the civil service *pan* (vol. 16, pp. 596-597), and on the other hand refers to it as *panyu* (*ibid.*, p. 588). In recent years, a modern scholar of traditional Chinese education has labelled the Ming legal test of the civil examination as legal judgement (*pan*), while failing to realize the existence of its earlier version, *panyu*. See Thomas H. C. Lee, *Education in Traditional China: A History*, Leiden: E. J. Brill, 2000, p. 163.

¹⁷ See Elman., *op. cit.*, p. 44. Wada Masahiro 和田正廣, in his book devoted to the contents of the *panyu* test in the civil service examination of the Ming, “Mindai kakyo seido no kamoku no tokushoku” 明代科舉制度の科目の特色, dates the beginning of this test to 1384, when Zhu Yuanzhang reintroduced the civil service examination. Without acknowledging the complaint by Hu Jie, nor discovering any examples of answers for *panyu* from the times before the Wanli era, Wada suggests that this form of artificial judgement, instead of the explanation of the meaning of the codes, was initiated by Zhu Yuanzhang from the very beginning. The argument has yet to be proved. Wada’s main error, however, is the date of abolishment of the *pan* test in the high Qing. He fixes this at 1687 (Kangxi 26) based on Shang Yanliu’s 商衍鑾 discussions of the development of the examination papers during the Qing. See Shang Yanliu, *Qingdai keju kaoshi shulu* 清代科舉考試述錄 (A history of the civil service examination in the Qing), Beijing: Sanlian shudian, 1958, pp. 63-64. But Wada overlooked all events between 1687 and 1757 and presumably simply read the description of the abolition in 1687, which in fact Shang dated to 1757 (Qianlong 22). See Wada Masahiro, *Min Shin*

The change in terms used for the test may well reflect fundamental reforms in the legal section which occurred after 1587. The original Ming form, with its emphasis on explaining judicial terms, was now replaced by a report with the aim of allowing candidates to demonstrate their skills in applying the essence of the law to practical judicial judgements.

At the beginning of the Qing, members of a certain Lai 來 family published the *Zouya shiye* 奏雅世業, a collection of exemplary essays for the reference of examination candidates.¹⁸ The work comprises ten artificial case reports that answer the two sets of five legal questions of the provincial examination of 1639 and the metropolitan examination of 1640. These cases shared the same literary form, the *siliuti* 四六體 (an euphuistic style of parallel constructions, consisting of pairs of sentences of four and six characters). They were collected in Bai Juyi's *Baidao pan*, Hu Jie's *Baiyi xinpan*, the exemplary *pan* collected in the commentaries on the code published from the Wanli period on, and a specialized contemporaneous collection of artificial judicial *pan* published in the late Ming entitled *Xinzuan siliu helü panyu* 新纂四六合律判語.¹⁹ An example of the case reports in the *Zouya shiye*, which responds to the judicial term *xinpai* 信牌, or warrants, appears as follows:

The transmission of messages to destinations a thousand *li* away is in written form rather than by word of mouth, and the bird-style scripts are carved on tallies made from tortoise shells. The three armies do not fear the person of the general, but the authority entrusted to him, so they ask to verify the imperial dragon seal on the orders with the [general's] tiger tally. If one distorts the facts

kanryōsei no kenkyū 明清官僚制の研究 (A study of the bureaucracy of the Ming and the Qing), Tokyo: Kyuku Shoin, 2002, pp. 36, 41 and 43.

¹⁸ The extant copy of *Zouya shiye* is held in the National Library of China, Beijing (SB 15353). The preface of this work by Chen Hanhui 陳函輝 (1590-1646), a famous Zhejiang scholar of the late Ming, tells us that the Lai's work was published as an examination aid for the second and third papers of the civil service examination. Some of the essays in this work are punctuated and published in Wang Tianyou 王天有, ed., *Zhongguo kaoshi wenxian jicheng* 中國考試文獻集成 (Collection of Chinese examination literature), Beijing: Gaodeng jiaoyu chubanshe, 2003, vol. 5, p. 404.

¹⁹ Guo Chengwei 郭成偉 and Tian Tao 田濤, eds., "Xinzuan siliu helü panyu" 新纂四六合律判語 (A new collection of *pan* essays in *siliu* style arranged parallel to the Code), in *Ming Qing gongdu miben wuzhong* 明清公牘秘本五種 (Five works of official documents and secret guidebooks from the Ming and the Qing), Beijing: Zhongguo Zhengfa daxue chubanshe, 1999, pp. 59-137.

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to serve one's own interests, and as if by magic alters the order several times in a single day, the people of the empire and those from beyond will certainly become unsettled, and they will bring forward complaints of their collective grievances.

At present, so-and-so has the task of composing documents and he abused his position, and after the order entrusted to him had already been issued, he secretly altered it. He violated the principles of the *yin* and the *yang*, and the pieces of paper kept silent; the spirits and ghosts meddled, and the basic regulations were never established. He arranged the battle formation of five elements as if a flourish of the five-clouds calligraphic style. How it dazzled the beholders!

Now, I replace the mourning of the whole region with the lament of a single household, and this is what the criminal deserves.

千里不傳聲而傳字，寄鳥篆於龜符。三軍不畏將而畏權，問龍章於虎節。倘下上其手，幻暮四朝三之術；必中外生心，攜合五聚六之情。今某筆有文而可舞，墨已潑而暗移。陰陽滅沒，片楮不言，神鬼那移，三章莫定。弄五花如五朵之雲，何其燦眼；借一家易一路之哭，是所甘心。”²⁰

This case report is not directly relevant to the article of “warrant” in the code. That instead deals with issuing warrants to set time limits for accomplishing matters at the prefectural level and restricting superior officials from going directly to their subordinates’ offices to urge them to perform duties.²¹ From this thematic divergence, we can see that the literary style of this type of report was far more critical than its contents for passing the examinations. As shown in this example, in each of the exemplary cases of the *Zouya shiye*, the first few lines are devoted to defining a crime related to the judicial term given in a question of the *pan* section. The following paragraph then begins with the phrase “at present, so-and-so” (*jin mou* 今某). It aims to describe the details of the artificial crime in an elaborate literary style. Finally, the last sentences record the punishment meted out to the criminal. Because of the unrealistic nature of these contrived cases, detailed punishments for the crime are, as a rule, seldom in-

²⁰ Wang Tianyou, *op. cit.*, vol. 5, p. 404.

²¹ For the full text of the statute “xinpai” in the *Da Ming lü*, see Jiang Yonglin (trans). *The Great Ming Code*, Seattle: University of Washington Press, pp. 67-68, article 80.

cluded. Moreover, in line with the examination regulations, these case reports are always about 100 to 140 characters long.²²

Hu Jie's complaint would therefore appear to have been answered at least in part, and the artificial case reports collected in the *Zouya shiye* clearly show that the *pan* test in the late Ming not only demanded that the candidates identify and explain legal terms but also required them to demonstrate their skills, both literary and legal, in the practice of judicial judgements.

More importantly, these judicial skills now weighed even more heavily in the selection of talent. In the early Ming, examiners of the civil service examination had paid overwhelming attention to the first paper on the Confucian Classics, and it was primarily on the basis of achievement in this section that a candidate's fate was determined. In 1573, probably under reforms introduced by the pragmatic Prime Minister Zhang Juzheng 張居正 (1525-1582), the tide changed and the second and third papers on practical administrative knowledge now became of key importance. In the provincial examination, candidates who only performed well in the first paper would not be allowed to pass, while those who did well in the second and third papers would have a chance to be successful, even if their performance in the first had been unimpressive.²³

Candidates duly realized that in order to excel in the two final papers, they needed to equip themselves with examination manuals and exemplary essays. In response to these new demands in the examination market during the late Wanli era, commercial publishers in the Jiangnan region started to issue anthologies of exemplary eight-legged essays and reference works specifically aimed at the second and third papers. For instance, the *Zengding ersan chang qunshu beikao* 增訂二三場群書備考 (Extended and revised ready reference of the works for the second and third papers of the civil service examination), originally published by the Dagan tang 大

²² For an analysis of the *pan* answers, see also Wada Masahiro, *op. cit.*, pp. 62- 76, 82.

²³ *Wanli Da Ming Huidian*, vol. 77, p. 448b. Although the effect of this new policy is doubtful, the second and third papers now undoubtedly carried at least as much weight as the first one. This shift might also be reinforced by the decline of Orthodox position of the Cheng-Zhu 程朱 School in the examinations during the late Ming. The introduction in the early Wanli era of the ideas of Wang Yangming 王陽明 (1472-1528) into the interpretations of the Classics in the examinations had undermined the uniformity of evaluation and thus the standard of pass for the first paper.

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觀堂 in Suzhou, a professional publisher of examination aids,²⁴ was repeatedly reissued by different commercial publishers after the mid-Wanli era.²⁵ Judicial materials now gloriously entered the market of examination candidates.²⁶

By providing a new demand for examination aids, the introduction of the *pan* test after the mid-Wanli period first reinforced a growing trend of reissuing casebooks from the Tang and Song. In addition, on top of the original interpretations of the laws, commentaries on the *Great Ming Code* newly issued or revised from the Wanli era on also added exemplary *pan* essays and judicial reports to each entry of the *Code*, clearly intended to attract the potential custom of students.²⁷ With the prospect of an enormous student readership and the potential to generate impressive profits, therefore, contemporary judges increasingly began to publish their own anthologies of enlightened, authentic case reports.

The Impact of the Development of Recruitment Procedures for Fresh Graduates of the *Jinshi* Qualification in the Later Half of the Ming: the *Tui zhi xingqu*

In addition to the reform of the *pan* test, the development of a promotion route for prefectural judges (*tuiguan* 推官) and county magistrates (*zhixian* 知縣) that affected the career paths of fresh *jinshi* degree holders during the Wanli era also stimulated the publication of judicial casebooks

²⁴ Qu Mianliang 瞿冕良, *Zhongguo guji banke cidian zengdingben* 中國古籍版刻辭典增訂本 (A dictionary of ancient books and woodblock craftsmanship in China), Suzhou: Suzhou daxue chubanshe, 2009, p. 16.

²⁵ See Shen Junping 沈俊平, “Mingdai fangke zhiju yongshu chuban de chenji yu fuxing de kaocha” 明代坊刻制舉用書出版的沉寂與復興的考察 (An observation on the downfall and revival of publication of examination manuals by commercial printers in the Ming), *Shumu jikan* 書目季刊, 41.4 (2008), pp. 31-32.

²⁶ Shen Junping lists the available titles of examination aids specifically for the second and third papers in his article “Ming zhongwanqi fangke zhiju yongshu de chuban ji chaoye renshi de fanying” 明中晚期坊刻制舉用書的出版及朝野人士的反應, (The publication of examination manuals and the response of officials and commoners in mid- to late Ming), *Hanxue yanjiu* 漢學研究, 27.1 (2009), pp. 151-152.

²⁷ Wada Masahiro, *op. cit.*, pp. 62-76.

in this period. Under the reformed arrangement, many of the third-class honour *jinshi* graduates²⁸ appointed as prefectural judges or magistrates would be likely to receive direct promotion to the position of supervising officials at court, if their performances were satisfactory, after three to nine years of service in these initial local posts.

This new promotion route, known as *tui zhi xingqu* 推知行取, or selection of supervising officials from the pool of prefectural judges and county magistrates,²⁹ signified a critical movement in the career prospects of *jinshi* degree holders compared to earlier reigns. Although it is difficult to suggest precise dates, the trend of development of the *tui zhi xingqu* and the gradual predominance of prefectural judges and magistrates in the posts of supervisory officials are clearly reflected by the records of the *Lantai fajian lu* 蘭臺法鑑錄,³⁰ an extensive collection of biographies of more than 4,285 censors who served the Ming court from 1368 to 1632.

From the Hongwu 洪武 (1368-1398) to the Tianshun 天順 (1457-1464) eras, these two groups of local officials played merely a minor role in the selection of censors, since well below one-fourth of these supervisory officials ascended from their ranks. Therefore, save for a few exceptional cases, if a *jinshi* graduate in this period was assigned to the office of judge or magistrate instead of to a junior post at court, he would at best ascend step by step from this humble position up the ladder of provincial administration, and it could take several decades for him to reach the level of a minor court official. If his performance were only fair or unsatisfactory, he might even remain in his junior local post until he retired, resigned, or was dismissed. In other words, these local positions were not particularly attractive, and the morale of the least promising judicial and administrative officials at the local level was unlikely to be high.³¹

²⁸ In the Ming and Qing civil service examinations, the three top-ranking *jinshi* received first-class honours and were appointed as Hanlin Academicians, while the other top 20 to 40 *jinshi* got second-class honours and were eligible to become Bachelors. For the three-rank, or jia 甲, system of the *jinshi*, see Elman, *op. cit.*, pp. 157-158.

²⁹ *Ming shi*, vol. 71, pp. 1717-1719.

³⁰ He Chuguang 何出光, Chen Dengyun 陳登雲 and Yu Sixun 喻思恂, comps., *Lantai fajian lu* 蘭臺法鑑錄 (Collection of biographies of censors), in *Beijing tushuguan guji zhenben congkan* 北京圖書館古籍珍本叢刊 (Compendium of rare books held in the Beijing Library), Beijing: Shumu wenxian chubanshe, 1994, vol. 16, pp. 1-585.

³¹ See Ōno Kōji 大野晃嗣, "Mindai no teishi gōkaku sha to shoninkan posuto:

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This situation started to change during the Chenghua 成化 era (1465-1487), when the *tui zhi xingqu* was probably effectively implemented for the first time.³² Now the number of censors promoted directly from prefectural judges and magistrates increased to about half of the total. Afterwards, during the Jiajing reign, their number grew steadily. It was not until the late Wanli era, however, that these two groups dominated the censorial posts. About three-fourths of the censors in the last few reigns of the Ming had held either the posts of prefectural judge or county magistrate immediately prior to their new appointments to the Censorate (Table 1).³³

Ōno Kōji 大野晃嗣 has carried out a detailed analysis of five lists of successful candidates by order of seniority in age (*tongnian chilu* 同年齒錄) from the late Ming and concludes that among 1,298 *jinshi* who graduated in the years 1547, 1553, 1556, 1586 and 1610, the majority of those gaining the third-class honours were assigned to local positions as magistrates (rank 7a) and prefectural judges (rank 7a). The majority of those awarded second-class honours, on the other hand, were appointed directly to court positions, such as secretaries of the six ministries (rank 6a).³⁴

Tongnian chilu to sono tōkei teki riyō” 明代の廷試合格者と初任官ポスト—「同年齒錄」とその統計的利用, *Tōyō shi kenkyū*, 58 (1999), pp. 27-28. For routes of promotion for prefectural judges and magistrates in Ming officialdom, see also Yang Xuefeng 楊雪峰, *Mingdai de shenpan zhidu* 明代的審判制度 (The system of justice of the Ming), Taipei: Liming wenhua, 1981, pp. 93-117.

³² The exact origin of *tui zhi xingqu* is still unclear, but by the Chenghua era it had become a standardized procedure for regional administrators to recommend prefectural judges and magistrates who performed well to be evaluated by the Ministry of Personnel for the appointment of supervising secretaries or censors. See the *Ming shi*, vol. 71, p. 1717.

³³ Before the Wanli era, the *tui zhi xingqu* was held irregularly and only when there was an urgent need for censors. The Wanli emperor then decided that this practice should be held every three years. In 1631, however, when one-third of the posts of censorial officials were found unfilled, the Chongzhen emperor attempted to change the *tui zhi xingqu* to an annual practice. But he was soon convinced by the censors that the quality of officials should be the priority, so that by the end of the Ming the Wanli practice of three-year intermission was kept. See the *Ming shi*, vol. 71, p. 1718. See also the *Chongzhen changpian* 崇禎長編 (Detailed chronology of the Chongzhen period), Taipei: Shiyusuo, 1962, vol. 45, pp. 2711-2713; vol. 59, pp. 3409-3410.

³⁴ Ōno Kōji, *op. cit.*, pp. 9, 12, 15, 20-22. Throughout the Ming, the first- and

Table 1: Censors Ascended Directly from the Posts of Prefectural Judges or County Magistrates during the Ming from the Different Chapters of *Lantai fajian lu*

Chapter	Reign	Years of appointment	Total no. of Censor	Magistrates & Prefectural Judges	%
1	Hongwu 1	1368-1386	272	31	11.4
2	Hongwu 2	1386-1400	214	22	10.3
3	Yongle 1	1403-1406	196	15	7.6
4	Yongle 2	1406-1412	188	26	13.8
5	Yongle 3	1412-1420	188	12	6.4
6	Yongle 4	1420-1424	139	34	24.4
7	Xuande	1426-1435	144	16	11.1
8	Zhengtong	1436-1448	176	20	11.3
9	Jingtai	1450-1454	173	6	3.5
10	Tianshun	1457-1464	114	28	24.6
11	Chenghua 1	1465-1477	184	71	38.6
12	Chenghua 2	1477-1487	197	121	61.9
13	Hongzhi	1488-1498	249	139	55.8
14	Zhengde	1506-1521	286	136	47.5
15	Jiajing 1	1522-1534	192	88	45.8
16	Jiajing 2	1533-1547	179	86	48.0
17	Jiajing 3	1547-1566	242	142	58.7
18	Longqing	1566-1572	111	63	56.7
19	Wanli 1	1573-1585	191	130	68.1
20	Wanli 2	1585-1612	294	198	67.4
21	Wanli 3	1614-1621	126	89	73.0
22	Tianqi	1622-1628	104	82	78.9
23	Chongzhen	1628-1632	126	92	73.1

Moreover, in this period, there were few instances of graduates being appointed to the post of supervising official as their initial appointment. This, Ōno suggests, was because these offices, referred to as “Qinghua zhixuan” 清華之選,³⁵ had been generally recognized since the Hongzhi 弘治 era (1488-1505) as too important to entrust to fresh *jinshi* graduates.³⁶ However, under the *tui zhi xingqu* system, these highly

second-class graduates of the civil service examination were seldom appointed to these local posts as their first appointment. In addition to placements in local positions, many of those receiving the third-class honour were appointed to minor offices at court, such as messengers (rank 8a) in the Messenger Office (*Xingren si* 行人司).

³⁵ As in most of the mid- and late Ming official publications, when the officials were listed, supervising officials were always placed before administrative posts of the same rank. See Ōno Kōji, *op. cit.*, pp. 23-24.

³⁶ *Ibid.*, pp. 17-18.

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prestigious positions of 50 supervising secretaries and 120 censors (as discussed above) in the central government were mainly filled by *jinshi* who had attained the third-class degree and who, having served in their first posts as prefectural judges and magistrates, were appointed to these offices at court as their second post.³⁷

By analyzing the career routes of prefectural judges, Ōno establishes that initial promotion to a supervisory post, rather than an administrative one, such as secretary of the six ministries, ultimately guaranteed a faster rate of advancement within the official bureaucracy.³⁸ In contrast, second-class degree holders whose initial positions were usually as secretary of the six ministries were repeatedly prohibited from moving from the administrative stream into the supervisory one.³⁹ They were thus usually denied this faster promotion route. In the late Ming, therefore, it was reported that many second-class degree holders envied third-class holders who received appointments to local positions, considering them to be destined to “ascend to immortality.”⁴⁰ In short, paradoxically, third-class honour holders who assumed the posts of prefectural judge or magistrate could be seen as having the best prospects, second only to those graduates who received first-class honours and were appointed to the Hanlin Academy.

As Chen Qixin’s complaint shows, by the end of the Ming period many prefectural judges and magistrates who were *jinshi* graduates were aware that they were supervisory officials in the making;⁴¹ their smooth and rapid rise through the ranks of officialdom was almost guaranteed. Although they may have been arrogant or impolite, as Chen claimed, still the best way for them to guarantee their fortune was to remain obedient and avoid confrontation with their superiors. Contrary to Chen’s accusation, it is probable that they would have tried to impress their superiors as well as the Ministry of Personnel by demonstrating at every opportunity their administrative skills and enlightened judgements. It therefore follows that they would have had every incentive to equip themselves with the knowl-

³⁷ About 90% of the prefectural judges and magistrates who participated in the *tui zhi xingqu* were *jinshi* degree holders. See the *Ming shi*, vol. 71, p. 1718.

³⁸ Ōno Kōji, *op. cit.*, pp. 26-27.

³⁹ *Ming shi*, vol. 71, p. 1717.

⁴⁰ Ōno Kōji, *op. cit.*, p. 30.

⁴¹ *Ibid.*, p. 31.

edge that might enhance their performance. Not surprisingly, it was these promising yet inexperienced officials who, by the late Wanli era, had created an ever-growing demand for the publication of administrative manuals and collections of exemplary judicial cases.

Whenever the *tui zhi xingqu* was about to take place, the high officials responsible for the general review of the official bureaucracy would prepare preliminary surveys of local officials' performance (*fangdan* 訪單) on which their formal appraisals were usually based.⁴² It was therefore essential for ambitious prefectural judges and magistrates to make themselves known to the high officials beforehand. Bribery, marriage alliances, shared membership in literary clubs, and factional politics all played their part in the process. But the most meritorious way for graduates to make a positive impression was to publicize their good governance among both elite circles and the general public. This meant presenting their enlightened judgements, endorsed by their superiors and preferably in published form, directly to the court officials responsible for their review. As a result, in the last phase of the Ming, an unprecedented number of judicial rulings by junior local officials were keenly collected by their authors, in either published or manuscript form.

The favour of high officials was no longer the only guarantee of promotion by the end of the Ming, however, since the Chongzhen emperor was personally involved in the process of *tui zhi xingqu*. In his *Sanyuan biji* 三垣筆記 (Notes of the working experience in three offices of scrutiny), Li Qing 李清 (1602-1683), the prefectural judge of Ningbo from 1631 to 1637, recorded that after participating in the appraisal of the Ministry of Personnel in 1637, he was summoned and interviewed by the emperor with all the other prefectural judges and county magistrates presented in the capital in May 1638. They were not questioned directly by the emperor. Instead, they were arranged into groups of five and held group discussions that the emperor observed. Afterwards, each participant was given an answer book to respond to questions on a board which were handwritten by the emperor himself. These questions were identical but the *pan* questions assigned to each participant were different.⁴³ From this arrange-

⁴² *Ming shi*, vol. 71, p. 1718.

⁴³ Li Qing, *Sanyuan biji* (Notes of the working experience in the three Offices of Scrutiny), in Zhou Guangpei, *op. cit.*, vol. 4, p. 13 (see n. 3, above). A punctuated edition of this work was published by the Beijing Zhonghua shuju in the series of *Yuan-Ming shiliao biji* 元明史料筆記 (Series of historical materials and miscellanies

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ment, we can see the enhanced status of the paper on judicial judgement in this era. The emperor then marked the answers by himself and personally decided the rankings of the participants.⁴⁴ In addition to the high officials responsible for the personnel review, the emperor was therefore also a potential target reader for the collections of administrative and judicial documents composed by prefectural judges and magistrates who attended the *tui zhi xingqu* during the Chongzhen era.

Should the performance of these local officials be satisfactory, they would then be promoted to assume the position of supervisory officials at court. Yet, because one of the most important duties of supervising offices was to review cases submitted by their fellow prefectural judges and magistrates in the local level administration, it was still necessary for them to sharpen further their judicial knowledge if they were to survive, not to mention thrive, in their new central appointments. A large portion of the *jinshi* graduates who aspired to attain to the most powerful offices in the empire, therefore, needed to equip themselves with concrete, practical knowledge of judicial rulings from the very outset of their careers. In addition, as we shall see in the following section, after the Jiajing era the court's increasing insistence that judicial judgements be standardized across the empire placed frontline judicial officials under increasing pressure to make judgements that conformed to this demand and were acceptable to their seniors. In effect, they had to learn from their successful predecessors; the publication of enlightened cases by able judges was one of the best ways of satisfying the demand of junior officials for the necessary knowledge on judicial procedures and decisions.

The Increasing Demand for Uniform Judicial Performance from Junior Officials

Although a *jinshi* graduate in the late Ming could look forward to a bright future, his degree was merely an entry ticket to key positions at court. In his attack against the civil service examination and *tui zhi xingqu*, Chen Qixin deliberately ignored the later struggles of these successful candidates. To secure a promotion, *jinshi* graduates had to prove that they had per-

from the Yuan and the Ming) in 1982.

⁴⁴ Li Qing, *op. cit.*, pp. 13-14 (see n. 3).

formed well in their initial posts. What constituted good performance? Since the trial and review of cases were the primary duties of prefectural judges, and judicial judgements were one of the routine assignments of county magistrates, to execute their primary duties satisfactorily, they had to equip themselves with the practical knowledge to compose well-written judicial reports. In addition to this basic requirement, there was a tendency from the Jiajing era on for high-ranking court officials to demand standardized and unified judicial judgements from local judges as they sought to impose increasing control over judicial activities at the local level. Front-line local officials were therefore not only required to write eloquent case reports but also expected to make correct judgements in strict accordance with the *Code* and other up-to-date regulations.

The judicial system established by Zhu Yuanzhang originally only required the provinces to submit cases involving capital punishment to the court for review. From the end of the fifteenth century, however, in an effort to exert a stronger hold over the lower echelons of the jurisprudence, high officials of the Ming court introduced procedures to review local-level judgements on a regular basis. Under these new measures, any punishment more severe than the Light Stick had to be strictly reviewed by various levels of superior officials. Provincial officials were then responsible for reviewing all cases tried by their subordinates. Moreover, Censors were sent as Regional Inspectors to the provinces where they not only made regular circuits re-open questionable cases in every prefecture but also organized annual general reviews of the cases in the region (these were known as joint reviews, *hui shen* 會審). In addition, a special agent would be sent every five years from the court to every province to review dubious local cases once again (known as great reviews, *da shen* 大審). All these procedures now served to supplement the original arrangement of submitting capital cases to the court for final review and to centralize and standardize the legal process.⁴⁵

As the central government tightened its hold over the administration of jurisprudence across the empire, many high officials of the sixteenth century inevitably complained about the poverty of expertise and knowledge among local officials when it came to making judgements. For in-

⁴⁵ For a comprehensive discussion of the system of reviewing cases in the mid- and late Ming, see Tanii Yoko 谷井陽子, “Min ritsu un’yō no tōitsu katei” 明律運用の統一過程 (The developing course of uniform application of the *Great Ming Code*), *Tōyō shi kenkyū*, 58.2 (1999), pp. 38-63.

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stance, Ying Jia 應檣 (1493-1553), a judicial official who composed a groundbreaking commentary on the *Great Ming Code* in the Jiajing era, protested that since the texts of the Statutes were too recondite and those of the sub-statute precedents too laconic, frontline officials could interpret them arbitrarily, creating discrepancies in the administration of justice.⁴⁶

Merely imposing further supervisory procedures would not guarantee the quality of justice at the local level. High-ranking judicial officials had repeatedly memorialized for the introduction of standardized interpretations and applications of the *Code* and suggested that these should be distributed widely to junior officials throughout the empire. On the one hand, it was considered essential to instruct frontline officials in the acceptable ways of making a judgement. On the other hand, it was suggested that these interpretations could also be used as standards by which to assess the performance of local officials. Therefore, official interpretations such as the *Tiaoli beikao* 條例備考 (A ready reference for regulations) and *Zengxiu tiaoli beikao* 增修條例備考 (An expanded ready reference for regulations) were published in the Longqing and Wanli eras respectively.⁴⁷ The fact that central officialdom had begun to pay closer attention to the application of the *Code* stimulated the development of legal studies. Private commentaries and guidebooks for administration, such as Lei Menglin's 雷夢麟 *Dulü suoyan* 讀律瑣言, were encouraged by the court and published to equip new officials with essential knowledge of the law.⁴⁸

These commentaries informed junior officials of the intention of the legislation and explained the meanings of judicial terms, but they did not directly translate legal knowledge into actual examples of enlightened judgements. In addition, as these commentaries had eliminated grey areas in the application of the law, frontline judicial officials were left facing a more rigid legal system in which they were under greater pressure to make the right judgements for fear that their mistakes would damage their term-end appraisals and would be brought to light by their superiors or colleagues in the complex review system. Few were willing to allow the

⁴⁶ *Ibid.*, pp. 62-63.

⁴⁷ *Ibid.*, pp. 67-68.

⁴⁸ Huai Xiaofeng 懷效鋒, "General introduction," in Lei Menglin (author) Huai Xiaofeng and Li Jun 李俊 (eds.), *Dulü suoyan* 讀律瑣言 (Petty notes on reading the Code), Beijing: Falü chubanshe, 2000, pp. 5-6.

promise of a bright future to be endangered in such a way.

In the final stages of the Ming, there was great demand for new commentaries to cope with the new regulations. New officials sought exemplary judgements dealing with different types of real-life judicial situations for use as indispensable reference tools, if not ready-made prototypes, in making judgements in the approved manner. It was probably for this reason that commercial publishers approached Li Qing to publish his collection of cases, the *Zheyu xinyu* 折獄新語 (New collection of anecdotes of judicial decisions).⁴⁹ His judicial performance was evaluated as excellent in the appraisal at the end of his term as prefectural judge of Ningbo, and a wide readership could have been expected.

Conclusion

In his memorial to the Chongzhen Emperor, Chen Qixin might have been right to comment on the idiosyncratic nature of the power structure between county magistrates, prefectural judges and high territorial officials in the late Ming provincial government. In fact, under the review system of the Ming judiciary, in reviewing court cases, the prefectural judges could challenge the judicial arguments of superior officials ranked much higher than themselves if they had strong support from the law.⁵⁰ The *tui zhi xingqu* personnel system, another target of Chen's criticisms, also fostered the morale of those junior officials. It offered the possibility that after their first promotion they might become Regional Inspectors and in turn supervise some of their previous superiors in the provinces. It therefore helped created an atmosphere among them that showed respect for the authority of the laws over the power of their superiors. But the "arrogance" of the front-line officials that Chen criticized in fact mainly happened in the provincial judiciary, where the humbly ranked but highly empowered Regional Inspector (rank 7a) took full charge.

In addition, Chen's military background limited his understanding of the civil service examination, his primary target of criticisms. He was not

⁴⁹ Li Qing, comp., *Zheyu xinyu* 折獄新語, in *Xuxiu siku quanshu*, vol. 972, pp. 541-673, Shanghai: Shanghai guji chubanshe, 1995.

⁵⁰ See Tam Ka-chai, "Justice in Print: Prefectural Judges of Late Ming China in the Light of *Mengshui zhai cundu* and *Zheyu xinyu*," PhD thesis, University of Oxford, 2009, pp. 254-266.

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fully aware that from the Wanli era on, the civil service examination, at least at the provincial level, no longer emphasized solely a moral interpretation of Confucianism, as he understood it did, but rather placed special weight on learning how to apply the law and other skills in governance. This system, however, nurtured an officialdom who had an unprecedented interest in legal expertise. Thus, aided by the increasing demand for uniform performance in judicial judgements among frontline officials and by the boom in the publishing industry fuelled by technological breakthroughs in the mid-Ming,⁵¹ the study of legal knowledge had never been taken more seriously or circulated more widely in Chinese history than in the final stage of the Ming. As demonstrated in the current study, it was now the key to success at every stage in the career of an ambitious literatus. By the Wanli era, legal books—first, commentaries on the *Code* and then the judicial casebooks—were already being widely published. No later than in the early seventeenth century did judicial works of all kind become an indispensable category for Chinese publishers.

⁵¹ Joseph P. McDermott, *A Social History of the Chinese Book: Books and Literati in Late Imperial China*, Hong Kong: University of Hong Kong Press, 2006, pp. 25-31.