The withering sprout: prefectural judiciary and legal professionalism in the early Qing dynasty

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The Withering Sprout —
Prefectural Judiciary and Legal Professionalism in the Early Qing Dynasty

FONG Kam Ping

A thesis submitted in partial fulfilment of the requirements
for the degree of
Master of Philosophy

Principal Supervisor: Dr TAM Ka Chai

Hong Kong Baptist University

January 2015
Declaration

I hereby declare that this thesis represents my own work conducted after registering for the degree of M.Phil. at Hong Kong Baptist University. It has not been included in any thesis or dissertation submitted to this or any other institution for a degree, a diploma or any other qualification.

Signature:________________________

Date: January 2015
Abstract

This study highlights the influence of the Ming-Qing transition on legal justice in China. According to mainstream sinicisation (Hanhua 漢化) theory, Manchu was assimilated into the Han majority and ruled China using the old Ming government system. This study proves otherwise via an extensive examination of the transition’s effect on legal justice, particularly the abolition of the prefectural judge (tuiguan 推官) position during the early Qing Dynasty. In the Yuan and Ming eras, judges emerged as unique officials specialising in juridical responsibilities and demonstrating the sophistication of legal justice. However, institutional reform during the Qing Dynasty pushed local administrators (prefects; zhifus 知府) into taking over prefectural judiciary responsibilities, gradually blurring the functional line between justice and civil executives until prefectural judges were ultimately banished from service. This study investigates the reasons behind the elimination of the prefectural judge position and the decline of legal professionalism in sixteenth and seventeenth century China. The findings demonstrate the great differences between the Ming and Qing legal systems and an alternative perspective for assessing the significance of the Ming-Qing transition is proposed.
Acknowledgement

This study represents the beginning of my adventures in academic research to explore history, law and justice and what a scholar is supposed to be. Although these questions remain unanswered at the end of writing this thesis, they will continue to inspire the direction of my academic life hereafter.

I could not have commenced this journey without Dr Tam Ka-chai. Over the past two years, he has encouraged my interest in Ming and Qing history and especially law and justice, and offered genuine support when my family was undergoing extreme difficulty. I owe a great debt to him and gratitude beyond words. As his first student, I hope my work serves to promote him. I also offer my sincere thanks to Prof. Lee Kam-keung for introducing me to the world of research. I may never have arrived at this stage without his encouragement. I also thank Prof Ricardo Mak King-sang, my co-supervisor, who inspired me to observe the pragmatic side of historical events and figures rather than focusing on grand theories. This has defined my research view and is one of the most important approaches implemented in this study. I am also grateful to Dr Loretta Kim for teaching me Manchurian and giving me profound support in networking with foreign scholars. Her kind notes and advice have always warmed my heart.

In addition, I thank a group of wonderful friends, especially Miss Fat Cat for being my personal copy-editor and proofreading this study line by line. I am also grateful to Mr Login Law, whose research and publication achievements and helpful career guidelines provided great encouragement. I thank Mr Jason Chu and Miss Joan Chan for creating a very happy atmosphere that made the writing process easier. I owe a million thanks to Miss Renee Chan and Miss Crystal Poon for offering priceless support in administrative matters.

Last but not least, I am forever indebted to my dear mother and sisters for their tolerance in so many areas of my life. I hope to spend more time with them. Special thanks are dedicated to Dora and Fiona, who kept me sane with loads of love and care, although they may never know what they still mean to me.
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INTRODUCTION

In summer 1644, the grand Manchu army marched through the Great Wall in collaboration with the Han Chinese and eventually defeated the peasant rebels, capturing the heart of the celestial empire of Beijing. Appearing as the avenger and successor of the Ming house (1368-1644), the Qing court Prince-regent Dorgon (Aisin Gioro Dorgon 愛新覺羅·多爾袞, 1612-1650) occupied and settled the central authority of the new regime in the Ming palace under the escort of former Ming imperial guards. On the following day of occupation, he commanded all of the officials and residents in the capital to observe a public mourning for the last Ming Emperor Chongzhen 崇禎 (Zhu Youjian 朱由檢, 1611-1644). Apart from this powerful respect paid to the dead ruler, the Manchu prince-regent invited all of the Ming officials to resume their former positions. The entire Han Chinese administration system was seemingly untouched, including even the primordial spirit of the Ming government. In 1646, the Hongwu baoxun 洪武寶訓, an instruction for ruling the country written by Ming founder, the Hongwu 洪武 Emperor (Zhu Yuanzhang 朱元璋, 1328-1398), was republished nationwide by the Qing court in both the Han and Manchu

1 Although Embroidered Uniform Guard (Jinyiwei 錦衣衛) Commander Luo Yangxing 駱養性 (d. 1649) surrendered to Li Zicheng 李自成 (1606-1645) when Beijing was taken by the Shun 順 army, the guard turned to Dorgon’s camp. See Qing Guoshiguan 清國史館 (ed.), Erchen zhuang 貳臣傳 (Taipei: Mingwen chubanshe 明文出版社, 1985), 12, pp. 4-5.
3 Anon., Souwen xubi 謠聞續筆 (Taipei: Xinxing shuju 新興書局, 1987), 1, p. 8b.
languages. It was a bid to establish the Qing reign as the legitimate successor of the Ming and an offer of obedience to the ruling guidelines of the preceding imperial authority.\footnote{In the name of Emperor Shunzhi 順治 (Aisin Gioro Fulin 愛新覺羅·福臨, 1638-1661), a preface was added to the new published version of Hongwu baoxun in which the emperor acknowledged that the Hongwu instruction could serve as an authoritative guide the Qing rulers. See Qing shilu: Shizu zhanguangdi shilu 清實錄: 世祖章皇帝實錄 (Beijing: Zhonghua shuju 中華書局, 1984-1985), 25/1, p. 209; and Guo Chengkang 郭成康, Shibashiji de zhongguo zhengzhizhushu 十八世紀的中國政治 (Taipei: Zhaoming chubanshe 昭明出版社, 2001), pp. 21-23. See also Meng Sen, Mingqingshi jiangyi, p. 631.}

As an ethnic minority non-indigenous to China proper, and now conquerors of the Chinese empire, it was natural for the Manchus to use elements of the established Ming system to manage their new territories. According to conventional ‘absorption theory’ suggested by traditional Chinese historians, the Manchus underwent a process of ‘sinicisation’ (Hanhua 漢化) to assimilate themselves into the Han majority under the Qing realm. The Qing institution and system hence emerged as a cohesive part of the Ming’s legacy. The recent rise of ‘New Qing History’ has stimulated an alternative approach to interpreting the Qing culture and system, suggesting that the Manchus indeed never lost their identity and that their ethnic background even provided the Qing government with particular cultural resources to rule the Han Chinese and their empire. Rather than merely having a one-way effect, cultural influence can always be extended as a complex process of interaction. For example, the contemporary sense of the term ‘Chinese traditional dress’ (so-called Tangzhuang 唐裝) actually refers to the Manchu buttoned jacket, which was irrelevant to the Han Chinese tradition. It is a reminder that the notion of ‘sinicisation’ tends to obscure the complexity of interactions between the two cultures. Furthermore, it hardly expresses the subjectivity of Manchu rulers in digesting Han traditions.
The current study explores the complexity of interactions between the Manchus and Hans in the context of legal system development. In detailing the abolition of the significant prefectural judge (tuiguan 推官) position during the Ming-Qing transition, it proposes that the sprout of judicial specialisation that had grown out of the Yuan Dynasty and throughout the Ming era unfortunately withered and died during the early Qing time. A valuable legal tradition was abandoned in the process, changing the local judiciary dramatically. The Manchu rulers had their own insights into Ming customs, deliberately reorganising the established system to consolidate their new regime with their own design. Although these arguments are of course indebted to Karl Wittfogel’s ‘Dynasties of Conquest’ and also the ‘New Qing History’, this study offers its own observations about the judicial system.  

Focusing on the practice of local justice, it illustrates the dramatic changes the new rulers made to the legal system and reconsiders the significance of the Ming-Qing transition to the development of Chinese society.

The Prefectural Judge Position and Legal Systems of the Ming and Qing Dynasties

In Ming and Qing China, a sophisticated review system was established in the judicial hierarchies to avoid miscarriages of justice. The county court, including the district (Xian 縣) and sub-prefecture (Zhou 州) houses, were the lowest levels under the supervisory agencies of the prefectural (Fu 府) and

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provincial (Sheng 省) governments. In general, every case had to be heard in the county court, and the upper courts had to review offences with penalties higher than a light bamboo stroke (Chixing 笞刑). The prefectural judge, circuit intendant (Daotai 道臺), provincial surveillance commission (Tixing ancha sishi 提刑按察司使), two magnates (Liangyuan 兩院), governor (Xunfu 巡撫) and governor-general (Zongdu 總督) were involved in the process from the prefectural to provincial echelons. Although the two magnates could conclude cases with punishments other than the death penalty, serious lawsuits related to human death and involving heavier penalties had to be submitted for review by the Ministry of Justice (Xingbu 刑部) in the central government or even retried by the Censorate (Duochayuan 都察院) and Court of Judicial Review (Dalisi 大理寺). Furthermore, cases involving capital punishment were brought before the emperor for final confirmation. The Ming-Qing authorities took lawsuits very seriously.

However, the devil always lurks in the details. Although the county court was a minor component of the entire legal system, it had a tremendous effect on the local community. The county magistrate, a frontline official known as an ‘official in touch with the people’ (Qinmin zhi guan 親民之官) and even a ‘father-and-mother official’ (Fumu guan 父母官) served his jurisdiction in

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7 Na Shilu 那思陸, *Qingdai zhongyang sifa shenpan zhidu* 清代中央司法審判制度 (Beijing: Beijing daxue chubanshe 北京大學出版社, 2004), pp. 113-114.
every aspect, including public administration and judiciary, by investigating and prosecuting all cases. It is thus unsurprising that Wan Weihan 萬維翰, a popular writer of ‘officials’ conduct handbooks’ (Guanzhen shu 官箴書) during the Qing Dynasty, indicated the following:

The basics of a case are already determined at the county level. The prefectural and provincial agencies merely confirm its course, consider its sentence and repair the minor problems with the county decisions.

萬事胚胎, 皆在州縣, 至於府司皆已定局面, 只須核其情節, 訂酌律例, 補苴滲漏而已。10

Wan was not the only one to notice the mighty influence of the magistrate on the local judiciary. During the Yuan and Ming Dynasties, prefectural judges were released from executive burden and made to specialise in prefectural judiciary and case review over subordinate counties. Prefectural judges were thus capable of concentrating on trials and rulings. This certainly does not suggest the existence of ‘legal independence’, as their decisions still had to be confirmed by a prefect (Zhifu 知府) or higher official. However, the establishment of such a specialised position illustrates the emergence of a demarcation between justice and civil administration in traditional Chinese bureaucracy and that legal professionalism had started to develop.

The prefectural judge position was abolished under the Qing rule in 1667. The highlight of the Ming legal system thus disappeared at the beginning of the

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Manchu era, when the Qing court was still consolidating its conquest of China. In 1662, Wu Sangui 吳三桂 (1612-1678), a former Ming general who transferred his loyalty to the new ruler, took the last Southern Ming (Nanming 南明) ruler Zhu Youlang 朱由榔 (1625-1662) captive in Burma. At the time, the Qing was struggling to build a strong and solid authority. In 1667, Emperor Kangxi 康熙 (Aisin Gioro Hiowanя 康煕, 1654-1722) was only 13 years old and the imperial government lay in the hands of the four regents (Sifuchen 四輔臣).

What happened to the Chinese legal system during this critical period of dynastic transition? What brought about the abolition of such an important judicial post, and what effect did these changes have on the local practice of law and order?

**Literature Review**

1. *On the Continuity and Changes of Society and Laws during the Ming and Dynasties*

   These questions relate to several greater issues and points of extensive debate in the studies of Ming and Qing China. First, they relate to the significance of the Ming-Qing transition to Chinese history and particularly the continuity and changes experienced during the period. The Ming-Qing transition can be explained and interpreted from various perspectives. In order to reveal the general trends through the centuries of the late Imperial China, the persistent developments along the two dynasties are a necessary focus. Frederic E. Wakeman therefore thought that the four centuries before the Republican era
should be considered collectively. From Ray Huang’s ‘grand history’ viewpoint, the framework of modern China was set during the Ming Dynasty. Charles Horner also indicated that development in the Ming era seemed wholly connected to China’s contemporary circumstances. From a socioeconomic perspective, issues such as the expansion of long-distance trade inside and outside China since the sixteenth century and the corollary reconstruction of the Chinese economy along with the rise of new social behaviour and cultures can only be considered by examining the cumulative developments that took place during both the Ming and Qing Dynasties. Jonathan D. Spence and John E. Wills observed that the dynastic transition indeed imposed limited damage on the Chinese economy and society. Yu Yingshi emphasised that Ming and Qing social history should be considered apart from the view of the ‘conquest of the Manchu’.

The foregoing narratives are no doubt inspiring. However, one should be more sensitive to the changes made to the political system during the dynastic transition. Although state structures are restricted by social and economic factors, relations between the ruling class and common people are always irrelevant to great historical trends but directly shape state institutions. As mentioned previously, the rise of the ‘New Qing History’ and its specific relationship with materials in the Manchu language highlight the ‘Manchuness’ of the Qing rule. It

proposed that the Manchus and the Qing Dynasty they created should not be considered merely as followers of the ethnically Han system of the Ming. In fact, as early as the 1950s, without paying specific attention to Manchu sources, Qian Mu 錢穆 (1895-1990) had already stressed the significant governance contrasts between the Ming and Qing Dynasties. According to his analysis, the Qing house was a ‘tribal regime’ (Buzu zhengquan 部族政權) that merely manipulated the government to seize power and serve its own interests. Therefore, he believed that the state should be seen as not a ‘system’ upholding public benefits but a mechanism of political expediency. As a scholar grown up during the late Qing and Republican eras, Qian inevitably had a strong bias against the Manchus. However, his criticism indicated that the tensions between the ruler and people under the rule of an ethnic minority were relatively unusual compared with those seen during the Ming Dynasty.

Despite their differences, many consider the Qing law and judicial system to replicate those of the Ming in terms of legal history. This impression was even shared by elites in the early Qing. In 1646, when the Great Qing Code (Da Qing 大清律) was promulgated as the first code of the dynasty, the early Qing eminent historian Tan Qian 諧遷 (1593-1657) had already criticised the new law for being simply another name for the Ming code. Indeed, at the very beginning of the new dynasty, when the state system was undergoing refinement, legislators had only to implement the Ming code to immediately restore law and order.

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first Qing code had no related terms to regulate the Manchus and thus did not apply to Manchu officials.\textsuperscript{19} It underwent massive revisions during the Shunzhi (1644-1661), Kangxi (1662-1722) and Yongzheng 雍正 (1722-1735) reigns before its finalised edition was promulgated in 1740 (Qianlong 乾隆 5). Lasting almost a century, this long period of revision introduced great differences from the Ming law. Qu Tongzu 瞿同祖 observed that the changes in legal codes from the Ming to Qing merited greater attention.\textsuperscript{20} However, it is common for modern scholars to consider the Qing and Ming codes as nearly the same. Feng Lixia 封麗霞 considered the Qing code to be only slightly different from the Ming code in terms of some of its wording and supported Tan Qian’s comments.\textsuperscript{21} More effort should be devoted to studying the changes between the Ming and Qing laws.

Japanese historians began conducting modern studies of Chinese legal history during the twentieth century. Nakada Kaoru 中田薰 (1877-1967) was the first to adopt German comparative methodology to study the characteristics of the Japanese judiciary in contrast with those of the West and China, providing a systematic framework for Chinese legal historical research. Learning from Nakada, Niida Noboru 仁井田陞 (1904-1966) produced his major work, \textit{Chūgoku hōsei shi} 中国法制史, as a general account of Chinese legal history. From the perspective of modern legal studies, he reinterpreted the law and its operation in traditional China using contemporary concepts. However, he did not

\begin{footnotesize}
\textsuperscript{19} Chen Daming 沈大明, \textit{Daqinglìli yu qingdai de shehui kongzhi} 《大清律例》與清代社會控制 (Shanghai: Renmin chubanshe 人民出版社, 2007), p. 12.

\textsuperscript{20} Qu Tongzu, “The Qing Law: An Analysis of Continuity and Change”, \textit{Social Sciences in China} (Fall 1980), pp. 103-114.

\end{footnotesize}
focus on their changes over time.22 Shiga Shūzō 滋賀秀三 (1921-2008) paid the most attention to Ming and Qing legal matters among those in the Nakada academic genealogy. He greatly emphasised the nature of legal procedures in traditional Chinese society and especially the significance of people’s feelings in litigation.23 Terada Hiroaki 寺田浩明 is another leading figure in the field and had had a particular interest in the functions of the various forms of law in Ming and Qing societies.24 However, according to these accounts, the legal systems of the two dynasties exhibited a coherent unity in terms of the delivery of their observations and arguments. This lack of attention to historical changes created the stereotype of an unchanged legal system in late Imperial China.

The current study posits that the Qing judiciary itself should receive independent attention based on its distinct characteristics and should be given an identity separate from that of the Ming. The abolition of the prefectural judge position serves as an insightful case study for discussing the differences between the Ming and Qing legal systems.

2. On the Position of the Prefectural Judge

Most of the scholarship related to the Qing legal system has neglected the

existence of the prefectural judge position. In fact, many of the Qing elites neglected its importance. For instance, in his authoritative guidebook related to the structure of Chinese officialdom past and present entitled Lidai zhiguan biao 歷代職官表 (published in 1845), Huang Benji 黃本驥 (1781-1856) failed to mention the prefectural judge position in a section describing the Ming-Qing prefectural government, as though it had never existed. Shen Jiaben 沈家本 (1840-1913), a late Qing premiere jurist and legal pundit, traced the development of Chinese legal bureaucracy from pre-history (before the Shang 商 Dynasty, B.C. 17c – B.C. 11c) to the Ming Dynasty in his book entitled Lidai xingguan kao 歷代刑官考 (1909). Although Shen mentioned the prefectural judge position in the Ming legal system, he described it only briefly as ‘responsible for legal matters 理刑名’. The prefectural judge position has also been absent from many general accounts of Qing legal history. Zhang Jinfan 張晉藩 did not include it in Qingchao fazhi shi 清朝法制史 (1994), his study of the development of the Qing judiciary. Although Zheng Qin 鄭秦 showed his concern for the abolition of the position in his Qingdai sifa shenpan zhidu yanjiu 清代司法審判制度研究 (1988), he did not provide the reasons for this move and its effect on the local judiciary. In his later works such as Qingdai falü zhidu yanjiu 清代法律制度研究 (2000), he continued to avoid acknowledging the position. Many

25 Huang Benji, Lidai zhiguan biao (Shanghai: Shanghai guji chudanshe 上海古籍出版社, 2007), pp. 269-276.  
27 Zhang Jinfan, Qingchao fazhi shi (Beijing: Falü chubanshe 法律出版社, 1995).  
29 Zheng Qin, Qingdai falü zhidu yanjiu (Beijing: Zhongguo zhengfa daxue chubanshe, 2000).
specialized studies of the Qing local courts shed offered no clarification of the position. Neither Tao Xisheng’s 陶希聖 Qingdaizhouxianyamenxingshishenpanzhidujichengxu 清代州縣衙門刑事審判制度及程序 (1972)\(^{30}\) nor Na Silu’s 那思陸 Qingdaizhouxianymen shenpanzhu 清代州縣衙門審判制度 (1982), which was based on Tao’s framework,\(^ {31}\) offered any mention of the prefectural judge position. Wu Jiyuan 吳吉遠 recognised the judicial post in Qingdai difang de sifa zhineng yanjiu 清代地方政府的司法職能研究 (1998).\(^ {32}\) However, like Zheng Qin, he avoided describing the reasons for and consequences of its abolition. Although all of these works were enlightening contributions to the study of Qing legal history, the nature of the Qing system and its departures from its Ming predecessor can never be fully explained without a discussion of this gate-keeping judicial post. Although Li Fengming 李鳯鳴 discussed the legal responsibility of county agencies in the local judiciary in Qingdai zhouxian guanli de shifa zeren 清代州縣官吏的司法責任 (2007), he did not confirm the existence of the prefectural judge position and therefore failed to appreciate the changes in the legal responsibilities of local Qing officials over time.\(^ {33}\)

Only Tam Ka-chai’s 譚家齊 doctoral thesis entitled Justice in Print: Prefectural Judges of Late Ming China in the Light of Menshui zhai cundu and Zheyu xinyu (2009) has offered a systematic study of the prefectural judge

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\(^{30}\) Tao Xisheng, Qingdai zhouxian yamen xingshi shenpan zhidu ji chengxu (Taipei: Shihuo chubanshe 食貨出版社, 1972).

\(^{31}\) Na Silu, Qingdai zhouxian yamen shenpan zhidu (Beijing: Zhongguo zhengfa daxue chubanshe, 2006).

\(^{32}\) Wu Jiyuan, Qingdai difang de sifa zhineng yanjiu (Beijing: Zhongguo shehui kexue chubanshe 中國社會科學出版社, 1998), pp. 150-160.

\(^{33}\) Li Fengming, Qingdai zhouxian guanli de shifa zeren (Shanghai: Fudan da xue chubanshe 復旦大學出版社, 2007).
In his examination of two casebooks from the late Ming Dynasty, including *Mengshui zhai cundu* 盟水齋存牘 by Yan Junyan 顏俊彥 (1580s-1660s) and *Zheyu xinyu* 折獄新語 by Li Qing 李清 (1602-1683), he indicated the significance of the prefectural judge position to the local justice of late Ming China and discussed the abolition of the position during the early Qing. By reconstructing the operations of prefectural courts during the late Ming, his work provided a foundation for the current study. It also demonstrated the excellent value of casebooks in studying issues related to local law and order. With a great account of verdict details, Tam was able to represent the rulings of local judges and the litigation procedures of different judicial levels in the provinces. Because the Ming background has been well explored, the logical next step is to study the development of the prefectural judge position during the Qing period.

3. On Judicial Casebooks

Indeed, Japanese legal historians had already noted the historical value of the late Ming casebooks before Tam’s study. In the late 1960s, Shiga Shūzō explored Chinese family law with the collateral support of the Qing casebooks. Furthermore, Nakamura Shigeo 中村茂夫 discussed the malicious accusations made during the Qing Dynasty based on the judicial reports.

However, study of the casebooks became inactive until the 1990s, when academia recognised the outstanding value of judicial casebooks as significant historical materials. Based on his discovery of the Ming judicial casebook collection in the Chinese National Library in Beijing, Hamashima Atsutoshi 濱島敦俊 gave a brilliant introduction of these underexplored materials in his article entitled ‘Mindai no handoku 明代の判績’ (1993) to promote the value of casebooks. Following the Japanese trend, scholars from mainland China also noted the value of the casebooks to capturing legal and economic history. Wang Shirong’s 汪世榮 Zhongguo gudai panci yanjiu 中國古代判詞研究 (1997) considered the genre of verdicts and judicial reports from the Tang down to the Qing. Tong Guangzheng 童光政 studied the civil practices of the Ming as reflected by the judicial cases in his profound work entitled Mingdai minshi pandu yanjiu 明代民事判績研究 (1998). The Taiwanese scholar Wu Renshu 巫仁恕 also discussed the usefulness of this sort of material in his article entitled ‘Mingdai de sifa yu shehui: cong Mingren wenji zhong de pandu tanqi 明代的司法與社會——從明人文集中的判績談起’ (2001). These promotional works greatly encouraged the usage of casebooks in historical research. In ‘Zhenxiang dabai: Ming Qing xingan zhong de falü tuili 真相大白: 明清刑案中的法律推理’ (2001), Qiu Pengsheng 邱澎生 explored the practices of investigation in criminal cases and the rationale behind the judicial judgements made by the Ming and Qing courts based on the decisions presented in Zheyu mingzhu 折獄明珠, a

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38 Wang Shirong, Zhongguo gudai panci yanjiu (Beijing: Zhongguo zhengfa daxue chubanshe, 1997).
39 Tong Guangzheng, Mingdai minshi pandu yanjiu (Guilin: Guangxi shifan daxue chubanshe, 1999).
collection of artificial cases from the Ming and Qing collection of exemplary cases known as Xingan huilan 刑案匯覽.\(^41\) Jiang Yonglin 姜永琳 and Wu Yanhong 吳艳紅 later published ‘Satisfying both Sentiment and Law: Fairness-centered Judicial Reasoning as seen in Late Ming Casebooks’, which discussed the decision-making processes of late Ming judges by analysing cases found in Mao Yilu’s 毛一鷺 (js. 1604) Yunjian yanlue 雲間譯略 (2007).\(^42\) The current study was nurtured by this academic trend. It aims to stimulate consideration of the early Qing casebooks, as the aforementioned studies focused mainly on Ming materials.

The Qing casebooks are basically well preserved and a notable number have recently been published. The increasing popularity of casebooks is indeed closely related to the emergence of these new materials. For instance, in mainland China, Yang Yifan 楊一凡 and his colleagues from the Chinese Academy of Social Sciences have edited and issued several series of casebooks including Lidai panli pandu 歷代判例判牘 (2005), which gathered 52 judicial casebooks and collections of judicial reports in punctuated form in 12 volumes,\(^43\) and Gudai pandu anli xinbian 古代判牘案例新編 (2012), which contained another 27 items from the Ming and Qing times in 20 volumes.\(^44\) Individual casebooks such as Zheyu xinyu by Li Qing and Mengsui zhai cundu by Yan Junyan were also

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\(^43\) Yang Yifan and Xu Lizhi 徐立志 (eds.), Lidai panli pandu (Beijing: Zhongguo shehui kexue chubanshe, 2005), vols. 1-12.
\(^44\) Yang Yifan, Gudai pandu anli xinbian (Beijing: Zhongguo shehui kexue chubanshe, 2005), vols. 1-20.
punctuated and reprinted in 1995 and 2002, respectively.\(^{45}\) In addition, Japanese scholars have made efforts to organise the vast amount of Chinese casebook materials. Miki Sō 三木聰, Yamamoto Hideshi 山本英史 and Takahashi Yoshirō 高橋芳郎 prepared a detailed catalogue of the Ming and Qing casebooks entitled *Dentō chūgoku pandu shiryō mokuroku* 伝統中国判牘資料目録 (2010).\(^{46}\) They included the following items from the early Qing period (Shunzhi to Kangxi) in their catalogue.\(^{47}\)

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<th>Book Title</th>
<th>Author</th>
<th>Author’s Position and Term Duration</th>
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<td><em>Hou liqiong rilu</em> 後李瓊日録</td>
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<td><em>Tangzhi Ishu</em> 湯子遺書</td>
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<td><em>Lixin cungao</em> 理信存稿</td>
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<td>Prefectural Judge (Guangxin 廣信, Jiangxi 江西), 1661-1667</td>
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\(^{45}\) Li Qing, *Zheyu xinyu* (Shanghai: Shanghai guji chudanshe, 1995); Yan Junyan, *Mengsui zhai cundu* (Beijing: Zhongguo zhengfa daxue chubanshe, 2002).

\(^{46}\) Miki Sō, Yamamoto Hideshi and Takahashi Yoshirō (eds.), *Dentō chūgoku pandu shiryō mokuroku* (Tokyo: Kyūko shoin 汲古書院, 2010).

\(^{47}\) *Dentō chūgoku pandu shiryō mokuroku*, pp. 23-67.
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<th>Title</th>
<th>Author</th>
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<td>Wangshantang yanyu 望山堂讞語</td>
<td>Zhang Fuyi 張扶翼</td>
<td>District Magistrate (Qianyang 錦陽, Hunan 湖南), 1661-1670</td>
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<td>Zhao Jishi 趙吉士</td>
<td>District Magistrate (Jiaocheng 交城, Shanxi 山西), 1668-1673</td>
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<td>Fuhui quanshu 福惠全書</td>
<td>Huang Liuhong 黃六鴻</td>
<td>District Magistrate (Tancheng 鄉城, Shanxi 山西), 1670-1672; (Dongguang 東光, Zhili 直隸), 1675-1678</td>
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<td>Pengxian jilüe 烹鮮紀略</td>
<td>Cui Mingju 崔鳴鶴</td>
<td>District Magistrate (Yifeng 儀封, Henan 河南), 1675; (Yanshi 僓師, Henan), 1677-1681</td>
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<td>Xinbian pingzhu Lu Jiaishu pandu jinghua 新編評注陸稼書判牘菁華</td>
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<td>District Magistrate (Jiading 嘉定, Jiangnan 江南), 1675-1677</td>
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<td>Shouning xingzhi lu 守寧行知錄</td>
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<td>Haiyang jilüe</td>
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<td>Zhiju gongyi</td>
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<td>Feixiang zhenglüe</td>
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<td>Li Liangzuo</td>
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<td>Fengling wu ri lu</td>
<td>Jia Pu</td>
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<td>Zhu Qizheng</td>
<td>District Magistrate (Tongan 同安, Fujian), 1712-1713</td>
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<td><strong>Total</strong></td>
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<td>2859</td>
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</tbody>
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The preceding list includes 32 casebooks. Although some of the casebooks have already been published in Yang Yifan’s series, some remain stored in libraries in
mainland China, Taiwan and Japan. Scholars have yet to investigate most of the 2,859 candidate lawsuits in studies of local justice during early Qing China.

Sources and Methodology

The casebooks *Jitingcao* 棘聽草 by Li Zhifang 李之芳 (1622-1694)\(^{48}\) and *Lixin cungao* 理信存稿 by Li Shihong 黎士宏 (1618-1697)\(^{49}\) are the main sources used by the present study. Both early Qing prefectural judges, the two Lis offer prime examples of the operation of the early Qing prefectural courts via their records. Their lawsuit verdicts demonstrate their judgements and rulings over cases, and their interactions with courts at different levels indicate the judicial procedures of the time. This study also considers the late Ming collections including Yan Junyan’s *Mengshuizhai cundu*, Mao Yilu’s *Yunjian yanlüe* and Qi Biaojia’s 祁彪佳 (1602-1645) *Puyang yandu* 莆陽讞牘 to determine the standards of the late Ming prefectural judges.

Memorials to the throne across the late Ming and early Qing periods are other sources reflecting contemporary discussion of the nature of the prefectural judge position and the legal system in general and shed important light on the abolition of the position. Finally, official codes such as the statutes of the Ming and Qing courts, including the *Da Ming Hui Dian* 大明會典 and the *Da Qing Hui Dian* 大清會典, must inevitably be consulted. The regulations related to grain transport, known as *Caoyun zeli* 漕運則例, are particularly useful for


understanding the auditing responsibilities of prefectural judges in the early Qing period.

Although it touches on the larger historical contexts and a number of big issues, the current study is basically a study of the local judicial institutions in early Qing China. In addition to reorganising information derived from official regulations and instructions, it shows the actual practice of law and order at the local levels via its adoption of authentic judicial cases. It doing so, it focuses on the dynamic between the institution and its participants. As always, people may force a system to change when restrictions are imposed. 50 Although expected to specialise in legal duties, prefectural judges were forced to take on an auditing role in the local government during the late Ming Dynasty. The huge pressures of financial responsibility imposed on these judges eventually led them to become more deeply involved in other aspects of the prefectural civil administration and drove the central authorities to restructure the local government. Before investigating this dynamic, we should trace the origins of this abolished position.

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50 This is known as ‘Dynamic Analysis of Institutional History’ (Dongtai zhidushi 動態制度史) in Qiu Pengsheng’s terms. See Qiu Pengsheng, “Dongtai zhidushi yanjiu ruhe keneng? ── Pingjie Mingdai zongyang sifa shenpan zhidu 動態制度史研究如何可能？——評介《明代中央司法審判制度》”, in Ming Studies Newsletter 明代研究通訊, vol. 6, December 2003, pp. 129-141.
CHAPTER 1
Emergence of the Prefectural Judge Position and Legal Specialisation in Yuan and Ming China

The title of ‘tuiguan’ appeared as early as the late Tang Dynasty (618-907). This judicial position had to provide executive support to local government during the Song Dynasty (960-1279) and only became specialised during the Yuan Dynasty (1279-1368). This chapter is primarily a retrospective of the development of the position before the Qing period. It also illustrates the formation of the specialised judiciary in prefectural court, which became a legacy of the early Qing legal system.

1.1 Developments during the Tang and Song Dynasties

A strict functional division among officials was uncommon in the local governments of Imperial China. Apart from their main duties, officials shared the responsibilities of others to address local needs. Beginning in the mid-Tang Dynasty, various commissioners (Shi 使) were appointed as royal representatives and dispatched to territorial governments to ensure the implementation of central government policies in local regions. The tuiguan position originally referred to an ancillary official of those commissioners during the late Tang period. 51 This

51 Those commissioners were allowed to recruit their own assistants out of the regular procedure of civil examination to form their private secretariats (Mufu 幕府). The tuiguan first
position was found in a wide range of offices, such as that of the military commissioner (jiedushi 節度使), surveillance commissioner (guanchashi 觀察使) and commissioner of the armoury (junqikushi 軍器庫使). As many of the holders of these offices had become warlords and dominated regional affairs after the great rebellion of Anlushan (anshi zhiluan 安史之亂, 755-763), tuiguans were also involved in the local governance of the domain ruled by their superior officials. Although they were particularly active in trials, they also contributed to a number of other ad hoc missions. For instance, Han Yu 韓愈 (768-824), the late Tang leader of classical literature, assumed the duties of tuiguan to the military commissioner of Xuanwu 宣武 early in his career. Although his activities during this period have not been well documented, there are some records of his management of the local civil examination and a piece of writing depicting his involvement in the construction of a water gate. Moreover, Lu Yongzhi 呂用之, a popular Taoist and alchemist, was appointed as tuiguan to the military commissioner Gao Ping 高騲 (821-887). It is believed that his main responsibilities related to alchemy, medicines and fireworks.

This unconfirmed nature of the tuiguan position was reformed during the Song Dynasty. The former Tang commissioners’ private secretariat eventually merged with the local government during the ‘Five Dynasties and Ten Kingdoms’

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54 Lai Ruihe, Tangdai jicheng wenguan, pp. 247-253.

55 Lai Ruihe, Tangdai jicheng wenguan, pp. 255-256.
period (Wudai shiguo 五代十國, 907-960). The tuiguan position was then absorbed into the prefectural government (normal prefecture, Zhou 州; superior prefecture, Fu 府) under the leadership of the prefect (Cishi 刺史, later Zhizhou 知州; Zhifu 知府).\(^56\) Their duties were still bound in law but changed dramatically. The Song legal system was thought to ‘separate the trial from the measurement of punishment’ (Yuyan fensi 罰讞分司). The two different groups of officials handled the two legal procedures. From a prefectural perspective, a subordinate official (Caoguan 曹官) known as the administrator for public order (sili canjun 司理參軍) managed the former and the administrator for law (sifa canjun 司法參軍) managed the latter. Their initial judgements were sent to the tuiguan and administrative assistant (panguan 判官) for final review, respectively.\(^57\) The tuiguan and panguan thus drafted verdicts to be confirmed and formally announced by the prefect.\(^58\) In short, tuiguan were not involved in interrogation, but served as technical gatekeepers of the prefectural judgement.\(^59\)

Some tuiguan during the Song Dynasty were also assigned other

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\(^56\) For more details about the merge of the private secretariat position into local government, see Peng Huwen 彭慧雯, *Songdai muzhi zhouxianguan zhi yanjiu* 宋代幕職州縣官之研究 (Xinbei: Huamulan wenhua chuban 花木蘭文化出版, 2011), vol. 1, pp. 34-60.

\(^57\) The position of ‘panguan’ had a confusing Chinese title with the word ‘pan 判’. Although this word literally means ‘to judge’ as a verb, during the Song Dynasty the panguan position merely belonged to administrative staff members commonly found at all levels of government. The title ‘panguan’ was normally prefixed with appropriate agency names or functions such as ‘yantie panguan 鹽鐵判官’ (administrative assistant for the salt and iron monopoly). In a prefectural government, it referred to the third-highest official assisting the prefect in overseeing the jurisdiction. Therefore, panguans played a role different from tuiguan. See Charles O. Hucker, *A Dictionary of Official Titles in Imperial China* (Stanford, Calif.: Stanford University Press, 1985), p. 363.


\(^59\) For more details about the development of the tuiguan position during the Song Dynasty, please see Xu Ruimin 許瑞敏, *Songdai tuiguan zhi yanjiu* 宋代推官之研究, (Master Thesis, Tamkang University 淡江大學, 2012).
administrative duties. For example, the tuiguan of Jizhou 济州 prefecture, Bi Shi’an 畢士安 (938-1005), was mainly tasked with taxation. The tuiguan of Rongzhou 容州, Li Bo 李勃, was given the job of ambassador to Chenla 真臘 (modern Cambodia and Thailand).

1.2 Legal Specialisation during the Yuan Dynasty

The Mongol-established Yuan Dynasty was the first to place strict restraints on the judiciary responsibilities of prefectural judges. During the period, the territorial government was a complex five-level hierarchy. Under the provincial echelon (the branch secretariats ‘Xing zhongshusheng 行中書省”), circuits (Dao 道) coordinated matters between provincial officials and lower administrators. The route echelon (Lu 路), which was under the supervision of circuits, monitored the prefectural governments. Counties were at the bottom of the hierarchy. In addition, tuiguans were established in the route and prefectural echelons in 1287. At first, they provided civil executive supports, as revealed by a ruling of the Ministry of Justice in 1288:

The prefectural tuiguan originally handled all matters of the prefecture with the prefect. Whenever a case was to be tried, the criminal had to be given a joint interrogation. If for any reason the array of officials was incomplete, no single official would dare to do the interrogation alone. The prison was thus full of prisoners.

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61 For more details about Bi Shian’s life, see Toqto’a 脫脫 (1414-1355), et al. (eds.), Songshi 宋史 (Beijing Zhonghua shuju, 1985), 281, pp. 9517-9522.
incarcerated for excessively long periods for undecided cases. From now on, the prefectural tui guan is assigned the sole responsibility of handling trials and imprisonment. He is not required to handle any other business or co-sign related documents and cannot be occupied with other assignments.

切見隨路推官，與府官一體通管府事。凡遇鞫問，罪囚必須完問。同署之人或有他故不齊，未敢獨具鞠問。罪囚盈獄，淹禁不決。今後，委令隨路推官專管刑獄，其餘一切府事，並不簽押，亦無餘事差占……

The joint interrogation and collective decision of other businesses of the Yuan local administration are worthy of further explanation. Beginning in 1264, based on nomadic Mongolian tradition, every ranked official (Zhengguan 正官) in the local government had to attend a roundtable meeting (Yuanzuo 圓坐) every morning. Joint decisions were made for every issue, including lawsuits brought before the officials. As a ranked position, the prefectural judge was part of the team. Serious stagnation understandably occurred in trials due to the shortcomings of the collective responsibility. To settle the problem, the tui guan was granted a special status to handle judicial matters, thus transforming the position into that of a literal ‘judge’. The Yuan legal system thereafter performed another form of ‘separation between the trial and the measurement of punishment’: the prefectural judge only tried cases, but the measurement of punishment was made before the

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64 *Yuan Dian Zhang*, pp. 27-28. The term ‘roundtable meeting’ referred to a ‘meeting of complete members’ and not a literal round table. See Li Zhi’an 李治安: *Yuandai xingsheng zhidu* 元代行省制度 (Beijing: Zhonghua shuju, 2011), vol. 2, p. 642. Ichisada observed that the prototype of this mode of collective decision emerged during the Song Dynasty but only entered into common practice during the Yuan Dynasty. Thus, it should be seen as the result of nomadic influences on bureaucracy during the Han Dynasty. See Miyazaki Ichisada, Xu Shihong (trans.), “Song Yuan shidai de fazhi he shenpan jigou 宋元時代的法制和審判機構”, pp. 294-295; 299-300.
roundtable meeting confirmations.\textsuperscript{65} This specialisation in legal matters could be thus seen as a side-reaction of the practice of Mongolian round-table tradition in the Chinese local government.

This reform did more than improve efficiency. It also expressed a new view of the administration towards the law in civil governance. In 1303, the branch secretariat of Jiangxi 江西 clarified the rationale behind the specialisation and explained the details of the judicial jobs of prefectural judges in an official communication:

Judicial affairs differed greatly from other general issues… There were undoubtedly impartial and incorrupt officials at the central and district levels, but few of them had acquired the skills and methods of trial and interrogation. Those promoted from mixed entry were even worse, and most were incapable of discovering the truth. They preferred using the means of judicial torture to establish accusations. Because some of them even accepted bribes to bend the law, right and wrong became twisted and light and heavy punishments were miscarried. Was it possible to cleanse the prison of the bad effects of excessive punishment and bent justice under these circumstances?

Moreover, the offences committed by the prisoners varied widely. Some might have committed crimes only punishable by face tattoo or penal servitude and exile, and

\textsuperscript{65} Yuan dianzhang, 40, p. 26.
some might have committed homicides, cases punishable by capital punishment. If they were not tried carefully, the local administration might have suffered negative effects. Once a case reached the route level, the prefectural judge had to inspect the related documents and examine the reasoning behind the words. During a trial, they had to observe the suspect’s way of speaking and facial expressions to determine the facts. Judicial officials in ancient times paid a great deal of attention to the ‘five observations’ during a trial. Hearing cases in district court demanded even more of their attention. Such were the responsibilities of prefectural judges. If they were dispatched for extra duties or disturbed by other issues, they found it impossible to concentrate on judicial matters, even if they had the heart for it.

兼囚徒所犯，小則決剌徒流，大則人命所系，不加詳審，害政實深。事旣到路，推官應須先自細看文卷，披詳詞理，察言觀色，庶得其情。且古者察獄之官，先備五聽。如就州、縣審理，尤且究心。此皆推官之責也。若差調奪於外，餘事擾其中，雖欲留情獄事，不可得已。《66

The provincial government drew a clear functional demarcation between justice and other administrative issues. They believed that the administration of justice required specialised techniques such as the ‘five observations’. These techniques were derived from the teaching of the *Rites of Zhou* (*Zhouli* 周禮), in which the ways of speaking (*Citing* 聽聽), facial expressions (*Seting* 色聽), breathing (*Qiting* 氣聽), vocal tones (*Eriting* 耳聽) and eye contact (*Muting* 目聽) of suspects were observed during interrogation.《67 Although these skills were neither sophisticated nor scientific, they at least suggested that the Yuan government

recognised the esoteric knowledge and techniques required by judges.

In addition, this separation was reflected in the Yuan physical design of the prefectural government. During the former Song Dynasty, tuiguans worked with other ancillary assistants such as panguans at the office Jianting 僉廳. However, the Yuan judge had an independent working chamber of his own. In the Route Command Office (Lu zhongguan fu 路總管府), the daruqaci 達魯花赤 worked in the main hall of the government house along with the commander (Zhongguan 總管), associate administrator (Tongzi 同知), and zhizong 治中. The other subordinate officers worked in the left wing of the same building. The judge worked in his own court, which was located on the right side of the main hall. As early Ming historian Wang Yi 王禕 (1322-1374) observed, this arrangement aimed to ‘make his duties important and his position serious 謹其職嚴其體’. 68

Based on these observations, the statuses of judicial officials and even the importance of justice improved significantly during the Yuan Dynasty. Although the Yuan prefectural judge, as a subordinate of the daruqaci, was still under the control of senior executive officials, a clear functional demarcation between justice and administration in civil operations indeed emerged. The judge was expected to be a legal specialist and thus gained a certain prestige among his prefectural colleagues.

However, the corollary training of legal specialists remained

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underdeveloped. Traditional Chinese legal study of ‘Lüxue 律學’ began development after the Six Dynasties. The subject of law (mingfa ke 明法科) had been important in civil examinations since the Tang Dynasty and received significant attention from Wang An’shi 王安石 (1021-1086) in his educational reform during the late Northern Song period. However, this subject disappeared during the Yuan Dynasty. The legal officials thus had to study law through their own efforts. Consequently, legal handbooks were widely spread among the Yuan officials, such as Lixue zhinan 吏學指南 and Waizheng zhonggao 為政忠告, showing a great demand for legal training. Despite this, a formal and standard legal training and a recognised law qualification remained absent for reasons yet to be explored.

1.3 Further Development of the Prefectural Judge Position during the Ming


70 Chen Jiaben, Lidai xingfa kao 歷代刑法考 (Beijing: Zhonghua shuju, 1985), vol. 4, p. 2143.

71 However, the level of legal knowledge Yuan officials obtained should not be underestimated. In contrast to the Tang and Song governments, the Yuan government relied on not the civil examination but official nominations to recruit talent. Entry to ranked positions was open to sub-officials (li 吏). A good command of the legal knowledge required to assist government operation was important to gaining nomination. In Weizheng zhonggao, the author clearly asserted that ‘sub-officials treat law as their master 吋人以法律為師’. This revealed the significance of law to the education of officials. See Zhang Yanghao 張養浩 (1270-1329), Weizheng zhonggao, collected in Guanzhenshu jicheng, vol. 1, (Hehei: Huangshan shushe, 1997), p. 207. For more details about the publication of Lixue zhinan, see Xu Yuanrui 徐元瑞, Lixue zhinan (Shanghai: Shanghai guji chubanshe, 1995).

72 Similar specialisation took place in other positions. The Yuan prison administration office, Siyusi 司獄司, also gained full-time status separate from the ordinary civil operation. The police in the county (Xianwei 縣尉) were freed from roundtable meetings to focus on the duty of prosecution. In terms of law and justice, several government departments saw a specialisation trend. This may suggest that the Yuan court paid a great deal of attention to the legal area. However, little scholarship has thoroughly examined this observation, indicating a re-evaluation of Yuan history and an effort to reshape understanding of the history of late Imperial China. For more details about the Yuan county police, see Xue Lei 薛磊, “Yuandai xianwei shulun 元代縣尉述論”, Shixue yuekan 史學月刊, vol. 12, 2011, pp. 29-35.
Most of the significant developments seen during the Yuan period carried over well into the Ming Dynasty. The Founding Emperor of the Ming Dynasty reaffirmed the specialised role of prefectural judges in promulgating the *Great Ming Commandment* (Damingling 大明令) following the investigating censor’s 1372 proposal (Jiancha yushi 監察御史; Zheng Yi 鄭沂) of establishing a prefectural judge in every prefecture. In addition, prefectural judge recruitment decisions were returned to the central government through civil examination. In general, judges were supposedly chosen from the third class of the jinshi 進士 graduates (tong jinshi chushen 同進士出身) or from a pool of provincial graduates (juren 舉人) after a joint selection made by the Ministry of Personnel and the Censorate. During the Ming Dynasty, only the jinshi subject emphasising literary quality was preserved in the examination system. It provided general training for civil officials who obviously lacked legal training. The

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73 The Ming judge’s office was known as Lixingting 理刑廳 or Xingting 刑廳. An example of its function can be found in Chen Yingwen 沈應文, *Shuntian fuzhi* 順天府志 (Wanli period) (Beijing: Airusheng shuzihua jishu yanjiu zhongxin 愛如生數字化技術研究中心, 2009), pp. 205-207 (electronic resource).

74 Zhang Lu 張鹵 (1523-1598) (ed.), *Huangming zhishu* 皇明制書 (Shanghai, Shanghai guji chuban she, 1995), p. 22. Although the ‘roundtable meeting’ was still prescribed in the *Great Ming Statutes* (Daming huidian 大明會典) of Wanli, it was absent in the records of the late Ming judicial casebook, which suggest it might not have been practised during the late Ming. See Shen Shixing 申時行 (1535-1614), *et al.* (eds.), *Daming huidian* 大明會典 (Shanghai, Shanghai guji chuban she, 1995), 5, p. 94. For more details about Zheng Yi’s proposal, see *Mingtaizu shilu* 明太祖實錄 (Taipei: Institution of History and Philosophy of Academic Sinica 中央研究院歷史語言研究所, 1966-67), pp. 1053-1054.

The ‘Daming ling’ was commonly promulgated in 1368 when Mingtaizu unified China. However, as Zheng Yi proposed establishing the prefectural judge position in 1372, a legal decree confirming the judge’s position could not have been made before that. The legal promulgation time of the ‘Daming ling’ was therefore made either in or after 1372, or the code was edited in or after 1372. See Tam Ka-chai, *Ming taizu dai xingfa qingzhong de taidu ya hongwu shi fa dai jiceng shehui de mosu* 明太祖對刑罰輕重的態度與洪武律法對基層社會的模塑 (Zhu Yuanzhang’s Attitudes towards Punishment and His Shaping of Local Society by Law) (MPhil Thesis, The Chinese University of Hong Kong, 2000), pp. 82-83.

75 *Daming huidian*, 5, p. 94.
questions related to law constituted one of the three papers. This approach changed when a series of reforms were introduced in the mid and late Ming period, particularly the implementation of the *tuizhi xingqu* 推知行取 or ‘selection of talents from the pool of brilliant prefectural judges and magistrates’. This boosted the frontline judges’ rightful demands for judicial uniformity and greatly encouraged the legal training of new officials.

1.3.1 *The Practice of Tuizhi xingqu*

The implementation of *tuizhi xingqu* dramatically changed the career prospects of the prefectural judge with a jinshi degree. The post was ranked 6b in the capital prefecture (Jingfu 京府) and 7a in other common prefectures. In the first half of the Ming epoch, a jinshi graduate appointed as a judge would have been promoted to a high rank on the provincial administration ladder at best. Indeed, it could have taken decades for a graduate to reach a junior court position if his performance were satisfactory. Luo Lun 羅倫 (1431-1478), a champion graduate (Zhuangyuan 状元) of the civil examination of 1466, once joked that although graduates would be joyful to receive court positions, those assigned to local offices may actually cry for resignation. Under the *tuizhi xingqu* arrangement, a different situation arose: brilliant judges and magistrates who exhibited excellent performance could achieve direct promotion to the court positions of supervising officials such as supervising secretary (Geishizhong 給

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76 Daming huidian, 5, pp. 182-183.
事中) or censor upon completing their local services. Ōno Kōji 大野晃嗣 and Tam Ka-chai thoroughly studied this significant change in career paths among late Ming jinshi graduates. Via detailed analysis of five lists of a record of successful candidates, Ōno’s *Tongnian chilu* 同年齒錄 captured the career tracks of 1,298 jinshi who graduated in 1547, 1553, 1556, 1586 and 1610. According to the resumes collected in these lists, among the 131 jinshi who had their first appointments as prefectural judges, one third (43) received the positions of supervising secretary or censor in their second or third appointments. These supervising official positions were prestigious enough to be called *Qinghua zhixuan* 清華之選. Their supervisory duties were highly regarded, and their greater tendency to achieve high positions of or above rank 4 provided a promising career path to former prefectural judges.

Tam Ka-chai illustrated the effect of *tuizi xingqu* in quantitative analysis of the records of *Lantai fajian lu* 蘭台法鑑錄, an extensive collection of more than 4,200 biographies of investigating censors who served the Ming court from 1368 to 1632. Tam established that former prefectural judges and magistrates dominated censor positions by about 60% after the Jiajing period and even reached 70% from the late Wanli to Chongzheng eras. Being appointed a prefectural judge in their first office positions brightened the prospects of jinshi graduates to the point of attracting criticism. Zhao Nanxing 趙南星 (1550-1627)

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80 Ōno Kōji, “Mindai no teishi gōkaku syha to shoninkan posuto: Tongnian chilu to sono tōkei teki riyo”, pp. 27-28.

once complained that because prefectural judges were potential censors who supervised the local government, his current juniors tried hard to please him and his seniors might have even crawled to him.82

Indeed, in spite of the great career potential, prefectural judge remained a demanding job, especially under the tight control of the central authority. This push factor complemented the aforementioned pull factor of promotion, greatly encouraging judges to promote well in service.

1.3.2 In Search of a Uniformity of Legal Performance in Local Justice

The tight control of the central government over the local judiciary was reflected in the high demand for uniformity of judgement in local courts, as demonstrated by the complex judicial ratification system and standardisation of law interpretations. The central authorities established a system for reviewing local cases during the Hongwu era. The local government had to submit cases sentenced to punishments higher than the level of beating with a heavy stick (Zhang 杖) to the Ministry of Justice for review.83 Following the Hongzhi 弘治 era (1488-1505), the central courts had to review any lawsuit with a punishment more serious than beating with a light stick (Ci 笞). In addition, the emperor himself appointed investigating censors as his royal proxy to the provinces. These regional inspectors (Xunan yushi 巡按御史) were tasked with ‘patrolling on behalf of heaven’ (Daitian xunshou 代天巡狩) by checking local administration

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82 Zhao Nanxing, “Shenming xianzhi shu 申明憲職疏”, in Chen Zhilong (ed.), Ming jingshi wenbian, vol. 6, p. 5027.
83 Mingshi, 94, p. 2306.
and more importantly investigating prisons and trial records. From 1481 onward, particular censors were sent out to local governments every five years to work with the regional inspectors. Monitored by this complex supervision system, the prefectural judge had to perform well to meet the high demand of justice, especially in view of future promotion via *tuizhi xingqu*.

Apart from being closely supervised by central officials, prefectural judge rulings were restricted by the standardisation of the interpretations of national laws. During the Tianshun 天順 era (1457-1464), *Liutiao shuyi 條律疏義* was published as an official interpretation of the codified law. As the central government promulgated different versions of *Wenxing tiaoli 間刑條例*, which collected new regulations based on judgements over time in the Hongzhi, Jiajing 嘉靖 (1521-1567) and Wanli 萬曆(1573-1620) eras, some law interpretations such as *Tiaoli beikao 條例備考* and *Zengxiu tiaoli beikao 增修條例備考* appeared during the Longqing and Wanli eras. The autonomy of a judge in interpreting the law under his ruling grew continuously narrow. At the same time, judges were under greater pressure to keep their judgements in line with the official interpretation. These tight restrictions influenced judges to follow the laws strictly.

1.4 Actual Performance of the Prefectural Judge during the Late Ming Dynasty

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Late Ming judicial casebooks illustrated the quality of the legal judgements made by prefectural judges. In his doctoral thesis, Tam Ka-chai analysed the experience of Yan Junyan, a late Ming prefectural judge from Guangzhou 廣州, via the Mengshuizhai cundu casebook.87 Tam discovered that Yan indeed rigidly followed the codes even when they contradicted his own moral reasons and sentiments. For example, in the case known as ‘Jianyin Kuang Xuepeng 姦淫鄺學鵬’, the criminal Kuang committed consensual fornication with a widow and her daughter. The daughter later committed suicide because of the shame she experienced upon public exposure of the act. According to article 390 of the Great Ming Code, entitled ‘Committing Fornication’ (Fanjian 犯姦), Yan sentenced the offenders to a beating with heavy bamboo.88 Although the regional inspector who reviewed the case suggested that the punishment was too lenient, Judge Yan insisted on his original sentence. Despite the fact that Kuang’s offence was morally unforgivable, the law only allowed the judge to give a beating with a heavy stick.89

Indeed, Yan was not alone among his colleagues. Mao Yilu 毛一鷺 (J. 1604), the prefectural judge of the Songjiang 松江 prefecture during the late


89 Justice in Print: Prefectural Judges of Late Ming China in the light of Mengshuai zhai cundu and Zheyu xinyu, pp. 260-261.
Wanli era, also felt enfeebled by the law restrictions. In his judicial casebook *Yunjian yanlüe* 雲間譜略, Judge Mao recorded his furiousness with the crimes committed by the Zhuang 莊 family despite his decision of a light penalty. In the case known as ‘Yijian qiangdao shaojie shi 一件強盜燒劫事’, Zhuang Xian 莊賢 and his gang robbed and poisoned his cousin Zhuang Ren 莊仁 to death and burned Ren’s house to ashes. Although Xian was sentenced to capital punishment, his father Zhuang Hui 莊惠, who became involved and attempted to hide his son’s crime, was given only a beating with a heavy stick. Judge Mao explained the light punishment according to article 289 of the code, entitled ‘Forcible Robbery’ (Qiangdao 強盜). Because goods were taken in Zhuang’s case, the offenders should have been punished by decapitation with no distinction made between their principal and accessory status, meaning that both Xian and Hui should have been sentenced to the same punishment based on their ordinary relationships with the victim. However, because Hui was the victim’s uncle, his penalty was lessened by five levels to a beating with heavy bamboo. Moreover, as he was over 70 years old, it was possible for him to bail out from his punishment by cash payment, prompting Judge Mao to comment on his luck.

In a similar case known as ‘Yijian luqiang shi 一件露搶事’, Xian’s younger brother Zhoang Ying 莊英 committed a horrible crime by seizing his servant Gu Liang’s 顧良 wife. Angry over Liang’s disobedience, Ying gouged

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90 For more details about Mao’s life, see He Chuguang 何出光, Chen Dengyun 陳登雲 and Yu Sixun 喻思恂 (eds.), *Lantai fajian lu* collected in *Beijing tushuguan guji zhenben congkan* 北京圖書館古籍珍本叢刊 (Beijing: Shumu menxian chubanshe 書目文獻出版社, 1998), vol. 16, p. 534.
91 For the publication of the casebook, see Mao Yilu, *Yunjian yanlüe*, collected in Yang Yifan and Xu Lizhi (eds.), *Lidai panli pandu*，vol. 3, pp. 398-603.
92 *Yunjian yanlüe*, pp. 407-408.
94 *Yunjian yanlüe*, pp. 407-408.
Liang’s eyes out and filled the holes with stone ash to prevent him from taking revenge. Although Judge Mao was furious about Ying’s crime and greatly upset by Liang’s tragedy, he could only punish Ying with penal servitude (tu 徒) due to article 336, entitled ‘Honorable and Mean Persons Striking Each Other 良賤相毆’. In spite of the decision, Judge Mao felt that ‘this punishment could not compensate one tenth of Ying’s venomousness 以此罪英尚不足酬慘毒之十一’, 95

In another example, Qi Biaojia 祁彪佳 (1602-1645), prefectural judge of Xinghua 興化 in Fujian expressed similar distress in his casebook Puyang yandu 莆陽讞牘. 96 He delivered the following verdict of the case known as ‘Fenshoudao yijian shihai shi 分守道一件勢害事’. 97 Lin Ci 林次 borrowed 20 taels of silver from local loan shark Lin Shishu 林士述, offering his land as collateral. Shishu refused to return the land although Ci and his son had fully paid off their debt. Although the land clearly belonged to Ci, there were other serious accusations against Shishu that complicated the case. Shishu had been accused of raping his father’s concubine and poisoning his elder brother. He was also suspected to have caused the suicides of five women who could not afford the extremely high interest rates of his loans. During the interrogation, Judge Qi believed the accusations but could not gather solid evidence to establish Shishu’s crimes. Judge Qi said, “If any one of these could be proved, God and the law would not allow him to earn interest in this way 使有一於此, 幽有神殛, 明法有懲, 必不容士述食息至今日矣.” Therefore, he could only sentence Shishu to a

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95 Yanjian yunlue, pp. 417-418; Mingdai lüli huibian, p. 834; The Great Ming Code, p. 138.
96 For Qi’s life, see Lantai fajian lu, p. 582.
97 For details about the publication of the casebook, see Qi Biaojia, Puyang yandu, collected in Lidai panli pandu, vol. 5. For details about the case, see pp. 97-98.
beating with heavy bamboo.\textsuperscript{98}

These three cases illustrate how the late Ming prefectural judges behaved under the strict regulations and ratification system. Although these examples alone are not enough to capture the situation of the entire prefectural judiciary of the Ming dynasty, they suggest that the rigid restrictions placed on local court judgement checked the power of prefectural judges. The judges were basically governed by laws, even when those laws contradicted their wills or moral principles. This indicates that a code of norm prevailed among the judges, who had to master legal knowledge to strictly apply the laws in their rulings. On the grounds that a demarcation between justice and civil administrations had been in place since the Yuan Dynasty, all of these cases indicate that a distinct type of professionalism was developing in the late Ming local judiciary.

By and large, the separation of judicial matters and other administrative issues in the prefectural government was a valuable tradition firmly established before the Ming Dynasty. The Mongolian rule is commonly understood as a dark age of Chinese history that brought only devastation to Chinese civilisation.\textsuperscript{99} However, the Mongols’ specialisation in law and justice shows that those ‘barbarians’ in fact bequeathed a significant but almost forgotten legacy.\textsuperscript{100}

\textsuperscript{98} \textit{Puyang yandu}, pp. 97-98.
\textsuperscript{100} In the territorial governments of the Song Dynasty, a trend of legal specialisation also emerged as reflected by the establishment of a judicial commission (Tidian xingyu si 提點刑獄司).
Thanks to the Ming founders’ reinforcement of this legacy, some constructive effects of the Yuan were preserved at the turn of the dynastic change. These effects faded away, not in the hands of the Han Chinese but during the Ming-Qing transition. The following chapter mainly explores the performance and struggles of the early Qing prefectural judges and the last years of the position in Chinese officialdom.

in each circuit (dao 道). Justice was the sole responsibility of the commissioner in his jurisdiction and was separate from his civil executive role. However, it may be inappropriate to consider this position as the origin of the specialised tuiguan. As shown previously, the Yuan reform of a tuiguan’s status was obviously a return of the implementation of roundtable meetings in prefectural governments and irrelevant to the Song practice. Moreover, no decree made during the Song Dynasty was similar to the Yuan order to restrict the commissioner’s justice-related duties. Therefore, during the late Northern Song period, the commissioner was considered responsible for auditing and gold mining. See Xu Song, *Song huiyao jigao*, Shihuo 食貨 39, p. 29; Shihuo, 34, p. 15; and Toqto’a et al. (eds.), *Songshi*, 167, p. 3967.
CHAPTER 2
Prefectural Judges during the Qing Dynasty

Even at the beginning of the Qing Dynasty, the Manchus recognised the importance of re-regulating the former Ming bureaucracy to establish their new rule and order. It was a critical time, and the Qing was still consolidating its rule in the midst of severe resistance to them in different parts of China. Ming Prince Zhu Youlang (朱由榔, 1623-1662) still occupied Guangdong 广东 and claimed sovereignty of China by ascending to the throne in 1646. The remaining Shun 順 forces seized the whole of Hunan 湖南 from Qing control in 1647, followed by a series of upheavals in Sichuan 四川 and Guangdong. Pacification in Shandong was still in progress as rebellions directly threatened the security of the capital. 101 Meanwhile, the Qing court was attempting to reform the bureaucratic system. In 1647, the local government structures of the newly occupied lands were reorganised to eliminate redundant officials. Only one prefectural judge was kept in each prefecture. At the county level, the position of assistant magistrate (Zhubu 主簿) was abolished. In addition, although the numbers of vice-prefects (Tongzhi 同知) and assistant prefects (Tongpan 通判) were subject to local needs with no fixed limit during the Ming Dynasty, these prefects were also dismissed if found unnecessary to local administration. 102 The prefectural judge position survived

101 For more details about the resistance at the time, see Frederic E. Wakeman, *The Great Enterprise, the Manchu Reconstruction of Imperial Order in Seventeenth-century China* (Berkeley: University of California Press, 1985), pp. 591-847.
102 *Shizu zhanghuangdi shilu*, 25, p. 216. In principle, every Ming prefectural government
this restructuring and was preserved throughout the Shunzhi period until its abolition in 1667. Although the court’s comments and attitude towards this judicial position remain unknown, its relatively late abolition suggests that it was once considered somewhat valuable to rulers. This chapter illustrates the position’s duties and contributions to the legal order of the early Qing within the context of the territorial government’s legal ratification system.

2.1 Prefectural Judges and the Early Qing Territorial Judiciary

The complex judicial review mechanism implemented during the Ming period was retained in the early Qing Dynasty. In 1648, the Qing court decided that lawsuits with punishments not higher than life exile could be concluded at the prefectural level, and that those involving death penalties had to be reviewed by governors and surveillance commissioners at the provincial level before being passed to the ministry of justice and censorate in the capital. Moreover, regional inspectors were active in their own jurisdictions in the same manner as their Ming predecessors. The prefectural judge position was strengthened under this system. In 1667, the minister of justice explained it as follows:

had only one judge, as mentioned in Chapter 1. However, additional judges were occasionally dispatched to other local offices to handle cases in remote areas. For example, in the Yongping 永平 prefecture, Zhili 直隸 sent two to three judges to oversee the judiciary of frontier towns in Jiliao 藁遼. The Qing court restored the original design. See Wanli yehuobian, p. 576.

This source was also noted by Frederic E. Wakeman and enclosed in his discussion of the consolidation of Qing rule in China in a way that seriously twisted its original meaning. The term ‘prefectural judge’ (tuiguan) was translated as an ‘official to be retired’ and the restriction placed on the number of positions was interpreted as ‘(the official) is to resign his rank and not remain temporarily as a retired official.’ See The Great Enterprise: the Manchu Reconstruction of Imperial Order in Seventeenth-century China, p. 704.

When a county magistrate is trying a ‘serious case’, he must pay attention to the details and prepare a case report with relevant testimonies to be submitted to the prefectural judge. The judge then checks them carefully and rejects and returns those mismatching the crimes and punishments to the county magistrate for retrial. If the county officials again cannot find the truth and chaotically submit the unsettled case to the prefectural judge, the judge should immediately clarify the details and submit his case report to the surveillance commissioner for review. The commissioner then checks them carefully and rejects and returns those mismatching the crimes and punishments to the prefectural judge for retrial. If the prefectural judge again cannot find the truth and chaotically submits the unsettled case to the commissioner, the commissioner should immediately clarify the details and report them to the governor-general or governor. The governor-general and governor must check the details carefully. If they discover any problem of crime and punishment mismatch, they need not reject and return the case to the prefectural judge or magistrate, but only reject it to the surveillance commissioner. If the commissioner still cannot find the truth and chaotically submits the unsettled case to the governor-general and governor, the latter should immediately clarify the crimes and decide a punishment. If any one of them does his job sloppily or in shilly-shally or quotes improper laws to make his sentences, the responsible officials must be listed and their titles and names must be memorised for further decision of proper treatments.

州縣官審重案時務必詳審,確擬招解推官。推官詳審，情罪不符者始駁州縣官。
如州縣官復審不明，混解推官，推官即行審明，招解臬司，臬司詳審，情罪不符者亦駁推官。推官復審不明，混解臬司，臬司即行審明，詳報督撫。督撫細核，如有情罪不合者，不必駁推官州縣，止駁臬司。臬司復審不明，混解督撫，督撫即行審明確擬。如有草率游移，引律不合者，開列承問各官，職名一併題參。104

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The minister’s explanation reflects a very complicated legal procedure for ratification. According to this review system, a ‘serious case’ (Zhongan 重案) was transferred among the magistrate, judge, commissioner and two magnates at the territorial level. Such a case could be tried and reviewed over 10 times at the provincial level as follows. The numbers show the order of judicial review in territorial courts.¹⁰⁵

Figure 1
Judicial Procedures in Early Qing Territorial Courts as Shown by the Ministry of Justice

¹⁰⁵ This complicated review process inherited from the Ming system. For its details, please see Tam Ka-chai, ‘Mengsui zhai cundu suo fanying de wanning Guangdong yuzheng quehan ji sifa wen ti 《盟水齋存牘》所反映的晚明廣東獄政缺憾及司法問題’, Journal of Chinese Studies 中国文化研究所学报, no. 57, July 2013, pp. 115-130.
In the casebook *Lixin cungao* composed by Judge Shihong, the murder case known as ‘Anchasi fashen yijian huosha nanming shi’ 按察司發審一件活殺男命事 was tried 10 times before arriving at his prefectural judge office. The case known as ‘Niesi feng liangyuan yijian wei xianzhan shi’臬司奉兩院一件為憲斬事, which was handled by Judge Zhifang, had been litigated 16 times when it reached his court. The prefectural judges were key actors during this long judicial review process. They reviewed the cases submitted by the county government and retried problematic cases in response to the difficulties of junior officials. When provincial supervisors found an unsatisfactory judgement, the judges re-examined the case. Although the judges served as sub-officials in the prefectural government, they also played important roles at both the county and provincial levels of the judiciary. In addition, although the minister of justice indicated that the two magnates did not necessarily assign problematic cases to the judges, it was often the judges’ job to handle such challenges in practice.

According to the records of the two casebooks (*Jitingcao* and *Lixin cungao*), the governors and governors-general transferred a certain number of lawsuits to the judges. In addition, a number of their cases were transferred from various circuit intendants, and a few were even handled in response to requests made by the ministry of justice. This chapter considers 462 cases from these two casebooks to demonstrate the interactions between the judges and different parties. The following chart illustrates the connections between various types of institutes and

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106 Li Shihong: *Lixin cungao*, in Yang Yifan et al. (eds.), *Gudai pandu anli xinbian*, vol. 9, p. 445. However, this was far from the end of the process. Although Judge Shihong could give judgements that satisfied provincial approval by the surveillance commission, a lawsuit involving human death had to be reviewed by the ministry of justice, censorate and court of judicial review and finally approved by the emperor. Murder cases had to be re-examined four to five times.

107 *Jitingcao*, p. 57.
the judges involved in lawsuit transfers during the Shunzhi and early Kangxi eras. The numbers in brackets indicate the numbers of cases transferred by different bodies and received by the judges.\textsuperscript{108}

\begin{figure}
\centering
\includegraphics[width=\textwidth]{connections-between-judges.png}
\caption{Connections between Prefectural Judges and Other Territorial Agencies as Shown by the Casebooks.}
\end{figure}

\textsuperscript{108} The transferor of a case is shown in the case title, as indicated by the previously mentioned example of ‘Anchasi fashen yijian huosha naming shi 按察司發審一件活殺男命事’. Although 562 cases were recorded in the two casebooks (Jitingcao, 385; Lixin cungao, 177), some were made when the judges were acting magistrates (28) and some were taken from pre-execution reviews (luqiu 錄囚; 24). In addition, 31 of the cases were not transferred by other parties, and in 17 cases the exact transferors could not be clearly identified. Therefore, 462 cases were left for analysis. Among the appropriate samples, joint transferences were found from the general administration and surveillance circuits and from the Ministry of Justice and regional inspector. These cases are also counted and added separately in the brackets of each item. The Chinese characters reflect the wordings used in the casebooks.
It is clear that the actual practices of the early Qing system were far more complicated than those prescribed by the ministry of justice. Prefectural judges indeed had to cooperate with almost every level of territorial court. Among these, the most frequent transference was from the circuit not indicated by the ministry of justice. This circuit was officially a branch office of two provincial commissions, as their intendants were appointed from a pool of commission officials. For instance, the vice-administration commissioners (Canzheng 參政) and assistant administration commissioners (Canyi 參議) were dispatched to be in charge of the general administration or tax intendant circuits, and the vice-surveillance commissioners (Fushi 副使) and assistant surveillance commissioners (Jianshi 僉事) were given the power to take control of the surveillance and education circuits. The prefectural and provincial echelons formed a mid-level governmental organisation. However, the commissioner formed a ‘one-man government’, as he was the only ranked official providing different functions, including judicial judgements. 109 The limited human resources of the circuit meant that the prefectural judge handled a large part of the circuit official’s judicial duties. The prefectural judge indeed played key roles in the provincial judiciary.

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A closer look at the review procedures reveals the significance of the roles of the prefectural judge in the legal system. In cases of transference, not all of the first hearing documents were forwarded. In general, after the magistrate’s initial trial, the testimonies of the suspect (Zhao 招) and witness (Gong 供) were merely taken to the prefecture. Only if the upper courts doubted the prefectural reports would those original documents be called for checking. Suspects and witnesses were also summoned to those senior agencies so that prefectural officials would not be able to twist the facts. In some cases, when evidence or witnesses were unavailable for further review, the prefectural judge could assume authority over the interpretation and representation of the original statements of the persons involved in a case. The records of Tang Bin 汤斌 (1627-1687) in his service as the intendant of the general administration circuit of Lingbei 嶺北, Jiangxi during the Shunzhi period provide invaluable sources for analysis. In the case known as ‘Shenbao fangbing shasi yinguan pu ming shi 申報防兵殺死印官僕命事’, the county magistrate who handled the first hearing left the position for a long time and all of the witnesses passed away. Therefore, although Tang believed that the criminal Wang was a murderer and deserved capital punishment, he nevertheless felt that he could not deny the suggestion of the prefectural judge to charge the criminal for crimes punishable only by life exile.

2.2 Prefectural Judges and Regional Inspectors

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110 During both the Ming and Qing Dynasties, suspects and witnesses had to be summoned to the upper courts for retrials. For more details about the Ming procedures, see Yang Xuefeng, Mingdai de shenpan zhidu, pp. 204-208; 281-286. For more details about the Qing procedures, see Na Shilu, Qingdai zhouxian yamen shenpan zhidu, pp. 142-155.

Apart from the preceding responsibilities, prefectural judges played a crucial role in the provincial judiciary when cooperating with regional inspectors. The foregoing chart demonstrates that regional inspectors transferred a notable number of cases (51) to prefectural judges. Because Lixin cungao recorded Judge Shihong’s prefectural services, including some years from the Kangxi period after the regional inspector position was abolished, the preceding number does not reflect the close relationship between the two parties. The inspectors were also part of Ming institutional heritages. After the Hongwu reign, investigating censors were dispatched to provinces as regional inspectors to examine local governance. Moreover, the one-year tenure, which became customary after the Yongle era, ensured that a different censor would be responsible for the same province each year.\footnote{Mingshi, 73 p. 1768.} In the beginning, judicial issues were prime concerns in terms of verifying local judicial records and addressing lawsuits brought forward by commoners. Although inspectors did not deal directly with cases, they referred them to corresponding courts for further review.\footnote{Daming huidian, 210, p. 491.} The 51 cases assigned by regional inspectors found in Jitingcao confirm that this relationship remained active in the early Qing period and invited severe complaints. For example, investigating censor Yu Jin 余綸 (1617-1689) made the following criticism:

The prefectural judges are responsible for distinguishing good and evil as the ‘ears and eyes’ of the regional inspectors. Although the lawsuits are also reviewed by the circuits and provincial commissions, the latter two parties’ decisions are based on [the trials of] the prefectural court. Therefore, this position also attracts the attention of wicked persons. Those wrongdoers who manipulate rumours for the purposes of blackmail or
bribe officials to free criminals are certainly close to the staffs of the prefectural court to achieve their evil aims… If the judge’s clean heart is affected a bit or his supervision has any minor problems, [the case] would be considered a crime… In the course of arrest and interrogation, [the innocent] may lose all of his property. Even if his case were re-examined someday, he would probably become handicapped or even lose his life…

… If the regional inspector were a person of integrity and trusted in the prefectural judge and his staff, he would not be cheated by their tactics.

盖刑廳職司賢否，為巡按耳目。雖司道互有聞報，而總之原本於刑廳。故若輩之精神氣脈全聚於斯。凡窩訪賣訪之家，斷無不結交刑廳書役而得呈其惡者也……

苟刑官秉心稍有不正，監察稍有不精，則一單欵也……一經拘訊，家產業已蕩然。

比及審明，多至殘軀隕命……

……雖有不阿之按臣，若祗信刑官之耳目，未有不墮其術中者也。114

This complaint identified the severe consequences of corrupt judges who worked with regional inspectors. It also explained the negative and important position of prefectural judges in the territorial judiciary. Although corruption could hardly be eradicated among judges, it did provide a vantage point from which to see the institutional functions of the position. In addition to Yu’s viewpoint, a detailed investigation of the judicial judgements made by prefectural judges during the early Qing should help illustrate their performance and suggest further value in maintaining the quality of justice.

2.3 Uniformity of Judicial Judgements reflected in *Jitingcao* and *Lixin cungao*

This section compares the judgements made by two early Qing judges as collected in their respective casebooks, *Jitingcao* and *Lixin cungao*. A pair of cases with similar contexts, one from each casebook, was selected to form seven categories of cases, as shown in Table 2. These cases not only include some ‘civil’ disputes such as marriage and inheritance conflicts, but also ‘criminal crimes’ in the contemporary sense, such as murders and false accusations, to give a more comprehensive picture of the prefectural judgements made.

**Table 2 Cases Selected for Comparison from *Jitingcao* and *Lixin cungao***

<table>
<thead>
<tr>
<th>Categories</th>
<th><em>Jitingcao</em></th>
<th><em>Lixin cungao</em></th>
</tr>
</thead>
<tbody>
<tr>
<td>A. Homicide</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Plotted Murder</td>
<td>泉司一件為究典命事</td>
<td>按察司發審一件冤命事</td>
</tr>
<tr>
<td>Killing in Affray</td>
<td>司道奉三院一件為活殺兩命事</td>
<td>按察司發審一件恭陳四款事</td>
</tr>
<tr>
<td>Killing by Mistake</td>
<td>兵巡道一件為活殺夫命事</td>
<td>分守道發審一件批縣即死事</td>
</tr>
<tr>
<td>B. Corruption</td>
<td>按院一件為出巡事</td>
<td>按察司一件衙蠹等事</td>
</tr>
<tr>
<td>C. Inheritance</td>
<td>兵巡道一件為天討事</td>
<td>分守道發審一件籲天親勦事</td>
</tr>
<tr>
<td>D. Marriage</td>
<td>府送一件為憲斬變詐事</td>
<td>按察司發審一件宣淫生割事</td>
</tr>
<tr>
<td>E. Fornication</td>
<td>府送一件為姦佔民妻事</td>
<td>分守道發審一件法究姦拐事</td>
</tr>
</tbody>
</table>

A. Homicide
The Qing law followed the Chinese legal tradition of differentiating cases of homicide into various types of crimes, such as ‘plotting to murder others’ (Mousha ren 謀殺人) in article 282, ‘killing with intention’ (Gusha 故殺) in article 290 and ‘killing by mistake’ (Guoshisha 過失殺) in article 292. Two early Qing judges were both indebted to this differentiation when constructing the bases of their analytical frameworks to handle their homicide cases.

\textit{Plotted Murder}

In the case known as ‘Niesi yijian wei jiu dianming shi 島司一件為究典命事’ in \\textit{Jitingcao}, Zheng Zongzhao 鄭宗兆 and Yu Longfeng 虞龍鳳 ran an inn in Jinhua, Zhejiang. When a guest, Zhang Xiu 張秀, stayed for a night, Yu discovered that he had brought a considerable amount of money with him. Yu killed and robbed Zhang, slashed the corpse into two and threw the pieces into an abandoned well. Seeing an obvious contemplative conspiracy, Judge Zhifang 谁芳 considered the crime a plotted murder by referring to article 282 of the Qing code (‘Plotting to Murder Others’). According to the end of his case report, Yu was yet to be punished when he escaped. However, he had a subordinate, Zheng Zongzhao,

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\textsuperscript{115} The Qing code itself underwent significant changes during the Qing Dynasty. After the first version promulgated in Shunzhi 4 (1648), it was revised in Kangxi 9 (1670) and finalised in Qianlong 5 (1740). As the original Shunzhi code has not yet been published, this study relies on \textit{Da Qing lü jizhu} 大清律輯注 (Beijing: Falü chubanshe, 2000) by Shen Zhiqi 沈之奇 for its code text to analyse the legal reasoning of the two prefectural judges. Although it is basically a commentary on the Kangxi code, it is qualified for use as code text because the Kangxi code bears no difference from the Shunzhi version. The law in Kangxi 9 was revised only to correct a problematic Manchu translation. Related terms about the regional inspector and prefectural judge can be found in the code. For more details about the revision of Qing law, see Shimada Masao 島田正郎: “Shinritu no seiritu 清律の成立”, Yao Rongtao 姚榮濤 (trans.), in Liu Junwen 劉俊文 (ed.), \textit{Riben xuezhe yanjiu Zhongguo shi lunzhu xuan yi 日本學者研究中國史論著選譯} (Beijing: Zhonghua shuju, 1992), vol. 8, pp. 461-521. The English translation of the codes was taken and modified from Yonglin Jiang (trans.), \textit{The Great Ming Code} (Seatle and London: University of Washinton Press, 2005).
who witnessed the entire killing and received two taels of silver from Yu to hide his crime. Zheng was sentenced to the punishment of decapitation according to the following code provision: ‘If, by committing the crime, the offenders obtain goods, the penalty shall be same as that for forcible robbery, and all shall be punished by decapitation without distinction of principal and accessories’. Judge Zhifang stated that because Zheng did not stop the crime and even received money to cover it up, he was by no means innocent and thus considered a conspirator.

Judge Shihong adopted a similar interpretation in another case known as ‘Anchasi fashen yijian yuanming shi 按察司審一件冤命事’. Huang Pinghan 黃屏翰 had an affair with née Yang 楊氏, the wife of a relative of his family, and had a prostitute living with him. This shameful affair pushed née Yang’s father Yiqi 儀七 to remonstrate, which only provoked Huang’s furiousness. Huang secretly ordered a gang to raid Yiqi’s house. Huang Zuliu 黃俎六 and Huang Qin 黃勤 killed Yiqi while Xie Quanyi 謝全一 and Xie Huanliu 謝煥六 robbed the house. Zuliu and Qin were later killed by Pinghan to cover up his crime. Article 282 was also applied in this case: ‘In all cases of plotting to kill another, the conspirator shall be punished by decapitation’. Judge Shihong gave a decapitation sentence to Huang Pinghan. The two Xies were decapitated according to the same provision. In short, the two judges punished the principal murderers and showed no mercy to the subordinates, who did not directly participate in the killing of the victims but gained from the plots. This was

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116 Daqinglå ji zhu, pp. 650-651; The Great Ming Code, p. 170.
117 Jitingcao, p. 48.
118 Daqinglå ji zhu, pp.650-651; The Great Ming Code, p. 170.
119 Lixin cungao, p. 425.
a strict application of the code provision.

**Killing in Affray**

The uniformity of judgement can be demonstrated by another example. According to the case known as ‘Si dao feng sanyuan yijian wei huosha liangming shi 司道奉三院一件為活殺兩命事’ from *Jitingcao*, Fu Lianghua 傅良化 killed Liu Xiyuan 柳希元 and Liu Xigui 柳希貴 in a fight. However, the two Lius had badly beaten up Fu’s father, Yang Shou 楊壽. To save his father, Fu fought back with a spear and eventually took the attackers’ lives. Judge Zhifang stated that because Yang Shou died fewer than 10 days after the fight, the severity of his injuries was clear. The judge believed that Fu had no intention to kill the attackers and did so only to counterattack. However, because Fu had killed two persons, the judge had no choice but to sentence him to strangulation. This was based on article 290, ‘Killing Others in Affrays or by Intention’ (Douou ji gusha 人鬥毆及故殺人), which read as follows: ‘In all cases of killing others in affrays, regardless of whether hands, feet or other objects such as metal knives are used, the offenders shall be punished by strangulation’. Similar to the feebleness caused by legal regulations and shared by the aforementioned Ming prefectural judges, the judge felt sorry for his legal judgement and made the following remark: ‘It is a great shame of the people that I cannot save Fu from punishment today’.

Judge Shihong adopted a method similar to that of his Ming predecessors

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120 *Daqinglu ji zhu*, p. 680; *The Great Ming Code*, p. 173.
121 *Jitingcao*, p. 9.
to handle his other case, known as ‘Anchasi fashen yijian gongchen si kuan shi 按察司發審一件恭陳四款事’. The Chen 陳 brothers, Huayi 華一 and Huasan 華三, met Li Mingwu 李明五 on a farm. They were involved in an affray based on a minor dispute and Huasan accidentally killed Li by the strike of a hoe. Although Judge Shihong applied article 290, the governor-general dismissed his judgement and turned the case down for retrial. In the supervisor’s opinion, that Li was killed by the joint strike of the Chen brothers made the case a crime of killing others with intention, meaning the offenders had to receive the penalty of decapitation. Judge Shihong defended his decision by arguing that the distinction between killing in affray and with intention relied on whether the offenders had an incentive to kill. As it was proved that there was no hostility between Li and the Chen brothers, Judge Shihong insisted that Huasan had no intention to kill Li Mingwu in the affray, and that it was therefore appropriate only to charge Huasan with the crime of ‘killing others in affray’. The final judgement of the governor-general on the case was unclear. However, the case was analysed according to intention, the same legal reason implemented by Judge Shihong. This set forth a type of solid judicial logic that judges of the time applied. The rebuttal by the governor-general to the case accounted for Judge Shihong’s sadness, as judges could only comply with regulations under the pressure of the state review system. However, Judge Shihong’s response clearly shows that the prefectoral judge could stick to his guns by rightfully interpreting legal codes.

Killing by Mistake

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122 Daqinglì ji zhù, p. 680; The Great Ming Code, p. 173.
123 Lixin cungao, pp. 377-378.
The significance of intention in ruling homicide cases is further reflected in two other cases. Judge Zhifang’s case known as ‘Bingxundao yijian wei huoshafuming shi 兵巡道一件為活殺夫命事’ involved a peasant named Ye Xiaonu 叶小奴. Noting a suspicious man sneaking onto his farm one night, Ye thrust his spear at the intruder, but soon discovered that the man was his neighbour Zhi Jiuyi 支九一. Zhi died after crawling back to his home. Judge Zhifang proved during his investigation that there was no hostility between Ye and Zhi and therefore that Ye had not intended to kill Zhi. In addition, Zhi’s wife admitted that her husband wanted to steal some beans from Ye’s field. In the end, the judge ruled that Ye had killed Zhi accidentally and sentenced him to pay compensation to the Jiuyi family.124

The case known as ‘Fenshoudao fashen yijian pi xian ji si shi 分守道發審一件批縣即死事’ from Lixin cungao 令信倉稿 illustrates a similar situation. After a night of customary drinking together, an affray broke out between friends Zhou Wen 周文 and Jiang Qin 蒋欽 on their way home, and Zhou accidentally killed Jiang with a brutal punch. Judge Shihong handled the case by investigating Zhou and Jiang’s friendship and confirmed that they were friends with no great disputes between them. Indeed, after the killing, Zhou had taken Jiang’s hat and clothes back to Jiang’s home as if nothing had happened. Witnesses observed that Zhou had been extremely drunk while exhibiting this behaviour. The judge therefore believed Zhou’s claim that he had no memory of the incident. He considered the killing an accident and sentenced Zhou to pay compensation to Jiang’s family.125

124 Jitingcao, p. 42.
125 Lixin cungao, p. 441.
The legal source of these judgements was article 292, ‘Killing or Injuring Others in Play or by Mistake’ (Xisha wusha guoshi shashang ren 戲殺誤殺過失殺傷人), which stated that ‘for those who kill or injure others by negligence, in each case… Redemption shall be allowed in accordance with the code.’ Apart from obeying the code, one’s intention to kill was the key to ruling judgement on such cases, as doing so showed a conscious attempt to assert a proper ruling with the support of relevant laws.

B. Corruption

Both judges used more or less identical methods to deal with corrupt clerks. In Judge Zhifang’s lawsuit known as ‘Anyuan yijian wei chuxun shi 按院一件為出巡事’, Shao Guangguo 邵光國 and Fang Muyun 方慕雲 were corrupt clerks (li 吏) in their county. Seeing the opportunity to verify taxation records, Shao threatened 46 families to give him money. Because Shao also handled tax collections, he collected an extra amount from households spreading 93 li of the county. Another sum of bribery was also extorted in his trial. After cheating some shop owners and doctors for illicit goods, Fang and his colleagues Hu Sheng 胡昇 and Song Weiyu 宋偉玉 launched false charges of extortion. Although it was obvious that the two wicked clerks had caused a great deal of damage, the judge looked into the exact amount of goods they had obtained when deciding a punishment based on the corruption laws. During the Ming and Qing Dynasties, a set of codes was specifically established in Section 6 entitled ‘Laws on Penal Affairs (Xinglü 刑律)’ to deal with different corruption crimes.

126 Daqinglù ji zhu, p. 689; The Great Ming Code, p. 174.
127 Jitingcao, pp. 94-95, 99.
Article 344, ‘Officials or Functionaries Accepting Property’ (Guanli shoucai 官吏受財), read as follows: ‘In all cases where officials or functionaries receive property, calculate the value of the illicit goods and decide the penalty accordingly.’\(^{128}\) Table 3 provides further details from the code.\(^{129}\)

**Table 3 Corresponding Qing Law Punishment for Corruption According to the Value of Illicit Goods Received**

<table>
<thead>
<tr>
<th>Less than 1 tael of silver</th>
<th>70 strokes of beating with a heavy stick</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-5 tael of silver</td>
<td>80 strokes of beating with a heavy stick</td>
</tr>
<tr>
<td>10 tael of silver</td>
<td>90 strokes of beating with a heavy stick</td>
</tr>
<tr>
<td>15 tael of silver</td>
<td>100 strokes of beating with a heavy stick</td>
</tr>
<tr>
<td>20 tael of silver</td>
<td>60 strokes of beating with a heavy stick and penal servitude for one year.</td>
</tr>
<tr>
<td>25 tael of silver</td>
<td>70 strokes of beating with a heavy stick and penal servitude for one and one-half year.</td>
</tr>
<tr>
<td>30 tael of silver</td>
<td>80 strokes of beating with a heavy stick and penal servitude for two years.</td>
</tr>
<tr>
<td>35 tael of silver</td>
<td>90 strokes of beating with a heavy stick and penal servitude for two and one-half years.</td>
</tr>
<tr>
<td>40 tael of silver</td>
<td>100 strokes of beating with a heavy stick and penal servitude for three years.</td>
</tr>
<tr>
<td>45 tael of silver</td>
<td>100 strokes of beating with a heavy stick and life exile to 2,000 li.</td>
</tr>
<tr>
<td>50 tael of silver</td>
<td>100 strokes of beating with a heavy stick and life exile to 2,500 li.</td>
</tr>
<tr>
<td>55 tael of silver</td>
<td>100 strokes of beating with a heavy stick and life exile to 3,000 li.</td>
</tr>
<tr>
<td>80 tael of silver</td>
<td>Strangulation.</td>
</tr>
</tbody>
</table>

In the case ruling, the exact amount of extorted goods was eventually left unstated by the case record. However, Shao and Fang were given life exile sentences to

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\(^{129}\) Ibid., pp. 853-855; p. 203.
differing degrees, and Hu and Song were sentenced to servitude and beating with a heavy stick, respectively. Although Zhifang did not provide further details related to the punishment, the principle was clearly applied.

Another example demonstrates a similar approach to that of Judge Shihong, who attempted to clarify the exact amount of extortion committed by offender Chen Wenming in the case known as ‘Anchasi yijian yadu dengshi 按察司一件衙蠹等事’. Chen told the newly arrived magistrate that Shicheng county was in deficit of national taxation to obtain a considerable amount of money through re-collection. He was then accused of illegally obtaining over 100 taels of silver, which the judge later found to be merely 40 taels. Chen was accused of gaining goods worth over 220 taels. However, Judge Shihong was able to determine that the illicit goods were worth only 80 taels. Furthermore, in offering manpower support to the deportation of Geng Jimao’s military force from Guangdong to Fujian in 1661, Chen extorted another 30 taels of silver. This case again illustrates that judges followed the instruction of the law closely, particularly when investigating the exact amounts of bribes in corruption cases.

Based on the punishment table, Chen should have been given a strangulation sentence. However, he was finally released in accordance with a contemporary amnesty, although not due to arbitrary judgement. Although the details of the amnesty and the exact time of the trial were not given, certain factors are indicative of the approximate dates. The third charge related to the

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130 Jitingcao, pp. 94-95, 99.
131 Lixin cungao, p. 523.
move of Geng’s military force in 1661 means that the trial must have occurred after that point. In the records of the *Veritable Records of the Qing Dynasty* (Qing Shilu 清實錄), ‘great amnesties (Dashe 大赦)’ were granted in 1661 and 1665, when the Kangxi Emperor succeeded the throne and natural disasters occurred, respectively. In response to the 1665 amnesty, Censor-in-chief Hao Weine 郝維訥 (1623-1683) suggested in his memorial that although crimes of corrupt officials and functionaries were excused under the amnesty, they should not be allowed to return to civil service. Although it cannot be ascertained whether Chen’s trial took place in 1665, Hao’s words proved that Judge Shihong’s judgement in fact complied with his contemporary legal practice. In addition to these important crimes, the standardisation of judgement also prevailed among prefectoral judges when handling their ‘civil’ disputes, as shown in the next section.

C. Inheritance

In the case known as ‘Bingxundao yijian wei tiantao shi 兵巡道一件為天討事’ in Judge Zhifang’s casebook, Chen Xing 陳卿 married née Zhu 諸氏 because she was the eldest parent of the Zhou 周 family and a wealthy widow controlling its properties. When this case reached the court, the judge ruled that because née Zhu had already married Chen, she should not continue to manage the Zhou properties, all of which would fall into the hands of the next eldest member, Zhou Shixuan 周士選. This judgement adhered to article 88 of the

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132 *Qing shilu: Shengzu ren huangdi shilu* 清實錄: 聖祖仁皇帝實錄 (Beijing: Zhonghua shuju 中華書局, 1984-1985), 1, p. 42; 14, pp. 221-222.
133 *Qing shilu: Shengzu ren huangdi shilu*, 16, p. 240.
code, ‘Inferior or Younger Family Members Making Use of Family Wealth (Beiyou sishan yongcai 卑幼私擅用財)’, which stated that superior or old family members should be in charge of household properties and that younger members had no right to use or sell them without permission, otherwise they would be punished by 20 strokes of beating with a light stick.\textsuperscript{135} This reveals that although it was lawful for senior members to manage their families’ wealth, they did not own the properties. One provision of the law clarified the following: ‘If senior or older family members who are living in the same household should divide the family property but not equitably, the penalty shall be the same’.\textsuperscript{136} The property would thus have belonged to the whole family in equal share and not simply the elder members. Therefore, once Zhu married Chen, she formally departed the Zhou family to enter the Chen family and lost control over the Zhou estate. It is clear that Judge Zhifang followed the law closely in making his judgement.

In another \textit{Lixin cungao} case known as ‘Fenshoudao fashen yijian yu tian qinjiao shi 分守道發審一件籲天親勦事’, Hu Yuanba 胡元八 divided his properties between his two sons, Nianshan 廿三 and Nianliu 廿六, to let them establish their own branches of lineage. To avoid redistributing his inheritance after his other son Guansheng 官生 was born, he left his own share to Guansheng. However, Guansheng and Yuanba died soon afterwards. Guansheng’s mother née Zhang 張 then controlled the remaining properties as a ‘superior family member’. She sold some of the properties to pay taxes and repay her own personal debts. Judge Shihong decided that the ownership of those properties did not belong to the widow but to the whole Hu household. In other words, nèe

\textsuperscript{135} Daqinglù ji zhu, pp. 216-217; \textit{The Great Ming Code}, p. 76.
\textsuperscript{136} Ibid.
Zhang was permitted to oversee the properties and rely on them for maintenance. However, she was forbidden to sell any of them in the future. After her death, Nianshan and Nianliu were entitled to divide her share.\textsuperscript{137} In the record, Judge Shihong did not mention the punishment of Zhang but did settle the dispute strictly according to the law.

\textbf{D. Fornication}

In the case known as ‘Fu song yijian wei jianzhan minqi shi 府送一件為姦佔民妻事’ collected in the \textit{Jitingcao}, Lang Wenzhi 郎文之 had a sexual relationship with Gui Chongyou’s 季仲有 wife née Zhou 周氏, who eloped with Lang. Although née Zhou strongly intended to leave her husband Gui and be with Lang, Judge Zhifang ruled that she should remain in her original marital relationship.\textsuperscript{138} This decision asserted the Qing law of the time, including article 366, ‘Committing Fornication (Fanjian 犯姦)’, which stated the following: ‘Adulterous women shall be sold or married [to others] by their husbands. If the husbands wish to keep them, they may do so.’\textsuperscript{139} According to this law, women who committed adultery were considered criminals and their fates lay in their husbands’ hands.

Judge Shihong enforced the law in the same way in similar situations. In the \textit{Lixin cungao} case known as ‘Fenshoudao fashen yijian fajiu jianguai shi 分守道發審一件法究姦拐事’, Zhan Guanwu 詹觀五 had an affair with a female relative of his family: Wu Xili’s 吳希立 wife née Zhan 詹. As with née Zhou in

\begin{flushleft}
\textsuperscript{137} \textit{Lixin cungao}, p. 495. \\
\textsuperscript{138} \textit{Jitingcao}, p. 234. \\
\textsuperscript{139} \textit{Daqinglù ji zhu}, pp. 911-912; \textit{The Great Ming Code}, p. 214.
\end{flushleft}
Judge Zhifang’s case, née Zhan eloped with Guanwu, but their relationship was brought to court by Wang Yueshan 王曰善. Judge Shihong ruled that the lovers should be separated and that Wu had the right to claim his wife back.140 In short, these two fornication cases serve as further evidence illustrating the uniformity of the judgements made by two early Qing judges.

E. Marriage

This type of standardisation can be further observed in marriage cases. In Judge Zhifang’s case known as ‘Fusong yijian wei xianzhan bianzha shi 府送一件為憲斬變詐事’, Chen Liangguan 陳兩觀 was first engaged to the daughter of the Xu family, Xu Isun 徐一孫. However, before Chen presented his wedding gifts (guo dali 過大禮) to the bride’s family, a rebellion broke out, sending the county into turmoil. The two families lost contact for many years. Although Isun was willing to maintain her promise to Chen, she finally married another person after she had not heard from Chen for over eight years.141 Isun’s marriage to another person was considered an offence to the law. According to article 101, ‘Marriages of Men and Women (Nannü hunyin 男女婚姻)’, ‘If [those in charge of a woman’s marriage] agree to marry her off, have drawn up marriage contracts or reached private agreements and arbitrarily change their minds, they shall be punished by 50 strokes of beating with a light stick’. The article also stated that ‘the women shall return to their first husbands’.142 Realising it had already been eight years since Chen and Xu last had contact and that Chen’s mother had received 22 taels of silver in compensation from the Xu family, Judge Zhifang

140 Lixin cungao, p. 520.
141 Jitingcao, p. 226.
142 Daqinglù ji zhu, pp. 248-245; The Great Ming Code, p. 123.
ruled that the Chens were not guilty.

This is comparable with the Lixin cungao case known as ‘Anchasi fashen yijian xuanyin shengge shi 按察司發審一件宣淫生割事’. Wu Pang 吳逢 was initially engaged to Qin Chongwu’s 秦崇武 daughter, Xinnü 辛女. However, before the wedding gifts were presented to Qin’s family, a war broke out and they were kept apart for a long time. At the time of Judge Shihong’s hearing, Xinnü had already been married to Liu 劉 for 15 years, and the two were parents to a 12-year-old son. The judge decided that Xinnü and her current husband should not be separated. However, because Xinnü had previously entered into a contract with the Wu family, the judge ruled that Chongwu should compensate the Wus with four taels of silver to pay for the cost of the remarriage.143 The corresponding punishment of Chongwu, who was responsible for Xinnü’s marriage, was absent from Judge Shihong’s record. However, the case shows how redemption continued to play an important role in settling marriage disputes.

Although the rulings diverged from article 101 of the code, ‘Marriages of Men and Women’, the judges made reasonable decisions. Xu Isun had lost all contact with Chen Liangguan for over eight years, and it was possible that Chen had died. This was similar to the situation of Xinnü, who married Liu and had a son. It was reasonable for Xinnü to remain in the Liu family. Modern scholar Wang Xiongtao 汪雄濤 interpreted the case of Xu Isun as an example of Qing judges ruling not by law but according to common reason.144 Although this may

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143 Lixin cungao, p. 382.
explain Judge Zhifang’s ruling, additional explanations are notable. The significant effect of the ‘general amnesty’ to legal judgement was seen in the case known as ‘Anchasi yijian yadu deng shi’, in which corrupt clerk Chen Wenming was pardoned for his crimes. One must rely on more than legal code to understand judicial operations in traditional China. In fact, after the mid-Ming Dynasty, the central government issued various li 例 (precedents) to be attached to the code as supporting provisions in response to new social situations. Tragedies of couples-to-be like Xu and Xinnü were not rare during the early Qing Dynasty, when the country was experiencing war and chaos. Corresponding precedents or royal decrees could have been announced to address such emerging problems. However, evidence of this kind of legal expediency remains absent to date.

In sum, the preceding comparison illustrates the uniformity of prefectural judgements made during the early Qing Dynasty. Although the cases mentioned do not reflect the behaviour of every early Qing judge, they demonstrate the emergence of professionalism within legal officials. By ruling according to the Qing code, the judges mentioned exhibited a mastery of legal knowledge and great respect for the laws. Considering the judges’ interactions with various territorial courts and cooperation with regional inspectors, it can be concluded that they made undeniable and useful contributions to standardising legal judgements at the provincial level. The predictability of the judiciary was also enhanced and the confidence of people in the legal system of the new dynasty was confirmed. In addition, the original Ming system of the prefectural judiciary achieved much in the early Qing years before its abolition. However, this important position would soon meet its end. A great change in legal services was about to occur.
CHAPTER 3

The Abolition of Prefectural Judges

After a joint meeting between the Princes of Deliberative Council (Yizhengwang dachen 議政王大臣) and Nine Chief Ministers (Jiu qing 九卿), the prefectural judge position was abolished in 1667 by royal decree. This marked the abandonment of a legal tradition that had been in place since the Yuan Dynasty and resulted in the emergence of legal professionalism in late Imperial China. The reasons for the decision remain unclear, and no official explanation can be found. It can only be confirmed that it was not an isolated reform. The Qing court redrew the provincial boundaries and created new provinces, including Anhui 安徽 and Jiangsu 江蘇 from Jiangnan 江南 and Hubei 湖北 and Hunan 湖南 from Huguang 湖廣, via the same decree. Each province has retained only one administration commissioner ever since. Nevertheless, almost the entire circuit level was removed along with an important agent bridging the gap between the prefectural and provincial governments. Critical changes were made to the original Ming system of territorial administration in 1667, particularly the abolition of the prefectural judge system. This chapter explores the motives of this abolition to clarify the end of legal specialisation in the local government.

3.1 Retrenchment of the Government Budget during the Shunzhi and early Kangxi

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145 Qing shilu: Shengzu ren huangdi shilu, 23, p. 315.
146 Ibid.
Reigns

The drastic reform of 1667 could be considered a plan to eliminate redundant officials and decrease government expenditures. In addition to the dismissal of administration commissioners, the Qing court laid off 107 circuit intendants and all 142 prefectoral judges. The restructuring of that government was unsurprising if one takes a closer look at the financial situation of the time. In fact, the Qing government experienced enormous economic difficulties during its early years in China, when it was still suppressing resistance in the south. During the Shunzhi era, huge military expenditures almost exhausted the total government income. In 1651, although military expenses exceeded 13 million taels of silver, annual revenue totalled only 14 million taels. Although income climbed to 18 million taels in 1656, military spending rose to 20 million taels due to the breakout of wars in Zhejiang and Fujian. In 1660, although the government was able to earn about 30 million taels, the troops consumed more than 33 million taels, posing serious threats to the new dynasty and forcing the government to cut expenditures by downsizing its scale.

In 1654, the ministry of revenue prepared a detailed list of expenditures to the throne in relation to the salaries of and subsidies provided to local officials, suggesting the abolition of some ‘unnecessary’ positions to minimise the cost of government operations. According to his calculations, the entire officialdom, including all Manchu and Han members, consumed a remarkable 1.9 million taels.

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147 Ibid.
of silver annually.\textsuperscript{149} As a result, during the second half of the year, 14 secretaries of the ministry of revenue and over 60 battalions (Weisuo 衛所) along with more than 20 local military officers were eliminated.\textsuperscript{150} In 1656, the emperor himself complained that the finance of the state was burdened by an oversized officialdom. He pinpointed the existence of two provincial administration commissioners coexisting in a single province as an example.\textsuperscript{151} Some ideas of the 1667 reform had already taken root in previous years. In 1658, the emperor urged his ministers to dismiss unnecessary offices in the provincial government to save money.\textsuperscript{152} This order led to a series of abolitions across the central and local officialdoms. In the seventh and eighth lunar months of that year alone, over 140 central government positions were eradicated, including positions in many Manchu departments. Many minor Manchu positions such as assistants and clerks in the six ministries and the Eight Banners (Baqi 八旗) were also abolished.\textsuperscript{153} In the following years, many local positions were eliminated, including Confucian instructors (Ruxue xundao 儒學訓導) and vice-prefects (Tongzhi 同知) at the prefectural level, followed by assistant magistrates (Xian cheng 縣丞), county registrars (Jingli 經歷) and county police commissioners (Xun jian 巡檢) at the county level.\textsuperscript{154} Controlling governmental expenditures by trimming the scale of the officialdom was a practice established during the Shunzhi era.

This wave of dismissal continued until the death of the Shunzhi Emperor. However, the temporary pause of the practice was not a sign of state finance

\textsuperscript{149} Qing shilu: Shizu zhang huangdi shilu (Beijing: Zhonghua shuju, 1985-1987), 85, p. 666.
\textsuperscript{150} Ibid., 86-87, pp. 647-689.
\textsuperscript{151} Ibid., 102, p. 790.
\textsuperscript{152} Ibid., 117, p. 911.
\textsuperscript{153} Ibid., 119-121, pp. 923-934.
\textsuperscript{154} Ibid., 123-131, pp. 948-1010.
recovery. In the early Kangxi era, the retrenchment plan was still in effect, but the focus was changed to limiting the daily operation expenditures of the local government. Similar to the Ming practice, the local government of the Qing reserved a certain proportion of the taxes collected for local use every year. At the beginning of the Qing rule, the local reserve accounted for half of the total revenue received. This was gradually decreased to support military needs, from 8.37 million taels in 1654 to a mere 3.16 million taels by 1668. The amount fell even more sharply to 1.64 million in 1669. Following serious debates in court, it was concluded that the government had seriously undermined the operation of the local offices and had to restore the budgets to their pre-1668 levels in 1670. This tough financial situation illustrates the enormous economic pressure behind the institutional reform of 1667.

3.2 The New Order in Territorial Administration

The 1667 reform was indeed the Qing court’s response to some administration problems. By 1662, all Southern Ming resistant powers had been suppressed following the strangulation in Kunming of the last Ming Emperor Yongli as he was captured in Burma (Myanmar). Controlling all of the Ming territories in the mainland, the Manchus were in a perfect position to reorganise their territorial administration. The Ming Dynasty previously implemented a dual capital system with the City of Nanjing serving as the southern centre of the empire. The southern capital governed a large southern

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156 *Qing shilu: Shizu zhang huangdi shilu*, 85, p. 666.
metropolitan area (Nanzhili 南直隴) based on the Ming founder’s original arrangement. After the Qing force conquered the area, there was no reason for the new dynasty to maintain the same system. To make things more expedient, the entire metropolitan area was downgraded to Jiangnan Province and given the standard organisation of a normal provincial government. Because the area was too big to be effectively governed, the office of the Right Provincial Administration Commissioner (PAC) moved to Suzhou 蘇州 in 1661 to be in charge of its eastern part. The rest of the province was entrusted to the Left PAC situated in Nanjing. A similar division of big provinces into two parts was also witnessed in Huguang. In 1663, the Right PAC of Huguang finally moved to Changsha 長沙 to control the southern part of the original province. The following year, the new office of surveillance commissioner was established in both Jiangnan and Huguang. The reform left just one administration commissioner in each province, and the two Right PACs were preserved and eventually achieved independent status with the removal of their ‘right’ titles. These new jurisdictions became new provinces known as Jiangsu, Anhui (from Jiangnan), Hubei and Hunan (from Huguang). \(^\text{158}\) The reform of 1667 confirmed the gradual development of these territorial separations and the reshaping of provincial boundaries away from their arrangement during the Ming Dynasty.

The reform also unexpectedly constructed a new regional government hierarchy, abolishing most of the circuits and consolidating the ‘two magnates’ as the highest authority in the provincial administration. During the Shunzhi era, a

clear differentiation between civil and military roles among territorial officials emerged. The military responsibilities of the governor were transferred to the governor-general, with the former becoming a civil executive. Meanwhile, the circuit lost some of its original duties to monitor local military officials. More than 50 military circuits such as the military defence circuit (Bingbei dao 兵備道) were abolished from 1662 to 1665. The importance of the two magnates greatly increased during this transition. In 1661, to tighten the control of newly conquered lands, only a single governor-general was allowed in each province. After the abolition of the governors of Fengyang 鳳陽, Ningxia 寧夏 and Nangan 南贛 in 1665, the one-governor policy was thoroughly implemented across the country. The jurisdictions of both the governor-general and governor merged into provincial commissions (PCs) to become the highest provincial authorities. Under the Ming system, PCs were the official governing bodies of the provinces, and the two magnates were established irregularly to allocate trans-provincial resources and support temporary military needs. The two magnates eventually became firmly established at the summit of the provincial hierarchy and the PCs were moved to the middle level. The original role of circuits as middlemen bridging prefectural governments and provincial supervisors became less important. The circuits were eventually considered redundant and three quarters of them were abolished in 1667.

In sum, the reform of 1667 was indeed the result of the accumulating

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159 Qing shilu: Shengzu ren huangdi shilu, vols. 1-13, pp. 39-205.
160 Ibid., 4, p. 88.
161 Ibid., 15, p. 229.
162 Fu Linxiang, “Qing Kangxi liu nian hou shouxundao xingzhi de tanxi 清康熙六年後守巡道性質的探析”, in Shehui kexue 社會科學 (Journal of Social Sciences), vol. 8, 2010, pp. 144-152.
changes made since the beginning of the Qing era, some of which were rooted in the late Ming. The reform brought the re-division of provincial boundaries and a new provincial government structure. That year, the Qing court concluded its earlier experience with territorial administration and began to establish its own way of governance. Prefectural judges were evaluated, considered redundant and eventually laid off.

### 3.3 The Changing Roles of the Prefectural Judge since the Late Ming Dynasty

Which factors persuaded the Qing government to look at the prefectural judge position as a burden awaiting abolition? A retrospective review of the contribution of the prefectural judge to local governance during the late Ming Dynasty provides an answer to this question. As discussed in the previous chapters, the prefectural judge had achieved the unique status of justice specialist during the Yuan Dynasty, a status that carried over into the Ming system. As full-time judicial officials, judges could not completely free themselves from other administrative assignments. As early as 1451, the Jingtai Emperor 景泰 (Zhu Qiyu 朱祁鈺, 1428-1457) ordered PCs to avoid occupying prefectural judges with non-judicial businesses.\(^{163}\) In 1488, Left Censors-in-Chief (Zuo duo yushi 左都御史) Ma Wensheng 馬文升 (1426-1510) made a similar complaint that the senior officials in the provinces such as the regional inspector, governor and provincial commissioner presumptuously dispatched judicial officials including prefectural judges on ad hoc missions, leaving no one to handle ordinary legal duties. He proposed that the court should move to prohibit senior officials from

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assigning non-judicial duties to judicial officials. The Hongzhi Emperor (Zhu Youlang 朱祐樘, 1470-1505) agreed, and although he complied, the situation saw little improvement. During the Wanli era, Zhi Dalun 支大綸 (1533-1604) similarly criticised this misuse of judicial officials. He observed that the original purpose of the ‘Ming Ancestors’ in establishing the prefectural judge position was to enhance local justice rather than assist senior officials. However, the judges complied with those senior provincial officials and treated their own judicial works as secondary duties. These complaints revealed the continuous challenges posed to the specialist status of prefectural judges. According to the original early Ming design, judges were ensured the unique role of focusing on local justice. However, a judge had to bear his future advancement in mind. Every three years, like any other official, prefectural judges had to undergo performance assessments to decide their future promotion. The prefect reviewed a judge’s service records, which were then checked and confirmed by two provincial commissioners. It was therefore natural for a judge to take on any extra services requested by senior officials.

Of those senior officials, regional inspectors deserve attention. As shown in the previous chapter, judicial issues were the primary concerns of these inspectors. They were required to verify local judicial records and rehear any lawsuits brought before them. Because of the intensified problem of local corruption since the Xuande 宣德 era (1426-1435), the main focus of the duties

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164 Ma Wensheng, “Ti zhensu fengji biyi zhidao shi 題振肅風紀裨益治道事”, Huangchao ming chen jingji lu 皇朝名臣經濟錄, in Siku jinhai shu congkan 四庫禁燬書叢刊 (Beijing, Beijing chubanshe, 2000), vol. 19, pp. 54-55.
166 Daming huidian, 12, p. 218.
of inspectors gradually shifted to monitoring the performance of local officials to maintain the discipline and morale of the local officialdom. Although regional inspectors as the investigating censors were given a humble ranking of 7a, they were entrusted with the authority to arrest and interrogate corrupted local officials who ranked above them, such as provincial commissioners (3a). Moreover, they provided direct reports about talented and incompetent officials to the Ministry of Personnel as references to make promotion and demotion decisions. Therefore, regional inspectors became very powerful, and their jurisdictional concerns sometimes exceeded the boundary of justice, providing ‘all-round surveillance’ in the region, as described by Charles O. Hucker. As an inspector’s local escort, the prefectural judge served as an assistant to the supervisory royal representatives. In 1572, Nanjing Minister of Revenue Cao Bangfu 曹邦輔 (1507-1576) issued the following complaint in his memorial:

Realising that the prefectural judge and county magistrate with the jinshi degree would probably be promoted to censorial positions, the regional inspector usually invited them to be his own private assistants and secretly entrusted them with the power of surveillance. However, the appraisals of the two provincial commissioners were all based on the words of the prefectural judge and county magistrate… The two commissioners were in fear [of his great influence], so they flattered him excessively.

巡按御史往往以進士推官知縣有科道之望，引為私人，陰授以廉訪之柄。二司賢否，悉出脣吻……二司畏懼，奉承之不暇。170

167 Ogawa Takashi 小川尚, Mindai chihō kansatsu seido no kenkyū 明代地方監察制度の研究 (Tōkyō : Kyūko Shoin, 1999), pp. 80-81.
168 Daming huidian, 211, p. 508.
170 Xu Xueju 徐學聚 (js. 1583), Guochao dianhui 國朝典彙, collected in Siku quanshu cunmu chongshu, vol. 265, p. 126.
As discussed in the first chapter, the practice of *tuizhi xingqu* improved the prospects of the good prefectural judge and magistrate with the jinshi degree for promotion to the court as investigating censors. Cao’s complaint indicates that the regional inspector treated these local officials as his fellow censorial members and private assistants. This close relationship elevated the prefectural judge to a premium position that demanded even the senior provincial officials to bow to them. Other local officials also sought to be assistants to the inspectors to enhance their own career prospects. To prevent crony corruption and the transfer of interest between inspectors and territorial officials, the Ming court decided in 1574 that only prefectural judges could serve as inspectors’ local escorts during surveillance tours to check judicial faults.\(^1\) Although in theory the judges should have served only their legal duties as prescribed by imperial command, the inspectors assigned their responsibilities in practice. As the only official assistants of the inspectors, prefectural judges were given an unusual amount of power. The arrangement suggests that the judges’ duties extended far beyond judicial affairs.

The extra contributions of the judges mounted over time, especially in the field of financial matters. In 1568, before the prefectural judge position was consolidated during the surveillance tour, Gu Tingdui 顧廷對, who was serving as regional inspector of the Metropolitan Area (Zhili 直隸) of the North, suggested that prefectural judges should help audit taxation under the lead of regional inspectors.\(^2\) This suggestion was unsurprising, as regional inspectors


had been checking military expenditure records since 1564. Although the throne did not support Gu's proposal, the prefectural judge became progressively involved in auditing jobs during the late Ming to assist the inspectors. In 1605, to tighten the control of expenditures on the Great Canal reparation project, the regional inspectors of the provinces involved were entrusted with the duty of monetary review, and the judges under their lead had to help prepare expenditure reports every 10 days for the court’s reference. During the Chongzhen era, prefectural judges were commonly assigned financial checking jobs. In 1630, the Department of Sichuan (Sichuan si 四川司) of the ministry of revenue observed in a paper that ‘prefectural judges were called “the judges” but auditing was also their responsibility 理刑號為法官查盤又其職掌’. Financial review became formally recognised as the official duty of judges. Moreover, a memorial written by military office, supervising secretary Chen Xiance 陳獻策 observed that the prefectural judge was the main assistant in tax auditing and had to go to every county under his prefecture’s jurisdiction to ensure that taxes were well collected. Under the pen of Liu Tingji 劉廷璣 (b. 1653), a writer during the late-Kangxi era of the Qing Dynasty, the Ming prefectural judges were remembered as legal officials with additional auditing duties, and their unique role in legal affairs was de-emphasised.

174 Ming Shenzhong shilu 明神宗實錄, 416, p. 7826.
176 Chen Xian’ce, “Ti wai xiusheng zhi shizheng wuru tongcheng qixi lizhen yinxun shi tianxia zhi gongzui bi xiao yi zuo yi xi shao yang ji fangke xi yin yinyun shi zhi gongzui bi xiao yi zuo yi xi shao yang ji fangke xian zhou ji tianxia zhi gongzui bi xiao yi zuo yi xi shao yang ji fangke xian zhou ji”, in Jin Risheng 金日昇 (ed.), Songtian labi 頌天臚筆, in Siku jinhui shu congkan, vol. 16, p. 260.
The financial role of the judge was further consolidated during the early Qing Dynasty. Furthermore, the prefectural judge’s close relationship with the regional inspector was maintained. Cheng Xing 成性 (1622-1679), who once held the post of regional inspector of Fujian, revealed that inspectors usually began their surveillance tours by sending out judges to check local grain storages and expenditures to ensure the accurate collection of taxes.\textsuperscript{178} In addition, judges played active roles in transport auditing. Yang Xifu 楊錫紱 (1701-1768), who was the director-general of grain transport (Caoyun zongdu 漕運總督) from 1757 to 1768, had compiled Qing regulations of grain transport into \textit{Caoyun zeli zuan 漕運則例纂} since the Shunzhi era. The documents clearly showed that the prefectural judge used to be the prime actor in transport auditing before its abolition. In short, prefectures located along the transport route were checkpoints and the prefectural judges worked as chief auditors.\textsuperscript{179}

\textbf{Table 4 Prefectural Checkpoints in Grain Transport Auditing}

<table>
<thead>
<tr>
<th>Shandong Province</th>
<th>Henan Province</th>
<th>Jiangnan Province</th>
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<tr>
<td>Jinan 濟南</td>
<td>Guide 歸德</td>
<td>Jiangning 江寧</td>
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<tr>
<td>Wuding 武定</td>
<td>Weihui 衛輝</td>
<td>Anqing 安慶</td>
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<tr>
<td>Yanzhou 兖州</td>
<td>Huaiqing 懷慶</td>
<td>Ningguo 寧國</td>
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<td>Dongchang 東昌</td>
<td></td>
<td>Chizhou 池州</td>
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<tr>
<td>Taian 泰安</td>
<td></td>
<td>Taiping 太平</td>
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<tr>
<td>Caozhou 曹州</td>
<td></td>
<td>Luzhou 廬州</td>
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The preceding table demonstrates that most of the eastern prefectures of the country were involved in transport auditing. As prescribed by *Caoyun zeli zuan*, the judges in these prefectures shouldered tough responsibilities. First, they had to personally check to ensure that the proper amounts of grains were being collected. They might have been punished if any inconsistency from the written records was found. Second, they had to identify and investigate the misconduct of officials in the transportation process. Failure to expose corruption might have led to castigation.\(^{180}\) Third, a critical check was required at River Huai 淮河, the midpoint of the major transport route. If any auditory problem was found, the prefectural judges involved were immediately considered suspects of

\(^{180}\) *Caoyun zeli zuan*, 5, p. 387.
In addition, according to *Da Qing Hui Dian* 大清會典, the prefectural judges were responsible for any delayed tax collection or grain transport. These strict regulations of the prefectural judges indirectly reflected the tough fiscal situation of the early Qing. The financial sector officials suffered heavy pressure from the court and were required to ensure accurate taxation to support the massive expenditures of the new dynasty.

The deeper the judges became involved in auditing, the more their unique judicial roles were undermined. Their active roles in the financial sector beginning in the late Ming inevitably overlapped with the job duties of other fiscal officials in the prefecture, such as the vice-prefects (Tongzhi 同知) and assistant prefects (Tongpan 通判). Under the Ming system, although the prefectural judges performed special law and justice functions, the vice- and assistant prefects addressed other prefectural issues. The numbers of these positions in each prefecture depended on the needs of the different local governments and had no fixed quotas. As recorded in *Da Ming Hui Dian*, assistant prefects usually focused on grain storage administration, agricultural development and water management. Some specific positions such as vice-prefect in grain administration (Guanliang tongzhi 管糧同知) and assistant prefect in grain administration (Guanliang tongpan 管糧通判) were established in some prefectures during the Zhengtong 正統 period (1436-1449) to improve control of financial resources. These prefects were originally assigned auditing and grain

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181 *Caoyun zeli zuan*, 13, p. 571.
182 See *Qingding daqing huidian zheli* 欽定大清會典則例, collected in *Yingyin wanyuang siku quanshu*, vol. 621, 42, pp. 333-335.
183 *Da Ming Huidian*, 22, pp. 400-405; 23, pp. 416-418; 28, pp. 529-541.
184 *Ming Yingzhong shilu*, 151, p. 2968.
transport duties.\textsuperscript{185} Although the local government suffered from rampant local corruption during the late Ming Dynasty, there was also a higher demand for financial support for the military. More officials were given auditing responsibilities, and it was believed that their repeated checking helped ensure more accurate taxation. The regional inspectors and prefectural judges were involved in such financial issues. As Ray Huang observed in his \textit{Taxation and Governmental Finance in Sixteenth-Century Ming China}, this arrangement was not unreasonable considering the physical and technical limitations of the time. However, it was unrealistic to expect crosschecking to guarantee the integrity of officials.\textsuperscript{186} Under the great pressure of the government’s budget retrenchment, refreshing the governmental structure led to the elimination of repetition. In general, as prefectural judges came to play more important roles in fiscal administration, they were progressively assimilated into this area of officialdom. Although this was indeed part of an effort to address contemporary economic difficulties, it also undermined the original function of the judge in the local government. Instead, judges were pushed to take on responsibilities that previously belonged to someone else. After the prefectural judge position was abolished, the assistant and vice-prefects absorbed the judges’ financial responsibilities.\textsuperscript{187} The odd circumstance of a judge holding financial responsibilities was further exposed after the regional inspectors were removed from the Qing officialdom.

\textsuperscript{185} \textit{Ming Shenzhong shilu}, 2, p. 44; 28, p. 687.  
\textsuperscript{187} \textit{Caoyun zeli zuan}, 5, p. 386.
3.4 The Last Straw: The Abolition of Regional Inspectors

Because prefectural judges were usually close partners of the inspectors in their regional surveillance duties, they exerted an extraordinary influence on the regional government, which eventually shifted their roles to the financial sector. However, in 1661, the Qing court stopped appointing investigating censors as regional inspectors. The judges’ importance greatly diminished without the support of their former superiors. At the beginning of the Qing Dynasty, the Manchu government followed the Ming practice of dispatching censors as regional inspectors, relying on them to settle the newly conquered areas. Indeed, inspectors were appointed even before governors and governors-general were present in Shanxi, Zhejiang, Fujian and Guangdong. However, the inspector position was never really consolidated in the early Qing bureaucracy. The position had been abolished four times during the Shunzhi era out of court concerns related to position holders’ abuses of power. As mentioned previously, the inspectors ‘patrolling on behalf of heaven’ were in charge of checking the discipline of local officials. What if the inspectors themselves were corrupted and became the source of the problem? For example, in 1648, Zhou Shike 周世科 (d. 1649), who was the regional inspector of Fujian, was found guilty of bribery and extortion of laws resulting in the killing of innocents. He was eventually sentenced to death by being sliced into pieces (Lingchi 凌遲). Moreover, in 1652, Liu Simei 劉嗣美, who was patrolling in Shanxi, was found guilty of embezzling illicit goods and was sentenced to exile. Furthermore, in 1655, Inspector of Shuntian 順天 Gu

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Ren 顧仁（d. 1655）was accused of employing corrupt functionaries and accepting bribes that prevented criminals from being punished. The last case particularly upset the Shunzhi emperor. Before Gu and other inspectors were dispatched to the provinces, the emperor personally instructed them to be his unfailing ‘eyes and ears’ on the outside. One month after Gu arrived at his jurisdiction, he was found to be seriously corrupt. The emperor heard the case personally. The evidence proved that Gu was guilty, and he was punished by decapitation. The emperor faced a dilemma. Although worried over the regional inspector’s abuse of power, he knew well that abolishing the regional inspector position would mean the removal of effective checks of the power of the two magnates. Because Shunzhi Emperor could not consolidate the establishment of the regional inspector, the position was repeatedly threatened and ethical conflicts emerged between the Manchus and Hans.

Regional inspectors were selected from a pool of investigating censors who were all Han Chinese. During the Shunzhi reign, there were 163 Han people or Han banners (Hanjun baqi 漢軍八旗) appointed to the position. With their mighty authority, the Han inspectors naturally balanced the power of the Manchu magnates in the provinces. Although Manchu officials proposed abolishing the regional inspector position to save money in 1650, its re-establishment in 1654 saw Manchu officials asking for the position to be entrusted to the Manchus. In fact, Han and Manchu officials stood in opposition during debates over whether the position should be preserved. In 1660, Prince An (An qinwang 安親王) Yolo
岳樂 (1625-1689) proposed abolishing the inspector position due to bad behaviour. However, under the lead of the vice-minister of personnel Shi Shen 石申, Han officials defended the inspector position as crucial to the effective control of territorial administration. Although Prince An later claimed that every official reached a consensus to eliminate the inspectors, the so-called compromise proved to be too weak. A month later, the censor Lu Guangyu 陸光旭 criticised the Manchus for dominating the meetings and discussion, further drafting the memorial in the Manchu language and forcing the Han officials to sign the agreement. This counterattack provoked another series of heated debates in the court, which further pushed the Shunzhi emperor to order his officials to reconsider the issue. Although the emperor decided to re-establish the regional inspector position, he passed away in 1661 before he could issue the appointments. The Qing court thus fell into the hands of the four regents of Manchu. Following the political principle of ‘Manchu first (shou chong manzhou 首崇滿洲)’, the conservative Manchu opinion dominated the court in the early Kangxi era, and regional inspectors were never again appointed.

Although they had previously provided local assistance to the regional inspectors, the prefectural judges became irrelevant under the new system without provincial censors. There was no longer a need for a supportive official at the prefectural level, as the office itself had been removed. One Qing writer from the early Kangxi period, Niu Tianxiu 牛天宿, explained the abolition of the prefectural judge position after the dismissal of the inspectors. Because the

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194 Ibid., 138, p. 1065.
195 Ibid., 142, p. 1094-1095.
196 Qing Shilu: Shengzu ren huangdi shilu, 2, p. 64.
197 Niu Tianxiu, Bailiao jinjian 百僚金鑒, collected in Siku quanshu cunmu chongshu, vol.
prefectural judges’ responsibilities overlapped those of other local officials, they lost their positions as special supporters of the royal commissioners. It was by no means surprising for the people of the early Qing Dynasty to observe the final abolition of this judicial position during the reform of 1667.

The services of the prefectural judge in Chinese history came to an end in 1667. The former judges were put on a list of potential magistrates awaiting formal appointments. The original scheme of xingqu subsequently included only brilliant magistrates. The judges’ judicial responsibilities fell to the prefects. The vice- and assistant prefects took over the judges’ financial duties, and some even occupied their independent offices. After the turbulent Ming-Qing transition, the prefectural judge position was finally removed from officialdom and eventually faded away from the memories of the Qing people.

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199 Qing Shilu: Shengzu ren huangdi shilu, 33, p. 446.
200 Ibid., 25, p. 351.
201 See Hunan tongzhi (Guangxu period) 湖南通志(光緒), collected in Xuxiu siku quanshu, vol. 662, 43, p. 426.
3.5 Reasons Precluding Resurrection of the Prefectural Judge Position

Emperor Shuzhi once remarked that although the series of dismissals in the officialdom provided fast relief from financial difficulties, the eliminated positions should be re-established after the government restored economic competence. However, prefectural judges were permanently removed from the bureaucracy even when the government fully recovered from fiscal weaknesses during the heyday of the ‘High Qing’. Despite the power of the emperor’s words in guiding his descendants, the trends observed under the Qing administration precluded the local judiciary’s need for judges’ services.

A. Debates over the Re-establishment of the Regional Inspector

An abolished position may be reinstated in the system once it is found necessary to governmental operations. The regional inspector position had officials’ attention when they discussed institutional problems during the late Qing Dynasty. During the Yongzheng era, two editors (jianzao 檢討) from Hanlin Academy (Hanlin yuan 翰林院), Li Lan 李蘭 (1692-1736) and Xu Julun 徐聚倫, both proposed re-establishing the regional inspector position to check the mighty power of the two magnates. Even Jiangxi 江西 Governor-General Yu Zhaoyue 俞兆岳 (1662-1738) supported the idea of an inspector combating local government corruption. However, Emperor Yongzheng observed that having

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202 Qing Shilu: Shizu zhang huangdi shilu, 102, pp. 790-791.
203 Li Lan, ‘Zouwei qingfu anchen yiqing lizhi yizhen junwei shi 奏為請復按臣以清吏治以振軍威事’, the fourth day of the second lunar month, Yongzheng 01 (10 March 1723), Neige quanzong 內閣全宗, collected in the First Historical Archive of China 中國第一歷史檔案館 (FHAC); Xu Julun, ‘Zouchen dufu shiquan lingshu tankui qianliang qing fen qi quan yi chu qi hai shi 奏陳督撫恃權凌屬貪虧錢糧請分其權以除其害事’. Yongzheng period, Neige quanzong, collected in the FHAC.
qualified governors and governors-general was already sufficient to ensure a clean local officialdom and did not accept their advice. The debate was nevertheless prolonged until the late Qing. During the Guangxu 光緒 period (1875-1908), another suggestion for restoring the inspector system appeared out of similar concerns. In 1910, one year before the collapse of the Qing house, the same proposal was again submitted. However, neither attempts received a positive response from the throne.

Rejection of these suggestions did not mean that the Manchus released their control over the regional agencies, only that they maintained control another way. Following the Yongzheng period, the Qing government developed a successful system of ‘secret memorials’ (mizhe zhidu 密摺制度). As the highest authorities in territorial administration, the two magnates bared the basic responsibility of monitoring local officials, and juniors were allowed to report complaints about supervisors directly to the throne in secret. In other words, all of the officials inspected one another and the Qing oversaw the entire administration. This necessitated a comprehensive crosschecking system to alert and monitor the behaviour of imperial servants and consolidated the emperor’s power as an omniscient ruler. Therefore, while Emperor Shunzhi was struggling over whether to appoint regional inspectors to check local governance, his great-grandson

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204 Yu Zhaoyue, ‘Zouwei jingchen yokun yangqi ruijian shi 奏為敬陳愚悃仰祈睿鑒事’, Yongzheng period, Neige quanzong, collected in the FHAC.
205 s.l., ‘Qingfu xunan zhe 請復巡按摺’, Guangxu period, Neige quanzong, collected in the FHAC.
206 Aisin Gioro Shixun 愛新覺羅‧世珣, ‘Zouwei xianzheng jinxing xian she xunan yifang liubi shi 奏為憲政進行先設巡按以防流弊事’, sixth day of the eleventh lunar month, Xuantong 宣統 02 (17 December 1910), Neige quanzong, collected in the FHAC.
207 For more details of the discussion on prefectural judge’s resurrection in late Qing, please refer to Victor K. P. Fong, ‘Cong tuiguan dao faguan 从推官到法官——中國傳統元素與現代司法的晉接’, paper presented on the 2nd Young Scholar Conference on China Studies, 5th Dec 2014, Hong Kong Baptist University.
Qianlong was able to firmly declare it unnecessary to re-establish the inspector position. As Niu Tianxiu indicated, the removal of the inspector position eliminated the need for the prefectural judge as a local assistant serving the regular imperial surveillance tour, and the practice of the secret memorial system indirectly precluded the re-establishment of the prefectural judge.

**B. The Importance of Efficiency in the Qing Administration**

Apart from the abolition of the regional inspector position, a new trend in Qing bureaucracy further confirmed the absence of the prefectural judge in local courts. As shown in previous chapters, a complex review system was entrusted in Ming and Qing China to ensure the quality of justice required to check and retry a lawsuit over 10 times. This system was built based on a deep concern for people’s lives and inevitably extended legal procedures and trial periods remarkably. During the course of review, a suspect had to be imprisoned until the final ruling confirmation. In some extreme cases, as reflected in *Mengsui zhai cundu* by the late-Ming Judge Yan Junyan, this regulation could keep a suspect in jail for over 40 years. During the late Ming period, judicial inefficiency became a serious problem. Xie Zhaozhi 謝肇淛 (1567-1624), a famous writer of the time, in an exaggerating tone, criticised that the long judicial review period killed half of those imprisoned. A new provision was therefore introduced during the Chongzhen reign to shorten the process. It ruled that those suspected of murder must be sentenced to exile or even released if there was a lack of solid evidence to

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establish the prosecution.  

In response to this problem, the Qing government made judicial efficiency its top priority. As early as 1645, the second year of the Qing dynasty, Shunzhi Emperor had urged his officials to accelerate judicial procedure. This turned into a decree later in the Shunzhi period that the ministry of justice had to review cases involving punishments less than a beating with heavy bamboo within 10 days and that the three central judicial offices (Sanfasi 三法司) had to jointly review more serious cases within 30 days. In 1727, Yongzheng Emperor further expanded the Shunzhi regulation covering procedures in local courts, placing detailed time constraints on trials and litigation between the courts as shown in the following table.

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211 For more details about this provision, please refer to Yan Junyan, *Mengsui zhai cundu*, p. 286; 296. For more details about the problem of inefficient judiciaries during the late Ming Dynasty, please see Tam Ka-chai, ‘Mengsui zhai cundu suo fanying de wanming Guangdong yuzheng quehan ji sifa wen ti’; and Yang Xuefeng, *Mingdai de shenpan zhidu*, pp. 275-285.

212 *Qing Shilu: Shizu zhang huangdi shilu*, 13, pp. 121-122.


214 *Daqing huidian shili*, vol. 2, 122, p. 578.
<table>
<thead>
<tr>
<th>Type of Cases</th>
<th>County Court</th>
<th>Prefectural Court</th>
<th>Provincial Court</th>
<th>Two Magnates</th>
<th>Time Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Case</td>
<td>Submission for review should be given in 2 months</td>
<td>Submission for review should be given in 1 month</td>
<td>Submission for review should be given in 20 days</td>
<td>Cases should be concluded in 10 days</td>
<td>4 months</td>
</tr>
<tr>
<td>Homicide Case</td>
<td>Submission for review should be given in 3 months</td>
<td>Submission for review should be given in 45 days</td>
<td>Submission for review should be given in 1 month</td>
<td>Cases should be concluded in 15 days</td>
<td>6 months</td>
</tr>
<tr>
<td>Robbery Case</td>
<td>Submission for review should be given in 7 months</td>
<td>Submission for review should be given in 2 months</td>
<td>Submission for review should be given in 45 days</td>
<td>Cases should be concluded in 45 days</td>
<td>1 year</td>
</tr>
</tbody>
</table>

This tight control over judicial review put an unprecedented amount of pressure on officials, as no time restrictions had been placed on case reviews during the Ming Dynasty. Although the regulations effectively accelerated the legal procedures for local justice, they were very demanding of officials. Delay at any

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215 Ibid.

216 The ‘prolonging imprisonment (yanjin 淹禁)’ law of the Ming code restricted only the time limit for the censor and provincial surveillance commission in confirming a ruling, with no related terms regulating the course of judicial review. See Huang Zhangjian, *Mingdai lüli huibian*, pp. 980-982. For the English version, see Jiang Yonglin (trans.), *The Great Ming Code: Da Ming lü*, pp. 227-228.
stage hindered progress and eventually obstructed cases that had to be concluded within the time limits. However, the demand for efficiency only became stronger. During the Qianlong era, the time limit for handling robbery cases was shortened to 10 months, and the corresponding time for each level was also contracted. The county court had to forward its cases for review within five months.\(^{217}\) When significant difficulties were encountered, officials were allowed to apply to extend the time limit by one month. However, they were dismissed if they could not conclude the case by the second deadline.\(^{218}\) All of these rules and other responsibilities imposed on the officials were clearly prescribed in the ‘Punitive Regulations and Provisions of the Ministry of Personnel’ (Libu chufen zeli 吳部處分則例) in Daqing Huidian. Under the tough demands of the regulations, Wang Huizu 汪輝祖 (1730-1807), a famous sub-official and county magistrate during the mid-Qing Dynasty, observed that the career of a county official was as fragile as a ‘glass screen’ (Liuli ping 琉璃屏).\(^{219}\)

Although the abolition of the prefectural judge position did not relax the supervision over the county court, it shifted the focus from quality to efficiency. The Ming system, which allowed a case to be examined and retried for years, guaranteed judicial officials sufficient time to handle lawsuits and give the most reasonable judgements. However, under Qing practices, efficiency determined the priorities of officials, who had to conclude all of their cases before the second deadline under any difficulties or face dismissal. This contrast reveals the differences between the Ming and Qing judicial systems, whose effects on local

\(^{217}\) Daqing huidian shili, vol. 2, 122, p. 578.
\(^{218}\) Ibid.
justice are worthy of further study. It also explains the circumstances that precluded the resurrection of the prefectural judge position. With this strong demand for efficiency, adding more review stages to the established system slowed down judicial progress. Although it provided a strong remedy for the inefficient judiciary of the late Ming Dynasty, it also drove the Chinese system further away from legal specialisation.
CONCLUSION

The abolition of the prefectural judge position was a cumulative result of a number of rather complicated issues. Under the extensive retrenchment plans of the Qing court to deal with significant financial difficulties, judges were seen as redundant and eventually removed after losing their original judicial roles during the dynastic change. Later on during the Qing Dynasty, the practice of a ‘secret memorial system’ that avoided the need for regional inspectors and shifted focus to judicial efficiency precluded the position’s resurrection. Developed as specialised judicial officials after the Yuan Dynasty, the tuiguans with their unique local government status were entrusted to concentrate on law and the judiciary apart from civil governance. In the due course of the Ming Dynasty, the prefectural judge became a subordinate working closely with the regional inspector. By the end of the Ming Dynasty, judges were deeply involved in different surveillance affairs handled by the censor, particularly in relation to auditing. Financial checking became their regular duty, and the judges were further assimilated with financial officials at the beginning of the Qing Dynasty, becoming particularly active in auditing grain transport. This shift of duty made the judges’ roles overlap with those of vice- and assistant prefects, who were responsible for financial matters at the prefectural level. The need for subordinate officials in assisting royal representatives diminished after regional inspector appointments ceased. All of these factors combined to force the abolition of
prefectural judges in the reform of 1667.

In addition to the financial pressures of the new dynasty and the judges’ changing roles in the local government, the conflicts between Manchu and Han officials indirectly harmed the status of the judges, as inspectors were dismissed largely due to the ethical conflicts between the two groups. In short, the prefectural judge position was eliminated due to the changing situations in the new dynasty. After its abolition, its original functions and uniqueness were almost completely erased from the minds of the Qing people. In *Mingshi* 明史, the official history of the Ming Dynasty prepared by the Qing court, prefectural judges were recorded as a position ‘handling justice and supportive of auditing matters 理刑名贊計典’.220 The original specialised gatekeeping role of judges as full-time local justice officials received no mention. During the late Qing Dynasty, eminent statesman and reformer Zhang Zhidong 張之洞 (1837-1909) combined the prefectural judge and assistant prefect positions into a single position. He mistakenly stated in a memorial to the throne that ‘the ‘assistant prefect’ (Tongpan) of today was developed from its Song predecessor, which was known as the ‘prefectural judge’ (Tuiguan) during the Ming Dynasty.’221 This mistake clearly illustrates that a valuable tradition of the professional judge long established after the Yuan Dynasty was neglected and finally disappeared, not only in terms of institutional practice but also in the people’s memory.

The abolition of the prefectural judge position can be further elaborated by

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220 *Mingshi*, 75, p. 1849.
221 Zhang Zhidong, “Xunzhi chouyi bianfa jinyi zhengdun zhong fa shier tiao zhe 遵旨籌議變法謹議整頓中法十二條摺”, in *Zhangwenxianggong zouyi* 張文襄公奏議, collected in *Xuxiu siku quanshu*, vol. 510, 53, p. 137.
comparing the Ming and Qing founders’ different attitudes towards law and justice. The early Ming rulers realised the importance of justice in local governance. The Hongwu Emperor painstakingly reorganised the government by eliminating the posts of many redundant officials. For example, when the court finalised the central government system in 1380, the number of central positions totalled only 105 (32 and 71 less than the numbers during the Tang and Yuan Dynasties, respectively), and the number of sub-official functionaries was merely 443 (426 and 345 less than the numbers during the Tang and Yuan Dynasties, respectively). In terms of territorial administration, Zhu significantly simplified the governmental structure by abolishing many Yuan institutions, including the provincial ‘branch offices’ of central government bodies such as the branch secretariats (Xing zhongshu sheng 行中書省), branch bureau of military affairs (Xing shumi yuan 行樞密院) and branch censorate (Xing yushitai 行御史臺) and intermediate agencies at the route level. However, during this process, the prefectural judge position remained well preserved, and the founding Ming emperor reinforced the judges’ roles by reaffirming their specialised status in Da Ming Ling. In article 58 of the Great Ming Code, entitled ‘Summoning Subordinate Officials without Authorisation (shangou shuguan 擅勾屬官)’, the Hongwu Emperor stated that senior officials who assigned non-judicial public affairs to prefectural judges could be punished by 40 strokes of beating with a light stick. By the same token, if a judge received commands and complied with them, he would face the same punishment. The Ming founders indeed expended great efforts to maintain the judges’ unique characteristics. This arrangement might have been based on the personal experience of Zhu himself.

222 Mingtaizu shilu, 130, p. 2067.
224 Huang Zhangjian, Mingdai luli huibian, p. 432.
As the son of a poor tenant family, he came from humble origins and in his worst years had to eat grass to survive. The founding emperor could not even afford to build a tomb for his parents and brothers when they died in the same year. His grassroots experience explained his profound sympathy with the hardships of the people and his deep hatred for rampant corruption in the local Yuan government. He made the following observation after coming to power:

In the past, when I was still a commoner, I seldom saw county officials who were sympathetic with the common people. Many of them were driven by lust for money, women and alcohol. They neglected all of the people’s hardships as if nothing had happened. I felt furious towards them.

昔在民間時，見州縣官吏多不恤民，往往貪財好色，飲酒廢事。凡民疾苦，視之漠然。心實怒之.

This explains the Hongwu Emperor’s enthusiasm for social law and order. It was echoed later in 1372, when the investigating censor Zheng Yi proposed establishing one prefectural judge in every prefecture to ensure local justice. In short, the early Ming founders very much appreciated the unique judicial functions of the judge.

However, the Qing rulers did not share this enthusiasm for legal specialisation. In contrast to the early Ming emperors, the new rulers did not attempt to reinforce the original duties of the judge. In an attempt to justify and assert its succession, the Qing court reprinted *Hongwu baoxun* nationwide and

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225 *Mingtaizu shilu*, 40, p. 802.
227 *Mingtaizu shilu*, 39, p. 800.
provided a bilingual version in both Chinese and Manchurian. However, they failed to pay equal attention to Da Ming Ling. No reaffirmation of the specialised role of the judges prescribed in the codes was found in any official announcement. Therefore, they gave no authority to uphold the importance of this specialisation in the local judiciary.

Indeed, the Manchu leaders ascended to the Chinese throne via a different path from that of Zhu Yuanzhang. Emperor Shunzhi grew up in the royal family and became the Qing emperor when he was only six years old, putting the court under the aristocratic monopoly of the Aisin Gioro family, which had been established in the time of Nurgaci (Nuerhachi 努爾哈赤, 1559-1626). The new emperor was privileged and thus would not sympathise with the hardships of his people as the Ming founders did. Furthermore, the Manchu political system lacked a mature and comparable legal tradition. In the primitive stages of Manchu society, the population was organised into different banner companies: the Niru (Niulu 牛) and Jalan (Jiala 甲喇). The head of both companies, Ejen (Ezhen 頭真), acted as both the judge and civil/military leader of his followers.228 As the population grew and tribal structure matured, the governing bodies were institutionalised. Some officials appeared and took on justice-related duties in 1615, when a judicial hierarchy was established. Lawsuits were initially heard by Jargüci (Zaerguqi 扎爾固齊), reviewed collectively by the ‘Five High Officials’ (Wudachen 五大臣) who deliberated government matters and concluded by the royal representatives of Beiles (Beile 貝勒).229 ‘Jargüci’ literally means ‘judge’

228 Liu Jinghui 劉景輝, Manzhou falü ji qi zhidu zhi yanbian 滿洲法律及其制度之演變 (Taipei: Jiaxin shuini gongshi wenhua jijin hui 嘉新水泥公司文化基金會, 1968), pp. 21-22.
229 Khasbagan 哈斯巴根, “Qing zaoqi zaerguqi guan hao tanjiu──cong man meng guanxi tanqi 清早期扎爾固齊官號探究——從滿蒙關係談起”, Manyu yanjiu 滿語研究, no. 1, 2011
in the Manchu language. Working with the two other groups of officials, Jargūci also participated in a national affairs advisory body\textsuperscript{230} and military operations.\textsuperscript{231} The Manchu political system lacked specialised judicial officials. This may explain why the Manchus overlooked the original value of prefectural judges, especially after they took on more financial duties after the late Ming Dynasty.

In addition to these changing circumstances, the demarcation between judicial and civil administration that emerged after the Yuan Dynasty also faded from people’s minds. As indicated in previous chapters, the judges’ assistance to the regional inspectors invited various criticisms. They were blamed for having an extraordinary influence on the officialdom as they helped the inspectors investigate the misconduct of local officials. They were also accused of neglecting their judicial duties due to the distractions of other affairs. However, the complaints seldom acknowledged that extending the judges’ ordinary duties to non-judicial jobs would eliminate the functional demarcation between their justice-related role and other civil matters. Nobody mentioned that judicial jobs should be subjected to legal expertise as initially indicated by the Yuan provincial officials. This may reflect that the ideal proposed by the Yuan ministry of justice was not widely perceived. Therefore, officials in the late Ming and early Qing did not truly adhere to the division. After the abolition of prefectural judges, their judicial duties were transferred to the prefects. This arrangement caused no serious complaints. It seemed not a serious problem for legal matters to be handled by civil officials. The legal profession had not yet begun to develop in

\textsuperscript{231} Zheng Tianting 鄭天挺, \textit{Qingshi tanwei 清史探微} (Beijing: Beijing daxue chubanshe, 1999), pp. 106-108.
late Imperial China, although it was beginning to show signs of doing so.

Chu Fangqing 储方慶 (1633-1683), the magistrate of Qingyuan 清源 county, Shanxi 山西, criticised the abolition of the prefectural judge position:

Emperor Shizu (Shunzhi) abolished the regional inspector. Your Majesty now decreases the numbers of supervising secretaries and censors and eliminates the prefectural judge position. It is believed that this reduction of official positions may improve the finance of the government by saving the expenditures for salaries of officials that are not urgently needed. Your servant hereby sincerely proposes that some officials should be abolished and some should not. The official positions that have been abolished so far indeed should not have been abolished… The elimination of all prefectural judges handling judicial affairs hides the eyes and ears of the legal system. When the eyes and ears of the legal system are hidden, the local officials at the county and prefectural levels cannot be checked, as nobody will regulate their actions.

Your servant humbly observes that when the prefectural judge position was abolished last year, the officials, local strongmen and functionaries of the counties and prefectures celebrated and clapped their hands upon learning the news. They sang and drank to illustrate their happiness. The court abolished a position from their
jurisdiction to save expenditures. Why should they feel so happy to lose a fellow worker who shared their burden? This also clearly illustrates that the prefectural judges might have crossed the local officials. Why on earth would Your Majesty need to comply with these officials and hide your intelligence of the legal system at the local level?

臣伏見去年裁推官時，郡縣豪吏，莫不欣欣得志，舉手稱慶。徵歌會飲，以明得意。朝廷省費而裁官於於彼，何與而若此之樂也？亦足以見推官為郡縣所不悅。陛下奈何狥郡縣，欲自蔽其聰明也？

Chu observed the importance of prefectural judges as a balancing force to check the power of other local officials and strongmen. As a magistrate himself, Chu referred to his personal experiences and observations and suggested that without the judges, local officials would be able to fully exert their own power over their jurisdictions. This was a justifiable worry of the local judiciary after 1667. As an all-rounded official, the Qing prefects bore very little judicial responsibility. In general, they only reviewed serious cases and transferred case reports from magistrates to provincial authorities. Moreover, although many circuit intendants were re-established after 1667, they served as administrators above the prefecture and county levels and were no longer active in judicial affairs. In addition, the provincial surveillance commission was suppressed to examine cases submitted by prefects. However, the sheer number of lawsuits and the physical distance between counties and the commission office made careful judicial review and the

232 Chu Fangqing, “Caiguan yi 裁官議”, Chu Dun’an wen ji 庫勤倦文集, in Qingdai shiwen ji hui bian 清代詩文集彙編 (Shanghai: Shanghai shi ji chu ban 上海世紀出版; Shanghai guji chubanshe, 2010), vol. 129, p. 465.

233 Fu Linxiang, “Qing Kangxi liunian hou shouxundao xingzhi tanxi”, pp. 144-152.

234 Na Shilu, Qingdai zhongyang shifa shenpan zhidu 清代中央司法審判制度 (Beijing: Beijing daxue chubanshe, 2004), pp. 193-200; 206-208.
rehearing of problematic cases impossible. The Ming structure of territorial judiciary was ultimately terminated. The official agencies during the Qing Dynasty operated in a very different way but implemented the same position titles. Without the effective checking from their prefectural and provincial supervisors, the Qing magistrates had much greater power than their Ming predecessors, as indicated by Chu’s observation.\(^{235}\)

During the late Qing period, when China faced serious threats of invasion from Western powers and the Qing court strove to strengthen itself, the prefectural judge position was rediscovered and included in a reform agenda. In response to the Western challenges, the Chinese reformers tried to ‘learn the barbarians’ strengths 師夷之長技’ and consulted traditional sources for inspiration to cope with the current crisis. Considered a powerful means for checking the power of magistrates and a sign of professionalism in the local judiciary, the position and title of prefectural judge was reintroduced at this critical moment as a measure to improve the legal system. After the Hundred Days’ Reform in 1898, a (zushi 主事) ministry of revenue secretary, Cai Zhenfan 蔡鎮藩 (1869-1914), proposed, in reference to the professional judges in Western legal systems, that tuiguans should be re-established at the prefectural level and in every county to specialise the judiciary and ensure local law and order.\(^{236}\) Moreover, the title of judge (‘tuiguan’) played a part in the legal modernisation process during the late Qing reform.

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\(^{235}\) See also Tam Ka-chai, *Justice in Print: Prefectural Judges of Late Ming China in the Light of Mengshui zhai cundu and Zheyu xinyu*, pp. 274-276.

Since the beginning of the twentieth century, a series of reforms have been carried out to modernise the Chinese legal system. In 1906, the court of judicial review (Dalisi) was reorganised into the Supreme Court (Daliyuan 大理院). Following the framework of the Western legal system, a separation of courts for civil and criminal cases was implemented in the new institution. Ten tuiguans were installed in the civil court and fourteen were put in the criminal court to handle cases transmitted from the lower courts. When the late Qing officials began to appreciate the values of the legal profession, the specialised judges of traditional China gained a new life. The new tuiguans were of course highly different from the Ming prefectural judges. For instance, they no longer subordinated the prefect in the prefectural government, but heard trials in the Supreme Court to review cases by locality. Moreover, following the abolition of the traditional civil examination known as ‘Keju 科舉’ in 1905, the new tuiguans were selected not from jinshi degree holders but from graduates of the newly established Capital Law School (Jingshi falü xuetang 京師法律學堂). Tuiguans eventually transformed into professional justice officials who were

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237 In that reform, the Western concept of the separation of legislative, administrative and judiciary powers was the key principle. The Court of Judicial Review was one of the three highest judiciary authorities along with the Ministry of Justice and Censorate. However, it was only responsible for reviewing serious cases and was seldom in charge of trials. To establish the judicial independence that separated judicial functions from the executive body, the court was reorganised into the Supreme Court as the highest court of China and absorbed the original judicial functions of the Censorate. The court had the sole responsibility of hearing and trying cases and planned to recruit judges with professional training from law school. It was decisively different from its predecessor. See Han Tao 韓濤, Wanqing Daliyuan: Zhongguo zui zao de zui gao fayuan 晚清大理院:中國最早的最高法院 (Beijing: Falü chubanshe, 2012), pp. 33-61; 140-166. However, the Ministry of Justice strongly refused to give up its judicial responsibility until the end of the Qing Dynasty, delaying the independence of justice. See pp. 115-136.

238 “Fabu Daliyuan zou wei Daliyuan guanzhi zhe bing qingdan 法部大理院奏為大理院官制折并清單”, in Shanghai shangwu yinshuguan bianyi suo 上海商務印書館編譯所 (ed.), Da Qing xin fa ling (1901-1911) 大清新法令 (Beijing: Shangwu yinshuguan, 2010), vol. 2, pp. 119-120.

fundamentally different from the Ming judges. However, the use of the title of ‘tuiguan’ continues to reflect that traditional institutions acted as a conceptual medium for transplanting Western practices into the Chinese system. In fact, when the abandoned Ming position was revived in the late Qing as a reference for reforming legal systems, it indirectly revealed the fundamental differences between the Ming and Qing in terms of justice.

This study discusses the subtle but significant changes made to the local judicial system during the Ming-Qing transition. It hopes to stimulate more related research to reconsider the current perceptions of the history of the Ming and Qing Dynasties. According to the local justice perspective set forth by this study, there are some topics worthy of further exploration. For instance, the effects of the abolition of the prefectural judge position on the administration of justice in the territorial courts must be examined. Chu Fangqing’s brief explanation is merely a rough review of the significance of the prefectural judge position. Moreover, the details related to legal system operations immediately following the elimination of prefectural judges deserve a closer look. Indeed, the early Qing judicial casebooks mentioned in the early chapters of this study may be useful sources for investigating this issue. Furthermore, the Manchu perceptions of law and prefectural judges must be studied to clarify the possible reasons for the abolition of the judicial position. What did this position mean to them? Did they ever recognise its original nature or the value of legal specialisation? More Manchu sources should be consulted to answer these questions. This approach may enforce the contribution of the ‘new Qing history’ when using Manchu sources and free us from the ‘Han-centred point of view’. On the contrary, this study also suggests
that the Manchus, who were restricted by their ethnical culture and background, were not always constructive and sometimes even destroyed valuable traditions of the mature Han Chinese culture. Indeed, some alternative approaches to understanding Qing history must be determined in addition to the Han-centric ‘sinicisation’ approach and the imperialist approach that emphasises the success of the Manchus in creating one of the largest empires in human history.
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