

cial ruin of the wealthiest commoner family of the realm. A member of that clan, Cao Xueqin (ca. 1715–ca. 1765), was to pen China's greatest novel, known both as *Story of the Stone* (Shitou ji) and *Dream of Red Mansions* (Honglou meng). His saga of the decline of a great house and of Buddhist enlightenment was unfinished at his death.<sup>6</sup>

The Yongzheng emperor began a series of changes in the central government intended to limit the power of his bureaucrats, the outer court (*waichao*). These thousands of administrators served in offices inherited from the Ming and earlier governments and, in accordance with the detailed stipulations of the legal code, managed the everyday business—and paper flow—of governing, including judicial review. Although they all acknowledged in theory that the monarch's power was supreme, they carried out their duties in accordance with the law and relying on consensus, which did not always align with imperial desire. The suspicious Yongzheng emperor established a body of trusted officials to advise him on military matters; as time went on, this group assumed more and more power over the regular functioning of government and served as a buffer between the throne and the bureaucrats. One became the model administrator for the rest of the dynasty.<sup>7</sup>

The fourth Qing monarch, Hongli (1711–1799), reigned as the Qianlong emperor for sixty years, from 1736 to 1796, and then abdicated for filial reasons—to avoid holding power longer than had his grandfather. Even so, he maintained control until his last year of life, making him the longest-reigning ruler in dynastic history. During the 1730s, the advisory bodies inherited from his father became the Grand Council (Junjichu [lit., Council on Military Strategy]). This new body was composed of men who concurrently held important positions in the administration and could use those positions to provide information, and appropriate documentation, to their ruler. Since their positions on the council were supported by neither law nor tradition, they were much more directly responsible to the emperor than was the regular bureaucracy. They could, however, both facilitate and impede communication in both directions.<sup>8</sup>

The Qianlong emperor liked to travel, and his six tours of the Lower Yangzi valley came at outrageous cost, yet he also remitted taxes in areas struck by natural disasters. The imperial treasury remained strong due to the rapid increase in land under cultivation and the growth of the population, which resulted in more tax revenues. By the end of his reign, however, all these surpluses were exhausted, and rebellions in the subsequent Jiaqing reign period (1796–1821) weakened the Qing empire to the extent that China

was unable to withstand foreign aggression during the infamous Opium Wars of the nineteenth century.<sup>9</sup>

The Qianlong emperor was a connoisseur of Chinese art; he amassed a huge and very fine collection, much of which is now housed in the National Palace Museum outside Taipei. He wrote poetry and painted (neither very well) and was fascinated by Western art. During his reign, trade with Europeans, especially the British, grew rapidly. Europeans were allowed to live in Beijing, some employed as artists or scholars. Missionary activity was officially forbidden but generally was allowed to proceed without interference, except by zealous local officials. Although the emperor was outstanding in both physique and mental abilities during his maturity, as he aged, he relied ever more on advisers, including the unscrupulous Heshen (1750–1799). By the time Britain's Lord Macartney came to offer the emperor congratulations on his eightieth birthday, signs of military unpreparedness and economic hardship were beginning to appear in the countryside. Imperial China's last "golden age" was winding down to a close.<sup>10</sup>

#### QING ADMINISTRATIVE SYSTEMS AND PRACTICES

The imperial administrative structure established by China's notorious First Emperor of the Qin, Qin Shihuangdi (r. 247–210 B.C.E.), emphasized strict laws and overlapping responsibilities among bureaucrats. Most subsequent dynasties adapted that structure while officially espousing more humanistic Confucian doctrines of governing. By emphasizing the nurture and education of the empire's subjects, Confucian values thus legitimated paternalistic government; in turn, emperors and their administrations perpetuated the educational system that ensured the orthodoxy of these values.

All educated men (and increasing numbers of elite women) mastered the same basic curriculum. They were also trained to read texts very carefully. They shared the vocabulary and, to a large extent, the values of the core readings; likewise, all prized the terse "classical" style of writing used in formal documents. Students began with basic primers that taught simple ethical standards and proceeded to the Four Books (Sishu) of the Confucian school: *The Analects of Confucius* (Lunyu), *The Great Learning* (Daxue), *The Doctrine of the Mean* (Zhongyong), and *The Works of Mencius* (Mengzi). By the time they had memorized these texts, most would have begun to take the preliminary examinations for the civil service degrees required for any position in the central administration. This would have entailed learning to produce essays in the "contemporary essay" (*shiwen*) form, also known as the "eight-legged

essay" (*bagu wen*) because of its obligatory eight sections. Candidates for the higher degrees would also have committed to memory large segments, if not the entirety, of five more texts (classics) of the Confucian tradition: *Changes* (*Yi*); *Poetry* (*Shi*); *Documents* (*Shu*); *Li*, classical ritual texts; and *The "Spring and Autumn" Annals* (*Chunqiu*), with commentaries. There were strict limits on how many were allowed to pass each of these upper-level examinations, and many promising young bureaucrats failed to score high enough to qualify even after years of study.<sup>11</sup> But those who did pass the third and highest level of examinations and became *jinshi* ("presented scholars," designating those who had been presented to the emperor) could count on positions in the administration.

By necessity, local and provincial administrators relied heavily on private legal secretaries (termed *xingming* [specialists in penal law] or *muyou* [friends at court]) who had mastered the statutes and all appropriate administrative procedures; magistrates themselves were never trained in laws but instead studied the values appropriate to administration. Most legal professionals came from this same group of highly educated men; they had at least major portions of the same training as the administrators who employed them.<sup>12</sup>

Governing from a Confucian perspective involved maintaining harmony in society by means of a clear hierarchy of merit: those of greater value to society were to receive more of its benefits and were to share the rewards with those of lower status. In theory, thorough training in the histories and the canonical philosophical texts of high antiquity imbued the educated with such high moral standards that they were qualified both to serve as behavioral models for society and to make the best administrative decisions. Confucian concerns among China's bureaucrats, nearly all of whom had achieved advanced degrees in this educational system, took several forms.

First, the family should form the basis of society and provide the model for governing. That is, officials should serve as the parents of the people (institutionalized in the common term *fumu guan*, or "parental officials," used to describe all local and regional administrators) by holding themselves to very high ethical standards. Their need to educate the populace rationalized what amounted to the "preaching" of moral maxims offered by the youthful Kangxi emperor, who, like all Chinese monarchs, was both Son of Heaven (*Tianzi*) and figurative father to his people. And all of these "family" relationships were to be regulated by proper ritual and etiquette. These virtues were known collectively as the Proper Way (*Zheng Dao*) or the Sagely Way (*Sheng Dao*) and were called "Confucianism" by foreigners. As senior members of this extended family, both emperors and their bureau-

crats were obligated to treat their subjects fairly and with parental concern for their adequate material support. Thus, an administrator would be called to task if he did not alleviate poverty in the area for which he was responsible. And any flaw in legal judgment could bring public humiliation and financial or even physical punishment in its wake.

Within a conjugal family, male dominance also had political significance: the eldest male was to provide the behavioral model for younger males and all females in the household. All women were theoretically subservient to elder males, despite the crucial economic importance of working-class women and the growth of literacy among female members of the elite by the eighteenth century. This was one factor in what has been termed a "cult of chastity" that developed in the late sixteenth century and culminated in the eighteenth century. Large numbers of elite women had committed suicide in order to avoid rape during the bandit raids that brought down the Ming and during the subsequent Qing conquest. Thereafter, numerous chaste widows were commemorated by memorial arches under Manchu rule. The further commercialization of society and new land rights practices produced an increasingly mobile male population made up of unattached men who traveled frequently to find menial work. Many, termed "rogue rascals" (*guanggun*), got into trouble. Social changes produced a crisis in Confucian thinking that made its way into judicial thought and practice: officials at all levels commented on what they interpreted as a failure in moral leadership on the part of men throughout society, both in the family and in the administration. One response was to draw public attention to the moral heroism of women; another was intense judicial scrutiny of all sexual offenses, and particularly cases of sexual violence, as the state sought to impose a uniform set of standards for gender performance.<sup>13</sup>

Regardless of Confucian niceties, the practical necessities of controlling a vast land with a large population dictated adherence to the rule of law, with harsh punishments for offenders and a complex bureaucracy for their administration; the moral suasion of Confucian teachings was never enough to maintain state power and order in society.<sup>14</sup> Not surprisingly, those who fell into the "net of the law" (*fawang*) through violent crime were most often China's working people; the more privileged members of society generally had access to other means of resolving disputes and relieving frustrations.<sup>15</sup>

Although all authority nominally resided in the emperor himself, routine and even urgent business was usually conducted by the regular bureaucrats at the central and provincial levels of the imperial administration. Complex and even cumbersome as it appears, the judicial system was designed to alle-



viate the inevitably disastrous effect on an accused person of a prejudiced or insufficiently observant judge or of a false confession given under duress. Because "district magistrates" (*zhixian*)<sup>16</sup> were responsible for determining both guilt and appropriate punishments, these administrators had to justify their procedures, as well as their verdicts in capital cases, to a series of judicial reviewers stretching upward through the bureaucracy of the "prefecture" (*fu*), the "province" (*sheng*), central authorities in Beijing, and ultimately to the emperor himself. Thus, the accused were not the only persons under scrutiny as the case passed through successive levels of review; so, too, were all the lower-level administrators involved in the case. By law and custom, all homicide cases had to be reviewed by (or in the name of) the emperor; only the emperor could authorize execution in cases other than those involving a direct threat to the state, treason, and the like.<sup>17</sup> This is why these reports were preserved: all relevant documents had to be forwarded to the capital for the final levels of review and imperial approval. The far more numerous legal suits over property, misdemeanors, and other such petty crimes were resolved at the county level, where the records normally were retained. It appears that most documents of this sort from the late imperial period no longer exist, except for a few troves recently discovered in Taiwan, Sichuan, and Liaoning.<sup>18</sup>

Secretaries generally drafted all crime reports. Since magistrates were culpable for any shortcoming in them, however, it behooved magistrates to edit carefully all reports that they did not personally write. Effort was clearly expended on discerning all relevant details for the principals in each case and to present their recommendations persuasively. In this sense, then, these cases also reveal the negotiations taking place between Confucian values and administrative expediency in late imperial Chinese society. The local administrator strove to be fair and caring. Such efforts are particularly visible in recommendations of leniency for widows left with small children or offenders who are the sole means of support for aging parents. In the terrible outcomes of transgressing these standards, one sees the devotion appropriate to the bonds of matrimony (even when there is little affection between husband and wife), the social harmony expected at the neighborhood and village levels, and the general understanding of laws and proper standards for conduct assumed to be held by all members of society.<sup>19</sup> One also sees a vindictive state punishing harshly all infractions of the standards the bureaucracy was charged with maintaining.

In some of the following cases, administrators seemingly struggle to define an offense in ways that make it fit one narrow legal description of a

transgression—and to select which analogies and statutes might apply. An apparently safe conclusion was to recommend leniency and, when the offense required the death penalty, to suggest reasons that justified reexamination at the capital. Moreover, the Qing emperors were inclined to recommend reconsideration of the preliminary sentencing at the "autumn assizes" (*qiushen*), an extended review process involving high officials and, finally, the emperor. Longtime legal adviser Wang Huizu (1731–1807), in a section of his manual for legal administration titled "Seek to Preserve Life" (*Qiu sheng*), wrote:

True enough, if anyone commits a crime for which he must be put to death by law . . . in such a case, the secretary should not find a roundabout way to dismiss it. However, some cases can be regarded as something between trivial and serious, or possibly either way, and the point at issue is focused at no more than a single sentence, the interpretation of which concerns a life-and-death matter. In such cases you have to put yourself in the other's place and search with sincerity for a way of forgiveness. . . . I acted as an assistant in administering punishments for twenty-six years altogether. In that time I entered the names of only six people for capital sentences. . . . In other cases, which I did not enter as "proven," always at the time of making my first report, I examined them, repeatedly, and with caution, with my superior. This is how it came about that after the Autumn Assizes my requests for leniency and mitigation of punishment were always successful. From this we know that the preservation of life is something that sometimes can be sought.<sup>20</sup>

As shown in the following cases, there was ample reason for most offenders to be granted reconsideration of their punishments. Only those who had committed the most grievous crimes were not eligible for this final reconsideration; not surprisingly, some offenses in this category are of political significance.

#### JUDICIAL REVIEW: PROCESS AND PERSONNEL

The crime reports in this volume demonstrate one of the world's great legal systems at work. Although most of the translations are truncated in order to avoid predictable repetition of legal formalities, several include all of the complex steps involved in a complete investigation, trial, and the successive judicial reviews stipulated for major criminal cases. China's legal codes had been evolving since high antiquity; the last imperial code was revised several

times during the Qing, with ever more detailed statutes designed to accommodate the substantial differences between individual cases in a changing society.<sup>21</sup> The cases offered here document the delicate balancing act the system performed between the seemingly inflexible laws and the paternalistic concern for humane government. Clearly, so many mitigating factors are included, and often repeated, in certain reports because those who drafted them wanted to influence their superiors in deciding how harshly, or even whether, to punish those who had committed the offenses.

The lowest level in the judicial administration during the Qing period was the district magistrate. The magistrate, like his superiors, was appointed directly from the capital in the name of the reigning emperor. His duties were wide-ranging, including virtually all political, economic, police, and military matters at the local level; however, he had authority to make final, binding legal decisions only in civil and minor criminal cases. It was his responsibility to resolve disputes over property and related matters by negotiating settlements or imposing fines.<sup>22</sup> In criminal cases, punishment could not exceed beating or public humiliation in severity; magistrates were authorized to pass judgment only on relatively minor infractions such as attempted assault or petty theft. Investigation of the more serious cases required approval from successively higher levels, where cases were retried as they passed upward through the judicial review system. Each stage produced standardized written reports presenting all the facts and outlining all administrative procedures followed—proving that the process had been conducted properly—and included recommendations as to the appropriate punishment for each individual offender.

Oversight of local magistrates involved frequent inspection tours by judicial review and supervisory officials in addition to the obligatory reconsideration of individual capital cases; any impropriety in procedure or unjustified penalties in any sort of legal action could lead to punishment for the magistrate. The threat of financial and even physical punishment functioned as a strong inducement for magistrates to perform scrupulously and conscientiously as local investigators, mediators, and judges.

There were no attorneys as there are in modern courts of law who might represent their clients by portraying opponents in an unfavorable light; the closest approximations were the private "litigation masters" (*songshi*) who drafted legal complaints for a fee (and were officially disparaged for regularly overstating their clients' grievances). After a magistrate received a complaint at the court, he was obligated to send underlings to investigate at once, and upon hearing their preliminary reports, he then commenced his formal

investigation. Magistrates were also required to reach a speedy resolution in every case, as there were time limits established for each stage of the investigation, and late reports brought stiff penalties. His reports then underwent obligatory judicial review; all reviewing officials had to agree that his decision and the punishment he recommended were correct. Careful construction and convincing wording were thus crucial elements of each report.

All major cases originating at the district level were reexamined and even retried by prefectural and provincial administrators before being forwarded to the capital for final consideration. At the provincial level, the "governor" (*xunfu*), the "judicial review commissioner" (*anchashi*) assigned to the governor's court, and the "governor-general" or "military viceroy" (*dudu*) of multiple-province circuits reviewed the cases. Provincial authorities could retry the case together with the judicial commissioner and the circuit intendants; then the case would be referred to the Board of Punishments (Xingbu) in the capital.<sup>23</sup>

Every capital case, regardless of whether the sentence was immediate execution or imprisonment pending reconsideration of punishment, was reexamined by some of the highest central authorities, including the Three Judicial Offices (Sanfasi): the Censorate (Duchayuan), the Board of Punishments, and the Court of Judicial Review (Dali Si). This process of reconsideration, termed the "autumn assizes" for the season in which these officials reported to the emperor, might result in a recommendation for immediate execution, which, with imperial approval, would be carried out expeditiously. It might also culminate in a recommendation for a less severe punishment, further delay (detention pending subsequent reviews), or a pardon.<sup>24</sup> As Article 1 of *The Great Qing Penal Code* (Da Qing lüli) states:

In all cases of offenses subject to the death penalty, inside or outside the capital, apart from those [offenses] which require execution without delay, the accused must be imprisoned to await the Autumn Assizes or the Court Assizes. The cases are to be distinguished according to [four choices] whether [the case is one in which the] circumstances [of the offense] require the infliction [of capital punishment], [one in which] execution [should take place but may] be delayed, or one in which [the circumstances give rise to] compassion, or where there are doubts.<sup>25</sup>

Assizes led to the regular reduction of sentences in the name of the (paternalistically merciful) emperor, thus demonstrating his leniency toward fallible commoners. Emperors might also issue a blanket amnesty for all con-



victed criminals; the Qianlong emperor did so eleven times during his sixty-year reign.<sup>26</sup>

Normally, the magistrate and all of the review officials were allowed a total of only six months to reach a final recommendation concerning punishment in an ordinary homicide case. Several factors facilitated communication among the various levels of judicial review. First, the penal code, even though it was large and its details were frequently updated, was of manageable size and complexity. Likewise, every *yamen* had at least one legal assistant who made it his business to be thoroughly conversant with not only the code but all the relevant explanatory handbooks and commentaries on it. The more expert of these specialists were highly paid by the magistrates who employed them and frequently accompanied these officials to successive postings.

Formal government schools did not offer training in the reading and production of legal documents; such schools—and virtually all private and local schools as well—prepared students only for the civil service examinations. Legal advisers learned on the job and through reading on their own. By the Qing period, there were numerous handbooks for *yamen* secretaries and clerks; likewise, numerous retired officials and legal advisers published volumes of advice for their successors, all of which were extremely helpful in familiarizing their readers with standard procedures and providing advice for judging difficult cases.<sup>27</sup>

#### INVESTIGATIVE PROCEDURES

During the Qing period, the population was loosely organized into groups of households under the supervision of a local warden or headman (their titles varied among regions of the realm). This elderly man was charged with paying attention to possible sources of conflict among his neighbors, and when violence seemed imminent, he was to inform the magistrate. Likewise, when any criminal act was perpetrated, the warden was to be notified first as the intermediary for common subjects. The procedure was informal; the man merely needed to be informed. Subsequently, he might accompany a person more closely linked to the offense, often its victim, to the magistrate's court, where that person would file a formal complaint. This could be done orally, but the court required a written statement providing as many of the particulars as possible, including a complete list of the property lost or damaged and the names of all perpetrators. These complaints might be

more hyperbolic than strictly factual and seem not to have been accepted at face value.

Upon receipt of a complaint, the magistrate was obligated to investigate as soon as possible. In a murder case, he was to proceed to the crime scene along with the district "coroner" (*wuzuo*) and a small number of his own assistants; generally, the plaintiff, the accused if already apprehended, and relatives and neighbors of both would be assembled at the scene. At that point, an inquest was held. The coroner examined the body for all signs of injury, reporting orally to the magistrate the location, description, and measurements of each as well as his assessment of whether the wound could have been the cause of death.

The forensic technicians loosely referred to here as "coroners" enjoyed little status or compensation for their efforts. Many were amateur doctors; others were simply court clerks or attendants who had been pressed into this service. From the Song period onward, most relied heavily on a single handbook on forensic medicine, *The Washing Away of Wrongs* (*Xiyuan jilu*), by Sung Tz'u (Song Ci) (1186–1249). As its author pointed out: "Among criminal matters none is more serious than capital cases; in capital cases nothing is given more weight than the initially collected facts; as to these initially collected facts nothing is more crucial than the holding of inquests. In them is the power to grant life or to take it away, to redress grievances or to further iniquity."<sup>28</sup> Once the coroner had completed his examination of the corpse, the magistrate himself had to check the accuracy of every detail. In addition to corroborating his coroner's report, he was bound to see for himself whether death might have occurred from natural causes in order to determine that in fact a crime had been committed. After ascertaining the condition of the corpse, the magistrate questioned the principals in the case. This procedure put both accused and accuser together in the presence of others, creating a powerful emotional incentive for the perpetrator to confess, thus saving everyone a great deal of time in investigation. All testimony was recorded on the spot by court scribes and rewritten for the record later. Principals and key witnesses were generally kept in the court's custody until a formal hearing could be held—this might last for a month or more while all the necessary permissions were obtained from prefectural and provincial judicial officials. The formal investigation then had to be carried out expeditiously.

Trials at the magistrate's court were generally open to the public. The entrance to the building faced south, and the doors would be wide open

while the court was in session. Both accuser and accused, along with all the relevant witnesses, knelt on the stone floor in front of the magistrate's high bench as he observed them from above and questioned each in turn.<sup>29</sup> The magistrate was surrounded by advisers and assistants, including court scribes and his legal secretary, while the principals were carefully monitored by numbers of armed guards, including several equipped with the instruments of punishment and torture, as the interrogation continued. A person who felt he had been wrongly convicted could demand another trial at a higher level, and the magistrate's recommendations could be overturned at any level of review.<sup>30</sup>

#### JUDICIAL TORTURE AND PUNISHMENTS

Judicial officials were allowed to use torture as a means of obtaining confessions if the accused did not freely admit guilt; witnesses might also be tortured under certain circumstances in order to determine the full "truth" in a case. Some, however, were not allowed to be tortured at all: the old, the very young, the disabled, pregnant women, and members of certain privileged groups.

Acceptable methods of torture included twisting the ears, slapping, beating, or making prisoners kneel on a chain, but the most common method seems to have been squeezing the fingers or ankles with wooden compressors made for this purpose.<sup>31</sup> Men might be subjected to interrogation with "ankle-squeezing blocks" (*jiagun*). This torture, "interrogation with ankle-squeezing blocks" (*jia shen*), could be applied only in cases of homicide and robbery, and officials were required to mention its use in their reports to the governor-general and governor. Women, however, could be subjected only to "interrogation with finger-squeezers" (*zan shen*). In the reports included in this volume, torture was more often threatened than applied, and various administrative handbooks advised against its use altogether. By the end of the Qing, many senior judicial officials had concluded that torture was neither humane nor effective in obtaining accurate information. Even so, Qing judges generally sought the "truth" through clear confessions rather than reached interpretations based on evidence alone.<sup>32</sup>

According to Article 1 of the Qing penal code, five categories of punishments were allowed: (1) Beating with a light bamboo rod, up to fifty strokes; (2) beating with a heavy bamboo rod, up to one hundred strokes (which was generally fatal); (3) penal servitude for periods of one to three years, plus up

to one hundred strokes of the heavy bamboo rod; (4) exile to a frontier region, either perpetual or for a fixed term, with or without penal servitude, and either with one's conjugal family or alone; and (5) execution by strangulation, decapitation, or dismemberment—possibly extending to family members for the most serious crimes (multiple murders or crimes against the state). Later revisions of the code stipulated that beatings should be reduced considerably before they were carried out. For example, a sentence of sixty strokes of the heavy rod was to be reduced to twenty, and a sentence of one hundred to forty.<sup>33</sup>

#### THE DOCUMENTARY SOURCES

All of the documents in this volume are official records of major criminal cases dating from the late seventeenth through the early nineteenth century, or from the late Kangxi through the Yongzheng and Qianlong reign periods and into the Jiaqing reign period. Most are from the Qing administrative records housed at the First Historical Archives in Beijing; others are in the Palace Museum collections in Taipei.<sup>34</sup> The documents are of three types. The majority are "routine memorials" (*tiben*) submitted to the throne about matters of local significance; the cases included here are from subcategories of the "judicial" or "legal" (*fali*) memorials. A second category comprises "depositions appended to memorials" (*lufu zouzhe*) sent directly to the emperor about the groups and individuals involved. The third type of document exemplifies a special avenue of communication: secret memorials from high-ranking officials at all levels of government addressing matters affecting the realm and its government, such as military campaigns and presumed acts of sedition, submitted directly to the emperor via the Grand Council.<sup>35</sup>

All documents in the same category are virtually identical in form. Routine memorials are written in a clear but often workmanlike script on white paper more than a foot in height, with pages folded every four to five inches in accordion style (the format in which Buddhist sutras might be presented), so that the reader could open one or several folds at a time, and the text would remain flat. There are six lines of writing on each folded page; a complete case report might make a pile of folded pages one to four inches or more in height. Memorials that went directly to the emperor were generally inscribed in a better hand, as were their attachments.

As historian Thomas Buoye has noted, given the need for conciseness and



clarity in a legal system requiring extensive review of all capital murder decisions throughout a vast empire, these documents generally exhibit a “familiar tenor and rhythm”:

Some cases were brutally complex and others painfully simple, but essentially the body of each report unfolded like a three act play. First, the magistrate set the stage by identifying the source of the dispute that led to violence. Next, he related, in a gory blow by blow description, the confrontation between the killer and victim. Lastly, the denouement, the magistrate recommended sentencing and addressed the aftermath of the killing. The resulting document was a violent, compelling, and concise vignette of a lesser known side of rural society.<sup>36</sup>

Even the small sample of judicial reports presented in this volume reveals both the formulaic structure and the standardized rhetoric such documents required. Offenders are introduced in the first paragraphs in terms that set the tenor of the crime report that follows: the perpetrator may be characterized as utterly immoral or prone to violence, a sign that the villain deserves no mercy.<sup>37</sup> Or the inadvertence of the act of violence may be emphasized in order to alert the judicial reviewer that the accused acted without malice or intent to do harm. Illicit sex is always referred to with the same pejorative term (*jian*) and is frequently described as having been carried out whenever the opportunity arose, with no further indication of the extent or even the nature of the relationship. Witnesses regularly report having arrived too late to intervene in a conflict or having been intimidated by the ferocity of the attacker. Matthew Sommer has observed, and cautioned, that:

These records are probably as close as we will ever get to the “voice” of the illiterate in late imperial China. But they are not verbatim transcriptions of witnesses’ utterances; rather, they are summaries of testimony crafted from witnesses’ answers to questions posed during interrogation. The answers were strung together in the form of a monologue in the “voice” of the witness. . . . These statements were shaped by the priorities of the magistrate, and should not be mistaken for purely spontaneous declarations.<sup>38</sup>

Moreover, what these people said in their various languages and dialects was translated to a uniform standard Chinese (Mandarin), or *guanhua* (lit., “the official language”). Their testimony was also edited to remove all vulgarity

and local slang and to fit customary prescriptions for the recording of testimony.

After the initial summary of the case, ordinary crime reports outline the procedures followed in the investigation—from the first notice of the crime, to the assembly of all persons likely to have been involved, to an investigation of the corpse. Thereafter the reports include testimony that speaks to the identity of the victim and of the perpetrator and the motivation for the offense. The reports vary in the quantity of testimony included, however; rapid population growth in China during the eighteenth century meant an increase in crime (if not necessarily an increase in its frequency).<sup>39</sup> This placed an extra burden on judicial review officials, who were not employed in greater numbers. Consequently, during the eighteenth century, there were repeated efforts to streamline crime reporting in order to ease this burden, which had the effect of diminishing the amount of testimony included in individual reports and increasing the amount of standard rhetoric used.

Magistrates, judges, and their legal assistants also expended considerable effort on ascertaining motivations and portraying in writing the precise degree of involvement of all persons implicated in a crime. The penal code distinguished between punishments for those who deliberately plotted to commit acts of violence, those who acted rashly or even caused injury by accident, ringleaders, followers, and mere bystanders. Taking another person’s life was clearly wrong and inevitably brought punishment, but *how* and *why* the victim died and precisely *who* acted to cause this death, *what* they did and *why*, could dramatically affect the recommended punishment.

In the cases heard by these Qing magistrates, the accused seems to have been convicted by his own and the testimony of others; the magistrate’s role was to confirm the accuracy of the original complaint. The defendant’s obligation was simply to acknowledge his guilt and then to accept the appropriate punishment. About this seeming prejudgment of crime, historian Brian E. McKnight has observed:

In traditional China, as in most premodern societies, homicide seems to have come in two basic grades, the obvious and the subtle, which all too often corresponded with the known and the unknown. Most homicides in China, like most in medieval Europe, were the result of sudden violence, of fights or robberies. Except where highwaymen were involved, the identity of the murderer was often common knowledge. Friend assaulted friend; husband murdered wife; an argument, sudden anger, and one of those involved was killed, often in the presence of witnesses. However, in China the problem of subtle

crime seems to have been more appreciated if not more common. Chinese investigators early on became conscious of the set of problems that have remained at the heart of forensic examinations: the distinguishing of accidental from deliberate death, of suicide from murder, or postmortem from postmortem wounds, and, in general, of natural death from unnatural.

The forensic problems were compounded not only by those who tried to disguise homicide as accident, but by those who sought to make natural deaths appear unnatural. Murderers and their relatives were apt to hide bodies, dispose of weapons, and attempt to disguise homicide as suicide or even as death from natural causes. Conversely, traditional Chinese investigative works often suggest that making suicide or natural death look like murder, in order to involve enemies with the criminal law and so injure them, was not an uncommon sport, played both by those seeking vengeance and by those practicing extortion.<sup>40</sup>

The cases in this volume are of the simpler, more common variety: most involve people who were familiar with one another—relatives, neighbors, and friends; few reflect the deceptions McKnight mentions above. The more “subtle” crimes were rare in reality, although these were the stock in trade of contemporary “crime-case fiction” (*gong’an xiaoshuo*) in which mysterious deaths caused by unknown assailants required a sometimes supernaturally insightful investigator to untangle.<sup>41</sup>

These particular cases were chosen—at the risk of giving a highly distorted view of society as a whole—because they include relatively large amounts of testimony from all the principals in a case. As Sommer noted above, however, rather than the words of the condemned and frightened witnesses, depositions are clerical representations of the thoughts, aspirations, and worries of these people rendered into a standard language style; the actions of all persons involved in a crime were similarly standardized so as to fit the degrees of culpability defined by the imperial legal code. Thus, even though these documents are not transparent records of real lives of individual persons, they do present a range of social problems that provoked acts of violence during the period of the Qing empire’s greatest military, political, and economic security and at the height of its cultural glory.

#### THE CRIMES AND THE CRIMINALS

The offenses described in this volume are of several types. Nearly all involve homicide, but one should not infer that Qing period Chinese killed one

another with greater frequency compared to people in other societies or of other times.<sup>42</sup> Early modern European societies were similarly violent; contrary to current accepted wisdom, the growth of cities often served to lower the per capita crime rate. Only during the twentieth century did U.S. crime rates, for example, surge above those of previous periods.<sup>43</sup>

Sexual desire, whether requited or spurned, jealousy, and the lust for revenge motivated several of the crimes. A few are products of careful planning with malicious intent. Others are the outcome of mere happenstance—the thoughtless comment that produces a moment’s anger, the tool or weapon that falls within the perpetrator’s reach as he loses self-control—as intent rises without warning and no one foresees the tragic outcome. Fits of rage over the petty frustrations of daily life lie behind many of these homicides.<sup>44</sup> Others reveal clashes between family members and neighbors that revolve around characteristically Chinese conceptions of proper relations and acts that breached social contracts. Some also reveal the empire’s responses to political and religious beliefs of the time. Although these few documents provide a view of late imperial Chinese society that is anything but complete, they do complicate understandings most often derived from the prescriptive statements of Confucian and Daoist thinkers, the idealistic visions of poets and painters, and the generalizations of historians, especially those whose political values motivate them to portray late imperial China in a uniformly negative light.

Viewed from the perspective of the Qing legal system, the crimes may be divided into premeditated or intentional homicide, killing during an affray, and other crimes. Such deliberate killers as Liu Huaiyu (case 2), the rapist Cao Ligong (case 5), Du Huailiang (case 6), the kidnappers (case 9), and the would-be extortionists (case 10) were sentenced to beheading for the crime of “premeditated homicide” (*mousha*) and had little hope of reprieve; their executions were to be carried out after the next autumn assizes. The punishment recommended initially for the leader of the fatal raid on the enemies of his clan, Zhou Fuquan (case 15), was immediate beheading for “intentional homicide” (*gusha*). However, the final recommendation was mitigated to beheading with delay on the charge of “intentional arson” (*gushao*) that caused the deaths of people. Others who committed “homicide during an affray” (*dousha*) (cases 11 and 12) were sentenced to immediate beheading as well, but their sentences were referred back to the Three Judicial Offices by the emperor, and they might not be awarded lesser punishments after reconsideration of the circumstances surrounding the homicides.



Execution by strangulation was recommended in several cases. This was a less horrific sentence: at least the body of the malefactor was left intact, thus not dishonoring the person's progenitors in death.<sup>45</sup> In two of these cases, execution was to be carried out after the autumn assizes (cases 1 and 9), but in others (cases 7 and 14), the sentence was left open for further consideration, with punishment delayed until provincial and capital officials conducted the extensive scrutiny that constituted the assizes. Because the assizes did not address the question of guilt but considered only the appropriateness of the punishment, it is highly likely that these convicts were given significantly reduced sentences. One such recommended penalty for killing during an affray (case 8) was commuted because of an amnesty: clearly, the victim had died by accident rather than by intent on the part of the perpetrator.

The worst penalty levied by Qing judges was "execution by dismemberment" (*lingchi*). Also known by the lurid term "lingering death," it was further exoticized by some foreigners as the "death of a thousand cuts," as they imagined it might take hours for the writhing victim to be released from his agony.<sup>46</sup> This punishment was carried out extremely rarely, and when it was, it seems to have been much less spectacular—and far less prolonged.<sup>47</sup> Token cuts were made on the body, and then the convict was strangled; thereafter, the corpse was dismembered at the joints and decapitated. The body lying in parts was thus the ultimate sign of the criminal's transgression, not only against the values of the public, but also against the memory of his ancestors. By engaging in a crime of such magnitude, he had shown no respect for the body that was the primary bequest from his parents. The only case bearing this frightful punishment is case 20, in which officials and their underlings conspired to murder a promising young official whom the emperor himself had recently met. Thus, murder became a political crime, and the ruler had no mercy. Dismemberment is the initial recommendation for an adulteress who killed her husband after he caught her in a compromising situation with her father-in-law (case 13), but the document here is inconclusive: the case was sent to another jurisdiction for reinvestigation because of the many illogical elements in its original presentation. It seems highly unlikely that a penalty of this severity would remain unchanged during the assizes.

In a small number of the cases included here, the documents assembled do not indicate the recommended punishment: they are depositions separated from the memorials to which they were originally appended. Case 16 groups testimony of this type from members of various religious sects. In case 17, because Ji Yanghua had by his own admission committed premedi-

tated murder, a death sentence would not be in doubt. Case 19 is translated from a series of memorials sent from a provincial official directly to the emperor. Given the seriousness of the crime, impersonation of an official, the normal judicial review process was simplified, although for the final decision on punishment, the emperor again sought the advice of his senior judicial officials on whether to behead as recommended.

The cases in this volume range from cold-blooded murders to inadvertent acts by victims of circumstance. Destructive violence in eighteenth-century China was generally as banal as it was elsewhere, and as in other cultures, perpetrators and victims usually knew each other, as neighbors or even as relatives. And with each case, we see administrators struggling to identify precisely what the crime was and, on the basis of individual circumstances, what the appropriate punishment should be. Even so, they could rely on higher courts to review their decisions and to find avenues for applying Confucian leniency to nearly all cases. Despite the standardization in these documents, one may still discern clearly enough the gap that separated the lives of these common people from the rulers who held their fates in their hands.

#### NOTES

1. See Ebrey, *Chinese Civilization*; and Cheng and Lestz, *Search for Modern China*. For a list of some principal events that occurred from the time of the Kangxi emperor's death in 1722 through 1820, see Bartlett, *Monarchs and Ministers*, xviii–xxi.
2. See Buoye, "Economic Change," *Manslaughter, Markets, and "Suddenly"*; Philip Huang, *Civil Justice in China*; Kuhn, *Soulstealers*; Sommer, *Sex, Law, and Society*; and Theiss, *Disgraceful Matters*.
3. Historian Ho Ping-ti originated the term "high Qing" in English, drawing attention to the "long eighteenth century" as a Pax Sinica; see his "Significance." For a systematic survey of the period, see Naquin and Rawski, *Chinese Society*; on this periodization, see *ibid.*, ix–xii. Other general histories are in Mote, *Imperial China*; Ray Huang, *China*; Ebrey, *Cambridge Illustrated History*; and Spence, *Search for Modern China*.
4. Rowe characterizes the middle of the eighteenth century as "the years when things went right" (*Saving the World*, 1). Buoye notes that the population grew from about 185.6 million in 1755 to around 301.4 million in 1790 with no appreciable change in the proportion of urban and rural population distribution. Buoye, "Economic Change," 241, 252. There were significant dislocations of male laborers in the process, however.
5. See Mair, "Language and Ideology."