

Reinterpreting Law in the Song:

Zheng Ke's Commentary to the "Magic Mirror for Deciding Cases"

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One problem facing scholars of Chinese legal history is the lack of authentic pre-modern case materials and judicial interpretations of the law. Though abundant case records from the Qing period have been preserved in historical archives and in comprehensive collections like the *Conspectus of Penal Cases* (*Xing'an huilan* 刑案匯覽), very few such materials from earlier periods have survived.¹ The vast majority of legal case records that do survive from the Ming and earlier periods are not verbatim transcripts of actual court judgments but brief summaries recorded in the biographies of eminent judicial officials or imperial edicts and other government documents. These were occasionally collected into legal "casebooks" and published with the aim of helping local magistrates to learn investigative and adjudicative techniques.² Yet due to their brevity, we cannot always be sure that such case summaries accurately reflect the complete methods and procedures adopted by judges in the courts. Also, because the casebooks generally include judgments from many different periods, and it is not always clear whether they are intended to be positive or negative examples, we cannot rely on them to give a clear and unified picture of the legal system at the time when they were published. These problems limit the usefulness of pre-Qing legal casebooks, and force scholars to make generalizations about pre-modern Chinese legal practices based almost exclusively on evidence from Qing sources.³

There are two ways to salvage something useful for legal scholars from the heterogeneous wreckage of the pre-Qing casebooks. The first is to search diligently for traces of authentic judgments that have somehow survived in neglected corners of libraries and encyclopedias, and then compare these to materials in the casebooks to see whether the latter give an accurate picture. The rediscovery of a complete text of the late

¹ For Qing legal materials, see Derk Bodde and Clarence Morris, *Law in Imperial China* (University of Pennsylvania Press, 1967), 144-56, 563-66 [hereafter, Bodde, *Law in Imperial China*]. For a useful recent annotated list of pre-Qing and Qing case records, judgments and other legal sources, see Hong Pimo 洪丕謨, *Zhongguo gudai falu mingzhu tiyao* 中国古代法律名著提要 (Hangzhou: Zhejiang renmin chubanshe, 1999) [hereafter *Falu mingzhu tiyao*]. For information about legal materials in Qing archives, see Nancy Park and Robert Antony, "Archival Research in Qing Legal History," *Late Imperial China* 14.1 (June 1993): 1-33.

² See *Falu mingzhu tiyao*, 210-233 for descriptions. I deal with Song collections in more detail below.

³ Ch'ü T'ung-tsu admits this bias in the introduction to his *Law and Society in Traditional China* (Paris: Mouton & Co., 1965), 13-14 [hereafter referred to as Ch'u, *Law and Society*]. When I say there are few pre-Qing materials on legal practices, I am not referring to the basic structure of the legal system, for which there are various codes and treatises available from many earlier dynasties, but to actual interpretations of the law in practice: legal cases.

Song dynasty *Collection of Enlightened Judgments* (*Qingming ji* 清明集) in the mid-1980s was extremely important in this regard.⁴

According to the translators of the partial English version of this text, the *Qingming ji* cases differ from Song case summaries mainly in their greater attention to statutes and the amount of detail they provide about the judges' reasoning methods. They demonstrate in effect that judges in the Southern Song had less freedom than the casebooks imply to decide cases based on their own moral principles. Statutes or other official regulations had to be invoked to support any judgment. They also show that sentences for officials and powerful local families who broke the law tended to be much lighter than for ordinary people convicted of the same offences, probably due to the difficulties of enforcing the decision and the need to rely on local elite families for law enforcement.⁵

The second way in which we may be able to salvage some useful information from the pre-Qing case summary books is to see whether they include commentaries evaluating the summaries from a consistent point of view. This is the approach of the present paper. Some of the casebooks, such as the *Collection of Doubtful Cases* (*Yi yu ji* 疑獄集) and the *Parallel Cases from Under the Pear Tree* (*Tang yin bi shi* 棠陰比事), have virtually no commentary at all.⁶ Others, such as the abbreviated Ming version of the *Tang yin bi shi*, limit their commentaries to technical issues, for instance, explaining which articles of the *Ming Code* judges should apply when faced with similar fact situations to those in the casebook.⁷ However, one text, the *Magic Mirror for Deciding Cases* (*Zhe yu gui jian* 折獄龜鑑) [hereafter *Magic Mirror*], does contain a sustained commentary by Zheng Ke 鄭克, an early Southern Song legal official, which individually evaluates each case summary and discusses the broader legal and moral issues that it raises.⁸ Hence, although the case summaries are drawn from a variety of sources and

⁴ See *Minggong shupan qingming ji* 名公书判清明集 (Beijing: Zhonghua shuju, 1987). For details of the rediscovery of the *Qingming ji*, and general information about its distinguishing features, see Brian E. McKnight and James T.C. Liu, *The Enlightened Judgments: Ch'ing-ming chi* (Albany: State University of New York Press, 1999), 1-21 [hereafter referred to as *Enlightened Judgments*].

⁵ *Enlightened Judgments*, 14-16.

⁶ See He Ning 和凝 and He Meng 和嶸, *Yiyu ji* 疑獄集 (Sibu congkan ed., Taipei: Shangwu, 1974) and Gui Wanrong 桂萬榮, *Tangyin bishi* 棠陰比事 (Sibu congkan ed., Shanghai: Shangwu, 1934) [hereafter referred to as *Bishi*]. Cf. Translation of the *Tangyin bishi* by Robert Hans Van Gulik, *T'ang-yin-pi-shih: Parallel Cases from under the Pear Tree* (Leiden: E.J. Brill, 1956) [hereafter referred to as Van Gulik]; and a useful annotated version of the *Yiyu ji* in Yang Fengkun 楊奉琨, ed., *Yiyu ji, Zheyu guijian jiaoshi* 疑獄集折獄龜鑑校釋 (Shanghai: Fudan daxue chubanshe, 1988).

⁷ See Wu Ne 吳訥 (1372-1457), ed., *Tangyin bishi yuanbian* 棠陰比事原編 (Congshu jicheng chubian ed., Beijing: Zhonghua shuju, 1985).

⁸ See Zheng Ke, *Zheyu guijian* (Congshu jicheng chubian ed., Beijing: Zhonghua shuju, 1985) [hereafter referred to as *Guijian*]. Cf. the annotated edition by Yang Fengkun mentioned in note 6 above, and an even more helpful edition with modern Chinese glosses and conveniently numbered entries: Liu Junwen 劉俊文, ed., *Zheyu guijian yizhu* 折獄龜鑑譯注 (Shanghai: Guji chubanshe, 1988) [hereafter referred to as *Yizhu*].

periods, the fact that Zheng Ke views them all from a Southern Song vantage point gives a remarkable sense of consistency to the book. The commentary transforms an incoherent mass of occasionally dubious judgments into a persuasive call for meticulous and compassionate adjudication, illustrated with concrete positive and negative examples from the past. As a result, it augments the authentic judgments found in collections like the *Qingming ji* by providing a normative Song vision of justice, which we can use to challenge some of the over-generalized conclusions of Chinese legal histories based on Qing dynasty sources alone.

In this paper, I will examine the commentary to the *Magic Mirror* in some detail, focusing especially on how Zheng Ke re-interprets the past case summaries that he has collected to make them fit his own vision of correct justice and legal procedure. In doing this, he often criticizes judgments that were clearly intended as positive examples in their original context, or he expands considerably on the original records to give the impression that past judges were as careful in following established legal procedures as he would be himself. The brevity and imprecision of the case summaries thus becomes an opportunity to remake them into strong pillars supporting his argument.

Before turning to the content of the commentary, however, I must first deal with the important question of why the *Magic Mirror*, and more specifically its commentary, has been virtually ignored by Western scholars in the past. In answering this point, I will mainly be arguing against the influential views of Robert Van Gulik in the introduction to his translation of the *Parallel Cases from under the Pear Tree* [hereafter *Parallel Cases*].⁹

An Academic Travesty of Justice? Comparing Three Song Legal Casebooks.

The case summaries in the *Magic Mirror* were drawn from a variety of sources, both historical and literary, dating from the Warring States period (473-221 BC) to the late Northern Song (960-1126). Zheng Ke did not find all the summaries himself, but borrowed most of the pre-Song examples from the *Collection of Doubtful Cases*, compiled by He Ning 和凝 (898-955) and his son He Meng 和蒙 (951-995). However, Zheng did add some important early cases omitted by the He's, along with numerous further examples from the Northern Song. In fact, Song dynasty examples make up over half of the total of 392 cases in the *Magic Mirror*. As we noted above, Zheng also wrote a commentary on the case summaries, and he rearranged them into broad topical categories. Hence his book differs significantly from its predecessor despite similarities in the basic case materials. Zheng originally compiled the *Magic Mirror* around the mid-1130s, but no edition of the book survives from the Song period, a point to which we will return below.¹⁰

Because this latter edition is so useful, I have chosen to refer to it along with the Congshu jicheng edition whenever I quote from the *Magic Mirror* below.

⁹ See note 6 above.

¹⁰ According to the Yuan scholar Liu Xun 劉燾 (1240-1319), Zheng Ke compiled the *Magic Mirror* in response to an Imperial edict of 1133 calling for officials to be more lenient in adjudicating offences. See

These kinds of casebooks must have been popular among Song literati, since another one, the *Parallel Cases*, was published in 1211 by Gui Wanrong 桂萬榮 (c.1170-1260). This book is basically an abridged and rearranged version of the *Magic Mirror*, containing 144 cases, yet without Zheng Ke's commentary except in a small handful of cases. The name refers to Gui's arrangement of the cases in symmetrical pairs with rhyming titles -- each pair dealing with a common investigative technique or reasoning method. The shorter length and pleasing aesthetic arrangement of the *Parallel Cases* made the book very popular among later Chinese and Japanese readers, even those who would normally keep their distance from legal texts. Its popularity among literati also meant that it provided material for many subsequent Chinese courtroom dramas and short stories.¹¹ Though the *Magic Mirror* also became indispensable reading matter for generations of Chinese magistrates, it probably lacked the broader appeal of the *Parallel Cases* among literati. And in the West, Van Gulik's convenient translation of the *Parallel Cases*, along with his disparaging opinion of the *Magic Mirror*, have led to a prevailing, though misguided, view among Western scholars that the former is a far superior work.¹²

Certainly, if we put aside Zheng Ke's commentary, the *Magic Mirror* would have little to recommend it over the *Parallel Cases* beyond its greater quantity of materials. Yet to neglect the commentary, as Van Gulik does, is to assume that the two books are both intended simply as introductions to the art of solving cases. This is a serious error since, unlike Gui Wanrong, Zheng Ke constantly warns his readers not to become so entranced by their own investigative prowess that they forget to uphold basic principles of justice. Again, unlike Gui Wanrong, Zheng Ke makes it very clear that some of his case summaries are negative examples -- what he usually terms "mirrors" (*jian* 鑑) -- and readers should not be tempted to follow them. In other words, the purposes of the two books are quite different: the *Parallel Cases* is really just a manual of detection, of clever solutions to difficult cases, with little in the way of jurisprudential reflection on the law.¹³ By contrast, the *Magic Mirror* is actually a persuasive treatise, in a traditional Chinese

Liu Xun, *Yinju tongyi* 隱居通議 (Congshu jicheng chubian ed., Beijing: Zhonghua shuju, 1985), 31.317. This comment is translated in Van Gulik, 39.

¹¹ For the popularity of the *Tangyin bishi*, see Van Gulik, vii-xi & 13 n.2; and for its influence on later Chinese and Japanese detective fiction, see John L. Bishop's review of Van Gulik's translation in *Harvard Journal of Asiatic Studies* 20 (1957): 227-30; and a doctoral dissertation by Robert Lewis Dunham-Stewart, "The Sung Magistrate and the Fundamental Importance of the 'Tang-yin-pi-shih' in Chinese Literary Evolution" (Georgetown University, 1990).

¹² See for example, the comment by Derk Bodde in *Law in Imperial China*, 145: "Three [Song dynasty casebooks] survive, of which the best, *Parallel Cases from under the Pear-Tree*, has been admirably translated by R.H. Van Gulik" [my emphasis]. Basing his impressions mainly on the *Parallel Cases*, Bodde also refers to these early casebooks as the "anecdotal writings of amateurs." For Van Gulik's own views, see my discussion below.

¹³ This is also how Benjamin E. Wallacker conceptualizes the *Parallel Cases* in his article "The Poet as Jurist: Po Chu-I and a Case of Conjugal Homicide," *Harvard Journal of Asiatic Studies* 41.2 (Dec. 1981): 507-26, at 525. He argues that Van Gulik's subtitle, "A Thirteenth Century Manual of Jurisprudence and Detection," should really omit the reference to jurisprudence.

commentary form, on principles of justice and legal procedure, with the cases playing a secondary role as evidence for Zheng Ke's arguments. To neglect the commentary is therefore to overlook the whole *raison d'être* of the book.

Besides his misleading comparison of the book to the *Parallel Cases*, Van Gulik makes two further criticisms of the *Magic Mirror* with which we must deal in more detail. The first is that the extant text of the *Magic Mirror* is corrupt, and therefore its usefulness as a source for Song attitudes to law is minimal. The second is that, partly due to the corruption of the text, the structure of the *Magic Mirror* is vague and Zheng Ke's commentary is virtually superfluous.

Van Gulik does provide a very impressive textual history of the *Magic Mirror* in the introduction to his translation of the *Parallel Cases*.¹⁴ He concludes from this evidence that the *Magic Mirror* was "drastically revised during the Ming dynasty, . . . [and] so burdened with additional material that it is difficult to discern the author's plan."¹⁵ Elsewhere he adds, "Although the present version of the [*Magic Mirror*] reproduces generally the contents of Zheng Ke's original and the main features of the text, the cases were revised -- some very drastically -- and their sequence changed."¹⁶

Certainly, if the *Magic Mirror* had been revised as "drastically" as Van Gulik claims, its usefulness as a source of Song law would be seriously curtailed, although it could still serve as a valuable pre-Qing source. Similar problems with the text of the *Collection of Doubtful Cases* would then leave the *Parallel Cases* as the only proven Song dynasty example of the case summary genre.¹⁷ However, in the case of the *Magic Mirror*, Van Gulik seems to have seriously exaggerated the textual problems.

It is true that the present text of the *Magic Mirror* is based on a Qing edition published by the compilers of the Imperial Collection (*Si ku quan shu* 四庫全書). The Qing editors stated that they in turn made use of a complete Ming version from the encyclopedia entitled *Yongle dadian* 永樂大典, and that they compared this text with a number of incomplete earlier versions.¹⁸ As a result, lacking a complete or partial Song version of the text today, we cannot be certain how much the *Magic Mirror* was altered by the time it was incorporated into the *Yongle dadian*. However, Van Gulik does introduce two Yuan dynasty (1279-1368) sources, each containing a dozen or more cases from a lost earlier version of the *Magic Mirror*, to serve as reference points. He gives detailed tables comparing the content and subject categories of these Yuan versions of the

¹⁴Van Gulik, 33-46.

¹⁵Van Gulik, ix. He gives a similar criticism of the *Collection of Doubtful Cases*, which may be more justifiable: see Van Gulik, 29-33.

¹⁶Van Gulik, 43. Here and in other quotations from Van Gulik below, I have changed Wade-Giles spellings of Chinese words to Pinyin.

¹⁷I treat the *Qingming ji* as a separate genre, since it contains authentic judgments rather than simply summaries of past cases.

¹⁸See Van Gulik, 38. Cf. *Yizhu*, 1-2, 534-5; and *Falu mingzhu tiyao*, 213-5.

cases with the present text of the *Magic Mirror*.¹⁹ He concludes from this evidence that in the present text, “the cases were revised -- some very drastically -- and their sequence changed.”²⁰

Yet even based on the tables provided by Van Gulik himself, I would come to a quite different conclusion regarding the authenticity of the present text. Indeed, Van Gulik admits that 14 of the 31 cases in the Yuan versions are “identical,” or “practically identical,” whereas he labels only 2 as “entirely different,” or “different version.” The remaining 15 cases display only minor differences of wording and odd phrases added or omitted here and there: nothing to affect the meaning of the passages. My own examination of these Yuan texts reveals that of the two cases Van Gulik calls “(entirely) different,” one is actually just an abbreviated version of that found in the present *Magic Mirror*, possibly the result of the Yuan editors’ truncation, and not necessarily due to Ming revisions. And the other case contains only slightly different wording in a couple of sentences.²¹ Van Gulik also claims that some of the cases selected in Liu Xun’s Yuan version appear under different section-headings from the present version, suggesting a major rearrangement of the book by the Ming editors. In fact, however, after we correct a page-numbering error by Van Gulik, only two cases are slightly out of sequence, and these are placed under the section-heading “Proving Concealment” (*zhengte* 證慝) rather than “Revealing Concealment” (*goute* 鈞慝) -- in other words, still in the same subsection of the book.²²

Faced with this evidence, I would conclude that even though a small handful of cases may have been rearranged or rephrased very slightly between the Yuan and Ming versions of the text, this should not cast doubt on the authenticity of the work as a whole. Especially so, since unlike the *Collection of Doubtful Cases*, which contains material obviously added after the deaths of its compilers and is clearly incomplete, the *Magic Mirror* includes only cases dating from before Zheng Ke’s compilation date of 1133; the total number of cases is virtually the same as described in Song bibliographical records of the book; and the statements of the commentator remain extremely unified in viewpoint throughout.²³

¹⁹Van Gulik, 38-43. The two texts are Liu Xun’s *Yinju tongyi* (see note 10 above), 31.317-21, and Tao Zongyi’s 陶宗儀 (fl.1360-68) collectanea entitled *Shuofu* 說郭: see *Shuofu sanzong* 說郭三種 (Shanghai: Guji chubanshe, 1988), vol. 3: 20.994-996.

²⁰ Van Gulik, 43.

²¹ Van Gulik seems to have confused one of these two cases, entitled “Li Nangong” 李南公 (*Guijian*, 6.98), with another of the same title (*Guijian*, 6.89), since he gives the page number of the latter. This would explain his conclusion that the Yuan version is “entirely different”! In fact, it is just a much shorter account of the same events. See *Yinju tongyi*, 31.321, cols.2-3. As for the other case that Van Gulik labels “different version,” I cannot find any differences except for a couple of phrases worded in a slightly different way. See *Shuofu sanzong*, vol.3: 20.995, case entitled “Fan Chunren” 范纯仁.

²²Van Gulik, 40-41. The two cases that are out of sequence are nos. 15 & 16 on Van Gulik’s list. For his error, see preceding note.

²³Van Gulik, 35-37, provides convenient translations of the relevant Song bibliographical records.

Regarding the authenticity of Zheng Ke's commentary, which is not included in the two Yuan texts quoted above, Van Gulik again provides evidence that could be interpreted in two ways. He notes that a Yuan scholar named Tian Ze 田澤 (fl.c.1300) published a version of the *Parallel Cases* that included "fragmentary passages" from Zheng Ke's commentary to the *Magic Mirror*.²⁴ These extra passages augmented the small handful of quotations from the commentary that Gui Wanrong himself had originally incorporated into the *Parallel Cases*.²⁵ After comparing Tian Ze's citations with the commentary found in the present version of the *Magic Mirror*, Van Gulik concludes that the texts "differ considerably." Though he does admit that Tian Ze may have altered Zheng Ke's words to fit their new context in the *Parallel Cases*, he prefers the idea that Tian Ze's version is the more authentic one, and he sees the discrepancies as further evidence that the current edition of the *Magic Mirror* is a Ming modification and expansion of already corrupted earlier versions, and therefore we should not treat its commentary as a reliable record of Zheng Ke's opinions.²⁶

Against this conclusion, I would argue that the commentary to the *Magic Mirror* is so closely tied up with the original critical framework and sequence of the book that, in order for Zheng's comments to make any sense at all when transplanted to the completely rearranged *Parallel Cases*, some drastic editing or omissions would be inevitable. And even Van Gulik himself describes the comments included by Tian Ze as "fragmentary." Unfortunately, this Yuan text of the *Parallel Cases* is extremely rare, so I was unable to check whether the differences in the comments can be explained by their new context. But it is very dubious to treat such differences as evidence proving the corruption of the present edition of the *Magic Mirror*.²⁷

The main problem with Van Gulik's argument here is that he ignores the quite different purposes of these two books, and that their compilers use the same cases to illustrate different points of law. This becomes very clear if we compare Gui Wanrong's coupling of a typical "pair" of cases with Zheng Ke's comments on the same two cases in the *Magic Mirror*. Entry 10 of the *Parallel Cases* is entitled "Sun Fu has millet pounded, and Xu Yuan has a boat burned."²⁸ Though Gui provides no comment on these cases, he has obviously placed them together because of the similar investigative methods used by the two judges. In the first case, Sun Fu must decide what punishment to give officials

²⁴Van Gulik, 43.

²⁵Van Gulik, 6, gives a total of ten cases where Gui quoted Zheng Ke's commentary. In the currently available *Sibu congkan* edition of the *Parallel Cases*, the wording of all Gui's quotations is exactly the same as Zheng Ke's in the present version of the *Magic Mirror*, though he shortens some of the comments.

²⁶Van Gulik, 43.

²⁷See Van Gulik's description of his own rare Japanese reprint of Tian Ze's version of the *Parallel Cases*: 10-22, 43. Any help readers might provide in locating a copy of this text would be greatly appreciated.

²⁸*Bishi*, 8b; Van Gulik, 90-1. The Chinese title of this pair, *Sun Fu chong su, Xu Yuan fen zhou* 孫甫春粟。許元焚舟, rhymes on the even-numbered line with that of the preceding case (*Bishi*, 8a): *Yanchao xu dao, Daorang zha qiu* 彦超虛盜。道讓詐囚 (Yanchao feigns a burglary, and Daorang deceives a crook). The case of Sun Fu is in *Guijian*, 8.130; that of Xu Yuan in *Guijian*, 8.129 (*Yizhu*, 489 & 485 respectively).

who have apparently allowed a whole granary of millet to go bad. However, Sun refuses to believe that all the millet is rotten, and he orders that several batches be pounded into flour to test them. He finds that only one or two tenths of the millet is actually unusable, therefore he greatly reduces the huge fine that was to have been exacted on the granary officials to one that allows them to avoid financial ruin. In the second case, Xu Yuan suspects that contractors building boats for the government were charging for more nails than they actually used in constructing the vessels. Since it was impossible to count the nails once the boats were finished, as most would be hidden in the wood, Xu Yuan orders that a newly completed vessel be set on fire. After it is reduced to ashes, he counts the leftover nails and finds that the contractors had been charging for ten times more nails than they actually used. He therefore fixes a quota for the amount of nails they are permitted to claim for each boat.²⁹

The similarity between the two cases is obvious: both judges are unwilling to adjudicate based on superficial appearances alone, so they create rational tests to prove the truth of the matter. By placing the cases together, Gui is clearly indicating that his readers should use similar methods when judging cases themselves. Both cases are meant as positive examples.

By contrast, Zheng Ke focuses on a quite separate issue when discussing these cases, namely, the differing *aims* of the two judges in creating their rational tests. As a result, he praises Sun Fu highly for using careful investigation to reduce the impossibly high fine that would have caused hardship to the granary officials. But he censures Xu Yuan for being so small-minded as to worry about charging for a few extra nails. He refers to a similar case from another region, which demonstrated that fixing tight quotas could easily damage the morale of boat-builders and lead them to produce unsafe vessels. He also notes that a certain amount of graft is necessary under the current economic system to allow the boat-builders to support their families.³⁰

In other words, judges should worry about small details when it helps to remove an intolerable burden from people, as in Sun Fu's case, but not when it merely causes them to resent the government and has little tangible benefit. One case is a positive example, and the other a negative one.

My discussion so far has shown, first, that the evidence Van Gulik provides is not sufficient to prove the current *Magic Mirror* text to be a “drastically” revised Ming edition; and second, that we cannot treat citations of Zheng Ke's comments in early versions of the *Parallel Cases* as more authentic than the current *Magic Mirror* commentary, since the two books differ greatly in their aims and scope. Therefore, until a complete Song or Yuan text of the *Magic Mirror* is discovered, I would prefer to give the

²⁹Van Gulik, 90, alters the second sentence of this account, changing *mu* 木 (wood) to *shui* 水 (water). He therefore translates it: “since all badly constructed boats had sunk [in the water], there was no way of checking the amount of nails actually used.” There is no reason for this emendation (it does not appear in any of the relevant texts), and it ignores the main point of Zheng Ke's commentary -- which Van Gulik partially quotes in his notes -- namely, that allowing workers to use more nails has always resulted in *strong* boats being built, whereas setting up strict quotas tends to lead to inferior and slipshod construction.

³⁰See *Guijian*, 8.129-30; *Yizhu*, 485.

present version of the text the benefit of the doubt, and allow that it could very well be an accurate record of Zheng Ke's original opinions.

A Vague Text and Superfluous Commentary?

I would be more prepared to agree with Van Gulik's conclusions if the *Magic Mirror* and its commentary contained obvious anachronisms and inconsistent viewpoints. Yet most readers of the book would be immediately struck by the distinctive and opinionated, yet at the same time compassionate, voice of the commentator. They would also find the book's structure quite clear, and its arrangement more logical than that of the *Parallel Cases*. However, because Van Gulik insists on comparing the structure of the *Magic Mirror* unfavorably with that of the *Parallel Cases*, I will give further evidence to support my opposite conclusions. In the process, I will also introduce the basic structure and aims of Zheng Ke's book.

Van Gulik states in his preface: "While the *Zheyu gujian* divides [the cases] over twenty rather vague legal categories, the *Tangyin bishi* gives the cases in parallel pairs; the choice of these pairs in itself often supplies interesting data on the old Chinese conception of civil and criminal law."³¹ Unfortunately, Van Gulik leaves readers to speculate on how arranging cases in pairs and then placing them in a random sequence supplies any "interesting data" on "old Chinese conceptions," beyond the assumption that Chinese legal practitioners preferred the aesthetic appeal of rhyming couplets to logical structure. Certainly, there is a clear connection between the constituents of each pair selected by Gui Wanrong, but beyond that, I can find no explanation for the sequence of the pairs in the book apart from their rhyming finals. When Van Gulik tries to justify the editor's approach further by comparing it to the *Magic Mirror* and the *Collection of Doubtful Cases*, he almost shoots himself in the foot without realizing it:³²

Gui Wanrong's editorial policy presents a combination of those followed by the two He's and Zheng Ke. The former headed each case by a title phrase of four characters and arranged the cases in a loose chronological sequence, without regard to their content. Zheng Ke headed each case by the name of the main person figuring in it, and divided the cases over twenty categories according to their content: 'Releasing the Innocent,' 'Discerning False Accusations,' etc. The two He's apparently recorded the cases without further comment and without mentioning their source, but Zheng Ke added to each case a commentary of his own, and a brief indication of the source of each case.

Gui Wanrong adopted the four-character title-phrases of the [*Collection of Doubtful Cases*], but arranged the 144 cases selected by him in 72 parallel pairs, in such a way that the title-phrases rhyme alternately. This arrangement in pairs is an interesting novum. Zheng Ke (or a later editor) added to most cases one or

³¹Van Gulik, ix-x.

³²Van Gulik, 5-6.

more duplicates differing only in time, place and persons concerned. Gui Wanrong, on the other hand, selected pairs of cases where the facts are quite different, but which were solved by the same reasoning or by the application of the same methods of detection. Some parallels are rather trite, but the fact in itself that Gui Wanrong adopted the device proves that he gave considerable thought to the subject.

Even from Van Gulik's own comparison here, a balanced reader would surely conclude that Zheng Ke's *Magic Mirror* has an informative commentary and a rational framework; especially when one realizes that within each section the cases are also arranged in basically chronological order to show changes in the law over time. By contrast, the *Parallel Cases* has no commentary to explain whether the cases are positive or negative examples, and Gui Wanrong seems unduly concerned with rhyming couplets, even to the extent of producing what Van Gulik calls "trite" parallels.

As for Van Gulik's claim that Zheng Ke's section headings are "vague," a careful reading of Zheng's commentary reveals that he provides clear definitions for most of the headings. The only slight inconvenience is that these definitions are scattered throughout the individual comments on cases rather than at the start of each section.³³ To give readers a better idea of the book's overall framework, I will conclude this preliminary discussion with an outline of the sections, and some of Zheng's comments on their importance. This should also help to refute Van Gulik's criticisms.

First, here is a table of the twenty section headings, showing the number of entries in each section:

	<u>Heading</u>	<u>No. of Entries</u> ³⁴
1:	Redressing Injustice (<i>shiyuan</i> 釋冤)	40
2:	Discerning False Accusations (<i>bianwu</i> 辨誣)	25
3:	Trying Facts (<i>juqing</i> 鞫情)	10
4:	Adjusting Sentences (<i>yizui</i> 議罪)	27
5:	Pardoning Faults (<i>youguo</i> 宥過)	11
6:	Punishing Evil (<i>cheng'e</i> 懲惡)	17
7:	Investigating Treachery (<i>chajian</i> 察姦)	22
8:	Thoroughly Examining Treachery (<i>hejian</i> 覈姦)	20
9:	Exposing Treachery (<i>tijian</i> 擿姦)	6
10:	Investigating Concealment (<i>chate</i> 察慝)	4
11:	Proving Concealment (<i>zhengte</i> 證慝)	13

³³It is possible that Zheng's original preface to the *Magic Mirror*, now lost, did give an overall summary of the book's structure.

³⁴Though Van Gulik (34-5) also lists the section headings, I have translated several of them differently to accord with the definitions in Zheng Ke's commentary. Many entries include more than one case. The total number of entries in the extant edition is 280, whereas the total number of cases is 392. In the original edition of the book, there were apparently 276 entries, with a total of 395 cases. See *Yizhu*, preface, 2.

12:	Revealing Concealment (<i>goute</i> 鈞慝)	4
13:	Investigating Thieves (<i>chadao</i> 譎盜)	14
14:	Tracing Thieves (<i>jidao</i> 迹盜)	5
15:	Tricking Thieves (<i>juedao</i> 譎盜)	4
16:	Investigating Armed Robbers (<i>chazei</i> 察賊)	7
17:	Tracing Armed Robbers (<i>jizei</i> 迹賊)	5
18:	Tricking Armed Robbers (<i>juezei</i> 譎賊)	6
19:	Strictness and Understanding (<i>yanming</i> 嚴明)	18
20:	Compassion and Care (<i>jinjin</i> 衿謹)	22

Zheng Ke gives the following explanation of the general arrangement of sections in the book.³⁵

Regarding the whole text of the *Magic Mirror for Deciding Cases*, the eight sections [1-6 and 19-20] . . . are central (*zheng* 正); whereas the other twelve sections, dealing with treachery, concealment, thieves, and armed robbers [7-18], are just further examples of evils that should be punished.³⁶ Those who overcame these four [evils] in ancient times focused mainly on being “strict and understanding” and backed this up with “compassion and care,” following the [*Classic of Changes*] saying, “The Gentleman applies punishments with understanding and caution, but does not delay when [judging] cases.” Therefore, the cases on the four kinds of [evils] are placed before those two [final] chapters. If one reads them very carefully, they will also be of some benefit.

From this passage, we see that Zheng Ke is not so interested in the specific methods or techniques for investigating and solving crimes, as exemplified by sections 7-18. They are not of “central” importance to the judge, though when used carefully, they can be “of some benefit.” The reason for Zheng’s caution regarding clever investigative techniques is that they can be used either for good or ill. Hence, in order to prevent judges from abusing their technical knowledge to trap the innocent, they must first be aware of the basic principles of justice: their whole attitude must be “compassionate and careful,” and when adjudicating cases they must always be “strict but understanding.” Zheng obviously believes that placing examples emphasizing these basic attitudes at the end of the book will create a lasting impression in the minds of his readers. Elsewhere, he

³⁵*Guijian*, 5.76; *Yizhu*, 311 (comment after entry 152, “Xue Xiang” 薛向).

³⁶Zheng Ke implies here that these twelve sections (7-18) can actually be grouped into four larger categories. This would certainly be sensible, since there is not a great deal of difference between the methods given in each group of three. In this respect alone, I would agree with Van Gulik that the individual section headings are rather vague.

further clarifies the meaning of the two final sections. Explaining how a judge demonstrated “strictness and understanding,” Zheng writes:³⁷

In the former case, [the accused] did not know to fear [justice], so [Pei] Xia convicted him; in the latter case, [the accused] knew to fear [justice], so [Pei] Xia pardoned him. We can view the conviction as an instance of “strictness,” and the pardon as an instance of “understanding.” So “understanding” is nothing more than possessing a penetrating awareness of [possible mitigating] circumstances.

Likewise, explaining why he placed the section “Compassion and Care” at the end of the book, Zheng writes:³⁸

[The *Magic Mirror*] finishes with “Compassion and Care” because all people have a sympathetic and pitying heart, but they are distracted by phenomena and lose it. Consequently, there are [judges] who even profit from peoples’ deaths and still treat this as evidence of their achievements. But if one starts extending the meaning of written laws to justify death sentences, or one falsely accuses people of capital offences, then how can one retain a “heart that does not tolerate [the suffering of others],” or empathize with those whose lives hang in the balance?³⁹

So compassion, care, and understanding are essential qualities for judges to cultivate in themselves in order to avoid abusing the law for despicable ends.

Turning to the first six sections of the book -- those that Zheng also terms “central” -- the difference between sections 1 and 2 is that “Redressing Injustice” involves cases where an unfair or erroneous verdict has already been reached, and the reviewing judge must find evidence to overturn it; whereas “Discerning False Accusations” involves people held in custody, wrongly accused of a crime, who have not yet been sentenced. It is no surprise that Zheng places these two sections at the beginning and devotes so many entries to them, since one of his major concerns is the dire consequences that follow from punishing innocent people -- a point that I will discuss in detail towards the end of this paper. The brief section 3, “Trying Facts,” is more like an appendix to “Discerning False Accusations” rather than a separate section, since it also involves the problem of dealing with unreliable and dishonest witness testimony.

Sections 4 (“Adjusting Sentences”) and 5 (“Pardoning Faults”) deal mainly with situations where judges should reduce a penalty, or pardon the accused altogether, due to mitigating circumstances. The difference between these and the preceding sections is that here Zheng focuses more on injustices caused by over-strict application of legal statutes

³⁷ *Guijian*, 8.125; *Yizhu*, 468 (entry 245, “Pei Xia” 裴俠). Cf. further explanation at *Guijian*, 8.123-4; *Yizhu*, 462 (entry 241, “He Wu” 何武).

³⁸ *Guijian*, 8.141; *Yizhu*, 530 (entry 280, “Wang Yanxi” 王延禧).

³⁹ The reference to a sympathetic and pitying heart and the passage in quotation marks both come from Mencius: see sections IIA6, VIA6, and IVB28 in D.C. Lau, trans., *Mencius* (Middlesex: Penguin Books, 1970, rpr.1984), 82-3, 133-4, 163.

rather than on fact-finding errors. These two sections also contain a handful of cases where Zheng criticizes the judge for *wrongly* reducing a sentence when the full punishment was deserved.⁴⁰ This problem is dealt with much more fully in section 6, “Punishing Evil,” which underscores the importance of making the punishment fit the crime. In all these three sections, Zheng constantly reiterates the need for balance: being too lenient would only encourage criminals to run rampant and would not give redress to the victims; but harsh punishment simply to exercise power is essentially no different from criminal behavior itself.⁴¹ Zheng sums up his basic principles regarding punishment, and the relationship between sections 4, 5, and 6, as follows:⁴²

The business of punishing evil basically runs counter to the Middle Way: it is something that one does only when there is no alternative. When one sentences . . . outside the law, . . . it is simply because that is the only way to pacify the hearts of the common people, and because the situation has serious ramifications. . .⁴³ But if the situation is trivial and one has used tricks to discover the facts, then it is intolerable to punish the offender outside the law.⁴⁴ Though vulgar people might praise this as “strict and understanding,” the Gentleman would never adopt [such an approach]. . . Thus, we have “Pardoning Faults,” where sometimes one can set people free without violating the law; “Punishing Evil,” where sometimes one can execute people outside the law; and “Adjusting Sentences,” which differs from both the above in that the decision has its basis [in the law], but can be made more lenient or strict without negating the law.

As these various comments show, the book is arranged around a number of issues that Zheng Ke considered crucial to the proper functioning of the Song justice system. In particular, he insisted that judges’ basic attitudes were of primary importance, whereas investigative techniques for solving cases, though necessary, were simply means to the end of treating people fairly and compassionately. Certainly, it would have been more convenient if Zheng Ke had explained the book’s structure in one longer passage, rather than several scattered comments. But there is no reason to conclude from this that the

⁴⁰ See, for example, *Guijian*, 4.60; *Yizhu*, 241 (entry 111, “Zhao Shimin” 赵师民); and another case where Zheng argues that an even stricter punishment was deserved: *Guijian*, 4.60-1; *Yizhu*, 243 (entry 113, “Li Chong” 李崇).

⁴¹ For this argument, see *Guijian*, 8.133; *Yizhu*, 500 (entry 263, “Lu Xiang” 陆襄).

⁴² *Guijian*, 5.67, 5.68; *Yizhu*, 264, 266 (entries 126, “Sun Mian” 孙沔 & 127, “Wu Zhongfu” 吴中復).

⁴³ In this context, “serious ramifications” refers to a rebellion in the capital. See the case “Wu Zhongfu” cited in preceding note.

⁴⁴ The example that Zheng calls “trivial” here is of a beggar with only two fingers, who was accused of stealing a pot. The judge tricked him into demonstrating that he could carry a pot even with his disabled hands. The judge then ordered that his remaining fingers be cut off in public, a punishment that totally ignored the *Code* provisions on theft. See *Guijian*, 5.67; *Yizhu*, 264.

arrangement of the *Magic Mirror* is vague and its purposes unclear. One could only draw such a conclusion by ignoring Zheng's commentary completely.

Reinterpreting the Law

Having introduced the basic structure of the book, and Zheng's main purposes for writing it, I will now demonstrate how he makes use of past cases to reinforce his own vision of justice. In the process, he regularly reinterprets or extends the meanings of these case summaries to produce conclusions that the original judges probably never intended or imagined. From these often surprising interpretations, we gain insight into a Song scholar-official's ambivalent attitude towards the past, especially in a constantly evolving field like law. On the one hand, Zheng must show respect to those who preceded him, maintaining the traditional Chinese view that the "ancients" lived in a golden age of social harmony, and giving the impression that he is simply transmitting the essence of the past in his own words. This explains his decision to adopt a commentary format rather than simply producing an original discursive legal treatise. But on the other hand, he must also contend with the frequent errors and even cruelty recorded in the case summaries, and the apparently casual and arbitrary manner in which many officials of the past dealt with offences. By using various techniques of reinterpretation, Zheng's commentary attempts to find a convincing middle path between these conflicting demands.

Since the *Magic Mirror* is too long to examine comprehensively in a single paper, I will select five main ways in which Zheng Ke interprets past cases to promote his own vision of justice. I will illustrate each with detailed examples, and will refer to other relevant cases in the notes for readers who wish to pursue the subject further.

1: Superior Judges Go to Extreme Lengths to Prevent Injustice

In his selection of cases and his commentary on them, Zheng Ke makes a point of praising judges who display extreme caution when investigating the facts of a case, and who avoid making hasty decisions when evidence raises the slightest doubt about the suspect's guilt. By contrast, he censures those who adjudicate too quickly, even when their verdicts are probably correct. He is concerned that judges might unwittingly sacrifice innocent peoples' lives in the name of speed and efficiency. The first two sections of the book, "Redressing Injustice" and "Discerning False Accusations," consist almost entirely of positive and negative examples illustrating the need for caution and deliberation when finding out facts, as do many individual cases later in the text. The attention that Zheng gives to this issue suggests that hasty adjudication was a serious problem in the Song period.

The following group of examples, all from the "Redressing Injustice" section, are representative. The first is entitled "Xu Zongyi" 許宗裔.⁴⁵

⁴⁵ *Guijian*, 2.15; *Yizhu*, 64 (entry 20). Many of these cases also appear in the *Parallel Cases*, though without Zheng Ke's commentary. Where possible, therefore, I also refer to the page numbers in Van Gulik's translation. This case is found in Van Gulik, 118-9 (case 30a).

At the time of the Shu 蜀 Kingdom, Xu Zongyi was governor of Jianzhou 劍州. A commoner of the region was robbed, but claimed to have seen [the thief] in the lamplight, so in the morning he accused the man at court. When they arrested the man, the only stolen property they obtained was some lengths of silk and balls of thread. When [Xu] Zongyi brought him forward for questioning, the accused complained that it was an unjust charge. He claimed that [the silk and thread] was his own property. Since both he and the accuser stuck to their stories, [Xu] sent someone to collect the spinning wheels belonging to each family, and when he compared the size of the silk lengths, they matched the mounting poles from the wheel belonging to the accused man. He also asked the two men: “What did you use to wrap the silk thread around?” One said it was apricot stones, and the other that it was a piece of tile. [Xu] then unraveled a ball of thread in front of them, and underneath was an apricot stone, just as the accused had stated. Consequently the accuser confessed that he had wrongfully claimed the objects, and the arresting officers were also charged with beating an innocent person. Thus, in a few brief moments a serious injustice was averted.

Zheng Ke saves his commentary on this case until after the following example, since he wishes to compare the meticulous care of Xu Zongyi favorably with the more slapdash methods of another judge, Gao Fang 高防:⁴⁶

When Gao Fang . . . was governor of Caizhou 蔡州, a local commoner named Wang Yi 王義 was violently attacked by a gang of armed robbers. Five men were arrested for the crime, held in custody, and thoroughly investigated. All the stolen property was apparently recovered and the men were to be sentenced with the harshest penalties, but [Gao] Fang suspected injustice. He examined the stolen property, then asked [the victim, Wang] Yi: “Were the clothes that you lost made from a single length of cloth or not?” [Wang] replied: “They were.” [Gao] Fang then compared the pieces of clothing and found that [they were made from cloth] of different widths and textures. The accused men then declared that they had been wrongfully charged. [Gao] Fang asked: “Why did you confess your guilt?” They replied: “We could not bear the harsh beatings, and we just wanted to have a quick death.” After several more days, the real robbers were caught, and the five men were freed.

Though at first reading, the methods employed by the judges in these cases appear quite similar, Zheng is quick to point out that the second judge, Gao Fang, relied too much on luck rather than cautious investigation. He makes the following observation:⁴⁷

⁴⁶ *Guijian*, 2.16; *Yizhu*, 67 (entry 22). Gao Fang was an official from the Five Dynasties period (907-960), who eventually served under the newly established Song. Van Gulik, 119 (30b).

⁴⁷ *Guijian*, 2.16; *Yizhu*, 67 (comment on entry 22).

Gao Fang's comparison of the cloth [used in making the clothes] was similar to Xu Zongyi's method for testing the stolen property. However, what if it turned out that even though the clothes were not the stolen goods, they happened to share the same width and texture? If there is the slightest doubt about whether the facts add up, it is never appropriate to make a hasty judgment, even when the stolen property and statements seem to match.

Clearly, Zheng is uneasy that Gao Fang's single test, if applied in other cases, would still allow an innocent person to be convicted, should he happen to be wearing clothes made from a single length of cloth. By contrast, Xu Zongyi's double test is more thorough, proving the ownership of the silk and thread beyond any doubt. We see that, rather than simply accepting both cases as positive examples -- as they were doubtless originally intended to be -- Zheng wishes to promote among his readers a higher standard of proof, therefore he re-interprets the second case as a negative example. To underscore his point, Zheng appends two further cases to the Gao Fang example, in which insufficient caution led to wrongful convictions and to punishment for the officials responsible. The second is as follows, with Zheng's conclusion at the end:⁴⁸

In the Jingde 景德 reign period [1004-1007], . . . Zhang Yi 張易, the magistrate of Kaifeng 開封 district, arrested eight men for theft. When the case was tried, they were sentenced to life exile. After the sentencing, however, the real thieves were caught. When the Censoriate investigated and found out what had happened, the judge and his officers were all demoted and fined.

[Zheng's comment]: This is obviously a case of relying only on the testimony about the stolen property, and making a hasty judgment without investigating whether the facts add up. But it is likely that the goods may not actually be stolen, and the testimony may not be truthful. So only by examining whether the facts truly add up can one avoid the risk of serious injustice.

Besides demotion for the officials involved, Zheng Ke believed that unjust verdicts would have much more far-reaching consequences for society as a whole, a point that I will discuss separately below. Continuing for now with the issue of careful adjudication, the above cases imply that the confession of an accused, though necessary, is not sufficient to convict him. As in the Gao Fang case, accused people were frequently unable to bear the pain of interrogation by the arresting officers, and confessed simply to bring an end to the torture. Zheng Ke obviously felt that judges should place very little weight on confessions and other verbal assertions, and should instead base their findings primarily on other evidence, especially incontrovertible physical evidence. Indeed, as the following case demonstrates, even when the accused stubbornly refuses to retract his confession despite the judge's doubts, the judge should continue investigating until his

⁴⁸ *Guijian*, 2.16; *Yizhu*, 68 (entry 22 appendix).

innocence (or guilt) is established by other means. The case, entitled “Xiang Minzhong” 向敏中, is too long to translate in full, but the facts are as follows.⁴⁹

A monk requested lodgings at a rural cottage, but the owner refused, so the monk spent the night in the owner’s cart outside. That night, a thief broke into the cottage, kidnapped a woman and stole some clothing, then escaped. The monk saw this, and since he feared that he would be accused, ran away, but tripped and fell down a well. Unfortunately, the thief had already killed the woman and thrown her body into the same well. The owner caught up, found the monk with his clothing stained by the woman’s blood, and dragged him off to court. Unable to stand the beating there, he confessed to the murder. He claimed that he had dropped the murder weapon and stolen clothing just before he fell down the well, and someone else probably made off with them. The judge, Xiang Minzhong, was suspicious because the weapon and stolen goods could not be found, and he questioned the monk several times, but the monk persisted with his story. Finally the monk happened to mention that he was probably being punished for killing “that man” in a past life, so there was no point in defending himself. Xiang got him to describe “that man,” and after further investigation tracked the thief down and found the weapon and booty in his home. The monk was then freed. Zheng Ke concludes: “When an official investigates a case, if he suspects an injustice, he must not make a hasty decision even though the accused refuses to protest his innocence.”

As Zheng Ke’s negative examples show, many busy judges would not have had the patience to look for further evidence to prove the innocence of the accused if a confession was available. But Zheng himself viewed confession statements obtained by torture as inherently unreliable indicators of guilt.⁵⁰ Likewise, the lack of a confession, even after repeated beatings, was not necessarily a sign of innocence, since hardened criminals were often able to withstand the pain and refuse to talk. Judges had to be particularly careful in such situations, because not only would they run the risk of letting an offender off the hook; by Song law, they would also be required to punish the accusers for bringing “false” charges -- for which the penalty was the same as if the accusers had committed the original crime themselves.⁵¹ The only way to prove the truth of statements from either side, Zheng argues, is to make the effort to find compelling physical evidence that corroborates the facts and clears up any discrepancies. Without such evidence, one must not convict.

⁴⁹ *Guijian*, 2.16-17; *Yizhu*, 70-1 (entry 23). Van Gulik, 74 (1a). The case dates from the early Song (late 10th century).

⁵⁰ See his attack on the use of torture to obtain evidence in *Guijian*, 3.42; *Yizhu*, 169 (entry 72, “Chen Shu” 陈枢, comment): “If one’s [investigative] methods are skilful, the true facts will certainly come to light. To rely on interrogation with beating is like having no method at all!”

⁵¹ For examples of criminals able to withstand torture, see *Guijian*, 3.39; *Yizhu*, 157-8 (entry 66, “Hu Zhi” 胡质). For penalties against false accusers, see Xue Meiqing 薛梅卿, ed., *Song Xingtong* 宋刑统 (Beijing: Falu chubanshe, 1998), 23.412 [hereafter referred to as *Song Xingtong*]; cf. Wallace Johnson, trans., *The T’ang Code*, 2 vols. (New Jersey: Princeton University Press, 1979 & 1997), I.15 and II.386-89 (art. 342) [hereafter referred to as Johnson].

Zheng does not go as far as adopting the principle of “reasonable doubt” -- since in his eyes, doubt should not automatically lead to an acquittal -- yet he does suggest that even the slightest discrepancy or inconsistency is a possible sign of injustice, false accusation, or unreliable confession obtained under duress. Therefore the judge must delay sentencing until the problem is cleared up. There are no short cuts when peoples’ lives hang in the balance.⁵² In a comment following entry 25, “Wang Li” 王利, Zheng sums up his thoughts on careful judicial procedure as follows.⁵³

In sorting out cases, one must value deliberation and guard against impatience. If one is impatient, then those who have been unjustly accused will be forced to confess to crimes they did not commit. In deciding to detain people, one must value thoroughness and guard against carelessness. If one is careless, then true offenders will get a chance to go free. Only one who is deliberate in deciding cases and thorough when detaining suspects will manage to prevent the guilty from escaping, yet without implicating the innocent. A perceptive and careful Gentleman (*junzi* 君子) should act in this way.

There is no doubt that Zheng is using these cases to justify his attack on current abuses of the Song legal system. One could even go further, and argue that Zheng is challenging some of the normative assumptions behind that system -- such as the view that torture is an effective method for obtaining reliable confessions, or that cases must be closed quickly to avoid the appearance of lax enforcement. Hence, his compilation of past cases is not merely a convenient handbook to help judges outwit their suspects, but is an accumulated mass of weighty testimony to support his call for changes to the ineffective methods that Song judges typically used to investigate crimes.

2: Expanding on the Brevity of Case Summaries/Correcting Misleading Information

Of course, one problem with many of these past case summaries was that they were extremely brief. As we mentioned, the vast majority were not verbatim records of actual judgments, but edited versions taken from biographical entries in the Dynastic Histories or grave inscriptions for eminent judges culled from the works of well-known literati. Whether because the writers of the summaries were not trained as legal experts, or simply because of lack of space, they often omitted important details regarding the adjudication procedure. It is also possible that many ancient judges were themselves not too concerned about the niceties of collecting sufficient evidence and avoiding subjective judgments based on unfounded accusations.

This presented Zheng Ke with a problem, but also an opportunity. He did not wish to give the impression that the majority of judges of the past, especially those with good

⁵² Zheng’s most common formulation of this principle is “do not make hasty judgments when there is any doubt [about the guilt of the accused].” See, for example, *Guijian*, 2.16-7; *Yizhu*, 67, 71 (comments to entries 22 & 23).

⁵³ *Guijian*, 2.18-9; *Yizhu*, 78 (entry 25).

reputations, were careless and arbitrary, since this would negate one of his main purposes in writing the book. Instead, he preferred to expand on the record, on the assumption that the original writer had simply omitted the full details of the judges' actions. In this way, he could put a positive spin on many cases that would otherwise have been negative examples. At the same time, there was a limit beyond which Zheng would not attempt to redeem a judge's behavior. Where he considered that a judge had been inexcusably harsh and hasty, especially when sentencing people to death, he was firm and outspoken in his condemnation. In this section, I will discuss the way in which Zheng expands on the case records to give both positive and negative slants that would not be obvious from the original writers' words.

Dealing first with Zheng's positive re-interpretation of what appear to be subjective and arbitrary judgments, entry 4 begins with two brief cases in which the judge doubts the guilt of the accused simply based on their facial expressions. The second is particularly laconic:⁵⁴

Fa Xiong 法雄 of the Latter Han [25-220 AD] was given the post of regional inspector of Qingzhou 青州. Whenever he traveled through the region to hear criminal appeals, he would examine their facial expression (*yanse* 顏色), and in most cases could establish from this whether the facts of the case were [true or] false.

To this arresting example of mysterious intuition, Zheng Ke is quick to add the following rational explanation:⁵⁵

There are three methods for investigating cases: [examining] the expression (*se* 色) [of the accused], the words (*ci* 辭) [of the accused], and the facts (*qing* 情) [of the case]. This is doubtless an example of investigating by means of the expression. If the words and the facts also strongly indicate an injustice, and upon re-checking the statements there is the slightest doubt [about the accused person's guilt], then how can one hastily assume that the facts are correct? Justice demands that one remand [the parties] in custody until the case is properly cleared up.

Zheng makes two important points here, neither of which is clear from reading the case alone. First, he asserts that examining peoples' facial expressions is *not* sufficient to acquit them (or by extension, convict them). The judge must also compare their words and the facts of the case in order to come to a balanced conclusion. Yet second, even the slightest doubt about any detail of the case -- including the "innocent" expression of the accused -- is sufficient reason to call for further investigation in case an injustice has been committed. Zheng underscores this point by appending twelve more cases, most of them equally brief, in which judges overturned unjust charges based on apparently intuitive

⁵⁴ *Guijian*, 1.3; *Yizhu*, 10 (entry 4 appendix, "Fa Xiong" 法雄).

⁵⁵ *Guijian*, 1.3; *Yizhu*, 10.

reactions to the facial expressions or words of the accused. He then claims that all these examples demonstrate the “careful adjudication that does not dare to give a hasty verdict. Due to [the judges’] thoroughness and deliberation, all of [the wrongly accused people] had the charges against them dropped.”⁵⁶

In these cases, it is easy for Zheng to argue that what seemed like arbitrary intuition was actually “thoroughness and deliberation” because the result of the judges’ decision was a delay in sentencing, during which time more convincing suspects could be located and charged with the offence instead. Since Zheng’s worst fear is that an innocent person will be unjustly punished, any decision that allows more time to corroborate the facts is likely to be a good one in his eyes, no matter how it was arrived at. It is more tricky, however, when a judge has *convicted* someone based on similar intuitive and subjective methods. In such situations, Zheng usually adds his own speculative explanation of what “actually” took place behind the scenes, and how the judge must have used careful reasoning to reach his verdict. For instance, entry 159 includes two cases where husbands murdered their wives but then claimed that the wife had committed suicide. Neither case gives much detail on how the judge discerned the husband’s guilt, so Zheng adds a convenient interpretation of his own. Here is the second case, followed by Zheng’s comment:⁵⁷

Li Jinglue 李景略 of the Tang dynasty first served as inspector for the Shuofang 朔方 military commissioner Li Huaiguang 李懷光. Zhang Guang 張光, a commander in Wuyuan 五原 district, had killed his wife, but had fixed the case by means of bribery so that several successive [judges] were unable to reach a verdict. [Li] Jinglue re-examined the facts and sentenced [Zhang Guang] to death. When he did this, a ghost-like woman entered the courtroom and expressed her gratitude. It was said that she looked like [Zhang] Guang’s wife. [Zheng’s comment] Now when someone commits a murder, the marks of the wounds will be different from those sustained when a person commits suicide, something that can be established through examination. And when clerks have accepted bribes and confused right with wrong, there will certainly be discrepancies in the statements and evidence. If one has the ability to observe and investigate, and to engage in thorough questioning based on reason, then even though [the accused] may be crafty and deceitful, there is no way that he will escape!

Zheng wishes to leave his readers in no doubt that the judge made a careful, reasoned decision based on incontrovertible physical and documentary evidence. He does not seem concerned that the details of this “evidence” and “reasoning” come straight from

⁵⁶ *Guijian*, 1.5; *Yizhu*, 12 (concluding comment to entry 4).

⁵⁷ *Guijian*, 6.83-4; *Yizhu*, 323 (entry 159 appendix, “Li Jinglue” 李景略). The translated case does not say what excuse the husband gave, but Zheng assumes that he claimed his wife committed suicide, like the other case in the same entry. The fact that no other potential suspect is mentioned in the account also points to this conclusion.

his imagination. This is because his main purpose is to use such past cases simply as raw materials to help promulgate his own vision of how the justice system *should* work.

One more example of positive re-interpretation by expansion of the written record will show that the above case is not an isolated instance. Entry 143 includes the following case, with Zheng's helpful explanation appended:⁵⁸

When Vice Director Ren Zhuan 任顛 was governor of Tanzhou 潭州, [the rebel] Nong Zhigao 儂智高 had brought the nine regions of Lingnan 嶺南 under his control.⁵⁹ A message came from the pacification commissioner [in charge of the Imperial armies] saying that a soldier in the Xuanyi 宣毅 Brigade of the Imperial Army had distinguished himself [fighting the rebels] and was to be promoted to the rank of lieutenant at the [Tanzhou] barracks. When the soldier arrived, [Ren] Zhuan observed that he had a shifty expression [*se dong* 色動], and said: "He must be a traitor." He immediately had him placed under arrest, and when they searched his residence they found many coded papers recording details about Tan[zhou's] army, weapons, city walls, and roads. Obviously Nong Zhigao was employing him as a mole within the army's camp. [Ren] Zhuan had him beheaded as a warning to others, and greatly increased preparations to defend [the region]. [Zheng's comment]: In a time of warfare, even if a soldier had been promoted to corporal for his distinguished service, he would still be kept at the battlefield. He certainly would not be dispatched back to the barracks. So when [Ren] Zhuan received the [commissioner's] message, he definitely would have suspected something already. Then, when the soldier arrived with such a shifty expression, his treachery was plain for all to see. This is why [Ren] had him arrested and searched his residence. [Ren] is another [judge] whom one could call skilled at discerning treachery.

Again we see that Zheng is uneasy with the existing account, which relies too heavily on Ren Zhuan's gut reaction to the soldier's "shifty expression." So he adds a prior reason for Ren's suspicions, one that depends much more on logic and knowledge of regular military procedure. As a result, he can use the case to underscore his contention that judges must be extremely "careful and understanding," not "impatient and hasty" -- a conclusion that few readers would draw from looking at the case summary alone.

Of course, there are a number of cases where, in Zheng's view, no amount of re-interpretation or expansion can cover up the fact that the judge made a mistake. His task in these situations is to make it clear that they are negative examples -- something that is not always apparent from the original account -- and to explain why the mistake or

⁵⁸ *Guijian*, 5.76; *Yizhu*, 298-9 (entry 143, "Ren Zhuan" 任顛). For further such examples, see the other case in this entry, "Jia Changchao" 贾昌朝, with Zheng's further comment, and entry 142 (*Guijian*, 5.76; *Yizhu* 297, "Zhang Baoyong" 张保雍), which includes two more examples involving hastily suppressed rebellion plots.

⁵⁹ Lingnan was basically the whole southern part of the Song empire. Tanzhou (near present Changsha 长沙, Hunan 湖南 Province) bordered onto Lingnan, so it was likely Nong Zhigao's next target.

injustice occurred. These kinds of negative evaluations are especially important for modern readers, because without them -- as in the extant editions of the *Parallel Cases* and *Collection of Doubtful Cases* -- one might assume that Song attitudes to adjudication were as inconsistent and arbitrary as some of the case summaries themselves.

For example, in the following case, the original account seems to treat the judge, Zhang Yunji 張允濟, as a perceptive and worthy official:⁶⁰

When Zhang Yunji of the Tang held his first post as magistrate of Wuyang 武陽 under the [preceding] Sui dynasty, he was once traveling and saw an old woman who had planted some green onions and put up a shelter so she could guard them. [Zhang] Yunji said to her: “Just go home and don’t worry about guarding these. If a thief comes, report it to me straightaway.” The old woman went home, and during the night much of her green onion crop disappeared. [Zhang] Yunji then assembled all the residents living on both sides of the onion patch. He called them forward one by one, and observed (*ting* 聽) each of them. By this means, he managed to catch the green onion thief.

The focus of this account is on Zhang’s powers of observation. Zheng Ke’s comment first clarifies the meaning of the term “observation” by quoting a passage from the *Rites of Zhou* 周禮 on “five kinds of observation,” namely, observing peoples’ words, expression, breathing, the way that they listen to others, and the way that they look at others (*ci, se, qi, er, mu* 辭, 色, 氣, 耳, 目). This is another example of Zheng expanding on the original record, since he turns Zhang Yunji’s simple “observation” (which was probably just smelling for onions, in this context) into a full-blown, five-fold cross-examination.⁶¹ However, Zheng is not content merely to rationalize the judge’s methods here. He also feels the need to censure Zhang Yunji for his careless complacency:⁶²

[Zhang’s] attitude was rather arrogant, since it wasn’t a case where he was forced to use such a method. He was no different from [the ancient official] Xi Yong 卻雍, who looked at thieves, examined the space between their eyebrows, and thereby found out the true facts.⁶³ If [Zhang, as the local governor,] could not

⁶⁰ *Guijian*, 7.107; *Yizhu*, 405 (entry 205, “Zhang Yunji” 張允濟). Van Gulik, 106-7 (22a).

⁶¹ By contrast, the version of this story in the *Parallel Cases* gives *ting qi shou* 聽其手, rather than just *ting* 聽, and Van Gulik therefore translates the phrase as “one by one he had their hands smelled.” See Van Gulik, 106-7 (22a); *Bishi*, 17a-b.

⁶² *Guijian*, 7.107; *Yizhu*, 405 (entry 205 comment).

⁶³ Xi Yong, a famous thief-catcher, appears in the “Shuofu” 說符 chapter of *Liezi* 列子: see Yan Beiming & Yan Jie, eds., *Liezi yizhu* 列子譯注 (Shanghai: Guji chubanshe, 1986), 207; and A.C. Graham, trans., *The Book of Lieh-Tzu* (London: John Murray, 1960), 164-5. The phrase “causing people to be ashamed of stealing” also comes from this episode.

cause his people to be ashamed of stealing, then he should have just let the old woman continue to guard [her green onions].

Zheng Ke castigates the magistrate for not only failing to attack the roots of crime in the region under his jurisdiction -- through moral education of the people -- but also for adding to the burden of the courts by encouraging people to be lax about their personal security. Because he is so keen to show off his clever investigative techniques, Zhang Yunji forgets that his own actions were the major cause of the crime.

There are two possible ways to read the allusion to the ancient thief-catching official Xi Yong, both negative. First, although Xi Yong was very successful at using “eyebrow observations” to spot thieves, he was unable to prevent further thefts from occurring, and ultimately he died at the hands of thieves who were resentful of his success. This is a warning to judges who focus only on punishing wrongdoers without transforming the morals of the people. Second, Xi Yong’s method was an idiosyncratic and unique talent, not an orthodox technique based on careful reasoning. Although it worked for him, he could not transmit it to others, and therefore, when he died, no other officials could emulate his work. By contrast, Zheng Ke saw his own mission as persuading judges to perfect a variety of rational and thorough methods of investigation, ones that did not depend on subjective intuition alone. Such methods could be learned, passed down through the generations, and employed to prevent innocent people from being convicted.

Besides such negative examples, where Zhang tries to prevent his readers from receiving an erroneous impression of how good judges should behave, there is a whole group of case summaries drawn from more unorthodox sources, such as works of fiction, which Zheng tends to criticize for presenting an inaccurate picture of the legal process.

There are a number of reasons why he does not exclude such fictional sources altogether. First, some do provide nuggets of useful information on how to investigate crimes, therefore Zheng is willing to retain them with some reservations.⁶⁴ Second, most were included in earlier case summary selections like the *Collection of Doubtful Cases*, which, Zheng feels, gives the misleading impression that they are authoritative examples. He counters this impression by strongly criticizing their errors.⁶⁵ And third, fictional works, including many involving crime and detection, were becoming much more popular among the literate classes of the Song, as compared with previous periods. Zheng would certainly have been aware of their growing influence, and doubtless hoped that his critical interpretations of such stories dealing with legal issues would reduce the

⁶⁴ See, for example, entries 16, “Liu Chonggui” 刘崇龟, and 19, “Prefectural Officer” 府从事 (*Guijian*, 1.11-12 & 2.14-15; *Yizhu*, 47 & 59). Van Gulik, 183-4 (70a) & 171-2 (64a).

⁶⁵ For example, entries 15, “Yuan Ci” 袁滋, and 43, “Sun Liang” 孙亮 (*Guijian*, 1.10-11, 3.28-9; *Yizhu*, 44-5, 111-2). Van Gulik, 126-7 (35a) & 164 (60a).

temptation for judges to model their behavior on the dazzling intuitive displays of fictional legal wizards, at the expense of careful and methodical investigation.⁶⁶

In one very clear example, Zheng compares a group of cases in which the judge must decide who is the true parent of a child, or in one case, the owner of a cow. The first three are drawn from orthodox sources, whereas the fourth is from a “recent piece of fiction” (*jinshi xiaoshuo* 近時小說). I will briefly summarize the cases, and then translate Zheng’s evaluation.⁶⁷

The first case, dating from the Former Han (206 BC – 9 AD), involves two women who both claim that a newborn son is their own. Since regular investigation cannot distinguish the true mother, the judge places the baby in the middle of the courtroom, and tells the two women to compete to drag him away. One woman yields after a brief struggle, fearing that the child will be injured. The judge then awards the child to her, since she has shown sufficient proof of her motherly affection.⁶⁸

The second case, from the Latter Han, describes how a two-year old boy becomes lost, and a long time later -- possibly years -- is spotted by his father at another man’s house.⁶⁹ Both men claim the child as their own, and each provides corroborating witnesses. Finally, the judge has the two men and the boy incarcerated separately, then a few days later falsely reports to the men that the boy has suddenly died. The true father reacts with uninhibited despair, whereas the other man merely sighs.

The third case, set in the Northern Zhou period (386-534), seems at first only tenuously related to the preceding examples, but Zheng’s concluding comment explains why he has included it. Two families possess herds of cattle, and both lose a cow around the same time. One cow turns up later, and both families claim it as their own. Again, the evidence is not conclusive, so the judge, Yu Zhongwen 于仲文, gets the family heads to drive their cattle herds into two separate enclosures, then he releases the cow in question, allowing it to select its own herd. After the cow makes its choice, the judge also confirms it by ordering his officer to make a slight cut on the cow’s back. The true owner complains bitterly, whereas the other man -- doubtless realizing that his ruse has failed -- is quite happy to see someone else’s cow harmed.

After Zheng explains that these are all positive examples of how judges may use little tricks when the evidence is inconclusive, he concludes by illustrating the distortions that can occur when “recent fiction” writers adapt such cases for their own artistic ends. He quotes a story in which two young children are playing together in a market, and one is crushed to death by a runaway horse. The two mothers both claim the survivor as their

⁶⁶ For the growing popularity of fiction in the Song, see Lu Xun 鲁迅, trans. Gladys Yang & Yang Hsien-yi, *A Brief History of Chinese Fiction* (Beijing: Foreign Languages Press, 1964), 139-162.

⁶⁷ *Guijian*, 6.89-90; *Yizhu*, 346-7 (entry 173, “Huang Ba” 黄霸). Three of the four cases in this entry are included in the *Parallel Cases*: see Van Gulik, 79-80 (4a-b) & 150-1 (51a).

⁶⁸ This Solomon-esque tale is probably apocryphal, but Zheng accepts it as orthodox, probably because of the good reputation of the judge, Huang Ba, and the fact that several later judges adopted a similar method of adjudication, as the next two cases show.

⁶⁹ Two years old is equivalent to the Chinese *san sui* 三歲 (“three sui”).

own child. Since the evidence is not conclusive, the fictional judge pretends to be furious, and tells the two women: “What if both of the children had been crushed under the horse’s hooves: would you still be fighting then?” He orders a strong officer to take the surviving child and throw it down a well. One of the women makes a desperate attempt to stop the officer; the other is slower to protest and less emotional. Therefore the former obtains custody of the child.

Though this version is certainly more dramatic than the preceding ones, with its runaway horse, well-throwing finale, and staged anger by the judge, Zheng Ke dismisses it with a snort of derision:⁷⁰

This is the overdressed nonsense of an ignorant fellow! [Compare it to] the [first] case, where the baby was seized just after its birth, and so would not be able to recognize its mother; and the [second] case, where the two-year old child was lost, and probably had already forgotten his father. [In this case], however, if the two children were already able to play together, even if they could not speak, they should have been able to recognize their own mothers. And there wasn’t any long lapse of time, so [the surviving child] would not have forgotten [its mother] so soon. Thus, just as in the case of Yu Zhongwen releasing the disputed cow . . . , if [the judge] had released the disputed child, it would certainly have headed straight for its mother, and the false claimant would have admitted her guilt. How could [the writer] claim that “the evidence was inconclusive,” and then invent such a trick to uncover the deceit?

Zheng is extremely uncomfortable with the portrayal of the grandstanding judge in this story, especially because he could have employed a much simpler and less cruel method to discover the truth. Zheng makes it clear that judges should only use tricks as a last resort, when all other efforts to collect evidence and sort out the facts have failed, and when serious injustice might otherwise result. His worry is that judges will take such fictional accounts, and even some orthodox case summaries containing misleading information, such as the green onion affair, as justification for turning the courtroom into their own dramatic stage, upon which they can show off their ingenuity and investigative prowess at the expense of treating people humanely and justly. At the same time, Zheng is willing to accept some fictional or sketchy case accounts as positive examples -- augmented by his commentary -- as long as the judges display deep concern for justice and respect for regular courtroom procedures.

3: Mitigating Circumstances/Special Punishments: Interpreting Statutes Properly

Another major function of Zheng Ke’s commentary is to attack those who use the law as an excuse to commit acts of cruelty and injustice. Zheng argues that the ultimate aim of law is not punishment but transformation and improvement of peoples’ behavior.

⁷⁰ *Guijian*, 6.90; *Yizhu*, 347 (entry 173, concluding comment).

As a result, he asserts, judges should always be looking for justifiable reasons to *avoid* punishing people as strictly as the law demands, especially if a death sentence is involved.

As with the above topics, Zheng provides numerous examples, both positive and negative, to substantiate his views. Indeed, the majority of cases and comments in the sections entitled “Adjusting Sentences,” “Pardoning Faults,” and “Punishing Evil,” (sections 4-6), along with many in the two final sections, “Strictness and Understanding” and “Compassion and Care,” closely relate to this issue. Rather than attempting to deal comprehensively with the wealth of material provided by Zheng here, I will focus on one representative topic -- unfilial behavior or other inter-generational conflict within families. These examples are particularly interesting because they contrast strongly with a prevailing view amongst Western legal scholars that any conflict between elders and inferiors within Chinese families would result in the inferiors receiving harsh punishment, with little regard for mitigating circumstances or for determining who was at fault.⁷¹ This view in turn seems to result from over-reliance on Qing dynasty sources. More recent research has suggested that the Song treatment of family disputes was often much more flexible and lenient than in later periods, especially for those of lower status within the relationship, and Zheng Ke’s commentary certainly adds support to this view.⁷²

The first example, entry 266, includes two cases involving wives accused of disrespect for their parents-in-law.⁷³ In the first of these, dating from the early Song, a man is away on business, and his father orders the man’s wife to carry out a task. When she refuses, he angrily cuts off her hair and threatens to demote her to the status of a maid. The son returns and defends his wife’s behaviour, at which point a great fight starts, and all the parties are dragged off to court. After someone warns the son that he faces the death penalty for suing his father, he decides to blame his wife instead. Father and son therefore both testify that the wife cut off her own hair to give the impression that the old man had attacked her. The judge, Zhang Yong 張詠, suspects that they are not telling the truth, but lacking conclusive evidence writes the following judgment:⁷⁴

⁷¹ See especially Ch’u T’ung-tsu’s detailed discussion of unfilial behavior and disrespect for elders, including examples from statutes and cases, in *Law and Society*, 26-8, 42-4, 57-60; cf. further cases in Bodde, *Law in Imperial China*, 389-94; 405-13. Also, for a very useful selection of cases from the Qing historical archives focusing on criminal offenses within the family, see Zheng Qin 郑秦 & Zhao Xiong 赵雄, eds., *Qingdai “fuzhi” ming’an* 清代“服制”命案 (Beijing: Zhongguo zhengfa daxue chubanshe, 1999).

⁷² For an important Song source of such cases, see McKnight and Liu, *The Enlightened Judgments*, esp. 354-60; 371-6. The approach of the judges in the *Enlightened Judgments* is strikingly similar to that advocated by Zheng Ke. It is also possible that studies of Qing law have focused too much on the harsher judgments contained in collections like the *Xing’an Huilan*, which include only the most serious cases sent up to the capital for judicial review. Recent work on Qing law, though more concerned with civil law, suggests that local judges had quite some discretion in cases that did not involve a death. If they believed that a situation was not serious enough to convict the accused, they could simply refuse to accept the case and send it back to the extended family for mediation. See especially Philip C.C. Huang, *Civil Justice in China: Representation and Practice in the Qing* (Stanford: Stanford University Press, 1996). It would be interesting to see Huang’s approach extended to the area of local criminal law.

⁷³ *Guijian*, 8.135; *Yizhu*, 506 (entry 266, “Zhang Yong” 张詠).

⁷⁴ *Guijian*, 8.135; *Yizhu*, 506.

Even though the son may cover up for his father, somehow his words are not convincing. Still, we cannot keep investigating the elder and superior party [i.e. the father], and neither can we pass sentence on the younger and inferior [members of the family]. We will treat it as a case where the daughter-in-law should be reprimanded and warned that if she does not look after [her elders] in future, she will be charged and brought straight back to court.

He then releases all the parties, and adds a further piece of advice to his subordinates: “The punishments for younger and inferior members within the five mourning groups are extremely harsh. Officials who care for their people should be very cautious when dealing with [such cases].”⁷⁵

Zheng Ke saves his own comment until after the second example, which involves a mother-in-law accusing her son’s wife of neglecting her needs.⁷⁶ The wife tries to justify her conduct, but the judge, Wang Zhi 王質, tells her: “Even if your mother-in-law treats you badly, do you not care about your husband?” He then gives some clothes to the old lady and some government grain to the daughter-in-law, admonishing her to return home and look after her elders properly. Both parties are moved to tears by his magnanimity. Zheng Ke comments:

In these two cases, the old man and the mother-in-law were both unreasonable, but the duties of family life still required that the younger and inferior members be castigated. Yet the one thing you must not do [in such situations] is hastily resort to the full force of the law. This is why [the judges] forgave their offences and simply admonished them to look after their elders.

This sympathetic attitude contrasts sharply with that of judges in the Qing case records, who seem to hold the opinion that if a parent or elder in-law is concerned enough to bring a younger family member to court, this in itself is sufficient evidence of the accused person’s guilt, and justification for harsh punishment. See, for example, a case cited by Ch’u T’ung-tsu where a son, accused of being lazy and disobedient by his mother, is banished to a remote region of the empire.⁷⁷ Zheng Ke’s approach, and that of

⁷⁵ *Guijian*, 8.135; *Yizhu*, 506. For a good discussion of the five mourning groups, and the statutory punishments for offences against elders within the groups contained in the Tang, Song, Ming, and Qing codes, see Ch’u, *Law and Society*, 15-20, 53-60.

⁷⁶ *Guijian*, 8.135; *Yizhu*, 506-7 (entry 266, appendix, “Wang Zhi” 王質, and comment).

⁷⁷ Ch’u, *Law and Society*, 28, cf. discussion 26-28. Ch’u does make one serious error when discussing pre-Qing cases involving unfiliality. When corrected, we can use the example as further evidence for a more lenient attitude towards intergenerational conflict in earlier dynasties. Ch’u (26) quotes a case from the Tang dynasty to support his contention that throughout the Imperial period, parents needed only to say the word and their children would be executed by the courts. The case describes a widow who accuses her son of unfilial behavior, and the judge, despite his doubts, tells the woman to go and buy a coffin for her son, implying that he will be executed. This is where Ch’u stops. However, the account then makes it very clear that the judge’s words were a trick. He has the widow followed, and on her way to the coffin shop she meets

the judges he quotes here, seems far more reasonable and more likely to result in the central Confucian ideal of family harmony than the strict and legalistic Qing approach.

Another example where Zheng Ke praises the judge for being more lenient than the letter of the law demanded is entry 267, “Xue Kui” 薛奎.⁷⁸ In this entry, Zheng selects three similar cases where mothers have accused their sons of being unfilial. According to the relevant penal codes, the normal punishment for those convicted of this offence in the Tang or Song would be at least two years’ penal servitude.⁷⁹ I will just translate the third case, followed by Zheng’s admiring comment on all three examples.⁸⁰

When Wei Jingjun 韋景駿 of the Tang was magistrate of Gui 貴 county, a mother sued her son and the son counter-sued. [Wei] Jingjun said [to the son]: “When I was young my parents both died, and this has always been a source of great sorrow to me. Now you are lucky enough to have a parent still alive, but you seem to have forgotten how to be filial. This must be because you have not been taught properly, and that is my own fault [i.e. it is the local magistrate’s duty to educate his people in correct behavior].” Then, as the boy sobbed, he gave him a copy of the *Classic of Filial Piety* (*xiaojing* 孝經), and told him to follow its basic principles. Both mother and son thereupon realized their mistake and asked for a second chance. Eventually the son became an exemplar of filial conduct.

[Zheng comments]: If [the judges] had punished them according to the law, the sons’ sentences would not have been light. They would have been based on the statute: “going against [one’s parents] when one is able to obey, and neglecting them when one should support them.”⁸¹ So can we not call [these judges] compassionate and careful?

It is likely that in the case we just translated, the son could also have been convicted of suing his mother, for which the statutory penalty in the Tang and Song was death by strangulation.⁸² This makes the judge’s leniency, and Zheng Ke’s approval of his

a Daoist and tells him that her plot to kill the son has succeeded. Apparently she felt that her son was getting in the way of her relationship with this Daoist, and wanted him removed. The judge then prosecutes her and has the Daoist beaten to death and thrown in the coffin meant for the son! This case is also included in the *Magic Mirror* (*Guijian*, 5.63; *Yizhu*, 247, entry 115, “Li Jie” 李傑; cf. Van Gulik, 95-6). Zheng records several other cases in which accusations by parents and in-laws are found to be groundless, and no punishment is given the accused. Besides those discussed in the main text, see also *Guijian*, 5.75; *Yizhu*, 293 (entry 139 appendix, “Ge Yuan” 葛源 & “Zeng Xiaoxu” 曾孝序). Hence, Ch’u T’ung-tsu’s assertion may have been true for the Qing, but does not apply universally to earlier periods.

⁷⁸ *Guijian*, 8.135-6; *Yizhu*, 508-9 (entry 267).

⁷⁹ See *Song Xingtong*, 1.12, 24.420; Johnson, I.74-80 (art.6.7) & II.399-400 (art.348).

⁸⁰ *Guijian*, 8.135-6; *Yizhu*, 509 (entry 267 appendix, “Wei Jingjun” 韋景駿).

⁸¹ A quotation from the *Song Xingtong*, 24.420.

⁸² See *Song Xingtong*, 23.414-6; Johnson, II.392-4 (art. 345).

conduct, seem even more remarkable, both when compared with the harsh inflexibility of judgments from later periods, and with the stipulations of the *Song Penal Code* itself. Nevertheless, Zheng is clearly alerting his readers to the possibility that many of these so-called unfilial acts were simply minor family quarrels brought to the courts on impulse, or false accusations. Hence, to split up the family by banishing the child, or worse still, executing him or her, would cause the family great hardship and do nothing to reform the child's behavior. This explains his call for re-education rather than penal sanctions in such situations.⁸³

In the above examples, the judges refuse to acknowledge that certain infractions are criminal offences at all, and as a result manage to avoid meting out the harsh sanctions of the penal code. Besides such caution in applying penal sanctions, another way in which judges could avoid over-harsh punishments, especially in family situations, was by looking to the intentions of the statute writers in creating certain offences. If following the relevant statute strictly would lead to a result that the statute framers could not have intended, judges might instead apply a statute with less serious penalty provisions, in the name of justice and fairness. Zheng thoroughly approves of this practice, not only because it frequently results in sentences more proportional to the crime, but even more so because it still relies on Code provisions, and therefore cannot be challenged as arbitrary or subjective.

An example will help to illustrate this approach and Zheng's positive appraisal of it. Entry 80, "Yin Zhongkan" 殷仲堪, involves a man called Huang Qinsheng 黄欽生 of the Jin period (265-420), whose parents died long before, but who, for reasons that are unclear, decides to put on mourning clothes and claims that he is off to his father's funeral.⁸⁴ When the ruse is uncovered, he is supposed to be sentenced to death by strangulation for "cursing" his parents. The judge, Yin Zhongkan, explains the reasons for the harsh statutory sentence, but then distinguishes the facts in this case and gives a more lenient sentence, deciding that Huang's behavior did not fit the statute in question:

If we search for the original meaning of this law, it was surely that those who recklessly talk of their parents' deaths while the parents are still alive violate all the accepted principles of nature and human affection. This is something that [the code writers] could not bear even to mention, so it is treated the same as the offence of "fighting and cursing [one's parents]," and dealt with by means of the death penalty.⁸⁵ But [Huang] Qinsheng only committed the error of "empty and reckless [behavior]." We will therefore spare his life.⁸⁶

⁸³ For further examples of leniency in family conflicts, see entries 265, 268, and 269 (*Guijian*, 8.134, "Lang Mao" 郎茂, & 8.136, "Ren Bu" 任布 and "Su Huan" 苏涣; *Yizhu*, 504, 511, and 512).

⁸⁴ *Guijian*, 4.47; *Yizhu*, 187 (entry 80). Van Gulik, 137 (42a). Possibly Huang was hoping to avoid military service or some other onerous public duty by claiming to be in mourning. Liu Junwen (*Yizhu*, 187n.1) notes that Yin Zhongkan's surname was a taboo word in the Song, therefore Zheng refers to him with an alternative surname Tang 汤.

⁸⁵ This case dates originally from the Jin dynasty, for which no penal code survives. In the Tang and Song Codes, the penalty for cursing one's parents was strangulation. See *Song Xingtong*, juan 22, 398; Johnson, II.366-7 (art.329).

[Zheng comments]: In the past, people praised Guo Gong 郭躬 [of the Latter Han] for imagining himself in the place of those he was judging, and going beyond accusations to search for the facts. Now . . . [this] was empathy and . . . sincerity, something that Yin Zhongkan also managed to achieve. After all, if he had not applied the law with sincerity and empathy, [Huang] Qinsheng would certainly have faced public execution. This is something that vulgar officials simply cannot grasp.

In other words, one should not automatically apply the harshest sentence that the law allows, even if it could easily fit the crime, but should rather be as *lenient* as the law allows.

With this attitude, it is no surprise that Zheng Ke strongly censures those who went to the opposite extreme and invented extra punishments beyond those stipulated in the Code, simply to shock people into submission. Though he admits that there are occasional social crises when special punishments may be necessary to quell unrest, he constantly declares that under normal circumstances even the most serious crimes must be thoroughly investigated, and the punishment should never go beyond that contained in the Code.⁸⁷ In a sense, this attitude towards special punishments is the logical extension of Zheng's call for leniency wherever possible. If the Code sentence was more lenient than the judge would like, then the Code should be strictly applied; but if the judge wished to apply a sentence *more lenient* than the Code, especially if he could base his argument on another Code provision, then flexibility should be allowed.

Two examples, one negative and the other positive, clearly illustrate Zheng's views on the issue of special punishments beyond the statute. Entry 118, a case from the Latter Jin period during the Five Dynasties (907-960), involves a married couple who together have sued their son for unfilial behavior.⁸⁸ The judge, An Zhongrong 安重榮, adopts a censorious expression, and drawing his sword, tells the parents to kill their son themselves. The father breaks down weeping and cries: "I cannot bear to do it." But the mother foully curses her husband and urges him to finish the job. It turns out that she is actually the boy's stepmother. An Zhongrong then takes her outside, and shoots her dead

⁸⁶ It is not clear what the Jin dynasty penalty for "empty and reckless [behavior]" was. By the Tang and Song periods, a separate provision had already appeared in the Code dealing with the exact situation discussed in this case, i.e., claiming that one's parents had just died, though they had actually been dead for some time, in order to seek some benefit. The penalty was three degrees less than the three years' penal servitude for falsely announcing parents' deaths when they were still alive, i.e. 1.5 years' penal servitude. See *Song Xingtong*, 25.455; Johnson, II.449-50 (art.383). Even though Song judges would not have faced the same problem as Yin Zhongkan in fixing the sentence, Zheng Ke still includes the case as an example of the principles of just sentencing, as his subsequent comment makes clear.

⁸⁷ Where no relevant Code provision exists for an offence, Zheng reminds his readers to sentence by analogy to equivalent offences in the Code, not to create penalties out of thin air. See, for example, *Guijian*, 4.52; *Yizhu*, 208-9 (entry 92, "Liang Shi" 梁適, comment).

⁸⁸ *Guijian*, 5.64-5; *Yizhu*, 252 (entry 118, "An Zhongrong" 安重榮). Van Gulik, 96 (14b).

with one arrow from his bow. The writer notes that people praised the efficiency with which An meted out justice. But Zheng Ke adds a highly critical comment:

From ancient times, it has been common for second wives to be jealous of prior wives' children. If one has established all the facts, then it would be acceptable to censure [such a woman] harshly and punish her strictly. But why was it necessary to take such hasty measures to deal with her in a way that violated the law? There is a saying: "One who kills people without [transforming them through] education is called a tyrant."⁸⁹ Thus, [An] Zhongrong's behavior was not praiseworthy, and this case should not be taken as a positive example. It is only because previous collections included it that I felt the need to [quote it and] offer this brief criticism.

As with some of the other examples mentioned earlier, Zheng is wary of approving a past case merely because it is included as a positive example in the official histories or earlier case collections. In his view, the judge's investigative ingenuity in finding out the facts cannot hide his callous disregard for proper legal procedures. Zheng displays a sophisticated awareness of the need to follow established procedures carefully, even when the guilt of the accused seems obvious, in order to avoid the risk of an injustice.⁹⁰

Zheng is so convinced of the importance of preventing arbitrary and hasty judgments beyond the law that he even praises officials who stand up for the law against the Emperor's will. Though he allows that the Emperor can make new laws, overrule old ones, or decide individual cases by decree, he insists that until the Emperor actually writes and promulgates such a decree, officials need not accept opinions of the Emperor about individual cases that contradict the Code. In other words, the Emperor should also be bound by a regular procedure, and not be totally free to interfere arbitrarily in the workings of justice. The following example demonstrates this point, recounting how a judge manages to reduce the sentence of the accused based on established legal and moral principles, despite the Emperor's initial objections. As with other kinds of special punishments, Zheng thoroughly approves of strict application of the Code provisions in such a situation because it takes place at the highest levels of government, and acts as a warning to judicial officials lower down the scale not to make over-harsh and subjective judgements.

⁸⁹ From the *Yao yue* 堯曰 chapter (section 20.2) of the *Analecets*. See D.C. Lau, trans., *The Analects* (Middlesex: Penguin Books, 1979, rpr. 184), 160.

⁹⁰ By "previous collections," Zheng is probably referring in particular to the *Collection of Doubtful Cases*, from which he took this and many other examples in his book. See this case in *Yiyu ji*, 3.11a. Interestingly, even after Zheng's scathing criticism, the later compiler of the *Parallel Cases* still included this case, apparently as a positive example of investigative methods. Zheng's criticism is not quoted, and the case appears beside another, that of Li Jie (cited in note 77 above), which also involves a clever technique to reveal a mother's false accusation of her son. This is just the kind of misinterpretation that Zheng feared, and hoped to counter with his commentary. See *Bishi*, 11b-12a; Van Gulik, 96-7.

The case, dating from the Latter Han, involves two brothers convicted of killing a man together.⁹¹ Since the judge did not know how to sentence such a collaborative offence, Emperor Mingdi 明帝 (r.58-76 AD) decreed that the elder brother should be executed for the crime, because he had authority over his younger brother; but the latter should be spared the death penalty, because he had been corrupted by his elder brother. Unfortunately, a palace eunuch, Sun Zhang 孫章, accidentally misread the decree, and both brothers were executed. The chief councilor wanted Sun beheaded for “falsely announcing an Imperial decree,” but the famous judge Guo Gong, when consulted, disagreed saying: “The law distinguishes between accidental and intentional offences. Since [Sun] Zhang made an error transmitting the order, his offence should be treated as accidental, and in such cases the law gives a lighter sentence . . . [Sun] should only be fined.” When the Emperor suggested that the eunuch probably had a grudge against the accused, and therefore purposely misread the decree, Guo persisted, arguing: “The Gentleman does not assume that others are deceitful.”⁹² Since the [ancient] emperors and kings received the law from Heaven, in punishing people one must not use crooked arguments to change its meaning.” The Emperor then accepted Guo’s argument and only fined the eunuch.

This case, with its quotation from the *Analects*, seems to bring us close to a Chinese-style “presumption of innocence,” or at least a presumption that where any doubts exist about intentions, the lesser sentence should prevail. In his comment on the case, Zheng Ke expresses complete agreement with this idea:⁹³ “Those who apply the law more strictly than the text requires and focus on the harshest punishments are all doing so by ‘using crooked arguments to change its meaning.’ [When he declared that] the Gentleman does not assume others are deceitful, [Confucius] doubtless feared that petty people certainly would stoop to such behavior.”

Thus, the written laws may be interpreted flexibly when the result is a fairer and more lenient sentence, but they should be strictly applied when a flexible interpretation would result in a harsh, possibly unjust, sentence. The only rare exception to the latter rule is during times of serious social unrest when quick and harsh sentences may be required to prevent total anarchy.

4: Dealing with Political Pressure and Corruption of the Legal System

The preceding case alerts us to the fact that judges frequently had to face pressure from their superiors -- whether the Emperor or central government officials -- to decide cases in a certain way, or to solve crimes more quickly. Besides such political pressure, judges also had to contend with the problem of corruption and abuse of the system by their ill-paid subordinates, the local clerks and officers. Such abuse was especially

⁹¹ *Guijian*, 4.46; *Yizhu*, 182 (entry 78, “Guo Gong” 郭躬).

⁹² Citing the *Xian wen* 憲問 chapter of the *Analects*: see D.C. Lau, trans., *The Analects*, 129 (s.14.31).

⁹³ *Guijian*, 4.46; *Yizhu*, 182 (entry 78, comment).

common when the accused came from a rich and influential local elite family that could pay to influence the investigation and trial process.

Zheng Ke did not try to paper over these problems. Indeed, it seems he was anxious to bring them into the open in order that a solution could be found. He collected numerous examples in which past judges managed to outwit the various forces of corruption arrayed against them, adding his own comments on the efficacy of their methods. He also interspersed these with cautionary tales in which even famous judicial officials failed to deal with the abuse, usually with disastrous consequences. A point that he constantly reiterates is that judging cases not only requires intelligence and fair-mindedness; it also demands immense courage. Otherwise, even cases that should be simple to prosecute will slip through the cracks of the system. See, for example, his reaction to the following case.⁹⁴

A household servant-boy on the staff of the commander of Taiyuan 太原 prefecture accused a soldier of robbing him of his clothes outside the prefectural offices. The commander angrily dragged the soldier to court and demanded that the clerks tattoo him and send him for penal registration. But the judicial commissioner, Bi Zhongyou 畢仲游, noticed that the so-called stolen clothes were extremely thin [i.e. not worth stealing], and doubted that anyone would rob a person right in front of the government offices. He had the case re-tried by a different official, and the accusation was found to be false. Zheng comments:

Some false accusations are difficult to discover; others are easy to discover. If one is not sufficiently intelligent, one may become confused, and will not be able to sort out a difficult case. But if one is not sufficiently brave, one may become frightened, and will not dare to sort out even an easy case. If one is unable to sort it out, this is no cause for censure. But if one does not dare to sort it out, this is truly blameworthy. . . . By solving this robbery case without fear of a great commander's wrath, [Bi] Zhongyou showed that he had the courage to do what was right.⁹⁵

Zheng Ke goes straight to the root of the problem here. When powerful officials show their willingness to accuse people without proper investigation, the effects will be far-reaching. Even their menial servant-boys will try to take advantage of the system, relying on the protection of their master.

What is especially interesting about this case is that the events probably occurred during Zheng Ke's lifetime: they are not from some past dynasty with a less-developed legal structure. By including such a contemporary example, Zheng is underscoring the pressing immediacy of the task of rooting out corruption in the judicial system. And the first requirement for judges is to have the courage to stand up against their superiors for

⁹⁴ *Guijian*, 3.38; *Yizhu*, 153 (entry 64, "Bi Zhongyou" 畢仲游); Van Gulik, 115-6 (28b).

⁹⁵ The text of the case has earlier made it clear that this particular commander, Han Zhen 韓縝 (1019-97) had previously been a vice chief councilor in the central government. This is doubtless why Zheng Ke refers to him as "great."

what is right. Zheng puts the issue into perspective in commenting on another case from the Song, in which a humble county magistrate dares to overturn the death sentence demanded by the central court of judicial review, against the advice of his colleagues.⁹⁶

When the ancients were upholding the law they all faced occasions where they had to argue against the Emperor. So when people say you cannot argue against the court of judicial review, this is absurd! Moreover, if I am so worried about arguing back that I forget to care about the accused, who is about to die, then how can I claim to be doing the right thing as a compassionate Gentleman?

In Zheng's view, the execution of someone who does not deserve death was not merely an unjust act against an individual, but could also have far-reaching social and even cosmic consequences. I will discuss his statements about the serious consequences of injustice in the final section below. However, I will first deal with the other main form of corruption facing judges in the Song period, namely, abuse of the system by judicial clerks and officers, especially the acceptance of bribes to pervert the course of justice.⁹⁷

To show just how cunning these clerks could be, and how careful the judge had to be when attempting to stamp out their corruption, Zheng cites a case involving Bao Zheng 包拯 (999-1062), governor of the northern Song capital region Kaifeng and the very Judge Bao whose life and brilliant detective exploits were later eulogized in numerous later plays and stories.⁹⁸ Here, however, he gets his comeuppance at the hands of a lowly court clerk. The case describes a man charged with an unspecified offence, for which the punishment would normally be a beating plus exile.⁹⁹ The clerk accepts his bribe and instructs him on the plan. The man then enters the court and vigorously protests his innocence. The clerk, who is responsible for interrogating him in front of the judge, pretends to get impatient, and shouts: "Just take a beating and go away!" This is insubordination, since only the judge has the right to pronounce sentences. Therefore Bao

⁹⁶ *Guijian*, 4.56; *Yizhu*, 225 (entry 101, "Pu Jinmi" 蒲谨密), a case dating from the reign of Emperor Renzong 仁宗 (1023-63).

⁹⁷ For further examples of political pressure from superiors, with similar comments by Zheng, see also *Guijian*, 1.9-10, 2.20, 3.27, 3.31, 3.42, & 4.56; *Yizhu*, 39, 83, 108, 124, 172, and 223 (entries 13, "Li Yuansu" 李元素, 28, "Zhang Wenzhi" 张愠之, 42, "Han Lang" 寒朗, 48, "Zhang Xingji" 张行岌, 74, "Sima Xuan" 司马宣, and 100, "Chen Xun" 陈巽).

⁹⁸ See, for example, George A. Hayden, *Crime and Punishment in Medieval Chinese Drama: Three Judge Pao plays* (Cambridge: Harvard University Press, 1978); and Lu Xun, *Brief History of Chinese Fiction*, 359-371.

⁹⁹ Case is in *Guijian*, 5.74; *Yizhu*, 290 (entry 138 appendix, "Bao Zheng"). Liu Junwen, the modern editor of *Yizhu*, interprets the original sentence as beating *plus* exile, even though the exile part of the sentence is not directly mentioned. It is implied, however, at the end of the case, when the man's sentence is "reduced" to just a beating. See *Yizhu*, 291n.8. Certainly almost all offenders sentenced to exile were also beaten before they were sent off, and the case would make little sense without this assumption that the original sentence was much heavier than simply a beating. Van Gulik, who makes no such assumption, finds himself unable to explain the point of the clerk's trick convincingly: see Van Gulik, 143-4 (46a).

Zheng, who is anxious to curb the power of his clerks and show that he is in charge, has the impudent clerk beaten with seventeen strokes of the heavy bamboo, and reduces the sentence of the accused to beating without exile. This outcome is exactly as the clerk predicted: obviously Bao Zheng had acted in a similar way on previous occasions. Though the clerk received a beating, he also made a profit and proved that those who paid him in the future could expect lenient sentences. Zheng Ke comments:¹⁰⁰

This was doubtless a case of guarding against insubordination, but failing to guard against [abuse of the system] for money. Generally when investigating treachery, one cannot make one's intentions clear. If clerks are actually insubordinate, there is nothing wrong with beating them. But [Bao] went too far by trying to correct such misbehavior through reducing the accused's sentence. And he must have done this [several times] so that he was noticed by the [clerk], leaving himself open to [abuse of the system] for money. His error was in making his intention to curb the clerk's power too obvious!

Besides keeping one's methods and intentions to oneself, Zheng saw the main key to overcoming corruption of subordinates and suspects as collecting information. One of his longest entries describes the successful methods of four ancient judges, focusing particularly on Yin Wenggui 尹翁歸 of the Former Han.¹⁰¹ These methods included: keeping secret records of all infractions, no matter how trivial, committed by clerks and ordinary people within their jurisdiction. These records could be consulted by the judge and used as extra ammunition when prosecuting those who tried to subvert the system. Another method was to spend a great deal of time -- sometimes the whole night -- chatting informally with clerks and other visitors, and in the course of conversation finding out detailed local information that could be used to corroborate or refute the statements of those charged with crimes. Still another technique was to attack cases of corruption in a selective and unpredictable way, so that one sudden prosecution of a surprised offender could shock a hundred other miscreants into mending their ways, without the expense and effort of punishing each separately. Zheng gives extra praise to Yin Wenggui because he was able to balance strictness with leniency in this way, unlike many inferior judges who mistakenly assumed that a harmonious society would result from over-harsh punishment of every single offender.

Zheng's favorite way to describe judges who were skilled at finding out detailed local information without making their intentions obvious was to say that they had "eyes and ears among the people," or "spread their eyes and ears broadly."¹⁰² In his view, developing a variety of reliable information sources beyond the courtroom was the only means for judges to ensure that they were deciding cases fairly within the courtroom.

¹⁰⁰ *Guijian*, 5.74-5; *Yizhu*, 290.

¹⁰¹ *Guijian*, 5.71-2; *Yizhu*, 277-8 (entry 133, "Yin Wenggui"). Cf. *Guijian*, 5.70-1; *Yizhu*, 274 (entry 132, "Zhao Guanghan" 赵广汉) with its similar emphasis.

¹⁰² See, for example, *Guijian*, 5.70-2; *Yizhu*, 277, 278 (entries 132, 133 comments).

Without such wider knowledge of the community and its complex networks of relationships, the judge would leave himself open to exploitation by his subordinates and their unscrupulous or desperate collaborators among the people.

Why were the lower judicial personnel so prone to corruption? Though the root cause was probably inadequate remuneration for their jobs, Zheng Ke suggests various other factors, all of them as much the fault of impatient judges as that of the clerks and officers themselves.¹⁰³ In one comment on the frequency with which innocent people were accused of theft, Zheng states:¹⁰⁴

As for arresting officers, sometimes they [wrongly] release thieves and must then arrest innocent people in order to obey their orders; sometimes they lose thieves after a chase, and must arrest innocent people to avoid being punished themselves; and sometimes they find the thieves, but also arrest innocent people in the hope of receiving a reward. If they then conspire to pay off the jail clerks, then one can hardly imagine the injustices that will result!¹⁰⁵

In other words, the clerks and officers were under a great deal of pressure to meet their quotas and give the impression to their superiors that criminals were being caught. In a follow-up comment, Zheng leaves his readers in no doubt that this pressure came from judges and central government officials who cared more about crime statistics than justice. He describes a contemporary case in which a headless corpse was found on a highway, and a passerby who happened to step in the blood was arrested for the murder.¹⁰⁶ However, the officers could not locate the missing head anywhere. After several months of constant pressure from the judge to close the case, the officers decided to kill a sick beggar who was sleeping on the street, and pretend his head was that of the victim. The accused man could not stand any more torture, so he “identified” the head and was executed for the murder. Months later, the real murderer happened to be arrested for robbery, and the truth came out. Zheng comments: “[The officers’] reckless murder of the man on the street and the unjust execution of an innocent person were both caused by the judge’s impatience to find the missing head and close the case. This shows that one must be extremely cautious when going after stolen goods or looking for physical evidence.”¹⁰⁷

¹⁰³ For evidence of the meager salaries of lower court personnel, see Brian E. McKnight, *Law and Order in Sung China* (Cambridge: Cambridge University Press, 1992), 167, 259. McKnight also discusses the various abuses of the Song legal system at length, especially in chapters 10 & 11 (321-384). McKnight’s research provides an excellent background context for Zheng Ke’s views.

¹⁰⁴ *Guijian*, 2.13; *Yizhu*, 54 (entry 18, “Kong Xun” 孔循, comment).

¹⁰⁵ Elsewhere Zheng notes that officers and judges would be rewarded for convicting a certain number of thieves or bandits, hence they sometimes implicated more people than necessary to make up their quota. See *Guijian*, 8.138; *Yizhu*, 520 (entry 275, “Hu Xiang” 胡向, comment). For more detailed discussion of rewards for law enforcement officers, see McKnight, *Law and Order*, 168-9.

¹⁰⁶ *Guijian*, 2.15; *Yizhu*, 59-60 (entry 19, “Prefectural Officer” 府从事, second appended case).

¹⁰⁷ *Guijian*, 2.15; *Yizhu*, 60 (entry 19, comment).

Thus, however despicable the behavior of officers and clerks could be, the responsibility for preventing injustice still lay with the judge. He had a duty, therefore, to develop the proper skills and knowledge, not to mention the patience, to deal with any kind of deception.

5: Describing the Consequences of Just and Unjust Verdicts

A common theme running through all the above sections is that judges must exercise extreme caution to avoid the possibility of innocent people being punished, and to sentence offenders correctly and fairly. Why was Zheng Ke so concerned about this issue? Though he suggests a number of practical reasons to appeal to judges' material interests, his most frequent explanation is that we live in a moral universe, and therefore judges who allow innocent people to suffer and die will cause an imbalance in cosmic energy, leading to serious social disorder and natural disasters.¹⁰⁸

In fact, rather than treating the practical consequences of judicial decisions, such as promotion or demotion of the judge, as different in kind from the social/cosmic consequences, Zheng seems to place them all on a single spectrum. Hence, one should not view the following list of consequences as discrete and separate, though for convenience I list them individually, since all could result simultaneously from one particularly serious miscarriage of justice.

Beginning with the most mundane consequences, erroneous or unjust verdicts faced the possibility of being overturned at a higher level, or being invalidated when the true offender turned up during investigation of other crimes. In such situations, the judge and his subordinates would be punished by demotion and fines, with an obviously deleterious effect on their career prospects. By contrast, Zheng claims, judges who gained a reputation for deciding cases fairly would usually end up in high central government positions. An egregious example of injustice is recorded in entry 22, mentioned above, where eight men were exiled for theft, but later found to be innocent when the real thieves turned up. The judge and his officers were all demoted and fined.¹⁰⁹ As for the stellar careers of superior judges, Zheng is careful to include at the end of many of his positive examples details about the high position that the judge later reached. One particularly brilliant judicial official, Guo Gong, even managed to bring good fortune on several generations of descendants. Zheng notes:¹¹⁰

¹⁰⁸ For a more extended discussion of this view, shared by many pre-modern Chinese legal thinkers, see Hsu Dau-lin, "Crime and Cosmic Order," *Harvard Journal of Asiatic Studies* 30 (1970): 111-25.

¹⁰⁹ See section 1 above, and *Guijian*, 2.16; *Yizhu*, 68 (entry 22, second appended case, "Liang Hao" 梁颢). Cf. *Guijian*, 2.19; *Yizhu*, 80-1 (entry 26, "Ren Zhongzheng" 任中正), where officers beat two innocent murder suspects to death before their trial. The officers are exiled and the judge only escapes punishment because the incident occurred before he was able to examine the suspects.

¹¹⁰ *Guijian*, 4.46; *Yizhu*, 182 (entry 78, "Guo Gong" 郭躬, comment).

[Guo Gong's] biography praises him for being a judge who decided cases and fixed punishments based on compassion and empathy. As a result the laws [he established] were passed down through the generations, and among his descendants one became chief councilor, seven were chamberlains for law enforcement, three became feudal lords, twenty or more reached the rank of regional inspectors, palace attendants, or leaders of Court gentlemen with remuneration of 2000 bushels, and numerous others filled the ranks of attendant censors and law enforcement aides. Does this not abundantly demonstrate the great blessings brought about by [Guo's] accumulated good works!

Of course, Zheng was aware that due to corruption in the government, a direct or immediate correlation between judging cases fairly and improving one's career prospects was not always apparent. In fact, in the short term it could be dangerous to insist on a just verdict in the face of pressure from one's superiors -- hence Zheng's constant reiteration of the need for courage, and his warnings against jeopardizing innocent peoples' lives for the sake of material rewards. However, he was convinced that in the long term, the universe would support and reward a careful, just official.

Another practical consequence of inferior and misguided adjudication was an increase in the level of crime within the judge's jurisdiction, something that would also affect his career prospects. When true criminals remained unpunished, Zheng warned, they would assume that they could get away with anything. His clearest statement of this point comes after a case in which a rich and powerful local family pays off the wife of a man they killed to keep her from testifying.¹¹¹ "If we allow such people to avoid punishment," Zheng declares, "they will become even more unscrupulous. The strong will harm the political order, and the weak will lose their sense of right and wrong, and there is nothing to which they will not stoop! This is something that greatly concerns the Gentleman."

Besides social disorder, bad judgments also tended to encourage further lawsuits, as the unjustly punished sought redress, whereas the wicked sensed an opportunity to falsely accuse people for their own ends. This made the judge's job much busier and more difficult, and led to delegation of the workload to corrupt subordinates who could then further subvert his control. Zheng frequently praises judges whose thorough investigation and fair decisions left no room for complaints and resulted in a reduction of lawsuits in his jurisdiction.¹¹²

Moving on to less tangible, but in Zheng's view more crucial, consequences of adjudication, it was essential in any crime situation, but especially one involving a person's death, to avenge the victim's suffering by punishing the correct offender. Zheng shared a common traditional Chinese view that someone who died unjustly would return

¹¹¹ *Guijian*, 5.78; *Yizhu*, 307 (entry 149, "Xiang Wei" 向纬).

¹¹² See, for example, *Guijian*, 6.87-8, 6.97, and 8.128; *Yizhu*, 339, 374, and 481 (entries 169, "Wu Yuanheng" 吴元亨, 191, "Wang Zeng" 王曾, and 252, "Ge Yuan" 葛源 respectively). McKnight, 381-2, notes that judges were also rewarded for having no offenders in the jails under their control.

as a malevolent spirit, and might even cause major natural disasters until the offender was properly punished. Though Zheng only cites a small handful of cases where ghosts actually appear on the scene, he often reveals his belief indirectly by the extreme concern with which he reacts to any kind of injustice in the case records.

To start with a famous example of ghostly retribution, the first case in entry 2 describes a judge of the Jin dynasty who successfully overturns a false accusation against an innocent woman, and saves her from being executed. Zheng then appends two other negative examples from earlier periods to serve as warnings about what might have happened if the false accusation had led to the woman's death.¹¹³ Since both appended cases are similar, I will quote only the first:

There was a filial woman in the Donghai 東海 region who was widowed young and had no son. She looked after her mother-in-law very conscientiously, and even though the mother-in-law wanted her to remarry, she refused. Later, the mother-in-law committed suicide, and her daughter complained to the court, saying: “[My sister-in-law] killed my mother.” The officers arrested the filial woman, and even though she denied killing her mother-in-law, she finally confessed after repeated interrogation. . . . [Having reviewed the case], the governor sentenced the filial woman to death. Then the whole region experienced a serious drought for three years. . . . Yu Gong 于公, [the regional prison officer, who had always believed in the woman's innocence], said: “The filial woman should not have died, but the former governor insisted on that verdict. Couldn't our disasters be due to this?” The new governor then killed an ox, offered it before the filial woman's grave, and set up a banner over her tomb [declaring her innocence?]. Immediately rain poured down and there was a bumper harvest that year.

[Zheng comments]: Only by recording such cases illustrating the dangers of injustice can one truly appreciate the noble achievements of those who save people from injustice.

Because of the risk of such supernatural retribution, it was absolutely essential not only that the correct offender was properly sentenced, but that even in situations where a death may have been a natural one, full investigation established the cause beyond a reasonable doubt. Otherwise, a victim's ghostly wrath might not be assuaged. An example of the necessity of punishing the correct offender is entry 38, which cites two cases where the judicial clerks wish to cut corners to save time and to avoid the possibility of being disciplined for failing to solve the crime.¹¹⁴

In the first case, a robber kills someone and dumps the corpse in a field. The landowner moves the body off his field, but a neighboring girl reports him to the authorities. He then kills the girl's mother. While charging him for this murder, the clerks

¹¹³ *Guijian*, 1.1; *Yizhu*, 2-3 (entry 2), first appended case, “Yu Gong” 于公. Van Gulik, 76 (2a), translates the positive example from the same entry, entitled “Cao Shu” 曹攄.

¹¹⁴ *Guijian*, 2.24; *Yizhu*, 100-1 (entry 38, “Chen Jian” 陈薦).

want to add the first murder to the charges as well, since the man is already due to be executed anyway. The judge refuses, and eventually the original robber is caught and punished.

In the second case, a dead body is discovered by the judge himself, half submerged in water. Someone tells him: “This is a famine year, and many people have died of hunger. Why not cover it up and avoid the risk of failing to catch the bandits [who killed him]?” Again, the judge insists on pursuing the murderers, and they are ultimately apprehended. Zheng comments:

After the field owner killed the girl’s mother, he certainly deserved to die. But if [the officials] had made him falsely confess to being the robber who killed the other person as well, then the crime of the robber would have gone unpunished and the victim’s feeling of resentment would not have been assuaged. Nothing is more disastrous than this! It is . . . treating something very serious as if it were trivial. . . . What the gentleman considers most important is to allow [victims] to release their resentment.

Clearly, Zheng is worried that punishing the wrong person -- even one who has already committed a capital offence -- will result in the kind of terrible reprisals that we saw in the case of the filial woman. This is why he uses the same word here, “disastrous” (*jiu* 咎), as Yu Gong did in that case to describe the three-year drought.¹¹⁵

A final example underscores the point by distinguishing between the effects of different kinds of death sentence.¹¹⁶ A man arrested and charged with kidnapping children, for which the penalty was death by strangulation, had used a special technique to feign death before the sentence was carried out, then escaped when the coast was clear. After being recaptured, he tried the same trick, but the judge ordered that his body be burned. Zheng gives the following interesting evaluation:

Because he feigned death, [the judge] therefore treated him as if he really was dead. But if [the judge] had just buried the body straightaway it would have been sufficient to spoil the man’s deception and punish his evil, so why did he have to burn him? . . . According to the law, the punishment for kidnapping other peoples’ children does not include mutilation of the corpse, so burning the body was not acceptable here.

This statement only makes sense if we assume that Zheng believed those who had already been executed would feel “wronged” if their corpses were mutilated, since the

¹¹⁵ Cf. another case where Zheng directly refers to ghosts: “Even if those guilty of abusing the law [to punish the innocent] are lucky enough to escape censure, the ghosts [of their victims] will manage to destroy them!” *Guijian*, 8.136-7; *Yizhu*, 514 (entry 270, “Li Shiheng” 李士衡, comment).

¹¹⁶ *Guijian*, 5.67; *Yizhu*, 262 (entry 124, “Liu Shi” 刘澍). Van Gulik, 153 (53a), explains that the man’s special ability in this case was a Taoist technique called *Yang* death (*yangsi* 阳死), or “suspended animation,” in which the heart was temporarily stopped.

punishment was too extreme for their crime, and their resentment would adversely affect the social and natural order.¹¹⁷

If wrongful punishment leads inevitably to supernatural retribution and social chaos, correct and fair judgments will presumably have the opposite effect. In the case of the filial woman above, we saw that public recognition of the woman's innocence and propitiation of her spirit led to much-needed rainfall and a bumper harvest. Earlier, we quoted another case where the ghost of a murdered woman came to thank the judge who finally convicted her killer.¹¹⁸

Yet a more common manifestation of cosmic support for the good and careful judge -- at least according to the cases in the *Magic Mirror* -- was supernatural intervention that helped to solve a crime and capture the offender when all hope of doing so appeared to be lost. We might call this the cosmic response to those who seek justice sincerely, or to use Zheng Ke's phrase, "supreme sincerity and compassion will certainly receive spiritual assistance."¹¹⁹

There are two main ways in which such supernatural interventions occur in the *Magic Mirror*. The first is through the judge's dreams, usually after he has exhausted all avenues investigating a case and finally resorted to prayer. The second is through a remarkable stroke of good fortune on the judge's part, something that can only be explained as the result of cosmic assistance. The latter do not always involve prayer, but invariably occur after the judge has proved his determination to solve the crime and absolve the innocent. An example that includes both kinds of intervention is entry 157:¹²⁰

The high court of Jiangnan 江南 was once trying a murder case, but could not establish the true facts. A court officer worried about the case night and day, and eventually burned incense and prayed fervently that the spirits would help him. He then dreamed that he was passing by a dried up river and climbing a high mountain. When he woke up, he thought about it and said: "A river (*he* 河) without water is the character *ke* 可; and a mountain (*shan* 山) that is high (*gao* 高) is the character *song* 嵩. Someone then mentioned that there was a monk at the Chongxiao Temple called Kesong 可嵩, so he requested that the court clerk write a summons. When [the monk] arrived and was questioned, he appeared to be

¹¹⁷ The distinction in traditional Chinese codes between execution by strangulation and by beheading, with the latter considered more serious due to mutilation of the corpse, also demonstrates the belief that different forms of death affected the person's spirit in different ways. For discussion of this point, see Johnson, 59-60n.74 and Bodde, *Law in Imperial China*, 92. For further discussion of the various kinds of death sentence used in the Song, see McKnight, *Law and Order*, chap.13 (446-471).

¹¹⁸ See section two above, and *Guijian*, 6.83; *Yizhu*, 323 (entry 159, appended case, "Li Jinglue" 李景略)

¹¹⁹ See *Guijian*, 1.2; *Yizhu*, 6 (entry 3, "Fu Rong" 苻融, comment).

¹²⁰ *Guijian*, 6.82-3; *Yizhu*, 320 (entry 157, "Court Officer" 狱史). Van Gulik, 117-8 (29b). This case dates from the Five Dynasties period (907-960), when Jiangnan was the capital of the Southern Tang kingdom, so the highest court in the kingdom was based there.

innocent. But suddenly [the officer] spotted some black stains on his sandals. When asked where they came from, [the monk] said: “I splashed them with ink.” . . . But when further questioned, the monk began to look shifty, so [the officer] had the ink washed off and underneath were bloodstains. When confronted with this evidence, the monk confessed to the crime.

In his comment below, Zheng Ke does not attempt to explain away the prophetic dream, but he does emphasize that it only happened after the judge used all his efforts to solve the crime in a more orthodox manner. Obviously, Zheng does not want judges to neglect their ordinary investigative work and rely instead on ethereal spirits to do the work for them. His comment also compares this case to two other similar occurrences, which I will explain in parentheses:¹²¹

The case of Kesong is similar to that of Feng Chang 馮昌, [in which the judge had a much more elaborate dream spelling out in symbolic form the characters of the murderer Feng Chang’s name].¹²² However, when [the officer] still had no proof of [Kesong’s] guilt, how could he have uncovered it if [Kesong] had not happened to be wearing the same bloodstained sandals? He doubtless received spiritual assistance here too, just as in the case where Xiao Yan 蕭儼 prayed to the spirits and thunder startled a cow to death. [In this case, a man had accused his neighbor of stealing silk sheets that were drying in his garden. In fact they had been eaten by the man’s own cow -- the very one killed by the thunderstorm -- as the judge discovered when he cut open the dead animal and found the sheets in his belly! The spirits thus prevented a wrongful conviction of the neighbor].¹²³ This is not a result that intelligence and inference could have predicted. He Ning once wrote:¹²⁴ “With pure sincerity you must fast, and pray that you will receive help from Heaven above; with fierce determination you must read classic texts, and long for inspiration from the distant past.” If one applies both these approaches when deciding cases, surely one will not encounter difficulties.

In other words, a sincere thirst for justice coupled with a willingness to study ancient texts carefully will put Heaven on one’s side, and will lead to unexpected solutions for intractable cases. The judge’s effort is crucial because the supernatural response still requires interpretation -- a symbolic dream or an ink-stained sandal only provides a clue -- and this will be impossible without broad learning and careful attention to detail.

¹²¹ *Guijian*, 6.83; *Yizhu*, 320 (entry 157 comment).

¹²² See *Guijian*, 1.2; *Yizhu*, 6 (entry 3, “Fu Rong”). Van Gulik, 116-7 (29a).

¹²³ See *Guijian*, 2.15-16; *Yizhu*, 65-6 (entry 21, “Xiao Yan” 蕭儼). Van Gulik, 139-40 (44a).

¹²⁴ He Ning: introduced earlier as one of the compilers of the *Collection of Doubtful Cases*. I have not managed to locate the source of this saying.

A final comment by Zheng Ke on another dream case makes the point especially clearly, and provides a fitting conclusion to this discussion. The case involves a landowner due to be sentenced to death for killing one of his tenant farmers.¹²⁵ Just before the sentencing hearing, the judge dreams that someone is telling him to delay the execution. He decides to wait, and about two weeks later a decree comes down from the Emperor declaring that this kind of offence is no longer a capital crime. The accused is therefore spared execution. Zheng comments:

This is not the result of rational thought. But doubtless because [the judge] was in the habit of being compassionate and careful, he was moved to respond to his dream. The *Record [of Rites]* [禮]記 says: “After following the Way of supreme sincerity, one will be able to know things in advance.” Wasn’t it referring to situations like this?

Conclusion: The Roots of Disorder and Harmony

In his comment on the *Magic Mirror* in the annotated catalogue to the Imperial Library collection, the Qing scholar Ji Yun 紀昀 (1724-1805) criticized Zheng Ke for “erring on the side of leniency” in his commentary.¹²⁶ He worried that Zheng’s approval of pardons and lighter sentences wherever possible might encourage judges to let offenders off the hook, leading to a serious increase in crime levels. Hence, he believed that Zheng’s book, though a useful source of information and more detailed than the *Collection of Doubtful Cases*, should only be read with caution.

Another more recent scholar, Yu Jiayi 余嘉錫, defended the book against Ji Yun’s attack, arguing that even if some sections do advocate leniency where the law allows it, others are equally concerned with punishing offenders properly for their crimes, including executing them if the Code and facts of the case require it.¹²⁷ He noted a number of cases where Zheng Ke even supported judges who created stricter penalties than the law demanded, or who convicted offenders, such as young children, who would normally have been exempted punishment under the Qing Code.¹²⁸ Yu’s conclusion was

¹²⁵ *Guijian*, 8.140; *Yizhu*, 528 (entry 279, “Wang Qi” 王琪).

¹²⁶ Ji Yun’s full annotation is collected in the appendix to *Yizhu*, 534-5.

¹²⁷ See Yu Jiayi’s full comment in *Yizhu*, 535-6, entitled “Refuting the Annotated Catalogue of the Imperial Collection” (*siku tiyao bianzheng* 四庫提要辨証).

¹²⁸ These cases include *Guijian*, 4.46, 4.56, 5.63, 5.65, and 5.68; *Yizhu*, 180, 222, 245, 254, and 265 (entries 77 appendix, “Wang Zun” 王尊, 99, “Jia An” 賈黯, 114, “Kong Xiuzhi” 孔琇之, 119, “Zhang Yong” 張詠, and 127, “Wu Zhongfu” 吳中復). They deal respectively with: an incestuous son summarily executed by being hung in a tree and shot; a man punished for not realizing that his father had been dead for three years; a nine-year old boy prosecuted for theft; an insubordinate clerk summarily executed with a sword; and a soldier executed for beating his superior officer. Cf. Van Gulik, 97 (15b).

that Ji Yun did not read the book thoroughly, but based his evaluation only on the opening and closing sections. When considered as a whole, he claimed, the *Magic Mirror* in fact attained a balance between leniency for those who deserved it, and strict punishment for those who did not.

I would agree with Yu Jiayi's challenge to the claim that the *Magic Mirror* is too lenient. As the numerous cases quoted above demonstrate, Zheng Ke's overwhelming concern is not to allow offenders to go free, but to ensure that the victims of crimes -- especially the deceased victims -- obtain redress. This will then prevent the social unrest and natural disasters that follow from injustice left unchecked. Redress comes from punishing the true wrongdoer with a sentence proportional to the crime. Yet the logical extension of this concern for redress is that punishment of a person who did *not* commit the offence, whether due to false accusations, corruption, careless errors in investigation, or ignorance of the penal code, simply will not appease the victim. A wronged spirit cannot be deceived, and punishing an innocent person for someone else's crime will only add another resentful victim to create cosmic and social disturbances.

Hence, what Ji Yun calls Zheng Ke's leniency is actually, in the great majority of cases, his determination to avoid punishing the innocent or harshly sentencing those charged with lesser offences. Indeed, Zheng's commentary implies that many judges in his own day were much more likely to err on the side of harshness than leniency, since they wished to prove their authority and stun the people in their jurisdictions into submission. They needed no encouragement in the direction of stricter punishments. According to Liu Xun's preface to his Yuan dynasty selection of cases from the *Magic Mirror*, Zheng Ke composed the book as his personal response to an Imperial edict of 1133, in which Emperor Gaozong ordered his officials to "think carefully about punishments, and warned those in the capital and provinces to exercise extra care, requiring them to set their minds on pity and compassion."¹²⁹ The fact that such an edict was considered necessary in the first place strongly indicates that many judicial officials were abusing their power and punishing people indiscriminately, and therefore needed restraining.

Beneath the surface of this debate about leniency and strictness, we can discern a more profound disagreement about the causes of social disorder and the best way to stamp it out. In Zheng Ke's view, there were three main causes of disorder: the first was, as we mentioned, the resentment of wronged victims whose attackers had gone unpunished. The second was people's ignorance of the rules for correct behavior, leading to social conflict, especially within families. And the third was poverty that led to desperate and illegal measures like theft and banditry.

Zheng argued that local judicial officials, who were also the most important government representatives in each region, should accept responsibility for all these kinds of disorder. As a result, though they must still punish those who committed serious offences such as injuring or killing another person, they should also be willing to reduce minor offenders' sentences, or pardon them completely, if their crime was due to ignorance or poverty. This explains Zheng's approval of judges who mediated between feuding family members rather than automatically punishing those of lower status as the

¹²⁹ See Liu Xun, *Yinju tongyi*, 31.317. Full preface translated in Van Gulik, 39.

Code stipulated; also his approval of judges who universally reduced sentences for theft during times of drought and famine.¹³⁰ If people had no food and no knowledge of how to comply with the law, then punishing them harshly “as a warning to others,” far from solving the problem, would merely add to their resentment and their tendency to take the law into their own hands. What the judge/local governor had to do instead was feed the people properly and educate them in correct behavior, while being extremely cautious about investigating and punishing their crimes. In this way, Zheng believed, social order and reduced crime levels would naturally come about.

The opposing view, presumably held by those judges whom Zheng criticizes in the *Magic Mirror* for being over-harsh, was that the causes of social conflict and disorder were immaterial. The important thing was to punish all offences as strictly as possible, ignoring most mitigating circumstances, and thereby frighten people into obeying the law. Those who advocated such a view also demonstrated by their judgments that any crimes involving insubordination, such as younger family members offending their elders, or groups of ordinary people stealing from public property, should be punished with extra ferocity, without requiring full investigation.¹³¹

The record of the 1133 Imperial edict calling for “pity and compassion” among officials suggests that Zheng Ke’s more “liberal” view of how to deal with social disorder was the officially accepted one during the Southern Song. Other contemporary records of judgments from the period, such as the *Qingming ji*, also indicate that there were significant numbers of judges who made an effort to be lenient when the circumstances of the cases allowed it.¹³²

Unfortunately, in later dynasties, and especially by the mid-Qing period, the “harsh justice” method for overcoming social disorder seems to have supplanted the approach advocated by Zheng Ke, at least judging by the majority of surviving case records. In particular, the later cases show an extreme reluctance to pardon any offenders who have harmed their parents or elders, even unintentionally, or whose parents have accused them of unfilial behavior.¹³³ Likewise, anyone suspected of banditry, fomenting disorder, or stealing from the government would usually receive an extremely harsh sentence in the Qing, without regard for the circumstances.¹³⁴

¹³⁰ For examples of the latter, see *Guijian*, 8.137-8, 8.140; *Yizhu*, 516-18, 529 (entries 271-3, “Wang Bowen” 王博文, “Wang Zhi” 王质, “Chen Zhifang” 陈执方, and 280, “Wang Yanxi” 王延禧). For mediation between family members, see section 3 above.

¹³¹ McKnight, in *Law and Order*, terms these harsh punishment advocates in the Song “legal conservatives,” and gives numerous quotations of their views: see, for example, 331-4, 474-9, 483, 490.

¹³² See *Enlightened Judgments*, 354-60, 371-6. McKnight also notes that, for various reasons, the number of executions seems to have decreased considerably from the early Southern Song onwards. See *Law and Order*, 464-9.

¹³³ For examples, see Ch’u, *Law and Society*, 42-44, 57-60.

¹³⁴ As many scholars have noted, the Qing rulers’ paranoia about social disorder and rebellion likely had its source in their being foreign invaders attempting to maintain control of a resentful Chinese populace. See, for example, Fu-mei Chang Chen, “On Analogy in Ch’ing Law,” *Harvard Journal of Asiatic Studies* 30 (1970): 223-4; and Bodde, *Law in Imperial China*, 186-89, 286-8, 481-6. For the contrasting approach

It is not surprising, therefore, in the light of these historical developments, that Ji Yun considered Zheng Ke's commentary to be too lenient. Rather than assuming that he failed to read the whole book, as Yu Jiayi unfairly suggested, we should instead place Ji Yun's evaluation within the Qing legal context. In comparison with the general tenor of surviving Qing judgments, most of the cases that Zheng Ke selected for approval do appear remarkably lenient -- even, some might argue, enlightened.¹³⁵

Thus, the significance of Zheng Ke's case selections and commentary is that, when read as a whole, they provide a well-reasoned and relatively systematic Song counterweight to the harshness of Qing criminal jurisprudence, and warn us against the fallacy of treating Qing views of justice as representative of the whole imperial period. They also remind us that, at least for some traditional Chinese thinkers, the central purpose of law and adjudication was not controlling the people through punishments, but rather, preventing injustice, protecting the innocent, showing sympathy for the poor and weak, and ultimately, bringing about social and cosmic harmony.

adopted by Zheng Ke, see the group of cases on people stealing salt and other goods from the State, in *Guijian*, 4.58-60; *Yizhu*, 234-242 (entries 107-112). Most are pardoned or allowed to repay the goods without further punishment. Of course, serious bandits and those convicted of sedition would also receive extremely harsh sentences in the Song, as in any Chinese dynasty: see McKnight, *Law and Order*, 450-2, for some examples.

¹³⁵ One cannot object that the *Magic Mirror* examples are not authentic cases, and therefore are unreliable indicators of Song attitudes, since Zheng himself makes it clear that he would *like* such judgments to be made in his day, no matter whether the original text was completely reliable or not.