

死刑與儒家的公平正義—中國傳統法律有關寬宥的限度
Capital Punishment and Confucian Justice: The Limits of Leniency under
Traditional Chinese Law

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清朝命案刑科題本的近代讀者，不得不佩服清代縣長調查和審判命案時所表現的勤勉跟稱職。命案刑科題本一方面簡潔明確記載了命案的必要條件，譬如案情、證據和口供等，並詳述該案觸犯了那些法律，應該如何判刑。另一方面，刑科題本對整個悲劇的發生，也有委婉細膩的描述。如此撰述的目的，是為了顯示犯罪者與被害人的動機及其道德本性。第一層內容是為了給上級長官在複查該案時，用以判定有罪或無罪的依據。第二層描述則是為了讓上級長官能夠依此推斷犯罪者與被害人的行為，以便在秋審的時候做出最正確的判決。

因此，從縣長的立場來看，審理每一件命案不僅要有效率，同時也必須兼顧人道的考量。本篇文章分析四件因為「護親情切」而殺死人的案例，充分顯示縣長如何運用嫻熟的技巧，把明確及不明確的案情片段結合起來，做出既符合清代法律規定也顧及當時道德標準的判決。官僚體制為求效率，在執行律法時似乎會和儒家的仁義道德產生矛盾。但作者認為，清代處理命案的法律制度，已足以解決該項問題。

The modern reader of Qing dynasty homicide reports cannot help but be impressed with the diligence and competence that magistrates displayed when investigating and adjudicating capital crimes. At one level these documents were straightforward and direct accounts which succinctly presented the essential elements of the crime, forensic evidence, and testimony to determine which laws had been violated and which punishments were appropriate. On another level, these documents were subtle depictions of a tragic event and were intended to suggest the motivation and moral character of victims and offenders. Information provided at the first level was aimed at the judicial review process that established guilt and innocence. Information supplied at the second level enabled superior officials to draw inferences about the behavior of offenders and victims which was critical to determining final sentencing of capital crimes at the autumn assizes.

In this way each homicide report challenged a magistrate to balance bureaucratic efficiency against humanistic values. This paper examines four

case records of individuals who committed homicides while rescuing their parents from violent attacks. An examination of these crime reports will reveal how county magistrates skillfully combined the presentation of explicit and implicit information designed to address the both legal requirements and moral values of Qing law. Finally the paper will argue that the Qing legal system for adjudicating capital crimes was well-designed to accommodate seemingly contradictory demands of bureaucratic efficiency and Confucian benevolence.