

Between ‘Civil’ and ‘Criminal’ Procedure: Handling Homicide Cases at the District Level in Qing China

Author: Terada, Hiroaki

Translator: Chang, Teng-Kai

Abstract

Regarding the judicial system of traditional China, there is a scholarly description that “Cases that were related to civil affairs (Huhun Tiantu) were concluded at the district level (Zhouxian, i.e., the lowest level of administration), whereas heavy criminal cases (Mingdao Zhong’an) were reported to higher officials [for the sake of review]”. This well-established characterization, which also frequently appears in Chinese legal history textbooks, leaves the impression that all cases were seemingly objectively divided into two categories (i.e., ‘civil’ and ‘criminal’) at the district level.

However, in reality, any single case was initially heard at the district government and the decision as to whether to settle it locally or report it to upper organizations, and if so what kind of punishment should be appealed before the report, was made through a variable and complex procedure. Surprisingly, the real condition of handling a heavy criminal case at the district level, the most important stage in the whole judicial process for such a case, has not sufficiently been explored and discussed so far. One reason for this seems to be that there is no case that was reported to higher officials by the district government in the Danxin Archives (Danxin Dang’an), which have been the principal primary sources for the study of China’s traditional judicial system.

In contrast, this paper is based on more than 700 homicide cases from the Baxian Archives (Tongzhi era), which allow the author to focus on cases that were reported to higher officials from the Baxian government. These shed light on (a) the judicial procedure of handling homicide cases at the district level, which was very closely similar to that of judging a civil case, including the procedures that were hidden behind the judicial documents themselves, and (b) the social background of the cases—most of which prove the existence of private monetary settlement. In order to reach these conclusions, the paper analyzes the contents of judicial documents in which cases were reported and initiated by the relatives of the dead by appealing autopsy but were finally judged as a death by accident, at the district level, without a report to the upper institutions. In doing so, this paper discusses how the ‘criminal cases’ were distinguished from the numerous cases that were accepted by district government and the social foundation upon which crimes were judged.

Keywords: Baxian Archives, Heavy Criminal Case, Confession Record, Review by Higher Officials, Private Settlement