

## 罪與罰：由刑科題本析論清代刑案書寫\*

李麗芳\*\*

制刑和制禮是傳統中國法律文化一體之兩面。各個時代的刑案書寫和記載，無疑是一種負面表述的禮教呈現。作為一種罪與罰的歷史書寫，本研究想要從刑案書寫文化的視角，重新理解清代刑科題本。首先，刑科題本是書寫刑案的一種文類，由於融合了官方文書、審轉制度、程式組合等層面，使得其更加具備歷史觀察的價值。其次因為牽涉重大事故與人命案件，並且隸屬清代官方文書的重要檔案，皇權的凝視隱隱然跟隨著每一卷宗。因此之故，模式化與定型化的刑案書寫，反而是常見的操作手段和寫作手法，同時也是一種必要之惡。有鑑於明清時期的官箴書，收錄有刑名圖式也提到「程式」一詞，從以圖說法背後的邏輯思維談起。其次，刑科題本如何從零到有著手，一一填滿圖示與程式留下的空白，是這裡首要處理的問題意識。程式要能發揮具體的意義，必須適切地鑲嵌進不同的日常生活脈絡，而不同類型案件裡可能都隱藏了特定的儒家價值。總而言之，刑科題本攸關罪與罰的清代刑案書寫，最終都猶如一種舞台上的文字展演。

關鍵詞：刑科題本、刑案書寫、以圖說法、程式、文本

---

\* 本文承蒙匿名審稿人與編審委員諸多指點與建議，謹此致謝。

\*\* 國立臺灣大學歷史學系博士

## **Crime and Punishment: Analyzing the Writing Up of Criminal Cases Based on the *Xingke Tiben***

LI Li-fang\*

Formulating a system of penalties and determining a system of rites are two sides of the same coin in traditional Chinese legal culture. Writings about criminal cases of any period are not only part of the penalty system, but also negative expressions of the Confucian values. As a historical essay about crime and punishment, this research aims at providing a new understanding of *Xingke Tiben* (Board of Punishments routine memorials) from the perspective of the culture of criminal case writing. To begin with, this is a genre of writings about criminal cases. Since the *Xingke Tiben* were an embodiment of official documentation, of the judiciary system, and of the integration of standards, they have become highly valuable as a lens into history. In addition, as they concern serious events and lawsuits related to human lives, and constitute an archive of official documents of the Qing Dynasty, almost every case was subject to the imperial gaze. Therefore, the writing up of cases according to fixed models and formulas can be found frequently and was a necessary evil.

This research asks how the style of writing up criminal cases came to be fixed and how it could be modified. Since the term “formula” is mentioned in the official documents of both the Ming and Qing Dynasties, this study explores the role of this concept, as well as its significance. The true purpose of a “formula” can only be seen in the context of daily life; meanwhile, particular Confucian values may be hidden in each of the different kinds of

---

\* Ph.D, Department of History, National Taiwan University.

cases. In sum, the writings about criminal cases that relate to crime and punishment, such as the *Xingke Tiben*, are in the end a kind of textual performance.

Keywords: *Xingke Tiben*, writings about criminal cases, formula, text, image of the *Great Qing Code*