

The Principle of “Citing Enactments to Draft Judgment Texts” in Court Verdicts in Song Dynasty

Liu, Hsin-chun

Abstract

This article investigates the procedure of settling a lawsuit and the function of court verdicts and judgment drafts as well as the practice of litigations by analyzing the legal documents pertaining to the system of “jianfa nibi” (Citing Enactments to Draft Judgment Texts) in Song Dynasty. This article also examines the local administrative bureaucrats in terms of their role and function in handling judicial cases.

The final procedure of handling legal cases in Song Dynasty was called “Jiejue,” in which the officials concluded a verdict by taking human sympathy and laws into account. When rendering the verdict of both criminal and civil cases, the officials would consult all past related judgment drafts as references. If imprisonment was involved in an inquisition by torture, both prison officers’ interrogations and judges’ prosecution reports were regarded as “judgment drafts.” Theoretically the previous recorded only prisoner’s affidavit without being adulterated with guided confession, and the later cited applicable laws and decrees without being compromised by personal opinions. In this regard, the settlement of a lawsuit in Song Dynasty relied heavily upon the opinions of the “legal drafters” from all departments rather than the judgments of judicatory officials.

Though the exercise of litigation appeared booming in

Chinese society since the Song Dynasty, the government didn't invoke penalty to prevent it. Instead, the government endeavored to improve legal procedures and nomological reasoning. Consequently the conditions of people tending to solve their disputes by means of lawsuits became several interactive judging systems.. After Emperor Gaozong of Southern Song, the Court stipulated that the court verdicts should be provided on disputes pertaining to marriage, grounds, and employment. Court verdicts equal to the count of the felony: "Resolving Laws to Sentence", namely a judgment wording of settling a lawsuit at certain district Yamens (the government offices).In order to conclude a verdict, judges were required to quote related enactments according to corpus delicti. However, as innumerable as the enactments in Song Dynasty were, the purposes of judging cases such as marriage, grounds, and employment weren't aiming at penalty, and even the national laws were not merely supporting judge officers to sentence. In order to prevent litigiousity and administrative errors as well, the system of "Citing Enactments to Draft Judgment Texts" was thus put into practice in the local Yamens.

As far as the function of "Citing Enactments to Draft Judgment Texts" to be concerned, ideally efficient drafters would citing and elaborating related arguments from the Confucian classics. Drafters could only consult the laws, and have no right to conclude verdicts. They should instead examine every detail of the cases and offer solutions to all possible scenarios for their superiors to decide. The key function of the draft judgment was, instead of concluding a verdict, to provide analysis of the cases with all nomological considerations. Last but not least, the complaint-rejected ordinances could be used to prevent litigiousity.

Local officials like prefects and county magistrates also took charge of the exercise of "Citing Enactments to Draft Judgment Texts" while dealing with criminal and civil cases. It was

helpful for the officials of local Yamens to gather their subordinates and deliberate together on those doubtful and disputed cases. The practice of “Citing Enactments to Draft Judgment Texts” could help training local officials by going through these legal procedures and therefore enhance their ability as local prefects and county magistrates. Arguably such practice also resulted in specialization and departmentalization of the local governments. To sum up, even though there have always been management problems of corrupt bureaucrats and petty officials, the practice of “Citing Enactments to Draft Judgment Texts” was, by any means, an essential part that could never be overlooked in the development of legal systems in Song Dynasty.

Keywords: Court verdict, Drafting judgment texts referring to enactments, To interrogate and adjudicate, False court verdict, Complaint-rejected ordinance