

**On the Judicial Methodology of Qing Dynasty:
An Argument Based on *Xing An Hui Lan
San Bian*(Conspectus of Penal Cases)**

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This paper represents an attempt to enter an historical context and examine traditional jurisdiction in China from a sympathetic point of view. With a keen awareness of both the characteristics of the traditional study of law (*lüxue*) and the objective and difficulties of traditional justice administration, this paper investigates Qing judicial methodology through an analysis of legal articles (the law as it ought to be) and several cases from the *Xing An Hui Lan San Bian* (the law as it actually is). It will focus on cases where the relevant laws were not applicable and jurists had to resort to legal findings; it will also touch upon the relationship between the use of “analogy” (*bi fu yuan yin*) and the penal modification. The author concludes that traditional jurisdiction demands both citing relevant legal articles and matching the crime with a corresponding situation. The former refers to the application of the appropriate legal articles and the latter, the pursuit of justice in each particular case. Traditional law is characterized by “objectivity and concreteness” and “absolute legal penalty,” which are in conflict with one another. The legislation and regulation of “objectivity and concreteness” lend to the excessive rigidity of the law, making it difficult to apply to actual circumstances. Even more difficult is balancing “absolute legal penalty” with the perplexities of each case. For this reason, the use of analogy was routine in judicial implementation. Analogizing was not merely reasoning by comparison, it was also a very creative means by which to discover, expound upon and prove punitive provisions. It called upon the like standards used in

equivalent situations and demanded that the situation correspond to the crime. Analogizing enabled jurists to discover, expound upon and prove the rules of punishment, where traditional legislative techniques had failed to do so. Naturally, the determination of such standards was founded on judicial experience and was restricted by the perfect system of judicial rehearing.

Keywords: study of law (*lǐxue*), jurisdiction, analogy (*bi fu yuan yin*)