

明清時代的判語考試與法律知識^{*}

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明清科舉考試之中的「判語」科目，是否能視為官員法律知識學習與培養的途徑？本文透過判語科目的出題、作答，以及佳作範本的整理與分析之後，認為判語科目的作用在於公文的寫作能力，並非實際審判的能力。考題、律文、答案並無絕對關係，題目流於追求相同字數的文字遊戲，未能反映政府意志與期許。作答方式也有固定格套，不僅能發現實際作答內容與判語範本相似，即使考生之間、範本之間，也都有重覆的情況。因此判語考試做為一個公文寫作的科目，便在乾隆二十一年（1756）被正式取消，但判語的行文結構卻做為文體被保留下來。

關鍵詞：科舉考試、判語、判牘、法律知識

^{*} 本文基礎於筆者博士論文〈法律、犯罪、社會：清代後期重慶竊盜案件的官員思考模式〉第三章部分內容，並增加部分篇幅與討論。另宣讀於中國明代研究學會2020年年會，感謝與談人李仁淵先生的批評，以及邱澎生先生、林麗月先生、巫仁恕先生、王鴻泰先生、吳政緯先生的建議，同時感謝匿名審查人的指正。

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Judicial Terms and Legal Knowledge in the Ming and Qing Periods

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Did the “Judicial Terms” (*panyu* 判語) section of the Ming and Qing civil service examination system reflect the legal knowledge and training experience of the officials? Analyzing the topics, answers and model essays of the “Judicial Terms” section, this article argues that the utility of this section lay in demonstrating proficiency for composing official documents, but not actual judicial capability. The examination questions, legal essays, and answers did not have direct relevance, and the topics devolved into matching word-counts, rather than reflecting the purposes and needs of governing. Writing the essays also required fixed styles, with close correlations between the student essays and the model essays, as well as direct textual repetition between student essays and among the models. Hence, the “Judicial Terms” section of the examinations was actually a test for writing official documents. The section was officially phased out in 1756, but the “Judicial Terms” format continued to be an important genre.

Keywords: civil service examination, judicial terms, judicial documents,
legal knowledge

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