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So Kee Long, "The Case of A Yiin: A Textual Review of Some Crucial Facts", The East Asian Library Journal 7, no. 2 (1994): 41-71, accessed January 14, 2017, https://library.princeton.edu/eastasian/EALJ/long_so_kee.EALJ.v07.n02.p041.pdf

The Case of A Yün

A Textual Review of Some Crucial Facts

SO KEE LONG

The case of A Yün is one of the best documented legal cases of Sung China, providing modern scholars with a chance to examine in considerable detail certain intriguing dimensions of the Chinese legal tradition. Although the case has been meticulously studied and discussed at some length by numerous scholars,¹ textual scrutiny renders questionable their descriptions of many details. This article adopts a textual approach to the case in order to reconstruct it on a more reliable basis for future interpretive pursuits.

PREVIOUS SCHOLARSHIP

Of the numerous sources cited in previous studies,² the “Biography of Hsü Tsun” in the *Sung shih* and records in the *Wen-hsien t’ung-k’ao* provide the most basic materials. Hsü Tao-lin, a modern scholar, was the first to try to produce a detailed account of what had happened.³ The following account of the case is based on his work, which is representative of the viewpoint of previous scholarship. Numbers in brackets have been inserted in the text to indicate points that are examined later.

The incident occurred sometime before 1068. A woman named A Yün who lived in Teng-chou Prefecture (modern Shan-tung Province)

was betrothed to a man named Wei A-ta during the period she was mourning her mother's death, and had not yet been formally received by the groom into his household. A Yün, finding her fiancé an ugly man, attempted to kill him during the night while he was asleep in a farm hut. She hacked him with a knife over ten times, but was able only to sever one of his fingers. Unable to find any attacker, the local authorities [1] began to suspect A Yün and arrested her for questioning. She confessed before inquisitional torture was applied to her.[2]

Hsü Tsun, [3] prefect of Teng-chou Prefecture, referred the case to the Supreme Court.[4] On the basis of a statutory provision that confession redemption would not apply if bodily harm had actually occurred, the Supreme Court held that A Yün should be sentenced to strangulation. Hsü Tsun, however, disagreed and argued that A Yün's confession should be taken into consideration and that her punishment should be reduced by two degrees. The Imperial Court passed the case to the Board of Punishments for further discussion. After reviewing the case, the board rejected Hsü's argument and upheld the Supreme Court's decision. But the throne was quite lenient toward A Yün, allowing her to make a payment for redemption of her sentence.[5]

Later Hsü Tsun was himself promoted to the position of judge on the Supreme Court.[6] There he was criticized by the Censorate for having made an error when handling A Yün's case. But Hsü rejected the accusation. Instead he pointed out that the Supreme Court and the Board of Punishments should be criticized for their decision, which, by refusing to grant reduction of punishment to A Yün after her confession, would discourage future offenders from confessing to the authorities. Hsü Tsun suggested that A Yün's case be reviewed by Hanlin academicians and edict drafters (jointly called *liang-chih*). Emperor Shen-tsung (1048-1085) assigned the task to Ssu-ma Kuang (1019-1086) and Wang An-shih (1021-1086). But these two arrived at opposite opinions, the former supporting the decision of the Board of Punishments, the latter that of Hsü Tsun. A favorite of the emperor, Wang managed to have his opinion accepted by the court. An edict was issued on the third day of the seventh month, 1068, stipulating that for those who had plotted to kill and had caused bodily injuries, sentence would be reduced by two degrees if they confessed before the interrogation.

This edict, however, was unacceptable to many court officials.

They even asked the court to remove Hsü from office. On advice from the censor-in-chief, the throne decided to convene a second review by officials from the *liang-chih*. This time Lü Kung-chu (1018–1089), Han Wei (1017–1098), and Ch'ien Kung-fu were charged with the task.[7] Their conclusion favored Wang's view and was accepted by the throne.

This development had serious implications for officials in the Supreme Court and the Board of Punishments who were previously against Wang An-shih's view: they were now regarded as having made an administrative mistake. They therefore protested the judicial ruling and persistently argued with Wang An-shih about the related points of law at the court.

Emperor Shen-tsung compromised and on the third day of the second month, 1069, issued another edict: "From now on, in cases of wounding in the course of [attempted] premeditated killing, if the criminal confesses before the beginning of the investigation, request the throne for decision [and sentence] by imperial edict." However, Liu Shu and Ting Feng, officers-in-charge of the Board of Punishments, returned the edict to the Grand Secretariat, arguing that the content of this edict was incomplete. Wang An-shih, now a deputy prime minister, also thought the edict unnecessary. After debating with T'ang Chieh, another deputy prime minister, Wang convinced the emperor to issue a new edict on the seventeenth day of the second month, which upheld the rules in the edict of the third day of the seventh month, 1068, and rescinded the edict of the third day of the second month, 1069.[8]

But the emperor could not silence the objections from Liu Shu and his colleagues.[9] Supported by the Censorate and at least one prime minister, they requested that the case be reviewed by the *liang-fu* (see below). Emperor Shen-tsung disliked their suggestion, but he nevertheless ordered the case passed to the Privy Council. There, opinions again split into two camps. The newly appointed Prime Minister Fu Pi (1004–1083) attempted to persuade Wang An-shih to change his mind. After his efforts failed, Fu withdrew completely from the debate, pretending that he was sick.⁴

By the middle of the eighth month, an imperial edict was issued: "For confession in cases of plotting to kill and for confession before inquisition, rules in the edict of the seventeenth day of the second month, 1069, should apply." [10]⁵ In the meantime, Liu Shu and his

colleagues were demoted.[11] Ssu-ma Kuang forwarded a memorial to the throne, disputing their demotions, but the emperor took no heed of his opinion.

STATUTORY AND PROCEDURAL BACKGROUND

This account of A Yün's case tells us that the case involves an attempted homicide and a voluntary confession by the culprit. It was handled according to the criminal procedures of the Sung legal system. Prior to the 1080s, Sung criminal procedures allowed the prefectural government to finalize a death sentence after trial and to carry out the sentence without prior approval from the central government, provided that the crime was punishable by death and occurred within its jurisdiction.⁶ As a safeguard, this prefectural judicial authority was subject to regular review by the central court, and officials who mistakenly sentenced innocent people to death were to be severely punished.⁷ In the meantime, if prefectural officials had doubts about any details concerning a particular case of capital punishment, or about the interpretation of the related law, they were requested to report and transfer the case in question to the central government for final judicial decision.⁸

Three offices were established at the central court specifically to handle such cases forwarded by prefectural authorities: the Supreme Court (*ta-li-ssu*), the Judicial Review Council (*shen-hsing-yüan*),⁹ and the Board of Punishments (*hsing-pu*).¹⁰ They performed a similar main function: to review documents of the case in question, to weigh all aspects of the related laws, and to recommend judicial solutions. For each individual case they would provide the emperor up to three alternative solutions to ensure that every aspect of the related laws had received thorough consideration. Should there be unsettled controversy over a case, the throne would set up an ad hoc committee to review the case. Such a committee usually consisted of Hanlin academicians, edict drafters (*chih-chih-kao*) of the Grand Secretariat (*chung-shu*),¹¹ or officials from the Censorate (*yü-shih t'ai*). If the committee failed to reach a solution, the emperor could ask top-ranking officials from the Grand Secretariat and the Privy Council (*shu-mi-yüan*), jointly called *liang-fu*, to submit their opinions on the case.¹² As the final arbitrator and adjudicator, the emper-

or, however, seldom made any decision without having acquired theoretical justification from certain officials who had participated in the review process.

The *Sung Code* stipulated that a criminal who had voluntarily surrendered to the authorities prior to interrogation (*an-wen yü-chü*) would earn a reduction of two degrees of punishment.¹³ The *Sung Code* also stipulated that the offense of plotting to kill a person and thereby causing any wounds was punishable by strangulation, which was an alternative and lighter form of the death penalty.¹⁴ However, up to the time when A Yün's case was tried in 1068–1069, the general practice and conventional interpretation of the code had been that the penalty reduction for offenders who had voluntarily confessed would not apply if the offender had inflicted bodily harm on or wounded the victim.¹⁵ Furthermore, if a wife plotted to kill her husband, she would be deemed as having committed "discord" (*pu-mu*), one of the ten abominations, even though the plot was never realized or the husband suffered no bodily harm. Her criminal liability would escalate if death or wounds resulted. In that case, the category of her offense would change to a more severe one called "contumacy" (*o-ni*).¹⁶ Both discord and contumacy were punishable by decapitation, the gravest form of death penalty listed in the *Sung Code*.¹⁷ An offender guilty of attempted homicide would be sentenced more harshly if the case involved husband and wife. It is therefore crucial that the marital status of A Yün be clarified beyond doubt.

This is so because in traditional Chinese law consideration of familial relationships played a salient role in the sentencing decision. Whether or not such a relationship existed between the culprit and the victim would often alter the degree of severity of the same criminal act. Therefore whether A Yün was a wife, a fiancée of the victim, or merely an ordinary person (*fan-jen*) unrelated to the victim, has significant legal implications.

A YÜN'S MARITAL STATUS

Shen Chia-pen and other modern scholars have uncritically accepted a record in the biography of Hsü Tsun in the *Sung shih*,¹⁸ and they all hold it a fact that A Yün was only betrothed to Wei A-ta and that the marriage

of the two had not been carried out at the time she committed the offense (*A Yün hsü chia wei hsing*). A Yün was therefore the victim's fiancée, not his wife. Here the legal issue is whether a fiancée should carry the same criminal liability as a wife.

Shen Chia-pen asserted that A Yün could have committed contumacy, because under Ch'ing law there was no status distinction between a fiancée and a wife. He nevertheless admitted that in accordance with ancient propriety a woman would not formally become a wife until all marriage procedures were completed. This included an introduction of the bride to the relatives in the ancestral hall three months after she had been received at the groom's home. Shen therefore found it acceptable not to treat A Yün as the wife of Wei A-ta.¹⁹ To elaborate this point further, Hsü Tao-lin cited a commentary to the *Sung Code*: offenses against a fiancée should be taken as the same as those against an ordinary person. This commentary leaves no doubt that during the Sung a fiancée would not carry the same criminal liability as a wife.²⁰

Their arguments, however, may well have missed the point, for as discussed below I would hold that A Yün had in fact become Wei A-ta's wife when she committed the offense. To clarify A Yün's marital status we need to examine carefully some related source materials.

The best evidence comes from Ssu-ma Kuang's collected works, *Ssu-ma wen-cheng kung ch'uan-chia-chi*.²¹ This collection was first engraved during the Chia-ting reign period (1208-1224). Under the title of the memorial detailing Kuang's argument when the case was first put under review by *liang-chih*, there is a note stating (see illustration 1):

The prefect of Teng-chou Hsü Tsun wrote a memorial that states: "A woman named A Yün had already become engaged (*ting-hun*) and married to Wei A-ta (*ch'eng-ch'in*) during the mourning period for her mother's death. Later she disliked A-ta and hacked him with a knife in the field at night. The district sheriff (*hsien-wei*) ordered the policeman (*kung-shou*) to arrest A Yün for questioning. He said: 'Were you the one who hacked and injured your husband (*pen-fu*)? Tell me the truth and I shall spare you from beating.' A Yün confessed at that point. The law of two-degrees reduction for confession before inquisition should be applied. However, the Supreme Court held that the law of

plotting to kill and causing wounds which demanded a penalty of strangulation should be applied instead. It was a wrong judgment." The Board of Punishments was assigned to review the case and came to the same conclusion as the Supreme Court. But [Hsü] Tsun still insisted that he was right. There was an imperial order requiring [Ssu-ma] Kuang and Wang An-shih to review the case again. [Wang] An-shih concurred with [Hsü] Tsun. Subsequently [Wang] An-shih's view was accepted by the imperial court.²²

The use of "*ch'eng-ch'in*" and "*pen-fu*" in this passage should suffice to establish beyond doubt that at the time A Yün committed the crime, Wei A-ta was her legal husband.

That Ssu-ma Kuang's collected works include the original text of his memorial has already been noted by Langlois.²³ But in the Sung edition more commonly used by modern scholars, including Langlois, which is entitled *Wen-kuo wen-cheng Ssu-ma kung wen-chi* and was engraved during the early years of the Shao-hsing reign period (1131-1162),²⁴ the title note is omitted altogether (see illustration 2). Therefore, scholars who read only the Shao-hsing edition would miss this important piece of information in the *Ch'uan-chia-chi* and would be easily confused about A Yün's marital status.

As this title note is the only evidence that can confirm A Yün's marital status, its authenticity should be subjected to further textual scrutiny. First, not every work collected in the *Ch'uan-chia-chi* carries a title note, but some of the title notes that do appear were prepared personally by Ssu-ma Kuang.²⁵ This is seen in the fact that occasionally he used the term "Kuang" to refer to himself rather than the first-person pronoun.²⁶ The title note in question also contains this term and is therefore a note written by Ssu-ma Kuang himself. Second, reading the exchange between A Yün and the sheriff one gains the impression that the sheriff's words were quite rude and that what is recorded in the title note clearly represents the original conversation between the sheriff and A Yün, as it was recorded in the contemporary legal documents. This in fact shows that Ssu-ma Kuang's account of this conversation must have been based on the original documentation of the case, since he was one of the officials who had early access to the documents. Third, other Sung

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後學桂林陳弘謀重訂

章奏二十三

議謀殺已傷案問欲舉而自首狀知登州許遵奏婦人阿云

於母服內與韋阿大定婚成親後嫌韋阿大夜閒就田中用刀斫傷縣尉令弓手勾到阿云問是你斫傷木夫實道來不打你阿云遂具實招通合作案問欲舉減二等大理寺不合作謀殺已傷絞罪斷遣下刑部定得大理寺允當遵不服詔下光與王安石定奪安石以為遵議是後朝廷竟從安石議

右臣竊以為凡議法者當先原立法之意然後可以斷獄竊詳律文其於人損傷不在自首之例注云因犯殺傷而自首者得免所因之罪仍從故殺傷法所謂因犯

傳家集卷第四十章奏二十三

1. Title note to Ssu-ma Kuang's memorial to the throne after the first liang-chih review. From Ch'en Hung-mou, ed., *Ssu-ma Wen-cheng kung ch'uan-chia-chi* (rpt. by Pei-yüan t'ang, 1741). Eleven cols. of 21 chars., border 14 x 19 cm. Collection of the Feng Ping-shan Library, University of Hong Kong.

律意蓋以於人損傷既不得首恐有別因餘罪而殺傷人者有司執文并其餘罪亦不許首故特加申明云因犯殺傷而自首者得免所因之罪然殺傷之中自有兩等輕重不同其處心積慮巧詐百端掩人不備者則謂之謀直情徑行略無顧慮公然殺害者則謂之故謀者不重故者差輕今此人因犯他罪致殺傷人他罪雖得首原殺傷不在首例若從謀殺則太重若從鬪殺則太輕故酌中令從故殺傷法也其直犯殺傷更無他罪者惟未傷則可首但係已傷皆不可首也今許遵欲將謀之與殺分為兩事按謀殺故殺皆是殺人若將謀之與殺分為兩事則故之與殺亦非是兩事也且律稱得免所因之罪故劫囚略人皆

名犯北朝諱元不曾接伴亦不曾奉使兩朝事體正如牆面虜中情傷分毫不知加以稟性昏顛遇事漏直今若使之館伴恐語言之際必有遺忘差錯或漏泄機事或抵觸使人萬一如此以貽朝廷之憂雖加巨以重誅終無所益伏望聖慈矜察於兩制中別選差才敏之人館伴北使貴無闕誤取進止
 臣竊以為凡議法者當先原立法之意然後可以斷獄竊詳律文其於人損傷不在自首之例注云因犯殺傷而自首者得免所因之罪仍從故殺傷法所謂因犯殺傷者言因犯他罪本無殺傷之意事不得已致有殺傷除為盜之外如劫囚略賣人之類皆是也

2. Ssu-ma Kuang's memorial to the throne after the first *liang-chih* review. From *Wen-kuo Wen-cheng Ssu-ma kung wen-chi* (first engraved during the Shao-hsing reign period, 1131-1162; reproduced in facsimile in the *Ssu-pu ts'ung-k'an ch'u-pien*). Twelve cols. of 20 chars.; border 9 x 14 cm.

and Yüan sources also contain records similar to the content of the title note in question.²⁷ The weight of these points should be sufficient to establish the reliability of the title note that reveals A Yün's true marital status. It also casts serious doubt on the passage in *Sung shih* that suggests A Yün was merely Wei A-ta's fiancée, an assertion that is not supported by other primary sources.

In fact, to the Sung scholar-officials involved in A Yün's case, the criminal liability of a fiancée against that of a wife seemed never to have been an issue in the first place. To them the real issue was whether the criminal liability of a wife would be affected and changed to that of an ordinary person if the marriage itself was invalidated on sufficient grounds.

In the *Sung Code* the marriage law stipulates that any marriage completed during the mourning period for the death of one's parents was an offense punishable by three years of penal servitude and mandatory

invalidation of the marriage (*li chih*).²⁸ But this article of the code has no clear provision indicating whether, when a marriage was officially invalidated in this manner, its legal effect prior to the invalidation would also be denied or not. On the basis of Ch'ing legal practice, Hsü Tao-lin suggested that if a marriage was found illegal, it was then invalidated from the very beginning of the relationship, and it would be deemed that no state of matrimony had ever existed. In that sense, the punishment of invalidation for illegal marriage was retrospective. A passage in the form of question and answer in the *Sung Code* reveals how Sung authorities dealt with this issue.

QUESTION: "If a husband marries another woman when he is already married, the second marriage is to be invalidated in accordance with the law. However, if members from the husband's and the second wife's family committed crimes against each other before their marriage is invalidated, should the law in relation to the legal wife [and its rules concerning affines] be applied?"

ANSWER: "One husband and one wife [in a legal marriage] is the norm of the society. To marry a second wife with the first one still alive will not give the second one the legal status of a wife. Considering the moral and legal principles, they [the husband, the second wife, and their affines] should be treated as unrelated people when crime among them occurs."²⁹

However, I suspect that invalidation of illegal marriage was not commonly practiced prior to the trial of A Yün, although the question and answer cited in the *Sung Code* imply that such a marriage would be nullified by Sung authorities. This was perhaps so because Hsü Tsun argued very hard to prove that A Yün had never injured her "husband." She never had one, for her marriage to Wei A-ta during the mourning period for her mother's death was illegal in the first place. This indicates that Hsü Tsun was seeking an appropriate interpretation of the law that was contrary to the prevailing legal practice during the Sung. Because Hsü Tsun's interpretation of A Yün's marital status was based on Sung legal principles, it was from the very beginning accepted by the Supreme

Court and the Judicial Review Council. The two judicial offices repeated Hsü Tsun's point in their reports to the throne. And it did not become an issue in further discussion and debate on A Yün's case.

TEXTUAL EXAMINATION OF OTHER IMPORTANT FACTS

Having clarified A Yün's marital status and the applicable punishment for her crime, we now need to subject some important points of fact in the commonly accepted account of A Yün's case to further textual study.

1. *To whom did A Yün confess?*

Who was the district official who conducted the interrogation and obtained A Yün's confession? Most sources, such as the *Sung shih*, only vaguely mention him as a certain "li" (literally, an official). Ssu-ma Kuang was no more specific in his memorial submitted to the throne after the first *liang-chih* review, saying that the "*kuan-ssu*" (literally the government) did the job.³⁰ Some modern scholars have also tried not to be specific, using such loose terms as "the authorities."³¹ Others assume that she was arrested by the police and interrogated by the magistrate at the court of the district (*hsien*) government.³² The title note to Ssu-ma Kuang's memorial makes it amply clear that it was the district sheriff who interrogated A Yün and obtained her confession. This leads to the next question.

2. *Was A Yün's confession too late to allow her a redemption?*

As discussed earlier, a culprit's voluntary confession to the authorities prior to interrogation (*an-wen yü-chü*) was a prerequisite for redemption of his sentence. Here a crucial issue is the exact meaning of the Chinese expression *an-wen*, and in particular who conducted the interrogation, a magistrate or a district sheriff? In order to ensure justice, Sung criminal procedures in principle prohibited a sheriff from conducting a law-court inquisition (*t'ui-chü*), not to mention a court interrogation of the accused.³³ A sheriff could only conduct a preliminary investigation, including questioning witnesses and suspects. But this was not meant to be part of a court trial. Therefore "*an-wen*" must have referred to the interrogation

held during an inquisition at the district government court, which was usually presided over by a magistrate or his legal staff. Since A Yün confessed to the sheriff, her confession should have occurred prior to any formal court inquisition, and she was therefore not too late for sentence redemption.³⁴

3. *Was Prefect Hsü Tsun incompetent in judicial matters?*

A key figure in A Yün's case, Prefect Hsü Tsun was himself a legal expert. Hsü's biographies in the *Tung-tu shih-lüeh* and *Sung shih* record that besides a *chin-shih* degree, Hsü also held the *ming-fa* degree, which was granted to those well versed in law and statutes.³⁵ The fact that Hsü was a legal expert makes his arguments important. Those arguments should not be brushed aside as nonsense arising out of ignorance.³⁶

4. *On what legal grounds did Hsü Tsun decide to transfer A Yün's case to the central court?*³⁷

Hsü Tsun believed that although A Yün was said to have been married to Wei A-ta, the marriage should have been invalidated since the two were engaged during the time A Yün was mourning for her deceased mother. A Yün therefore had committed an offense against a non-family person, not her husband, and she should be sentenced to strangulation, a punishment for those who had plotted to kill an unrelated ordinary person and caused only wounds. Hsü Tsun also believed that A Yün should be granted a two-degree reduction in punishment because of her confession prior to inquisition. This means that she should be spared the death penalty and sentenced to a lifetime exile 2,500 *li* from her hometown.³⁸

5. *What was the outcome of the initial views?*

First the Supreme Court and Judicial Review Council individually reviewed the case,³⁹ and both arrived at the conclusion that A Yün should not be treated as Wei A-ta's wife. But their conclusion was different from Hsü Tsun's view in that they also held that A Yün was not eligible for reduction of punishment. Their opinion was based on a provision in the law concerning voluntary confession which stated that no reduction should be granted to offenders whose crimes had resulted in actual grievous bodily harm or wounds.⁴⁰ They therefore recommended a sen-

tence of strangulation for A Yün. However, for some unknown reason the newly enthroned Emperor Shen-tsung pardoned her and reduced the punishment to penal registration (*pien-kuan*). Instead of being exiled, she would be beaten with a heavy rod, and serve as a convict laborer near her home.⁴¹ This was in fact close to the punishment that Hsü Tsun had suggested. It is also clear that A Yün was not sentenced to make a cash payment for redemption of punishment.⁴²

6. *When did Hsü Tsun appeal for a liang-chih review?*

Hsü Tsun appealed for a *liang-chih* review of A Yün's case when he was still the prefect of Teng-chou. Many sources attest to this fact.⁴³ It is also substantiated by a passage from Hsü's biography in the *Veritable Records for Emperor Shen-tsung* (*Shen-tsung shih-lu*):

[His legal arguments on the case of A Yün] had convinced the public opinion of the time. Soon he was appointed head of the Supreme Court (*p'an ta-li*)⁴⁴ and granted an imperial audience at which he was allowed to dress as a third-ranked official (*san-pin fu*). Although he politely refused to accept the appointment the emperor insisted and ordered an imperial commissioner (*chung-shih*) to guide him out of the palace, a highly unusual honorary measure.⁴⁵

The "Biography of Hsü Tsun" in *Sung shih*, however, gives a different account. It suggests that Hsü did not appeal until after his appointment to the Supreme Court.⁴⁶ Since other sources consistently indicate that Hsü received the new appointment at the Supreme Court after his opinion on A Yün's case had prevailed, it is evident that the relevant account in *Sung shih* is distorted.

7. *When was the second liang-chih review committee formed?*

According to the *Wen-hsien t'ung-k'ao*, following advice from the vice censor-in-chief (*yü-shih chung-cheng*), the de facto head of the Censorate, Emperor Shen-tsung called up a second ad hoc committee of three other *liang-chih* members. The committee came up with a conclusion in favor of that of Hsü Tsun and Wang An-shih.⁴⁷ On the third day of the seventh month, 1068, the emperor accepted the committee's recommendation

and issued an edict that day.⁴⁸ Therefore the second *liang-chih* committee must have been formed before the third day of the seventh month, 1068.⁴⁹ In fact, it was because of its report that Shen-tsung issued this edict.

8. *What were the circumstances under which the edict of the third day of the second month, 1069, was issued?*

I believe that the edict was promulgated on the advice of some judicial officers.⁵⁰ The edict stipulated that cases in which the convict had plotted and killed a person but confessed before trial should be transferred to the imperial court for final decision.⁵¹ The justification for this edict was that if punishment for plotting to kill and causing wounds was redeemable in cases of confession, then there should be no difference in the punishment of those whose crimes had caused the death of the victim. But the deputy vice censor-in-chief (*chih-tsa yü-shih*), who was concurrently an officer-in-charge of the Board of Punishments (*p'an hsing-pu*), Liu Shu, returned the edict to the Grand Secretariat. This was done together with the other officer-in-charge of the Board of Punishments, Ting Feng.⁵² They also reported to the throne that the content of the edict needed further deliberation. Wang An-shih, who was appointed deputy prime minister on the same day the edict of the third day of the second month was issued, seemed to have first endorsed the edict,⁵³ but he later changed his position and advised the emperor that the issuance of the edict was unnecessary. A heated debate between Wang An-shih and T'ang Chieh, another deputy prime minister, followed. Wang eventually won the emperor's ear.⁵⁴ The debate was so emotionally charged that T'ang reportedly fell sick after the debate and soon passed away.⁵⁵ The exact content of this debate is unclear. Perhaps it was not about the edict of the third day of the second month because Wang had already advised the emperor to withdraw the edict. One possibility was that T'ang used the opportunity to challenge the edict of the third day of the seventh month, 1068.

9. *Why were there strong objections to the edict of the seventeenth day of the second month, 1069?*

On the seventeenth day of the second month, 1069, a new edict was issued.⁵⁶ It repealed the edict of the third day of the second month, 1069, and reconfirmed the principles in the edict of the third day of the seventh

month, 1068. This new edict, however, was not circulated to every circuit of the country as was the usual practice, but rather was issued to only three central government offices with judicial functions — the Censorate, the Supreme Court, and the Judicial Review Council — as well as to the K'ai-feng prefectural government.⁵⁷ Liu Shu, supported by other colleagues from the Censorate, opposed the issuance of the new edict and suggested that the *liang-fu* discuss the matter.⁵⁸ At first Emperor Shen-tsung thought it unnecessary to take such a drastic measure as ordering *liang-fu* officials to review the edict because the points of law and the relevant legislation in the new edict were clear enough to him. But one of the prime ministers reminded the emperor that he would not get the best advice unless more officials were allowed to express their views. The emperor gave in,⁵⁹ and the case was passed to the *liang-fu* for deliberation.

10. The final judgment

Deliberation in A Yün's case lingered on at the *liang-fu* for almost half a year. Officials there again split into two camps. The whole matter finally came to an end on the first day of the eighth month, 1069, when a new edict was issued. It formally invalidated the edict of the third day of the second month and reconfirmed the principles stated in the edict of the third day of the seventh month. And this time the new edict was probably issued to the entire country.⁶⁰ Now A Yün's case was finally settled, and the related laws became binding for subsequent cases.

Shortly afterward, on the fifth day of the eighth month, Ssu-ma Kuang submitted a long memorial entitled "On the Importance of Fundamentals" (*T'i-yao shu*).⁶¹ He reprimanded the emperor for neglecting the fundamentals (*t'i*) of governance by having unwittingly paid too much attention to specific matters of government, and he cited numerous examples to elaborate his point. At the end of the memorial he mentioned A Yün's case, saying that it should not have reached the central court in the first place and wasted so much of the emperor's and his ministers' time and energy. Ssu-ma Kuang argued further that the final decision on A Yün's case was bad law. Ssu-ma Kuang's memorial failed to change the emperor's mind, but Ssu-ma Kuang was luckier than many other officials involved in the case. He was not demoted and continued to be an influential adviser to Emperor Shen-tsung.⁶²

11. *Punishment for other judicial officials involved in A Yün's case*

Sometime between the first day and the ninth day of the eighth month, Liu Shu, together with two other censors, Liu Ch'i and Ch'ien Yi, presented a memorial to the throne, criticizing Wang An-shih and his handling of A Yün's case. They further questioned Wang's new policies and his suitability for the post of deputy prime minister. But Emperor Shen-tsung rejected the memorial outright.⁶³ On the ninth day of the eighth month, Liu Shu, Ting Feng, and Wang Shih-yüan, a judicial officer of the Judicial Review Council who initially disputed Hsü Tsun's legal argument in A Yün's case, were put under judicial investigation for possible violations of administrative rules. On the same day, Liu Ch'i and Ch'ien Yi were demoted to offices out of the capital for inappropriately criticizing imperial policies.⁶⁴ Ssu-ma Kuang promptly wrote a memorial on the eleventh day of the eighth month, recommending more lenient treatment toward them,⁶⁵ but his efforts were to no avail. On the twenty-seventh day of the eighth month, Liu Shu, Ting Feng, and Wang Shih-yüan were also demoted. Liu and Ting were accused of having inappropriately delayed the issue of the edict of the third day of the second month, Wang Shih-yuan of having wrongfully created a dispute over the case of A Yün.⁶⁶

A POLITICAL OR A LEGAL ISSUE?

Some scholars wonder if all the arguments involved in A Yün's case were merely legal rhetoric designed to cover the power struggle between the conservatives headed by Ssu-ma Kuang and the reformers headed by Wang An-shih. For instance, Shen Chia-pen, although he never used the term "faction," accused Wang An-shih of arbitrarily undermining the law. Knowing nothing about law, Wang used his powerful position in the court, not his jurisprudence, to win the debate over A Yün's case. The debate reflected an intrusion into the legal system by political forces ignorant of law.⁶⁷ Hsü Tao-lin followed and further developed this line of argument. He claimed that the arguments from both sides, although complicated, were more likely to have been part of a political struggle than a genuine legal debate.⁶⁸ He later revised his opinion to suggest that

there were certain elements of factional struggle in the case, but it was still a genuine legal issue. He regarded A Yün's case as an outstanding one in the legal history not only of China but of the rest of the world as well. This was so because the legal debate over the case, which involved merely a commoner woman, had such an enormous impact on the government and the impact lasted for so long.⁶⁹ Miyazaki Ichisada pointed out that the case was an unusual example in Chinese legal history.⁷⁰ But he also suggested: "Clearly more than legal principle was involved in this case, which obviously reflected the political struggle between Wang An-shih and his opponents. Nevertheless, it is significant that political conflict in China a millennium ago could have taken the form of a debate over the proper disposition of an appellate case."⁷¹ This is in fact a political-issue theory, which has also been echoed in McKnight's work.⁷²

Other scholars tend to view the debate more as a legal one than a reflection of politics. Relying heavily on the work of Shen Chia-pen, Borowitz tried to interpret the legal reasoning of both Wang An-shih and Ssu-ma Kuang in the light of "strict construction" doctrine. He came to the conclusion that Wang's argument was consistent with his jurisprudence.⁷³ Langlois also emphasizes the jurisprudential aspect of the case. Although he does not address this issue directly, his conclusion that the dispute between Wang and Ssu-ma may be interpreted as a clash of values (deterrence versus rehabilitation) and methodologies (precedence of imperial authority and the Tao over the code versus strict interpretation of the code) makes it clear that he thought the issue had more legal than political implications.⁷⁴

To determine the nature of the debate over A Yün's case, we need to examine carefully the related primary sources. The *Wen-hsien t'ung-kao* and the *Sung shih* are two standard sources in which there is no indication that the case was more a political than a legal struggle. But records in other sources imply that the opposite is the case.⁷⁵ It is, however, worth noting that these records, without exception, were written either by Northern Sung officials who strongly opposed the stand of Hsü Tsun and Wang An-shih, or by Southern Sung or later authors who also had a clear anti-Wang position. Their interpretation of the debate over A Yün's case is not necessarily fair and unbiased, and should be treated with great

caution. For instance, some historical records report that most of the bureaucrats in the central court ridiculed and opposed the argument by Hsü Tsun and Wang An-shih.⁷⁶ But there is evidence that the real situation might not have been so one-sided,⁷⁷ although it is difficult to determine the exact number of officials on each side.

Whether or not A Yün's case was merely a political issue can also be examined against the historical background of major events from 1067 to 1069, which is shown in the following table of events.⁷⁸

| | |
|---|---|
| First month, 1067 | Death of Ying-tsung; Shen-tsung enthroned |
| Twenty-fifth day of the intercalary third month, 1067 | Wang An-shih appointed prefect of Chiang-ning-fu |
| Twenty-third day of the ninth month, 1067 | Wang appointed Hanlin academician |
| Ninth day of the fourth month, 1068 | Wang granted private imperial audience |
| Third day of the seventh month, 1068 | Edict issued in favor of Wang An-shih's opinion in A Yün's case |
| Third day of the second month, 1069 | Wang appointed deputy prime minister; edict issued |
| Seventeenth day of the second month, 1069 | Edict issued |
| Twenty-seventh day of the second month, 1069 | Finance Planning Commission (reforms) established |
| Sixth month, 1069 | Lü Hui attacked Wang fiercely in a memorial |
| Seventeenth day of the seventh month, 1069 | Tribute Transport and Distribution System enforced; first reform measure implemented |
| First day of the eighth month, 1069 | Edict issued, reaffirming the principles in the edict of the third day of the seventh month, 1068 |

This table of events indicates, among other things, that the early months of 1069 witnessed the gradual emergence of Wang An-shih as a central figure leading a new reform movement, and the beginning of the development of an undercurrent of political conflict. This conflict led Lü Hui (1014-1071) to express his unreserved criticism of Wang An-shih in a memorial to the throne, accusing him of forming factions and manipulating power. Even at this stage, however, Ssu-ma Kuang still held Wang in high respect and tried unsuccessfully to stop Lü from submitting his memorial.⁷⁹ It was after the issuance of the edict dated the first day of the eighth month, 1069, that Ssu-ma Kuang expressed strong opposition to the opinions expressed in Wang An-shih's *T'i-yao shu*, dated the fifth day of the eighth month.

This table of events also suggests that the edict of the third day of the seventh month, 1068, could hardly have been the result of any political struggle related to Wang An-shih's reforms. At that time Wang had not yet consolidated Emperor Shen-tsung's trust in him to carry out reforms, and it was too early for other official-scholars to realize that a controversial reform was imminent. As most officials had voiced their opinions on A Yün's case before the edict of the third day of the seventh month, it seems safe to assume that their opinions were a genuine reflection of their legal reasoning, not part of any political scheming. Admittedly, later debate leading to the issuance of the edict on the first day of the eighth month may well have been politicized by disputes over Wang An-shih's reforms. In particular, the demotion of Liu Shu and others, who had attacked both Wang's reforms and his personal integrity, may well have been a politically oriented move. But at this time the legal issues in A Yün's case had already been settled. Therefore in terms of jurisprudence, the politicization of debates over A Yün's case was far less significant than were the jurisprudential debates that led to the issuance of the edict on the third day of the seventh month, 1068.

The debate over A Yün's case can also be examined in terms of the personal relationships among the officials involved in the case. Here the crucial question is whether Han Wei, Lü Kung-chu, and Ch'ien Kung-fu, members of the second *liang-chih* review committee, constituted a faction under Wang An-shih. Lü Hui's criticism of Wang prior to his demotion in the sixth month, 1069, gives the impression that this was the case.⁸⁰ But in fact this impression is misleading. Ch'ien Kung-fu had

voiced harsh criticism of Wang An-shih before as well as after the edict of the first day of the eighth month, and he was the first to be demoted in the fifth month of 1069.⁸¹ Lü Kung-chu was appointed vice censor-in-chief in the sixth month of 1069. He soon became opposed to Wang An-shih's reforms, and was demoted in the fourth month of the next year.⁸² As for Han Wei, he strongly opposed the edict of the third day of the second month, 1069, which had earlier been endorsed by Wang An-shih. In his memorial, Han Wei challenged the rationale of the legal measures specified in the edict and explicitly asked Wang An-shih for an explanation.⁸³ His opposition to some reform measures also made him an opponent of Wang An-shih in early 1071.⁸⁴ Obviously the three were not members of Wang's faction in terms of their political stands.

Admittedly Wang An-shih had a close friendship with both Han Wei and Lü Kung-chu in the early stages of his career in the central government. As a matter of fact, Wang An-shih managed to establish his reputation as a conscientious Confucian scholar-official of high political caliber through cultivating friendships with such eminent officials as Han Wei and Lü Kung-chu.⁸⁵ This was so particularly in 1068 when Wang An-shih was still very junior in the central administration and his position as a political leader was far from being established.⁸⁶ Therefore when A Yün's case was forwarded to the second *liang-chih* review committee in 1068, the opinion of Han Wei and Lü Kung-chu on A Yün's case was more likely to have influenced that of Wang An-shih, not the other way around. This is seen in their arguments for the case, which went much deeper into the philosophy of law than the points of technicality that Wang An-shih put forth in his own argument. Therefore the fact that the opinion of Han Wei and Lü Kung-chu concurred to a certain extent with that of Wang An-shih should not be regarded as merely a factional chorus, but the outcome of their own independent legal reasoning.

THE CASE OF A YÜN RECONSTRUCTED

What follows is my reconstruction of A Yün's case, incorporating the textual investigation discussed above. The case took place in Teng-chou Prefecture before 1068. A Yün, the wife of Wei A-ta, attempted to murder her husband because of his ugliness. While he was sleeping in a farm hut,

she hacked him with a knife over ten times, but was able only to sever one of his fingers. The district sheriff, unable to find any attacker, began to suspect A Yün and arrested her for questioning. She confessed under the threat of torture.

Prefect Hsü Tsun referred the case to the central government for two reasons: First, A Yün's marriage with A-ta should be considered invalid from the very beginning because the engagement occurred when A Yün was mourning for her deceased mother. She had thus committed only an offense against an ordinary person, not her husband. And the offense was punishable by strangulation. Second, A Yün confessed before a court inquisition and should therefore have been granted a two-degree reduction in punishment and sent into exile.

The case was first reviewed by the Supreme Court and the Judicial Review Council, then by the Board of Punishments. They all held that A Yün should be sentenced to strangulation according to the statutory provision that confession redemption would not apply if bodily harm had actually occurred. The throne eventually decided to exempt A Yün from death and sentenced her to penal registration.

Undismayed, Hsü Tsun appealed for a *liang-chih* review of A Yün's case. Emperor Shen-tsung ordered two Hanlin academicians, Ssu-ma Kuang and Wang An-shih, to review the case. They came to opposite conclusions, Ssu-ma Kuang supporting the board and Wang An-shih backing Hsü Tsun. On the advice of the censor-in-chief, the throne decided to convene a second *liang-chih* review. This time Lü Kung-chu, Han Wei, and Ch'ien Kung-fu were appointed to review the case. Their conclusion favored Wang's view and was accepted by the throne. An edict was issued on the third day of the seventh month, 1068, establishing a legal principle that for those who had plotted to kill but caused only wounds, punishment would be reduced by two degrees if they confessed before a court inquiry was conducted.

The issuance of this edict meant that officials in the Supreme Court, the Judicial Review Council, and the Board of Punishments who had held the opposite view on A Yün's case were now considered to have made an administrative mistake. They protested against the judicial ruling and persistently argued with Wang An-shih about the related points of law at the imperial court.

On their advice, Emperor Shen-tsung issued another edict on the third day of the second month, 1069, stating that all cases of premeditated killing where the criminal confessed prior to the court inquisition should be submitted to the throne for final decision.

But Liu Shu and Ting Feng, officers-in-charge of the Board of Punishments, returned the edict to the Grand Secretariat. They held that the content of this edict needed further deliberation. Wang An-shih, now deputy prime minister, also thought the recommended procedures unnecessary. After debating with T'ang Chieh, another deputy prime minister, Wang An-shih convinced the emperor to issue a new edict on the seventeenth day of the second month, 1069. This new edict reconfirmed the principles in the edicts issued on the third day of the seventh month, 1068, and rescinded the edict of the third day of the second month. But this edict of the seventeenth day of the second month, 1069, was circulated among the judicial offices only in the capital, not in the entire country.

Liu Shu and his colleagues strongly objected to this new edict and asked to have it reviewed by the *liang-fu*, a suggestion supported by the Censorate and at least one prime minister. Emperor Shen-tsung disliked their suggestion, but he nevertheless ordered the case passed to the Privy Council and the Grand Secretariat. There opinions again split into two camps.

An imperial decision was finally handed down on the first day of the eighth month, 1069. It formally rescinded the edict of the third day of the second month and reconfirmed the rulings in the edict of the third day of the seventh month, 1068. Ssu-ma Kuang submitted a memorial on the fifth day of the eighth month as a last attempt to counter this decision. Meanwhile, Liu Shu, together with censors Liu Ch'i and Ch'ien Yi, also submitted a memorial to the throne, criticizing Wang An-shih's stand on A Yün's case and his reform policies. But Emperor Shen-tsung rejected their memorial outright. Liu Ch'i and Ch'ien Yi were demoted on the ninth day of the eighth month, 1069; Liu Shu and two others who had previously been involved in the debate on A Yün's case were subject to investigation for violation of administrative rules. Ssu-ma Kuang forwarded another memorial on the eleventh day of the eighth month to defend their cases. But the emperor took no heed of his

opinion. The three were all demoted on the twenty-eighth day of the eighth month. The debate over A Yün's case came to an end.

NOTES

1. Shen Chia-pen, *Chi-i wen-ts'un*, collected in *Li-tai hsing-fa k'ao* (Peking: Chung-hua shu-chü, 1985), vol. 4, pp. 2161-2169. Other legal historians who have studied the case include Hellmut Wilhelm; see his "Der Prozess der A Yün," *Monumenta Serica* 1 (1935-1936), pp. 338-351; Albert Borowitz, "Strict Construction in Sung China: The Case of A Yün," *American Bar Association Journal* 63 (April 1977), pp. 522-528; Hsü Tao-lin, *Chung-kuo fa-chih-shih lun-lüeh* (Taipei: Chung-cheng shu-chü, 1953), pp. 73-79; John Langlois, Jr., "'Living Law' in Sung and Yüan Jurisprudence," *Harvard Journal of Asiatic Studies* 41.1 (1981), pp. 165-217; Miyazaki Ichisada, "The Administration of Justice during the Sung Dynasty," in *Essays on China's Legal Tradition*, ed. Jerome Cohen, Randle Edwards, and Fu-mei Chang Chen (Princeton: Princeton University Press, 1980), pp. 56-75, esp. pp. 67-69 (this is an abridged translation of Miyazaki's "Sō-gen jidai no hōsei to saiban kikō," *Tōyō gakuho* 24 [1954], pp. 115-226); Brian McKnight, *Law and Order in Sung China* (Cambridge: Cambridge University Press, 1992), pp. 501-503.
2. The most detailed account comes from Ma Tuan-lin, *Wen-hsien t'ung-k'ao* (Taipei: Hsin-hsing shu-chü, 1963; hereafter abbreviated as *WHTK*) 170, pp. 1475-1476. Also widely cited is T'o T'o, *Sung shih* (Peking: Chung-hua shu-chü, 1977) 201, pp. 5006-5007; 330, pp. 10627-10628. Other sources used in previous scholarship include Li T'ao, *Hsü tzu-chih t'ung-chien ch'ang-pien* (Taipei: Shih-chieh shu-chü, 1961) 411, p. 13a; Huang I-chou, *Hsü tzu-chih t'ung-chien ch'ang-pien shih-pu* 3, pp. 15b-17b, collected in Li T'ao, *Hsü tzu-chih t'ung-chien ch'ang-pien*, book 7, pp. 2149-2150; Wang Ch'eng, *Tung-tu shih-lüeh* (Taipei: Wen-hai ch'u-pan-she, 1967) 112, pp. 7a-b; Ssu-ma Kuang, *Wen-kuo wen-cheng Ssu-ma kung wen-chi* (Ssu-pu tsung-k'an ch'u-pien edn.) 38, pp. 11b-13b; Han Wei, *Nan-yang chi* (Ssu-k'u ch'üan-shu edn.) 26, pp. 1a-8a. Shen Chia-pen provided the first serious research into this case. But he did not attempt to reconstruct an account of A Yün's case, merely citing the two passages from the *Sung shih* and the *Wen-hsien t'ung-k'ao*. See his *Chi-i wen-ts'un* 4, pp. 2161-2166. Three later studies have attempted to give a full narrative of the case. See Wilhelm, "Der Prozess der A Yün," pp. 338-349; Hsü Tao-lin, *Lun-lüeh*, pp. 74-75; Langlois, "'Living Law,'" pp. 201-207.
3. Although Langlois' interpretation of A Yün's case differed from that of Hsü, his account of the case was basically a translation of Hsü's reconstruction.
4. "Fu Pi was so put out that he simply resigned"; Langlois, "'Living Law,'" p. 207. In fact, Fu did not resign. He just claimed to be sick.
5. "To honor the original edict from the summer of 1068"; *ibid.* It should be the edict of the seventeenth day of the second month, 1069, though the latter actually reconfirmed the ruling of the former.

6. Previous scholarship usually suggests that all capital sentences passed at the prefectural level should be referred to the central government for final review and approval before execution. See Hsü Tao-lin, "Sung-ch'ao hsing-shih shen-p'an chung ti fu-ho-chih," in his *Chung-kuo fa-chih-shih lun-chi* (Taipei: Chih-wen ch'u-pan-she, 1975), pp. 230-248; esp. p. 240. Miyazaki Ichisada, on the other hand, believes that a capital penalty sentenced at the prefectural court must be reviewed and approved by the circuit government before execution. See his "Administration of Justice," p. 65. Both views are modified by Tai Chien-kuo in his "Sung-tai hsing-shih shen-p'an chih-tu yen-ch'iu," *Wen-shih* 31 (1988), pp. 116-143, esp. pp. 131-133. According to Tai, prior to the 1080s, cases of capital punishment with no doubtful points of fact or law would be settled by the prefectural government. This included the execution of the sentence. It was only after the 1080s that such cases were carefully reviewed by the central judicial offices. They also needed to be reviewed and endorsed by the circuit government prior to execution.
7. *Sung hsing-t'ung* (Peking: Chung-kuo shu-tien, 1990; hereafter abbreviated as *SHT*) 30, pp. 5b-10a. See also Tai, "Hsing-shih shen-p'an," p. 132.
8. Tai, "Hsing-shih shen-p'an," pp. 133-135; Miyazaki, "Administration of Justice," p. 65.
9. This term has also been translated as the "Counsellor's Committee."
10. Miyazaki, "The Administration of Justice," pp. 66-69; Tai, "Hsing-shih shen-p'an," pp. 133-135. It should be noted that the Sung Supreme Court, unlike its counterparts in the Han and the T'ang, was not a real trial court but part of the judicial review apparatus. Its function was similar to that of the Judicial Review Council.
11. Charles Hucker explains the term "*liang-chih*" as "Two drafting groups on duty in the Administration Chamber (cheng-shih t'ang), where Grand Councilors (tsai-hsiang) presided over the central government; one group consisted of Hanlin Academicians (han-lin hsüeh-shih) of the Institute of Academicians (hsüeh-shih yüan), collectively called Inner Drafters (nei-chih); the other consisted of nominal members of the Secretariat (chung-shu sheng), collectively called Outer Drafters (wai-chih). The collective designation of both groups was Drafters (chih-chih-kao). As such, chih-chih-kao was equivalent to liang-chih." See Charles Hucker, *Dictionary of Official Titles in Imperial China* (Stanford: Stanford University Press, 1985), p. 309. But this was not the case during the Sung because "*chih-chih-kao*" was clearly a more minor position in the "*chung-shu-sheng*," which also had an edict-drafting function but usually dealt with less important affairs. This group was called Outer Drafters. In contrast, Hanlin academicians were usually more prestigious and in charge of drafting important edicts at the "*han-lin yüan*," which was located inside the palace city, and they were thus called Inner Drafters. "*Liang-chih*" therefore referred to Hanlin academicians and "*chih-chih-kao*." See *WHTK* 54, pp. 490-491. Langlois translated "*liang-chih*" as the "two counsellors," which does not reflect the function of the title either. See his "Living Law," p. 205.

12. Miyazaki, "Administration of Justice," pp. 66-69; Tai, "Hsing-shih shen-p'an," pp. 133-135.
13. *SHT* 5, p. 4b.
14. *Ibid.* 17, pp. 9a-b.
15. *Ibid.* 5, pp. 1a-2a and 5a. The interpretation of this article was in fact the crux of the legal debate concerning the case of A Yün. It is, however, clear that up to the trial of A Yün's case, the conventional interpretation had been a strict construction of the wording: no voluntary confession was to be accepted in cases of "plotting to kill" whereby the victim had suffered bodily harm or wounds.
16. *SHT* 1, pp. 7b-8a, 11b. See also Wallace Johnson, *The T'ang Code* (Princeton: Princeton University Press, 1979), pp. 65-68, 78-80.
17. *SHT* 17, pp. 7a-b. For Sung death penalties, including irregular cases apart from the two types of cases mentioned here, see McKnight, *Law and Order in Sung China*, pp. 446-471.
18. *Sung shih* 330, p. 10627. For uncritical acceptance of this account in the *Sung shih* by later scholars, see Shen, *Chi-i wen-ts'un* 4, pp. 2161-2162; Wilhelm, "Der Prozess der A Yün," p. 338; Hsü Tao-lin, *Lun-lüeh*, pp. 73-76; Miyazaki, "Administration of Justice," pp. 67-68; Borowitz, "Strict Construction," p. 523; Langlois, "Living Law," pp. 202-204; McKnight, *Law and Order in Sung China*, p. 502.
19. Shen, *Chi-i wen-ts'un* 4, pp. 2161-2162. Wilhelm does not appreciate the legal implication of the betrothal issue and holds that it is legally irrelevant. See Wilhelm, "Der Prozess der A Yün," p. 341 and n. 1.
20. Hsü Tao-lin, *Lun-lüeh*, p. 76. *SHT* 1, p. 8a. See also Johnson, *T'ang Code*, p. 68.
21. Ssu-ma Kuang, *Ssu-ma wen-chung kung ch'uan-chia-chi* (Ssu-k'u ch'üan-shu edn.; hereafter abbreviated as *CCC*). This work has many editions. The Ssu-k'u ch'üan-shu edition was reproduced on the basis of a Ming edition printed in the mid-fifteenth century. There is a very good edition printed by Pei-yüan T'ang and edited by Ch'en Hung-mou in 1741. Since the edition that I am using contains epilogues indicating that its earlier version was reprinted at least twice in 1183 and 1224 respectively, its content may be traced back to the Sung editions. See Wang Chung-min, *Chung-kuo shan-pen-shu t'i-yao* (Shanghai: Shanghai ku-chi ch'u-pan-she, 1983), p. 517; Ch'ü Liang-shih, *T'ieh-ch'in t'ung-chien lou tsang-shu t'i-pa chi-lu* (Shanghai: Shanghai ku-chi ch'u-pan-she, 1985), pp. 257-258. For extant editions of the *CCC*, a useful reference can be found in Szechuan ta-hsüeh ku-chi cheng-li yen-chiu-so, ed., *Hsien-ts'un Sung jen pieh-chi pan-pen mu-lu* (Chengtu: Pa-shu shu-she, 1989), pp. 54-56.
22. *CCC* 40, 1a.
23. See Langlois, "Living Law," p. 201, n. 126. The full text of the memorial was also quoted in a note in the *Hsü tzu-chih t'ung-chien ch'ang-pien shih-pu* 3, pp. 15b-16b.
24. Ssu-ma Kuang, *Wen-kuo wen-cheng Ssu-ma kung wen-chi* 38, p. 11b. This edition is the facsimile of a Sung version with a preface dated 1132 in the T'ieh-ch'in

- t'ung-chien lou collection. However, it should be noted that the same work is mistakenly marked as a "shao-hsi" reign period edition (1190-1194) in the Ssu-pu tsung-k'an edition. For information on this Sung edition, see Chü Yung, *T'ieh-ch'in t'ung-chien lou shu-mu* (1898 edn.) 20, pp. 9b-14a.
25. For instance, in the title note to a memorial which was written in 1082 but was never submitted to the throne, there is a usage of the first person, "wu" (literally "me"). See CCC 17, p. 20a. For Ssu-ma Kuang's compilation of his own works, see Ch'ao Kung-wu, *Chün-chai tu-shu-chih chiao-cheng* (Shanghai: Shanghai ku-chi ch'u-pan-she, 1990) 19, p. 1001.
 26. For instance, in the title note to a memorial dated 1056, we find the Ssu-ma self-identification "Kuang." See CCC 19, p. 1a. Later Ssu-ma Kuang's descendants added some notes to his work. We can easily identify these notes because Ssu-ma Kuang's descendants would not impolitely address him simply as "Kuang." For instance, a title note to an undated memorial on the policy of establishing the "kung-shou" system in Che-chiang reads: "My late father (*hsien-kung*) [i.e., Ssu-ma Kuang] was a prefect of Hang-chou when he wrote this memorial [on behalf of another official]." See *ibid.* 18, p. 1a.
 27. For example, Wang ch'eng, *Tung-tu shih-lüeh*; Yang Chung-liang, *Hsü tzu-chih t'ung-chien ch'ang-pien chi-shih pen-mo*; Yang Chung-liang, *Hsü tzu-chih t'ung-chien ch'ang-pien chi-shih pen-mo* (Taipei: Wen-hai ch'u-pan-she, 1967; hereafter abbreviated as *CPCSPM*).
 28. *SHT* 13, pp. 16a-17b.
 29. *Ibid.*, p. 15a.
 30. *Sung shih* 330, p. 10627; CCC 40, p. 3b.
 31. Langlois, "Living Law," p. 202.
 32. Wilhelm, "Der Prozess der A Yün," p. 338; Miyazaki, "Administration of Justice," p. 67; Borowitz, "Strict Construction," p. 523.
 33. Miyazaki, "Administration of Justice," p. 61; Hsü Tao-lin, "Sung-ch'ao ti hsien-chi ssu-fa," in his *Chung-kuo fa-chih-shih lun-chi*, pp. 129-154, pp. 148-149; Wang Yün-hai, ed., *Sung-tai ssu-fa chih-tu* (K'ai-feng: Ho-nan ta-hsüeh ch'u-pan-she, 1992), pp. 265-269.
 34. Shen Chia-pen argued that A Yün did not confess until she was interrogated, and her confession should therefore not be accepted as a voluntary confession. See his *Chi-i wen-ts'un*, p. 2162. See also Miyazaki, "Administration of Justice," p. 68. Shen's argument would have been sound if that interrogation was part of a formal court inquisition. But as we have seen, that was not the case. Wang Yün-hai also touches on this matter. He is more sympathetic toward A Yün but still holds that she confessed during a formal trial. See Shen's *Sung-tai ssu-fa chih-tu*, pp. 129-130.
 35. See *Tung-tu shih-lüeh* 112, p. 7a; *Sung shih* 330, p. 10627.
 36. Shen, *Chi-i wen-ts'un*, p. 2162. Wilhelm noticed that Hsü Tsun had a notable legal career but incorrectly took him as a legal official in Teng-chou. See his "Der Prozess der A Yün," p. 339, n. 1.
 37. Hsü Tao-lin did not touch on Hsü Tsun's justification for referring the case to the central court at all. See his *Lun-lüeh*, p. 73.

38. *WHTK* 170, p. 1475. Records in the *Sung shih* are unclear as to whether Hsü Tsun had already put forth his argument about voluntary confession. See *Sung shih* 330, pp. 10627–10628. My reconstruction here is based primarily on *WHTK*. It is consistent with another account in an important but seldom cited Sung source: *CPCSPM* 75, pp. 13a–b.
39. *WHTK* 170, p. 1475. Miyazaki, Hsü Tao-lin, and Langlois hold that the Supreme Court was the only judicial body that reviewed the case at this time. See Miyazaki, “Administration of Justice,” p. 67; Hsü Tao-lin, *Lun-lüeh*, pp. 73–74; and Langlois, “Living Law,” p. 204.
40. *SHT* 5, p. 1b, pp. 5a–b. According to the law of voluntary confession, there are six exceptions where the law will not apply. One of them is that the crime has resulted in bodily harm or wounds (*yü jen sun-shang*). The term “*sun*” is defined as any damage to the body and “*shang*” as wounds with bleeding. But the degrees of severity of these “bodily harm or wounds” are not clearly defined.
41. *WHTK* 170, p. 1475. This record only says that A Yün was pardoned from death. However, Ssu-ma Kuang’s memorial *T’i-yao shu* is more specific, indicating that she was pardoned from death but sentenced to penal registration. For penal registration, see McKnight, *Law and Order in Sung China*, pp. 385–445, esp. pp. 401–402 on penal registration of women. See also Kuo Tung-hsü, “Sung-tai pien-kuan-fa,” *Ho-pei ta-hsüeh hsüeh-pao*, no. 3 (1992), pp. 12–16.
42. Hsü Tao-lin, *Lun-lüeh*, p. 74; Langlois, “Living Law,” p. 205.
43. For instance, *Tung-tu shih-lüeh* 112, pp. 7a–b; *CPCSPM* 75, p. 13b; *WHTK* 170, p. 1475.
44. Langlois and Hsü Tao-lin uncritically used the account in the *Sung shih* and incorrectly interpreted “*p’an ta-li*” as “a judge in the High Court of Justice.” See Langlois, “Living Law,” p. 205; Hsü Tao-lin, *Lun-lüeh*, p. 74. This position in fact signified the head of the Supreme Court. For the function of “*p’an ta-li*,” see *WHTK* 56, pp. 506–507.
45. This passage was quoted in a commentary to the *Hsü tzu-chih t’ung-chien ch’ang-pien* 411, p. 12a.
46. *Sung shih* 201, p. 5006; 330, p. 10628.
47. Members of this committee included Han Wei, Lü Kung-chu, and Ch’ien Kung-fu. But Wilhelm omitted Han from this list; see “Der Prozess der A Yün,” p. 339. The full text of the report prepared by this committee is in *Nan-yang chi* 26, pp. 1a–8a. See also McKnight, *Law and Order in Sung China*, p. 502, n. 99.
48. The exact date is given in *CPCSPM* 75, p. 13a. See also *WHTK* 170, pp. 1475–1476.
49. Hsü Tao-lin mistakenly placed the forming of the committee after the issuance of the edict on the third day of the seventh month, 1068. See his *Lun-lüeh*, p. 74. See also Langlois, “Living Law,” pp. 206–207.
50. The circumstances under which the edict of the third day of the second month was issued are vital but highly obscure in primary sources. However, another memorial submitted by Han Wei in response to this edict reads: “[We submitted our report on the debate between Wang An-shih and Ssu-ma Kuang]. . . . Later, the judicial officers (*fa-kuan*) held that if those who had plotted to kill

- but merely injured the victim were allowed to confess [and enjoy a reduction of punishment], the same interpretation should also be applied to those who had actually killed." See Han Wei, *Nan-yang chi* 26, pp. 6a–b. Without documentary support, Hsü Tao-lin assumed that the edict of the third day of the second month was a compromise out of the debate. See his *Lun-lüeh*, p. 74. Langlois also followed Hsü's argument. See Langlois, "Living Law," p. 207.
51. Hsü Tao-lin and Langlois misinterpreted the text. Langlois translated the edict as: "From now on, in cases of wounding in the course of [attempted] premeditated killing"; see his "Living Law," p. 207. See also Hsü Tao-lin, *Lun-lüeh*, p. 75.
 52. Before 1080, the Board of Punishments was headed by two officers-in-charge who were usually the concurrent "*chih-tsa yü-shih*." Its nominal heads, the vice minister of the Board of Punishments (*hsing-pu shih-lang*) and director (*lang-chung*), were usually assigned to other duties. See *WHTK* 52, p. 481.
 53. *Nan-yang chi* 26, pp. 6b–7a.
 54. *WHTK* 170, pp. 1475–1476.
 55. This was reported in a memorial by Lü Hui who harshly criticized Wang An-shih. See Lü Tsu-hsien, ed., *Huang-ch'ao wen-chien* (Ssu-pu tsung-k'an ch'u-pien edn.) 50, pp. 597b–598a. See also Ch'en Chün, *Sung-pen huang-ch'ao pien-nien kang-mu pei-yao* (Taipei: Ch'eng-wen ch'u-pan-she, 1966) 18, p. 7b.
 56. *WHTK* 170, p. 1476. There is a textual problem here. According to *WHTK*, the date of this edict was the seventeenth day (*keng-yin*) of the second month. But this date was recorded in numerical form as the twenty-seventh day of the same month in *CPCSPM* 75, p. 13b. As the twenty-seventh day of this month would be "*keng-tzu*," Yang probably mixed up "*keng-yin*" and "*keng-tzu*," and incorrectly put down the latter as the date on which the edict was issued.
 57. This is revealed in the words of Liu Shu. See *WHTK* 170, p. 1476.
 58. Langlois holds that the edict of the seventeenth day of the second month was returned because of a vehement storm of protest by the officials, and that it was only sent to the Privy Council. This is inaccurate. See Langlois, "Living Law," p. 207. Miyazaki, on the other hand, states that Liu's objection to the edict was meant to argue "against the issuance of such executive directives to judges presiding in pending cases"; see "Administration of Justice," p. 68. But Miyazaki's opinion is not supported by the relevant records in the *WHTK*.
 59. *WHTK* 170, p. 1476.
 60. The date for the issuance of this edict, the first day of the eighth month, is indicated by a record in the *CPCSPM* 75, p. 13b. See also *WHTK* 170, p. 1476.
 61. In *CPCSPM* 81, pp. 9a–b, the date is given as the second day of the eighth month; but in Ssu-ma Kuang's *wen-chi* it became the fifth day of the same month. See *CPCSPM* 5, p. 8a. Since it took time to write a long, articulate, and critical memorial to the throne, it would be more sensible to have the memorial dated the fifth day of the eighth month than the second day of the eighth month.
 62. For the full text of the *T'i-yao shu*, see *CCC* 43, pp. 1a–12b. The event itself was recorded in *WHTK* 170, p. 1476, and *CPCSPM* 81, pp. 9a–b. The narrative

- in the *WHTK* gives the impression that the *T'i-yao shu* was submitted to the throne after the demotion of some judicial officials. This is incorrect because the first order for those demotions was issued on the ninth day of the eighth month, whereupon Ssu-ma Kuang responded promptly with another memorial, dated the eleventh day of the eighth month, specifically protesting the act. It is therefore clear that demotions of those officials had not yet happened when Ssu-ma Kuang submitted his *T'i-yao shu*.
63. *Hsü tzu-chih t'ung-chien ch'ang-pien shih-pu* 5, pp. 8a-9b; *Tung-tu shih-lüeh* 78, p. 7a. For the main portion of the memorial see *Sung-pen huang-ch'ao pien-nien kang-mu pei-yao* 18, pp. 9a-10a. The account given in the *Sung shih* 321, p. 10432, says that Liu Shu submitted the memorial together with Liu Ch'i and Ch'ien Yi when he was under investigation. This is incorrect because Liu Shu was put under investigation on the ninth day of the eighth month, the same day on which the other two were demoted.
 64. Primary sources are inconsistent about these events. A record in *WHTK* 170, p. 1476, confuses the dates and events. A record in *CPCSPM* 75, p. 14a, confuses the date on which Liu and others were put under investigation (the ninth day of the eighth month) and the date of Ssu-ma Kuang's memorial (the eleventh day of the eighth month). Neither of the two works mentions the demotion of two censors, Liu Ch'i and Ch'ien Yi. The most reliable source concerning these events is Ssu-ma Kuang's memorial. See *CCC* 42, pp. 11b-12b.
 65. *CCC* 42, pp. 11b-12b.
 66. *Hsü tzu-chih t'ung-chien ch'ang-pien shih-pu* 5, pp. 9a-b. *Sung shih* 14, p. 271.
 67. Shen, *Chi-i wen-ts'un*, pp. 2162, 2167, 2169.
 68. Hsü Tao-lin, *Lun-lüeh*, p. 79.
 69. Hsü Tao-lin, *Chung-kuo fa-chih-shih lun-chi*, p. 105.
 70. His view is similar to that of Hsü's. See Miyazaki, "Administration of Justice," pp. 68-69. Although Miyazaki's article is an abridged translation of its Japanese version published as early as 1954, the original text does not include such a view. See Miyazaki, "Sō-gen jidai no hōsei," p. 144.
 71. Miyazaki, "Administration of Justice," p. 69.
 72. McKnight, *Law and Order in Sung China*, p. 502.
 73. Borowitz, "Strict Construction," pp. 525, 528.
 74. Langlois, "'Living Law,'" pp. 216-217.
 75. For instance, *CPCSPM* 75, pp. 13a-14a; Li T'ao's commentary note to his *Hsü tzu-chih t'ung-chien ch'ang-pien* 411, p. 13a; the memorial written jointly by Liu Ch'i and Ch'ien Yi, and another memorial by Fan Shun-jen, partially quoted in the *Sung-pen huang-ch'ao pien-nien kang-mu pei-yao* 18, pp. 9a-11a; Lü Hui's memorial in the *Huang-ch'ao wen-chien* 50, pp. 597b-598a; Shao Po, *Shao shih wen-chien hou-lu* (Peking: Chung-hua shu-chü, 1983) 21, pp. 165-166.
 76. See Ssu-ma Kuang's memorial of the eleventh day of the eighth month in *CCC* 42, pp. 11b-12b. *Shao shih wen-chien hou-lu* 21, p. 165. Indirectly, it is echoed in the *Sung shih* 331, p. 10628.
 77. See, for example, the passage from *Shen-tsung shih-lu* identified in n. 45 above. See also *Tung-tu shih-lüeh* 112, p. 7b.

78. *Sung shih* 14, pp. 264-271. There are too many works on Wang An-shih to cite them all. The best English account comes from James Liu, *Reform in Sung China* (Cambridge, Mass.: Center for East Asian Studies, Harvard University, 1959).
79. *Sung shih* 321, p. 10430. See also Shao Po-wen, *Shao shih wen-chien-lu* (Peking: Chung-hua shu-chü, 1983) 10, pp. 106-108.
80. *Huang-ch'ao wen-chien* 50, p. 597b.
81. *Sung shih* 321, p. 10422; 14, p. 271.
82. *Ibid.* 14, p. 271; 15, pp. 275-276; 336, pp. 10773-10774.
83. *Nan-yan chi* 26, p. 7a.
84. *Sung shih* 315, p. 10307.
85. *Ibid.* 327, p. 10543; *Shao shi wen-chien lu* 3, pp. 24-25; 9, p. 92. For the political influence that eminent families had during the Northern Sung, see Kinugawa Tsuyoshi, "Sōdai no meizoku-Kōnan Rōshi no baai," *Kōbe shōka daigaku jinbunronshō*, 9.1-2 (1973), pp. 134-166. Wang Chang-wei, "Sung-tai shih-tsu hun-yin yen-chiu," *Hsin shih-hsüeh* 43 (1993), pp. 19-58.
86. Wang explicitly wanted Lü to be promoted to prime minister in the hope that under Lü's leadership he could serve the government better. See *Shao shih wen-chien lu* 12, p. 125.

GLOSSARY

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|---------------------------------|------------------------|
| A Yün 阿云 | hsing-pu 刑部 |
| A Yün hsü chia wei hsing 阿云許嫁未行 | Hsü Tao-lin 徐道鄰 |
| an-wen yü-chü 案問欲舉 | Hsü Tsun 許遵 |
| ch'eng-ch'in 成親 | K'ai-feng 開封 |
| Chiang-ning-fu 江寧府 | Kuang 光 |
| Ch'ien Kung-fu 錢公輔 | kuan-ssu 官司 |
| Ch'ien Yi 錢顓 | kung-shou 弓手 |
| chih-chih-kao 知制誥 | li 吏 |
| chih-tsa yü-shih 知雜御史 | li chih 離之 |
| chin-shih 進士 | liang-chih 兩制 |
| chung-shih 中使 | liang-fu 兩府 |
| chung-shu 中書 | Liu Ch'i 劉崎 |
| fan-jen 凡人 | Liu Shu 劉述 |
| Fu Pi 富弼 | Lü Hui 呂誨 |
| Han Wei 韓維 | Lü Kung-chu 呂公著 |
| hsien 縣 | ming-fa 明法 |
| hsien-wei 縣尉 | Miyazaki Ichisada 宮崎市定 |

- o-ni 惡逆
 p'an hsing-pu 判刑部
 p'an ta-li 判大理
 pen-fu 本夫
 pien-kuan 編管
 pu-mu 不睦
 san-p'in fu 三品服
 Shao-hsing 紹興
 Shen Chia-pen 沈家本
 shen-hsing-yüan 審刑院
 Shen-tsung 神宗
Shen-tsung shih-lu 神宗實錄
 shu-mi-yüan 樞密院
 Ssu-ma Kuang 司馬光
Ssu-ma wen-cheng kung ch'uan-chia-chi
 司馬文正公傳家集
Sung shih 宋史
 ta-li-ssu 大理寺
- T'ang Chieh 唐介
 Teng-chou 登州
 t'i 體
 Ting Feng 丁諷
 ting-hun 訂婚
 T'i-yao shu 體要疏
 t'ui-chü 推鞠
Tung-tu shih-lüeh 東都事略
 Wang An-shih 王安石
 Wang Shih-yüan 王師元
 Wei A-ta 韋阿大
Wen-hsien t'ung-k'ao 文獻通考
Wen-kuo wen-cheng Ssu-ma kung wen-chi
 溫國文正司馬公文集
 Ying-tsung 英宗
 yü-shih chung-cheng 御史中丞
 yü-shih t'ai 御史台