Law, Literature, and Gender in Tang China: An Exploration of Bai Juyi’s Selected Panwen on Women

Norman P. Ho (侯孟沅)*

I. INTRODUCTION

Since the birth of the law and literature field in the 1970s,¹ scholars working in the West have primarily focused their attention on analysis of legal issues in American and European literary masterpieces. More recently, academics have begun to explore the intersections between law and literature in the literary traditions of late imperial and modern China.² However, very little scholarly atten-

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* J.D. candidate and Global Law Scholar (class of 2012), Georgetown University Law Center. A.M. in Regional Studies-East Asia (Chinese History), Harvard University (2009). Harvard-Yenching Institute Fellow, Department of History, Peking University (2007-2008); A.B. cum laude in History, Harvard University (2007). I would like to thank Professor Wai-yee Li for her extremely helpful comments and suggestions about my translations of Bai Juyi’s panwen and on this paper in general, as well as her encouragement for pursuing research on this topic. Many thanks also to Professor Xiaofei Tian for first introducing me to panwen as a literary genre.


² For example, see JEFFREY C. KINKLEY, CHINESE JUSTICE, THE FICTION: LAW AND LITERATURE IN MODERN CHINA (Stanford, CA: Stanford University Press, 2000) and also WRITING AND LAW IN LATE IMPERIAL CHINA: CRIME, CONFLICT, AND JUDGMENT (Robert E. Hegel & Katherine Carlitz eds., Seattle: University of Washington Press, 2007). However, there has been little to no attention on law and literature in more ancient dynasties.
tion, in both English and Chinese, has analyzed premodern literature and law.

It would be a mistake to suggest the reason for such scholarly neglect is lack of “law” in premodern China. It is now widely agreed among Chinese and Western scholars that China had a sophisticated legal system throughout much of its history, its apex marked by the promulgation of the Tang律 Tang lü [Tang Code] in the mid-seventh century, which became the fundamental basis for legal systems in other East Asian kingdoms during that time. For much of imperial Chinese history, although no independent judiciary existed, law was administered effectively from the emperor down through local officials and magistrates, who not only handed legal disputes but also attended to everyday administrative matters in their jurisdiction. One of the most interesting things about traditional Chinese

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3 Some scholars assert evidence for a systematic code of law can be found as early as the 周 Zhou dynasty. For example, some of the independent feudal states (most notably, the state of 郑 Zheng) had organized and inscribed their laws on bronze cauldrons as early as the mid-sixth century B.C. For example, see evidence in the 左传 Zuozhuan [THE CHRONICLE OF ZUO QUMING], an ancient text that is an important source for history of the Spring-Autumn period and traditionally thought to be a commentary on the 春秋 Chunqiu [SPRING AND AUTUMN ANNALS], an annalistic history of the ancient state of 鲁 Lu. The Zuozhuan is organized chronologically by the reign dates of the 12 rulers of the state of Lu, starting with 隐公 Yingong [Duke Yin] (722-712 BC) and ending with 哀公 Aigong [Duke Ai] (roughly 494-468 BC). See 昭公传六·三 Zhaogong zhuan liu, san [Sec. 6, Chap. 6 of Duke Zhao]: “三月,郑人铸刑书” [“In the third month, the state of Zheng cast penal laws on bronze.”] Also see 昭公传二十九·五 Zhaogong zhuan er shi jiu, wu [Sec. 29, Chap. 5 of Duke Zhao]: “……遂赋晋国一鼓铁,以铸刑鼎,着范宣子所为刑书焉” [“[The Jin leaders] then brought over from Jin one drum-measure of iron, and used it to make a penal cauldron, and inscribed on it the criminal legal code that Fan Xuan had written.”] A good Chinese edition of the Zuozhuan to use is: 杨伯俊编, 春秋左传注, Beijing: Zhonghua shu ju (Zhonghua Book Company), 1990. Many thanks to Professor Wai-ye Li for sharing her draft translation and expertise on the Zuozhuan, especially for the “one-drum measure” term. For good, introductory historical overview of the history of traditional Chinese law in English, consult JOHN W. HEAD & YANPING WANG, LAW CODES IN DYNASTIC CHINA: A SYNOPTIC OF CHINESE LEGAL HISTORY IN THE THIRTY CENTURIES FROM ZHOU TO QING (Durham, NC: Carolina Academic Press, 2005). A good starting book in Chinese for understanding the breath of Chinese premodern law is 范忠信、陈景良编, 中国法制史, 北京: 北京大学出版社, 2007 Fan Zhongxin & Chen Jingliang eds., Zhongguo fazhi shi [A HISTORY OF CHINESE LAW] Beijing daxue chubanshe (Peking University Press), Beijing: 2007.

4 ENDYMION WILKINSON, CHINESE HISTORY: A MANUAL (Cambridge, MA: Harvard University Asia Center, 2000), 539.
law,\textsuperscript{5} is that it reflected the Chinese emphasis on Confucian ritual, behavior, and ethics. The legal system adopted by imperial China, which began with the Qin dynasty’s harsh, Legalist codes in the third century B.C., served the imperial state well until its downfall in 1911.

We would also be equally remiss if we believed that another reason for lack of scholarly inquiry is due to lack of literary material dealing with law in imperial China. Indeed, one of the most unique forms of literary writing that has received scant scholarly attention is the 判文 panwen genre, which can be translated as “written verdicts” or “written judgments,” and also interchangeably called 判 pron, 判词 penci, or 拟判 nipan.\textsuperscript{6} Panwen reached its height in the Tang dynasty (618 – 907), institutionalized in the imperial civil service examinations, one of the entryways into coveted government positions. The structure of panwen is simple: it begins with a statement of a problem rooted in ethics or law, and then argues for a certain position using legal precedent, legal codes, or logical reasoning. Panwen that are extant can be broken up into three categories – 拟判 nipan (constructed judgments), or panwen based usually on fictitious problems and issues that are created and then answered by the author in order to prepare for panwen questions on the civil service examinations; 案判 anpan (case judgments), or real verdicts to real cases decided by government officials; and 杂判 zapan (miscellaneous judgments), or written judgments on problems or issues one faced in everyday life.\textsuperscript{7} Approximately 1200 different panwen appear in the 全唐文 Quan Tangwen (The Complete Prose of the Tang Dynasty), one of the central sources for Tang dynasty writings today.\textsuperscript{8} The large number of extant panwen suggest the importance

\textsuperscript{5} By “traditional Chinese law” I mean law in imperial, dynastic China (221 B.C. to 1911 A.D.).


\textsuperscript{8} 谭淑娟、刘晓华, “试论唐代科举判文题目的性质与意义”, 载宁夏大学学报 (人文社会科学版), 2007 年第 4 期, 第 107 页 Tan Shujuan & Liu Xiaohua, Shi lun Tang dai ke ju panwen ti mu de xing zhi yu yi yi (A Discussion of the Nature and Significance of Tang Dynasty Civil Service Examination Panwen Questions), in Ningxia da xue xue bao (Ren wen she hui ke xue ban) (JOURNAL OF NINGXIA UNIVERSITY, Humanities and Social Sciences Edition), No. 4, 2007, p. 107. The Quan Tang wen was compiled by 董浩 Dong
and permeation of law (or at least, legal modes of thinking and writing) in the Tang. More important, analysis of panwen can perhaps reveal important connections between law and literature in the Chinese tradition, as well as how writers in the Tang thought, conceived of, and applied the law.

Despite the immense scholarly potential in panwen, like the field of Chinese law and literature in general, it has received very little scholarly attention over the past two to three decades, with almost no work done in English. Some of the very best English-language histories of Chinese literature do not even discuss panwen as a genre. Prominent English-translation anthologies of Chinese literature also do not include renderings of panwen. No full-length books in Chinese or English exist that exclusively discuss panwen, and since 1980 to March 2009, only about ten articles have been published (all in Chinese) in China that deal with panwen. Clearly, there is a scholarly deficit on panwen.

This paper hopes to make a very modest contribution to the field and explores the panwen genre specifically through the work of 白居易 Bai Juyi (772-846), one of the Tang dynasty’s most beloved and famous poets. His panwen, known as the 百道判 baidaopan Hao (1740-1818) in 1814 (see Wilkinson, supra note 4, at 594.). A good modern edition to use is published by 中华书局 Zhonghua shu ju (Zhonghua Book Company) in 1996. According to Wilkinson (supra note 4), the Quan Tang wen includes 18,400 literary compositions of 3,042 Tang authors.


11 It is not possible in this paper to provide a full biography of Bai Juyi. One of China’s most famous poets and writers, his poems have been intensely studied and translated by scholars, but his prose (especially his panwen), have not garnered much attention. To give a quick overview of his life, took the civil service examinations first at the age of 28. He served in several posts in government, including governor of Zhongzhou, Hangzhou, and Suzhou, and also mayor of Luoyang, the eastern capital of the Tang. He emphasized the educational value of literature and believed that every composition should have a socially-applicable purpose. He is also known for writing about society’s social problems, particularly as they related to the poor. See “Bai Juyi (Chinese poet),” Britannica Online Encyclopedia (available http://www.britannica.com/EBchecked/topic/465541/Bai-Juyi). Numerous studies are available in Chinese on Bai’s life and poetry. Recommended titles include:
(the one hundred panwen questions), are part of the nipan category, created and written by himself to prepare for panwen civil service examinations. As such, they can be regarded as true works of literary creation, but unfortunately have received scant scholarly attention. The 四库全书总目提要 siku quanshu zongmu tiyao (The Essentials of the Table of Contents of the Siku Quanshu) said that “Bai Juyi’s panwen are the mainstream [and representative of the panwen genre.”12 In other words, Bai’s panwen were considered

陈才智, 白居易, 五洲传播出版社, 2005 年版 Chen Caizi, BAI JUYI, Wu zhou chuan bo chu ban she (China Intercontinental Press), Beijing: 2005; 葛培岭, 白居易, 知书坊出版社, 台北: 2001 Ge Peiling, BAI JUYI, Zhishufang chubanshe (Zhishufang Publishing Co., Ltd.), Taipei: 2001. In English, consult ARTHUR WALEY, THE LIFE AND TIMES OF PO CHU-I (London: George, Allen, and Unwin Ltd, 1949). Modern selected anthologies of Bai’s work – such as 王汝弼选注, 白居易选集, 上海古籍出版社, 上海: 1980 Wang Rubi, ed. and annotates, Bai Juyi xuan ji [SELECTED WORKS OF BAI JUYI] . Shanghai guji chu ban she [Shanghai Classics Press], Shanghai: 1980, focus on his poetry, usually including very little prose, let alone his panwen. A biography of Bai Juyi can also be found in the 新唐书 Xin Tang shu [THE NEW HISTORY OF THE TANG], an official history of the Tang dynasties, which includes biographies of important Tang individuals, edited by 欧阳修 Ouyang Xiu and 宋祁 Song Qi in the Song Dynasty. See the 列传第四十四 Lie zhuan di si shi si [No. 44 of Liezhuan] in the Xin Tang shu for Bai’s biography. The Xin Tang shu is part of the dynastic histories, or “official histories,” known as the 正史 Zheng shi [Official history]. The preservation of the past and the writing of history has been a very serious enterprise in Chinese civilization. Among the most important historical works that were produced are these twenty-five dynastic histories, or Zhengshi. They cover important events, people, and institutions of the various dynasties. One dynasty’s history was usually written by the dynasty that followed it. Use the Zhonghua shu ju edition of the Xin Tangshu (published in 1975). Note that there is also a 旧唐书 Jiu Tang shu [THE OLD HISTORY OF THE TANG] that was compiled and edited, under the leadership of 刘昫 Liu Xu. The Xin Tang shu can be understood as a revision of this earlier work. Wilkinson argues that the Jiu Tang shu is more reliable (see Wilkinson, supra note 4, at 820). Both are important sources for the study of Tang history.

12 See 龙筋凤髓判· 四卷, 永容、纪昀等主编, 四库全书总目提要, 卷一三五 子部 四十五 类书类一, 商务印书馆, 上海: 1933, 第 2785 页 Long jin feng sui pan si juan [THE PANWEN FORM (Four Volumes)], Yong Rong & Ji Yun etc., eds., Siku quan shu zong mu ti yao [THE ESSENTIALS OF THE TABLE OF CONTENTS OF THE SIKU QUANSHU], Juan 135 [Volume 135] Zi bu [The 45th of Zi (Philosophy) Part] Lei shu lei yi [The 14th of Lei shu lei Part], Shang wu yin shu guan (The Commercial Press), Shanghai:1933, p. 2785. The 四库全书 si ku quan shu (sometimes translated as “Complete Library of the Four Treasures”) was a massive editorial undertaking during the Qing dynasty, commissioned under the Qianlong emperor, which was completed in 1782. The purpose was to collect, and in some cases, annotate, almost all surviving historical texts covering the fields of history, philosophy, literature, and the Classics. The editors frequently provided descriptions or introductions of
as models and representative of the *panwen* genre as a whole, and so have been chosen for study. Because his *panwen* are too numerous to explore satisfactorily in the scope of this paper, I will focus specifically on his *panwen* that deal with women and gender issues so as to allow more concentrated analysis of the legal issues at stake in the specific *panwen*. In terms of our literary analysis, focusing on women issues is also helpful since the theme of gender and women has been one of the most imaginative and popular among male Chinese literati throughout Chinese history.

This paper proceeds as follows. Because of the lack of scholarship on premodern Chinese law and literature, Section I will discuss some theoretical issues on the relationship between law and literature in the Chinese tradition, and explicate some differences between the role and function of literature in premodern China and the West. Section II will then provide a brief overview of the *panwen* genre, its history and its literary features, with specific attention to Bai Juyi’s *baidaopan*. Section III will then present my translations of selected *panwen* by Bai Juyi and put forth my analysis. Through these sections, I hope to argue first and foremost that the relationship between literature and law in these *panwen* was very important and that they supported each other. Their boundaries often overlapped in numerous ways: literature could become a source of law, through the act of writing literature could try to elucidate certain principles and take on a “legal” character, and literary writing through the *panwen* could give rhetorical force to law. Furthermore, as seen through Bai’s *panwen* – what we might think of today as rational and legal thinking influenced the form and content of the *panwen*. Tang *panwen* have, generally speaking, gotten a “bad rap” in history – one prominent scholar of Bai Juyi has written that: “[h]ighly antithetical, stilted clauses, archaic vocabulary and various other obligatory mannerisms combined to make the ’judgment’ (*panwen*) the most pedantic and artificial of all Chinese literary forms.”

I do not think such an assessment is entirely fair and hope to show that Bai was making important and substantive points in his *panwen*, to the point of even defying traditional gender attitudes during his time.

Indeed, the ultimate argument of this paper is to attempt to show the symbiotic relationship between literature and law – as seen through Tang *panwen* – in the Chinese tradition, and also highlight the crucial agency and rhetorical power literature offered to the functioning of law.

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The word *panwen* survives today in modern Chinese, meaning “verdicts.” One of the central challenges with Chinese legal reform today is the lack of comprehensive written legal judgments by judges to explain their handling of a case. Perhaps the important and dynamic tradition of *panwen* in the Tang dynasty can provide some insight into how we might encourage the writing of more complete and detailed verdicts in Chinese courts today.

II. THINKING ABOUT LITERATURE AND LAW IN TRADITIONAL CHINA – THEORETICAL ISSUES

In his landmark work, *Law and Literature*, Richard Posner argues that we must be careful in lumping the two fields together and that they possess intrinsic differences. For example, he writes that “[l]aw is so common a subject of literature that one is tempted to infer a deep affinity between the two fields, giving the lawyer privileged access if not to the whole body of literature then at least to the works that are explicitly about law.”14 Posner also asserts the nature of “law” and “literature” are also quite different – “literature is characteristically dramatic,”15 but “the essential spirit of the law is not dramatic.”16 In other words, Posner draws a sharp distinction between law and literature.

At this point some might object, under Posner’s assumptions, that it would be foolhardy to study *panwen* as literature because of the sharp divide between law and literature. However, it is important to note that there are important theoretical differences between conceptions of literature in the Western and Chinese traditions. Posner’s assumptions that there exists a gulf between law and literature may be more suitable for analysis of Western literary works – indeed, it is therefore no surprise to see that Posner’s literary examples draw from the Western, not Eastern, canon.

In traditional Chinese civilization, literature – or *wen* – had a very pragmatic value and special status. One of the earliest meanings of *wen* was “pattern” – a beautiful and sophisticated pattern that represented the essence of refinement.17 Today *wen* forms the basis

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15 *Id.* at 22.
16 *Id.* at 23.
of numerous words such as wenxue (literature), wenzhang (composition), wenming (civilization), and wenhua (culture). Writing later became the hallmark of the ru (Confucian) scholars; good writing was intimately connected with the moral standards of a person. This juxtaposition of wen with human life and ethics is evident from a passage from the Analects: “The master [Confucius] taught four things; wen (writing), ethical conduct, loyalty, and trustworthiness.”

Literature was not a hobby to be solely to be created and enjoyed in the privacy of one’s home – it was to be a reflection of one’s philosophy and character.

Throughout traditional China, perhaps more than in the Western tradition, the practical value of literature was emphasized – it had to have some use to society, but also be enjoyable to read; indeed, “in China, the Way (dao 道), literature, and government form[ed] a tight-knit trinity.” Another clear way to see the relationship between literature and public affairs is simply glancing at the various categories of literature listed in the Wenxuan [Selections of Refined Literature], one’s of China’s most important literary anthologies, compiled by 萧统 Xiao Tong (501-531) in the sixth century. Among the categories listed as literature are: inscriptions, proclamations, announcements, laments, requiems, odes, epitaphs, letters, commands, admonitions, just to name a few. A person who has exclusively read literature from the West might be surprised to see genres that he may not consider literature. The contents of the Wenxuan thus further reveal a key contrast between Western and Chinese notions of literature – the public value of literature and writings produced by officials in government service. Finally, fiction was generally looked down upon by Chinese officials and literati, in favor of history or historically-based writings dealing with government affairs. Wilt Idema and Lloyd Haft point out that works that

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21 Mair, supra note 17, at 4-5.
have enjoyed canonical status in the West – such as the Iliad and the Odyssey – might very well have been “dismissed” in pre-twentieth century China as popular works for the masses.\textsuperscript{22} Thus, the major point to take away here is that it is not without merit to assume a close relationship between literature and law in the Tang panwen. Bai Juyi – who did serve as an official in the Chinese imperial government, while also writing literature – is the perfect example of a writer who not just straddled but truly lived both worlds – literary and political/legal – simultaneously. Furthermore, perhaps it is only in the Chinese tradition where we can assume – based on the points raised above – that literature and law were not just related, but one in the same. Panwen serves as a model example of their synthesis.

Having argued for that assumption, we now move on to another of Posner’s theoretical points. In his chapter on “Judicial Opinions as Literature,” Posner also discusses ways law and literature can be mutually beneficial and urges that we can examine judicial opinions “under the aspect of literature,”\textsuperscript{23} and that literary art has much to offer in making judicial writings more rhetorically powerful and persuasive. Furthermore, he makes the point that a “judicial writing style” – perhaps because of a judge’s or writer’s “aesthetic principles” – can “affect [the] content” of a judicial decision.\textsuperscript{24} In essence, Posner attempts to argue for the weighty influence of literature and literary form on the very nature of a judicial decision. I find this point to be persuasive and directly relevant to our discussion on the panwen. If we consider them to be judicial decisions, we can also see the influence of literary developments (specifically the development of 骈体文 piantiwen, or parallel prose) on the panwen. Furthermore, we see Posner’s point proven in the history of Chinese written verdicts and judgments. Tang piantiwen was usually written in the piantiwen format, which many authors considered as the quintessential writing style during the Tang and pre-Tang. Piantiwen, a sort of versified prose that had strict rules regarding balanced tonal patterns and parallel construction of sentences, became the writing style of the day. However, some Tang writers later decried that authors, in an effort to adhere to the rules of the pianti format – were sacrificing clarity and message for literary ornamentation. Soon, Tang literati such as 韩愈 Han Yu (768-824) were advocating the guwen style, or a return to the concise prose style of the pre-Han authors. Literary historians now call this movement, led by Han Yu

\textsuperscript{22} Idema, \textit{supra} note 19, at 10.

\textsuperscript{23} Posner, \textit{supra} note 14, at 255.

\textsuperscript{24} Posner, \textit{supra} note 14, at 294.
and other writers, the 古文运动 guwen yundong or the “classical prose movement.” In the Song dynasty (960 – 1279 AD), pian- tiwen was largely discarded in favor of guwen. This change of “aesthetic principles” changed judicial writing – whereas Tang panwen were written in pianitiwen and involved more literary features in order to argue a case (such as classical allusions and references), Song written verdicts were much more concise, often serving more as handbooks or references for magistrates deciding cases. One could argue they became much more “legalized.” The major point to be taken away here that will form another theoretical base of this paper is that we should underestimate the impact of literature or changes in literary style on panwen or the composition of written verdicts. This has implications for law in China today, if we are to make the argument that panwen in the Tang has resources to offer for modern judges and verdict writing.

Indeed, in the Chinese tradition, the central message is that “writing and law are always inherent in each other.”

III. AN OVERVIEW OF PANWEN, WITH AN EMPHASIS ON BAI JUYI’S BAIDAOPAN

Here I aim to give a very brief overview of panwen as a genre and also offer an introduction to Bai Juyi’s Baidaopan. The panwen genre is: 吴承学, “唐代判文文体及源流研究”, 载文学遗产 1999 年第 6 期 "Tang dai panwen wen ti ji yuan liu yan jiu" (Research on the Form, Origins, and Transmission of Tang Dynasty Panwen) in Wen xue yi chan (LITERARY HERITAGE), No. 6, 1999. 谭淑娟, “唐代判文文学研究综述”, 载广西社会科学 2008 年第 9 期 "Tang Shujuan, Tang dai panwen wenxue yanjiu zongshu (A Summary of the State of Research on Tang Dynasty Panwen), in Guangxi she hui ke xue (GUANGXI JOURNAL OF SOCIAL SCIENCES), No. 9, 2008 is an excellent and concise “state of the field” essay that summarizes Chinese research on panwen over the past 20 years or so. 陈勤娜, “唐前判文的沿革”,


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26 ROBERT E. HEGEL AND KATHERINE CARLTIZ, ED., WRITING AND LAW IN LATE IMPERIAL CHINA: CRIME, CONFLICT, AND JUDGMENT (Seattle: University of Washington Press, 2009), P. XI.

27 Perhaps the best starting article to get an idea of the origins and characteristics of the panwen genre is: 吴承学, “唐代判文文体及源流研究”, 载文学遗产 1999 年第 6 期 "Tang dai panwen wen ti ji yuan liu yan jiu" (Research on the Form, Origins, and Transmission of Tang Dynasty Panwen) in Wen xue yi chan (LITERARY HERITAGE), No. 6, 1999. 谭淑娟, “唐代判文文学研究综述”, 载广西社会科学 2008 年第 9 期 "Tang Shujuan, Tang dai panwen wenxue yanjiu zongshu (A Summary of the State of Research on Tang Dynasty Panwen), in Guangxi she hui ke xue (GUANGXI JOURNAL OF SOCIAL SCIENCES), No. 9, 2008 is an excellent and concise “state of the field” essay that summarizes Chinese research on panwen over the past 20 years or so. 陈勤娜, “唐前判文的沿革",
Our major sources for Tang panwen are the Quan Tangwen (the Complete Prose of the Tang dynasty) and also the Wenyuan yinghua, an important anthology of Tang writings compiled in the late tenth cen-

As discussed earlier, the three major types of panwen were the nipan, the anpan, and the zapan. Since the anpan were verdicts and judgments of actual court cases, the names of the people involved usually were recorded. The nipan—given their fictitious nature—usually referred to people as jia 甲 or yi 乙 (Mr. A or Mr. B). Furthermore, the nipan were written primarily in piantiwen, a testament to their literary nature and value.

The nipan comprise the great majority of panwen found in the Quan Tangwen; out of the approximately 1200 panwen in this anthology, anpan number only about 15.

The Wen yuan yinghua includes about 1,000 panwen. A glance at the contents in the Wen yuan yinghua reveal the substantive diversity of panwen—organized by topical area and content, the involve issues relating to harvests, natural disasters, learning and schools, music, ancestral rituals, criminal infractions, agriculture, taxation, commerce and business, filial piety, family affairs and marriage, to name a few.

In other words, Tang panwen covered the entire realm of human and government affairs, a testament to the interest toward and importance of law in Tang society.

This naturally leads to an important question—why did the panwen flourish especially in the Tang dynasty? The answer is that the panwen genre was institutionalized as material to be tested in the Tang civil service examination system 科举. The examinations were a source for recruitment of new officials into government service.

Two major examinations are of note—the jinshi 进士 (literacy...
ratus presented to the emperor for appointment) and the *mingjing* 明经 (clarifying the Classics) examinations. These were the top two exams on the national level (after passing tests at the local level); candidates could choose which to take. The *jinshi* examination largely emphasized literary skill, requiring the candidate to write poems and parallel prose. The *mingjing* examinations included policy essays on philosophy and history, but also tested literary writing. This was the *ju* 举 component of examination process. Even if you did spectacularly on the *mingjing* or *jinshi* examinations, you did not automatically receive an appointment in the government — you received a qualification, frequently called a *chusheng* 出身, which made you eligible for the *xuan* 选, or selection, portion of the examination, administered by the Ministry of Personnel, or the *libu* 吏部. Candidates would then have to take one of three possible exams; one of these exams was the “transfer examination,” which required candidates to write two *pan*. A special promotion examination was also offered for individuals who already had a posi-

test answer scrolls were not anonymous during the Tang (as opposed to the Song) and candidates could often be recommended by famous people, which increased their chances. Additionally, candidates in the Tang routine took advantage of the 行卷 *xingjuan* method [presenting scrolls], where they first sent (before the examinations) their writings to influential intellectuals in the capital to better their chances at the actual examination (see Chan, *supra* note 28, at 60-61). It was not until the Song dynasty that the examination system reached arguably its most “objective” state and thus a great majority of officials were selected through the examination system. The examination system was not discarded until 1905, near the end of the Qing dynasty. Its importance to Chinese history cannot be understated — preparing for and doing well on the examinations consumed the lives of countless Chinese men, whose goal was to enter government service. Good historical overviews of the system include Benjamin Elman, *A Culture History Of Civil Service Examinations In Late Imperial China* (Berkeley, CA: University of California Press, 2000). 李新达, 中国科举制度史, 台北: 文津出版社, 1995. Li Xinda, *Zhongguo ke ju zhi shi* [A HISTORY OF THE CHINESE CIVIL SERVICE EXAMINATIONS], Wenjin chu ban she (Wenjin Press), 1995; 郭齐家, 中国古代考试制度, 北京: 商务印书馆, 1997 *Guo Qi Jia*, Zhongguo gu dai kao shi zhi du [THE EXAMINATION SYSTEM OF ANCIENT CHINA], Shang wu yin shu guan (Commercial Press), 1997; and Thomas H.C. Lee, *Government Education and Examinations in Sung China* (Hong Kong: Chinese University Press, 2000).

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39 *Id.* at 62.
tion, but who sought to move up to higher posts. According to the Tongdian: [41]

As for these candidates seeking promotion, there were four criteria for selection: first, the candidates’ manner and the way he carries himself; second, his skills of speech; third, his writing and calligraphy; and fourth, his skills in writing pan. When these four criteria are met, then he will be ranked according first to the quality of his ethical conduct, then his talent, and then his previous service will be taken into consideration . . . as for [a]ll those who are to be tested, they will be first brought together and then administered the test, and their writing/calligraphy and pan will be inspected... [42]

As is clear from the Tongdian’s record, panwen played a central role in the selection not of local, minor officials, but of the most talented public servants seeking the highest and most respectable positions in Chang’an. The panwen was also included in other special

40 Id. at 63.
41 The Tongdian is an encyclopedic text covering the history of Chinese institutions from antiquity (the Yellow Emperor) to Emperor Xuanzong (755 AD) of the Tang dynasty, designed as a guide to the institutional structure and administration of previous dynasties and periods. It was written by 杜佑 Du You (735-812), who had served as chancellor three times during the Tang, and completed in 801. The Tongdian is divided into nine sections, deliberately ordered by Du You: 1) food and money 食货; 2) the examination system 选举; 3) official ranks and titles 职官; 4) rites 礼; 5) music 乐; 6) the military 兵; 7) legal punishments 刑; 8) regional/provincial administration 州郡; and 9) border defenses 边防. According to Endymion Wilkinson, one of the values of the Tongdian – especially for use in research of pre-Tang institutions – is that “many of the sources used [by the Tongdian] have since been lost (Wilkinson, supra note 4, at 525).” The Tongdian is classified as a zhengshu 政书 by the Sibu 四部 classification and it heavily influenced the Tongzi 通志 and the Wenxian Tongkao 文献通考. These three works collectively are known as the Santong 三通. It is important to remember that the respective authors of these works also included their individual views and opinions into the texts. See: ENDYMION WILKINSON, CHINESE HISTORY: A MANUAL, REVISED AND ENLARGED (Cambridge, MA: Harvard University Asia Center, 2000) and 张衍田, 中国历史文选, 北京: 北京大学出版社, 2002 ZHANG YANTIAN ED., Zhongguo li shi wen xuan [SELECTED READINGS FROM CHINESE HISTORY] (Beijing: Peking University Press, 2002) for discussions of the Tongdian.

examinations for individuals who had only passed the mingjing or jinshi examinations and had no practical experience, but who wanted to advance up the government ladder. This examination— which Bai Juyi took in 802— was called the shupan bacui 书判拔萃. The baidaopan were written by him in order to prepare for this examination. After all, the shupan bacui required candidates to “write three panwen.”

The importance of panwen was also recognized by Chinese intellectuals in the Ming dynasty (1368-1644). Xu Shizeng 徐师曾 (ca.1517-1580), who wrote the Wenti mingbian xushuo 文体明辨序说 (Introductory Remarks/Preface to A Study of Different Literary Forms) counted panwen as among 127 primary genres of traditional literature. According to Xu:

Analyzing the structure of the character pan 判, [we can see that] it means “to break.” When deciding and judging cases in high antiquity, the wusheng 五声 were used to hear...
cases . . . in the Qin dynasty, government clerks were shi 師 and were especially in charge of administering the criminal legal system. In the subsequent Han dynasty, although Confucian scholars advanced in court, they still placed importance on using the Classics to help decide legal cases. This method was very close to the system of the ancient sage-kings and the punishment system of the Annals of the Spring and Autumn Period. After this came the panwen. In the Tang dynasty, testing panwen on the examinations served as one method to select scholar-officials. As a result, panwen grew in importance. Thus as for the reason our verdicts today often use anonymous or fake names for people involved in cases, this is because of the style of the panwen. On the examination panwen, candidates would give people generic surnames of ‘jia’ or ‘yi’. Now as for wanting to use panwen to decide or to investigate into truth of cases . . . panwen is erasing the ancient principle of handling cases, [and is not suitable for these purposes]. [Furthermore] Tang panwen were ladled with stories and allusions and not appropriate for controlling crimes; it chose to employ florid and ornamental language, and was not in accord with the published legal codes.

Xu argued that some Tang panwen had degenerated into literary formulas, emphasizing literary ornamentation over substantive argument (a similar argument to the guwen yundong advocates in the Tang and Song). Indeed, at this point, some may raise Xu’s argument that panwen are not useful sources for studying law and literature because of their lack of innovation and literary predictability. While it would be a mistake to think all panwen can serve as superb sources for legal history or analysis, I would argue, and hope to show specifically through Bai’s panwen, that such generalizations are not necessarily appropriate and that much depends on the particular author. As indicated in the introduction, one of the aims of this paper is to show that law and literature were (and are) indeed compatible

47 The Qin dynasty was ruled by the Legalists, or fajia 法家.
48 As discussed earlier, nipan often referred to people as jia 甲 or yi 乙 (Mr. A or Mr. B).

Chinese texts are available in a convenient searchable website called The Chinese Text Project, compiled and organized by Donald Sturgeon, available at http://chinese.dsturgeon.net/index.html
and mutually enriching, and Bai was an author who took *panwen* seriously and attempted to write rational judgments based on legal codes, all without sacrificing literary excellence.

Xu’s view does however reinforce the point of *panwen*’s pivotal role in the Tang imperial examination. Indeed, the civil service examination’s testing of literature further confirms the validity of our assumption that the boundaries between “private” and “public” literature were not clear and sometimes overlaid on top of each other. More specifically, *panwen* were looked upon not just as simply literary exercises – as we can see from their inclusion into the some of the most important examinations in the Tang for the top candidates who had passed national level jinshi and mingjing examinations, the emperor and the authorities saw *panwen* as being able to measure the ethical and intellectual depth of a candidate. The *panwen* could not just reveal his ability to judge cases or resolve difficult political and legal questions – this literary exercise was seen to have the ability to allow evaluators to truly know the candidate inside and out.

IV. **AN ANALYSIS OF BAI’S SELECTED PANWEN**

In this next section, I translate and examine a few of Bai’s specific *panwen* from the *Bai dao pan* that focus on gender and family issues, in an attempt to argue that he did take the law seriously and applied legal reasoning to his *panwen*. In other words, these *panwen* were not simply literary ornamentations, but had evidence of legal substance. I will focus on three *panwen*: no. 1, 22, and 36. 50

We begin with *panwen* no. 1 (得甲去妻后妻犯罪请用子荫赎罪 甲怒不许), which takes its title from the central legal problem that is to be resolved, followed by the response and decision.

**Problem:** After Mr. A divorced his wife, his wife committed a crime. She now wants to use her son’s protection privilege in order to avoid punishment. Mr. A is very angry and refuses to allow [her to utilize the protection privilege]. 51

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50 The numbering is the order of appearance of the *panwen* in 白居易笺校 *Bai Juyi ji jian jiao* (see note 51).

51 朱金成, 白居易笺校, 上海: 上海古籍出版社, 1999. ZHU JINCHENG, *Bai Juyi ji jian jiao* [ANTHOLOGY OF BAI JUYI’S WORKS WITH COMMENTARY], Shanghai gu ji chu ban she (Shanghai Guji Press), 1999, 66 卷, *panwen* no. 1, p. 3561. There are numerous collections and anthologies of Bai Juyi’s writing in print. For all *panwen*, I use Zhu Jincheng’s convenient punctuated and annotated edition. I have also consulted 孙望, 郁贤皓主编, 唐代文选, 南京: 江苏古籍出版社, 1994 Sun Wang, Yu Xianhao ed. *Tang
Before analyzing Bai’s response, some background information is required on the legal issues at stake here. The Tang Code 唐律, the Tang dynasty’s penal code that was promulgated in the mid-seventh century, provided for a “protection right,” granted for members of the emperor’s family, officials of certain rank, or “those who had the eight deliberations.” In other words, the background or status of the offender had an influence on the deciding of the case. Relatives were, in some cases, covered by protection privileges as well. The purpose of such a system was to reinforce Confucian notions of hierarchy, which were seen as paramount in the efficient family-structure of the state. In this case, Mr. A’s wife wants to use her son’s protection privilege (we are not told how he qualifies, just that he does) to prevent punishment.

The panwen text continues, full of historical allusions:

Response: Even if relations between husband and wife are good and harmonious, there may be a time when they will get divorced. In the third year [of Mr. A and his wife’s] marriage, they gave birth to their son, and her grace to him can never be forgotten. Although the phoenix no longer harmoniously call [to one another], how could the [small] crow [their son] possibly forget to return to feed and care [for his parents]?
look back at his parents’ hatred for one another, I think I have reached an enlightened judgment. Wang Ji of the Han dynasty divorced his wife . . . and did not remarry; Kong Li’s (Confucius’s son) mother was forced to leave, [yet after her death Kong Li mourned her]; now Mr. A’s wife is about to be subject to the compassionate laws [of our state]. But a son’s desire to take care of his mother is understandable, how could he allow disasters to befall her and not save her? Even though his mother did not find her right place at home, yet [her son]’s filial heart still wants to comfort her. Mr. A accompanied his wife “only a little way to the threshold.” So should the son’s protection privilege be refused in order for her to be redeemed from punishment? Even though the wife has climbed down the mountain and her husband still is angry with her, how could son possibly “ascend that bare hill,” without feelings for his mother? I think of the “Song of the Plaintains” , and

54 From 诗经, 谷风. SHI JING (CANON OF ODES), Gu feng, poem no. 35. All SHI JING numbers are the Mao numbers. I use James Legge’s translation for all SHI JING poem references and quotes; these are publicly available on the previously cited Chinese Text Project. Also see the French Association of Chinese Language Teachers’ online edition at http://afpc.asso.fr/wengu/wg/wengu.php?l=Shijing for another online edition.

Relevant text of poem:

I go along the road slowly, slowly / In my inmost heart reluctant.
Not far, only a little way / Did he accompany me to the threshold.
Who says that the sowthistle is bitter? / It is as sweet as the shepherd’s purse.
You feast with your new wife / [Loving] as brothers.

The point of this poem is to stress the husband’s lack of care or love toward his wife.

55 In other words, she has been divorced. See annotations in Quan Tang wen xuan, 2487.

56 This is a reference to poem no. 110 (Zhi hu 陟岵) in the SHI JING. The poem emphasizes the child’s filial love for his mother.

Relevant text of poem:

陟彼屺兮、瞻望母兮。
母曰嗟、予季行役、夙夜无寐。
上慎旃哉、犹来无弃。

陟彼屺兮、瞻望母兮。
母曰嗟、予季行役、夙夜无寐。
上慎旃哉、犹来无弃。
also hear that happiness comes from having a son. I also consider the central message and significance of the “dolichos creepers.”

How could one not consider patiently taking care

I ascend that bare hill / And look towards [the residence of] my mother.

My mother is saying, 'Alas! my child, abroad on the public service, morning and night have no sleep.

May he be careful / That he may come [back], and not leave his body there!'

From Shi Jing, Poem no. 8, Fu yi. Here, reference to this poem is to emphasize the happiness that comes through peace in the family.

Relevant text of poem:

采采芣苢，薄言采之。
采采芣苢，薄言有之。
采采芣苢，薄言掇之。
采采芣苢，薄言捋之。
采采芣苢，薄言袺之。
采采芣苢，薄言襭之。

We gather and gather the plantains / Now we may gather them.
We gather and gather the plantains / Now we have got them.
We gather and gather the plantains / Now we pluck the ears.
We gather and gather the plantains / Now we rub out the seeds.
We gather and gather the plantains / Now we place the seeds in our skirts.
We gather and gather the plantains / Now we tuck out skirts under our girdles.

From Shi Jing, poem no. 71, Ge lei. The point of citing this poem is again to emphasize the important relationship between mother and son.

Relevant text of poem:

绵绵葛藟，在河之浒。
终远兄弟，谓他人父。
谓他人父，亦莫我顾。

绵绵葛藟，在河之涘。
终远兄弟，谓他人母。
谓他人母，亦莫我有。

绵绵葛藟，在河之湄。
终远兄弟，谓他人昆。
谓他人昆，亦莫我闻。

Thickly they spread about, the dolichos creepers / On the borders of the He.
For ever separated from my brothers / I call a stranger father.
[of his parents] as the most important responsibility? It is thus difficult to dismiss the argument of the mother and son [in this case]. I sincerely request that she is not deprived of [this protection privilege].

Bai Juyi’s verdict is clear – he ruled completely in favor of the mother, appealing to sources of authority in literature and historical texts. The central reasoning offered by Bai Juyi is that the relationship between mother and son is sacred and cannot be violated. The permitting of the mother’s usage of her son’s protection right to redeem herself from punishment is an expression of the son’s duty and desire to protect her, as his dictated by his filial responsibilities. What is interesting here is that Bai did not simply portray this as a filial responsibility, but something natural and to be expected.

Of course, we might ask the question – if the son were to extend his protection privilege to his mother, would this not also be an act of disobedience to his father? Bai Juyi first seems to have assigned blame to Mr. A, arguing that he did not fulfill his duties as a father and head of household efficiently. He quoted various passages, many of which criticize unloving and irresponsible husbands, from the 《Shijing 诗经》 – or the Classic of Poetry – one of China’s canonical and authoritative texts. For example, the passage from the Shijing where the husband “accompanied his wife only a little way to the threshold” is originally about a husband who basically abandons his wife in order to marry a new one – he basically disrespectfully sends his previous wife off to fend for herself. In the poem, it is clear that his previous wife went away reluctantly, which may hint that this divorce also was instigated by Mr. A. Moreover, he brought up the historical allusion of Kong Li, who was Confucius’s son. Kong Li had disobeyed Confucius by formally mourning for his mother, going against ancient laws of ritual. Gender issues are also at stake – usually the father figure was much more important. But Bai here excused his behavior, arguing that the natural tendency for filial devotion outweighs the black letter law of ritual back in antiquity.

I call a stranger father / But he will not look at me.
Thickly they spread about, the dolichos creepers / On the banks of the He.
For ever separated from my brothers / I call a stranger mother.
I call a stranger mother / But she will not recognize me.
Thickly they spread about, the dolichos creepers / On the lips of the He.
For ever separated from my brothers / I call a stranger elder-brother.
I call a stranger elder-brother / But he will not listen to me.

59 Zhu, supra note 51, at 3561.
This is a very powerful claim, especially since Confucius was treated a sacred sage and who was seen as incontrovertible for much of Chinese history.

Other quoted passages from the *Shijing* appeal to mother-son relationship by eliciting feelings of nostalgia and possibly homesickness; the “dolichos creepers” is in reference to a poem that discusses a son that is separated from his family, and calls out to strangers, pretending they are family members to ease his painful solitude.

Tying this analysis back to the arguments of this paper, we can first see the powerful role of literature in producing this judicial decision – Bai Juyi appealed to literature as a source of emotional justification for his *panwen*, to stir up human feelings in readers. Emotional appeal becomes not just an empty rhetorical device, but a critical aspect, foundation, and rationale for his decision – we should allow the extension of the son’s protection privilege because the emotional bonds between mother and son are sacred. Moreover, Bai seems to have been saying, you as a reader should be able to empathize and feel these feelings yourself.

Furthermore, Bai did not elucidate the reasons why Mr. A is angry with his wife. Perhaps the reasons were justifiable, perhaps they were not. However here the rhetorical and persuasive power of literary omission empowers the *panwen* and the legal issues at stake, almost universalizing his decision – in other words, the message Bai has conveyed seems to be that it does not matter what the mother did that caused her husband to divorce her in the first place, for nothing trumps the mother and son relationship.

Literature not only becomes a key rhetorical device to persuade, but it also serves as a source of law itself, further showing that in the premodern Chinese tradition, the boundaries between law and literature could be overlapped. Bai rested his argument on the principles found in the *Shijing* poems and historical allusions he cites; his major assumption is that the relationships as detailed in the *Shijing* are natural, right, true, and unbreakable.

What is also interesting in this *panwen* is that there is no clear reference or citation of any specific law or code in the Tang Code. Does this mean that law was seen as unimportant by Bai Juyi? Is this *panwen* simply an empty literary text? I would argue that law still plays a major role in the *panwen*, especially if we try to appreciate what Bai tried to do. First, I think although not made explicit in the *panwen* text, I think we can assume that Bai was very much aware of the relevant law in the Tang Code (after all, the *panwen* questions were testing not only literary skill, but legal knowledge). We can also assume the law formed the basis and starting point for his construction of the *panwen* problem and question. Thus, the work does not simply cite or refer to literary allusions, but there is a
rational, “legal” formulation to the argument. Bai did not simply say that the case should be decided in favor of the mother simply because of filial piety, but he did an analysis of Mr. A as a father and a husband. Clearly Mr. A’s deportment, in Bai’s eyes, had some bearing on the case, and he used sources from literature to reveal that. In other words, I argue that we should see literature here as a source of law that complements the content of legal codes.

What, then, does the Tang Code have to say about this situation? According to the subcommentary of Article 15.4: “[For cases where a wife] has committed an offense against her husband and is divorced, she may still use her son’s protection.”60 The law seems to be quite clear about this matter—so the obvious question is, why not simply cite the law? The answer again lies in the rhetorical power of the panwen and verdict. I would speculate here that one of Bai Juyi’s intentions here was not only to apply the law to the case, but to illuminate the most important and fundamental principles governing the entire Tang Code—namely, that “[t]he intent of the Code [was] clearly to keep the family together”61 and to preserve the sanctity of proper parent-child relations. In other words, Bai not only stressed the application of proper law, but of its perpetuation through the support of the principles on which it was built. The rhetorical power of Bai Juyi’s literary forms, I would argue, had the effect of conferring on the law even more legitimacy.

The next panwen to be discussed is no. 22,《得景妻有丧景于妻侧奏乐妻责之不伏》:

*Problem:* The parents of Mr. Jing’s wife died, but he played music at her side. She censured him but he does not admit wrongdoing.62

Before we proceed further into the panwen, it is important to keep in mind the relevant law, recorded in Article 120 of the Tang Code, “Concealing and Not Mourning the Deaths of Parents or Husband”:

ARTICLE 120.1a. All cases of persons who upon hearing of the deaths of parents or husband conceal it and do not mourn are punished by life exile at a distance of 2,000 li.

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60 Tang Code, Article 15.4 Subcommentary in Johnson, supra note 52 at 107. Original Chinese text available in Qian, supra note 52 at 66.
61 Johnson, supra note 52 at 33.
62 Zhu, supra note 51 (volume 66, panwen no. 22) at 3582.
ARTICLE 120.1b. If a person takes off mourning clothes and wears ordinary clothing before the end of the mourning period, or neglects mourning by making music, the punishment is three years of penal servitude.

COMMENTARY: The punishment is the same if the person makes the music himself or herself or has another person do it.\textsuperscript{63}

\textit{Panwen} no. 22 continues:

\textit{Response}: If there is death then there is mourning, and when you see it, proper respect must be maintained. Music is only for honoring occasions of joy, it must be played in accordance to what is ritually proper. What is of paramount importance for a husband and wife is that they are of the same heart. But in auspicious or inauspicious matters, their life paths [may be] different. Mr. Jing’s wife is in a stage of austere mourning, but the musical instruments were not removed from the courtyard.\textsuperscript{64} \textit{Kengqiang}\textsuperscript{65} sounds (music) came incessantly from the [husband’s] ringing of the bells, and the musical tones harmed their marital relations. Not only did Mr. Jing go against his duty as a husband, he also rejected proper mourning for those who had died. He should have been thinking: “My wife is unmistakably wearing mourning clothes on her body – that [proper mourning] is my concern.” [But instead] he tunes and adjusts the music of stringed instruments in order to fill his ears – how can he be at peace with this? [As a result], the proper respect between husband and wife has gone off course, and the great, serious mourning [that was supposed to

\begin{footnotesize}
\textsuperscript{63} Article 120, Tang Code in Johnson, \textit{supra} note 52, at 88. The original Chinese text can be found in Qian, \textit{supra} note 52, at 340.

\textsuperscript{64} I have translated the line “庭不彻悬” as “the courtyard has an inappropriate air of joviality.” “彻悬” here is also the same word as “彻县.” “彻县” describes a phenomenon in Chinese antiquity where rulers and ministers would flock quickly to remove specific suspended instruments (such as bells) in an effort to show they were removed from hedonistic activities and not wallowing in self-comfort. Thus, I have interpreted “不彻县” as not having this air of respect, which is equivalent to saying that the Jing courtyard had an “inappropriate air of joviality.” This would also fit into the context of the issue being discussed in this \textit{panwen}, where Mr. Jing is not upholding the proper ritual austerity required due to his in-law’s demise.

\textsuperscript{65} Onomatopoeia words, used usually to describe bright, clear sounds such as from the striking of jade or gold.
\end{footnotesize}
be observed] has become perverse. Husband and wife’s duet of songs\footnote{This means that husband-wife relations are smooth and harmonious.} was in strife, [in this case] the wife’s melancholy and husband’s [improper] joy caused mutual offense. Thus if on the road one sees another in hempen clothes\footnote{These hempen clothes would indicate the person is in deep mourning for his/her parents.}, I have heard that the manner by which you carry yourself must change. If there is a funeral in the neighborhood or district, you must also not sing. [Thus indeed we can see] that Mr. Jing did not have a sympathetic or compassionate heart – he should receive the punishment of penal servitude that he so rightfully deserves.\footnote{Zhu, supra note 51 at 3582.}

Bai again ruled in favor of the women, applying the law to the situation at hand. But what is interesting is that Bai’s verdict does not simply relay the decision. He attempted to analyze some of the reasons why Mr. Jing acted the way he did, showing a definite interest in the mindset of the “criminal” in the case. Bai traced part of the reason to the fact that Jing did not serve his wife well in his role as a husband. This \textit{panwen} is also unmistakably didactic – instead of using simple prose narrative structure, Bai utilized the literary power of rhetorical questions and hypothetical constructions, strengthening the force of the verdict. For example, Bai attacked the husband quite directly, asking “how can he live with himself,” emphasizing the grave nature of the offense. Moreover by beginning and anchoring his \textit{panwen} in more universal and broad statements (“[i]f there is death then there is mourning, and when you see it, proper respect must be maintained”), Bai was able to show Mr. Jing not only as mistreating his wife, but going against established ritual and social convention. Bai also, in a small twist, thinks for the husband, arguing what the husband should have been thinking when he saw his wife garbed “unmistakably” in mourning clothes. We see the sophistication of the \textit{panwen} genre here, and also that Bai clearly took the legal substance and issues at stake seriously – it was not just an opportunity to show off literary ornamentation. Nor was the sole goal simply to apply the law and be done with it. Bai crafted the \textit{panwen} by almost creating an incontrovertible case against the husband, attempting to discover his intentions, but also trying to educate him so he can avoid such behavior in the future.

The final \textit{panwen} by Bai Juyi to be discussed is no. 36, 得甲妻于姑前叱狗甲怒而出之诉称非七出甲云不敬\footnote{Zhu, supra note 51 (volume 66, \textit{panwen} no. 36), at 3594.}.
Problem: Mr. A’s wife shouted at a dog in front of her mother-in-law. Mr. A became incensed and divorced his wife. The grounds for divorce were contested on the basis that his wife as she did not breach the seven causes for repudiation [of marriage]. Mr. A does not agree.

Before proceeding further, the relevant law is recorded at Article 189 in the Tang Code:

ARTICLE 189.1: All cases of divorcing a wife who has not given any of the seven causes for repudiation, nor any of the conditions for divorce, are punished by one and one-half years of penal servitude.

SUBCOMMENTARY: The way of husband and wife is to expect to be in the same grave. Once joined, they do not change during their lifetimes. Therefore if a wife has not given any of the seven cases for repudiation, nor any conditions for divorce, she may not be repudiated. According to the statute: “[In all cases of casting aside a wife, there must be one of the seven causes for repudiation:] the first is not to have any children; the second is immoral behavior; the third is not serving her parents-in-law; the fourth is loquacity; the fifth is committing robbery or theft; the sixth is jealousy; and the seventh is incurable disease.”

Divorce refers to “[In all cases of] beating the wife’s paternal grandparents or parents, or killing the wife’s maternal grandparents, her paternal uncles and aunts, her brothers, her maternal aunts, or her sisters. Or, if the husband and the wife’s paternal grandparents, parents, maternal grandparents, paternal uncles and aunts, brothers, maternal aunts, or sisters kill each other. Or, if the wife beats or curses with bad language (as versus cursing with a spell) the husband’s paternal grandparents or parents, or kills or wounds the husband’s maternal grandparents, parents, paternal uncles and aunts, brothers, maternal aunts, or sisters. Or there is illicit sexual intercourse between any of the husband’s relatives within the fifth degree of mourning or the wife’s mother, with the wife or the husband. Or where the wife attempts to harm the husband. Even though there should be an amnesty, there is divorce in all these cases. Even though the wife may not yet have entered the husband’s house, this statute must be followed.” If there are not these seven causes for repudiation or conditions for di-
And if the wife is improperly repudiated, the punishment is one and one-half years of penal servitude.  

Panwen no. 36 continues:

Response: If there are errors in some fine, small points of conduct, it is true that this may go against the principles of a wife’s obedience [of her husband and superiors]. But if he [Mr. A] cannot even tolerate small errors, how can he be considered an understanding husband? Mr. A no doubt must have fully applied himself to sincerity and respect in the parent-child relationship. Now if he had taken so lightly the relationship between himself and his wife, then his marriage might have been smooth. She [his wife] has served well her superiors, clearly showing her obedient nature. Moreover, she has not yet been known to have erred against obeying her husband [or her in-laws]. Mr. A – shouting at a dog is indeed a violation of propriety, but is that any reason to hate [her] as a result? Indeed, I would be more worried [about a situation] where someone’s voice seemed affable and pleasant, but was in reality surreptitiously hiding something [nefarious] away. If we do not forgive [his wife] for losing her mouth [this one time], then who among us is completely faultless? Although we should respect Junchang’s wife, it is also necessary to take back Wang Ji’s wife.

In this panwen, Bai ruled that the husband had no legal grounds to divorce his wife. He admits that Mr. A’s wife’s shouting at the dog was improper, but measured against her history of good, obedient servitude to her superiors, it was a relatively trivial offense. Again, direct criticism is aimed in a rhetorical question at her husband. Again, Bai’s decision not only adheres to the stated Tang legal code, but also attempts to adhere to more universal, common-sense laws – I think we can read this panwen also as Bai appealing to the human propensity to forgive, as well as to see their own faults before judging others (the panwen makes clear that all humans have said something rash at some point, and as a result, we should not be hypocrites but rather tolerate and forgive minor offenses).

70 Tang Code Article 189 in Johnson, supra note 52, at 167. Original Chinese text in Qian, supra note 52, at 453-454.

71 Id. Here the point is to reach a balance – Bai Juyi argued that it is important to respect the filial nature between Mr. A and his mother, but at the same time, he should not have divorced his wife.
Reading this *panwen* with the Article 189.1 of the Tang Code, I would argue this *panwen* differs from the previous two that we discussed in that the law here is arguably a bit more ambiguous and might allow for a favorable ruling as far as the father is concerned. Among one of the stated “seven repudiations” or infractions a wife might commit that could lead to her being divorced by her husband was “not serving her parents-in-law” (see full article, quoted earlier). One could imagine a tangible argument made by the husband or on the husband’s behalf that the wife’s shouting at the dog constituted an offense against this rule. Perhaps by shouting at the dog, she made her mother-in-law feel uncomfortable, which was not the right way to serve. In other words, “serving” or “to serve” – in the original Tang Code Chinese text, the character is 事 *shi* – might carry a broader meaning than simply bring parents-in-law food or making their beds. *Shi* might also have entailed the entire way you conducted yourself in front of your superiors, your loyalty to them, and how well you observed ritual propriety.

Obviously it is impossible to know whether Bai anticipated such objections and conscientiously addressed them in his *panwen* above. But at the very least we can see that he found a way to argue out of this dilemma caused by legal ambiguity – he makes a clear distinction and separation between “serving” and the verbal infraction committed by the wife. He also pushed for moderation and mutual understanding, and even assigned blame to the husband, arguing that if he had taken his relationship with his wife more seriously, this verbal paroxysm might have been avoidable. Bai went even further though, I would argue – he took a step to make a positive defense for the wife, arguing that even though her outburst may have been rude, at least it was a candid, frank outburst. This showed her simplicity and honesty, which would be preferable to a scheming, “nefarious” individual who might be a suave talker.

At this point it would be helpful to step back and examine all three of Bai’s *panwen* on a more macroscopic level. First, it should be clear that the argument that *panwen* largely degenerated into a formulaic, literary form should be complicated – while there is definitely truth to that statement, we can see that the three *panwen* examined conveyed a Bai Juyi who took law and substantive reasoning seriously in his *panwen*. Second, we see that literature and the act of writing allowed Bai more rhetorical and substantive space not just to show application of law – but to strengthen his *panwen* with an appeal to universal principles, common-sense, logic, and other sources of complementary – not competing – authority (such as revered texts in ancient Chinese literature). Third, if we read these *panwen* with the Tang Code, we also see how law empowered the literary pieces as well and lifted them up from simply just ornamenta-
tions or literary trifles. The search for universal and logical “laws” and the use of them to make an argument can be interpreted as a “legal” way of thinking on Bai’s part.

Indeed I would even suggest that the three panwen above also hold much historical importance as well in regards to the relationship between gender and law, complicating the dominant view that law and the legal system in Tang, and premodern, China was completely patriarchal. One of the assumptions underlying all three panwen is that some women could bring their husbands or at least an injustice to the attention of the local magistrate for legal arbitration and resolution – after all, these were panwen, judicial decisions. For someone to even get an opportunity to decide a case, that case would have had to be presented. We certainly would not expect the husbands in the three cases we examined to have brought the case to the local magistrate. This has other implications as well – perhaps it might suggest that some women had at least a little understanding of how law operated, and that they might even have had some confidence that decisions would go their way. Indeed, the very fact that Bai wrote these panwen and crafted the cases the way he did shows us that he believed such occurrences would not have been completely impossible. After all, we must remember who the audience of these panwen would be – examiners and graders of the civil service examination. Any response that was completely unrealistic, unreasonable, or illogical would have been likely discarded. For Bai, these panwen were not just literary escapades – they were of profound importance, the door to a better position in government.

Furthermore, Bai ended up supporting the women in all three cases, but the way he accomplished also deserves some attention. He did not make appeals to female weakness or present himself as someone sympathetic to a women’s lot in life. Nor was he a literati – at least as revealed through these three panwen – that idealized women. He made substantive, rhetorically powerful arguments that treated women as actors within the legal, ritual, and family system. The women’s side – as Bai portrayed it – won because they had reason on their side.

V. CONCLUSION

This paper as attempted to do the following: first, to provide a brief orientation to the panwen genre, given scholarly dearth on the subject in English; second, to make an argument for the importance of the panwen genre; third, to argue that Bai Juyi’s panwen – as seen through the examples translated and analyzed above – were not
simply literary ornamentations, but utilized law, reasoning, substance and rhetoric to make important points about the case at hand, but also the human condition; fourth, to complicate existing stereotypes of the relationship between law and gender.

This paper has also been concerned with more theoretical matters, namely, the relationship between law and literature in the premodern Chinese tradition. Boundaries between law and literature were often loose. More importantly, law’s relationship to literature and literature’s relationship to law is not simply passive. Rather, literary features and literary space empowered the *panwen* genre and the force of law expressed through the written decision, and legal modes of thinking an analysis uplifted the *panwen* we looked it from mere “fiction” to pieces with substantive and rhetorical flourish and backbone. I contend that such a close connection between law and literature is probably only possible because of premodern Chinese conceptions of the role of literature in society.

Indeed, to make perhaps a tenuous but nevertheless interesting connection between Bai Juyi’s *panwen* with the present today, one of the concerns numerous scholars of modern Chinese law and legal reform express is the lack of comprehensive written verdicts available for consultation. Many times this may be due to the nature of the case (written verdicts may be seen as unnecessary), or perhaps the judge in question does not feel qualified or is too busy to write a full decision. I think literature – especially the premodern Chinese attitude of reverence for literature’s place in society, and the stress on refined, elegant, stylistic, but also substantive, educational, and serious writing – has much to offer to Chinese judges and courts today. If one of the goals of modern Chinese legal reform is to attempt to encourage judges to write solid judicial decisions that can be taught and consulted by future lawyers, judges, or students, it might be advisable to read Tang *panwen*.

Ultimately, the overarching point of this paper is that *panwen* is an interesting genre that deserves more explanation. I hope the research above has made just a modest contribution into encouraging more research on not only Tang *panwen*, but *panwen* in later imperial Chinese history. Famous Chinese scholar 周敦颐 Zhou Dunyi (1017–1073) is well known even today for his quote, “文以载道, wen yi zai dao” or “the purpose of writing is to convey the Dao, or the Way.” This quote is a testament to the power of literature in Chinese culture. *Panwen* – as a form of writing – not only makes for pleasant reading, but shows us the possibilities of the marriages between law and literature in the Chinese tradition.