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Women, family, and litigation in nineteenth-century Chongqing
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Citation

Xin, J. (2024, September 17). *Women, family, and litigation in nineteenth-century Chongqing*. Retrieved from <https://hdl.handle.net/1887/4083625>

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Women, Family, and Litigation in Nineteenth-Century Chongqing

Proefschrift

ter verkrijging van
de graad van doctor aan de Universiteit Leiden,
op gezag van rector magnificus prof.dr.ir. H. Bijl,
volgens besluit van het college voor promoties
te verdedigen op dinsdag 17 september 2024
klokke 16.00 uur

door

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geboren te Zhaoyuan

in 1992

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The research project is funded by the China Scholarship Council.

Cover design: Yiyun Huang

Layout design: Jiayi Xin

Printing: Ridderprint | www.ridderprint.nl

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A Note on Conventions

- ✧ Chinese names of persons and places are all transliterated according to the *pinyin* system, except for modern authors who follow the Wade-Giles or Cantonese systems.
- ✧ Chinese women's names are rendered as found in original sources. In general, the legal archives would identify married women by the surname of her husband, her father's surname and *shi* (literally referring to "surname"). For instance, if Mr. Wang's daughter gets married with Mr. Huang, then the woman would be identified by Huang Wang Shi. In the main body of the dissertation, I have not translated or italicized "*shi*."
- ✧ The man's and unmarried women's names are rendered as the original Chinese form, and the order is surname first, then given name.
- ✧ Ages are expressed in *sui*, which are generally one or two more than the same age when reckoned in "years old."
- ✧ All translations are my own, except where noted.

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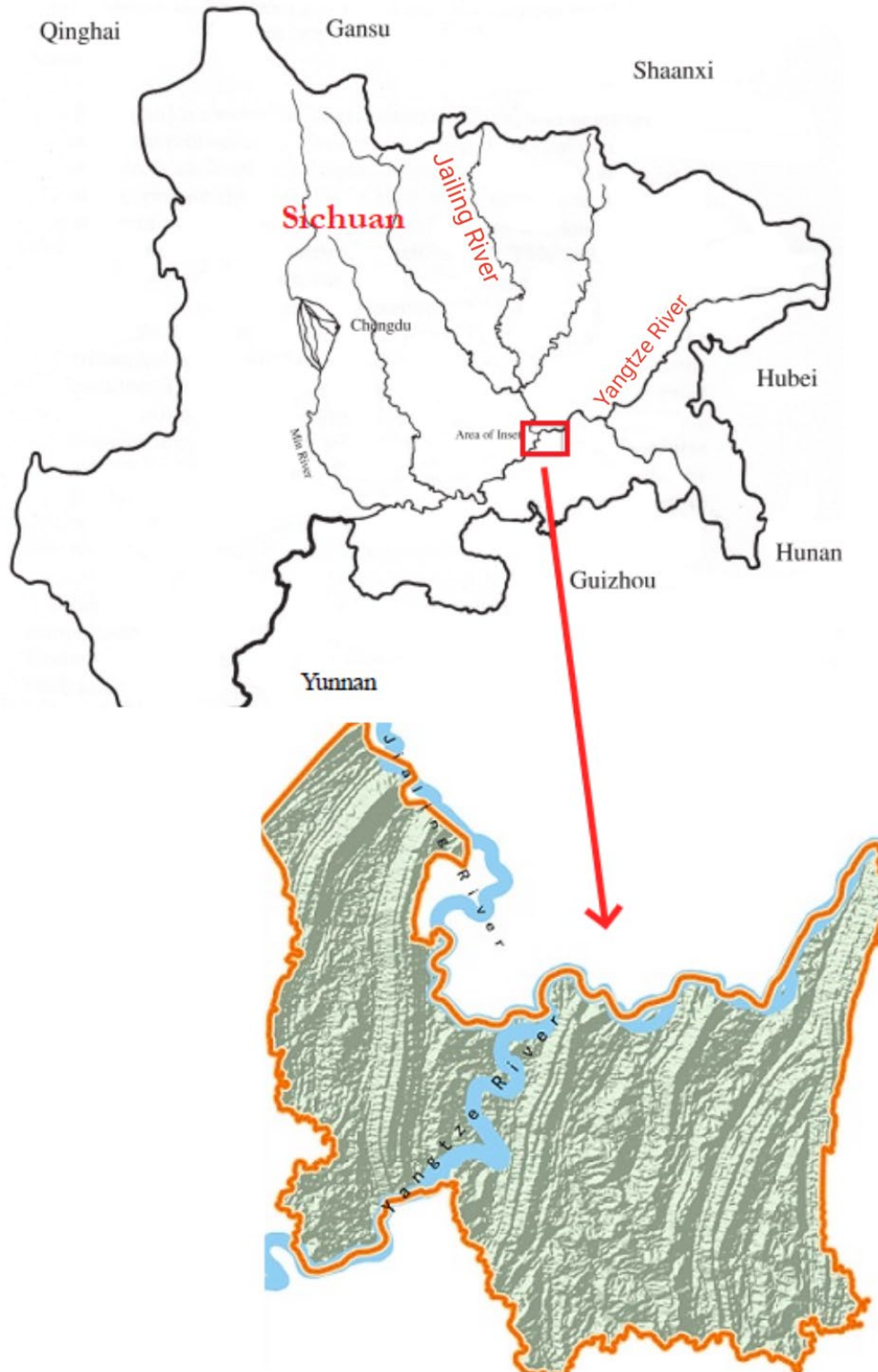
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Map: Ba County in Late Qing Sichuan (1758-1911)

Based on Bradly W. Reed, *Talons and Teeth: County Clerks and Runners in the Qing Dynasty* (Stanford, Calif.: Stanford University Press, 2000), xxvi.



Introduction

In 1808, a man named Xiu Quantai, brought a lawsuit of adultery against Liu Laoyao before the magistrate of Ba County, located in what is now Chongqing. In 1807 Quantai had married a widow by the name of Zheng Shi, and the couple were renting a room and living with Liu Guanghua, a relative of Liu Laoyao. As a street peddler, Xiu Quantai normally left home early and returned late, which gave Liu Laoyao the chance to seduce Xiu's wife Zheng Shi. Returning home one day for breakfast, Quantai surprised the two having sex in his bedroom, and was injured by Laoyao when the adulterer tried to escape. The case record ends with a report by runners saying they were not able to find the suspects.¹

Three weeks later, another lawsuit was brought before the Ba County magistrate concerning Zhanggu, a young girl whose father had died and whose mother had soon remarried. Four years earlier, Zhanggu's uncle Gu Weimei, her father's younger brother, had married her to Gou Lungui as an adopted daughter-in-law. Recently, Weimei had been informed by Lungui that he had married Zhanggu off to another man. The uncle was resentful and accused Lungui of selling Zhanggu. As in the previous case, the runners reported they could not find any defendants and no other information is present in the record.²

The main plots of the statements above are utterly different. Yet, these two cases are emblematic because they reveal a particular combination of the type of accusation and the importance of the familial relationships between the two parties. In the first case, the accusation was of adultery, and the case happened between a husband and an outside male. In the second case, the accusation concerning marriage was brought between members of a woman's natal family and marital family. Such combinations are common in the case records: if the cause of conflict pertained to the legitimacy or validity of a marriage, then the lawsuit was most likely to be between a woman's natal family versus her husband or in-laws. When husbands or other members of the marital family accused outsiders, they had the tendency to use sexual offenses such as adultery and rape as the pretext for legal action.

The main question of this dissertation is: how did family members use the Qing Code

¹ Q6-05-04287. All archives are cited by the serial numbers given by Sichuan Provincial Archive.

² Q6-05-04290

and Confucian family values in the Ba County court cases involving women between 1803 and 1873? To a large extent, the answer to the question and this dissertation aims to contribute to our understanding of how the law worked in practice during late imperial era, and the main question could be broken down into the following sub-questions: how could family members use the Qing Code and ideologies to gain advantages before the Ba County court? How did the strategical use of legal and ideological norms influence the presence of women in local archives?

The relevance of this research question lies in its examination of the impact of laws, state ideology, and the patriarchal system in 617 cases from the Ba County Archive. In Qing China, women's positions and roles were largely defined by their place within the family realm, by their roles as daughters, wives, mothers, and widows. The imperial China was mainly a patrilinear society where women moved to their husbands' places after marriage and became subjects to their husbands and their husbands' families.³ The *Great Qing Code*, the codified law of the Qing Dynasty and Confucian ideology promoted strong patriarchal values, women's subjection to men, and their confined position in the household. However, much less is known about the impact of legal rules and the patriarchal family system values on everyday legal practices, especially on women's participation and presence. The current dissertation will argue that language on gender and women in legal practice inevitably followed the discipline of official discourse, which ultimately made the presence of women in local archives, to a certain extent, parallel those in the codified law and state ideology.

The two cases in the beginning suggest that to a large extent, the relationships between women, plaintiffs, and defendants determined the type of accusations and litigation strategies people used in their legal actions involving women. Family relations are the central point of this dissertation. As women's roles were defined by their family relations, court cases involving women in nineteenth-century China can only be understood by looking at the family and social relations between women, plaintiffs, and defendants. This dissertation will explore the ways in which different relationships functioned in legal practice and how the participation of women's family members influenced the portrayal of women in the legal archives.

³ For the exception of delayed-transfer marriage, see Janice Stockard, *Daughters of the Canton Delta: Marriage Patterns and Economic Strategies in South China, 1860-1930* (Stanford, Calif.: Stanford University Press, 1992), 102-16; Gail Hershatter, "State of the Field: Women in China's Long Twentieth Century," *The Journal of Asian Studies* 63, no. 4 (November 2004): 997-98.

Understanding Women in Family Relationships

Family is a perpetual topic in Chinese women's studies. As the prominent historian Patricia Ebrey summarizes, the dominant model of Chinese family was "patrilineal, patriarchal, and patrilocal." It is not difficult for historians to find reasons for criticizing this kind of family system as oppressive to women.⁴ Legal texts in imperial China presented an ideal pattern of authority relations in the family and, at the same time provided concrete evidence of oppression. Chinese historian Chü Tung-tsu (Qu Tongzu) has concluded in his groundbreaking book, *Law and Society in Traditional China*, that family was a fundamental feature in traditional Chinese law, which "fully recognized the parents' authority in controlling and chastising their children."⁵

Chinese family is a complicated system. Gender, generation, and age were the three deciding factors in the configuration of the Chinese family hierarchy, but the role of each factor needs to be analyzed and understood in the context of family relationships.⁶ Philosopher Roger T. Ames in the theory of "role ethics," has pointed out that "principle" and "virtues" from a Confucian perspective, were primarily "value growth in relations" and "a generalization derived from acting within our family and community relations."⁷ The traditional Chinese codified laws are strong evidence of this deduction since they contain systematic regulations on people's behavior based on their relations with others. Like the precondition of children's obedience to parents and parents' authority over their children was the parent-child relation, the foundation of all kinds of family identity, and the following rights or duties originate from the formation or demise of certain relationships. Therefore, any investigation into the status of women cannot evade the context of family relations.

⁴ Patricia Ebrey, *The Inner Quarters: Marriage and the Lives of Chinese Women in the Sung Period* (Berkeley [etc.]: University of California Press, 1993), 8.

⁵ Tung-tsu Chü, *Law and Society in Traditional China* (The Hague: Mouton & Co., 1965), 280.

⁶ Yonglin Jiang, "Legislating Hierarchical yet Harmonious Gender Relations in the Great Ming Code," *Ming Studies* 2014, no. 69 (May 1, 2014): 27–45; Vivien Ng, "Sexual Abuse of Daughters-in-Law in Qing China: Cases from the 'Xing'an Huilan,'" *Feminist Studies* 20, no. 2 (1994): 372. Most literature focus on the marriage and gender factors in Chinese families of different dynasties, for instance, Ebrey, *The Inner Quarters*; Kathryn Bernhardt, *Women and Property in China: 960-1949* (Stanford, Calif.: Stanford University Press, 1999); Margaret Kuo, *Intolerable Cruelty: Marriage, Law, and Society in Early Twentieth-Century China* (Lanham, MD [etc.]: Rowman & Littlefield, 2012). The book by Du Yue fills the gap in generational dynamics, Yue Du, *State and Family in China: Filial Piety and Its Modern Reform* (Cambridge: Cambridge University Press, 2021).

⁷ Roger T. Ames, *Confucian Role Ethics: A Vocabulary* (Hong Kong: The Chinese University Press, 2011), 159.

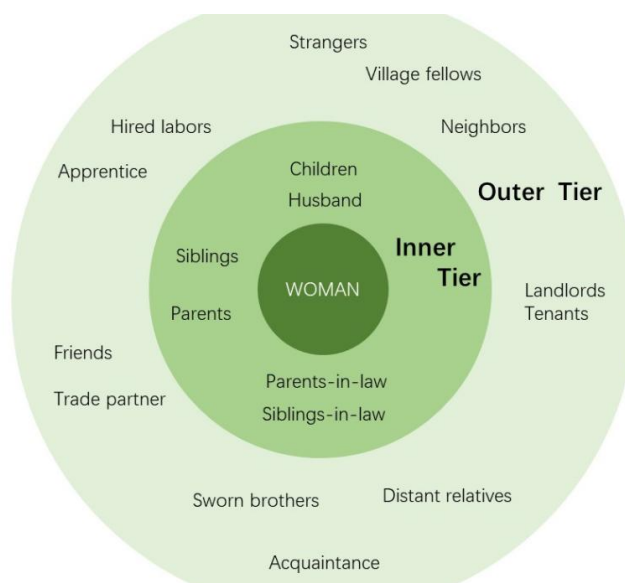
For this reason, my dissertation will focus on the role of family relationships in law, litigation, and the status of women in late imperial Chinese society. This choice of focus is supported by both codified law and judicial archives. The *Great Qing Code*, the codified law of the Qing Dynasty, includes multifarious clauses regulating certain family relationships. As many historians have discussed, Chinese imperial governments, formulated laws to regulate family relations in every detail and ruled the countries with the principles defining and protecting family relations.⁸ At the same time, the evidence from the judicial archives shows that the relationships between the plaintiffs and defendants, and their relationships with the women involved in the cases were highly influential in their choice of litigation strategies, in particular the choice of different kinds of “accusations,” the excuses that litigants used to charge others.⁹

One argument of this dissertation is that family relationships were a key component of how state power aimed to regulate women in the Qing. Not only did family relationships play a prominent part in official and ideological contexts, but they also functioned in legal practice. In general, family relationships were an avenue of social control in China, where social control can be defined as “the enforcement of norms and the regulation of behavior,” and “all forms by which historical agents define deviant behaviour and react to it.”¹⁰ The family relationship was vital for the exercise of social control over women because the precondition for certain types of legal or moral deviance was that a person was located within certain family relationships. Men also came under this kind of control, but they also had identities outside the family. While the Qing Code granted almost no other identity to women, family relations thus became the primary and essential means for regulating women’s behavior.

⁸ Chü, *Law and Society in Traditional China*, 9–127. Sommer’s work shows how the Qing government regulated the marital relations by law in order to realize greater control over the people from the bottom of society, see Matthew H. Sommer, *Sex, Law, and Society in Late Imperial China* (Stanford, Calif.: Stanford University Press, 2000); Du in her book explains the function of generational relations and the principle of filiality in ruling the empire, see Du, *State and Family in China*.

⁹ Here “accusation” refers to the reason people used to charge others.

¹⁰ Martin Dinges, “The Uses of Justice As a Form of Social Control in Early Modern Europe,” in *Social Control in Europe: Volume 1, 1500-1800*, ed. Herman Roodenburg and Pieter Spierenburg (Columbus: The Ohio State University Press, 2004), 161; Pieter Spierenburg, “Social Control and History: An Introduction,” in *Social Control in Europe: Volume 1, 1500-1800*, ed. Herman Roodenburg and Pieter Spierenburg (Columbus: The Ohio State University Press, 2004), 10.

Figure 1 The Inner-Outer Tier Model of Relationships Around Women¹¹

With this in mind, and on the basis of an analysis of the Qing Code and local archives, I have created the following diagram of the Inner-Outer Tier Model (Figure 1). The making of the diagram is inspired by Fei Xiaotong and his classic theory of “the Differential Mode of Association” (*cha xu geju* 差序格局) to show the basic and ideal form of how relationships with women, including both family and social relations, were organized.¹² The main members of the natal and marital family of the woman are situated in the Inner Tier. These parties had the closest relationship with women, and the Qing Code defined clear and strict regulations for dealing with conflicts between them. In the domain of social control, the relationship between members in the Inner Tier and women was of the utmost importance. However, this model cannot show a critical feature of family relationships implied by statutory law under the Qing: that family relations always embody a relationship of authority. The two parties to a family relationship, whether husband and wife or mother and child, were never equal, there was always a clear distinction between superior and inferior, and the more intimate the relationship, the more

¹¹ Here the Inner and Outer are partly distinguished from the “difference between inner and outer” (内外之别) in traditional Chinese contexts, which will be discussed in detail in Chapter One. The Figure 1 stressed the dimension of interpersonal relationship, rather the space separation, though the reasonable interactions between women and other persons was supposed to occur in the inner realm.

¹² Xiaotong Fei, *From the Soil: The Foundations of Chinese Society*, trans. Gary G. Hamilton and Wang Zheng (Berkeley [etc.]: University of California Press, 1992), 60–70.

power and influence the superior would have over the inferior.¹³

Chinese sociologist and anthropologist Fei Xiaotong, put forward the concept, “the Differential Mode of Association” and its relevant “concentric circle” pattern, to describe Chinese society, in which every individual is at the center of his or her own circle of social relationship; as these circles remain elastic, the strength of each bond and therefore its obligations are variable. The closest relationships, such as those within the immediate family, “are expected to be much closer and important than the other relations down the line.”¹⁴ Based on legal norms, the diagram can only reflect a static view of the spectrum of relationships around women from the close to the distant. Fei’s work, on the other hand, can incorporate a dynamic perspective by emphasizing the scope of how families, known colloquially as *zijiaren* 自家人 “my own people”, are defined in terms of personal experience. Fei points out that the Chinese language context does not mark a clear boundary around the family: “*Zijiaren* (my own people) may include anyone whom you want to drag into your own circle, ...The scope of *zijiaren* can be expanded or contracted according to the specific time and place.”¹⁵ The dynamic perspective can help us to understand that the boundary between inner and outer is shifting and explain how the outsiders exerted influence on women and dragged them into lawsuits.

Another inspiration for making Figure 1, was the *wufutu* (五服图, Diagram of Five Mourning Degrees, Picture 1&2) at the very beginning of the *Great Qing Code*; the diagram could show the official arrangement of close and distant relationships. Chapter One will discuss the mourning system in length, which “defines the time period and dress required in mourning the death of relatives.”¹⁶ The *wufutu* is the visualization of the mourning system. The closer a relative is to the central “yourself” in the picture, the closer they should be to each other in the legal and ritual perceptions.¹⁷ Family members in the Inner tier, actually are the relatives who are placed in the four cells adjacent to “myself” in the

¹³ Although the authority based on relationship does not exclude the obligation of the superior to the inferior.

¹⁴ Ana Sinha and Pooja Lakhanpal, “Rediscovering Fei Xiaotong: Blending Indigenous Chinese Thought and Western Social Science,” *The American Sociologist* 53, no. 3 (September 2022): 382–83.

¹⁵ Fei, *From the Soil*, 62–63.

¹⁶ Yonglin Jiang, trans., *The Great Ming Code: Da Ming Lü* (Seattle: University of Washington Press, 2012), lxxii.

¹⁷ Though the close proximity does not necessarily refer to longer time mourning. Linghua Ding, *Wufu Zhidu Yu Chuantong Falü* 五服制度与传统法律 [Five Mourning Degrees and Traditional Law] (Beijing: The Commercial Press, 2013), 111–13.

diagram, in other words, they are the closest family members that a woman should have.¹⁸ Therefore, the diagrams of the mourning system to a large extent determined the structure of the diagram, especially the members of the Inner Tier.

The diagram profoundly impacts on the framework of this dissertation, which will discuss how the interaction between women and members of two tiers led to divergent forms of litigation in nineteenth-century Ba County. Qing legal practice shows a mixed picture, where family members belong to the Inner Tier, and are more readily and frequently able to exercise power and influence over women. Nevertheless, other parties from the Outer Tier could also extend their sphere of influence over women. This dissertation will show a tangible manifestation of how these groups of people can be distinguished from each other in their different choices of accusation and litigation strategies.

Victimized Chinese Women

The patriarchal model of family authority had a profound impact on the lives of women in imperial China. The two cases discussed at the beginning of this chapter share the common feature whereby male family members spoke in court on behalf of women, and the legal archives predominantly recorded the voices of males. This represents a more insidious yet fundamental phenomenon where, although the cases revolved around a woman, most records did not highlight their actions or the mentality of the women themselves. The silence and the relative invisibility of women in all kinds of legal documents, including both codified law and local archives, are key reflections of the patriarchal system, which can result in an image of women as passive and victimized in most situations. In the construction of Chinese women as victimized, the law, through the medium of state institutions and instruments of control, played a key role. From the perspective of historiography, it is the codified law and the discourse of official records that have been a major impetus for shaping the image of victimized women.

The notion of women as victims in the context of the Chinese patriarchal family and state is a long-held belief, but only recently have historians realized that this was a view invented by multiple ideological and political traditions.¹⁹ Most early writings on Chinese

¹⁸ A detailed explanation of the position of husband, and the relationship between women and their in-laws in the mourning system, see Chapter One.

¹⁹ Dorothy Ko, *Teachers of the Inner Chambers: Women and Culture in Seventeenth-Century China* (Stanford, Calif.: Stanford

women in English came from missionaries and ethnologists who had worked in China for a substantial period.²⁰ Portrayals of China and Chinese women in this period are rooted in Orientalist stereotypes: when writers depicted the barbaric and backward Oriental world, women became the antithesis of the civilized and advanced West.²¹ English writers attributed the tragic experience of Chinese women to the Confucian moral system. For example, American missionary Arthur H. Smith claimed that compared with Christianity, Chinese ethics had never “furnished either preventive or remedy.”²² On account of their interest in and purpose of “civilizing” the Chinese, Orientalist writers on Chinese women strongly emphasized the oppression of women and their lower status.²³

Besides recording eyewitness or anecdotal accounts, the missionaries and ethnologists translated the biographies of prominent women and produced descriptions of the “ideal women” derived from readings of the Confucian Classics.²⁴ The denial of women’s rights in law was also part of the missionary argument. In the matter of divorce, the Methodist missionary Houghton concluded that “under no circumstances, upon no plea,” could a wife in China demand separation from her husband.²⁵ Such writers were keenly aware of the unequal legal status of men and women: “The laws of China against female

University Press, 1994), 1–3.

²⁰ These works include Rev. Ross C. Houghton, *Women of the Orient: An Account of the Religious, Intellectual, and Social Condition of Women in Japan, China, India, Egypt, Syria, and Turkey* (Cincinnati: Hitchcock and Walden, 1877); A. M. R. L. McNabb, *The Women of The Middle Kingdom* (New York: Young People’s Missionary Movement, 1907); Lucinda Pearl Boggs, *Chinese Womanhood* (Cincinnati: Jennings and Graham, 1913) and so on. For an overview of early writing on Chinese women, see Jinhua Emma Teng, “The Construction of the ‘Traditional Chinese Woman’ in the Western Academy: A Critical Review,” *Signs: Journal of Women in Culture and Society* 22, no. 1 (1996): 120–23; Yanhong Chu, *Biandong de shijiao: 20 shiji 60 niandai yilai meiguo de zhongguo funiisbi yanjiu 变动的视角：20 世纪 60 年代以来美国的中国妇女史研究* [Shifting Perspectives: A Study on Chinese Women’s History of America’s Academia since the 1960s] (Shanghai: Shanghai shehuikexueyuan chubanshe, 2015), 24–45.

²¹ Edward W. Said, *Orientalism* (New York: Vintage Books, 1979).

²² The missionary summarized the “seven deadly sins in the relation of that system to woman,” including a lack of education for Chinese women, the sale of wives and daughters, marriages that were too early and too universal, infanticide of female infants, concubinage, suicides of wives and daughters, and overpopulation. He also asserted that these sins were all the “ultimate outcome and a most characteristic fruitage of Confucianism.” Arthur H. Smith, *Village Life in China* (London: Routledge, 2004), 306–310.

²³ Jinhua Emma Teng, “The Construction of the ‘Traditional Chinese Woman’ in the Western Academy: A Critical Review,” *Signs: Journal of Women in Culture and Society* 22, no. 1 (1996): 121.

²⁴ Miss A. C. Safford, *Typical Women of China* (Shanghai [etc.]: Kelly & Walsh, 1899); Teng, “The Construction of the ‘Traditional Chinese Woman’ in the Western Academy,” 120.

²⁵ Houghton, *Women of the Orient*, 208. However, this is not absolute, the discussion on divorce in Qing, see Chapter One.

unchastity are very severe ... Beheading is the regular punishment for infidelity on the part of a wife. An unfaithful husband is a misnomer in China, since no moral or civil law interferes with his pleasures, or binds him strictly to the women of his own household.”²⁶

This portrayal of the victimized woman was not confined to works in Western languages. Such an image of women was also perpetuated in writings by Chinese literati in the early twentieth century. During this period, which culminated in the modernizing May Fourth Movement, writing about Chinese women had a profoundly nationalistic connotation.²⁷ The image of Chinese women as oppressed by the patriarchy embodied the resentment of the intellectuals of the May Fourth era towards the Confucian family and value system. Furthermore, the picture epitomized the plight from which the Chinese nation was suffering, and the emancipation of women became a vital stage of the Chinese journey toward modernization.²⁸ The works produced in this social milieu aimed to shine a light on the oppression of women and to take responsibility for leading women out of their miserable lives toward liberation.

As a crucial element of social control, the law became a useful source and dimension to demonstrate and interpret the oppression of women in imperial China. To accomplish his duty of inspiring a female revolution, in 1928, scholar Zhao Fengjie published a comprehensive study of the legal status of Chinese women. In the Author's Preface to his book, Zhao claimed that the “female problem” was one of the most important social issues and that legal reform in Republican China had not eradicated gender inequality. With the intention of discussing the roots of the problem, Zhao's book extensively cited the codes of different dynasties and constantly highlighted a lack of women's citizenship and property rights throughout Chinese history.²⁹

²⁶ Houghton, 328.

²⁷ Besides the book discussed below, there are two other books about Chinese women's history published in Republican era, Tianxiao Xu, *A New History of Chinese Women* 神州女子新史 [A New History of Chinese Women] (Shanghai: Shenzhou tushu ju, 1913); Dongyuan Chen, *Zhongguo Funü Shenghuo Shi* 中国妇女生活史 [The History of Chinese Women's Life] (Shanghai: The Commercial Press, 1928).

²⁸ Rey Chow, *Woman and Chinese Modernity: The Politics of Reading between West and East* (Minneapolis: University of Minnesota Press, 1991), 14–15; Charlotte L. Beahan, “Feminism and Nationalism in the Chinese Women's Press, 1902–1911,” *Modern China* 1, no. 4 (October 1, 1975): 379–416; Sally Borthwick, “Changing Concepts of Women from the Late Qing to the May Fourth Period,” in *Ideal and Reality: Social and Political Change in Modern China 1860–1949*, ed. David Pong and Edmund S. K. Fung (Lanham, MD: University Press of America, 1985), 63–91.

²⁹ Fengjie Zhao, *Zhongguo funü zai falü shang zhi diwei* 中国妇女在法律上之地位 [The Status of Chinese Women in Law] (Shanghai: The Commercial Press, 1928).

Since the 1970s, the image of the “wretched woman” has come under challenge. The feminism movement in the 1960s called upon scholars to put women at the center of historical research.³⁰ The theory of “early modern China,” in which China roughly from the sixteenth century to the early nineteenth century saw similar socioeconomic changes to those taking place in early modern Western Europe, suggested that gender notions in the Ming-Qing era resembled those in early modern Europe.³¹ In the 1980s, together with the rise of postmodernism and gender theory, historians began to wonder how the picture of victimized Chinese women was constructed and articulated.³² As a result of these multiple trends, the 1990s saw the release of several highly influential works on women’s history, including books by Dorothy Ko and Susan Mann about women in late imperial China.³³ One significant contribution of these studies has been their disenchantment with the old image of Chinese women. By centering Chinese women, and through the examination of women’s own literary creations, they emphasize women’s efforts in creating new living spaces, pursuing a career, traveling, and other activities that go against the victim narrative. However, a new problem emerged here, in that the sources used by these scholars have primarily been poems and literary works by women from elite families in the Lower Yangtze region.³⁴ This limitation makes it hard to say to what extent their findings could

³⁰ For the impact of the women’s studies on Chinese women’s history, see Weijing Lu, “Meiguo Zhongguo funü yanjiu pingshu 美国中国妇女研究评述 [Chinese Women’s Studies in the United States],” in *Beimei Zhongguo xue: yanjiu gaisbu yu wenxian ziyuan 北美中国学: 研究概述与文献资源* [Chinese Studies in North America: Research and Resources], ed. Haihui Zhang, Zhaohui Xue, and Shuyong Jiang, (Beijing: Zhonghua Book Company, 2010), 491–92.

³¹ During this period, “China began to experience important indigenous social and economic changes, including rapid economic expansion, monetization and commercialization of the economy, population growth, urbanization, expansion of printing and literacy, and increased social mobility,” see Paul S. Ropp, “Women in Late Imperial China: A Review of Recent English-Language Scholarship,” *Women’s History Review* 3, no. 3 (1994): 347. For further introduction to “early modern China,” see Susan Naquin and Evelyn S. Rawski, *Chinese Society in the Eighteenth Century* (New Haven and London: Yale University Press, 1987), ix–xii; William T. Rowe, *Hankow: Conflict and Community in a Chinese City, 1796-1895* (Stanford: Stanford University Press, 1989), 1–11.

³² Teng, “The Construction of the ‘Traditional Chinese Woman’ in the Western Academy,” 129.

³³ Dorothy Ko, *Teachers of the Inner Chambers: Women and Culture in Seventeenth-Century China* (Stanford, Calif.: Stanford University Press, 1994); Susan Mann, *Precious Records: Women in China’s Long Eighteenth Century* (Stanford University Press, 1997); Susan Mann, “Grooming a Daughter for Marriage: Brides and Wives in the Mid-Ch’ing Period,” in *Marriage and Inequality in Chinese Society*, ed. Rubie Watson and Patricia Ebrey (Berkeley: University of California Press, 1991), 204–30. And though it mainly analyzes the women in Song Dynasty, Ebrey’s book is highly influential in all sections of Chinese women’s history, Patricia Ebrey, *The Inner Quarters: Marriage and the Lives of Chinese Women in the Sung Period* (Berkeley and Los Angeles: University of California Press, 1993).

³⁴ Susan Mann mentioned in an interview that the republication of *lidai funü zhuozuo kao* (历代妇女著作考, A

represent the factual circumstances of ordinary women.

The aforementioned works, moreover, showed a dearth of discussion of women's legal status; or rather, studies on the legal status of women cannot sustain the same approach to developing a more positive image of the position of women in late imperial China. In a paper published in 1996, Katheryn Bernhardt points out that most current studies of Chinese women did not give explicit standards for measuring changes in women's status, and proposed a shift of focus to developments of women's treatments in the legal realm. Her work compares the articles in codified law regarding marriage and property rights of women in the post-Song period. One of the most visible changes was that after Yuan Dynasty (1271–1368), when a widow remarried, she should leave her original dowry with her first husband's family, instead of taking it into her new marriage.³⁵ Bernhardt argues that women were more treated as a wife and daughter-in-law by law and fully incorporated into their marital families after the Song Dynasty, which ultimately resulted in the overall decline of female legal status. Correspondingly, the Ming-Qing was a time of consolidation in the legal codes of "old" gender assumptions and roles, like "a greater emphasis on the inviolability of betrothal" and nobody having the right to force a widow to remarry against her will.³⁶

Although driven by different ideologies, the creation of the women-as-victims has its most important theoretical basis in normative prescriptions and official discourse. However, beyond the construction and deconstruction of different images of women, we still have no clear picture of which kinds of impact the official discourse had on women. As Bernhardt mentioned, the transformation of women's legal status can give clearer reference points for assessing the true extent of change in women's overall status.³⁷ Her research inspires my analysis that the law and legal texts can be used as a measure of women's status. Women's involvement in litigation, especially women from the lower

Survey of Women Writers Through the Ages) in 1985 helped her and a group of historians to find the sources they needed. "清代知识女性的'写作文化,'" Weixin Official Accounts Platform, accessed May 5, 2022, https://mp.weixin.qq.com/s?src=3×tamp=1651760494&ver=1&signature=ISuIDGf8AFf73hKhDVfitTnJcz5656B0O*IFHr0JDZ4nMjCb4ix1oz0XiCq2ukRviNckq9wo0*O-peMgP7xkM3bRzozJB99mXXZBc1VzJGvovS9c-QaX2YPwBWXtjrVaSY8Z8eswdS3IJK5Ruwjodg==.

³⁵ Katheryn Bernhardt, "A Ming-Qing Transition in Chinese Women's History? The Perspective from Law," in *Remapping China: Fissures in Historical Terrain*, ed. Gail Hershatter et al. (Stanford, Calif.: Stanford University Press, 1996), 54–55.

³⁶ Bernhardt, "A Ming-Qing Transition in Chinese Women's History," 50–53.

³⁷ Bernhardt, "A Ming-Qing Transition in Chinese Women's History," 50–55.

echelons of society, is an aspect of their situation seldom mentioned in the women-as-victim narrative. The current dissertation aims to fill the gap and contribute to this discussion by using judicial archives to explore the impact of official discourse on the portrayal of women. Previous works have concentrated on the status of women under particular legal provisions, like their law on women's dowry and widows' right to remarriage, while ignoring the language featured in the legal codes themselves and the power relations constructed by the texts.³⁸ This dissertation intends to answer the critical question about how the *Great Qing Code* defined the female gender, and how the authors of legal complaints in local archives used tactics to make their texts comply with and reinforce the ideology of womanhood as constructed by official discourse.

Women in Qing Legal History

With the opportunity to access the legal archives of the Qing Dynasty (1644-1911), historians can now gain insight into the role of women from non-elite families in everyday legal practice. The opening of local and central legal archives in the 1980s produced a major change in the paradigm of Chinese legal history.³⁹ Legal historians started to pay more attention to legal practice in Qing China, especially at the county level.

Our basic understanding of legal practice in Qing China should be attributed to Philip Huang, whose publications from 1993 to 2001 discuss civil law during Qing and Republican eras. Huang's work has prompted a lively academic debate around the congruence and divergence between codified law and magisterial adjudication, or "the disjunctions between (official) representation and (legal) practice."⁴⁰ Based on observations of Qing local archives from different counties, he found that the county courts actually handled many civil cases, and the magistrates would usually give clear judgments on the basis of the *Great Qing Code*. This picture is quite distinct from the "official representation," which represented the Qing legal system as little concerned with

³⁸ Bernhardt in her work listed some works on discussing the law on women's dowry in imperial China, see Note 20, see Bernhardt, 50.

³⁹ The shift of paradigm in Chinese legal and women's history could be a part of the "China-centered" approach, though it seems that no publication has ever discussed the relationship. For the "Chinese-centered" approach, see Paul A. Cohen, *Discovering History in China: American Historical Writing on the Recent Chinese Past* (New York: Columbia University Press, 1984).

⁴⁰ Philip C. C. Huang, *Civil Justice in China: Representation and Practice in the Qing* (Stanford, Calif.: Stanford University Press, 1996), 3.

civil matters, and magistrates would operate as mediators at best and tended to deal with civil conflicts by relying on Confucian morality and human compassion.⁴¹

Huang's research motivated many subsequent scholars to apply his framework of comparing official representation and legal practice. More historians have started using local archives to explore the relationship between code and practice, in order to answer the question of whether county magistrates rendered judgment based on the *Great Qing Code* in imposing punishments and if not, what were the practical standards they followed. Some scholars have also used cases related to women and gender to answer this question.⁴² Matthew Sommer has modified Huang's conclusions by examining how magistrates dealt with cases of wife selling. In most situations, county magistrates "acted flexibly and expediently to solve practical problems," and only in the small percentage of cases that would be reported to superiors did they rigidly apply the protocols set out in the code.⁴³ Mio Kishimoto has also argued that, when the magistrates handled wife-selling cases, they would generally take the personal relations and economic situations of the parties into consideration rather than depending solely on the codified law.⁴⁴

Huang's analysis of women's legal status in the Qing Code can corroborate the

⁴¹ Buxbaum might be regarded as the first scholar to "discover" the civil law of the Qing. He argues that Qing law included a significant measure of civil law and the court had to deal with quite a number of civil cases. "If we look at other contemporary notions of modern legal systems, we may find that Chinese law of the Ch'ing period similarly fits the 'modern' categorization fairly well." David C. Buxbaum, "Some Aspects of Civil Procedure and Practice at the Trial Level in Tanshui and Hsinchu from 1789 to 1895," *Journal of Asian Studies* 30, no. 2 (February 1, 1971): 273.

⁴² For example, Li Zan, *Wanqing zhouxian susong zhong de shenduan wenti: ceshong Sichuan Nanbuxian de shijian* 晚清州县诉讼中的审断问题：侧重四川南部县的实践 [The Adjudication in Late Qing at County Level: Focus on Legal Practice in Nanbu, Sichuan] (Beijing: Law Press, 2010); Peilin Wu, *Qingdai xianyu minshi jiu fen yu falü zhixu kaocha* 清代县域民事纠纷与法律秩序考察 [Civil Disputes and Legal Order in Counties of Qing Dynasty] (Beijing: Zhonghua Book Company, 2013), 349–92; Weini Zhao, *Shenduan yu jinxu: yi wanqing Nanbuxian hunyinlei anjian wei zhongxin* 审断与矜恤：以晚清南部县婚姻类案件为中心 [Adjudication and Compassion: Focus on the Marriage Cases in Late Qing Nanbu County] (Beijing: Law Press, 2013). And for an overview of Qing legal history in county level, see Jianpeng Deng, "Wenxian duoyangxing yu qingdai difang sifa yanjiu 文献多样性与清代地方司法研究 [The Diversity of Historical Documents and the Studies of Local Judicial Systems of the Qing Dynasty]," *Historiography Bimonthly*, no. 04 (2021): 72–82.

⁴³ Matthew H. Sommer, *Polyandry and Wife-Selling in Qing Dynasty China: Survival Strategies and Judicial Interventions* (Oakland, Calif.: University of California Press, 2015), 374–75.

⁴⁴ Mio Kishimoto, "Qi ke mai fou? ming qing shidai de maiqi dianqi xisu (妻可賣否？——明清時代的賣妻、典妻習俗 Wives for Sale? On the Customs of Wife-Selling and Wife-Pawning during the Ming-Qing Era)," trans. Jihua Li, in *Qiyue wenshu yu shehui shenghuo (1600-1900)*, ed. Qiukun Chen and Liwan Hong, (Taipei: Institute of Taiwan History, Academia Sinica, 2001).

position that the law was a significant factor in shaping the image of victimized women. Huang notes that the Qing Code conceded women a subordinate position with only “passive agency,” which means that a woman’s choice only consisted of consenting to or resisting men’s active proposals of illicit sex or marriage. Huang also concluded that the agency exercised by women as represented in the Qing Archives “fell well short of the active agency that would be envisioned” by Republican civil codes, in which “a woman possessed the same rights and obligations as a man.”⁴⁵

Sommer disagrees with this opinion and finds that although wife-selling was widespread during the Qing Dynasty and became part of the survival strategy of the poor, which made the boundary between sale and marriage indistinct, the women who were bought and sold should not be considered merely as victims, and that women’s personal choices were vital in determining whether transactions could be consummated. As shown in both central and local archives preserved in Qing China, some women were desperate to get themselves out of poor families and wanted to be sold, while other wives went to court because they had vowed not to leave their husbands.⁴⁶ The practice of wife-selling has been a traditional symbol of victimized Chinese women.⁴⁷ However, Sommer’s research shows that in such cases we can still find traces of female agency.

Women’s agency, by a wide definition of “everyday interactions in which women accommodated, negotiated or manipulated social rules and gender roles,” is not the central theme of this dissertation, but women’s agency (and the lack thereof) is addressed throughout the book.⁴⁸ The dissertation will show the primary function of family members in litigation largely conceal the agency of women. Of particular importance is the fact that when women’s names appeared in legal documents, they were usually assigned two identities – either as an object that the two parties competed for or as a tool, that others used to gain advantages in the court – and in neither case were women required to speak. However, women could exert their agency in some “corners” in the archives,

⁴⁵ Philip C. C. Huang, *Code, Custom, and Legal Practice in China: The Qing and the Republic Compared* (Stanford, Calif.: Stanford University Press, 2001), 174, 180.

⁴⁶ Sommer, *Polyandry and Wife-Selling in Qing Dynasty China*, 211–21.

⁴⁷ See Note 13

⁴⁸ Deborah Simonton and Anne Montenach, eds., *Female Agency in the Urban Economy: Gender in European Towns, 1640-1830* (London: Routledge, 2015), 5; Michael J. Braddick and John Walter, eds., *Negotiating Power in Early Modern Society: Order, Hierarchy and Subordination in Britain and Ireland* (Cambridge: Cambridge University Press, 2001); Manon van der Heijden, Marion Pluskota, and Sanne Muurling, eds., *Women’s Criminality in Europe, 1600–1914* (Cambridge: Cambridge University Press, 2020), 4–5.

especially by finding leeway with the networks between women.

Sommer has given a comprehensive evaluation of the role of gender and sexuality in the Qing legal system. In the eighteenth century, the Qing government promulgated a string of imperial regulations to intensify the surveillance of illicit sexual behavior, including the outright criminalization of prostitution, more severe punishment for homosexual rape, and stronger protections for widows who preferred to maintain their chastity. Sommer argues that all of these measures were designed to emphasize gender roles and gender performance in order to defend a normative political, social, and family order.⁴⁹

Another significant contribution of Sommer is that he attributes the widespread practice of wife-selling to three factors. First, due to “systematic discrimination” which led to female infanticide, there was a “shortage of wives and consequent surplus of single men.”⁵⁰ Particularly in Ba County, the male surplus was serious; based on the archival documents, Zhang Xiaoxia found that the average male to female ratio in Ba County reached 144:100 in the early nineteenth century.⁵¹ Second, the Confucian duty, to continue the family line and ancestor worship created the fertility cult and “the market for women’s sexual and reproductive labor.”⁵² The third factor is the “desperate poverty” that many peasant families experienced in Qing China.⁵³ Poverty in Sichuan might be even more severe; by the end of the Qing dynasty, landless or land-poor peasants accounted for 70% of the peasant population, a figure higher than the national average.⁵⁴ The three larger

⁴⁹ Sommer, *Sex, Law, and Society in Late Imperial China*.

⁵⁰ Sommer, *Polyandry and Wife-Selling in Qing Dynasty China*, 6, 26.

⁵¹ For the infanticide in China, see Michelle Tien King, *Between Birth and Death: Female Infanticide in Nineteenth-Century China* (Stanford, Calif.: Stanford University Press, 2014); Bernice J. Lee, “Female Infanticide in China,” *Historical Reflections/Réflexions Historiques* 8, no. 3 (Fall 1981): 163–77; Isabelle Attané, *The Demographic Masculinization of China: Hoping for a Son* (New York: Springer, 2013). For sex ratios in the Qing, see Ping-ti Ho, *Studies on the Population of China, 1368-1953* (Cambridge, Mass: Harvard University Press, 1959), 57–62, 274–75; for the sex ratios in Ba County, see Xiaoxia Zhang, *Qingdai Ba County hunyin dang’an yanjiu 清代巴县婚姻档案研究 [A Study on Ba County Marriage Archives in Qing]* (Beijing: Zhonghua Book Company, 2020), 412–14. Another reason that the men of lower classes could not find a wife in Qing, was the concubinage in elite family, see Sommer, *Polyandry and Wife-Selling in Qing Dynasty China*, 52-53.

⁵² Sommer, *Polyandry and Wife-Selling in Qing Dynasty China*, 26. For the fertility cult in China, see Attané, *The Demographic Masculinization of China*, 96–93.

⁵³ Sommer, *Polyandry and Wife-Selling in Qing Dynasty China*, 25.

⁵⁴ Philip C. C. Huang, *The Peasant Economy and Social Change in North China* (Stanford, Calif.: Stanford University Press, 1988); Jia Xu, Xiuzhen Ding, and Thurid Eggers, “Poverty Risks of Women in Ancient China: How Social Institutions Shaped the Poverty Risks Faced by Women During the Ming-Qing Period,” *Journal of Family History*,

phenomena and their intersection constituted the deep reason why the practice of “polyandry” (several men sharing one wife) and wife-selling was so widespread in Qing China.⁵⁵

This dissertation uses the three factors to explain most conflicts owing to the commodification of women in the Ba County Archive.

I would characterize the method that Huang, Sommer, and most scholars used to analyze the legal records as “explaining the facts,” which means historians place the descriptions given in legal documents in their social context to interpret events and people’s behavior relating to women, gender, and marriage.⁵⁶

The approach of “explaining the facts” also brings out a question, of how to distinguish “official representation” from “legal practice.” Huang writes: “Legal materials ... involve of necessity both representation and practice. The complaints and countercomplaints of case files contain both the litigants’ representations of the facts and evidence of their actions; the court judgments both the magistrates’ proffered rationales and their actual rulings; and the Qing Code and magistrate handbooks both ideological statements and practical instructions.”⁵⁷ Though he dealt with archives mainly in terms of practice, Huang has acknowledged that case records can show the entire process stretching from representation to practice and local archives and also contain the factor of “representation.”

Therefore, another method for analyzing descriptions of women in the case records could be named “explaining the representational reality.” “Representational reality” is a term invented by Huang, which refers to the phenomena constructed by the ideological

December 8, 2022, 1–18, <https://doi.org/10.1177/03631990221143987>; Di Wang, *Kuachu fengbi de shijie: changjiang shangyou quyu shehui yanjiu 1644-1911* 跨出封闭的世界：长江上游区域社会研究（1644-1911） [Breaking Up a Closed World: The Social Transformation of the Upper Yangzi Region, 1644-1911] (Beijing: Zhonghua Book Company, 2001), 133–39.

⁵⁵ Matthew H. Sommer, “Making Sex Work: Polyandry as a Survival Strategy in Qing Dynasty China,” in *Gender in Motion: Divisions of Labor and Cultural Change in Late Imperial and Modern China*, ed. Bryna Goodman and Wendy Larson (Lanham, MD: Rowman & Littlefield Publishers, 2005), 33–34.

⁵⁶ Some Chinese scholars use the same approach to analyze archives about women and marriage, see Xiaoxia Zhang, *Qingdai Ba County bunyin dang’an yanjiu*; Liuyang Zhao, *Funiu, jiating yu falü shijian: qingdai yilai de falü shehui shi* 妇女、家庭与法律实践：清代以来的法律社会史 [Women, Family and Legal Practice: A Social Legal History Since the Qing Dynasty] (Guilin: Guangxi Normal University Press, 2022).

⁵⁷ Huang, *Civil Justice in China*, vii.

representational dimensions of discourse.⁵⁸ Here I use the “representational reality” in a broader way, so it does not necessarily stress the factor of ideology and can include the facts reflected by certain discourse, such as the discourse represented by the local archives. “Explaining the representational reality” means that in their works, historians focus more on how the documents were drafted, which kinds of language were adopted in the documents, and what the representational reality was according to the case records.

There is a much smaller body of research in which this method has been applied, although this literature is highly significant for the aims of this dissertation. Mao Liping finds that the magistrates particularly tended to use the trope that “women were foolish and ignorant” (“妇愚无知”) as a reason for mitigating their responsibility for a crime. The magistrates believed that since women lacked knowledge, autonomy, and self-determination, they were not obliged to take responsibility for their actions, and the focus of a trial tended to shift to their husbands, fathers, or male proxies. In some cases, some women clearly realized this and took advantage of this trope of “ignorance” to sketch themselves as victims to avoid punishment.⁵⁹ Furthermore, Mao finds that women tried to show distinctly their ignorance, to win the sympathy of magistrates. The county magistrates, were satisfied with the weak and benighted women, in the light of the ignorant picture of women, they could uphold the male authority and give tolerance for females, as the imperial laws and Confucian benevolence required. The current work will adopt a similar approach and show a more comprehensive picture of how women were treated in the archives: in addition to depicting women as weak and ignorant, diminishing the importance of women was another common choice for those who drafted the records.

In an article on women in Nanbu County Archives, Mao Liping points out that the picture of women in legal archives was the result of concerted efforts by “male family members, officials, and women themselves.”⁶⁰ This opinion is the most important source of inspiration for my dissertation. The material and discussion in this work will show a

⁵⁸ Philip C. C. Huang, “Rural Class Struggle in the Chinese Revolution: Representational and Objective Realities from the Land Reform to the Cultural Revolution,” *Modern China* 21, no. 1 (January 1, 1995): 105–11.

⁵⁹ Liping Mao, “Fu yu wu zhi: Jiadao shiqi minshi anjian shenli zhong de xian’guan yu xiaceng funü ‘妇愚无知’: 嘉道时期民事案件审理中的县官与下层妇女 [“Women Are Ignorant”: Magistrates and Lower-Class Women in the Trials of Civil Cases during Jiaqing and Daoguang Reigns],” *The Qing History Journal*, no. 3 (August 2012): 100–110.

⁶⁰ Liping Mao, “Dang’an yu xingbie: cong Nanbu Yamen Dang’an kan zhouxian sifa dang’an zhong nüxing xingxiang de goujian 档案与性别——从《南部县衙门档案》看州县司法档案中女性形象的建构 [A Study on the Construction of Women in the Prefecture’s Judicial File],” *Social Sciences of Beijing*, no. 02 (2015): 54–61.

striking parallel to Mao's argument and provide more details to explain how the makers of complaints formed the understanding of women with particular techniques in drafting legal complaints.

Research by legal historian Janet Theiss also finds that women employed the notions embodied in official discourse to protect their own interests. The cult of female chastity in late imperial China, according to the classic view, was regarded as a yoke for women.⁶¹ But according to Theiss, in the legal archives, women could interpret norms of chastity in accordance with their personal situation, and make use of it as a strategy to maintain control of their lives. Thus, women were “active agents in the production and reproduction of notions of femininity, morality, and propriety.”⁶² Theiss emphasizes the use of chastity by women to defend their interests, and the information in the archives also suggests that people who adopted this strategy were not limited to women: men also were very likely to use the chastity of women as a pretext for engaging in litigation.

The use of phrases like “women are ignorant” or the practice of women interpreting themselves as chaste, represents a kind of strategy that could be deployed by women in court. As Nathalie Zemon Davis notes in *Fiction in the Archives*, supplicants in the letters of remission could use narrative techniques from fiction that formulate, embody, and construct the elements of their story, as a strategy to gain an advantage in court.⁶³ In Qing China, litigants also used all kinds of “strategies,” to demonstrate their innocence, formulate their grievances, and convince the magistrate of their side of the story. In the current work, the litigation strategy was similar to the usage in Michael Szonyi's book on lineage in Fujian, which is about “manipulating the system to serve their own interest.”⁶⁴ While in regard to litigation, the strategy is more about ingratiating oneself with the legal system. The current dissertation will illuminate some interesting findings about the lived

⁶¹ Jihua Liu, “Zhongguo zhenjie guannian de lishi yanbian 中國貞節觀念的歷史演變 [The Historical Evolution of the Chastity Concept in China],” reprinted in *Zhongguo Funiushi Lunji, Siji 中國婦女史論集* [Collected Essays on Chinese Women's History, Vol. 4], ed. Chia-lin Tao, (Taipei: Daoxiang chubanshe, 1995), 101–30; Chen, *Zhongguo funü shenghuo shi*, 177–83; 241–46.

⁶² Janet M. Theiss, “Femininity in Flux: Gendered Virtue and Social Conflict in the Mid-Qing Courtroom,” in *Chinese Femininities/Chinese Masculinities: A Reader*, ed. Susan Brownell and Jeffrey N. Wasserstrom (Berkeley [etc.]: University of California Press, 2002), 47–66.

⁶³ Natalie Zemon Davis, *Fiction in the Archives: Pardon Tales and Their Tellers in Sixteenth-Century France* (Stanford, Calif.: Stanford University Press, 1987).

⁶⁴ Michael Szonyi, *Practicing Kinship: Lineage and Descent in Late Imperial China* (Stanford, Calif.: Stanford University Press, 2002), 205–6.

social reality, or the “fact” in Ba County Archives, but the strategy in making complaints also drives me to pay attention to the method of “explaining the representational reality”. The “Sources and Methodology” will explain more about my choice of the two styles of research.

Setting the Scene: Ba County and the Local Court

Ba County, is not a familiar place to most Chinese these days. The area is no longer labeled as Ba County on modern maps, but one can still identify its location in the most prosperous area of today’s Chongqing. In the nineteenth century, the administrative offices of the Chongqing Prefect and the East Sichuan Circuit Intendant were also located in Ba County.⁶⁵

Ba County consisted of a district seat, a walled city with 28 wards (坊, *fang*) surrounded by 14 suburban districts (厢, *xiang*) and hundreds of villages.⁶⁶ There was no formal government below the county level in the Qing; instead, the government filled the partial administrative vacuum by creating intricate semi-official units.⁶⁷

In Qing Ba County, when a person living in a rural area took part in a legal action, he or she would usually describe his address in terms of the *li jia* (里甲) system: for instance, as the sixth *jia* of *xiao* (孝 “filial piety”) *li*. In nineteenth-century Ba County, there were 84 *jia* in 9 *li*.⁶⁸ The system of *li jia* was initially designed for revenue collection and population registration. There was another system, *bao jia* (保甲), that performed the function of neighborhood security and surveillance.⁶⁹ Apart from the system of *li jia* and *bao jia*,

⁶⁵ Generally speaking, the county (县 *xian*) was the smallest administrative unit in Qing, and counties formed parts of larger units: prefectures (府 *fu*), then circuits (道 *dao*), and provinces (省 *sheng*). Ba County is a part of Chongqing Prefecture, East Sichuan Military Defense Circuit, and Sichuan Province.

⁶⁶ It remains unclear how many wards and suburban districts existed in nineteenth century Ba County. Reed has mentioned in his book that, “by the mid-eighteenth century, the city wall contained twenty-nine wards surrounded by twenty-one suburban districts.” Bradly W. Reed, *Talons and Teeth: County Clerks and Runners in the Qing Dynasty* (Stanford, Calif.: Stanford University Press, 2000), 27. However, Reed does not give any reference to the exact numbers. Here I use data from a document preserved in the archives, in Sichuan Provincial Archives and History Department in Sichuan University, eds., *Qingdai Qian Jia Dao Ba County Dang’an Xuanbian (Xia Ce)* (*Compendium of Qing Dynasty Documents from Ba County-Qianlong, Jiaqing and Daoguang Period. Part. 2*) (Chengdu: Sichuan daxue chubanshe, 1996), 340–41.

⁶⁷ Tung-tsu Chü, *Local Government in China Under the Ch’ing* (Cambridge, Mass.: Harvard University Press, 1962), 2–3.

⁶⁸ *Qian Jia Dao Ba County Dang’an Xuanbian (Xia Ce)*, 340–41.

⁶⁹ Kung-Chuan HSIAO, *Rural China: Imperial Control in the Nineteenth Century* (Seattle: University of Washington

officially sponsored agencies and organizations in rural Ba County also included *xiang yue* (鄉約, for ideological control), *tuan lian* (團練, “grouping and drilling,” local militia after White Lotus Rebellion in 1796), and *ke zhang* (客長 “chief of guests”).⁷⁰ The agents and leaders of these organizations constituted the majority of the so-called heads of the local community.

As is clear from the Map, Ba County and Chongqing are situated at the confluence of the Jialing and Yangzi Rivers. This geographical location made the city a center of water transport and commercial transactions in the Upper Yangtze region.⁷¹ Due to the effects of war in the transition between the Ming and the Qing, Sichuan saw a massive demographic decline with a loss of between 2/3 to 3/4 of its population.⁷² The newly sovereign Qing actively promoted the resettlement of Sichuan, and with economic growth and massive immigration, the population of Ba County continued to increase during the Qing.⁷³

The county magistrate was the head of both the judiciary and the executive in the area. The Qing central government maintained a descriptive classification of the post of local officials: *chong* (冲 frequented, a center of communications), *fan* (繁 troublesome, with a great deal of official business), *pi* (疲 wearisome, many overdue taxes), *nan* (難 difficult, a violent populace, prone to crime). As the seat of administrative control and a trade center, Ba County qualified under three of the four classifications, *chong*, *fan*, and *nan*,

Press, 1960), 25–26. For the function of *baojia*, Hsiao calls it “police control.”

⁷⁰ “Guest” in general, referred to the immigrants, and the government set up the “chief of guests” to regulate the large group of immigrants better, see Xinyu Yan and Shuji Cao, “Xiang Bao Zhi Yu Difang Zhili: Yi Qian Jia Dao Shiqi Baxian Wei Zhongxin 乡保制与地方治理：以乾嘉道时期巴县为中心 [The Self-Protection System and Governance at Sub-County Level: The Case of Ba County in Reigns of Qianlong, Jiaqing and Daoguang],” *Shi Lin*, no. 4 (2017): 84–96; for *xiang yue*, see HSIAO, *Rural China*, 184–260.

⁷¹ Xiping Lin, “Qingdai Jiaqian Zhijian Sichuan Shangye Zhongxin de Dongyi 清代乾嘉之际四川商业重心的东移 [The Commercial Center of Sichuan Shifted Eastwards During Qianlong and Jiaqing Era in Qing],” *The Qing History Journal*, no. 3 (1994): 62–69; G. William Skinner, “Cities and the Hierarchy of Local Systems,” in *The City in Late Imperial*, ed. G. William Skinner (Stanford, Calif.: Stanford University Press, 1977), 275–351.

⁷² Shuji Cao, *zhongguo yimin shi (di liu quan)* 中国移民史 (第6卷) [The migration history of China vol.6] (Fuzhou: Fujian renmin chubanshe, 1997), 68–77.

⁷³ Quinn Javers, *Conflict, Community, and the State in Late Imperial Sichuan: Making Local Justice* (London and New York: Routledge, 2019), 5–8; Robert Eric Entenmann, “Migration and Settlement in Sichuan, 1644–1796” (PhD diss., Massachusetts, Harvard University, 1982).

which made the magistrate in Ba County an “important post” (*yao que* 要缺).⁷⁴

Table 1 Population in Ba County

	Household	Population
1812*	75,743	218,779
1824**	82,041	386,472
1910 ***	191,394	990,474

*Source: Chang Mingxiu, Yang Fangcan ed., *Sichuan tong zhi* 四川通志 (the Sichuan Gazetteer), 1812.

** Source:道光四年巴县保甲烟户男丁女叩花名总册, in Qian Jia Dao Ba County Dang'an Xuanbian (Xia Ce), 340–41.

*** Source: Ba County zhi, 巴县志 (Ba County Gazetteer), (Chongqing: Chongqing chubanshe, 1994), 641

In general, the collection of taxes and the administration of justice was crucially important for magistrates, but most officials in the nineteenth century did not receive systematic and professional education in either their administrative or legal duties.⁷⁵ So how could this administrative machinery operate well with inexperienced county magistrates? Magistrates could obtain legal knowledge from magistrate manuals or other printed materials.⁷⁶ Some outstanding officials published handbooks themselves, such as Liu Heng, who worked in Ba County from Daoguang 5 to 7 (1825-1827).⁷⁷ But in general, they relied more on people with specialized knowledge and skills.

⁷⁴ *Qing shi gao* (Draft History of the Qing Dynasty), Vol. 69, p5741.

⁷⁵ Writing “judicial terms” (*panyu* 判語), as a part of civil service examination, had been cancelled in 1756, Jing-jie Wu, “Mingqing shidai de panyu kaoshi yu falü zhishi 明清時代的判語考試與法律知識 [Judicial Terms and Legal Knowledge in the Ming and Qing Periods],” *Journal of Ming Studies*, no. 34 (2020): 145–84. Chang Wejen believes that law actually never became “a serious subject in regular school education,” Wejen Chang, “Legal Education in Ch’ing China,” in *Education and Society in Late Imperial China, 1600–1900* (Berkeley [etc.]: University of California Press, 1994), 292–339.

⁷⁶ They could choose to learn by themselves, see Zhongming Xu and Jin Du, “Qingdai sifa guanyuan zhishi jiegou de kaocha 清代司法官员知识结构的考察 [A Research on the Judicial Officials’ Knowledge Structure],” *ECUPL Journal*, no. 05 (2006): 69–90. And people could have easy access to printed copies of the *Great Qing Code*, Ting Zhang, *Circulating the Code: Print Media and Legal Knowledge in Qing China* (Seattle: University of Washington Press, 2020).

⁷⁷ His publication includes *Yong li yong yan* (庸吏庸言), *Shu liao wenda* (蜀僚问答), *Duli xinde* (读律心得), and so on, see *Qing shi gao* (Draft History of the Qing Dynasty), Vol. 478

In Qing, the magistrates hired private secretaries (*mu you* 幕友) to cope with the demanding work. In contrast to magistrates who had focused on the study of the Confucian classics to obtain their official titles, these secretaries had undergone specialized training in administrative matters for the purpose of serving as expert advisers to officials. One of the most important categories of secretaries related to “criminal law,” is known as *xing ming* (刑名).⁷⁸ Generally speaking, when a complaint was lodged, it was the duty of these private legal advisors to read the complaint and suggest reactions and instructions at the end of a copy of the complaint. Once the suggestions by secretaries had been approved and endorsed by the magistrate, they would be copied onto the original complaint document.⁷⁹ Also, an experienced advisor would then give advice to the magistrate before the investigation or trial about what kind of information was necessary, and how that information should be collected.⁸⁰

Another group important to the administration of the court was runners and clerks. Clerks served both in the magistrate’s office and the offices of the magistrate’s subordinate officials.⁸¹ As stated in standard appointment papers, yamen clerks were employed for the tasks of “copying and composing documents, the management of public affairs, and the processing of all legal cases.”⁸²

The duties and functions of government runners varied over time and space. The runners, in general, were assigned to legal and penalty affairs, to serve summonses, make arrests, use torture to obtain a confession from suspects and administer corporal punishment, as well as to catch robbers and thieves, guard the jail, and escort criminals in

⁷⁸ Li Chen, “Legal Specialists and Judicial Administration in Late Imperial China, 1651–1911,” *Late Imperial China* 33, no. 1 (2012): 2–5.

⁷⁹ Qu (CHÜ), 95–98.

⁸⁰ Chen, “Legal Specialists and Judicial Administration in Late Imperial China, 1651–1911,” 27.

⁸¹ The county magistrate was not the only “official” in the county. There were three kinds of subordinate officials. The formal definition of such subordinate officials was “those officials who are not in charge of the seal are not allowed to accept lawsuits”, and for a long time they were regarded as “insignificant”. See Qu, *Local Government in China*, 8–13. In the past decade, some historians revealed that sometime they also had the power to accept lawsuits and give judgement on trivial cases, see Mao Wei, “Wanshi Peitai Shiyu Zhouxian Hu? —— Cong Mingan Zhi Dai Yan Zai Lun Qingdai Zuoza Shenli Quan 万事胚胎始于州县乎? —— 从命案之代验再论清代佐杂审理权限 [Does Administration Begin from County-Level?: A Research on Power to Inspect Homicide Cases by Subordinate Officials to Discuss the Legal Authority They Had in Qing Dynasty],” *Law and Social Development*, no. 4 (2011): 95–103. In my research on Ba County Archives, there is not much trace of them in the archives: only one case was first filed to a subordinate official.

⁸² Reed, *Talons and Teeth*, 35.

transit.⁸³ Local clerks and runners usually had a bad reputation and were nearly universally reviled as the most cunning and venal of scoundrels.⁸⁴ However, clerks and runners played a vital role in all legal casework, and we see evidence of their work on every document. Although the magistrates, private secretaries, runners, and clerks are not the main subjects of this dissertation, these male officials and staff were responsible for creating most parts of the legal documents. While it is impossible to measure the degree to which the extremely gendered composition of these occupations affected the image of women in the archives, it is nevertheless the case that most legal archives from the central to the local level are characterized by narration from a predominantly male perspective.

Sources and Methodology

Ba County has now become a popular topic in Qing historical research, mainly because the collection of Ba County Archive represents the most complete county-level government records in the Qing dynasty.⁸⁵ Before the archives were transferred to the Xinan (Southwest) Museum in 1953 and organized by Sichuan University, these documents had been kept unguarded in a temple, and during this period, some villagers living nearby used the papers to start fires, inevitably resulting in the destruction of some pieces of the documents. Nevertheless, the Ba County Archive are composed of a collection of more than 113,000 files (*juan* 卷), and the section of law files makes up 88% of the entire holdings.⁸⁶

The files in Ba County Archive are cataloged according to the dynastic reign period as follows: general, homicide, assault, gambling, theft, fraud, family, women, land, tenancy, house, contracts, loans, commerce, mining, water transport, inheritance, opium, religion, taxes, transference, and miscellaneous.⁸⁷ All these documents in the Sichuan Provincial

⁸³ Qu, *Local Government in China*, 60–61. In Ba County, they were organized into four groups: district runners (*kuaiyi*, *liangyi*); salt runners (*yanyi*); constables (*buyi*); and commoner guards (*minzhuang*) Reed, *Talons and Teeth*, 130–33.

⁸⁴ As Huang has pointed out that bad reputation of runners and clerks, or “*yamen* worms” was construction of the state legal ideology and the officials always blamed the litigation masters and runners for the increasing lawsuits, see Huang, *Civil Justice in China*, 185–89.

⁸⁵ Lin Zhou, “Qingdai Chongqing shi yanjiu shuping 清代重庆史研究述评 [A Review of the Studies of Chongqing History in the Qing Dynasty],” *Journal of China West Normal University (Philosophy & Social Sciences)*, no. 06 (2014): 20.

⁸⁶ Yasuhiko Karasawa, Matthew H. Sommer, and Bradley W. Reed, “Qing County Archives in Sichuan: An Update from the Field,” *Late Imperial China* 26, no. 2 (2005): 115.

⁸⁷ Karasawa, Sommer, and Reed, 15. In fact, the contents in different reign period are not exactly the same, see

Archives have already been renamed and reclassified by modern archivists. Therefore, it must be noted that currently, it is almost impossible to know how the original categorization worked. Compared with the files in the Nanbu County Archives, which have been categorized according to the branch office (“房,” *fang*) that initially handled them, in the case of Ba County it is difficult to know how many cases belonged to the *xing fang* 刑房 (punishment office) or the *li fang* 禮房 (ritual office).⁸⁸ It is almost impossible to calculate the ratio of female criminals to males, or the rate of women involved in lawsuits, even if we simply equate the cases in the “punishment office” to criminal cases, since we do not know how many cases were categorized into “punishment office.”⁸⁹

All of the cases drawn in this dissertation come from the “women” section.⁹⁰ The word, “archive” in this dissertation mostly refers to the “women” section of Ba County Archive created by modern archivists.⁹¹ This dissertation discusses 617 cases from fifteen years ending with 3 or 8 between 1803 and 1873 (1803, 1808, 1813, etc.).⁹² The number

Peilin Wu, “Sanshinian lai de Qingdai falüshi yanjiu: cezhongyu zhongguo dalu difang falüshi 三十年來的清代法律史研究——側重於中國大陸地方法律史 [Researches of the Legal History in Qing Dynasty in the Past Three Decades: Focused on the Local Legal History in Mainland China],” *Journal for Legal History Studies*, no. 24 (December 2013): 195–240.

⁸⁸ The distinction between the *xingfang* (punishment office) and the *lifang* (ritual office) is not clear, and we can see regional differences in relation to the different *fang*. In the documents I read, all the documents were signed by the *xingfang*, with only three documents signed by other offices.

⁸⁹ This is a simple but not rigorous approach. In practice one case could be handled by different offices. Peilin Wu, “Youxu yu wuxu zhijian: qingdai zhouxian yamen de fen fang yu chuan fang 有序与无序之间：清代州县衙门的分房与串房 [Order and Disorder: Division and Confusion of Departments in Qing’s Prefecture and County Yamen],” *Journal of Sichuan University (Philosophy and Social Science Edition)*, no. 2 (2018): 43–60.

⁹⁰ I also analyze some documents falling under other sections because they are related to some files included in the “women” section, for instance, the records of the same case were divided and put separately under different sections. In addition, a small number of documents in the “women” category had nothing to do with women. Not all of the case records involving women were in were categorized under “women,” but due to the limitation that Sichuan Provincial Archives only allow every visitor to request 20 files per day, it would take too long time to look through all the document and find out how many files, except for the “women” section, were related to women, therefore I mainly discuss the cases from “women” section.

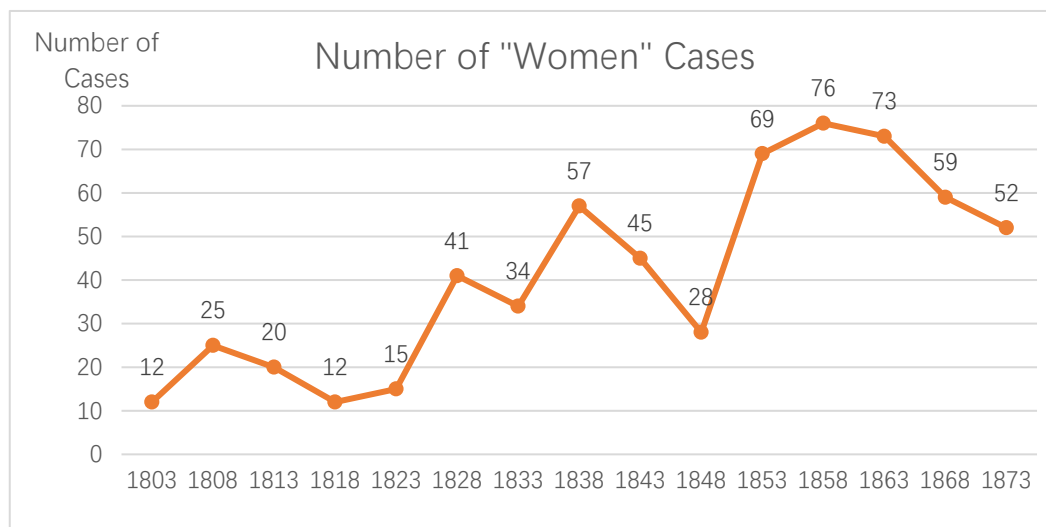
⁹¹ Although, through my study of a small number of archival documents from other regions, such as Nanbu and Huangyan, I believe that the conclusions of this dissertation can be substantiated by evidence from other Qing local archives, rigorously, the local archives and legal archives in this paper confined to Ba County “women” archives.

⁹² The choice of this time period was based on the situation where most archives during Guangxu reign (1875-1912) are unavailable on the computers at the Sichuan Provincial Archives. Though people can look through the documents on microfilms, it is difficult to locate the archives in the “women” section. The choice of years ending with 3 and 8 was made by the drawing of lots, which was a random selection.

of cases fluctuates but generally increases as we move through the decades, which is most likely the result of increased litigation with growth in the population. However, we cannot tell the extent to which the actual numbers of extant records are a consequence of poor preservation.

The writing of the texts in the complaints shows much more continuity than discontinuity over time; therefore, the dissertation will not focus on the changes of text over time. The case records mainly include the initial complaints and countercomplaints filed by both parties, the court summons, the runners' reports, a list of all the names of people who showed up at court hearings, the testimony of the litigants at the court sessions, and pledges by the litigants to accept the judgment.⁹³ It is possible that there are many complaints filed by litigants or more than one summons signed by magistrates in the records of an individual case. In such cases, the records may run to dozens or even hundreds of pages. But many records contain only one sheet or a single document, the reason for this being either poor preservation or the fact that many cases came to an abrupt end.

Figure 2 Number of "Women" Cases in Ba County Archive per Year



Source: BXA, "Women," 1803 - 1873.

This dissertation will provide the collected data about who participated in which types of litigations, and which kinds of role women played in litigations. I have analyzed the court cases from two different perspectives. First, by looking at the types of accusations. The accusation is defined as the charge based on the first complaint of one case. Second, by

⁹³ Huang, *Civil Justice in China*, 4.

looking at the relationship between the plaintiffs, defendants, and women in the case. The links of the two perspectives reveal the factors that the defendants would take into consideration when drafting complaints.

The dissertation will adopt a bottom-up approach, with a focus on how the individuals participated in and made use of litigation to achieve their objectives in the court, rather than how the higher authority figured to govern the commoners through the law. While ideological discourse certainly influenced the writing of complaints, it is crucial to note that the emphasis on public morality and female chastity in litigation was largely driven by the pursuit of financial interests.

The bottom-up approach is based on the fact where the local archives, especially the case records, provide a gateway to the investigation of the quotidian life of common people whose voices have normally been muted in official Chinese history and other records created by the elite. However, it does not mean the information in the archives unproblematically represents “truth” or directly reflects the original statements people gave in court. In China as in Europe, “court records are shaped by the formal judicial framework in which they were created.”⁹⁴ Within the judicial system, the work of government staff included but was not limited to, translating from a dialect or original language into “the uniform vernacular style derived from Mandarin speech (*guanhua* 官話),” scrutinizing statements from common people for the requirement of consistency and weeding out contradictions.⁹⁵ Similarly, when local magistrates reported cases to the higher authorities, they commonly adopted the facts to fit the extant legal categories and relied on model cases to craft their decisions.⁹⁶

Besides those employed by the government and courts, another significant group contributing to local legal practices were litigation masters (*songsshi* 訟師), or any literates, including licensed scribes (*dai-shu* 官代書) who would help litigants to draft complaints and formulate litigation strategies. When crafting the complaints, at least two crucial purposes must be taken into consideration. Firstly, to ensure the acceptance of complaints by

⁹⁴ Jeannette Kamp, *Crime, Gender and Social Control in Early Modern Frankfurt Am Main* (Leiden; Boston: Brill, 2019), 30.

⁹⁵ Yasuhiko Karasawa, “From Oral Testimony to Written Records in Qing Legal Cases,” in *Research from Archival Case Records: Law, Society, and Culture in China*, ed. Philip C.C. Huang and Kathryn Bernhardt (Leiden; Boston: Brill, 2014), 89–118.

⁹⁶ Frédéric Constant, “Thinking With Models: The Construction of Legal Cases as Reflected in Late Qing Local Archives,” *T'oung Pao* 107, no. 3–4 (September 8, 2021): 472.

magistrates, the plaintiffs needed to contain reasonable accusations, aligning with offenses punishable under codified law. Additionally, plaintiffs often depicted their actions as conforming to Confucian ethics, establishing themselves as victims of unjust defendants based on ethical standards. Consequently, plaintiff writers strategically employed official ideologies, such as the cult of female chastity, to bolster their claims.

Secondly, the events and behavior depicted in the plaintiffs were the results of a strategic choice to make sure that the stories were familiar and plausible to the readers. These stories might not indicate what actually happened, but they did show the perceived ways in which conflict was likely to or supposed to occur. These plots might have roots in experience and observation of quotidian life, or they might be influenced by plots from popular literary works. This assumption can help us understand why there are so many similar stories in the archives, containing similar plots and contexts and even similar counter-arguments.

In addition to the techniques used by government staff in drafting records, and (legal) strategies employed by commoners in their plaintiffs, there must be plenty of other fictional elements in legal records, such as false accusation. Therefore, the most significant challenge in analyzing judicial archives, in a sense lies in navigating the relationship between fiction and fact. To address this, the current dissertation will handle the archival cases broadly in two scenarios. Although all cases may encompass fictional elements, if it is a special case, the analysis will focus on elucidating the sources of the uniqueness of the case, including the plots of the conflicts constructed in the records, the language employed in the plaintiffs and the relationships between participants involved in the litigations. From this perspective, the method used in the situation is closer to the previously mentioned “explaining the facts.”

If a certain narrative pattern appears in several cases, the dissertation tends to interpret the formation of “patterns” as an echo of social reality, because the stories must represent normal and believable narratives in the understanding of most people to convince the magistrates. As noted by a European legal scholar, “even lies have to have a certain level of plausibility to be convincing and therefore reflect everyday norms and mentalities.”⁹⁷ The repeated plots in the archives, especially in the legal plaintiffs to some extent drafted by subjects crafted “representational reality.” In other words, this dissertation will not dwell on the truth or falsity of a particular event or behavior but rather on the public perceptions and representational reality it might represent, by “explaining the representational reality”.

⁹⁷ Kamp, *Crime, Gender and Social Control in Early Modern Frankfurt Am Main*, 30.

Nonetheless, a careful analysis of the archives makes it possible to some extent to reconstruct the role of women in nineteenth-century China, since the representational reality must have its factual basis. However, rather than studying “women”, this dissertation focuses more on the “image” “portrayal” or “presence” of women in the archives, about how women were represented and perceived, which influenced how women would be understood and interpreted by current scholars. Just as the beautiful selfies on social media are often the product of multiple layers of filters, women in the historical archives are shaped by complex considerations—moral, legal, and economic. The dissertation never attempts to strip away these filters and reveal the “true” face of the women (which is, to some extent, impossible), but rather on understanding why these filters were applied and how they influence our perception of the women in the archives.

Structure

Chapter One serves as an essential foundation for the subsequent discussions in the following chapters. The intricate and rigorous definition of family relationships in the *Great Qing Code* constituted the basis of the Inner-Outer Tiers model, illustrated in Figure 1. To comprehend how legal archives portrayed women in nineteenth-century China and the patterns they established regarding women’s conduct in legal matters, it is crucial to examine both codified law and the gender concepts defined by authorities. By adopting quantitative textual analysis, this chapter meticulously will count and describe the words employed to characterize women to address the underlying attitudes to women and gender. While the code assumed the inherent existence of two distinct sexes, it offers insight into how the male-female dichotomy and the concept of gender were ideologically constructed.

Chapter Two moves on to an overview of Ba County Archive and compares the general portrayal of women in local records with that in the code. The fictional factors in the local archives were reflected by the strategies people adopt in litigation, especially the sorts of accusations they tended to use. What techniques would be employed to create a specific picture of women in the litigation files, particularly in the complaints? And, to what extent did the treatment of women in legal practice overlap with the definition of women in official discourse such as the code? Under most circumstances, the way that legal complaints constructed women was similar to the picture presented in the codified law. People even invented and incorporated phrases to reduce the importance of women in the case. This chapter will also nuance our understanding of the low rate of female participation in litigation and in a broader social context.

In the next three chapters, I will turn my attention to the Inner-Outer Tier model of women's relationships, a model that promises to open up a new analytical perspective. The relationship between the two parties in the lawsuits about women has not received enough academic attention. Only Zhang Xiaoxia in her study on Ba County Archive has mentioned that most wife-selling cases were submitted to the court by the natal and marital family members of the women.⁹⁸ Current literature mainly shows the relationship between women and their adulterers, scholars have noticed that adultery usually happened between women and their relatives or women and their neighbors.⁹⁹

The chapters will not be divided in the usual ways, such as by offenses, but based on the preliminary finding that the relationship between the two parties had a considerable influence on the choice of accusation. First, to be analyzed are cases occurring between those within the Inner Tier: conflicts between a woman's natal and marital families. Chapter Three will present data on the kinds of accusations commonly used to initiate lawsuits, and examine the intrinsic motivations behind frequent kinds of disputes. Whether people identified abduction or marriage as the cause of conflict, they would use similar methods to draft complaints with the same intention: to ensure that women would stay under their control. The conceptualization of women as property was the prerequisite of the conflict. The chapter will also discuss the relationship between women and their natal families. The members of the natal family usually served as allies of women.¹⁰⁰ However, the legal documents illustrate that the natal family would sometimes pay more attention to their own interests rather than the women's concerns.

Chapter Four will shift attention from family relations to the connections between the family and the outside world, especially with male outsiders, or between people in the Inner and Outer Tier. This chapter will examine the kinds of conflicts that occurred

⁹⁸ Xiaoxia Zhang, *Qingdai Ba County bunyin dang'an yanjiu* 清代巴县婚姻档案研究 [A Study on Ba County Marriage Archives in Qing] (Beijing: Zhonghua Book Company, 2020), 431–35.

⁹⁹ Zhang, 557–74; Songyi Guo, *Lunli yu shenghuo: Qingdai de bunyin guanxi* 伦理与生活：清代的婚姻关系 [Morality and Life: Marriage in the Qing Dynasty] (Beijing: The Commercial Press, 2000), 536–42; Hui-Min Lai and Szu-Ling Hsu, “Qingyu yu xingfa: Qing qianqi fanjian anjian de lishi jiedu 情慾與刑罰：清前期犯奸案件的歷史解讀 (1644-1795) [Passion and Punishment: Historical Interpretation of Adultery Cases in the Early Ching Dynasty (1644-1795)],” *Research on Women in Modern Chinese History* 6 (August 1998): 47–48.

¹⁰⁰ Sommer, *Polyandry and Wife-Selling in Qing Dynasty China*, 222–23; Liping Mao, “Qingdai xiaceng funü yu niangjia de guanxi: yi Nanbu dang'an wei zhongxin de yanjiu 清代下層婦女與娘家的關係—以南部縣檔案為中心的研究 [Lower-Class Women and Their Natal Families during the Qing Period: A Study Based on the Nanbu County Archive],” *Research on Women in Modern Chinese History*, no. 21 (2013): 3–48.

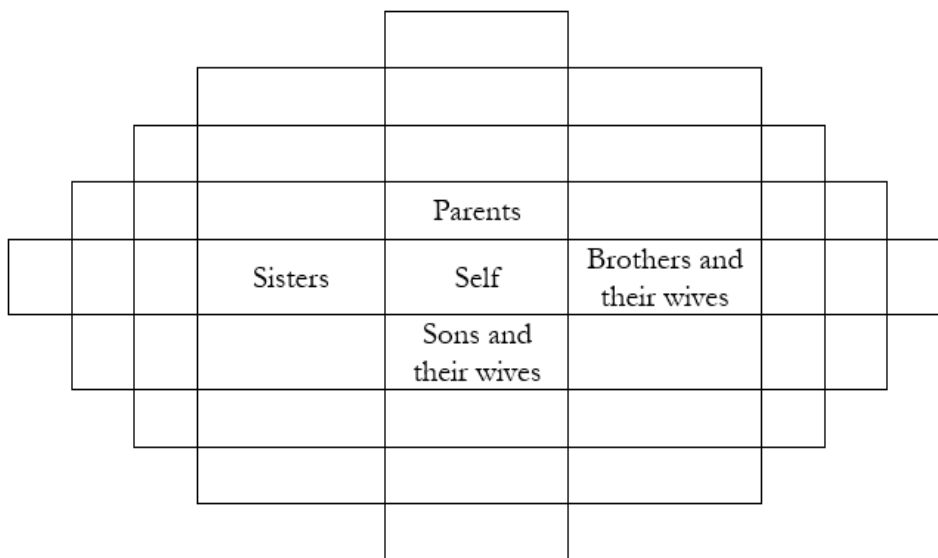
between outsiders and family members, mainly husbands and in-laws, and the common forms in which litigants preferred to represent their disputes in court. In contrast to the marital issues discussed in Chapter Three, the focus of this chapter is sexual offenses. This choice of accusation is, on the one hand, a reaction to social reality. On the other hand, it was also a strategic decision. An interesting finding is that sexual offenses are often accompanied and followed by economic conflicts, which means that when a male outsider was charged with a sexual offense by a husband, the offender would very likely counter by identifying a relevant economic conflict. The formation of this strategic pattern marked the further objectification of women. Women's bodies could be used in exchange for money, and their honor and chastity were an instrument in litigation.

Chapters Three and Four generally examine women being portrayed as objects and tend to reconstruct any instances of rebellion on the part of women, including running away and extramarital sex, as litigation strategies. But this does not mean that the judicial archives do not provide the women's own perspectives. In a context where family relationships formed the basis of social control, was there a space left for women? While Chapter Four analyzes only cases related to outside males, Chapter Five focuses on *females* in the Outer Tier, and looks at the conflict between women's survival strategies in the absence of husbands and the patriarchal family system. In this mechanism, one way for women to make a living was to count on a "network" of mainly female members. As the archives show, women could find a means of livelihood, for instance, to find another husband, with the help of other women. However, direct communication between women could bring both opportunities and risks at the same time, especially when a woman left home and found a job outside the household with other women as intermediaries, the working women could be charged as runaway. The law and judicial system, as part of formal social control, were designed to bring all women back under the surveillance of the family. Therefore, the family and the state joined forces to destroy women's opportunities to work outside of the household.

Picture 1 Diagram of Five Mourning Degrees



Picture 2 Simplified Diagram of Five Mourning Degrees¹⁰¹



Source: “大清律箋釋合鈔三十卷首不分卷 康熙四十一年序錢氏思補堂刊本,” accessed December 4, 2022, http://shanben.ioc.u-tokyo.ac.jp/main_p.php?nu=B3802200&order=rn_no&no=00602.

¹⁰¹ For the complete version of the translation of the diagram of five mourning degrees, see Jiang, *The Great Ming Code*, 9–10.

Chapter 1. Women in Code: A Textual Analysis of the *Great Qing Code*

This dissertation will discuss how the Qing Code and family system influenced legal practice in the Ba County court case and our understanding of women in nineteenth-century China. In this chapter, the main question is, how did the Code specifically define and influence the understanding and treatment of women? I will give a summary of how legislators imagined and regulated women in terms of family relationships. Current works usually discuss the legal status of Chinese women within the context of rights and obligations.¹ The aim of this chapter is to illustrate the status of Chinese women in different stages of their lives with a focus on family relationships.

The main source of this chapter is the *Great Qing Code*, and I will analyze the code from two viewpoints. The first examines the language used by the Code to identify women. The terms referring to females show us that most women were identified within family relationships, and there are very few examples in which women were referred to by their profession. It is also interesting to see the distribution of these words referring to women in the Code, as they are mostly found in legal provisions related to marriage, family, and sexual offenses. Moreover, some legal clauses suggest that only males could commit rebellion or treason, partly due to the distinction between the inner and outer spheres that excluded women from political and military positions.

The analysis in this chapter from the perspective of codified law can be used to corroborate claims that notions of gender in imperial China were generated in the context of “differential kin linkages,” and women were defined in kinship-specific, relational terms.² In the Code, there seemed to be no foundational status for women beyond the relations of patrilineal kinship.³ As legal historian Geoffrey MacCormack concludes in his research about traditional Chinese law, “of these the most important was the legal

¹ For instance, Zhao, *Zhongguo funü zai falü shang zhi diwei*; Bernhardt, *Women and Property in China*.

² Bernhardt, “A Ming-Qing Transition in Chinese Women’s History? The Perspective from Law,” 49, quoting Tani Barlow, “Theorizing Woman: Funü, Guojia, Jiating [Chinese Women, Chinese State, Chinese Family],” *Genders* 10, no. Spring (1991): 132–60.

³ Tani Barlow, *The Question of Women in Chinese Feminism* (Durham and London: Duke University Press, 2004), 42.

bolstering of the human relationships held to be necessary for the well-being of society.”⁴ Examination of the Code is based on “relationship,” since women were usually identified in the context of their family relationships, and the Code specified a large number of rules devised to regulate family and societal relations between people.

The second viewpoint taken in the analysis is to examine how the law treated women. The code contains more than one article recommending leniency toward women because of compassion for the “weak” women and the necessity to protect female chastity. The purity of women was emphasized by lawmakers, including punishment for women who did not cherish their virginity and severe penalties for those men who “polluted” women. Meanwhile, the rapidly expanding cult of chastity during the Ming and Qing dynasties also granted certain privileges and advantages to widows who maintained their chastity.

The Code also tells us that the two people in a relationship are not equal: on the contrary, the relation usually involves a hierarchy of authority featuring a superior and a subordinate. For example, parents could deal out corporal punishment to or even accidentally kill the unfilial children and would not receive punishment.⁵

When analyzing the life of women in Qing China, it is of utmost importance to identify who had the power to negotiate marriage for women. This chapter will discuss the power of parents in relation to the marriage of their children, the limited ability of a husband to sell his wife, and the alteration of power over widows. This analysis is essential because local archives will show that conflicts over the marriage of women constituted the major source of lawsuits in legal practice.

By observing women at different stages of life, we can see that gender was not the only factor that had a significant influence on the position of women in the patriarchal family system. As one of the most significant aspects of ideology and morality, filial piety gave mothers, to a large extent, a similar status and the same authority over descendants as fathers. So, to nuance our understanding of female legal status in Qing China, age and generation played a role just as essential as gender.

The first part of this chapter introduces basic information on the Qing Code. Next,

⁴ Geoffrey MacCormack, *The Spirit of Traditional Chinese Law* (Athens, Georgia: University of Georgia Press, 1996), 7.

⁵ William C. Jones, trans., *The Great Qing Code* (Oxford: Clarendon Press, 1994), 305; Jiang, *The Great Ming Code*, 188.

it shows two important factors, the distinction between inner and outer (内外之别) and female chastity, in understanding the role of Chinese women, and explaining from a linguistic viewpoint how the law defines women. The third section moves on to the dynamic and fluid status of women through the different stages of their life cycle, by analyzing legal provisions in the Code. The last part of the chapter explains how Qing law treats female criminals and defines femininity.

Basic Knowledge of the *Great Qing Code*

This part will introduce the basic content and structure of the *Great Qing Code* to build up an elementary picture of the Code.⁶ The place of the Code in the system of legislation of the Qing Dynasty is debatable, but even the most conservative opinion agrees on its central position,⁷ and that the *Great Qing Code* had a direct influence on people's behavior. Even though Japanese historian Shûzô Shiga has stressed the human sentiment (*renqing* 人情) and heavenly principles (*tianli* 天理) in the Qing justice system, he also admitted that the *Great Qing Code* was the only law that officers would cite in their judgment.⁸ Or, as some Chinese scholars put it, among all the sources of law, the articles of the *Great Qing Code* were the most fundamental.⁹

Qing emperors and officials took a long time and put considerable effort into enacting and standardizing the codified law.¹⁰ In 1647, soon after the Manchu occupation of Beijing, the Shunzhi Emperor (1643-1661) promulgated the first version of the Qing

⁶ Bodde has given a good introduction to the history and structure of Qing Code in the important book, *Law in Imperial China*, see Derk Bodde and Clarence Morris, *Law in Imperial China: Exemplified by 190 Ch'ing Dynasty Cases* (Cambridge: Harvard University Press, 1967), 55–68.

⁷ This is a topic mainly discussed in the Chinese scholarly literature, see Yifan Yang, *Chongxin Renshi Zhongguo Falishi* 重新认识中国法律史 [New Understanding of Chinese Legal History] (Beijing: Social Sciences Academic Press, 2013), 33–34.

⁸ Shûzô Shiga, “Qingdai susong zhidu zhi minshi fayuan de gaikuoxing kaocha: qing li fa 清代诉讼制度之民事法源的概括性考察——情、理、法 [A General Examination of Sources of Civil Law in the Qing Litigation System: Sentiment, Heavenly Principles and Law],” trans. Yu Fan, in *Mingqing shiqi de minsbi shenpan yu minjian qiyue* 明清时期的民事审判与民间契约 [Civil Adjudication and Contracts during Ming-Qing Period], ed. Yaxin Wang and Zhiping Liang, (Beijing: Law Press-China, 1998).

⁹ Qinhuo He, “Qingdai Falü Yuanyuan Kao 清代法律渊源考 [The Sources of Qing Dynasty Laws],” *Social Sciences in China*, no. 2 (2001): 116.

¹⁰ Zhang, *Circulating the Code*, 11–40.

Code, under the name *Statutes of the Great Qing with Collected Commentaries and Appended Substatutes* (*Da Qing Lü Jijie Fuli* 大清律集解附例).¹¹ Shunzhi's successor, the Kangxi Emperor (1662-1722), only published a collection of substatutes.¹² During the Yongzheng reign (1723-1735), the second edition of the Qing Code was completed, which realized the “standardization of statutes” and where the number of statutes was reduced from 459 to 436 and never subsequently changed.¹³ In 1740, the Qianlong Emperor (1736-1796) promulgated a new version of the code, which asserted that the statutes in the code were the “ancestral constitutional law” and should not be revised in the future: it would be a violation of filial piety and highly disrespectful to alter what the imperial ancestors had enacted.¹⁴ Therefore, the Qianlong code finalized the texts of statutes (*lü* 律), and in general, they remained fixed until the legal reforms of the early twentieth century.

The *Great Qing Code* bore a striking resemblance to the *Great Ming Code*. When the first version of the code was published during the Shunzhi Reign, contemporary historian Tan Qian (谈迁) commented as follows: “the *Great Qing Code* is just the *Great Ming Code* with a different name.”¹⁵ In addition to directly inheriting provisions from the Ming code, according to modern scholars, the Qing Code continued to cite the traditional Chinese codified law of the previous one thousand years.¹⁶ Chü Tung-tsu believed that since the Confucianization of law was completed, Chinese law and society had been dominated by Confucian ideology.¹⁷ According to MacCormack: “not only were large sections of the substantive and procedural law retained more or less intact from the Tang to the Qing (a period of thirteen centuries), but many rules were retained long after they had ceased to

¹¹ For the first version of Qing Code, see Qin Zheng, *Qingdai Falü Zhidu Yanjiu*, 清代法律制度研究 [Research on Laws and Legal Institutions of the Qing Period] (Beijing: China University of Political Science and Law Press, 2000), 1–22; Zhang, *Circulating the Code*, 15–16.

¹² Under the title *Substatutes of the Board of Punishments in Current Use*, see Zheng, *Qingdai falü zhidu yanjiu*, 22-34.

¹³ Zheng, *Qingdai falü zhidu yanjiu*, 34.

¹⁴ Robert J. Antony, *Unruly People: Crime, Community, and State in Late Imperial South China* (Hong Kong: Hong Kong University Press, 2016), 194–95.

¹⁵ Qian Tan, *Bei You Lu* 北游录 [Records of Travelling in the North] (Beijing: Zhonghua Book Company, 1960 reprinted), 378. Zheng Qin has pointed out that the difference between Shunzhi code and Ming code could be larger than that people used to believe, but he also admits the similarity between the two codes. See Zheng, *Qingdai falü zhidu yanjiu*, 1-21-.

¹⁶ For details on the consistency of formation and substance of Chinese codified law from Tang to Qing and the reason for it, see Geoffrey MacCormack, *Traditional Chinese Penal Law* (Edinburgh: Edinburgh University Press, 1990).

¹⁷ Chü, *Law and Society in Traditional China*, 280–83.

have any connection with social reality.”¹⁸ Additionally, the inheritance was not limited to the structure of code and content of the articles, but also the words and language, the principles and spirit. In particular, the moral values that Confucianism subscribed to and embodied in the legal statutes did not change dramatically,¹⁹ and the moralistic packaging was the most prominent in the official representation.²⁰ The Qing Code and Ming code too shared much in common; for this reason, when I need an English translation of a statute from the Qing Code, I will also refer to the translation of the Ming code.

On the other hand, the *Great Qing Code* was never stagnant, and legislators tried to keep abreast of the times. Another significant contribution of the Qianlong Emperor was that he established a rule: contrary to the unchangeable statutes, substatures (例 *li*) should be revised every five years,²¹ and every ten years, *li* should be largely modified.²² The central government roughly adhered to the rules, and from 1743 to 1870 – the year of the last imperial revision – the substatures were edited twenty-three times.²³

Substatures were incessantly being added, modified, and repealed. Many of them were special clauses to deal with specific types of activities or crimes in particular provinces, and some of these special laws were designated as temporary measures, which should be repealed once conditions returned to normal.²⁴ The late Ming code had only 382 substatures, but by the Yongzheng period, the number in the Qing Code had jumped to 815. In 1740, the number was 1,049; in the Jiaqing period 1,573; in the early Daoguang period 1,766; and by 1870 the substatures had reached their peak at 1,892.²⁵

Usually, the substatures were added below the statutes. For example, the statute “*Five Punishments*” in the code was followed by 18 substatures.²⁶ This is an explanation of the

¹⁸ MacCormack, *The Spirit of Traditional Chinese Law*, 32.

¹⁹ MacCormack, 7.

²⁰ Huang, *Civil Justice in China*, 1–3, 14–15.

²¹ The regulation in the Qianlong 5 (1740) was to revise every three years, while in 1746, it became every five years.

²² DLCY, 53.

²³ The exception was no revision during the 18 years from Xianfeng 2 (1852) to Tongzhi 10 (1870), Zhang, *Circulating the Code*, 21–22.

²⁴ Antony, *Unruly People*, 195.

²⁵ Kaixiang Peng and Zhan Lin, “Cong li de xiuding kan qingdai zhili moshi: yi daqinglüli huidianshili weizhu de fenxi 从例的修订看清代治理模式：以《大清律例》《会典事例》为主的分析 [Amending the Central Regulations (Li) and the Governance of the Qing Dynasty: An Analysis Based on *Great Qing Code* (Da Qing Lü Li) and The Collected Statutes and Precedents (Huidian Shili)],” *The Qing History Journal*, no. 6 (2020): 53–72.

²⁶ DLCY, 127–28.

comparison between *lǐ* and *lǐ*, based on the one given by Sir George Staunton in the first English translation of the code:

The *Lǐ*,..... upon its formation soon after the accession of the present dynasty, appears originally to have consisted, and which, being, at least nominally, permanent, are reprinted in each successive edition, without either alteration or amendment.

The *Li*, are the modifications, extensions, and restrictions of the *Lǐ*, which, after undergoing a deliberate examination in the local courts and the Board of Punishment, and receiving the sanction of the emperors or high-level officials, are inserted in the form of clauses, at the end of each article, in order that they might, together with the *lǐ*, be equally known and observed.²⁷

Just as Chū Tung-tsu argued, it is hard to deny that lawmakers in Qing took for granted the existing Confucian patriarchy in the code. Meanwhile, to deal with social and economic changes, legislators also made revisions to the code. For instance, the statute did not allow sons to “establish separate household registers or divide the family property when their parents were still living.”²⁸ Nevertheless, division of the household property during the parents’ lifetime was common in society. So, one substatute was added in 1725, “if the parents give their permission, then household division may be allowed.”²⁹ Therefore, the law could reflect both the Confucianism ideology with great continuity and adapting to social change: Philip Huang has named “practical moralism,” referring to “moral ideals and practical considerations as a dyadic unity,” as the fundamental organizing principle of Qing law.³⁰

On the other hand, this chapter does not analyze the statutes and substatutes separately, the main reason being that, although they were formulated in different eras, the

²⁷ George T. Staunton, *Ta Tsing Len Lee; Being the Fundamental Laws, and a Selection from the Supplementary Statutes, of the Penal Code of China* (Cambridge University Press, 2012), xxix–xxx. Some terms have been replaced by those I use in this chapter. In order to avoid confusion, also I deleted some inaccurate sentences and words. The relationship between the application of statutes and substatutes is an important topic in the field of Chinese legal history because scholars have found some conflicts between statutes and substatutes, which makes it a highly controversial issue deciding which articles should be applied to make a decision in certain circumstances, see, Yigong Su, *Ming Qing Lüidian Yu Tiaoli* 明清律典与条例 [The Codes and Substatutes in the Ming and Qing] (Beijing: China University of Political Science and Law Press, 1999), 232–37.

²⁸ Jones, *The Great Qing Code*, 112; Jiang, *The Great Ming Code*, 76.

²⁹ Huang, *Civil Justice in China*, 25.

³⁰ Huang, 203–22; Philip C. C. Huang, “Theory of Practice and China Research: Legal and Social Science Studies,” *Modern China* 48, no. 6 (November 1, 2022): 1124–25.

language of the statutes and substatutes was basically the same. The Tongzhi Code (1870) is the latest edition of the *Great Qing Code*. In this chapter, all my data and analysis of the Code is based on this version, or more specifically, the statutes and substatutes contained in 讀例存疑 *Du Li Cun Yi*. All the serial numbers of articles are also cited from this edition.

Table 1.1 Six Specific Sections in the *Great Qing Code*

Law relating to	
Ministry of Personnel 吏律 Art. 047-074	rules specifying punishments for breach of duty by officials
Ministry of Revenue 戶律 Art. 075-156	rules on family and marriage, land, government storehouses, taxes, money lending, and markets
Ministry of Rites 禮律 Art. 157-182	penal rules dealing with sacrifices and ceremonies
Ministry of War 兵律 Art. 183-253	rules on imperial palaces, imperial guards, the frontier, horses and cattle, and postal services
Ministry of Punishments 刑律 Art. 254-423	rules dealing with crimes of public disorder, homicide, physical injury, insult, theft and other property offenses, sexual offenses, and the legal procedure for criminal cases
Ministry of (Public) Works 工律 Art. 424-436	rules on public construction and the conservation of rivers

The table is made based on the summary by MacCormack, see Geoffrey MacCormack, *Traditional Chinese Penal Law* (Edinburgh: Edinburgh University Press, 1990), 19.

The *Great Qing Code* consists of seven parts. The first chapter, *Names and General Rules* (*ming li li* 名例律) includes general concepts, principles, and rules that are applicable throughout the rest of the code. The remaining parts were named for one of the Six Ministries of the central government, and each contains the rules that are perceived to relate to one Ministry (*Laws on Personnel/ Revenue/ Rituals/ Military Affairs/ Penal Affairs/ Public Works*).³¹ The “Penal Law” (Laws on Penal Affairs) is without doubt the largest section in the code, making up 38% of statutes (169 out of 436) and more than 50% of the total number of words (including both statutes and substatutes).

³¹ Jones, *The Great Qing Code*, 12; Jiang, *The Great Ming Code*, lv–lvi.

Family Order and Filial Piety: Mourning System

Almost all versions of the *Great Qing Code* begin with a series of diagrams, including the Meanings of Eight Characters as Used in the General Principles (例分八字之義), the Five Punishments (五刑之圖), the Penal Instruments (刑具之圖), and eight diagrams related to the “mourning system.”³² As mentioned in the Introduction, the system defined how long a period and which kinds of dress were required in mourning the death of relatives.

The mourning system in late imperial China was highly gendered. The second diagram on the mourning system, though with the title “Formal Mourning Degrees for the Relatives of Nine Generations and Five Mourning Degrees within One’s Own Lineage,” was designed particularly for men, partly for unmarried women.³³ For married women, there are another three diagrams to regulate their mourning.³⁴ A wife should mourn her husband for three years (the longest time in the regulations), but the husband needs to spend only one year mourning his dead wife. The married woman, also had to spend three years in mourning after the death of her husband’s parents, while the husband only needed three months to mourn for his wife’s dead parents. Also, after a woman got married, the time she should mourn for her parents would decrease from three years to one year, because now as a wife, she had become a formal member of her marital family, which would downgrade the link between her and her biological parents.

However, not all married women shared the same position in the diagrams. The wives, at least were put in the center on the diagram “Wife’s Mourning Degrees for Husband’s Relatives” (Picture 3); however, the concubines, did not even have a position in the diagram “Concubine’s Mourning Degrees for Household Head’s Relatives” (Picture 4).³⁵ The comparison between wives and concubines, and the non-appearance of concubines in the diagram, imply that concubines were not regarded as formal members of the family in the

³² The eight diagrams include: 1. General Mourning Degrees, 2. Formal Mourning Degrees for the Relatives of Nine Generations and Five Mourning Degrees within One’s Own Lineage, 3. Wife’s Mourning Degrees for Husband’s Relatives, 4. Concubine’s Mourning Degrees for Household Head’s Relatives, 5. Married Daughter’s Reduced Mourning Degrees for Her Own Lineage, 6. Mourning Degrees for External Relatives, 7. Mourning Degrees for Wife’s Relatives, and 8. Mourning Degrees for Three Fathers and Eight Mothers. All the titles are translated by Yonglin Jiang, since those in Qing Code are the same as in the Ming code. Jiang, *The Great Ming Code*.

³³ Because an unmarried girl should not have children.

³⁴ The three includes: Wife’s Mourning Degrees for Husband’s Relatives, Concubine’s Mourning Degrees for Household Head’s Relatives, Married Daughter’s Reduced Mourning Degrees for Her Own Lineage.

³⁵ Jiang, *The Great Ming Code*, 12.

original legal arrangement.

The practical reason for such detailed regulations relating to the mourning system was that the relationship between offenders and victims could have a direct and determining influence on the types of crime and penalty, and the law governed the severity of punishments for crimes between relatives according to the closeness of their mourning degree.³⁶ There are 56 statutes in the *Great Qing Code* formulated explicitly to regulate crimes between people within a specific relationship, accounting for 12.84% of all the statutes, and many substututes were added for such issues.³⁷ Therefore, when a case came before the court during the Qing era, the magistrates needed first to figure out the relationships between the two parties.

All the diagrams and regulations aimed to emphasize that the family relationship was at the core of Qing law. The second statute of the whole Code is the “*Ten Great Wrongs*” (十惡), which probably is the best-known term among ordinary people derived from the traditional legal system, with the proverb 十惡不赦 “the Ten Great Wrongs should never be pardoned” describing those who are guilty of the most heinous crimes. In general, it includes all the worst crimes during the imperial era, which could be divided into disloyalty or disrespect to emperors, cruel and violent crimes, and threats to the family and the political order.³⁸ The law highlighted the demotic relationship and familial organization because the structure of the whole country at the macro level followed the same logic as the family order at the micro level.

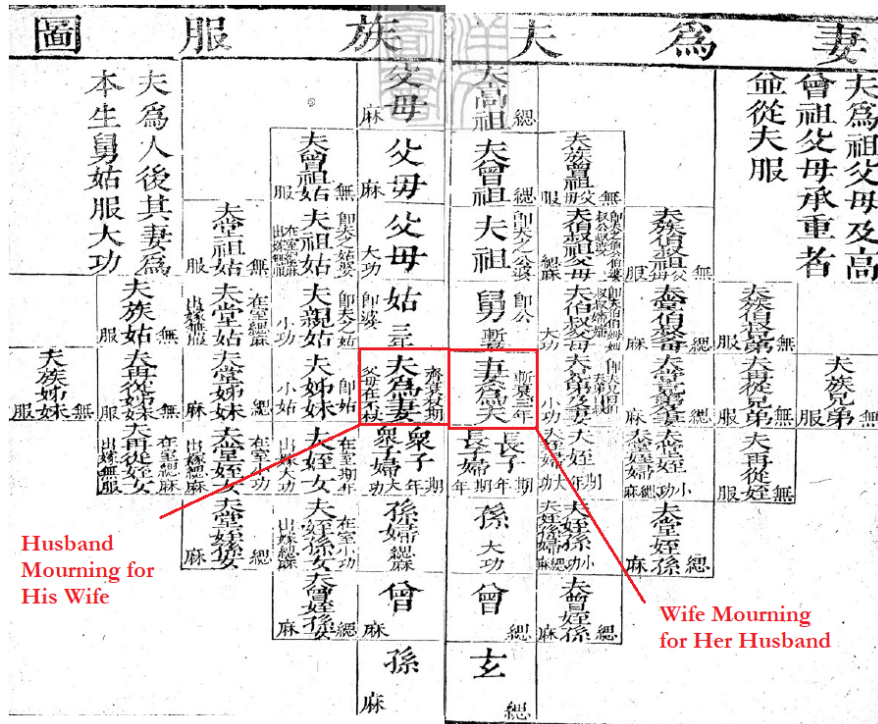
Due to the familism of traditional Chinese law, the family order to a vast extent constituted the central metaphor for the overall social and political order.³⁹ The English words “state” or “country” are usually translated into “国家” (*guojia*) in Chinese, but the first character in this term “国” alone could epitomize the English words and the meaning of the second character “家” is family, home or household. An emperor in China was the Son of Heaven (天子), also the Father and Monarch of the people (君父). The regional

³⁶ Jiang, lxxii.

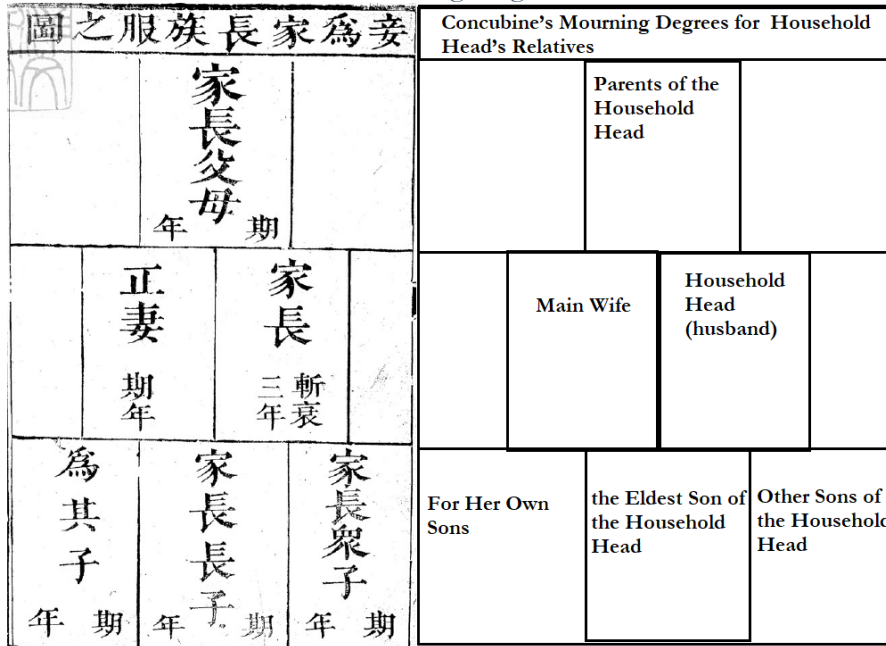
³⁷ Daoming Wei, *Zhixu yu qinggan de chongtu: jiedu qingdai de qinshu xiangfan anjian* 秩序与情感的冲突：解读清代的亲属相犯案件 [The Conflict Between Order and Sentiment: Interpreting the Criminal Cases Between Relatives in the Qing Dynasty] (Beijing: China Social Sciences Press, 2013), 17–22.

³⁸ Jones, *The Great Qing Code*, 35–36; Jiang, *The Great Ming Code*, 18–19.

³⁹ Chü, *Law and Society in Traditional China*, 9.



Picture 3 Wife's Mourning Degrees for Husband's Relatives



Picture 4 Concubine's Mourning Degrees for Household Head's Relatives

Source of Picture 3&4: "大清律箋釋合鈔三十卷首不分卷 康熙四十一年序錢氏思補堂刊本,"

accessed December 4, 2022, <http://shanben.ioc.u->

tokyo.ac.jp/main_p.php?nu=B3802200&order=rm_no&no=00602.⁴⁰

⁴⁰ For the complete translation of the wife's and concubine's mourning degrees, see Jiang, *The Great Ming Code*,

and local officers, such as magistrates and prefectural governors, as the personal agents of emperors, were named by the common people “parent officials” (父母官). Though historians have found the construction of “familism” a complicated process, it is hard to deny that Confucian political philosophy endeavored to extend the order within a family to the hierarchy around the entire country.⁴¹

Another essential part of family order was filial piety, a moral code regulating the relationships between children, parents, elders, and ancestors. Many cultures have traditionally valued children’s respect for and obedience to their parents.⁴² In imperial China, the concept of “filiality” varied from time to time, as impacted by different religions and policies, and developed a whole set of rituals, morals, and discourse.⁴³ The Chinese context made the meanings of filial piety complicated: not only should everyone take good care of, show respect for, and follow the commands of their parents and grandparents, but people also needed to comply with the social order by being filial. This is a consequence of familism and the patriarchal state described earlier. Therefore, the imperial governments of Chinese dynasties paid extra attention to the notion of filial piety, which was placed at the center of Confucian governance since the emperors should “rule all under Heaven through the principle of filiality.”⁴⁴ Only when a person was a filial and obedient son could he be a loyal subject of the state and the emperors.

⁴¹ Ogata Isamu, *Zhongguo gudai de jia yu guojia* 中国古代的“家”与国家 [Family and State in Ancient China], trans. Hequan Zhang, (Beijing: Zhonghua Book Company, 2010), 248. Isamu agrees that in the public sphere, the construction of the relationship between rulers and subjects (君臣关系) was based on the familial relationship in the private realm, and thus it established the orderly structure as the ruling foundation of empire. However, he criticizes the traditional familism or “patriarchal state,” and argues that when people entered the public sphere, they must first abandon their private family, and the relation between ruler and subjects would become more important for them.

⁴² Philip J. Ivanhoe, “Filial Piety as a Virtue,” in *Filial Piety in Chinese Thought and History*, ed. Alan K. L. Chan and Sor-Hoon Tan (London and New York: Routledge, 2004), 189; Du, *State and Family in China*, 8.

⁴³ Keith N. Knapp, “The Ru Reinterpretation of Xiao,” *Early China* 20 (1995): 195–222; Yuet Keung Lo, “Filial Devotion for Women: A Buddhist Testimony from Third-Century China,” in *Filial Piety in Chinese Thought and History*, ed. Alan K. L. Chan and Sor-Hoon Tan (London and New York: Routledge, 2004); Livia Kohn, “Immortal Parents and Universal Kin: Family Values in Medieval Daoism,” in *Filial Piety in Chinese Thought and History*, ed. Alan K. L. Chan and Sor-Hoon Tan (London and New York: Routledge, 2004); Mugitani Kunio, “Filial Piety and ‘Authentic Parents’ in Religious Daoism,” in *Filial Piety in Chinese Thought and History*, ed. Alan K. L. Chan and Sor-Hoon Tan (London and New York: Routledge, 2004), 91–109; Patricia Ebrey, “Imperial Filial Piety as a Political Problem,” in *Filial Piety in Chinese Thought and History*, ed. Alan K. L. Chan and Sor-Hoon Tan (London and New York: Routledge, 2004).

⁴⁴ Yue Du, “Policies and Counterstrategies: State-Sponsored Filiality and False Accusation in Qing China,” *International Journal of Asian Studies* 16, no. 2 (July 2019): 79–97.

More importantly, filial piety had a direct influence on legal mechanisms, and the laws reshaped by filial piety would then influence “how people on the ground perceived the normative intergenerational hierarchy.”⁴⁵ Since the codified law attached great importance to preserving family ethics and relationships, familism greatly influenced the picture of women in the code. The following section will show explicitly how the law defined the family hierarchy and the position of women in this system.

Two Key Concepts: The Distinction between Inner and Outer and the Cult of Female Chastity

Before discussing the identification of women in the Code, there are two elements we need to clarify, that to a large extent, determined the way the codified law described women. First, Confucian gender ethics was founded on the doctrine of separate spheres, male/outer and female/inner.⁴⁶ There are multiple dimensions of meanings of the concept of “distinction between inner and outer.”⁴⁷ Though the Code did not elaborate much on the distinction between the two, other sources, including the Confucian classics, didactic texts for women’s education, and familial admonitions, emphasized the importance and necessity of differentiating the inner from the outer. Even today, the proverb “the men are in charge of all affairs on the outside; the women manage the inside affairs” remains an especially prominent part of conceptions of gender roles in China.⁴⁸ This gendered division of labor is the first facet of the distinction between “inner” and “outer.” Other layers of the concepts are exemplified in the classic *Book of Rites* (*li ji* 禮記). According to its instructions and explanations, the most fundamental principle should be the spatial separation of the

⁴⁵ Du, *State and Family in China*, 12–13.

⁴⁶ Ko, *Teachers of the Inner Chambers*, 12.

⁴⁷ About how the concept distinguished from private and public spheres in European societies, see Ko, 12–14.

⁴⁸ Cited in Ebrey, *The Inner Quarters*, 23–24. Over the last two decades, Chinese people’s attitudes to gender even have displayed a shift toward broader acceptance of this commonly perceived “conservative” or “traditional” notion, see Yunzhu Jia and Dongling Ma, “Xingbie guannian bianqian de duoshijiao kaoliang: yi ‘nan zhu wai, nü zhu nei’ weili 性别观念变迁的多视角考量：以‘男主外,女主内’为例 [Changes in a Gender Perspective from Multifaceted Perspective: The Case with ‘Men Dominating the Outside While Women Dominating the Inside of Households’],” *Collection of Women’s Studies*, no. 3 (2015): 29–36; Qi Xu, “Zhongguoren xingbie guannian de bianqian qushi, lai yuan he yizhixing: yi ‘nan zhu wai, nü zhu nei’ he ‘gandehao buru jiadehao’ weili 中国性别观念的变迁趋势、来源和异质性——以‘男主外,女主内’和‘干得好不如嫁得好’两个指标为例 [Trend, Source and Heterogeneity of the Change of Gender-Role Attitude in China: A Case Study of Two Indicators],” *Collection of Women’s Studies*, no. 03 (2016): 33–43.

sexes:

.....為宮室，辨外內。男子居外，女子居內，.....男不入，女不出。

[...] the mansion and its apartments, distinguishing between the exterior and interior parts. The men occupied the exterior; the women the interior. [...] The men did not enter the interior; the women did not come out into the exterior.⁴⁹

Spatial segregation has other ramifications, including the division of male and female duties or the gendered division of labor, which is already described in the *Book of Rites*:

男不言內，女不言外。

The men should not speak of what belongs to the inside (of the house), nor the women of what belongs to the outside.⁵⁰

The division of space also naturally leads to restrictions on interactions between men and women, which are also implied in the *Book of Rites*: “Things spoken inside should not go out, words spoken outside should not come in.”⁵¹ (內言不出，外言不入)

Therefore, in addition to being spatially and physically segregated from each other, the exchange of information between the sexes should also be forbidden, let alone interaction between males and females. Later works further elaborate on this idea; for example, *Book of Analects for Women* (*nü lunyu* 女論語), an influential didactic work by two sisters, Song Ruoxi and Song Ruozhao working in the imperial palace of the Tang Dynasty, stated: “Inner and outer each have their place. Males and females gather separately.”⁵² (內外各處，男女異群) This quote highlights another aspect of the distinction between inner and outer, that men and women should inhabit separate zones. The realm of their interaction was supposed to be among people of the same sex rather than between opposite sexes.

Thus, a complete definition of the distinction between the interior and exterior sphere would consist of at least three parts: the separation of space, the division of duties, and the boundaries of interaction. Males and females should have their independent space for living, working, and interacting, and women were placed in the “inner quarter.”⁵³ The

⁴⁹ James Legge, trans., *Delphi Collected Works of Confucius - Four Books and Five Classics of Confucianism* (Delphi Classics, 2016), 470.

⁵⁰ Legge, 454.

⁵¹ Legge, 454.

⁵² The names of sisters are Song Ruoxi 宋若莘 and Song Ruozhao 宋若昭 (c. 770? - 824?). Cited in Ebrey, *The Inner Quarters*, 24.

⁵³ In late imperial China, male was also defined in patrilineal kinship. The difference between male and female was

inner and outer dichotomy signified the inherent distinction between men and women but also intricately intertwined with family relationships and structures.⁵⁴ Crossing this boundary at will would indicate a transgression of propriety and a rebellion against their gender identity and social status. As we will see in the following sections, such transgression and rebellion were an explicit focus of the code.

Protecting female chastity was another legal and social focus in late imperial China. From the legal perspective, the traditional Chinese state defined female chastity as a necessary part of Confucian virtue and continued to promote the cult of female chastity.⁵⁵ Keeping this notion in mind can help us to understand why the law set many regulations and strict punishments for those who harmed the chastity of women.

The denotation of 貞 *zhen*, “chastity” in Chinese, has been changing over thousands of years.⁵⁶ We can find clues in the ancient classics to the original and fundamental meaning and usage of the word. Records from the pre-Qin era containing this word are relatively scarce, and there are only two mentions in the *Zhou Yi* 周易 “*The Classic of Changes*” close to the concepts of *zhen* of later ages.⁵⁷ The first part shows the seeds of “one woman could not serve two husbands”:

恒其德，貞。婦人吉，夫子凶。

If one perseveres in virtue here and practices constancy, it would be good fortune for the woman but misfortune for the man.

婦人貞吉，從一而終也。夫子制義，從婦凶也。

Comment: For the woman to practice constancy here means good fortune, for to the end she should only follow one man, but, as the man should take charge and act according to moral principles, for him to behave like an obedient woman would mean misfortune.⁵⁸

Another reference to *zhen* is located in the hexagram of *gou* 姤 “encounter”, where the original text “the woman is strong; it would not do to marry this woman” seems to have

the former was also defined in the “outer” world, therefore men also had positions in the public sphere.

⁵⁴ Lisa Ann Raphals, *Sharing the Light: Representations of Women and Virtue in Early China* (Albany, N.Y.: State University of New York Press, 1998), 195–234.

⁵⁵ Mark Elvin, “Female Virtue and the State in China,” *Past & Present*, no. 104 (1984): 111–52.

⁵⁶ Jihua Liu, “Zhongguo zhenjie guannian de lishi yanbian 中國貞節觀念的歷史演變 [The Historical Evolution of the Chastity Concept in China],” Reprinted in *Zhongguo Funiushi Lunji, Siji* 中國婦女史論集 [Collected Essays on Chinese Women’s History, Vol. 4], ed. Chia-lin Tao, (Taipei: Daoxiang chubanshe, 1995), 101–30.

⁵⁷ Liu, 516–17.

⁵⁸ Richard John Lynn, trans., *The Classic of Changes: A New Translation of The I Ching as Interpreted by Wang Bi* (New York: Columbia University Press, 1994), 333–40.

nothing to do with chastity. But the ways scholars of a later time were inclined to suggest instructions and explanations made the link, implying that women who engaged in sexual intercourse with more than one man would become unchaste. For example, Kong Yingda, a Chinese philosopher living in Sui and Tang, glosses “strong” as lascivious *yin zhuang*,⁵⁹ while Zhu Xi implied:

又一陰而遇五陽，則女德不貞...。取以自配，必害乎陽， ...

The single yin encounters the five yang lines and the woman’s virtue is not correct, ... Choosing her as a mate for oneself will surely harm the yang; ...⁶⁰

In sum, chastity could include two forms of thought and expression. In the realm of marriage, a woman should only have one husband in her life, which is embodied in the canonization of those women who martyred themselves or remained widowed after the death of their husbands. In sexual terms, women must not have sex with anyone other than their husbands. Therefore, most imperial dynasties chose to officially honor widows who refused to remarry, and women martyrs who committed suicide or self-mutilation in order to resist all kinds of aggression, especially sexual assault. As summarized by Janet Theiss, the culmination of the chastity mania in Qing featured “dramatic increases in the numbers of canonized women” and “the eruption of widespread debate over all aspects of chastity-centered female virtue.”⁶¹

Words in the Code Referring to Women

The mourning system diagrams figuratively present the overall understanding of family relationships in official discourse, and the Qing law provides more nuanced information between the lines. The language adopted by the Code emphasized its core intent and value orientation, and so here I will analyze all the words referring to women in the code, clarify the meanings behind them, and work out the distribution of those words in the law, thereby discovering the priorities of Qing law in regulating and disciplining women.

The *Great Qing Code* stipulated the rules of conduct for people in different family

⁵⁹ Lynn, 410–16.

⁶⁰ Xi Zhu, *The Original Meaning of the Yijing: Commentary on the Scripture of Change*, trans. Joseph Adler (New York, NY: Columbia University Press, 2019), 148.

⁶¹ Janet M. Theiss, *Disgraceful Matters: The Politics of Chastity in Eighteenth-Century China* (Berkeley [etc.]: University of California Press, 2004), 2.

relationships, and then defined the family hierarchy and patriarchy. Three important factors, gender, age, and generation, together played a decisive role in the construct of the family relationship. Gender, first, created two types of relationships between parents and children, which then led to different inheritance rights for sons and daughters. As women grow older, they could become “superior or elder relatives,” especially when women became mothers; the mother-son relationship would promote the status of women.

An analysis of the signifiers of women in the code can promote our understanding of how women were defined. There are 16 Chinese words in the *Great Qing Code* that refer to females, including, *qi* 妻 “wife”, *fu* 婦 “women” or “daughter-in-law”, *nü* 女 “women or daughter”, *qie* 妾 “concubine”, *zì* 姊 “elder sister”, *mei* 妹 “younger sister”, *gu* 姑 “(paternal) aunt or mother-in-law”, *xi* 媳 “daughter-in-law”, *ji* 姨 “(maternal) aunt”, *ji* 妓 “prostitute”, *chang* 娼 “prostitute”, *ni* 尼 “nun”, *bi* 婢 “bondservant”, *Huanghou* 皇后 “Empress”, *Taihou* 太后 “Empress Dowager, Grand Empress Dowager” and *fei* 妃 “Imperial Concubine”.⁶² (Table 1.2)

I categorize these words into five types. First, the three words *ji* 妓, *chang* 娼, and *ni* 尼 representing prostitutes and nuns respectively, could refer to some “professional” women, and compared with the other words, rarely appeared in the code.⁶³ Second, the Empress and Empress Dowager were women from the royal family. Third, the two words *fu* 婦 and *nü* 女 have the common meaning of “female as a sex.” The frequency of these two words when they roughly referred to the female gender is 50%.⁶⁴ The fourth category includes a series of words that indicate women in family relationships and identity and were the most frequent of all, making up 71%, and two words, *qi* 妻 “wife” and *mu* 母 “mother”, alone accounted for 42% of all references to women in the code. The last word *bi* 婢 “bondservant”, refers to those women of “mean” or “debased” (*jian* 賤) status who were possessed by commoners.

This data tells a simple truth: the Qing Code usually discussed women within the family realm and in relational discourse, as the wives of men, mothers of children,

⁶² The 妃 appeared twice in the code, once refers to the concubine of Emperor, another to the wife of Heir Apparent (太子妃).

⁶³ In addition, “Taoist nun” 女冠 *nüguan* appeared ten times in the Code.

⁶⁴ By counting all the “婦” and “女”, the meaning of “female sex” appeared 314 times (out of 652).

daughters of parents, or bondservants of their masters.⁶⁵ These words did not give direct evidence as to the position of women in the household, but illustrated that part of the relationship which was the focus of law, and thus showed that the husband-wife relationship and mother-children relationship mattered more for women in Qing law.

It is also interesting to see the distribution of those words in the code. Unsurprisingly, most terms referring to women appeared in the articles related to sexual offenses, marriage, and family issues (see Figure 3). These regulations could be roughly divided into three parts. The first is the chapter entitled “Marriage” (*hunyin* 婚姻) in the *Laws on Revenue*, Art. 101-117, which included rules on how to form marital ties and whether the marriage was legitimate and rightful.

The second part was about sexual offenses, the chief culprits for disrupting the family order, mainly included in the chapters “Fornication” (*fanjian* 犯姦) in the *Laws on Penal Affairs*, Art. 366-375 and Art. 285, *Killing the Adulterous Lover* (*sbasi jianfu* 殺死姦夫). The statutes and substatutes in these sections contain definitions of and punishments for different forms of sexual offenses.

The last section included articles regulating the conflicts between family members or relatives. These were scattered throughout the code and consisted of 13 pieces.⁶⁶ The words referring to women located in the three parts above made up more than half of all these words in the Code, though the number of all words/characters in these articles was less than 8%. To put it briefly, the regulations on women concentrated on the theme of

⁶⁵ The bondservants were incorporated into the family system of their masters, who were meanwhile the household head for the slaves. The legal provisions that regulated the relationship between slaves and their masters were often included in clauses that governed the generational relationship. For instance, the ART. 284 *Plotting to Kill Paternal Grandparents or Parents* mentioned that if slaves plot to kill their masters, they shall be punished by the same penalty as that for sons who plot to kill their parents. In a word, the female domestic slaves were also disciplined within the family system, see Jones, *The Great Qing Code*, 269–71; Jiang, *The Great Ming Code*, 170–71. For further discussion on the relationship between slave and master, see Chü, *Law and Society in Traditional China*, 188–200; Sommer, *Sex, Law, and Society in Late Imperial China*, 45–54.

⁶⁶ Including ART. 284 *Plotting to Kill Paternal Grandparents and Parents*; ART.286 *Plotting to Kill the Parents of Her Deceased Husband*; ART.293 *Husbands Striking Transgressing Wives or Concubines to Death*; ART.315 *A Wife or Concubine Striking Her Husband*; ART.317 *Striking Superior or Older Relatives of the Third Mourning Degree or More Distant*; ART.318 *Striking Superior or Elder Relatives of the Second Degree*; ART.319 *Striking Paternal Grandparents or Parents*; ART.320 *A Wife or Concubine and Her Husband's Relatives Striking Each Other*; ART.328 *Cursing Senior or Older Relatives*; ART.329 *Cursing Paternal Grandparents and Parents*; ART.330 *A Wife or Concubine Cursing Her Husband's Superior or Older Relatives of the Second Mourning Degree*; ART.331 *The Wife or Concubine Cursing Parents of Her Deceased Husband*; ART.337 *Violating Status and Offending against Righteousness*; ART.338 *Children Violating Instructional Orders*.

marriage and family, and the Code assumed that women would be regulated and disciplined in the field of family relationships. This also lays down the first rule for analyzing the status of women in the Code: in most situations, the domestic relationship should be the center of analysis.

More details in the Code imply that the legislators ignored the role of women beyond the family realm. The code tacitly assumed that only men could commit crimes that might harm the state's authority and security, as it assumed that women were fixed within the domestic sphere. According to the articles listing the first three crimes in the "Ten Great Wrongs", "Plotting Rebellion" (*moufan* 謀反), High Treason (*moudani* 謀大逆), and Plotting Treason (*moupan* 謀叛), were regulated at length, the mothers, (unmarried) daughters, wives, concubines and (unmarried) sisters of male criminals would be enslaved into families of meritorious officials.⁶⁷ However, no words mentioned what would happen when a woman was involved in these offenses, and which types of punishment should apply to her husband and relatives.⁶⁸ The exclusion of women from serious political crimes was likely due to the logic that if a woman who stayed in the inner quarter could take part in a rebellion, her husband or male family members must have been involved and played a more important role since they were the ones who had access to the public sphere and political, economic and military resources. This is an example to show how the distinction between inner and outer had a profound impact on women and gender in imperial China.

Women were normally not allowed to hold official or military positions and were not supposed to engage in public construction work, due to the requirements of the distinction between inner and outer. Table 1.2 does not include the *Law on the Public Works*, because I could not find any words referring to women in that chapter and only a few mentions in the sections of *Laws on Personnel* and *Laws on Military Affairs*. Women should not have any opportunities to gain political and military power and plot rebellion. Although the code did not specify its attitude toward women working outside the family, it did imply that women should stay in the confined "inner" sphere, especially within the household, while the "outer" or public realm was a male domain.

Sometimes legal articles stress the family position and relationships to make it clear

⁶⁷ Jones, *The Great Qing Code*, 34–35; Jiang, *The Great Ming Code*, 18.

⁶⁸ Jones, *The Great Qing Code*, 237–39; Jiang, *The Great Ming Code*, 154–55.

that the criminals must be women, such as a wife or concubine striking her husband or cursing her husband's relatives.⁶⁹ In addition, some other articles were not specially designed for women, but there were some terms to stress that women could be criminals to certain victims. For example, in the statute on *Plotting to Kill Paternal Grandparents and Parents* (謀殺祖父母父母):

凡謀殺祖父母，父母及期親尊長，外祖父母，夫，夫之祖父母父母，已行者，皆斬

In the case of anyone who plots to kill his paternal grandparents, parents, or his relatives of the second degree of mourning, who are of superior rank or older, or his maternal grandparents, or *a husband or a husband's paternal grandparents or parents*, if the killing has taken place, then all will be condemned to death by slicing.⁷⁰

Clearly, this article specifically mentioned the cases in which women murdered their husbands and “a husband's paternal grandparents or parents.” This is a phrase repeated 24 times in the code, while “a wife's parents” was used only six times. The codified law stressed that women were ruled out of the dangerous public sphere, and the relationships of women, especially with their husbands and in-laws, were vital for a better understanding of women in the codified law

Before Marriage: Daughters and Parents

Now that we have established the notion that women were mentioned in the code usually in terms of their familial identity, the next task is to find out which relationships were significant and fundamental during distinct phases of women's lives. Before the marriage, a woman usually would not be recognized as a single woman: instead, she was a member of her natal family and the daughter of her parents. Additionally, by means of comparing sons and daughters, we can see how gender affected the legal treatment of women.

It was the daughter's legal duty to follow the orders of her parents and grandparents, just the same as it was the sons'. Daughters, according to the Qing Code, were expected to live under the obligations of *Violating Status and Offending against Righteousness Children* (*ganming fanyi* 干名犯義) and *Children Violating Orders* (*zisun weifan jiaoling* 子孫違犯教令).⁷¹ The superiors in generational relationships, parents and grandparents, had the lawful right

⁶⁹ Jones, *The Great Qing Code*, 299-300,312.

⁷⁰ Jones, 269-70; Jiang, *The Great Ming Code*, 170.

⁷¹ Jones, *The Great Qing Code*, 322-25; Jiang, *The Great Ming Code*, 198-200.

to discipline their children. It is of particular importance for the daughters that the right to decide their marriage was in the hands of their parents (and grandparents). One substatute under the article *Marriages of Men and Women* (*nannü bunyin* 男女婚姻) states clearly:

嫁娶皆由祖父母父母主婚。祖父母父母俱無者，從餘親主婚。其夫亡攜女適人者，其女從母主婚。

Parents and paternal grandparents shall take charge of the children's marriage; if they all die, the marriage should follow the order of other (elder and superior) relatives. If a widow remarries others with her daughters, the mother shall take charge of the daughters' marriage.⁷²

Furthermore, the statute and substatutes repeatedly stated that if the legality or validity of the marriage were challenged, or if one party broke off a pledge of marriage, it is the person in charge of the marriage who should be punished rather than the bride or bridegroom. In other words, the code explicitly stated that both the rights and obligations concerning the children's marriage would fall on the parents or other elder family members.

Compared with sons, the daughters were regarded as temporary members of their natal family, and the *Great Qing Code* actually distinguished “daughter” and “son.”⁷³ According to the article in *Names and General Rule*: “in reference to ‘children’ (zi 子), both males and females shall be included.”⁷⁴ However, in the code the “children,” especially when it appeared as 子孙 *zǐ sun*, literally means “son and son's son” does not always refer to both males and females. For example, in the statute *Marrying Musicians as Wives or Concubines* (*qu yueren wei qi qie* 娶樂人為妻妾), “the sons or son's sons of an official (who will inherit a title) who marries a musician,” there is no doubt that “children” here refers to only males.⁷⁵ Moreover, the word 女 *nü* is the better reference for “daughter,” in the term undoubtedly referring to both sons and daughters 子女 *zǐ nü*, which is used 64 times in the code. Another phrase appears 38 times in the code, 妻女 *qī nü*, which literally means “wife (and) daughter”, could refer to all female family members.

In brief, the code did not use the same terms to describe male and female descendants, and lawmakers tended to distinguish between the two genders at the linguistic level. When considering the content of codified law, the difference basically lies in two issues: collective

⁷² Art. 101.01, see DLCY, 292.

⁷³ It does not mean that the married daughters would cut off the connections with their parents and natal families, see Chapter Three.

⁷⁴ Jones, *The Great Qing Code*, 71; Jiang, *The Great Ming Code*, 45.

⁷⁵ Jones, *The Great Qing Code*, 132; Jiang, *The Great Ming Code*, 87.

prosecution and inheritance rights.⁷⁶

In the same statute that mentioned the word “son,” there is also a note: “In case of collective prosecution, females shall not be included” (緣坐者女不同).⁷⁷ Some specific clauses also contained instructions on the different ways to deal with male and female members of the offenders’ families in the cases of collective prosecution. For instance, the article *Plotting Rebellion and High Treason* (*moufan dani* 謀反大逆) specifies that the male relatives of those who had committed the rebellion should be beheaded, while all female family members shall be given to the households of meritorious officials as slaves. Furthermore, if the daughter or sister has already been betrothed, she would be returned to her husband and would not be punished.⁷⁸

Here we can see the status of a daughter changed after she was betrothed. Sometimes, even before her engagement, a daughter would not be punished due to collective prosecution. The statute *Killing Three Persons from One Household* (*sha yijia sanren* 殺一家三人) stipulated that the principal’s wives and sons shall be exiled to 2000 *li*, but “it does not mention daughters here, so they are not within the rule of collective prosecution.”⁷⁹

Why was the daughter isolated from the core of her natal family? According to Shiga Shūzō, the most critical relationship in a Chinese family is the father-son unit (*fuzi yiti* 父子一体), then the husband-wife unit (*fuqi yiti* 夫妻一体). The father and the son were the continuations of the same being. The son was the heir of the father, and the father’s personality was prolonged in the son. In the matter of family property, the son had almost no right to the family property as long as the father was alive. But if the father passed away, the son would replace the father. By contrast, in the case of the husband-wife unit, the center was not inheritance, but the husband would absorb the personality of the wife, and the wife would acquire a place in the sacrifice along with her husband.⁸⁰ Therefore, a daughter would be seen as only a temporary member of the natal family since she would find a position in her husband’s family and join the husband-wife unit.

⁷⁶ Here “collective prosecution” means that if a member of one family commits a certain crime, then his or her family members would also be punished even though they had not committed any crime.

⁷⁷ Jones, *The Great Qing Code*, 71; Jiang, *The Great Ming Code*, 45.

⁷⁸ Jones, *The Great Qing Code*, 237–39; Jiang, *The Great Ming Code*, 154–55.

⁷⁹ Jones, *The Great Qing Code*, 273–74.

⁸⁰ Shūzō Shiga, *Zhongguo jiazufa yuanli* 中国家族法原理 [Principles of Chinese Family Law], trans. Jianguo Zhang and Li Li (Beijing: Law Press, 2003), 104–10.

For the same reason, daughters had very limited the right of inheritance; particularly during the Ming-Qing period, daughters lost almost all inheritance rights because of compulsory appointed heirs.⁸¹ If a household died out on account of a lack of male heirs, the extinct household must adopt a boy as an heir, and this adopted son would inherit all the family property.⁸² Only if no son could be found among the whole kin might the daughters of this extinct family have inheritance rights.⁸³

In a word, generational “parent-child” relations governed the lives of daughters in the Code, and the comparison between sons and daughters revealed that gender indeed had an influence over the legal treatment of women. Sons were deemed the heirs of the family and daughters were temporary family members, and they maintain this status in the legal construction, regardless of their seniority, with gender being the determining factor in this distinction.

Wife and Concubine

Marital status, about whether or not a woman had entered into a marriage, constituted the second decisive element in determining her legal status. In legal terms, marriage marked the transformation of a woman from a member of her natal family to a member of her husband’s family. The codified law contained a range of provisions to regulate the relationship between women and other marital family members, including the relationship between wives and concubines, wives or concubines and husbands, and wives or concubines and in-laws.

The legal treatment of women is significantly impacted by their matrimonial status. For instance, the penalty for women who committed sexual offenses was usually different before and after marriage. In general, the code stated that a woman should receive a harsher punishment if she had a husband.⁸⁴ For men, by contrast, getting married did not notably alter their legal identity or treatment: the law did not mention any particular consequences for a married or unmarried man involved in sexual offenses.

The shift in a woman’s role to becoming a wife in the Qing could occur prior to the

⁸¹ Bernhardt, *Women and Property in China*, 9–47.

⁸² The adopted heir should be a son from the same kin to which the head of household belonged. Usually, it could be a son of his brother(s) or a grandson of his father’s brother.

⁸³ Art. 88.02, see DLCY, 260.

⁸⁴ Jones, *The Great Qing Code*, 347.

formal marriage ceremony. In 1843 a substatute was added saying that if a betrothed girl plotted with her adulterer to murder her fiancé, she would be sentenced to death by slicing, just as a wife murdering her husband would because of adultery.⁸⁵ This is why Bernhardt believes that “betrothal had become in certain respects tantamount to marriage, and a betrothed woman was to be punished for certain crimes just as if she were a wife.” Furthermore, Bernhardt argues that by the Qing period, women would have been fully incorporated into their marital family even before the couple were formally wed.⁸⁶

The bond between a married woman and her husband was the most important relationship for her, but the dynamic between a husband and wife was distinct from that of a husband and concubine.⁸⁷ Table 1.3 summarizes the crimes and penalties where wives or concubines violated their husbands or the relatives of their husbands. The following analysis of the articles dealing with the offenses between husband, wife, and concubine can show us how their status and the relationship in a family were supposed to be interpreted.

The hierarchical system within these three identities –husband, wife, and concubine – was shaped by two elements. The first was the husband-wife unit mentioned before. The status and identity of a wife was usually defined in traditional China as “a husband and his wife became one unit, one entity, sharing the same status and honor,” and a wife was regarded as a fundamental member of a family.⁸⁸ Confucius emphasized the importance of showing respect for the wife, although he also stated clearly this was because the wife would take charge of the sacrifices for her husband’s parents. Therefore, it was the wife’s functions in ancestor worship and in continuing the family line that brought respect.⁸⁹ In the legal field, the husband-wife unit was a construct where “a woman lost her separate

⁸⁵ Art. 285.35, see DLCY, 809.

⁸⁶ Bernhardt, “A Ming-Qing Transition in Chinese Women’s History? The Perspective from Law,” 50–51.

⁸⁷ There is a large body of work discussing the role of concubines in Chinese history, for instance, Lisa Tran, “Concubines under Modern Chinese Law” (PhD diss., University of California, Los Angeles, 2005); Hsieh Bao Hua, “Female Hierarchy in Customary Practice: The Status of Concubines in Seventeenth-Century China,” *Jindai Zhongguo Funü Shi Yanjiu (Research on Women in Modern Chinese History)*, no. 5 (1997): 55–114; Bau Hwa Sheih, “Concubines in Chinese Society from the Fourteenth to the Seventeenth Centuries” (Ph.D., United States -- Illinois, University of Illinois at Urbana-Champaign, 1992); Yue Du, “Concubinage and Motherhood in Qing China (1644–1911): Ritual, Law, and Custodial Rights of Property,” *Journal of Family History* 42, no. 2 (April 1, 2017): 162–83.

⁸⁸ Ebrey, *The Inner Quarters*, 46.

⁸⁹ Chü, *Law and Society in Traditional China*, 102.

identity by marrying; her identity was absorbed in her husband's."⁹⁰

When we observe the family order from the angle of concubines, the husband-wife unit is evident. A concubine would get 80 strokes of the heavy bamboo if she cursed her husband or husband's wife.⁹¹ Yet, in cases where a wife cursed her husband, the law had no provision for the act, "because the duty between those of the same rank in the interior quarters requires forgiveness."⁹² In cases where a concubine injured her husband or the wife of her husband resulting in injury less severe than critical disability, the penalty she would receive would be identical.⁹³ These regulations indicated that a concubine should be inferior to both her husband and her husband's wife. It seems that a concubine bore the same duty to her husband and his wife; moreover, a husband had to abide by the rules that could "protect" his wife, but he had more power over his concubines.⁹⁴

The gender factor led to the second hierarchy, which was reflected in the equal penalty for both wives and concubines when one of them struck the husband resulting in critical disability or death, when she murdered the husband deliberately, or when she forced or accidentally caused her husband to commit suicide.⁹⁵ More importantly, when a husband struck and injured his wife or concubine, he would receive punishment far lighter than the other way around. The following article fully embodied the hierarchy:

其夫毆妻，非折傷勿論，至折傷以上，減凡人二等[須妻自告乃坐]。..... 毆傷妾至折傷以上，減毆傷妻二等，.....妻毆傷妾，與夫毆妻罪同[亦順妾自告乃坐]。過失殺者各勿論[蓋謂其一則分尊可原一則情親當矜.....]

As for the husband striking the wife and not causing fractures, he shall not be punished. If he causes fractures or worse, the penalty shall be reduced two degrees from that for ordinary persons (The wife herself must complain, only then can he be punished.) [...] If the husband strikes the concubines and the injury amounts to fracture or worse, the penalty shall be reduced two degrees from that for striking and injuring his wife. [...] If the wife strikes and injures the concubine, this is the same as the husband striking the wife (The concubine herself must complain for there to be punishment.) If the husband accidentally kills his wife or concubines, or principal wife accidentally

⁹⁰ Ebrey, *The Inner Quarters*, 46.

⁹¹ Jones, *The Great Qing Code*, 312.

⁹² Jones, 312. If the victim (husband) insisted on punishing his wife, the punishment should be strokes of the light bamboo according to the statute of "*Doing What Ought Not to Be Done*", see Jones, 312; Jiang, *The Great Ming Code*, 221.

⁹³ Jones, *The Great Qing Code*, 299–300; Jiang, *The Great Ming Code*, 185.

⁹⁴ Later I will show in detail that a husband could not divorce or "repudiate" his wife arbitrarily, but there is no regulations on his relation with concubines, Jones, *The Great Qing Code*, 135–36; Jiang, *The Great Ming Code*, 88.

⁹⁵ Jones, *The Great Qing Code*, 299–300; Jiang, *The Great Ming Code*, 185; Art. 299.10, Xue, *Du Li Cun Yi*, 877.

kills the concubines, in each case the husband or wife shall not be punished (*this is because the husband and wife have the honorable position, they could receive a pardon, also because of the closeness of the relationship, mercy should be shown to them [...]*).⁹⁶

The last sentences illustrated why the code granted leniency to husbands and wives, with the keywords being “honorable position” and “close relationship.” It did not suggest that the closer relationship would lead to a lighter punishment. On the contrary, the article was trying to emphasize that the family relationship was a concrete manifestation and expression of the superior and inferior position in the family. Thus, the relationship among wives, concubines, and husbands rendered by legal articles clearly indicated that domestic relation was a pathway to wielding the power of the superior over the inferior. This sets the foundational context for discussing family relationships and social order in the subsequent chapters, where relationships should not be regarded as involving equal interactions. The key questions of this dissertation were devised precisely in order to gain insights into the underlying unequal power relations behind family relationships.

Marriage used to bring and now still does bring a woman into a relationship with her husband’s family and relatives, which was particularly important for Chinese women. Among the seven reasons why a wife could be repudiated, “she does not serve her parents-in-law” (不事舅姑) was included. In the *Great Qing Code*, five articles were specifically formulated to regulate the relationship between a wife or a concubine and her husband’s relatives.⁹⁷ Several other clauses specified situations where a “husband’s parental grandparents and parents” were criminals or victims or where there were conflicts between them and their daughter-in-law.⁹⁸

When we pay attention to the offenses between a wife and her husband’s relatives, we find the husband-wife unit worked as a primary rule to regulate this kind of relationship. For instance, when a wife or a concubine struck her husband’s superior or elder relatives, the woman would be punished in the same way as the husband.⁹⁹ However, this is an

⁹⁶ Jones, *The Great Qing Code*, 299–300; Jiang, *The Great Ming Code*, 185–86.

⁹⁷ It includes Art. 286, 320, 322, 330, 331, see Jones, *The Great Qing Code*, 271, 305, 308, 312; Jiang, *The Great Ming Code*, 171, 188, 189, 192.

⁹⁸ For example, in the article “Striking Paternal Grandparents or Parents,” if a wife or concubine struck her husband’s parental grandparents and parents, she would be beheaded, just like if she had been striking her parents or parental grandparents and parents, see Jones, 304.

⁹⁹ “Every wife or concubine who strikes her husband’s superior or elder relatives of the second degree or below,

exception; a concubine usually did not come within this unit. In cases where a wife injured inferior relatives of her husband, the penalty would be the same as if the husband did so, which means that the punishment would be less severe than if an ordinary person committed the crime.¹⁰⁰ But if the act was committed by a concubine, she would be punished as a normal person.¹⁰¹

Marriage would bring a notable alteration to women's status. There was a great increase in the domestic relations associated with her, and the law incorporated many provisions to regulate her relationship with her husband and her husband's relatives. The husband-wife unit was usually genuine in dealing with conflicts with in-laws and concubines. On the other hand, the law constantly emphasized the authority of the husband and the elders of the family over the wife and concubine. Yet, most married women would become mothers one day in their lives, and the mother-children relationship would generate a whole host of changes to their legal status.

Motherhood and Widowhood

Given the state's emphasis on filial piety, motherhood made it possible for married women to gain a higher position in the family. First of all, the *Great Qing Code* in most situations granted the same degree of privileges to both fathers and mothers. Interestingly, the words referring to women such as "mother" and "wife" make up the highest proportion among all expressions the family identities, but there is a massive difference in the representation of the two words in the code. The Chinese characters referring to a married couple, "husband (and) wife" (夫妻 *fuqi* or 夫婦 *fufu*), do not appear very often, only eight times in total. But the phrase referring to father and mother (父母 *fumu*), or grandfather and grandmother (祖父母 *zufumu*), appear 477 times in the same code (the character 母 *mu* "mother" appeared 578 times in total, but more than 80% of instances were as part of the term 父母 *fumu* "father and mother"). As this language implies, gender was not an influential factor in the parent-child relationship, and parents seemed to have equal privileges and identical authority over their descendants. This was manifested in how the

or of the fifth degree or above (in the direct line, the maternal line, or by marriage), will be punished in the same way as the husband who strikes [such persons] would be punished, see Jones, *The Great Qing Code*, 305–6.

¹⁰⁰ Jones, 301–2.

¹⁰¹ Jones, 306.

code regulated the conflicts between parents and children, for example, if a mother kills her son, she will receive the same punishment as her husband; or if a son murders his father, he will get the same penalty as for killing his mother. So, in general, the Qing law regarding parents applied equally to mothers as well as fathers.¹⁰²

More significantly, the Qing Code embodied the principle of filial piety. The “*Ten Great Wrongs*” includes “Gross Unfilialness” (*e’ni* 惡逆) and “Lack of Filial Piety” (*buxiao* 不孝).¹⁰³ In order to promote filial piety, someone who committed offenses that called for execution might instead under specific conditions remain at home to care for his relatives (*cunliu yangqin* 存留養親).¹⁰⁴

Filial piety was crucial for women since children bore identical filial duties to both father and mother. Consequently, this exerted a profound impact on the family status of women, and because of the requirement of filiality on the part of her children, a woman could gain opportunities to enhance and sustain her power and influence. Given that her son might become the head of the household in the future after the death of her husband, the generation and age factors would make the widowed mother become an authority in her son’s household.¹⁰⁵

For widowhood, the first thing to know is that the relationship between husband and wife, or husband and concubine, did not cease with the husband’s death. Even if a wife remarried after her husband died, she still could not break certain rules related to her husband’s parents. Thus, when she cursed the deceased husband’s parents, she still would receive the same penalty for cursing her current parents-in-law.¹⁰⁶

On the other hand, since the husband-wife unit did not terminate, a widow could inherit some wealth and power from her husband: or more precisely, she could wield such power on behalf of her son(s) before they grew up.¹⁰⁷ Suppose her husband died earlier and the widow was able to preserve her chastity, in that case, the law would help guarantee her right to property and independence, based on her performance as a moral guardian of

¹⁰² Du, *State and Family in China*, 39. In addition, this rule is also true to grandparents.

¹⁰³ Jones, *The Great Qing Code*, 35.

¹⁰⁴ Jones, 49; Jiang, *The Great Ming Code*, 28.

¹⁰⁵ Even a concubine could receive the blessing of filial piety for having a son. See Du, “Concubinage and Motherhood in Qing China (1644–1911).”

¹⁰⁶ Jones, *The Great Qing Code*, 312–13.

¹⁰⁷ An elderly mother gaining superior status and authority completely corresponded to filial piety, yet in contrast with the notable norm *Three Obedience*, which include “the obedience of a woman to her son after her husband’s death.”

the household and society.¹⁰⁸ Together with the cult of chastity, filial piety empowered widows in the family. Anyone who has ever read the famous Qing novel 紅樓夢 *Dream of the Red Chamber* or *the Story of the Stone*, one of the best-known works of fiction in China, would get an impression of how powerful *Jia Mu* 賈母 ‘Grandmother Jia’, the Matriarch, was in the family and the clan as a whole.

Divorce

This part will discuss the different forms of termination of marriage in the Qing Code. It seems that in the Catholic parts of Europe during the early modern period (1500-1800), divorce was not allowed because marriage was seen as a holy bond that could not be broken. After the sixteenth century, Protestant churches did allow divorce under very strict conditions, and historians consider the possibility of filing for divorce as an important transition to greater freedom and individual choice in marriage.¹⁰⁹ In China, by contrast, voluntary divorce has a long history: as early as the Tang Dynasty, it had been stipulated: “if the two spouses do not get along together and they are both willing to divorce, they shall not be punished. If in spirit they are already separated, how can they be united by force?”¹¹⁰

However, such a provision could not be considered a chance for women; on the contrary, it was almost impossible for women to seize the initiative to divorce.¹¹¹ When analyzing the regulations on “divorce,” Art. 116 “*Repudiating a Wife*” (*chu qi* 出妻), it is fairly straightforward that from the title onwards, the article was drafted entirely from the male standpoint, regarding the circumstances under which he could “repudiate” his wife, rather than how the couple as a whole could dissolve their marriage.¹¹²

¹⁰⁸ Susan Mann, “Grooming a Daughter for Marriage: Brides and Wives in the Mid-Ch’ing Period,” in *Marriage and Inequality in Chinese Society*, ed. Rubie Watson and Patricia Ebrey (Berkeley [etc.]: University of California Press, 1991), 204–30.

¹⁰⁹ Stephanie Coontz, “The Origins of Modern Divorce,” *Family Process* 46, no. 1 (2007): 7–16; Lawrence Stone, *Road to Divorce: England 1530-1987* (Oxford: Oxford University Press, 1990), 383–422.

¹¹⁰ Wallace Johnson, trans., *The Tang Code: Volume II-Specific Articles* (Princeton: Princeton University Press, 1997), 168; Jiang, *The Great Ming Code*, 88; Jones, *The Great Qing Code*, 134.

¹¹¹ Kathryn Bernhardt, “Women and the Law: Divorce in the Republican Period,” in *Civil Law in Qing and Republican China*, ed. Kathryn Bernhardt and Philip C. C. Huang (Stanford, Calif.: Stanford University Press, 1994), 189; Shiga, *Zhongguo Jiazufa Yuanli*, 385.

¹¹² Jones, *The Great Qing Code*, 133–35; Jiang, *The Great Ming Code*, 88–89.

Women did have the right to divorce in certain situations, but all required them to pay a heavy price first. For instance: “If, within three years after her husband abandons his wife and runs away, the woman does not report to the authorities but runs away by herself, she shall be punished by 80 strokes of beating with the heavy stick.”¹¹³ This rule remained a punitive one and did not specify the conditions under which a woman could get a divorce. We can only deduce that if a wife had been abandoned by her husband for more than three years, and she reported the vanishing husband to the magistrate, the wife would not get punishment and could have the right to the dissolution of the marriage.

Another way that women could divorce was through “breaking of the bond” or “extinguishment of duty” (*yijue* 義絕), but it was, to some extent, a compulsory dissolution of marriage. One form of *yijue* involved the acts committed by a husband and his family against the wife, which included situations where a grandparent or parent struck the wife of the son or grandson without good cause and the act resulted in serious disability, a husband forced his wife or concubines to engage in fornication with another, or a husband sold or hired out wives, in which cases the wife could “return to her natal clan” (*guizong* 歸宗).¹¹⁴ Sometimes a couple would be sentenced to “break the marital bone” because their marriage was illegal, such as in cases where the couple had the same surname, the marriage occurred between a superior and inferior relative, the marriage happened after adultery, or there were charges of bigamy, and thus the law ordered the marriage be dissolved.¹¹⁵

From the male angle, it was much easier to terminate a marriage, although there were some legal constraints. A husband could choose to repudiate his wife in seven situations.¹¹⁶ But if he attempted to repudiate his wife without any of the seven causes for repudiation or without circumstances that would extinguish his marital duties, he would be punished by 80 strokes with the heavy stick.

Moreover, if we regard “selling a wife in marriage” as a dissolution of marriage,

¹¹³ Jones, *The Great Qing Code*, 134; Jiang, *The Great Ming Code*, 88.

¹¹⁴ Jones, *The Great Qing Code*, 125, 305, 348–49.

¹¹⁵ Jones, *The Great Qing Code*, 128–29, 347–48. “Bigamy” here means if a man already had a wife and he married another wife, not including concubines. See Jones, 125–26.

¹¹⁶ The seven reasons were: the wife has no son, she is wanton, she does not serve her parents-in-law, she has a big mouth, she steals, she is jealous and envious, or if she has a malignant disease, her husband could choose to repudiate her. Jones, *The Great Qing Code*, 133–34.

husbands indeed had the right in certain situations to marry wives to other men.¹¹⁷ When a wife committed adultery or betrayed her husband and ran away, she would receive punishment and at her husband's will, would be married off or sold. Otherwise, a husband who sold his wife would receive a penalty.¹¹⁸

The constraints for husbands who desired divorce were the following three conditions, “if a woman had carried on three years of mourning for her husband's parents, or her husband was previously poor, but they have become rich, or her natal family no longer exists, even if she had committed one of the seven acts, with the exception of committing adultery, the repudiation cannot be executed.”¹¹⁹

In a nutshell, although voluntary divorce was allowed in Qing China, we can infer it was still a right vested almost exclusively in men. In most cases, women could get divorced only if their husbands agreed. However, her husband did not have unlimited power to dissolve a marriage, and the law protected a wife from being repudiated without reason. The regulations on divorce in the code help us to understand the “legal” or “ideal” relationship between a husband and wife. A wife occupied an inferior status vis-à-vis her husband, but a husband could not diminish the status of his wife, because the law by the original definition protected a wife as a fundamental member of the family and equal to her husband. The law did not stipulate the situations under which a husband could repudiate his concubines, and it is generally assumed that he might dispose of concubines at will.¹²⁰

The sections above have introduced the cycle of female family identity at different life stages. The evolution of female status was enshrined in the law in the form of regulation of relationships between women and other family members. A woman in Qing China was primarily subject to patriarchal power as a member of different families, and in theory it was only after her husband, elders and senior in-laws had all died that she might have the opportunity to exercise greater parental authority.

The inequality between parents and children, husbands and wives, wives and

¹¹⁷ As Ransmeier concluded, “for each statute prohibiting the sale of people, a handful of statutes enumerated conditions under which selling people remained acceptable,” see Johanna S. Ransmeier, *Sold People: Traffickers and Family Life in North China*, Illustrated edition (Cambridge, Mass.: Harvard University Press, 2017), 25.

¹¹⁸ Jones, *The Great Qing Code*, 348–49; Jiang, *The Great Ming Code*, 214–15.

¹¹⁹ Jones, *The Great Qing Code*, 133–34.

¹²⁰ For how concubines could “divorce,” see Tran, “Concubines under Modern Chinese Law,” 35, 60–63; Patricia Ebrey, “Concubines in Sung China,” *Journal of Family History* 11, no. 1 (January 1, 1986): 11.

concubines, etc., manifested itself in the differential severity of punishments for violating each other. That is, the relations between family members served as a decisive factor in determining their power and status. Age and generation, as well as gender, are the three clues to a deeper understanding of the family hierarchy and power structure.¹²¹ The daughters were confined to the younger age and generation until they became mothers, and the change of their status was a consequence of their older age and the fact they had produced descendants for the next generation.

At the apex of the family relationship system was the head of the household (*jiazhang* 家長), literally “family elder” and in most cases, the male assumed this role. Household heads were vested with a range of powers codified by law: they might punish disobedient children or ask the local authorities to punish them. They also exercised supreme control over the family property, and had the authority to select a spouse for their children, something which was of utmost importance for women. The parents or grandparents had the full capacity to take charge of a daughter’s marriage, while a husband could not arbitrarily divorce or sell his wife.

This disparity suggests that parents possessed full parental authority over their unmarried daughters, but that the husband’s control over his wife was more subtle and incomplete. The marriage did curtail the daughter’s bond with her natal family, for example, the mourning degrees for her lineage would be reduced after a woman got married, but the law certainly recognized that the blood ties existed from the beginning to the end of her life.¹²² Hence in legal practice conflicts over authority between the natal and marital families became the most significant source of disputes about women.

Leniency to Women: Weakness and Chastity

Though the legal status of women varied at different stages, the law included some provisions for women as a whole, especially in regard to giving leniency to women. This section will show what kind of lenient treatment women were granted by the *Great Qing Code* and explain why the legislators made such regulations.

¹²¹ Jiang, “Legislating Hierarchical yet Harmonious Gender Relations in the Great Ming Code.” It seems that the relation between wives and concubines fell outside the three factors; in fact, the position of concubines was more akin to that of slaves, who were not full members of the family, and the relationship between the wives of the head of household and the slaves was not regulated in the realm.

¹²² Jiang, *The Great Ming Code*, 12.

There are two articles in the Code whose titles refer to women: Article 20, *Committing Crimes by Government Artisans, Musicians, and Women* (工樂戶及婦人犯罪) and Article 420, *When Women Commit Offences* (婦人犯罪).¹²³ Both articles contain rules on how to carry out penalties for women. In general, female criminals in Qing China could expect lenient treatment according to the Code. Here is a summary of the special regulations on punishments for female criminals:

- a) In many cases, women were allowed to “redeem punishment” *shu xing* 贖刑, which means people could pay silver or cash to be exempt from a penalty after trial.
- b) In general, if a woman was sentenced to beating with the heavy bamboo, she could wear an unlined garment when being punished.
- c) A woman would not be tattooed.
- d) Generally, it is not permitted to question or incarcerate women.
- e) Instead of being imprisoned, in most cases women would be put under their husbands’ supervision.
- f) Female criminals could avoid being publicly beheaded.
- g) Pregnant women would have more privileges, like delaying the execution of the penalty they might receive.¹²⁴

Women, the young, the old and the sick or disabled people could enjoy the privilege of “redemption”. Confucian humanitarianism was the dominant and original reason why the Chinese promulgated special laws with regard to those whom they considered to be weak members of society.¹²⁵ More specifically, privileges that were granted to women and other “weak” people were the result of “humanity” or “benevolence” (*ren* 仁), to show “compassion for the weak.” Shen Zhiqi, a jurist in the Qing dynasty, made commented on the article on redemption: “The emphasis of this article is on respecting the elderly and being gentle with the young. To show compassion for those who are not at their full capacities is a kindness imparted by the law.”¹²⁶

The “weak” body of women reflected how the government imagined and tried to discipline women, who were defined as persons without full capacity. This a definition that

¹²³ Jones, *The Great Qing Code*, 50, 399–400; Jiang, *The Great Ming Code*, 29.

¹²⁴ The Appendix C includes a complete version of original Chinese and English translations of statutes and substutates on the special treatments that women could have in the *Great Qing Code*.

¹²⁵ Derk Bodde, “Age, Youth, and Infirmary in the Law of Ch’ing China,” *University of Pennsylvania Law Review* 121, no. 3 (1973): 437–70. Bodde also mentioned that Confucian particularism, which means the principle of legalized differentiation according to rank, relationship, and specific circumstance, was another reason for the leniency.

¹²⁶ Fenghua Jing, “Compassion for the Weak?: Juvenile Offenders in the Qing Dynasty Legal System,” trans. Jennifer M. Neighbors, *Modern China* 44, no. 4 (2018): 374.

perhaps had its roots in the doctrine of “*yin yang*.”(陰陽)¹²⁷ The body of a female usually carried more “*yin*” which carried the connotation of weakness and tenderness.¹²⁸ Such “weakness” was not confined to the female body but also included a weak character or personality and even evolved into weakness in terms of knowledge of the world.¹²⁹ This perception of vulnerable deserving legal leniency women determined how authorities disciplined women, whose bodies should neither bear penalties nor heavy physical labor, thus also creating gendered divisions of labor.

Women were constructed as feeble and easily moldable by outside influences, so the law sometimes punished her husband rather than the woman herself, and deprived them of the right to initiate lawsuits.¹³⁰ At least five articles included regulations for circumstances under which a woman was guilty, but her husband or son was punished.¹³¹ Even if a woman was the principal in a joint crime with other male family members, it was the men who would receive punishment, rather than the principal women.¹³² Legislators took into account the possible grievances of women and other vulnerable groups, so they introduced a system of “legal proxy” or “surrogate” (*baogao* 抱告). In most situations, a woman needed a male relative to represent her in court, and if an accusation was proved false, this proxy was subject to a penalty.¹³³ When a woman went to sue on behalf of

¹²⁷ Hua Peng, “Lun rujia dui nüxing qizhi de goujian jiqi yingxiang 论儒家对女性气质的构建及其影响 [The Confucian Construction of Femininity and its Influence]” (Xingbie duoyuan: Lilun yu shiwu yanjiu, Beijing Forestry University, Beijing, 2012), 239–50. But this did not necessarily mean that there used to be a simple correspondence between *yin* and weakness, see Charlotte Furth, *A Flourishing Yin: Gender in China’s Medical History: 960–1665* (Berkeley [etc.]: University of California Press, 1999).

¹²⁸ Furth, *A Flourishing Yin*, 2; Ebrey, *The Inner Quarters*, 27–29; Chia-lin Tao, “Yin-Yang xueshu yu funü diwei 陰陽學說與婦女地位 [The Idea of Yin-Yang and Women’s Status in China],” *Chinese Studies* 5, no. 2 (1987): 501–12.

¹²⁹ Xiaomei Tian, “Zai ‘zhaogu’ de lishi biaoxiang beihou: zhongguo gudai falü ‘zhaogu’ nüxing de neizai yuanyin pouxi 在‘照顾’的历史表象背后——中国古代法律‘照顾’女性的内在原因剖析 [Behind the Historical Notion of ‘Compassion’: Making Sense of ‘Compassion’ for Women in Ancient Chinese Law],” *Collection of Women’s Studies*, no. 05 (2008): 42–50; Fengjie Zhao, *Zhongguo funü zai falü shang zhi diwei*, 144.

¹³⁰ Jones, *The Great Qing Code*, 325; Jiang, *The Great Ming Code*, 200–201.

¹³¹ Art. 141 the rules on salt, Jones, 155; Art. 161, *Blaspheming the Spirits*, Jones, 173; Substatute 275.02, *Kidnapping Persons and Selling the Person Kidnapped*, DLCY, 727; Substatute 325.02, *Cursing Imperial Emissaries or One’s Own Head Official*, DLCY, 971.

¹³² “If female senior or older members and male junior or younger members commit crimes jointly, although the women are principals, still only punish the men.” Jones, *The Great Qing Code*, 64–65; Jiang, *The Great Ming Code*, 40–41.

¹³³ The situations where the old, young and disabled persons and women were allowed to initiate lawsuits by themselves included “plotting rebellion, treason, or high treason, or a child or son’s child being unfilial, or in the situation

herself without any male proxy, her husband or son, if she had one, would be punished no matter whether the accusation was true or false.

The same logic of “weakness” probably also protected women from certain severe judgments on violent crime. The fifth of “*Ten Great Wrongs*”, *bu dao* 不道, mainly referred to what were considered to be extremely evil and cruel crimes, including “to kill three persons from one household who are not guilty of a capital offense”(殺一家非死罪三人), “to dismember a living person”(支解人), “to mutilate living persons”(採生折割), “to make or keep insect poisons”(造畜蠱毒), or “to practice sorcery”(魘魅).¹³⁴ In the statutes that defined the crime in detail, most contained expressions such as “the wives and children of ringleaders shall be exiled to 2,000 *li*” or “the wives and children of the offenders ... shall all be punished by life exile to 2,000 *li* and settled...”¹³⁵ The legislation assumed that women were not capable of carrying out such crimes and therefore there was no need to draft any provisions for the family members of potential female criminals.¹³⁶

Everything above shows that, under the premise of portraying women as weak, the *Great Qing Code* exempted women from certain forms of punishment. Consequently, the code deprived women of a large part of the right to sue, which was not just the price women paid for lenient treatment, but more significantly, the consequence of the discipline imposed on women.

Another reason for the privileged treatment given to women was the concern among lawmakers to protect female chastity.¹³⁷ The legal cult of chastity had a dual effect: the

in which he himself, or those living with him, have had property taken by theft or fraud, or where property has been seized and taken away, or there has been killing and injuring,” see Jones, *The Great Qing Code*, 325; Jiang, *The Great Ming Code*, 200–201. The statute about proxy was not added to the *Code* until 1826, but whether women needed proxies was not clear, see DLCY, 23. The requirement where women need a male proxy to file a plaint had been already widely adopted in local litigation practice before 1826, see Peilin Wu, “Qingdai Sichuan Nanbuxian minshi susong zhong de funü yu baogao zhidu 清代四川南部县民事诉讼中的妇女与抱告制度--以清代四川《南部档案》为中心) [Women and the Baogao (Litigation Agent) System in the Civil Cases of Nanbu County of Sichuan during the Qing Dynasty: With the Focus on the Nanbu Archive of Sichuan],” *Rural China* 8, no. 1 (2011): 106–31.

¹³⁴ Jones, *The Great Qing Code*, 34–35; Jiang, *The Great Ming Code*, 18.

¹³⁵ Jones, *The Great Qing Code*, 273–74; Jiang, *The Great Ming Code*, 171–72.

¹³⁶ It seems that only the Tang code had mentioned that if women who make or keep insect poisons must be exiled and are sent into life exile in accordance with the law, see Wallace Johnson, trans., *The Tang Code: Volume I- General Principles* (Princeton: Princeton University Press, 1979), 162–63.

¹³⁷ A Feng, *Mingqing shidai funü de diwei yu quanli: yi mingqing qiye wenshu, susong dang'an wei zhongxin* 明清时代妇女的

women who preserved or attempted to protect their chastity would have priority, and those who abandoned their purity would receive harsh penalties. The cult of widow chastity had a side effect in which the codified law promoted the property rights of widows who decided to remain chaste.

The Code itself never explicitly stated this link between female chastity and women's lenient treatment, but jurists in the Qing Dynasty drew attention to it; for example, Wang Huizu explained a series of lenient treatments for women as follows:

婦人犯罪，則坐男夫；具詞，則用抱告；律意何等謹嚴，何等矜恤。蓋幽嫺之女，全其顏面，即以保其貞操，而妒悍之婦，存其廉恥，亦可杜其潑橫。¹³⁸

When a woman commits a crime, her husband should be punished instead of her; when a woman intends to file a lawsuit, she should have a proxy: the intention of the law is prudent and rigorous, reflecting its compassionate stance. For a gentle and refined woman, preserving her honor is protecting her chastity, while for a jealous and shrewish woman, preserving her honor is to prevent her from being violent and spiteful.

Meanwhile, the wording of the Code did imply traces of concerns over female chastity. When a male criminal received strikes of the heavy bamboo as punishment, it was written that he should take his clothes off. If a woman was punished like this, she would lose her purity; only when a woman had engaged in illicit sex offenses would her clothes be removed since she had already lost her chastity. Purity was also the reason why it was not permitted to incarcerate women, for if a woman lived in a prison full of unruly men, it would be difficult for her to maintain her purity.

The definition of sexual offenses in the *Great Qing Code* was based on the logic of female chastity. There is a large body of work on sexual crimes in the Qing Dynasty. No matter whether scholars focus on adultery or rape, one major contribution of these scholarly works is that they have advanced our understanding of “illicit sex” in late imperial China. In his research on the legal article *Killing the Adulterous Lover*, Dutch scholar M.J. Meijer raised the question as to why there was a wide discrepancy between the husband's right to a justifiable killing of the adulterous couple, and the mild punishment meted out by the authorities to the adulterous couple (80 strokes of the heavy bamboo). His answer

地位与权利：以明清契约文书、诉讼档案为中心 [Women's Status and Rights in Ming and Qing: Based on The Contracts and Legal Archives] (Beijing: Social Science Academic Press, 2009), 206.

¹³⁸ Huizu Wang, “Zuo Zhi Yao Yan 佐治藥言 [Admonitions on Assisting a Magistrate with Governance],” in *Rumu Xuzhi Wuzhong 入幕須知五種* [Five Volumes of Essential Knowledge for Those Entering Private Secretary Work], ed. Tingxiang Zhang, Reprinted (Taipei: Wenhai chubanshe, 1968), 149.

was, in addition to the husband's moral misery which would grant him immunity, "safeguarding the family could in final analysis prevail over the safeguarding of the life of persons who had already trespassed against the law and good morals."¹³⁹ Meijer also realized that concerns over rectifying the people's customs were another reason for impunity for the double murder of the adulterous couple, as a warning for others who engaged in illicit sex.¹⁴⁰ He pointed out that in the Qing, "judicial policy favors greater severity in the punishment of crimes which violate the moral norms," though he did not recognize the unique role of female chastity.¹⁴¹

In her study of Qing rape law, Vivien Ng emphasizes that chastity was a paramount virtue in Qing China, and that "rape was a capital offense because it was a violation of a woman's virtue."¹⁴² Rape law in Qing China demanded stringent proof of rape because a woman had to "show sufficient signs of having resisted her assailant vigorously" and prove that she was "innocent and chaste," for her rapist to receive the death penalty. The Qing rape law "was intended to help further promote the cult of chastity," and it ultimately "served to implement the realization of the Neo-Confucian social order."¹⁴³ However, this dissertation will demonstrate that instead of adhering strictly to moral standards, the individuals involved in the litigation opted to employ female chastity as a tactic.

Sommer agrees with Ng's opinion that Qing rape law aimed to promote the cult of chastity in Qing China, and provides a deeper insight into the notion of *jian* 姦.¹⁴⁴ Sommer identifies three elements that would define "sexual offenses" *jian* in imperial China: heterosexual intercourse, outside valid and legitimate marriage, and an assault and threat to the orthodox family and social order.¹⁴⁵

The definition of illicit sex in late imperial China that Sommer gives is complete, though it does not mean that there are no other ways to interpret the notion. As Ng

¹³⁹ M. J. Meijer, *Murder and Adultery in Late Imperial China: A Study of Law and Morality* (Leiden [etc.]: Brill, 1991), 42–43.

¹⁴⁰ Meijer, 43.

¹⁴¹ M. J. Meijer, "The Price of a P'ai-Lou," *T'oung Pao* 67, no. 3/5 (1981): 302.

¹⁴² Vivien Ng, "Ideology and Sexuality: Rape Laws in Qing China," *The Journal of Asian Studies* 46, no. 1 (1987): 65.

¹⁴³ Ng, 69.

¹⁴⁴ Ng, "Ideology and Sexuality"; Sommer generally agrees with Ng, but he argues that "the transformation of the legal discourse of rape accompanied the development of imperial chastity cults from the Yuan dynasty through the Qing," rather than stating that it was a sudden departure in the early Qing as Ng suggested, see Sommer, *Sex, Law, and Society in Late Imperial China*, 67–71.

¹⁴⁵ Sommer, *Sex, Law, and Society in Late Imperial China*, 33–36.

emphasized that female chastity was the keyword to understanding rape law in the Qing, the following discussion will show that the role of female chastity could extend to the entire sphere of illicit sex.

There was no direct and general definition of *fanjian* in the codified law, and the articles in this section divided sexual offenses into three situations:

凡和姦，杖八十；有夫者，杖九十。

In all cases of consensual illicit sex [*he jian*], the punishment is 80 blows of the heavy bamboo. If [the woman] has a husband, the punishment is 90 blows of the heavy bamboo.

刁姦者[無夫有夫]，杖一百。

For fornication brought about by seduction [*diao jian*], (whether or not she has a husband), the penalty shall be 100 blows of the heavy bamboo.

強姦者絞[監候]；未成者，杖一百流三千里。

For those who commit rape [*qiang jian*], they shall be punished by strangulation. If it is not consummated, the penalty shall be 100 blows of the heavy bamboo and life exile to 3,000 *li*.¹⁴⁶

All these legal articles were inherited from the Ming Code, and Ming jurists had provided their own glosses and delineations of these articles:

和謂男女相願；刁謂用威力挾制，及巧言誘出至別所。然刁必從和來。¹⁴⁷

“*He*” means male and female (have illicit sex) by mutual consent; “*diao*” means (a man) lures (a woman) to other places for (committing illicit sex), but “*diao*” must be “*he*” at the root.

男女相願欲，曰和；……誘引婦人出其家之外和姦者，杖一百。¹⁴⁸

Illicit sex by mutual consent is called “*he*”; …… (those men) luring women to consensual illicit sex outside the household, shall receive 100 strokes of beating with the heavy stick.

和姦，謂男女情願，和同私姦也。刁姦，謂姦夫刁誘姦婦，引至所通姦，亦和姦也。¹⁴⁹

¹⁴⁶ “Fornication” in Jones, *The Great Qing Code*, 347. Because the Qing copied this article from the Ming, I modified the translation based on *The Great Ming Code*, translated by Jiang Yonglin and Sommer’s translation of “The Basic Illicit Sex Statute in the Ming and Qing Codes”. See Yonglin Jiang, *The Great Ming Code: Da Ming Lü* (Seattle: University of Washington Press, 2012), 214. Matthew H. Sommer, *Sex, Law, and Society in Late Imperial China* (Stanford, Calif.: Stanford University Press, 2000), 325.

¹⁴⁷ Kentang Wang, *Da Ming lü fuli jianshi* 大明律附例箋釋 [An Explication of the Code of the Great Ming with Attached Substatutes], Photo-repro. of Gu Ding 1691 edition, *Zhongguo lüxue wenxian* 中國律學文獻, ser. 2 vol. 5 (Harbin: Heilongjiang renmin chubanshe, 2005), 198.

¹⁴⁸ Jia Ying, *Da Ming lü shiyi* 大明律釋義 [An Explanation of Meanings in the Penal Code of the Great Ming], Photo-repro. of 1549 edition, vol. 2, *Zhongguo lüxue wenxian* 中國律學文獻, ser. 2 (Harbin: Heilongjiang renmin chubanshe, 2005), 400–401.

¹⁴⁹ Zhiqi Shen, *Da Qing lü jizhu* 大清律輯注 [Collected Commentaries on the Great Qing Code], Modern punctuated ed. based on copy of 1715 edition, ed. Xiaofeng Huai and Jun Li, (Beijing: Law Press, 2000), 912.

“*He jian*” refers to a situation where both male and female willingly engage in private illicit sex.

“*Diao jian*” refers to an adulterer luring an adulteress to another location, which is also classified as “*he jian*.”

According to these Ming jurists, *he jian*” required women’s approval, and this is why I will use the English word “adultery” to denote this form of extramarital sex. “*Diao jian*” should be a part of “*he jian*,” though it does not exclude violence or intimidation in the sexual act, for example:

刁奸，刁詐逼迫以奸人之婦女也。¹⁵⁰

“*Diao jian*” involves tricking or coercing another’s wife or daughter into illicit sex.

刁姦之情有二，……一則用力挾制、迫之以不得不從之勢也。¹⁵¹

There are two kinds of adultery by intrigue (*diao jian*). Another kind occurs when the adulterer uses his influence to intimidate a woman into succumbing to his demand.

Considering the particular situations mentioned above, *diao jian* was still regarded as a sexual act with mutual consent even if the men used coercion or abuse of authority.

Meanwhile, *qiangjian* “coercive illicit sexual intercourse” or “rape” did not stress the violence of the crime, but rather the attitudes of women and the pollution of female purity caused by the act of extramarital sex:¹⁵²

強姦則婦人無願欲之情。¹⁵³

Rape occurs when the woman does not consent.

若婦女本守貞潔，而人用強姦之，肆已淫惡，污人節摻，其情至重。¹⁵⁴

If a woman maintains her chastity but is forcibly raped, such a reckless and immoral act not only sullies her chastity but is also regarded as a very serious offense.

強姦則肆已淫污人之節。¹⁵⁵

Rape pollutes the chastity of women unscrupulously.

In this definition of rape, more than one jurist mentioned the keywords “chastity” and

¹⁵⁰ Kenkichi Naitō and Zhaoqi Cheng, eds., *Liubu chengyu zhuji*, Modern edition based on the Naitō edition, 六部成語注解 [Terminology of the Six Ministers of the Chinese Part with Explanations] (Hangzhou: Zhejiang guji chubanshe, 1987), 131.

¹⁵¹ Liu-hung Huang, *A Complete Book Concerning Happiness and Benevolence: A Manual for Local Magistrates in Seventeenth-Century China*, trans. Chu Djang (Tucson, Arizona: University of Arizona Press, 1984), 439.

¹⁵² Sommer, *Sex, Law, and Society in Late Imperial China*, 66.

¹⁵³ Ying, *Da Ming lü shiyi*, 2:401.

¹⁵⁴ Shen, *Da Qing lü jizhu*, 912.

¹⁵⁵ Zhenji Zhong, *Da Ming Lü Jijie Fuli* 大明律集解附例 [The Great Ming Code with Collected Commentaries and Substatutes Appended] Photo-repro. of 1610 edition, 5 (Taipei: Taiwan Xuesheng shuju, 1970), 1837.

“pollution.” Furthermore, there is a term, *jianwu* 姦污 “committing illicit sex and polluting (virtue)”, which is frequently and regularly used in all kinds of sources, suggesting the role and importance of chastity in making the definition:

將未至十歲之幼女，誘去強行姦污者，照光棍例，斬決。¹⁵⁶

(The *Great Qing Code* 366.04) Whoever lured away a girl not yet 10 sui and sexually polluted her by coercion (*qiang xing jian wu*), shall be sentenced to immediately beheaded based on the “Substatute on Rootless Rascals”

用藥昏迷、因而姦污者，雖無恐嚇縛制之形，已有計誘迷蒙之實，不之強姦得乎？¹⁵⁷

(officials’ handbooks) The crime of illicit sex and pollution (*jianwu*) may not involve the actual use of force or physical restraint on the victims, yet they are consummated by the use of tricks and drugs and cannot be considered anything but rape.

何必堅執姦污，自博不貞之名乎？¹⁵⁸

(Fiction) Why do you insist on accusing him of defiling you (*jianwu*) and getting a bad reputation for being unchaste?

The term *jianwu* contains two dimensions of meaning, “(committing) illicit sex” as an action and “pollution” or “defilement” of descent lines, of commoner status, and especially of female chastity as the consequence.¹⁵⁹ Descriptions of female chastity could roughly involve two forms of expression. In the realm of marriage, a woman should only have one husband in her life, which is embodied in the canonization of those women who martyred themselves or remained widowed after the death of their husbands. Moreover, women must not have sex with anyone other than their husbands, so imperial dynasties chose to officially honor women martyrs who committed suicide or self-mutilation to resist all kinds of aggression, especially sexual assault.¹⁶⁰

The Qing laws required women to maintain their chastity and severely punished women who degraded themselves and men who compromised the purity of women. When the women were willing to commit sexual offenses, such leniency towards women would vanish and the same penalty would apply to women as men: as in adultery, where male and

¹⁵⁶ The translation is modified based on Sommer, *Sex, Law, and Society in Late Imperial China*, 80.

¹⁵⁷ Huang, *A Complete Book Concerning Happiness and Benevolence*, 435. I slightly adapted it.

¹⁵⁸ Yun Ji, *Yuewei caotang biji* 閱微草堂筆記 [Random Jottings from the Cottage of Close Scrutiny], Photomech reprint, (Tianjin: Tianjin shi guji shudian, 1988), 660.

¹⁵⁹ Sommer, *Sex, Law, and Society in Late Imperial China*, 67.

¹⁶⁰ Theiss, in Chapter One and Two of her book, speaks about the shift of the focus of state canonization system in mid- and late imperial China, see Theiss, *Disgraceful Matters*, 25–54.

female offenders would receive equal punishment.¹⁶¹

Furthermore, although the law offered additional protection to women who did their best to defend their virtue, such women had to offer evidence of high standards of virtue. Therefore, once a rape was deemed to have been committed, the man was sentenced to be hanged, and the woman did not have to receive punishment if only she could give evidence that she had made great efforts to resist:

須有強暴之狀，婦人不能掙脫之情，亦須有人知聞，及損傷膚體、毀裂衣服之屬。

In the prosecution for rape, there must be evidence of violent coercion (*qiangbao*), and the situation must have been such that the woman could not struggle free; there must also be persons who heard what happened, as well as evidence such as physical injury or torn clothing.¹⁶²

Since the May Fourth Movement, the cult of chastity has been generally considered a great disservice to women, since women might lose their freedom and even lives to maintain their chastity.¹⁶³ However, the logic of chastity also provided some protection for women, especially for those widows who chose to maintain their virginity.

The official promotion of the chastity cult impacted the legislative process. The *Great Qing Code* gave a widow the right to “stay chaste” or “not remarry.” After three years’ mourning, if a widow, whether wife or concubine, would like to remain chaste, but “her paternal grandparents or parents, or her husband’s paternal grandparents or parents force her to marry, they will be punished with 80 strokes of the heavy bamboo.”¹⁶⁴ By comparing the Qing rules on forcing widows to remarry to those in different dynasties, MacCormack argues that “to some extent, in the thinking of the Qing legislators, the value of chastity outweighed that of filial obedience.”¹⁶⁵

The cult of chastity significantly changed the property rights of women. Even after her husband’s death, a woman was supposed to stay completely loyal toward him. If she chose to remarry, a widow would also lose her qualification to become a “chastity heroine.” Furthermore, when a widow remarried, her original dowry would remain with her marital family; by taking away her possessions, the law attempted to discourage a widow from

¹⁶¹ Jones, *The Great Qing Code*, 347; Jiang, *The Great Ming Code*, 214.

¹⁶² Sommer, *Sex, Law, and Society in Late Imperial China*, 89; Jones, *The Great Qing Code*, 347.

¹⁶³ Dongyuan Chen, *Zhongguo funü shenghuo shi* 中国妇女生活史 [The History of Chinese Women’s Life] (Shanghai: The Commercial Press, 1928), 241–46.

¹⁶⁴ Jones, *The Great Qing Code*, 127.

¹⁶⁵ MacCormack, *The Spirit of Traditional Chinese Law*, 96.

betraying her late husband.¹⁶⁶

Scholars also find more subtle variations in the inheritance rights of widows. According to Bernhardt, widows in the Song enjoyed full rights to inherit the legacy of their deceased husband,¹⁶⁷ while in the Ming and Qing, widows lost their inheritance rights. Instead, the Qing law asked for mandatory succession for a man without any sons. Therefore, the key to the succession was who could become the heir, and a widow must adopt a male heir to inherit the legacy if she did not have a son, to whom she only had some degree of guardianship.¹⁶⁸ The lineage head was the one who could choose a nephew of the appropriate generation as an heir for the deceased man.¹⁶⁹

This was largely a contraction of widows' rights, but the cult of chastity guaranteed the rights of widows to some extent. In 1775, another statute was added to the code which gave a widow the right to select a nephew she was fond of as heir when the appointed successor could not get along with her. If the family and lineage forced her to adopt one particular boy and it resulted in a lawsuit, the magistrates should punish other family members and give judgment to confirm that the widow had the right to choose a preferred heir.¹⁷⁰

A man needed to be succeeded by a son for ritual as well as for property purposes, and mandatory succession was initially made for this reason. However, because of the normative power of the chaste widow, the legislation came to emphasize concern for faithful widows. Consequently, the law confirmed the rights of widows to select preferred heirs regardless of the opinions of the heads of lineage and then protected their property rights.

¹⁶⁶ Bettine Birge, *Women, Property, and Confucian Reaction in Sung and Yuan China (960–1368)*, Cambridge Studies in Chinese History, Literature and Institutions (Cambridge: Cambridge University Press, 2002), 261–79; on the other hand, Bernhardt thinks it also demonstrated that her deceased husband's family had the obligation to endow the widow with a dowry, a symbol to show the women's fuller incorporation into marital family, see Bernhardt, "A Ming-Qing Transition in Chinese Women's History? The Perspective from Law," 54–55.

¹⁶⁷ Shiga had a different opinion; he believed that widows never had the right to full inheritance during the imperial era, see Shiga, *Zhongguo jiaozufa yuanli*, 335–50.

¹⁶⁸ Bernhardt, *Women and Property in China*, 47–72.

¹⁶⁹ Art. 78.02, Xue, *Du Li Cun Yi*, 247.

¹⁷⁰ Art. 78.05, Xue, 248.

Conclusion

This chapter explains that the women were defined and disciplined by the *Great Qing Code* in terms of their relationship with other family members. At the very beginning of all versions of the Qing Code, the series of diagrams illustrating the mourning system manifested familism in law. The Code is full of provisions to regulate family relations. When we discuss women in the *Great Qing Code*, what we are speaking about are wives, concubines, mothers, widows, or daughters; every woman was positioned and identified in terms of her familial relationship. Not surprisingly, most words referring to women were situated in the articles relating to sex offenses, family, and marital affairs. The absence of women from the rules of public affairs also suggested that the law never incorporated women into the public sphere and that the code implicitly confined women and their activities through a distinction between inner and outer.

Following the life cycle of women, first, we can see that unmarried women used to be temporary members of natal families since they were not in the father-son unit. The law suggested this point by giving daughters differentiated treatment from other family members in cases of collective prosecution. Even so, parents were entrusted with the mission and power to negotiate a marriage for their daughters and sons. As soon as she was betrothed, a woman tended to be bound by law to her fiancé and his family, and after the wedding, as a wife, she would become a formal member of her marital family. As a result, she would bear the same duties and enjoy similar respect as her husband in some situations due to the husband-wife unit. Thus, the husband could not arbitrarily divorce or arrange remarriage for his wife. But the code also tells us that when conflicts occur between a couple, a wife should be subordinate to her husband. A woman in Qing China would have a better chance of being treated equally to her husband when she gave birth to children since the mother and father generally should have similar authority over their descendants due to filial piety.

The law also gave lenient treatment to women as a class because lawmakers tended to show “compassion for the weak.” The law imagined and disciplined women in terms of a supposed weakness applying to the female body, personality, and knowledge. As a consequence, the law exhibited mercy on women, while at the same time depriving them of most of the rights to file lawsuits.

Chastity is another necessary factor in discussing the status of women. Rather than stressing the negative influence exerted over women by the cult of chastity, maintaining

female virtue constituted one crucial reason to give them merciful treatment. More significantly, scholars have found the logic of chastity helped widows who preserved chastity to retain their rights by choosing an adoptive heir, and then controlling the heritage of their husband.

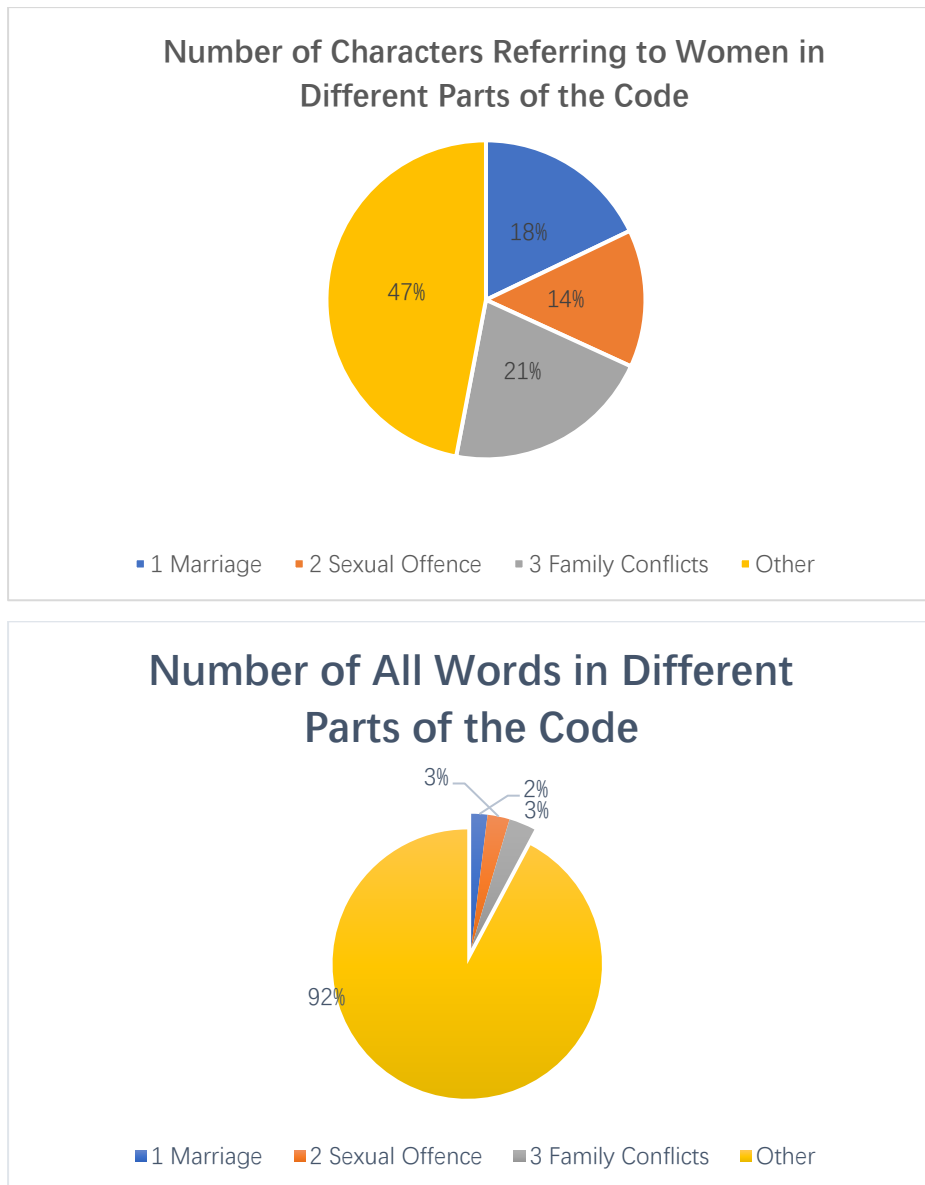
The shifting status of the widow is a good example: the apparent reason for the rise in their position seemed to be as the official booster of chastity and filial piety. Still, we can only discover the primary cause of her relationship in relation to her husband and sons. The purity of a widow means that she chose to maintain loyalty to her husband and their relationship even after his death, and filial piety granted her authority over her male heirs due to the mother-son tie.

Behind this sequence of changes in female legal status was the transformation of various family relationships. Under the influence of three factors: gender, age, and generation, the changes in relationships within the family deeply affected the identity and status of women. A widow could play a more significant role in the family because of her age if she lived without any restrictions produced by her relations with other senior or elderly in-laws.

Portraying women as victims was not an intention of the Qing Code, but the law did leave evidence of women's victimization between the lines. For instance, in punitive rules it excluded women from certain types of offenses and stressed the weakness of women. The regulations in codified law in traditional China, not limited to the Qing Code, provided strong evidence for the construct of victimized women. According to the *Great Qing Code*, women usually were at a disadvantage in the family relationship and their subordinate status in the patriarchal hierarchy became clear when taking the family relationship into account. However, the codified law also demonstrated how complicated and nuanced the position of women was, since with their growing age and rising generation, women were more likely to become superior in relationships.

In a nutshell, the *Great Qing Code* suggests that a woman's legal status would fluctuate over her life cycle; the establishment and extinction of relationships determined these changes. The gender identity of women certainly determined part of their legal status, but this shift in age and generation would also bring changes in relationships, and the proximity of relations would govern the quality of their authority. However, this is not the whole picture; the following chapters will show the legal practice of family relationships and patriarchal power by describing and discussing how to involve women in lawsuits.

Figure 3 Distribution of Characters Describing Women in the *Great Qing Code*



Source: DLCY

1 Marriage: Art. 101-117, “Marriage” in the *Laws on Revenue*

2 Sexual Offence: Art. 366-375, “Fornication” in the *Laws on Penal Affairs*, and the Art.285, *Killing the Adulterous Lover*.

3 Family Conflicts: Art. 284 *Plotting the Kill of Paternal Grandparents and Parents*; Art.286 *Plotting to Kill the Parents of Her Deceased Husband*; Art.293 *Husbands Striking Transgressing Wives or Concubines to Death*; Art.315 *A Wife or Concubine Striking Her Husband*; Art.317 *Striking Superior or Older Relatives of the Third Mourning Degree or More Distant*; Art.318 *Striking Superior or Elder Relatives of the Second Degree*; Art.319 *Striking Paternal Grandparents or Parents*; Art.320

A Wife or Concubine and Her Husband's Relatives Striking Each Other; Art.328 Cursing Senior or Older Relatives; Art.329 Cursing Paternal Grandparents and Parents; Art.330 A Wife or Concubine Cursing Her Husband's Superior or Older Relatives of the Second Mourning Degree; Art.331 The Wife or Concubine Cursing Parents of Her Deceased Husband; Art.337 Violating Status and Offending against Righteousness; Art.338 Children Violating Instructional Orders
Other: all other parts in the *Great Qing Code*

Women in Code

Table 1.2 Chinese Characters Referring to Women in the *Great Qing Code*

*The character “姑” was used twice not referring to women in the code.

	Laws on General Rules	Laws on Personnel	Laws on Revenue	Laws on Rituals	Laws on Military Affairs	Laws on Penal Affairs	Total	
母 mother	96	5	65	31		388	585	25.2%
妻 wife	46	10	85	2	13	239	395	17.0%
婦 women or daughter-in-law	57		57	9	4	262	389	16.8%
女 women or daughter	48		133	11	13	174	379	16.4%
妾 concubine	7		53	1		123	184	7.9%
姊 elder sister	4		19	1		40	64	2.8%
妹 younger sister	3		15			33	51	2.2%
姑 aunt or mother-in-law	2*		15	1*		30	48	2.1%
娼 prostitute	1		2			17	20	0.9%
媳 daughter-in-law	2		1			9	12	0.5%
尼 nun	4		1	1		5	11	0.5%
姨 aunt			7				7	0.3%
妓 prostitute			1			6	7	0.3%
婢 bondservant	8		19		2	122	151	6.5%
皇后 Empress	2				1	1	4	0.2%
太后 Empress dowager	6				2		8	0.3%
妃 “fei”	1					1	2	0.1%
Total	279	15	454	57	33	1328	2317	

Source: DLCY. I do not include the laws relating to Public Works in the table since there is no character referring to the women in this section.

Table 1.3 Crime and Penalty Between Wives or Concubines and Their Husbands or the Relatives of the Husband

		Wife as Offender	Concubine as Offender
Offense	Victim		
Cursing	Husband	No provision for the wife cursing the husband. The punishment should be strokes of the light bamboo in accordance with the law of “Doing that which ought not to be done.”	80 strokes of the heavy bamboo.
	Wife		80 strokes of the heavy bamboo (same penalty as cursing husband).
	Husband’s Paternal Grandparents and Parents	Strangulation. It is necessary that [the victim] himself file a complaint. Only then can punishment be inflicted.	Strangulation. It is necessary that [the victim] himself file a complaint. Only then can punishment be inflicted.
	Husband’s Relatives of the Second Degree Who are Superior or Older*	The same punishment as the husband receives for cursing such persons [Art. 328].	The same punishment as the husband receives for cursing such persons [Art. 328].
	Deceased Husband’s paternal grandparents or Parents	The same penalty as for cursing her parents-in-law [Art. 330].	The same penalty as for cursing her parents-in-law [Art. 330].
Striking	Husband	100 strokes of the heavy bamboo.	Adding to the penalty for a wife striking a husband one degree
		Resulting in a fracture or worse: add three degrees to the penalty for injuring in an ordinary affray.	Resulting in a fracture or worse: add (to the penalty for a wife striking a husband) one degree.
		Resulting in critical disability: strangulation (to be executed [immediately]).	Resulting in critical disability: strangulation (to be executed [immediately]).
		Resulting in death: beheading (to be executed [immediately]).	Resulting in death: beheading (to be executed [immediately]).

* This refers to relatives who are superior or older, and between the second degree or below and the fifth degree or above (either in the direct or maternal lines).

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	Unintentional killing: strangulation (to be executed [immediately]).	Unintentional killing the head of household: strangulation (to be executed [immediately]).
	Resulting in intentional killing: death by slicing.	Resulting in intentional killing: death by slicing.
Wife		The same penalty as striking the husband. If there is unintentional killing, then the penalty is 100 strokes of the heavy bamboo and penal servitude of three years.
Husband's Paternal Grandparents and Parents	Punished in the same way as the husband who strikes [such persons] would be punished [Arts. 317, 318].	Punished in the same way as the husband who strikes [such persons] would be punished [Arts. 317, 318].
Concubine	The same as the husband striking the wife [Art. 315]. If there is unintentional killing, then there is no penalty.	
Wife's parents		The same penalty as husband striking the fifth degree of mourning relatives.
Husband's superior or elder relatives	Punished in the same way as the husband who strikes [such persons] would be punished [Arts. 317, 318].	Punished in the same way as the husband who strikes [such persons] would be punished [Arts. 317, 318].
Husband's inferior relatives**	Punished in the same way as the husband who strikes [such persons] would be punished [Arts. 317, 318]. Resulting in death: strangulation with delay.	Punished according to the law of ordinary affray [Art. 302].
Sons of her husband's brothers	Unintentional killing: 100 strokes of the heavy bamboo and exile to 3000 li.	Punished according to the law of ordinary affray [Art. 302].

** This includes the inferior relatives of the husband in the fifth, fourth, and third degrees, although the husband's father's brother's son's children; his father's brother's son's son's children' and persons who are his brothers' sons' children who are of the fourth degree are also included

		Intentional killing: strangled with delay.	
	Concubine's child	Reduce the penalty for ordinary persons two degrees.	
	Wife's child		Use the penalty for ordinary persons.
	The husband of the husband's elder or younger sister***	As an ordinary affray [Art. 302].	Adding to the penalty for the husband striking or the wife striking one degree.
	Deceased Husband's Parents	Penalty will be the same as for striking her parents-in-law [Art. 319].	Penalty will be the same as for striking her parents-in-law [Art. 319].
Homicide	Husband&Husband's Paternal Grandparents and Parents	Regardless of whether injury has been inflicted or not, all are beheaded.	Regardless of whether injury has been inflicted or not, all are beheaded.
		If the killing has taken place, then all will be condemned to death by slicing.	If the killing has taken place, then all will be condemned to death by slicing.
	Husband's superior or elder relatives****	Act has been executed: (the principal) will receive 100 strokes of the heavy bamboo and exile to 2000 li.	Act has been executed: (the principal) will receive 100 strokes of the heavy bamboo and exile to 2000 li.
		If injury has been inflicted, (the principal) will be strangled.	If injury has been inflicted, (the principal) will be strangled.
		If death has taken place, then all will be beheaded.	If death has taken place, then all will be beheaded.
	Deceased Husband's Parents	Punishment is the same as for plotting to kill (her present) parents-in-law [Art. 284].	Punishment is the same as for plotting to kill (her present) parents-in-law [Art. 284].
Causing suicide	Husband	Put pressure on her husband, so he dies: strangulation (to be executed [immediately]) [Art. 299.10].	Put pressure on her husband, so he dies: penalty is strangulation (to be executed [immediately]). [Art. 299.10].

*** This refers to relatives who are not within the degrees of mourning and are all of the same rank.

**** This refers to persons in the fifth degree of mourning or above, who is of superior rank or older.

Women in Code

		Husband suicides because of minor matters without pressure: strangulation with delay.	Husband suicides because of minor matters without pressure: strangulation with delay.
Husband's Paternal Grandparents and Parents		Offending against one's status or violating duty, then causing suicide: punished in the same way as the husband, penalty is beheading (to be executed [immediately]).	Offending against one's status or violating duty, then causing suicide: punished in the same way as the husband, penalty is beheading (to be executed [immediately]).
		Not serious offending against superior: punished in the same way as the husband, penalty is strangulation with delay.	Not serious offending against superior: punished in the same way as the husband, penalty is strangulation with delay.

Source: DLCY; Jones, William C., trans. *The Great Qing Code*. Oxford: Clarendon Press, 1994.

Chapter 2. Procedure, Strategy, and Women: An Overview of 617 Cases from Ba County “Women” Archives

Chapter One shows the image and position of women at the level of the Qing Code, while this chapter discusses the local archives. Specifically, this chapter gives an overview of the 617 cases from the “women” archives of Ba County. It introduces how the legal procedures work, the categorization of cases, the individuals who took part in lawsuits, and the presence of women in the case records.

One contribution of this chapter lies in the definition and categorization of archival cases. The local judicial archives, at the time they were unearthed, seemed to be closely linked to the discovery of Chinese civil law. From David Buxbaum to Philip Huang, local archives were used as sources to study civil law in imperial China.¹ Research on local archives is no longer exclusively confined to the topic of civil law and has largely departed from the absolute division between civil and criminal law. However, no scholar has given a standardized and widely accepted answer to the question of how to classify the cases and documents in the archives; more precisely, most historians do not address the issue explicitly.

This chapter does not classify the cases solely by today’s standards but, instead, tries to return to the historical context. Thus, one prerequisite to specifying the category of an archival case is to examine how people in the nineteenth century designated the legal suits they filed. Correspondingly, this chapter focuses on the cause of litigation according to the description in the legal complaints that subjects handed in. In other words, the so-called “rapes” or “adultery” in this dissertation are defined mainly in accordance with the first complaint in the case record, about how the initial plaintiff described the conflicts or behaviors.

Legal complaints are the most voluminous documents preserved in the archives; more importantly, the complaints were drafted by plaintiffs and litigation masters rather than the staff working in the government. These complaints demonstrated the techniques and strategies

¹ Buxbaum, “Some Aspects of Civil Procedure and Practice at the Trial Level in Tanshui and Hsinchu from 1789 to 1895”; Huang, *Civil Justice in China*.

the plaintiffs and litigation masters adopted in litigations. Most texts exhibit consistent features; particularly, the litigation masters and the knowledge in their “secret guidebooks” had a large impact on the making of the documents. Parallels can be observed between the complaints produced in practice and the samples in guidebooks, indicating that people learned skills and techniques from the manuals. The strategies mentioned in this dissertation can be broadly divided into two types. The first was to exaggerate or even fabricate the real situation, to highlight the severity of the case and ensure the magistrates’ acceptance of complaints. Second, the plaintiffs or the litigation masters would employ a significant amount of moral discourse to demonstrate the innocence of plaintiffs and the despicability of the defendants, thus increasing the chances of winning.

Remarkably, the status of women, especially widows, was also part of these strategies. This chapter analyzes the role of women in litigation and argues that the presence of women in case records was highly influenced by how complaints were drafted and the litigation strategies the litigants used. Using the fictional and strategic narrative in the archives, this chapter will shed light on the discussion of women’s functions in the traditional Chinese legal system. The account of women in the local archive depended not solely on their performance in court but also on the intentional strategies and unconscious behaviors of others, especially their family members.

The first part of this chapter introduces the types of documents in the Ba County Archive and the relevant legal procedures, focusing on how the complaints were drafted and why people inserted fictional elements into their drafting of complaints. The second part examines the occupation and residence of the litigants. The last section sketches a general picture of women’s presence in litigation and explains the factors that might influence the presence of women in archives.

The Initial Stage: Complaints²

Philip Huang has summarized that, on average, a court case contains about seven sheets, typically including “the initial complaint, on which the magistrate usually wrote his reactions and instructions; the counter complaint if any, again with the magistrate’s comments; the original depositions of the plaintiff and defendant if those were taken; the report of the runners if any; the court summons if one was issued; the testimony of the litigants taken at the court session; the magistrate’s brief

² The division of the three stage is based on Huang’s work, see Huang, *Civil Justice in China*, 111–22.

written judgment, and the pledge by the litigants to accept that judgment.”³ In practice, some other types of documents existed in addition to these seven sheets; most files did not consist of only seven sheets.

Sometimes, the first page of a case record was the “cover.” Often, it was made by clerks on the basis of the first complaints. The papers usually included the cause of the case, the name and address of the plaintiff (or both parties), the starting date, the names of the runners who were responsible for the case, and whether the case had been closed (Appendix A).

Table 2.1 Types and Numbers of Documents

		Number
封面	Cover	422
状式	Plaints	1282
票、签	“Tickets” *	437
回禀	Reports from Runners	368
点名单	Register of Names **	677
口供	Testimony	433
禀状	Simple Plaints ***	543
结状	Pledge (by the litigants to accept that judgment)	127
文约/字据	Contracts as Evidence	118
清单	Lists of Lost Property	266
保/领	Bailing Documents	71
草稿	Drafts of Plaints	14
其他/不明	Unknown/ Others	76
	Total	4834

Source: BXA, “Women,” 1803 - 1873.

* Tickets: to investigate, summon witnesses, and/or arrest the defendants – also includes documents that sought the help of other county yamen and higher-level courts.

** Register of Names: all the names of people who should have participated in the court hearing.

*** Simple Plaints: usually added something to their former complaints, for example, asking to summon more people.

³ Huang, *Civil Justice in China*, 4. For a detailed discussion of the legal procedure in local archives, see Mark A. Allee, *Law and Local Society in Late Imperial China: Northern Taiwan in the Nineteenth Century* (Stanford, Calif.: Stanford University Press, 1994), 148–249.

In Qing China, a case typically began with people going to the court and handing in a plaint. The defendants might also submit contracts, marriage contracts, lists of lost property, and other documents as evidence simultaneously. As Table 2.1 exhibits, Ba County Archive is ripe with legal plaints, much more than any other kind of sheets. This part answers a series of questions about the plaints, including how the plaints looked and why they were bound to a certain format, who wrote the plaints, and the role of litigation masters in their drafting. Furthermore, it examines the contexts under which the plaints were constructed.

The plaints usually started with two characters, “to charge (somebody)” (具告, 具诉) or “to report (the case)” (具禀), sometimes “to reserve (the conflict in the record)” (具存). The clauses were a sweeping generalization of the purpose of the plaints. Following these characters, the name and personal information of the plaintiff were usually given. The main body of the plaints, always began with *zhu yu* 硃語/珠語, “red words” or “pearl words,” which refers to the four-character or eight-character phrase to show which kinds of complaints the plaintiff made.⁴ After explaining the details of conflicts in the main body, the plaintiff would usually list the names of the defendants (or those “being charged” 被告), witnesses (干証), and community leaders (約保 and 鄰佑).

Setting the Formula

In nineteenth-century China, if people wished to file a complaint, they had to write it on paper in a specific format (Appendix B).⁵ There are “instructions for completing the petition form” at the end to explain what kind of information the texts must include and which kinds of cases the magistrates could approve (or not).⁶

There are 1,284 plaints in 617 cases I have examined; most of them were written on the format. During the Qing, especially after the Yongzheng era, many local officials established a policy on the format of plaints, including mandating officially standardized

⁴ All the guidebooks for litigation masters only use the terms “硃語”, meaning “red words”, while in contemporary research, Chinese scholars generally use “珠語” (“pearl words”).

⁵ Sometimes, runners could report cases and arrest suspects. For example, a constable runner (buchai, 捕差) named Ran Gui found someone quarreling because they visited the same prostitute, then reported it to the court, see Q6-05-04509.

⁶ Allee, *Law and Local Society in Late Imperial China*, 153–54.

and printed sheets and limiting characters (one character per square).⁷ The number of cells on a sheet changed over time and depended on place. In Ba County, Karasawa noticed a downward trend in the number of characters on a plaint from 1797 to 1881. One was allowed to write 336 characters on a plaint in 1797, while in the late nineteenth century, there were only 160 squares for writing.⁸

As to the immediate cause of the formulation of the plaint format, more than one Qing official attributed the accuracy and concision of plaints to the regulations. For example, Huang Liuhuang mentioned the following in his book:

而狀式不立，傍有善唆慣訟之人，巧設虛局，並瞞代書；或代書雖據事以書，不限定字格，枝詞蔓語，反滋纏繞；故狀刊格眼三行、以一百四十四字為率。

Prescribed forms are used to prevent those who specialize in instigating lawsuits from offering false evidences to fool the court. Even if the scribe records only factual statements, complaints are apt to be too long and involved without some limitation on length. In a complaint the body of the plea should be limited to three lines with no more than 144 words in all.⁹

Another county magistrate, Zhang Woguan, recorded his order to promulgate a mandate to standardize in 1720 and explained why he did so:

本縣于每日收受詞狀一百數十餘紙，即焚膏披閱不少虛詞，究之實跡真情，十無一二。若不頒一定式，使知遵照奉行，何由訟獄得清、下情得達？¹⁰

As a county magistrate, every day I receive more than one hundred plaints, then [I must] read and make comments on them every day and night [...] there are many inauthentic words [in the plaints], when [I] try to investigate the truth, only one or two-tenths of words were describing the facts. If [I] do not issue an order for a standardized format of plaints, which [people] could obey and do accordingly, how is it possible to clear up lawsuits and hear people's voices?

A close examination of the two paragraphs above indicates that several shared concerns led to the litigation formula. County magistrates first complained about an excessive number of lawsuits and wordy complaints with misleading information. They

⁷ At Ming dynasty, the plaints already needed to follow litigation formula, see Susumu Fuma, "Litigation Masters and the Litigation System of Ming and Qing China," *International Journal of Asian Studies* 4, no. 1 (January 2007): 84–85.

⁸ Yasuhiko Karasawa, "Qingdai Suzhuang Jiqi Zhizuoche 清代的诉状及其制作者 [Legal Plaints and Their Writers in the Qing]," trans. Jie Niu, *Peking University Law Review* 10, no. 01 (2009): 29.

⁹ Liu-hung Huang, *A Complete Book Concerning Happiness and Benevolence: A Manual for Local Magistrates in Seventeenth-Century China*, trans. Chu Djang (Tucson, Arizona: University of Arizona Press, 1984), 253.

¹⁰ "頒設狀式等事"(Matters on Setting Legal Plaints Formats), in Woguan Zhang, *Fu Weng Ji Xing Ming 覆甕集 刑名* Penalty Theme in Jar Cover Collection (Shanghai: Shanghai Chinese Classics Publishing House, 2002), 432.

believed that those disorderly people who instigated others to initiate suits, *song shi* (訟師 litigation masters), were to be blamed for all the trouble, according to official records and personal jottings by elites.¹¹ In spite of the fact that they were stigmatized, litigation masters played an essential role in the litigation procedure in Qing.¹²

Litigation Strategies

Song shi (litigation masters), or a more pejorative term, *song gun* (訟棍, which can literally be translated into “litigation hooligan” or pettifogger), were males who made a living by writing legal complaints and offering legal service in imperial China; and most of them might have other professions, such as fortune-tellers, medicinal practitioners, teachers, or any jobs lower literati could do.¹³

Litigants, with the help of litigation masters, participated in the production of complaints. Compared with other documents entirely made and written by staff working in the court, the complaints were drafted from the point of Qing subjects and could show how they understood and made use of the legal system. The records I have checked did not give any clues about how the litigants knew the masters who offered legal services. However, a part of the answer is *xiejia* 歇家 “hotel” which not only provided accommodation during the Ming and Qing but also was deeply involved in the country’s administration, commerce, and legal practice.¹⁴ In general, *xiejia* could help the litigants complete the litigation procedures, such as by helping them write complaints (sometimes the managers of *xiejia* were

¹¹ The Confucian governance ideal of “no litigation” (*wusong* 无讼) was another reason that magistrates tried to prevent people initiating lawsuits. Confucius had stated that “In hearing litigations, I am like any other body. What is necessary, however, is to cause the people to have no litigations.” See James Legge, trans., *The Chinese Classics — Volume 1: Confucian Analects*, 2003, <https://www.gutenberg.org/ebooks/4094>. In the Confucian perception of the ideal world, everyone behaves properly with no need for enforcement, and disputes do not arise; therefore, there is no litigation, see Linxia Liang, *Delivering Justice in Qing China: Civil Trials in the Magistrate’s Court* (Oxford [etc.]: Oxford University Press, 2007), 249–50. The state of “no litigation” was the “ultimate” purpose of governors, Chü, *Law and Society in Traditional China*, 249.

¹² Melissa Macauley, *Social Power and Legal Culture: Litigation Masters in Late Imperial China* (Stanford, Calif.: Stanford University Press, 1998); Lung-Lung Hu, “Another Justice—Litigation Masters in the Chinese Legal Story,” *Ming Qing Yanjiu* 20, no. 1 (March 1, 2016): 165–91. As Huang concluded, the roots for the bad reputation of “litigation masters” was how the Qing state “conceptualized” them; the government had no choice but to blame the immoral litigation abusers for the strains on the court (rather than the magistrates who were “by official ideology superior men selected for their moral qualifications”), Huang, *Civil Justice in China*, 186.

¹³ Macauley, *Social Power and Legal Culture*, 144. Also in Fuma, “Litigation Masters and the Litigation System.”

¹⁴ Tieqiu Hu, *Mingqing Xiejia Yanjiu*, 明清歇家研究 [A Study on the Xiejia in Ming-Qing China] (Shanghai: Shanghai guji chubanshe, 2015), 636.

litigant masters) or helping them find a litigation master.¹⁵

According to Japanese historian Susumu Fuma, the functions of *song shi*, varied from case to case. Sometimes they might include handling the whole process of litigation for clients, but more frequently they would help litigants to draft complaints, devise strategies for litigants, and negotiate with clerks and runners.¹⁶

Here, strategy refers to the narrative tricks and techniques litigation masters and litigants used in drafting complaints to gain advantages in court. These strategies were necessary for litigants because the litigation system in Qing China was “textualism,” which means that the decisions of the magistrates on whether to accept or reject the cases depended entirely on the texts written on the legal complaints. The magistrates might not accept trivial disputes if the plaintiffs described the situations honestly. Local officials would make their disdainful positions about “petty disputes” (family matters, marriage, landed property, and financial contracts) clear:¹⁷

本县.....为此仰军民人等知悉：除真命逃盗大案，宜赴官司首告外，凡系户婚田土债负等事，止应自相理谕，不必轻于举词。若一时口角细微忿怨，断该情恕理遣。各安生业，保守身家，何得任性使刁自蹈法网？

I, the Magistrate, [...] wish all people, civilian as well as military, to know that except in capital cases involving homicide, fugitive slaves, and robbery, for which complaints must be filed immediately, all other cases—those involving family matters, marriage, landed property, and financial contracts—should be settled between the parties themselves, who should not file complaints without due consideration. As to disputes resulting from occasional altercations or minor squabbles, they should be settled without resorting to litigation. This will enable the disputants to pursue their livelihood peacefully and keep their family fortunes intact. Why should they become victims of clever schemers and fall into the clutches of the law?¹⁸

¹⁵ Terms used to describe and criticize litigant masters, such as “inciting litigation” and “colluding with corrupt officials,” which will be explained later, could also be used for *xiajia*, see Hu, 453–67.

¹⁶ For example, the plaintiffs had to negotiate with the clerks about the fees, and litigation masters could help with the process, see Fuma, “Litigation Masters and the Litigation System,” 90–101.

¹⁷ Huang, *Civil Justice in China*, 1.

¹⁸ Huo-lu Chang, “Proclamation on Suppressing Unscrupulous Pettifoggers and Arresting Instigators of Lawsuits,” in *A Complete Book Concerning Happiness and Benevolence: A Manual for Local Magistrates in Seventeenth-Century China*, Huang Liu-hung, trans. Chu Djang (Tucson, Arizona: University of Arizona Press, 1984), 261. This is a warning to prevent subjects from resorting to the court too often; however, there was no clear evidence in the archives to show that the magistrates usually rejected “petty disputes.” Only nine complaints were rejected among the 617 cases I have examined, and seven of them did not get approved because they had already got a judgement on the same issues from the magistrates before. According to Wu Peilin, the number of approved cases is much higher than those not approved, but it is possible that some complaints that did not get approved by the magistrates were not reserved in the archives, see Wu, *Qingdai xianyu*

From the perspective of the litigants, the first function of the litigation master and the first purpose of the strategies was to help construct the “petty disputes” into a plaint that would be accepted by the magistrate. However, the imperial bureaucracy did not appreciate the work of litigation masters, since it would increase their workload. Historians have found that there used to be a “linguistic uniformity of an official vituperative discourse” on litigation masters who were associated with a variety of questionable legal behavior, including “inciting litigation” (*jiaosuo cisong* 教唆詞訟), “colluding with corrupt officials” (*chuantong yadu* 串通衙蠹), and so on.¹⁹ The following extract is an imperial edict announced by the Jiaqing Emperor in 1820. This edict is an example of the official attitude toward the group of *song shi*:

民間訟牘繁多，最為閭閻之患。而無情之詞紛紛赴訴，則全由於訟棍為之包謀。此等刁惡之徒陷人取利，造作虛詞，捏砌重款。……將造謀誣控各情節嚴究得實，一切重罪悉以訟師當之，其被誘具控之人轉可量從寬減。

The multiplication of lawsuits among the people brings much harm to rural communities, and the machinations of the litigation tricksters are what produce all the inconsequential verbiage constantly going into these accusations. These rascally fellows entrap people for the sake of profit. They fabricate empty words and heap up false charges. [...] As soon as the litigation specialist has been arrested and brought to account, all the circumstances of how he planned and perpetrated the false accusation must be strictly investigated. Heavy punishment should always go to him, whereas the person tricked by him into presenting the accusation may be shown leniency.²⁰

According to the Jiaqing Emperor, if the officials could take measures to prevent evil litigation masters, there could be fewer lawsuits, and dutiful citizens would have a peaceful life. His opinion is hardly an exception in official discourse, but a part of formal law; legislators added statutes to restrict and repress litigation masters in the *Great Qing Code*. Among the twelve statutes under the article *Instigating Actions* (*jiaosuo cisong* 教唆詞訟), eleven were related to litigation masters and can be classified into three categories: to punish *song shi*, set up official scribes, and ban “secret pettifogger handbooks” (*song shi mi*

minshi jinfen yu falü zhixu kaocha, 230–31.

¹⁹ The only exception for the presence of litigation master, might be in in the vernacular novels, see Macauley, *Social Power and Legal Culture*, 19. For the phrases used to describe litigation masters, see Fuma, “Litigation Masters and the Litigation System,” 80.

²⁰ Bodde and Morris, *Law in Imperial China*, 416–17.

ben 訟師秘本).²¹ The Qing government intended to replace litigation masters with officially authorized scribes and hinder the circulation of “pettifogger” knowledge.

Although the Qing government assiduously attempted to denounce and ban litigation mastery, the state was unable to rule litigation masters out; instead, they became increasingly active in the procedure of lawsuits toward the end of the Qing dynasty.²² The central government issued an order to arrange official scribes in inner provinces around the country. To promote the services of official scribes, the standard terms at the end of complaints stated that “those [complaints] without the seal of official scribes will not be approved [by magistrates]” (无代书戳记者不閱).²³ In my research, I have found no single complaint written on format paper and submitted to the court without the seal.²⁴

On the one hand, it not mean that official scribes had already taken the place of litigation masters. As Karasawa argues, by delving into 3,000 complaints in the Danshui-Xinzhu Archives, more than 80% of complaints were drafted by litigants themselves or any literate persons offering legal assistance.²⁵ On the other hand 对大部分诉状来说，我们无法判断其到底出自于代书还是讼师的手笔，但这可能也不是最关键的问题，重要的大部分诉状的书写确实体现了除了策略性，而素质参差不齐可以解释为给了代书（讼师）更多钱就会更加用心的为顾客出谋划策。In many complaints, there was not enough evidence on who drafted the complaints, litigation masters or scribes, which although is not a key part of the issues. It is important to note that the complaints indeed contain strategies, The varying quality can be explained by the fact that paying more money to the scribe (or litigation master) results in more diligent and thoughtful advice for the client.

²¹ Pengsheng Chiu, “Shiba shiji qingzhengfu xiuding ‘jiao suo ci song’ lü li xia de cha na songshi shijian 十八世紀清政府修訂〈教唆詞訟〉律例下的查拿訟師事件 [Regulating Litigation Masters in Eighteenth-Century China],” *Bulletin of the Institute of History and Philology Academia Sinica* 97, no. 4 (2008): 646–47. For a short introduction to *songshi miben*, see Pierre-Étienne Will, *Handbooks and Anthologies for Officials in Imperial China (2 Vols): A Descriptive and Critical Bibliography* (Leiden; Boston: Brill, 2020), LVI–LVII.

²² Fuma, “Litigation Masters and the Litigation System,” 108.

²³ Yuxiang Yao and Yangshan Hu, eds., *Da Qing lüli hui tong xin zuan* 大清律例會通新纂 [New Comprehensive Compilation of the Great Qing Code], reprint. (Taipei: Wenhai chubanshe, 1964), 2923–24.

²⁴ According to Wu Peilin, a scholar who has read more than 10,000 complaints from Nanbu archives, there are no complaints on standard format submitted without a seal. Wu also notes that there were less than 40 pieces which were accepted but not presented in format papers or without an official seal, see Wu, *Qingdai xianyu minshi jiu fen yu falü zhixu kaocha*, 261.

²⁵ Karasawa, “Qingdai Suzhuang Jiqi Zhizuoze,” 33.

In addition to the presence of pettifoggers, their secret handbooks and litigation knowledge also functioned in legal practice. Fuma sums up three fundamental components in these manuals: the matters that need special attention when contracting for lawsuits and writing legal complaints, the model or samples of legal documents lodged with the court, and the terms and phrases for these documents.²⁶ The contents maintain a high degree of similarity to all secret books. As Fuma asserts, almost all the guidebooks for litigation masters published in the Qing era had the same origin and merely made minor and slight alterations.²⁷ Moreover, although the Qianlong Emperor outlawed secret books in 1742, several versions were nonetheless published in the nineteenth century.²⁸

The secret handbooks that aimed to teach people to write legal complaints and distribute litigation knowledge did not comply with the ideal of “no litigation.” Therefore, the category of books became forbidden, and the government attempted to stop the diffusion of knowledge. However, the “work ethic” in the manuals was not in contravention of the official discourse. For instance, the handbooks told the users that they should not initiate or urge others to involve in lawsuits lightly and arbitrarily.²⁹ This advice contradicts the traditional image of the litigation masters; instead, the instruction corresponds to the ideal of governance, which expects people to engage in litigation as little as possible.

In the 617 cases I have examined, only ten mentioned the influence of litigation masters, and none gave a description of the behavior of “litigation hooligans” in detail. The complaints simply said that “Tu Wanchun counted on him as a litigation hooligan in Jiangjin County, bullied and falsely accused me,” or “the litigation hooligan, Wang Dashi instigated Zhuo Yisheng to initiate a lawsuit.”³⁰ Although the complaints gave little

²⁶ Susumu Fuma, “Song shi mi ben Xiaocao yibi de chuxian 讼师秘本《萧曹疑笔》的出现 [The emergence of the secret pettifogger handbook Xiaocao yibi],” in *Riben xuezhe kaozheng zhongguo fazhishi zhongyao chengguo xuanyi (Mingqing juan)* 日本学者考证中国法制史重要成果选译·明清卷 (Translation of selected important Japanese works on Chinese legal history [on the Ming-Qing periods]) ed. Hiroaki Terada, trans. Minqin Zheng, (Beijing: Zhonghua Book Company, 2016), 467–75.

²⁷ Fuma, “*Song shi mi ben Xiaocao yibi de chuxian*”, 490.

²⁸ We can see the PDF version of such secret books, for example, “Sanchi Dingheng Fajia Xinshu 三尺定衡法官新書, 4 j. [A New Book for Legalists: Deciding on the Evaluation of Cases According to the Law] | LSC,” accessed July 22, 2020, printed in 1825. http://lsc.chineselegalculture.org/Documents/E-Library/Magistrates_handbooks_pettifoggers?ID=647.

²⁹ Susumu Fuma, “Songshi Miben de Shijie 讼师秘本的世界 [The World of the Secret Handbook of Litigation Masters],” trans. Li Li, *Peking University Law Review* 11, no. 01 (2010): 214–20.

³⁰ Q6-11-09444, Q6-20-05428. As Zhou Guangyuan mentioned in the research on Danshui-Xinzhu archives,

information about the litigation masters, the masters' knowledge must have had a deep impact on the writing of legal complaints in the records, and Chapter Four shows a vivid example.

First Step of Strategies: Choosing Accusations

The first thing the litigation masters and their clients would decide is which kind of charges the plaintiffs were going to use in the lawsuits. Since “petty disputes” were not welcomed by magistrates, the litigants were inclined to exaggerate their complaints, which could result in false accusations; it is difficult to distinguish exaggeration from false accusations and impossible to know which parties – the plaintiffs, the defendants, or both – had lied. The phenomenon of plaintiffs telling contrasting stories occurred everywhere in the nineteenth-century Ba County Archive, which means that at least one party was stating something unreal or both parties contained unreal factors in their complaints.

Examples of contrasting stories, which indicate where people acquired the litigation strategy of choosing accusations, were common in the secret handbooks of litigation masters. Usually, these guidebooks have two kinds of legal complaints: *gao* 告 (to initiate a lawsuit) and *su* 訴 (to respond to the first complaint). For instance, there is one sample with the title “to sue for compelling my wife to jump into the water” in the manual, where the first complaint complained about Tian Yilang, who tried to sexually harass a woman twice but failed, then beat her to injury and forced her to jump into the water. However, the second complaint from the counterparty told the magistrate that the woman fell into the water accidentally when her husband asked her to rob Tian Yilang's home.³¹

The situations where the two parties told contrasting stories were also common in legal practice, for instance:

告狀人：陳福星

Plaintiff: Chen Fuxing

為裝奸勒索……姪陳大鵬在麻柳嘴□訓蒙。本月十六挨晚，有蚊姪連房賣糧之李光祿，夜靜□忽染疾病，叫蚊姪看脉。光祿忽將房門閤鎖，…詐稱蚊姪與伊妻蔣氏有姦，不由分說，將蚊姪大鵬□氏捆綁棒毆，……光祿要銀□□方休。

To sue for extortion and blackmail by fabricating a rape case, [...] My nephew Chen Dapeng is

because of the underground nature of the profession, the “case records contain no information about who these men (litigation masters) were, what they usually did in litigation, or how they were paid by their clients,” see Guangyuan Zhou, “Beneath the Law: Chinese Local Legal Culture during the Qing Dynasty” (PhD diss., University of California, Los Angeles, 1995), 212.

³¹ *San chi ding heng fa jia xin shu*, vol. 1, “illicit sex”.

teaching young children in Maliuzui. In the late afternoon on the 16th day of this month, his neighbor Li Guanglu, who makes a living from the cereals business, [...] suddenly became very sick and asked my nephew to feel his pulse.³² [When my nephew came into his room], Guanglu suddenly locked the door, deceitfully claimed my nephew had been coerced his wife, Jiang Shi into engaging in illicit sexual intercourse. Without giving him a chance to explain, Guanglu and Jiang's uncle tied up my nephew and beat him. [...] Guanglu insists on money to close the case.

告狀人：李光祿

Plaintiff: Li Guanglu

為欺姦捏誣.....幫人推船日。前月十六日，蚊往河下問理生意。是夜，蚊同架缸蔣洪發轉歸。撞遇隔壁教書陳大鵬，在家欺姦蚊妻蔣氏。蚊當將陳大鵬扭獲，投經房主.....

To sue for adultery and false accusation. [...] I make a living by helping others to push boats. On the 16th day of last month, I went to the downstream area to do business. That night, I returned home by the same boat with Jiang Hongfa. Unexpectedly, I found the teacher Chen Dapeng, who lives next to me, coercing my wife Jiang Shi into engaging in illicit sexual intercourse. So, I seized Chen Dapeng and turned him over to the landlord.

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In the end, the magistrate closed the case on the grounds of a complaint submitted by three community leaders. According to them, Guanglu and Hongfa first bickered and then had a grudge against each other (“因口角微嫌起衅”). It was unclear if both sides had exaggerated or even falsified their conflicts or if one party's account was closer to the truth. Nevertheless, what really matters is that the two parties—the original plaintiff and the defendant—told two contrasting stories. The legal complaints produced in practice were almost identical to the pattern presented in the secret books. That is to say, the actions and the events in the pleadings were narrated under the influence of a series of exaggerations or false accusations.

From this perspective, the plaintiffs who made false accusations were not dishonest or cunning. On the contrary, fanciful or exaggerated charges were “a strategy deployed by a range of individuals to bring their complaints to the court for remediation.”³⁴ Additionally, when considering this case, the old and negative impression of litigation masters, in which they exaggerated conflicts and framed others, was not devoid of truth.

³² Feeling the pulse means pulse diagnosis, a traditional Chinese medical method to identify diseases.

³³ Q6-11-08677.

³⁴ Quinn Javers, “The Logic of Lies: False Accusation and Legal Culture in Late Qing Sichuan,” *Late Imperial China* 35, no. 2 (December 29, 2014): 27.

Litigation masters had to be proficient in using tactics and techniques to help their clients by adding fictional elements into the complaints.

The presence of “false accusation” complaints in the records presents a challenge for historians regarding classifying cases in local legal archives. For instance, when discussing the Chen Fuxing case above, should it be categorized as a “rape” case? Without a systematic standard for categorizing them, similar and common situations created problems in sorting cases.³⁵ Sometimes the records included the outcome of the case. In Fuxing’s case, the community leaders concluded that there was no illicit sex. However, many records did not preserve the judgment by the magistrates or the agreement the two parties signed, so this method for categorizing cannot solely be relied upon.

In order to combat this problem, I use the words the litigants adopted in the complaints to categorize cases.³⁶ In other words, this section and the whole dissertation are trying to discuss the lawsuits in terms of the claim the parties chose to sue on. Following this approach, some other valuable questions wait for further research: which accusation was a litigant inclined to make in Qing Ba County? Why did he or she make such a decision? In litigation related to women, I seek to understand why ordinary people and litigation masters chose these claims and which kinds of strategies they deployed to achieve their goals.

Table 2.2 displays my findings of the types of accusations in the 617 cases.³⁷ By extracting and analyzing the initial accusation, especially *zhu yu* of the first complaints, which the litigants and their counselors condensed their accusations into, I classified the cases. If *zhu yu* cannot provide an accusation or contains more than one accusation, I relied on their

³⁵ There is some information in the archives that might help us to do the categorization. For example, there sometimes is a note on the top of the complaint, like “marriage” (婚姻), abduction (拐卖) etc., however, this is not common. Another way scholars used to

³⁶ Scholars have to invent their own way to do classification. I take inspiration from Sommer when using the words from the archives to make Table 2.2. By inspecting Qing legal case records and early twentieth-century surveys of popular customs, Sommer uses a term found in the documents to generalize a type of cases, “*zhao fu yang fu*” (招夫养夫, “getting a husband to support a husband”). Sommer, “Making Sex Work,” 30.

³⁷ In this dissertation, I use “accusation” because the meaning of accusation, “a statement saying that you think a person is guilty of doing something wrong, especially of committing a crime,” which perfectly fits in the nature of legal complaints in Qing China, “Accusation Noun - Definition, Pictures, Pronunciation and Usage Notes | Oxford Advanced American Dictionary at OxfordLearnersDictionaries.Com,” accessed May 19, 2023, https://www.oxfordlearnersdictionaries.com/definition/american_english/accusation.

own words in other parts of the documents to classify the types of cases. Therefore, Table 2.2 shows categories of “accusations,” not categories of “crimes.”

Table 2.2 Types of Cases by Accusation

	拐逃	Abduction and runaway	206	33.4%
	人口买卖	Human (women) trafficking	10	1.6%
Sexual offenses	霸占	Forcibly taking possession of a woman	31	5.0%
	强奸	Coerced sexual intercourse	57	9.2%
	通奸	Adultery	57	9.2%
	调戏	Noncoercive sexual proposition	15	2.4%
Marital disputes ³⁸	拆嫁	Usually, parents making their daughter leave her husband and marry someone else	11	1.8%
	嫁卖	Sell her off in marriage, mainly a husband selling his wife	61	9.9%
	套娶	Marriage by deception	10	1.6%
	婚姻	Breaking off an engagement and forced marriage	34	5.5%
	家庭纠纷	Family disputes, including internal violence, conflicts between parents and children, fights between wife and concubine, etc.	41	6.6%
	卖娼, 嫖娼	Prostitution	59	9.6%
	其他	Other	25	4.1%
		Total	617	

Source: BXA, “Women,” 1803 - 1873.

According to Table 2.2, “abductions and runaways” makes up one-third of all accusations, much more than all other categories. Sexual offenses, including rape, adultery, forcibly taking possession of a woman, and noncoercive sexual proposition, also account for over 25%.³⁹ Classifying different accusations related to marriage is a tricky task. In this dissertation, if in the first plaint of the case, the writer stressed marriage, especially the Chinese characters 嫁/娶/婚, the case was defined as a marital dispute; these kinds of

³⁸ The two categories, sexual offenses and marital disputes are created for the reason that subcategories under marital disputes or sexual offenses might overlap, and the category could give an overview of how many conflicts included marital or sexual factors. For instance the though some cases were tagged as “coerced sexual intercourse” or “rape”, but the records did not include any details about whether the rape was an attempt or had completed.

³⁹ For the definition of sexual offenses, see Chapter One and Four.

cases constitute another 25% of all accusations. Although I give general explanations of marriage disputes in Table 2.2, the terms were not used the terms in a consistent way.

It is noteworthy that abduction and rape in the *Great Qing Code* are classified as “serious crimes.” The different articles in the code give specific instructions for different types of abduction. In general, the penalty for criminals who committed abduction shall be higher than penal servitude; In cases of rape, the code states that the woman shall not be punished, but the man who commits rape shall be strangled after the assizes.⁴⁰ For serious crimes, the magistrates should report abduction cases to higher officials.⁴¹

Since most county magistrates did not hope that too many “trivial matters” cases would come before the court, the litigants and litigation masters had to adopt the strategy of false accusation and exaggeration. They, thus, often chose the charge of severe crimes and made rape and abduction so prevailing in the records.

Second Step of Strategies: Constructing Plots

In addition to choosing accusations, the litigants and litigation masters had to construct corresponding plots, which inevitably also contained fictional elements. Here “fiction” does not exclusively refer to something fake; according to Davis, the term “fictional” was not only used to indicate something false or untrue but stressed the “narrative skills that formulate, embody, and construct elements in the story.”⁴² Therefore, the “fictional” in this dissertation is regarded as a necessary part of litigation strategies, which were “choices of language, detail, and order,” and the primary purpose of strategies was to “present an account that seems to both writer and reader true, real, meaningful, and/or explanatory.”⁴³

The legal complaints in Qing local archives are, to a certain extent, similar to “letters of remission” in sixteenth-century France. Both are “one of the best sources of relatively uninterrupted narrative from the lips of the lower orders,” and both supplicants in France and plaintiffs in Qing China took part “in shaping a story.” The litigants were expected to

⁴⁰ Jones, *The Great Qing Code*, 257–59, 347–48. DLCY, 730-731.

⁴¹ This is the system of “judicial review,” to further investigate those serious crimes, or “major cases” where the offenders should receive punishment of penal servitude, exile or death penalty. See Silu Na, *Qingdai zhongyang sifa shenpan zhidu*, 清代中央司法审判制度 [The Central Judiciary of the Qing Dynasty] (Taipei: Wenshizhe chubans, 1992), 193–294. Also see Bodde and Morris, *Law in Imperial China*, 113–22. However, very few cases in local archives had left the records to be reported and solved beyond the county level.

⁴² Davis, *Fiction in the Archives*; Yasuhiko Karasawa, “Between Oral and Written Cultures: Buddhist Monks in Qing Legal Complaints,” in *Writing and Law in Late Imperial China: Crime, Conflict, and Judgment*, ed. Robert E. Hegel and Katherine Carlitz (Seattle and London: University of Washington Press, 2017), 67.

⁴³ Davis, *Fiction in the Archives*, 3.

give oral testimony before the judge, which should conform to their written complaints.⁴⁴ Current research proves that legal documents in Ba County cannot exclude the “fictive” or “literary” quality. Karasawa argues that the making of legal complaints adopted narrative skills and fictional elements to convince their audiences, the magistrates, and their secretaries. Therefore, “a fictional stereotype was not only used as a narrative strategy but also served to shape the representation of reality in complaints.”⁴⁵

Borrowing narrative skills and plots was not rare in cases related to women. The following extract is an example of how fictional elements influenced the writing of legal complaints:

Plaintiff: Zhou Hu Shi 周胡氏

氏夫周文海，在毛家場開站房生理，積銀數百兩，又開漕房屠牛。氏夫不守本分，妄為肆嫖。先與氏四胞兄之妻胡石氏通姦，謀氏兄斃命。夫娶石氏為妾，今已三載。可憐氏夫嫌氏如犬，棄之不問；夫與石氏如同膠漆。三年毆氏，拴捆多次，棍棒腳尖拳頭（毆）氏背千餘，幾次斃命。

My husband, Zhou Wenhai, accumulated hundreds of taels of silver by managing the winery and then setting up a butcher shop for beef.⁴⁶ However, he does not act properly and often goes whoring without restraint. He committed adultery with the wife of my fourth elder brother, Hu Shi Shi, and conspired with her to murder my brother. Then, my husband took Hu Shi Shi as a concubine, and it has been three years now. I am in a pitiable state; my husband loathes me like a dog and neither cares to inquire about me nor hears my pleas. My husband and Shi Shi have been firmly attached to each other for three years. During this time, I have been tied up and beaten with sticks, clubs, fists, and feet many times. I have nearly died several times.⁴⁷

All Chinese people, even those who are illiterate, can recognize the prototype of this story: Pan Jianlian, a malicious and lascivious woman, has an affair with Ximen Qing, who

⁴⁴ Natalie Zemon Davis, *Fiction in the Archives: Pardon Tales and Their Tellers in Sixteenth-Century France* (Stanford University Press, 1987), 5–21. For the consistency and inconsistency between the litigants voiced in complaints and testimonies, please see Peilin Wu, “Qingdai zhonghouqi zhouxian yamen ‘xugong’ de wenshu zhizuo: yi Nanbu Dang’an wei zhongxin 清代中后期州县衙门‘叙供’的文书制作——以《南部档案》为中心 [The Composition of Records of Oral Testimony (Xugong) in County Yamen in the Late Qing: Centering on the Nanbu County Archive],” *Historical Research*, no. 5 (2017): 68–88.

⁴⁵ Karasawa, “Between Oral and Written Cultures,” 74.

⁴⁶ The original words are “開漕房屠牛” (*kai cao fang tu niu*), however it is not clear what “*cao fang*” means here, usually “*cao 漕*” means “canal,” and it seems not fit well here. It is likely the wrong character for “槽,” “槽房” means winery in Sichuan dialect, see Shenyi Zhang and Guotai Ji, *Shu Fangyan*, 《蜀方言》疏证补 [The Dialect in Sichuan] (Chengdu: Bashu Shushe, 2007), 199–200.

⁴⁷ Q6-05-04306.

is a wealthy businessman but does not act properly; Pan's husband, Wu Da, found out about their adultery, so his lewd wife conspires with her adulterer to murder her husband. This story originated from *Shui Hu Zhuan* (水滸傳, *Water Margin* or *Outlaws of the Marsh*), one of the best-known full-length Chinese traditional vernacular fictions. The story is so famous that an unknown author wrote *Jin Ping Mei* (金瓶梅, *The Plum in the Golden Vase*), the most influential “erotic” novel in Chinese history, which was a “fan fiction” based on *Water Margin*. *Jin Ping Mei* begins with the story of Pan Jinlian and Ximen Qing but constructs a different ending where Pan marries her paramour as a concubine.⁴⁸ In the legal plaint, the woman Shi Shi played the same role as Pan Jinlian; the behavior of the plaintiff's husband, Zhou Wenhai, was virtually identical to Ximen Qing, and the plaintiff's brother was also murdered because of the affairs of his wife.

A more prominent approach to constructing plots is to use a composite of socially recognized elements to draft plaints. In this dissertation, I name the common elements and their combinations “representational reality,” which refers to the fact that they are frequently adopted because they are a highly generalized version of social phenomena and does not mean that the statements in the plaints conform to *truth*.⁴⁹ Such plots include but are not limited to, domestic violence against young women, conflicts between mothers-in-law and daughters-in-law, and complaints about poverty. These plots are the focus of the discussion in the following chapters.

End of Plaints: Moral Discourse

Today when a lawyer writes a civil complaint in China, the documents must include a paragraph “based on [which articles in law] the plaintiff will ask for [what].” However, the situations in the plaints of the Qing were very different from today's situations. No plaint among the 617 cases directly cites a legal article. The samples in the secret pettifogger handbooks sometimes include phrases that try to seek the endorsement of codified law, such as “there is a clear regulation in the code,” “the code forbids such marriage,” “it does not conform to the statute,” and so on.⁵⁰ But

⁴⁸ David Tod Roy, trans., *The Plum in the Golden Vase, Volume One: The Gathering* (Princeton, N.J.: Princeton University Press, 1993).

⁴⁹ The use of “representational reality” is also inspired by You Chenjun's work, see Chenjun You, *Jusong Fenyun: Qingdai de “Jiansong Zhibeng” Huayun Jiqi Biaodaxing Shijian* 聚讼纷纭: 清代的“健讼之风”话语及其表达性现实 (Beijing: Peking University Press, 2022), 17–18.

⁵⁰ “律有明載,” in Jue fei shan ren, “Er Bi Ken Qing 覺非山人《珥筆肯綮》點校本 [Punctuating and Annotating Late Ming Litigation-Master Handbook Er Bi Ken Ching],” ed. Chiu Pengsheng, *Journal of Ming Studies*, no. 13 (2009): 260; “律禁成婚,” 新刻法家蕭曹雪案鳴冤律 [*The Legalists Xiao's and Cao's Painstaking Study of the Voicing of Injustice*,

even these vague terms seldom appeared in the complaints.⁵¹

The writers of complaints usually mentioned neither their legal basis nor a specific litigation request; instead, they would show moral concerns about the unruly behaviors in their statements. Japanese historian Hiroaki Terada gives the “typical example” for complaints: “The respondent, relying on his wealth and physical power, has oppressed my weak self. He has pushed aside reason and has entered upon my domain. If this were to be allowed, it would be an outrage against the law and against heaven. I entreat your worship, the exceedingly fair and just governor, to discipline the respondent and instill in him the fear of heaven.”⁵² Terada thinks the behaviors of both the applicants and the administrators who were going to deal with the cases could be understood “in terms of reprimanding oppressive behavior and restoring the oppressed applicant to his rightful position.” Terada uses the terms “grievance” (冤抑 or 冤屈) and “to redress grievance” (*shenyuan* 申冤) to condense the narrative model of petitions in Qing legal procedure. The “grievance” thus was expressed as “Do not use the strength of your position to oppress the weak” (勿恃強凌弱).

In addition to the general demand “to summon and interrogate (defendants, witnesses, and other related people)” (喚訊究 *huan xun jiu*), there was indeed a series of terms to air grievances that can be found in both actual complaints and *song shi mi ben*, such as “to drive out the rascals and protect good people” (除害安良) and “to dispel my grievance and destroy evils” (撥冤杜害).⁵³ Sometimes the demands in the complaints also stressed the public order and social impact, “to redress the (bad) public morality” (以正風化 or 以正倫化), “to deter the immoral atmosphere (以儆刁風).⁵⁴

Newly Carved], in Jiahong Sun and Rufu Gong, eds., *Ming qing songshi miben bazhong huikan xia* 明清訟師秘本八種匯刊 (下), vol. 12, *Lidai zhenxi sifa wenxian* (Beijing: Social Sciences Academic Press, 2012), 464; Fuma, “songshi miben de shijie,” 225..

⁵¹ I found them three times in my archival research.

⁵² Hiroaki Terada, “The Crowded Train Model: The Concept of Society and the Maintenance of Order in Ming and Qing Dynasty China,” in *In Law in the Changing World: Asian Alternatives*, ed. Morigiwa Yasumoto (Stuttgart: Franz Steiner Verlag, 1998), 103.

⁵³ “除害安良,” in Q6-11-08672; “撥冤杜害,” see Jianpeng Deng, “Songshi miben yu Qingdai suzhuang de fengge: yi Huangyan susong dang’an wei kaocha zhongxin 訟師秘本与清代诉状的风格——以‘黄岩诉讼档案’为考察中心 [The Secret Handbooks of Litigation Masters and the Style of Legal Complaints in Qing: Focus on the Huangyan Archives],” *Zhejiang Social Sciences*, no. 4 (2005): 73.

⁵⁴ Q6-01-108817

These terms used as a plea for judgment directly presented the pursuit of moral order and coincided with official representations defined by Philip Huang. He claims that when dealing with “civil” issues, the Qing code and traditional Chinese political discourse mainly contained “moralizing words,” stressing the “ideological justifications.”⁵⁵ As Huang stresses, Qing legal culture must be understood “in the light of a system that encompassed paradoxical representation and practice.”⁵⁶ In his discussion, the case records at the county level were mainly a manifestation of legal practice. However, the representation and practice in this view can be further elaborated. For example, Sommer explores the meaning of “legal practice,” illustrating that legal practice in Qing China distinguished between local and central government. His comparison between attitudes to wife-selling cases of officials from different levels of government can highlight “the two very different modes of adjudication practiced in those courts of first instance”; usually the magistrates would deal with wife-selling cases “flexibly and expediently,” but if the case came into the system of judicial review, the Qing code would be the main basis for adjudications.⁵⁷

This dissertation, however, tries to relocate the notion of “official representation.” Local judicial archives contain information far beyond simple practice. In general, all records in the archives rely on words and texts; representation and practice are never separable. This is not a new finding – Huang already points out that “the case records allow us to look at the entire process stretching from representation to action, and to ask about the congruences and disjunctions between them.”⁵⁸ Yet, most scholars rarely analyze the local archives in terms of representation. Then, did the textual material produced amid the interaction between the people and local government differ significantly from the contexts in the files promulgated by the central government? Based on the preliminary analysis of prayer words in the complaints, the distinction between official and local (more precisely semi-official) discourse might be relatively small, and highly moralized language abounded in the documents produced by common people. They stressed the need “to redress the (bad) public morality” and “deter the immoral atmosphere” to locate their own interests into a rightful realm. A preliminary observation is that the complaints produced in legal practice actively used the moral discourse within the realm of official representation. Exaggeration and false accusations were everywhere in these texts with moral and ideological packaging.

⁵⁵ Huang, *Civil Justice in China*, 2–3.

⁵⁶ Huang, 3.

⁵⁷ Sommer, *Polyandry and Wife-Selling in Qing Dynasty China*, 308–75.

⁵⁸ Huang, *Civil Justice in China*, 3.

As a part of the strategy, the repetition of moralizing contexts was the best disguise in their writing.

The vague writing style at the end of complaints also presented a significant challenge for researchers, as it became difficult to precisely determine the primary purpose of litigants; the writers of complaints almost never clearly put their aims directly; thus, the discussion about the objects of litigants must be based on the analysis on the main body of complaints. In cases related to women, this objective generally revolved around either challenging or validating the family's ownership of females or utilizing litigation as a means to accelerate mediation and resolve disputes that were likely rooted in financial matters.⁵⁹

Middle Stage: Summon and Mediation

After litigants handed in their complaints, the litigation would come to the middle stage. The magistrates and their secretaries, as mentioned in the Introduction, would first look through the documents. The magistrates would generally give their opinions at the end of complaints: approved (or not).⁶⁰ If approved, they would give orders to summon and interrogate both defendants and witnesses. Then or meanwhile, the counterparty would possibly submit another complaint in the same variety of format paper. Again, the magistrate would give his instructions.

In the next step, the magistrate would sign and give a *piao* (票, “ticket”) to one or two runners to investigate and summon witnesses and defendants. For cases where someone had been hurt or was dead, the magistrate would also give an order to a coroner to check the injury or the body. There was also a format for tickets and some standard sentences. Since the runners had a bad reputation at that time, there was a sentence to admonish them: “The runners are forbidden to extort with this ticket, to make troubles and delay, if any, [you will] be punished harshly.”

When the runners finished their work, they would write a report to the magistrates about what they had discovered and whether they had found witnesses and successfully arrested defendants. In around 15% of cases in my sources, a file only includes a complaint, ticket, and/or runner's report. It can be said that many cases “ended” at this stage, since it is not possible to know what happened next.

⁵⁹ About how the litigation could help to solve the disputes by mediation, see Huang, 119, 185, 190–92.

⁶⁰ According to some officials' personal notes in the Qing, it seems that they would “approve” complaints in very strict situations, but in current archives we see that there are many more “approved” complaints than “not approved.” One explanation for this is that “not approved” complaints would not be preserved in the archives, see Peilin Wu, *Qingdai xianyu minshi jinfen yu falü zhixu kaocha*, 261.

Sometimes the runners would report that they could not find the witnesses or that the defendants had already escaped. The kind of people who were more likely to appear in court seemed to follow a geographical pattern. David C. Buxbaum, a pioneer scholar writing on the history of civil law in the nineteenth century by studying Danshui-Xinzhu archives in northern Taiwan, found that only 20% of cases in which the plaintiff resided 71 to 80*li* (24 to 27 miles) from the downtown were litigated until the matter was determined. However, 60% of the civil cases where the plaintiff lived within the city were litigated to a result.⁶¹ The number might imply that the runners had difficulty reaching remote areas, the parties or witnesses tried to avoid trekking, or in general, distance and geography dramatically affected the degree of participation in litigation.

The duration of the middle stage in different cases could fluctuate dramatically. If the plaintiffs, defendants, and witnesses were already in the town or easily found by runners, the case might go to the final trial stage within 10 days.⁶² But more often, plaintiffs and defendants, even sometimes witnesses, would submit additional documents to add more information. These documents might be made with the format of complaints, but they could also be written on a piece of paper with only vertical lines, which I name in Table 2.1 as “simple complaint.” If the magistrates felt that the additional information was important, they would sign another ticket to continue investigating or summon more people. Then the stage would be repeated and extended indefinitely. Sometimes the suspects were incarcerated before they were finally convicted and might have relatives, community leaders, or even hotel managers to bail them out.⁶³ Therefore, some bailing documents remained in the archives.⁶⁴

Most lawsuits would not come to the “final stage.” Approximately 50 cases in my collection were solved in the “third realm,” as Philip Huang defined it: the intermediate space between community mediation and court adjudication; upon filing a complaint, community mediators would generally redouble their efforts to resolve a dispute.⁶⁵ In

⁶¹ Buxbaum, “Some Aspects of Civil Procedure and Practice at the Trial Level in Tanshui and Hsinchu from 1789 to 1895,” 274.

⁶² The case could even be closed in the same day as the complaints were submitted, see Q6-11-09207. For a general circulation of the duration of cases, see Buxbaum, 269.

⁶³ For example, in Q6-05-04515 two managers of a hotel bailed out a person in the jail.

⁶⁴ This was not “bail” by modern standards, as “bail” here only required a promise, not a payment; there was never a mention of financial proof.

⁶⁵ Philip C. C. Huang, “Editor’s Introduction,” in *The History and Theory of Legal Practice in China*, ed. Kathryn Bernhardt and Philip C. C. Huang (Leiden; Boston: Brill, 2014), 9.

practice, the “third realm” worked in this way: the head of the community, such as *kezhang*, *paishou*, and *xiangbao*, would submit a plaint that aimed to “beg [the magistrate] to stop the conflict peacefully” (懇恩息訴 *ken en xi su*). The plaint would clarify the fact that they investigated and provided a solution for the conflict. Usually, the magistrate would agree to the solution presented by the community leader.

Final stage: Court Session

If the case reached the stage of the court hearing, there would first be a “register of names,” a paper indicating whether all persons, including plaintiffs, defendants, and witnesses, were present. Then the two parties and the witnesses would give their testimony. The “testimony” documents were not faithful accounts of people’s original words. As many scholars have noted, the producers would polish the testimony for different purposes.⁶⁶

Under most circumstances, the magistrates would deliver a judgment. Their decisions did not necessarily include a confirmed version of the conflicts and punishment but would always have an arrangement for the people involved, especially regarding the women’s future, such as who their husbands should be.

Whether the case was solved after the court hearing or in the “third realm,” the case would be ended in the files with several official sheets (*jie zhuang* 結狀 ending settlement). Both parties and relevant persons needed to sign one pledge to claim that they were willing to accept the solution and would no longer make trouble. Different parties might hand in plaints repeatedly, and the summons process and court hearing could also be repeated. If so, the case record would become tedious.⁶⁷

⁶⁶ For a good overview of the works on “making” archives in Chinese legal history, see Chenjun You, “Piping yu zhengming: sifa dang’an zhi yu zhongguo falüshi yanjiu de xueshu jiazhi 批评与正名:司法档案之于中国法律史研究的学术价值 [Criticisms and Clarifications: A Review of the Academic Value of Judicial Archives in the Study of Chinese Legal History],” *Journal of Sichuan University (Social Science Edition)* 226, no. 01 (2020): 119–30; Wu, “Qingdai zhonghouqi zhouxian yamen ‘xugong’ de wenshu zhizuo”; Zhengzhen Du, *Jin Dai Shan Qu She Hui de Xi Guan, Qi Yue He Quan Li: Longquan Si Fa Dang an de She Hui Shi Yan Jiu*, 近代山区社会的习惯、契约和权利: 龙泉司法档案的社会史研究 [Custom, Contract and Right in Modern Mountain Area: A Social Historical Research on Longquan Legal Archives] (Beijing: Zhonghua Book Company, 2018); Constant, “Thinking With Models”; Thomas Buoye, “Suddenly Murderous Intent Arose: Bureaucratization and Benevolence in Eighteenth-Century Qing Homicide Reports,” *Late Imperial China* 16, no. 2 (1995): 62–97; Li-fang LI, “Zui Yu Fa: You Xingke Tiben Xilun Qingdai Xing’an Shuxie 罪與罰: 由刑科題本析論清代刑案書寫 [Crime and Punishment: Analyzing the Writing Up of Criminal Cases Based on the Xingke Tiben],” *Journal for Legal History Studies*, no. 37 (December 1, 2020): 323–55.

⁶⁷ The section only talks about the legal procedure shown in local archives, for the short introduction to a general

The Social Status of Plaintiffs

This section examines who went to the court and made use of the justice process. Compared with other information, the addresses and professions written in the complaints would include fewer fictional elements.⁶⁸ They show the social status of people inclined to resort to court, settle disputes, or defend their interests. At the beginning of a complaint, the litigant would state his or her identity, including their name, age, address, and the name of a proxy (if any). The address contains the plaintiff's current address and the name of the *xiejia* they stayed in during the litigation.⁶⁹ The venue of a case can vary based on different litigants' statements; in such situations, I have chosen the statement from the first complaint in the documents.

More than half of the cases were filed to the court by someone living outside of the city wall, which seems to be a high proportion; however, this number suggests a deviation from the urban and rural population ratio. Based on the statistics from archives in 1824, there were 55,148 people living in *fang*, accounting for 14.2% of the whole population, and these people initiated more than 30% of lawsuits (Table 1). This statistic could be explained in two facets, the conflicts happened more often in the walled city and the people living inside the city wall had better access to legal resources.

Table 2.3 Place of Residence

	Venue	Number	Proportion (N=617)
坊	<i>fang</i> (inside the walled city)	192	31%
里甲	<i>li jia</i> (outside the walled city)	327	53%
外地	Other places (outside Ba County)	28	5%
厢	<i>xiang</i> (near the city)	13	2%
本城	"Local City" *	16	3%
不明	Unknown	41	7%

Source: BXA, "Women," 1803 - 1873.

* It is unclear what "local city" refers to; in some examples "local city" means somewhere inside the city wall, and there are no examples outside.

legal procedure to deal with cases, especially homicide cases, from local to the central government, see Robert E. Hegel, trans., *True Crimes in Eighteenth-Century China Twenty Case Histories* (Seattle: University of Washington Press, 2009), 11-16.

⁶⁸ Lying about this issue hardly seemed to have any benefit.

⁶⁹ Sometimes the "address" also included an ancestor's home (zuji 祖籍).

Local geography must have hindered potential litigants who lived in rural areas from going to the county court (see Map). Chongqing city has a famous nickname in China, “mountain city.” The hilly and rugged terrain shocks modern visitors traveling by vehicle, while in the nineteenth century, people had to overcome the obstacle of walking 40 miles to file a charge.⁷⁰ After the long walk, the litigants would wait for days or even months within the city for later investigation and interrogation. Therefore, the cost of accommodation and the inconvenience of travel would impose a heavy burden on litigants.

Traffic problems were not the only perceived hindrance. Lack of legal knowledge and social resources might also have been a stumbling block to reaching the county court. Although the production and circulation of legal knowledge in late imperial China is a major topic,⁷¹ it remains unclear how widespread legal knowledge was among common subjects.

Books undoubtedly bore the duty of disseminating legal knowledge, especially “category books” or encyclopedias, handbooks for litigant masters (at least before the books were officially banned in 1742), and the commercially published versions of the *Great Qing Code*.⁷² You Chenjun studies the price of “category books” to discuss who would and could use the encyclopedias. He argues that “fully literate” people, mainly including lower literati and merchants, could read and make use of the books and the legal

⁷⁰ Javers, “The Logic of Lies.”

⁷¹ Li Chen and Madeleine Zelin, eds., *Chinese Law: Knowledge, Practice, and Transformation, 1530s to 1950s* (Leiden; Boston: Brill, 2015); Zhang, *Circulating the Code*; You Chenjun, *Falü zhishi de wenzi chuanbo: mingqing riyongleishu yu shehui richang shenghuo*, 法律知识文字传播: 明清日用类书与社会日常生活 [The Literal Circulation of Legal Knowledge: the Encyclopedia Books and Social Life in Ming-Qing China] (Shanghai renmin chubanshe, 2013); Pengsheng Chiu, “Lüli ben hu shengjing: Ming-Qing shiren yu guanyuan de falü zhishi lunshu 律例本乎聖經: 明清士人與官員的法律知識論述 [Law and Statutes Based on Confucian Canons: Legal Discourse of Ming-Qing Scholar-Official Literati],” *Journal of Ming Studies*, no. 21 (December 2013): 75–98.

⁷² Historians have given so-called “encyclopedias” in Ming and Qing many different names, including “wan bao quan shu 萬寶全書” (the full book of ten thousand treasure). Just as the name suggests, people could find all kinds of information in these books, such as compendia of names, anecdotes, documentary and epistolary genres, administrative texts, and also practical legal information, such as how to write a contract or a legal complaint, see Huifang Wu, *Wan Bao Quan Shu: Mingqing Shiqi de Minjian Shenghuo Shilu* 萬寶全書: 明清時期的民間生活實錄 [Encyclopedias: A Record of People’s Lives in Ming and Qing] (Taipei: Department of History, NCCU, 2001). for the commercial publication of the Great Qing Code, see Ting Zhang, “Marketing Legal Information: Commercial Publications of the Great Qing Code, 1644–1911,” in *Chinese Law: Knowledge, Practice, and Transformation, 1530s to 1950s*, ed. Li Chen and Madeleine Zelin (Leiden; Boston: Brill, 2015).

knowledge inside.⁷³ According to Rawski, the literacy rate in urban areas was higher than that in rural regions.⁷⁴ If this is true, city dwellers would have had better access to legal knowledge than those living outside the city wall.

Books only constituted a small part of the knowledge and information exchange network. If a person in nineteenth-century Ba County would like to learn more about litigation, it could be more effective to ask someone familiar with the legal procedure. If the litigants came from a rural area, they could find legal information and services in the “hotels” where they were staying. Hence, the circulation of litigation knowledge can answer both questions: why city dwellers filed cases more often than others and why people from rural regions could also take part in legal action.

Table 2.4 illustrates the stated professions of male plaintiffs. It shows that businessmen and merchants took part in lawsuits more frequently than other groups. Therefore, the section analyzes why they were involved in litigation more often than other groups. Hired laborers and peasants also made up a large portion of all plaintiffs. Since not all plaintiffs claimed their profession in the papers, I assume many of them were farmers, and the number of peasants involved in the cases far exceeded what was shown in Table 2.4. Community leaders, accounting for 15% of all plaintiffs, were another noticeable group who generally submitted complaints, as mentioned before, to close a case or, sometimes, to report unlawful acts in their domain.

The businessmen and hired laborers likely stayed away from home for a long time when working. Thus, their wives might have more liberal time under less stringent control and have more chances to keep in touch with others; this is a common descriptive factor in the legal complaints. Many plaintiffs would clarify that the criminal event happened when they were somewhere else.

Additionally, merchants (including their employees), businessmen, and even craftsmen (their professions could also be explained as small businesses) had better access to litigant information. Just like urban people, these groups had more chances to get in touch with *xiejia*.⁷⁵ They were also likely literate since keeping accounts and making contracts was a mandatory part of their occupation. Therefore, it can be concluded that it

⁷³ For the definition of “fully literate” and how it is distinguished, please see Wilt Idema, *Chinese Vernacular Fiction: The Formative Period, Chinese Vernacular Fiction* (Leiden: Brill, 1974), L-LIII.

⁷⁴ Evelyn S. Rawski, *Education and Popular Literacy in Ch'ing China* (Ann Arbor: University of Michigan Press, 1979), 10–13.

⁷⁵ “*xiejia*” also played the role of broker in all kinds of trade and business, see, Hu, *ming qing xiejia yanjiu*, 59-92.

was more convenient for them to file a case than other groups. To some extent, Tables 2.3 and 2.4 tell a similar story, where urban citizens and businessmen, to whom legal information and knowledge were more accessible, participated in legal action more frequently. Furthermore, the normal peasants living in rural regions could also find a way to resort to the courts.

Table 2.4 Jobs of (male) Plaintiffs

	Number*	percentage
Trade or business**	142	33.6%
Helpers in trade	8	1.9%
Craftsman	36	8.5%
Hired labor	42	10.0%
Tenant farmers	22	5.2%
Landlord	11	2.6%
Owner-cultivator	6	1.4%
Farmer	14	3.3%
Boatman or docker	7	1.7%
Coolie	9	2.1%
Runners and clerks	21	5.0%
Teacher	2	0.5%
Served in army	2	0.5%
Opera actors	2	0.5%
Monk (Taoist/ Buddhist monk)	3	0.7%
Government staff***	18	4.3%
Community leader****	65	15.4%
Work for officials	11	2.6%
Doctor	1	0.2%
Total	413	

Source: BXA, "Women," 1803 - 1873.

* The Table also includes the jobs of plaintiffs' relatives (usually sons) if the plaintiffs themselves did not mention their profession but their families' jobs. It does not include the occupation of women.

** This includes all of the people who mentioned their jobs as engaging in trade, owning a small business, or managing shops, restaurants, and teahouses.

*** "Government staff" refers to very low-rank officials, differing from clerks and runners, who did not have any rank in the government.⁷⁶

**** The community leaders include all the people with the titles of *xiangyue*, *baozheng*, *paishou*, and *kezhang*, for the details of the community, see Introduction.

⁷⁶ Tatsuya ONO, "Qingmo Baxian xuli Tanminzheng 清末巴县胥吏谭敏政 [A Study of Tan Minzheng as an Errand in Baxian County of Late Qing Period—Cases Centering on Two Lawsuits]," *Journal of Sichuan University(Philosophy and Social Science Edition)*, no. 2 (2020): 85–96.

Female Plaintiffs in Litigation

In this dissertation, the term “plaintiffs” refers to the persons who filed a lawsuit and submitted a plaint. The Qing government had set up limitations on female litigation not only in codified law but also in the instructions on the plaint paper:

夫男現在，支婦女出頭者，不准。

Those cases where the husband is alive and puts his wife up to file lawsuits are not approved.

非姦情牽連婦女作證者，不准。

Those cases which are not sexual offenses but involve women being witnesses are not approved.

有職人員及監貢生員、婦女，無抱告者，不准。

If those who have official positions, or who are Provincial Graduates, Tribute Students, or women [file lawsuits] without a proxy, the cases are not approved.

細事牽連婦女，及夫男現在，支婦女出頭者，不准。

Those trivial cases involving women or those cases where the husband is alive and puts his wife up to file lawsuits are not approved.⁷⁷

In practice, some plaints were submitted by women, although much less than those by men. In the Danshui-Xinzhu archives, there are 20 “so-called civil case files” initiated by females.⁷⁸ Hu Zhen calculates “capital appeal cases” (京控, the cases in which the subjects appealed against the conviction, so they went to Beijing for justice) and finds that in 11–26% of cases, the women played the role of plaintiffs. Hu thinks that because the capital appeals were mostly serious cases, and the regulations to prevent women from lodging cases were directed at trivial cases, the cases filed by women would usually not be rejected.⁷⁹ In my analysis of 617 cases, 201 women filed 312 plaints and simple plaints, accounting for 17% of all plaints (most female plaintiffs had male proxies, see below). Considering the regulations, the percentage seems to be relatively high. However, all the cases I have examined come from the “women” archive; undoubtedly, the number must be much lower if more cases from other categories were considered in the analysis.

⁷⁷ These clauses varied slightly on time, but similar articles were always included. These samples are cited from Q6-05-04191 and Q6-11-08829.

⁷⁸ Allee has also mentioned that there are “numerous” example of women filling petitions in criminal cases, though he does not give a clear number, see Allee, *Law and Local Society in Late Imperial China*, 168–74.

⁷⁹ Zhen Hu, “Susong Yu Xingbie: Wanqing Jingkong Zhong de Funü Susong 诉讼与性别——晚清京控中的妇女诉讼 [Litigation and Gender: The Female Litigation in Capital Appeal during Late Qing],” in *Research on Modern Law*, ed. Liangui Li, vol. 01 (Beijing: Peking University Press, 2007), 107–8.

Even among the “women” archives, females were involved in litigation far less frequently than males. Along with the foregoing analysis of occupation and residence, one of the reasons why women resorted to court less often might be that female literacy was much lower than male literacy. According to Rawski, basic literacy was unevenly distributed between males and females, with perhaps 30–45% of males and only 2–10% of females possessing some ability to read and write.⁸⁰

Is it reasonable to regard the female plaintiffs as a symbol of their resistance to patriarchal authority? I indeed found a case about a daughter’s challenge to her natal family, but the story shows a more complicated picture than “resistance,” which is discussed in Chapter Three. This section discusses another important factor: litigation strategy, which influenced the participation of women in lawsuits. As Table 2.5 illustrates, the marital status of the female plaintiff is noticeable. Most female litigants were widows; unmarried daughters rarely filed cases to the court, which is not unique in Ba County; Wu Peilin found that unmarried girls filed no lawsuits among 409 claims in which women were involved in the Nanbu Archives, and more than 90% of cases were lodged by widows.⁸¹

Table 2.5 Marriage Status of Female Plaintiffs

	Number	percentage
Widow	108	53.7%
Remarried after widowed	23	11.4%
Divorced / Remarried after divorced	2	1.0%
Never married	2	1.0%
Married*	66	32.8%
	201	

Source: BXA, “Women,” 1803 - 1873.

*Here, “married” includes those who said clearly that they were in their first marriage when they were filing the complaints and those who did not clarify whether this was their first marriage.

In the Name of Widows

Why did widows take on the role of plaintiffs more frequently than other women? The reason is complicated. First, widows who maintained chastity would receive respect from authorities. Second,

⁸⁰ Rawski, *Education and Popular Literacy in Ch'ing China*, 6–8. Though scholars have criticized the specific figures given by Rawski, it seems that nobody has ever doubted the conclusion that the female literacy rate in the Qing era was significantly lower than that of men.

⁸¹ Wu, *qing dai xian yu min shi jiu fen*, 382-83.

as Chapter One shows, widows would gain higher family status and greater power if they did not have elder and superior in-laws, therefore it might be easier for widows to afford the expense of litigation since they could have control over family property.⁸² Moreover, due to filial piety and the cult of female chastity, they also had more (relatively proper) reasons to file a lawsuit, such as to sue their unfilial sons or daughters-in-law. For example, widow Cheng Liu Shi sued her son because he gambled away 100 taels of silver and stole 200 taels from her old-age money. The widow called her son “disobedient” or “unfilial” (*ni zǐ* 逆子) and put his name on the top of the defendant list.⁸³

Because of the privileges that widows might enjoy in litigation, the status of widows had become a litigation strategy, where there were multiple manifestations. For instance, women could profess themselves as widows. In a case record from 1858, a woman at the beginning of a plaint declared herself a widow, but in the same document, she admitted that she remarried after the death of her first husband and divorced the second one. This woman could be understood as a “widow” or a divorced woman who pretended to be a widow.⁸⁴

More commonly, there was no doubt about the identity of widows, but the counterparty would question whether they really took part in the litigation or not. For instance, in 1848 Fang Baiqi accused others of harassing his wife; one week later, his mother, Fang Liu Shi, filed another plaint with a similar text. She was seventy-one *sui* and lived 120 *li* away from the city. The comment by the magistrate, saying “If this is untrue, the proxy will be punished,” suggested a warning to her son. Furthermore, the plaint by the other party mentioned that it was her son who had conspired with the “villains” to make false accusations in the name of the widow.⁸⁵ In 1863, Deng Xia Shi, a fifty-*sui* widow, likewise sued Ba County and Chongqing Prefecture because someone had molested her daughter-in-law. Her son played the role of proxy from the beginning to the end. The magistrate commented on this situation: “I have given my opinion before. Do not be

⁸² Kathryn Bernhardt, *Women and Property in China: 960-1949* (Stanford, Calif.: Stanford University Press, 1999), 62–63; Shūzō Shiga, *Zhongguo jiazufa yuanli*, 335–36; A Feng, *Mingqing shidai funü de diwei yu quanli: yi mingqing qiyue wenshu, susong dang'an wei zhongxin*, 明清时代妇女的地位与权利: 以明清契约文书、诉讼档案为中心 [Women's Status and Rights in Ming and Qing: Based on The Contracts and Legal Archives] (Beijing: Social Sciences Academic Press, 2009), 17–18.

⁸³ Q6-11-08804.

⁸⁴ Q6-20-05481. Another similar situation was “stealing the name,” which means that someone other than the woman in question her name to hand in a plaint without her permission. In Ba County I did not find examples like this, but scholars have found it in the Nanbu Archives, see Wu, *qing dai xian yu min shi jiu fen*, 345.

⁸⁵ Q6-11-09626.

blamed for that you relied on the identity of women.” The opponent also said that Deng Xia Shi was “to draw on her identity of women acting craftily.”⁸⁶

Proxies played a critical role in the operation of women lodging complaints and they probably would benefit from the strategy of making use of a widow’s name. The majority of 312 complaints filed by women contained the names of a male proxy, while only 15 were without a proxy, and one was with a female proxy.⁸⁷ The women’s sons were most likely to bear the responsibility of being a proxy, followed by other male relatives from natal and marital families.⁸⁸

On the one hand, having a proxy could not stop women from appearing in court, since the magistrates usually summoned both women and the proxies simultaneously. On the other hand, stressing the responsibility of male proxies was the magistrates’ response to the strategy of making use of female identity. Magistrates (and perhaps their secretaries) used the term “counting on your status as a woman” to name the strategy.⁸⁹ Male proxies might have been considered the driving force behind women who submitted complaints. Just as the case of Fang Baiqi showed, he could and did file a complaint on his own, and there was no other reason except that he was attempting to take advantage of the widow status of his mother.

The strategy of “counting on the status as a woman” was a direct consequence of the lenient treatment of women according to the codified law, especially women’s redemption. Chinese historian A Feng argues that the regulations on redemption indulged women in criminal activities, especially since more women could choose to be involved in lawsuits, even though they had limited rights to file a case.⁹⁰ Women had the right to

⁸⁶ Q6-26-07219.

⁸⁷ None of these cases were rejected by the magistrates. The accusation these women usually used was the husband forcing them into prostitution. Therefore, the possible reason they did not have a proxy might be that they could not rely on anybody from the marital family since they were charging the husbands, and maybe they did not have any close relatives from natal family; yet, the complaints did not give any clear information. For the only case with a female proxy, it was when a man was keeping in jail, his mother, with his wife as proxy, submitted a complaint to say that without her son, the mother did not have any income, so she asked to release the son. Since the two women did not have close male relatives, the widow mother played the role as plaintiff and the wife as the proxy.

⁸⁸ Here I cannot give exact numbers because the relationships between proxies and women were not clear in many archives. Relationships can only be inferred by the surname. According to statistics in Wu’s book, sons played the role of proxy more commonly than others in the Nanbu Archives, and male members from the marital family stepped into the role more than people in natal family. Wu, *Qingdai xianyu minshi jiu fen yu falü zhixu kaocha*, 332–40.

⁸⁹ It was used explicitly seven times among all the archives I have consulted.

⁹⁰ A Feng, “Daqing Lüli Zhong Funü Buzhun Shoushu Tiaoli Kao 《大清律例》中妇女‘不准收赎’条例考 [An

redemption since the Ming Dynasty, and the amount of redemption silver was so small that women had nothing to fear.⁹¹ Shen Zhiqi and Xue Yunsheng also commented that even when women filed cases that were not true, they would either not be punished or could redeem themselves. The low risks related to filing a case might have encouraged false accusations. An examination of the history of women and redemption shows an important change during Jiaqing's reign (1796–1821). In Ming and Qing before Jiaqing, the attitude toward women's redemption was relatively tolerant. While after Jiaqing, due to the increasing number of capital appeal cases in which women were involved, the Jiaqing Emperor issued an edict: "There are women who are very shrewish when she is seized and questioned for a case. . . . as a result, the villains live a better life, the good folks are bullied." Following this order, the Board of Punishment proposed regulations on female redemption in detail. Some statutes were added to the code, but very few restrictions were imposed on women's redemption; in most cases, women could still redeem themselves (Appendix C). Nevertheless, such regulations did not stop women from participating in false accusations or complaints of not following the correct procedure.⁹²

The phrase "counting on your status as a woman" included both widows and other women. However, in practice, it mainly concerned widows. As was explained in Chapter One, the policies for promoting chastity and protection for women spawned the lenient treatment of women and unexpectedly led to the strategy of "counting on your status as a woman." Therefore, it gave men and women, especially widows, the chance to use gender and family identity to participate in litigation.

Although the magistrates had realized the role of men in "counting on women" and tried to warn the male participants instead of females, they still adopted the term that directed an attack against women. Considering the restrictions on women to involve themselves in litigation, the invention and adoption of the phrase, and the stigmatization of women the phrase suggests, might be an attempt to stop them from appearing in court and a warning against potential legal actions.

Analysis of the Substatute of 'Female Redemption Is Not Allowed' in the Great Qing Code], in *Jiu Li Xin Quan: Da Qing Lǐlǐ Guoji Yantaobui Lunwenji* 旧律新诠：《大清律例》国际研讨会论文集 [A New Interpretation of the Old Code: Proceedings of the International Conference on the Great Qing Code], ed. Yigong Su and Jing Xie (Beijing: Tsinghua University Press, 2016), 3–12.

⁹¹ Jones, *The Great Qing Code*, 325.

⁹² A Feng, "funü buzhun shoushu tiaoli kao", 11-12.

Women as Defendants

The term “defendant” refer to all those who were listed as “being charged” (被告) or “being reported” (被稟) at the end (sometimes at the beginning) of the plaint. In general, I can identify female names 667 times in the lists of “defendants,” including repeated ones. Yet, as Table 2.6 shows, some women were not being accused, such as *gen yao* 跟要, which would be explained later; sometimes, they were even called “victims.”⁹³ Table 2.6 also includes the number of female witnesses. According to the standard format, the witness should be put on another list. While in practice, the names of the witnesses might be written in the same column as the names of the defendants, with small characters marking them as a “witnesses.”⁹⁴

Table 2.6 The Situation of Female Defendants

	Number*	percentage
The Only Defendant	27	4%
The First Defendant (out of two or more)	115	16%
The Second Defendant **	184	30%
The Last Defendant	147	21%
Witness	90	10%
<i>Gen yao</i> 跟要 ***	93	17%
Victim	11	2%
	667	

Source: BXA, “Women,” 1803 - 1873.

* The table does not calculate all female defendants, some of them (only a small portion) were put in the “middle” of the list, but it is difficult to define “middle.”

** If there are only two defendants on the list and the woman is the second, she would be counted as “the second,” not the last.

*** *Gen yao* means that the plaintiff would like to ask for her/him back, usually for women and children.⁹⁵

It can be seen from Table 2.6 that plaintiffs tended to list women in the second half of the defendant list rather than in the first half or as the only person on the list (20% in Table 2.6, and even lower if we are including all females put in the “middle” part). In some

⁹³ Q6-11-09004.

⁹⁴ Q6-11-09215.

⁹⁵ Many thank Prof. Zhang Xiaoxia and Prof. Wu Peilin for this explanation.

cases, even the whole document was complaining about the woman, her name was possibly listed below her husband.⁹⁶ Such an arrangement is identical to the Qing code. As Chapter One argues, the *Great Qing Code* supposed that women could not commit certain crimes and women were not as capable as men of bearing the penalty or accepting criminal liability.

Gen yao is an interesting term.⁹⁷ It appears 93 times in legal complaints and is used as a note only before the name of women and children, showing that the plaintiff wanted these persons to come back home with him or her. The term demonstrated an attitude where those who drafted the complaints did not request penalties for women but asked them back home. Considering that young children who were innocent would also be marked as *gen yao*, women with the same mark were most likely not to be regarded as guilty.⁹⁸ This attitude toward women was another parallel between legal practice and the code, that women were often expelled from the position of main culprit in the legal regulations and the writing of complaints. The main or only purpose of listing women as *gen yao* should be that the plaintiffs wanted the women back home.

Correspondingly, the magistrates rarely punished women, even those who committed adultery. In 59 cases, women were sentenced to “be slapped in the face” (*zhangze* 掌责), and in eight cases, they were punished by being beaten with instruments (*xieze* 械责).⁹⁹ Compared with men, it was rare for women to receive a penalty in Ba County, and the punishments women were subjected to were also relatively light. Men were sentenced to “be slapped” (110 times) and “penalty by instruments” (20 times) more often than women, and they were also subject to “beating with the heavy stick” (*zhangze* 杖责) and “wearing cangue” (*jiahao* 枷号), which seemed to never apply to women.

Regardless of gender, the magistrates would not follow the provisions of the law to administer punishments. Even the so-called “beating with the heavy stick” may not be equal to the “*zhangxing* 杖刑” in “The Five Punishments,” because the magistrates rarely specify how many strokes the criminal should receive, let alone under which legal articles they gave the orders. The most used penalty, “slapping in the face,” according to the Qing

⁹⁶ Q6-20-05085.

⁹⁷ So far, no research has ever discussed this term, and the origin of this term is still a mystery.

⁹⁸ Q6-27-08250.

⁹⁹ It is not clear which kinds of “instruments” were used. About how to execute the penalty of *zhangze*, see Xiaoqing Yu, “Qingdai xingxun zhidu kaobian 清代刑讯制度考辨 [On Torture System in Qing Dynasty]” (PhD diss., East China University of Political Science and Law, 2008), 69.

law, was a torture means to force suspects to confess.¹⁰⁰ However, in practice, it was mainly used as punishment by the county magistrates.

In general, the treatment given by magistrates to all people, male or female, was more lenient than the regulations in the *Great Qing Code*. The serious penalties in the code were seldom used in practice. Men were punished more frequently since they were involved in more cases and more likely to be named as the first defendant.

On the one hand, magistrates considered the “weakness” of women. For example, county magistrates did not give women cangue as punishment, since “wearing cangue” required a long public display, which would harm female chastity and virtue. Although the magistrates did not follow the specific provisions of the law, their judgments to a considerable extent followed the spirit of the law and gave preferential treatment to women.

On the other hand, women did not enjoy completely lenient treatment in legal practice. For instance, women were summoned as witnesses frequently even when the plaintiffs did not write the names of women as witnesses or defendants. This practice breached the legal requirements that they should not be summoned unless they were principal offenders in felonies (Appendix C).¹⁰¹ The records do not include any explicit information about why this occurred. I can only assume that due to the pressure of a heavy workload, the goal of closing cases as soon as possible overrode everything, and summoning all witnesses, including women could help the magistrates clarify the situations quickly.

Marital Status of Women in the Archives

In a large part of the 617 cases examined in this study, the marital status of the women involved was mentioned. In general, most of the women mentioned in the archives were or had been in a marriage, and some experienced marriage more than once. It is not surprising to find that many widows chose to remarry or that after divorce women married other men. From this perspective, the failure of the effort to promote female chastity can be seen; the notion of chastity mainly remained a perception on paper. The discipline did not impel women to stay loyal to their husbands; instead, the influence of the chastity cult lies in the reality that people invented the strategy to make use of the identity of widows in the legal system.

¹⁰⁰ Yu, 67–69.

¹⁰¹ For instance, Q6-05-04299, Q6-05-04190.

Table 2.7 Marriage Status of All Women

	Number*	percentage
Married	766	63%
Never married	114	9%
Remarried after divorce	51	4%
Remarried after widowed	95	8%
Widowed	176	14%
Unknown	14	1%
	1216	

Source: BXA, “Women,” 1803 - 1873.

* Similar to Table 2.5, “married” women include all the women who were married at least once. Some explicitly stated that they were in their first marriage, and some did not (they were perhaps remarried after being widowed or divorced).

These statistics can only tell the general status of people who appeared in the archives, but more nuanced details are given in the complaints. Below is a complete translation of a document that contains many factors that were prevalent in the records. I call it “typical” because it fits almost perfectly into the model that the data shows. This complaint tells a story about a man living within the city walls who had a small business and one day found his wife missing when he came back home; the man believed she went missing because someone from her natal family induced her to leave him.

具喊狀人：呂玉豐，年三十歲，係本省本縣本城里，寓定遠坊。

Name of Plaintiff: Lü Yufeng Age: 30 *sui* Address: Dingyuan Fang, in Ba County City

為串拐捲逃喊叩拘究事。

To sue [defendants] for conspiring [with each other] and seduce [my wife] to take away [my personal property] and run away [from home], [I] shout [for attention] and bow in salute to ask for seizing [defendants] and finding out [truth].

蚊住南紀門內，豆腐生質，家居定遠坊，在家日少。去歲憑媒說娶劉氏為妻，過門和睦。劉氏薦伊表兄徐玖仁、何興培均幫蚊質。嗣因嫌言起衅，玖仁計刁與蚊不睦，商串何興培，朋唆劉氏，私造金銀飾衣。于今正十六，乘蚊出街，玖仁胆拐劉氏，捲盡衣飾一空潛逃，另單粘呈。蚊歸見駭，投街隣清理不現。跟問興培，語言支吾，奸不指實，玖仁拐匿何地。人財兩空，大傷風化。迫叩仁天賞拘，跟追法究，沾德伏乞。

I earn a living near the Gate of Nanji [by making and selling] tofu. I live in Dingyuan Fang but do not stay at home very often. Last year I took the daughter of Family Liu as wife on a matchmaker's word, and after our marriage, we lived in peace and harmony. My wife Liu recommended her cousins Xu Jiuren and He Xingpei to help me with the business. Then because of a grudge leading to a dispute, Jiuren was planning to induce Liu to break the harmony with me and conspire with Xingpei to induce Liu to make golden and silver ornaments and clothes privately. When I was not home on the 15th day of the first month, Jiuren dared to instigate Liu to abscond with all the clothes and jewelry and escape. The list of lost items has been submitted on another sheet. when I returned home I felt shocked, then looked for [her] on the streets and around the neighborhood, but did not find her. When I asked Xingpei, his voice faltered and he craftily did not tell the truth. Jiuren induced [Liu to leave] and is hiding somewhere, and I have lost both my wife and wealth. [What he did] gravely injures public morality, [I] must kowtow to benevolent heaven and beg for [the defendant] to be arrested, [the case] investigated, and [him] to be punished by law. [I] am convinced by morality and prostrate myself to beg.

被喊：何興培，（懇喚）徐玖仁，（跟要）劉氏

Names of Defendants: He XingPei, (sincerely asked to summon) Xu Jiuren, and (someone I would like to ask her back) Lü Liu Shi

投証：呂春澤，周鳳鳴

Names of Witnesses: Lü Chunze, Zhou Fengming

鄰

Neighbors: [blank]

鄉約

Treaty of Villagers: [blank]

同治十二年正月廿日具

Date: The twentieth day of the first month in Tongzhi 1¹⁰²

The first question that should be asked following this story is “What did the woman do in this case?” Lü Liu Shi made or ordered some expensive jewelry induced by her cousin; she ran away from home, again due to the wicked incentive of others. Therefore, it is difficult for the audience to say what *she* actually did, and it seems she did not take any actions by herself. Furthermore, the plaint shows no signs of her acting or thinking independently. Instead, she was a marionette, manipulated by her evil and greedy cousin(s). It is not uncommon in cases where someone's wife disappeared, even when there was no clear suspect, for her husband or in-laws to believe that somebody seduced her.¹⁰³

¹⁰² Q6-27-08153.

¹⁰³ For the discussion of these cases, see Chapter Three.

Liu Shi was listed as the last one among the defendants, and above her name, the small characters *gen yao* were added to describe her status. The plaintiff did not want the court to punish her; he just asked for the ownership of the woman.

The legal complaints clearly give us an impression about women in which females were nameless and faceless. They were affected, seduced, and controlled by others. Their “bad” behaviors did not originate from themselves and therefore did not have to be punished. As mentioned before, to portray women in this way was in accord with the spirit of the code, and this portrayal is one part of the strategy that was likely inherited from the secret handbooks. The handbooks contain similar details; for instance, a father indulged his nephew into having an illicit sexual relationship with his daughter. Hence, the fiancé sued her father and the adulterer instead of the woman.¹⁰⁴ Or, a housemaid ran away from home and stayed with another man, and her master sued the man for abduction rather than the maid for running away.¹⁰⁵ The understanding of women as innocent served the purpose of attributing all responsibility to the defendants, portraying them as evil, while presenting the plaintiff’s family, including his wife, as victims. This portrayal would help construct a narrative of the plaintiff’s grievances and the devilry of the defendants.

The portrayal of women is a comprehensive result of litigation strategies, rather than an honest reflection of societal truth in Qing Ba County. By imitating the terms and plots in *song shi mi ben*, females in the legal complaints and other parts of complaints present a homogeneous picture, stressing their grievance and purpose to maintain public morality and women’s innocence. The legal complaints, from the lowest level of the court system and directly drafted by common subjects and litigation masters, show the same ideological core and gender discourse as those in the *Great Qing Code*.

Conclusion

For a tenant farmer, a man with a small business, or other illiterate ordinary people to participate in litigation was probably the only chance in their lives to leave a written record; this is why the legal complaints are so precious to historical research. Unlike other documents from the local archives made by staff working in the court, it is the litigants and litigation masters who drafted the legal

¹⁰⁴ Er Bi Ken Qing, 274.

¹⁰⁵ *Xin juan fajia toudouban* 新鐫法家透膽寒 [The Thorough Terror of Legalists, Newly Engraved], in Jiahong Sun and Rufu Gong, eds., *Ming qing songshi miben bazhong huikan shang* 明清訟師秘本八種匯刊 (上), vol. 11, Lidai Zhenxi Sifa Wenxian (Beijing: Social Sciences Academic Press, 2012), 161.

plaints. The complaints provide a new perspective to observe how ordinary people realized their own purposes in the exercise of state authority.

This social-historical analysis shows that people working in business and people who were living within the walled cities were keener to resort to the court than those living in rural areas. This difference was not only due to geographical convenience but also because businessmen and urban citizens were more likely to have knowledge and information advantages about litigation. For the same reason, it was more difficult for women to participate in litigation, and they usually had lower levels of literacy and limited access to litigation knowledge.

From the perspective of the county magistrates, undesirably numerous lawsuits had become a heavy burden in nineteenth-century China, and they needed to find a way to keep a balance between an increased workload and their authority over local society. Therefore, the magistrates established detailed regulations on the format of legal complaints; moreover, the central government created new statutes to deter litigation masters from participating in legal actions and stop the circulation of secret pettifogger handbooks so that they could decrease the number of lawsuits. However, these measures did not achieve their aims, and litigation masters still functioned in the local legal practice of the nineteenth century.

More significantly, people in legal practice were still adopting the techniques and skills in *song shi mi ben* to make legal complaints. The continuity shown in the archives far outweighed the discontinuity; litigants and their counselors seemed to use the same techniques to draft their complaints from 1803 to 1873. For litigants, the Confucian moral discourse was essential in drafting their complaints and the legal complaints in the archives seldom cross the boundaries of “official presentation.” The adoption of official representation, to package their realistic purpose, was also a strategy. Just as people used exaggerated language, false accusations, and plots in novels, they also brought fictional factors into the archives.

Within the framework of official discourse, abduction, sexual offenses, and marriage conflicts over women constituted three major causes people were inclined to use to take advantage of the legal system. The choice is similar to that in the code: the issue of women was always sex, marriage, and family. In general, the magistrates and litigants mostly followed the spirit of the code. The code put restrictions on the right of women to take part in litigation, so the frequency of female involvement in lawsuits was much lower than that of men. Furthermore, women in practice usually would not be listed as the principal criminals by litigants nor given serious penalties by magistrates, since the code excluded

women from the offenders of certain crimes and gave women special treatment.

Furthermore, the body and identity of women had also become an essential section of litigation strategy. The dual effect of the female chastity cult and filial piety gave widows chances to play the dominant role among all women in filing complaints to court. Their family status and their right to control the family property granted widows proper reasons to go to court. Widows could also win more respect and empathy from society and the government due to their status. Therefore, the names of widows were more valuable in litigations.

The ideology and policy to promote the cult of chastity and the law to give lenient treatment to women led to the strategy of “relying on women.” It sounds like a strategy where women relied on their gender to make trouble; however, it was employed by many men to take advantage of the legal system. The invention of the actual term “relying on women,” as a response to the strategy of making use of female identity, might have been a means to stigmatize and intimidate women, which meant that any woman who dared to step into the courtroom was regarded as unruly.

The ultimate goal of this chapter was to show that the images of women that can be seen in the archives are artificially constructed. Multiple layers of “filters” have been added between their true faces and their pictures in the documents. The “filters” included the various strategies in drafting complaints adopted by the litigants and litigation masters and the complicated intentions of magistrates and clerks to polish texts in archives. The presentation of women in archives always had a sense of purpose. It, thus, creates a challenge in methodology when using archives in women’s history about how to cope with the “filter” and find the forces that shaped the presence of women. This chapter and the subsequent chapters show that the picture of women in nineteenth-century Ba County Archive was dependent upon the construction of codified law and ideology, litigation strategies, and probably the most important factor, family relationships and authorities.

Chapter 3. Abduction and Marriage: Conflicts Between Natal Family and Marital Family

The role of the family in the court cases involving women is the focus of this dissertation, and this chapter will discuss the disputes between the natal families and marital families of women, compare the lawsuits brought forward by natal family and marital family members, and show how the family relationships between the plaintiffs, defendants, and women shaped the presence of women in archives. Previous research has not identified any specific correlation between two factors, the relationship between the plaintiffs and defendants in the lawsuits, and the accusations the plaintiffs used in the legal actions in Qing local archives; this dissertation will partly fill that gap.

According to Table 3.1, around half of the conflicts occurred between people within the Inner Tier. Abduction and *jia mai* (嫁賣, sell women off in marriage) were the two most frequently used accusations. There were 221 litigations that took place between the natal and marital families of women, accounting for 34% of all cases I have collected. Table 3.3 shows that these lawsuits were mainly abduction cases (referring to behaviors that forced or lured women to run away from their households) and matrimonial cases (conflicts over the validity of marriages).

As discussed in Chapter Two, there are often specific strategies in drafting legal complaints. Unsurprisingly, some writing patterns were particularly prevalent in “marriage” and “abduction” accusations. Looking at the techniques and strategies used in drafting complaints, this chapter will argue that there was generally no fundamental difference between marital disputes and abduction. Both, in nature, can reflect the competition for control over women.

In addition to discussing the tensions between women’s marital and natal families, this chapter will also analyze the relationship between women and their natal families. Most commonly, natal family members would support women by acting on their behalf in court. However, to a certain extent, having the natal family act on behalf of females in court against the husbands and in-laws had cut off the women’s own channels of voice.

Table 3.1 Relationship between Plaintiffs and Defendants by Tiers

Type of Relationship		Number of Cases	
Inner Tier*	Marital family (including husbands) vs. Natal family	221	34.0%
	Women vs. Marital family (including husbands)	58	8.9%
	Women vs natal family	2	0.3%
	Former husband vs. Current husband	51	7.8%
	Adoptive parents vs natural parents	15	2.3%
	Total	347	
Outer Tier	Marital family (including husbands) vs. Outsiders (mainly neighbors, distant relatives, strangers)	97	14.9%
	Different members of the marital family	19	2.9%
	Natal family vs. Outsiders (mainly neighbors, distant relatives, and strangers)	19	2.9%
	Women vs outsiders (mainly neighbors, distant relatives, strangers)	8	1.2%
	Marital family (including husbands) vs. Strangers	85	13.1%
	Natal family vs strangers	21	3.2%
	Women vs strangers	5	0.8%
	Total	254	
Unclear/ unknown relation		49	7.5%
Total		650	**

Source: BXA, "Women," 1803 - 1873.

* The distinctions of "tiers" are based on Figure 1.

** Sometimes, I have to use two kinds of relationships to describe one case, so the number is more than 617.

Table 3.2 Cases by Category and Relations Between Two Parties

Category of Accusation		Inner Tier		Outer Tier	
拐逃	Abduction and runaway	97	28.0%	105	41.3%
人口買賣	Human (women) trafficking	3	0.9%	5	2.0%
霸佔	Forcibly taking possession (of a woman)	14	4.0%	20	7.9%
強姦	Coerced sexual intercourse	7	2.0%	44	17.3%
通姦	Adultery	25	7.2%	34	13.4%
調戲	Noncoercive sexual proposition	3	0.9%	11	4.3%
拆嫁	Break up marriage	12	3.5%	2	0.8%
嫁賣	Sell her off in marriage, mainly a husband selling his wife	60	17.3%	5	2.0%
套娶	Marriage by deception	9	2.6%	1	0.4%
婚姻	Breaking off an engagement and forced marriage	32	9.2%	5	2.0%
家庭糾紛	Family conflicts, mainly internal violence, and the conflict between parents and kids, wife and concubine, and so on.	37	10.7%	5	2.0%
賣娼, 嫖娼	Prostitution	38	11.0%	8	3.1%
其他	Others	10	2.9%	9	3.5%
	Total	347		254	

Source: BXA, "Women," 1803 - 1873.

Table 3.3 Lawsuits between Natal Family and Marital Family

	Type of Accusations		
	Abduction and runaway	61	27.6%
	Human (women) trafficking	1	0.5%
	Family conflicts (mainly internal violence) and the conflict between parents and children, wife and concubine, and so on	28	12.7%
	Prostitution	23	10.4%
	Others	5	2.3%
Sexual Offenses	Forcibly taking possession (of a woman)	6	2.7%
	Coerced sexual intercourse	5	2.3%
	Adultery	16	7.2%
	Noncoercive sexual proposition	2	0.9%
	Total	29	
Marriage	Break up marriage, usually parents making their daughter leave her husband and marry someone else	10	4.5%
	Selling a married woman off in marriage, mainly a husband selling his wife	38	17.2%
	(A man) marrying several women and keeping them as wives	4	1.8%
	Breaking off an engagement and forced marriage	22	10.0%
	Total	74	
	Total	221	

Source: BXA, "Women," 1803 - 1873.

Table 3.4 Relationships between Women and Main Plaintiffs

	Number	percentage
Women	38	6.2%
Marital family members and husbands*	393	63.7%
Natal family members	117	19.0%
Unclear or non-family	69	11.2%
	617	

Source: BXA, "Women," 1803 - 1873.

* Here the family members also include female relatives, like a mother-in-law.

Meanwhile, there were exceptions to this allyship since the interests of the natal family and the women themselves did not always coincide; a few cases in this chapter, show us a glimpse of women in dispute with their natal families.

The Definition of Abduction

In this chapter, the definition of abduction is based on the first plaintiff of a case; if the document stressed the terms abduction or runaway, especially the phrases in Table 3.4, then the case would be defined as “abduction.” This term, “*guai tao* 拐逃,” translates to “abduction and runaway.” This phrase was used in “pearl words” 24 times in the archives I have collected, literally meaning to “lure (women) to escape.” In general, it includes two types of accusations, (1) where abduction means that another person lured the woman, and (2) where runaway refers to when a woman escaped from home by herself, even though there was no sharp distinction between the two situations.

I do not translate this term into “human trafficking;” rather, in Table 3.2 “abduction and runaway” and “human trafficking” were listed separately. The first character of the word “*guai tao*,” “*guai*” (拐) in the modern Chinese language generally refers to “human trafficking,” but in the archives made in the nineteenth century, “abduction” can be distinguished from “human trafficking.” The following table displays some other terms that might stress one accusation. Litigants usually use *tou mai* (透賣, steal and sell) or *chuan mai* (串賣, conspire together to sell) in so-called human trafficking cases. In short, “trafficking” places more emphasis on the transactional element of selling, while “abduction” stresses the behavior and act of luring and abducting women.¹

Table 3.5 Regularly Used Phrases Referring to Abduction and Runaway Cases

<i>diao guai</i>	刁拐	abducting slyly
<i>juan tao</i>	捲逃	absconding with property
<i>chuan guai</i>	串拐	colluding and abducting
<i>juan guai</i>	捲拐	abducting and absconding with property
<i>guai mai</i>	拐賣	abducting and selling

Source: BXA, “Women,” 1803 - 1873.

Furthermore, both “abduction” and “selling off in marriage” in this dissertation belong to “human trafficking” by the current definition. According to the United Nations, “human trafficking” shall mean “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of

¹ Another reason is, in today’s contexts, “human trafficking” usually is committed by crime syndicates, while in Ba County archives, the abduction more often was used to charge natal family members and adulterers.

abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.”² From today’s perspective, abduction and human trafficking in this dissertation could fit the above definition, by acts, means, or purpose. However, almost nobody showed self-consciousness of exploitation or being exploited in the context of the nineteenth-century legal archives. Although people sometimes emphasized acts of buying and selling women in their complaints, it did not mean that these behaviors were unjust, let alone that they considered it a violation of women’s personal rights. Instead, the evil of trafficking in women was based on the infringement of a man’s rightful ownership of a woman.³

Today trafficking of women remains a critical social issue in China.⁴ As was also the case one hundred years ago, most slaves or sold people in China today seem not to take on agricultural or other economic production. In the 1970s, anthropologist James Watson studied chattel slaves in the elite lineages in Hong Kong’s New Territories, claiming that before 1949, China had “one of the largest and most comprehensive markets for the exchange of human beings in the world.”⁵ More importantly, he argues that people who were sold as slaves to wealthy families were regarded as luxury items that constituted an economic burden on the household rather than an effective instrument of production.⁶

This opinion has been inherited and extended by Johanna S. Ransmeier, who argues that the practice of selling people was not for agricultural production, but “a response to a shortage of domestic help, decreasing numbers of women for the marriage market, and resulting anxieties about male offspring.”⁷ Furthermore, Ransmeier concludes that “Chinese families were transactional families,” and except for childbirth, the process of

² “United Nations Convention against Transnational Organized Crime,” United Nations: Office on Drugs and Crime, accessed March 14, 2022, //www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html.

³ Mio Kishimoto, “Selling Land, Selling People: The Concept of Ownership in Comparative Perspective,” *Japan Association for Middle East Studies (JAMES)* 19, no. 1 (2003): 3–26; Sommer, *Polyandry and Wife-Selling in Qing Dynasty China*, 193–96.

⁴ “Xuzhou Chained Woman Incident,” in *Wikipedia*, May 17, 2022, https://en.wikipedia.org/w/index.php?title=Xuzhou_chained_woman_incident&oldid=1088413079.

⁵ James L. Watson, “The Chinese Market in Slaves, Servants, and Heirs,” in *Asian and African Systems of Slavery*, ed. James L. Watson (Berkeley [etc.]: University of California Press, 1980), 223.

⁶ James L. Watson, “Chattel Slavery in Chinese Peasant Society: A Comparative Analysis,” *Ethnology* 15, no. 4 (1976): 361–75.

⁷ Ransmeier, *Sold People*, 12.

members joining a household always “involved the exchange of money (or goods).”⁸ Sommer shares a similar opinion and casts doubt on the authenticity of a binary distinction between marriage and trafficking women from the perspective of the rural poor since both were financial transactions with women as the product.⁹ This chapter builds upon this argument; the transactional nature of marriage determined how the wife was treated in her marital family, as valuable family property, and the lawsuits about marriage and abduction aimed at taking the women back to the husbands and marital families.

Sommer also concludes that selling women had become a widespread practice because the skewed sex ratio led to a shortage of wives and a pervasive market for women, together with overall downward mobility and a heavy financial burden on poor families, which made the practice of wife-sale widespread in China.¹⁰ This chapter will demonstrate that the conjunction of the three factors led to the frequent conflicts over the ownership of women between the natal and marital families of the same woman.

The second character of *guai tao* – *tao* – is translated to “runaway” as Ma Zhao, who studied “runaway wives” in Beijing from 1937 to 1949, did in his works. The revolutionary history framework generally viewed “escaping women” as independent and emancipated.¹¹ While Ma argues that for women of the lower classes, the runaway was mostly “a survival tactic” or “an individual and spontaneous reaction to both opportunities and threats.”¹² These women used economic hardship to justify themselves, rather than revolutionary discourses.¹³ Therefore, his study provides a new perspective on lower-class women’s transgressive behavior beyond the grand narrative of revolution. This chapter also studies people from the bottom of society but focuses on how ordinary people, both men and women, made use of abduction and running away in legal actions.

⁸ Ransmeier, 2.

⁹ Sommer, *Polyandry and Wife-Selling in Qing Dynasty China*, 376. Ransmeier revises and broadens the point, explaining that human trafficking and family extended by a monetary transaction between persons was not limited to people in poverty from the Qing to the Republican period. Ransmeier, *Sold People*, 2–18.

¹⁰ Sommer, “Making Sex Work,” 32–34.

¹¹ Zheng Wang, *Women in the Chinese Enlightenment: Oral and Textual Histories* (Berkeley [etc.]: University of California Press, 1999), 332–42; Zhao Ma, *Runaway Wives, Urban Crimes, and Survival Tactics in Wartime Beijing, 1937–1949* (Cambridge, Ma.: Harvard University Asia Center, 2015), 319–20; Jiaqiong Lei, “Jiannan de Kangzheng: Wusi Hou Shinianjian Taohun Nüxing de Shengcun Kunjing 艰难的抗争：五四后十年间逃婚女性的生存困境,” *Social Science Front*, no. 12 (2011): 101–7.

¹² Ma, *Runaway Wives*, 12, 321.

¹³ Ma, 17, 320.

Research by Lai Huimin provides general information on legal cases of female abduction during the Qing Dynasty. She used the central judicial archives to analyze the family structure and social status of male criminals in around 100 abduction cases. Huimin finds that although most cases happened in areas with high mobility, the single men who committed these crimes had already established some ties with the community, rather than being strangers to the women they lured and the family the women used to belong to. The cause for female desertion could be economic reasons such as family poverty, pulling themselves out of domestic violence, or pursuing emotional support. Lai believes that a woman's agency played an essential role in abduction cases; after all, the decision to leave her current husband's home was made by a woman when she was not compelled by violence or other force.

In a paper on women eloping in Qing China, Paolo Paderni noticed that at the trial, women “presented themselves as passive and dependent in order to mitigate the magistrate's punishment.”¹⁴ I agree with this observation: in the local archives, the complaints and other documents emphasized other people's active abducting behaviors and obscured the actions and mentalities of the women. What distinguishes my research from Paderni's paper is that I focus on the role of the natal and marital family in the presence of women, especially their strategies to a large degree determined the presence of women in local archives.

Abduction in Southwest China

This dissertation analyzes the stories and languages in the legal complaints, mainly in terms of litigation strategy, and abduction, as an essential part of plots, also played the role of strategy. This section will demonstrate that abduction became a prevalent strategy in Ba County for two reasons. Firstly, it was considered a serious crime under Qing law and could be used as a “hook” to draw the magistrates' attention. Secondly, human trafficking was widespread in Qing China, but particularly in the three southwestern provinces, Sichuan, Yunnan, and Guizhou; the fact functioned in facilitating this strategy.

The previous chapter mentioned that abduction was a serious crime according to the

¹⁴ Though Paderni has put more emphasis on passivity, women could not deny that they had actively sought to implement a conscious strategy, such as elopement, to improve their condition, see Paola Paderni, “I Thought I Would Have Some Happy Days: Women Eloping In Eighteenth-Century China,” *Late Imperial China* 16, no. 1 (1995): 1–32.

Great Qing Code. Statute 275, *Kidnapping Persons or Kidnapping and Selling Persons* (略人略賣人), and its substatures stipulated the penalties to be imposed for criminal conduct, and substatute 275.02 seemed to fit the situations described in the complaints:

凡誘拐婦人子女，或典賣或為妻妾子孫者，不分良人奴婢、已賣未賣，但誘取者，被誘之人若不知情，為首擬絞監候，為從杖一百流三千里，被誘之人不坐；如拐後被逼成姦，亦不坐。¹⁵

In all cases of the abduction of women, (other people's) sons or daughters, no matter whether (the victims) are from commoner status or debased, sold or not, and no matter whether selling (the victims) to others or being his wife or offspring, if the crime of abduction is committed, if the one who is abducted does not know of the situation, the principle offenders shall be strangled after the assizes, and accessories shall receive 100 blows of the heavy bamboo and life exile at a distance of 3,000 *li*, those being abducted shall not be punished; even if the woman is forced to commit illicit sex, she also shall not be punished.

The punishment for the criminals who “lured” or “kidnapped” women could be penal servitude (with strokes of beating with the heavy stick), exile, or the death penalty. Therefore, abduction cases should have been treated as “major cases”¹⁶ rather than “trivial matters” by the magistrates. The procedural legislation was not fully implemented, and abduction cases in Ba County usually would not draw attention. However, the local archives show that the notion of “major cases” influenced the drafting of legal complaints, and the litigants made use of abduction as an accusation and a vital part of the litigation strategy to make sure that at least the magistrates would accept their complaints.

Human trafficking was widespread in Qing China, particularly in the three southwestern provinces, Sichuan, Yunnan, and Guizhou. In the Qing Code, under the statute *Kidnapping Persons or Kidnapping and Selling Persons*, there are three substatures about human trafficking in the Guizhou province,¹⁷ one substatute about regulating “Sichuan human traffickers” (川販),¹⁸ and one substatute that is a provision to specify human trafficking in Guizhou, Yunnan, and Sichuan.¹⁹ The question of why human trafficking was so extensive in southwest China could be answered from the perspective of sellers and buyers. Guizhou was the home of the people who were sold, and many of them were ethnic minorities, such as the Miao,²⁰ who were sold either due to poverty or because they

¹⁵ DLCY, 730.

¹⁶ For the definition of “major cases,” see Note 39 of Chapter 2.

¹⁷ Including substatute 275.05, 275.08, 275.09, see DLCY, 730-732, and Appendix D.

¹⁸ Substatute 275.06, see DLCY, 730, and Appendix D.

¹⁹ Substatute 275.07, see DLCY, 730-31, and Appendix D.

²⁰ James Stuart Olson, *An Ethnohistorical Dictionary of China* (Westport, Conn.: Greenwood Press, 1998), 228-35.

became captives in the frequent wars.²¹ Therefore, the price of persons in Guizhou was extremely low.²² Sichuan was the inflow of the sold people, and “Sichuan human traffickers” had become an idiom in Qing.²³ The immediate reason for the emergence of “Sichuan traffickers” was that Sichuan was a lucrative market. As shown in the Introduction, due to the wars and disasters in the transition between the Ming and the Qing, Sichuan saw a massive demographic decline. In the seventeenth and early eighteenth century, Sichuan still needed people to fill the population gap, as Xue Yunsheng mentioned, “several statutes (under the statute “*Kidnapping Persons or Kidnapping and Selling Persons*”) contain the term “Sichuan traffickers,” at that time (during Qianlong reign and earlier time) the human trafficking was prevalent, this is because Sichuan was vast but thinly populated area.”²⁴ Thus for human trafficking the trade route between Guizhou and Sichuan was created, and Chongqing became a major transit point in this path.

In the nineteenth century, the historical records show that the route of human trafficking between Guizhou and Sichuan still existed.²⁵ Chongqing no longer had a population vacuum; still, as an important trading center, the city attracted a large mobile population, especially single men, who would gather there.²⁶ According to the research of

²¹ The reason why Miao and other minority people were sold was highly complicated, see Zhongkui Zhang, “Lun Qingdai qianqi Guizhou miaojiang renkou fanmai lujinbuzhi de yuanyin 论清代前期贵州苗疆人口贩卖屡禁不止的原因 [On the Reasons of Repeated Human Trafficking of Miao Frontier in Guizhou of the Early-Qing Dynasty],” *Journal of South-Central University for Nationalities (Humanities and Social Sciences)* 29, no. 02 (2009): 72–76; Yadong Yang, “Qingdai qianqi yungui diqu shehui wenti yanjiu 清代前期云贵地区社会问题研究 [Research on Social Issues in Yunnan and Guizhou Area in the Early Period of Qing Dynasty ——With the Perspective of Social Control]” (PhD diss., Yunnan University, 2016).

²² *Qingdai Qianqi Miaomin Qiyi Dang'an Shiliao Huibian Shang*, 清代前期苗民起义档案史料汇编 上 [Compendium of the Historical Sources on Miao Rebellion in the Early Qing Part One] (Beijing: Guangming ribao chubanshe, 1987), 430.

²³ For example, the statute 275.06, see Appendix D. In *Qing shilu*, the term was around 10 times, for instance, “漢籍電子文獻資料庫,” accessed March 1, 2023, <https://hanchi-ihp-sinica-edu-tw.ezproxy.leidenuniv.nl/ihpc/hanji?@130^1500177931^807^^^702110010007005400010014^3@@448462405#top>.

²⁴ DLCY, 731.

²⁵ For example, Tao Tingjie, a Censor, had mentioned that “the human traffickers from different provinces come to Guizhou to buy women and earn money, which is very abhorrent,” see *Qing shilu* 清實錄 (Veritable records of the Qing dynasty), Daoguang Reign, 887-1, 887-2, in “明實錄、朝鮮王朝實錄、清實錄資料庫合作建置計畫,” accessed November 12, 2022, https://hanchi-ihp-sinica-edu-tw.ezproxy.leidenuniv.nl/mqlc/hanjishilu?12:1277347639:10:/raid/ihp_ebook2/hanji/ttsweb.ini:::@SPAWN#top.

²⁶ “Single men” does not mean they were not married, but they lived alone without families. For example, Yan Ruyi, in his book mentioned that every month there might be ten thousand boat trackers gathering in Chongqing, see

Zhou Lin, many women were sold to Chongqing as prostitutes.²⁷ The abduction had become a quotidian experience with a long history in Chongqing. Although not all abduction accusations in the archival documents were true, the choices of accusations constituted “representational reality”: not all the charges were true, but the social background could convince the magistrates, the litigants, and the litigation masters that abduction was a proper excuse for litigation. In a word, the choice of accusation was a result of the common sense in the Sichuan region and the impact of legal regulations.

Attacks From the Marital Family

It is difficult to discern the specific provisions that impacted the cases discussed in this chapter. However, it does exemplify how family relations controlled women. According to the regulations of the *Great Qing Code*, women’s lives should always be under the control of the natal and marital families; and in practice, women were indeed contested between these two families.

This part will examine the reaction the husbands (or other members of the marital family) would have when their wives disappeared, and analyze the reason why they directed attacks against their relatives by marriage. When a married woman suddenly disappeared and her husband or parents-in-law did not have any clues about her disappearance, one of their reactions was to report the event to the court. Among 221 cases that happened between marital and natal families, 138 were brought to the court by the members of the marital family. This is because of the patrilocal system in China, where women, after the wedding, were generally obligated to move into the home of their husbands, and the husbands and in-laws could immediately realize that the wives were missing. Yet, it was difficult for a woman’s parents and other natal family members to find out if there was anything wrong with her marriage if a married daughter did not visit for her parents a long time.

Ruyi Yan, “Sansheng bianfang beilan 三省邊防備覽 [Guide to the defense of the three-province border],” in *Xu xiu Si ku quan shu shibu* 續修四庫全書史部, *Xu xiu Si ku quan* 續修四庫全書 732 (Shanghai: Shanghai guji chubanshe, 2002), 218.

²⁷ 澎湃私家历史, “消失的‘茶妹’与沉默的盛世: 清代重庆一桩拐卖妇人案件,” Weixin Official Accounts Platform, accessed December 2, 2022, https://mp.weixin.qq.com/s?src=11×tamp=1669978389&ver=4202&signature=DaYYdlmzPda2cQxx0x-JyrBdwRdcLxAv0EQAxCoFxmL4BmiuvdBqEvYnLpHG*J7y86W6Ka0TGowVenHRSRW0taErDe9f7KgPnx4D0jBjcL5RSLw6UEBmtfpWZzfG5vk4&new=1.

On the one hand, what makes this course of action interesting is the subtle expressions husbands or fathers-in-law used to depict what happened. In 1808, Zhu Weiyuan found that the child bride of his son had vanished from sight. In the plaint he sent to the court, Weiyuan stated: “I have been searching her for days to find out whether she was abducted by others. please track down the abductor and find the child bride of my son.”²⁸ The plaintiffs did not know exactly what happened, but Weiyuan assumed that it was somebody else who lured his daughter-in-law away. In 15 cases where women suddenly disappeared without evidence as to their whereabouts, seven held a similar statement. Texts in many case samples (cited in the following part) implied the same fact: the language in the plaints did not leave many traces of women’s voices and much space for women to act, rather the plaints usually portrayed the women as an object that others were competing for. It was, to a large extent, a denial of female agency and self-determination; due to a lack of autonomy, women were not supposed to and were not able to determine an action like escaping.

On the other hand, husbands were inclined to blame the parents and other members of the natal family for their missing wives. If there was no clear suspect, returning to her natal family (*hui niang jia* 回娘家) would be the most straightforward explanation accepted by the marital family for why the wives ran away. It was generally accepted that married women could visit their parental families from time to time, but there were not usually definitive guidelines on how often they could go and how long they could stay.²⁹ In Ba County, I found cases where “*hui niang jia*” resulted in legal conflicts. A man named Li Qingyun accused his wife (and her brother) in 1858 of running away with clothing and jewelry. When a runner found Qingyun’s wife staying with her sister six weeks later, Qingyun had to file another plaint to withdraw the charge and clarify that his wife had just been visiting her sister.³⁰ The plaint mentioned neither how long she stayed with her natal family members nor whether it had happened before, and the plaints did not provide an explanation for why he chose to resort to the court for such a trivial matter and charged the brother of his wife.

Philip Huang has noticed that a woman visiting and staying with her parents or

²⁸ Q6-05-04282.

²⁹ Ellen R. Judd, “Niangjia: Chinese Women and Their Natal Families,” *The Journal of Asian Studies* 48, no. 3 (1989): 525–44.

³⁰ Q6-20-05426.

siblings could lead to litigation. He finds 13 cases represented as involving “runaway” wives out of 32 marriage cases in the Baodi archives, “the disgruntled peasant wife’s only real recourse was to return to her natal family.wives who had returned to their natal home for extended stays but were charged by their husbands with having run away to make their actions appear criminal to the magistrate.”³¹ Huang thinks the cause of a “runaway” accusation is that a woman stayed with her natal family for a long time without her husband’s permission.

However, the underlying causes are more complex than Huang’s conclusion. Husbands and in-laws usually saw the natal family as a great threat, and this sense of being threatened, according to complaints in the archives, comes from at least three aspects. First, the natal family was the most convenient shelter that a runaway wife could find, especially for women from the underclass, who would not live far away from their parents after marriage. In the research of Chinese historian Guo Songyi, the lower the social class people in Qing China were from, the smaller the geographical circle of marriage would be; most families contracted marriages within the same county, or even within the same township.³² This close geographical proximity constructed the necessary conditions for natal families sheltering married women.

Second, if a married woman suddenly died or disappeared, her natal family had the right to know what happened to their daughter, and natal family members may seek legal recourse under the pretext of their missing daughters.³³ This is the apparent reason for the worries that the husbands and parents-in-law had. There is a legal complaint filed in 1858 by Yi Yonglu:

為嫌貧私逃，稟懇存案事情。蚊家貧下力生活，娶妻王氏，不守婦道。本月初二，乘蚊未家，否聽何峻，私捲衣服、首飾、錢文潛逃。..... 若不稟存作主，恐伊娘家尋蚊滋禍，迫不得已，粘呈捲單。懇稟仁天賞准存案，俾後查獲王氏，稟究有憑，伏乞。

For (my wife) escaping from home without permission, report and beseech (the court) to reserve the case. My family is poor, and I make a living by toiling. I have married Wang Shi, who does not observe female virtue. On the second day of the current month, I am not at home (I do not know) whether she was instigated by someone. She absconded with clothing, jewels, and money. [...] I

³¹ Huang, *Civil Justice in China*, 29.

³² Songyi Guo, *Lunli yu shenghuo: Qingdai de bunyin guanxi* 伦理与生活：清代的婚姻关系 [Morality and Life: Marriage in the Qing Dynasty] (Beijing: The Commercial Press, 2000), 142–79. For two-thirds of women, their natal and marital family were located in the same township, see Mao, “Qingdai xiaceng funü yu niangjia de guanxi,” 14.

³³ Sommer, *Polyandry and Wife-Selling in Qing Dynasty China*, 437; Arthur P. Wolf and Chieh-Shang Huang, *Marriage and Adoption in China, 1845-1945* (Stanford, Calif.: Stanford University Press, 1980), 76–77.

report (to the court) and reserve the case for fear that *her natal family will stir up trouble* for me. I have no choice but to report and beseech with the list of lost property. I implore the benevolent heaven to approve to reserve this case in order to have grounds for investigating Wang Shi when tracking her down in the future.³⁴

Above is a typical legal complaint to instigate a runaway case. Though no evidence showed that Wang Shi was lured away by others, the husband still cited this situation as a possibility. Moreover, most complaints would start with “to prepare for a charge,” and the name of the defendants usually would be titled as “being charged” (被告) at the end of the complaint, as mentioned in Chapter Two. But this complaint starts with “to prepare for reservation” (*ju cun* 具存), and in this complaint, the woman was identified as “being reserved” (被存). In short, the husband did not intend to charge and punish his runaway wife but to avoid potential conflicts with her natal family. There is no single word in this complaint mentioning what the natal family did or if they had any connection with her escape, but out of the fear of future trouble, her husband resorted to the court for security.³⁵

If the daughter-in-law had close contact with her natal family, it would make the husbands and in-laws in greater distress. Li Shanglun handed in a complaint in 1863 with the pearl words: “My rebellious daughter-in-law absconded and escaped.” However, the first name he listed as the defendant was Tong Tangguan, the father of his daughter-in-law (Li Tong Shi). More specifically, Tong Tangguan and her daughter did not get “charged.” Instead, Shanglun asked to “reserve” his accusation because he was afraid that Tangguan “would ask me for the woman and stir up trouble for me, it is hard for me to avoid it. I implore (magistrate) to approve to reserve this case to have grounds for (solving) future troubles.”³⁶ Similar to the example above, Shanglun did not show any credible evidence for Tangguan being involved in the case of Li Tong Shi. He believed the natal family must play a key role, only because Tangguan took the young girl back home regularly and “there was something immoral, and bad rumors spread everywhere.” However, no details explained what exactly happened when she stayed with her parents.

The last, and most important reason why the natal family was regarded as a threat by the marital family was the potential conflicts over the ownership of married women

³⁴ Q6-20-05396.

³⁵ The logic should be that if in the future the natal family of his wife make trouble, he could use the “preserved” complaint as the evidence for that he had tried best to look for his wife.

³⁶ Q6-26-07184.

between the two sides. Research by Ransmeier and Sommer supplies the theoretical basis for our understanding of the conflicts between affinal relatives. Ransmeier's book "exposes the position of women in the Qing as movable property, as household assets that could be realized through sale."³⁷ In other words, whoever took possession of women had a portion of portable property. Sommer points out how women became moveable property in the Qing era, that the three forces: severe gender imbalance, a pervasive market for women, and widespread poverty among farmers converged to result in polyandry and wife-selling. Furthermore, Sommer has concluded that people at the bottom of Qing society followed a marriage pattern, "brideprice-heavy," which means that "the brideprice (*caili* or *caili qian* 彩禮) paid by the groom's family far exceeded any dowry, which was often trivial in value (if any was given at all)."³⁸ Thus, when a daughter or a widow got married, those who arranged the marriage for her (her natal or marital family members) would receive money rather than spend it.

These premises can help to analyze the motivation for the two parties (the natal and marital family). For a family from the lower strata, finding a bride had already cost them a great deal of money. It would be devastating for a man and his family to lose a wife. Not only would they lose the money they had paid, but they would also lose the possibility to capitalize on the woman in the future. In addition, if she had not given birth to a son, the husband and the family presumably needed to buy another bride, which would increase the burden on the family's finances. Therefore, the marital family of a woman must ensure that the woman stays in their household under their own dominance. Their suspicions and hostility against the natal family, built on a solid economic foundation, made it so that they could not bear the risk that their affinal relatives would claim the women back.³⁹

At the same time, the natal family could also make money by marrying the daughter to someone else if they could find a chance to take her back home. Another part of the reason why the natal family took part in the lawsuits about their daughters or sisters was

³⁷ Ransmeier, *Sold People*, 22.

³⁸ Sommer, *Polyandry and Wife-Selling in Qing Dynasty China*, 8–9. Also see Hill Gates, *China's Motor: A Thousand Years of Petty Capitalism* (Cornell University Press, 1996), 121–47. While the elite and rich families followed "dowry-heavy" and de facto polygyny marriages, see Ebrey, *The Inner Quarters*, 99–11–3.

³⁹ Indirect evidence comes from Li Liying, who finds that in 80% of homicides, subsequent to adultery, the adulteress' husbands were killed, and much fewer adulteresses were murdered by either their husbands or relatives. This is because the husbands could sell the wives for money, as Li shows, they did not have to take the lives of the wives. Liying Li, "They Are Expendable' Adultery and Homicide in Late Imperial China," *International Journal of Comparative and Applied Criminal Justice* 23, no. 2 (September 1, 1999): 267–76.

an emotional concern to protect the married women. In the cases discussed later, fathers of women would constantly claim that their daughters had experienced domestic violence.

Weapons of the Natal family

There were 80 cases against the marital family of a woman initiated by her natal family.⁴⁰ The purpose of the natal family – to bring their daughter home – can be reflected in the accusations they chose in litigation. The natal family, in 19 cases, had alleged that the in-laws and the husband were trying to force their married daughters or sisters into prostitution, or had sold/tried to sell the women into prostitute households.⁴¹ Prostitutes have been the subject of most scholarly research in Chinese women's history.⁴² This section will, from a unique angle, emphasize the function of “force into prostitution” as a strategy in local legal practice.

The ultimate purpose of the natal family was a divorce. Their aim led to their choice of prostitution accusation. In the nineteenth century, being a prostitute was forbidden by the *Great Qing Code*. Although there is no clear article about “a husband forced his wife into prostitution,” the closest regulation is “*Facilitating and Tolerating the Wife's or Concubine's Fornication*.” (zongrong qiqie fanjian 縱容妻妾犯姦) According to the article, if a woman were forced by her husband or parents-in-law to engage in fornication with another, the wife should not be punished; more importantly, the marriage should be terminated, and the woman should be “returned to her clan.”⁴³ The legal result of divorce constituted the vital reason why a woman's natal family chose to initiate “prostitution” cases.⁴⁴

⁴⁰ As shown in Table 3.1, there are 221 cases happened between natal and marital family, in which three cases that it was not clear which parties brought the case to court.

⁴¹ I could only find one case in which the marital family clearly charged the natal family for prostitution. Another common type of dispute caused by prostitutes in Ba County was the dispute over the cost of prostitution and jealousy, see Zhang, *Qingdai Baxian bunyin dang'an yanjiu*, 626–700.

⁴² For a short overview of Chinese prostitution and a list of important works, see Weikun Cheng, *City of Working Women: Life, Space, and Social Control in Early Twentieth-Century Beijing* (Berkeley [etc.]: Institute of East Asian Studies, University of California Press, 2011), 3.

⁴³ Jones, *The Great Qing Code*, 348.

⁴⁴ As a strategy, another function of forced prostitution might be to stain the morals of the husband and in-laws. Sommer has concluded that before 1723, for the legally debased or mean (*jian*) groups, sex work constituted an essential stigma that defined their social and legal status. The aim of emancipating the debased groups in 1723 was to extend commoner standards of sexual morality and criminal liability to all people. Hence, the prostitution charge also means that the husbands and in-laws had serious moral stigma, see Sommer, *Sex, Law, and Society in Late Imperial China*, 210–11, 260–61.

In a complaint of 1838, the daughter of Zheng Yucai, Zheng Shi married Xiao Yongshun after she became a widow, however:

殊永順不守法紀，欺蚊年邁耳聾。本月初八胆敢串誘周長興同來伊家宿娼，被永順逼蚊女為娼。蚊女不從，反遭永順執木棒打傷蚊女鄭氏，兩膀兩肋青紫可驗。

Yongshun did not observe laws and discipline, and took advantage of my old age and deafness. On the eighth day of this month, Yongshun dared to conspire with Zhou Changxing to come to his house and sleep with a prostitute. Yongshun tried to force my daughter into prostitution. When my daughter refused, Yongshun beat her with a wooden stick, injuring her. Her arms and ribs are bruised, and the injuries can be verified.⁴⁵

Yongshun, on the contrary, argued that Zheng Shi had committed adultery with another man. The coroner did not mention any injuries to Zheng Shi's arms and ribs, but a bruise on her head. No matter what really happened, Yongshun admitted in the testimony that he used to force his wife into prostitution. Yucai successfully used the strategy; the magistrate finally gave a divorce judgment, allowing Zheng Shi to return with Yucai to her natal family.⁴⁶

In some cases, though the charges of forcing women into prostitution did not get full admission, or even were denied, the natal family still achieved their purpose. In 1853, Peng Shuangfa stated in his complaint that his daughter Zhaogu married Ning Xuegui. But, the mother of Xuegui, Ning Chen Shi, smoked opium and "forced my daughter into prostitution. My daughter resisted, so she was beaten several times." Just like Zheng Shi, Zhaogu's arms and ribs were injured. The response of Xuegui was "classic," saying that the natal family was trying to abduct Zhaogu who went back to her parents very often. All their legal complaints were submitted in the summer, and the dispute was settled privately in autumn, and the two parties agreed on a divorce. The court hearing did not start until winter, and the magistrate confirmed the result of divorce, though all people's testimony included a similar story, in which Zhaogu disobeyed and clashed with her mother-in-law, and Shuangfa falsely accused his affinal relatives.⁴⁷ In this case, even though the story of prostitution was rejected, the natal family successfully claimed the daughter back.

No strategy could always get the expected result. In 1853, a widow, Huang Wang Shi,

⁴⁵ Q6-20-05025.

⁴⁶ Q6-11-09213.

⁴⁷ Q6-20-05025.

likewise suggested that the in-laws forced her daughter into prostitution and beat her unmercifully many times. Her son-in-law, Shen Yisheng, argued that Huang Wang Shi “had no sense of shame, despised of poverty, so she repudiated the marriage.” Eventually, Wang Shi and her son admitted that they had lodged a false accusation, and Wang Shi’s daughter was still Yisheng’s wife.⁴⁸

Sometimes, “force into prostitution” was used by women themselves to state that their husbands or other members of the marital family forced them into prostitution. In 1838, Chen Song Shi claimed that her husband, Chen Yongshun was ill, and could not find work to support the family, so he forced his wife into prostitution. Song Shi resisted, but the husband still found a customer, Hu Shishun, for her. The woman then had a physical encounter with the customer and cut the man’s hair in the fighting. Song Shi went to court, fearing that Shishun would file suit first. In the final judgment, the woman and her husband were sentenced to be slapped on the face, and Song Shi was told that she should follow her husband back home.⁴⁹ In another similar case in 1843, Feng Xie Shi stated that she was forced more than once by her husband into prostitution and had physical conflicts with a customer her husband had introduced. The magistrate gave a rare decision, banishing the couple from Ba County.⁵⁰ Compared with the lawsuits initiated by natal family members, it seems that the chances of getting a divorce were lower in the cases filed by women themselves. In the cases filed by natal family members, most (20 out of 32) cases ended with divorce, while in the cases initiated by women, only one case clearly mentioned that the woman could return to her natal family. I could not give a concrete explanation for this, but we can see that if a woman entered the court by herself, there was a chance that she did not have a natal family to rely on, so the magistrate would not think it was impossible to let her return to her parental home.

Those women who resisted being prostitutes and resorted to the court often proposed to leave their husbands. While the women who obeyed the command of their husbands to be prostitutes could also go to court for financial compensation.⁵¹ In such cases, the magistrates probably would not blame anyone for prostitution. In 1838, Wang Xiong Shi accused her husband, Wang Cifu:

⁴⁸ Q6-20-05018.

⁴⁹ Q6-11-09242.

⁵⁰ Q6-11-09422. The judgement to banish somebody only appeared twice in my research of archival documents, by the same magistrate (Ye Zhaocai 葉朝采) in the same year (1843), see Q6-11-09422 and Q6-11-09418.

⁵¹ Some prostitutes could even go to the court to ask their customers to pay, see Q6-20-05397

氏父故母醮，賜福不務正業，赤貧無聊，在渝欠眾債無償，將氏潛搬綦邑，逼氏為娼婦，無奈勉從。

My father is dead and my mother has remarried. Cifu does not live by honest labor. He is utterly poor and heavily in debt which he could not repay. He secretly relocated me to Qijiang and forced me into prostitution. I had no choice but to agree.⁵²

She also claimed that Cifu sold her to another man as a concubine, and continued blackmailing the woman and her second husband. In contrast, Cifu claimed that Wang Xiong Shi was abducted. The case was closed by mediation. Wang Xiong Shi aimed to stop the blackmail, however, after mediation, her second husband gave her up, and she had to live with her first husband. Wang Xiong Shi did not have a natal family anymore, and her second husband got rid of her because of the potential trouble she might bring. The magistrate accepted the result and did not give any punishment.

Almost all women in their complaints approached chastity in the issue of prostitution with the same attitude. The pattern was that they first affirmed that they had made the necessary resistance, but the poverty of their family and the pressure of their husbands left them no choice. As Theiss argued, women could interpret the notion of “chastity” for their own interests. Here, women argued for the circumstances under which chastity might be abandoned. The magistrates, in general, took a tacit position, in which they might reprimand the prostitutes, but seldom punished them and sometimes even helped them to find a way out. For example, a widow, Li Chen Shi, charged her father-in-law. When her husband was alive, he did not have a job and then forced his wife into prostitution. After his death, Li Chen Shi was getting ill, but her father-in-law still asked her to give him money. After she refused, he even tried to rape her. Instead of making value judgments and punishing the woman as a prostitute, the magistrate asked the runners, together with her father-in-law, to find her a new husband. It took them two weeks to find someone willing to marry her.⁵³

For a woman who was never involved in sex work, forced prostitution was a strategy she could use to get rid of their greedy and unemployed husbands. Those who were already prostitutes could also find a way to reduce the stigma attached to their occupation that nineteenth-century China might have set off.

We cannot speculate how many allegations of “prostitution” were true; yet, as shown before, the emergence of an accusation and the construction of a plot usually worked to

⁵² Q6-11-09231.

⁵³ Q6-11-09188.

tell a convincing story in the justice system. Fitting in with people's perceptions of society and family was the basic and critical foundation of the narration. The recurrence of forced prostitution denotes that it might be an effort that a family often made to alleviate poverty, a part of representational reality. More significantly, it is one circumstance of coerced divorce endorsed by the codified laws, allowing the natal family to reclaim their daughter from her husband or a woman to leave her husband.

Vague Boundary Between Marriage and Abduction

Table 3.3 tells us that the most frequent lawsuits that occurred between the marital family and the natal families were abduction and marriage. The following section will show that it is worth considering whether there is a binary distinction between abduction and marriage in the archival cases. Analysis of the common factors used in both marriage and abduction can show the consistency between these two kinds of accusations. The highly similar storylines in the complaints submitted by the husbands to charge the natal family about marital disputes and abduction suggest that the core of all the cases was the same: who had the ownership and control over women was the focal point of the lawsuits.

"Despise the Poor"

"Despise the poor" and "break up the marriage" are widely used by the marital family in their complaints, which from the perspective of women's in-laws, constituted the critical factors to show the motivation of the natal family and the worries and concerns of the marital family. The following is a case that mingled with such common factors. This is a complaint from a marital dispute. A thirty-four-year-old man, Liao Bingnan, again sued his father-in-law, Luo Hengtai. The pearl words Bingnan used were "Luring (my wife) into (new) marriage and no trace (of her)" (誘嫁無踪):

[妻子廖羅氏]被妻父羅亨泰乾戚曹陳氏，屢接妻妾，引誘不端。經蚊教誡，不許往來。孰知亨泰嫌貧，居心拆嫁。今二月，亨泰生期接羅氏赴席，淫惡曹老三唆使不歸。蚊疊往問，亨泰藏匿羅氏不現。密問推艇丁洪順，吐說亨泰陳氏已將羅氏拆嫁。

Cao Chen Shi, the sworn relative of Luo Hengtai, who is the father of my wife, had repeatedly picked up my wife at her house and seduced her to improper conduct. I reprimanded them and forbade them to interact with each other. However, Hengtai despised my poverty and harbored evil intentions to break up my marriage. In the second month of this year, when my wife went to take part in Hengtai's birthday dinner, the villain Cao Laosan urged my wife not to return home. I have asked (my parents-in-law about my wife) more than once, but Hengtai hid Luo Shi, and I could not find her. I had secretly questioned boatman Ding Hongshun, who told me that Hengtai

and Cao Chenshi had married Luo Shi to another man.⁵⁴

The lawsuit initiated by Bingnan was a marital dispute. Bingnan believed that Hengtai intended to break up the marriage, so Bingnan's wife, Liao Luo Shi went back home to celebrate Hengtai's birthday, and Hengtai and Cao Chen Shi kept Luo Shi with her parents. In Bingnan's opinion, this is a marital dispute with the storyline that the couple were forced to separate, and the natal family married the wife to another man, so the husband sued the natal family in court when he found his wife missing.

The following "marriage" case is similar and includes more details. Zheng Yongtao, a twenty-one-*sui*, sued his father-in-law, Liu Hanwu, in 1808 because Wuhan "broke up (my marriage) and sold (my wife) when I was not at home" (乘外拆賣):

蚁幼抱劉漢武之女劉氏為婚，……夫婦和睦無異。殊劉漢武夫婦窺蚁近年貨賣不遂，即起嫌賤之心，屢次刁擺蚁妻劉氏與蚁不睦。動輒凌辱扭毆，蚁尚舍忍。於去冬月，蚁往江北遠貿，被岳漢武即將妻歸寧，隨將衣飾捲去，遭地棍杜之賢主擺，劉漢武串痞李正倫為媒，將蚁妻劉氏夥賣與豪惡杜老大為妻，獲銀分肥。腊月廿八，蚁歸始知往理，豈惡等欺蚁目不識丁，預寫字據一紙，逼蚁畫押。

I married Liu Hanwu's daughter when I was young [...] We lived in harmony. However, the Liu Hanwu couple felt that my business had not gone well during the past years, so they entertained thoughts of despising and loathe me and cunningly influenced my wife to be at odds with me several times. My wife thus insulted and grappled with me. I put up with (all unruly behaviors). In the eleventh month of last year, I went to Jiangbei for business, and my father-in-law asked my wife to abscond with clothes and ornaments and visit her parents. Then the local thug Du Zhixian was in charge (of the evil event), and Liu Hanwu colluded with ruffian Li Zhenglun as the matchmaker to marry my wife to Du Laoda. They earned money and shared the booty. On the twenty-eighth day of the twelfth month, I came back home and went to argue with them. However, they took advantage of the fact that I am illiterate and prepared a contract and forced me to sign it.⁵⁵

This plaint contains all the familiar elements: a husband away from home and his impoverished family, a greedy natal family, and the missing wife. Liu Hanwu not only took her daughter back home, but also had a whole set of arrangements for a new marriage, including matchmakers and a marriage contract, or a document to confirm the termination of the current marriage. From this perspective, the case is a typical marital dispute about the legality and validity of a marriage. Therefore, the case could be defined as a marital conflict, with the same plot and language used as the prior-mentioned abduction and marriage cases.

⁵⁴ Q6-20-05412.

⁵⁵ Q6-05-04284.

The following case discussed here refers to abduction and involves the natal family having lured their married daughter back to the family and hiding the woman in her parental home. Xie Zhengrong, a twenty-four-*sui* man, sued his father-in-law, He Ershun, and Ershun's relatives, He Zailin and Hu Wu, for “slyly stealing (my stuff) and firmly hiding my wife”(刁透堅匿):

不料二順嫌蚊家貧，支伊兄何在林，並妻兄胡五於九年七月初六來家，乘蚊外貿未歸，胆唆蚊妻何氏私將蚊衣飾等物透，逃二順家藏匿。

Ershun despised my poor family, and asked his elder brother, He Zailin, and the brother of his wife, Hu Wu, to influence my wife, He Shi, to abscond with clothes and adornment when I was doing business elsewhere.⁵⁶

The model of this complaint was still that the parents of the wife resented the poor husband, so the natal family members decided to lure the wife to come back to her natal family when the husband was not at home. The mere difference between this abduction case and the previous marital disputes lies in whether the complaints mentioned “marriage.” Nevertheless, the storyline of each case expresses a husband's anxiety about his ownership and control over his wife, and no matter whether the natal family had arranged the remarriage for the woman, the claim of the husband rested on getting his wife back. This concern probably stemmed from the woman's role as the portable property of the family, and the anxiety over the missing wife followed the same logic of the loss of land.⁵⁷

Many of the complaints look alike. The drafting of complaints works similar to assembling a machine; those who drafted the complaints extracted specific terms from common phenomena and used these parts to assemble a legal paper. “Despising poverty” and domestic violence (discussed below) were regularly used to describe the motivation of their litigation in the conflicts between natal and marital families. “Abduction” or “marriage” merely functioned as an outer packing.

The practice of trafficking women was consistent with the preconceived notion that women were frequently used in exchange for survival resources, so this kind of representation could be sustained and eventually become part of the litigation strategy. It should be noted here that the extensively used expression of “despising poverty” does not have to mean that most conflicts between affinal relatives resulted from economic hardship in reality; rather, in contemporary social perceptions, poverty or the resentment against

⁵⁶ Q6-27-08182.

⁵⁷ Ransmeier, *Sold People*, 24–61; Sommer, *Polyandry and Wife-Selling in Qing Dynasty China*, 189–96.

poverty was the most important root for the battle over women. The phrasings “despise the poor” and “break up the marriage” were employed to create a context that contemporary people were familiar with and tended to believe. These factors were tallied with the experiences of ordinary people and the knowledge of magistrates: it is normal for a married woman to be abducted since there was a history of human trafficking in the Sichuan area.

All complaints in this part stressed that silver was used as a primary motive for breaking off the marriage and creating conflicts between the affinal relatives. Husbands or marital families accused the natal family of “despising the poverty” and “abducting” very frequently. The marital family and natal family mirrored each other to a certain extent. The resentment of poverty, in effect, preceded the transaction; complaints against the domestic financial situation might trigger the trade concerning the woman, or forced prostitution as explained before. Both marital and natal families took this logic for granted. The practice of trafficking in women and the diverse forms of the transaction, such as “getting a husband to support a husband” had become a widely recognized fact. Simply because it was consistent with the preconceived notion that women frequently were used in exchange for survival resources, few people would question the veracity of the description, and this kind of representation could be sustained and eventually become part of the litigation strategy. In summary, the expression of “despising poverty” was a part of “representational reality,” which means that the conflicts between affinal relatives resulting from economic hardship were common. This phenomenon was broadly accepted and fixed as part of the litigation strategy.

“Loathe and Hit”

Rather than “despising the poverty,” the natal family more frequently chose to blame the husband for domestic violence. As mentioned above, “*xian jian*” (嫌賤, to loathe and despise) is a term suggesting that the husbands or parents-in-law had been abusing married women. There are other phrases more directly referring to violence, “*xian ou*” or “*xian ke*” (嫌毆 or 嫌尅, to loathe and hit).

Mao Liping has pointed out that in cases of “abduction,” the in-laws always attributed the cause to “despising the poverty,” while the natal family emphasized that husbands and in-laws abused the daughters.⁵⁸ It is true that young wives were usually perceived to be the

⁵⁸ Mao, “Qingdai xiaceng funü yu niangjia de guanxi,” 36.

victims of domestic violence, but domestic violence, as a weapon to gain sympathy, was widely deployed by litigants and was not limited to the natal family members.

The following case is an example of how the parties use violent factors in their legal actions.

In 1837, Zhang Wenlun's eldest son, Zhang Guangxi, married He Boyuan's daughter, He Gu, but conflict occurred between the parental families of the young couple during the second year of the marriage. Wenlun reported that his daughter-in-law had escaped more than once:

不料何姑幼失教訓，自適蚊門，性最刁傲，與子不睦，藉端鬧釀，已非一次。蚊屢向伯元說知，縱女不戒，以致何姑愈為得勢。今正十八，私捲衣物逃亡伯元家。蚊憑團理說，伯元雖將何姑送歸，不安於室。蚊夫婦只得隱忍未較，殊何姑不改前非，本月初八又捲摺銀飾、衣物私逃走。蚊妻李氏趕至路途理阻，何姑胆敢推蚊妻，跌地挺傷腰脊。

To my surprise, He Gu did not get a proper education when she was young. When she came into my home, she behaved meanly and arrogantly and did not live in harmony with my son. She seized opportunities to make trouble more than once, I have told Boyuan repeatedly, but he pampered her daughter so that He Gu was more unbridled. On the eighteenth day of the first month, she absconded with clothes and adornment to Boyuan's home. I resorted to community leaders to reason with Boyuan. Although he returned her to my family, He Gu still did not behave herself in the family. My wife and I chose to forbear. However, she did not rectify her errors. On the eighth day of this month, she absconded with silver jewelry. My wife, Zhang Li Shi, hurried to stop her, but she dared to shove her to the ground, and my wife hurt her waist and back.⁵⁹

According to the context, a daughter-in-law hurt her mother-in-law. If we strictly refer to the codified law, and if “pushing over” could be considered “striking,” this accusation is close to “*Gross Unfilialness*” (惡逆), the fourth clause of “*The Ten Great Wrongs*,” and He Gu should be beheaded!⁶⁰ However, neither Zhang Wenlun nor the magistrate treated the case as a severe unfilial crime, and the magistrate only made a common instruction, “waiting to be inspected wounds, summoned and interrogated.” Wenlun did not ask to punish He Gu (her name was the last one on the defendant list) but to guarantee his control over the young woman. The conflict and its resulting injury helped Wenlun and his family play the role of victims and hold the moral high ground.

Compared with the former brief and sketchy narration, a plaint filed by He Boyuan described how the marital family, especially her husband and mother-in-law, abused his

⁵⁹ Q6-11-09209.

⁶⁰ See Article 284. *Plotting the Killing of Paternal Grandparents and Parents*, in Jones, *The Great Qing Code*, 236–70.

daughter in great detail:

蚊厚辦賠奩，並外贈錢十三千。蚊女素知婦道，敬孤順夫無異。殊光喜母子嫌蚊女性蠢木舌，今正十六、十九兩次將蚊女毆打，蚊尚婉言勸慰。詎光喜同伊庶母張李氏悍惡不悛，嫌賤愈熾。本月初六光喜又藉事生枝，執漿洗木棒毆打蚊女。逶至蘭土地啼哭，李氏復縱子光喜二次拳毆，跌下街鄰雲應銀田內。

I prepared and gave a large dowry and extra money. My daughter always knows female virtues, respects her mother-in-law, and obeys her husband without any behavior disorder. However, Guangxi and his mother think my daughter is dull and awkward in speech. They beat my daughter twice in the first month of this year, I had gently persuaded and soothed them.⁶¹ Guangxi and his concubine mother, Zhang Li Shi, remained shrewish and impenitent, and they loathed my daughter more aggressively. On the sixth day of this month, Guangxi made trouble again and clubbed my daughter with a stick for laundry. My daughter was running away and crying. Mrs. Li indulged her son Guangxi in beating my daughter again, so she fell into the neighbor's land.

He Boyuan gave more information, including which day and what kind of weapon Guangxi and his mother used to strike He Gu. But the following report by the coroner merely mentioned there was a wound on Zhang Li Shi's arm and no information about whether He Gu was injured. All of them, no matter whether natal or marital family members gave similar testimony later: the in-laws did not like He Gu going to the natal family so often, so once when she came back again, Zhang Li Shi upbraided her, and she talked back, which irritated Zhang Wenlun so that he decided to resort to the court.

If the testimony was the truth, both parties had exaggerated or falsified violence as their strategy to win the lawsuit. For Wenlun, a more severe accusation could help to make sure his complaint would be accepted. From the standpoint of the natal family, telling a story of a daughter being severely injured would not only shape her as a victim but also imply that He Gu, as a newly married wife, was weak and alone in the natal family, so she was not able to injure her mother-in-law.

The magistrate decided that since the two parties were affinal relatives, they should get along well with each other. He did not give punishment to anyone, and Zhang Wenlun could bring He Gu back. However, Wenlun staged a comeback one year later:

張主見何姑光喜均屬年幼，諭蚊帶回管束，不許娘家往來，各結在卷。本年正月二十四，伯元聽得何姑與蚊妻口角，令伊次子何秀全、何三等來家，估接何姑，蚊妻與子隱忍未阻。至三月十八裁秧，乏

⁶¹ It happened on the sixteenth and nineteenth day.

人炊爨，蚁着子光喜往接何姑。反被伯元挾忿嫌貧，逼令休退。伊次子何秀童書就婚約稿，令蚊子照字書寫，蚊子不允，逃歸向蚁說知。

The magistrate believed that He Gu and Guangxi were both young, and instructed me to bring He Gu back and discipline her, while her natal family should cut off relations with her. The records of all parties agreeing to end the case remain on file. On the twenty-fourth day of the first month, Boyuan heard about a quarrel between my wife and He Gu, so he asked his second son He Xiuquan, He San, and others to come to my home to pick her up. My wife and son tolerated this and did not prevent them. By the eighteenth day of the third month, when we were busy transplanting rice shoots and nobody could cook, I asked my son Guangxi to bring He Gu back. However, Boyuan, harboring resentment and despising the poor, forced my son to divorce his wife. He asked his second son, He Xiutong, to draft a divorce contract and had my son write according to his draft. My son refused and returned to inform me.

His accusation took further steps this time, from runaway to breaking off the marriage. Unfortunately, no more investigation and interrogation records followed, and the magistrate only instructed that Wenlun could bring He Gu back, as the former judge said. Indeed, Wenlun confirmed his lawful authority over He Gu, and as the record has revealed, this is a case where the accusations evolved from runaway to marriage conflicts, which suggests another kind of connection between the two accusations. They might not appear in the same complaint but would gradually approach the core of conflicts, the legality of marriage, and the control over and ownership of the woman.

It is undeniable that until today domestic violence is still one of the biggest threats to women's life and health in China, and the news that domestic violence leads to homicide can still prompt nationwide outcry and discussion from time to time.⁶² On the other hand, domestic violence could also work as a part of the litigation strategy in the Qing era. The role of violence in litigation shows that it constitutes the "representational reality." The image of abusive husbands and mothers-in-law was equally accepted in the textual facet and therefore became a part of the strategy.

A Mix of Marriage and Abduction

The case of He Gu has demonstrated the circumstance that the accusations of breaking off marriage and abduction tangled with each other. This section will give examples where

⁶² For example, a young wife was abused to death by her husband and in-laws, and the criminals were given a very light penalty in November of 2020, see Jessie Yeung CNN, "Public Outrage after Family Sentenced to Three Years for Killing Young Woman," CNN, accessed November 30, 2020, <https://www.cnn.com/2020/11/20/asia/china-woman-killed-fertility-intl-hnk-scli/index.html>.

the same complaints submitted by the husbands to charge the natal family members of their wives, contained indications of both types of conflicts: marital disputes and abduction. All the stories told by the husbands in this section clearly showed that the nature of the conflicts between the marital and natal families of wives was about the ownership of the women.

In Xianfeng 3 (1853), a twenty-four-*shui* man, Xiong Dashun, submitted a complaint, “abducting (my wife) and marrying (her to another man), using violence and forcing me” (拐嫁兇勒), to charge Liao Daxing and Liao Jinxiu, who were Xiong Dashun’s father-in-law and brother-in-law, and a man with the surname of Deng:

不料大興嫌蚊家貧，本月二十三，乘蚊出外做活，縱伊子廖金秀刁唆廖氏透捲衣物。清理大興翻言與蚊要人。

Daxing despised the poverty of my family. On the twenty-third day of last month, when I was working outside, Daxing asked his son, Liao Jinxiu, to lure Liao Shi to abscond with clothes. I asked Daxing what happened; however, Daxing asked me for her.⁶³

According to Dashun, Liao Daxing, and Jinxiu first abducted Dashun’s wife, then arranged another marriage for her (with Deng). He used the four characters to summarize his complaint, including the keywords for marriage and abduction disputes. In this case, abduction and marriage were two segments of the conflict; the integration of the two made the complaint complete. Moreover, there was no clear-cut line between abduction and marital disputes as that in the *Great Qing Code*. There are no records of how the conflict ended and no judgment of the magistrates.

In the case detailed above, abducting the woman and arranging a marriage for the woman were still separate acts, while in the following case, abduction and marriage were inextricably linked. In 1853, Wu Chaofa filed a complaint with pearl words, “colluding and marrying (my wife to others), and (there is) no trace (of her)” (串嫁無踪). The phrasing makes me want to categorize it under “marriage,” and it also suggests the key part of his accusation was that Wu Chaofa could not find his wife:

蚊父母俱故。幼娶髮妻王氏，傍岳母王田氏樓住。蚊傭工度活，今正蚊幫張油匠數月未回。田氏嫌蚊貧苦，串媒滾...乘蚊未家，私將王氏拐嫁無踪，捲擄蚊衣被飾物一空。本月廿五，蚊歸始知，投團約羅德超等集理，田氏仗屬女流潑蠻，橫不由剖。

My parents died. I married Wang Shi when I was young, and I lived with my mother-in-law, Wang Tian Shi. I make a living by being hired labor. Early this year, I came to work for Painter Zhang. I left my house for several months. Wang Tian Shi despised my poverty, and colluded with the

⁶³ Q6-20-05027.

matchmakers, [...] abducted and married my wife to others when I was not at home; now I cannot find her trace. She absconded with clothing, quilts, jewels, and money. On the twenty-fifth day of this month, I came back and realized what happened and resorted to speaking to the community leaders. However, Tian Shi counted on herself as a woman and was shrewish to obstruct my actions.⁶⁴

The narrative of this plaint did not include the respective depiction of abduction and marriage; rather, it combined the two issues as one verb. *Guai jia* 拐嫁 (abducting and marrying) could be explained as two acts, first luring a married woman to leave her husband, then marrying her to another man, which is how Liao Daxing used the word. It could also be interpreted as indicating that abduction and marriage were inherently integrated, in which case there would be no need to distinguish and describe them separately.

In the two preceding cases, although the two defendants did not specify their claims (as most plaints did not), the texts in the plaints made their purpose clear: they wished that the court recognized the legitimacy of their marriage, that it would nullify the next marriage, and especially that it would help them get their wife to return home. In other words, the two cases were indeed marital conflicts, but the writers of the legal plaints injected the element of abduction into the lawsuits, for which there was no better reason than interpreting as a strategy to draw the attention of the magistrate.

Since the litigants and litigation masters drafted the “marriage” and “abduction” plaints in identical ways, and we have seen the words “abducting and marrying,” this might suggest that it is not necessary for us to distinguish between these two types of accusations. Still, the subtle differences between “marriage” and “abduction” cases can also show the different dimensions taken into account when choosing an accusation. Marriage lawsuits were more in accordance with the perception of the relationship between the marital and natal family. Since the law only granted parents (and husbands and in-laws, under certain circumstances) the authority to arrange a woman’s marriage, it was logical for them to bring a lawsuit related to marriage. For those who were inclined to use abduction, one of the reasons might be, compared with marriage disputes, abducting women was a more serious crime, and the magistrates should more easily approve lawsuits with abducting accusations. Therefore, family ties and legal provisions together determined the strategy employed by the parties.

⁶⁴ Q6-20-05058.

Relationships between Daughters and Natal Families

The previous part mainly talks about the conflicting relationship between the natal family and marital family of the same women, and in the cases above the natal family seemed to help women to get rid of their poor and violent husbands, and maybe earn money by remarrying the daughter. However, the daughters and the natal families sometimes had conflicts and this part will focus on the relationship between women and their natal families.

The opinion that married women in China were isolated from their natal family used to be popular; just as a proverb implied, “married daughters, as water spilled out onto the ground, could never return” (嫁出去的女儿, 泼出去的水). For example, Kay Ann Johnson concluded that ties of married women to natal families were weak due to “patrilocal residence, poor communication and a kinship ideology and religion based exclusively on patrilineal lines.”⁶⁵

However, this view is constantly challenged. A daughter was depicted as “a pearl in the palm,” an essential member of the natal family, and cherished and protected by her parents.⁶⁶ Upper-class families maintained political influence or formed alliances through their daughters and affinal relationships and even passed on “family learning” through their daughters.⁶⁷

Most studies on the affinal relationship in the lower classes are on the basis of the judicial archives.⁶⁸ According to Sommer, natal families were expected to protect a daughter’s safety and interests. With the help of her parents, a woman could get rid of her unhappy marriage.⁶⁹ This opinion has been echoed in the work of Theiss, who argues that women’s natal families posed a significant threat to “notions of patrilineal prerogative,” as they “intervened to defend daughters who had been accused of impropriety by their in-laws.”⁷⁰ Mao Liping, in her research about the Nanbu Archives, elaborates that as their elite counterparts, affinal relationships for lower-class people also constituted a vital alliance for them to tide over and survive difficult times. The fact that daughters remained

⁶⁵ Kay Ann Johnson, *Women, the Family, and Peasant Revolution in China* (Chicago and London: University of Chicago Press, 1985), 8–9.

⁶⁶ Weijing Lu, “A Pearl in the Palm’: A Forgotten Symbol of the Father-Daughter Bond,” *Late Imperial China* 31, no. 1 (2010): 62–97.

⁶⁷ Mann, *Precious Records*, 76–120.

⁶⁸ As mentioned before, the marital and natal families of a woman usually would live in the same town.

⁶⁹ Sommer, *Polyandry and Wife-Selling in Qing Dynasty China*, 222–33.

⁷⁰ Theiss, *Disgraceful Matters*, 89.

in close contact with their natal families after they were married was not only a consequence of emotional or affective ties but also because natal families perceived their married daughters as a potential survival resource.⁷¹

My observations on the Ba County Archive prove the close connection between married women and their natal families. For instance, Tu Huanzhang, aged 19, submitted a complaint in 1863 with *zhu yu* “cunningly hide (my wife), absconding (my property), and forcing (me)” (刁匿捲逼), to charge his father-in-law and brother-in-law, because they abducted Huanzhang’s wife, Tu Chen Shi and forced Huanzhang to sign a divorce contract. Soon after, Tingxing and Shuangying responded and handed in a complaint with *zhu yu*, “force to marry and confound (black and white) to accuse falsely” (逼嫁顛誣):

鶴鳴父子浪蕩傾家，日食莫繼。七月初三，煥章向蚊雙瀛泣懇，家貧難保。伊父苦逼陳氏嫁賣祝姓，取銀十兩。陳氏不從，煥章親送蚊女至劉欽瑜家暫住等語。……殊鶴鳴逼嫁未遂，堅聽棍監塗玉山唆擺，旋支煥章架以刁匿捲逼誣告，……且伊家貧如洗，何有捲逼。

Heming (Tu Huanzhang’s father) and his son, loafed and lost his family fortune, and could not afford daily food. On the third day of the seventh month, Huanzhang cried to me (Liu Shuangying), saying his family was too poor to keep (his wife), so they forced his wife hard, to sell her off in marriage to a Mr. Zhu, and got 10 teals of silver; Tu Chen Shi did not follow the arrangement, so Huanzhang himself sent her to stay with Liu Qinyu temporarily. [...] However, because his force to remarry did not succeed, Heming was instigated and manipulated by a villainous imperial student, Tu Yushan, and prompted Huanzhang to accuse falsely [...] and how impossible (Tu Chen Shi) to abscond, since Tu family is as poor as a church mouse.⁷²

Then Tu Chen Shi herself submitted a complaint, telling a similar story and adding more details:

去四月，氏夫屢說日食無度，翁要估逼作賤，氏不允從，氣急觸怒口角，闔鄰共知。前月初一，氏翁逼氏嫁賣...氏願從一而終，臨死不允。

During the fourth month of last year, my husband said several times that there had been no reliable income, and my father-in-law intent to force me to be a prostitute. I did not allow it and refused to follow his order, which infuriated them, and we had a quarrel. All the neighbors heard and knew this. On the first day of last month, my father-in-law threatened to sell me off in marriage ... I am faithful to my husband to the end, rather die than submit.

⁷¹ Liping Mao, “Qingdai xiaceng funü yu niangjia de guanxi: yi Nanbu Dang’an wei zhongxin de yanjiu 清代下層婦女與娘家的關係—以南部縣檔案為中心的研究 [Lower-Class Women and Their Natal Families during the Qing Period: A Study Based on the Nanbu County Archive],” *Research on Women in Modern Chinese History*, no. 21 (2013): 3–48.

⁷² Q6-26-07223.

This is a story where a daughter and her natal family allied to fight her in-laws. According to the two complaints, it is Tu Chen Shi's determined attitude to refuse to remarry that led to the conflict between her natal and marital families. Her father and natal family stood together with her in an alliance to fight her poor and evil husband and father-in-law. This case is very emblematic of the fact that many women could count on their natal family to combat their husbands and in-laws. Although domestic violence might function as a tactic, it cannot be denied that there must be parents who sued their affinal relatives for the sake of their daughter's life and health. A woman could take refuge with her natal family when she faced violence or other threats if they lived in close proximity to each other. If she had to take part in legal actions, a married woman possibly had no choice but to depend on her natal family to take legal action for her rights and interests. Margery Wolf has suggested that a married woman could gradually establish herself as a member of the women's community in the village, which could help her to find protection in her husband's household.⁷³ However, in contrast to her natal family, the women's community that a wife might count on in everyday life could hardly give any substantial support for legal actions.

The case of Tu Chen Shi also includes some unusual elements because the married daughter filed a legal complaint. In most cases, as long as the natal family members offered succor, the woman did not have to show up by herself in court. Or rather, the voice of women could exit from the public sphere as long as they could have their natal family speak for them.

A Mother Fighting for Herself

All the cooperation or alliances between women and their natal families was based on the alignment of the woman's interests with her natal family, and the natal family being willing to help the woman, whether for financial or emotional reasons. However, what if they had conflicts or diverged interests, or the woman was trying to attack her natal family? Though such cases were rare, they indeed existed and reflected the diversity among females.

The behavior of the woman Yao Yang Shi in the case below contradicts the cliché that a mother would always want the best for her children. It is not salient in the text that she cared about her daughter's life; instead, she put her own interests first. She was dragged into the court because her son-in-law, Zhang Shifang, submitted this complaint in 1858:

⁷³ Margery Wolf, *Women and the Family in Rural Taiwan* (Stanford, Calif.: Stanford University Press, 1972), 37–41.

咸豐二年，被伊再醮母姚楊氏嫌貧愛富，將陳氏藏匿伊家，是□七月鳴喊……將陳氏掌責，斷蚊承領。三年復遭姚楊氏將伊女串拐……蚊四路找尋無蹤，忽至今三月初三，…得見蚊妻陳氏。熟料伊母復又改嫁張姓，與楊氏在彼看戲，蚊扭陳氏投鳴街坊。伊吐稱在鄭洪家賣娼為生。

In the second year of Xianfeng (1852), my wife's mother, Yao Yang Shi, who had remarried someone else after widowed, despised me for my poverty and curried favor with the rich, so she hid my wife in her own house, so I cried out about my grievances to magistrate... my wife (Zhang Chen Shi) got slapped, and I brought my wife back. However, three years later, Yao Yang Shi seduced my wife to run away again, [...] I searched everywhere but could not find any trace of her until the third day of the third month of this year (1858), [...] I found my wife was watching a play with her mother (she had remarried another man again), then I seized my wife and handed her over to neighbors, and she admitted she had been making a living from prostitution in Zheng Hong's household.

被稟：張楊氏（即姚楊氏），（惡娼）鄭洪游本家，（聽匿）陳氏

Defendants: Zhang Yang Shi (Yao Yang Shi), (evil prostitute) Zheng Hong, (being hidden) Chen Shi⁷⁴

Zhang's mother-in-law admitted and confirmed his statement during the interrogation, and the magistrate asked Zhang to rent a place first, then he could bring his wife back. It seemed the case was going to be closed, and Zhang had already handed in a document in which he promised to bring his wife and mother-in-law back home. However, on the same day, his mother-in-law suddenly filed a simple plaint:

時芳引女至涪州，嫁賣劉倫為妾。劉倫亡故，伊妻劉巫氏又將氏女陳氏嫁與林志冲為室，育有幼子。因志冲未家，時芳扭氏喊冤。本月初四訊斷，時芳暫領母女在城佃居……今時芳不思嫁賣之咎，胆違訊斷，只領氏女，不要氏同居。氏思志冲歸家害累胡底，為此呈明。…飭時芳全領同居。

Zhang Shifang brought my daughter to Fuzhou and sold her off in marriage, Liu Lun, as a concubine. After Liu's death, his wife sold my daughter to a man, Lin Zhichong, and my daughter had already given birth to a young boy (with Lin). When Lin was not home, Zhang handed me over to the court to cry out about his grievances; on the fourth day of this month, the judge asked Zhang to rent a room and live with my daughter and me in Ba County. [...] However, Zhang does not ponder over his mistakes of selling his wife off in marriage, and he dares to violate the judgment since he only brought my daughter back and did not let me live together. I will be implicated in this case when Lin returns home, so I report this clearly [...] [the magistrate] orders Zhang to live with me.

Because of this unforeseen event, Shifang and two women had to get interrogated eight days later, and all of them changed their testimony; Zhang and his mother-in-law

⁷⁴ Q6-20-05405.

both acknowledged that they withheld the truth of the transaction during the first interrogation.

The archive does not record a formal ending of the case. The magistrate decided to investigate in Fuzhou and ask for help from the local court. Three weeks later, Zhang filed another plaint, saying it was Lin Zhichong who illegally took possession of his wife. However, in another plaint submitted by Zhang one month later, he was willing to let his mother-in-law bring her daughter back, and because his mother was seriously ill, he had to come back to his hometown, and the runner could not find him anymore.

This is a record full of contradictions. It starts with a statement about abduction and prostitution but ends with wife-selling and forcible occupation. It is classified as “abduction” because, in the first plaint submitted by Shifang, he used the word “*gua*” several times; yet, in the next two plaints, he stressed Lin Zhichong “forcibly takes possession of” Chen Shi and his focus transferred to “occupation.” While in his mother-in-law’s narration, she urged the audience to pay attention to the “fact” that someone else had already taken possession of her daughter.

The two women in the case are examples at opposite ends of the spectrum of female behavior in the legal records. In this case, the distinctive performance of mother and daughter reminds us that women as a group are never homogeneous, and gender cannot explain all female actions. As (ex)wife of Shifang and daughter of Yang Shi, Zhang Chen Shi or Lin Chen Shi, whom the two parties were fighting for, was kept in silence in the court records, “according to Zhang Chen Shi: Yao Yang Shi is my mother. The rest is the same as my mother’s words.”⁷⁵ This sentence appeared in two records of interrogation. Whether she was manipulated by her mother’s scheme to leave her first husband, or sold by her first husband and the wife of her second husband, she acted on others’ decisions, and it is hard to see her actions and mentalities.

On the other end of the spectrum, Yao Yang Shi took an active part in the process, which related to her identity. Even though Zhang mentioned she had remarried more than once, she insisted she was a widow. This case demonstrates that as a segment of litigant strategy, it was possible for women or others who helped them to participate in lawsuits to stress or make up their identity as widows. Regardless of whether the widow’s identity was true, she could gain confidence in her position as a widow. As the previous chapter shows,

⁷⁵ There is a slight difference: in the first interrogation, it also mentioned “Zhang is my husband,” but this is not present in the second one.

widows played a role as plaintiffs in the archives more frequently than women in other marital statuses.

Moreover, Yao Yang Shi probably was not in marriage during the lawsuit because of the strange requirement she had. She begged to live with her daughter and Shifang, although she knew clearly that if she did so, she would have to live in poverty. In her testimony and plaint, she mentioned several times that she had been afraid that Shifang could not support her daughter, and Zhang himself admitted that he could not afford to rent a room within the city. So, it is most likely that she had to live with her daughter and rely on her son-in-law as a widow. According to her statement, she did not care about who should be the legal husband of her daughter, but the husband would have to bear the responsibility of feeding her. In other words, her main concern was not who or what was good for her daughter but what was good for herself.

An Unmarried Girl Entered the Court

The case above was about a mother and her daughter having divergent interests, but they did not have direct conflicts. The following example includes close combat between a woman and her natal family. This is only one case in which an unmarried girl filed plaints by herself to the court out of hundreds of cases.⁷⁶ Her natal family did not give her any help; on the contrary, the young girl accused her uncle (father's brother) more than once. The experience of the unmarried girl to some extent suggested that the natal family, in addition to helping women to take legal actions, also constituted a barrier for women to resort to the court.

Yang Yan Shi, a sixty-*sui* woman, with her son Yang Hongxing as the proxy, sued Li Yuting because Yuting lured her granddaughter, Yang Zhanggu ("the eldest daughter"). In the story from Yang Yan Shi, as usual, the texts in the plaint did not record any dynamic behavior of the young girl Zhanggu:

氏長子故，遺孫女陽長姑，年十五歲，擇戶未字，傍氏么子洪興，剃頭鋪居住。……洪興多外，遭痞李二大耶，胆窺長姑少艾。本月初二早，乘間瑣唆使長姑透捲氏家衣飾拐渝。

My eldest son died and left a granddaughter, Yang Zhanggu, fifteen *sui*. She has been engaged but has not gotten married; she lives with my youngest son, Hongxing, in the barbershop. when Hongxing was not at home, a ruffian, Li Yuting, coveted the young and pretty Zhanggu, on the

⁷⁶ There are two cases including plaints filed by an unmarried girl, see Table 2.5; another one is Q6-20-05468. But this case is the only one in which the girl submitted the plaint without a proxy.

second day of this month, Yuting instigated Zhanggu to pilfer with clothing and jewelry and run away to the Chongqing City.⁷⁷

In the counter-plaint submitted by Li Yuting, he highlighted his innocence and the greed of the Hongxing. At the same time, the plaint portrayed Zhanggu as an adamant figure. Her runaway was the direct reason for the dispute:

蚊販賣水果，與楊洪興家往來。去腊伊姪女楊長姑，託伊戚楊氏為媒，許蚊為婚，受蚊聘銀，洪興盡知。復逼長姑另行嫁賣，不允。本月初二，長姑同鋪司林五外出，着林五尋蚊，會面哭訴。蚊送不歸，只得通知洪興，擇期治酒。洪興將長姑接回，旋支伊母楊顏氏喊控蚊。

I make a living by selling fruit and have dealings with Yang Hongxing. In the last month of last year, his niece Zhanggu, who entrusted a relative, Yang Shi, as the matchmaker, was betrothed to me and accepted my betrothal silver. Hongxing was fully aware of this, but he pressured Zhanggu to marry someone else, which she refused. On the second day of this month, she went out with Lin Wu, a barber, and asked Lin to find me, where she cried and confided in me. I tried to send her home, but she did not return, so I had to inform Hongxing to arrange a date for a wedding. Hongxing brought Zhanggu back home, but then immediately sent his mother, Yang Yan Shi, to accuse me.

The second plaint by Yang Yan Shi was strange. In general, it again told the story in which Yuting was trying to lure Zhanggu, and the main body did not contain much about the behavior of the girl, but it stressed in the end: “Now Zhanggu does not follow the girl virtue, and she is guilty and deserves to be chastised, it is hard for the law to forgive her, I implore to enquire and severely punish her.” However, the plaint did not put her name as a defendant, but as a witness.

This twisted attitude was later explained to some extent. Since Zhanggu herself filed the complaint on the same day, perhaps her family was aware of her impending action before, and they chose to speak ill of her in the text. Or, the bad behavior actually referred to her participation in the lawsuit. It is particularly noteworthy that Zhanggu filed this document without any proxy, and the magistrate did not raise any questions about her actions in any way. This is her statement:

女憑媒許李玉亭為婚。洪興翻異，昧絕天良，勒要將女另行嫁賣，女不甘從。殊洪興圖財心堅，囑伊鋪內客司鄭大順與玉亭說知，給銀允嫁。否洪興罔顧倫紀，旋允旋翻。由此口角，今大順喊控，株女在案。女不露面陳情，將來皂白難分，只得據實稟懇。

I have been betrothed to Li Yuting through a matchmaker. However, Hongxing changed his mind

⁷⁷ Q6-26-07194.

and acted against his conscience, trying to force me into another marriage, which I was unwilling to accept. Determined to profit, Hongxing instructed a customer, Zheng Dashun, to speak to Yuting, stating that he would allow the marriage only if Yuting paid him extra money. Yet, Hongxing showed no regard for ethics and quickly went back on his word, leading to a quarrel. Now, Dashun has accused and implicated me in this matter. If I do not show my face and provide a full account, it may be difficult to distinguish right from wrong in the future. Therefore, I must report the facts.

Because of her unique status, Zhanggu emphasizes at the end that while her actions might have been inappropriate, she had a good reason for doing so. The way the plaint was drafted did show that those who wrote the documents took her identity fully into account. Since the status of unmarried could not bring any benefit in litigation, it is likely that Zhanggu herself made the decision to resort to the court and sit at the center of the whole plan. From a modern angle, it is a story of a girl who broke through the fence of her natal family and entered court in a tightly controlled environment.

This sensitive status of the unmarried girl also forced Zhanggu to position herself in the orthodox and official discourse and emphasized that her reason for doing so, like most plaints, was for social justice and decency. The regulations on proxy might not wholly prevent women from taking part in legal actions; but when women took part in litigations, they consistently observed the requirements regarding the language and discourse. So, Zhanggu's behavior was indeed a rebellion against family and social control, but this rebellion could not transcend the parameters of official discourse.

Based on the initial results, Zhanggu's resistance was hardly a success since she did not marry Yuting as she had wished. The magistrate gave his judgment that Zhanggu should follow Hongxing back home and marry someone else, and she was not allowed to marry Yuting. He also made a response to Zhanggu's participation: Zhanggu did not follow the female virtue and should be punished but treated with leniency. Furthermore, there were no more words from Zhanggu in this testimony, only "my testimony is the same as my uncle's." From this perspective, most women's voices could be easily erased from judicial files or assimilated by other men's testimony in the process of making depositions by the staff working in the court.

After this, Zhanggu married Qingtian, but her story did not stop there, and the legal records documented the twists and turns of her life. Her husband believed that she had committed adultery with Yuting after their marriage, and Zhanggu (by this time, she was known as Yang Shi) walked into court again:

氏幼孤。去春遭游勇李成龍稱係武職，窺氏孤弱，蠱惑污沾。至七月無媒無證，將氏套娶。未浹旬，

無力養活，逼氏作賤。去冬復欲將氏嫁賣，氏不甘允。索要贖身銀兩，迫氏出約。央戚彭長發等抬借銀五十兩，經房主過交成龍，憑街鄰給氏離異字據，聽氏從良，永不復滋。氏因獨居擇戶，殊成龍貪得味良，屢稱尋禍，意圖滋索。氏聞外避，本月初八夜，成龍統黨兇將氏家器物搜空，陷害情慘，泣懇作主，俾使得另尋生路。

I became an orphan when I was young. Last spring, I encountered Li Qingtian, who claimed to be a soldier and had a position in the army. Seeing that I was weak and vulnerable, he deceived and exploited me. In the seventh month, he married me without any matchmaker or witnesses. Before long, he could not support me and forced me into prostitution. Last winter, he tried to sell me off again, but I refused. He demanded money for my redemption, which forced me to sign a contract. I borrowed fifty taels of silver from relatives, including Peng Changfa. The landlord handed the money to Chenglong, and with neighbors as witnesses, he wrote the divorce contract for me. I have left prostitution and returned to a common life, vowing never to return. I am living alone and looking for a new husband. However, Chenglong is greedy and lacks conscience; he often seeks trouble and demands more money. I have had to escape from him. On the eighth day of this month, he led a group of thugs to empty my house of all my belongings. I have suffered greatly and cry out for help: please allow me to find a new means of livelihood.

There was something implausible in Zhanggu's petition, such as why Peng Caifeng (tailor Peng) was willing to lend Zhanggu fifty taels of silver and how Zhanggu intended to return the massive amount of silver. There is no way to find this truth, but one thing is certain: Zhanggu's plaint did change, as she had a proxy this time. Her uncle Hongxing took this part, whom she had previously rebelled against. On the same day, the magistrate interrogated Qingtian and Zhanggu. This time the testimony of Zhanggu was preserved, which was consistent with her statement in the plaint. Yet, in virtue of the deposition, I wonder if Hongxing was truly Zhanggu's proxy since his words actually matched the claim of Qingtian, that Zhanggu had adultery with Yuting, the opposite of Zhanggu. The result suggests that Zhanggu added the name of Hongxing as a proxy to make her document meet the criteria, and Hongxing did not agree to help her.

The outcome of the second phase, again, was largely negative for Zhanggu, who was sentenced to be slapped. More importantly, she was required to follow Qingtian home. But the magistrate also gave her a gleam of hope: if Qingtian forced Zhanggu to be a prostitute again, she could come to the court and get a divorce. Zhanggu soon found a chance to divorce. Qingtian sold her to another man as a concubine. The two husbands were well aware of the risks involved in this transaction and reported the matter to the magistrate, but they received a response that the sale of a wife was forbidden. Zhanggu, of course, did not miss this opportunity:

殊青田鮮恥，旋串媒李春富等，將氏嫁賣陳泰順作妾，獲銀一百餘兩，書立賣約，出有手印，與泰順各稟存案。……泰順買氏月餘，見批畏累，將氏退交祖母顏氏另嫁脫貨。家貧乏費，難以餓守，哀懇賞批作主，俾得另尋生路，終身有着。

Qingtian had no sense of shame. He immediately colluded with matchmakers, tried to sell me off in marriage to Chen Taishun as a concubine, and got one hundred taels of silver. He wrote the contract with a thumbprint and reported it to court with Taishun. [...] One month after Taishun bought me, he felt worried about future trouble, so he returned me to my grandmother. My family is poor, and I cannot stay chaste in hunger. I implore the magistrate for mercy. Please let me look for a new means of livelihood and rely on it for life.

Since Qingtian had previously admitted to selling his wife, the magistrate agreed to Zhanggu's request. His logic was that the husband had sold his wife and broken the bond between the couple, and he believed and accepted the statement of Zhanggu that her second husband was willing to return her to her natal family.

Zhanggu had thus realized her purpose. However, Zhanggu's crisis was not over. Her grandmother and uncle handed in another document a few days later, saying that Yuting had forcibly occupied Zhanggu. Zhanggu did not allow herself to be manipulated, and her response straightforwardly pointed out the greed of her uncle:

氏胞叔見氏無依，藉氏圖利，屢欲賣氏分肥。氏恐被陷，不允。洪興挾忿。今氏擇嫁張姓，已行聘。洪興等聞知向氏索要銀一百兩，未遂。胆以氏祖母楊顏氏名控。

My uncles saw the chance that I was lonely and helpless, so they tried to sell me and make money. I feared being framed by them, so I did not accept the arrangement, and my uncle had a grudge. Now I have decided to marry Zhang, and he sent betrothal gifts and money to me. My uncle got to know this and asked me for one hundred taels of silver but in vain. So, they sued me with the name of my grandmother.

The command by the magistrate fully affirmed Zhanggu's right to choose a husband for herself: "I have made comments on former plaint, she could choose a man and marry. According to your granddaughter, she has decided to marry Zhang, so you should let her marry someone else. You should not be instigated by others and implicate cases that had been closed, do not rely on the status of being women to mislead and come to court."

The piece of record begins on the fourth month of Tongzhi 2 and ends on the third month of Tongzhi 3. Zhanggu went to court at least four times in less than a year, terminated her marriage twice, and was about to have a third husband. In this process, she gradually realized the convenience and trouble that her gender identity might bring. It is interesting to observe the changes in her plaints during the year. In the beginning, when she was an unmarried woman, Zhanggu did not have a proxy. But afterward, the name of

the proxy did not stay blank. Most likely, it was a measure to meet the format requirements and a sign to show that she behaved herself. She became aware of how to present herself as a well-disciplined person, so the complaints she submitted became more and more compliant with all kinds of rules.

On the one hand, there was only a total of two cases of women suing their natal families in my collection, and both were initiated by an unmarried girl. This is not a coincidence, because the chances for married women to sue their natal family were smaller. Though it is not surprising that women, married or not, were at odds with their parents or siblings, logically, just as they could rely on their natal families to fight against their in-laws, the husbands, sons, and parents-in-law could speak for married women legally. So, even if the disputes between a woman and her natal family became a lawsuit, it would look like a conflict between their natal and marital families.⁷⁸

On the other hand, the random factors in these two cases were also important. Zhanggu was an orphan, so her parents, who were supposedly closest to her, could not provide any help. Obviously, she did not live in harmony with her grandmother and uncle, who had the power to marry the young girl off or sell her arbitrarily. The other case was about a girl charging her adoptive father, rather than her biological parents. Therefore, the special family structure might be one of the reasons why unmarried girls decided to take legal action by themselves. Another question that should be explained by random factor was how Zhanggu could have dealt with the largest challenge: how did she gain knowledge about litigation? How could she pay for the costs of litigation? The archives cannot give a certain answer. Her courage was essential; in addition, she seemed to have maintained some contact with Yuting and his family, who might have helped her somehow.⁷⁹

The mainstream in the archives was that commonly the members of the natal family spoke for the married woman, which is indeed evidence of the close relationship between the woman and the natal family. A general conclusion is that if the interests of both parties were consistent, the consanguinity provided a “shortcut” for women to achieve their goals, and women could rely on their parents and not have to show up in public in the courts. The case of the Zhanggu proves the inverse of the assertion, that if women and their natal

⁷⁸ Although I never found such a case in archives.

⁷⁹ Since Li Yuting was also named as Peng Yuting, and Peng Caifeng was very likely to be a close relative of Yuting, this was the most possible explanation why he would lend Zhanggu a large sum of money. In another case, the girl counted on her “sworn father” (*gandie*, 干爹) to stand up to her adoptive father.

family had divergent interests, women would lose this aid, and they would have limited choices but to go to court by themselves.

Conclusion

This chapter deals with two sorts of relationships: between the natal family and marital family of a woman, and between women and their natal families. The affinal relatives in the archives always had conflicts with each other. Women and their natal families were usually in alliance, though the archives also recorded their conflicts. Abduction and marriage were the most frequent accusations the marital and natal families chose to use. From the view of writing complaints, these two accusations were presented in highly similar ways in text and language, and it is difficult to distinguish between the two accusations. The factors used in both accusations, such as “despising poverty” and domestic violence, had achieved “representational reality” since the phenomena that the phrases depicted remained consistent with public perceptions.

The impact of family relations on litigation was based on both legal regulations and social practice. According to the *Great Qing Code*, this relationship between husbands/in-laws/parents and women brought important control over women. In social practice, a patrilocal marriage made it possible for husbands or in-laws to detect any unexpected situation of women, particularly if the wives went missing. Meanwhile, the three elements, gender imbalance, massive market demand for women, and widespread poverty pushed women to become a vital part of movable property. Because of this, the marital family aimed to maintain control over women, and the most significant threat to this property, from the perspective of husbands and in-laws, came from the natal family. The natal family, sometimes based on emotional factors, might try to protect their daughters from domestic violence; yet, when it comes to economic concerns, the natal family might also have interests in making money by selling their daughters into marriage, which required control over their daughters. As a result, the two parties, the natal family and the marital family, waged war to claim their ownership of the woman.

The skills of drafting legal complaints had an essential impact on how the archives portrayed women; meanwhile, the strategies were a reproduction of official representation. Normally, the narration about the behaviors of women in the complaints submitted by husbands and in-laws did not include any signs of autonomy, issuing claims stating a woman did not run away herself but was abducted by others, for instance. Her husband or marital family members also did not ask to punish her but to let her return home, which

was consistent with the spirit of the Qing Code. In this and the next chapters, abduction was used as an accusation frequently, partly because the law gave heavy penalties to those who committed abduction, and the plaint about abduction could draw the magistrates' attention.

More significantly, the story between natal and marital families can help us to understand why women seldom go to court by themselves and without proxies. That was mainly because they depended on the natal family to take legal action; conventionally, her father or other male relatives could act as her agent in court. There was a comparative dearth of female plaintiffs in this chapter, showing that if there were someone who could take action on behalf of women in the court, it would make women invisible and their voices unheard in the court.

Chapter 4. Outside Male and Inside Couple: The Interplay Between Sex and Money

This dissertation is rooted in the Inner-Outer Model of Relationships around Women (Figure 1) and discusses how the relationships between the plaintiffs, defendants, and women in a lawsuit could influence the choice of accusation as found in the archival cases. In this section, I will answer a series of questions about the patterns of conflict between women or women's family members (the Inner Tier) and outsiders (the Outer Tier), especially male outsiders: what types of accusations involved outsiders? Who started these lawsuits? Why did they go to court? And which strategies did the plaintiffs adopt to compose the complaints?

One critical issue is that of identifying "outsiders" from the case records. Though the boundary between the Inner and Outer Tier is always blurry and ever fluctuating, the outsiders defined and discussed in this chapter – which includes all individuals except for family members – are those belonging to the Outer Tier (1).¹ These outsiders could be neighbors, distant relatives, landlords, tenants, friends, colleagues, acquaintances, or strangers.² The position and identity of outsiders are differentiated from those in the Inner Tier; for example, "parents" merely refers to the woman's parents, but "neighbors" means her and her family's neighbors. Family members always have a certain and clear relationship with the woman herself, but outsiders could have connections with the whole family. This is a starting point for understanding the cases in this chapter; a woman could be implicated in lawsuits not only because of her own behavior but also due to her family's disputes with outsiders over rent or debt.

This chapter will deepen our understanding of the interplay between money and sex by focusing on how litigants made use of sexual offenses and female chastity as a strategy.

¹ "Family members," as shown in Figure 1, include parents, siblings, husbands, parents-in-law, siblings-in-law, and children.

² There is no exact definition of "neighbors, distant relatives, landlords, tenants, friends, colleagues, acquaintances, and strangers." They were generally identified by their own words in the complaints. "Distant relatives" are an exception, and their relationships with the women would usually be described in detail. Those who are identified as "distant relatives" in this dissertation include all relatives except for family members as defined in Figure 1.

Taiwanese legal historian Chen Yun-ru has examined cases of adultery and abduction in the Danshui-Xinzhu Archives, finding that “in litigations among families, chastity of female members was often called into question, and bringing a false charge of abduction was a common strategy by ex-husbands in disputes of wife-selling.”³ This part will broaden these findings, demonstrating how all kinds of sexual offenses, not limited to adultery and abduction, could be used as strategies to settle an economic conflict.

The first part of this chapter will provide definitions of sexual offenses. The second part will discuss the combination of abduction and adultery. As argued in the previous chapter, abduction cases between a woman’s natal and marital family cannot be clearly distinguished from disputes over marital matters. In this chapter, we will also see the complicated situation of abduction cases (105 cases, accounting for 41% of all cases related to outsiders; Table 3.2) involving outsiders entangled in sexual offenses; more specifically, adultery would lead to abduction, according to the narratives of the plaintiffs. A comparison between this chapter and the previous one will show that even the same types of cases, particularly those entailing abduction, can reveal discrepancies in their features, such as the motivation for the abduction, which depends on the participants and their relationships.

The third part of this chapter will pay attention to extramarital relationships. Sexual offenses took up a high proportion of lawsuits related to outsiders (109 cases, or over 40% of all cases involving outsiders; Table 3.2), and outsiders were involved in more than two-thirds of all sexual offense cases. In late imperial China, all (attempted) sexual behaviors outside the bounds of lawful marriage were sexual offenses, because they would affect the social and family order and pollute female chastity – “chastity” being the key word to understanding sexual offenses. My discussion will reveal a link between sexual offenses and economic disputes in an unexpected way: women’s bodies, and especially their chastity, became a pivotal means for resolving financial conflicts, such as removing debt or settling disputes over rent.

Sexual Offenses and the Pollution of Women

Rape and adultery were two categories of cases in which outsiders were frequently implicated, accounting for 30% of all cases involving outsiders (Table 3.2). Both crimes were perceived as “illicit sex” (*jian 姦*) in the *Great Qing Code*. As discussed in Chapter One, I define illicit sex in Qing

³ Yun-ru Chen, “Danxin Dang’an zhong de jianguai anjian: falü chuantong de chongxin jianshi 《淡新檔案》中姦拐案件：法律傳統的重新檢視 [Cases of Adultery and Abduction in Tan-Hsin Archives: Re-examining Legal Traditions in Qing Taiwan],” *Taiwan Historical Research* 25, no. 4 (December 2018): 21–73.

China as all acts that mutilated, polluted, or posed a threat or danger to the purity and chastity of women.

Adultery cases, or *he jian*, stressed that women were willing to be polluted and lose their chastity, and they would therefore receive the same penalty as the male criminals. In rape cases, or *qiang jian*, women did not receive punishment if they could prove that to protect their purity, they had struggled against the violation.⁴ Even if there was no contact with the sex organs, behaviors that attempted to jeopardize female chastity could lead to severe and dangerous consequences, so the act of attempted rape was punished under the Qing code.⁵

Table 4.1 Frequently Used Terms to Describe Sexual Offenses in Ba County Archive

Offenses	Term*	Translation
霸佔 <i>ba zhan</i> Forcibly taking possession of a woman	霸佔 <i>ba zhan</i>	Forcibly taking possession of a woman
	佔霸 <i>gu ba</i>	
	奸佔 <i>jian zhan</i>	Fornicating and taking illegal possession of a woman
	透佔 <i>tou zhan</i>	Stealing and taking illegal possession of a woman
強姦 <i>qiang jian</i> Coerced sexual intercourse	奸奪 <i>jian tuo</i>	Raping and robbing
	佔奸 <i>gu jian</i>	Committing illicit sex with force
	欺奸 <i>qi jian</i>	Bullying and committing illicit sex
通姦 <i>tong jian</i> Adultery	誘姦 <i>you jian</i>	Seducing women into fornication
	奸透 <i>jian tou</i>	Fornicating and stealing
	通姦 <i>tong jian</i>	Committing illicit sex
調戲 <i>tiao xi</i> Noncoercive sexual proposition	調戲 <i>tiao xi</i>	(Unwanted) flirting
	欺調 <i>qi tiao</i>	Bullying and flirting

Source: BXA, "Women," 1803 - 1873.

*Different terms can be used to describe the same kinds of offenses, but the meanings may differ slightly in detail.

Under this definition, Table 4.1 also includes *ba zhan* (forcibly taking possession of a woman) and *tiao xi* (noncoercive sexual proposition), neither of which required direct sexual intercourse, yet each would inevitably lead to the threat to the woman and undermine patriarchal order. In Table 3.2, four types of accusations account for 43.2% of the cases that outsiders were engaged in: adultery (34 cases, or 13.4% of all cases that

⁴ Ng, "Ideology and Sexuality," 58; Sommer, *Sex, Law, and Society in Late Imperial China*, 88.

⁵ Jones, *The Great Qing Code*, 347.

outsiders were involved in), coerced sexual intercourse (or rape; 44 cases, or 17.3%), forcibly taking possession of a woman (20 cases, or 7.9%), and noncoercive sexual proposition (11 cases, or 4.3%).

The Qing code does not provide any definition of *tiao xi*, but the word was usually used in the fixed context of “unwanted flirting failed to lead to illicit sex” (調戲未成姦) or “sexual proposition failed” (調姦未成). The phrase *tiao xi* itself represented only the act to attempt, and it was implied that the perpetrator had “not succeeded.” In practice, the legal complaints would rarely specify whether a *tiao xi* had been successful or not, but the term was supposed to include the meaning of “failed” and “no sexual intercourse consummated.” Because of the threat that *tiao xi* might pose to female chastity, in this chapter I also define it as an example of illicit sex.⁶

According to the codified law, *ba zhan* (霸佔, forcibly taking possession of a woman) is far removed from “illicit sex”. It falls under the authority of a statute in the chapter on “Marriage” in the *Hu li* (“Laws on Revenue”), whereas articles and regulations on illicit sex are part of “Laws on Penal Affairs”:

112.00 強占良家妻女

凡豪[強]勢[力]之人，強奪良家妻女，姦占為妻妾者，絞[監候]；婦女給親[婦歸夫，女歸親]。配與子孫弟姪家人者，罪[歸所主]亦如之。[所配]男女不坐[仍離異給親]。

Article 112. Forcibly Seizing the Wife or Daughter of an Honorable Family.

In all cases where a person who is influential and overbearing (who is in possession of force) forcibly takes the wife or daughter of an honorable family, and wrongfully makes her his wife or concubine, he will be punished with strangulation (with delay) and the wife or daughter will be returned to her family (the wife returns to her husband and the daughter to her family).⁷

More than one commentator has emphasized that this article differs from the law on rape because it was aimed at offenders; for example:

「姦占」二字分看，姦止姦宿，不必為妻妾；占則終為己有。.....如為姦宿而強奪，則依強姦論；如為妻妾而強奪，則依此律。⁸

The two words *jian zhan* should be considered separately: *jian* means having illicit sex and sleeping with a woman, while *zhan* refers to appropriating the woman. [...] If a male intends to sleep with the female and seizes her forcibly, he should be punished according to the law

⁶ Women “who feel abashed and bitter because of flirtation and commit suicide” were eligible for imperial canonization; *Qinding libu ze li shangce* 欽定禮部則例上冊 [Regulations and Precedents of the Board of Rites vol.1], Reprint, (Taipei: Chengwen chubanshe, 1966), 310.

⁷ Jones, *The Great Qing Code*, 132; Jiang, *The Great Ming Code*, 87.

⁸ Shen, *Da Qing li jizhu*, 277.

of rape; if he plans to marry her (as wife or concubine) and seizes her, he should be punished according to this article.

In this opinion, the two terms *qiang jian* (rape) and *ba zhan* (forcibly taking possession) can only be distinguished on the basis of the criminals' different intentions: if a man uses force merely to have sex with a woman illegally, he will commit rape; if he intends to marry the woman forcibly, he will be punished for *ba zhan*. Nevertheless, forcibly taking possession of a woman would violate and pollute the chastity and purity of the woman and could be defined as a sexual offense.

The legal files of Ba County sometimes stressed the issue of marriage when ordinary people used *ba zhan* in complaints.⁹ However, they also emphasized the status of women who were under the control of others, especially the possibility of one engaging in sexual intercourse with other men.¹⁰ In view of the official representation of offenses and quotidian usage of the phrase, there is no doubt that *ba zhan* could be regarded as a serious breach of control over a woman's body and chastity in both contexts.

Pattern I: Adultery as Cause, Abduction as Result

It was common for outsiders to be involved in “abduction” accusations. This section will show that abduction cases involving outsiders would usually be intertwined with extramarital sex, whereas abduction was entangled with marital disputes in the cases that family members initiated. Though the family members used the same term, “abduction,” as their motive for litigation, the distinctions and variations in relationships between plaintiffs and defendants dictated that the abduction cases could not present the same dynamics as were discussed in the previous chapter.

In abduction cases involving outsiders, the phrase “adultery and abduction” (*jian guai* 姦拐), is frequently mentioned.¹¹ A typical pattern observed in the archives is that a man first engages in adultery with a woman, and then tempts her to run away with him. For instance, in 1868, Chen Liujing filed a complaint to the court:

為奸拐透賣，稟懇嚴究事。蚊娶妻呂氏，過門和睦無異。害遭附近痞棍崔和尚，欺蚊愚樸，乘便與妻通奸。蚊知理斥，惡尤不改。蚊迫投團與伊理講，伊知情虧，甘立服約一紙，與街鄰存執。殊伊仍不改非，忽於前月十八，乘蚊未家，胆將蚊妻刁拐出外，並透去衣飾等物。

⁹ For example, this sentence is extracted from a complaint from the Ba County Archives: “he dared to forcibly occupy (*ba zhan*) my wife, Qin Shi, as his wife (*wei shi*)” (Q6-05-04298).

¹⁰ Actually, some *ba zhan* resulted from illicit sex; for example, in 1838, Jin Zhenglun believed that Bai Hengfang illegally occupied his wife because they were adulterous first. See Q6-11-09198.

¹¹ The phrase *jian guai* was used for five times in pearl words. *Jian* in this dissertation can usually be translated as “illicit sex,” but in this part, the character actually refers to adultery.

To report (a case of) adultery and the abduction, stealing, and selling (of my wife), and to ask for stringent punishment (for the defendants). I married Lü Shi, and we lived in harmony. However, Cui Heshang, a ruffian living nearby, took advantage of my honesty and seized the opportunity to commit adultery with my wife. When I realized what had happened, I excoriated his behavior, but Heshang refused to correct his bad conduct. I had no choice but to resort to the community leaders. Heshang knew that justice was not on his side, so he wrote a contract (to admit his crime and promise never to come to the neighborhood). The contract is proof preserved in the hands of community leaders. However, Heshang did not repent for his past mistakes. On the eighteenth day of last month, he tempted my wife to leave my home and steal clothes and ornaments.¹²

In this plaint, the outsider man Cui Heshang first had an affair with Liuqing's wife, Chen Lü Shi; then, when Liuqing was not at home, he found a chance to elope with Chen Lü Shi. The narrative clearly shows the close link between adultery and abduction; adultery was the cause, and abduction was the consequence. The story, recounted by Liuqing with the testimony of his neighbors, successfully convinced the magistrate, who sentenced Cui Heshang to be beaten with light bamboo.

The case could be labeled as abduction, yet also as adultery since the plaint contains the phrases and plots found in both kinds of accusations. As discussed in Chapter Three, lawsuits over abduction between in-laws and parental families were usually entangled with selling women off in marriage or marital disputes. The focus of attention shifts to extramarital sexual relations when outsiders are involved in lawsuits. With outsiders as defendants, the plaintiffs, usually the husband and in-laws of a woman, would make different choices in their accusations and narratives, and were inclined to focus more on the elements of "adultery" and "abduction" rather than "marriage." The choice had a legal basis: in Qing China, natal family members, and in-laws had the legal right and duty to negotiate a woman's marriage under certain circumstances, and it was difficult for outsiders to gain the power to arrange a woman's marriage.¹³ Compared to a story in which an outside man lures a woman into marrying him *without* any family endorsement, a plot in which the man first tempts the woman to have sex with him, and then convinces her to elope with him might better conform to public perceptions.

¹² Q6-26-07803

¹³ Bernhardt, "A Ming-Qing Transition in Chinese Women's History? The Perspective from Law," 52–53.

Ming-Qing vernacular novels display the prevalence of adultery and abduction. Many Ming and Qing fictions contain the plot of “adultery leading to abduction,” one of the most famous being the *Plum in the Golden Vase*:

(来旺儿与孙雪娥) 通奸, 拐盗财物, 走外居住。

(Lai Wanger) fornicated with her (Sun Xue'e), and colluded with her in running off with stolen property, in order to go live together somewhere else.¹⁴

Some novels even mention that as long as the strange young man and woman stayed together, it might be possible to secure an elopement after adultery:

(闲汉) 见是一男一女两个少年人, 认作奸拐, 走进来对那老者说道: “才来一起一男一女两个少年人, 恐其来历不明, 老爹需要小心盘问, 查查看。”¹⁵

(Some idle people) see two young persons, a man and a woman (sitting together in the restaurant), and think that the two must be running away to commit adultery, and tell the old manager of the restaurant: “We are concerned that the background of the young man and woman who came together is dubious; you should make careful inquiries of them.”

It cannot be denied that abduction arising from adultery may have been widespread in late imperial China, as well as in Western China. Yan Ruyi, an officer who used to work near Sichuan, mentions in his articles that on the border between Sichuan and Shaanxi, “adultery and abduction happened every day” (奸拐之事無日不有).¹⁶

The plots of adultery and abduction in the novels and legal complaints were representational reality. This section mainly analyzes the writing patterns and strategies litigants used in local legal records, instead of discussing the “real” reasons behind

¹⁴ David Tod Roy, trans., *The Plum in the Golden Vase, Volume Five: The Dissolution* (Princeton, N.J.: Princeton University Press, 2013), 190. Many fictions mentioned adultery and abduction, see Jingzi Wu, *The Scholars*, trans. Xianyi Yang and Gladys Yang (New York: Grosset and Dunlap, 1972), 168–69; Yu Li, *Silent Operas (Wusheng Xi)*, trans. Patrick Hanan (Hong Kong: Research Centre for Translation, Chinese University of Hong Kong, 1990), 59–62.

¹⁵ *Huitu Shan'e tu quan zhuan* 善惡圖全傳 [The Chart of Good and Evil] (Beijing: Zhongyang minzu xueyuan chubanshe, 1994), 151–52.

¹⁶ Ruyi Yan, *shansheng shanwei bianfang lun san* 三省山内邊防論三 [The Defense of the Three-province Border Region within the Mountains], in vol. 82 of Changling He, ed., *Huang chao jing shi wen bian*, 皇朝經世文編 [Collected Qing Memorials on Statecraft] 6 (Taipei: Wenhai chubanshe, 1972), 2917. Yan Ruyi was not the only one to mention that “adultery and abduction” (*jian guai*) were common in Qing China. Chen Dashou, the Anhui Grand Coordinator, also reported to the Qianlong Emperor that adultery and abduction were the second most frequent crimes in the area under his administration; *Qing shilu* 清實錄 (Veritable records of the Qing dynasty), Qianlong Reign, 626-2, “明實錄、朝鮮王朝實錄、清實錄資料庫合作建置計畫,” accessed November 12, 2022, <https://hanchi-ihp-sinica-edu-tw.ezproxy.leidenuniv.nl/mqlc/hanjishilu?@6^1781422186^807^^^702110110008011400010009^1@@@312738466#toP>.

abduction and adultery.¹⁷ Partly due to popular novels that made adultery and abduction well known, the litigants and their counselors chose to draw on elements of fictional plots as a vital part of their strategy. Though not all of the stories in these complaints were true, they nonetheless entailed a part of representational reality: people who drafted and read the complaints could believe the stories in which adultery led to abduction. The rationale for adopting representational reality in this dissertation is that the concept can reflect both social patterns and litigation strategies: the writing of complaints including fictional factors also reflected social reality and popular perceptions.

A Variant of Pattern: Obscure Polyandry?

This part will discuss a possible variant of the adultery-abduction pattern. One phrase describing the relationship between the plaintiff and defendant has caught my interest: “living together” (*tongzhu* 同住). Unclear statements about “living together” have led to assumptions of polyandry. Polyandry is uncommon and irregular in the context of Chinese history. The marriage system in imperial China was often depicted as “a system of one husband, one main wife and multiple minor wives (concubines),” which was polygyny in a broad sense, regardless of the status distinctions between concubines and wives.¹⁸ In practice, due to the financial burden, men of the lower social strata did not have the chance to own concubines, and most families stayed in generally monogamous marital relationships. However, through judicial records and surveys of popular customs, Matthew Sommer has revealed the tacit existence of polyandry in Qing China. He describes this unusual form of marriage as “the impoverished couple being supported by one or more outside males in exchange for sexual access to the wife.”¹⁹

In the cases I have examined, there is none that clearly mentions polyandry, where a woman has more than one husband.²⁰ However, “living together” might be a means to

¹⁷ The motives for extramarital sex can be divided by individual/family choice and social factors. The female’s personal choices were driven by family poverty, affection, and domestic violence; in a word, women’s unhappy lives with their current husbands and families. Historians have also linked the historical background of overpopulation and agricultural involution with the causes of sexual offences; see Yuesheng Wang, *Qingdai zhongqi hunyin chongtu touxi*, 清代中期婚姻冲突透析 [Marital Conflict in the Mid-Qing Dynasty] (Beijing: Social Sciences Academic Press, 2003), 154–205; Li, “‘They Are Expendable’ Adultery and Homicide in Late Imperial China”; Lai and Hsu, “Qingyu yu xingfa,” 52–61; Hui-Min Lai and Ching-wei Chu, “funü jiating yu shehui: Yongqian shiqi guaitaoan de fenxi 婦女、家庭與社會：雍乾時期拐逃案的分析 [Women, Family and Society: A Study of Abduction and Elopement Cases in Imperial China (1723~1741)],” *Research on Women in Modern Chinese History*, no. 8 (August 2000): 23–32.

¹⁸ “一夫一妻多妾制”; see Tran, “Concubines under Modern Chinese Law,” 33.

¹⁹ Sommer, “Making Sex Work,” 30–31.

²⁰ It seems that Sommer also did not find any clear examples of “polyandry” in Ba County, though he mentions

acknowledge the special form of marriage, though fitting the pattern of adultery and abduction, in which polyandry, or adultery approved by the husband, led to abduction. In a case from 1848, the initial complaint depicts a simple case of abduction in which a man, He Zhong, comes home to find his wife (He Luo Shi) missing, and she is eventually found in the defendant's house (Wang Pangzi).²¹ The complaint was very short, without any extra information or any mention of the defendant's identity or their bonds to each other. Yet the following testimony reveals a more bizarre side of the case. First, all the testimonies contain statements on the relationship between the two parties: Wang Pangzi used to "live with" He Zhong and his wife. Secondly, the defendant and He Luo Shi had committed adultery while sharing the same house. After Pangzi moved out, He Luo Shi heard about his current address and fled to her adulterer while her husband was working out of town. The magistrate believed the story of adultery and abduction; therefore, the defendant was sentenced to wearing the cangue, and the wife returned home with her husband.

On the one hand, this case represents the simple model in which the initial adultery gave rise to the subsequent runaway and abduction. On the other hand, the subtleties of this case require further analysis. The first mystery is how the participants in the case defined "living together."²² It seems that they chose these vague words deliberately to obscure how they moved in together. None of them use the more common term "rent" (租 or 賃), which clearly indicates landlord-tenant relations. The people "living together" also never mention whether they had paid money to "live together." If so, how did they build trust in each other? How did they connect with each other? Was there any special relationship between them? The occupations of the two men are unclear, and no clues show they were coworkers. There is no mention of kinship or them being sworn brothers; the confusing bonds render the relationship suspicious. In addition, He Zhong did not mention their prior contact when he submitted the first complaint; there is hardly a good explanation for this, except that he was deliberately trying to hide the fact that they had lived together. Combined with the confession of adultery during the period of cohabitation, a detective might uncover a story about "polyandry" in this case.

that there are many examples of "Retail Prostitution with Husband as Pimp" in the Ba County Archives; see Sommer, *Polyandry and Wife-Selling in Qing Dynasty China*, 94-140.

²¹ Q6-11-09624.

²² Sommer has mentioned that in a polyandrous family, they "ate together as one family." Although the two phrases were not exactly the same, they indeed showed something in common; see Sommer, *Polyandry and Wife-Selling in Qing Dynasty China*, 33-35.

Sworn brothers sharing the same wife constituted a regular form of polyandry, and the following example contains both factors: sworn brothers and “living together.”²³ Unfortunately, the plaints and counter-plaints no longer exist in the archives, so the records begin with statements that the runners had escorted the defendants to court for trial. The testimonies of all parties have an identical storyline: the defendant (Liu Laoqi) and the plaintiff (Wang Wenfu) were sworn brothers and *lived together* for six or seven years, while Liu and the plaintiff’s wife (Wang Lei Shi) had been in an extramarital affair for at least six years. In the eleventh month of the previous year, Liu connived with Lei Shi’s cousins to abduct the woman when Wang was not home.²⁴ The magistrate was convinced by the adultery and abduction strategy, and sentenced Laoqi to wear a cangue.

The exact relationship between the plaintiff and the defendant has been lost in the mists of time. The case seems to be a wretched and miserable outcome for the practice of polyandry from all angles: the outside male, cohabitating in sworn brotherhood for a long term, maintained an extramarital sexual relationship with the only female. It is hard to believe that Wenfu had never found out about the affair, since they had all lived together for many years.

There is no direct and concrete evidence of “polyandry” in these two cases, but the inference can explain the ambiguity of the relationships and the extramarital sex between the defendants and the wives point to the inference and help to solve several puzzles in these cases. First, it could help to explain why the plaintiffs did not clarify their relationships at first. As Sommer observed, many couples tried to conceal that they had ever been involved in any form of polygamous marriage, because they would have to face “stigma and shame” as well as “gossip and ridicule.”²⁵ The behavior of the participants in these two cases accords with this possibility.

Additionally, if it was a case of polygamy, this might answer the question of how the outside males in the two cases above could live in others’ houses without paying rent. We can assume that this is because the outside males needed to pay more than just rent and embedded themselves in polyandrous families. The sexual resources women could barter

²³ Sommer, “Making Sex Work,” 43–45.

²⁴ Q6-11-08670. The whole story recounts that after Wenfu returned home and found his wife missing, her cousins told Wenfu that Lei Shi had jumped into the river, and asked the husband to pay to retrieve her corpse. Wenfu eventually found out that his wife had run away, but he had already paid the money, as the cousin had asked, so he accused his wife’s cousin in court.

²⁵ Sommer, “Making Sex Work,” 41.

for were not limited to rent, but “labor, income, and whatever other resources the outside male can contribute on an ongoing basis.”²⁶ In other words, the outside men, in exchange for sexual resources, had to contribute everything they had to the family, rather than merely paying rent. Therefore, such cases can also disclose the diverse and complex forms of transactions between sex/sex crime and cash.

Pattern II: Exchange between Sexual Offences and Money

This section will zoom in on conflicts over sexual offense cases and reveal how female chastity had become commodified amid the ongoing process of the Qing government upholding female virtue and the exchange between sex and cash. Besides prostitution, the entanglement of sex and monetary disputes expressed itself in different ways; women’s bodies and their sexual and reproductive labor had a large and ubiquitous market in Qing China and could be immediately exchanged for cash. In addition, the scandals and affairs surrounding their bodies and chastity might also have rendered these a sort of capital. When the emperors and court officials formulated their policies, it was impossible to anticipate that the cult of chastity would have a series of unforeseen consequences. As Theiss observes, the cult of chastity stressed a woman’s “loyalty and obedience” to her husband more than the interests of the patriline; for instance, Qing judicial officials consistently defended chaste widows’ property rights against their husbands’ relatives as long as they maintained their chastity, which “starkly revealed the tensions between generational and conjugal notions of patriarchy and the fragmented nature of family authority in practice” – ultimately leading to a weakening of patriarchal authority, in diametric opposition to the original plan.²⁷ Similarly, this chapter will demonstrate another unexpected result of the chastity cult: how the chastity and honor of a woman became a method and tool for settling economic disputes.

Another point my readers might notice is that none of the “rapists” in the following cases were “strangers” in the community. The current discussion of the “profile of the ideal rapists” in late imperial China more or less was inspired by Philip Kuhn’s description of “strangers,” who were “people without roots, people of obscure origins and uncertain purpose, people lacking social connections, people out of control.”²⁸ This opinion is, to a certain extent, confirmed by Sommer. He concludes that *guang gun* 光棍 (“rootless rascals”), or marginal men who stood outside the family-based social order, had become

²⁶ Sommer, 35.

²⁷ Theiss, *Disgraceful Matters*, 4, 99, 208–9.

²⁸ Philip A. Kuhn, *Soulstealers: The Chinese Sorcery Scare of 1768* (Cambridge, MA; London: Harvard University Press, 1990), 41.

the rapists in Qing legislative discourse. While Sommer finds that most rapists came from the same village as their victims, the rapists led lives “with little obvious stake in the social order.”²⁹ His findings were challenged by Lai Huimin and Chu Ching-wei, who noticed that roving single men would first try to forge close interpersonal relationships with locals by making contacts in the workplace, common clanship, adoption, and sworn-brother ties, and would then gain access to women (wives of friends).³⁰ This chapter leans into the view of Lai and Chu because, in all of the following examples, the “rapists” and the victims (or the families of victims) always had certain connections and were involved in economic disputes. Although it cannot be denied that some rapists were strangers and vagrants, the subsequent cases serve to demonstrate that the phenomenon of rape occurring between acquaintances within the same community was commonly acknowledged in nineteenth-century China.

Attempted Rape and False Accusations

This section will discuss how attempted rape was used as an excuse for false accusations in Qing legal practice. Meijer has discovered that during the Qing Dynasty, “every handbook for magistrates contains the warning against false accusations of fornication; it was the easiest subject for committing blackmail, and no magistrate could take such accusations seriously.”³¹ Japanese historian Gomi Tomoko has examined samples of “to vilify with illicit sex” (誣姦) in the anthology of judgments (*pan du*) produced from the late Ming through the early Qing. She argues it is because “chastity” had been given considerable importance in a society that people chose to vilify others through accusations of sexual offense.³² It does not matter whether or not people committed the slander in their own actions; they knew very well that chastity was a moral norm highly valued by society, and made good use of the cult of chastity to win a more favorable position in the lawsuit.

The overall aim of using sexual offenses in (false) accusations, as Gomi shows, was to gain an advantage in court. She believes that the specific object could be to frame others or to reduce their own guilt. As a significant part of the strategy, female chastity could also

²⁹ Sommer, *Sex, Law, and Society in Late Imperial China*, 101–3.

³⁰ Lai and Chu, “*funü jiating yu shehui: Yongqian shiqi guaitaoan de fenxi* 婦女、家庭與社會：雍乾時期拐逃案的分析 [Women, Family and Society: A Study of Abduction and Elopement Cases in Imperial China (1723~1741)],” 12–21.

³¹ Meijer, *Murder and Adultery in Late Imperial China*, 42.

³² Tomoko Gomi, “*Jianwu yu zhenjie: yi wanming zhi qingqianqi de pandu wei zhongxin* 「誣姦」與貞節：以晚明至清前期的判牘為中心 [‘False Accusations of Adultery’ and Chastity: Official Decisions in the Late Ming and Early Qing],” *Research on Women in Modern Chinese History*, no. 17 (2009): 223–56.

have assumed another function in writing the complaints: namely, to “leverage an opponent.” As Philip Huang argues, “the filing of a complaint intensified the efforts of community or kin mediators to work for an out-of-court resolution of the dispute.”³³ The importance of female chastity and the severity of sexual crimes could raise the possibility that the magistrates accepted the complaint, which would give a signal to the opponent: if we do not settle the disputes privately as soon as possible, we will have to go to the court, to be interrogated, and endure an expensive process.³⁴ As discussed in Chapter Two, the plaintiffs would usually not state their purposes straightforwardly in their complaints, so we cannot know which specific aim(s) they had. Nonetheless, the high value of female chastity and sexual offenses could help the plaintiffs in all segments of litigation.

A lack of local archives from the late Ming to the early Qing prevented Gomi from further investigating how people strategically availed themselves of the chastity cult in trivial matters. Ba County Archive makes it possible to observe how people used chastity in the nineteenth century: accusations entangled with vague sexual offenses (whose veracity proved difficult to ascertain) were everywhere in nineteenth-century Ba County. These case records would prove the assertion of the magistrate’s handbooks and Gomi’s argument at the local level. I will contribute to this discussion by establishing a link between accusations of illicit sex and economic disputes, specifically how commoners used extramarital sex as a strategy to achieve a particular monetary purpose.

The first example is a case of attempted rape. The woman herself is named nowhere in the case records. Instead, her husband, father, and outsiders contributed three different versions of the same story. Although the three male participants had divergent relations to the woman, their narratives pointed to a similar core: the case had nothing to do with

³³ Huang, *Civil Justice in China*, 119, 185, 190–92.

³⁴ In the literature of the Ming and Qing dynasties, there is a great deal of discussion about how expensive litigation can be and how the people involved in litigation used all kinds of techniques to avoid the high fees; see Chenjun You, “Mingqing sifa jingji dui minzhong susong celue de yingxiang: gao’ang songfei yu jiansong fengqi zhi beilun de yige fenxi [Influence of Judicial Economy on Litigation Strategy of the Public in Ming and Qing Dynasties—An Analysis on the Paradox between Expensive Litigation Fee and Atmosphere of Preferring Litigation],” *Law Science*, no. 03 (2019): 118–30. Scholars have frequently discussed the cost of litigation; for example, Li Yanjun divided the expense into two parts: legal, fixed and expected fees, such as money to buy a complaint form on paper, which common peasants could usually bear; yet there might also be unexpected and indefinite expenses, especially bribes to officials. See Yanjun Li, *Cong Mianningxian Dang’an kan qingdai minshi susong zhidu*, 从冕宁县档案看清代民事诉讼制度 [Civil Lawsuits in Qing Dynasty: Research on Mianning County Documents] (Yunnan University Press, 2009), 279–86; Philip C.C. Huang, *Civil Justice in China: Representation and Practice in the Qing* (Stanford University Press, 1996), 181–85.

sexual offenses, but was mostly a financial dispute.

Five leaders of the community (Gong Entan, Gong Shixuan, Wang Zhishan, Wu Yishun, and Zhang Lichuan) initiated suits in the last month of the sixth year of the Tongzhi reign (1867–1868). Their legal complaint starts with an introduction on the “badly behaved” couple, Cui Guo Shi, and her husband, Cui Sihai, who were tenants of Cui Wanliang. A ruffian, Sun Ma’er was trying to rape the woman while she was collecting firewood in the mountains; Cui Shi screamed and struggled to free herself, but then the story took an unexpected and surprising twist:

孙介泉詐稱呈稟，串弊孙永乾猶□孙晴齊、楊大等，嚇搯麻二出錢二十釧，私和分吞。拖今，生等查知，...但郭氏在團滋禍多次，若不稟究，麻二出錢得勢，倘再欺□.....

Sun Jiequan and some others pretended to report (the rape case) to the court, intimidated and extorted twenty strings of cash from Ma’er to settle the matter privately, and (Jiequan and his mates) pocketed and shared the money. We found out later [...] that Guo Shi had raised a fuss more than once. If we do not report (the situation) and Ma’er pays money and earns support, so if he commits (such crimes) again [...] ³⁵

At the end of the paper, besides punishing Ma’er, Jiequan, and the other extorters, the heads of the community also ask to expel the Guo couple from their area. Some information is missing from the fragmentary document. Yet it still shows, from the angle of those holding local power, that the rape itself would not necessarily have caught their attention; instead, it was what might follow – the fury of the victim and her family, the escalating conflict and potential chaos, and the risk they would be even punished by the magistrate – that constituted their central motivation for resorting to court, to avoid drawing fire on themselves.

After the spring festival, Cui Sihai, the husband of the rape victim, submitted a complaint, telling an utterly different story. He claimed that he and his wife were innocent, while Gong Enxun and Gong Shixuan were not heads of the community, and the array of lawsuits originated in the enmity between Sun Ma’er and Sun Jiequan:

（龔恩覃、龔時軒）去腊胆竊王志山、吳益順等名，平空飛誣，以“搯吞防累”稟孫麻二等在案，株蚊夫婦受害。未訊，今正時，軒以銀二十兩賄蚊，硬誣麻二與蚊妻通姦。蚊妻素以名節為重，誓不受賄。.....二月初五，差突來鄉四捕，...捉麻二等磨搯。切蚊夫婦□□自耕食力，朝夕在家，□有姦情，蚊豈不知？

³⁵ Q6-26-07681

In the final month of last year, Gong stole the names of Wang Zhishan and Wu Yishun, falsely accused Sun and other people on no grounds, and implicated us in the lawsuit. Before the court hearing, in the first month of this year, Shixuan bribed me with twenty taels of silver, asking me to falsely accuse Ma'er of committing adultery with my wife. My wife, who has always put her reputation above all else, vowed never to accept his bribe. [...] On the fifth day of the second month, the officers suddenly came to the village [...] to arrest Ma'er. [...] ³⁶We plow fields and earn our own living; we stay home together from morning to night. If there is adultery, how could I not know?

One month later, Guo Sanyin, Cui Shi's father, contributed a third version of the story. He confirmed that Ma'er attempted to rape his daughter. Then, the narrative of the conflict takes another direction: Ma'er's father, Sun Deyou, volunteered to be fined and promised to contribute to constructing a road for the community in order to settle the dispute. Deyou later broke his promise and bribed Jiequan and others with twenty strings of cash. At the time when Gong accused Ma'er, Jiequan was harboring Ma'er. However, the identity of Sanyin was also challenged. Another man, Guo Yongwan, claimed that he was the real father of Cui Shi, that somebody had stolen his name, and that there had been no rape.

Unfortunately, there is neither testimony nor a judgment from the magistrate in the case record. Yet combing the records for information can disclose a collection of themes and features well worth considering. Stealing names is one such interesting topic; though works have discussed false accusation as a strategy deployed by people, it seems "stealing names" (*qie ming* 竊名) has not yet been thoroughly investigated.³⁷ The identities behind the names, and the positions and authority that the names might confer, constituted the primary motivation for the theft. There are two possible instances of "stealing names" in the case record above: the first being that of stealing the names of community leaders. The key opinion leader in rural society could demonstrate the endorsement of the local power holders. Stealing the identity of the woman's father could fabricate espousal by the natal family. The county magistrates did not accept all the opinions of local authorities without question, but they undoubtedly relied heavily on the observations, investigations,

³⁶ The meaning of this sentence is not clear.

³⁷ For example, see Javers, "The Logic of Lies"; Macauley, Melissa. *Social Power and Legal Culture: Litigation Masters in Late Imperial China*. 1 edition. Stanford, Calif: Stanford University Press, 1998.

and reports of those heads of the community to make their adjudications.³⁸ In this case, if there had been no question of “stealing names,” the judge could have had enough reason to believe the rape story, with two complaints respectively from the authorities of the community and the family.

The risk of stealing names might not seem very high; however, without biometric technologies and personal identity documents, authentication poses a challenge. The limited means of verifying identities included having someone close to the defendant recognize him or her, so the magistrate also had to summon witnesses to judge whether it was a case of name-stealing. However, in nineteenth-century China, this first step – finding relatives and neighbors and bringing them to court – was a strenuous task. As shown in the Introduction and Chapter Two, the mass of failed or fruitless summons in the archives attests to this difficulty: the runners might be indolent or bribed, the mountain path was rugged and uneven (this was of particular importance in Chongqing, “Mountain City”), and/or the target group of people could have run away. Whether or not the summons succeeded in its objective, the different parties in the lawsuit could make full use of the time to organize and participate in negotiations and consultations. It was possible that the tumult would subside, and all parties agree on a solution to settle the dispute during the mediation. The identity thief could then drop the lawsuit before the name-stealing was disclosed in court and punished by the magistrate. Almost nobody regarded it as favorable to be embroiled in lawsuits, since it was a waste of their working time and would cause an extra financial burden, as noted above. Many people might thus choose to find a solution privately instead of going to court. In this way, subjects who deployed the strategy of name-stealing and other forms of false accusation were aiming for a chance to allow the various parties to negotiate to solve their problems, just as Philip Huang stresses, with low risks by drawing state power into the conflict as the commoners were evading court.³⁹

No matter which version of the above case from the archives was true – if any of them – they all displayed a part of a bigger picture in which all the texts in the record revealed virtually the same heart of the conflict: a trade between sex/chastity and money. In the first story, rape becomes a tool for extortion, of which we will see similar cases later. The second version more directly suggests that the sexual accusations in the archives did not necessarily represent extramarital sex, but they might also simply be means and tactics

³⁸ Javers, “The Logic of Lies.”

³⁹ Huang, *Civil Justice in China*, 122–30, 195–97; Javers, “The Logic of Lies.”

used by people motivated by hatred and economic interests. The third plaintiff mentions the term *zhe xiu yin* 遮羞銀 (“silver used to hush up a scandal” or hush money). The Ba County Archive preserve a flurry of such cases: when a scandal (usually adultery or rape) was exposed to the public, the male offender would be required to pay cash to settle the dispute, and what they paid was called *zhe xiu yin*.

All three versions of this one case reveal that sex/chastity and money were closely connected and frequently exchanged. The legal proceedings reveal a representational reality in which people had created a new way to make use of women’s purity and chastity

From Rape to Disputes over Rent

The cases in this part will demonstrate that on occasion both the victim and rapist remained silent and invisible in the case records since the sexual offense might never have been the primary focus of the lawsuit. That we hear from neither the male rapist nor the female victim of the “rape” implies that the linchpin of the following case was their conflict over landlord–tenant relations.

Chen Weixian filed this complaint in the spring of 1818 (Jiaqing 23):

嘉慶十九年，有巨戶黃岐山將兩處田業佃與耕種，憑中議押佃銀七十兩，每年認給伊租穀三十四石，佃約注明伊執，連年清楚。突去臘月二十二，忽被田主岐山長工劉陞乘黃氏在主人宅後山坡上撿樹葉，遭劉陞胆敢目無法紀，兜來山林內扭黃氏欺姦，黃氏當時吶喊，無人聞見，鳴岐山之子團首劉土順証.....

In Jiaqing 19, the wealthy man Huang Qishan leased two fields to me to cultivate through an intermediary, the two parties agreed on a rent of seventy taels of silver per year, and paid 34 *shi* of grain, with the deed stating that Huang would keep them, and the accounts for each year were cleared.⁴⁰ Last year, on the 22nd day of the 12th month, Liu Sheng, a hired hand of the Huang family, took advantage of the fact that my wife, Huang Shi, was collecting leaves in the hills behind the landlord’s house and dared to rape my wife in the mountains. My wife cried out at that time, but no one heard her. [...] I went to the community leaders to reason it out [...]⁴¹

It is a rather strange way to draft a rape complaint. One-third of the complaint spoke about the rental agreement between Chen Weixian and Huang Qishan, but did not mention why it mattered. Even though we cannot tell what Qishan did in the rape case, Weixian still listed him as the first among the defendants, and the rapist, Liu Sheng, as the second. It seems that the plaintiff wished to demonstrate the importance of their landlord–tenant relations and the guilt and responsibility of his landlord. It makes me wonder what he

⁴⁰ 石 here probably refers to weight; each *shi* is equal to around 60 kilograms.

⁴¹ Q6-05-04504

precisely sought: a penalty for the villain who violated his wife, or an ulterior motive?

The landlord, Huang Qishan, instead of the hired laborer accused of the crime, filed a counter-plaint with the title “evil tenant falsely accusing”:

嘉慶十八年，有蚊堂姪孫婿陳位賢之父，陳朝選佃蚊田耕，租谷均分。殊伊父子奸刁，每至獲谷，隱吞谷不分。至二十一年，蚊向退佃，朝選央伊姪孫陳三福等議明，攜租承保仍耕。至去秋，成惡又估騙蚊谷四石不與。蚊理言斥，惡遂挾仇釘心。

In Jiaqing 18 (1813), the husband of my cousin's granddaughter, Chen Weixian, and his father, Chen Zhaoxuan, rented my field to farm. We shared the grain harvested equally. I had not realized that the father and son were cunning and tricky. Every time the harvest season came, they concealed and embezzled the grain and did not share it with me. In Jiaqing 21 (1816), I asked them to stop renting my land. Chen Zhaoxuan begged me and asked his nephew's son and others to discuss this with me, saying that they were willing to guarantee that Chen would bear the cost of the rent, so the Chen family continued cultivating. Last fall, they again cheated me out of four *shi* of grain. I reprimanded them with reason and justification, so the evil ones held a grudge.

乘去臘月二十二，位賢之妻，蚊姪孫女陳黃氏來蚊業內□□柴薪。（長工劉陞）見理斥。去後即遭朝選父子設計誣栽劉昇欺□□□□□兇。投經黃廷秀、劉朝俸、岑建然鄉約、黃國茂、劉朝祿等集□查問，黃氏云稱，因在蚊業砍柴，被阻回家，遭伊翁姑丈夫責毆，押伊誣姦圖騙等語。衆斥其非，事寢無異。如無位賢不思誣告有條，突前月二十六，架以欺害難容控蚊與劉陞在□轅.....尤敢以蚊孫女誣姦捏控。

In the final month of last year, Chen Weixian's wife, my nephew's daughter, Chen Huang Shi, came to my land to collect firewood. My hired hand, Liu Sheng, saw her, and he reprimanded Chen Shi. After she left, Chen Zhaoxuan and his son plotted to frame Liu Sheng, saying that he had bullied and raped Chen Shi. After being questioned by the community leaders, Chen Huang Shi admitted that because she was cutting firewood on my land and returned home, she was scolded and beaten by her in-laws and husband, who forced her to make a false accusation of rape in an attempt to lay the blame on others. People reprimanded them for doing wrong, and it was no surprise that things ended that way. However, last month Weixian disregarded the law against false accusations and took Liu Sheng and me to court. [...] How dare they falsely accused (Liu Sheng and me) of raping my cousin's granddaughter!

The plaint also begins with a description of relations between the two parties; besides being landlords and tenants, they were also distant relatives. Additionally, the plaint gave more details about their conflict over the land lease. The so-called rapist did not play any vital role in the narrative, and the landlord, Qishan, manifestly perceived that it was an attack on him on the basis of their conflict over the share of grain.

The case records contain the outcome of this case. The community leaders filed a plaint and confirmed there had been no rape. Qishan and Weixian respectively handed in

their statements that they would honor the result and be willing to end the litigation. Liu Sheng did not participate in the lawsuit from the outset to the end.

In this chess game, both parties, Qishan and Weixian, realized that rape was just an excuse, and what they cared more about was the tenancy conflict. Both of them went to great lengths to emphasize the tenancy relationship, putting no effort into the account of rape. Weixian made use of his wife's honor and reputation for a chance to resolve the problem, and Qishan knew the other side was trying to resolve the monetary issue.

In this case, the initial accusation of sexual crimes gradually disappeared from the records, and the case turned out to be the outbreak of a tenancy conflict. However, a lack of language about female chastity in the sample could not build a straight link between the value of female virtue and silver. The following case can make up for this shortcoming and highlight the specific manifestation of female chastity.

Similar to the former story, the two parties in this story were also associated with each other in a dual relationship: distant relatives and landlord–tenants. It also began with an accusation of rape. In 1848, an old lady (seventy-one *sui*), Fang Liu Shi, filed the complaints, which mentioned that her son, Fang Baiqi, was doing business and not at home. She and her daughter-in-law, Fang Ye Shi, rented the house of Fang Daiheng (the son of her dead husband's cousin 堂侄 *tang zhi*) and opened an alcohol factory for a living.⁴² One day the landlord, Daiheng, attempted to rape Fang Ye Shi. Because she yelled for help, the man ran away. Ye Shi then tried to commit suicide and was fortunately saved by a hired laborer, but this was not the end:

今葉氏羞愧莫釋，屢欲自盡，日夜難防。氏情急倒懸。

Now Ye Shi feels too ashamed to forgive herself, and has repeatedly tried to kill herself. It is hard to stop her day and night. I am too anxious.⁴³

The first counter-plaint, unexpectedly, came from Ye Shi's natal family. Her brother and two cousins believed that the rape was a pretext because “the rent was not clear,” Daiheng and Baiqi had had conflicts before, and Daiheng did not have time to commit rape at that time. More importantly,

⁴² Here Fang Liu Shi says they opened a 漕房 (*caofang*), which might be the wrong word for 槽房 – which in the Sichuan dialect means a place to make alcohol – but Fang Daiheng mentions that it was a 腰店 (*yaodian*), referring to a small shop in dialect; see Shenyi Zhang and Guotai Ji, *Shu Fangyan* 《蜀方言》疏证补 [The Dialect in Sichuan] (Bashu Shushe, 2007), 199–200.

⁴³ Q6-11-09626

蚊妹謹守婦道，素無醜聲，境鄰咸知。突遭效先抗延縮首，聳母捏抵，有玷門風，遺臭後裔。

My younger sister has always maintained her female virtue and never had a scandal; her neighbors knew it. Suddenly she was forced by her husband to follow her mother-in-law in fabricating a false accusation of rape, tarnishing our family and disgracing our descendants.

Both Fang Liu Shi and Ye Shi's brothers, though having different aims, depicted Ye Shi and her chaste and unyielding character in an elaborate style, since they knew the value of female chastity. Her mother-in-law highlighted the severe harm the attempted rape had caused to a woman who insisted on preserving her purity. At the same time, her brother placed emphasis on the negative influence the rape exerted. Fang Daiheng also filed two complaints to defend himself. Both stressed the parties' conflict over rent and had nothing to do with rape or female chastity. When Fang Baiqi returned, though his complaint mentioned the rape and his wife attempting suicide, he paid close attention to the rent dispute.⁴⁴

In the two cases discussed in this section, the accusations of rape vanished after the crux of the lawsuits emerged: a dispute over a house and land lease. The model worked as follows: the plaintiff would first accuse the opponent of sexual offenses, particularly rape, and demonstrate that the defendant had seriously polluted the chastity of the rape victim; the defendant would claim that they had a conflict over rent or debt; and then the two parties would put more effort into negotiating their economic conflict. The plaintiff's objective was probably to attract the magistrate's attention, using the court procedure to obtain leverage and solve the dispute. A well-established narrative template was thus developed for a wide range of "sexual crime–economic dispute" models.

Links between Female Chastity and Money: Hush Money

In this part, I showcase how the link between sexual offenses and economic disputes could be straightforward. Extramarital sex, as a kind of scandal, is a perfect vehicle for extorting money. For example, in a case (1843) where two men discovered evidence of adultery, they "took advantage of the rare opportunity" (以為奇貨) and blackmailed both sides of the affair. When the woman's husband returned home, the husband reported the event to the court because his family had been extorted. Although he expressed his indignation at his wife's betrayal, his ultimate claim was directed at his financial loss of one thousand in cash.⁴⁵

Furthermore, concocting a scene of rape and plotting extortion might not have been

⁴⁴ There is no document in the archives showing how the case was closed.

⁴⁵ Q6-11-09441. The case record does not include the outcome of the conflict.

rare or inconceivable at the time.⁴⁶ One father mentions in a complaint that after his son refused to lend money to a neighbor, the neighbor tied up his son and prepared to frame his son for rape in order to extort money.⁴⁷

Hush money is another way to link female chastity and family honor with silver. Zhang Xiaoxia has observed this widespread phenomenon in practice and explains it as a kind of economic punishment.⁴⁸ However, the nature of this punishment can be starkly distinguished from the bamboo beating or cangue, which was formally and officially regulated in the codified law. Rather, as the following case shows, hush silver was universally accepted by society.

Seldom did people question the practice of compensating for illicit sex with hush money, but they did frequently disagree over the amount of money. In 1838, Wan Chaozhu and his wife found out that their daughter-in-law, Wan Zhou Shi, had been raped by Ye Kaishou:

初十日，投憑張仁才、萬朝鳳、鄒澤厚、涂志元、葉裁縫等講理。開壽自願出錢十四千與蚊子挽和俯理。朝鳳受賄得蚊錢二千。廿二日，蚊子以估姦勒和控伊等於分主。廿七日，沐訊未究。切周氏被惡姦玷污，名難洗雪。

On the tenth day of this month, I went to negotiate with Ye Kaishou, accompanied by my neighbors, Zhang Rencai, Wan Chaofeng, Zou Zehou, Tu Zhiyuan, and others. Ye voluntarily offered 14,000 cash to my son to reach a settlement, while Chaofeng accepted a bribe of 2,000 cash (which should have been mine). On the twenty-second day, my son filed a lawsuit against Ye and others for “being forced to reconcile after (his wife) was raped” in the court of the assistant magistrate. After the hearing on the twenty-seventh day, they were not prosecuted. However, Zhou Shi’s reputation remains tarnished due to the evil acts committed against her, making it difficult to restore her honor.⁴⁹

The case record also includes a fragmentary copy of the complaint, in which Wan Yuanheng, the son of Chaozhu, mentioned that most of the hush money had been taken by various persons who participated in the reconciliation. Despite the discrepancies in the details, legal complaints from the father and son expressed their complaints and concerns about the appropriation of their rightful share of the cash. On the other hand, the neighbors and community leaders had confirmed in a complaint that Ye had never committed rape, so it was

⁴⁶ Such tactics had already been mentioned in a book about swindles in the late Ming era; see Yingyu Zhang, 杜騙新書, 2007, <https://www.gutenberg.org/ebooks/24021>.

⁴⁷ Q6-11-09245. Though the magistrate did not believe the story, the judgment did not mention any debt disputes.

⁴⁸ Zhang, *Qingdai Baxian bunyin dang'an yanjiu*, 590–93.

⁴⁹ Q6-11-09232

Chaozhu and his family who had tried to frame Ye. The same plaint also mentions that Ye and some other leaders pooled money to prevent potential trouble in case the Wan family should create a disturbance.

The case was closed after interrogation. Wan Zhou Shi admitted that she had been caught by Ye when she was stealing beans from his land; then she lied to her husband, saying Ye raped her, so the magistrate punished her with “instruments.”⁵⁰ However, Wan Chaozhu insisted on his original story in the final testimony, saying Ye had promised to give him hush money; the actual amount of cash he received was less than what was agreed upon, which is why he sued.

It is hard to say whether the legal result of this case reflects the objective truth, but the intricate and tangled records at least reveal some representational reality. Neither the magistrate nor the people ever questioned the legality or rationality of the “hush money,” which probably shows it had become a widely recognized custom. The obstinate claim to the money of Wan Chaozhu and the last sentence in his plaint indicates that even though he had realized the damage to his reputation and the pollution of female chastity that a rape accusation would cause, the core of his petition was always about the money it might bring.

To conclude, I would like to briefly introduce one last case. In 1858, Liu Yu Shi, a thirty-two *sui* woman, got pregnant and gave birth to a baby when her husband was not home. Her brother-in-law found out about her adultery with the landlord, and then brought the case to court. The case was settled by mediation, but three months later, she filed a plaint with her brother-in-law as a proxy:

（鄧思貴）愿給氏遮羞銀百三十兩，請息在卷。詎息侯氏僅得銀八十兩。還給訟費餘銀五十兩。……
屢討不給，慘氏節被玷污，銀被吞齧，日食無度。

Deng Sigui offered to give me 130 taels of silver as hush money to settle the lawsuit, but subsequently, I got only 80 taels, which I used to pay for the litigation.⁵¹ [...] I repeatedly asked for (the remainder), but he wouldn't give it [to me]. My chastity was tarnished, and my silver was swallowed up and cheated from me. I have no money for everyday food.⁵²

The plaint shows that a woman of low social status might not subscribe as ardently to the cult of chastity, and the magistrate indeed fiercely criticized her for not cherishing her

⁵⁰ See footnote 97 in Chapter Two.

⁵¹ It may have been expensive to be involved in a lawsuit in the Qing era, but such a high price sounds unlikely. For a discussion of the cost of litigation, see footnote 54.

⁵² Q6-20-05494, also see Q6-20-05471 and Q6-21-06737

chastity.⁵³ The legal consequences of a woman's loss of purity stand in stark contrast to the cliché where women with impurity would be driven out by their lineage and tortured by the detestation of society. Instead of the moral hazards the woman might face, what figured most prominently in her mind were the potential strategies to cope with the pressure of survival.

The Handbooks for Litigation Masters: The Source of Strategy

The cases detailed in the prior sections have proven that in legal practice, when one party, usually a woman's family members, used sexual offenses as a strategy to initiate a lawsuit, the other side (the outsiders) would strike a counterblow with economic disputes. This part will analyze the origin of this strategy and counter-strategy. As Gomi shows, due to the cult of female chastity in late imperial China, litigants used sexual offenses, which always resulted in the pollution of women, as a strategy to attract the magistrates' attention and make sure that their complaints would be accepted by the court. The above-cited quote, observing that there were many adulteries and abductions, may also insinuate that sexual offenses were prevalent in Qing China.⁵⁴

The counter-strategy, that of using economic disputes to fight back, arose from the secret handbooks of litigation masters. As mentioned in Chapter Two, these handbooks usually provided writing samples for both parties: the plaint from the original plaintiff and the counter-plaint from the opposing side. The handbooks offered templates for composing plaints about sexual offenses, though they could not explicitly suggest the function of female chastity in print. More importantly, these manuals incorporate the strategy of responding to sexual accusations with claims of economic disputes.

In general, the handbooks show two ways of reacting to an accusation of illicit sex. One is simply to express the suspects' grievances without detailed stories.⁵⁵ More frequent, however, was the second way, which entailed speaking about other conflicts between the

⁵³ The magistrate rejected the complaint because the woman's story did not accord with the previous outcome of the case.

⁵⁴ Another number can perhaps also help us understand the prevalence of sexual offences. According to Guo Songyi, 250 to 530 homicide cases caused by adultery were reported to the central government every year, see Guo, *Lunli yu shenghuo*, 527.

⁵⁵ For example, a male servant used this strategy to react to the charge of raping and killing his female masters; see 新刻法家蕭曹雪案鳴冤律 [*The Legalists Xiao's and Cao's Painstaking Study of the Voicing of Injustice, Newly Carved*], in Sun and Gong, *Songsbi Miben Bazhong Huikan Xia*, 12:402.

two parties, thus illustrating that the accusation of “illicit sex” could be a false one. “Other conflicts” could potentially include domestic violence or quarrels between family members, yet the secret handbooks preferred economic disputes – over debt, rent, property rights, and inheritance rights – as the grounds of defense.⁵⁶

Three examples demonstrate how the suspects of sexual offenses used conflicts over debt, rent, and property rights to defend themselves in lawsuits. In the first example, a charge of raping a widow was countered by stating that the plaintiff’s true intention is to repudiate a debt:

奸惡某某，逋欠本銀若干，嗔取圖騙，計控伊嫂居孀，陡捏身強姦誑。切騙銀有券，況拿夜無中。既號聲振，何不聞於四鄰？⁵⁷

The treacherous [name of the defendant], who owed me [x amount of] money, tried to cheat me (and repudiate the debt). He then employed a stratagem, to make use of his sister-in-law, a widow living alone, to make up a story that I had raped [her]. I have proof that he cheated me out of the money, but he cannot show any evidence that I was caught in the middle of the night. If the widow screamed, why did no neighbors hear the sound?

The second instance starts with the accusation that the landlord raped his tenant’s wife. The landlord thus tried to stress their conflict over rent:

身承稅租若干石，蹇落惡佃某某耕。詎籽粒不交，致稅賦莫辦。⁵⁸

I am responsible for [amount of] taxes. Unfortunately, I rented my field to the vicious tenant [name of the tenant]. However, he did not hand over the grain to me; and so I am unable to pay the tax.

In the final example, a nephew is charged with raping his uncle’s wife. The nephew then describes their conflict over land ownership:

謀產賴姦事。身有基地一片，界連叔屋，涎謀不就，計問伊妻，賴蟻調姦，粧局誣陷，陰謀基地。⁵⁹

For the sake of seeking to take my property, (my uncle) falsely accused me of rape. I have a piece

⁵⁶ Conflicts within the family were used to respond to charges of illicit sex between family members; see xinjuan fajia toudanhan 新鐫法家透膽寒 [The Thorough Terror of Legalists, Newly Engraved], in Sun and Gong, *Songshi Miben Bazhong Huikan Shang*, 11:90–92.

⁵⁷ 新鐫法家透膽寒 [The Thorough Terror of Legalists, Newly Engraved], in Sun and Gong, *Songshi Miben Bazhong Huikan Shang*, 85.

⁵⁸ 新鐫法家透膽寒 [The Thorough Terror of Legalists, Newly Engraved], in Sun and Gong, *Songshi Miben Bazhong Huikan Shang*, 88.

⁵⁹ 新刻法筆驚天雷 [The Heaven-Frightening Thunder of the Legalist’s Brush, Newly Carved], Sun and Gong, *Songshi Miben Bazhong Huikan Shang*, 254.

of land that is connected to my uncle's house. My uncle had always coveted my land but had been unable to get it. He conspired with his wife and falsely accused me of raping her in a plot to get my land.

In this example, the nephew makes it explicit that the purpose of his uncle's false accusation was to wrest the piece of land from him, but it does not reveal precisely how the uncle would achieve this aim. Was it a threat that the uncle would file a rape charge if the nephew did not surrender the land to him? This is one possibility; the secret handbooks do not offer an answer. As in many other case records in the archives, the defendant accused of the sexual offense claimed that the opponent's charge was motivated by financial gain. Then the plaintiff and defendant might reach an agreement to settle the dispute out of the court, and it was possible that the plaintiff realized the purpose of money in this process; this, however, would not have left much trace in the case records.

These examples from the litigation masters' secret handbooks provided ideas on how to defend oneself against the charge of a sexual offense, which was to invent an economic conflict between the two parties. The relationship between the two parties was the basis for the type of financial excuse used in the story. If the two parties had a tenancy relationship, the landlord could claim that the tenant had been trying to repudiate the rent; if they used to be friends or business partners, there might be a debt dispute that the suspect could make use of.

Unlike the "sexual crime" strategy, which rested on the official cult of female chastity, the counter-strategy of economic disputes did not have an ideological endorsement. The examples in the handbooks can answer the question of where the litigants and their consultants learned the strategy, but still cannot tell us why the authors of these books put forward such ideas. According to current research, the examples in the handbooks for litigation masters could have been sourced from both the authors' own works and the transcriptions of official case records.⁶⁰ Therefore, instead of seeking the birth of this strategy in one thinker's bright idea, it could be better understood as arising from cumulative experience; the act of exchanging women's chastity for economic benefits, like repudiating debts or settling tenancy disputes, was well within social perceptions and formed an element of representational reality, though it caused severe damage to the reputation of a woman's purity.

⁶⁰ Rufu Gong, *Mingqing songxue yanjiu*, 明清讼学研究 [Litigation Knowledge in Ming and Qing Dynasty] (Beijing: The Commercial Press, 2008), 116–20.

Conclusion

This chapter focuses on lawsuits between women's family members, particularly husbands, in-laws, and outsiders in nineteenth-century Ba County. According to the narratives of the complaints, outsiders participated in many abductions. In order to abduct a woman, an outside male would usually first commit illicit sex with a woman. Husbands were inclined to combine sexual offenses and abduction when planning to charge an outside man. The pattern constitutes an element of representational reality, namely that outside men and married women would first engage in adultery, and then elope together. Compared with the cases in Chapter Three in which a marital family would usually insert marital disputes into abduction charges when accusing the natal family, they would compose the complaints in a different way when the defendants were outsiders. Even though the purpose of the charges remained largely consistent and the marital family always aimed to resume or maintain control over the woman, husbands and in-laws would choose divergent accusations and construct corresponding plots whether attacking someone from the Inner or Outer tier.

In consideration of the prevalence and impact of the chastity cult in Qing China, subjects realized the value of chastity and acquired the ability to wield it for legal ends. Therefore, the impact of the female chastity cult manifests in an unexpected form: the analysis of sexual crimes in this chapter intends to reveal this commodification of female honor and chastity. The complaints are fraught with depictions of women's resolute efforts to maintain their chastity, especially their (attempted) suicide in the face of a threat to their purity, and the extreme pain they experienced after being violated and polluted. Sexual offenses and female chastity were crafted into a strategy in the litigation masters' secret handbooks, which at the same time also provided the counter-strategy, namely defending oneself through economic disputes. In legal practice, the litigation masters and litigants learned this template, so the archives show direct but nuanced links between sexual offenses and money.

Charging a sexual offense, based on the current literature, could have two purposes: attracting the magistrate's attention and compelling the defendant to solve a dispute with the plaintiff. Nevertheless, the pattern constituted another element of representational reality: female chastity seemed a good bargaining tool in economic disputes, and had been objectified just like female bodies, sexual resources, reproductive labor, and the right to marry in the Qing Dynasty. The cult of female chastity had become a part of the dominant discourse, which was too authoritative and too influential to avoid. Therefore, the subjects made use of the chastity cult, leading to a consequence that the policymakers could not expect.

Chapter 5. Beyond Inner and Outer: Women's Living Spaces and Their Outside Contacts

The previous chapters of this dissertation discussed gender norms in the Qing code and how family relationships could drag women into legal issues. The focus lay on the choices and strategies of natal and marital relatives in cases that involved women. In the cases examined, women's roles were largely determined and constrained by strict moral and legal codes, and their lives took place within the household. This chapter shifts the focus to women who did have contacts outside the Inner Tier, particularly with other females. I will argue that the nature of the litigation over working women was also determined by the same three factors that I have used to explain most other conflicts over women in the previous chapters: the surplus of men and lack of women, the high demand for women on the marriage and sexual market, and the pervasive poverty in Qing China.¹

The connections between women in this chapter will show how the distinction between inner and outer influenced the opportunities women might have to deal with the hardships they encountered. On the one hand, the cases in Chapter Four prove that there was no physical boundary between inner and outer in the lives of women in nineteenth-century Ba County; the women could run away from their husbands or have affairs with other men. It was impossible for non-elite women from the middle or lower strata of society in the nineteenth century to avoid contact with men as they walked the streets and alleys or went to the farm or work every day. The separation of physical space between the inner and outer realms was purely the hyperbole of elites and textbooks. As Dorothy Ko argues, there was “a continuum of inner (*nei*) and outer (*wai*) domains as fields of action that women inhabited”; she stresses that the continuum was formed by “a series of nested circles,” starting with the most intimate inner chambers and expanding outward to encompass ever wider social realms. The gender boundary in late imperial China was thus

¹ Sommer, “Making Sex Work.”

“ambivalent, shifting, and open to negotiation.”²

On the other hand, there is a shadow of the norms distinguishing inner vs. outer in the archives. This chapter will discuss the impact of these norms of separate spheres from two angles, both aiming to emphasize interactions between women; again, according to Dorothy Ko, in order to study women’s history, scholars should examine the context of their everyday interactions with men and other women.³ In the domain of everyday lives within one household, there were frequent conflicts between mother-in-law and daughter-in-law. These conflicts align with one facet of the distinction: even within the household, wives had more frequent contact with female relatives, especially their mothers-in-law, while contact with individuals of the opposite sex (excluding spouses) was restricted even within the home.

To a certain extent, the norms distinguishing between inner and outer influenced how women built connections with the world outside their household. Many cases discussed in this dissertation arose when the women’s husbands were away from home; therefore, these case records can illustrate how women survived in the absence of their husbands, namely by finding another man as their source of livelihood or finding a job outside their household. The cases contain interesting details of the significant role women played in helping other women to find a husband or a job. The distinction between inner and outer made the connections between women easier than contacts between men and women.

The comparison between the cases in this section and in Chapter Four demonstrates how a married woman and an outside male would usually need an intermediary to get to know each other, whereas women could build contacts effortlessly with each other. The convenient connections between women might constitute an element of representational reality: it was normal and natural to find women’s community in rural China.⁴ Historians have discovered that women had extra-familial networks, such as female poetry clubs, female pilgrimage societies, and sisterhood relationships on the basis of “a female-specific written script” in late imperial and Republican China.⁵ This chapter will contribute to the

² Ko, *Teachers of the Inner Chambers*, 12–14.

³ Ko, 14.

⁴ Wolf, *Women and the Family in Rural Taiwan*, 37–52.

⁵ Ko, *Teachers of the Inner Chambers*, 14; Glen Dudbridge, “Women Pilgrims to T’ai Shan: Some Pages from a Seventeenth-Century Novel,” in *Pilgrims and Sacred Sites in China*, ed. Susan Naquin and Chün-Fang Yü (Berkeley [etc.]: University of California Press, 1992). The script is known as known as *nüshu* or “female writing”; see Fei-Wen Liu, “Literacy, Gender, and Class: *Nüshu* and Sisterhood Communities In Southern Rural Hunan,” *NAN NÜ* 6, no. 2 (January 1, 2004): 241–82.

scholarship on women's communities by studying the contacts between plebeian women in legal archives and the role of their connections in lawsuits.

The regulations on internal and external milieux placed an extra burden on women to justify their working outside the household as hired laborers, businesswomen, or prostitutes. The motivation was generally poverty, yet the experiences of the working women reveal that compared to the income that work could bring, these women's husbands were more concerned with the stability of women as property. Any action to leave the home, when taken by a woman, was regarded as a threat to the husband's (and the marital family's) ownership over the woman. The litigation scenarios reflect a conspiracy between state power and patriarchal families to confine women within the domestic realm, as the *Great Qing Code* expected.

The first section will discuss the relationships between women within and beyond the family and compare the details of how women built social contacts with outside men and women. The second part of this chapter will focus on working women in the archives, especially those providing domestic services in others' households, and answer the question of how they found such jobs and how their husbands drove them back home by means of litigation.

Conflicts Between Women within the Family

As stated in Chapter One, one of the connotations of the inner–outer distinction is the restriction of contact between men and women. Women, in general, did not squarely challenge the standards, but found ways to make contact with other women in separate, gendered spaces within the confines of moral norms.

The rule that people were supposed to associate with those of the same sex rather than the opposite one also applied within families. Anthropologist Francis Hsu noticed that in China when a couple lived with the husband's parents before the division of the family estate, “in the day-to-day life father-in-law and daughter-in-law relationship amounts almost to avoidance; they do not even converse with each other freely. Meanwhile, the mother-in-law and daughter-in-law relationship follows, in a broad way, that of mother and daughter.”⁶ Therefore, this part will focus on how the gendered living spaces of women within the household were reflected in the case records, particularly the frequent conflicts

⁶ Francis L. K. Hsu, *Under the Ancestors' Shadow: Chinese Culture and Personality* (Columbia University Press, 1948), 61.

between mothers-in-law and daughters-in-law.⁷

The following case describes a complicated dispute between a young bride and her mother-in-law (and between natal and marital families, so it includes some familiar details as mentioned in Chapter Three). In 1838, Zhou Chaoxiang was informed that his daughter Ergu (“second daughter”) had run away from her marital family. Chaoxiang asked his son-in-law Zhang Zigui and Zigui’s father (Zhang Delu) to search for her, but the two men refused, so Chaoxiang sued them. Unfortunately, the complaint by Chaoxiang is missing, but there is another complaint, from Delu, responding with an opposing claim. Delu believed that it was Chaoxiang and the natal family who had abducted his daughter-in-law because she often used to come back to the maternal home for extended stays:

去正月，朝相妻黃氏接二姑回家，四月內送回。未滿一月，黃氏又接二姑回家，至冬月送歸，其中顯有不美事情。蚊忍未較。今正月初四，黃氏來接二姑，蚊妻羅氏理阻。十三日黃氏喊控江北……二姑吐稱黃氏唆誣逼娼，又云周臘苟周喜元嫌貧唆鬧，欲拆另嫁。理剖黃氏不許往來……是月二十八，朝相接二姑回去，前月二十六送回。本月初九，二姑潛逃。蚊當着子清問，黃氏堅匿不現。十五日，黃氏、周臘苟來家兇鬧。

被訴：周朝相、（懇賞添喚）周喜元、周臘苟、周黃氏

In the first month of last year, Zhou’s wife, Zhou Huang Shi, collected Ergu, and in the fourth month Ergu returned home. Less than one month later, Huang restored Ergu to her natal family again and did not return Ergu home until the eleventh month, there was obviously something immoral, and I restrained myself from arguing with them. And this year, on the fourth day of the first month, Huang came to pick Ergu up, and my wife reasonably prevented her. When Huang was stopped from picking up her daughter, the natal family filed a case in the court of Jiangbei⁸ [...] then Ergu admitted that her natal family had forced her to be a prostitute. She also said her family members despised my family for our poverty, incited her to make a fuss, and intended to break up her marriage and remarry (her to someone else). The magistrate of Jiangbei demanded that Huang sever connections with Ergu. [...] However, on the 28th day of the same month (first month), Zhou restored Ergu to her natal family and returned her on the 26th day of the last month (fifth month). On the 9th day of this month (sixth month), Ergu slunk off. I sent my son to ask Huang Shi, and she resolutely concealed Ergu. On the 15th day, Huang and Zhou Lagou came to make an aggressive fuss at my home.

Defendants: Zhou Chaoxiang, Zhou Xiyuan, Zhou Lagou, Zhou Huang Shi.⁹

⁷ Conflicts between mothers and daughters-in-law are still one of the most important sources of family conflicts, and are usually explained through the rise of “girl power” after the social reformation in China; see Yunxiang Yan, “Girl Power: Young Women and the Waning of Patriarchy in Rural North China,” *Ethnology* 45, no. 2 (2006): 105–23.

⁸ It is not clear why they did so; according the records, both natal and marital family lived in Ba County.

⁹ Q6-11-09230

Like other examples in Chapter Three, the plaintiff does not present any evidence to prove that the natal family had abducted Ergu, but when his daughter-in-law disappeared, Zhang Delu suspected his affinal relatives. Later, when Delu and the runners found Ergu, he submitted another plaintiff, stating that Ergu admitted that her mother, Zhou Huang Shi, had asked Yue Lin and Yue Ma Shi to abduct her. This plaintiff portrayed Zhou Huang Shi as playing an evil role in the case. The testimony did not include any mention of instigation by Ergu's mother. On the contrary, Ergu told a short story in her testimony:

小婦人出外買藥，撞遇這認口的岳馬氏，把小婦人引到胡具文裡住。

When I went out to buy medicine, I met Yue Ma Shi, a woman I know. She brought me to Hu Juwen's household.

Yue Lin said that because Ergu claimed her parents-in-law had degraded her repeatedly, his wife, Yue Ma Shi, decided to conceal Ergu at Hu Luo Shi's home. The case records end with statements from the three parties stating that they all accepted the judgment asserting that Yue Lin and his wife had abducted Ergu and that the couple would be punished (without a detailed account).

It is hard to know to what extent the judgment conformed to reality, but the stories told by the three parties and the language they use allow us adequate resources and angles for analysis. Zhang Delu and Zhou Chaoxiang were, respectively, the father-in-law and father of Ergu, and they, on behalf of the parental and marital family, filed plaintiffs to the court. Yet it seems that males did not play the central role in their narratives. In Delu's plaintiffs, Ergu was picked up by her mother, Zhou Huang Shi; her father did not take part in the abduction (though he was listed as the first defendant). Chaoxiang, in his testimony, mentions:

小的女儿屢被張德祿的妻子羅氏嫌賤。

My daughter was loathed and despised by Zhang Luo Shi, the wife of Zhang Delu.

He clearly points out that it was the mother-in-law who abused her daughter, rather than Ergu's husband and father-in-law. Those who played the leading roles in this case, including Ergu, Zhou Huang Shi, Zhang Luo Shi, and Yue Ma Shi, were all women. The conflicts and cooperation between the four women created links across the boundary of the household and led to this lawsuit.

The concept of the "uterine family," developed by anthropologist Margery Wolf, can help us understand this sort of conflict between mother-in-law and daughter-in-law. In addition to the patrilineal system within the Chinese family, Wolf argues that the "uterine

family” is another domestic system centered on the mother, including her children.¹⁰ When a daughter gets married and bears children, she starts her own uterine family.¹¹ A newly married bride could threaten the old family order constructed by males and older females, especially the mother-in-law.¹² If the young woman would like to exert influence on the household, she must rely on her husband, her mother-in-law’s son. The two women had to make use of the same man’s position and impact in the family. As mentioned by Margery Wolf, the potential sphere of influence that the wife could have in the future would more or less overlap with her mother-in-law’s uterine family.¹³ Therefore, the older women had to be vigilant against all possible attacks the younger women might launch. This is the reason why the complaints were full of disputes between mothers and daughters-in-law. Meanwhile, the frequent conflicts between mothers and daughters-in-law, consistent with the daily experiences of most people, constituted an element of representational reality, especially the domestic violence that the young brides might face, found as a major cause of lawsuits between natal and marital family.¹⁴

Communication Between Women Beyond the Household

The case of Ergu implies that communication with women outside the household could lead to abduction, and this section will introduce more cases to elaborate on why women would engage with other females outside the household and how these contacts generated lawsuits. Developing same-sex contact was relatively safe and convenient for women to expand their social space, owing to the distinction between inner and outer and the constraints of male–female interaction. The warnings below indicate that many families used to guard less strictly against outside females, but at least by the Ming era, people had realized the threat women could pose to the family and social order:

人家關防內外，止計較外來男子，而不知外婦之尤甚。¹⁵

When people prevent the boundary between inner and outer from blurring, they only guard against outside men, but do not know that outside women are more likely [than outside men] to cause

¹⁰ The uterine family includes her siblings, but excludes her father and parental grandparents.

¹¹ Wolf, *Women and the Family in Rural Taiwan*, 32–36.

¹² Yan, “Girl Power,” 113.

¹³ Wolf, *Women and the Family in Rural Taiwan*, 36.

¹⁴ See Chapter 3.

¹⁵ Unknown author, “Jia Fan” 家範 [Precepts for Family Life], in Boxing Zhang and Xichou Xia, eds., *Kezi suibi chao* 課子隨筆鈔, Reprint, (Taipei: Guangwen shuju, 1975), 319.

trouble.

外面婦人雖至親，不可使其當來行走，一以防其談是非，至一家不和；一以防其為姦盜之媒也。¹⁶

Outside women, even if they are close relatives, are not allowed to hang around freely: firstly to prevent them from talking about gossip, which may lead to family discord. Secondly to prevent them from acting as go-betweens for evil things.

The warning was because “as a woman, she naturally feels more comfortable in intimate situations with her female clients as she chants sutras to them in the meditation room” (到內室念佛看經，體格終須是婦女，交搭更便).¹⁷

Research by Yi Ruolan suggests that the work of “nuns and grannies” facilitated a large number of improper behaviors, such as female elopement, by women from both elite and normal families.¹⁸ Particularly for women from the lower and middle strata, they had more chances to be exposed to and even work in the outer world, and female interactions within and outside of the familial sphere were persistent and casual.¹⁹

The following cases could partly answer the question of how women used the advantages and conveniences of their gender identity for their benefit. In the year 1833, when a woman named Fang Ainü visited her half-brother (Zhao Hongfa), she talked with Zhu Huang Shi, who lived with her husband next to Hongfa. Huang Shi complained to Ainü about her life: her husband (Zhu Xiancai) and his family were poor, and Xiancai had been working outside for a long time; now, she was lonely and helpless. Then Ainü put forth a suggestion: Zhu Shi could follow her to the walled city (of Ba County), and she would help Zhu Shi to find another husband. It seems that without the slightest hesitation, Zhu Shi escaped from her poor husband and came with Ainü. Then, Ainü arranged for her to live with Liang Huang Shi, and asked Liang Shi to look for a mate for Zhu Shi.²⁰

Due to the shortage of women and the pervasive market for them, it is not difficult to imagine that if Zhu Shi’s husband had not found her in time, Liang Shi would most

¹⁶ Jisheng Yang, “Yu Yingwei Yingji liang’er” 諭應尾應箕兩兒 [To Instruct My Two Sons, Yingwei and Yingji], in Zhang and Xia, 99.

¹⁷ Mengchu Ling, *In the Inner Quarters: Erotic Stories from Ling Mengchu’s “Two Slaps,”* trans. Lenny Hu (Vancouver: Arsenal Pulp Press, 2003), 87.

¹⁸ Ruolan Yi, *Sangu Linpo: Mingdai Funü Yu Shehui de Tansuo*, 三姑六婆——明代婦女與社會的探索 [Nuns and Grannies: A Research on the Women and Society in Ming China] (Taipei: Daw Shiang Publishing Co., Ltd., 2002), 161–79.

¹⁹ Yi, 116–30.

²⁰ Q6-11-09013.

likely have profited from Zhu Shi's remarriage.²¹ From this perspective, Ainü and Liang Shi formed a small group that benefited from the abduction and sale of women through marriage. In the legal archives, social circles would usually evolve further into criminal networks, in which women had their own division of labor; some were responsible for abducting women, while others acted as baits or mediators.

From the angle of Zhu Huang Shi, however – the so-called “victim” – it seemed to be a beneficial choice to leave her original, poor family and husband to find a new source of support. In this respect, her female contacts, Ainü and Liang Shi, actually helped Zhu Huang Shi to find a way to survive in the absence of a husband.

In another case, we can see that the women's participation and the contact between them had multiple functions in all stages of the “crime.” The events of the case had been narrated via complicated accounts with convoluted plots in which an unmarried girl was abducted and resold multiple times, and the narratives of the different parties varied. In 1843, a widow, Zhang Chen Shi, the mother of Gaogu (or Changgu), submitted a plaint in which she mentioned that her unmarried (but engaged) daughter was missing. She then discovered that her daughter had been abducted by an old lady, Huang Laoma, and was sold twice: first to Cao Laoer and “matchmaker” Tang Hongshun, then to Zheng Runting.

Runting, however, gave a different version of the events. In his plaint, he recounted that with Zheng Luo Shi as a matchmaker, he bought Gaogu – who was said to be Hongshun's adopted daughter – as a bondservant. Additionally, Gaogu had not come to his house and now lived with Zou Xu Shi.

Tang Hexian and his father Hongshun reported yet a third version: Hexian's mother-in-law, Zhang Xie Shi, was seriously ill and needed a maid. Zhang Chen Shi had sold her daughter to Runting. Runting then sold Gaogu to Xie Shi, but Runting worried that if Xie Shi were to die, the deal would become invalid, so Xie Shi asked Hongshun to sign the contract. A copy of the contract had been submitted to the court, which said that with Qin Shi and Zhao Zhang Shi as matchmakers, Zhang Chen Shi had sold her daughter to Zhang Xie Shi.

The judgment ultimately combined all three versions of the events: Laoma had enticed Gaogu away from home and brought her to Qin Shi, then Qin Shi sold the girl to Hongshun.²²

²¹ Sommer, “Making Sex Work,” 32–34.

²² Q6-11-09426.

In spite of the variations and divergences, the roles of the women were impressive in every version. Though there are four different accounts in the case of Gaogu, each of them admitted that women – including Zheng Luo Shi, Zhang Xie Shi, and Qin Shi – could play the role of brokers. Men were also involved in abduction cases, but the trust and cooperation between women performed a fundamental function. Chapter Four has proven that if an outside male wanted to abduct a married woman, he usually needed first to have sexual relations with the woman (the section below will show how the men obtained access to the women). However, in cases where women had lured another woman, they did not have to build any special contacts, or the complaints and testimonies in the archives did not have to show how or why they could build such trust with each other, which seemed to be natural and innocuous. Although the complaints had a tendency to blame men rather than women in their wording (Chapter Two), and the number of women who committed abduction was small, they nonetheless reflect the representational reality that the distinction between inner (female) and outer (male) made women feel more comfortable having contact and building trust with other women as opposed to men.

It is possible that the female plotters, executors of plots, and brokers in these cases always had the aim of earning money by selling other women; yet the archives also record acts of mutual aid between women.²³ In 1838, Xu Wang Shi filed a complaint mentioning that Xu Xuechun, the husband of Xu Wang Shi, had repeatedly tried to sell his daughter to alleviate their poverty. Xu Wang Shi resolutely and firmly opposed her husband's decision. The magistrate punished Xuechun, ordering him not to sell his daughter. Xu Shi worked outside the household as a hired hand, living with Dou Wang Shi. However, Xuechun again tried to snatch their daughter away from Xu Shi, injuring his wife in the attempt. Fortunately, Dou Wang Shi and Wang Wu Shi stopped him.²⁴

Dou Shi and Xu Shi were “natal relatives” (內戚). The relation between direct relatives, siblings, and even cousins would usually be specified in the text of complaints, but the documents in question only described their relationship with the ambiguous phrase “natal relatives.” Presumably, they were only distant relatives; however, with the support of this weak bloodline and female network, Xu Shi could obtain help and support.

²³ More precisely, making a profit and providing mutual help could not always be distinguished, as the case of Zhu Huang Shi shows.

²⁴ Q6-11-09195.

In a word, the cases in this section share the commonality of a woman absent from her husband, either because he was working away from home or dead, or because the wife had decided to leave him. The woman could make use of her contact with other women to survive.²⁵ Her female contacts could help her to find another husband, sell her daughter to make money, or obtain shelter. Each of these scenarios reflected the impact of gender ethics and the doctrine of separate spheres on social and legal practices.

Eloping with Men

The preceding section illustrates that it was easy for women to establish contact with each other, while this part will examine the difficult situations in which an outside man attempts to form a relationship with a married woman. The comparison can better demonstrate the difference between same-sex and opposite-sex relationships.

Table 5.1 Relationship between Adulterer and Adulteress in Chapter Four Examples

Archive No.	Relationship
Q6-1109624	Living together
Q6-1108670	Wife and sworn brother of the husband
Q6-0504504	Landlord-tenant
Q6-1109626	Landlord-tenant
Q6-1109245	Neighbors
Q6-1109232	No special connection
Q6-2005494	Landlord-tenant

Source: BXA, "Women," 1803 - 1873.

Without blood or kinship ties, it was not as easy to interact with the opposite sex as it was with the same sex. Table 5.1 lists the relationships between women and outside men as found in all seven examples in Chapter Four; the common pattern observed in the

²⁵ As previously stated, Chongqing was a city with a highly mobile population, and the archives frequently mention men leaving for work, trade, or business. While the exact number of mobile males cannot be verified, the case records offer insights into how the wives left behind coped during their husbands' absence; see Gilbert Z. Chen, "Becoming Nun in the Absence of Husband: Male Migration and Female Religiosity in Nineteenth-Century China" (unpublished paper presented at the Association for Asian Studies Annual Conference, Boston, March 17, 2023).

archives is that a man first engaged in adultery with a woman, and then tempted her to elope with him. Extramarital sexual relationships were based on existing ties, and the husbands or other male family members participated in or played the leading role in establishing these connections, though unwittingly.

The following cases will explore the issue of how adulterers and adulteresses found the opportunity to become acquainted with each other. Zhang San, the adopted son of Liao Henghua, worked for Xinghua as a long-term hired hand; he seized the opportunity to engage in adultery with Xinghua's wife (Liao Tao Shi), eloping with her in 1858, on an occasion when Xinghua was not at home.²⁶

Similarly, Li Hongsheng owned a felt shop and had Wang Xiang as his apprentice. Xiang availed himself of the moments when Hongsheng sometimes left his shop to have an extramarital affair with Li Guo Shi (Hongsheng's wife). Finally, they ran away together in 1863.²⁷

Though the details vary, an adulterer would first build a certain relationship with the husband (employer and hired laborer, master and apprentice), then find a chance to gain access to the woman. The husband was the central link in both of the preceding cases (and most cases mentioned in Chapter Four). The husband thus accidentally facilitated the contact between his wife and an outside male, who met each other in the overlapping space of the husband's life and work. This is distinguished from interactions between females since women did not need an "intermediary" to link them. A woman's quotidian contact with other women seemed to pose less of a threat to female chastity and patriarchal authority; they would thus be given enough space for same-sex relationships.

Cooperating with other women even became another option for males who wanted to abduct a woman. For instance, after Yang Gu got married, her cousins (*tangxiong* 堂兄) "despised the poor family," and they collaborated with a widow, Long Tang Shi, to inveigle Yang Gu to escape secretly.²⁸ Yang Gu's cousins probably believed that a woman might have more opportunity to talk to and persuade their married cousin than they themselves did; otherwise, it is difficult to explain why the cousins needed an outside woman to execute their plan.

This chapter does not attempt to prove that women were allowed no access to men

²⁶ Q6-20-05450.

²⁷ Q6-20-07172.

²⁸ Q6-11-09228.

outside of their family or household. On the contrary, the archives demonstrate the reality that women were surrounded by many men (both relatives and others) in their living spaces and social circles. Nevertheless, the examples in this section suggest that the manners and modes in which men associated with women differed dramatically from how women bonded with each other. The extended (spatial) mobility and relationships of a man (sworn brothers, landlord–tenant, master–apprentice, employment relationships) might allow another man to come into contact with his wife; a woman, meanwhile, did not need a special space or opportunity to establish and maintain her connections, as in the case of Zhu Huang Shi, where Fang Ainü could easily gain the trust of the lonely woman.

The above shows that the risky male–female interactions gave way to safe same-sex encounters. The legal archives leave traces of the norms distinguishing between inner/female and outer/male, according to which women did not need any special relationship or identity to establish connections with other women, but men did. This phenomenon, as a part of representational reality, was a consequence of gender ethics in inner and outer separate spheres.

Laboring Women

Further evidence of the distinction between inner and outer in the legal archives lies in the magistrates' and husbands' attitudes toward working women. As mentioned in Chapter One, the gender division of labor confined women's work to the domestic sphere. Women who left home to work outside the house were not uncommon in the judicial records, but they faced challenges in breaking the boundaries of gender roles. This cross-boundary work was often seen as an act of disobedience. Moreover, working outside the house meant that the women were no longer under the surveillance of their husbands and in-laws, which posed a great risk to their safety as family property. Therefore, the legal records included cases of women being forced by their husbands to return home.

Most research about working women in late imperial China focuses on textile production. The canonical gendered division of labor stated that “men plow and women weave” (男耕女織), so a woman should sit “at her spindle and loom, making cloth.”²⁹ However, according to historian Francesca Bray, with the textile industry becoming “increasingly commercialized and specialized” from 1000 to 1800, women's contribution

²⁹ Weijing Lu, “Beyond the Paradigm: Tea-Picking Women in Imperial China,” *Journal of Women's History* 15, no. 4 (2004): 19.

to textile production was “devalued, marginalized, or simply subsumed within male-headed household production.”³⁰ Bray and other historians are trying to enhance our understanding of the role of working women and women’s work in industries such as embroidery, tea-picking, and household crafts, as well as in state policy, imperial ideology, and social transformation.³¹

The question this section will discuss is quite different. I will focus on the practical aspects of women’s work, including why women needed jobs, how they could find work, and how they became involved in lawsuits due to their work, which will add observations from a micro angle to current historiography. Here I define “work” simply as activities that could directly generate income for women. However, some groups of women were difficult to place into such categorization. For example, many women acted as go-betweens or matchmakers (*mei po* 媒婆), but there are few mentions of matchmakers earning money in the archives.³² Still, matchmakers were an important group, since these women walked the streets and alleys to do their work, which played an essential role in building social connections among women.³³ Further, the legal records did not often specifically mention women working within the family (such as housework and needlework) or farming unless it was closely related to the circumstances of the case, like a woman being raped while

³⁰ Francesca Bray, *Technology, Gender and History in Imperial China* (London and New York: Routledge, 2013), 94.

³¹ Susan Mann, “Household Handicrafts and State Policy in Qing Times,” in *To Achieve Security and Wealth: The Qing Imperial State and the Economy, 1644-1911*, ed. Jane Kate Leonard and John R. Watt (Ithaca, N.Y.: Cornell University Press, 1992), 75–95; Grace S. Fong, “Female Hands: Embroidery as a Knowledge Field in Women’s Everyday Life in Late Imperial and Early Republican China,” *Late Imperial China* 25, no. 1 (2004): 1–58; I-Fen Huang, “Gender, Technical Innovation, and Gu Family Embroidery in Late-Ming Shanghai,” *East Asian Science, Technology, and Medicine* 36, no. 1 (August 13, 2012): 77–130; Yuhang Li, “Embroidering Guanyin: Constructions of the Divine through Hair,” *East Asian Science, Technology, and Medicine* 36, no. 1 (August 13, 2012): 131–66; Lu, “Beyond the Paradigm.”

³² The records do usually include the “unlawful” income of matchmakers – for example, when a matchmaker deducted twenty taels of silver from the betrothal gifts (Q6-05-04508).

³³ Female matchmakers were part of the *sangu liupo* (三姑六婆 three nuns and six grannies). In general, the three kinds of aunts were religious – including Buddhist nuns, Daoist nuns, and soothsayers – and the six grannies were brokers, matchmakers, shaman-healers, procuresses, drug-sellers, and midwives; see Angela Ki Che Leung, “Women Practicing Medicine in Premodern China,” in *Chinese Women in the Imperial Past: New Perspectives*, ed. Harriet T. Zurndorfer (Leiden [etc.]: Brill, 1999), 102. See also Ruolan Yi, *Sangu Liupo: Mingdai Funü Yu Shehui de Tansuo*, 三姑六婆——明代婦女與社會的探索 [Nuns and Grannies: A Research on the Women and Society in Ming China] (Taipei: Daw Shiang Publishing Co., Ltd., 2002), 5–8. The other “aunts and grannies” rarely appear in the archives. There are two “medicine grannies” in Q6-11-09451. On the (Buddhist) nuns, see Gilbert Z. Chen, “The Lustful Nun: The Intersection of Law and Female Monastic Sexuality in Nineteenth-Century Western China” (ISCLH Biannual Conference, online, June 11, 2021).

doing farmwork in the fields.³⁴

Businesswomen

It is nearly impossible to determine how many women in the archives were involved in business activities, as most records are vague on this point. For example, according to the story told by a husband, after his wife returned to their hometown, his inn (or storehouse) was left unattended, so he took another woman as his concubine. Later, however, his wife and concubine could not get along, and the wife took the husband and the concubine to court.³⁵ This seems to imply that their business used to be managed by the wife, or at least that she undertook especially prominent duties. Some documents were missing from the archive, including the initial plaint filed by the wife, making it impossible to tell whether the husband had made up an excuse to take on a concubine. The husband's statement at least suggested that it was not beyond the imagination for a husband to take on a concubine in the nineteenth century if the concubine could serve as a supplement to the workforce.³⁶

The only identified businesswoman in the archives was a widow named Hu Liu Shi. All parties in the lawsuits acknowledged her status as a businesswoman. Moreover, she submitted her legal plaints by herself without any proxy.³⁷ Hu Liu Shi entered the courtroom due to a family issue, rather than a commercial problem:

氏夫存抱一子，僅只數齡。有曹坤元央請曹忠明為媒，將伊女曹二姑許氏抱子正魁為嫻媳。曹二姑年今十四歲。今前月二十九，氏至渝探親，午後氏歸見櫃貯引線失去五萬。氏向二姑清詢，吞吐不言，詎二姑情虛，是夜潛藏。三十日，經長發在坤元家尋獲二姑，跟問透引現賣氏鄰謝二、張煤炭、黃二買訖；並詢明二姑二十九夜，尚在謝二家歇宿。

My ex-husband has a very young adopted son. Cao Kunyuan asked Cao Zongming as a matchmaker, to marry his daughter, Cao Ergu, to my son as a child bride. She is 14 sui. I went to Chongqing to visit my relatives on the twenty-ninth day of last month. When I came back in the afternoon, I found I had lost fifty thousand fuses kept in the cupboard. I asked Ergu, but she was humming and hawing, so I guess she must be guilty. That night, she ran away and hid. On the thirtieth day, Luo Changfa found her in Kunyuan's house, and she admitted that my neighbors, Xie

³⁴ For instance, in 1843, He Deng Shi claimed that a monk attempted to rape her while she was collecting firewood on a mountain (Q6-11-09457).

³⁵ Q6-20-05040.

³⁶ Usually, a man would have a concubine because his wife could not bear children, but in this case, the wife, Cao Shi, had already birthed a son.

³⁷ Hu Liu Shi did not have a proxy, as she probably did not have any close adult male relatives. Her husband and her husband's brother had died, and her adoptive son was very young. She was forty-eight *sui*, which means her father must have been quite old or even deceased.

Er, Zhang Meitan (“coal Zhang”), and Huang Er bought all the fuses. And she slept in Xie’s home at night.³⁸

The theft was not the direct cause of the lawsuit. After this, the neighbors paid for the price of the stolen fuses, and Hu Liu Shi took Ergu back. The real reason for the lawsuit was that the young bride then ran back to her natal family again. Kunyuan demanded that Hu Liu Shi give him money and food, threatening to reclaim Ergu; Hu Liu Shi refused, instead deciding to break off the marriage. The unsatisfied Kunyuan resorted to the court to sue Hu Liu Shi and Changfa, who attempted to rape his daughter; Ergu was reprimanded after telling her mother-in-law about the violation and tried to commit suicide. Changfa also instigated Hu Liu Shi to break off the marriage. It is noteworthy that Kunyuan listed Hu Liu Shi as the first defendant, and Changfa, who had attempted to rape his daughter, as the second. In the end, Kunyuan confessed to the false accusation; the magistrate chastised Kunyuan and Ergu, and asked Hu Liu Shi to take Ergu back home.

What makes the case more interesting is the way that Hu Liu Shi described her experience as a businesswoman in depth:

氏夫胡恒泰原開引線作房。道光十四年，夫故。夫弟長泰與氏合夥經理。因長泰亦亡，十五年有羅長發出本，與氏夥辦火爆引線。

My husband, Hu Hengtai, used to have a factory to make fuses (for fireworks). My husband passed away in the fourteenth year of Daoguang (1834). His brother, Changtai, and I started running the business in partnership. However, Changtai also died, so in the fifteenth year (of Daoguang, 1835), Luo Changfa provided funds, and we ran the business together producing fuses.

She had changed business partners twice after the death of her husband; the second time, she explicitly mentioned that the other party financed it, which means that she was actually the one who mastered the technique of producing fuses and firecrackers. Thus, if we look closer at the story of her career, we will find that Hu Liu Shi was not just a businesswoman but also a skilled artisan.

In her plaint, she refers to a man named “Coal Zhang,” who probably made a living by selling coal. Similarly, we can find names like “a man’s surname + Carpenter/Blacksmith/ Tinsmith, etc.” in legal documents. However, very few women are referred to like this in the archives; the only exception is for a prostitute.³⁹ Despite being an expert in making fireworks, Hu Liu Shi never received a nickname like “Fuse Hu.” As anthropologist Rubie Watson has stated, the names of rural women in Hong Kong would not be marked

³⁸ Q6-11-09208

³⁹ In Q6-26-07791, a woman is referred to as “prostitute He.”

by any achievement outside the home. They always lost their childhood names upon marriage, thereafter becoming “known by a series of kin terms.” On the contrary, men’s names leave more room for individuation or self-expression, and could reflect their “achieved criteria (such as student, scholar, businessman, writer, politician).”⁴⁰ Similar examples can be found in the legal archives produced in nineteenth-century Ba County; the women mentioned in this dissertation were usually marked as “surname of her husband + surname of her father + Shi (which means ‘surname’ in Chinese).” Only unmarried girls could have a “real” name, though most of them were just called “the first daughter” (Zhanggu), “the second daughter” (Ergu), or “the youngest daughter” (Yaogu).

It seems that though no one, including the magistrate, had ever questioned the occupational status of Hu Liu Shi, she spent about one-fifth of the length of the plaint describing her business history. In contrast, men usually only had to use one phrase, “make a living by,” to describe their work. The rationale for Hu Liu Shi’s explanation was to clarify why she had a mountain of fuses in her place, thus triggering Ergu’s theft.

More importantly, her testimony may have been necessary to justify her actions under the gender division of labor and the gender doctrine of distinguishing between inner and outer. She places special emphasis on her business journey, seemingly to imply that she had been continuing the business as an inheritance from her husband and his family. In a sense, she, as a widow who had not remarried and was trying to the ancestral tradition of manufacturing fuses, thus justified her own career practices and her status as the head of the household, especially her authority over her daughter-in-law.⁴¹ Since there was no other senior in her household, as the (adoptive) mother of the only male heir and a widow who strived to sustain the family tradition, the magistrate should not have any doubt about her authority in the household.

Offering Domestic Services to Other Households

Records of women working as hired labor were not rare in imperial China. For example, during the Song Dynasty, some urban families from the lower strata of society trained their daughters as

⁴⁰ Rubie S. Watson, “The Named and the Nameless: Gender and Person in Chinese Society,” *American Ethnologist* 13, no. 4 (1986): 619–31.

⁴¹ After all, participation in the family business as a chaste widow was somehow officially permitted; one example was the widows from the salt merchant’s family, on which see Man Bun Kwan, “Custom, the Code, and Legal Practice: The Contracts of Changlu Salt Merchants in Late Imperial China,” in *Contract and Property in Early Modern China*, ed. Madeleine Zelin, Jonathan K. Ocko, and Robert Gardella (Stanford, Calif.: Stanford University Press, 2004), 288–90.

hired workers, such as female cooks.⁴² Female *yong gong* or *bang gong* (佣工 or 帮工 in the archive – the same words as for male “hired labor”) is commonly mentioned in the Ba County Archive. 18 pieces of legal records explicitly mention women working outside their households as hired laborers.⁴³ Their work probably differed significantly from that of men. The term “cooking and washing” (*cui cuan jiangxi* 炊爨浆洗) was often used in the archives to describe their work; in other words, the female hired laborers would stay in other people’s homes and do household chores. Another less common job was wet nurse, or breastfeeding (*weinai* 喂奶). It first needs to be clarified that though both did housework for their masters, female hired hands were distinguished from the “bondservants” (*binü* 婢女) in the archives. Bondservants, generally, were sold by their parents to the masters, who held a contract of the sale.⁴⁴ A hired hand and her employer would usually reach an agreement, and the employers would not have parental authority over the hired hands.

The phenomenon of women offering domestic services to other families has not yet received enough academic attention. In his book about working women in early twentieth-century Beijing, Chinese historian Cheng Weikun mentions maidservants, or “old maids” (*laomazi* 老妈子), as a general term for a category of female laborers including “wet nurses, hairdressers, and home laborers.” They mainly undertook duties such as “shopping, cooking, laundry, sewing, and babysitting.”⁴⁵ In terms of the job description, “old maids” sounds very similar to female “hired laborers” in legal archives.⁴⁶

Cheng also mentions that a maidservant would have to “shop, fetch water from the

⁴² Han-Sheng Chuan, “Songdai nüzi zhiye yu shengji 宋代女子職業與生計 [Women’s Careers and Livelihoods in the Song Dynasty],” in *Zhongguo funüshi lunji* 中國婦女史論集 [Collected essays on Chinese women’s history], ed. Chia-lin Tao and Darong Ren, Reprinted (Taipei: Daoxiang chubanshe, 1979), 197–98.

⁴³ Research on the central legal archives has also noted that women working outside the household as hired laborers was common; see Hui-Min Lai and Szu-Ling Hsu, “Qingyu yu xingfa: Qing qianqi fanjian anjian de lishi jiedu 情慾與刑罰：清前期犯奸案件的歷史解讀(1644–1795) [Passion and Punishment: Historical Interpretation of Adultery Cases in the Early Ching Dynasty (1644–1795)],” *Research on Women in Modern Chinese History* 6 (August 1998): 59. In her book, Hershatter mentions that one-fifth of women in 1930s Shanghai provided household services; see Gail Hershatter, *Dangerous Pleasures: Prostitution and Modernity in Twentieth-Century Shanghai*, 1999, 422.

⁴⁴ For example, Q6-11-08995 is a contract for parents who have sold their young daughter as a bondservant.

⁴⁵ Cheng, *City of Working Women*, 53.

⁴⁶ Here I discuss only Cheng’s book and the maidservants of Beijing, but it does not mean that there was no “female hired labor” in other areas. For example, “there were hairdressers in Canton; they were hired by others, and did the work of styling hair,” “the masters would pay their salary at the end of each month,” and “a wealthy family would specially hire a woman, called a ‘personal maid’ (*jin shen* 近身);” see Ke Xu, *Qing bai lei chao nubi lei*, 清稗類鈔奴婢類 [Collection of Antidotes of Qing Times: Slaves and Servants] (Shanghai: Shangwu yinshuguan, 1918), 29.

street well, watch the children as they played outside, and deliver messages for her master.”⁴⁷ Hence, they had chances to be exposed to the outer world and public space. Cheng then argues that the working mode of maidservants actually “obscured the division between domesticity and work.”⁴⁸

This section will answer such questions as: why did women choose to work as hired labor? How did these women find jobs? More importantly, it will reveal that the gender doctrine of separate spheres would force women into lawsuits. In 1858, a man named Zhou Zongqing could not find his wife, so he went to court. In the first plaint he submitted, though his wife seemed to be extremely wanton by his account, he did not accuse her (*gao* 告 or *bing* 稟), but sought to “preserve” the case in the official records in case of any future trouble that the missing wife might cause:

王氏不守婦道，行爲詭密。屢捕姦夫，被伊縱逃。前月十六夜，蚊幫人傭工未家。王氏心毒，丟棄兒女，私捲衣飾，背夫脫逃。……至今不知去向。

Wang Shi did not follow female virtue and behaved surreptitiously. I apprehended her adulterer more than once, but she helped him to escape. The night of the sixteenth day of last month, I was working outside as a hired laborer. While I was away from home, Wang Shi was callous enough to abandon our son and daughter and escape from the home with clothes and jewelry. [...] I still have no idea where my wife is.⁴⁹

When he found his wife, Zhou Zongqing immediately turned his attacks against those men who had illicit sexual relations with his wife; in the second plaint, the name of Wang Shi as the defendant vanished, and we find only three men.

初七夜，有何壽喜、陳家寅爭姦蚊妻，鬪毆。……蚊在姦所捉獲何壽喜，押送在途脫逃。……何壽喜、陳家寅、范錫匠隱匿王氏，不認。

On the night of the seventh day of the month, He Shouxi and Cai Jiayin were fighting (for the chance) to sleep with my wife. [...] I caught Shouxi, but Wang Shi escaped [...]. Shouxi, Jiayin, and Tinsmith Fan hid Wang Shi, but they would not admit it.

However, in the testimony of Zhou Wang Shi, her experience was depicted as rather simple, and did not include the dramatic scene of two men fighting to sleep with her:

陳家寅、范錫匠們與丈夫都是親戚，素相往來。小婦人因家裡貧苦，日食難過，來渝托范錫匠幫小婦人找尋幫工。不料本月初四日，丈夫周宗慶撞遇小婦人，就說與這陳家寅、范錫匠們私通逃走。...小婦人不應背夫私走，理應責懲。姑念有孕，從寬免究，吩咐丈夫把小婦人領會，不准私逃就是。

⁴⁷ Cheng, *City of Working Women*, 54.

⁴⁸ Cheng, 55.

⁴⁹ Q6-20-05423

Cai Jiayin and Tinsmith Fan are my husband's relatives, and we are in regular contact. Because my family is so poor and lacks enough food for daily life, I came to Chongqing and asked Tinsmith Fan to help me find a hired labor job. However, on the fourth day of this month, my husband Zongqing met me by chance, and he scolded me for committing adultery with Jiayin and Tinsmith Fan [...] I should not run away without my husband's permission, and I should receive punishment. (The magistrate) is concerned that I am pregnant, so I will be exempt from a penalty, my husband should take me home, and I will not be allowed to run away again.⁵⁰

Although each party sticks to its own version of the story, making the facts ambiguous, there is a common thread in the stories: both sides admit that Zhou Wang Shi had left her home; the core of the dispute is why she did so. Zhou Shi's confession may not be accurate, though several elements of her testimony recur in the following examples: she had to leave home to make money due to poverty, and to find a job, she had no choice but to ask for help from her family members or friends, in this case, a relative of her husband.

The following are accounts of other women in the legal files with parallel reasoning as to why they determined to take the risk of leaving home: their husbands' inability to provide for their families was the intrinsic motivation for the women to work outside the household:

詎料喻開明不務恒業，日食莫度。去腊，開明將季氏引來渝城幫人炊爨漿洗度活。

However, Yu Kaiming, the husband of my daughter, did not have a proper and stable job and could not afford daily food. Last year, he let my daughter work in Chongqing as a hired hand to do cooking and washing.⁵¹

小婦人再醮這李永貴為妻。過門後因丈夫無力養活，小婦人在外幫人度日。

I remarried Li Yonggui. However, I discovered he could not support me, so I worked outside as a hired laborer to make a living.⁵²

因氏夫屢棄家出外，氏幫工度活。

Because my husband has left and abandoned our family more than once, I have to make a living by doing hired labor.⁵³

Furthermore, it was not easy for a woman to find a job by herself in nineteenth-century Ba County. They had to depend on their social connections; however, job recommendations could easily lead to disputes. Sometimes women also relied on female

⁵⁰ Cai Jiayin and Tinsmith Fan gave the same testimony in their statement.

⁵¹ Q6-11-09452.

⁵² Q6-20-05434.

⁵³ Q6-26-07256.

connections in seeking job opportunities. In one case from 1873, as Wang Tianxing has mentioned, one woman was recommended for a post by another woman:

今八月，陳桂山之妻陳趙氏，與蚊舅鄭福倫之妻鄭葉氏同來蚊家。趙氏自稱作成黃氏江北幫工。

In the eighth month of this year, the wife of Chen Kui, Chen Zhao Shi, and the wife of my uncle (*jiu* 舅, mother's brother, Zheng Fulun), Zheng Ye Shi, came to my place. Zhao Shi said she had arranged for Ye Shi to work as a hired labor in Jiangbei.⁵⁴

The long and tedious case record did not mention the specific relationship between Chen Zhao Shi and Zheng Ye Shi. I have ascribed their behavior to mutual help based on the connection among women. To get to work, Zheng Ye Shi still needed to pay travel expenses, for which she turned to other relatives. However, according to Zheng Fulun, his wife was lured away by Chen Kui and his wife, and Tianxig was also involved. There is a similar case, from 1828, in which Liu Shi, the wife of Liu Laoer, recommended Qin Xie Shi, the wife of Qin Xian, for work as a wet nurse in Ba County. Qin Xian did not deny that his wife was working outside of the home, but he insisted that Laoer sold Qin Xie Shi into marriage, which “sever the marriage bonds and family sacrifice.”⁵⁵

So far, we have a basic understanding of the motivations and modes of behavior of female hired laborers, who were forced to make a living due to penury and counted on their family ties and female social contacts to find a job. Women working as hired laborers were not beyond the social perceptions of nineteenth-century Ba County, though they always had to defend themselves, whereas men never had to.

The choice of language and strategy of the husbands followed a pattern. The narrative of Zhou Zongqing can be viewed as a typical case, containing several elements and parallels in other documents. Although he depicts his wife as a woman violating female virtue and escaping the household due to adultery, he never made it a priority to punish his wife for her affairs, but placed more emphasis on how to ask her to come back home. This was also the major concern of the magistrate, whose comment on the first plaint filed by Zongqing was: “a wife who runs away without the permission of her husband should be punished; you should wait for my order to let the runners seize her, and you should not only preserve the case.”⁵⁶ The magistrate did not pay any attention to the sexual offense either, and in his final judgment, he penalized Zhou Wang Shi for her running away and ordered her to return home with her husband.

⁵⁴ Q6-27-08250.

⁵⁵ Q6-11-08823.

⁵⁶ Q6-20-05423.

A similar case occurred in 1868 when Chen Dashun returned home to find his wife, Chen Liang Shi, missing. After searching for her, he concluded that his landlord and his landlord's wife had abducted Chen Liang Shi. At the end of the plaint, he stresses that his two young sons could not survive without their mother's care. He lists his landlord as the first defendant and asks Chen Liang Shi to return home (*gen yao*). The testimony of both Chen Liang Shi and the landlord states that the wife worked outside the home due to poverty, but the magistrate, in his judgment, still compelled the wife to return home.⁵⁷ In both of the preceding cases, as well as some others in the archives, the husbands did not ask the magistrate to punish their wives, but emphasized the importance of having their wives back at home, and the magistrates always upheld their complaints.

There is also some variation in the mode of the story where the husband tries to get his wife working outside back home. In 1863 Long Shigui told a similar story in court about his working wife. We cannot find his plaint in the archives, but according to his testimony, he neither denied nor prohibited his wife from working outside the household; further, there was only one woman in the family whom she was working for.⁵⁸ Even so, trouble came after the wife left home:

妻子何氏來渝幫人。在他嫂子——宋裁縫的妻子宋氏——家來往。⁵⁹宋氏刁唆妻子何氏是有的。迨後小的來渝尋找妻子何氏無着。前月二十六日，小的得見妻子在這向恒家屋……（何氏）稱說在隔壁李柳氏家幫工，小的想起宋裁縫的妻子宋氏屢次刁唆使何氏，恐有不美的情事。……小的當堂把妻子龍何氏領回管束。

My wife (Long) He Shi came to work in Chongqing as a hired laborer. She had connections with her sister, Song Shi (the wife of dressmaker Song Wanfa), who lured my wife (into vice). I came to Chongqing to look for my wife, but could not find her. On the twenty-sixth day of last month, I found her in the house of Xiang Heng[...] Li Liu Shi, whom my wife worked for, is the neighbor of Heng. I recalled that Song Shi had attempted to lure my wife (into vice) more than once, and I worried about their immoral behavior. [...] I should take Long He Shi home and keep her under strict control.⁶⁰

⁵⁷ Q6-26-07787.

⁵⁸ Q6-26-07205. According to Li Liu Shi, "My husband has gone to Guangdong for business; since there is no one else in my household, I hired Long He Shi."

⁵⁹ The testimony of Long Shigui likely mistook the relationship between Song Shi and He Shi, who should be sisters, rather than a sister-in-law, because the surname of He Shi's brother should He, rather than Song, and in others' testimony, the two women were sisters. Therefore, the English translation used "sister" instead of sister-in-law.

⁶⁰ Q6-26-07205.

The absence of complaints makes the details of the testimony look less convincing. Why did Shigui accuse Wanfa and Song Shi after he found his wife at Heng's place? Was there any other reason for the complaint besides the fact that Song Shi had lured Long Shi away before? Further, due to the absence of a complaint, we cannot know his specific claims and focus, but according to Long He Shi, Shigui seemed to stress his authority over the marriage of his wife:

因世貴□□□藝，日用不敷。夫室商議，氏暫出外幫工得錢度日。前月十二日，氏幫李柳氏家，每月工資四百文。至二十五日，遭田木匠，支使氏夫世貴來李柳氏家...欲將氏嫁賣，否則逼氏作賤，氏不甘從。世貴知咎難掩，捏詞喊控。

Because Shigui [...] could not afford daily expenses, after discussion [we agreed] I would temporarily work as a hired hand outside to make a living. On the twentieth day of last month, I started working for Li Liu Shi, at a salary of 400 cash per month.⁶¹ On the twenty-fifth day, carpenter Li asked my husband to come to Li Liu Shi, and my husband tried to sell me off in marriage, otherwise, he would force me to be a prostitute. I was unwilling to accept. Shigui realized he could not gloss over his fault, so he made a false accusation.

The magistrate ordered Long He Shi to come back home with her husband. In the cases of women working outside the home, the judges' sentences were consistent: husbands should take their wives home and keep them under strict control, and the wives should not leave the household without permission. County officials required this, as stated in Chapter One because family order was essential to social order. Thus, they would always try to ensure that the family members were under the control of the heads of the household to maintain the orthodox social order. The interaction between family authority and state power was a key means of deterring women from working outside.

The requirement for women to stay within the household led, to some extent, to the stigmatization of working women and the victimization of most women. In the above examples, the husbands have usually accused their wives of sexual offenses and being abducted.⁶² The magistrates usually did not explicitly check the authenticity of such complaints; however, the women's punishments and the orders compelling them to return home endorsed the stories of their husbands. At the least, their judgments denied the legitimacy of wives working outside the home, even though the women were victims of and tempted by others. The idea that working outside the household might endanger

⁶¹ It is interesting and worth further research, that in all three files that specifically clarify the salary of female hired hand, these women all received 400 cash every month.

⁶² In some other cases, working women also might be accused of being prostitutes; see Q6-27-08243.

women, and the stereotype of women as victims would have identified “women as permanently weak nourishes women’s fears and, paradoxically, contributes to their disempowerment.”⁶³

The following case highlights the dangers and threats that women would face when working outside the household. In 1853, Shui Chaoxing reported an attempted rape to the court:

劉萬全乘蚊妹在伊幫工，孤獨一人。胆於今正二十六夜，刁門入室。萬全摟抱蚊妹，估姦蚊妹不從。吶喊脫身，當投街鄰，劉品三等。次日集理。萬全情虧拒抗不前。

Liu Shui Shi is my sister. She was working in Liu Wanquan’s household as a hired hand. On the night of the twenty-sixth day of the first month, my sister was sleeping alone. Wanquan tricked her into opening the door, then tried to rape her. My sister did not yield and cried out. She resorted to neighbors immediately and planned to have it out with Wanchao the next day. Wanchao knew he was in the wrong, so he did not show up.⁶⁴

According to the plaint, though Liu Shui Shi protected herself from violation, she not only exposed herself to the risk of being raped due to working outside the home, but she was also sued in court.⁶⁵ Nevertheless, the emergence of such a narrative more than once suggests that in the social perceptions of the period, when a woman left her home and the male family members who had the ability and duty to protect her, she was vulnerable to falling victim to all kinds of dangers, especially the violation of her chastity and purity.

In her famous book about prostitution in twentieth-century Shanghai, Gail Hershatter has pointed out that during the state-sponsored prostitution-reform campaign of the 1950s, there was “a desire to stabilize the nation by returning women to the (putatively protective) embrace of family authority.”⁶⁶ She used the term “atomized victim” to refer to the situations described in contemporary stories, the “dramatic rupture of family networks” faced by the women working in the Shanghai brothels.⁶⁷ The case above shows

⁶³ Esther Madriz, *Nothing Bad Happens to Good Girls: Fear of Crime in Women’s Lives* (Berkeley [etc.]: University of California Press, 1997), 19.

⁶⁴ Q6-20-05012.

⁶⁵ As in other rape cases mentioned in Chapter Four, the defendants insisted that it was extortion. According to Feng Chengguang, Liu Shui Shi was a sick woman from Qijiang County; she was stranded (in Jiangbei), so he hired her to look after his grandmother, but “Liu Shui Shi and her son, a hooligan, stayed at my place. She resorted to the court in Jiangbei; we followed the order to (settle our disputes) with Wen Zhengyou and others; they reprimanded Shui Shi for extortion, which made her angry; and so she colluded with her brother, Shui Chaoxing, Jiang Zong, and others to frame Wanquan and extort money.”

⁶⁶ Hershatter, *Dangerous Pleasures*, 32.

⁶⁷ Hershatter, 181.

that in late imperial China, the logic was similar: if women left their families, they would be in danger. For the female hired laborers in nineteenth-century Ba County, they would become “atomized victims,” and no family member could protect them from the threats to their security and chastity.

This section points to the two factors that forced women to give up working and come back home. First, the gender doctrine of the separate spheres required women to stay within the household to sustain the social and family order. Second, from the angle of women’s husbands and marital families, if the wives worked outside, it would seriously affect the stability of their property. The discourse stigmatizing working women and victimizing *all* women, partly as a consequence of these two factors, played a similar role in driving women back home and hindering them from the outer world. It was not enough for the magistrates and husbands to push wives who had already left home to return to the inner, “safe” zone. The judgments of the magistrates were warnings to prevent more women from escaping family control and disrupting the social order.

The portrayal of “women as victims” would lead to the fear of crime. Sociologists and criminologists have analyzed how women reacted to that fear, and in general, the stereotypical notion of women as victims helped to set stringent rules of behavior for them.⁶⁸ “The underlying message is that women who do not follow this code expose themselves to ‘unnecessary’ risk; if they are victimized, it is their fault for transgressing stringent rules.” Therefore, women should avoid going to dangerous places with the wrong people and not take jobs that expose them to risk.⁶⁹ The stigmatization of working women performed a similar function; women must stay within the household, otherwise, they would become unchaste and unruly. As the examples in this chapter have shown, despite these strict moral codes, women sometimes did have the opportunity to maintain contacts

⁶⁸ Madriz, *Nothing Bad Happens to Good Girls*; Elizabeth A. Stanko, “Women, Crime, and Fear,” *The Annals of the American Academy of Political and Social Science* 539 (1995): 46–58; Carol Brooks Gardner, *Passing by: Gender and Public Harassment* (Berkeley [etc.]: University of California Press, 1995); Qing Liang, “Ruyingsuixing: xingqin youlü dui nü daxuesheng zuifan kongju yingxiang 如影随形：性侵忧虑对女大学生犯罪恐惧影响 [‘Haunted by a Shadow’: The Effect of Sexual Assault Anxious to Female College Students’ Fear of Crime – Based on an Empirical Study in Campus]” (Master’s thesis, Nanjing University, 2018); Min-ling ZENG et al., “Gaoxiao xiaoyuan xuesheng zhian ganzhi ji fanzui kongju de dili kongjian yanjiu: yi Zhuhai shi Xiangzhou qu sisuo xiaoyuan weili 高校校园学生治安感知及犯罪恐惧的地理空间研究——以珠海市香洲区四所校园为例 [Geospatial Analysis of Students’ Perception and Fear of Crime in University Campus: A Case Study of Four Campus in Xiangzhou District, Zhuhai],” *Human Geography* 33, no. 01 (2018): 51–60.

⁶⁹ Madriz, *Nothing Bad Happens to Good Girls*, 152.

and to work outside the family sphere.

Conclusion

This chapter shows how separate spheres of inner/female and outer/male influenced legal practice in two respects: that of women building connections with each other without violating restrictions on opposite-sex interactions, and of women working outside the home, which contradicted the gendered division of labor. Although women could step outside the household, they indeed lived in highly gendered spaces. On account of the potential conflicts within the uterine family, the gendered living space would naturally and unavoidably lead to strife, domestic violence, and other disputes between mother- and daughter-in-law.

It is safe to say that there was also a “network” among women from the very bottom of society, though in a different form than what Ko has discovered in elite families. In this sense, distinctions between inner and outer, ideological moral values and codes of conduct indeed profoundly influenced all people beyond class polarization, not by physically separating men and women, but by delineating dangerous male–female contacts and pushing women to establish connections with other women. Women could build trust among themselves squarely and directly, which is why we find that two women who were not acquainted with each other were involved in unruly behaviors after just a short conversation. On the contrary, it was not easy for outside males and inside females to get to know each other; normally, another man and the extension of his social circle would function as intermediaries. This narrative in the complaints reflects the representational reality that women could establish contact with other women easier than with men.

Moreover, women on the same “team” were taking advantage of these connections, no matter whether they played the role of perpetrator, matchmaker, or even victim in “abduction” cases. The woman’s goal could be making money by selling women to other men or finding another husband to survive in the absence of livelihood. Even those who were sold were hardly victims of human trafficking; instead, they were relying on contacts among women to find a way to survive.

The legal archives have preserved information on working women outside the household, and the records also show that the distinction between inner and outer posed serious obstacles for working women. Women must provide a good reason for their transgression of this boundary; only in cases where the family was extremely poor and the husband was unable to support the family could women be motivated to work outside the home. Meanwhile, it was natural, right, and proper for men to work outside and support

the family. Poverty was the primary motivation for women to leave their families and find a job to earn a livelihood. This narrative template, at the same time, was also a representational reality; poverty was so prevalent that the magistrates and the subjects could consider it a normal cause for a woman's transgression.

The phenomenon of women working outside the home, beyond the boundaries of the gendered division of labor, challenged the family and social order. Yet ideological considerations cannot explain the full picture; when they worked outside the household, wives – as important family property – would be “lost” to their husbands and marital families, who could not take substantial risks. Therefore, both the state and patriarchal authorities preferred to keep women within the domestic sphere, and magistrates would sentence women to return home with their husbands. More importantly, the husbands' narratives combined with the adjudication of the magistrates created and sustained the picture of “victimized women” and “polluted working women.” The victimization and stigmatization of women stoked their fear of crime and losing their chastity, thereby pushing women out of these “dangerous” workplaces and the outer world. Patriarchy could thus realize its aim to hinder more women from working outside the home or escaping from the household more generally. Victimization and stigmatization, as less visible and more “lenient” means, might work more effectively as a form of discipline.⁷⁰

The previous chapters have hardly mentioned the attitudes of the magistrates, since the instrumentality of women as a strategy, the violability of women as presupposition, the ownership of women as a target, or, more generally, the objectification of women had already been assumed before the parties drafted their documents and put them before the magistrate's approval. In the case of women who worked outside the home, we gain a chance to see how husbands were able to bring their wives back under their control with the help of the state. The husbands made use of the legal system and colluded with the magistrates, on behalf of the state, to force women back into the domestic sphere and the authority of their husbands.

⁷⁰ Michel Foucault, *Discipline and Punish: The Birth of the Prison*, trans. Alan Sheridan (New York: Vintage Books, 1995), 135–141, 162–170. For a clearer interpretation of how Foucault studied victimization and its links with power and knowledge, see Seyla Benhabib, *Situating the Self: Gender, Community and Postmodernism in Contemporary Ethics* (Cambridge: Polity Press, 1992), 222.

Conclusion

Local judicial archives offer a myriad of possibilities for historical research. In this dissertation, I have encountered many women and their families, fragments of whose lives have been captured in the judicial archives of nineteenth-century Ba County. The litigation experience of women deepens our understanding of the interaction between family, law, and women in Qing China. As Conley and O'Barr have said, "When we move into the past, written texts become our sole window on legal discourse."¹

My dissertation has examined the legal discourse on women in two kinds of legal sources: the *Great Qing Code* and 617 Ba County archival cases. The in-depth analysis of the latter particularly revealed the discourse practices of the nineteenth century. In the codified law, women's roles are largely defined by their position within the household, particularly that of the natal and marital families. This dissertation shows how the patriarchal system and ideologies were reflected in the everyday legal practice of the county court. The first finding is that in Ba County, the types of lawsuits in which women were passively involved or actively participated were mainly about marriage, abduction, and sexual crimes; it is similar to the code in defining women in the context of marriage and family. Second, the frequency of women as plaintiffs or defendants, as recorded in the legal complaints, was relatively low. The data from the court cases also shows that the frequency of widows acting as plaintiffs (in 108 complaints) was much higher than that of other women. The chances that an ordinary married woman, with a living husband, would act as a plaintiff were much less; there are only two cases of an unmarried girl filing complaints. In over two-thirds of all cases (393), it is the woman's husband or another member of the marital family who is the accuser; the wife's natal family is more likely to be implicated in abduction and marital disputes, and outsiders in sexual offenses and abduction. The main purpose of these accusations was to gain or maintain control over women. Members of the natal family also played the role of plaintiff, though less frequently (in 117 cases). They charged the women's marital family with "prostitution" (forcing women into prostitution) and marital disputes (especially selling women off), and they sometimes sued outsiders for abduction. The natal family's aim was often to protect their female family members, but

¹ John M. Conley and William M. O'Barr, *Just Words: Law, Language, and Power*, Second edition (Chicago: University of Chicago Press, 2005), 116–17.

they also leveraged court cases to compete for ownership of the women. The archival records also reveal that women from lower socioeconomic backgrounds embraced opportunities to confront the hardships of their challenging lives. Women made use of their connections with other women to escape their impoverished husbands or to find work outside the home, although the magistrates in the records would order the women to follow their husbands' back home. This is the basic scenario presented by the local archives. However, the real challenge is how to approach the data and observations from the records, which can facilitate a better understanding of the status of women in Qing China.

Women in Representational Reality

Dorothy Ko has proposed a template for the analysis of Chinese women in three aspects: ideal norms, practice, and self-perceptions.² To some extent, this dissertation draws upon this framework. Chapter One, examining the *Great Qing Code*, emphasizes that the status of women in the ideal norms was determined by their relationship with (male) family members. The following chapters focus on women in legal practice and reveal that the majority of the court cases were recreating a common dynamic: the patriarchal authorities sought to keep women in check, maintain their status within the domestic sphere, and silence their voices. This is a simple observation about how the nineteenth-century Ba County Archive portrays women. However, this dissertation discusses how rather than a full and accurate picture of women's lives, the legal records illustrate women in "representational reality." The intention of incorporating this concept into the dissertation is to remind readers that even though the elements found in archival materials might be fictional, they could still offer insight into social realities. Regarding the presence of women in the records, women's "self-perceptions," choices, or agency were often obscured in writings that were predominantly controlled by men. Legal archives might not faithfully depict the social status and lives of women, yet they still shed light on the challenges women encountered; particularly, this approach illustrates how the power of writing has influenced our understanding of women's history based on archival research.

Litigation strategy has played an essential part in shaping the image of women and evoking representational reality. The male family members, with the help of male litigation masters, could decide what kinds of lawsuits a woman was involved in and what part she played in a case – as a resold bride or an abducted wife. The women did not have much to do but were simply lured in by others, according to someone else's narrative, and then

² Ko, *Teachers of the Inner Chambers*, 8.

marked as *gen yao* at the end of the legal complaints.

The narrative templates of legal complaints, including the accusations, plots, and roles of women, constituted the main corpus of “representational reality” discussed in this dissertation. State ideology or official representation was the biggest driving force and exerted a profound influence on the construction of narrative patterns, including trying to confine women within the boundaries of the household and stressing public morality and female chastity in the complaints. Yet all those who participated in the legal procedure, including ordinary people, also added their quotidian experience and common knowledge to the writing templates, like the universal practice of abduction in Sichuan and the close connections between married women and their natal families. The stories in the legal complaints contained fictional, ideological moralistic elements to attain credibility in the court and moral advantages over the other party. The legal records were ultimately a reflection of strategically used Confucian ideology and a multitude of general social phenomena.

The complexity of the representational reality is best reflected in the presentation of sexual crimes related to female chastity. On the one hand, considering the prevalence and impact of the chastity cult in Qing China, the subjects of the complaints described the agony of the woman and her family members when she lost purity due to sexual assault, which embodied a reassertion and affirmation of ideological female gender norms. On the other hand, the case records suggest the possibility that ordinary people did not valorize female chastity, but learned the strategy of leveraging the veneration of chastity in litigation in order to acquire more favorable conditions. Chastity-centered illicit sex cases were seen as one powerful means of this, and members of the Inner Tier could use it to combat outsiders and achieve their ends in litigation related to economic interests. The use of illicit sex as an excuse to sue or falsely accuse was common in legal practice. In some examples, one party might first complain about rape, but the part describing illicit sex gradually disappears and eventually evolves into an outright economic dispute. Not only could illicit sex work as a lever for extortion, but also fabricating a rape or adultery and resorting to the court might force the other party to sit at the conference table and settle rent conflicts with them.

Women’s participation in litigation can also be explained strategically. The substantial prevalence of widows in lawsuits was the result of their authority in the family. However, this must also consider how other members of the family (such as the widows’ sons) attempted to use their widowhood in the court. Poverty was pervasive in nineteenth-century China; women thus used poverty as the most common excuse for their unruly

behavior. Those women who worked outside the household would articulate the hardships of their families and the incompetence or absence of their husbands in order to validate their work despite its transgression of boundaries. Women in prostitution would claim that they had put up the necessary resistance to protect their chastity just as the law and morality required,³ even though the poverty of their families and the persecution of their husbands ultimately forced them to engage in selling their bodies. The prevalence of penury cannot really prove that all women were driven to prostitution by abject poverty. Nonetheless, this narrative demonstrates the “representational reality” in which poverty was the most obvious and acceptable reason for any rebellious or immoral behavior.⁴

The Impact of Family

Family relationships were another key to understanding the portrayal of women in the Ba County Archive. Two crucial factors, family relationships and litigation strategies, closely overlap in shaping the picture of women; family relationships, moreover, were an important factor in shaping the representational reality.

The *Great Qing Code* exemplifies this, suggesting the orthodox view that women in imperial China had almost no status or rights outside the family; their identity was defined exclusively on the basis of family relationships. The codified law recognized and guaranteed the ethics, rights, and obligations of both men and women in terms of family relationships. The Ba County Archive presents a window of opportunity for us to investigate the impact of family on legal practice and local society.

From the tip of the iceberg constituted by my data set of court cases, we can see that family determined a woman’s portrayal in the records to a large extent. Natal and marital families used the court mainly to control women, but also to protect them to some extent. The Inner Tier members’ authority over women was recognized and granted by the code, whereas legal practice tended to bolster the family’s power in a larger sense.

The sale of women can serve as a prime example of leveraging women for legal gain. Although Qing law basically forbade selling women, it always left room for maneuvering, in the sense that under certain circumstances, a woman could be sold by her husband. Although the code did not explicitly and comprehensively prohibit the sale of individuals,

³ Huang, *Code, Custom, and Legal Practice in China*, 155–79.

⁴ Ransmeier mentions that in the human-trafficking cases, poverty was not always the motivation; see Ransmeier, *Sold People*, 18, 62–101.

even with limited restrictions in place, it undoubtedly facilitated the selling of women. Therefore, a family could gain and transfer ownership of women. The potential for selling women was infinitely expanded in practice. In addition to husbands or in-laws selling their wives arbitrarily, the personhood or chastity of women also became a mode of monetary transactions. In this process, the purpose of the marital family was clear: to make sure that they possessed the woman or the money exchanged for her. The aim of the woman's natal family was more complicated: even if they would have liked to protect their daughters, like sheltering the women to be sold by their husbands and in-laws, they always needed to "control" the women to some degree.

The (family) relationships between the plaintiffs, defendants, and women to a large extent determine what kinds of strategies and especially types of accusations are used in court for disputes over women. When drafting the complaints, the plaintiffs and litigation masters would take the relationship between plaintiffs, defendants, and women into account. If the opponents were the natal family members, the women's husbands or in-laws tended to charge them with abducting the women or marrying them off to others. The strategy of combining marriage and abduction disputes in the complaints had both a legal and a social basis. The law granted the parents power to arrange marriages for their daughters, correspondingly the marriage would be considered valid only with the endorsement of the natal family. Therefore, when the husbands or in-laws planned to initiate a charge against the natal family, they could choose marital disputes, or a combination of marital conflicts and abduction, which included plots and phrases common in marital disputes and abduction. However, when the defendants were outsiders, the marital family members often used accusations of abduction and sexual offenses; marital disputes were hardly ever mentioned. Outside males, according to the narratives of women's family members, usually first committed adultery with a woman, thereby trying to lure her into elopement, which was a reasonable story in representational reality. This is why the women were depicted as victims of abduction; they must be victims so that the family can go to court.

The objectification of women was the root cause of this image of victimized women, and the case records display at least three forms of objectification: "instrumentality" (the object is treated as a tool for one's own purposes); "inertness" (the object is treated as lacking in agency, and perhaps also in activity); and "ownership."⁵ These three aspects of

⁵ Martha C. Nussbaum, *Sex and Social Justice* (Oxford, New York: Oxford University Press, 1999), 218.

women's objectification were realized by the family authority in the process of drafting the complaints. First, the female gender itself, not to mention the body and chastity of women, had become a significant instrument employed by women's marital and natal families in litigation. Second, in the narratives of the complaints, women are usually lured or forced by others, and the plaintiff usually aims at taking the woman back home, rather than asking that she face a penalty, which is a sign of women lacking in agency and "inertness." Last but not least, the frequent conflicts between a woman's natal and marital family resulted precisely from concern over a woman's ownership or the instability of women as portable property.

These cases about the ownership of women could reflect a facet of the larger social context. The three factors that Sommer adduced to explain the widespread polyandry and wife-selling – a severe gender imbalance, pervasive market for women, and epidemic poverty among farmers – were equally valid for most conflicts concerning women in nineteenth-century Chongqing.⁶ First, the institutional discrimination against women in imperial China led to the killing of female infants, later resulting in a shortage of women and an excess of men. Second, the Confucian filial piety that emphasizes the family line and ancestor worship created a high demand for women's reproductive services. Therefore, even families at the bottom of the social hierarchy were desirous of obtaining females and the children they could bear. However, the scarcity of women made it necessary to purchase brides from the market at great expense, even though many peasant families in Qing China experienced extreme poverty. This rendered these families vulnerable to the risk of losing their young wives, while the most serious threat to a woman's ownership came from her natal family. As a result, a large number of ownership disputes between the two parties can be found in local legal archives, and the husbands must force their wives working outside the house to return home. Furthermore, as the case records show, for many poor people, the pressure of survival overpowered the restrictions of morality. How to survive with the available resources, including women's bodies and chastity, was of paramount importance to women in the lower strata of society and their families. The ownership of women was thus used in exchange for survival resources in diverse forms, including prostitution, polyandry, wife-selling, and extortion by means of sexual offenses.

⁶ Sommer, "Making Sex Work."

Local Archives and Chinese Women's History

In her research on footbinding, Dorothy Ko revealed a dilemma in studying Chinese women's history: scholars have little alternative but to rely on secondhand testimony culled from the material made by male literati.⁷ In this regard, this dissertation faced a similar dilemma, since the making of judicial records was to a large degree in men's hands. Rather than trying to discover the "authentic" voice of women, I focused the lens on how and why the makers of legal documents, particularly the plaintiffs, presented women.

The research on Chinese women in legal archives holds a special position in the domain of Chinese women's history. Until scholars of the 1980s began incorporating local archives into their research, these sources did not have a significant impact on research in Chinese women's history; as historical material, they did not figure in the construction of the victimization paradigm since the May Fourth era. Conventional historical sources, such as standard histories, government document collections, and local gazetteers, have helped to illustrate the image and position of women and establish the notion of Chinese women as victims since the early twentieth century.

In the 1980s, scholars first began trying to overturn this old image, based mainly on women's self-writing. Only women from elite families who had mastered literacy could leave their voices in the poetry, prefaces, essays, and colophons that women wrote. This body of scholarship made huge contributions to Chinese women's history, for instance, Ko's study of intellectual women revealed their reinterpretation of Confucian ideology.⁸ The most valuable aspect of the local archives is that they preserve fragments of the sentiments and actions of women from the lower classes.

The local judicial archives offer a hint of the challenges ordinary women faced in their daily lives and how they responded to them. The case records show a delicate balance, which of course included female intelligence, agency, and women's strategic responses to dilemmas, like women working outside of their household and making use of the connections between women to find a new husband, as well as their misfortune in lives and the repression they endured.

On the one hand, the picture drawn by the local archives is still an ideological construct. Though the text of the plaintiffs was the product of ordinary people and litigation

⁷ Dorothy Ko, *Cinderella's Sisters: A Revisionist History of Footbinding* (Berkeley [etc.]: University of California Press, 2005), 10–14, 85–91.

⁸ Ko, *Teachers of the Inner Chambers*, 115–76.

masters from the lower strata of society, their writing had to adapt to the moral discourse of state ideology.

On the other hand, this may suggest that the stereotype of women as victims was more than an invention of the May Fourth era based on “the definition of twentieth-century Chinese modernity.” The New Culture Movement tried to demonstrate “the yoke of China’s feudal past” by invoking victimized women, and the following revolution reinforced “the stark view of China’s past as a perennial dark age for women.” Moreover, compared with “privileged Western women,” women of the Third World, including China, were constructed as victims.⁹

The parallel between the construction of victimized women in the May Fourth era and the presence of women in local archives is due to the reaffirmation and continuation of the official representation as being used in late imperial China. It is possible that the ideological construct was not merely set down on paper, but also had become a part of social practice and common knowledge; though ordinary people did always not follow these doctrines, they did realize how essential the orthodox principles could be in their lives, especially in their contact with the government.

The Ba County Archive also revealed in legal practice how to discipline a special group of women: active female participants in litigation. The preferential treatment women received under statutory law gave women the chance to resort to court with less risk; even if the women’s false accusations were revealed, they did not have to be punished. My dissertation has demonstrated that women (and men, particularly women’s sons) would use these privileges in practice. However, those who controlled the discourse of power in late imperial China could easily have invoked the term “counting on their status as women” to stigmatize women’s actions in litigation. When the plaintiff had a female name, it was likely that the magistrate would reprimand the woman and her proxy for precisely this. This was a successful means of discipline. Women not only had to deal with dangers and hazards like being resold to a brutal husband; they also contended with a fierce society in which they could be stigmatized for any action that could threaten patriarchal authority, such as finding a job outside the household. At the beginning of the litigation, rebellious women would gradually temper and restrain themselves to being the ignorant and conformist “good girl” at the end.

⁹ Ko, 2–4.

Reconsidering “Official Representation” and “Legal Practice”

My research largely supports Philip Huang’s argument that Qing law was a system “that encompassed paradoxical representation and practice.” This “representation” was “official” and “packaged within moralistic declarations,” while the “practice” was “unofficial”; and sometimes there were “disjunctions between official representation and actual practice.”¹⁰ On the one hand, identical to the spirit of the law, legal practice always stressed women’s position in the family and patriarchal family authority over women. The plaintiffs would constantly emphasize the effect of a “moral atmosphere” and the sanctity of legal marriage, which echoed moralistic Confucian ideology. On the other hand, in matters relating to women, the common folk engaged in lawsuits continuously for their own benefit and even used the chastity of women as a weapon. The subjects made use of the official discourse instrumentally, but warped it to obtain material advantages; such usage is undoubtedly the opposite of “official representation.”

Another problem, closely related to “legal practice,” is the standards by which traditional Chinese adjudication was constituted. This dissertation stepped away from this discussion, partly because the multitude of fragmentary files creates insurmountable obstacles to analyzing the standards of adjudication. In this respect, the absence of the final judgment in many records proved problematic. More importantly, this dissertation followed the approach of Ma Zhao and Johanna S. Ransmeier, striving for a shift in perspective. Instead of insisting on answering whether and how the magistrates used the law and customs to give judgments and govern their area, I adopted a “bottom-up” approach in order to observe ordinary people and to look at their use of justice.

This approach revealed that the usage of “official representation” was a vital component of litigation strategies. The legal complaints made by the common people followed the official ideology and moralized discourse. The litigants made use of the female chastity, public morality, and filial piety stressed in official representations to gain advantages in their legal actions.¹¹ In my examination of the Ba County Archive, for common subjects, it was a practice of “official representation” to take part in the legal action, though strategically. The state ideology, or its “moralizing words,” as reflected in the minds of those who drafted complaints, profoundly influenced the writing of these complaints. Yet the use of “official representation” aimed at winning a lawsuit. We can probably express the relationship between “official representation” and “legal practice” as follows: “official

¹⁰ Huang, *Civil Justice in China*, 2–19.

¹¹ Du Yue has discussed the function of filial piety in justice; see Du, *State and Family in China*.

representation” still played an important role in practical litigation, and “practice” itself was a part of the adoption and reproduction of “official representation.” What separated the two concepts was who made, used, and reinterpreted “representations.” The emperors, bureaucrats, and elite literati invented the “official representation,” but common folks “practiced” and somehow reproduced it.

For Future Research

This dissertation has discussed a huge number of abduction cases as well as the “abduction” accusations that ordinary people used. “Abduction” seems to have been a “master key,” which implies that all kinds of people in different relations with women could use this strategy in court. Nonetheless, it remains unclear whether the frequent abductions in Ba County were a unique instance. Moreover, we do not know how pervasive this phenomenon was in Qing China. The notion of “representative reality” emphasizes how the narratives of the people in the complaints reflected some facts of society, and the use of “abduction” implied that women in the Ba County area were easily lured and sold by others. If that was the case, what were the underlying reasons? In particular, was it related to the migrant society? Though the government no longer officially promoted immigration in Chongqing in the nineteenth century, as a large inland port, it still experienced considerable population growth.

While the writing of complaints offered a useful perspective for studying women in the legal archives, the further social-historical inquiry remains a vital prospect for the future. The data in this work is not complete or comprehensive; therefore, this dissertation could not venture into a pattern of female crime. The current statistics from documents under one category of archives, “women,” would undoubtedly show that women were more frequently involved in litigation than the actual circumstances. Further, the limited data makes it impossible to compare the situation in Ba County with European studies on female crime. In particular, the lack of certain cases, such as homicide and theft, in the “women” files did not allow us to draw a full picture. The dissertation has analyzed the role of women in legal procedure, but we still know little about the role of men. Hence, a closer examination of all the categories of Ba County Archive would be helpful to understand gender roles in litigation more fully. If we calculate all the cases in a year (or years), rather than narrowing my focus to the “women” files, we could investigate the rate of female crimes or female defendant shares, which would make it possible to compare late imperial Chinese and early modern Europe. This research question would enhance our understanding of the construction of gender norms in two areas, as well as the

development of society amid the Great Divergence.

The dissertation discussed the Ba County Archive in the early and mid-nineteenth century. It seems that the style of drafting complaints in 1803 did not significantly differ in 1873. However, a large number of issues remain unexplored. For example, in the year 1838, the “red words” used in almost every complaint comprised only two characters, *su ming* or *bing ming* (稟明 or 诉明, to report something clearly), which did not include any exaggerated factors, nor even plain narrative terms. Was it due to the request of the county magistrate? Could the orders of the magistrate be carried out so thoroughly? Or were there some other reasons?

In terms of time, further examination of the Ba County Archive could help to understand the dynamics of Chongqing as a regional society. The expansion of the space and scope of the research and comparisons between Ba County and other parts of the country would make it possible to nuance our understanding of state-building in the Qing Dynasty. This dissertation has, to a large extent, ignored development over time. A more extensive and systematic historical analysis of archives over a period, of five, ten, or one hundred years could be the next work for me. Would it be possible to note specific changes? Did the changes in county magistrates have an impact on the production of case records? Would the people have adopted diverse strategies in response to different magistrates?

Meanwhile, my dissertation studies a relatively tranquil period of time, but in the early 1860s, Chongqing was briefly affected by the Taiping Rebellion. This research stretches up to the 1870s, and in 1890, Chongqing became a “treaty port.” In addition, the town kept experiencing all kinds of natural disasters. Did these factors influence how people participated in lawsuits and how the court dealt with litigation?

The town of Ba County offered a fruitful setting for the historical analysis of gender dynamics in Chinese litigation culture. With the most long-term and best-preserved local archives all over China, Ba County provided an opportune backdrop to trace women’s litigation behaviors throughout the judicial process. My work used Ba County as a case study in order to nuance our understanding of women in the Qing Dynasty. However, it is not clear whether uniformity on this matter existed across the whole empire. This dissertation has no ambition to extend the findings to the entire country. Yet based on a preliminary observation of other county archives, it seems that there were parallels in writing style. Does this mean that nineteenth-century Qing China had succeeded in establishing a comprehensive system of knowledge about litigation? Did this system constitute part of the reason why the Qing Dynasty lasted in spite of domestic rebellion

and foreign invasion? An overall examination of county-level litigation across China remains outside the scope of this book, but it could be an intriguing means to acquire further knowledge about the position of women in Qing China.

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Abbreviations

BXA—Ba County Archive, held at Sichuan Provincial Archive, Chengdu; all cases cited are from the category “women”; each case is cited by serial number and date of earliest document in file.

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Appendix

A: Layout of "Cover" of Case Records

	Zheng Tang (Main Court)	
	For [cause of action]	
Date②	[address]	(Dealt by)
	[name of plaintiffs]	Which
	charge	Office and
		Which
		Runner(s)①
③	[name of defendants]	

The position of ① and ② might be exchangeable

③If the case has an official result, it would say "jie" (case closed)

C: Articles on Women's Special Treatments in the *Great Qing Code*

條例 1.08 贖刑[五刑中俱有應贖之款附列於此以便引用]

納贖[無力依律決配有力照律納贖]

收贖[老幼廢疾天文生及婦人折杖照律收贖]

贖罪[官員正妻及例難的決並婦人有力者照律贖罪]

Substatute 1.08 Monetary redemption

Nashu: if a criminal is not able (to pay the redemption), he shall be punished according to the law; if a criminal is able to, he may redeem.

Shoushu: if the old, the young, the disabled, the astronomers or the women shall receive the heavy strokes of bamboo, he or she may redeem according to the code.

Shuzui: if a woman is the wife of an official, or if her does not necessarily receive actual penalty according to the code and she is able to pay the redemption, she may redeem according to the code.

[specific amount omitted]

條例 1.14

婦女犯姦杖罪的決枷罪收贖

Substatute 1.14

If a woman commits illicit sex, she shall receive actual penalty of the blows of heavy bamboo, and the penalty of cangue may be redeemed.

條例 1.15

婦人有犯姦盜不孝者各依律決罰其餘有犯笞杖並徒流充軍雜犯死罪該決杖一百者與命婦官員正妻俱准納贖

Substatute 1.15

If a woman commits a sexual offense, theft or gross unfilialness, she shall receive actual penalty according to the code. If she

- (1) commits other kinds of crime and shall receive penalty of light or heavy strokes of bamboo, or
 - (2) shall receive penal, exile, military exile or she commits miscellaneous capital offense, but the punishment shall be converted into 100 the blows of heavy bamboo, or
 - (3) is a woman with a title of honor, or the main wife of an official,
- she may redeem (*nashu*).

『律』 20.00 工樂戶及婦人犯罪

Statute 20.00 [Government] Artisans and Musicians, or Women Who Commit Offences

其婦人犯罪應決杖者姦罪去衣[留褲]受刑餘罪單衣決罰皆免刺字若犯徒流者決杖一百餘罪收贖

.....If a woman commits an offence punishable by blows of the heavy bamboo, for fornication she shall be stripped of her clothing (and wear the drawers) to receive punishment. For other crimes she may wear unlined garments to receive punishment. All female criminals shall be exempted from tattooing. For crimes punishable by penal servitude or life exile, the punishment shall be converted into 100 the blows of heavy bamboo; the remaining punishment may be redeemed.

條例

Substatute

20.02

婦女有犯毆差闕堂之案，罪至軍流以上者，實發駐防為奴；犯徒罪者，若與夫男同犯，一體隨同實發，亦不准收贖。若婦女專犯徒罪者，仍照律收贖。

If a woman commits striking officials or disturbing court and should receive penalty of military exile or above, she shall receive actual penalty and become a slave. If she commits a crime with her husband and shall receive penal servitude, both of the couple shall receive actual exile, and redemption (*sboushu*) is forbidden; if she commits a crime alone and shall receive penal servitude, she may redeem.

20.03

各直省審理婦女翻控之案，實係挾嫌挾忿、圖詐圖賴，或恃係婦女，自行翻控，

審明實係虛誣，罪應軍流以上及婦女犯盜後，經發覺致縱容袒護之祖父母、父母、並夫之祖父母、父母畏罪自盡，例應問擬雲貴兩廣極邊煙瘴充軍者，壻免其實發駐防為奴，各監禁三年，限滿由有獄管、獄官察看情形，實知改悔，據實結報，即予釋放。儻在監復行滋事，犯該笞杖者，仍准收贖；犯該徒罪以上，加監禁半年；軍流以上，加監禁一年，再行釋放。若官吏獄卒故意陵虐者，照陵虐罪囚例，加等治罪。其婦女翻控，訊明實因伊夫及尊長被害、並痛子情切，懷疑具控及聽從主使出名誣控，到官後供出主使之人，俱准其收贖一次；如不將主使之人供明，仍照例監禁，俟三年限滿，再分別禁釋。

When the provincial court investigates the countercharge cases filed by women,

- (1) if it is because of anger or enmity, or it aims to money fraud or put blame on others, or a woman relies on her gender and does countercharge by herself, the case is indeed a false accusation after making a factual determination, women are punishable by military exile or above; or
- (2) after a woman committing theft and being discovered, her parents or grandparents or her husband's parents or grandparents suicide because he or she facilitated and shielded the woman, in this case, the woman should be exiled to farthest frontier, or a malarial region in Yunnan, Guizhou, Guangdong, Guangxi (Article 338.03)

The female criminals, in the two above situations, may avoid actual exile, but be incarcerated for three years, when the term is completed, if the criminal shows remorse and mend her way, the jail warden would report based on truth, the criminal should be released. If the criminal still causes trouble in the jail, and if it is a crime punishable by the blows of light or heavy bamboo, she still may redeem (*shoushu*); if it is a crime punishable by penal servitude, she shall be incarcerated for another half a year; if it is a crime punishable by military exile or above, she shall be incarcerated for another year, then be released. If officials or jail guards abuse of her intentionally, the punishment shall be increased one degree according to the article on *Abuse of and Cruelty to Prisoners* (398.00). If the woman countercharges because her husband or a relative who is superior or older or her son was killed, she has doubt and charges, or she follows someone else's orders, but she has given the name behind the scenes, she may redeem once; if she does not give the

name after the falsely accusation, she shall be incarcerated according to this statute, when the term of three years completed, she shall be incarcerated or released after the situation is distinguished.

20.04

京城姦媒有犯誘姦、誘拐罪，坐本婦之案，如犯該軍流，俱實發各省駐防為奴。其罪止徒杖者，准其收贖。徒罪所得杖罪，即照婦女犯姦之例，一體的決，不准收贖。

If a wicked and evil broker seduces or kidnaps others in the capital city, and if it is a crime punishable by military exile, she shall receive actual penalty and become a slave; if it is a crime punishable by penal servitude or blows of heavy bamboo, she may redeem. For the blows of the heavy bamboo coming with penal servitude, she shall receive actual penalty, and it is forbidden to be redeemed, according to the statute on women committing illicit sex (Substatute 1.14).

20.05

婦女犯軍流等罪，除例載實發駐防為奴[按此應實發者]，及酌量監禁免其實發各條外[按此應監禁者見上條]，若係積匪、並窩留盜犯多名，及屢次行兇、訛詐，罪應外遣者，實發駐防給官兵為奴。罪應軍流者，准其收贖一次，仍詳記檔案；如不知悛改，復犯前罪，即行實發駐防，不准收贖。犯該徒罪以下者，仍准收贖，不得加重實發。

If a woman commits a crime punishable by military exile, besides the situations described in legal articles that require actual exile and being slave and those articles that require incarceration and exempt the criminal actual exile (Note: for those crimes that require incarceration, see the last statute), and if she is a recidivist and harbors several criminals or she commits violence crimes or extortion several times, she shall be actually exiled and become a slave. (Except these,) if she commits a crime punishable by military exile, she may redeem (*shoushu*) for the first time, which should be recorded carefully; if she does not show remorse and mend her ways and commits the same crime again, she shall be exiled actually and the redemption is forbidden; if she commits a crime punishable by penal servitude or below, she may still redeem (*shoushu*) and it is forbidden to increase the

punishment to actual penalty.

『律』 420.00 婦人犯罪

Statute 420.00 Women Committing Crimes

1 凡婦人犯罪除犯姦及死罪收禁外其餘雜犯責付本夫收管如無夫者責付有服親屬鄰里保管隨衙聽候不許一概監禁違者笞四十

In all cases in which women commit an offence, for fornication and capital crimes they shall be imprisoned; for all other miscellaneous crimes they shall be put in the charge of their husband for supervision. If the woman has no husband, she shall be put in the charge of her relatives within the degrees of mourning, or of the neighborhood for supervision. The women shall be held at the disposition of the yamen to be called [to appear]. It is forbidden to incarcerate [women] generally. Any violation of this rule shall be punished by 40 blows of the light bamboo.

2 若婦人懷孕犯罪應拷決者依上保管皆待產後一百日拷決若未產而拷決因而墮胎者官吏減凡鬥傷罪三等致死者杖一百徒三年產限未滿而拷決[致死]者減一等

If pregnant women commit crimes and should be interrogated or beaten, they shall be put in charge as above [para. 1]. They shall be interrogated or beaten 100 days after the delivery. If they are interrogated or beaten before the delivery and as a result they abort, the official or clerk shall be punished for injury in ordinary affray [Art. 302] reduced three degrees. If as a result death occurs, the penalty shall be 100 blows of the heavy bamboo and penal servitude for three years. If the interrogation or beating is administered after they have given birth (which results to the death of the women) but before the term [of 100 days] has passed, the penalty shall be reduced one degree.

3 若[孕婦]犯死罪聽令穩婆入禁看視亦聽產後百日乃行刑未產而決者杖八十產訖限未滿而決者杖七十其過限不決者杖六十

If (pregnant women) commit capital crimes, allow midwives to come to the prison and examine them. The penalty shall also be executed 100 days after the delivery. If the penalty is executed before the delivery, the offenders shall be punished by 80 blows of the heavy bamboo. If the penalty is executed after they have given birth but before the term [of 100

days] has passed, they shall be punished by blows of the heavy bamboo. If the penalty is not executed after the term has passed, they shall be punished by 60 blows of the heavy bamboo.

4 失者[失於詳審而犯者]各減三等[兼上文諸款而言如不應禁而禁笞一十懷孕不應拷決而拷決墮胎杖七十致死者杖七十徒一年半產限未滿而拷決致死者杖六十徒一年及犯死罪不應刑而刑未產而決者笞五十未滿限而決者笞四十過限不決者笞三十]

If [interrogation or beating is administered to the women] negligently, ([the punishment for the officials] who fail to make an investigation so that there is a violation of these rules) shall be reduced three degrees.

(This applies to all the situations described in the paragraphs. If [women] shall not be imprisoned, but they are imprisoned, the penalty will be 10 blows of the light bamboo. If the interrogation and beating induced abortion when this shall not be done, the penalty is 70 blows of the heavy bamboo. If death results, 70 blows of the heavy bamboo, and one and a half years of penal servitude. If the term [of 100 days after delivery] has not passed and the women are put to the interrogation and beaten, which result to death, the penalty is 60 blows of the heavy bamboo and one year of penal servitude. If women are condemned to death, and the punishment shall not be inflicted, but is inflicted, if she has not delivered and is executed, the penalty is 50 blows of the light bamboo. If the term [after delivery] has not expired and she is executed, the penalty is 40 blows of the light bamboo. If the delay expires and there is no execution of the penalty, the penalty is 30 blows of the light bamboo.)

條例 Substatute

420.01

未產拷決不墮胎及產限未滿拷決不致死者依不應輕律

If [the pregnant women] have not delivered and are put to the interrogation or beaten with no result of abortion, or if the term after birth has not elapsed and the women are put to the interrogation and beaten, and it does not result in death, (the officials or clerks) shall be sentenced to the lighter penalty in the [Art. 290] *[Doing] That Which Ought not to be Done.*

420.02

婦女有犯姦盜人命等重情及別案牽連身係正犯仍行提審其餘小事牽連提子姪兄弟代審如遇虧空累賠追贓搜查家產雜犯等案將婦女提審永行禁止違者以違制治罪

If women commit sexual offences, theft, homicide (*renming*) or other felonies, or women are the principal offender in some cases, the women shall still be interrogated; if women are involved in other minor matter cases, her sons, nephews, elder or younger brothers shall be interrogated instead. It is forbidden permanently to interrogate women if it is for confiscation of illegally obtained property or searching for property or other miscellaneous offences, (the officials or clerks) shall be punished according to [Art. 385] *Violating an Order*.

420.03

婦女除實犯死罪例應收禁者另設女監羈禁外其非實犯死罪者承審官拘提錄供即交親屬保領聽候發落不得一概羈禁

Only if women commit crimes punishable by actual death penalty, they shall be imprisoned according to laws, and there shall be women's prisons. Except this, after investigation and interrogation, female criminals shall be bailed, put in charge of her relatives for supervision and be held at the disposition to be sentenced. It is forbidden to incarcerate [women] generally.

420.04

凡擬徒收贖婦女除係案內緊要證犯仍行轉解質審外其經該州縣審訊明確毋庸解審者即交親屬收管聽候發落

The women who may redeem the penal servitude, only if they are important witnesses and shall be transferred under escort, interrogated and investigated, (shall be imprisoned; except that,) as long as the local governments (*yamen*) have investigated and confirmed that their crimes are clear and there is no need for more investigation, they shall be put in charge of her relatives and be held at the disposition to be sentenced.

420.05

斬絞監候婦女秋審解勘經過地方俱派撥官媒伴送其業經解勘一次情罪顯然無可改擬者下次即停其解審如有外省定擬情實可矜具題經九卿會核改擬緩決者次年

秋審核准無異亦即停其解審

When the female criminals who shall receive strangulation or beheading with delay, are transported by escort for autumn assizes, the local governments shall send official brokers as escort. If the women have been transported once, the circumstances and nature of the offences are clear and cannot be changed anymore, they may not be transported again. If the provincial governments propose that though circumstances deserve of a capital punishment, the female criminals are worthy of compassions, the Nine Chief Ministers verify and defer execution, and the Autumn Assizes in the second year also verify the situations without any doubt, it is permitted to stop transporting the women again.

420.06

犯婦懷孕律應凌遲斬決者除初審證據未確案涉疑似必須拷訊者仍俟產後百日限滿審鞫若初審證據已明供認確鑿者於產後一月起限審解其罪應凌遲處死者產後一月期滿即按律正法

For pregnant women who shall receive death penalty by slicing or immediate beheading, only if the evidence in the first trial is not strong enough, or there is still doubt about the case, then women may be interrogated and beaten; (except this), wait until 100 days after the delivery and then conduct the interrogation. If the evidence in the first trial is good enough, and the testimony is clear, the women should be transferred by escort one month after the delivery. If women shall receive death penalty by slicing, the penalty shall be executed one month after the delivery according to the law.

420.07

婦女犯該斬梟者即擬斬立決免其梟示

If women commit crimes punishable by beheading, even though the penalty shall be executed immediately, the women may avoid being beheaded publicly.

D: Articles on Human-trafficking in the *Great Qing Code*

『律』 275.00 略人略賣人

Statute 275.00 Kidnapping Persons or Kidnapping and Selling Persons

凡設方略而誘取良人[為奴婢]，及略賣良人[與人]為奴婢者，皆[不分首從、未賣]杖一百流、三千里；為妻妾、子孫者，[造意]杖一百、徒三年。因[誘賣不從]而傷[被略之]人者，絞[監候]；殺人者，斬[監候]，[為從各減一等]，被略之人不坐，給親完聚。若假以乞養過房為名，買良家子女轉賣者，罪亦如之。[不得引例。若買來長成而賣者，難同此律。]

In all cases of devising tricks and enticing and seizing persons of commoner status or kidnapping and selling persons of commoner status (as slaves), the offenders (without distinction between the principal and accessory and regardless of whether the person has been sold) shall all be punished by 100 blows of the heavy bamboo and life exile to 3,000 li. If [the offenders take the kidnapped persons] as wives, concubines, sons, or sons' sons, they shall be punished by 100 blows of the heavy bamboo and penal servitude for three years. If, because the persons who are kidnapped resist the aggression, the offenders injure (the victims), they shall be punished by strangulation (with delay); if they kill (the victims), they shall be punished by decapitation (with delay). The persons kidnapped shall not be punished and shall be returned to be reunited with their families. For those who, by using the pretext of raising and adopting [children] to have them change households, purchase persons' children of commoner status and then sell them, the penalty shall be the same. (It is not permitted to refer to the substutates. If [the victims] are bought [when they are young] but sold when they grow up, this statute cannot be applied.)

若和同相誘[取在己]，及[兩]相[情願]賣良人為奴婢者，杖一百、徒三年；為妻妾、子孫者，杖九十、徒二年半。被誘之人減一等，[仍改正給親]。未賣者，各減[已賣]一等。十歲以下，雖和亦同略誘法。[被誘略者不坐]。

In the case of enticing others [to agree to be taken into the offenders' households] or, with mutual agreement, selling persons of commoner status as slaves, the offenders shall be punished by 100 blows of the heavy bamboo and penal servitude for three years. If [the offenders take the victims] as wives, concubines, sons, or sons' sons, they shall be punished

by 90 blows of the heavy bamboo and penal servitude for two and one-half years. For the persons who are enticed, the penalty shall be reduced one degree. (Moreover, correct his status and return him to his own family). If the kidnapped persons are not yet sold, in each case the penalty shall be reduced one degree. If those who are enticed are 10 *sui* or younger, although they agree, the penalty shall be the same as that for kidnapping and enticing. (The one who is enticed and kidnapped shall not be punished.)

若略賣、和誘他人奴婢者，各減略賣、和誘良人罪一等。

For kidnapping, selling, or enticing others' slaves, in each case the penalty shall be reduced one degree from that for kidnapping, selling, or enticing persons of commoner status.

若略賣子孫為奴婢者，杖八十；弟妹及姪、姪孫、外孫，若己之妾、子孫之婦者，杖八十、徒二年。[略賣]子孫之妾，減二等。同堂弟妹、堂姪及姪孫者，杖九十、徒二年半。和賣者減[略賣]一等；未賣者又減[已賣]一等。被賣卑幼[雖和同，以聽從家長]不坐，給親完聚。

For those who kidnap and sell [their own] sons or sons' sons as slaves, they shall be punished by 80 blows of the heavy bamboo. [For kidnapping and selling their own] younger brothers, younger sisters, brothers' sons, brothers' sons' sons, daughters' sons, [the offenders'] own concubines, sons' wives, or sons' sons' wives, the penalty shall be 80 blows of the heavy bamboo and penal servitude for two years. [For selling and kidnapping] sons' concubines or sons' sons' concubines, the penalty shall be reduced two degrees. [For kidnapping and selling] father's brothers' sons or daughters who are younger than the offenders, father's brothers' sons' sons, or father's brothers' sons' sons' sons, the penalty shall be 90 blows of the heavy bamboo and penal servitude for two and one-half years. If these relatives are sold by consent, the penalty shall be reduced one degree; if they are not yet been sold, then again reduce the penalty (for the completed sale) one degree. The inferior or younger relatives who are sold (although they have agreed [to the sale], but [has done so] on the basis of obeying and following the head of the household) shall not receive any punishment. Return the victims to their families to be reunited with it.

其[和略]賣妻為婢，及賣大功以下[尊卑]親為奴婢者，各從凡人和略法。

For those who sell wives (with her agreement or by kidnapping) as slaves, or who sell

(superior or inferior) relatives of the third mourning degree or more distant as slaves, in each case they shall be punished according to the law on enticing or kidnapping ordinary persons.

若[受寄所賣人口之]窩主，及買者知情，並與犯人同罪，[至死減一等]。牙保各減[犯人]一等，並追價入官。不知者，俱不坐，追價還主。

If those who (are entrusted to receive, hold and) harbor the persons who are sold, and the buyers know the circumstances, they shall be punished by the same penalty as that for the offenders (up to death which is reduced one degree). The broker-guarantors will have the penalty reduced (from that of the principal offenders) one degree; and the prices shall be forfeit to the government. For those who do not know the circumstances, in both cases they shall not be punished; and the prices shall be returned to the owners.

條例 Substatute

275.02

凡誘拐婦人子女，或典賣，或為妻妾子孫者，不分良人奴婢、已賣未賣，但誘取者，被誘之人若不知情，為首擬絞監候，為從杖一百、流三千里，被誘之人不坐。如拐後被逼成姦，亦不坐。若以藥餅及一切邪術迷拐幼小子女，為首者絞立決，為從發極邊足四千里充軍。其和誘知情之人，為首者亦照前擬軍，為從及被誘之人，俱減等滿徒。若雖知拐帶情由，並無和同誘拐，分受贓物，暫容留數日者，不分旗民，俱枷號兩個月發落。有服親屬犯者，分別有無姦情，照例科斷。婦人有犯，罪坐夫男。夫男不知情，及無夫男者，仍坐本婦，照例收贖。

In all cases of the abduction of women, (other people's) sons or daughters, no matter whether (the victims) are from commoner status or debased, sold or not, and no matter whether selling (the victims) to others or being his wife or offspring, as long as the abduction crime consummates, if the one who is abducted does not know of the situation, the principle offenders shall be strangled after the assizes, and accessories shall receive 100 blows of the heavy bamboo and life exile at a distance of 3,000 *li*, those being abducted shall not be punished; even if the woman is forced to commit illicit sex, she also shall not be punished. If the young kids are enticed by drugs or all kinds of sorcery, the penalty for the principal offenders shall be strangulation to be executed immediately, the accessories

shall be sentenced to military exile to the extreme frontier (4,000 *li*). In the case of enticing people who know the circumstances, the principal offenders shall be punished by military exile on the basis of the former sentence; the accessories and the people who are enticed should be reduced to the highest degree of penal servitude. If the people know the circumstances harbor the people for several days, but do not participate in abduction and share illegally obtained property, no matter whether they are Bannermen and civilians, they shall wear the cangue for two months. If the relatives within the degrees of mourning commit the abduction, distinguished by whether there is illicit sex or not, they shall be punished on the basis of statutes. If women commit abduction, their husbands and sons shall be punished instead; if the husbands and sons do not know the circumstances or the women do not have husbands or sons, the women shall be punished and may redeem according to the statutes.

275.03

凡夥衆開窩，誘取婦人子女，藏匿勒賣，事發者，不分良人奴婢、已賣未賣，審係開窩情實，為首照光棍例擬斬立決，為從發黑龍江，給披甲人為奴。

In all cases where a group of people open brothels, entice women and children, and hide them for sale, no matter whether they are commoner status or slaves, the victims have been sold or not, as long as the circumstance of opening brothels are true, the principles on the basis of statute (275.07) on “Rootless Rascals” shall be sentenced to immediate beheading, the accessories shall be exiled to Heilongjiang as slaves for soldiers.

275.05

凡外省民人有買貴州窮民子女者，令報明地方官，用印准買，但一人不許買至四五人，帶往外省。仍令各州縣約立官媒，凡買賣男婦人口，憑官媒詢明來歷，定價立契，開載姓名、住址、男女、年庚，送官鈐印。該地方官預給循環印簿，將經手買賣之人登簿，按月繳換稽查。倘契中無官媒花押，及數過三人者，即究其略賣之罪。倘官媒通同棍徒興販，及不送官印契者，俱照例治罪。至來歷分明，而官媒措索，許即告官懲治。如地方官不行查明，將苗民男婦用印賣與川販者，照例議處。至印賣苗口以後，給與路照，填註姓名、年貌，關汛員弁驗明放行。如有兵役留難勒索，及受賄縱放者，俱照律治罪，該管員弁分別議處。

in all cases where people from other provinces who buy kids from poor families in Guizhou Provinces, shall report the cases to local officials who may give permission with seals to buy persons; but every person is not permitted to buy more than four or five person and take them to other provinces. Every department and county shall set up official brokers, in all cases where buy and sell men and women, the official broker shall check the background of the persons, make contracts with names, addresses, genders, and ages, and send the documents to officials for seals. The local official shall prepare rosters, and the persons who handle the sales shall be registered in the rosters, and the persons in the rosters shall be checked on a monthly basis. If there is no signature of official brokers on the contracts, and if one person sells or buys more than three persons in one month, those shall be punished on the basis of the crime of kidnapping persons. If the official brokers communicate with the villains or they do not send the contracts to have official seals, the brokers shall be punished by on the basis of statutes. If the background of people is clear, but the official brokers extort, it is permitted for those who buy or sell persons to sue in the court. If local officials do not find out the facts, but apply seals to allow to sell Miao men and women to Sichuan traffickers, they shall be punished on the basis of statutes. When the procedure of applying seals and selling Miao people completes, people shall be given passes with names, ages and appearance, the officers in the passes shall verify and release these persons. If there are soldiers to detain or extort them, or accept bribes to release them illegally, the soldiers shall be punished on the basis of statutes, and the military officers of higher and lower ranks shall be punished separately.

275.06

凡窩隱川販，果有指引捆拐，藏匿遞賣確據者，審實，照開窩為首例，同川販首犯，皆斬立決，在犯事地方正法。其無指引捆拐遞賣情事，但窩隱護送分贓者，不論贓數，不分首從，俱發近邊充軍。其止知情窩留，未經分贓者，無論人數多寡，為首者杖一百、流三千里，為從杖一百、徒三年。其鄰佑知而不首者，杖一百。

In all cases where people who harbor Sichuan traffickers, if they guide the traffickers and take part in binding, hiding and selling persons, and if the evidence is enough, after making

a determination of the facts, they shall be punished on the basis of the substature (275.03) on opening brothels, together with the principal Sichuan traffickers, they shall be punished to immediate beheading and it shall be executed in the place where the offense happens. For those who harbor, escort Sichuan traffickers and share illegally obtained property, but never take part in guiding, binding, enticing and selling, they, no matter how much they share and without distinction between the principal and accessory, shall be punished by (military exile to the) near frontier (2,500 *li*). For those who know the circumstances and harbor the traffickers, but do not share illegally obtained property, the principals, no matter how many persons they harbor, shall receive 100 blows of the heavy bamboo and exile to 3000 *li*, the accessories shall receive 100 blows of the heavy bamboo and penal servitude of three years. For those neighbors who know the circumstances but do not report to the court, they shall receive 100 blows of the heavy bamboo.

275.07

貴州、雲南、四川地方民人，誘拐本地子女在本省售賣，審無勾通外省流棍情事，仍照誘拐婦人子女本例分別定擬。如捆綁本地子女在本地售賣，為首擬斬監候，為從發近邊充軍。

Civilians from Guizhou, Yunnan and Sichuan, who entice and sell kids in the province, and there is no collusion with villains from other provinces, shall be punished according to the substature (275.02) on abducting women, sons and daughters. For those who bind local kids and sell them in the local places, the principal shall be beheaded with delay and the accessories shall be punished by military exile to the near frontier (2,500 *li*).

275.08

凡貴州地方有外來流棍勾通本地棍徒，將荒村居民苗人戶殺害人命，虜其婦人子女，計圖販賣者，不論已賣未賣，曾否出境，俱照強盜得財律，不分首從皆斬，梟示。其有迫脅同行，並在場未經下手，情尚可原者，於疏內聲明，減為擬斬監候，請旨定奪。至殺一家三人以上者，仍從重定擬。其用威力強行綁去，及設方略誘，往四川販賣，不論已賣未賣，曾否出境，為首者擬斬立決，為從者擬絞監候。其有將被拐之人傷害致死者，除為首斬決外，為從者擬斬監候。若審無威力捆縛，及設計強賣，實係和同誘拐往川者，不論已賣未賣，但起行在途，為首者

擬絞監候，為從者杖一百、流三千里。被誘之人，仍照例擬徒。其窩隱川販在家，果有指引殺人捆虜，及勾通略誘和誘子女，藏匿遞賣者，審實，各與首犯罪同。其無指引勾串等情，但窩隱護送分贓，與僅知情窩留而未分贓者，仍照舊例分別定擬。雲南、四川所屬地方，如有拐販捆虜等犯，亦照貴州之例行。(下略)

In all cases where the roving villains from other places collude with local villains of Guizhou, kill the Miao people living in desolate villages, kidnap the women and children, and plot to sell the persons, no matter whether they are sold or not, whether they leave the place or not, without distinction between the principal and accessory, the offenders shall be punished by beheading immediately and publicly on the basis of Statute (266.00) on *Theft with Force*. For those who are forced to join the criminal teams and do not participate in the crime, though present in the scene of crime, the officials shall state the pardonable circumstances in the memorials and reduce the penalty to beheading with delay, to ask the imperial edicts to make the decisions. For those who kill three persons from the same family, they shall be punished in accordance with the heavier penalty. If the offenders forcibly tie up the victims, or devise tricks and entice people to sell in Sichuan, no matter whether the persons have been sold or not, whether they have left the province or not, the principals shall be sentenced to immediate beheading, the accessories shall be punished by strangulation after the assizes. If the victims are injured, which results in death, in addition to the principals who shall be sentenced to immediate beheading, the accessories shall be sentenced to beheading with delay. If there is no tying, or other forces, or tricks to sell persons by force, and it is indeed by mutual agreement to sell persons to Sichuan, no matter whether the persons have been sold or not, as long as they are on their way, the principals shall be sentenced to strangulation after the assizes, the accessories shall be punished by 100 blows of the heavy bamboo and exile to 3000 *li*; those who are enticed shall be sentenced to penal servitude on the basis of the statute. For those who harbor Sichuan traffickers at home, if they guide the traffickers to kill and tie up persons, or collude to kidnap, hide and sell kids, after making a determination of the facts, the penalty is the same as the principals. For those who do not guide or collude with the traffickers but harbor, escort and share the illegally obtained property, or those who know the circumstances and

harbor them, but do not share illegally obtained property, they should be sentenced on the basis of the old statutes. In Yunnan and Sichuan, if there are crimes such as enticing and kidnapping persons, the penalty is the same as those in Guizhou. [sentence omitted]

275.09

凡流棍販賣貴州苗人，除本犯照例治罪外，其知情故買者，照違制律杖一百，仍將苗人給親收領。

In all cases where the roving villains traffic the Miao people from Guizhou, the offenders shall be punished by the statute (275.08); for those who know the circumstances, they shall receive 100 blows of the heavy bamboo on the basis of the statute Violating Imperial Edicts, and the Miao persons shall be collected by their relatives.

275.12

興販婦人子女，轉賣與他人為奴婢者，杖一百、流三千里。若轉賣與他人為妻妾子孫，杖一百、徒三年，為從各減一等。地方官匿不申報，別經發覺，交部議處。

For those who sell women and kids to others as slaves, they shall be punished by 100 blows of the heavy bamboo and exile to 3000 *li*; for selling to others as wives, concubines, or offspring, the principals shall be sentenced to 100 blows of the heavy bamboo and penal servitude of three years, the penalty for accessories shall be reduced one degree. If the local officials do not report the cases, when the case is detected, the Ministry of Personnel shall propose a provisional sentence to them.

275.15

凡姦夫誘拐姦婦之案，除本夫不知姦情，及雖知姦情而迫於姦夫之強悍，不能禁絕，並非有心縱容者，姦夫仍依和誘知情為首例擬軍，姦婦減等滿徒。若係本夫縱容抑勒妻妾與人通姦，致被拐逃者，姦夫於軍罪上減一等，杖一百、徒三年；姦婦及為從之犯再減一等，杖九十、徒二年半。本夫本婦之祖父母、父母縱容抑勒通姦者，亦照此例辦理。

In all the cases where the adulterers entice the adulteresses, and if the husbands of the adulteresses do not know the affairs, or if the husbands know the affairs but are forced by the fierce adulterers and cannot stop it, and the husbands are not deliberately tolerate the adultery, the adulterers shall be sentenced to military exile on the basis of the principals in

the substature (275.02) “enticing people who know the circumstances,” and the penalty to the adulteresses shall be reduced on degree to the highest degree of penal servitude. If the husbands facilitate and tolerate the wives or concubines to commit adultery with others, which results in abduction, the penalty for the adulterers shall be reduced one degree to 100 blows of the heavy bamboo and penal servitude of three years, the penalty for the adulteresses and the accessories shall be reduced one more degree to 90 blows of the heavy bamboo and penal servitude of two and half years. The paternal grandparents or parents of the husbands or wives who facilitate and tolerate adultery, shall also be sentenced on the basis of this substature.

Summary

The dissertation explores the intricate relationship between family dynamics, legal practices, and the status of women in Ba County during nineteenth century (1803-1873). It delves into how family members leveraged the Qing Code and Confucian values and made use of the identity of women to gain advantage in court, examining 617 cases from the Ba County Archive to understand the interplay of law, state ideology, and patriarchal systems.

In imperial China, the roles of women were largely confined to the family sphere, with their identities as daughters, wives, mothers, and widows defining their societal positions. The *Great Qing Code* and Confucian ideology reinforced patriarchal values, advocating women's subordination to men and limited roles within the household. The dissertation seeks to uncover how these legal and ideological constructs were applied in everyday legal practices, particularly focusing on women's participation and their portrayal in legal records.

The concept of "role ethics", suggesting that Confucian principles of virtue and principle were deeply rooted in relational values, can help to explain how behavior was regulated within the family context in imperial China. The family relationships were a crucial instrument of social control, especially for women, whose identities and behaviors were primarily defined and regulated through these relationships. The research underscores the significance of family relationships in shaping legal strategies and women's presence in court documents. It posits that the roles of were defined by their familial ties, and thus, understanding court cases involving women necessitates an examination of the familial and social connections between women, plaintiffs, and defendants.

Drawing inspiration from Fei Xiaotong's "Differential Mode of Association" and the mourning system diagrams in the *Great Qing Code*, the dissertation presents an Inner-Outer Tier Model. This model illustrates the hierarchical organization of relationships around women, with the Inner Tier comprising the closest family members and the Outer Tier including more distant connections. The model reveals the authoritative nature of family relationships, where power dynamics were inherently unequal. The differential power relationships would have a major impact on the categories of cases that women were involved in.

The dissertation adopts the concept of "representational reality" suggesting that while legal

records may not accurately depict women's lives, they offer insights into societal challenges and the power of writing in shaping historical understanding. By the approach of “explaining the representational reality”, this dissertation argues that the language used in legal practice, influenced by official discourse, contributed to the parallel portrayal of women in both legal archives and state ideology. With the gendered archival cases, this dissertation shows legal practice as an origin of the victimized Chinese women. Chinese historians, since 1970s have begun to challenge the “wretched woman”, and to a large extent reveal how the image of victimized women were shaped. The historical portrayal of Chinese women as victims within the patriarchal structure of imperial China, shaped significantly by codified law and state institutions. Early Western writings, influenced by Orientalist perspectives, depicted Chinese women as oppressed, attributing their plight to the Confucian moral system. These narratives were also perpetuated by Chinese literati during the May Fourth Movement, which framed women’s oppression as a symbol of national suffering and a focal point for modernization efforts. There was a divergence between the codified law and practical adjudication in traditional China. The law theoretically confined women to passive roles, however, it does not necessarily mean that women would have a totally different presence in legal practice.

By analyzing the Ba County Archive, the research provides a detailed account of the types of litigation women were involved in and the roles they played. More importantly, this dissertation acknowledges and tried to draw attention to the limitations in the archival records, particularly the potential gender biases the predominantly male perspective of the records.

Chapter 1 examines the family system and the role of women in the *Great Qing Code*. The Qing Code predominantly defined women in the context of family relationships, with few references to women by profession. The language of the code and legal provisions reveal a patriarchal structure where women’s identities were largely tied to their roles as wives, mothers, daughters, or widows. The legal status of women was not static; it evolved through life stages, influenced by gender, age, and generation. While the Code implicitly confined women to the domestic sphere, it also acknowledged their shifting roles and authority within the family, particularly as they aged or ascended in the generational hierarchy. The chapter also highlights the significance of filial piety, which could afford mothers a status and authority similar to fathers.

The Code usually gave lenient treatment to women, reflecting a perceived weakness that

necessitated protection, yet this leniency also limited women's rights, such as to file lawsuits. The leniency underscores the importance of female chastity, granting privileges to widows who maintained it and emphasizing the purity of women. The chapter shows that the *Great Qing Code* contributed to a nuanced understanding of women's positions in society, reflecting both their victimization and the complexity of their familial roles.

Chapter 2 provides an in-depth examination of the court cases from Ba County, specifically focusing on the "women" archives. The chapter give summary of legal procedures and case categorization, and offer insights into women's participants in lawsuits, and the depiction of women in case records. A significant contribution of this chapter lies in its definition and categorization of archival cases, shifting away from modern standards and returning to the historical context. It emphasizes the importance of understanding how people in the nineteenth century categorized the legal suits they filed, with a focus on the causes of litigation as described in the legal complaints. These complaints, drafted by plaintiffs and litigation masters rather than government staff, reveal the techniques and strategies employed in litigation, often influenced by the "secret guidebooks" that plaintiffs and litigation masters consulted. County magistrates in 19th-century China faced the challenge of managing an increasing number of lawsuits, leading to detailed regulations on the format of legal complaints and efforts to deter litigation masters. However, these measures were not entirely successful, and the continuity in the techniques used to draft complaints from 1803 to 1873 is evident.

The chapter highlights the social-historical analysis showing that businessmen and urban citizens were more likely to resort to the court due to their knowledge and information advantages, while women, with generally lower levels of literacy and limited access to litigation knowledge, found it more difficult to participate. Meanwhile, the cult of female chastity and filial piety provided widows with opportunities to gain respect and empathy from society and the government, making their names valuable in litigation. The ideology promoting female chastity and the lenient treatment that women could have led to the strategy of "relying on women," where female gender was used to take advantage of the legal system. This strategy, however, was often employed by men and could be used to stigmatize and intimidate women who dared to enter the courtroom.

The images of women in the archives are artificially constructed, with multiple "filters"

between their true identities and their presentation in documents. These filters include litigation strategies, the intentions of magistrates and clerks, and the complex interplay of codified law, ideology, and family relationships. The challenge for methodology in women's history is to navigate these filters and uncover the forces that shaped the presence of women in the archives.

Chapter 3 examines 221 litigations, representing 34% of the collected cases, primarily centered on abduction and forced marriage (*jia mai*). The chapter analyzes the correlation between the relationship dynamics in these lawsuits and the legal strategies employed, filling a gap in previous research. The analysis reveals that the drafting of legal complaints often involved specific strategies, with no fundamental difference between how marital disputes and abductions were presented. Both types of cases reflect a struggle for control over women. Gender imbalance, market demand, and poverty further commoditized women, leading to conflicts between natal and marital families over control.

The chapter also discusses the role of natal family members in supporting women in court, which, while providing representation, could also limit the women's own voice. Legal complaints, adhering to the Qing Code's spirit, often lack in signs of the autonomy of women. It highlights the invisibility of women in court, as they typically relied on male relatives to act on their behalf, which underscores the need to understand the complex interplay of family relationships, legal strategies, and societal norms in shaping women's legal presence.

Chapter 4 explores conflicts between women's family members (Inner Tier) and (male) outsiders (Outer Tier) in nineteenth-century Ba County and reveals how sexual offenses and female chastity were used strategically in legal disputes. Sexual offenses constituted a significant portion of lawsuits involving outsiders. In late imperial China, any sexual behavior outside lawful marriage was considered an offense due to female chastity and its impact on social order. Women's bodies and chastity, used for legal purposes, became significant in resolving financial conflicts, since chastity was highly valued. The narrative templates from the handbooks of litigation masters, included women's struggles to maintain their chastity, like (attempted) suicide and extreme pain after violation, to attract the magistrate's attention and compel the defendant to settle disputes. The use of female chastity in legal disputes reflects a broader societal discourse, where it became an authoritative and influential tool, leading to unintended consequences that policymakers could not

have foreseen.

Chapter 5 focuses on the interactions between women and the influence of societal norms that distinguish between the domestic and public spheres. Even though the physical separation between inner and outer was more a concept of the elite rather than a reality for non-elite women, who frequently interacted with men in their daily lives, the women's network played a more important role for them. It notes that women could more easily establish connections with other women, which was reflected in their roles in helping each other find husbands or jobs.

The legal archives reveal the challenges working women faced in justifying their need to work outside the home, often due to poverty. However, the three factors, gender imbalance, high demand for women in marriage and sexual markets, and widespread poverty, was enforced through legal actions initiated by husbands to bring their wives back under their control. The state and patriarchal authorities preferred to keep women within the domestic sphere, reflecting a broader societal and legal bias against working women, leading to the victimization and stigmatization of working women, which served as a form of social control to discourage women from seeking work outside the home.

Conclusion offers an integral frame to understand the role and experiences of women in the judicial archives of nineteenth-century Ba County. First, the legal records from the nineteenth-century Ba County Archive offer a "representational reality", influenced by state ideology, rather than an accurate depiction of women's lives. Legal cases highlighted the instrumental use of women, their lack of agency, and disputes over their ownership, but the passive status of women was just a representational reality. Second, family relationships and litigation strategies were the key to understanding the narratives on women in the Ba County Archive. Litigation strategies played a major role in the narratives with male family members and litigation masters controlling narratives, and the passive status of women was a result of such depiction. Third, the dissertation to a large extent, supports Philip Huang's argument that Qing legal system encompassed paradoxical representation and practice, and one meaning of practice is how the ideological representation implemented in legal system. It calls for further research to deepen our understanding of the dynamics of gender, law, and society in Qing China and to explore the broader implications of these findings for historical and cultural studies.

Acknowledgments

First and foremost, I remain grateful to my supervisor, Manon van der Heijden, for her unwavering guidance and support throughout this dissertation journey. Her expertise, patience, and encouragement have been instrumental in navigating numerous challenges, ensuring the successful completion of this work.

A sincere thanks to my co-supervisor, Jeroen Duindam, for his meticulous reading and insightful comments on the drafts, which have significantly enriched the quality of this research.

Special thanks are extended to my doctoral committee members, whose comprehensive reviews and comments have propelled my thinking forward and injected new energy into my research.

To my dearest friend in Leiden, Tan Yujing, or Tuotuo, I am deeply thankful for her invaluable academic advice and unwavering support, which provided both intellectual guidance and emotional comfort. Yujing and her husband, Meng Haoqi, are experimenting an ideal way of marital life, I wish they will always be happy together.

My appreciation goes to Yixiu and Zexu, whose companionship during shared meals and game nights provided much-needed relaxation during my Ph.D. studies. Interactions with them also deepened my understanding of religion and feminism. Additionally, I am grateful to Yiyun and Sanhua for introducing me to a new way of life and for the cherished moments we shared together.

At the dinner parties Guanmian and Jihui organized, I got the chance to know most of my friends in Leiden. I benefited from the reading group organized by Guanmian and Tuotuo, where I learned a lot from Ma Xiao, Wei Ning, and other participants. Also, Guanmian's optimism and passion for academia always inspired me during the lonely journey for doing Ph.D.

I would like to express my gratitude to Hilde de Weert for organizing the seminar on Chinese history, where I had the opportunity to establish meaningful connections and friendships. In particular, I am thankful for the friendships formed with Hu Jing, Jialong,

Xiong, and Yuning, whose conversations have enriched my academic perspectives. Lin Fan offered invaluable support and guidance when I need it the most.

I am indebted to a group of scholars, Chen Xiao, Chen Zhe, Stephine Painter, Zhao Mengdie, and Yao Ping who generously invited me to join the panel in academic conferences, providing valuable feedback and fostering a sense of community within the academic sphere. Du Yue and Chen Li, as the commentators of the conference panel, gave precise suggestions on my papers and dissertation.

In the Posthumus research school, I found a way to start my research step by step, where I received useful suggestions in the beginning of writing. Also, I am happy to know Bente De Leede, Sophie Rose, Cao Junhao and Wang Meimei in the courses.

I am grateful to Zhang Tiantian for diligently reviewing my chapters and identifying serious mistakes, thereby contributing to the refinement of this work.

My appreciation also extends to my colleagues in the office, Sander and Ajeng, during my first year in Leiden, for their camaraderie and support.

I am deeply thankful to Wen Shanshan, whose presence provided immense comfort and assistance during my most challenging moment, despite our limited interactions.

I wish to acknowledge The Sorcerer's Apprentice, MTC Official and Still Xiaozhi, whose videos and live streams on Bilibili served as an important source of companionship throughout the writing process.

It is difficult for me to express my appreciation to Patrick for his unwavering support, especially during the challenging times of lockdown. Regardless of what the future holds, Henk, Willy, and Leonie will always have a special place in my heart as my family in the Netherlands.

Last, I wish to express my gratitude to my parents and all families, no matter when and where, I will remember your love and support. You have always been understanding and have helped me in every way. 最后要感谢我的父母与家人，无论何时，我都会记住你们的爱与支持。你们一直包容我，用自己的方式给了我一切支持。

I cannot write all the names who have given me help, encouragement, and confidence on this difficult journey, but I am deeply grateful to every one of you.

Curriculum Vitae

Jiayi Xin was born on November 11, 1992 in Zhaoyuan, China. She received her bachelor degree in law from China Foreign Affairs University in 2015. Then she got her master degree in Comparative and Public History from Chinese University of Hong Kong in 2016. Life at CUHK sparked her interest in academic research, so she decided to pursue a PhD. Being awarded the CSC scholarship, she came to Leiden University and started her PhD research about women from Ba County Archives during nineteenth century in July 2017. During her doctoral project, she participated in academic conferences and delivered presentations in ISCLH 2021 Biannual Conference and 2023 AAS Annual Conference.