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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>

Version: Publisher's Version

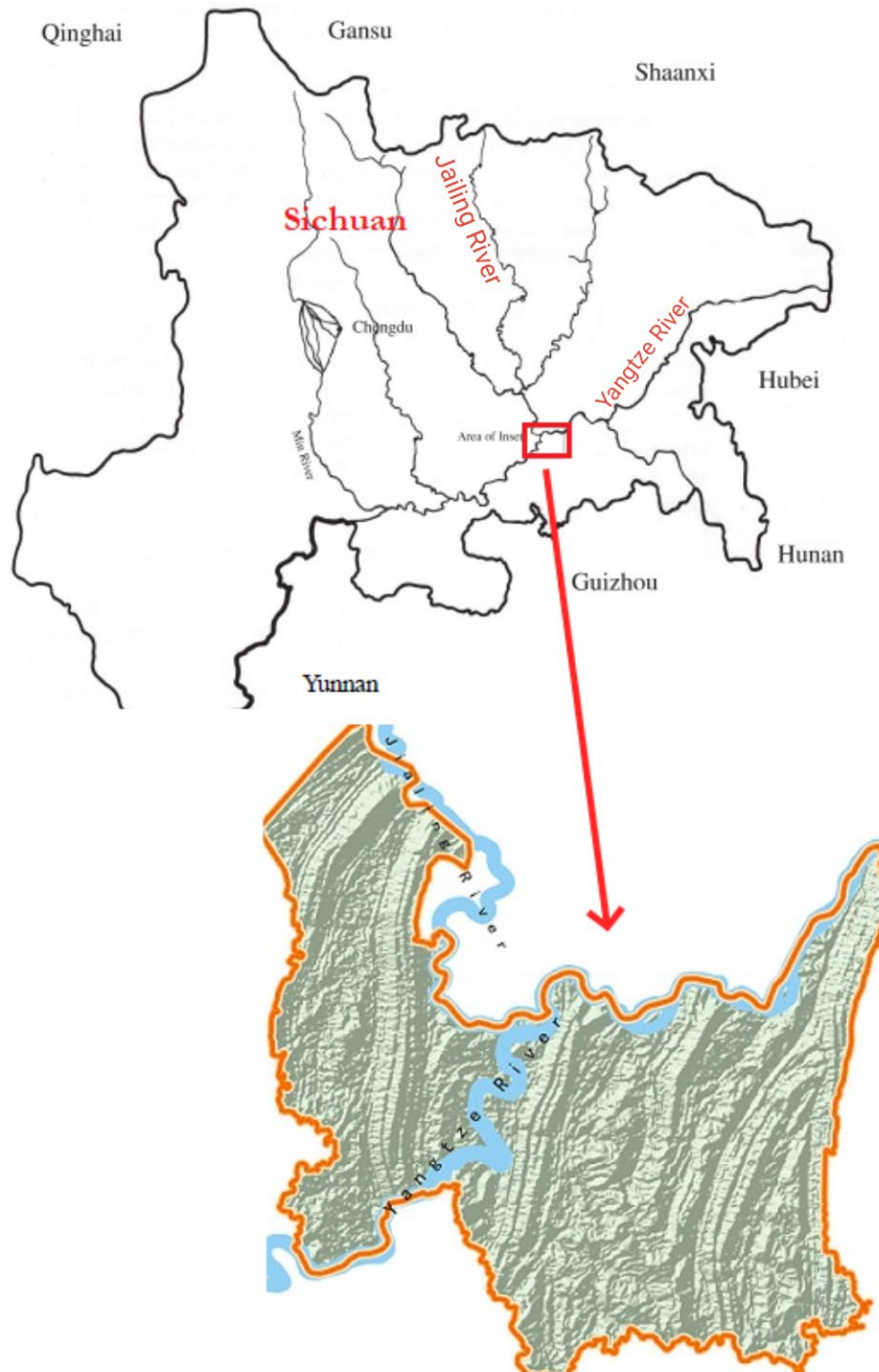
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Note: To cite this publication please use the final published version (if applicable).

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

Based on Bradley 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.

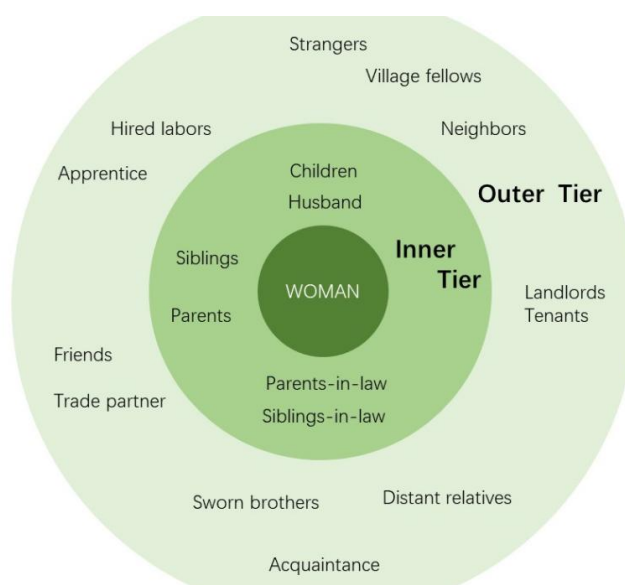
For this reason, my dissertation will focus on the role of family relationships in law, litigation, and the status of women in late imperial Chinese society. This choice of focus is supported by both codified law and judicial archives. The *Great Qing Code*, the codified law of the Qing Dynasty, includes 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 funiushi 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 gaishu 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 *lilai 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 zhoubuxian susong zhong de shenduan wenti: cexhong 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 jinfen 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, *Funü, 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 Funüshi 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.” Bradley 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 (*kuaizi*, *liangyi*); salt runners (*yanyi*); constables (*buyi*); and commoner guards (*minghuang*) 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 *xingfang* 刑房 (punishment office) or the *lifang* 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 additionally, 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.

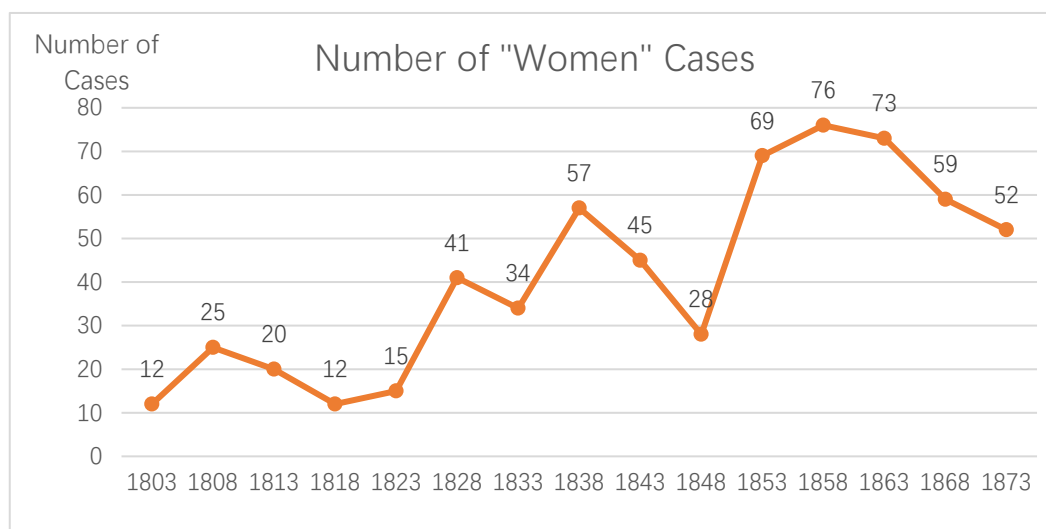
⁹¹ Although, through my study of a small number of archival documents from other regions, such as Nanbu and Huangyan, I believe that the conclusions of this dissertation can be substantiated by evidence from other Qing local archives, rigorously, the local archives and legal archives in this paper confined 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 (*guanbua* 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 (*daishu* 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 complaints 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, complaint writers strategically employed official ideologies, such as the cult of female chastity, to bolster their claims.

Secondly, the events and behavior depicted in the complaints 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 complaints, 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 complaints 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 complaints 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.

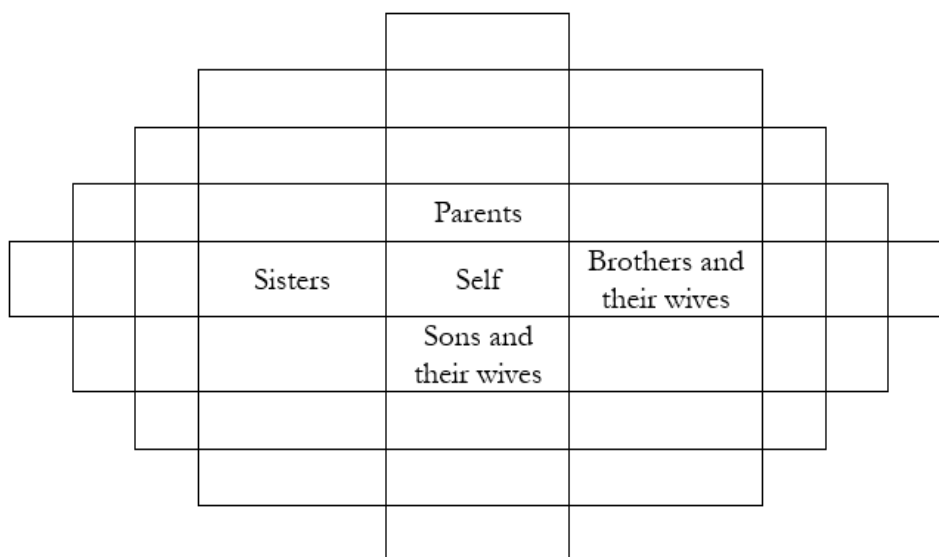
⁹⁹ Zhang, 557–74; Songyi Guo, *Lunli yu shenghuo: Qingdai de bunyin guanxi* 伦理与生活：清代的婚姻关系 [Morality and Life: Marriage in the Qing Dynasty] (Beijing: The Commercial Press, 2000), 536–42; Hui-Min Lai and Szu-Ling Hsu, “Qingyu yu xingfa: Qing qianqi fanjian anjian de lishi jiedu 情慾與刑罰：清前期犯奸案件的歷史解讀 (1644-1795) [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.

