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

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## 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.<sup>1</sup> 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

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<sup>1</sup> 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: Complaints<sup>2</sup>

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

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<sup>2</sup> 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.”<sup>3</sup> 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.

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<sup>3</sup> 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)” (具稟), 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.<sup>4</sup> 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 和 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).<sup>5</sup> 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).<sup>6</sup>

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

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<sup>4</sup> 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”).

<sup>5</sup> 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.

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

and printed sheets and limiting characters (one character per square).<sup>7</sup> 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.<sup>8</sup>

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.<sup>9</sup>

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？<sup>10</sup>

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

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<sup>7</sup> 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.

<sup>8</sup> Yasuhiko Karasawa, "Qingdai Suzhuang Jiqi Zhizuoze 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.

<sup>9</sup> 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.

<sup>10</sup> "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.<sup>11</sup> In spite of the fact that they were stigmatized, litigation masters played an essential role in the litigation procedure in Qing.<sup>12</sup>

## 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.<sup>13</sup>

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.<sup>14</sup> In general, *xiejia* could help the litigants complete the litigation procedures, such as by helping them write complaints (sometimes the managers of *xiejia* were

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<sup>11</sup> 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.

<sup>12</sup> 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.

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

<sup>14</sup> 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.<sup>15</sup>

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.<sup>16</sup>

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:<sup>17</sup>

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?<sup>18</sup>

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<sup>15</sup> 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.

<sup>16</sup> 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.

<sup>17</sup> Huang, *Civil Justice in China*, 1.

<sup>18</sup> 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.<sup>19</sup> 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.<sup>20</sup>

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*

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*minshi jinfen yu falü zhixu kaocha*, 230–31.

<sup>19</sup> The only exception for the presence of litigation master, might be 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.

<sup>20</sup> Bodde and Morris, *Law in Imperial China*, 416–17.

ben 訟師秘本).<sup>21</sup> 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.<sup>22</sup> 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).<sup>23</sup> In my research, I have found no single complaint written on format paper and submitted to the court without the seal.<sup>24</sup>

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.<sup>25</sup> 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.

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<sup>21</sup> 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.

<sup>22</sup> Fuma, “Litigation Masters and the Litigation System,” 108.

<sup>23</sup> 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.

<sup>24</sup> 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.

<sup>25</sup> 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.<sup>26</sup> 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.<sup>27</sup> Moreover, although the Qianlong Emperor outlawed secret books in 1742, several versions were nonetheless published in the nineteenth century.<sup>28</sup>

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.<sup>29</sup> 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.”<sup>30</sup> Although the complaints gave little

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<sup>26</sup> 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 xueshe 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.

<sup>27</sup> Fuma, “Song shi mi ben Xiaocao yibi de chuxian”, 490.

<sup>28</sup> 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](http://lsc.chineselegalculture.org/Documents/E-Library/Magistrates_handbooks_pettifoggers?ID=647).

<sup>29</sup> 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.

<sup>30</sup> 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.<sup>31</sup>

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

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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.

<sup>31</sup> *San chi ding beng 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.<sup>32</sup> [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.....幫人推船口日。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 plaintiff 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.”<sup>34</sup> 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.

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

<sup>33</sup> Q6-11-08677.

<sup>34</sup> 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.<sup>35</sup> 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.<sup>36</sup> 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.<sup>37</sup> 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

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<sup>35</sup> 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

<sup>36</sup> 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.

<sup>37</sup> 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](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 <sup>38</sup>	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%.<sup>39</sup> 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

<sup>38</sup> 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.

<sup>39</sup> 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.<sup>40</sup> For serious crimes, the magistrates should report abduction cases to higher officials.<sup>41</sup>

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.”<sup>42</sup> 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.”<sup>43</sup>

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

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

<sup>41</sup> 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.

<sup>42</sup> 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.

<sup>43</sup> Davis, *Fiction in the Archives*, 3.



give oral testimony before the judge, which should conform to their written complaints.<sup>44</sup> 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.”<sup>45</sup>

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.<sup>46</sup> 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.<sup>47</sup>

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

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<sup>44</sup> 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.

<sup>45</sup> Karasawa, “Between Oral and Written Cultures,” 74.

<sup>46</sup> 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.

<sup>47</sup> 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.<sup>48</sup> 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*.<sup>49</sup> 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.<sup>50</sup> But

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

<sup>49</sup> The use of “representational reality” is also inspired by You Chenjun's work, see Chenjun You, *Jusong Fenyun: Qingdai de “Jiansong Zhifeng” Huayu 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.

<sup>50</sup> “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.<sup>51</sup>

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.”<sup>52</sup> 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).<sup>53</sup> 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).<sup>54</sup>

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*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..

<sup>51</sup> I found them three times in my archival research.

<sup>52</sup> 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.

<sup>53</sup> “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.

<sup>54</sup> 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.”<sup>55</sup> As Huang stresses, Qing legal culture must be understood “in the light of a system that encompassed paradoxical representation and practice.”<sup>56</sup> 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.<sup>57</sup>

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.”<sup>58</sup> 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.

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<sup>55</sup> Huang, *Civil Justice in China*, 2–3.

<sup>56</sup> Huang, 3.

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

<sup>58</sup> 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.<sup>59</sup>

## 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).<sup>60</sup> 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.

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

<sup>60</sup> 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 jufen 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.<sup>61</sup> 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.<sup>62</sup> 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.<sup>63</sup> Therefore, some bailing documents remained in the archives.<sup>64</sup>

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.<sup>65</sup> In

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

<sup>62</sup> 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.

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

<sup>64</sup> 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.

<sup>65</sup> 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 complaint that aimed to “beg [the magistrate] to stop the conflict peacefully” (懇恩息訴 *ken en xi su*). The complaint 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.<sup>66</sup>

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 complaints repeatedly, and the summons process and court hearing could also be repeated. If so, the case record would become tedious.<sup>67</sup>

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<sup>66</sup> 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.

<sup>67</sup> 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.<sup>68</sup> 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.<sup>69</sup> 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.

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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.

<sup>68</sup> Lying about this issue hardly seemed to have any benefit.

<sup>69</sup> 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.<sup>70</sup> 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,<sup>71</sup> 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*.<sup>72</sup> 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

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<sup>70</sup> Javers, “The Logic of Lies.”

<sup>71</sup> 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.

<sup>72</sup> 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.<sup>73</sup> According to Rawski, the literacy rate in urban areas was higher than that in rural regions.<sup>74</sup> 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*.<sup>75</sup> 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

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<sup>73</sup> 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), I-LIII.

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

<sup>75</sup> “*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.<sup>76</sup>

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

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<sup>76</sup> 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 complaint. The Qing government had set up limitations on female litigation not only in codified law but also in the instructions on the complaint 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.<sup>77</sup>

In practice, some complaints 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.<sup>78</sup> 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.<sup>79</sup> In my analysis of 617 cases, 201 women filed 312 complaints and simple complaints, accounting for 17% of all complaints (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.

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

<sup>78</sup> 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.

<sup>79</sup> 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.<sup>80</sup>

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.<sup>81</sup>

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,

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<sup>80</sup> 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.

<sup>81</sup> 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.<sup>82</sup> 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.<sup>83</sup>

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.<sup>84</sup>

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.<sup>85</sup> 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

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<sup>82</sup> 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.

<sup>83</sup> Q6-11-08804.

<sup>84</sup> 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.

<sup>85</sup> 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.”<sup>86</sup>

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.<sup>87</sup> 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.<sup>88</sup>

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.<sup>89</sup> 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.<sup>90</sup> Women had the right to

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<sup>86</sup> Q6-26-07219.

<sup>87</sup> 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.

<sup>88</sup> 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.

<sup>89</sup> It was used explicitly seven times among all the archives I have consulted.

<sup>90</sup> 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.<sup>91</sup> 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.<sup>92</sup>

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.

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Analysis of the Statute of 'Female Redemption Is Not Allowed' in the Great Qing Code], in *Jiu Li Xin Quan: Da Qing Lǐlǐ Guoji Yantaohui Lunwenji* 旧律新论: 《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.

<sup>91</sup> Jones, *The Great Qing Code*, 325.

<sup>92</sup> 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.”<sup>93</sup> 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.”<sup>94</sup>

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.<sup>95</sup>

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

<sup>93</sup> Q6-11-09004.

<sup>94</sup> Q6-11-09215.

<sup>95</sup> 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.<sup>96</sup> 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.<sup>97</sup> 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.<sup>98</sup> 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).<sup>99</sup> 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

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<sup>96</sup> Q6-20-05085.

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

<sup>98</sup> Q6-27-08250.

<sup>99</sup> 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.<sup>100</sup> 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).<sup>101</sup> 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.

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<sup>100</sup> Yu, 67–69.

<sup>101</sup> 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，豆腐生貿，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、何興培均幫蚊貿。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 15<sup>th</sup> 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 1<sup>102</sup>

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.<sup>103</sup>

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<sup>102</sup> Q6-27-08153.

<sup>103</sup> 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.<sup>104</sup> 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.<sup>105</sup> 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

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<sup>104</sup> Er Bi Ken Qing, 274.

<sup>105</sup> *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.



