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WASHINGTON UNIVERSITY

Department of East Asian Studies

Wayward Sons: Civil Litigation and the
Family in Nineteenth-Century China

by

John Ross Bandy

A thesis presented to the
Graduate School of Arts and Sciences
Of Washington University in
partial fulfillment of the
degree in Master of Arts

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Introduction

Yi Zhang Shi was a desperate widow.¹ On October 9, 1881, likely with the help of an agent, she walked into the yamen of Ba County, Sichuan, to submit a plaint to the magistrate sitting in the main hall, wearing his official robes.² She presented a damning complaint against her stepson, Huazu. According to Yi Zhang Shi, after her husband passed away, Huazu's personality began to change. He became dissolute, and squandered all of his 500-tael inheritance. This blow to the family budget forced Yi Zhang Shi to live together with a younger son, where together they earned a living by producing bottles. Huazu eventually agreed to give her a little money each month for living expenses, but he refused to grant her any financial help when she had to repay a debt. After Yi Zhang Shi scolded her stepson for his impropriety, Huazu, in turn, insulted his stepmother and then knocked her to the ground. He then refused to give her any money at all, completely cutting her off from her means of sustenance. She could only depend on the righteousness of the court to correct this wrong, and compel Huazu to support her old age needs.³

¹ When referring to married women, late imperial Chinese documentation records both the husband's surname and the natal family's surname. Thus, Yi is her husband's surname, Zhang is her natal family's name, and Shi is an honorific title equivalent to the English "Ms."

² Linxia Liang, *Delivering Justice in Qing China: Civil Trials in the Magistrate's Court* (Oxford: Oxford University Press, 2007), 31-36. Liang writes that magistrates usually received petitions on "open days" (*fanggaori*) typically held on every third, sixth, and ninth day of every ten-day period of a month. However, according to the *Qinban zhouxian shiyi*, a magistrate was not required to maintain this particular schedule. Unlike males over the age of 16, all aged persons, women, and disabled persons had to employ an agent to submit a plaint on their behalf. As a woman, Yi Zhang Shi likely had to employ an agent to submit her plaint to the magistrate.

³ *Ba Xian* 6-42-22782. Hereafter, references to all Ba Xian documents will be shown as *BX*.

This plaint represents a family in crisis. The protagonist, Yi Zhang Shi, faced off against her stepson, who is consistently referred to as *ni* 逆. In normal usage, *ni* can be a verb meaning “to disobey,” or an adjective meaning “counter” or “contrary.” It can also be combined with other characters to become a noun, such as *nizei*, meaning “rebellious bandit” or “traitor.” Finding its *locus classicus* in the *Shangshu*⁴ in which *ni* was used as the verb “to resist” or “to oppose,” it was then incorporated into legal parlance in the Tang (618-907) and Qing (1644-1912) codes.⁵ In the Tang Code, *ni* figures into two of the “Ten Abominations” (*shi e*), first as a crime against the state and secondly as a crime against the family. The subcommentary on the 2nd article within the Ten Abominations section, labeled as “Plotting Great Sedition” (*mou da ni*) describes this crime as a person who “breaks laws and destroys order,” and one who “is against morality and goes contrary to virtue.”⁶ In contrast, the 4th article defines a crime against the family in the form of “contumacy” (*e ni*), which deals with violent behavior towards parents or relatives within five degrees of mourning (striking or plotting to kill).⁷ The Qing Code utilizes the same arrangement when it comes to delineating the “Ten Abominations,” but expands on anti-state actions in another article, “Plotting Rebellion and High Treason” (*mou fan da ni*) by

⁴ Commonly translated as the “Book of Documents,” this text produced during the Spring and Autumn period (771 BCE- 476 BCE) was considered to be one of the Confucian classics, and contained records of the Xia, Shang, and Zhou dynasties.

⁵ Explaining his moral instructions, Yi Yin said, “If you dare to condemn the words of sages, to *resist* the loyal and upright, to put far from you the aged and virtuous, and to be familiar with precocious youths—that is called the fashion of disorder.” (Italics added) Quoted in *Shangshu*, trans. James Legge (Oxford: Oxford University Press, 1966), 196-197.

⁶ Yanhui Dai 炎輝戴, ed., *Tanglü tonglun* 唐律通論 *General Theory of the Tang Code*, (Taipei: Zhengzhong shuju yinxing, 1964), 198. I have followed the English translation found in *The T'ang Code*, trans. Wallace Johnson (Princeton: Princeton University Press, 1979), 63-64.

⁷ Dai, 199; *The T'ang Code*, 65-68.

indicating various degrees of heavy punishment for infractions.⁸ These articles and statutes, however, were not explicitly cited by either plaintiffs or magistrates when it came to lawsuits against junior males in the family. In these suits, *ni* instead implies an inversion of proper Confucian relationships, in which the younger members subvert the hierarchical family structure or fail to perform orthodox roles. This, in part, reflects the Confucian and legalist ideology of the Qing legal system, in which those of a ritually superior status could count on the Qing Code to uphold their position, including senior family members. In legal cases regarding family disputes, such as in the case of Yi Zhang Shi and Huazu, *ni* became a pejorative pronoun utilized by the plaintiff to castigate the defendant, so that the defendant's identity is subsumed under this category. Thus, although lawsuits dealing with *ni* did not utilize a formal article or statute of the Qing Code to deal with junior males as such, labeling a junior male as *ni* did entail a wide range of misbehaviors.⁹

Ni can be found in all types of legal cases that deal with family conflicts, and was utilized in both civil and criminal cases, even though the Qing legal code and other representations did not necessarily make a formal distinction between these two categories.¹⁰ However, research in the early 1990s by Philip C.C. Huang, Kathryn

⁸ Tian Tao 田濤 and Zheng Qin 鄭秦, eds., *Daqing lili* 大清律例 (Beijing: Falü chubanshe, 1999), 84-85, 365. I've followed the translation in *The Great Qing Code*, trans. William C. Jones (Clarendon Press: Oxford, 1994), 35, 237-238.

⁹ This phenomenon contrasts with Matthew Sommer's research on "rootless rascals" (*guanggun*), a population of floating, low-class males who constituted an ideal type for sexual crimes. During the Yongzheng period of the Qing (1722-1735), statutes defining this type of male first entered the Qing Code. See, Matthew H. Sommer, *Sex, Law, and Society in Late Imperial China* (Stanford: Stanford University Press, 2000), 14.

¹⁰ Shiga Shuzo makes the claim that during the imperial period "no institutional distinction was made between civil and criminal judicial procedure." Quoted in Mark A. Allee, "Code Culture and Custom: Foundations of Civil Case Verdicts in a Nineteenth-

Bernhardt, and others have indicated that in practice, the Qing legal apparatus was highly proficient in adjudicating civil disputes, and the courts were readily utilized by people to defend their interests.¹¹ Echoing Philip Huang’s categorization of civil and criminal law, the distinction that I originally made between “criminal” and “civil” cases hinges on the applicability of punishment.¹² Whereas criminal cases entail physical punishment administered by the state, civil cases are those in which the principles seek remuneration, either through money or property. Because the use of *ni* in legal case files straddled both criminal and civil lawsuits—or in the gray area in between—it became a category fraught with ambiguity. Cases that were ostensibly civil in nature could occasionally demand physical punishments, either by flogging or a stint in the cangue, thereby blurring the distinction between civil and criminal. “Criminal” *ni* cases usually charged a junior male with gambling, whoring, theft of family property, and, in more severe cases, insulting and striking senior family members. Since these types of criminal behavior were associated with *ni*, family members who sued junior males in civil lawsuits often used the same tropes to obtain a tactical advantage in litigation. This strategy induced the plaintiffs to resort to extremely emotional rhetoric in their accusations in order to create a narrative of

Century County Court,” In *Civil Law in Qing and Republican China*, ed. Kathryn Bernhardt and Philip C. C. Huang (Stanford: Stanford University Press, 1994): 122-141., 141. However, Philip C. C. Huang takes a much different view.

¹¹ Philip C.C. Huang, *Civil Justice in China: Representation and Practice in the Qing* (Stanford: Stanford University Press, 1996), 1-2. Also see, Philip C.C. Huang and Kathryn Bernhardt, ed., *Civil Law in Qing and Republican China* (Stanford: Stanford University Press, 1994).

¹² Huang, *Civil Justice*, 1-2. Huang explains that whereas Qing representations of civil law were deemed to be “trivial matters” (*xishi*), criminal law that concerned the state was labeled as “weighty matters” (*zhongqing*). The Republican period, in contrast, made a greater distinction between “people’s matters” (*minshi*) and “criminal matters” (*xingshi*), which entailed punishment for offenders. Huang uses the term “civil” as in the same meaning as Republican law.

mistreatment at the hands of junior males. Therefore, by labeling a junior male as *ni* and accusing him of engaging in typical “*ni* behavior,” senior members “criminalized” junior males in order to gain the sympathies of the county magistrate and obtain a positive ruling on their civil suit. This particular strategy depended on the Qing code’s support of family hierarchy and ritual statues, but the tactic could face a severe challenge if the lawsuit negatively impacted the patriline of the *ni*, especially when it came to land, property, and other economic matters.

By exploring legal discourse and litigation strategy during the Guangxu era (1875-1908), this thesis demonstrates how *ni* functioned as a weapon used by family seniors to attack junior males who threatened the seniors’ livelihood. In turn, this reflects a social reality of the late Qing in which senior family members often faced extreme insecurity regarding their economic well-being. Despite their superior social standing according to Confucian norms and the Qing Code, seniors could be an easy target for younger family males with strong connections to the patriline. Thus, I argue that there resides a palpable contradiction between those tenets of the Qing Code that uphold the ritual hierarchy of senior family members and agents of the Qing state which went out of their way to protect the interests of the patriline. The decision to protect the interests of the patriline forced magistrates to weaken seniors’ connections to their livelihoods, thereby harming their economic security. I also argue that senior family members utilized emotional narratives to castigate junior males to the point of “criminalizing” them in order to circumvent the fact that junior males could sue seniors to defend legitimate property interests, and in cases in which the plaintiff was a woman, to try to balance out the power of the patriline to which she was married. In turn, the magistrate would take the rightful interests of both

parties into consideration during the adjudication process, but the success of a civil suit often hinged on the ability of the plaintiff or defendant to align their interests with those of the patriline. I further argue that rhetoric employed by senior family members reveals strong preoccupations with aging, loss of control, or disability, as well as interfamilial generational, patrilineal, or conjugal rifts that mirror the change in family structure and status of its individual members. In contrast, the rhetoric of juniors' defense is couched in appeals to responsibility and duty to the family.

Sources

The main sources of documentation in this study are legal case files collected from the Ba County Archives, presently housed in the Sichuan Bureau of Archives in Chengdu. The Ba County Archives are the largest of the four extant late imperial county-level archives, comprising over 113,000 *juan*, and categorized topically with cases related to homicide, theft, assault, commerce, mining, family, women, land, etc.¹³ This vast resource is an invaluable tool for those wishing to gain perspective on the relationship of state and society on the local level. For a period of two months in the summer of 2010, I collected approximately 32 legal files on cases of family litigation, paying close attention to those involving *ni*. I mainly focused on collecting cases from the Guangxu era (1875-1908) because the cases from this time period account for the bulk of the archive's files and are in the best physical condition. Although all the files from the Ba County Archive have been converted to microfilm, it is obvious that time has not been kind to many of the

¹³ Yasuhiko Karasawa, Bradley W. Reed, and Matthew H. Sommer, "Qing County Archives in Sichuan: An Update from the Field," *Late Imperial China* 26.2 (December 2005): 114-128, 115.

cases therein. Tattered files, water damage, and missing sheets are some of the frustrations that the researcher must put up with, and the further back in time one ventures, the worse the files' condition become. In spite of this difficulty, I have also tried to collect files from the Qianlong (1736-1796) and Jiaqing (1796-1820) eras. As previously stated, this essay contains mostly Guangxu-era case files, but those from the Qianlong and Jiaqing period are also represented in tables on pages 25 and 26.

A standard legal case first presents an initial plaint, which contains the name, age, place of origin, and current address of the plaintiff, and the name of the accused. The plaint was written on a *zhuang* (standard form); it opened with a series of general accusations, then explained the nature of the complaint at hand, and closed with a respectful plea to the court.¹⁴ The magistrate then wrote his comments (*pi*) on the plaint, and chose whether to accept or reject the case. Many of the legal case files stopped at this point, which usually indicated that either the magistrate did not accept plaint or the complainant dropped suit. The initial plaint might also be followed by a countersuit presented by the accused, complete with his or her personal data and the magistrate's comments. Some of the extensive cases have a very long series of plaints and counter-plaints, and contain nearly one hundred pages. This series was then followed by a report by the yamen runners who either summoned the litigants to court or arrested one of the accused individuals on the magistrate's request. Finally, the testimony of each of the litigants and relevant witnesses was recorded, and then the magistrate wrote out his judgment.

¹⁴ Liang, 44.

In addition to Ba County legal files and selections from the Qing code, the scholarship of Philip C. C. Huang, Kathryn Bernhardt, and others on civil litigation in Qing and Republican China have been very informative in terms of the workings of the late imperial legal system. My thesis is also in conversation with twentieth-century anthropological studies of the Chinese family demonstrating the continuity in family structure from “traditional China,” especially those works by Myron Cohen and Gregory Ruf. Their scholarship has proven to be an invaluable tool that has assisted me in filling in the gaps of my documentary sources.

Ba County

Ba County is located at the southeastern edge of Sichuan, a province in China’s southwest. During the Qing dynasty the seat of Ba County, Chongqing Prefecture, and the East Sichuan Circuit were located in Chongqing, a city that is situated on the intersection of the Yangzi and Jialing rivers. The seventy-two rural districts (*li*) of Ba County during the Ming dynasty were consolidated to four at the commence of the Qing, and then expanded to twelve by the Kangxi period (1661-1722).¹⁵ The overall number of urban wards (*fang*) of Chongqing increased from 8 in the Ming to 29 by the Kangxi period of the Qing.¹⁶ During the nineteenth century, due to migration from already overpopulated eastern provinces, the population of Ba County exploded; the population, estimated at

¹⁵ *Ba xianzhi* 巴縣志 (Gazetteer of Ba County). 6 volumes. R.O.C. edition. (Taipei: Taiwan xueshengshuju, 1967), 219-222.

¹⁶ *Ibid.*

218,000 in 1812, grew to 990,500 by 1910, an increase of almost 350 percent.¹⁷ While these population figures are not extreme when compared to other regions of the empire, the mountainous terrain of the county made arable land a scarce commodity.¹⁸ Because of its advantageous location along two major rivers, Ba County became a thriving trade hub, which further increased in activity after Chongqing was opened up to foreign trade in 1891.¹⁹ Qing administrators regarded this bustling center of human activity with much apprehension. Officially deemed to be an “important post” that was moreover “frequented,” “difficult,” and “troublesome,” Ba County was by no means an easy post for magistrates, forcing many to leave the job before their term was complete.²⁰

In this study, the vast majority of the litigants in the cases I have examined were from the countryside, which is to say, they were not residents of Chongqing. Those who lived in the countryside were situated in “nucleated settlements,” comprising a few households near scattered market towns (*chang*).²¹ Country residents’ livelihoods were based on the production of rice and corn, handicrafts, and perhaps the “illicit production and sale of salt.”²² The enormous population pressure affecting the limited arable land of

¹⁷ Bradley Reed, *Talons and Teeth: County Clerks and Runners in the Qing Dynasty* (Stanford: Stanford University Press, 2000), 26. Also see, Wei Yingtao 隈瀛涛, *Jindai Chongqing chengshishi 近代重庆城市史 (A History of Modern Chongqing)*, (Chengdu: Sichuan daxue chubanshe, 1991), 387-397.

¹⁸ Reed, 26.

¹⁹ *Ibid.*, 27.

²⁰ *Ibid.*, 26-29. For an explanation on the post designations, see G.W. Skinner, “Cities and the Hierarchy of Local Systems,” In *The City in Late Imperial China*, ed. G.W. Skinner (Stanford: Stanford University Press, 1977): 275-351.

²¹ Reed, 27. Also see, Theodore H. White and Annalee Jacoby, *Thunder Out of China* (New York: Da Capo Press, Inc., 1946), 21. Writing about their experiences in Chongqing during the GMD retreat to this city, White and Jacoby notice that in a typical village “ten or twelve houses clustered together for protection.”

²² Reed, 26.

Ba County led to a very small individual-to-land ratio, a condition that was not conducive to raising livestock, and one that required families to collect their nightsoil to increase the productivity out of their limited acreage.²³ In spite of the vibrant commercial atmosphere of nineteenth century Chongqing, very little of the wealth derived from trade percolated down into the Ba County hinterland, at least until the 1890s when the city was opened to foreign commerce.²⁴ Despite the divergence between urban and rural society, residents of the hinterland readily utilized the county court to defend their interests from perceived threats. Coming to the county seat from distances up to 120 *li*, litigants typically lived close to the yamen in the Taiping ward to conveniently manage their lawsuits.²⁵

This thesis is divided into two parts. Chapter One closely examines “criminal” cases of family litigation and explores the rhetoric on common “*ni* tropes” in order to perceive how such characterization fitted into a wider strategy to obtain a favorable ruling from the county magistrate. The characterization of *ni* as such naturalized the link

²³ White and Jacoby, 22.

²⁴ Madeline Zelin, “The Rights of Tenants in Mid-Qing Sichuan: A Study of Land Related Lawsuits in the Ba Xian Archive,” *The Journal of Asian Studies* 45.3 (May 1986): 499-526, 503. For scholarship on the vibrant rice trade that ran through Chongqing, see Chin-keong Ng, *Trade and Society: The Amoy Network* (Singapore: Singapore University Press, 1983), 119-121. See also, Han-sheng Chuan and Richard A. Kraus, *Mid-Ch'ing Rice Markets and Trade: An Essay in Price History* (Cambridge: Harvard University Press, 1975), 70.

²⁵ One of the frustrations of working on Ba County is the lack of a map that shows the administrative divisions of the city (particularly the wards) and the locations of the market towns (*chang*). According to a Qing dynasty map of Chongqing, the county yamen is located very close to the Taiping gate in the southern section of the city. It appears likely that Taiping ward encompasses this area. See, *Chongqing shi zhi* 重庆市志 (*Gazetteer of Chongqing*), ed. Sun Tongchuan 孙同川 (Chengdu: Sichuan daxue chubanshe, 1992), 729. Many magistracies provided a “litigants shelter” for people pursuing a lawsuit to help them avoid predatory accommodation services run by “unscrupulous” individuals in close proximity to the yamen. Liu-hung Huang, *A Complete Book Concerning Happiness and Benevolence*, trans. Djang Chu (Tucson: The University of Arizona Press, 1984), 262.

between these allegedly degenerate junior males and “criminal behavior.” Chapter Two examines the conflict between senior and junior family members, and their strategies of employing different types of rhetoric in order to gain tactical advantage in the process of adjudication or mediation. It will also explore how the interests of family seniors, especially older women, faced fundamental tensions with the patriline when the normative family structure broke down. Taken together, these chapters present a highly tense family structure in which desire for property produces generational conflict.

Chapter One: Characterization of Ni

Used in legal rhetoric, *ni* connoted a wide-ranging possibility of behaviors. At its base, *ni* means “to disobey,” “to be contrary,” or “to counter.” Thus, in theory, a junior in a family relationship (son, younger brother, nephew) could be characterized as *ni* for an any number of reasons deemed offensive by a senior family member. In spite of its ambiguity, however, *ni* was not applied indiscriminately to chastise junior men for an infinite array of possible bad behaviors. On the contrary, men categorized as *ni* typically manifested a much narrower range of infractions against their elders. A junior male categorized as *ni* tended to engage in at least one, if not more, of the following activities, which I label as “primary offenses”: gambling and visiting prostitutes, cursing seniors, threats of violence against seniors, or outright violence against seniors. In fact, these behaviors are akin to what we might consider to be “criminal offenses.” That is to say, each of these activities and behaviors are punishable misdemeanors according to the Qing code. Tellingly, aside from gambling, these infractions also reflect transgressions against the body or the social status of the senior. These primary offenses were often accompanied by another range of “secondary offenses” that are more of a referendum on the junior’s personality. These behaviors typically include “being dissolute,” having a bad temper, not engaging in “upright” occupations, and wasting money. These secondary offenses were not criminal offenses per se, but these types of personality flaws threatened the viability of the family as a socio-economic unit. The three figures on pages 25 and 26 show the types of tropes used in the initial complaint of the plaintiff. From these tables we can see that “violence” was formulated an important description of *ni*. This portrayal was often followed up by complaints of junior males “being dissolute” or otherwise exhibiting a bad

temper. Grievances over money (gambling or spending excessively) and theft of property are not far behind. From this we can discern that the *ni* in family litigation exhibited similar behavior that would otherwise be used to describe rebels or bandits.

In this section I will explore the characterization of *ni* as they manifest one or more of these primary offenses. I will also demonstrate that the plaintiff's characterization of *ni* was not only premised on the law, but also on highly emotional grounds as transmitted by senior family members. This phenomenon is also reflected in the plaintiff's litigating strategy: the rhetoric of the initial plaint hinged more closely on the emotional import of the accusation rather than on the law itself. The accused, in turn, defended his actions by appealing to his responsibilities and duties to the family in far less emotional tones. In turn, the magistrate adjudicated cases according to the level of violence done to the patriline, either through physical assault, economic disintegration, or breach of authority.

Gambling

Although gambling was considered to be a "social evil," it persisted due in no small part due to complicit local authorities and yamen employees, and led to numerous instances of violence.²⁶ Gambling could have a debilitating effect on a family in both economic and emotional terms. Its addictive tendencies could ruin a family's financial savings and sever the emotional bonds that predicated normative family relationships. Therefore, because of its deleterious effect on family stability and solvency, the Qing code

²⁶ Bill Rowe, *Hankow: Conflict and Community in a Chinese City, 1796-1895* (Stanford: Stanford University Press, 1989), 195-96. Since both Hankou and Chongqing were river-port trading cities, it is quite likely that Chongqing's situation mirrored Rowe's description of Hankou's gambling scene.

criminalized the activity, and violators faced severe penalties.²⁷ Gambling was a characteristic offense of *ni*. Although in most legal cases when the plaintiff accused the younger male of gambling, the goal was to place the defendant in an unfavorable light. The image of a young male scion of a “good family” wasting the family’s resources was an effective method to discredit the accused: by engaging in this activity, the accused male would be on the wrong side of both the law and family. Whether the accused junior male did engage in gambling or not, the plaintiff often had other motives to prosecute a junior family member. Accusations of gambling were often used as a red herring, or to enhance the emotional import of the case in order to achieve a more favorable reaction from the magistrate. In some instances, however, a junior male’s gambling was deemed serious enough to merit prosecution, and therefore constitute a criminal case. Such is the case of the Xu family. On April 7, 1890, Xu Xingfa, a resident of Chongqing, delivered a plaint to the yamen, begging the county magistrate to take action against his son, Baosan.

I am a faithful and simple man. I married a woman named Huang Shi, who gave birth to our son, Baosan. We raised him and saw him married, and he has already brought us a grandchild. Our daughter-in-law died, so Baosan remarried a virtuous and understanding woman, Yu Shi. Misfortune struck my son: as he got older, his nature changed. He no longer listened to me, and was unable to be restrained. Outside he went whoring and gambling, became dissolute, and spent excessive amounts of money and clothes. I knew that I should pile on warnings so that my son would recognize his errors and repent. From books I that knew how to read, I learned that I could bring him to trial. This disobedient boy knew that his heart was in violation [of principles], yet he continued to gamble excessively, whored, and took rash action. Yesterday, when he returned home, I found that he

²⁷ Tian Tao 田濤 and Zheng Qin 鄭秦, eds., *Daqing lüli* 大清律例 (Beijing: Falü chubanshe, 1999), 531. I’ve followed the translation in *The Great Qing Code*, trans. William C. Jones (Clarendon Press: Oxford, 1994), 354. Both gamblers and those who ran gambling halls faced 80 stokes of the heavy bamboo. Since punishment of this magnitude would kill the accused, it is likely that this sentence was significantly reduced.

took our jewelry, so I've appeared here today. Since this disobedient boy's evil is overflowing, I'm forced to request his arrest and interrogation.²⁸

From this plaint it is evident that Xu Xingfa lays multiple accusations against his son.

Only two of those charges, gambling and theft of property, are criminal offenses. The rest, such as “[becoming] dissolute” and spending excessively, are not criminal offenses, but instead constitute what I have labeled as “secondary offenses.” These secondary offenses represent an emotional referendum on Baosan’s perceived behavior, thereby constituting a “culture of the plaintiff victim.”²⁹ Heavy emotional appeal of a father regarding his son’s abhorrent behavior is typical example on the part of plaintiffs to win a magistrate’s acceptance of the case, and ensure a beneficial outcome. On the other hand, if a plaintiff did not actually intend to prosecute the case to the end, obtaining a magistrate’s sympathetic comments on the plaint could constitute powerful leverage in obtaining a favorable settlement outside of court.³⁰ In any case, this strategy was so common, in fact, that language denigrating junior male members eventually became a trope found in both criminal and civil cases. It therefore became expected for males castigated as *ni* to show evidence of “dissolute behavior,” to go out “whoring and gambling,” to “not listen” to senior members, or to be “unable to be restrained.” There is no doubt that such histrionic language was invariably one-sided, and often initiated either “exaggerations or even false accusations.”³¹ It took a perspicacious magistrate to read between the lines of such emotional appeals.³²

²⁸ BX 6-42-22891.

²⁹ Liang, 48.

³⁰ Philip C.C. Huang, *Civil Justice in China*, 64.

³¹ *Ibid.*

³² Liu-hung Huang, 251. After his retirement from magisterial posts in Shandong and Zhili, Huang wrote, “When people are involved in lawsuits, their craftiness and treachery

Nonetheless, for Xu Xingfa the tactic paid off. Just when Magistrate Zhou authorized an investigation, however, he vacated his post, and Xu's case was left in limbo. In lieu of a formal inquest, Baosan signed a pledge to change his behavior and to give up gambling, which was witnessed by a group of relatives and friends.³³ Yet this attempt at mediation did not last long. Five years later, Xu again filed a complaint against Baosan for gambling and the theft of some household articles. In addition, Xu claimed that Baosan "cursed" him when he tried to prevent Baosan from taking the household objects, thereby adding an additional "primary offense" to Baosan's repertoire of crimes.³⁴ Unluckily for Baosan, the new magistrate again ordered an investigation, and interrogated both father and son.

Xu Baosan testifies: Xu Xingfa is my father. I am 37 *sui*. Ordinarily, I am a merchant. In the 16th year of the Guangxu reign (1890), I stupidly went out and gambled excessively, so my father went to Magistrate Zhou to file a complaint and investigate me. Unexpectedly, last year my business lost money. In the first month of this year (January-February 1895), I borrowed my father's clothes to act as collateral so I could earn some capital for my business. Unexpectedly, my father prevented me from doing this and he wasn't willing [to hand over the clothes]. He even claims that I scolded him! So he came to the yamen to file a complaint against me. The investigation will show that I did not scold or curse my father. I beg the favor of the court.³⁵

In his testimony Baosan sought to portray the incident as a misunderstanding, and cast his actions in a more responsible light. While he admitted to gambling five years prior, he

are difficult to penetrate. The problem is bad enough in disputes over family matters, marriage, or property, but it is worse in cases of homicide, robbery, fugitive slaves and adultery."

³³ BX 6-42-22891.

³⁴ *The Great Qing Code*, trans. William C. Jones, 312. See also, Tian and Zheng, eds., *Daqing lüli*, 471. According to the Qing code, cursing one's parents or grandparents was punished by strangulation.

³⁵ *Ibid.*

attempted to draw a line between that incident and his current duties to make a living as a merchant. The subtext here is that his action was necessary to ensure his family's material prosperity, and thus, an essential requirement in fulfilling his filial obligations. From this testimony we can gather that in response to the senior family member's emotional charge, the accused tends to frame his actions in terms of occupational duties or responsibility to family members. From an emotional standpoint and compared with his father's testimony, Baosan's testimony had much less impact. Moreover, justifying defiance of senior members by appealing to obligations to family responsibilities tended to ring hollow, especially if the junior male directly violated a senior's wishes, as was the case with the Xu family. If the plaintiff also had other family members or friends to act as witnesses or agents—which was often the case—the isolation of the defendant became widely apparent, and further exacerbated his “guilt.” In cases that dealt with gambling, violence, or threats, it was difficult for the accused to find witnesses to back up his version of events. In contrast, cases that dealt with land or property (discussed below), the accused was often able to employ witnesses on his behalf. Faced with his father's emotional testimony and use of an agent, Chen Yuting, Baosan's was isolated and his testimony fell on deaf ears: the magistrate sentenced him to forty lashes of the heavy bamboo.³⁶

³⁶ *BX 6-42-22891*. Interestingly, the magistrate first singled out Baosan's alleged cursing of his father as the most egregious crime; he noted that according to the code, such offenders should be sentenced to strangulation. However, it is unlikely that the magistrate would have thought such a sentence would be appropriate even if Baosan's cursing his father was the central issue.

Threats

The threat of violence by junior members within a family structure presents another common basis for litigation. When categorized as *ni*, they are typically described as “fierce bullies” and “violent.” While there is no specific statute that deals with the threat of violence, a junior male on the receiving end of such a charge found himself in a very unsympathetic position. In fact, although some cases involving threats of violence continued into the testimony stage, most of the junior males could foresee a disastrous conclusion to the litigating process, and preferred to settle the matter among the family rather than risk physical punishment by the magistrate. Therefore, case records of violent threats usually only contain one or two complaints submitted by the plaintiff. Such complaints were also valuable as leverage for out-of-court mediation.

Most cases of violent threats were preceded by confrontations over money, property, or other valuables. Since these altercations were not merely one-time occurrences, it would appear that most of the junior males involved in these types of disputes were unable to sustain themselves economically due to competition or personality flaws. In April of 1884 Zhang Chen Shi filed a complaint against her son, Wenkui, at the yamen for making violent threats.

My husband is dead and my family is poor. As a widow, I have protected my eldest son, Wenkui, and my second son, Wenyuan, and have provided them with education. Because Wenkui obstinately refused to be educated, he engaged in trade for many years, but his business did not prosper. My second son, Wenyuan, learned to be a cotton assistant, and earned a salary for his service. Only Wenkui was unable to be controlled, became dissolute, and repeatedly fomented disaster. After Wenyuan advised him to return, he became more fiendish, and clashed with his superiors. He did not regret his past faults. Recently, he has sought out Wenyuan [to demand money] and grown in fierceness, and has forced Wenyuan to seek out another profession. If there wasn't something to his liking, he acted evilly at home. He wantonly stirred up trouble and is unbearable. When his aunt tried to

soothe the situation, he fiercely insulted her. He was repeatedly scolded with principles [of proper behavior], but did not change. Instead, he dares to carry his evil action even further: he threatened to strike, kill, and burn down the house. My disobedient son is evil and difficult to put up with, so I am compelled to bring a charge against him, have him arrested, and commence an investigation into correct ethics.³⁷

Comparing this plaint with Xu Xingfa's, we find that Zhang Chen Shi utilizes even more emotional language. The question is, what accounts for this plaint's more emotional tone?

I assert that aside from Wenkui's insult of his aunt, this plaint specifies no crime.

Wenkui's insulting his aunt is merely another example of his abusive personality, but the central issue at hand is Wenkui's potentially violent nature, which has harassed his mother and younger brother, Wenyuan. Wenkui's personality threatened the stability of the Zhang family as a whole, and the social status of his mother and aunt. Zhang Chen Shi's long narrative of Wenkui's increasingly disturbing behavior functions as substitute for an actual crime. Thus, her choice of words was strategically chosen to build a narrative of Wenkui's mounting transgressions, which became his "crime(s)." The emotional import of her plaint is also carried by heavy use of adverbs, such as "repeatedly" and "fiercely," which commonly comprised diction related to *ni* cases. These words established a pedigree of bad behavior that plagued the family. Such a strategy could be successful in attracting the magistrate's sympathies: even if no crime was committed according to the letter of the law, magistrates could circumvent this problem by deciding "the case by analogy to a certain statute or statute."³⁸ In addition to the emotional accusations hurled at her son, Zhang Chen Shi also employed Wenkui's insulted aunt as a witness to testify on her behalf. Wenkui was in the unenviable position

³⁷ BX 6-42-22812.

³⁸ Liu-hung Huang, *A Complete Book*, 281.

of facing both the censure of his immediate family and the reprimand of a representative of his patriline. Perhaps not foreseeing a favorable outcome, Wenkui settled with his mother out of court.

My father has been dead for many years. My mother was abandoned³⁹, so I raised Wenyuan and my other brothers without exception. Recently, I have made a fool of myself at the Cotton Trade Association, and demanded money from my brother in order to survive—this is true. But unexpectedly, Wenyuan hid the money. My aunt and my mother lied that I was not filial, and have come to the yamen to press charges against me. Now there has been a judicial inquiry. I shouldn't ignore instruction and warnings. I have already been punished. I have been commanded that afterwards if I should have accounts to settle, I am not permitted to go to Wenyuan to stir up trouble and demand money. I should be satisfied.⁴⁰

Although he has agreed to end his hostilities against his family and his extortion of money from his brother, Wenkui did not accept the entirety of his family's censure. In fact, at the expense of his mother and aunt (who were abandoned/divorced, and "lied"), Wenkui places himself in a position of responsibility to his younger brothers, thereby displaying a typical justification for a junior male's actions. Yet, faced with an emotional plaint submitted by his mother, isolated from other family members, and not even having a witness, Wenkui settled with his family, which was confirmed by the magistrate.

Violent Behavior

Violence against senior family members was a serious crime. The Qing Code stipulated that child who strikes his paternal parents or grandparents is to be beheaded; younger siblings who strike an older brother or sister are sentenced to 90 strokes of the

³⁹ The word in question is *xiatang* 下堂, meaning to be abandoned or divorced by one's husband. It is possible that Wenkui calls attention to this fact in part to cast his mother in a negative light.

⁴⁰ BX 6-42-22812.

heavy bamboo.⁴¹ Unlike in cases concerned with violent threats, cases dealing with physical violence against senior family members had an applicable statute. Therefore, there was little need to build up the emotional import of the narrative to create a “crime” as in cases of mere threats. The audacity of a junior male’s violence was usually shocking enough, but complaints that dealt with violence also tended to establish that a junior male’s behavior had been problematic for a long period of time. Similar to Zhang Chen Shi’s construction of a violent pedigree for her son, Wenkui, by establishing a build-up of troublesome incidents that lead up to an explosion of violence, the plaintiff could “prove” that the actions of a junior male was attributed to the junior’s inborn nature (*xing*), thus absolving the plaintiff from responsibility regarding the incident, and to stave off any culpability for possible future incidents. The following case illustrates how the emotional weight of complaints dealing with threats is replaced a more shocking narrative of problematic behavior that lead to violence. On July 13, 1786, Wan Guoxian submitted a complaint to the yamen:

My parents have given birth to me and three other siblings. Unexpectedly, my father died early, so it was up to me to raise my brother, Guocai, and find a wife for him. But [Guocai’s] normal behavior was cruel and tyrannical. He could not be restrained, despite our many warnings. On the 15th of this month, [Guocai] was in the house making a ruckus, so our mother, Li Shi, scolded him, saying, “how can you lack moral discipline?” [Guocai] then pushed our mother to the ground. I saw what he did, and began to scold him with principle. But he grabbed a kitchen knife, and sought me out to kill me. Fortunately, my second brother, Guoxiang, wrested the knife away, so [Guocai] did not follow through with his murderous scheme. My disobedient brother took up a knife [to harm me]—the law does not allow this! I have come here to plead for his arrest and call

⁴¹ *The Great Qing Code*, trans. William C. Jones, 303-305. See also, Tian and Zheng, eds., *Daqing lili*, 462-464. The law also stipulates different penalty for different degrees of infractions. For instance, children who caused the death of a parent by striking them were sentenced to death by slicing.

for an investigation, so that a fresh breeze of ethical behavior can be restored.⁴²

Guoxian demonstrated that his brother's violent actions arose from his "normal behavior," despite Guoxian's attempts to raise him and settle him in the family with a wife.

Impervious to his older brother's attempts to integrate him into the orthodox family structure, Guoxian effectively absolves himself of any liability for the violent incident. Since Guocai's behavior was characterized in starkly negative terms, it is only natural for him to start a "ruckus," strike his mother, and attack his brother with a knife—in other words he embodies *ni*. Thus, only Guocai can be blamed for the family disorder.

Although, as previously mentioned, the law took a severe stance on instances of violence against elder family members, in reality, how these types of cases were resolved remained ambiguous. This case ends with the magistrate writing, "Prepare the arrest and investigation," but the ultimate fate of Guocai and his family remains unknown. Cases that dealt with what we might today label as "domestic violence," such as this one, invariably contain a single plaint with the magistrate's comments. I have seen no cases with more than one plaint, not to mention cases that contain testimony or a judgment by the magistrate. It remains unclear how either the magistrate or the family determined these sorts of violent disputes, or even which party resolved the conflict. In any circumstance, it is apparent that no charge of low-level and non-fatal violence in the Ba County cases resulted in the death penalty for the accused. In fact, since families depended on all of all its stem members to ensure material well being, it is likely that plaints concerning violence were used to gain leverage in out of court mediation by the family rather than risk losing the economic productivity of a junior male to state-enforced

⁴² BX 6-01-01580.

punishment.⁴³ Tellingly, there is a huge gap between the penalty stipulated by the law and the actual resolution of the crime.

These three legal cases have illustrated some of the most common crimes associated with *ni*. Each of the crimes presented in the complaints are also accompanied by a range of secondary offenses, which, although not criminal in nature, further highlight the delinquency of the accused junior males. The association of these primary crimes with secondary offenses naturalized the depraved character of those categorized as *ni*; thus, it was more than plausible for a junior male accused of a crime, such as gambling, to also exhibit other deviant behavior such as being dissolute, wasting money, not engaging in an “upright” career, etc. The effect of these combined accusations was to establish a history of problematic conduct for junior males, which arose out of their “inner nature.” In addition to absolving other senior family members from responsibility for the alleged incidents, it also created a powerful and emotional narrative, which was used as an offensive strategy to gain a favorable outcome from the magistrate. Whereas the plaintiffs assailed junior members by relying on emotional rhetoric, the accused junior males, in turn, defended themselves by contextualizing their behavior in their capacities as “responsible family members” (even if other members did not understand their actions, as in the case of Baosan and his father). In criminal cases, the emotional complaint submitted by

⁴³ Even in cases in which one family member killed another, the crime was not necessarily reported. In his article, Adrian Davis discusses a case in which the murder of one brother by another was concealed by the mother. Her reluctance to report the murder was attributed to her dependence on her sons to ensure her economic survival: she knew that if her son who had murdered his sibling was executed, it would jeopardize her economic security. See, Adrian Davis, “Fraternity and Fratricide in Late Imperial China,” *The American Historical Review* 105.5 (December 2000): 1630-1640.

senior family members and their use of outside kin as witnesses and guarantors was usually effective in either having the magistrate punish the junior male or forcing him to acquiesce to mediation. The junior male's defense, in contrast, appeared to be ineffective. However, in Chapter Two, we will see that in civil cases, a junior male's defenses could be at least partially successful in spite of being characterized as *ni*. This phenomenon was, in part, due to the different nature of the case itself. Whereas criminal cases sought punishment or censure, civil cases sought restitution of land, money, or other property. There was usually no possibility of material gain in charging a family member with a crime. Moreover, criminal cases in family litigation *had* to be punished because the integrity of the patriline was at stake. The Qing state depended on patriline and lineages to exercise indirect control on the local level; thus harming the patriline would be tantamount to weakening the state. In contrast, all the principles involved in civil cases had potentially legitimate interests regarding disputed property that had to be weighed against each other; moreover, the litigant whose claims conformed with the interests of the patriline were far more likely to be successful than those that threatened its coherence. The exaggerated rhetoric of suits and countersuits often concealed true reasons for litigation or made duplicitous claims about the other party or property in order to obtain a favorable outcome. Yet, it was the very fact that all the parties involved in civil suits had competing (and perhaps legitimate) claims to property that made them so contentious. In the next section we will see how the plaintiffs in disputes over family property utilized the rhetoric associated with *ni* to "criminalize" junior members. These contentious civil suits over family property between senior and junior members revealed fault lines within the patriline and exposed anxieties over economic security.

Figure 1: Guangxu-era complaints

Case number	Violence/Threats	Gambling/Theft	Being dissolute/Bad temper	Not engaged in “upright work”	Wasting money
6.42.22773	•		•		
6.42.22709		•	•	•	•
6.42.22740	•		•	•	•
6.42.22754	•	•	•	•	
6.42.22766	•	•	•	•	
6.42.22768	•				
6.42.22782	•		•		•
6.42.22789		•	•		•
6.42.22838	•				
6.42.22867	•				•
6.42.22812	•		•	•	
6.42.22818	•				
6.42.22838	•		•		
6.42.22894	•	•	•		
6.42.22891		•	•		•
6.42.22882	•	•	•		
6.42.22892			•		•
6.42.22878	•	•	•		

Figure 2: Jiaqing-era complaints

Case number	Violence/Threats	Gambling/Theft	Being dissolute/Bad temper	Not engaged in "upright work"	Wasting money
6.04.03953	•		•		•
6.04.03954	•		•	•	

Figure 3: Qianlong-era complaints

Case number	Violence/Threats	Gambling/Theft	Being dissolute/Bad temper	Not engaged in "upright work"	Wasting money
6.01.01551	•		•		
6.01.01561	•		•		
6.01.01580	•		•		
6.01.01578	•		•		•

Chapter Two: *Ni* and Civil Suits

This part explores the intersection of *ni* with civil lawsuits. Provocatively, the rhetoric utilized by the plaintiff was often quite similar to those in criminal cases. Although the cases were actually disputes over the proper allocation of land, money, or other property, the plaintiffs utilized emotional narratives and accused junior males of various forms of “deviant” behavior. This strategy was intended to win the sympathy of the magistrate and “criminalize” the junior male. In other words, the plaintiff’s narrative turned the junior male into *ni*. The junior males, castigated as *ni*, in turn, defended themselves by associating their behavior with orthodox family responsibilities and roles, just as in the criminal cases. The success of these various strategies often depended on whether or not it was aligned with the larger interests of the patriline. Since the Qing state supported the patriline in order to help it consolidate its control on the local level and maintain its legitimacy, county magistrates were loath to entertain litigants whose cases threatened family stability. The civil suits between junior and senior family members were also illuminating in different ways. In addition to formulating an effective litigating strategy, the emotional complaints of senior members also reveal deep-seated anxieties concerning old age, loss of control, and fears over the stability of their livelihoods. These concerns moreover manifest themselves in interfamily tensions, which result in cleavages along agnatic, affinal, or conjugal lines, placing seniors’ property in jeopardy. These themes will be explored in two sections. The first deals with the problem of adopted sons, whose interests often clashed with their “parents.” As newly integrated individuals to a different family structure, they had the potential to bully their “parents” out of their property, and therefore, their livelihood. The second part examines the fractures within

the larger family structure itself, and how it manifests along lines of the uterine and agnatic family members, thereby posing a threat to the integrity of the patriline.

Abusive Adopted Sons

A couple without a male heir faced a serious economic and ritual threat: not only would an old-age caregiver be unavailable, but there would also be no male heir to lead the funeral and burial rituals. In exchange for continuing the family line of their adopted parents, a “son” would enjoy full inheritance rights.⁴⁴ Introducing an heir to a new household was a necessary but risky venture because there was no way to be sure that the relationship would work, or that conflicts over property with the agnatic family would not emerge.⁴⁵ The danger of conflict increased when families adopted adult males to be their heir.⁴⁶ As an adult, these men had already formed relationships independent of their newly adopted family. They could maintain connections to their biological families (especially with their biological fathers), or already have responsibilities and emotional ties to their own wives and children that preempted their *de jure* role as adopted son. Such conflict of loyalties and difference of opinion regarding familial roles could easily

⁴⁴ Paul Chao, *Chinese Kinship* (London: Kegan Paul International, 1983), 141.

⁴⁵ Myron L. Cohen, *Kinship, Contract, Community, and State: Anthropological Perspectives on China* (Stanford: Stanford University Press, 2005), 117. Strict genealogical rules governed the process of adoption. The intention was to prevent disputes over property among the agnatic family, but such rules weren't always successful in preventing conflict.

⁴⁶ However, even adopting extremely young male heirs did not always ensure a successful and happy relationship between adopted son and father. In BX 6-01-01542, Zou Wenming adopted his younger brother's three-year-old son, and renamed him Zou Longxiang. In June 1782, when Zou Longxiang was 28 *sui* and had gotten married, Zou Wenming charged him with being an unfilial child in part for “listening” to his biological father, Zou Wenjun.

produce squabbling. In very difficult situations, an adopted son could bully his “parents” out of their property and means of livelihood. This was especially vexing for elderly parents. Thus, interfamilial litigation often took the form of parents versus their adopted son and heir. Robbed of their means of subsistence and betrayed by a man who was intended to ensure their well-being, the future must have looked very grim indeed. In this regard, the adopted “*ni*” were not only “disobedient,” but also something more akin to “rebellious bandits.” If we understand the late imperial Chinese family as a socio-economic unit with a cosmological foundation rooted in the model of a miniature state and society, then “bandits” is a good metaphor.⁴⁷ Facing such a catastrophe, the plaintiffs who sued their adopted sons over appropriated property routinely relied on a strongly emotional narrative to gain the sympathies of the magistrate, just as in criminal cases. The emotional accounts revealed deep-seated anxieties regarding old age, economic survival, and vulnerability and isolation of senior family members. Moreover, the narratives provided by the plaintiffs in plaints and testimonies present such an atmosphere of victimhood that the junior males themselves become “criminalized.” To examine this phenomenon, I will closely examine two case studies.

In April of 1888 a widow, Chen Yan Shi, was faced with the prospect of losing control over her farmland to her stepson, Han Tianxi, and his gang of cronies who forcefully squatted on her land. Although a previous magistrate had already ruled in favor of Chen Yan Shi’s ownership, Han Tianxi refused to leave.⁴⁸ Chen Yan Shi testified:

⁴⁷ William T. Rowe, “Ancestral Rites and Political Authority in Late Imperial China: Chen Hongmou in Jiangxi,” *Modern China* 24.4 (Oct. 1998): 381.

⁴⁸ Sadly, the record of her first plaint and judgment no longer exist.

I was originally married to Han Guangfu. Since he lacked an heir, he adopted a child [Han Tianxi] from the Cheng family of Bishan County to be his heir. Afterwards, because my husband got sick and died, his adopted son became unfilial. Then, I married Chen Guangzhu of Jinyi, and became his wife. Recently, he became sick and died. [I possessed] 200 taels to purchase farmland in Jieshichang, and made a contract to collect rent and grain every year [from tenants] for my sustenance. I met disaster at the hands of my former husband's son, Han Tianxi, who allowed Peng Yuchuan to squat on the land and cut down all the trees, which gives me difficulty in obtaining my daily sustenance. Last year, [Han] submitted a case [to acquire the farmland], but having no money of his own, he obtained 100 taels from the tenants. Afterwards, he also obtained 20 taels with interest for capital. Now, he has again instigated Peng Yuchuan et al. to stir up trouble, bully, and squat on the land. Also, he has given free reign to his wife to be violent and perverse. Special blame goes to Hu Lizhi et al. who have fabricated multiple charges against Liu Chengzhang as well as the tenants, all just to encumber me!⁴⁹

The above testimony reveals some clues why Chen Yan Shi so stringently defends her claim to the land and highlights the temerity of her stepson—the *ni*—Han Tianxi, and his gang. We can determine that Chen Yan Shi's principle means of economic support was the rent and grain collected from the tenants on her Jieshichang farmland.⁵⁰ Additionally, the profits from lumber produced on the property would also be an important source of income.⁵¹ Her remarriage to Chen Guangzhu after the death of her first husband is representative of non-elite, commoner women who could not afford to be “chaste widows” after the death of a husband. Refusing to remarry and taking part in the Qing dynasty cult of chastity required a woman to have independent economic means to

⁴⁹ BX 6-42-22867.

⁵⁰ *Ba xianzhi* 巴縣志 (Gazetteer of Ba County). 12 volumes. Jiaqing edition. Chinese Academic Digital Associative Library Collection. Jieshichang is located approximately 60 *li* away from the seat of Ba County. Chen Yan Shi's late husband, Chen Guangzhu, lived in Jinyi, the county directly south of Ba County.

⁵¹ Zelin, 506-507. Zelin reports that there was a “large market” for any type of lumber products, such as firewood or paper, in Ba County. The illegal felling of trees and bamboo for profit or vandalism against “unjust” landlords was a leading cause of litigation.

support herself, or at least have an extended family wealthy enough to take her in.⁵² It would appear that, out of economic necessity, Chen Yan Shi was forced to reenter a bond of marriage in order to ensure her survival. Ironically, after the death of Chen, her second husband, her windfall of 200 taels to purchase farmland might have provided her with a way to make a living without resorting to remarriage; yet, because she did remarry after the death of her first husband, she could not be considered a “chaste widow.” Chen Yan Shi’s remarriage to Chen Guangzhu therefore compromised her adherence to ideal modes of orthodox female morality, which provided Han Tianxi with a line of attack.⁵³ She moreover faced the daunting prospect of having been married into two separate families and lacked the “anchor” in terms of a biological heir that would continue to tie her to the a family and provide her with material support and social standing after her husband(s)’ demise. Seen from the perspective of the family structure, Chen Yan Shi was rootless. Without her natal family to rely on, two dead husbands, a compromised moral standing, and no biological heir left Chen Yan Shi vulnerable to the designs of her stepson.

Han Tianxi’s allegedly unfilial behavior, manifested after the death of her first husband, not only sheds light on the tenuousness of Chen Yan Shi’s isolation, but it also reveals her anxieties over security in her old age. It has been suggested that the emotive

⁵² Sommer, 184-187. Sommer writes that “it was not unusual to learn from case records that a widow remarried quickly in order to raise enough money to liquidate the debts of her first husband, or even to finance his burial.”

⁵³ Jonathan K. Ocko, “Hierarchy and Harmony: Family Conflict as Seen in Ch’ing Legal Cases,” *Orthodoxy in Late Imperial China*. ed. Kwang-Ching Liu (Berkeley: University of California Press, 1990), 216. Ocko writes, “Although the mother commanded filial respect as a parent, she was as a female vulnerable to her son’s challenges to her authority. Significantly, it was a vulnerability inversely proportional to a mother’s moral and legal standing. The chaste biological mother was not nearly as likely to be confronted, at least by her own sons, as were mothers who had remarried, stepmothers, and adoptive mothers.”

bond between a mother and son, as part of the “uterine family” (*niangniangmu*), in which a mother could depend on absolute loyalty and love to provide her with care, was a key aspect of family survival strategy.⁵⁴ Thus, sons would take care of their parents in their old age out of filial devotion. Although having a dutiful son caring for his parents in their dotage might reflect an ideal of orthodox familial relations more than reality, a mother who produced a biological heir did have a significantly better ability to exploit her status and connections with different family members to ensure material stability for her later years.⁵⁵ In place of a biological anchor to tie her in with a larger family structure, the case of Chen Yan Shi exemplifies the danger of when adoptions went wrong. Bernhardt’s assessment aptly sums up Chen Yan Shi’s situation:

With adult men, genuine affection for the adoptive parents could not be taken for granted, and a couple in need of an heir understandably looked long and hard at the characters of the candidates, desiring one who had their best interests at heart and was not just after their property. This need for an affectionate relationship between the parties made the selection of an heir a particularly contentious issue.⁵⁶

It would appear that Han Tianxi was an unfortunate choice for Chen Yan Shi and her deceased husband. The apparent lack of emotive bonds between Chen Yan Shi and Han Tianxi seriously undermined her old age economic security, especially in the aftermath of her second husband’s death. Unfortunately, we do not know how old Han Tianxi was at

⁵⁴ Ping-chen Hsiung, “Constructed Emotions: The Bond Between Mothers and Sons in Late Imperial China,” *Late Imperial China* 15.1 (1994): 87.

⁵⁵ Arthur P. Wolf and Chieh-shan Huang, *Marriage and Adoption in China, 1845-1945* (Stanford: Stanford University Press, 1980), 67. Also see, Gregory A. Ruf, *Cadres and Kin: Making a Socialist Village in West China, 1921-1991* (Stanford: Stanford University Press, 1998), 35. Ruf writes that although women had “few formal rights to property,” they could exercise strong influence in the family through their offspring.

⁵⁶ Kathryn Bernhardt, *Women and Property in China, 960-1949* (Stanford: Stanford University Press, 1999), 51. Bernhardt also writes that since adopted heirs were required to be only one generation removed from the “father,” an adopted son could have been quite old, and with a family of their own.

the time of his adoption by Han Guangfu. Yet, because the case record shows that he had a wife and two male children at the time of this lawsuit, it is likely that he was at least a young man.⁵⁷ Han Tianxi might have felt that it was more of a priority to take care of his own biological family's needs than those of his adopted mother. Moreover, his actions might be explained by his desire to attend to his own old-age necessities. Whatever his true feelings towards his adoptive parents and his motives might have been, in his testimony, Han Tianxi characterized himself as a filial scion of the Han family.

Since I was young, I have been a son of the Han family. Afterwards, because father [Han Guangfu] got sick and died, my mother [Chen Yan Shi] remarried and entered the Chen family of Jinyi. Before long, stepfather also died. With the son of my former wife, my cousin, Xing Yuanhe, and I went to Jinyi to make a name for ourselves and to sign a contract stating that we would take care of our mother, [Chen] Yan Shi, and bring her back home with the 200 taels. This Jieshichang farmland was originally my duty to buy. Now Liu Chengzhang⁵⁸ is stirring up trouble, [Chen Yan Shi] is forcing me off the land, so Hu Zhifa et al. was afraid that there would be trouble and become involved in a lawsuit...⁵⁹

Han Tianxi not only described himself as a “son of the Han family,” but by signing a contract with his cousin to provide care for Chen Yan Shi, he also presented himself as a responsible son to his adoptive mother. His role as “son” is again highlighted when he asserted that the farmland “was [his] duty to buy.” Provocatively, he referred to Chen Yan Shi’s deceased second husband, Chen Guangzhu, as his “stepfather.” This choice of words appears to be a deliberate strategy on Han’s part: while characterizing himself a

⁵⁷ Another complaint was filed by Chen Yan Shi on May 11, 1888, complaining that Han Tianxi’s wife, Jiang Shi, and his two male children, Han Zhangsheng and Han Er, were squatting on her land, and cutting down its trees. It would appear that the two sons would have to be old enough to manage the vigorous task of felling trees. *BX 6-42-22867*.

⁵⁸ Chen Yan Shi originally accused Han Tianxi of squatting on her land and felling the trees. He sold the lumber to Liu Chengzhang, but the transaction was stopped by Chen Yan Shi. She repaid his money for the lumber and got him to testify on her behalf.

⁵⁹ *BX 6-42-22867*.

son of the Han family and a dutiful son to Chen Yan Shi, his acknowledgement of his “stepfather” implies that he has rights to the 200 taels of silver bequeathed to Chen Yan Shi. Of course, all this was ostensibly done for the maintenance of Chen Yan Shi in her old age. In fact, the Qing Code mandated that children had to supply their parents and paternal grandparents with suitable nourishment; failure to do so would result in 100 strokes of the heavy bamboo and exile of three thousand *li* (in theory, at least).⁶⁰ Failure to act as he had, then, might have cast aspersion on his filial assertions. More pertinently, Han Tianxi intended that his actions were to be understood in his capacity as *jiazhang* (family head) and perhaps *dangjia* (family manager).⁶¹ As the *jiazhang*, he was the public face of the family, but if he also considered himself to be the *dangjia*, then he would in charge of its economic affairs. Embodying these roles, he presented his actions as falling under his legitimate purview. It should be obvious, however, that his claim to the property was dubious: although Chen Yan Shi was his adopted mother, the land granted to her was not bestowed by Han’s adopted father, but it was given by a man from a different patriline. Despite the legal status of ownership, Han nonetheless positioned himself as a son who owed particular duties to ensure smooth family management as a good *dangjia* should. This pattern of defense is remarkably similar to that put forward by junior males involved in criminal cases. Both framed their actions and motivations by

⁶⁰ Yun-sheng Hsueh 薛允升. 1905. *Tu-li ts'un-i 讀例存疑* (Doubts remaining after perusing the statutes). Taiwan reissue, ed. Huang Tsing-chia. Volume 4. (Taipei: Chinese Research Materials and Research Aids Service Center, 1970). 1015.

⁶¹ Myron L. Cohen *House United, House Divided: The Chinese Family in Taiwan* (New York: Columbia University Press, 1976), 60. See also, Ruf, 34. As the eldest surviving male, Han Tianxi is most definitely the *jiazhang*. Yet, the *dangjia* did not necessarily have to be a man. It is likely that Chen Yan Shi considered that she embodied this role, especially since the 200 taels was bestowed upon her by her second husband of which Han Tianxi has no relation.

appealing to their responsibilities for the family, even if senior members did not interpret their activities in the same way. Yet, as in the criminal cases, Han Tianxi's justification for his actions rang hollow. Far from being a filial son to his adopted mother, his claims of responsibility to the family are not able to mask his overt appropriation of orthodox ideals for individual gain. In a very real way Chen Yan Shi and her property became a commodity that could be manipulated through appeals to normative Confucian roles.

The particular pattern of Chen Yan Shi's litigation strongly suggests deep-seated anxieties regarding her material well-being in her old age. The majority of people who filed complaints at the yamen did not, in fact, see the case through to the end with the magistrate's ruling. On the contrary, the decision to file a complaint was often simply a strategy for complainants to put pressure on an opponent: after the initial complaint was filed, the dispute was often mediated out of court.⁶² Chen Yan Shi, on the other hand, chose to bear the increasing court costs and litigate her case to the end, right up until the magistrate's judgment. The tenacity of her assertions regarding legitimacy of her claim over the farmland, her unwavering commitment to prosecute Han, and her avoidance of mediation (or the failure of it) suggests how important this land was to her economic survival in her old age.⁶³ This phenomenon is even more telling when taken in the context of her isolation as a remarried ("unchaste") widow and the unreliability of outside family

⁶² Philip C.C. Huang, *Civil Justice*, 191. According to a sample of legal cases collected by Huang, only 35 percent of the litigants continued through multiple levels of court adjudication after the initial complaint was filed at the yamen (as well as bear the requisite costs of adjudication).

⁶³ Phillip C.C. Huang, "Court Mediation in China, Past and Present." *Modern China* 32.3 (July 2006): 278. Huang writes that even after a complaint was filed, courts generally deferred to "intensified societal mediation" to end disputes. Court action would proceed only if such attempts at mediation did not succeed.

assistance.⁶⁴ This point is underscored by her financial dependence on her own tenant, Chen Taichang⁶⁵, who loaned her 60 taels in order to meet the court fees. This donation, however, might not have been a spontaneous act of kindness: two other tenants on the Jieshichang land claim that Chen Yan Shi did not get along with her neighbor (i.e. Chen Taichang). His loan of 60 taels, therefore, might have caused the friction between them. Nevertheless, that her tenant, and not a relative, assisted Chen Yan Shi in her financial obligations suggests that her family (both marital and natal) were either unwilling or unable to lend a hand. Without a supportive family structure, the desire to vindicate her claim and secure economic resources to see her into old age becomes all the more understandable. Luckily for Chen Yan Shi, the magistrate ruled in her favor:

Having been brought to trial, the deed of Chen Yan Shi has been examined and approved. After remarrying into the Chen family household, [Chen Yan Shi] acquired 200 taels to purchase [land]. It is not the property of the Han family. The adopted son of her former husband, Han Tianxi, should not forcefully squat on the land, nor fell its trees, nor be perversely unfilial. He will be flogged and placed in the cangue, after which, he will be released into the custody of a guarantor. [...] If Han Tianxi hereafter fells trees, Chen Zhangfa⁶⁶ will have him subpoenaed to appear in court where he will be stringently investigated. The case is closed. This is the judgment.⁶⁷

The judgment is a clear victory for Chen Yan Shi, or, perhaps more specifically, a victory for the integrity of the Chen patriline. Han Tianxi's rhetorical strategy of positioning himself as a filial "son of the Han family" in his testimony backfired: in recognizing Han Tianxi as member of the Han clan, the magistrate asserted that the land was "not the property of the Han family," and no member of the Han family had a

⁶⁴ See note 51.

⁶⁵ No relation to her second husband, Chen Guangzhu.

⁶⁶ Chen Yan Shi's nephew.

⁶⁷ BX 6-42-22867.

legitimate claim to the Chen property, as represented by Chen Yan Shi. Moreover, not only was Chen Yan Shi's deed to the land upheld, but the magistrate also agreed that Han Tianxi exhibited extreme unfiliality towards his adoptive mother, and so condemned him to a beating and a stint in the cangue to punish his shameful behavior.⁶⁸ Thus, in addition to having her civil claim upheld by the yamen, Chen Yan Shi's emotional testimony of abuse and misappropriation by her adopted son effectively "criminalized" Han Tianxi.⁶⁹ Despite the official ruling, however, Chen Yan Shi's farmland remained at the center of an interfamily dispute. While Han Tianxi spent one month in the cangue, Chen Yan Shi was compelled to file another plaint accusing his wife, Jiang Shi, and his two sons, Han Zhangsheng and Han Er, with forcibility occupying her land and felling its trees. However, the case ends with Han Tianxi's release into the custody of an uncle, Han Yungui, and the promise that he will rent another tract of land, so it is unknown if Chen Yan Shi followed up with more action on her plaint against Han Tianxi's dependents. What is significant is that the official ruling ultimately failed to safeguard Chen Yan Shi's claim: she and her farmland—as well as her economic security in her old age—remained vulnerable to *ni*. Although Han Tianxi was punished, and he nominally accepted the magistrates' ruling, it did not prevent members of the Han family from

⁶⁸ Klaus Mühlhahn, *Criminal Justice in China* (Cambridge: Harvard University Press, 2009), 34. Weighing thirty-two and a half pounds, the cangue (*jia*) was a collar constructed of wooden blocks, which restricted the wearer's mobility prevented the wearer from touching his face or head. A placard was often placed on the cangue to designate the wearer's crime. Also, see Liu-hung Huang, *A Complete Book*, 274. Huang writes that the goal of punishment by the cangue was to humiliate the wearer, and thereby discourage similar behavior in the magistrate's jurisdiction.

⁶⁹ That Chen Yan Shi was able defeat Han Tianxi in a lawsuit recalls Melissa Macauley's assertion that widows could use courts in order to contest power, particularly that of the male lineage. See, Melissa Macauley, *Social Power and Legal Culture: Litigation Masters in Late Imperial China* (Stanford: Stanford University Press, 1998), 147.

harassing a vulnerable, elderly woman.⁷⁰ Perhaps Jiang Shi and Han's children hoped that through attrition, Chen Yan Shi would gradually lose the will, and, more importantly, the funds for the court fees to defy them. Nonetheless, the larger family ties that Han Tianxi enjoyed with his wife and two sons (not to mention extended family and friends) gave him a comparative advantage in terms of a reliable family alliance over his isolated, adoptive mother, who, despite her court victory still remained vulnerable to the whims of predatory *ni*. In short, Han Tianxi's immediate family thus became an alliance bound by marriage and blood, effectively isolating Chen Yan Shi and outmaneuvering the county authorities.

In the Chen Yan Shi case, the magistrate unequivocally sides with the plaintiff and punishes Han Tianxi for severe breaches of propriety. Although Chen Yan Shi was able to achieve success in part due to her emotional narrative, it was not necessarily a strategy that would guarantee success in every situation. Even other widows who submitted complaints containing strong overtones of victimhood that took every effort to "criminalize" junior males would not always find a magistrate that would unilaterally sympathize with their claim. Often magistrates issued a ruling that drew a middle line between the claims of the plaintiff and defendant, and strongly urged the aggrieved parties to move beyond petty squabbles and return to a stable status quo. What accounts for the discrepancy in the rulings that call for punishment of the junior male (*ni*) and those that appeared to mediate between the claims and counter-claims of the plaintiff and

⁷⁰ Philip C.C. Huang, *Civil Justice in China*, 16. In order to close a civil suit, litigants had to pledge to accept the magistrate's ruling. Also, see Reed, *Talons and Teeth*, 110-116. Reed's investigation into internal workings of the yamen and its staff have shown that after the failure of a civil suit, a tenacious plaintiff could obtain a positive ruling from a new magistrate.

defendant? I argue that judgments that urged a return to the status quo can be explained in two ways. On one hand, I agree with Mark Allee's assertion that magistrates supported cultural norms that maintained family integrity in order to bolster the legitimacy of the state.⁷¹ That is not to say, however, that magistrates were consciously concerned with the moral and social underpinnings of the empire; instead, by supporting orthodox familial relationships (and by lessening the frequency of family litigation itself), they could more easily obtain commendation from their superiors in the bureaucracy, and maintain the cooperation of elite families in the governing project. On the other hand, the magistrate might perceive that the actual problem did not lie between parent and heir, but among scheming relatives that sought to benefit materially from interfamily conflict. Ironically, while urging familial reconciliation between seniors and juniors, if a magistrate believed that a peripheral family member was intentionally stirring up trouble, that individual could be punished as a criminal. I further venture to say that the magistrate's own personality and opinions regarding family relationships also played an important role. Finally, and perhaps most significantly, Chen Yan Shi won her suit because she was able to demonstrate that her needs matched those of the Chen patriline. The magistrate saw Han Tianxi as a usurper of Chen property. To grant him ownership over the land would endanger the economic security of the Chen family as represented by Chen Yan Shi.

⁷¹ Mark A. Allee, "Code, Culture, Custom: Foundations of Civil Case Verdicts in a Nineteenth-Century County Court," In *Civil Law in Qing and Republican China*, ed. Philip C. C. Huang and Kathryn Bernhardt (Stanford: Stanford University Press, 1994), 122-141. 134. Allee writes, "Cultural norms were important. The values of filial piety, family and lineage continuity and solidarity, and the clarification of relationships within the (extended) family were significant for the maintenance of the legitimacy of the imperial Chinese state itself."

Thus, by upholding Chen Yan Shi's claim the magistrate was protecting the Chen patriline.

County magistrates might have been forgiven for being unenthusiastic when it came to family litigation. Characterized as "minor matters" in Qing dynasty legal discourse and considered to be an official nuisance, family disputes not only suggested that there was something fundamentally amiss about societal morals, but in fact such cases occupied much of a magistrate's time.⁷² When an already overworked magistrate such as the ones in Ba County encountered tedious cases of family litigation, it must have been perceived as the result of a moral decline in family structure and its ability to mediate problems internally.⁷³ Dangerously, a family dispute between two members could easily escalate to a wider conflict among the extended family; if multiple, conflicting family members came to the yamen, the magistrate could have a difficult time in discerning the "truth."⁷⁴ For the magistrate, the way to read between the lines of a plaint lay in his ability to inspect the litigant's "moral character and intent, as well as the circumstantial context of the act."⁷⁵ In addition, when it came to civil suits, the magistrate's preconceived conceptions of "stock villains" played a powerful role in informing his judgment.

⁷² Philip C.C. Huang, *Civil Justice in China*, 10-11. Huang writes that "minor matters" (in contrast to "weighty matters" or "criminal matters") were viewed as societal, not state, concerns; and, such civil lawsuits were deemed to be "trivial annoyances" for the legal system. However, commoners often did take advantage of the court system to defend their interests.

⁷³ Reed, 29. He records that Ba County was a notoriously "hard assignment for magistrates." This post had a high frequency of magistrates failing to see out their three-year tenure.

⁷⁴ See note 30.

⁷⁵ Reed, *xvii*.

The following case exemplifies this phenomenon. On October 3, 1889, Dong Lu Shi submitted a plaint to the yamen citing a dispute over land and money with her adopted son, Xueti. Her petition is filled with typical tropes that were designed to criminalize junior males.

My husband and children are dead. I have been left with 20 *dan* worth of grain-producing land. In 1885, my relatives arranged for the 3rd son of my husband's brother, Xueti, to be the adopted heir. But he was unscrupulous, smoked opium, and was unable to be restrained. He visited prostitutes, was dissolute, gambled, and stopped at nothing. The result was that I had to put up my land for sale. With the remaining 200 taels, I rented land from Xu Huiting to be my *yangshan* land.⁷⁶ How could the disobedient son be so perverse as to pile on evil, cancel the tenancy of the farmland, demand silver, and be violent towards me? Many times he has stirred up great calamity, and howlingly cut me off from my breakfast and supper. He has forced me to go to my clan to explain the matter. The disobedient son became even more violent and evil, but he is on friendly terms with them, and he has blocked me from returning home.⁷⁷

Dong Lu Shi's plaint presents a very familiar emotional narrative and stock tropes. In this manner she attempted to criminalize her *ni*—Xueti—despite the fact that, at heart, this was a civil suit. As in the case of Chen Yan Shi, her plaint is filled with anxiety concerning the ability to support herself in her old age because her adopted heir, Dong Xueti, cut her off from the land that she depended on for survival. Despite his alleged bad habits, Xueti was a member of the agnatic family, and posed a serious obstacle for Dong Lu Shi's ability to have her problems mediated by the Dong patriline, with whom Xueti was on "friendly terms." The influence of the Dong patriline was further evidenced by the individual who instigated the countersuit: Dong Mingrui, Dong Lu Shi's brother-in-law. His counter-plaint alleged that the cause of the rift between mother

⁷⁶ This type of land was for the purpose of ensuring the material security of seniors in their old age. It could be purchased, but more often, it was reserved from a family's original holdings after the household division.

⁷⁷ BX 6-42-22882.

and adopted son was due to the schemes of Dong Lu Shi's biological brother, Lu Chunfa, who had "framed" Xueti of wrongdoing in order to obtain his share of money after a land sale. Thus, what began as a mother and son conflict then erupted into a much wider conflict that pitted the agnatic and natal families against each other. Presented with these two competing family complaints, the magistrate had to make a decision regarding the more "truthful" claim.

After interrogating Dong Lu Shi and Dong Xueti, I have come to the conclusion that they formulate a mother-son relationship, and have lived together for many years. Without exception there has hitherto been no gossip [regarding them]. Now Lu Shi has suddenly stated that Xueti is not filial, smokes opium, and desires to divide the household. Among which was land rented from Xu Huiting and 270 taels. Off the books, the remaining 200 taels have been discussed by the clan, 120 of which go to Lu Shi's maintenance, and the other 80 are for Xueti to pass his days. This has already been established by contract. The money is to be managed internally by the clan by trustworthy individuals. Lu Chunfa is Lu Shi's brother. He took the initiative, and in violation of the contract, he attempted to take control of the money, but the [Dong] clan would not allow this. So, Lu Shi accused [Xueti]. Now, looking at the former affection between mother and son, and how they used to live together, it is obvious that Chunfa salivated after the money, and it was from this reason that he instigated his plan. The land is still cultivated by Huiting. Every year the rent should be managed by the [Dong] clan and handed over to Lu Shi who is not to give it to Chunfa. Mother and son have cooked food together for a long time. Therefore, after Lu Shi is buried, the remaining property is to be handed over to Xueti. Chunfa should not sow discord, and I order him arrested.⁷⁸

Since the magistrate does not cite a specific law or statute in his judgment, it is unclear exactly what informed his decision. Nonetheless, it is obvious that the magistrate in this case unequivocally supported Dong Xueti and the patriline. The Dong clan's case was probably helped a good deal by their ability to have multiple sympathetic witnesses testify; in contrast, Dong Lu Shi had only her brother, Chunfa, to support her case.

⁷⁸ BX 6-42-22882.

Secondly, Dong Lu Shi's rhetoric contained in her initial plaint may have backfired. Through her emotional narrative of victimhood, she intended to win the sympathy of the magistrate; yet, the actions that she alleged, such as smoking opium, visiting prostitutes, being dissolute, and gambling, etc., formed an all too-common theme. The magistrate had probably seen very similar rhetoric and accusations in previous plaints, and was aware of its strategic value as a trope. Moreover, that Xueti suddenly engaged in this type of behavior after living together with Dong Lu Shi for many years was of dubious veracity. Finally, the magistrate's verdict may have been influenced by normative cultural values.⁷⁹ Since the Qing state often went out of its way to support family patriline in order to bolster its own legitimacy, the Dong patriline took precedence over Dong Lu Shi's natal family, thereby reflecting the "Confucianization of the law."⁸⁰

The same phenomenon is present in cases that pit different members of the same patriline against each other; in such situations the magistrate's judgment often urged the family to reunify through compromise instead of choosing to uphold one claim of the patriline against the other. In a case from 1890 the magistrate happened to bring an end to an extremely long suit over the sale of some land between a grandmother, represented by her son, Chaohe, and the *ni*, her grandson, Xianguang. In the end, the magistrate urged unity and compromise.

[Zeng Chaohe] and Zeng Xianguang are uncle and nephew: they shouldn't be taking this issue so seriously! This [behavior] does not strengthen moral ties between people or uphold the way of peace among the clan. [...] For the time being, Zeng Xianguang and Zeng Chaohe will be on a basis on friendship. Chaohe should consider helping Zeng Xianguang out

⁷⁹ Allee, "Code, Culture, Custom," 129. Allee writes that some judgments "were crafted in such a way as to further some socially or culturally desirable end," which could support "the interests of the state."

⁸⁰ Macauley, 97.

by giving him 70 taels for a [financial] foundation. Afterwards, if he squanders the money, he is not allowed to return to Chaohe to stir up trouble and exact more money from him. I order that Zeng Chaohe hand over the money to await its collection by Zeng Xianguang.⁸¹

Both this case and the Dong Lu Shi case reach a conclusion in which the integrity of the patriline prevailed. Tellingly, the magistrate not only absolved the junior male (*ni*) from punishment, but also found a different family member to blame for stirring up trouble. In Dong Lu Shi's case, her brother, Lu Chunfa, was accused and punished by the magistrate, but in the Zeng case, a cousin, Zeng Yinshan was held culpable for sowing discord between mother and grandson. In the magistrate's eyes, these outside family members produced a destabilizing effect on clan harmony, much as in the same way the pettifoggers (*songgun*) are held accountable for a glut of civil cases.⁸² Yet, unlike Lu Chunfa, Zeng Yinshan was not punished. What accounts for this discrepancy? I contend that because Zeng Yinshan was still a member of the patriline, the magistrate, in his interest to protect the Zeng patriline, did not single Yinshan out for punishment. Since Lu Chunfa was interfering with the property of the Dong patriline, the magistrate had fewer qualms about arresting him. Although in both cases it appears that the maintenance of the patriline was the concern of the magistrate, it is difficult attribute what influenced his judgment to any one trend.

In this section, the plaintiffs each characterized the junior male as a person who violently overturned the moral order of the family, and cut off the senior members from

⁸¹ BX 6-42-22892.

⁸² In addition to yamen clerks and runners, pettifoggers were formulated into "stock villains" that thrived on sowing discord and promoting lawsuits. See Macauley, *Social Power and Legal Culture*, particularly Chapter 6, and Melissa A. Macauley, "Civil and Uncivil Disputes in Southeast Coastal China, 1723-1820," In *Civil Law in Qing and Republican China*, ed. Philip C. C. Huang and Kathryn Bernhardt (Stanford: Stanford University Press, 1994), 85-121.

their means of sustenance, which formulated classic patterns of *ni* behavior. Since many of the plaintiffs were already advanced in years, the disruption of their livelihood combined with the uncertainty regarding their material well-being gave rise to deep-seated anxieties about their old age and loss of control over their lives. To draw attention to their plight and gain the compassion of the county magistrate, both Chen Yan Shi and Dong Lu Shi presented highly emotional narratives and accused their adopted heirs of various offenses in the hopes of “criminalizing” them. Yet, one woman won her case, and the other lost. What accounts for this discrepancy? I contend that the much of the explanation again lies with the patriline. Chen Yan Shi’s accusations against Han Tianxi paid off, in part, because she was the one protecting the Chen patriline. Han Tianxi’s defense of his actions, framed as his filial responsibilities, was immaterial: a Han had no rights to Chen land. In contrast, in the magistrate’s eyes, Dong Lu Shi tried to subvert the patriline that she was attached to by marriage. Despite her claims of abuse at the hands of her adopted son, the magistrate turned a deaf ear to her pleas. Instead, the magistrate singled an outsider as the prime culprit: just as Han Tianxi tried to usurp Chen land, so did Lu Chunfa attempt to drive a wedge between Dong Lu Shi and Xueti in order to get his hands on Dong money. Compared with the criminal cases in the previous section, the heart of these civil cases rested on property. Thus, when a case was criminal in nature, and when the litigants could gain no material benefit, senior family members often successfully prosecuted junior males. Simply speaking, each of the criminal cases exposed a dangerous situation for the long-term stability of the family. In contrast, when commodities such as land or money could be won or lost, magistrates took a much harder look at the litigants, especially when the economic interests of the patriline were at stake.

In both the criminal cases and civil suits, the magistrates protected the family as a cooperate unit, both from the whims of degenerate *ni* and the dangers of property dispersion. The protection offered to the patriline came at the expense of the economic and social security of senior family members, especially widows.

Family rifts and alliances

The cases of Dong Lu Shi and the Zeng clan are also illustrative of a wider phenomenon concerning the emergence of rifts and alliances of family members along patrilineal, conjugal, or affinal lines. It is to these interfamily alliances that we now turn in two other court cases. As in the situation of Chen Yan Shi, the complainants argued over property and capital after the death of a family member. It is in fact the death of a family member that exposed and reordered these alliances—hierarchical alliances that were contested between the agnatic and affinal family members. Yet, the fact that in many cases both the plaintiff and defendant were members of the patriline thereby added a larger degree of difficulty to the process of adjudication or mediation. Both sides in civil disputes utilized pious language in order to position themselves as the rightful beneficiaries or celebrants of filial piety (or sometimes both), thereby becoming a struggle of competing filial claims. The pejorative *ni* also figured in the strategy of claiming filial devotion; moreover, it can be utilized by both the plaintiff and the defendant to cast aspersion on the other party in rival claims. Because the origin of the disputes centered around property or capital—essentially zero-sum material entities—the rivalry between these opposing sides again highlights litigants' concerns with maintaining control over their lives during their later years or in disability. In addition,

because both the plaintiff and defendant were members of the same patriline, the county magistrate faced a potential difficulty in deciding which party had the “rightful” claim.

The following case presents a suit in which a stepson indirectly challenges his patriline by labeling his younger, half-brother as *ni*. Over the course of his legal battle over money, a shift can be discerned regarding which side of the family he championed in order to increase his chances of obtaining a favorable ruling. As the plaintiff transferred his ostensible devotion from his stepfather to his dead mother, distinct alliances and rifts begin to emerge. In the late summer of 1884, a blind fortune-teller named Wang Yuchun, age 32 *sui*, submitted two complaints within a month against his younger half-brother, Wang San (also referred to as Wang Bicai), for not sharing money that Wang Yuchun considered to be his due. In initial complaint, Wang Yuchun emphasized his capacity as a responsible son to his stepfather as well as a provider for all his family members, and hence, a good scion of the Wang patriline. By calling attention to his filiality, he uses the “classic *ni* defense” as a tool to gain the empathy of the magistrate, even though he was never directly accused of being *ni*.

In 1860 my brother, Erxi, my mother, and I were abandoned [by our father]; our mother then remarried Wang Xingfa, a charcoal peddler. In 1862 I went blind, and my mother gave birth to my brother, Wang San. So, I had no choice but to go to a charitable institution to learn fortune-telling. After my studies were completed, I set out to seek my livelihood. Every month I gave my stepfather 1,000 cash for the household expenses to ensure the lives of the family. In 1871 my mother died, and my father did not save up much money. At that time my father was old, weak, and lacked energy, so he advised us to use some money to start a small business. In the successive years I handed over 50,000 cash to my father to buy charcoal. In this way my family enjoyed a period of stability. Unexpectedly, Wang San’s heart changed. He incited mischief by saying my father was telling lies, and turned me out of the house to live outside, but I acknowledge that afterward he divided the family property evenly. Last year, Erxi died suddenly. Wang San then got even worse, and bullied more than 400 taels out of the family wealth. He did not give up one

fraction, nor did he lend any out, and uses the power of the clan and our father to support him...⁸³

In addition to emphasizing his role as a productive member of the patriline, Wang Yuchun also invoked his difficult family situation—his biological father’s abandonment, his blindness, and the deaths of his mother and brother—to emphasize his perseverance in earning a living with fortune-telling and helping his sickly stepfather with his charcoal business and to increase the “pity factor” of his plaint. Presenting himself in this sympathetic light, he then underscored the injustice and further tragedy of family betrayal by stating that his younger half-brother, Wan San, was withholding his share of the family money. In Wang Yuchun’s conceptualization, it is Wang San who is *ni*, the pernicious element undermining the proper familial relationship. As a blind fortune-teller, whose services were not always welcome⁸⁴, and a charcoal dealer, Wang Yuchun is almost certainly at the lower end of the socio-economic ladder in Ba County; and, unless he was a member of a guild, his only support structure was his family.⁸⁵ Despite his need for money, it is unclear on what legal grounds (if any) he is appealing his claim to the “family wealth”; moreover, as he mentioned in his testimony, the family property had already been divided fairly. The key component of Wang Yuchun’s plaint is the inversion of proper hierarchy, in which Wang San violated his role as the younger brother by abusing Wang Yuchun, thereby manifesting his status as *ni*. In his informative article, Adrian Davis explains that although the relationship between brothers was one of the “most celebrated,” in fact, this relationship was one of the most fragile. In addition to

⁸³ *BX* 6-42-22818.

⁸⁴ Hanchao Lu, *Street Criers: A Cultural History of Chinese Beggars* (Stanford: Stanford University Press, 2005), 15.

⁸⁵ Reed, 28. As Ba County developed as a thriving port during the latter half of the 19th century, it acquired a huge population of underclass individuals.

facing direct competition from each brother during the household division process, the “hierarchical and equal elements” between brothers could easily come into conflict. That is to say, each brother was of equal status when it came to the household property, but hierarchal when it came to interpersonal relationships within the family. Thus, older brothers could use their hierarchical advantage “to obtain personal advantage” or become angry with younger brothers for perceived lack of filial sentiment.⁸⁶ As the older brother, it would appear that Yuchun either assumed that his younger half-brother owed him a certain amount of deference, or simply used his social position to snatch material advantage out of Wang San’s hands. Of course, the two possibilities need not be mutually exclusive. While Yuchun could castigate his younger brother as an unfilial *ni*, he had to be more prudent when it came to his stepfather. Thus, concomitant with his position as a responsible son, Wang Yuchun was careful not to directly implicate his stepfather, Wang Xingfa, in the deeds of Wang San.⁸⁷ Instead, by quietly suggesting that Wang Xingfa was more or less complicit in the unjust practices of Wang San, Wang Yuchun was better able to demonstrate the injustice wrought on him by his surviving family, and contrast himself as a dutiful son.

By charging Wang San and quietly criticizing his stepfather, we can begin to discern an interfamily rivalry between the patriline (represented by Wang San) and the

⁸⁶ Davis, 1630-1632. For understanding the economic tensions between brothers see Cohen, *House United, House Divided*, 73.

⁸⁷ Tian Tao 田濤 and Zheng Qin 鄭秦, eds., *Daqing lüli 大清律例* (Beijing: Falü chubanshe, 1999), 486. I have followed the translation in William C. Jones, et al., trans., *The Great Qing Code* (Oxford: Clarendon Press, 1994), 322. According to article 337 of the Qing code, any child who charges his parents or paternal grandparents with a crime—even if true—will be beaten 100 times with the heavy bamboo and sent into penal servitude for 3 years. If the accusation is found to be false, however, the accuser will be sentenced to strangulation. Whatever Wang Yuchun’s true feelings towards his stepfather and his level of complicity with Wang San, he wisely avoided charging his stepfather.

uterine family (represented by Wang Yuchun). The death of Erxi, Wang Yuchun's other brother, marks the decline of influence in the uterine side of the family: without his mother and Erxi, blind Yuchun became more vulnerable to the demands of Wang San, Wang Xingfa's biological son. Although Yuchun had equal inheritance rights, this legal protection could not, of course, preclude material perks contingent on the whims of personal family sentiment. Put simply, with his mother and (fully) biological brother dead, Wang Yuchun no longer had any allies left within the family. Despite their demise, his championing of the uterine family, however, was made even more explicit in his testimony three months later (November-December 1884).

I was born in 1860. My brother, Erxi, and I, along with our mother were abandoned; afterwards, we took on the name of our stepfather, Wang Xingfa. In 1869 I became sick and went blind. After that [my mother] gave birth to my 3rd brother, Wang San. I went to a charitable institution to study fortune-telling. In due course I set out into the world, and earnestly amassed money to take back home. Unexpectedly, my mother got sick and died. My savings for the purpose of interring the body amounted to 5,000 strings of cash, which I handed over. My stepfather, along with my brother Wang San, remained at home, doing business in coal. Up till now, they have collected more than 400 taels of silver, but did not give even a tiny bit. Last year (1883), my biological brother, Erxi, also passed away. I tried to get support from my relatives [in this matter], but they were harsh and unreasonable. So, I cannot help but file this lawsuit today. I demand that Wang San help me out with money every year to the tune of 5,000 cash to wind up this case.⁸⁸

The emphasis of Wang Yuchun's testimony differs markedly from his initial plaint. From being a responsible son to all his family members, including his stepfather Wang Xingfa, he has now become a son whose filial devotion is directed primarily towards his mother. The act of paying for the burial with his limited funds positions Wang Yuchun as filial son, while his portrayal of Wang San and his stepfather who "remained at home, doing

⁸⁸ BX 6-42-22818.

business in coal” and collecting 400 taels of silver, make them out to be individuals lacking sufficient propriety. Moreover, how Wang Yuchun portrayed himself, Wang San, and his stepfather mirror the trajectory of his litigation. The language utilized in the initial plaint emphasized Wang San being *ni*, while he depicted himself as a dutiful son to both his mother and stepfather. It is likely that this plaint was part of a larger strategy to bring pressure on Wang San to accede to his demands; therefore, when it failed to produce the anticipated results, Wang Yuchun took aim at both Wang San and his stepfather, and portrayed himself as a filial son to his mother.

Faced with two complaints condemning him as a *ni*, it was Wang San’s turn to respond. In contrast to Wang Yuchun’s depiction of himself as a filial son to his uterine family, Wang San in his testimony portrayed himself as a son working to support the agnatic family:

This Wang Yuchun is my elder brother. Following her abandonment, our mother came to be registered under the name of our father, Wang Xingfa. Our father raised us and sent [Yuchun] to study fortune-telling. Afterwards, our mother got sick and died. Yuchun went to live separately, while at home, I exerted myself to make a living. I provide for my father. Yuchun has falsely alleged that I have accumulated more than 400 taels, and so has brought me to the yamen, and through his lies, has filed a charge against me. Here, he has commanded me to help him out every year to the tune of 5,000 cash. I will comply with the command in order to wrap up the case. That’s it.⁸⁹

In Wang San’s articulation, it is Wang Yuchun who became the unfilial child. Though he did not refer to Wang Yuchun as *ni*, Wang San’s statement on Yuchun’s choice to live separately from their father implicitly casts aspersion on Yuchun’s pious veneer. In contrast, through statements such as “I exerted myself to make a living,” and, “I provide for my father,” Wang San highlighted his role as a responsible son who supports the

⁸⁹ BX 6-42-22818.

patriline. Moreover, unlike Yuchun, Wang San and his father live together, coming closer to the family ideal of all members living under one roof. It is obvious, then, that Wang San and his father are far closer economically and socially. Unsurprisingly, the testimony of Wang Xingfa, the stepfather, also echoed Wang San's portrayal of Wang Yuchun as son who is lacking in filial sentiment:

During the Xianfeng reign, I married Wang Yang Shi [mother of Wang Yuchun and Wang San]. Before, she had given birth to two sons; the elder's name is Yuchun, and the second one's name is Erxi, both of whom I raised. Afterwards, she gave birth to Bicai [Wang San]. Since Yuchun was blind, I sent him to study fortune-telling. In 1872 my wife got sick and died. Yuchun went to live separately. It was hard for me to obtain clothes and food. I went to [Yuchun] for help, but not only did he not give [money], but he has also told lies! He slanders Bicai and me, saying that we have accumulated a few hundred taels. Now he has accused my son Wang Bicai.⁹⁰

Just as Yuchun castigated his half-brother for his lack of deference, Wang Xingfa harshly criticized Yuchun for much the same reason. Moreover, Wang Xingfa's testimony is strongly suggestive that a harmonious family structure is necessary to ensure his survival in his old age. Whatever his true economic condition, he strategically evoked a difficult situation (dead wife, difficulty in obtaining food) to justify drawing on the material resources of both sons, who, according to the Qing code, had a legal obligation to provide.⁹¹ He also echoes Wang San's observation that Yuchun lived apart from the family: such a choice of lifestyle implied Yuchun's disengagement with the family itself, a choice that was anathema to the ideal of the Confucian family structure.⁹² Without

⁹⁰ BX 6-42-22818.

⁹¹ See note 58.

⁹² Philip C.C. Huang, *Civil Justice in China*, 25. Huang writes that this type of family structure was practiced by the societal elites, and emulated by the lower classes. In the case of the Wang family, however, Wang Yuchun's decision to live apart might merely reflect the needs of his career as a fortune-teller. At the same time, it also provides Wang

Yuchun's participation in the family structure, he, in effect, jeopardized the family's ability to survive—especially for the elderly Wang Xingfa. Wang Yuchun, then, doubly betrayed his filial duty to ensure his father's material and nutritional needs by not only refusing him money and living separately, but also by “telling lies” about Wang Xingfa and Wang San and their possession of a large sum of money. Moreover, this case demonstrates that litigants' use of *ni* as an offensive strategy was highly volatile: Wang Yuchun accused his brother of being *ni*, but was subsequently accused of being *ni* by his father. The multiple familial roles Wang Yuchun exercised (older brother and son) allowed him to simultaneously use, and be vulnerable to, this category.

Family rifts and alliances also afforded individuals the opportunity utilizing the derogatory qualities of *ni* to obtain personal gain. Thus, accusing family members of engaging in “*ni* behavior” could also be used to hide the actual purpose of pursuing litigation: to gain control over family property. In another case that demonstrates the fault lines among family members, the utilization of *ni* became an offensive strategy, and one that masked the true motivations for instigating a legal case. In the late winter of 1890, Liu Yifa accused his nephew of being *ni*, and in so doing, he opened up a wider family dispute:

I raised my biological nephew, Liu Shaozhou. Out of righteousness, I divided up a little bit of property for his use. He took advantage of it, smoked opium, became dissolute, and gambled. I repeatedly admonished him, but he was not repentant. Instead, he decided to get revenge. On the 22nd of last month, my wife went to Hu Xingshun's home for a banquet where [Liu Shaozhou's] wife, Zhou Shi, met up with her. [My wife] implored her to calm down, but [Zhou Shi] had the temerity to raise her hands against my wife, and knocked her to the ground. Luckily, Xingshun rescued her and took her back home. I am wise enough to rely on

San and Wang Xingfa with a line of attack to assail Wang Yuchun's commitment to filial precepts.

principle, but my nephew is fierce and perverse. He shows no respect for elders. He gave his wife, Zhou Shi, free reign. This scorpion is squatting in my home; I have used principle to try to get him to leave, but he won't go. He provokes quarrels and has little regard for his own life. My family and neighbors are helpless to do anything. Since this misfortune will soon become unfathomable, I am forced to request his arrest.⁹³

Liu Yifa's typically emotional plaint draws attention to the debased nature and behavior of his nephew and his wife. The good intentions of Liu Yifa (raising his nephew, giving him a part of the family property) contrasts with Liu Shaozhou's alleged activities (gambling, smoking opium), and also position himself as a person who is trying to conform to orthodox family principles. That is to say, since his nephew's father is dead, it is up to Liu Yifa to raise him to manhood, as any good family man should. Described by Yifa, Liu Shaozhou's actions are at once criminal activities defined by the Qing code, and are again representative of a common trope used to accuse sons of dissolute behavior.⁹⁴ Provocatively, Liu Yifa did not charge Liu Shaozhou's wife with the serious crime of striking the wife of her husband's uncle; instead, he claimed that Liu Shaozhou and his wife were squatting in his home and refused to leave. In this case, the categorization of Liu Shaozhou as *ni* almost eclipsed that which motivated Liu Yifa to instigate the plaint. Even more tellingly, it was not Liu Shaozhou who countered his uncle's accusation. Instead, Liu Shaozhou's mother, Liu Xiong Shi, filed a counter-plaint accusing Liu Yifa of plotting to dominate all the family property and force her out of the home after the death of her husband, the brother of Liu Yifa. In short, the initial plaint accusing Liu Shaozhou of being *ni* was, in fact, a dispute over the division of family

⁹³ BX 6-42-22894.

⁹⁴ Tian Tao 田濤 and Zheng Qin 鄭秦, eds., *Daqing lili* 大清律例 (Beijing: Falü chubanshe, 1999), 531. Again, I have followed the translation in Jones, et al., trans., *The Great Qing Code*, 354.

property brought about by internal family rifts.⁹⁵ The testimony also bears out the fact that this case not only had less to do with “rebellious” nephews than the division of property, but it also symbolized a showdown between the interests of the patriline (represented by Liu Yifa) and the conjugal and uterine family (represented by Liu Xiong Shi). The testimony of Liu Yifa and Liu Xiong Shi, instead, made claims and counter-claims regarding the fairness and clarity of the property division; the property dispute now eclipsed the initial complaint of Liu Shaozhou, his wife, and their behavior. In fact, Liu Shaozhou and his wife, Zhou Shi, testified only to support the correctness of Liu Xiong Shi’s testimony.⁹⁶ Moreover, because this case was, at heart, a property dispute, the witnesses who oversaw the division by lot five years prior at the marketplace, were present at the court hearing to give testimony as well.⁹⁷ The magistrate’s ruling gave neither Liu Xiong Shi nor Liu Yifa a definitive victory. The magistrate ruled that due to the testimony of the witnesses, Liu Xiong Shi could not appeal the division of the property, but neither could Liu Yifa use his authority as the eldest son in an extended family to control all aspects of the household affairs.⁹⁸ Magistrates were typically reluctant to get involved in disputes concerning the division of family property, and

⁹⁵ David Wakefield, *Fenjie: Household Division and Inheritance in Qing and Republican China* (Honolulu: University of Hawai’i Press, 1998), 34. Wakefield writes that the most common reasons for a family’s decision to divide property was internal dissension or economic stress.

⁹⁶ BX 6-42-22894. Liu Shaozhou and Liu Shi jointly testify: This Liu Xiong Shi is my mother. We are husband and wife. Our testimony and mother’s testimony are identical.

⁹⁷ Shuzo Shiga, “Family Property and the Law of Inheritance in Traditional China,” *Chinese Family Law and Social Change in Historical and Comparative Perspective*. ed. David C. Buxbaum (Seattle: University of Washington Press, 1978), 116-117. Shiga writes that during the division of family property, a third party was called in to oversee the division (often accomplished by drawing lots), a document was signed, and copies given to all the relevant parties.

⁹⁸ BX 6-42-22894.

instead preferred that it be settled among the lineage or family.⁹⁹ Liu Yifa's initial complaint accusing Liu Shaozhou of being *ni* was not only intended as a strategy to call the magistrate's attention to the "seriousness" of the dispute, and have a better chance at obtaining a favorable verdict, just as importantly, accusing Liu Shaozhou of being *ni* was an attempt to bypass the clout of Liu Xiong Shi who was living in the Liu household as a chaste widow. As mentioned previously, it was difficult to challenge the authority of chaste widows¹⁰⁰; Liu Yifa might have hoped that calling attention to the bad behavior of Liu Shaozhou could even embarrass him and his mother into submission. At any rate, accusing Liu Shaozhou of being *ni* appears to be a deliberate strategy by Liu Yifa to ensure the best possible outcome for his interests.

In both the Wang and Liu cases, the *ni* category was a useful device with which to exploit internal family tensions and alliances in order to gain material benefit—either for oneself or for a particular family division. Charging family members with typical "*ni* behavior" was also a dangerous strategy because it allowed for other family members to charge the initial plaintiff as being unfilial (as in the case of Wang Yuchun) or as conniving (as was alleged by Liu Xiong Shi). Litigation such as this likely caused family rifts to become even deeper: in addition to the anxiety over ensuring material comfort in old age or disability, the family now faced the reality that they could not necessarily trust members from a different conjugal or uterine branch. This phenomenon could have devastating effects for long-term family stability. Magistrates must have preferred that problems among the patriline were to be resolved internally. Yet, when mediation failed, the magistrate found it necessary to initiate a compromise, lest the patriline be destroyed

⁹⁹ Wakefield, 113.

¹⁰⁰ See note 42.

by internal conflict. Moreover, we find that women involved in disputes with the patriline found security through their biological sons. Luckily for Liu Xiong Shi, her son, Liu Shaozhou, anchored her to the Liu patriline; thus, as long as he remained alive, her position within the family could not be so easily challenged, as was the case of Dong Lu Shi.

Conclusion

In civil litigation the *ni* category reflects a number of phenomena regarding the tense relationship of senior and junior family members. The highly emotional qualities of seniors' complaints served as a strategy that "criminalized" junior males in order to win the sympathies of magistrates who would apparently be "shocked" at the breach of social propriety. Such narratives, constructed out of concern for the fate of property that ensured seniors' material prosperity, reveals intense anxieties about their old age and loss of status at the hands of junior members.

The nature and content of the complaints further indicates that many seniors during the late Qing often had potentially weak ties to property. The fact that a junior male could usurp seniors' property not only put seniors' material well-being at risk, but also undermined normative hierarchies premised on age. Advanced age and its superior ritual status predicated on both Confucian norms and the tenets of the Qing Code did not necessarily offer protection against property-hungry juniors. Thus, subversion of normative family roles was truly a fearful prospect for seniors who depended on familial ties to maintain their livelihoods. Whereas the family was ideally intended to provide support to all members, it could also become an abusive organization vis-à-vis weaker members, taking advantage of their tenuous social ties for material profit.

To counter this insidious threat, the *ni* label functioned an offensive weapon in the arsenal of senior family members who used the court as a last resort to maintain their claim to property and keep it safe from predatory junior males. This tool implicitly champions the ideals of normative family hierarchy: it is from the maintenance of this hierarchy that family seniors can guarantee a modicum of security in their later years. It

moreover implicitly champions those sections of the Qing Code that preserve the ritual status of family seniors and the obligations of junior members to provide seniors with care and nourishment. Simply put, *ni* were diametrically opposed to orthodox family roles and hierarchies. Although there is no article or substatute in the Qing Code that deals with *ni* in the context of civil family disputes, the *ni* label with help from other criminalized behavior associated with deviant junior males (gambling, violence, etc.) was constructed through the legal process and carried a certain amount of legal weight. A junior family member finding himself on the wrong side of the *ni* label could face severe censure from the county yamen.

The efficacy of the *ni* label, however, met its match when the interests of family seniors' conflicted with those of the patriline and its coherence as a corporate unit. As previously mentioned, the Qing Code safeguarded the status of seniors against the whims of juniors, yet this protection could be subverted by the county magistrate's attempt to protect the stability and economic resources of the patriline. Therefore, despite having articles and substatutes that protected family seniors' status and property claims, county magistrates emasculated those sections of the code by championing the economic coherence of the patriline. Simply speaking, the reflex to protect the patriline trumped individual needs in terms of social status, economic resources, and perhaps even physical security. Moreover, as long as a junior male's claims were in accord with the patriline, the typical "*ni* defense" of junior males who justified their behavior by placing their actions in the context of family responsibilities—including duties towards family seniors— may have made it easier for magistrates to rule in their favor. Seen from this perspective, if the magistrate were to safeguard the interests of the patriline, he would

also be protecting family seniors, despite seniors' pleas to the contrary. At any rate, as future heirs, junior males were a proxy for the patriline itself: although their actions might not be in the best interest of senior family members, punishing the junior males would be to harm the patriline itself. With its interest in maintaining the patriline to enhance its own prestige and power and ingrain its control more firmly within the fabric of local society, the agents of the Qing state in the person of the county magistrate protected the patriline at the expense of senior family members, and thereby gave victory to the wayward sons.

Bibliography

- Allee, Mark A. "Code, Culture, Custom: Foundations of Civil Case Verdicts in a Nineteenth-Century County Court," In *Civil Law in Qing and Republican China*, ed. Philip C. C. Huang and Kathryn Bernhardt. Stanford: Stanford University Press, 1994. 122-141.
- Ba Xian*. Ba County Archive, Sichuan Provincial Archives, Chengdu. Each case is identified by its serial number.
- Ba xianzhi* 巴縣志 (Gazetteer of Ba County). 12 volumes. Jiaqing edition. Chinese Academic Digital Associative Library Collection.
- Ba xianzhi* 巴縣志 (Gazetteer of Ba County). 6 volumes. R.O.C. edition. Taipei: Taiwan xueshengshuju, 1967.
- Bernhardt, Kathryn. *Women and Property in China, 960-1949*. Stanford: Stanford University Press, 1999.
- Chao, Paul. *Chinese Kinship*. London: Kegan Paul International, 1983.
- Chuan, Han-sheng and Richard A. Kraus, *Mid-Ch'ing Rice Markets and Trade: An Essay in Price History*. Cambridge: Harvard University Press.
- Cohen, Myron L. *House United, House Divided: The Chinese Family in Taiwan*. New York: Columbia University Press, 1976.
- . *Kinship, Contract, Community, and State*. Stanford: Stanford University Press, 2005.
- Dai, Yanhui 炎輝戴, ed., *Tanglü tonglun* 唐律通論 *General Theory of the Tang Code*. Taipei: Zhengzhong shuju yinxing, 1964.

- Davis, Adrian. "Fraternity and Fratricide in Late Imperial China," *The American Historical Review* 105.5 (December 2000): 1630-1640.
- The Great Qing Code*. Translated by William C. Jones, et al. Oxford: Clarendon Press, 1994.
- Hsiung, Ping-chen. "Constructed Emotions: The Bond Between Mothers and Sons in Late Imperial China." *Late Imperial China* 15.1 (1994): 87-117.
- Huang, Liu-hung. *A Complete Book Concerning Happiness and Benevolence*. Trans. Djang Chu. Tucson: The University of Arizona Press, 1984.
- Huang, Philip C.C. *Civil Justice in China: Representation and Practice in China*. Stanford: Stanford University Press, 1996.
- . "Court Mediation in China, Past and Present." *Modern China* 32.3 (July 2006): 275-314.
- Hsueh, Yun-sheng 薛允升. 1905. Tu-li ts'un-i 讀例存疑 (Doubts remaining after perusing the statutes). Taiwan reissue, ed. Huang Tsing-chia. 5 vols. Taipei: Chinese Research Materials and Research Aids Service Center, 1970.
- Karasawa, Yasuhiko, Bradley W. Reed, and Matthew H. Sommer, "Qing County Archives in Sichuan: An Update from the Field," *Late Imperial China* 26.2 (December 2005): 114-128.
- Liang, Linxia. *Delivering Justice in Qing China: Civil Trials in the Magistrate's Court*. Oxford: Oxford University Press, 2007.
- Lu, Hanchao. *Street Criers: A Cultural History of Chinese Beggars*. Stanford: Stanford University Press, 2005.

- Macauley, Melissa A. "Civil and Uncivil Disputes in Southeast Coastal China, 1723-1820." In *Civil Law in Qing and Republican China*. ed. Kathryn Bernhardt and Philip C.C. Huang. Stanford: Stanford University Press, 1994.
- , *Social Power and Legal Culture*. Stanford: Stanford University Press, 1998.
- Mühlhahn, Klaus. *Criminal Justice in China*. Cambridge: Harvard University Press, 2009.
- Ng, Chin-keong. *Trade and Society: The Amoy Network*. Singapore: Singapore University Press, 1983.
- Ocko, Jonathan K. "Hierarchy and Harmony: Family Conflict as Seen in Ch'ing Legal Cases." *Orthodoxy in Late Imperial China*. ed. Kwang-Ching Liu. Berkeley: University of California Press, 1990.
- Reed, Bradley W. *Talons and Teeth: County Clerks and Runners in the Qing Dynasty*. Stanford: Stanford University Press, 2000.
- Rowe, William T. "Ancestral Rites and Political Authority in Late Imperial China: Chen Hongmou in Jiangxi," *Modern China* 24.4 (Oct. 1998): 378-407.
- , *Hankow: Conflict and Community in a Chinese City, 1796-1895*. Stanford: Stanford University Press, 1989.
- Ruf, Gregory A. *Cadres and Kin: Making a Socialist Village in West China, 1921-1991*. Stanford: Stanford University Press, 1998.
- Shangshu*. Translated by James Legge. Oxford: Oxford University Press, 1966.
- Shiga, Shuzo. "Family Property and the Law of Inheritance in Traditional China." *Chinese Family Law and Social Change in Historical and Comparative*

- Perspective*. ed. David C. Buxbaum. Seattle: University of Washington Press, 1978.
- Sommer, Matthew H. *Sex, Law, and Society in Late Imperial China*. Stanford: Stanford University Press, 2000.
- The T'ang Code*. Translated by Wallace Johnson. Princeton: Princeton University Press, 1979.
- Tian Tao 田濤 and Zheng Qin 鄭秦, eds. *Daqing lüli 大清律例*. Beijing: Falü chubanshe, 1999.
- Wakefield, David. *Fenjia: Household Division and Inheritance in Qing and Republican China*. Honolulu: University of Hawai'i Press, 1998.
- Wei Yingtao 隈瀛濤. *Jindai Chongqing chengshishi 近代重庆城市史 (A History of Modern Chongqing)*. Chengdu: Sichuan daxue chubanshe, 1991.
- White, Theodore H. and Annalee Jacoby. *Thunder Out of China*. New York: Da Capro Press, Inc., 1946.
- Wolf, Arthur P. and Chieh-shan Huang. *Marriage and Adoption in China, 1845-1945*. Stanford: Stanford University Press, 1980.
- Zelin, Madeline. "The Rights of Tenants in Mid-Qing Sichuan: A Study of Land Related Lawsuits in the Ba Xian Archive," *The Journal of Asian Studies* 45.3 (May 1986): 499-526.

