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Los Angeles

Complicated Matters:  
Commercial Dispute Resolution  
in Qing Chongqing from 1750 to 1911

A dissertation submitted in  
partial satisfaction of the  
requirements for the degree Doctor of Philosophy  
in History

by

Maura Dominique Dykstra

2014

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## ABSTRACT OF THE DISSERTATION

Complicated Matters:  
Commercial Dispute Resolution  
in Qing Chongqing from 1750 to 1911

by

Maura Dominique Dykstra  
Doctor of Philosophy in History  
University of California, Los Angeles, 2014  
Professor R. Bin Wong, Chair

This dissertation offers a historical analysis of commercial dispute resolution practices in the Chinese port city of Chongqing from the middle of the eighteenth century until the Republican Revolution of 1911. It reconstructs the dispute mediation behaviors of more than three thousand individuals in over four thousand legal documents from more than three hundred legal cases preserved in the Qing Ba County magistrate archives. One of the central propositions of this work is that the adjudication of commercial disputes in the Qing magistrate's *yamen* cannot be understood without an appreciation for the fractal and complicated instruments of authority and communication used to govern the jurisdiction. For this reason, additional administrative documents from the archives and an array of other printed primary sources were used to reconstruct the history of the city's administration as a background to understanding changing mediation patterns over time.

The first result of this approach is a revision of the historical administrative profile of the city itself: this dissertation argues that, in the middle of the eighteenth century, Chongqing and its environs were still only in the process of being incorporated into the Qing administration. This allows the researcher to document the implementation of two critical Qing institutions – the collective responsibility system of administrative intermediaries and the licensed brokerage system of economic mediation – in the city and to evaluate how these institutions played a role in the administration's efforts to establish a legal

order in the market of the city. The historical reconstruction of the implementation of these systems and their impact on eighteenth-century patterns of dispute mediation in the first three chapters of this dissertation allows for a new perspective on the role of administrative and economic systems of responsibility in governing the late imperial Chinese city and defining obligations in the courts of the Qing Empire.

The growth of institutions of administrative and economic responsibility at the local level in the eighteenth century is juxtaposed, in the fourth and fifth chapters, against several local institutions that arose in Chongqing over the course of the nineteenth century. The reconstruction of the administrative transformation that led up to the creation of these institutions provides grounds for a new argument about how the parameters and constraints of eighteenth-century state-building had implications for nineteenth-century approaches to administration and governance. The conclusion of this historical survey of Chongqing's nineteenth century is that, although the era has been widely associated with dynastic crisis and administrative decline, the institutions that emerged over the course of the era offered new and dynamic solutions to the problem of how to administer the city's market.

The final three chapters of the dissertation show how the historical trends discussed in the first five chapters played out in the magistrate's court by presenting a focused analysis of a subset of 107 commercial cases. Court behaviors are considered from the perspective of the magistrate, the litigant, and the administrative and economic intermediaries who participated in dispute resolution. This exploration demonstrates, first, that the world of imperial justice combined both legal and administrative forms of authority for the resolution of disputes whose accusations fell beyond the boundaries of explicit imperial sanctions (as the majority of commercial cases did). It then explains why, in order to adjudicate these cases, magistrates were required to depend on processes of mediation and negotiation that occurred outside of the courtroom in order to resolve disputes. It illustrates how this system allowed the local officials of the empire to adjudicate commercial disputes in a way that permitted a wide range of flexibility about the creation and content of commercial agreements.

The dissertation further documents how non-court processes of agreement and dispute mediation became more closely and predictably tied to court mediation efforts over the period under study, and how this led to a crisis of authority in the late nineteenth century. The eighth and final chapter explains how this crisis – which emerged from the explicit policy of legal ambiguity adopted for the handling of commercial disputes – was addressed in the course of several late nineteenth- and early twentieth-century reforms, which altered the legal and political framework of collaboration and communication between the state and its administrative intermediaries.

The dissertation concludes with the argument that the early twentieth-century reforms discussed in the last chapter are more than instances of legal and institutional borrowing from western nations (as they have been most commonly represented in earlier scholarship). It supports the recent conclusions of other scholars, who have argued that these reforms are the key to understanding the creation of the modern Chinese state, by documenting precisely how and why the institutional innovations of this era were responsible of the *nationalization* of justice. This finding suggests that China's early twentieth-century reforms and should be considered the culmination of imperial institutional history, and that – for this reason – the history of the modern Chinese cannot be considered independently of its imperial legacy.

The dissertation of Maura Dominique Dykstra is approved.

Richard von Glahn

Jack Chen

R. Bin Wong, Committee Chair

University of California, Los Angeles

2014

This work is dedicated to

Frank Garosi

*... for inviting me to play the game.*



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## INTRODUCTION: WHY COMPLICATED MATTERS

Why is law necessary? What is the relationship between law and other norms? What is the difference between them? Where does law come from? If law is made by humans, which humans, and with what qualifications, and how do they come by the proper authority to create law? Can someone with this authority create law according to personal whim? Or are there certain procedures that must be followed, or objectives that must be pursued? If so, what are those procedures and objectives? Who decides them?

Chang Weijen, “Justice and Law in the Chinese Tradition”<sup>1</sup>

This dissertation summarizes the results of a systematic analysis of commercial dispute resolution practices in the Chinese port city of Chongqing from 1770 to 1911 to offer a new perspective on the legal and economic history of the Qing Empire. It begins – in the middle of the eighteenth century – with a history of how the Qing civil administration first began to introduce imperial systems of governance to the city and its market after decades of warfare had resulted in the near-complete depopulation of the region and the destruction of its economic networks. The second half then follows the history of these eighteenth-century approaches to governing commerce through the administrative transformations and institutional innovations of the nineteenth century to reconstruct a *longue durée* historical context for understanding the legal and political reforms of the late nineteenth and early twentieth centuries.

This approach to the study of the resolution of commercial disputes as the product of the interaction of central initiative, regional political shifts, and local practices offers a dynamic perspective from which to consider the relationship between legal and economic development in late imperial China. To date, studies on the legal and economic history of China in the era of what has come to be known as

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<sup>1</sup> Chang Weijen (张伟仁), “Justice and Law in the Chinese Tradition [*Zhongguo chuantong de sifa he faxue* 中国传统的司法和法学,” *Xiandai faxue* [现代法学] 28, no. 5 (Sept. 2006): 62.

the Great Divergence<sup>2</sup> have been constrained by a tendency to search for the moment in time when and the reasons why China's precocious economic and political institutions failed to transform into recognizably "modern" systems.

While this work has opened up interesting avenues of scholarship, the study of divergence – situated as it is in the search for deep institutional or cultural differences – has led scholars slowly back into the intellectual cul-de-sac of the nineteenth century, in which the one unimpeachable standard of modernity – embodied in the history of the West – was held up as a guiding light for The Rest. This orientation consigned the study of non-Western histories to a search for difference, which had to be explained in order to be overcome. Even when the presumption of an impassable cultural divide has been dressed up as a celebration of difference – in forms such as the study of Something-With-Chinese-Characteristics – the notion of difference itself still hinges on unscientific, reductive, and normative discourses of modernity, which make the study of Chinese law “never *only* about Chinese law, or lack thereof.”<sup>3</sup>

This work takes a different approach to the historical formation of China's modern state by attempting to de-couple its narrative from the implicit has/has-not comparisons of earlier works which take European or American legal categories and economic forms as a point of departure. It circumvents retrospective historical comparison by studying how Qing rulers, officials, and merchants engaged

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<sup>2</sup> This term has been used so widely since Kenneth Pomeranz first authored *The Great Divergence: China, Europe, and the Making of the Modern World Economy* (Princeton, NJ: Princeton University Press, 2000) that one might suggest there exists an entire sub-field of economic history that might be labeled Great Divergence studies, which generally focus on the question of why China – which was both prosperous and precocious in the eighteenth century – did not develop the modern capitalist economic infrastructure of Europe and the United States. For divergent perspectives on the current state of this discussion, see Christopher Isett, "Social History and Rehistoricizing the Great Divergence Debate in Qing and World History," in Haihui Zhang et al., eds., *A Scholarly Review of Chinese Studies in North America*, 148-173 (Ann Arbor, MI: Association for Asian Studies, 2013) available online at [http://www.asian-studies.org/publications/A\\_Scholarly\\_Review\\_ePDF.pdf](http://www.asian-studies.org/publications/A_Scholarly_Review_ePDF.pdf); Thomas G. Rawski, "Studies of China's Economy," in *A Scholarly Review of Chinese Studies*, 174-191; and the essays collected in Debin Ma and Jan Leuitem van Zanden, eds. *Law and Long-Term Economic Change: A Eurasian Perspective* (Stanford, Calif.: Stanford University Press, 2011).

<sup>3</sup> Teemu Ruskola, *Legal Orientalism: China, the United States, and Modern Law* (Cambridge: Harvard University Press, 2013), 6.

*converging* global political discourses of modernity in the late nineteenth and early twentieth centuries.<sup>4</sup> The result is a historicization of both the notion of modernity<sup>5</sup> and the processes that led up to and resulted from the interaction of local histories with global trends in the increasingly connected and shifting geopolitical order of the modern world.

Treating economic and political modernity as a process of historical convergence – and not as a single goal or end result – addresses one of the deepest and most serious flaws in research on Chinese legal and economic history to date: the enduring presumption that the story of Chinese development ends in failure. From the nineteenth century forward, the study of Qing market and political systems was increasingly focused on explaining what about them was inherently feudalistic, despotic, or unmodern. This orientation survived not only the fall of the empire, but the history of reform in the twentieth-century Republic of China, the formation of a communist state in the 1950s, and even the increasingly integrated systems of trade and rule in contemporary China.<sup>6</sup>

The unrelenting narrative of failure and abiding assertion of idealized Western institutions as the only valuable rubric for understanding development has caused a serious and equally unproductive reaction in the last several decades: as China's economy has grown and its place in the international

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<sup>4</sup> In making this move, I rely on the work of others who have insisted that notions of law be historicized; I simply move one step further by also insisting that notions of legal modernity must also be placed in their historical contexts. Chiu Pengsheng makes an argument about the need to historicize portrayals of the Ming and Qing legal systems, see 邱澎生 《當法律遇上經濟：明清中國的商業法律》 2008, 206. Jerome Bourgon has framed this search for the larger context of imperial justice as the quest to understand a wider “legal culture” through the incorporation of diverse historical materials and perspectives. See Bourgon, Jérôme. “Figures in the Carpet: ‘Customs,’ ‘Contracts,’ ‘Property Rights’ in Qing Legal Culture” presented at the 明清司法運作中的權力與文化 [Power and Legal Culture in Court activity under the Ming and Qing Dynasty], Academia Sinica, Taipei, Taiwan, November 10, 2005.

<sup>5</sup> For a clear and thorough statement of the history and implications of the construction of a notion of legal modernity, see Ruskola, *Legal Orientalism*, 1-29.

<sup>6</sup> Xiaoqun Xu, *Trial of Modernity: Judicial Reform in Early Twentieth-Century China, 1901-37*, (Stanford University Press, 2008); Joseph Kai Huan Cheng, “Chinese Law in Transition: The Late Ch’ing Law Reform, 1901-1911,” PhD diss., Brown University, 1976; Jerome A. Cohen, “Chinese mediation on the eve of modernization,” *Journal of Asian and African Studies* 2, no. 1 (April, 1976): 54-76; Meredith P. Gilpatrick, “The Status of Law and Lawmaking Procedure Under the Kuomintang 1925-46,” *The Far Eastern Quarterly* 10, no. 1 (Nov., 1950): 38-55.

political order has become more important, some scholars have begun to assert that Chinese history embodies an alternative developmental trajectory (one with “Chinese Characteristics”). This work proposes that both of these backwards approaches to modernity – which try to determine key political or market institutions by choosing a contemporary standard of modernity and simply searching for precedents in the past – rely on simplified or at best incomplete portrayals of the historically dynamic experience of modern economic and political growth.

This work begins not with the assumption that a standard of modernity must be found in the present to trace back into the past, but rather that each state has already and continues to experience the process of global modernity with mixed, uncertain, and as-yet-unmeasured success. Instead of presuming that the perfect form of the modern state and economy has been determined, this work proceeds from the assertion that all states are still grappling with the question of how to survive in the emerging world of modern political and economic integration.

In order to reconstruct the Qing perspective on legal and economic modernity in the late nineteenth and early twentieth centuries, this dissertation documents the century of court practice, administrative habits, political debates, and practical problems of imperial justice leading up to the era of reform that was framed in terms of global modernity. It develops a context-specific institutional and intellectual history of commercial dispute resolution to serve as the background for questions about how, when, and why reforms to the court and economic systems of the late Qing were linked to what was at the time portrayed as Western and Japanese forms of modernity. I argue that previous works – which have portrayed the late Qing reforms as a failed importation of non-Chinese systems of modern economy and governance – have thus misunderstood the importance of the Qing experience of global modernity: it was not a history of failed borrowing from developed to developing nations, but the culmination of centuries of Qing legal and economic development that made use of a new language of political and economic modernity.

The historical study of the modern Chinese state must, by this logic, begin with an understanding of the problems that Qing intellectuals, jurists, officials, and subjects were grappling with and the way that those problems were framed in the late nineteenth and early twentieth centuries when they began to be translated into a language of global modernity. Only with this perspective can the local, historically-dependent, and context-specific implications and interpretations of modernity be understood as historical processes that linked individual and local experiences, empire-wide problems of political economy, imperial priorities, and global discourses of political and economic modernity. Once this perspective can be achieved, the idea of trying to find precedents for Western notions of modernity in the Chinese historical context is rendered patently absurd because one may finally appreciate that, in the increasingly global exchange of ideas about sovereignty, statehood, and economy, *there are no copies, only originals.*<sup>7</sup>

#### *Law and Other Things: Complicated Matters*

The study of the translation of imperial practices of commercial dispute resolution into a modern system of justice must begin with a re-examination of the categories that have been used to study disputes between merchants. Up until the 1990s, scholarly works on Qing legal history have all operated on the presumption that there was a basic division in the way that “penal” and “civil” cases were treated in the late empire. I argue here, and in subsequent chapters at greater levels of detail, that this starting assumption about the distinction between realms of criminal and civil law in the study of legal history has failed to leave historical legal categories intact and, as a result, has obscured an otherwise clear and compelling history of the emergence of China’s modern legal system.

Early scholarship operated on the unchallenged assumption that the majority of disputes that would have been handled as civil cases in European legal systems were, in the Qing, mediated outside of

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<sup>7</sup> I must thank Thomas Duve for this phrase. Its original formulation, as it was given to me, was: “There are no originals. Only copies.” But the converse, I think, preserves the meaning at the same time that it offers something... original.

the courtroom in the guild, the clan, and the village. From the nineteenth century until the 1970s, the result of this presumed contrast between European and Chinese legal systems led scholars to conclude either that the Qing was forced to recognize the authority of social groups because the state lacked the legal instruments to handle civil disputes, that the imperial court chose to recognize non-legal instruments of mediation because the emperor and his officials were complicit in a larger feudalistic or paternalistic project of collusion between state and social systems of authority, or that a vaguely-defined Chinese or Confucian cultural tradition resulted in a universal and unchanging preference for mediation over litigation throughout the empire.<sup>8</sup>

In spite of the vastly different assumptions of these arguments – as they have been outlined by various scholars at different times – they uniformly posit that law was not at the center of the resolution of civil cases, and was exclusively reserved for adjudicating criminal cases. This distinction was supposed to have been recognized in the sources themselves, which are portrayed as having considered criminal cases “serious” (*zhong* 重) and civil cases (*xi shi* 細事) as “trivial matters” or “minor matters.”

Beginning in the 1990s, archival discoveries from the field started to re-shape historians’ interpretation of the category of *xi shi* when it was demonstrated that, throughout the empire, a large

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<sup>8</sup> This argument has taken many different forms. For several representative examples, see Thomas R. Jernigan, *China in Law and Commerce* (New York: The Macmillan Company, 1905), 33; Léon Vandermeersch, “An Enquiry into the Chinese Conception of Law” in Schram, S. R., ed. *The Scope of State Power in China*, 3-25 (London: School of Oriental and African Studies, University of London, 1985). 24; Chang Bin Liu, “Chinese Commercial Law in the Late Ch’ing (1842-1911): Jurisprudence and the Dispute Resolution Process in Taiwan,” PhD diss., University of Washington, 1983, 29; van der Sprenkel, Sybille. *Legal Institutions in Manchu China: A Sociological Analysis* London School of Economics Monographs on Social Anthropology 24 (London: University of London, The Athlone Press, 1962), 113 and 162; Niida Noboru (仁井田陞) *Studies of Chinese Legal History [Chūgoku hōseishi kenkyū 中国法制史研]* (Tokyo : Tōkyō Daigaku Shuppankai, 1964), 349; Derk Bodde, “Basic Concepts of Chinese Law: The Genesis and Evolution of Legal Thought in Traditional China,” *Proceedings of the American Philosophical Society* 107, no. 5. (Oct. 15, 1963): 375-398. Cao Pei (曹培), “A Preliminary Study on Civil Litigation at the County Level in the Qing Dynasty [*Qingdai zhouxian minshi susong chutan* 清代州县民事诉讼初探],” *Zhongguo faxue [中国法学]* 2 (1984): 133-156; Shiga Shūzō (滋賀秀三) ““A General Analysis of the Origins of Civil Legal Order in Qing Litigation” [*Shindai soshō seido ni okeru minjiteki hōgen no gaikatsuteki kentō* 清代訴訟制度における民事的法源の概括的検討] *Tōyōshi Kenkyū [東洋史研究]* 40, no.1 (1981): 74-102; Shiga Shūzō, “The Character of Court Judgments in Qing Litigation: The Absence of a Concept of Final Judgment [*Shindai no shihō ni okeru hanketsu no seikaku – hanketsu no kakutei to iu kannen bo fusonzai* 清代の司法における判決の性格——判決の確定という観念の不存在],” *Hōgaku Kyōkai zasshi [法学協会雑誌]* 91, no. 8 “Chūgoku no hōritsu [中国法学] (1974): 47-96 and 92, no. 1(1975):1-64.



number of these cases wound up in county courts and were resolved at least partially by a process of court adjudication.<sup>9</sup> In direct contradiction of earlier scholarship on the division between a legal interpretation of criminality and a primarily social approach to resolving civil disputes, a group of scholars largely based out of UCLA and led by Philip C. C. Huang began to argue that Qing law contained “unequivocal” and “explicit principles” for handling “civil cases,” which *were* used in county courts to guarantee individual “rights” in judicial practice.<sup>10</sup>

This stance, while it conveyed the renewed appreciation of the importance of *xi shi* litigation at the local level, has in subsequent years been dismissed as too extreme, too faithful to legal categories derived from Western systems which have little or no bearing in China, or too sparsely documented in the evidence to be considered generally credible.<sup>11</sup> But even though later scholars have shied away from the claim that there existed an implicit set of civil law principles in the Qing world of justice, the most recent generation of archive-based scholarship on *xi shi* litigation has been associated with a greatly enlarged field of vision in portraying the Qing world of justice, which has been expanded to include sources of order and governance beyond the written code, such as custom, contract, and precedent.<sup>12</sup>

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<sup>9</sup> The idea that “civil cases” were seen as unimportant was first challenged with the publication of David Buxbaum’s 1971 article, which demonstrated that the magistrates in Taiwan’s Xinzhu (新竹) and Danshui (淡水) counties handled a high volume of these disputes. Buxbaum, David C. “Some Aspects of Civil Procedure and Practice at the Trial Level in Tanshui and Hsinchu from 1789 to 1895.” *The Journal of Asian Studies* 30, no. 2 (February 1, 1971): 255–279, 276.

<sup>10</sup> Kathryn Bernhardt and Philip C. C. Huang, *Civil Law in Qing and Republican China* (Stanford, Calif.: Stanford University Press, 1994), 9; Philip C. C. Huang, *Code, Custom, and Legal Practice in China: The Qing and the Republic Compared* (Stanford, Calif.: Stanford University Press, 2001), 27.

<sup>11</sup> For two representative critiques of the “civil law” hypothesis, see Shūzō Shiga, “Regarding Judgments in Qing Dynasty Civil Cases [Shindai no minji saiban ni tsuite 清代の民事裁判について],” *Chūgoku shakai to bunka* [中国——社会と文化] 13 (1998): 226-252 and Jérôme Bourgon, “Uncivil Dialogue: Law and Custom Did Not Merge into Civil Law Under the Qing,” *Late Imperial China* 23, no. 01 (2002): 50-90.

<sup>12</sup> Liang Zhiping (梁治平), *Custom in the Qing Dynasty: State and Society* [*Qing dai xiguanfa: Shehui yu guojia* 清代习惯法: 社会与国家] (Beijing: Zhongguo Zhengfa Daxue chubanshe, 1996), 19. This logic was further expanded by the group of American scholars who later argued that contract was the basis of the adjudication of many instances of Qing litigation. For examples of the scholarship, refer to Ramon Meyers, “Customary Law, Markets, and Resource Transactions in Late Imperial China,” in Roger L. Ransom et al., eds., *Explorations in the New Economic History: Essays in Honor of Douglass C. North*, (New York: Academic Press, 1982), 273-298; Fu-mei Chang Chen

In the journey from viewing civil cases as existing in a realm of legal neglect, to positing that a latent set of civil legal principles existed, to then insisting on a pluralistic vision of the sources of civil legal order, the law-centered framework of analysis from earlier generations has yet to be replaced by another general picture of how the courts of the Qing interacted with the larger and diverse world of justice operating beyond the explicit territory of Qing law. This dissertation tries to bring the big picture back into the study of the complex world of imperial justice by framing the history of one diverse and changing group of litigants – merchants in Chongqing – over a long period of time, as a path to understanding the emergence and historical development of *xi shi* as a legal category.

The term *xi shi* (and more often the closely related general term *xi gu* 細故) was, in some contexts, used as a diminutive or even derogatory label for disputes between subjects that were seen as petty, trifling, and burdensome to the court. But this dissertation reveals how, beginning from the middle of the eighteenth century, the term began to appear in new legal statutes which coalesced into a larger and interlocking set of principles about how *xi shi* cases were defined and had to be handled by magistrates. In an attempt to capture the historical appearance of this explicitly legal meaning of the term, I offer a new translation of the phrase *xi shi* to be used in contexts where its legal dimensions are being invoked. I call them “complicated matters.”

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and Ramon H. Myers, “Customary Law and the Economic Growth of China During the Ch'ing Period,” *Ch'ing-shih wen-t'i*, Volume 3, Number 10, November 1978, pp. 4-27; Madeleine Zelin, “A Critique of Property Rights in Prewar China,” in Madeleine Zelin, Jonathan K. Ocko, and Robert Gardella, eds., *Contract and Property in Early Modern China* (Stanford, Calif.: Stanford University Press, 2004), 27-36; Chiu Pengsheng (邱澎生), “About a Commercial Code: An Attempt to Discuss Seventeenth-Century Chinese Legal Judgments, and Legal Rationale [*Ye shi 'shang fa' wenti: shi lun shiqi shiji Zhongguo de falü pipan yu falü tuili* 也是「商法」問題：試論十七世紀中國的法律批判與法律推理.]” *Fazhishi yanjiu* [法制史研究] 8 (2005): 75-123; Chiu, “Legal Professions, Merchant Associations, and the ‘Customary Law’ Issue in China [*Faxue zhuanjia, Suzhou shangren tuanti yu Qing dai Zhongguo de 'xiguanfa' wenti* 法學專家、蘇州商人團體與清代中國的「習慣法」問題.]” *Bei Da falü pinglun* [北大法律評論] 10, no.1 (2009): 80-81; and Zhang Yu (张渝), “Commercial Litigation and Adjudication in Qing Dynasty Chongqing [*Qingdai Chongqing de shangye susong ji qi shenli* 清代重庆的商业诉讼及其审理.]” *Chongqing Shifan Daxue xuebao (zhexue shehui xueban)* [重庆师范大学学报(哲学社会科学版)] 3 (2009): 15. For a recent overview of the diverse sources of legal order in Qing China, see Pierre-Étienne Will, “Adjudicating Grievances and Educating the Populace: Reflections Based on Nineteenth-Century Anthologies of Judgments,” *Zhongguo shi xue* [中國史學], forthcoming. For my own discussion of this scholarship, see Chapter Three.

Linguistically, the word *xi* does not only or even most often mean “trivial” or “minor,” in spite of the fact that *xi shi* has been consistently translated as “trivial matters” or “minor matters.” This translation has, one can only assume, been selected because scholars presume that the term for “civil cases” should be contrasted with “important” (*zhong*) “criminal cases.” But what previous scholars have consistently overlooked is that these terms were not opposites in the world of Qing jurisprudence. *Zhong*, or grave, offenses are contrasted in Qing legal parlance with *qing* (輕), or lighter, offenses to distinguish between aggravating and mitigating circumstances according to which punishments were explicitly delineated in the Qing Code. For this reason historians’ conclusions about the “importance” of criminal cases in contrast with the “triviality” of civil cases may only be understood as a willful misinterpretation of Qing legal categories resulting from the presumption that the Qing legal system must have divided cases into “civil” and “criminal” realms of law.

Much more interesting than this misinterpretation of *xi* and *zhong* as opposites is the fact that *zhong* cases and *xi shi* actually do sit at the extreme ends of a particular spectrum. This is not because of their relative gravity, but because of the *complicated* nature of *xi shi* cases and their implied contrast with the *simplicity* of both *zhong* and *qing* offenses. In contrast to both grave and light offenses – which were always punished through a direct and inflexible application of the law – judgments in *xi shi* cases (which include disputes on land, household structure, and debt) could not be determined according to dynastic code, which did not offer legal definitions for individual or household economic agreements beyond certain basic, immutable, “simple” principles. For this reason, the resolution of *xi shi* required the incorporation of non-legal norms and agreements into the negotiation of a settlement. It is in this sense that *xi shi* may be understood as complicated: the resolution of these disputes hinged upon many, diverse, interlocking, and ramifying sources of authority and notions of right and wrong. The true difference between *zhong* cases and *xi shi* is, thus, not their gravity but the simplicity and straightforwardness of the application of Qing law in the process of adjudication.

Truly, the conflicting stories, dizzying details, and scarcity of legal guidelines in adjudicating *xi shi* cases must have seemed chaotic and nightmarish to the average Qing magistrate who was given the responsibility of handling these disputes. But the complexity of these cases did not make them “minor” or “trivial.” On the contrary, their resolution hinged on a precarious and demanding balance between local practice, various sources of expertise and social order, legal processes of litigation, and the magistrate’s ability to use the court and the administrative authority of the *yamen* to negotiate a settlement within the wider world of agreements and conventions operating beyond the boundaries of Qing law.

### *A History of Commercial Disputes in Chongqing*

This new vision of complicated matters offers a compelling avenue of analysis for the history of commercial dispute resolution in Chongqing. Since cases in this category were adjudicated by incorporating norms and standards existing outside of the realm of legal definition, the history of how merchants resolved their disputes inside and outside of the courtroom invites the question of how, over time, the relationship between various sources of legal order changed. This dissertation portrays the negotiation between the court and this wider field of justice as part of a constant effort to bind the Qing territorial bureaucracy to a changing and diverse world of lived experience through a constant dialogue between legal principles and local circumstances. This dissertation takes a chronological and institutional approach to explaining the history of how the court related to the several other forums and institutions which combined, in Qing Chongqing, to form an imperial world of commercial dispute resolution. The result of this set of studies is a new interpretation of the form, substance, and import of the modernization of the Qing world of justice in the late nineteenth and early twentieth centuries.

Chapter One begins by situating the history of the city of Chongqing within the temporal, territorial, and administrative developments of successive Chinese empires. It reviews the two-thousand-year history of Chongqing as a background to explaining the particular set of opportunities and challenges

faced by merchants and magistrates in the eighteenth century. It concludes that the *yamen* of the Ba County magistrate – whose office was in the heart of Chongqing city and whose jurisdiction included both the city and its hinterland – was still struggling to produce even the most basic elements of administrative and legal order in the middle of the eighteenth century, when the coverage of the Ba County archives begin. This conclusion sheds new light on the use of these archives to study the history of Chinese law by arguing that, on the one hand, legal practices in Chongqing cannot be considered representative of the average Qing city because Ba County was still in the process of being re-settled and incorporated into the system of civil bureaucracy. On the other hand, I demonstrate over the course of the next two chapters that this new perspective on the history of the city and the world of emerging legal, civil, and economic order that the archives reveal gives historians a chance to learn how Qing imperial institutions were introduced, modified, and expanded in a developing urban space.

Chapter One thus sets the historical background for Chapters Two and Three, which each focus on the implementation of a single administrative institution in the eighteenth century and its impact on patterns of commercial dispute resolution. Chapter Two discusses early eighteenth-century attempts to form a working collaboration between the local state and newly-registered collective responsibility heads. This collaboration is actually part of a larger project of the local *yamen* to attempt to carve out a state-centered legal order in the city and its market. In describing the dilemmas that the magistrate's *yamen* faced in its endeavor to govern the city and resolve commercial disputes indirectly through collective responsibility units, this chapter concludes with several insights about how and why the eighteenth-century Qing state was beginning to re-conceive its policies on the role that these non-state figures could play in the mediation of disputes. I locate this historical tension, and the state's response to it, as the origin of the meaning of *xi shi* as “complicated matters.”

Chapter Three covers the roughly contemporaneous implementation of the *yahang* (牙行) system of licensed brokerage in Chongqing's eighteenth-century market. It first offers a new perspective on Qing laws surrounding the taxation and management of long-distance trade by arguing that, in the middle of the

eighteenth century, a distinct Qing Market System emerged, which centered on the principle that long-distance commerce had to be protected, by law, from the privation of local officials and merchants. The chapter then moves on to explain how the principles of the Qing Market System and its attendant policies, which were initially designed to protect long-distance merchants, slowly expanded over the course of the eighteenth and nineteenth centuries to encompass wider interpretations of economic responsibility in the resolution of commercial disputes.

This description of the institutional background of dispute resolution in the eighteenth century serves as a contrast with the next set of chapters, which cover what I describe as the administrative transformation of the nineteenth century. First, Chapter Four outlines the general history of Sichuan and Chongqing in the nineteenth century in an effort to explain why the tensions of this era – which have been associated with the beginning of Qing dynastic decline – were the direct outcome of the conflicting eighteenth-century policies of ambitious imperial intervention and expansion, on the one hand, and extreme administrative and fiscal austerity, on the other. I then discuss how the co-incidence of these two policy characteristics formed a resource gap at the local level across which the gulf between administrative commitments and resources was bridged by the expansion of an illicit bureaucracy in the late eighteenth century. The administrative and institutional history of nineteenth-century Chongqing is then briefly outlined to illustrate how nineteenth-century state expansion may be understood as a long-term project of replacing the functions of this illicit bureaucracy with local institutions run by community members and supervised by the local state. The result of this administrative transformation, the chapter concludes, was the emergence of a diverse and flexible set of local institutions built on new forms of cooperation and collaboration between the state and its subjects.

The fifth chapter explores one specific set of institutions that emerged from nineteenth-century processes of state-subject administrative collaboration: the merchant groups of Chongqing. Chapter Five argues that these groups emerged directly out of local state demands for material resources and labor within the strictures of the eighteenth-century Qing Market System reforms to form a new type market

institution. It then demonstrates that the collaborative approach to market governance in this era led to a new framework for the delegation of administrative tasks in which individual merchant groups were given *exclusive responsibility* to represent the state in handling public affairs related to their own trade. The chapter documents how these administrative notions of duty and responsibility were expanded, elaborated, and re-negotiated over the century to produce a sophisticated and robust set of merchant institutions capable not only of taxing commerce and performing other basic functions of administration, but also of participating in the resolution of commercial disputes.

Chapters Six and Seven then combine to provide an overview of how the institutions described in Chapters Two, Three, and Five interacted with the court to form a complex of commercial dispute resolution forums. First, Chapter Six contextualizes the magistrate's role as court judge within the larger realm of legal and administrative responsibilities of the county, and it demonstrates how the legal ambiguity attached to his position, and to the position of *xi shi* cases, constrained his discretion and offered a strictly defined set of tools for handling disputes between merchants.

Chapter Seven then explains how the patterns of court cooperation with non-court mediation forums changed from 1770 to 1904. First it documents a clear pattern of increasing incorporation of mediation into the court process over the nineteenth century. It then argues that, over this hundred-year period, the role of local mediation forums in the commercial dispute resolution process was increasingly systematized and recognized by the county court of Chongqing. The second half of the chapter then explains how, both in spite and because of this process, in the last decades of the nineteenth century the court faced a crisis of authority. It illustrates how the court became further involved in more difficult-to-resolve cases as a result of the legal ambiguity that marked the process of commercial dispute resolution. It concludes with an overview of how the court's use of borrowed information led to a series of unresolvable conflicts between litigants, which, in turn, led to a documented increase of extremely difficult cases that the court had to expend more and more resources to resolve.

Chapters Six and Seven thus illustrate how the nineteenth-century expansion of local mediation institutions – which reflected the larger phenomenon of expanding state reach through collaboration with new forms of local organization – led to a crisis of divided authority in the closing decades of the nineteenth century. The eighth chapter concludes by demonstrating how this dilemma was conceived and discussed by reformers in the late nineteenth and early twentieth centuries. It argues that the sudden and widespread demands for centralizing reforms – linked at the time to the need for unity in the “nation” – combined emerging global discourses with the very specific and real challenges documented in earlier chapters. It demonstrates how the call for centralized unification led to the formation of Chambers of Commerce and the formulation of a policy of dispute resolution that resolved earlier problems of legal ambiguity by recognizing the mediation efforts of local forums as official components of the court resolution process. It then presents the concluding argument of this dissertation – that the late nineteenth and early twentieth-century reforms which have been previously dismissed as superficial imitations of modern Western institutions were, in fact, important precisely because they gave a new nominal status to existing practices of dispute resolution and that the official recognition of local dispute mediation forums was a critical part of the history of the *nationalization* of the system of imperial justice in Qing China.

*A Proposal: Legal Ambiguity in Qing Litigation and the Nationalization of Imperial Justice*

The arc of this dissertation project, when viewed from a beginning to end, suggests that the history of Chinese law and markets in the twentieth and twenty-first centuries emerged out of a set of problems and parameters that were determined by a patently imperial legal order. The corollary of this assertion is that studies of Chinese legal and economic modernity should be studied not in contrast to European or American systems or their idealized abstractions but, rather, as the outgrowth the institutions of Qing China and the way that they were re-envisioned in successive reform eras.



The work presented in the following pages suggests that the key to understanding the complex of commercial dispute mediation institutions in the Qing and their transition into the twentieth century begins with an appreciation of the Qing imperial commitment to upholding catholic claims to sovereignty over a diverse and changing territory. In order to assert its authority within well-defined and enforceable parameters, the Qing enshrined basic and fundamental principles of its rule in a legal code designed to address unacceptable threats to the imperial order. In cases where the behavior of subjects violated the legal sanctions of the state, magistrates were expected to apply the law with technical precision and absolute fidelity in a “highly centralized system” of fact-finding, judgment, and review.<sup>13</sup>

On the other hand, in order to assert a less well-defined and more difficult-to-enforce claim of authority over the world of experience that could not be summed up or fixed in legal statements, complicated matters were supposed to be handled under the general guidelines on litigation without reference to fixed legal principles.<sup>14</sup> In cases where wrongdoing hinged upon the interpretation of notions of right or wrong that were not universally enforced, magistrates – as the heads of county government – were required to seek the collaboration of other institutions to merge general legal principles with shifting facts and conventions. In the performance of this more broadly-defined realm of adjudication, county courts throughout the empire were challenged with the task of binding the fixed foundation of dynastic law to dynamic notions of justice beyond the claims of the state to distinguish between right and wrong. Or, in the words of seventeenth-century magistrate Pan Biaocan:

Legal suits arise out of the quest to even out the inequities of the human condition. But circumstances in the human world are ever-changing while the law is unable to change in tandem with the vicissitudes of time. However, if the unchanging law is used to even out the ever-changing circumstances of life, then the law itself will be established and the

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<sup>13</sup> Zhiqiang Wang “Judicial Reasoning and Political Legitimacy in Early Eighteenth-Century Criminal Justice: China, England and France,” Ph. D. diss, Yale University 2014, 44 – 71, 184.

<sup>14</sup> The recognition of the members of the Qing bureaucracy of the “conflict between the ideological need for a fixed order and the need to adapt to changing circumstances” is discussed at Thomas A. Metzger, *The Internal Organization of Ch'ing Bureaucracy: Legal, Normative, and Communication Aspects* (Cambridge, Mass.: Harvard University Press, 1973), 81.

circumstances of existence will gravitate toward it, transforming into the living foundation of the law [lit. the timber out of which the law is constructed]. Once the living foundation is trained and restrained [lit. once the rope of is lashed around], judgment may be used to carve or refashion what remains. This is the method of implementing law in the courts.<sup>15</sup>

Thus, while the political center retained judicial prerogative over all forms of disputes, the magistrates and county government were required to modulate local expectations and needs with more flexible notions of social and economic order in everyday experience. The purpose and function of the notion of law, in the context of commercial disputes being heard in this diverse and pluralistic world of mediation, was to serve as a boundary within which the discretion of the magistrate and the powers of local groups could influence and determine local behaviors. Law framed state power and the spheres within which individuals remained free to act without coming into conflict with the authority of the state.

The agreements which arose from conventions outside of the law were flexible and varied enough to serve the needs of subjects from all over the empire's sprawling territory. Market conventions, exchange agreements, and trade standards were left alone to flourish and multiply in local arenas, as long as they did not conflict with imperial prerogative. By confining *xi shi* litigation to a purposeful realm of legal ambiguity – whose parameters were defined by the law but for which the basis of judgments were adopted from non-legal conventions – the Qing managed to absorb the diverse sources of social order into the basic blueprint of the imperial system of justice. This made Qing magistrates capable of presiding over a wide range of disputes for which the central government was not required to produce or enforce a single set of legal claims, by instead invoking the power of bottom-up agreements or group negotiation to bridge the gap between legal principle and local convention. The result was a “complimentarity” of dispute mediation mechanisms inside and outside of the county courtroom in which the lines between

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<sup>15</sup> Pan Biaocan (潘杓燦), “Rules” [*Zhangcheng* 章程] in *An Unreliable Treatise* [*Wei xin bian* 未信編], 1684 preface, *juan* 3.

social and imperial sources of order and convention were purposefully blurred to artificially create what appeared to be an organic whole.<sup>16</sup>

This composite world of imperial justice<sup>17</sup> mirrored the basic principles of other fields of imperial administration in its fractal and multi-vectored approach to unity and balance. When viewed from a certain perspective, the frequent and widespread incorporation of non-state institutions into state processes has seemed to most scholars to entail a great divide between a small but powerful state and a large and powerful “social” world. But in spite of a pervasive and compelling imperial fiction of community power operating in accord with benevolent government, the interaction between state and non-state systems was not one of stasis or division, but a dynamic and complex process that required considerable intervention to preserve the appearance of order.

When the history of commercial dispute resolution is viewed from this perspective, it becomes clear that the process of transforming imperial practices into a single national system was not primarily a story of codifying a fixed set of legal norms. Rather, the most important force in the transition begun in the early twentieth century was the nationalization of the administrative and economic institutions of mediation upon which imperial justice and governance rested. This process – which began with the local state recognition of mediating institutions in the nineteenth century and entered a new phase in the era of *fin-de-siecle* reform – combined two distinct trends. The first – summarized in the German concept of *Verstaatlichung*<sup>18</sup> – was the long and complicated history of drawing non-state groups closer to the state

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<sup>16</sup> On the distinction between the complementarity and substitutability of local for central institutions in late imperial history, see R. Bin Wong “Formal and Informal Mechanisms of Rule and Economic Development: the Qing Empire in Comparative Perspective,” *Journal of Early Modern History* 5, no. 4 (2001): 400.

<sup>17</sup> The legal ambiguity of commercial disputes was not the only thing about the Qing system of justice that operated on imperial notions of control. For another example, see the work on Qing “legal pluralism” in Pär Kristoffer Cassel, *Grounds of Judgment: Extraterritoriality and Imperial Power in Nineteenth-Century China and Japan*, Oxford Studies in International History, Series Advisor James J. Sheehan (Oxford: Oxford University Press, 2012), 8-38.

<sup>18</sup> I am indebted to Gunnar Folke Schuppert for introducing me to this concept and its usage in German scholarship. For an explanation of this concept and how it relates to the paired notion of *Entstaatlichung*, see Philipp Genschel, “Metamorphosen des Staates - Vom Herrschaftsmonopolisten zum Herrschaftsmanger,” *Leviathan* 36 (2008): 430-

through decades of collaboration between the magistrate and administrative intermediaries. The other – related to the French concept of *etatisation*<sup>19</sup> – was the shift at the turn of the twentieth century toward a larger and more inclusive vision of a state which was destined to subsume all of the groups and interests of the nation by representing them within a centrally-determined and unified political order.

The nationalization of justice in the twentieth century was, for this reason, much more than a straightforward story of failed modernization-through-borrowing, as it has been portrayed. The history of legal and economic development in China's twentieth century cannot and should not be studied outside of the patently modern and global milieu of the late nineteenth and early twentieth centuries. But this history was at least as much – if not more – the product of an internal series of historical developments whose sources can be traced back at least as far as the eighteenth century. This dissertation documents how the structures of imperial rule already contained the potential for nationalization because the Qing approach to imperial justice hinged upon a complex act of representing local and individual interests within a single empire-wide legal framework. The key to transforming this system into a *national* one was removing the mediating influence of the groups who had previously operated at the center of this negotiation, and that is exactly what happened in the early twentieth century when local institutions of governance were formally absorbed into the structure of the state.

In this way, if we wish to speak of the modernization of the Chinese courts or the Chinese market, we must situate this process within an explicitly imperial context as much as we do within a global framework. This conclusion leads to one final and over-arching question: how much is the “modern” world, in fact, the product of empire? When we set aside functional comparisons based on analytical categories that are derived from ideal-type representations of the European or American experience, and

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454. For English-language discussions of the concept, see Stephan Leibfried and Michael Zürn eds., *Transformations of the State?* (Cambridge: Cambridge University Press, 2005) and Klaus Schlichte ed., *The Dynamics of States. The Formation and Crisis of State Domination* (Brurlington, VT: Ashgate Press, 2005).

<sup>19</sup> Jacques Chevallier, *L'Etat* (Paris: Dalloz, 2011).

instead consider the historical development of the modern world, how much does the standard of legal and economic modernity which seems so universal, rational, and clear in its abstracted form seem, rather, the product of imperial ambitions, the frustration of imperial limits, and the means devised to overcome them? If we bring history back into our vision of global modernity, it becomes clear that, more than the abstract and idealized definitions of modernity, *complicated matters*.

CHAPTER 1:  
CHONGQING'S PLACE IN THE FIRST TWO MILLENNIA  
OF THE CHINESE EMPIRE (316 BCE-1796 CE)

天下未亂蜀先亂  
天下已平蜀未平

When the empire is not yet in disorder,  
Sichuan is already in disorder;  
When the empire is already pacified,  
Sichuan is not yet pacified.

- anonymous<sup>1</sup>

### Introduction

The Ba county (*Ba xian* 巴縣) archives of Chongqing's Qing (1644-1912) county magistrate's office have a prominent place in the study of Chinese history. In recent decades, scholars with an interest in the local operation of government, the daily function of Chinese courts, and the local implementation of Qing policy have relied on the unique collection housed in the Sichuan Provincial Archives. The largest cache of Qing local government documents to have been preserved (Taiwan's Dan-Hsin archives remain a distant second, and have still proven an invaluable resource), the Ba county documents have been the material foundation of hundreds of articles and monographs written by historians of China.

But the Qing historians who have relied so heavily on this documentary collection have uniformly neglected all but the most superficial details of the history of the city itself. Many fail to consider any part of Chongqing's past beyond its disastrous experience in the Ming-Qing transition of the seventeenth

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<sup>1</sup>Liu Dingsheng, *Comments on the History of Sichuan* [*Sichuan shihua* 四川史話] (Taipei: Zhongzheng shuju, 1975), 76.

century. Others move directly from a description of the *Zuo zhuan* materials describing the kingdom of Ba in the Warring States period (ca. 475 BCE to 221 BCE) to descriptions of Qing-era Chongqing. All simply agree that Chongqing was a thriving commercial and urban center in the middle of the eighteenth century, when the earliest documentary evidence in the Ba county collection begins to provide a glimpse at the local life and the administration of the city. And no scholar of Qing Chongqing fails to mention that it was a complicated and fraught urban space filled primarily with immigrant communities. But apart from its strong commercial identity and its thriving immigrant populations, Chongqing is generally treated as a typical Chinese city.

The problem with this convention is that Qing scholars are alone in considering Chongqing a Chinese city. It receives almost no treatment at all in histories about the Sichuan region before the Song and from the Song forward is regarded by historians and historical materials alike as an unremarkable backwater of Chengdu notable only for its qualities as a military base. A few studies comparing the histories of Chongqing and Chengdu have remarked that a shift from the domination of Chengdu over Sichuan to an orientation focused on Chongqing seems to have occurred sometime between the Song and the Qing. But the quality and nature of this transition, and what it entailed for the administration of Chongqing in the era of its ascent, have only been covered indirectly in the scholarship. The first task of this dissertation is to present a general *longue durée* perspective on the history of Chongqing.

A survey of Chongqing's experience through its history with the Chinese empire reveals that, in the middle of the eighteenth century when the Ba county archival documents begin, the long and difficult process of incorporating Chongqing into the administrative structure of the empire was still incomplete. What one sees in Qing-era Chongqing, after stepping away from the immediate local picture and connecting the city with its longer history, is a locale still being sketched out and re-formed in accordance with the Chinese imperial notion of space.

This chapter first reviews how and why Chongqing's first two thousand years of interaction with the larger sphere of the Chinese empire left the future commercial center relegated to the margins of imperial history. Then it explores several fundamental shifts in the Chinese approach to governing Chongqing from the Song dynasty onward. The motivations for each change in imperial ambitions toward Chongqing are described along with the substance of the attendant shift in imperial policy and the unforeseen ramifications of each stage at the local level. The chapter concludes with a description of the historical background of the eighteenth century, when the Ba county archival resources begin to depict the life of the city at the ground level.

As a basis for later chapters, this introduction proposes a particular framework for situating Chongqing's place in the Chinese empire and evaluating changes to the governance of the city over time. I propose that Chongqing's failure to fit comfortably within the taxonomy of urban spaces and administrative units of the Qing Empire presents an opportunity to indulge in reflection about how the geometric act of labeling, representing, dividing up, mapping out, and interacting with space is a fundamental task of governance. The very structures and functions of each state contain critical assumptions about how territorial space may be apprehended and shaped, and these axiomatic realities of rule dictate many of the functions of government at the local level.

The city of Chongqing presented such a challenge to imperial China's administrators that it was only nominally controlled by the Chinese state for over two millennia. It was not until the middle of the eighteenth century that the Chinese imperial bureaucracy began to make serious inroads in the city. This is the very period in which documentary coverage of the county *yamen* begins. This felicitous confluence of historical evolution and documentary evidence presents an exciting opportunity to consider the axioms of Chinese administrative geometry in a space and time where they were just taking shape on the Qing frontier.



## Chongqing's Spatial Qualities

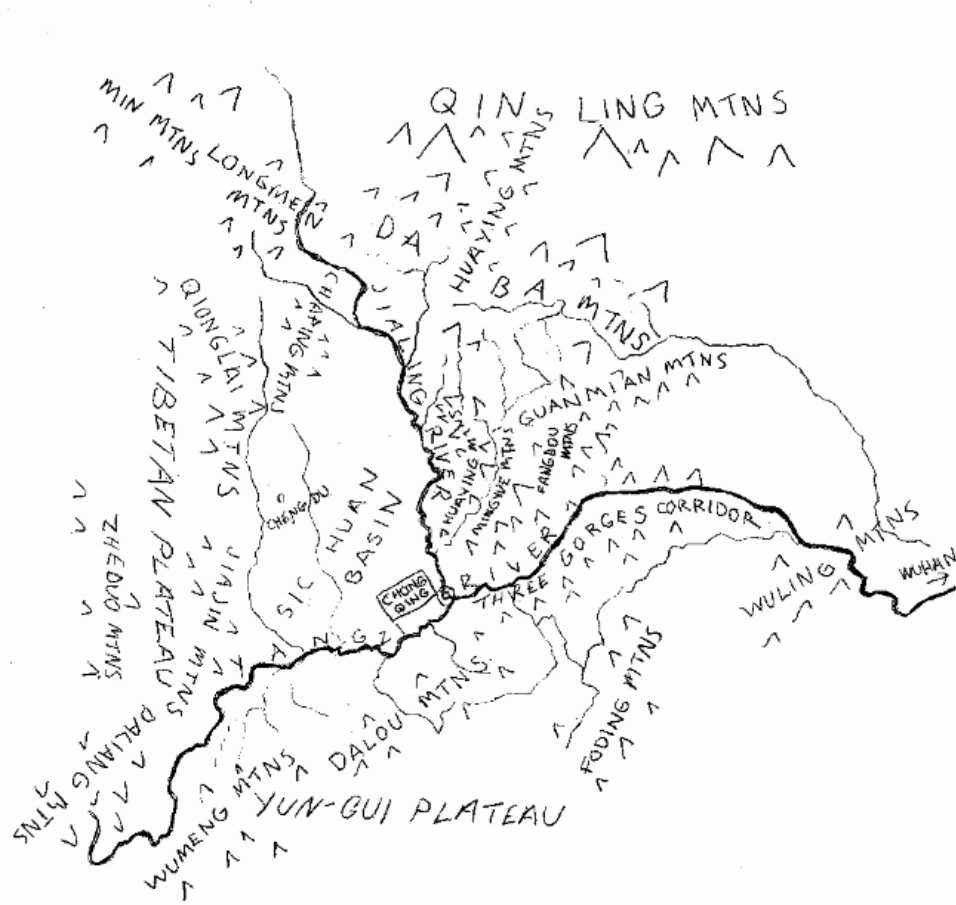
Chongqing is located at the southeastern edge of the Sichuan basin. The site of the city – and the wider Three Gorges region in which it is situated – was once submerged in the vast inland sea that covered the southwest of today's China in the Triassic period (ca. 250 million to 200 million years ago).<sup>2</sup> The distinctive towering rock face on which Chongqing was built, once the bed of a massive sea, was created in the same series of geological shocks that formed the interlocking mountain ranges now so familiar to China's southwest: the Himalayan range between China and India, the Qinling (秦岭) mountains on the north of the Sichuan basin, the Hengduan (横断) mountains between the Sichuan basin and the Tibetan plateau in the west, and the high-altitude mountains to the south of today's Sichuan in Yunnan and Guizhou. This series of geological events reduced the size of the inland sea, formed a forbidding fortress of linked mountain ranges separating the Sichuan Basin from the outside in all directions, and created the cliffs and narrow corridors that form the Three Gorges section of the Yangzi River.

Situated on the southeastern edge of the former sea, the mouth of the Three Gorges emerged as a small, almost entirely hidden chink in the wall of impassable mountains encircling the region, allowing communication over the Yangzi River between the Sichuan basin and the central plains of China to the east. The Jialing River, which connects many of Sichuan's waterways, meets with the Yangzi River at the westernmost point of the Three Gorges. At this point, where the east-west axis of the Yangzi connects with the north-south axis of the Jialing, intersecting the traffic of the Sichuan Basin with a main water route of the Chinese empire, the two waterways define the boundaries of a rocky peninsula of

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<sup>2</sup> The term 'Three Gorges' literally refers to the peaks between Fengjie (奉节) and Yichang (宜昌), but it is most often used in a wider sense, which includes Chongqing as the westernmost point on the route. It is the latter sense in which I employ the term throughout this work.

approximately ten square miles. This inhospitable and isolated promontory, surrounded by high slopes, steep cliffs, and winding waterways, was the future location of the city of Chongqing.



### 1.1 A sketch of the geographical features of Chongqing and the surrounding regions

Perched atop the intersection of two major rivers and nestled within the topographically complex southeastern edge of the Sichuan Basin, Chongqing sits at the center of a matrix of mountains and waterways that both separated and connected three regions: the fertile Chengdu Plain, the rocky, elevated territories of Yunnan-Guizhou and Tibet beyond the furthest southern and western boundaries of China’s early empires, and the Chinese heartland, which lay just past the Three Gorges corridor. Despite this enviable position at the hub of three distinct regions, traffic only rarely passed through Chongqing for

the first two thousand years of the Chinese empire. The Three Gorges corridor, the most dangerous portion of the Yangzi River to navigate, was abandoned in favor of the slow overland routes into Sichuan from the north, which centered on the cultural and economic hub of Chengdu.

### Chongqing's Entry into the Chinese Political Sphere

The earliest textual references to Chongqing in the Chinese canon identify it as the domain of the Ba (巴) lineage. But the rulers of the kingdom of Ba who claimed possession of this territory were not native to the Three Gorges region.<sup>3</sup> They had probably been forced to seek refuge there because of pressure from the powerful rising states that surrounded the shrinking Ba territory: the fast-growing domain of Chu loomed to the east, the flourishing kingdom of Shu maintained a stronghold to the west, and the state of Qin threatened in the north.<sup>4</sup> When the Ba lineage was exiled by fate to the rocky lands at

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<sup>3</sup> We know little about their origin, but by the time of the Spring and Autumn period Ba was one of the seven domains whose rulers were bestowed with the title of 'king' (*wang* 王). This suggests that, whether by deed or relation, the Ba rulers were intimately linked with the Zhou ruling house and its sphere. In year 9 of the Huan Gong (桓公) chronicles of the *Spring and Autumn Annals* [*Chun Qiu* 春秋], it is remarked that "There are seven domains whose leaders are called kings, and Ba is among them" (七國稱王，巴亦王焉。) However, several questions about the origin of the Ba rulers and their authority in the Zhou sphere have still yet to be answered. On the early history of the Ba, see Zhu Shengming, "Evidence on the Evolution of the Ba Territories and Commandery Before and After Qin Unification," [*Qin tongyi qianhou Badi junxian bianqian kao* 秦统一前后巴地郡县变迁考], *Chengdu Daxue xuebao (jiaoyu kexue ban)* [成都大学学报(教育科学版)], no. 04 (2008) : 90-92, 105, and Cai Jingquan, "The Dissemination of the Movements and Civilization of the People of Ba" [*Baren de liuxi yu wenming de chuanbo* 巴人的流徙与文明的传播] *Huazhong Shifan Daxue xuebao (renwen shehui kexue ban)* [华中师范大学学报(人文社会科学版)] 44, no. 4 (July 2005): 65.

<sup>4</sup>The earliest movements of the Ba line have been traced to the territory around two tributaries of the Yangzi at the boundaries of today's Shaanxi, Hubei, and Sichuan provinces – the Han River (漢水) and the Qing River (清江). The Han River (汉水) flows between today's Wuhan (武漢) in the east and Hanzhong (漢中) in the west. The Qing River (清江) begins in today's Enshi (恩施) autonomous region, and flows through the Tujia (土家) autonomous region, terminating at the city of Yichang [宜昌]. For textual evidence on the early territory of the Ba rulers, see the "Ba jun and Southern jun Outlanders" [*Bajun Nanjun man* 巴郡南郡蠻] sub-section of the "Biographies of the Southern and Southwestern Outlanders" [*Nanman xinanyi liezhuan* 南蠻西南夷列傳] chapter of the *Hou han shu* [後漢書]. For a discussion of some of the existing archaeological evidence, refer to Zhao Bingqing, "Research on Several Questions about the Relationship between the Ba and the Chu" [*Ba, Chu guanxi zhu wenti zhi yanjiu* 巴、楚关系诸问题之研究] (PhD diss., Central China Normal University [*Huazhong Shifan Daxue* 华中师范大学], 2006),

the mouth at the Three Gorges, it was the only territory in the region not claimed by one of the more powerful domains in the Zhou cultural sphere.

Long before the claim of the Ba royal line over the Three Gorges region, Chongqing and its surroundings were already inhabited by a diverse population. For much of its early history, the area was home to several small and scattered groups of non-Han settlers, who eked out a living in relative isolation.<sup>5</sup> The region was both hot and humid, experiencing frequent showers, with rolling mists flowing between the high cliffs and steep valleys. The climate and plentiful natural endowments of the area allowed its inhabitants to sustain themselves without forming large permanent settlements. The geography of the region necessarily divided its communities into small autonomous groups. The majority of the inhabitants of the so-called kingdom of Ba had no connection with the royal line and seemed to have lived out their lives without any awareness of the group that claimed ownership of the territory.<sup>6</sup>

After their move to the greater Chongqing region, now pushed to the last corner of refuge between increasingly powerful domains, the rulers of Ba became active participants in the contest for influence on the widening margins of the waning Zhou state. They embarked on a host of alliances and joint campaigns with their neighbors, often manipulating their relationships with the nearby states of Chu, Shu, and Qin to temporary benefit. But the Ba kingdom never had the vast economic or military resources that its neighbors possessed. When all of other, smaller kingdoms in the region had been extinguished,

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Cai Jingquan, “The Dissemination of the Movements and Civilization of the People of Ba,” and Qi Yang, “Ancient Chongqing” [*Gudai de Chongqing* 古代的重庆], *Chongqing Shifan Daxue xuebao (zhexue shehui kexue ban)* [重庆师范大学学报(哲学社会科学版)], no. 01 (Apr., 1982): 61-65.

<sup>5</sup> For a discussion of the groups inhabiting the Ba territory during the Spring and Autumn and Warring States periods, see Gao Yingqin, “An Attempt to Discuss the Relationship between Ba and Chu,” [*Shi lun Ba yu Chu de guanxi* 试论巴与楚的关系], *Sanxia Daxue xuebao(renwen shehui kexue ban)* [三峡大学学报(人文社会科学版)], vol. 25, no. 06 (Nov., 2003): 14 – 15, 26 and Qi Yang, “Ancient Chongqing.”

<sup>6</sup> The diversity of the archaeological record of the Ba/Shu region demonstrates that no single culture dominated the area, and that the Ba culture left little or no impression on the area. Zhao’s “Research on Several Questions about the Relationship between the Ba and the Chu,” concludes, on page 15, that, in the early and mid-Shang periods, “There were still no distinct qualities or signifiers of Ba culture.” See also Cai, “The Dissemination of the Movements and Civilization of the People of Ba.”

Ba's position became untenable. By the end of the Spring and Autumn period (ca. 771 BCE to 476 BCE), competition between Ba and its neighbors took the form of direct aggression and war broke out between the small state and every one of its former allies. The destruction of the state in the second-to-last decade of the fourth century BCE was a direct result of the Ba kingdom's precarious position in the inter-state warfare that consumed the territories of former Zhou allies. Warfare and political upheaval had become so quotidian by this period that no surviving historical source from the era made note of which aggressor or which battle was responsible for the extinction of the Ba state.<sup>7</sup>

After the unknown tale of their historical demise had run its course, the early rulers of Ba left their territory much as they found it. The local roads were narrow and underdeveloped even at the end of the reign of Ba's rulers and did little to connect the diverse communities inhabiting the isolated pockets of the territory. The Ba kingdom didn't even have a fixed capital, with the royal family residing at turns in Jiangzhou (江州, which would later become Chongqing), Dianjiang (墊江), Fengdu (豐都), and Langzhong (閬中).<sup>8</sup> Within their own territory, the aristocratic line supporting the Ba house was merely one among many groups. The rulers of Ba only exist in the historical record because of their involvement with the Zhou political sphere. They left little mark on the area: moving from one place to the next and interacting more with the leaders of their neighboring domains than with the other inhabitants of the region they claimed to rule.

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<sup>7</sup> For a discussion of the evidence about which state inflicted the final blow to the Ba kingdom – the two candidates being Chu and Qin – see Zhang Jiantao, “An Attempt to Discuss the Process of the Disappearance of Late-Period Ba Culture in Chongqing” [*Shi lun Chongqing diqu wanqi Ba wenhua ji qi xiaowang guocheng* 试论重庆地区晚期巴文化及其消亡过程] (master's thesis, Chongqing Normal University [*Chongqing Shifan Daxue* 重庆师范大学], 2005) and Zhao Bingqing “Research on Several Questions about the Relationship between the Ba and the Chu.”

<sup>8</sup> The *Huayang guo zhi* (華陽國志) reports: “In the time of the Ba, although the capital was at Jiangzhou, sometimes they ruled from Dianjiang, sometimes they ruled from Fengdu, and later they ruled from Langzhong.” This Eastern Jin (245-420 C.E.) source is the only reference to Ba activity on the location of the future city of Chongqing. Even here, it is mentioned as one among many seats of political control.

Historians know little about the culture of the Ba rulers and no evidence has been found that they altered anything about the social or political topography of this complicated region. But as ephemeral of an experience as the era of Ba rule seems to have been on the ground, their territorial claim was an important beginning. The rulers of Ba gave the greater Three Gorges region a Chinese name. It was foreign-sounding, and its origins are so obscure that even today Chinese scholars present conflicting explanations of its etymology. But the act of naming the space initiated the very first stage of its integration into the Chinese sphere, as its name became a part of the larger political imagination of the Late Zhou period.

Inhabitants of the future site of Chongqing had no way of knowing that, to imperial officials and historians of later ages, they had become the people of Ba. And they could not possibly apprehend that the flimsy claim of the Ba house had initiated a process of incorporation into the Chinese empire that would span thousands of years. But this process did begin when the entire diverse region was presented to the Sinologic world with a simple, mysterious character.



## 1.2 An early rendering of the character *ba*<sup>9</sup>

### *Qin Imperial Claims*

In 316 BCE, the territories of the Ba domain were absorbed by the expanding kingdom of Qin, which established the Ba commandery (巴郡 *ba jun*) to rule over the lands of the defeated state.<sup>10</sup> The

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<sup>9</sup> Reproduced in the *Kangxi zi dian* [康熙字典] (Tainan: Zonghe chubanshe 1986), 255.

<sup>10</sup> For the most contemporary passage referring to the absorption of the Ba domain, see year nine of the in the Huan Gong (桓公) section of the *Chun qiu*. Only the much later *Huayang guo zhi* offers a date for the campaign.

creation of the Ba commandery marked a new era in Chongqing's introduction into the Chinese ecumene. It was the first time that an imperial administrative unit was transcribed on the Ba sphere and the first attempt to represent the former Ba territories as a space within a Chinese bureaucratic order. The administrative unit created by the Qin persisted as a naming convention over several dynasties and survived in the Qing (1644-1912) name of the city's lowest level of administration: Ba County (巴縣).

The Qin conquest over the Ba territories was a pivotal military accomplishment, as it removed the final impediment to a direct attack on Qin's rival domain of Chu. The defeat of Ba also gave the Qin state a base from which to attack the kingdom of Shu in the Sichuan Basin, and the site where Chongqing was later founded served as a staging point for a campaign of attack over water into the heart of Chu territory. Qin dominion over the former Ba territory gave the rising state unhindered access to the center of enemy lands and brought it one step closer to the complete consolidation of imperial rule under the Qin line.

The conquest of Ba was the first step in the Qin state's military domination of the greater southwest. But as important as possession of Chongqing and its surrounding regions had been to the conquest of other states, the former Ba territories lost their significance as soon as the military victories were won. Chongqing became a dim beacon of the empire: it bore a territorial name that marked its incorporation into the Qin territorial bureaucracy, but it was surrounded for hundreds of miles by a terrain almost wholly uninitiated into the habits of imperial rule and full of independent tribes who lived out their own histories without reference to Qin authority.

Chongqing was so far beyond the reach of the Qin administrative apparatus that the initial seat of administration over the conquered Ba territory was first established over 150 miles away from Chongqing, at the site of Langzhong in the north of the Sichuan Basin.<sup>11</sup> For almost forty years, the inaccessible

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<sup>11</sup> Many scholars incorrectly assume that Chongqing was the site of the Qin administration from the very beginning. This is in part due to the lack of an explicit description of the history of the early administration of the Ba commandery by the Qin, and in part because Chongqing has been so completely identified with the center of Ba culture and administration in scholarship. But Ba county (巴縣) might as well have been the name of an

territories of Ba were nominally administered from a city more than a hundred miles away.<sup>12</sup> Through the centuries of slow conquest initiated by Qin claims to rule over Chongqing, the site's location at the mouth of the Three Gorges in the southeastern extreme of the Sichuan basin made it one of the most inaccessible corners of the territory claimed by the Chinese empires.

For the first millennium of imperial dominion over Chongqing, the city remained outside of even the most fundamental material and organizational structure of the empire, as the Qin and its successor dynasties remained primarily focused on funneling the material wealth of the southwest into the imperial heartland to the east. The Qin and the Han (206 BCE to 220 CE) mounted several efforts to promote to the economy of the Sichuan basin, which served as a natural reserve of resources for the imperial houses that exerted control over it. Large-scale irrigation projects were implemented throughout the Chengdu plain, salt and iron monopoly offices were set up in its capital city, and various artisanal workshops, plantations, lumber offices, and mines sponsored by the imperial administration began to spread from Chengdu throughout the Sichuan basin on the new networks emerging out of improved transportation. Not a single one of these imperial projects even managed to approach the vicinity of Chongqing, 200 miles away from the city of Chengdu.

Traffic and all forms of exchange between the Ba/Shu region and China's central plains flowed out of the hub in Chengdu. Early on, roads from Chengdu to the Qin heartland were built and others followed: routes between Chengdu and Gansu, and from Chengdu to the Yangzi, were among the first projects undertaken by the Qin in Sichuan.<sup>13</sup> The roads of empire were the concrete foundation of

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administrative unit in Langzhong if not for Qin ambitions in Chu, which involved a strategic investment in the Yangzi artery.

<sup>12</sup>It wasn't until 277 BCE that the administrative center of the Ba commandery was moved to Chongqing. Luo Erhu, *The Southwest of China in the Qin and Han Eras* [*Qin-Han shidai de zhongguo xinnan*. 秦汉时代的中国西南] (Chengdu Shi: Tian di chu ban she, 2000), 174.

<sup>13</sup> For fuller descriptions of the roads and the process of their creation, see Luo, *The Southwest of China in the Qin and Han Eras*, pp. 41-57; Chapter 1 of Paul J. Smith, "Taxing Heaven's Storehouse: The Szechwan Tea Monopoly and the Tsinghai Horse Trade, 1074-1224" (PhD diss., University of Pennsylvania, 1983); and Deng Yanping,



expansion into the Ba/Shu territories. The transportation infrastructure made way for the construction of the administrative foundations of empire on the Chengdu plains. Trade and travel forged a link between the resources of the southwest gathered in Chengdu and the Chinese imperial court. Social preferences mirrored imperial priorities. Both Qin and Han settlement in the southwest also gravitated toward the cultural and economic center of Chengdu.<sup>14</sup>

Economic development in the Ba/Shu region was highly uneven, and the Three Gorges region maintained a low economic profile for the first millennium of its experience as part of the Chinese empire. Those cities north of the Yangzi which lay along communication routes linked to Chengdu or Hanzhong in the north drew more of the region's population and became the earliest centers of trade toward the end of the first thousand years of Chinese imperial control.<sup>15</sup> All the way up to the tenth century Sichuan's economic base was centered on the Chengdu Plain.<sup>16</sup>

While Chengdu rose quickly to become a cultural and economic bastion of Han culture in the Ba/Shu region, Chongqing remained a neglected economic backwater, little altered by the empire that

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“Geographical Differences and Cultural Interaction in the Qin and Han Eras of Westward Expansion” [*Qin-Han shiqi xibu kaifa de diyu chayi yu wenhua hudong* 秦汉时期西部开发的地域差异与文化互动] (PhD diss., Jiangxi Normal University [*Jiangxi Shifan Daxue* 江西师范大学], 2007), 44.

<sup>14</sup> On early Qin settlement of Sichuan, see Smith, “Taxing Heaven’s Storehouse,” 33-34.

<sup>15</sup> For a thorough study of Tang commercial centers in the southwest, see Cheng Dongyu, “Research on the Commercial Centers of the Southwest in the Tang Dynasty” [*Tangdai xinan diqu shangye duhui yanjiu* 唐代西南地区商业都会研究], master’s thesis, Southwestern University [*Xinan Daxue* 西南大学], 2009) and Cheng Dongyu 程东宇. “An Attempt to Discuss the Commercial centers of the Southwest in the Tang Dynasty” [*Shi lun Tangdai xinan diqu shangye duhui* 试论唐代西南地区商业都会] *Leshan Shifan Daxue xuebao* [乐山师范学院学报], 23, no. 08 (August 2008): 96-99.

<sup>16</sup> For a general sketch of the Shu Circuit economy in the Song, see Liang Zhongxiao “A General Description of the Economies of Song Dynasty Shu Circuit Cities and their Environs” [*Songdai Shudao chengshi yu qiyu jingji shulun* 宋代蜀道城市与区域经济述论] *Xinan Shifan Daxue xuebao (renwen shehui kexue ban)* [西南师范大学学报(人文社会科学版)] 30, no. 05 (Sept., 2004): 95-100. For a detailed historical analysis of the regional economy spanning the Qin to the Southern Song, see Paul J. Smith *Taxing Heaven’s Storehouse □: Horses, Bureaucrats, and the Destruction of the Sichuan Tea Industry, 1074-1224* (Cambridge, Mass.: Harvard University Press, 1991). For an explicit comparison of Chengdu and Chongqing, see Chen Li (陈黎) “Comparative Research on the Development of Chengdu and Chongqing in the Qing Dynasty” [*Qingdai Chengdu Chongqing chengshi fazhan bijiao yanjiu* 清代成都重庆城市发展比较研究] (master’s thesis, Sichuan University [*Sichuan Daxue* 四川大学], 2007).

claimed to rule it. Agriculture, never common in the mountainous region, made few inroads. The local economy was primarily centered on the harvest and sale of wild raw materials to surrounding areas.<sup>17</sup>

Many inhabitants of the region made their money by providing housing for or pulling the boats of merchants passing up and down the Yangzi River, who took the region's salt, fruits, and timber for sale elsewhere.

In Chongqing, location on the periphery of the empire was combined with the absence of routes of communication with the outside world: mountains impeded quick movement and confounded travelers not possessed of local knowledge. The wealth of the rivers and hills befuddled would-be agricultural settlers who were hard-pressed to carve fields out of mountaintops and hillsides. Real distance from the tools and structures of empire was compounded with social distance, as the space of the former Ba kingdom remained, even after a thousand years of nominal control by Chinese empires, a terrain over which uncounted numbers of non-Han groups and Han settlers long cut off from the central state roamed and competed for political and economic advantage in their own *milieu*.

The Qin and its successors recognized the limits of imperial ambitions in the vast and strange territories of the southwest and maintained a system of dual governance throughout much of the Ba/Shu region.<sup>18</sup> On the one hand, the empire introduced the *junxian* (郡縣) administrative policies of direct bureaucratic rule to the regions inhabited by settled Han populations and developed substantive bureaucratic systems in the most prosperous nodes of the region's transportation and economic networks. But only those residents with a connection to the central administration, either by virtue of living in a

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<sup>17</sup>Lan Yong, in his "Examining the Economic Exploitation of Today's Three Gorges Region from the Perspective of Historical Geography" [*Cong lishidilixue de jiaodu kan jintian Sanxia diqu de jingji kaifa* 从历史地理学的角度看今天三峡地区的经济开发] *Kexue jingji shehui* [科学.经济.社会], 12, no. 02 (Jun., 1994): 17 – 19 suggests that less than 3% of the land was cultivated, the majority of labor being spent on agricultural sidelines (such as timber harvesting) and salt production. In this respect, the Ba region certainly played the role of a colony: providing valuable factor materials to more developed markets in other regions. Even from the Tang/Song period, when the area under cultivation more than doubled, it remained under 10% of the total land. Intensive cultivation of the region didn't begin until the late imperial period.

<sup>18</sup> For a comprehensive review of the Qin and Han administrative units and the function of the *junxian* system in the southwest, see Luo, *The Southwest of China in the Qin and Han Eras*, 79-111.

large city or by the bonds of subjecthood recognized by early immigrants, had any reason to countenance the policies of an empire whose influence was only dimly perceived in the majority of the southwest.<sup>19</sup>

Beyond the Chengdu Plain, the precarious hold of the early empires over large swathes of the territories of the former kingdoms of Shu and Ba was an untenable basis for imperial control. For these regions in which state investments were primarily limited to basic territorial security and the economic and social infrastructure of the empire did not exist, the Qin and later dynasties operated with an alternative set of governing principles, in the form of halter-and-bridle (*jimi* 羈縻) regimes.

The halter-and-bridle system was set up in the Qin and inherited by its successors to govern territories that were occupied by non-Han groups. In exchange for fealty to the empire and cooperation in the defense of the border region, the Qin awarded non-Han political figures with titles and royal privileges. The nominal support of these ennobled vassals was exchanged for almost complete autonomy. The taxes levied on these areas were extremely light and were exchanged for generous imperial gifts. In exchange for trade and assured peace on the borders, the groups already existing in the southwest were allowed to “govern in accordance with standing custom” (以其故俗治).<sup>20</sup> Chongqing was situated in one of the many areas of the early southwest that were controlled by halter-and-bridle vassals. The system adopted by the Qin was then continued by later dynasties, and the region became known as part of the territory of the southwestern outlanders (西南夷).

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<sup>19</sup> Much has been made of the one piece of evidence demonstrating the implementation of Shang Yang’s policies in the Ba/Shu region: a placard on which some of the Qin land policies were referenced. For the original archaeological report, see Li Shaohu, Mo Honggui, and Yu Caiqi, “A Wooden Placard Detailing the Qin Revision of the Land Code is Unearthed in Qingchuan County: A Brief Report on Warring States Tomb Finds in Sichuan’s Qingchuan County” [*Qingchuan xian chu tu Qin gengxiu tianlü mupai: Sichuan Qingchuan xian Zhanguo mu fajue jianbao* 青川县出土秦更修田律木牍——四川青川县战国墓发掘简报], *Wenwu* [文物], no. 01 (1982): 1.

<sup>20</sup> For a history of the halter-and-bridle offices assigned by the Qin state to inhabitants of the Three Gorges region, see “Biographies of the Southern and Southwestern Outlanders” chapter of the *Hou han shu*.

## Growth on the Margins

“On Being Removed from Xunyang and sent to Zhongzhou”

A remote place in the mountains of Ba.  
Before this, when I was stationed at Xunyang,  
Already I regretted the fewness of friends and guests.  
Suddenly, suddenly, bearing a stricken heart  
I left the gates, with nothing to comfort me.  
Henceforward, relegated to deep seclusion  
In a bottomless gorge, flanked by precipitous mountains.  
Five months on end the passage of boats is stopped  
By the piled billows that toss and leap like colts.  
The inhabitants of Ba resemble wild apes;  
Fierce and lusty, they fill the mountains and prairies.  
Among such as these I cannot hope for friends  
And am pleased with anyone who is even remotely human.

-Bo Juyi (Appointed Governor of Zhongzhou in 818)<sup>21</sup>

The first one thousand years of Chongqing’s subjugation by the states of the central plains were marked by physical, infrastructural, economic, political, linguistic, and cultural distance from the empires that claimed to possess it. The entire Three Gorges region remained dominated by non-Han groups, who retained a high degree of autonomy under the halter-and-bridle system of indirect governance. The imperial state had little knowledge of the political logic of the region, which remained firmly outside of imperial norms and practices. The area was associated with poverty, violence, and strangeness, when it was remarked upon at all by imperial sources. Chongqing quietly passed a millennium in the administrative and economic hinterland of the Chinese ecumene.

Rarely mentioned in connection with the historical drama of the Chinese empires, the inhabitants of the Three Gorges region played out their own intrigues beyond the view of the state. Settlers began to venture into the area after the campaigns of Han Wu Di (r. 141 BCE to 87 BCE) against the competing polities of the Yun-Gui plateau brought new roads to the territory. But the few who dared to venture so far

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<sup>21</sup> Modified from Arthur Waley, trans. Bai Juyi, *A Hundred and Seventy Chinese Poems* (New York: Knopf, 1918), 219.

into the hinterland simply disappear from the historical record. When the turmoil of the Eastern Han (25 CE–220 CE) sent large numbers of refugees fleeing to safety behind the mountains of the Sichuan basin, Han settlement pushed further into the more isolated regions of the frontier.<sup>22</sup> The chaos of the Three Kingdoms (220 CE–280 CE), Jin dynasty (265 CE–420 CE), and Northern/Southern dynastic (420 CE–589 CE) periods pushed greater numbers of refugees from the central plains into the southwest, and increasing numbers of Han immigrants formed dense settlements centered on new transportation networks, living in large clan-like groups.<sup>23</sup>

The region grew slowly from the Qin to the tenth century, attracting settlers and merchants who preferred to exist beyond the imperial gaze.<sup>24</sup> Chongqing and similar locales throughout the southwest became home to a mix of non-Han groups and former subjects of the Chinese empire who had struck out beyond the administrative reach of the state. With the imperial administrators of the Chinese heartland focused on Chengdu and *de facto* control of the southeastern corner of the Sichuan basin left in the hands of powerful locals, the prefectural status of Chongqing remained an administrative fiction.<sup>25</sup> The offices of Chongqing were shunned, even by exiled scholars from the central plains, and abandoned to native power holders in an *ad hoc* marriage of imperial bureaucracy and halter-and-bridle principles.<sup>26</sup> In the

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<sup>22</sup> On Han settlement patterns, see Luo, *The Southwest of China in the Qin and Han Eras*, 41–57.

<sup>23</sup> For a general overview of early immigration to the southwest, see Chapter 1 of Lan Yong *The Historical and Cultural Geography of the Southwest* [*Xinan lishi wenhua dili 西南历史文化地理*], (Chongqing: Xinan Shifan Daxue chubanshe, 1997).

<sup>24</sup> For a survey analysis of Sichuan’s growth over the centuries, see Paul J Smith, “Commerce, Agriculture, and Core Formation in the Upper Yangzi, 2 A.D. to 1948,” *Late Imperial China* 9, no. 1 (June 1998): 1–78.

<sup>25</sup> This was reflected in the administrative priority given the post, which remained low for the first thousand years of imperial dominion. In the Tang, Chongqing’s prefectural status was ‘lower’ (*xia* 下). See Table 1 on pages 56–57 of Lan Yong, “Research on Changes in the Distribution of Cities and Towns in the Southwest in the Tang and Song Eras” [*Tang-Song shiqi xinan diqu chengzhen fenbu yanbian yanjiu 唐宋时期西南地区城镇分布演变研究*], *Zhongguo lishi dili luncong* [中国历史地理论丛], no. 04 (Dec., 1993): 55–70. This status placed Chongqing at the very lowest level of administrative priority in the Ba/Shu region.

<sup>26</sup> Officials from the Chinese heartland repeatedly refused to take up appointments in the city. Over the course of the Han, local officials increasingly tended to hold a large proportion of the region’s posts. For a list of the men who

tenth century the prefectural seat of Chongqing was still considered part of the halter-and-bridle system, as portions of the territory remained divided amongst a number of non-Han groups. Chongqing (indeed, its entire Song-era administrative region of Kui Circuit) was not considered part of the Chinese cultural sphere, but rather a “distant wasteland where the outlanders and Chinese intermix (夔部曠遠，夷夏雜糅).”<sup>27</sup>

From the third century BCE to the tenth century CE, the state continued to invest the management of local affairs to local power holders in the Ba region. Over the centuries, the power of those local elites was consolidated silently in the margins of the historical record. Native non-Han groups and Han settlers combined forces in the fight over resources by living in large settlements based on ties of vassalage or fictive kinship. The local magnates at the head of these estates cooperated with China’s various dynasties in occasional military campaigns, the defense of the region against invasion, tax collection (often more symbolic than substantial), and in maintaining the fiction of political unity. Beneath this façade of imperial authority, the powerful families of the southwest worked tirelessly in a Hobbesian competition to amass undocumented private fortunes, personal armies, and laborers pledged to servitude.<sup>28</sup>

Over this period, regional trade expanded slowly but steadily, and the power of local magnates grew. Han immigration into the area fed the machines of local domination. The halter-and-bridle

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held the post of Ba commandery prefect (*Bajun taishou* 巴郡太守) during the Han, see Li Guifang, “Research on the Bureaucratic System and Regional Development of the Southwest Border Offices in the Han and Former Han” [*Liang Han xinan bian li de lizhi ji quyue kaifa yanjiu* 两汉西南边吏的吏治及区域开发研究] (PhD diss., Southwest Normal University [*Xinan Shifan Daxue* 西南师范大学], 2004): 7-8. For information about high-level officials in the Ba administrative region, see pages 16 to 19 of the same work.

<sup>27</sup> *Zhi bi ge zhishi Wang Gong xing zhuang* [直秘閣致仕王公行狀], *juan* 90, as cited on Tang Chunsheng, “Early Song Policies toward the Minorities of the Kuizhou Circuit,” [*Song chu dui Kuizhou lu de shaoshu minzu zhengce* 宋初对夔州路的少数民族政策], *Chongqing Shifan Daxue xuebao (zhexue shehui kexue ban)* [重庆师范大学学报 (哲学社会科学版)], no. 1 (Feb., 2012): 56.

<sup>28</sup> This process is only poorly documented in the historical record. The scholar who has done the most to attempt to tease out what details are preserved into a comprehensive picture of the social and economic formations of the region in the tenth century is Richard von Glahn. See Chapter 4 of Richard von Glahn, “The Country of Streams and Grottoes: Geography, Settlement, and the Civilizing of China’s Southwestern Frontier, 1000-1250,” (PhD diss., Yale University, 1984). In the table on page 94, he concludes that in 1080 up to 68% per cent of the households in the Ba region were pledged in bondage to the protection of a local magnate (compared to only 31% in the Shu region).

approach to governance left the wealth of these regions to exploitation by locals and abandoned positions of bureaucratic authority to the area's natives, who ruled in accordance with their own needs and customs under the aegis of imperial authority. The traditional tools of imperial conquest: trade, settlement, infrastructure, and military conquest were never brought to bear forcefully on what seemed to imperial officials an impenetrable and impoverished wasteland.

The relationship between the local magnates of Sichuan and the various dynastic governments was fraught with tension. The powerful magnates of the southwest cooperated with the central government – even adopting official titles and accepting imperial degrees and administrative positions when advantageous – but only when cooperation was the best path to ensure their own continued influence. Overly assertive administrative initiatives were met with violent rebellion, weak states were ignored, and strong states often simply countenanced them. Not surprisingly, the historical sources left to us do not provide many direct or reliable accounts of life beyond the purview of the rationalizing bureaucracy of empire, which obscured much of the real nature of power in the southwest.<sup>29</sup> In the Northern Song, Chongqing was still considered a place where “the customs of the people were half in the style of outlanders (民俗半夷風).”<sup>30</sup>

### **Imperial Expansion and Military Consolidation**

In the intervening millennium between Qin conquest and the tenth century, the structures of imperial administration existed only nominally in Chongqing. Titles and offices within the bureaucracy were awarded to those who held power on the ground and existed alongside with a complicated network

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<sup>29</sup> The character and history of Sichuan's local magnates, and their changing relationship with the Tang and Song states, has been well documented and thoroughly discussed in the works of Richard von Glahn and Paul J. Smith. The subject is so well covered in these works that the details will be passed over in this review, which cannot possibly do justice to the results of these studies.

<sup>30</sup> *Yu di ji sheng* [輿地紀勝], *juan* 160 and 167, as quoted on page 82 of Hu Zhaoxi and Zhang Maoze, “Chongqing in the Northern and Southern Song Eras” [*Liang Song shiqi de Chongqing* 两宋时期的重庆], in Wei Yingtao, ed., *Studies on the Urban History of Chongqing* [*Chongqing chengshi yanjiu* 重庆城市研究] (Chengdu: Sichuan daxue chubanshe, 1989), 72-100.

of overlapping halter-and-bridle claims to authority. The succession of Chinese states claiming to rule over this space did so only nominally or indirectly. Quadrants of authority were sectioned off and parceled out to local magnates who seemed loyal enough, but little of the political, social, and economic organization of the region resembled a space governed by a Chinese bureaucracy.

The tenuous balance of power between the central state and the host of local magnates governing the southwest was fundamentally altered after the Song dynasty's 965 CE conquest of the Ba and Shu territories. Over the course of the next century, many of the locales in Kui circuit (a Song administrative division roughly coterminous with the greater Three Gorges region) were converted into state-managed centers of production and tax collection. The potential for tension between local power holders and the imperial state developed alongside with the economic growth of the region, as an increasing flow of immigrants clashed with or provided fuel for local systems of domination.

The Song continued the halter-and-bridle administration of the Three Gorges region, but the balance between autonomy and fealty became more fragile in the face of unprecedented levels of immigration and profit from exploitation of natural resources.<sup>31</sup> Conflicts with non-Han groups whose territory or resources were threatened by Han expansion turned into causes for state aggression and resulted in a series of military clashes that led to the conversion of halter-and-bridle territories to regular administrative units under direct state control. The defensive conquests of the Song state in the eleventh century were followed up by concerted efforts to consolidate the empire's interests throughout the province. Eager to secure the economic advantages of state consolidation of the frontier, the Song began a period of rapid state expansion in Sichuan starting from 1070 and fundamentally altered the nature of the commitments of the Chinese bureaucracy in the southwest.

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<sup>31</sup> For a general overview of the Song halter-and-bridle system, see Tang "Early Song Policies toward the Minorities of the Kuizhou Circuit" and Yuan Xin, "The Relationships between the Ethnicities of Kui Circuit in the Northern Song and the Development of Regional Ethnic Zones" [*Bei Song Kuizhou lu de minzu guanxi ji minzu diqu de fazhan* 北宋夔州路的民族关系及民族地区的发展], *Changjiang Shifan Xueyuan xuebao* [长江师范学院学报], 25, no. 1 (Jan., 2009): 13–20.



Under the ‘opening the frontiers and acquiring new territories’ (*kaibian natu*開邊納土) policy advocated by Wang Anshi (1021-1086), the Song state initiated a cycle of imperial expansion. Lucrative careers in the official bureaucracy were offered to local magnates throughout the Ba/Shu region in exchange for their assistance in the great Song project of converting the wealth of the southwest into taxable enterprises.<sup>32</sup> Conflict with the Jin and the emergence of the threat of the Mongols brought the economic potential of the Three Gorges region to the fore of dynastic struggle.<sup>33</sup> Under the threat of war and conquest, the state’s willingness to commit to more costly and risky forms of settlement increased, and the Song state pushed farther into the unexplored and mineral-rich territories of Kui circuit.<sup>34</sup>

Chongqing did not become a central site of imperial expansion in the Song, but grew from increased economic traffic, infrastructure, and immigration during this period. Chongqing’s first tax station was established in this era.<sup>35</sup> The revenues generated in Chongqing reflected the general upswing of production and commerce in the Three Gorges region, as well as the new importance of the Yangzi as a transportation artery toward China’s eastern coast. Immigration to the region boomed.<sup>36</sup> The profits made from the salt and mining enterprises in the Kui Circuit, combined with the recently-tapped potential of the

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<sup>32</sup> The seminal treatise on this process is Smith’s *Taxing Heaven’s Storehouse*.

<sup>33</sup> On the transition of the Song economy from a focus on the northern routes to the southern cities in Kui Circuit, see He Yuhong, “A Discussion on the Decline of the Economy of the Shu Circuit in the Southern Song” [*Lun Nan Song Shu dao jingji dai de shuailuo* 论南宋蜀道经济带的衰落] *Xinan Daxue xuebao (shehui kexue ban)* [西南大学学报(社会科学版)] 33, no. 03 (May, 2007): 53–58 and Smith, “Commerce, Agriculture, and Core Formation in the Upper Yangzi.”

<sup>34</sup> For a history of the Three Gorges economy of the Song, see Zhang Shun, “General Studies on the Economic Exploitation of the Three Gorges Region in the Song Dynasty” [*Song dai Changjiang Sanxia diqu jingji kaifa de zhengti yanjiu* 宋代长江三峡地区经济开发的整体研究] (master’s thesis, Central China Normal University [*Huazhong Shifan Daxue* 华中师范大学], 2003), and Chapter 4 of von Glahn, “The Country of Streams and Grottoes.”

<sup>35</sup> By the second half of the eleventh century, it ranked 12th in revenues of the 46 figures known from Sichuanese tax stations established by the Northern Song. See Cheng, “Research on the Commercial Centers of the Southwest in the Tang Dynasty,” 42.

<sup>36</sup> Zhou Yong notes that, in the course of the Song, population of the Three Gorges region increased and spread out so much that over 180 towns (*zhen* 鎮) were created. See Zhou Yong, ed. *A Survey History of Chongqing* [*Chongqing tong shi* 重庆通史], (Chongqing: Chongqing chubanshe), 2002, vol. 1, 136.

Yangzi River as a commercial route, meant that, by the eleventh century, although Chengdu maintained dominance over the region, the Three Gorges area – and Chongqing in particular – grew several times more rapidly than Chengdu.<sup>37</sup>

The elevation of Song interests in Sichuan required the court to mount a serious administrative effort to maintain its economic foothold and govern the growing immigrant populations in the former Ba territories. Hosts of officials were commanded to take up posts in Kui circuit. Many expectant bureaucrats refused assignments in the area, which was the subject of many reports of shock and disgust by the officials dispatched to govern the area. Song official Fan Chengda (范成大) (1126-1193) recorded his first impressions of Chongqing in 1177 (then called Gongzhou 恭州):

On the *gengxu* day, we disembarked from the clay banks and traveled 60 *li*, arriving at Gongzhou (Chongqing). From there we entered the path among the gorges... the atmosphere and the land are entirely different... Gongzhou is a prefecture atop a great big rock. In the fierce summer the water evaporates and the earth bakes, and the poisonous heat burns like a coal fire. The mountains and water are all covered with miasmatic mists, and the water is insalubrious in the extreme.<sup>38</sup>

Over the course of the Southern Song, the Three Gorges region earned a reputation as a desolate and strange landscape full of misadventure and loneliness for the unlucky officials who were assigned to posts in the region. A wry aphorism circulated among officials of the day:

In the four circuits of Sichuan,  
The worst places are Zhong and Fu,  
But Chongqing and Wanzhou are especially low.<sup>39</sup>

The former Ba territories were considered a bleak cultural wasteland situated in a desperately primitive economic backwater. Wang Shipeng (王十朋 112-1171) reported:

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<sup>37</sup> In his “Commerce, Agriculture, and Core Formation in the Upper Yangzi,” Smith concludes that “From 742 to 1080 the Chengdu Plain grew only 43 percent, while the rest of the region more than doubled, for an increase of 108 percent... the Chongqing Region grew 433 percent.”

<sup>38</sup> Fan Chengda (范成大) *Wu chuan lu* [吳船錄], vol. 2.

<sup>39</sup> Modified in consultation with the original from p. 7 of Smith, “Commerce, Agriculture, and Core Formation in the Upper Yangzi.”

Amidst the gorges of Kui circuit, the land is scarce and the people poor. Their faces are of a strange color, and their clothes do not cover their bodies... as for the overlords and commanders of the region, even if they exhaust their mental strength to scratch out some characters, not even all of their energies thus spent could produce something wonderful.<sup>40</sup>

Despite being elevated to the rank of ‘superior prefecture’ (*fu* 府) in 1189, posts in Chongqing remained unfilled for years at a stretch. Chongqing failed to develop enduring social or administrative ties to the empire. Assignments to govern the former Ba territories were considered hardship posts, and a place where one was assigned only after winding up on the wrong side of court politics.<sup>41</sup>

But the disdain of imperial officials did not halt the progress of state interests in the greater Chongqing area. The city continued its career as an increasingly prosperous center of regional trade in spite of the derision of the cultural elites who traditionally gravitated toward Chengdu.<sup>42</sup> And economic expansion continued to pull the Chinese state further into the frontier. Clashes with the halter and bridle territories in the region occurred with increasing frequency, as the complicated political economy was destabilized by Han immigration and intrusive Song economic and military policies. In 1075 the Song established a Nanping Garrison (南平軍) to protect Chongqing and Fuzhou (涪州) in the face of increasingly unstable relations with the non-Han residents of the area. The Chongqing frontier was militarized: fortifications were built and Song military officials were brought down to defend state interests in the Three Gorges region. Officials started requesting that all of the Kui circuit be converted to normal administrative units. But the government position in the region was still fragile, and war on other frontiers engaged the attention of the state.

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<sup>40</sup>Wang Shipeng, *Meixi ji* [梅溪集].

<sup>41</sup> For an example, see the “Epitaph of Yuzhou Magistrate Wang Shuzhong” [*Zhi Yuzhou Wang Shuzhong muzhiming* 知渝州王叔重墓志铭] in *juan* 23 of Lü Tao’s *Jing de ji* [淨德集].

<sup>42</sup> Von Glahn, “Streams and Grottoes,” 64-65.

## *Chongqing's Military Age*

The Song military build-up in Sichuan took on a new meaning when the north of China was lost to the Jurchen Jin dynasty (1115-1234), forcing the Southern Song on the defensive not only against their Jurchen rivals but also in against the Mongolian horde. Mongol raids on Sichuan began in the first half of the thirteenth century. Chengdu fell first in 1236. The city was later recovered, but it proved impossible to defend in the face of repeated attacks and had to be abandoned. The same qualities that made the Chengdu Plain so desirable in times of peace were insurmountable liabilities in the face of armies attacking from the north, especially when the northern heartland beyond the Hanzhong pass had already been lost to the Jin.

The Song generals cast about for options and soon fixed on a new plan: if the rich Chengdu Plain was lost, the rocky and inhospitable promontories of the Three Gorges, which had proved so resistant to settlement throughout the millennium, would suffice as a base from which to make a stand against invading armies. Even if the wealth of Sichuan had to be surrendered, the Song state recognized that access to Chongqing and the Yangzi River was an unacceptable threat to the safety of the remaining territory of the empire. The Southern Song fixed its defense on Chongqing.<sup>43</sup>

Under the initiative of Song generals Peng Daya (彭大雅) and Yu Jie (余玠), Chongqing's walls were refortified and expanded for the first time since the Qin. Two new inscriptions were carved into the city's walls. The first read: "Peng Daya built this wall, to serve as the bulwark of Western Sichuan (彭大雅筑此城为西蜀根本)."<sup>44</sup> When Yu Jie arrived to take over the defense of Chongqing in 1243, he added

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<sup>43</sup> On the strategy and the course of the Southern Song defense against the Mongols in Sichuan, see Li Bangzheng, "The Strategic Position of Chongqing in the Struggle of the Southern Song against the Mongol (Yuan)" [*Chongqing zai Nan Song kang Meng (Yuan) douzheng zhong de zhanlüe diwei* 重庆在南宋抗蒙(元)斗争中的战略地位] *Xinan Shifan Daxue xuebao (zhexue shehuike xue juban)* [西南师范大学学报(哲学社会科学版)], no. 03 (Oct., 1990): 103–109 and Guan Wenfa, "An Attempt to Discuss Sichuan's Strategic Position in the Southern Song" [试论南宋时期四川的战略地位], *Xinan Shifan Xueyuan xuebao* [西南师范学院学报], no. 01 (Apr., 1982): 49–56.

<sup>44</sup> Shao Guizi, *Xue zhou cuoyu* [雪舟脞語], as collected in Tao Zongyi's (陶宗儀 1321-1407) *Shuo fu* [說郛].

his own inscription to the city gates: “A single defensive position in this miraculous stronghold can be relied upon for decades to come (一柱擎天頭勢重十年踏地脚根牢).”<sup>45</sup>

In the final decades of the Song, the attributes that had made the Three Gorges region so difficult to govern became critical military assets; Chongqing and its two satellite towns of Hezhou (合州) and Diaoyu (釣魚) served as the lynchpins of the Song military strategy in Sichuan. The commitment to a defensive position centered on Chongqing was both a successful military strategy and a pivotal point for the city’s history. Chongqing lived up to the expectations of its proponents and held out for decades against Mongol onslaught. Even after the Mongols declared the creation of the Yuan dynasty in 1271 and subsequently severed communications between the Sichuan Song army and the Chinese heartland by establishing control over the Middle Yangzi, Chongqing and its satellite defense cities continued to resist conquest. Completely cut off from the support of its court and any reinforcements, the stranded Sichuan army continued to defend Chongqing for six years after the Yuan encircled the stronghold. The city held out even after the surrender of the Southern Song capital of Hangzhou in 1276 and was only taken after a fierce battle in the first month of 1278. By the time of its fall, Chongqing and its surrounding cities had succeeded in fending off Mongol attacks for an entire generation.

The Southern Song defense from Chongqing changed the status of the city: its military potential as guardian of the mouth of the Three Gorges was brought to the fore for the first time since the earliest days of imperial consolidation under the Qin and Han. The city’s baptism in the conflict of the Song and the Yuan established Chongqing as a key military position for control over access between Sichuan and the rest of the empire. Even after the defeat of the Southern Song, the Mongols maintained a strong presence in the city: it served as the headquarters of the eastern Sichuan army (东川枢密院 *Dong Chuan chu miyuan*) after the victory of the Yuan and, when the eastern and western forces in Sichuan were

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<sup>45</sup>Wu Lai, *San chao yeshi* [三朝野史].

divided into four separate posts in 1278, Chongqing was one of the bases of the new office (宣慰司 *xuanweisi*).<sup>46</sup>

Chongqing's new military status brought the city serious attention from imperial generals, but this profile attracted calamity as well. The Song-Yuan transition that first consecrated Chongqing's position as a military stronghold cost the city dearly. In 1290, twelve years after its surrender to the Yuan, the entire Chongqing prefecture claimed only 22,395 households – an estimated 20 to 25% of the city's population at its peak in the Song.<sup>47</sup> The population of the province didn't return to its previous levels until more than five hundred years later under the Qing dynasty.<sup>48</sup> The economy of the region was set back by centuries. Even the modest recoveries made during the Yuan were erased when Chongqing's profile as a military prize attracted the attention of a new conqueror in the midst of renewed dynastic struggle.

After less than a century of Yuan control, the empire-wide revolts that hastened the end of the dynasty spilled over into Sichuan in 1357. By the fourth month of 1357, rebel leader Ming Yuzhen (明玉珍) and his followers from the neighboring province of Huguang (湖廣) arrived at Chongqing. The Yuan garrison fled, and the city became the base for the peasant army. In 1363 Ming Yuzhen announced the

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<sup>46</sup>Over the years, as a strong military presence in Sichuan became less important (and finally infeasible), the various armies in the province were combined into one force under the direction of a single *xuanweisi*. From 1288 to 1290, this post was based in Chongqing, until being moved to Chengdu. On the history of Yuan military and administrative early organization in Sichuan, see Wang Yupeng, "The Distribution of Military Offices and Troops in the Southwest during the Yuan" [*Yuan chao xinan diqu junshi jigou de shezhi ji bingli de buzhi* 元朝西南地区军事机构的设置及兵力的布置], *Guizhou wenshi congkan* [贵州文史丛刊], no. 2 (May, 2011): 6–12.

<sup>47</sup>This figure is from the Geography Treatise (*Dili zhi* 地理志) of the Yuan History (*Yuan shi* 元史); as quoted in Zou Dengshun "On the Influence of Immigration on the Cultural Development of the Three Gorges Region during the Yuan, Ming, and Qing" [*Lun Yuan Ming Qing Sanxia diqu de yimin dui qiyu wenhua fazhan de yingxiang* 论元明清三峡地区的移民对区域文化发展的影响] *Chongqing Shifan Daxue xuebao (zhexue shehui kexue ban)* [重庆师范大学学报(哲学社会科学版)], no. 05 (Oct., 2004): 60–66. The estimate of this population statistic in relationship to Song figures is taken from Zhou Yong, ed. *Chongqing: The Rise of an Inland City* [*Chongqing: Yige neilu chengshi de jueqi* 重庆: 一个内陆城市的崛起] (Chongqing: Chongqing chubanshe, 1989), 47.

<sup>48</sup>For an exploration of the population of Sichuan in the Ming, see Long Denggao, "The Formation and Development of Regional Markets in Chinese History: A Case Study of the Upper Yangzi Region," [*Zhongguo lishi shang qiyu shichang de xingcheng ji fazhan: Changjiang shangyou quyu shichang de ge'an yanjiu* 中国历史上区域市场的形成及发展-- 长江上游区域市场的个案研究] *Sixiang zhanxian* [思想战线], no. 06 (1997): 59–63.

founding of his own Xia dynasty (夏). The military stronghold of Chongqing was made the capital. By the time the Ming troops under the Hongwu Emperor entered Sichuan and conquered the Xia dynasty in 1371, the kingdom had expanded its borders to encompass the northern and eastern reaches of Sichuan, as well as the south of Shaanxi, the northwest of Hubei, and the north of Guizhou.

The bloody century between the Yuan and Ming conquest of Sichuan secured Chongqing's reputation as a base from which to dominate the greater southwest and control access between Sichuan and the Chinese heartland. In an era of turmoil, the city's desirability as a military stronghold meant that it began to eclipse even the allure of Chengdu, as war and strategy became more pressing concerns than administration and economy. By the conclusion of the brief reign of the Xia dynasty – Chongqing's first stint as the capital of a dynasty – the military strength of the city had made it the most desirable prize in Sichuan. By the time of the Ming (1368-1644), Chongqing became known as “the root of Eastern Sichuan (川東之根本),” and was considered the natural stronghold from which the entire province could be defended.<sup>49</sup> Chaos had consolidated the city's new position as the supreme military base of the region, controlling access between the southwest and the central plains.

### **From Military Stronghold to Center of Immigration and Expansion**

From the founding of the Xia dynasty and through the three centuries of the Ming, the military value of Chongqing was translated into population growth. The large influx of Huguang immigrants following Ming Yuzhen formed a new taxable agricultural base around the city in what became known as the first of two “great migrations of Huguang into Sichuan” (湖广填四川).<sup>50</sup> The authority of the Chinese

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<sup>49</sup>See, for example, *Shang neige Shen Zhao er xiang gong ji tian da sima* [上内閣趙沈二相公及田大司馬] and similar memorials reproduced in *juan 424 of Huang ming jingshi wenbian* [皇明經世文編].

<sup>50</sup> More about the background and implications of the first great migration of Huguang natives into Sichuan is outlined in Zou, “Cultural Development of the Three Gorges Region during the Yuan, Ming, and Qing.” On the economic implications of these two waves of Huguang immigration to Sichuan, see Lan Yong “Immigration and

empire was carried into the hills and river valleys of the former Ba territory by subjects themselves, who settled in droves.

The city walls of Chongqing were rebuilt by the Ming in accordance with the *Ijing* octagonal design. In the 1380s the Ming emperor's demand to implement the *lijia* (里甲) system led to the creation of municipal units of taxation and collective responsibility in Chongqing. By the 1461 compilation of the Ming Imperial Gazetteer, Ba County was reported to have 91 *li* units.<sup>51</sup> Sichuan's wealth began to enter imperial registers by a new means entirely: household taxation. The implementation of imperial administration in Chongqing was thus furthered not by state design so much as social movement, as Huguang immigration brought the Ming to the Three Gorges.

In a now-familiar cycle, population growth in the Ming led to renewed hostilities between the imperial state and the non-Han polities that still claimed semi-autonomous dominion over pockets of the region. Military conflict between Han settlers and non-Han populations led to the gradual conquest and incorporation of halter-and-bridle territories into the regular system of imperial administration. The Ming stationed a Military Intendant (兵备道) in Chongqing to look after the security of the region's imperial subjects and manage relations with the halter-and-bridle territories, which were converted into *tusi* (土司) domains. This process of provocation, conflict, and acquisition of non-Han domains triggered further clashes. Chongqing itself was threatened by the 1599 attack of an army under Yang Yinglong (楊應龍)

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Economic Development in the History of the Three Gorges Region" [*Lishi shiqi Sanxia diqu de yimin yu jingji kaifa* 历史时期三峡地区的移民与经济开发] *Jingji Dili* [经济地理], no. 04 (1992): 92–96.

<sup>51</sup> *Ming Imperial Gazetteer* [*Da Ming yitong zhi* 大明一统志] (1461), 4334–4338. In spite of the ability of the Ming state to directly tax the population living in the greater Chongqing region, the household/population ratio of the entire province of Sichuan remained much higher than elsewhere. According to the *Ming hui yao* (明會要), Sichuan reported 1,466,778 individuals in 215,719 households in 1393, for an average 6.8 individuals per household. The ratio for Zhejiang during this period was 4.9. In 1491, Sichuan reported an average ratio of 10.2 individuals to the household. The ratio for Zhejiang during his period was 3.5. In 1578, Sichuan's household/individual ratio of 11.8 compared to 3.3 for Zhejiang. The large gap between reported average household sizes can be attributed to two factors. The first is a continuation of the earlier Ba/Shu strategy of maintaining large, multi-family households in dangerous frontier regions. The second is a widening gap between estimated population figures in Sichuan and the state's ability to maintain household registers. For the figures used here and for others, see the *minzheng* (民政) section in *juan* 50 of the *Ming hui yao*.



from Zunyi (遵義). In 1622 the city was briefly captured by She Chongming (奢崇明), the leader of an Yi (彝) military unit whose cooperation with the Ming campaigns spoiled over an issue of remuneration. She's rebellion was one of several smaller-scale uprisings that plagued the Chongqing region in the early seventeenth century.

The Yuan and Ming military consolidation had opened up the Three Gorges region to Han immigration and exploitation. Much like the Song cycle of imperial state-building, the massive influx of immigrants from Huguang led to clashes between Han and non-Han populations and pulled the state further and further into the self-replicating logic of imperial expansion. Unlike the Song state, however, Ming expansion pushed more firmly toward the dissolution and absorption of non-Han polities, as the horizon of frontier expansion was cast in more clear relief by Han military domination of the boundaries of frontier space. State expansion now took place within a defined and increasingly well-defended territory. The complex social and political logic of the Three Gorges region began to slowly melt away in the face of aggressive settlement and the growth of a Chinese administration.

### **Total War in Sichuan**

The strong forces compelling the Ming state to expand its presence in the southwest were mitigated by the more compelling demands of empire-wide warfare in the seventeenth century. While the forces under peasant rebel Li Zicheng (李自成) swept across the eastern half of the empire, the main herald of dynastic transition in Sichuan was Zhang Xianzhong (張獻忠), a man from Shaanxi who began building his own army in 1630. He made his first foray into the southwest in 1640 and succeeded in capturing the city of Chongqing in 1644, where he murdered Zhu Changhao (朱常浩), a scion of the

Ming imperial line who had fled to the city in search of refuge.<sup>52</sup> From Chongqing, Zhang seized Chengdu, where he mounted the throne as emperor of the Great Western dynasty (大西) in December of 1644, having eliminated every member of the Ming line who had sought refuge in the province.

Zhang's conquest marked the beginning of Sichuan's long and painful experience of the Ming-Qing transition. Although the emperor of the Great Western dynasty enjoyed a relatively successful reign in the first years of his rule, the instability of the region, widespread clashes between Ming and Qing armies, and depredations of roaming bands of displaced peasants were not long in descending on the Ba/Shu region.<sup>53</sup> When Zhang's forces were forced to give up their strongholds in the cities of Sichuan, they pursued a vicious scorched earth policy and wrought havoc and destruction throughout the province. The scale of devastation and violence was unprecedented even in Sichuan's tumultuous history.

In the destruction of the late Ming and early Qing, almost the entire population of Chongqing was wiped out. An account of the city's destruction by Zhang Xianzhong's troops in 1646 suggests that, by the time that Qing troops arrived to contend for the city it was already destroyed:

As far as the eye could see everything was burned to the ground. All of the houses and buildings of Chongqing's city were leveled. The city walls had been flattened into rubble... As far as the eye could see, the villains had taken the city battlements and pushed them all into the river, and then camped on even ground for several days before deciding to leave... everywhere they went they plundered, burned, and killed everything....<sup>54</sup>

Only the remotest, most isolated areas escaped complete destruction. Traveling from Chongqing to Shaanxi, a Qing officer Li Furong wrote of the devastation:

... I have seen corpses and bones everywhere, thorns and brambles blocking the road. Yesterday's pavilions and terraces, halls and chambers, are today's tangled brushes

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<sup>52</sup>Zhang's seizure of Chongqing and his execution of the officials residing in the city (by removing their hands, feet, eyes, and tongues) is recorded in Gu Shanzhen, "Shu Ji [蜀記]," reproduced on page 271 of the *Taiwan wenxian congkan* [台灣文獻叢刊] (Taipei: Taipei Yinhang, Zhonghua Shuju, 1969).

<sup>53</sup> For a careful depiction of the rule of Zhang Xianzhong and the Ming-Qing transition in Sichuan, see Robert Entenmann, "Migration and Settlement in Sichuan, 1644-1796" (PhD diss., Harvard University, 1982).

<sup>54</sup>Gu, *Shu ji*.

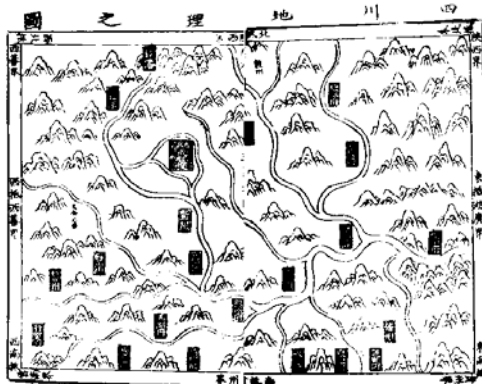
sheltering foxes and rabbits. Yesterday's luxurious clothing and works of art are today's tiles and rubble, birds and mice. Yesterday's mulberry leaves and hemp and millet are today's wastelands of creeping grass. The mountains and rivers are as they were long ago, the human scene utterly destroyed. Of old villages, only one or two out of a hundred remain. I grasped my hands in astonishment, as if I were reborn in a new world.<sup>55</sup>

At the time of the founding of China's last empire, Chongqing presented a bleak portrait on the ravages of war. By the middle of the seventeenth century the entire province was haunted by troops, bandits, and hungry tigers that were no longer held at bay by human cultivation. War and plunder was followed at a close distance by disease and starvation. In a ghostly refrain on the region's complicated past, the non-Han groups who had been pushed out of the fertile Sichuan Basin by Han settlement returned from mountain fortresses and remote regions to fill the vacuum left by province-wide devastation.

In 1646, Wu Sangui led Qing troops into Sichuan. Qing generals reported the pacification of the region as early as 1653, but the armies of the new dynasty remained occupied with war against troops still loyal to the Ming until 1665. Chongqing maintained a high profile during the Qing campaigns to establish control over the province. The city served as the headquarters of the Qing Governor-General throughout most of the 1660s, as the fighting throughout the province became concentrated in the difficult-to-control strongholds of the Three Gorges region. In the heightened military atmosphere, Chongqing's place in the region was portrayed as never before:

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<sup>55</sup>Li Furong (李馥榮), *Yan yu nang* [滄瀕囊], *juan* 4, as cited in Sun Cizhou, "An Investigation of the Historical Evidence Regarding Zhang Xianzhong in Sichuan" [*Zhang Xianzhong zai Shu shiji kaocha* 张献忠在蜀史迹考察] *Lishi yanjiu* [历史研究], no. 1 (1957): 54.



1.3 A Ming-era representation of Sichuan: the large box is Chengdu. Chongqing is labeled as the third city down on the eastern-most river indicated on the map. It is indistinguishable from the others.<sup>56</sup>



1.4 A new vision of Chongqing’s place in the province from the Kangxi Era<sup>57</sup>

Chongqing’s central place in the military struggle over Sichuan came with a toll. At the close of the Qing campaigns the entire prefecture of Chongqing housed “no more than a few hundred households.”<sup>58</sup> Taking up his post as Governor-General in 1671, Cai Yurong noted that “Sichuan has

<sup>56</sup> *Ming Imperial Gazetteer* [*Da Ming yitong zhi* 大明一統志] *juan* 08, 4163-4164.

<sup>57</sup> *Kangxi Sichuan General Gazetteer* [*Kangxi Sichuan zongzhi* 康熙四川總志], “pictures and contents” [*tumu* 圖目] *juan*.

<sup>58</sup> *Kangxi Sichuan General Gazetteer*, *juan* 10.

fields to till, but no people to work them.”<sup>59</sup> The population of was so low that even the military garrisons of the region were impoverished and understaffed, lacking a material base to defend the war-torn fields.<sup>60</sup>

Before the specter of violence could be forgotten in a fever of reconstruction, another war racked the province. Wu Sangui – one of the generals responsible for Sichuan’s pacification – declared war on the Qing in 1673 by establishing his own dynasty, the Zhou (周).<sup>61</sup> In 1674 Wu’s forces, headed up by Wang Pingfan, entered Sichuan. Before any vigorous defense against the onslaught of the forces of the turncoat general could be mounted, Sichuan fell once more. The Qing lost control over the province by the end of 1674, and the War of the Three Feudatories ignited conflict throughout the south of China.

Chongqing was once again placed at the center of the military stage, being won and lost with frequency. By 1680, having secured the city a final time, Qing generals gathered their forces in Chongqing to prepare for a final defense against Wu Sangui’s army in Yunnan and Guizhou.<sup>62</sup> Qing forces won control over Sichuan thirty-seven years after first declaring victory. Under the hard-won Qing domination of Sichuan, a new era of settlement and reconstruction – after the false start and failures of the first four decades of Qing rule – was initiated. The scope of imperial ambitions in the southwest was unrivalled in history, and its consequences equally far-reaching.

### **The Fallow Field: Sichuan in the Early Qing**

When the Qing finally managed to secure its hold over Sichuan, it was faced with the challenge of building the infrastructure of the province from scratch. In the early years of his reign, the Kangxi

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<sup>59</sup> *Veritable Records of the Kangxi Emperor* [*Shengzu Ren huangdi shilu* 聖祖仁皇帝實錄, hereafter KXSL] year 10, month 6, *yiwei* day.

<sup>60</sup> KXSL year 10, month 6, *dingsi* day.

<sup>61</sup> On the War of the Three Feudatories, see Tsao, Kai-fu, “K’ang-Hsi and the San-Fan 三藩 War,” *Monumenta Serica*, vol. 31 (1975-1974): 108–130.

<sup>62</sup> KXSL: year 19, month 1, *jiayin* day and year 19, month 2, *gengchen* day.

Emperor (r. 1661-1722) adopted a “fallow field” approach to Sichuan’s recovery. The imperial court opened up the province to unrestricted immigration, implemented dramatically reduced tax quotas, and instructed the provincial officials of Sichuan to interfere as little as possible with the local economy. In the first several decades of the new *pax Manchurica*, the exhausted fields of Sichuan were left open and the administrators of the province were instructed to tread lightly, in the hopes that nature might take her turn in fostering the revival of Sichuan’s reputation as the rich treasury of the empire.

Resettlement of the province was ordered as early as 1661.<sup>63</sup> The administrative needs of the province were addressed in preparation for the arrival of returned and new families: in order to fill the empty posts throughout the region, local men (often from a military background) were recruited to take over the offices that had long been abandoned. Administrative units were collapsed under larger and larger territories, to accommodate the lack of personnel and the absence of a population to govern.<sup>64</sup> In the midst of the final throes of the struggle for dynastic control, reconstruction also began again: the city walls of Chongqing were rebuilt in 1663, and the city’s *yamen* was reconstructed in 1669.

After victory over Wu Sangui, Sichuan was re-integrated into the civilian administrative infrastructure and returned to the control of the Shaanxi-Sichuan Governor-Generalship. Settlement campaigns began in earnest. In the August of 1681, the emperor approved a proposal from the Board of Revenue outlining sanctions for military men who refused to return the fields of Sichuan back to original owners who decided to return to their livelihoods.<sup>65</sup> But the natives of Sichuan did not come rushing back, and the province lagged far behind the rest of the empire in its economic and demographic recovery. The Kangxi Emperor decided to speed up the growth of the province by dictating a special administrative

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<sup>63</sup> KXSL: year 7, month 11, *wuwu* day.

<sup>64</sup> Entenmann, “Migration and Settlement in Sichuan,” 54.

<sup>65</sup> KXSL: year 20, month 7, *gengshen* day.

strategy. In a 1685 interview with the newly-appointed Inspector-General of Sichuan, the emperor declared that the most important function of the post was the facilitation of Sichuan's recovery:

The people of Sichuan, at the end of the Ming, suffered the devastations of Zhang Xianzhong, and the fields have been laid to waste. Suffering the repeated depredations of waves of bandits, the people have been driven to the edge of exhaustion... We must provide support for them, and then people from afar will come and engage happily in life and industry...<sup>66</sup>

The pull of opportunity on the southwestern frontier was trusted to provide the same motivation to settlers that it had offered in previous times, and the Qing court left the resettlement of Sichuan to settlers themselves.

The Kangxi Emperor's fallow field policy was explained more fully in his 1709 interview with Nian Gengyao, the expectant Inspector-General of Sichuan. Now that the province had begun on the slow path of recovery, the Kangxi Emperor instructed his official to continue to tread lightly:

Sichuan is scattered about with Miao peoples, who are of different dispositions. You must do your utmost to make arrangements to coexist with them, and thus will your governorship be stable, and there will be mutual peace. In previous years the commoners of Huguang have flooded into Sichuan, and opened up fields and taken up residence. The region is slowly becoming wealthy. In your position as Intendant, if you arrive at your post and just start trying to clearly register the fields and land, in order to raise taxes, you will not win the hearts and minds of the people. It was because there was a land survey in Hunan that trouble arose there... You must abide peacefully with the commoners, and only gradually examine and add revenue sources. The most important task in Sichuan right now is *establishing a legal order* (刑名). Use utmost caution and care ....<sup>67</sup>

The delicate state of Han and non-Han relations, the sudden influx of poor immigrants, and the fragile process of economic recovery justified a special approach to the administration of Sichuan. The

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<sup>66</sup> KXSL: year 24, month 9, *jiayu* day.

<sup>67</sup> KXSL: year 48, month 10, *jiyou* day, emphasis added. Nian Gengyao appears to have taken Kangxi's exhortation to employ lax financial policies to heart, but little else. During more than a decade as a provincial official in Sichuan, he carried out a career of embezzlement, misreporting, and abuses of both officials and commoners that later earned him ignominy. On his dubious career, expulsion by the Yongzheng Emperor in 1725, and legacy in Sichuan, see *Veritable Records of the Yongzheng Emperor* [*Shizong Xian huangdi shilu* 世宗憲皇帝實錄, hereafter YZSL]: year 3, month 6, *guisi* day; YZSL: year 3, month 7, *dingwei* day; YZSL: year 5, month 3, *wuxu* day; and Yingcong Dai, *The Sichuan Frontier and Tibet: Imperial Strategy in the Early Qing*, (Seattle: University of Washington Press, 2009), 69-90, 103-4, and 167-188.

precarious peace in the war-torn region was too precious to threaten with overly assiduous taxation or administrative meddling; government revenues were less important than the promise of long-term stability. The main challenge facing the provincial administration was the provision of only the most basic outlines of an imperial social order, to encourage an eventual return to Sichuan's former glory.

In response to these policies, peasants from the land-poor, tax-heavy, and famine-stricken neighboring provinces – especially Huguang – began to move to Sichuan from the beginning of the eighteenth century. In 1705, enough settlers had entered the province that several administrative positions were reconstituted or created for the first time. By 1706, the Qing imperial court remarked that the administration of the province was not growing apace with the population and that civil officials proved reluctant as ever to take up positions in the faraway, military-dominated province, often refusing posts in the area.<sup>68</sup> The Kangxi Emperor responded to Sichuan's staffing problems with yet another compromise to add to the list of things that made Sichuan exceptional. If regularly-appointed officials were loath to staff the deserted offices of the province, expectant officials would suffice, to ensure that the posts were not empty for long. The administration in Sichuan was dedicated to the maintenance of the *status quo*, as the steady stream of migrants entering the province did the real work of recovery.

The Kangxi Emperor's policy of administrative restraint came at a cost to the central administration. The activities of the individuals inhabiting Sichuan's fields and offices were consistently under-reported. In 1710 the Board of Personnel proposed that the unorthodox bureaucratic staffing processes practiced in Sichuan might be to blame for the poor quality of the administration, remarking that Sichuan remained an unattractive assignment to regular civil officials.<sup>69</sup> The distance between Sichuan and the empire's capital, although intentionally preserved, also made the region difficult to

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<sup>68</sup> KXSL: year 45, month 3, *bingyin* day.

<sup>69</sup> KXSL: year 49, month 3, *wuzi* day.



supervise. Sichuan became known for “malfeasance and impropriety” at the capital, as reports of officials “running amok, dispatching troops, and causing trouble” arrived in Beijing.<sup>70</sup> Concerns about even the maintenance of a basic level of legal order in Sichuan began to surface at the central court. The wisdom of the fallow field approach to resettlement could only be asserted with qualifications, as the administrative infrastructure of the province was outpaced by settlement and the frontier became increasingly lawless.

### **Sichuan as a Qing Military Theater in the Era of Westward Expansion**

Before the structural stresses of the Kangxi Emperor’s fallow field approach to Sichuan could be evaluated and addressed, war broke out on the frontier and once more threatened the modest political, economic, and population gains made by the Qing in Sichuan. In 1717, the Zunghar army – which had been contending with Qing troops for supremacy along China’s northwest border – invaded Tibet, and menaced not only the empire’s territory in the southwest, but also the Qing’s larger diplomatic strategy. In August of 1718, the Kangxi Emperor ordered the creation of a permanent garrison in Chengdu, with an eye toward the development of the Qing strategic position in the region.<sup>71</sup> Sichuan was awarded its own Governor-Generalship once more, and military buildup in the province began in earnest. All of Sichuan was concentrated on supplying the Tibetan campaigns, upon which hinged the question of Qing supremacy in Central Asia.<sup>72</sup>

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<sup>70</sup> KXSL: year 49, month 3, *dinghai* day.

<sup>71</sup> KXSL: year 57, month 7, *gengyin* day.

<sup>72</sup> On the general state of Qing affairs in Central Asia, see Peter C. Purdue, *China Marches West: The Qing Conquest of Central Eurasia*, (Cambridge: Harvard University Press, 2005). On the role of Sichuan in the Qing campaigns, and on the administrative profile that Sichuan earned by this position, see Dai, *The Sichuan Frontier and Tibet* and Robert H. G. Lee “Frontier Politics in the Southwestern Sino-Tibetan Borderlands During the Ch’ing Dynasty,” in Joshua A. Fogel and William T. Rowe, eds., *Perspectives on a Changing China: Essays in Honor of Professor C. Martin Wilbur on the Occasion of His Retirement*, (Colorado: Westview Press, 1979), 35–68.

The military officials who were charged with translating Sichuan's resources into a successful campaign in Tibet were, under the emperor's direction, spared many of the restrictions that applied to the civil administration. Means of appointment and the length of tenure were irregular and made flexible enough to provide them with the leeway required to build up a successful military foundation for conquest in the greater southwest.<sup>73</sup> Combined with the standing policies of low taxation and minimal monitoring by the central bureaucracy, this shift presented the opportunity for military officials in Sichuan to gather great fortunes from the salt wells, horse markets, tea plantations, and fertile fields that had financed previous empires, while the focus of the central bureaucracy was fixed farther to the west, in Tibet.<sup>74</sup>

The outbreak of war on the western frontier meant that Sichuan's "no spending, no exaction" fiscal profile (first adopted in the fallow field era to attract settlers) would continue indefinitely, in the face of mounting military costs. From the recovery of Sichuan in 1680 to the end of the Kangxi reign in 1722, the province was known for its light agricultural tax burden, its low level of central oversight, its informally-managed economic and administrative infrastructure, its freely available land, its burgeoning economy, and its military-centered field administration. The domination of military interests fundamentally altered the dynamic of the fallow field approach to administration in the province, as Sichuan was bound tightly to the Qing military complex in the southwest. By the close of the Kangxi reign, the economic recovery of the province had been funneled into the business of war, which would serve as the primary focus of the region's administration for the duration of the eighteenth century.<sup>75</sup>

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<sup>73</sup> On Kangxi-era military personnel strategy, see Yingcong Dai, "To Nourish A Strong Military: Kangxi's Preferential Treatment of His Military Officials," *War and Society*, Vol. 18, No. 2 (Oct., 2000): 71-91.

<sup>74</sup> On the personal wealth of military officials, see Yingcong Dai, "The Rise of the Southwestern Frontier Under the Qing 1640-1800," (PhD diss., University of Washington, 1996), 196-7 and 208-209.

<sup>75</sup> The authoritative account of this process – with much more detail than what I am able to offer in the limited space below – may be found in Dai, *The Sichuan Frontier and Tibet*.

## The Yongzheng Reforms

At the beginning of the eighteenth century, the inability of the Kangxi Emperor's fallow field administration to handle the mounting pressures of the region had become apparent. In the last decade of his reign, the Kangxi Emperor himself remarked upon the signs of unchecked population growth and economic distress in Sichuan.<sup>76</sup> By the time of the Yongzheng era (1722-1735), Sichuan's population growth registered at the central court as a mounting crisis, as immigrants pouring into the province found ever fewer means of subsistence and formed a large population of unsettled, unemployed, and ungoverned subjects. The Yongzheng Emperor beseeched authorities in neighboring provinces to dispel the increasingly unrealistic rumors of wealth waiting to be claimed across the border in Sichuan:

In the previous year it was reported that the people of Huguang, Guangdong, Jiangxi, and other such provinces have begun to migrate *en masse* to Sichuan because of land pressure and rising rice prices at home ... According to the memorials from all provinces, this migration is due to the dream embraced by many unknowing commoners of a Sichuan that is vast, where land is readily available and rice is cheap... They even say that it is easy to make a living in Sichuan, and that a man may become wealthy as soon as he changes his place of registration to that province. This rumor has deeply deluded the ignorant masses... now all the people of the empire converge on the single province of Sichuan, and those people all require food – and then what happens to the legendarily low food prices? It's a causal chain.

And yet people from a thousand *li* distant, or several thousands of *li* away, continue to quit their home fields, pick up their young and old, and head for the hills and rivers that lead into Sichuan. If they have any saved up wealth, they use it for travel expenses. Many suffer on the journey and find themselves in need of help, but with no assistance to be found. Some even turn into bandits to get by... These commoners must be edified before this delusion can be overcome. All local officials, in your quotidian efforts to support the populace, must exhort them on making it through the thin times. Explain the error of this delusion, and a timely warning will teach the commoners of every place to cherish the bounty of their own land...<sup>77</sup>

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<sup>76</sup> KXSL: year 52, month 10, *bingzi* day.

<sup>77</sup> YZSL: year 6, month 2, *jiachen* day.

Sichuan's reputation as a productive wellspring and its long tenure as a lightly-governed and under-taxed region attracted adventurers from throughout the empire, and the especially poor of neighboring provinces flocked into Sichuan in unwavering numbers.

The tensions hidden beneath the thin pretense of stability on the southwest Qing frontier became apparent with the 1725 downfall of Sichuan's Inspector-General, Nian Gengyao.<sup>78</sup> A powerful military figure, Nian's career and his fall from grace became a lightning rod for attention to the infrastructural weaknesses of Sichuan's civil administration and the burden that an over-privileged military administration had imposed on the population. In the wake of the investigations that followed Nian's dismissal, the Yongzheng Emperor concluded that the administration of Sichuan was under-qualified and under-supervised, resulting in "a superabundance of wicked personnel" (劣員甚多).<sup>79</sup>

A province-wide audit of Sichuan's civil office-holders was ordered. Several officials – including the Chongqing vice-prefect and the Ba county magistrate – were dismissed from office on a range of charges including embezzling military funds, exploiting the populace, and flattering their superiors into complacency while cruelly abusing the population.<sup>80</sup> Profiteering officials throughout the province were accused of vastly under-reporting profits from state mining and salt production ventures, thus turning the wealth of Sichuan – intended for imperial military adventures – into private fortunes.<sup>81</sup>

The effects of official privation were widespread and deep-rooted. The military administration had long been willing to overlook local abuses in exchange for the unceasing flow of wealth from the local level to the provincial coffers. Eager to please their superiors and make a profit off of their own

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<sup>78</sup> For an account of Nian's dismissal see Dai, *The Sichuan Frontier and Tibet*, 103-4.

<sup>79</sup> YZSL: year 3, month 6, *guisi* day.

<sup>80</sup> YZSL: year 3, month 7, *dingwei* day.

<sup>81</sup> YZSL: year 5, month 3, *wuxu* day.

positions, local officials throughout the province placed heavy extralegal burdens on the population. To escape this pressure, large numbers of peasants falsely registered their land under the names of patrons from the degree-holding class, who used their tax-exempt status to cultivate client-patron ties with larger and larger portions of the population. The peasants who failed to seek the protection of these local magnates were left with onerous tax burdens, as the majority of the province participated in a complicated game of informal accumulation and obfuscation of wealth.<sup>82</sup> The combination of the fallow field approach and the free reign given to military officials had warped the very fabric of the administration and economy of the province.

In response to such systemic disorder, the Yongzheng Emperor determined to replace the irregular physical, administrative, and social geography of the frontier – so inaccessible to imperial instruments of control – with the flat and legible divisions of imperial administration. Discontent with the powerful military apparatus of the southwest, the lawlessness of local society, and the threat of non-Han tribes who were now coming into contact with Han settlers, the Yongzheng Emperor set out to reshape the administrative geometry of the entire region.

In 1725, the Yongzheng Emperor began the task of reorienting the frontier space in Sichuan by commanding officials in the province to compile land and population registers. Although Galtu (噶爾圖), the Inspector-General of Sichuan from 1688 to 1693, had once requested a province-wide land survey, Sichuan's land and population had remained unregistered due to a lack of support for the idea.<sup>83</sup> The first Yongzheng-era registration initiative also languished under protests by Sichuan officials, who argued that the settlements of the region were too far apart, too difficult to access, and too impermanent to

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<sup>82</sup> YZSL: year 4, month 4, *wuzi* day.

<sup>83</sup> The Kangxi Emperor's response to Galtu's suggestion was framed his instructions to Galtu's successor, Nian Gengyao, who was encouraged to neglect the implementation of land registers and taxation instruments, in order to encourage resettlement. See KXSL; year 48, month 10, *jiyou* day.

successfully implement an ambitious registration scheme.<sup>84</sup> In 1727, the Board of Revenue proposed a compromise: the administration might begin to control the sources of immigration to Sichuan by implementing a licensing system. Poor peasants would apply to the *yamen* of their home county for a license to immigrate to Sichuan. Upon moving, the licenses would be used to trace families to their original place of registration. Licensed immigrants could be registered in Sichuan, and the *baojia* units for local census-taking and militia organization could begin to be created.<sup>85</sup> The same year, the Yongzheng Emperor approved the Shaanxi-Sichuan Governor-General's request to send virtuous and capable officials to the province in order to undertake a province-wide land survey.<sup>86</sup>

The Yongzheng administration enthusiastically guided the registration movement in Sichuan. A Board of Revenue proposal for a full re-evaluation of the distribution of taxes was approved, imperial censors were sent to the province to investigate tax abuses, and the proposed immigration licensing system was formalized by the Board of Revenue.<sup>87</sup> In 1728 the Yongzheng Emperor also ordered the Board of Revenue to organize a settlement scheme to offer tax relief, no-interest loans for farm capital, and access to seeds and oxen to till the fields of newly-reclaimed land.<sup>88</sup> Even the controversial land survey was completed by the end of 1729.<sup>89</sup>

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<sup>84</sup> On the early and abortive attempt of the Yongzheng Emperor to order Sichuan officials to begin a land registration scheme, and on the skeptical and measured response of the provincial authorities, see Entenmann, "Migration and Settlement in Sichuan," 135.

<sup>85</sup> YZSL: year 5, month 6, *wuzi* day.

<sup>86</sup> YZSL: year 5, month 11, *gengchen* day.

<sup>87</sup> On the survey project, see YZSL: year 6, month 8, *renyin* day. On the dispatch of imperial censors, see Entenmann, "Migration and Settlement in Sichuan," 136-137. On the formalization of the immigrant licensing scheme, see YZSL: year 7, month 3, *renzi* day.

<sup>88</sup> YZSL: year 7, month 4, *wuzi* day.

<sup>89</sup> YZSL: year 8, month 4, *jiachen* day.

To govern the administrative and agricultural space being carved out of the Sichuan wilderness, the Yongzheng emperor also supported an ambitious overhaul of the civil administration. Several of the administrative units that had been dissolved or combined under the Kangxi reign were revived. The civil responsibilities formerly invested in garrison units throughout the province were returned to newly-appointed magistrates, under imperial order. In 1730, more than 70 official positions were created or reinstated, most of which were at or below the county and prefectural level.<sup>90</sup> The local apparatus of imperial administration was built anew (and sometimes for the first time) throughout Sichuan.

#### *Renewed War on the Southwestern Frontier*

The ambitious civil reforms of the Yongzheng Emperor promised to override the influence of military authorities by increasing the strength of the civil bureaucracy. But these promises were soon revealed as nothing more than a false start when war broke out on the frontier once more. The Qianlong era (1735-1796) began with the outbreak of two wars: the 1735-1736 Miao Rebellion in the southwest, and renewed conflict with the powerful Zunghar Empire in the northwest.<sup>91</sup> In response to these crises, the Qianlong Emperor sought a low-cost equilibrium on the southwestern frontier. He brought both military and administrative expansion in Sichuan to a halt. Absent the stimuli of state expansion on the battlefield and in the administrative offices of Sichuan, the fragility of the Yongzheng-era reforms was revealed.

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<sup>90</sup> Entenmann, "Migration and Settlement in Sichuan," 109.

<sup>91</sup> On the Qianlong era military strategy in Sichuan, see Dai, *The Sichuan Frontier and Tibet*, 117-146.

Animosity between the military and civil branches grew unabated, as both provincial and local governments struggled to carve out their own territories.<sup>92</sup> The infrastructure of the entire region remained impoverished from years of neglect, and the civil administration was forced to operate on a miniscule surplus, as the bulk of revenues were regularly sent up to the provincial treasury in order to maintain the standing military. Extralegal exactions – the source of funding for extraordinary war expenses and the operating costs of local governments – went unchecked. In spite of the amount of funds being raised at the local level, almost no revenue was diverted to the maintenance of local administrations. New offices could not be built quickly enough to house the officials expected to preside in them.<sup>93</sup>

Matters were exaggerated by the constant flow of immigrants into the province.<sup>94</sup> The impoverished peasants and military adventurers arriving in Sichuan were supplemented with the arrival of a steady stream of criminals from across the empire, many of whom were sent to Sichuan by the imperial bureaucracy itself. Dubbed one of the “malarial region” (*yan zhang* 煙瘴) destinations for exile, Sichuan played host to guests that had proven to be *personae non gratae* in their pre-exile careers. The crimes that could land an offender a sentence of exile to Sichuan included the manufacture or stockpiling of forbidden weapons, the asking for or acceptance of bribes while holding imperial office, and the forging of counterfeit currency.<sup>95</sup> Sichuan proved such a profitable place for pursuing criminal activities that in

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<sup>92</sup> *Veritable Records of the Qianlong Emperor* [*Gaozong Chun huangdi shilu* 高宗純皇帝實錄, hereafter QLSL]: year 9, month 2, *dingchou* day.

<sup>93</sup> QLSL: year 5, inter-calendrical month 6, *bingchen* day.

<sup>94</sup> In a 1745 memorial, the Shaanxi-Sichuan Governor-General reported that, in a single two-month period, over 3,000 immigrants were registered as having entered the province. See QLSL: year 10, month 10, *wuwu* day.

<sup>95</sup> On exile to Sichuan as a penalty for the manufacture or stockpiling of forbidden weapons from the state, see the second sub-statute of the law on “Illicit concealment of prohibited weapons” [*si cang yingjin junqi* 私藏應禁軍器] on Wu Tan (吳壇, 1724—1780), *Survey Examination of the Laws and Sub-statutes of the Qing with Footnotes* [*Da Qing lüli tongkao jiaozhu* 大清律例通考校注, hereafter DQLL1779], reprinted by Ma Jianshi (馬建石), Yang Yutang (楊育棠), and Lü Liren (呂立人), eds. Beijing: Zhongguo zheng fa da xue chu ban she, 1992, 597. After 1736, office holders found guilty of “violating dynastic prerogative” (干犯國憲) by extorting or accepting bribes in the name of “official fees” (部費) were sentenced to death, but any accomplices who shared in the profits were



1735 a new sub-statute was written to ban exiles sent to the province from *returning* to Sichuan after the end of their sentences (rather than escaping it before the conclusion of their punishment).<sup>96</sup> Sichuan had officially become a desirable destination for the most undesirable elements in the empire.

In 1739 a sub-statute applying directly to travel in Sichuan was introduced mandating that all of Sichuan's "inveterately wicked and unemployed (其素非良善者)" residents be sent back to their home provinces.<sup>97</sup> But the renewed onslaught of war along the western frontier and within the non-Han territories of the southwest during the Qianlong reign meant that warfare remained the highest priority of provincial officials. The near-constant venture of war on the frontier not only undermined all attempts to slow immigration, but also attracted some of the most ruthless opportunists in the empire.

In 1743, Sichuan's Inspector-General warned the emperor about a new class of bandit in Sichuan. They were called *guolu* (囑嚕):<sup>98</sup>

In Sichuan, these several years, there have been unemployed immigrants from provinces like Huguang, Jiangxi, Shaanxi, Guangdong. They study the martial arts of the fist and the cudgel and can even inflict harm by means of talismans drawn with water. They gather together the treacherous and wicked men of the province. In groups of three to five they go around, brandishing knives and making trouble in the countryside and market towns. They are called the *guolu*. They perform all sorts of illicit activity and predation. There's nothing they will not do... The reason for this horrible specter is that the

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sentenced to exile in the "miasmatic regions" (*yazhang* 煙瘴) of Yunnan, Guizhou, Sichuan, Guangxi, and Guangdong. See the first sub-statute of the law on "Officials accepting money" [*guanli shou cai* 官吏受才] at DQLL1779, 907. Criminals found guilty of forging fake silver out of other metals to pass off as currency were also banished to the miasmatic frontiers between 1740 and 1759. See the sixth sub-statute of the law on "Illicit minting of bronze currency" [*si zhu tong qian* 私鑄銅錢], DQLL1779, 934.

<sup>96</sup> See the seventh sub-statute of the law on "Escape from exile" [*tuliu ren tao* 徒流人逃] at DQLL1779, 1006.

<sup>97</sup> See the "Migration to other territories" [*liuyu yi di* 流寓異地] section of the *Qin ding da Qing huidian zeli* [欽定大清會典則例, hereafter HDZL], *juan* 33, 24-25.

<sup>98</sup> The name *guolu* has been transcribed with various Chinese characters (mostly 囑嚕 and 咕嚕), and is of disputed origin. It might be related to the word for "gambler" or the words for "poor" and "orphan" in the Sichuan dialects, or could even be a Hakka pronunciation of the term *gelao*, that was later used to label Sichuan's largest secret society. See Cheng-yün Liu, "The Ko-Lao Hui in Late Imperial China" (PhD. diss, University of Pittsburgh, 1983), 19-20.

immigrants from Huguang and such places have all heard incorrectly that Sichuan is vast and scarcely populated, and so they come in droves to till unclaimed land. They do not know that Sichuan's fallow fields have already been filled up, and there is no means of subsistence...<sup>99</sup>

Even in the midst of its own crisis, the southwest continued to serve as a release valve for the tensions mounting in adjacent territories. Signs of wear were starting to show.

In vain, Sichuan's officials warned other provinces that immigrants without licenses would be sent back to their homes, to quell the tide of banditry and crime that was rising day by day.<sup>100</sup> Immigrants found little land available and joined the swelling army, or took up banditry, or formed their own militias to ward off the predations of others.<sup>101</sup> The administration, comprised of an idle military machine and an unfortunate cadre of civil officials with few resources to govern a highly mobile population, was incapable of putting out the fires that began to spread across the province.

The compromises first struck in the Kangxi reign between the central government and the southwestern military complex underpinned the infrastructural deficiencies that continued to hamstring Sichuan's civil administration for the rest of the Qianlong Emperor's reign. The administration of Sichuan was dedicated to the maintenance of Qing military campaigns.<sup>102</sup> The cost of the Qianlong frontier wars, and their burden on the local population and provincial infrastructure, was several times greater than the Kangxi campaigns. The number of standing troops in Sichuan reached an all-time high. By the 1776

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<sup>99</sup> QLSL: year 8, month 10, monthly summary (*shi yue* 是月).

<sup>100</sup> QLSL: year 10, month 10, *wuwu* day.

<sup>101</sup> In a memorial from 1750, the Sichuan Governor-General reported on the widespread formation of *liantuan* (練團) throughout eastern Sichuan, where local communities began to arm themselves against the growing bandit population. See QLSL: year 15, month 4, monthly summary.

<sup>102</sup> On the formative character of frontier conquest in generating Qing policy toward Sichuan and on the Qianlong Emperor's inability to demobilize the troops, see Dai Yingcong, *The Sichuan Frontier and Tibet*.

conclusion of the second Jinchuan campaign in Tibet, the war had cost 61.6 million taels, making it the most expensive campaign in the history of the Qing.<sup>103</sup>

### **The Chongqing Market from 1700 to 1800**

The Qing policy toward Sichuan left the economic and political spheres entirely open to private exploitation. Sichuan's economy became organized around the commercial demands of a growing military complex. The war-centered economy, improvised funding infrastructure, and *ad hoc* nature of local administration made Sichuan a particularly volatile frontier. Commerce and crime flourished together in the province. Both legal and illicit trades associated with the provision of troops and the opportunities for profit in war expanded.<sup>104</sup> The provincial military establishment amassed private fortunes by rendering Sichuan's resources into cash. The exploitation and commercialization of the province's abundant agricultural and mineral resources opened up a host of opportunities for merchants, transport workers, artisans, peasants, hangers-on, and criminals alike. The treasures of Sichuan – previously siphoned directly into imperial coffers or jealously guarded by powerful local magnates – spilled out into the national market. The Yangzi River was choked with the goods that flowed out of the province.

For the first time in history, Chongqing's potential as a major inland commercial hub of the Chinese empire was realized. In 1707 the Chongqing tax station was reinstated, with particular instructions to monitor and tax the large lumber trade that defined the region.<sup>105</sup> After the agricultural

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<sup>103</sup> Dai, "The Rise of the Southwestern Frontier," 470.

<sup>104</sup> On the massive demand for purchased labor and the opportunities for commercial enterprise during the Jinchuan campaigns, see Yingcong Dai, "The Qing State, Merchants and the Military Labor Force in the Jinchuan Campaigns," *Late Imperial China*, Volume 22:2 (December, 2001): 35-90.

<sup>105</sup> HDZL *juan* 138, 26.

recovery of the early eighteenth century, the bounty of raw natural materials being sold out of the province was supplemented by a new trade when Sichuan became one of Qing China’s largest producers of rice.<sup>106</sup> The fecundity of the Sichuan Basin and the availability of arable land combined with low rates of taxation to create profit margins on rice and other grains so high that it became the major export commodity of the province. Merchants from across the empire came to profit from the massive outpouring of cheap grains from Sichuan to neighboring provinces. The agricultural yield of the province gathered for sale and shipment downriver in the commercial hub of Chongqing.

No city in the province grew faster than Chongqing, which experienced a population boom that lasted through the entire eighteenth century and continued until the end of the dynasty.<sup>107</sup> The population of Chongqing’s city center alone (the peninsula enclosed within the Qing city walls, measuring approximately nine square miles) grew by leaps and bounds. By the end of the eighteenth century, the registered population had grown to more than 680% its size in the year 1700:

1.1: The Registered Population Living within Chongqing’s City Walls:<sup>108</sup>

<b>Year</b>	<b>Population</b>
<b>1665</b>	3,000
<b>1700</b>	6,300
<b>1725</b>	10,300
<b>1750</b>	18,000
<b>1775</b>	28,000
<b>1800</b>	43,000

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<sup>106</sup> Tan Ping, “A Rough Description of the Traits of Commerce in Qing Dynasty Sichuan” [*Shi shu Qing dai Sichuan shangye de tejie* 试述清代四川商业的特节] *Chengdu Daxue xuebao*, (*sheke ban*) [成都大学学报(社科版)], no. 04 (1991): 26.

<sup>107</sup> Smith, “Commerce, Agriculture, and Core Formation in the Upper Yangzi.”

<sup>108</sup>Source: Zhou, *Chongqing tong shi*, vol. 1., 235, table 9-8. It must be remembered, as Entenmann argued in his dissertation, that all early Qing figures for population in Sichuan must be considered in light of the endemic under-reporting of households and the extremely high number of sojourners who never changed their registration, despite long-term residence in the province.

Registered inhabitants were only a small fraction of the city's residents. From early on, Chongqing became an attractive destination for a wide range of semi-permanent unregistered populations who used the city as a base for legitimate and illicit forms of trade.

Ships heading to Chongqing to be filled with grain brought cargo bays full of cloth and cotton to the region, which was sold in vast quantities for distribution throughout the southwest.<sup>109</sup> During the eighteenth century, yearly shipments of grain from Sichuan to downriver ports for sale reached 300,000 to 400,000 *shi* per year. The cotton and cloth shipped in to Chongqing from downriver for sale within Sichuan are estimated to have reached 10 million taels in value annually.<sup>110</sup> The transport of these items up and down the Yangzi opened up the door to other commodities, and Sichuan's goods began to flow downriver to the empire's markets for the first time since the founding of the Qing.

The agricultural bounty and abundant raw materials of the entire southwest – from the fertile Sichuan Basin, Gansu in the north, Yun-Gui in the south, and Tibet in the west – converged on the transshipment point of Chongqing. Wealthy buyers from all over the empire established shops in the city to purchase and trade the goods that poured into the city from the surrounding countryside and market networks. Producers throughout the southwest often pooled their funds and products to finance a trip of their own to the city, sometimes with the aid of a professional broker. Warehouses lining the docks of the city specialized in filling large wholesale orders, and maintained regular relationships with producers, middlemen, and merchants capable of buying and selling in large quantities. A myriad of commodities circulated throughout the network of markets and towns dotting the countryside of Sichuan. By the middle of the Qianlong era these networks all intersected in the great wholesale markets of Chongqing.

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<sup>109</sup> On Sichuan's role in the grain market, see Dai, "The Rise of the Southwestern Frontier," 218-220. On Chongqing's place in Sichuan's market, see Lin Chengxi, "The Eastward Movement of Sichuan's Commercial Core in the Qianlong and Jiaqing eras of the Qing" [*Qing dai Qian-Jia zhi ji Sichuan shangye zhongxin de dong yi* 清代乾嘉之际四川商业重心的东移], *Qing shi yanjiu* [清史研究], no. 03 (Aug., 1994): 62-69.

<sup>110</sup> Chen, "Comparative Research on the Development of Chengdu and Chongqing in the Qing Dynasty," 35-36.

The city began to attract an array of individuals who made their living by preying on or providing for the more specialized demands of the growing urban center. Already in the first half of the eighteenth century the city had developed a reputation for crime. The Yongzheng Emperor was even compelled to author a special decree in response to reports that “Southern outlanders (蠻)” from surrounding areas were congregating in Chongqing and bringing large crowds of women and vagrants with them to dwell in shantytowns on the banks outside of the city center, where they set up camps that harbored prostitution and crime.<sup>111</sup> Banditry was especially prominent in Chongqing prefecture, where the rivers of Sichuan brought all of the goods of the province for trade throughout the empire.<sup>112</sup> On the eve of the nineteenth century, Chongqing had become a favorite destination of the empire’s risk-takers, con-men, bandits, military men, hangers-on, and fortune-seekers.

By the end of the Qianlong campaigns in the southwest, the very foundations of legal order in Sichuan, only hastily established in the first century of Qing rule, had been consistently eroded. Reports arriving at the central court suggested that Sichuan was distinguished by its unfair litigation practices, official malfeasance, and the pilfering of imperial monopoly goods.<sup>113</sup> Even human trafficking flourished in the province.<sup>114</sup> The forces of systematic tension and imbalance throughout the province both

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<sup>111</sup> HDZL *juan* 33, 30.

<sup>112</sup> QLSL: year 46, month 7, *wuwu* day.

<sup>113</sup> QLSL: year 55, month 8, *jiayin* day and year 55, month 3, *gengzi* day.

<sup>114</sup> Sichuan was mentioned alongside the neighboring provinces of Guizhou and Yunnan in a special sub-statute mandating the strict enforcement of laws against selling children into slavery, as the “rootless vagrants” (流棍) immigrating from other provinces were reported to be in the habit of kidnapping girls and boys for sale to others. See sub-statute 10 of the law on “The kidnapping and sale of persons” [*lüe ren lüe mai ren* 略人略賣人], DQLL1770, 753.

expressed and engendered the disorder of local society. The number of homicide cases in Sichuan was several times greater than any other province in the empire.<sup>115</sup>

## Demobilization

The Zunghar Empire – Qing China’s main threat in Central Asia – was eliminated in 1757, Muslim rebellion on the northwestern frontier was quelled in the 1750s, and the last major campaign into Tibet (the Second Jinchuan War) ended in 1776. When the Qing troops fighting on the western frontier were demobilized in the midst of this atmosphere at the conclusion of the second Jinchuan campaign in 1776, violence spread throughout Sichuan, as the province struggled to absorb the massive numbers of unemployed military men that roamed the fields and hills.<sup>116</sup> By this time *guolu* bandits had already been harassing the province for decades.<sup>117</sup> But in the last quarter of the eighteenth century the ranks of Sichuan’s bandit gangs swelled with recently-demobilized military men. Memorials reported bands numbering in the hundreds, or even beyond a thousand members.

Many of the *guolu* bandits lived out of bases in the mountainous border region to the north of Chongqing at the intersection of the provinces of Sichuan, Shaanxi, and Henan. They routinely harassed major shipment lines and market towns. Unable to seek protection from the exhausted local governments, merchants and peasants sometimes purchased membership in these organizations in the form of protection

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<sup>115</sup> QLSL: year 55, month 3, *gengzi* day.

<sup>116</sup> These bandits had even earned the dubious honor of a dedicated sub-statute in the Qing code. Authored in 1758, it set forth special provisions for the execution of *guolu* bandits guilty of gang rape, and loss of life resulting from it. See the tenth sub-statute on “Illicit sex” [*fan jian* 犯奸], DQLL1779, 953.

<sup>117</sup> For a more extensive review of banditry and criminal societies on Sichuan, see Liu, “Ko-Lao Hui.” For contemporary reports on *guolu* activity, see also QLSL: year 46, month 6, *sichou* day; year 46, month 7, *bingchen* day; year 46, month 7, *wuwu* day; year 46, month 9, *renyin* day; year 48, month 1, *wushen* day; and year 54, month 6, *jiayu* day.

fees, or formed military bands of their own.<sup>118</sup> Local efforts to stem the tide of banditry always fell short of the mark, in spite of constant effort.<sup>119</sup> The Board of Punishments made a special rule for Sichuan: bandits in groups of more than five individuals who were captured could be executed on the spot.<sup>120</sup> The central administration simply couldn't handle the burden of assessing and executing the sentences of the massive yearly influx of captured bandits from Sichuan. In 1788, the emperor declared that officials in any province who failed to capture at least 100 military deserters per year would be punished with a two-grade demotion. Sichuan was the only province that met its quota.<sup>121</sup>

A decade after the end of the Jinchuan campaigns, at the peak of the province-wide disaster of population growth, widespread criminal activity, and military demobilization, Sichuan's Governor-General memorialized the throne. Without attempting any literary flourish, he presented the perfect metaphor for the tense situation throughout the province and Chongqing's place in it. He reported:

... There's over 280,000 *jin* of sulfur still stored in Chongqing after the demobilization of the Jinchuan forces. We are afraid that it will rot, and there will be great losses. If we distribute it among the banner garrison camps throughout the province, there will be enough for making gunpowder for the next 15 years. Please instruct each of the garrison offices to divide it up according to precedent, and to carefully guard it, for military purposes in the future. These materials must be handled very carefully.<sup>122</sup>

Chongqing – one of the hubs of frontier supply and one of the most under-governed commercial centers of the empire – was a neglected powder keg. After demobilization the civil administration had neither a

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<sup>118</sup> Merchant groups were suspected of forming societies that harbored bandits and plotted dubious means of earning a profit, but were treated cautiously by imperial decree (as the emperor remarked that such an affair should be handled carefully by the Sichuan Inspector-General, since the supply of the borders “was one of the most urgent duties assigned to you in the course of your management of the frontier,” [此正汝封疆大臣之要務也]). QLSL: year 11, month 7, monthly summary. See also Liu, “Ko-Lao Hui,” 36.

<sup>119</sup> In 1781 alone, Sichuan sent over 200 criminals (many of whom were accused of banditry or homicide) to Beijing for judgment at the autumn assizes.

<sup>120</sup> See QLSL: year 46, month 11, *yisi* day and sub-statute seventeen of the law on “Theft in broad daylight” [*baizhou qiangduo* 白晝搶奪] at DQLL1779, 708.

<sup>121</sup> QLSL: year 48, month 1, *wushen* day.

<sup>122</sup> QLSL: year 48, month 6, *renwu* day.



need for the leftover instruments of war nor much of an idea about how to safely dispose of them in the supercharged atmosphere.

In 1776, at the conclusion of the Qing campaigns in Tibet, the military objective that had shaped the administration of the entire province suddenly ceased to exist. Sichuan lost its *raison d'Etat*, and began a painful descent from war into chaos. By the end of the Qianlong reign in 1796, the western military frontier was closed. But the mobilization of the resources of Sichuan failed to wind down from its fevered pitch, and the province became increasingly unstable. The nightmarish cycle of military-centered state-building and *laissez-faire* administration played out in a space entirely devoid of the centripetal forces of war once containing them.

## **Conclusion**

In the middle of the eighteenth century, when the Sichuan Provincial Archives' *Ba xian* collection begins, Chongqing was still in the process of becoming a Chinese city. The Yongzheng Emperor's attempt to even out the irregular, diverse, and complicated structures of authority in Sichuan was the most ambitious effort to impose a classical administrative structure on the province in history. But not even the famously energetic and rigorous Yongzheng Emperor could reshape Sichuan in the image of a classical Chinese political space, and the 60 years of war on the western frontier under the Qianlong Emperor that followed the Yongzheng reign did more to exaggerate the structural tensions introduced in the Kangxi era than to regulate and civil-ize the government of the province. At the conclusion of the Qianlong reign in 1796, the world that residents of Chongqing inhabited was not one in which the even and planar divisions of classical imperial administrative systems had ever yet taken root.

Instead of a grid of agricultural plots assigned to stable, registered households, the city was a matrix of intersecting trajectories. Merchants, landless laborers, military personnel, and criminals met in the streets, harbors, and alleys of the port city. The registered population was far outnumbered by the city's sojourning and itinerant residents, over whom the local administration had little authority. Operating in an atmosphere of many variables and few constants, the county *yamen* faced the task of governing the city with constrained resources. By the time that the Ba county archival collection provides documentary evidence about the city in the mid-eighteenth century, the magistrate's office was still struggling to provide basic forms of social and market order in this dynamic urban environment.

When historians rifle through the fuzzy microfilm images of the Ba *xian* collection in the Chengdu reading room of the Sichuan Provincial Archives, they are not just gaining insight into the daily life of a Chinese commercial center. They are reading documentary evidence about the *creation* of a Chinese city on an extremely militarized frontier in the midst of a commercial boom. The dramatic tensions and high stakes involved in governing this space charged every interaction with a particular kind of urgency, as the state, the economy, and the society of Chongqing searched for balance and sustainability in the midst of unprecedented growth.

CHAPTER 2:  
COLLECTIVE RESPONSIBILITY AND THE CREATION OF LEGAL ORDER  
IN EARLY QING CHONGQING (1725-1800)

“Melancholy”

A miasma afflicts all of Sichuan,  
the clouds conceal hosts of outlanders.  
Lifting the screen there is only churning water,  
whose mists envelop verdant mountain after verdant mountain...

- Du Fu (712-770)<sup>1</sup>

### **Introduction**

By the turn of the eighteenth century, Chongqing had spent almost a hundred years without a functioning civil administration. The pacification of the province had taken several decades, and not even the hard-won Qing victory over Ming loyalists, bandit forces, and non-Han combatants brought imperial rule to the province. The officials who administered the cities and fields of Sichuan were a dubious collection of military men, failed exam candidates, and returned natives who had been lured back to their home province with the promise of free land and offices. The Kangxi Emperor established a simple list of priorities for the provincial administration: support the various war efforts along the western border, provide a basic foundation of legal order, and refrain from placing unnecessary burdens on the slowly-recovering economy and population. The officials of Sichuan were extremely successful at making war. But they became infamous for presiding over one of China’s most lawless territories, and they earned a

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<sup>1</sup> Du Fu, “Melancholy” [*men 悶*]*Quan Tang shi* [全唐詩], *juan* 231, no. 21.

reputation as one of the most corrupt and extractive provincial administrations in the empire. The system designed to bring order to the war-torn southwest had run amok.

By the end of his reign even the Kangxi Emperor, architect of the fallow field policy, noted that the administration of Sichuan seemed to operate beyond the control of the court. The Emperor observed that the population of the province, the crowds of new arrivals, and even the local and provincial officials regularly took advantage of the fact that “the capital is ever distant, and we have no way of hearing or knowing what happens.”<sup>2</sup> In this vacuum, a whole host of *ad hoc* institutions had been adapted to the fallow field administration, which daily violated the basic tenets of Qing civil administration. The Yongzheng Emperor’s response to this predicament was to alter the administrative geometry of the province. He proposed to overcome the impediments to bureaucratic control over the region by replacing the byzantine and irregular systems of governance with the familiar social, economic, and political structures of classical imperial organization. The cornerstone of the Yongzheng Emperor’s campaign to re-map the southwest was the introduction of the Qing *baojia* system of household registration.

The Yongzheng Emperor’s *baojia* initiative created a new foundation for the interaction of the local bureaucracy and its subjects. In his revival of the *baojia* system, the emperor drew upon the legacy of one of the richest and longest-lived forms of statecraft in China: the institution of collective responsibility. Members of collective responsibility units were administered as a group, punished as a group, and organized to carry out local projects as a group. The collective responsibility units established in Chongqing after the Yongzheng initiative cooperated with the local government to provide some semblance of order in the under-staffed, highly mobile, and growing frontier society. The *baojia* system became a foundation for the everyday operation of the local administration. The registration of *baojia* units as a first step toward establishing a regular civil administration was so effective in Sichuan that it

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<sup>2</sup> KXSL: year 49, month 3, *dinghai* day.

later served as a model for the incorporation of other problematic territories into the regular imperial system.<sup>3</sup>

By the time that legal cases appear in the documentary record with any regularity in the second half of the eighteenth century, collective responsibility institutions were a vital part of the administration of justice in the city. One of the primary duties of collective responsibility heads was policing the line between legitimate (state) force and wanton violence. *Baojia* heads and collective responsibility members were charged with bringing arguments to the magistrate's *yamen* for state-supervised resolution before disputes could degenerate into physical violence. Once cases entered the court system, *baojia* heads proved indispensable as conduits of information about the details of commercial transactions, the reputations of business owners, the financial holdings of disputants, and any other details pertinent to the fact-finding and judgment processes of the court. Case by case, *baojia* delegates made themselves a part of the long and halting process of asserting state dominion over the field of dispute resolution among the city's traders, artisans, and laborers.

A close examination of the administrative foundations of Qing rule leads to a new appreciation of the consequences of state decisions about how to divide and represent social space. This chapter demonstrates that collective responsibility systems offered an effective framework for cooperation between official and social institutions in one of the most unsettled and administratively thin corners of the Qing Empire. It further illustrates how a new understanding of the intermediary function of collective responsibility units in court cases demands a wholesale revision of the history that has been written about litigation over private disputes in the Qing Empire.

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<sup>3</sup> The Sichuan system of immigration registers and *baojia* compilation for controlling the population of newly-opened land was used as a precedent for the settlement of the *gaitu guiliu* territories in the southwest. See QLSL: year 16, month 12, monthly summary. In the Qing campaigns to convert non-Han holdings into regularly administered land in provinces like Sichuan, the implementation of *baojia* collective responsibility units and *xiangyue* covenants were one of the first steps taken toward incorporation into life under the Chinese empire. See QLSL: year 19, month 6, *xinhai* day.

In this chapter I argue that the incorporation of information about transactions from collective responsibility units into the court process allowed the Qing courts throughout the empire to arbitrate over a wide range of commercial disputes without the aid of legal conventions about transaction. The use of collective responsibility units to verify and interpret market exchanges meant that a rich diversity of economic practices proliferated throughout the Qing territories and that the local administration was not required to spend its own resources in maintaining knowledge of local practices in order to arbitrate over them. But the ability of the institution of collective responsibility to collapse the space between the state and its subjects did not operate in only one direction. Magisterial reliance on these systems meant that court authority in arbitrating commercial disputes was sometimes usurped by these governing intermediaries.

In practice, there was a fine line between productive state use of information from collective responsibility networks and the infringement of state prerogative by litigants capable of manipulating the flow of information through collective responsibility systems to their own advantage. This dilemma engendered a distinct awareness of the vulnerability that resulted from the court's reliance on collective responsibility. I conclude this chapter by pointing out that the state recognized and acted upon this potential problem by developing a legal classification for the cases that depended upon collective responsibility mechanisms in the arbitration process. These cases – which involved disputes about land, debt, and marriage – were known to Qing jurists and magistrates as *xi shi* (細事). This legal term has been translated by scholars as “trivial matters” or “minor matters” and has been presumed to illustrate either state neglect of or disdain for litigation over private agreements. In the concluding section of this chapter, I present a new translation of this term that reflects the distinguishing features of *xi shi* arbitration; I propose that they be understood as “complicated matters.”

## Trivial Matters and Chinese Law

Less than fifty years ago, historians presumed that the local state and imperial law made no provisions whatsoever for the arbitration of commercial disputes in Qing China.<sup>4</sup> The consensus of scholars was that the Qing considered these affairs “trivial,” as suggested by the conventional translation of the term. In the course of the 1980s and 1990s, this condemning assessment of the Qing legal system was revised by a wave of archival studies. Scholars working with large caches of local legal documents reported from the field that private disputes between individuals actually constituted the greater part of the archival record, and that magistrates were actively involved in the resolution of “minor” cases.<sup>5</sup>

Decades of vibrant scholarship followed from this discovery. *Xi shi* cases went from being considered simply “trivial matters” to being classified as “civil cases.” A new generation of scholars began to argue that Qing China clearly possessed a system of civil jurisprudence.<sup>6</sup> This scholarship largely centered on a theoretical framework set forth by Philip C. Huang. In several published works, Huang has argued that, although “civil cases” might have been considered “trivial matters” by the Qing administration, these disputes could be arbitrated “in the shadow of the law” by *baojia* leaders and other community mediation figures, who constituted a semi-formal “third realm” of justice between the formal

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<sup>4</sup> This assumption is central to the exposition in one of the seminal English works on late imperial law: Derek Bodde and Clarence Morris, *Law in Imperial China* (Cambridge, Mass.: Harvard University Press), 1967. It is also found in early books on Chinese law and commerce by English-language authors who wrote about their own experiences in China at the turn of the twentieth century. Two classic examples of this genre are Hosea Ballou Morse, *The Gilds of China: With an Account of the Gild Merchant or Co-hong of Canton ... With 2 Illustrations*. (London: Longmans, Green & Co.), 1932 (reprint of the 1909 edition) and Thomas R. Jernigan, *China in Law and Commerce*, (New York: The Macmillan Company), 1905. For a contemporary scholarly exploration of the persistence of notions about the “penal” and “cruel” nature of Chinese law, see Timothy Brook, Jérôme Bourgon, and Gregory Blue, *Death by a Thousand Cuts*, (Cambridge, Mass.: Harvard University Press), 2008.

<sup>5</sup> This generation of scholarship was indebted to David Buxbaum, the earliest scholar to demand a reassessment of the place of what he called civil cases in Qing local courts, in his David C. Buxbaum, “Some Aspects of Civil Procedure and Practice at the Trial Level in Tanshui and Hsinchu from 1789 to 1895,” *The Journal of Asian Studies* 30, no. 2 (February 1, 1971): 255–279.

<sup>6</sup> Much of this early work was done by the students of Philip C. Huang and Kathryn Bernhardt at UCLA, who turned out seminal works on law, local administration, and “civil justice” in the Qing. This argument and its ramifications are best represented by the 1994 publication of the Civil Law in Qing and Republican China volume of collected essays: Philip C. C. Huang and Kathryn Bernhardt, eds. *Civil Law in Qing and Republican China* (Stanford: Stanford University Press, 1994).

world of the court and the informal world of social mediation. In this formulation, even if there were no “formal” solutions to disputes between individuals, the “informal” realm of dispute mediation could extend legal reasoning into community dispute forums by extending the legal rationale of the court into the world of social mediation.<sup>7</sup>

Huang’s insistence about the existence of a tradition of civil justice sparked lively debate about the place of law in the homes and businesses of Qing subjects. Many scholars continue to frame their work in terms of the third realm even to this day. Others went in search of analytical frameworks with more traction or legal categories with closer equivalents to the Qing linguistic, legal, and administrative world, rejecting the characterization of “civil justice” as an overly-simplified comparison with Western legal tradition.<sup>8</sup> Still others pursued similarities between the settlement of disputes in Qing China and the notion of “contract” in other legal cultures.<sup>9</sup> Because of the efforts of these scholars, the dismissive conclusion of previous generations – that the Qing state offered no guidance or support for the resolution of personal disputes – has been completely overturned.

And yet, no new consensus has formed about the place of these “trivial matters” in the Qing legal world. I argue that our failure to grapple with this native legal category is a result of an undue focus on the role of law in defining the disposition of court cases. The purpose of this chapter is to demonstrate that it was never the intention of Qing legal framers to provide guidelines for the terms of economic exchange or the resolution of commercial disputes.

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<sup>7</sup> For one of Huang’s more detailed expositions of the third realm, see Philip C. C. Huang, “Between Informal Mediation and Formal Adjudication: The Third Realm of Qing Civil Justice,” *Modern China* 19, no. 3 (July 1993): 251–298.

<sup>8</sup> See Jérôme Bourgon, “Figures in the Carpet: ‘Customs,’ ‘Contracts,’ ‘Property Rights’ in Qing Legal Culture,” in Chiu Peng-Sheng and Chen Hsi-yuan, eds. *Power and Culture in the Operation of Ming and Qing Law [Ming-Qing falü yunzuo zhong de quanli yu wenhua 明清法律運作中的權力與文化]*, (Taipei: Lianjing chuban gongsi, 2009), 275-344; and Chiu Peng-sheng, *When Law Encounters Commerce: Commercial Law in Ming and Qing China [Dang falü yushang jingji: Ming-Qing Zhongguo de shangye falü 當法律遇上經濟：明清中國的商業法律]* (Taipei: Wunan tushu chuban gongsi, 2008).

<sup>9</sup> Several examples of this vein of scholarship are collected in Madeleine Zelin, Jonathan K Ocko, and Robert Gardella, eds. *Contract and Property in Early Modern China* (Stanford.: Stanford University Press, 2004).



What made commercial disputes and other *xi shi* “complicated” was their factual and logical basis in the purely local world of convention, experience, custom, and agreement. The transactions of private individuals were solely and wholly anchored in the local world that was made obscure to the administrative gaze by virtue of being contained within the many interchangeable and indistinct units of collective responsibility. Rather than attempt to accommodate and codify the needs of life and transaction at this super-local level, the Qing distinguished between those affairs which were handled in accordance with law and those which were (because of their “complicated” nature) handled in accordance with local conditions.

These affairs were not dismissed by the territorial bureaucracy that operated the empire’s courts, but the role of the court in adjudicating these disputes was not one of applying a straightforward legal reasoning to issues that had been set forth in Qing law. Rather, in the words of Chongqing’s famous nineteenth-century jurist Liu Heng (劉衡), the court acted as a forum for “determining the upright and the crooked” between disputing parties.<sup>10</sup> In this task, as in many other facets of day-to-day administration in Chongqing, the court relied heavily upon the local informants who managed the systems of collective responsibility in the city. This system of information gathering and administrative mapping allowed the magistrates of the city to incorporate the entirety of lived, local experience in its deliberations on disputes emerging out of private agreements gone awry. But the Qing and its officials were keenly aware of the fact that this routine administrative reliance could not be converted into legal authority, for to do so would be tantamount to handing over the prerogative of the emperor and his officials to members of the local community who had already been made powerful by their administrative roles.

The categorization of “complicated matters” allowed the state to exercise authority over a world of private agreements that emerged out of an explicitly local context and reflected the diversity of the entire empire. The absence of laws about how to settle these disputes was no accident. Rather, it was a

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<sup>10</sup> Liu Heng, “Ten Articles on Handling Litigation” [*li song shi tiao* 理訟十條], in *Yongli yongyan* [庸吏庸言], *juan* 2.

recognition of the limitations of the state and the importance of non-state institutions and individual preferences in determining the market choices of subjects. The state was neither capable of nor willing to replace the complexity of life at the sub-county level with a single, legal vision of how to form commercial relationships. This set of constraints and convictions did not mean that commercial issues were dismissed from courts or settled arbitrarily; it only meant that the role of courts was more complicated than scholars have presumed.

### **Collective Responsibility**

The Qing, like the other dynasties that preceded it, situated the philosophical and political logic of collective responsibility in the venerable institutions of the early Zhou dynasty (1046–256 BCE). The first system of collective responsibility is described in the *Rites of Zhou*, whose pages (now widely understood to be apocryphal creations of the Qin) informed the policies and philosophies of Chinese officials throughout the imperial age.<sup>11</sup> Collective responsibility units operated on the premise that some tasks necessary to the stability of the empire were best handled at the local level. These local institutions did not carry the official authority of the central bureaucracy and its officials but were flexible, fractal, semi-autonomous cells of social organization capable of collapsing the diverse communities throughout the empire into a single administrative geometry.

The section on local administration (地官司徒) in the *Rites of Zhou*, cited by Qing officials in their discussions of the *baojia* and collective responsibility systems, described the Zhou system of collective responsibility:

Every five households constitute a *bi* (比), whose members bear responsibility for one another's actions. Every five *bi* constitute a *lü* (閭), whose members comingle and move freely among one another. Four *lü* constitute a *zu* (族) whose members shall bury their

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<sup>11</sup> David Schaberg, "The *Zhouli* as Constitutional Text," in Benjamin A. Elman and Martin Kern, *Statecraft and Classical Learning: The Rituals of Zhou in East Asian History* (Leiden: Brill, 2009), 33-63.

dead in the same grounds. Five *zu* constitute a *dang* (黨), whose members shall aid one another in times of danger and disaster. Five *dang* constitute a *zhou* (州), whose members share with one another in times of need and distress. Five *zhou* constitute a *xiang* (鄉), whose members treat one another with honor and respect.<sup>12</sup>

Each of the units of collective responsibility in the Zhou system was supervised by a head, whose duties were commensurate with the scale and function of the unit assigned to him. The heads of the various units were responsible for a wide range of tasks. Some were required to explicate the legal codes and basic teachings of the domain on a yearly basis to educate the residents of the collective responsibility unit. Some were responsible for carrying out or instructing others in the performance of important rituals and overseeing the fair distribution of conscription demands, corvée labor, and patrol duties. The heads of the smallest units of organization were responsible for keeping household registers up to date, reporting on movement within and beyond the prescribed units, and ensuring the continued function of collective responsibility mechanisms, which dictated that the members of each group shared the punishments and rewards allotted to any given member.

Elements of the system described in the *Rites of Zhou* continued to operate in collective responsibility schemes implemented by subsequent dynasties. Over time, unit heads were held responsible for census-taking, tax collection, the assignment of compulsory labor obligations, the organization of local patrols or militia units, the mediation of disputes between members, the coordination of local infrastructure improvements, the performance of community rituals, and the maintenance of communication between members of the group and the lowest level of the imperial administration.<sup>13</sup> The

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<sup>12</sup> See the “Local offices” [*Diguan sit u* 地官司徒] section of the *Zhouli* [周禮].

<sup>13</sup> For a general history of household registration in China (including a review of the histories of both the *baojia* and the *lijia*), see Richard von Glahn, “Household Registration, Property Rights, and Social Obligations in Imperial China: Principles and Practices,” in Keith Breckenridge and Simon Szreter, eds. *Registration and Recognition: Documenting the Person in World History* (Oxford: Oxford University Press, 2012), 39-66. On the Song *baojia* system, see Luo Yuandao “An Attempt to Discuss the Employment and Evolution of the *Baojia* System” [*Shi lun baojia zhi deyanbian ji qi zuoyong* 试论保甲制的演变及其作用], *Zhongguo lishi bowuguan guan kan* [中国历史博物馆馆刊], no. 01 (1994): 62–70; Qiang Wenxue, “The Rise and Decline of the *Baojia* Rural Militia in the Mid- and Late Northern Song” [*Bei Song zhonghouqi baojia xiang bing de xingfei* 北宋中后期保甲乡兵的兴废], *Changchun Shifan Xueyuan xuebao (renwen shehui kexue ban)* [长春师范学院学报(人文社会科学版)] 30, no. 1

range of collective responsibility functions adopted by each dynasty changed in response to the needs of different eras, but the institution remained both a symbol of and a conduit for cooperation between the imperial bureaucracy and the communities over which it claimed dominion. It was an institution that made China's dynasties capable of extending central power further and deeper into the territories. And it was a system that linked the diverse needs and customs of the empire to the standard bureaucracy through even structures of accountability.

### *The Development of Qing Collective Responsibility Institutions*

The Qing *baojia* system was a simple household-level decimal organization scheme. The whole empire was, in theory, organized into ten-household units whose residents' names were recorded on a placard (*pai* 牌). One member of each ten-household unit was designated to take responsibility for maintaining a register of household residents and keeping the placards up to date. This delegate was known as the placard-holder (*paitou* 牌頭 or *paizhang* 牌長), and his ten-household jurisdiction was known as a placard (*pai*). Ten *pai* constituted a single *jia* (甲) of 100 households (headed by the *jia* chief, or *jiazhang* 甲長), and ten *jia* formed a single *bao* (保), which contained 1,000 households:

$$1 \text{ bao} = 10 \text{ jia} = 100 \text{ pai} = 1,000 \text{ households}$$

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(Jan. 2011): 32–35; Tian Xiaozhong, “On the Relationship Between State Control of Rural Society and the Evolution of the Organization of the Countryside in the Song Dynasty” [*Lun Song dai xiangcun zuzhi yanbian yu guojia xiangcun shehui kongzhi de guanxi* 论宋代乡村组织演变与国家乡村社会控制的关系], *Sixiang zhanxian* [思想战线] 38, no. 3 (2012): 68–70. On *baojia* antecedents, see Philip A. Kuhn, *Rebellion and its Enemies in Late Imperial China: Militarization and Social Structure, 1796-1864* (Cambridge, Mass.: Harvard University Press, 1980). On the history of the *lijia* system, see Fuma Susumu, “Late Ming Urban Reform and the Popular Uprising in Hangzhou,” in Linda Cooke Johnson, ed., *Cities of Jiangnan in Late Imperial China*, (SUNY Series in Chinese Local Studies, Albany: State University of New York Press, 1993): 47-79. On the link between the *baojia* system and the decline of the *lijia* system, see Jin Zhongbo, “The Relationship between the *Baojia* System and Rural Organization in the Ming and Qing Eras” [*Ming-Qing shidai xiangcun zuzhi yu baojia zhidu zhi guanxi* 明清时代乡村组织与保甲制之关系], *Zhongguo shehui jingji shi yanjiu* [中国社会经济史研究], no. 02 (2002): 22–25.

Each *bao* was managed by a *bao* chief (*baozhang*保長 or *baozheng*保正), who was given an officially sanctioned register upon which to write the names of residents of the unit.<sup>14</sup> Any movement in or out of the jurisdiction was recorded in this register. The heads of each *baojia* unit were legally accountable for maintaining up-to-date information about their territories, and the residents of each group shared criminal responsibility for any offenses committed by their members or in their jurisdiction.

The development of Qing systems of collective responsibility during the Shunzhi and Kangxi reign periods (from 1644 to 1722) were dictated by a strict concern about dynastic security and local order above all other considerations.<sup>15</sup> The widespread unrest in the early days of the dynasty was blamed on powerful criminal interests wreaking havoc on the countryside, and communities were compelled to mobilize collective responsibility units in order to secure the empire.<sup>16</sup> In this period collective responsibility institutions were primarily used for two functions: the organization of local defense activities and the maintenance of mutual legal responsibility for crimes committed within the unit.<sup>17</sup> Local governments tended to use whatever units existed already for immediate purposes, and the legal terms for

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<sup>14</sup> For general introductions to the collective responsibility systems operating in the Qing, see Kung-chuan Hisao, *Rural China: Imperial Control in the Nineteenth Century* (Seattle: University of Washington Press, 1960); Duan Zicheng and Shi Tiejing, “An Attempt to Discuss the Governing Functions of the Qing Dynasty *Xiangyue* System” [*Shi lun Qing dai xiangyue de zhengzhi zhineng* 试论清代乡约的政治职能], *Hechi Shi Zhuan xuebao (shehui kexue ban)* [河池师专学报(社会科学版)] 18, no. 3 (August 1998): 29, 74–77; and Duan Zicheng, “The Strengthening of the Basic Administrative Managerial Functions of the Qing Dynasty *Xiangyue* System” [*Qing dai xiangyue jiceng xingzheng guanli zhineng de qianghua* 清代乡约基层行政管理职能的强化] *Henan Shifan Daxue xuebao [zhixue shehui kexue ban]* [河南师范大学学报(哲学社会科学版)] 38, no. 2 (March 2011): 213–217.

<sup>15</sup> For a more detailed summary of early Qing *baojia* policy, see Chang Jianhua, “The Implementation of the *Baojia* System in the Shunzhi and Kangxi Eras of the Qing” [*Qing Shun-Kang shiqi baojiazhi de tuixing* 清顺康时期保甲制的推行], *Ming-Qing luncong* [明清论丛] (2012): 321–350.

<sup>16</sup> *Veritable Records of the Shunzhi Emperor* [*Shizu Zhang huangdi shilu* 大清世祖章皇帝實錄, hereafter SZSL]: year 6, month 7, *guiwei* day.

<sup>17</sup> At its inception, the *baojia* system of the Qing primarily resembled its Song predecessor, which was organized during the reforms of Wang Anshi (1021–1086) as a local militia system. Both the Song and the early Qing *baojia* units were militarized local collective responsibility groups charged with the tasks of defending the community from outside threats and reporting security issues to the imperial bureaucracy. The structure and priorities of the Song *baojia* system were a good fit for the early days of the Qing, when the Manchu conquerors were primarily concerned with defending and consolidating their new domain.

collective responsibility from past dynasties – especially the Ming – were kept unaltered for temporary use, leading to a general confusion of collective responsibility institutions.<sup>18</sup>

The highest and most powerful functions of this local dragnet of information collection could only be rallied when institutions of collective responsibility were uniformly and universally implemented throughout the empire. This task became the ambition of the Yongzheng Emperor (r. 1722 to 1735). It was during his reign that the Qing *baojia* system began to mature into a standardized and flexible empire-wide foundation for local civil administration.<sup>19</sup> The emperor began this process by commanding local governments to integrate the *baojia* system with local bureaucratic units throughout the empire.<sup>20</sup> The territorial bureaucracy was also commanded to expand the institution into areas and populations of the empire that had yet to be organized into collective responsibility units.<sup>21</sup> By the middle of the eighteenth

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<sup>18</sup> In their efforts to produce local systems of order in the post-transition period, the Qing relied heavily on the institutions of collective responsibility that already existed at the local level and in the Ming legal code. Many of these structures of local organization hailed from the *lijia* system first mandated by the Ming Hongwu emperor in 1381. The household statistics maintained by the original *lijia* units of the fourteenth century were considered long out of date by the sixteenth century, when *lijia* systems were little more than geographical signifiers marking places where communities had once been organized. Late Ming reforms designed to revive collective responsibility institutions were, by the Qing mixed together with the original *lijia* units in a confusing patchwork that varied from locale to locale. On the history and terms of Ming sub-county organization, see Timothy Brook, "The Spatial Structure of Ming Local Administration," *Late Imperial China* 6, no.1 (June 1985), 1-55.

<sup>19</sup> On the Yongzheng *baojia* reforms as an innovation on the Shunzhi and Kangxi approach, see Chang Jianhua, "The Implementation of the *Baojia* System in the Shunzhi and Kangxi Eras of the Qing."

<sup>20</sup> For general statements about *baojia* organization by the Yongzheng-era administration, see YZSL: year 4, month 4, *jiashen* day and year 4, month 7, *yimao* day.

<sup>21</sup> The *baojia* laws were amended in 1733 to specify that unpropertied individuals without home estates and families were the legal responsibility of the individuals whose fields they tilled or in whose employ they labored or under whose roof they lived. See HDZL *juan* 33, 21. In 1724, the Yongzheng court reinstated a Ming statute requiring refugees from other provinces, upon settling in a new area, to organize into 10-family *jia* units and undertake pledges of responsibility for one another under the management of the *li* head presiding over the jurisdiction. See the second sub-statute of the law on "Fleeing from obligations" [*taobi chaiyi* 逃避差役], DQLL1779, 416. In 1726, the code was further amended to allow clan leaders (*zuzheng* 族正) to represent cohabitating lineage groups of over 100 individuals in the stead of *baojia* delegates. See the eleventh sub-statute of the code on "Leaders of thieves and bandits" [*Daozei wozhu* 盜賊窩主], DQLL1779, 762-763.

century, the *baojia* system had become the basic administrative unit of social organization across the empire.<sup>22</sup>

Over the course of the Qianlong reign (1735 to 1796), the ambition of the Yongzheng Emperor to map out, label, and incorporate the communities of the empire into the civil administration took a new turn. Efforts to expand *baojia* systems into new communities began to widen not only the span of collective responsibility networks but also their scope and function. The very nature of collective responsibility was modified as new institutions expanded to encompass new sectors of the population. The more flexible interpretation of collective responsibility units in the Qianlong era made the *baojia* a useful tool for organizing the large sectors of the late imperial empire that operated outside of the classical and stable community structures that had formed the base of early collective responsibility schemes.

Throughout the Qianlong era local innovations to collective responsibility systems were reported to the central level. Court officials commented upon and ratified these adaptations, adopted several into the legal statutes of the dynasty, and promulgated commentaries on these local systems for consideration by administrators across the empire. This dynamic process produced a best-practices approach to collective responsibility that resulted in a vibrant culture of sub-official local administration. By the end of the eighteenth century, through the initiative of local authorities, provincial officials, and court policies, the *baojia* system had been transformed into a flexible and multifaceted tool of social organization.

The simultaneous complexity and simplicity of the *baojia* system in the Qing was a defining achievement of the last dynasty. The details of collective responsibility institutions in the Qing grew by a process of accretion at the same time that the function of those systems was increasingly standardized and centralized. The imaginative leap from a one-to-one correlation between households, collective

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<sup>22</sup> The preeminence of the *baojia* structure as the organizing principle of local society and sub-county administration was made explicit in the Qianlong reign when, in 1740, the Qianlong Emperor formally decreed that even the tax registration and reporting responsibility of the partially functioning *lijia* system be handed over to the management of *baojia* officials.

responsibility, and imperial administration to a more flexible interpretation of the relationship between social, administrative, and bureaucratic systems all united in the framework of collective responsibility was one of the major breakthroughs of the Qing imperial system.

### *The Introduction of Qing Collective Responsibility to Chongqing*

It was during the Yongzheng era that the Qing system of collective responsibility was introduced into Sichuan, as part of a larger program of preparing the province for a regular imperial administration.<sup>23</sup> In 1728, two years after the Yongzheng Emperor ordered local officials throughout the empire to implement the *baojia* system in every locale, he laid out the plan for a province-wide campaign to register and examine the population of Sichuan. The compilation of *baojia* units would serve as the organizing principle of a much wider effort to settle the population of the province and rid the frontier of its least desirable elements:

... The households entering Sichuan are multitudinous. There are good ones and bad. Order the officials in charge to **enroll the population into *baojia* units**. Those individuals who simply knock about and cause trouble should be sent away. Those who are really bandits or have committed crimes should be sent back to their home provinces. Anyone who knowingly hides these individuals or any official who fails to find them due to inattentiveness shall be punished. Anyone who entered Sichuan after the winter of 1725 shall be examined: find out the names and numbers of the inhabitants of their households, as well as their province of origin. Submit detailed and truthful reports. If, among them, there are those who have committed crimes in their home territories, send them back.

Of those who stay in Sichuan, those who are truly so poor that they cannot make a living should be given land and a loan of seed, the use of an ox, and rice to support them. The required funds should come from their province of origin... If there are those who have

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<sup>23</sup> The first imperial system of collective responsibility ever introduced to the Three Gorges region was the result of Song expansion under Wang Anshi's push to incorporate the resources of the frontier. But the *baojia* system introduced to the region in the Song entailed little more than imperial recognition and labeling of the networks of patronage that already dominated the region. For an extensive overview of the Song *baojia* system in Sichuan, see Chapter 6 of von Glahn, "Streams and Grottoes." By the time of the compilation of the 1461 *Ming Imperial Gazetteer*, 91 *li* were associated with all of Ba County. According to the Ming *lijia* system, this would have amounted to 10,100 households throughout the county. In the "Buildings and structures" [*jianzhi* 建置] section in *juan* 2 of the 1761 *Ba Xian Gazetteer* [*Baxian zhi* 巴县志] it was noted that the urban center of Chongqing had organized eight districts (*fang* 坊) and two suburban districts (*xiang* 厢) to accommodate the influx of migrants into the city during this period.



lost their vocation because of the move, and live off of their relatives, the relatives may be required to find them a means of subsistence. If their families do not have enough capital, and cannot support their relative, then they, too, may be given a plot of land, which they shall till themselves. But there is no need to give them an ox or seeds or rice. Those households that have entered Sichuan but are willing to go back to their home provinces do not need to be given grain. Take down their names and number and transmit the information to their place of origin. Sichuan must create its own population registers. If, later, these households return to Sichuan, they shall be fined.

Natives to the province who are without land may be apportioned plots according to their quality after the land survey has been finished. Number them in sequence, and then calculate the number of households that have remained in Sichuan, and distribute the land evenly among them. If there are any who attempt to seize or use land without authorization or fight over it, they shall all be sent back...<sup>24</sup>

In the absence of a strong civil administration, the process of forming collective responsibility units was merged with the first steps of clearing the way for a new order in Sichuan. The simultaneous acts of *baojia* registration, homestead grants, and official communications about population movement would clear away the great confusion of Sichuan's social and economic order and replace it in one grand move with a classical agrarian space, ideal for administration by a newly-created civil bureaucracy.

The beginnings of Qing control of the administrative structure of Chongqing were thus established by the imperial state on improvised foundations, with *baojia* registration at the center. What emerged in Chongqing was a pastiche of both Ming-era and Qing collective responsibility institutions, often named and organized in non-standard ways.<sup>25</sup> Even the Chongqing *yamen* frequently displayed an inability to keep the titles of various collective responsibility heads straight, referring to the same individuals with different and sometimes nonexistent titles.<sup>26</sup> In spite of the confusing nomenclature of

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<sup>24</sup> YZSL: year 6, month 1, *yihai* day, emphasis added.

<sup>25</sup> For example, the *xiangyue* (鄉約) "village compact" heads appointed to lecture on the emperor's Sacred Edicts. *Xiangyue* heads often appear in Chongqing *yamen* documents performing *baojia* tasks, and the *baojia* heads in two of the city's 29 wards (the Chaotian [朝天] and Chuqi [儲奇] districts) were labeled according to *xiangyue* nomenclature. This practice is in obvious disagreement with the distinct duties assigned to *xiangyue* heads. For an outline of those duties, see Hsiao, *Rural China*.

<sup>26</sup> Collective responsibility heads might be referred to as *keyue* (客約), *yuelin* (約鄰), and other such portmanteaus. For examples, see the Sichuan Provincial Archives Ba Xian collection [hereafter SPABX]:18-1107; SPABX:03-00121; SPABX:07-00136; and SPABX:31-00013

collective responsibility in the city, the institution provided a framework for cooperation between local authorities and its subjects. The collective responsibility units introduced to Chongqing were able to provide a stable point of administrative reference to the shifting population of the city. It was this uniformity of administrative structure and the organizational capability it entailed that became the most useful part of collective responsibility in Qing Chongqing.

In the Qianlong era, the land-based *baojia* registration scheme in Sichuan was supplemented in Chongqing by the *kezhang* (客長) “guest-chief” system.<sup>27</sup> This scheme for collective responsibility appeared throughout the southwest in the middle of the eighteenth century as a means to govern the large populations of sojourners who settled throughout the region without changing their place of registration.<sup>28</sup> Particularly designed with sojourners in mind, this institution extended the system of security and registration based in the settled household to a previously unmonitored population. *Kezhang* delegates were elected from each sojourning population and charged with maintaining a rotating register (*xunhuan bu* 循环簿) of the visitors from their home province.<sup>29</sup> These registers were forwarded to the local

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<sup>27</sup> A good deal of scholarship has been written about this system. Its functions and basic character have all been covered in depth in this previous work. See Liang Yong, “Studies of the Sichuan’s Qing Dynasty Guest-Chief System” [*Qing dai Sichuan kezhangzhi yanjiu* 清代四川客长制研究], *Shixue yuekan* [史学月刊], no. 03 (2007): 28–35; Chen Yaping, “The *Xiangyue*, *Baojia*, and *Kezhang* systems of Qing Dynasty Ba County and Local Systems of Order: An Investigation Centered on Materials from the Ba County Archives” [*Qing dai Baxian de xiangbao kezhang yu difang zhixu: yi Baxian dang’an shiliao wei zhongxin de kaocha* 清代巴县的乡保客长与地方秩序——以巴县档案史料为中心的考察], *Taiyuan Shifan Xueyuan xuebao (shehui kexue ban)* [太原师范学院学报(社会科学版)], no. 05 (2007): 123–127; and Zhou Lin, “Urban Merchant Groups and Rhythms of Commerce: With the Commercial Dispute Mediation Activities of the Qing Dynasty Chongqing Eight-Province Guest-Chiefs as an Example” [*Chengshi shangren tuanti yu shangye shixu: Qing dai cChongqing bashing kezhang tiaochu shangye jiufen huodong wei zhongxin* 城市商人团体与商业时序——清代重庆八省客长调处商业纠纷活动为中心], *Nanjing Daxue xuebao (zhexue renwenkexue shehuikexue ban)* [南京大学学报(哲学人文科学社会科学版)], no. 02 (2011): 80–99.

<sup>28</sup> The *kezhang* system is recorded in imperial documents as early as the first year of the Yongzheng era (1722), as officials presiding over highly mobile populations in Jiangxi, Guangxi, and Sichuan began to seek out delegates to take responsibility for the sojourners residing in their jurisdictions. On the documented examples of early Qing *kezhang* systems, see Liang Yong, *Immigrant, Nation, and Local Authority: The Case of Qing Ba County* [*Yimin, guojia, yu difang quanshi: yi Qing dai Baxian wei li* 移民、国家与地方权势——以清代巴县为例], forthcoming, 133-134.

<sup>29</sup> For information on the *kezhang* system in Guangxi, which was roughly contemporaneous with its appearance in Sichuan, see QLSL: year 9, month 10, *bingwu* day.

government quarterly, in order to supplement the efforts of *baojia* delegates who were incapable of keeping track of the large number of visitors to the city.<sup>30</sup>

*Kezhang* were given many of the same duties assigned to *baojia* heads at the local level. They were responsible for security tasks (such as reporting bandits, heterodox religious activity, and gambling or other illegal economic activity), the management of levies and corvée, the collection of various ‘contributions’ for local projects such as wall repairs and temple and bridge construction, and local community activities such as the performance of rituals and festivals.<sup>31</sup> Together with the *baojia* heads and other collective responsibility delegates of the city, Chongqing’s *kezhang* organization formed part of a massive network of supervision linking the local administration to the population it governed.

At the same time that the central court supported the expansion of collective responsibility to new sectors of the population, the implementation of these systems at the local level began to ramify in new ways. The Yongzheng-era reforms and Qianlong-era adaptations to Qing institutions of collective responsibility culminated in the realization of an empire-wide framework for the flow of information between local government offices and the communities over which they presided. The completion of this powerful network led to a ramification of the functions and duties of collective responsibility heads, as the scope and capacity of the system expanded.

### *The Authority of Collective Responsibility Heads*

Heads of collective responsibility units were granted no salaries, no explicit powers, and no formal terms of office. The Qing Code dictated merely that *baojia* heads were required to report suspicious

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<sup>30</sup> For a description of *kezhang* duties in Chongqing, see QLSL: year 40, month 2, monthly summary. Several *kezhang* licenses are reprinted at Sichuan Daxue lishi xi and Sichuan Sheng Dang’an Guan, eds., *Selections from the Qing Qianlong, Jiaqing, and Daoguang Ba County Archives [Qingdai Qian, Jia, Dao Baxian dang’an xuanbian 清代乾嘉道巴县档案选编]* (Chengdu: Sichuan Daxue chubanshe, 1996), vol. 2, 294-301 (hereafter QJDBX XB)

<sup>31</sup> Liang, “Studies of the Sichuan’s Qing Dynasty Guest-Chief System,” 31-33.

behaviors to the local government.<sup>32</sup> Failure to report illegal actions was punished by law. *Baojia* heads who failed to report crimes because of their ignorance of the commission were tried under the same charge of “Inattentiveness” (*shi cha*失察) that dictated punishments for officials who had neglected their duties.<sup>33</sup> In cases where collective responsibility figures received bribes to cover crimes within their jurisdiction, they were tried under the statute on “Misappropriation of the Law,” which primarily applied to officials guilty of abusing their authority.<sup>34</sup> Despite having no official rank, collective responsibility intermediaries were made subject to punishments originally designed for officials because their role in preserving local order was so vital to the function of the local administration of the Qing.

By law, holders of collective responsibility positions were nominated by members of their own community, although in practice they were often nominated by the previous office holder. Nominees were required by the local administration to submit a pledge at the magistrate’s office swearing that they were law-abiding, qualified candidates for the job.<sup>35</sup> This pledge was examined by the local authorities, who then issued a license to the delegate.

The text from one typical Qianlong-era license for a *baojia* delegate required the bearer to:

Carefully and assiduously handle any ‘public affairs’ (*gong shi*公事) that might be encountered within the collective responsibility unit. And, whenever *guolu* bandits or the illicit slaughter of draft animals or illegal minting or prostitution or gambling or confidence artists or heterodox practitioners or unfamiliar and suspicious strangers appear in the locale, the bearer is permitted to make a secret report to the magistrate, so that the

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<sup>32</sup> For an example of a proclamation that arose from such a report, see SPABX:01-00217.

<sup>33</sup> This statute, included in the 1740 revised code, was co-authored by the Boards of Revenue, Crime, and Military. See sub-statute twelve of the law on “Leaders of thieves and bandits” at DQLL1779, 763, as well as QSL: year 13, month 9, *guichou* day.

<sup>34</sup> See the text of the law on “Fleeing Obligations” at DQLL1779, 416, as well as QLSL: year 1, month 9, *dingsi* day and YZSL: year 11, month 6, *xinwei* day.

<sup>35</sup> Qing law merely required that *baojia* heads to be “diligent and experienced (勤慎練達)” individuals. See sub-statute eleven of the law on “Leaders of thieves and bandits” at DQLL1779, 762-762 and HDZL *juan* 26, 32.

local office may investigate and handle the matter. The bearer must not use this authority to bully others, or impede public matters, or create problems.<sup>36</sup>

As the text of this license illustrates, even though *baojia* heads were only required by law to report on public security issues, a host of duties were attached to collective responsibility positions in Chongqing. Even the *xiangyue* community covenant heads were pledged to similarly broad duties.<sup>37</sup> The following example of one *xiangyue* license demonstrates this phenomenon. Although the pledge noted the *xiangyue* requirements to cultivate morality in Qing subjects, much of the text mirrored the composition of *baojia* licenses to a surprising degree (since *xiangyue* delegates were not required by law to perform the reporting duties associated with *baojia* appointees):

Carefully and assiduously handle any public affairs that might be encountered within the collective responsibility unit. On the first day of every lunar month, gather together the subjects at a public place for a reading of the Sacred Edicts, to edify the benighted and bring harmony and rectify social relations. Furthermore, occasionally inquire as to whether there are *guolu* bandits, or individuals hiding prostitutes or gambling, or illicit slaughter or illegal minting, or heterodox teaching or confidence men, or suspicious strangers who have appeared in the locale. In these cases, the bearer is permitted to make a secret report to the magistrate, so that the local office may detain the suspect for investigation. If the bearer, for reasons of personal prejudice, conceals these matters, once it is discovered or reported the penalty will be doubly heavy.<sup>38</sup>

The licenses of early *kezhang* heads bore a strong resemblance to *baojia* licenses. One example read:

Henceforth, whenever there are public affairs in this *chang*, the bearer is required to carry them out assiduously and carefully. If he finds any traces of *guolu* bandits, or gambling, or prostitution, or the illicit slaughter of draft animals, or illegal minting, or the cutting of queues, or confidence men, or the spread of heterodox teachings, or suspicious strangers who appear in his jurisdiction, he is permitted to submit the relevant information for official investigation.<sup>39</sup>

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<sup>36</sup> QJDBXXB vol. 2, 294.

<sup>37</sup> On the broad duties shared by *baojia* and *xiangyue* heads in Chongqing despite the formal legal difference between these two positions, see Liang, *Immigrant, Nation, and Local Authority*, 104-108.

<sup>38</sup> QJDBXXB, vol. 2, 295.

<sup>39</sup> SPABX: 01-00107; 21.

Collective responsibility heads were required to monitor and report on any suspicious activity in their units. Each license reads as a laundry list of the criminal problems plaguing the region at the time of its issuance. The general statement in collective responsibility licenses about performing “public affairs” acted as a necessary catch-all category for the duties that these individuals might be called upon to perform beyond their limited formal functions.

From the middle of the eighteenth century, the evidence in the Ba county archives demonstrates that the imperial initiative to introduce collective responsibility to the frontier had already begun to fundamentally alter the way that the city was governed. The rapid expansion of collective responsibility systems into areas where Chongqing’s civil administration required assistance began to reshape the very meaning of collective responsibility itself, as this classic imperial institution took shape in the midst of the late imperial frontier.

Collective responsibility heads played a critical role in creating a sense of legal order and administrative competence in the midst of a very mobile and dynamic frontier. In the earliest archival materials, *baojia* heads can be seen aiding the state in its attempt to reclaim its monopoly over the use of violence. Collective responsibility units were tasked with policing their members and began, in the eighteenth century, to halt and report violent confrontations to the magistrate’s office as part of a larger effort to establish the difference between the legal and illegal use of force in the city.

In the early days of collective responsibility in Chongqing’s court, *baojia* heads also aided the court in its effort to claim dominion over the settlement of disputes by communicating information to the magistrate about litigants so that cases could be settled fairly and swiftly. The reports of collective responsibility members about litigants were often the only secure source of information available to the magistrates presiding in the local court.

Over time, as these two functions of collective responsibility established a firm basis for the litigation of commercial disputes in Chongqing's court, the magistrate's reliance on these institutions widened the reach of the court and the community's access to a legal forum. Collective responsibility systems soon began to play new and more involved roles in the commercial dispute resolution process. The expansion of the powers and actions of collective responsibility heads became such an integral part of the local administration that, on occasion, the autonomy and power of these systems was even capable of threatening the state's control over legal processes. It was the importance of this institution and the danger that it posed to the state that demanded a recognition of the "complicated" nature of *xi shi* cases in Qing courts.

### **Collective Responsibility in Early Commercial Disputes**

At this early period of Chongqing's incorporation into the Qing civil bureaucracy, the administrative habits of the empire were still overshadowed by an aggressive frontier atmosphere. In the market the threat of violence was often employed to prevent and resolve disputes between merchants. Force was used to collect debts, to avoid debts, to resolve accounts, and to reckon commonly-held assets among business counterparts. As Chongqing's magistrates struggled to establish control over the city's residents and merchants in the eighteenth century, collective responsibility heads played a formative role in restraining the use of illegitimate force and asserting the state's prerogative to enforce justice.

#### *Violence*

Chongqing was a place so full of risk that violence was a common resort for desperate traders in the eighteenth century. The number of strangers, criminals, and seasoned frontiersmen in the city made its population impossible for the fledgling administration to police thoroughly. But the *baojia* network

offered community resources to the state in its quest to prevent and punish violence: fights breaking out within any neighborhood could be contained, reported, and punished with cooperation between collective responsibility units and the local administration. Slowly, the practice of collaborative prevention of and court punishment for violence began to create new patterns of order and control in Chongqing, as it became clearer over time that the rule of force from more unruly days was destined to become a thing of the past. Although Chongqing maintained a reputation for crime and danger for the rest of its days in the Qing, the most flagrant violations of legal order were reined in starting with the consistent deployment of collective responsibility in the Qianlong era.

Tales of physical confrontation in the southwest were not confined to bandits and decommissioned military personnel. In Chongqing, where everyday trade and life involved high levels of risk, the legal record contains many examples of the use of force to handle even simple commercial disputes. A constant potential for aggression lurked in the charged atmosphere of the frontier market. The merchants and shop keeps who dealt with Chongqing's ever-changing cast of buyers and sellers had no way of knowing which of their counterparts had criminal connections, unsavory backgrounds, or violent tendencies. Fights often broke out between creditors and debtors or partners in troubled business ventures, whose arguments could quickly become heated in the city's uncertain market.

Knives were a favored weapon of dispirited merchants, who drew concealed blades or grabbed kitchen utensils in their fights with one another on several occasions. Reports of collateral damage resulting from disputes about commerce were common. In one case, when Wu Kui (武魁), the owner of a tea shop and bar, encountered a former customer who had previously skipped out on his bill, the plaintiff demanded repayment from the customer, but the latter "instead responded with force, smashing several tables and chairs" before both men went to the magistrate's office to file suit against one another.<sup>40</sup> Lists

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<sup>40</sup> SPABX: 01-01031; 1.



of belongings destroyed in an affray were often submitted together with complaints relating to commercial disputes.

Even acquaintances, long-time customers, and business partners were not immune from violence in a region where the average businessman had some experience with the tough frontier life, the military trade, or the criminal world. In one dispute, an argument between two men who had joined in a business venture led to fisticuffs. Subsequently, the plaintiff Niu Guozhen (鈕國珍) accused his partner of “responding to my demands for the return of the money with a strike of the fist, which made blood start pouring from my nose.” The plaintiff then pled for mercy, and a second defendant, in league with the first, pulled out a kitchen knife and slashed Niu across the forehead. They then kicked him repeatedly, before a neighborhood resident saw the affray and interfered.

Other merchants resorted to hiring local thugs to harass debtors into making good, using tactics that skirted the line between aggressive debt collection and pure extortion. This happened in the case of Kong Yaozhang (孔堯章), who alleged that a creditor of his nephew’s firm in the far north of the province came to town to bully him into accepting responsibility for the debts of the other firm. Kong accused this creditor of extortion, reporting that the defendant had “colluded with a local ruffian Gong Zhengyi (龔正益) to come to the shop and regularly make false accusations that I was in business with the debtor firm,” in an attempt to force Kong to pay off the unrelated debt merely out of a desire to rid himself of the constant pestering.<sup>41</sup> In a port city where business transactions commonly took place between merchants based in locales hundreds of miles distant from one another, the practice of hiring a local ruffian to “squat” (*ju* 踞) on a debtor’s house or shop in the city was extreme, but not unusual.<sup>42</sup>

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<sup>41</sup> SPABX: 01-01898; 2.

<sup>42</sup> These behaviors were much more common in early Chongqing. By the late nineteenth and early twentieth centuries, magistrates would later take a serious and more direct position on this sort of aggressive strategy of risk prevention. For an example, see SPABX: 32-03847.

Some individuals were bold enough to even attempt to use violence and threats to keep witnesses from testifying before the court to head off the possibility of official interference in their personal handling of commercial disputes through force. This occurred in the suit filed by Wu Yifa (吳億發), who was forced to attempt to collect a debt from the broker of a transaction after the other party who owed money had already gone into hiding. The defendant, Tang Heshun (唐和順), brother of the truant debtor, alleged that he had never agreed to serve as his brother's guarantor and offered as proof a list of witnesses who had attended a ceremony where he swore his innocence before the gods. In a counter-suit, the plaintiff Wu Yifa accused Tang of "terrifying the witnesses through physical assault and proclaiming that if the witness Li gave testimony, he would be throwing away his life."<sup>43</sup> In these and other cases, desperate or vigilante members of Chongqing's merchant community fought to assert their interests in ways that directly undermined the façade of state authority. Using force, harassment, and the threat of violence to overcome the uncertainty of exchange in the busy port, many merchants attempted to operate within a stateless space where individual initiative, personal resources, and brute strength were the weapons against risk and uncertainty.

Neighbors and collective responsibility heads appear in the Ba county archives as one of the only things standing between these bouts of aggression and serious, life-threatening circumstances. Since residents of the ward were legally accountable for criminal acts committed in their neighborhood, it was often neighbors or *baojia* heads that dragged disputants to the court after a ruckus broke out or intervened directly during a fight.<sup>44</sup> In one particular suit, after the defendants pulled out knives rather than allow the plaintiffs to investigate some lumber whose ownership was disputed, both the plaintiffs and a neighbor (*jielin*街鄰) who saw the fight and attempted to stop it were injured. The victims, in their official accusation, remarked upon the lawlessness of the defendants: "It is already flaunting the law to embezzle

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<sup>43</sup> SPABX: 01-01900; 5.

<sup>44</sup> For examples, see SPABX: 01-01869; 01-01031; 01-01219; 01-01863; and 01-01403.

the goods and sell them illicitly without splitting the profit, but they even dared to brandish knives in accomplishing their treachery! This is making a mockery of imperial order (似此私賣吞價不分，已屬不法，尤敢持刀估騙弁髦王章!)”<sup>45</sup> Such behavior, after all, was a violation of the state’s monopoly of violence and a direct threat to the efforts of local officials to produce a sense of legal order in the city.

In cases where serious forms of violence resulted from commercial disputes, the magistrate asserted state dominion over the use of force through outright punishment. This was what happened when Zhu Ji (朱紀), a butcher running a shop in the city, had a confrontation with a customer named Chang Xiang (常相).<sup>46</sup> Chang was a peddler who purchased meat from Zhu for sale in the countryside, and when the two men met, Zhu demanded payment for the tail end of the last year's account. Chang refused to pay. When the argument over the bill grew heated, Chang brandished a knife, “threatening me and smashing the furniture and some miscellaneous items in my home to pieces.”<sup>47</sup> Hearing the ruckus, a neighbor named Zhang Hong (張洪) came to Zhu's aid. The two men brought Chang Xiang to court and requested an immediate hearing, at which both Zhu and his neighbor testified to the facts of the dispute. Upon hearing the details of the case, the magistrate ordered a light beating as punishment for Chang's violent outburst and placed him in the custody of a *yamen* bailiff until the bill was fully paid. In cases where men and women turned to violence in the course of settling commercial affairs, the magistrates of Chongqing punished offenders for two infractions; not only for failing the trust of their counterparts, but also for crossing the line that the state was in the very process of policing: the line between legitimate and illegitimate uses of force.

The first step of asserting state control over Chongqing and its market was identifying, punishing, and preventing the rampant forms of illegitimate force that governed life and trade in the city. Case by

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<sup>45</sup> SPABX: 01-01219.

<sup>46</sup> SPABX: 01-01863.

<sup>47</sup> SPABX: 01-01863; 2.

case, members and heads of collective responsibility units cooperated with *yamen* runners to convey the victims of threats and abuse to the county court to seek arbitration. Litigation under the auspices of the state protected these men and women from the competing claims of others seeking to exact their own kinds of justice. Knife by knife, the tools of violence were confiscated by the local state in its bid to claim control of and monopoly over force in the city. Collective responsibility heads and members stood on the front lines of this process. They were required to break up and report the outbreak of violence in the marketplace as part of the local state's bid to claim the right of punishment for itself alone.

### *Information*

The obligations of collective responsibility heads to assist the local court in processing commercial disputes did not end when litigants arrived at court. Magistrates continued to rely on *baojia* heads and other collective responsibility figures in the process of evaluating court claims and weighing evidence. *Baojia* heads and *kezhang* were regularly counted upon to produce reliable, representative, and concise information about a dispute and the individuals involved. The information that *baojia* representatives gathered through their local networks was often the sole foundation of court verdicts in commercial cases.

The information-sharing duties of collective responsibility delegates participating in the resolution of commercial disputes were an extension of their legal function as agents of local security. For this reason, information received from a collective responsibility delegate was handled differently than information from other sources, and *baojia* figures were allowed to *report* (*bing* 稟) to the magistrate rather than to plead before him. The form and style of their communications with the *yamen* thus took on an official character. The magistrates of Chongqing used collective responsibility intermediaries as

reliable conduits of information about the commercial agreements and business practices of the city in order to produce rulings that reflected the best interests of involved parties.

*Baojia* heads and members of collective responsibility units were often listed among the witnesses in legal suits or came up in the description of a dispute before its entry into the court.<sup>48</sup> This information served two important functions. It gave the *yamen* a direct reference for inquiries about the details of the suit, and it indicated the appropriate liaison for the court process. When clerks and runners were dispatched on case-related business, they went first to confer with the *baojia* figures related to the case.<sup>49</sup> Throughout the case, runners and collective responsibility heads worked together to carry out official commands.

Collective responsibility units could also be involved in dispute mediation by express magisterial command. *Baojia* heads were the magistrate's closest allies in the court's defense against misinformation and were frequently called upon to substantiate the claims in law suits. In one particular case, the collective responsibility tasks of information gathering and violence prevention are illustrated together. The plaintiff, Wu Lichang (吳禮常), filed a detailed complaint about the sort of lawless ruffian that the state most feared: a treacherous rogue by the name of Zhou Sheng (周陞) had come to his guest lodge and pretended to be a *yamen* worker on an official errand in an attempt to extort funds and services from this

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<sup>48</sup> Indeed, although the forms used to record legal suits changed over time, plaint forms always had special areas where litigants were requested to provide information about their collective responsibility units. In the Qianlong era, Ba *xian* legal forms had blank spaces where filers were supposed to include information about their *yuelin* (約鄰), or *xiangyue* head and neighbors, or – for those from out of town – about the place of lodging (*xiejia* 歇家), whose owner was the individual responsible for passers-by staying in his inn. Later legal suits had more specialized and varied requests for information about collective responsibility. By the time of the Guangxu era, the name of several *baojia* figures connected with filers of suits was requested on each legal form.

<sup>49</sup> Liu Heng, the famous magistrate of Ba County who later wrote several handbooks for magistrates, even suggested that *baojia* heads and *xiangyue* appointees be asked to handle the duties of summoning and reporting on cases about land, marriage, and debt exclusively, arguing that any *yamen* worker involvement in these cases at all could lead to exploitation and hardship for all parties involved in legal cases. See Liu Heng, “Do not Employ Yamen Staff to Serve Summons” [*Bu yong chaiyi chuan an piao gao* 不用差役傳案票稿] in *juan* 1 of the vol. 6 of *Guan zhen shu ji cheng bianzuan weiyuanhui* [官箴書集成編纂委員會] ed., *Guan zhen shu ji cheng* [官箴書集成], (Hefei, Anhui: Huangshan shu she, 1997.), 10 vols.

small business owner. When the beleaguered Wu slipped out of his shop as the unwelcome guest was dining on the house and drinking himself into a stupor, the errant impostor Zhou took the opportunity to sneak into Wu's home in the back of the shop and attempt to rape the shop owner's wife, tearing the woman's clothing in his advances. Wu claimed that, upon the discovery of this struggle, he had cried out for the help of his neighbors, but that Zhou had summoned his two brothers and a gang of "many others" who appeared, wielding knives.<sup>50</sup> They proceeded to smash up several of the objects in Wu's shop. Wu then ran to Yuan Dalun (袁大倫) and Zhao Shengyan (趙聖彥), the *changtou* (場頭) *baojia* head and *xiangke* (鄉客) *kezhang* deputy of his collective responsibility unit for help before reporting to the court, with the torn cloth from the attempted rape of his wife in evidence. The magistrate immediately approved an order for the arrest of Zhou Sheng and his accomplices.

Before the arrest warrant was officially issued, Zhou Sheng's brother Zhou Huanran (周煥然) turned up at the *yamen* to file a counter-suit.<sup>51</sup> In his version of events, a ruffian named Zhao Lun (趙倫) was the individual guilty of posing as a *yamen* worker who went out to extort from businesses, and the business whose goods had been extorted was owned by the defendant Zhou Sheng, rather than the plaintiff Wu. The confidence man Zhao Lun had gotten away with several of the items being sold by Zhou Sheng, the law-abiding green-grocer, as well as a handful of cash. In the confrontation that had occurred the next day among Zhou Sheng, Zhou Huanran, and the impostor Zhao Lun, it was Wu – the plaintiff – who had been called upon by the criminal to threaten the innocent brothers. Zhou Huanran accused Wu of appearing on the scene with a wooden cudgel, which he used to beat the two men. Zhao Lun himself brandished a knife and scared off the Zhou brothers, but not before Wu managed to inflict several injuries. In his suit, Zhou Huanran gave the names of two neighbors who had come upon the

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<sup>50</sup> SPABX: 01-01403; 1.

<sup>51</sup> Throughout his suit, Zhou Huanran refers to his brother by another name, Zhou Weixun (周維勳). These sort of conflicting reports of the names and identities of litigants were common in Qing cases, which were often filed between strangers. I have kept the name Zhou Sheng here for the sake of narrative consistency and to prevent confusion, but it was probably only a nickname for the defendant.

affray, as well as the *kezhang* delegate Yuan Dalun, who had been mentioned under another title in Wu's initial suit.<sup>52</sup> In response to this alternative version of events, the magistrate issued a new order: "Look to the *kezhang* and neighbors to offer witness testimony and confirm the events through an investigation, then report back with haste."<sup>53</sup> The sharply conflicting stories had left the court unable to act decisively without more information. The collective responsibility heads of the area were called upon to fill the gap.

At this point the members of the collective responsibility unit became officially involved in the case. The magistrate issued an order to the delegates in charge of the jurisdiction, commanding them to confirm whether or not a fight had occurred, whether or not a life had been threatened, whether or not Zhao Lun had attempted to extort from the Zhous, and then report back to the county office. In the official report filed in response to this order, the nine *baojia* representatives from the area warned the magistrate that Wu "has several times accused others of impropriety towards his wife as a means of fraud and extortion," to the point that "such instances would be difficult to enumerate." Moreover, Zhou Sheng had gotten into a fight with Wu's wife over the sale of some cucumbers, whereupon Wu had fallen to his usual habits of false accusation.<sup>54</sup> Zhao Lun had joined him in the abuse and encouraged him to file false suit, demanding 2,000 *wen* in cash from the Zhou brothers to drop the claim. Since the investigation had begun, the *baojia* heads had attempted to reach a resolution to the original dispute, but Zhao Lun had already fled. The magistrate responded by issuing an arrest warrant for Wu and Zhao to answer for this outrageous behavior, but the case ended there: the criminals had already completed their escape. Through the information-gathering and reporting activities of collective responsibility leaders, Wu's attempt to use the court system to extort Zhou was exposed, and the two perpetrators became targets for state discipline.

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<sup>52</sup> Much like the common mistakes in the names of individuals found in legal suits, the precise titles of collective responsibility heads was often confused. This is consistent with the seemingly arbitrary and overlapping labels of collective responsibility systems in the city. Not even the residents of Chongqing seem to have been able to keep track of the differences in titles.

<sup>53</sup> SPABX: 01-01403; 6.

<sup>54</sup> SPABX: 01-01403; 1.

The collective responsibility system could not prevent all forms of cheating or abuse, but its existence made the link between misbehavior at the local level and the search for justice in the courtroom a less circuitous and treacherous path. The fact that the above case ended abruptly with the flight of the defendants stands as a reminder that, even with the aid of savvy and well-informed collective responsibility heads, the state was still struggling with the challenges of policing a city like Chongqing, where many criminals and fraud artists had so little invested in the locale that they could disappear overnight, returning to their distant native lands or running off into the hills to join the large criminal and military populations of the province.

The magistrate's reliance on collective responsibility intermediaries to verify and elaborate upon the claims of litigants was so consistent that the conclusions of *baojia* heads could directly decide the magistrate's disposition toward litigants. As one example, the Chongqing magistrate relied upon collective responsibility agents in the case of Kong Yaozhang, the merchant who charged "squatter" Gong Zhengyi with harassment and extortion. The magistrate responded to Kong's first suit by indicating in his rescript that the collective responsibility heads associated with the plaintiff's ward of business should "take up this public matter and report back."<sup>55</sup> In the official court order that was issued, the collective responsibility group was commanded to "quickly investigate the matter, handle it in a manner befitting the performance of public duty, and report back."<sup>56</sup> The defendant responded to the plaintiff's accusations with a counter-suit, but his legal hopes were soon dashed when the residents of the ward (坊鄰) filed their official report, finding that the plaintiff's business had no history of intercourse with the defendant's firm. The case disappeared from the docket, the issue having been settled by the authoritative claim of the ward residents. This type of local knowledge of events could make or break a case, as

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<sup>55</sup> SPABX: 01-01898; 2.

<sup>56</sup> SPABX: 01-01898; 3.



magistrates were often confined to reliance upon collective responsibility heads for information about market disputes.

### **Expanded Uses of Collective Responsibility**

The dependence of the local government upon collective responsibility figures was due in no small part to the extraordinary pressure on county and prefectural magistrates to resolve legal cases in their jurisdictions. Since the Yongzheng reign, it was required by law that all commercial cases and other *xi shi* be tried in the county court of the location where the dispute first occurred.<sup>57</sup> This law prevented double jeopardy, protected litigants from being lured into unfamiliar court settings where another party had managed to work his own local influence, and reduced the likelihood of ruin due to the expense of travel and detention in distant county offices.

The importance of immediate and effective resolutions to legal cases was stressed in the Qing Code itself. It was against the law in Qing China for magistrates to refuse to accept suits that were filed in accordance with the codes on legal procedure.<sup>58</sup> During the routine provincial audits of local magistrate administrations, censors were instructed to make careful notes on the number of standing cases involving disputes between individuals and to set forth a firm deadline for settlement for any cases that had remained open. Any magistrate failing to resolve cases by the prescribed date, or found harboring employees who interfered in the litigation process, was liable for punishment at the discretion of

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<sup>57</sup> Building on a Ming-era sub-statute originally applying only to merchants in Jiangxi, the Qing mandated that “when a traveling merchant in the provinces does business abroad, if there are cases of debt or obligation, it is only permitted to bring suit in the very place [where the debt or obligation was undertaken].” See the seventh sub-statute of the law on “Litigation bypassing appropriate jurisdiction” [*yuesu* 越訴] at DQLL1779, 871. This statement mirrored another Yongzheng-era statute commanding that all “complicated matters” be tried in the jurisdiction where the event in question had occurred. See sub-statute fourteen of the same law, at DQLL1779, 872-873.

<sup>58</sup> Magistrates found guilty of refusing to handle court cases brought to their attention were punished in accordance with the severity of the crime itself. Extra punishments were dictated for accepting bribes to delay the resolution of lawsuit, and for failing to settle pending cases after a deadline to clear the dockets had been issued by auditing provincial authorities. See the law on “Not responding to complaints” [*gaozhuang bu shou li*], DQLL1779, 879.

provincial officials.<sup>59</sup> Cases of deliberate delay on the part of the magistrate or any employees involved in settling court cases were supposed to be “strictly punished.”<sup>60</sup>

Not only were *yamen* officers and their employees responsible for settling every valid case that came to court, but they were also required to do so in an official capacity, “without delegation to others,” under the threat of additional punishment.<sup>61</sup> This imperative put local officials in a difficult position: compelled to find satisfactory resolutions for all cases, they were also required to oversee the conclusion of each case personally. This meant that the *yamen* was under great pressure to outsource as many functions of litigation as it could safely delegate to others. Collective responsibility heads played a large role in helping Chongqing’s county court manage its growing case load.

Unable to ignore or reject the pleas of local subjects outright and often mistrustful of the *yamen* clerks who performed many official duties in exchange for extra-legal fees, magistrates turned to collective responsibility institutions to deal with these disputes.<sup>62</sup> Since *baojia* delegates were the only community members who could file official reports about activity in the locale, magistrates could turn to them as bureaucratically-recognized representatives of the community to handle some aspect of an investigation or mediation on behalf of the court. *Baojia* figures were frequently given official Orders of Delegation (*wei pai* 委牌) to carry out the command of the court.

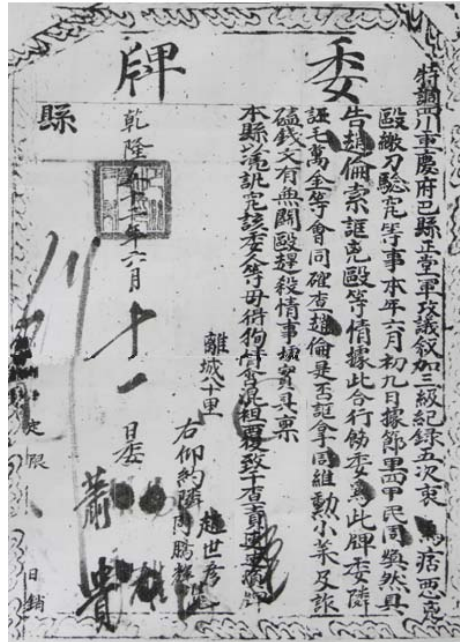
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<sup>59</sup> Sub-statute five of the law on “Not accepting and handing complaints,” DQLL1779, 880-881.

<sup>60</sup> Sub-statute ten of the law on “Not accepting and handing complaints,” DQLL1779, 881-882.

<sup>61</sup> The law on “Not responding to complaints,” DQLL1779, 879.

<sup>62</sup> For a direct illustration of this attitude, see the magisterial proclamation warning against the use of *yamen* workers to summon litigants and the recommendation to use *baojia* figures instead, at SPABX: 34-06699; 1.



## 2.1 Court Order of Delegation (official version of the draft translated on page 33)<sup>63</sup>

A 1787 draft of the Order of Delegation in the case of Peng Hengchang read as follows:

This placard bears the magisterial command for the Jiangxi *kezhang* to meet with the neighbors of the plaintiff in order to investigate whether or not Zhang Si did indeed embezzle Peng Hengchang's medicinal herbs and money. They shall report back truthfully to the county office within X days, so that the report may be apprehended by the magistrate. Those empowered by this order must not act on personal considerations or show bias or make false claims in their report. Such wrongdoing will be punished severely if discovered.<sup>64</sup>

Another example, from the 1787 case of Wu versus Zhou, read:

This placard bears the magisterial command for the neighbor witnesses Mao Wanjin et al. to meet together and determine whether or not Zhao Lun cheated Zhou Weixun out of his shipment of leafy greens and then extorted his money, and whether or not a life-threatening assault ensued. They shall report back truthfully to the county office, so that the report may be used in the course of deposition and investigation. Those empowered by this order must not act on personal considerations or make false claims in their report.

<sup>63</sup> Source: BXQA 01-01403; 2

<sup>64</sup> SPABX: 01-01391; 6. The "X days" here refers to the fact that the deadline for reporting back was not recorded in the draft, and thus the space where the number of days before the deadline would have been recorded was left blank.

If they do they will suffer a penalty upon discovery. The order on this placard must be carried out swiftly!<sup>65</sup>

This first of these orders was sent out before the associated case was formally permitted before the court. This pre-court vetting process for commercial disputes shifted the burden of distinguishing between false claims and legitimate complaints from the court to collective responsibility heads before beginning formal court action.<sup>66</sup> The second order of delegation above was issued after the court case had already been accepted, as the result of a counter-suit from the defendant which contained serious accusations about the plaintiff. In this case, the magistrate was already committed (by virtue of permitting the plaintiff's first suit) to seeing the issue through to a conclusion, but decided that the claims of the defendant were serious enough to warrant deeper investigation before an official verdict could be issued.<sup>67</sup> No matter the circumstances under which collective responsibility heads were first ordered to investigate, however, their reports were frequently used as a guide for court interrogation and judgment if a case did go on to litigation. The collaboration of collective responsibility intermediaries could be so vital that some orders commanding them to investigate were only issued after the magistrate's failure to reach or enforce a verdict caused a stalemate in the court process.<sup>68</sup>

The position of collective responsibility delegates as conduits of knowledge intended for official use made them important in ways that were predicated not solely upon formal dynastic policy, but also on *de facto* administrative practice. By the end of the Qianlong era, litigants had begun to invoke the powers of collective responsibility delegates in new ways, and *baojia* heads were called upon to act as character witnesses, mediation hosts, and contract witnesses. These roles were not linked directly to the performance of their official duties, but neither did they threaten the sanctity of the court-*baojia*

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<sup>65</sup> SPABX: 01-01403; 5,

<sup>66</sup> For other examples of cases where the magistrate issued orders for collective responsibility intermediaries to investigate a claim before allowing suit, see SPABX: 01-01293, 01-01898, 03-00497.

<sup>67</sup> For other examples of cases where the magistrate issued an order for collective responsibility heads to investigate after a counter-suit was filed in a case that was already accepted, see SPABX: 01-01857 and 12-10043.

<sup>68</sup> See, for example, SPABX: 05-04770, 01-01869, 09-04865, and 01-01873.

relationship. Rather, this expanding use of collective responsibility by merchants signaled a recognition of the vital position of collective responsibility heads in the dispute mediation process. Merchants soon began to understand how the court relied upon *baojia* heads and to employ these resources to their own benefit.

### *Strategies of Collective Responsibility Use by Litigants*

One of the simplest and most common stratagems invoking collective responsibility figures in legal suits was for filers of complaints to make casual references to their position in the community. Merchants might attempt to assuage the magistrate's doubts about the claims in a suit by asserting that they were law-abiding members of a local neighborhood and suggesting that the court could find proof of their local standing as verification of the veracity of their claims. When Wu Kui was accused by his debtor of using violence to collect on a dispute over accounts, the man pled that "all of the neighbors of my shop know that I am but a poor, simple man who makes his living off of a tea and alcohol shop and abides the law without wavering."<sup>69</sup> In another example, when Kong Yaozhang initiated his case against Gong Zhengyi, Kong's first suit mentioned that "I run a hat shop on Chongqing's Datie Street. I keep the laws and maintain order. Everyone on the street knows it."<sup>70</sup> Similarly, when Tu Jinkui (涂金魁) made accusations of gambling against Wang Zongren (王宗仁), he made sure to note that "I sell loose pork cuts, small amounts of rice, and cabbages of salt in my shop. I keep to the law and don't know anything about playing at dice or gambling with tickets. My neighbors, like Li Jian (李健), all know it."<sup>71</sup> These sorts of assertions peppered the texts of commercial suits, allowing litigants to subtly claim credibility by invoking the names of those who were most often depended upon to provide information to the court.

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<sup>69</sup> SPABX: 01-01049; 1.

<sup>70</sup> SPABX: 01-01898; 2.

<sup>71</sup> SPABX: 01-01154; 1.

Other litigants were more active in their engagement of collective responsibility institutions and asked *baojia*, *kezhang*, or *xiangyue* to participate in commercial agreements before a dispute even existed, as a preventative measure. Merchants included collective responsibility heads as witnesses at the signing of contracts or the forming of partnerships, in anticipation of potential court requests for information from these very individuals. This phenomenon became much more pervasive in later eras, but even during the Qianlong reign litigants were invoking the authority of collective responsibility heads in this capacity. One example is found in the case of Yu Junyi (余均義) versus Liu Tingxuan (劉廷選), which centered on the question of whether Yu had been a partner or employee of the business founded by Liu's father.<sup>72</sup> When the magistrate ordered the *kezhang* from Yu's and Liu's province of origin to get together with the neighboring shops and settle the question of partnership, one of the *kezhang* listed on the report was the same individual who was listed as a witness to the partnership contract, which had been written out fifteen years ago. Over time, efforts to include collective responsibility heads in important business agreements became increasingly common. By the end of the nineteenth century, merchants incorporated collective responsibility figures into their contracts, partnership formation agreements, dispute mediation attempts, and settlement agreements.

Other expanded uses of collective responsibility took the court's reliance on *baojia* heads for granted in attempts to generate information about commerce that magistrates would find credible, by preemptively invoking the authority of collective responsibility institutions. Claims carefully filed under this category often went unquestioned by magistrates. This was the case in the claim of Chen Tianlu (陳天祿), a co-defendant in a case filed by *jiansheng* Tang Huazuo (唐華佐), who accused Chen and his alleged business partners of embezzling the plaintiff's goods.<sup>73</sup> After the magistrate ordered the defendants to repay Tang for his losses, Chen filed a counter-suit claiming that he was merely "a wage-

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<sup>72</sup> SPABX: 01-01857.

<sup>73</sup> SPABX: 01-01071.

worker in the shop of the defendants, whose wages have still never been paid, and not at all a partner with the Liu brothers who ran the enterprise.”<sup>74</sup> As his evidence he explained that “In Month 5 I asked the *yuelin* of my ward, Dong Yuanfu (董元輔), to mediate on the issue of the money that the Liu brothers owed to me, and the Liu brothers agreed to pay by a certain deadline. Thus, their partnership has nothing to do with me.” Although the magistrate replied only with the standard phrase of consideration: “Await examination,” Chen did not appear any more on the case docket. He was able to avoid further prosecution by citing an earlier mediation under collective responsibility heads, which had taken for granted Chen’s position as an employee of the firm rather than a co-owner.

In each of these cases, litigants invoked the authority of collective responsibility intermediaries in ways that anticipated the court’s reliance on these individuals to resolve disputes. In some ways, these uses merely voluntarily mimicked court behaviors. In others, merchants who had not yet encountered disputes attempted to mitigate their likelihood by ratifying their contracts in the presence of those who could later serve as official witnesses. In yet others, litigating parties attempted to usurp the initiative of the court by presenting their own information – in the guise of sanctioned information from collective responsibility heads – at key points in the arbitration of a case.

### *Growth and Specialization of Collective Responsibility Institutions*

Other innovative uses of collective responsibility in court cases were the result of the continued evolution of collective responsibility systems. The most prominent example in this category is the history of Chongqing’s *kezhang* and the creation of the Eight-Province Association (*ba sheng huiguan* 八省會館). The roots of this association lie in a distinction between the duties of rural and urban *kezhang*; *kezhang* responsible for rural populations appear earliest in the documentary evidence and evolve along lines

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<sup>74</sup> SPABX: 01-01071; 8.

similar to their *baojia* and *xiangyue* counterparts, while urban *kezhang* only begin to emerge in *yamen* records toward the end of the eighteenth century.<sup>75</sup> But over the course of the nineteenth century, urban *kezhang* began to overshadow their rural counterparts, as they developed into leaders of the merchant community and collective responsibility intermediaries responsible for several aspects of commercial dispute resolution.

One of the reasons for the murky nature of the division between these two worlds is that it does not appear to have been intentional at the beginning. At first, the only thing distinguishing urban *kezhang* from rural ones was their constituency: the large population of merchants who resided and conducted business in the city without changing their place of home registration.<sup>76</sup> But by the time of the late eighteenth century when direct evidence of the activities of urban *kezhang* exists, another factor distinguished them: the existence of *huiguan* lodges established by each merchant community in the city. Since *huiguan* were already organized by each of the provinces whose natives traded in large numbers in the city, the magistrates of Chongqing simply took the head of each *huiguan* as a representative of his native constituency, rather than requiring the natives from each province to independently elect a guest-chief and have him report to the *yamen*.<sup>77</sup> By the dawn of the nineteenth century, the urban *kezhang*

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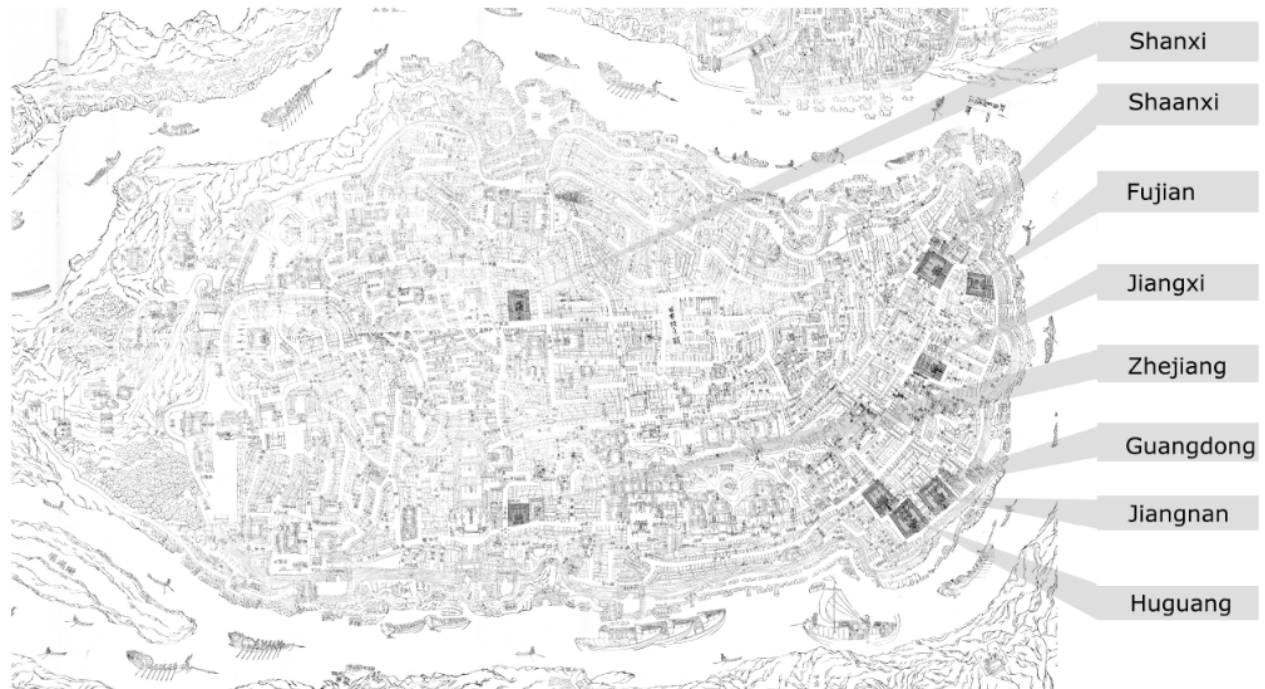
<sup>75</sup> None of the other scholars who have studied Chongqing's *kezhang* have yet pointed out the salient nature of the division between urban and rural guest-chiefs, but several of the facts upon which this conclusion were based have been discussed in other scholarship. In his forthcoming monograph, for example, Liang Yong discusses several of the parallels between the *kezhang*, *baojia*, and *xiangyue* systems in a way that is relevant for my conclusions about rural *kezhang*. See Liang, *Immigrant, Nation, and Local Authority*, 135, 150-154, and 156-165.

<sup>76</sup> Chiu Peng-sheng, "State Law and *Bang* Regulations: Mechanisms of Shipping Dispute Resolution in Early Qing Dynasty Chongqing," [*Guofa yu bang'gui: Qing dai qianqi Chongqing cheng de chuanyun jiu fen jie jue jizhi* 國法與幫規：清代前期重慶城的船運糾紛解決機制] in *Power and Culture in the Operation of Ming and Qing Law*, 291.

<sup>77</sup> The fact that no licenses existed for urban *kezhang* has created a great deal of confusion in the scholarship, as historians have base conclusions about the entire system based on evidence from urban and rural examples of *kezhang* that has not been considered separately. For examples of some of the debates resulting from this confusion, see Shi Yuhua, "The Interactions between *Huiguan* and Government: A Discussion of the Qing Dynasty Ba County Eight-Province Association," [*Huiguan yu zhengfu de hudong guanxi: jian lun Qing dai Baxian de ba sheng huiguan* 会馆与政府的互动关系—兼论清代巴县的八省会馆], *Sichuan dang'an* [四川档案], 03 (2007): 34-36. and Liang, "Studies of the Sichuan's Qing Dynasty Guest-Chief System," 29.



represented eight great merchant halls: the ones organized by residents from Huguang (Hunan and Hubei), Jiangxi, Jiangnan (Jiangsu and Anhui), Zhejiang, Fujian, Guangdong, Shanxi, and Shaanxi.



## 2.2 The Sites of the “Eight *huiguan*”<sup>78</sup>

Over the course of time, the collective responsibility duties of these urban *kezhang* took on a distinctly commercial character, as the *kezhang* serving within Chongqing’s city walls were instead asked to report on merchant activities, commercial customs, and urban infrastructural issues relating more closely to their urban, merchant constituency. By the turn of the nineteenth century, these *kezhang* had developed such a reliable reputation for handling merchant affairs within their constituencies that they began to be conceived of and written about as a consortium of commercial experts handling important

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<sup>78</sup> Map courtesy of the Harvard Yenching Library. Altered by the author.

issues that concerned the various merchants inhabiting this city. In this form, they became known as the Eight-Province Association (or sometimes the Eight-Province *kezhang*).<sup>79</sup>

Over the course of the next two hundred years, the urban *kezhang* system would morph into a framework for merchant self-governance, as the Eight-Province Association grew to preside over a series of commercial affairs and municipal projects (see Chapters 4 and 5 for more information). What began in frontier regions as a simple adaptation to systems of collective responsibility for governing the city's sojourning populations grew to become one of the most distinguishing features of the city's administration. The path toward this innovation was based on the magistrate's recognition that the city's *kezhang* were uniquely capable of representing Chongqing's merchant community. This capacity is apparent in many early legal materials, as the use of collective responsibility expanded to incorporate the use of these merchant experts.

Urban *kezhang* were called upon to settle a number of litigation problems specific to commercial disputes, but the most common and earliest duty that they performed was the reckoning of accounts.<sup>80</sup> Since many commercial disputes came down to technical questions of payment, ownership, the value of assets, or the structure of partnerships, the magistrate sometimes required the help of these merchant collective responsibility intermediaries to navigate the facts of a dispute. In these cases, the information-gathering and reporting capacity of collective responsibility heads moved subtly from the provision of facts to responsibility for producing interpretations of commercial disputes based on a range of evidence.

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<sup>79</sup> On the formation of the *ba sheng huiguan*, see Liang Yong, "A Preliminary Investigation of The Eight-Province Association in Qing Dynasty Chongqing" [*Qing dai Chongqing ba sheng huiguan chutan* 清代重庆八省会馆初探], *Chongqing shehui kexue* [重庆社会科学], 10 (2006): 94. For a detailed review of the available evidence on the origins of the name of *ba sheng huiguan*, see Zhou Lin, "Traditional Commercial Institutions and Their Modern Transformation: A Case Study of Chongqing from 1752 to 1911" [*Chuantong shangye zhidu ji qi jindai bianqian: yi Qing dai zhonghouqi de Chongqing wei zhongxin 1752-1911* 传统商业制度及其近代变迁：以清代中后期的重庆为中心 1752-1911], (PhD diss., Qinghua University [*Qinghua Daxue* 清华大学], 2010). On pages 166-168 of this work, she concludes that the name *ba sheng kezhang* did not appear until around 1771, and *ba sheng huiguan* until 1816.

<sup>80</sup> The later functions of the *ba sheng huiguan* in settling commercial disputes will be handled in Chapter 6. For other characterizations of the *ba sheng huiguan* involvement in merchant disputes, see Liang, *Immigrant, Nation, and Local Authority*, 258-261 and Zhou, "Urban Merchant Groups and Rhythms of Commerce."

In this manner, collective responsibility units reduced the complexity of commercial relationships to apprehendable, testifiable facts of record upon which magistrates could act with confidence.

In one of the earliest cases where urban guest-chiefs were invoked by their corporate name of *ba sheng kezhang*, they were asked to do precisely this. When plaintiff Hong Wenhan (洪文翰) filed suit against his former business partners in 1812, he charged them with not only colluding to embezzle from the now-bankrupt firm, but also cheating in the negotiation a settlement among creditors. Defendants Wang Zhonglin (王中麟) et al. were accused of “secretly plotting to extort money from me by forcing me to surrender the balance of my deposit on the mortgage contract (for the shop) in order to pay off the firm debt to its creditors” even though they had already secreted away the bulk of the firm assets.<sup>81</sup> Furthermore, Hong added, his treacherous business partners had cheated their creditors as well by making secret deals, returning all of the debts owed to strong business owners and smaller amounts of those owed to less powerful firms. The magistrate accepted the case, and in the two weeks between the date that the first suit was filed and the date of the court session, counter-suits from four separate parties were filed about the firm and its liquidation. By the time of the court date, several claims had been made about the assets of the defunct business. In response to this predicament, the magistrate’s verdict was to “reckon clearly under the *ba sheng kezhang*.”<sup>82</sup>

After this verdict none of the eager litigants returned to the courtroom: it became obvious that the outcome of mediation under the Eight-Province Association would be the foundation of the court verdict, so no further recourse to the magistrate was required. It was not uncommon for commercial suits to leave the court system after being mediated within a collective responsibility forum, but before a court

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<sup>81</sup> SPABX: 05-4770; 5.

<sup>82</sup> SPABX: 05-4770; 3.

verdict.<sup>83</sup> Collective responsibility mediation was such a strong predictor of the outcome of a legal case that litigants often dropped a suit after collective responsibility mediators came to an agreement.<sup>84</sup>

The verdicts of experts such as the *ba sheng kezhang* were so powerful in determining the outcome of a case that they could even be fatal to litigants. This potential is demonstrated in a remarkable case form 1826, which was filed by several sojourning merchants against one Liao Mingqi (廖鳴岐), who was charged with fraudulently declaring bankruptcy. In this case the magistrate answered the plaintiffs' accusations that Liao had secreted away a fortune on his estate in Luzhou by asking the Eight-Province Association to reckon the accounts of his failed business.<sup>85</sup> When the urban *kezhang* concluded that Liao should make good by paying off a final 1/10 of the original debt, the magistrate refused to overturn this settlement even after years of pleading from the defendant, who eventually died in prison unable to make good on the debt.

Just as settlements from the Eight-Province Association could condemn a man to languish in prison indefinitely so could mediation under the auspices of urban *kezhang* be used to resolve a case outside of the courtroom. This happened in the case of Jin Zhengcun (金正存) versus Wang Shengnüe (王生虐) et al., which began early in the year 1804 when Jin leveled serious allegations against the defendants:

I am from Hubei province, and make a living through peddling cotton and cloth, together with my brother Jin Zhengfang (金正芳)... Disaster befell me when my brother

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<sup>83</sup> In one of the few cases where the *kezhang* dictated a settlement but the plaintiff persisted in litigation, the magistrate eventually commanded the defendant to pay a settlement to the plaintiff that was less than half of the initial award that would have been granted. See SPABX: 01-01857.

<sup>84</sup> This was noted by Phillip Huang, but the causality demonstrated here suggests the opposite conclusion from the one that Huang draws. Where Huang argues that *baojia* figures operated in the shadow of the law to inform disputants about the most likely court ruling, it is clear in the examples above – and other cases that will be discussed subsequently – that the court was rather acting “in the shadow of collective responsibility,” and relying on the information derived from mediation in collective responsibility forums to produce verdicts. Thus, once a mediation settlement had been reached, many litigants had little reason to continue to press their cases. For more on this phenomenon and other litigation patterns, see chapter 5.

<sup>85</sup> SPABX: 09-04865; 3.

purchased 50 bales of cotton at Sha City (沙市), and shipped them together with 20 bales entrusted to him by another customer on a ship operated by Zhang De (張德)... On Day 16 of this month, the ship got to Changshou (長壽), but Wang Shengnue and Jin Niukun (金生昆) of Chongqing's Kai He Xing (開合興) firm set a trap, got their hands on a brokerage receipt, and forged my name on it. Right there in Changshou they off-loaded the cotton on to a boat... Having run into these crooked brokers who embezzle has left my business hanging in the balance...<sup>86</sup>

The magistrate issued a summons immediately in response to these allegations of what amounted to theft. A month later, however, before any trial was summoned, the head of the *Huguang* merchants reported that they had “invited the two parties to come and discuss the issue,” succeeded in getting to the bottom of the affair, and then brokered an appropriate settlement, so that “both sides were no longer willing to pursue litigation.”<sup>87</sup> The *Huguang* merchant head asked the magistrate to “graciously remove the case from the docket, so that each may return to peacefully plying his trade,” and the magistrate dismissed the case accordingly.<sup>88</sup>

Another example of the ability of the *kezhang* to directly resolve disputes can be seen in the case of Peng Hengchang (彭恒昌), a merchant from the southeastern province of Jiangxi (江西). Peng alleged that several merchants from Shaanxi (陝西) had cheated him by selling off a shipment of medicinal herbs that he had stored in their Chongqing warehouse. On Peng's first suit, the magistrate commanded: “Look to the Jiangxi *kezhang* to meet with the neighbors of the shop, investigate, and report back to the *yamen*.”<sup>89</sup> An order was then sent from the magistrate's office commanding the *kezhang* from both Jiangxi and Shaanxi to meet, investigate, and report on the situation. In their official response to the court, the two *kezhang* recounted the substance of dispute and notified the magistrate that they had brokered a compromise between the two litigants. Promissory notes had been exchanged, and “the hearts of both

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<sup>86</sup> SPABX: 05-04628; 1.

<sup>87</sup> SPABX: 05-4628; 2.

<sup>88</sup> For another example of a case that was abandoned after mediation under *kezhang*, see the 1787 case at SPABX: 01-01391.

<sup>89</sup> SPABX: 01-01391; 4.

parties were eager to submit to the agreement, pledging hereafter to never again gainsay the agreement, in hopes of avoiding further trouble.”<sup>90</sup> The magistrate noted on the docket that the case had been settled. The two guest-chief representatives had brought their expertise to bear on the dispute, proposed a compromise, and convinced the two parties to settle without further recourse to the court system.

The heads of the sojourning merchant community in Chongqing thus wielded a powerful influence over the resolution of commercial disputes in the city. They were the experts to whom the magistrate turned when a case had to be settled with technical knowledge about commerce and markets, and in providing this expertise, the *ba sheng kezhang* became responsible not only for conveying the truth but for manufacturing the interpretations upon which a verdict hinged.

The judgment of these merchant heads was indispensable to Chongqing’s court, as the technical expertise, local knowledge, and networks of information possessed by urban *kezhang* made the entire world of facts about commerce in the city accessible to the magistrate. But this powerful tool of information collection produced constraints on the magistrate, as he was unable to question or audit the settlements of the Eight-Province Association. This could lead to fatal instances of deadlock, as the court was bound to dismiss or persist in persecution of debtors on nothing but the word of these experts. This relationship was a vital one, but a dangerous one as well, and threatened the freedom and ultimate authority of the men who were supposed to sit in judgment over others.

### **Complicated Matters**

The very act of selecting and reporting information is one that depends upon judgment and expertise, but the late imperial state made this compromise in exchange for access to a society and economy about which they had too little information to govern credibly. What becomes apparent, however, in the perusal of legal cases from Chongqing’s county yamen, is that not even this bargain was a

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<sup>90</sup> SPABX: 01-01391; 2.

straightforward one. It entailed the formation of closer ties between the court and collective responsibility intermediaries who, even while acting on behalf of the magistrate, remained players in the social world with interests and faults of their own. Over time, as court reliance on these intermediaries became more predictable and developed, the line between the court's use of information from collective responsibility heads and its dependence upon them blurred, and magistrates risked abrogating their duty and their prerogative to the very institution that gave them more meaningful authority over the individuals residing and doing business in the city. This is perhaps most apparent in the cases where *kezhang* or *baojia* intervention resolved disputes in the court system without consulting the magistrate, and the court sanctioned these settlements directly.<sup>91</sup>

The authors of the Qing Code, recognizing the authority that followed from deputizing collective responsibility delegates, attempted to circumscribe the power of *baojia* heads. It forbade the formation of these units outside of the administration, condemning illicit groups as a means to organize populations for criminal forms of profit and authority.<sup>92</sup> One of the Qing Code sub-statutes charged the local officials presiding over each *baojia* unit with the task of ensuring that the system wasn't abused for the illicit profit of entrenched local figures and mandated heavy punishments for any *baojia* head guilty of using collective responsibility institutions for such purposes.<sup>93</sup> Officials could be demoted for misbehavior among *baojia* heads within their jurisdiction, in a statute that grouped together corrupt collective responsibility delegates and *yamen* workers together under the category of "Yamen Underlings Disturbing the Population" (*yayi zishi*衙役滋事), in which *baojia* and *xiangyue* were described as "members of officialdom" (查皂快保甲鄉約等役。均屬在官).<sup>94</sup> As useful as the institution of collective

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<sup>91</sup> Case-ending mediation under *kezhang* is discussed in the above section, but cases were also settled by *baojia* heads and then dismissed by the court, as well. For examples see SPABX: 01-01057, 12-10043, and 10-07809.

<sup>92</sup> "The prohibition and expulsion of *zhubao* and *lizhang*" [*jin ge zhubao lizhang* 禁革主保里長], DQLL1779, 415.

<sup>93</sup> Sub-statute eleven of the law on "Leaders of bandits and thieves," DQLL1779, 762-763.

<sup>94</sup> QLSL: year 45, month 10, *jiayin* day.

responsibility was to local magistrates, it offered such a direct channel to the workings of the *yamen* that it could lend great power to appointed delegates.

By sanctioning conduits for the communication of “official information” in the *baojia* system, the local state also created the possibility of making information “official” even without the direct involvement of the court. It was this delicate negotiation between state authority and the use of information from collective responsibility institutions that necessitated the emergence of a legal framework for dealing with the “complicated matters” that relied upon third-party information for settlement.

The role that *baojia* heads and neighborhood residents played in the litigation process posed a subtle but profound threat to the integrity of the legal system. This threat was recognized by the Qing central administration, which dedicated a sub-statute to the issue under its code on punishment for magisterial neglect of arbitration duties in 1764. It read:

For the **complicated matters** involving litigation between subjects, such as disputes over field boundaries or irrigation, or the degrees of mourning between family members, it is permitted to order *xiangyue* and *baojia* officials to investigate and report, then the county official is required to examine and issue a ruling. **It is not permitted** to issue a rescript ordering the collective responsibility institutions to mediate and resolve the dispute. If such cases are not personally heard and ruled upon by a presiding official, then as soon as a superior official hears of it, the subordinate official will be punished at the superior official’s discretion.<sup>95</sup>

Here the Qing policy on collective responsibility delegates in arbitration is made clear. Magistrates might have to rely upon *baojia* heads to provide details on the complicated private agreements and mitigating circumstances leading up to a dispute over property, household structure, or debt. But giving these intermediaries the power to settle cases after they had been accepted for court trial was tantamount to making the local administration a handmaiden to the interests of savvy local figures.

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<sup>95</sup> Sub-statute nine of the law on “Not responding to complaints,” DQLL1770, 881; emphasis added.



In his handbook for magistrates, Liu Heng (劉衡), a magistrate of Chongqing from 1825 to 1828, painted a similar picture of the dangers of post-summons out-of-court settlement. At the center of his depiction were the infamous “litigation masters” of late imperial times, whose scholarly knowledge and familiarity with officialdom made them powerful advocates in the litigation process.<sup>96</sup> If the court gave up its duty to try each case officially, Liu wrote, it could play directly into the hands of unscrupulous men who would then use litigation as a means of pressure to obtain their every whim:

In those cases where there are complaints that cannot be rejected, they are permitted and summonses are issued for trial and interrogation. Substantiated allegations are followed by investigation and punishment. False allegations are followed by punishment. It is not permitted to pass down a verdict to settle, for once a suit is permitted a verdict to settle, it will give litigation specialists the idea that charges might be dismissed even after a suit has been accepted, and if charges may be dismissed as a result of settlement, then litigation specialists and would-be litigants could file suits without compunction, and use a permitted suit to resolve the dispute out of court. This sort of strategy would then lead to the filing of false complaints, which must be sent to mediation and result in settlement out of court on the eve of trial. This is a scheme by which treacherous agents manipulate officialdom. Without interrogation or deposition to gain knowledge of the facts, the maker of false allegations is never exposed. Thus would legal cases pile up by the day, and thus would litigation specialists spread their poison... For this reason the officials at the county and prefecture level, having permitted a suit, are not allowed to command litigants to settle out of court. This is the way to both dispel litigiousness and prevent false accusations.<sup>97</sup>

The line between providing information and providing dispute resolution services should never be crossed: that sort of behavior would surrender the authority of the court into the hands of collective responsibility heads, and thus invest social, bureaucratic, administrative, *and* legal authority in the individuals meant to serve the court in a purely informational capacity. In order to prevent unfair advantage or the potential for abuse, the systems of collective responsibility must be prevented from acquiring independent authority, and act in an official capacity only when directly serving the command of the magistrate’s office.

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<sup>96</sup> For a detailed examination of late imperial litigation specialists, see Melissa Macauley *Social Power and Legal Culture: Litigation Masters in Late Imperial China* (Stanford: Stanford University Press, 1998).

<sup>97</sup> Liu Heng, “Ten Articles on Handling Litigation.”

But, in a busy *yamen* servicing tens of thousands of residents and sojourners, the line between providing information and dictating court opinion was often blurred. The court was hampered by the extent of its reliance on collective responsibility. “Complicated matters,” after all, shared two important characteristics that made them difficult for magistrates to grapple with. The first is that this type of dispute arose from private agreements, which were dependent upon the mores of a locale and the preferences of the individuals entering upon them. The second is that these disputes could not be tried in accordance with the Qing legal code, because no laws or procedures existed to dictate their resolution. Various aspects of land ownership, marriage, inheritance, and debt were certainly covered in the Qing legal statutes, but the agreements between private individuals about these matters could not be legally ratified or arbitrated according to any civil procedure. Despite the concern of the central state about the potential for abuse,<sup>98</sup> the local state continued to rely on collective responsibility heads to facilitate the litigation process, and the boundary between legitimate and illicit authority was blurred in practice.<sup>99</sup>

## Conclusion

At the turn of the eighteenth century, Chongqing was a boom town emerging on a military frontier. The Qing strategic priorities in Sichuan had hobbled the local governments charged with the challenging task of asserting imperial authority. The mobility of Chongqing’s population, the diverse backgrounds and socioeconomic profiles of its inhabitants, and the lack of a strong administrative

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<sup>98</sup> For more on the binding powers of social agreements and the threat that they posed to the authority of the magistrate, see Hiroaki Terada (寺田浩明), “The Nature of Social Agreements (yue) in the Legal Order of Ming and Qing China (Part One),” *The International Journal of Asian Studies* 2, no. 02 (Jul., 2005): 309-327 and “The Nature of Social Agreements (yue) in the Legal Order of Ming and Qing China (Part Two),” *The International Journal of Asian Studies* 3, no. 01 (Jan., 2006): 111-133.

<sup>99</sup> For further discussion about why a delicate balance between legal and illicit dispute resolution methods was maintained, see Maura Dykstra, “Empire, Magistrates, Merchants, and the Ties that Bind: Commercial Litigation in Late Imperial Chongqing” [*Diguo, zhixian, shangren yiji lianxi bici de niudai: Qing dai Chongqing shangye susong* 帝国、知縣、商人以及連繫彼此的紐帶：清代重庆的商业诉讼] in Wang Xi, ed. *Chongqing in Historical China and the World: Selected Papers from the 2012 International Conference on Chongqing History* [*Zhongguo he shijie lishi zhong de Chongqing: Chongqing shi yanjiu guoji huiyi* 中国和世界历史中的重庆——重庆史研究国际会议 (2012) 论文选编] (Chongqing: Chongqing daxue chubanshe, 2013), 166-180.

tradition in the city provided serious barriers to creating any sort of legal order. Law thrives on universal claims, and requires an equality of information, circumstance, applicability, and enforceability in order to exist meaningfully. None of these things were possible in Chongqing in 1700.

The distance between the local state and the individual was not reduced by replacing the diverse social and economic practices of Chongqing's residents with universal legal institutions. Rather, the system of collective responsibility created a uniform framework for cooperation between the local administration and the population of the city without requiring the *yamen* to directly govern every facet of local space. The chaotic, crowded, and ever-changing social world of Chongqing could be transformed, for administrative purposes, into the intelligible grids and hierarchies of classical administrative design. The creation of these administrative spaces made the distance between the state and the individual easier to navigate, through the aid of collective responsibility heads. Under normal circumstances, the state required little or no information about the everyday activities of city residents, and it offered few commands about quotidian personal decisions. But in times of need, the constant potential for information and mobilization that was contained in the offices of collective responsibility could be realized to suit the demands of the local *yamen*.

The division of a complex social space into collective responsibility units indelibly altered the commitments and capacity of the administration of Chongqing. The units of collective responsibility designed to make the mass of lived experience intelligible to the local state were artificial by nature, but were animated through their continued use by the official bureaucracy. Over time, repeated delegation of court authority, special permissions to employ bureaucratic communications, and consistent reliance on collective responsibility heads for administrative tasks carved out an ever-deepening niche for the individuals raised up to *baojia* and *kezhang* offices. By the end of the eighteenth century, collective responsibility heads had emerged as an entire stratum of individuals in charge of mediating the flow of information between the state and the inhabitants of the city. Their role in the project of establishing legal

order in the locale was so valuable and their involvement so pervasive that they easily threatened the court's prerogative without open defiance, as the boundaries between social and court initiative were blurred.

As a result of the Qing commitment to this administrative arrangement, the state was neither qualified nor willing to offer interpretations about issues as complicated as liability in commercial exchange. Qing subjects were left to determine for themselves, in any particular circumstance, which terms of trade or means of exchange to employ. Transactions and partnerships were created according to the preferences of the individuals involved in them, and the terms of commercial relationships could be taken into account in the courtroom through the information communicated by collective responsibility heads. The existence of networks of collective responsibility provided an infrastructure for the verification and negotiation of obligations between individuals that did not rely upon the recognition or certification of the state.

The state did not commit itself to directly enforcing the myriad agreements employed by the empire's merchants. Instead, it relegated commercial disputes – together with cases about marriage, the sale of land, and other disputes that hinged upon the interpretation of private agreements – to the category of “complicated matters.” These disputes were tried in the courts with authority over the jurisdiction in which the agreements were originally undertaken and were supposed to be overseen directly by the magistrate, but often depended heavily upon the intervention of collective responsibility figures. Collective responsibility heads were trusted to convey information about what had been agreed to and, when necessary, oversee the re-negotiation of an agreement that had gone bad.

This system allowed all of the merchants of the vast Qing Empire to trade according to needs that varied across time and space, thus solving a basic problem of political economy. The imperial state became capable of punishing wrongdoing in the market without creating a single standard for commercial exchange. Whether the wealthy and sophisticated merchants of Chongqing, the poor peddlers operating in

the city's hinterland, or the farming households that frequented more rural markets, all individuals could conduct trade based on personal capacity, individual preference, and local practice. The state was capable of participating in the resolution of disputes that arose without taking an official position on the validity or nature of the initial transaction. But this solution created a new need, which was to police the powerful court intermediaries created by the state's reliance on collective responsibility. It was this problem that the legal creation of the category of "complicated matters" was designed to address.

CHAPTER 3:  
INTERMEDIARIES, AGENCY, AND TRANSITIVE RESPONSIBILITY  
IN THE COURT OF CHONGQING (1750-1875)

It often happens that when out-of-town traders go to a broker with their merchandise, the broker sees that the traders are inexperienced and strangers in town and cheats them by using the proceeds of the sales for other purposes or by embezzling the money outright. Stranded in a strange town and losing their business capital, the traders appeal to the court for relief. The magistrate should try his best to examine the facts and set a time limit for the erring broker to make restitution to relieve the traders' loss. When the traders are grateful and satisfied with the magistrate's judgment they will be glad to come back and bring business to the district on a continuing basis.

Huang Liuhong, seventeenth-century magistrate<sup>1</sup>

### **Introduction**

The collective responsibility systems outlined in Chapter Two enabled both registered inhabitants of Chongqing and sojourning merchants to bring sophisticated commercial agreements before the county courts with some guarantee that the original terms of exchange could be taken into account during the dispute resolution process. The participation of collective responsibility members in witnessing, verifying, and negotiating transactions meant that commercial disputes could be brought to court for enforcement without requiring either magisterial familiarity with contract conventions or a legal framework for civil obligations. The key to this success was the sharing of information between collective responsibility units and the local administration. Although these systems engendered a diverse world capable of creating, negotiating, and enforcing commercial agreements, they operated in a strictly local framework. This led

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<sup>1</sup> Djang Chu, trans. Huang Liuhong (黃六鴻), *A Complete Book Concerning Happiness and Benevolence: Fu-hui ch'üan-shu: A Manual for Local Magistrates in Seventeenth-Century China* (Tuscon: Arizona University Press, 1986), 451.

to problems enforcing the commercial agreements of merchants engaged in long-distance trade who traveled to unfamiliar markets.

The solution to this dilemma was a legal recognition of the commercial obligations linking sojourning traders with local brokers. The responsibility of economic agents for the parties they represented had operated for hundreds of years as an empire-wide custom, emerging out of the well-established practice of brokered exchange in long-distance trade. This convention was formally adopted by the court in 1744 as part of the Qing market system reforms.

The court's commitment to a legally explicit vision of broker liability gave imperial credence to a notion of responsibility for economic agency that was transitive in nature. What I call transitive responsibility was generally referred to in court cases as *jingshou zhi ze* (經手之責), or “responsibility associated with mediating a transaction.” The basic tenet operating at the center of transitive responsibility was that brokers were responsible to their customers for ensuring that the terms of a trade were fulfilled. If one party failed to live up to a commercial agreement, the wronged party could seek satisfaction directly from the broker, rather than having to track down the wayward party (who might live and work hundreds of miles away from the place where the transaction had been conducted). In these cases, the obligation of the debtor was transferred to the broker who had acted as an agent for both parties, and one half of the transaction could be completed before the errant party had lived up to the other end. It then became the turn for the broker to act as the agent of the creditor and pursue the delinquent party. In this way, the role of both creditor and debtor could be transferred to the broker, collapsing the space between two distant transacting parties to the distance between each party and the broker and simplifying complex webs of obligation down into disarticulated relationships between each party and the broker.

Qing insistence upon the legal liability of licensed brokers overcame the gap between buyers and sellers who were not based in the same locally-bounded system of court justice. Local agents were made

legally responsible for negotiating local systems of dispute prevention and mediation on behalf of sojourning customers. The fact that brokers could be held legally accountable for upholding the terms of transaction meant that even merchants from far-flung ends of the empire had legally-guaranteed access to the “complicated matters” complex of dispute mediation tools. Strangers from faraway towns were thus linked in a transaction-based, legally recognized network of transitive responsibility toward one another. This solution balanced imperial demands that sojourning merchants be given uniform access to justice with the purely local realities of exchange in the Qing empire.

### **Transitive Responsibility, Collective Responsibility, Contracts, and Court**

The framework presented in this chapter provides a new perspective on the argument of economic and business historians that court enforcement of contracts was the basis of partnership and exchange in late imperial China. To date, scholars have succeeded in showing that the array of contracting behaviors available to Qing commercial actors allowed for a wide range of choice about economic relationships. It has also been demonstrated that the contracts undertaken by individuals were important to the court process and were taken into consideration by magistrates presiding over legal cases. This has led prominent historian of Chinese economy and business Madeleine Zelin to argue that “in the absence of commercial law and in the absence of a system of courts capable of generating precedent... [contracts] took on enormous importance in the establishment of property relationships.”<sup>2</sup> Robert Gardella, pushing the conclusions of other scholars further, even concluded that “A central element – perhaps *the* central element – in the logic of indigenous Chinese business organization was the use of written contracts to

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<sup>2</sup> Madeleine Zelin, “A Critique of Property Rights in Prewar China,” in Madeleine Zelin, Jonathan K. Ocko, and Robert Gardella, eds., *Contract and Property in Early Modern China* (Stanford: Stanford University Press, 2004), p. 24.



formalize joint relationships of authority, cooperation, investment, profit taking, and risk management.”<sup>3</sup>

The role of written contract as the central mechanism defining and securing business relationships has become an established convention in the field.

Although this approach has appeared to explain the flexibility of business and transaction forms in Qing China, it is a theory with limits. It has not yet been recognized, for example, that although contracts *could* be used as evidence, they were not the only or even the most common proof of business relationships offered by litigants in Chinese courts.<sup>4</sup> Indeed, of the 88 commercial cases collected by this author in the period from 1765 to 1875, only seven of the dockets (8%) contained contracts that had been copied into evidence (one of which later turned out to be a forgery).<sup>5</sup> In five additional cases, contracts were mentioned but never even submitted to the court for inspection.<sup>6</sup> The infrequent use of contracts as evidence, and the failure to produce contracts where they might have illuminated key aspects of the obligations between litigants, casts serious doubt on the central importance ascribed to written contracts in the Qing legal system by historians. Furthermore, as others have noted, there was simply no legal precedent or rationale for creating formal civil obligations with contracts in Qing China.<sup>7</sup> Thus, although Chinese businesses did employ contracts, there is no practical, theoretical, or legal basis for assuming that

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<sup>3</sup> Robert Gardella, “Contracting Business Partnerships in Late Qing and Republican China: Paradigms and Patterns,” in *Contract and Property in Early Modern China*, 308.

<sup>4</sup> On the use of contracts as evidence, see Mark Alee, “The Status of Contracts in Nineteenth-Century Chinese Courts,” in *Contract and Property in Early Modern China*, 159-177.

<sup>5</sup> The seven cases between 1765 and 1875 in which contracts were copied into evidence are: SPBXA: 01-01857; 03-00497; 05-04770; 04-02440; 04-02566; 27-08595; and 27-08854.

<sup>6</sup> These cases were SPBXA: 27-08705; 27-08789; 25-05573; 27-08761; and 27-08843.

<sup>7</sup> Bourgon, “Figures in the Carpet.”

the Chinese use of contract implied the same legal obligations that operated at the center of systems of civil jurisprudence.<sup>8</sup>

I argue that contracts were not an integral part of the dispute mediation process because they were only a manifestation – and not the basis – of the operation of the systems of collective and transitive responsibility. Contracts formalized the agreements of business counterparts, but did not need to be scrutinized or ratified by the court because they were already embedded in the complex of collective responsibility institutions that were at the heart of the disposition of “complicated matters.” Where legal action and court enforcement became important was in determining, assigning, and executing responsibility for settlements. Transitive responsibility was the key to this process, and courts settled questions of agency rather than obligation.

The local and legal worlds intersected at the point of transaction. The agreements that emerged from each form of business exchange were imbedded in the agreements, conventions, and decisions that were made known to officialdom through the administrative mechanism of collective responsibility. Since the creation of these agreements and the mediation of the disputes that were related to them took place within this purely local system of information and agreement, the Qing court provided a special form of access to and leverage on local institutions of dispute mediation for merchants operating outside of their own places of registration by framing a legal statement about the responsibility of intermediaries acting on behalf of non-locals in the market. Under this system, each transaction generated information about and relationships between parties involved in exchange, linking them together in a unique web of responsibility. Since this web could only be navigated through the “complicated matters” framework of

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<sup>8</sup> On the problem of equivalency between Western and Chinese legal categories, see Jonathan Ocko, “The Missing Metaphor: Applying Western Legal Scholarship to the Study of Contract and Property in Early Modern China, in *Contract and Property in Early Modern China*, 178-208; On the misleading use of terms from the Roman legal tradition in the context of Chinese history, see Jérôme Bourgon, “Uncivil Dialogue: Law and Custom Did Not Merge into Civil Law Under the Qing,” *Late Imperial China* 23, no. 01 (2002): 50–90.

dispute mediation and litigation, responsibility for handling issues that arose was imbued with a transitive property that allowed merchants in strange towns to navigate local systems with the backing of the court system.

When scholars observed that complicated commercial agreements were upheld in court, they naturally concluded that magistrates were upholding contracts between litigants. But contracts were not necessary to resolve commercial disputes. What was upheld were not the explicit terms of exchange, but the *process* of agreement and negotiation covered in Chapter 2 and the *legal responsibility* of economic agents to participate in these processes on behalf of those who had entrusted economic agency to them. This combination of obligations appears similar to contract adherence, but was in fact a disarticulated pair of behaviors that kept the court *free from* the need to enforce contracts directly, at the same time that it allowed the court to foster and protect exchange by fixing responsibility for settlements on local agents.

### **The Qing Market System and its Precedents**

Like the classical systems of collective responsibility discussed in Chapter 2, China's early imperial market systems were based on an elegant vision that united physical and administrative spaces.<sup>9</sup> Up to the Tang dynasty (618-907), Chinese markets for trans-local exchange were physically closed off wards within the empire's urban centers, which were designated for exchange under imperial supervision.<sup>10</sup> The administrators of these market areas were responsible for the tasks of taxation, official

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<sup>9</sup> It should be noted that this discussion of the state's relationship with the market excludes the voluminous details relating to the monopoly trades and industries protected by special laws, such as commerce in salt, tea, and grains. In these and other monopoly trades, the state's intervention in market activities was much more pronounced. For more on Qing management of these commodities, see Pierre-Étienne Will, R. Bin Wong, and James Z. Lee, *Nourish the People: The State Civilian Granary System in China, 1650-1850* (Ann Arbor: Center for Chinese Studies, University of Michigan, 1991), Madeleine Zelin, *The Merchants of Zigong: Industrial Entrepreneurship in Early Modern China* (New York: Columbia University Press, 2005), and Man Bun Kwan, *The Salt Merchants of Tianjin: State-Making and Civil Society in Late Imperial China* (Honolulu: University of Hawai'i Press, 2001).

<sup>10</sup> Imperial market spaces also existed on frontiers and within the imperial court for exchange with non-Han populations, but these spaces will not be covered here.

procurement, commercial and artisanal regulation, price reporting, and market governance. But the increase of population mobility and the expansion of economic exchange that began in the Tang and then continued throughout the imperial age posed the same problems for the imperial market system that it did for the classical institution of collective responsibility. By the ninth century, imperially-administered market spaces had disappeared from urban centers.

In the almost one thousand years between the demise of the Tang market system and the Qing market system innovations discussed in this chapter, the central authorities of the Tang, Song, Yuan, Ming, and Qing dynasties could make no claim to police the empire's markets.<sup>11</sup> Instead, administrative oversight of commercial activity fell into the hands of the empire's local governments, market brokers, and *hang*(行) merchant organizations.<sup>12</sup> The Qing market reforms were designed to replace these institutions with a new, formal, universal, centralized system of market governance that could serve the needs of the merchants and the state of the late empire. This ambition required a full-scale revision of the nature of commercial governance.

The reforms to the Qing market system in the Qianlong era marked the final shift from the Tang ambition of full administrative control over the urban market space to a distinctive late imperial system of economic regulation without direct state intervention in the marketplace.<sup>13</sup> The Qing approach to market regulation separated the local state entirely from the task of assessing and collecting commercial taxes in

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<sup>11</sup> A brief exception may be considered in the case of the New Laws reforms based on the ideas of the Song-era reformer Wang Anshi. See James T. C. Liu, *Reform in Sung China; Wang An-Shih (1021-1086) and His New Policies*, (Cambridge: Harvard University Press, 1959).

<sup>12</sup> For more on the *hang*, see Chapter Five.

<sup>13</sup> This case has already been made in Chiu Peng-sheng "Understanding the Ming and Qing Legal Regulation of the Market through the Evolution of the Market Codes," [*You shichan lili yanbian kanming Ming-Qing zhengfu dui shichang de falü guifan* 由市廛律例演變看明清政府對市場的法律規範], in *Historical Studies: A Collection of Conference Papers on the Study of Continuity and Change* [*Shixue: chuancheng yu biaoqian xueshu yantaohui lunwen ji* 史學：傳承與變遷學術研討會論文集,] edited by Shen Gangbo (沈剛伯) (Taipei: Guoli Taiwan daxue lishi xuexi, 1998).

order to check the spread of extortion of the empire's merchants by the empire's bureaucrats. The Qing gave responsibility for the taxation of trans-local exchange instead to the economic intermediaries who were already situated at the intersection of commerce between distant ports. It proposed to regulate them and prevent abuse of this position by only allowing licensed brokers (牙行 *yahang*) the authority to tax commerce. And the Qing made magistrates responsible for policing the activities of these individuals by allowing merchants – for the first time in history – to bring suit against brokers on allegations of cheating or embezzlement, which were expressly forbidden by the dynastic code.

### *The Operation, Decline, and Legacy of the Tang Market System*

The Tang system of commercial regulation was based on the unit of the market (*shi* 市), which was both an administrative structure and a physical space cordoned off within designated wards (*fang* 坊) of the empire's capital, prefectural, and county cities. Long-distance trade was supposed to take place within the physical confines of the market space, whose boundaries constituted a discrete administrative unit. The Market Director (*shi ling* 市令) assigned to each market was responsible for registering shops and merchants, inspecting weights and measures, preventing the circulation of counterfeit money, monitoring the quality of commodities, registering certain types of sales, and regulating market prices.<sup>14</sup> Within the Tang *shi*, each row of stalls, or *hang* (行), was grouped by trade. Each trade appointed a *hang* leader (*hangtou* 行頭 or *hanglao* 行老) to liaise with the office of the Market Director. The *shi* and the *hang* were, thus, units defined by both their physical and administrative relationship: control over the market was exercised by direct control over the actual space in which exchange was conducted, and the delegation of the tasks of market regulation was modeled on the physical layout of the market itself.

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<sup>14</sup> Denis Twitchett, "The Tang Market System." *Asia Major*, new series, 12:2(1966): 207 – 208.

The geometric accord between physical and administrative market boundaries began to break down by the turn of the ninth century. The spread of commercial activity pulled economic exchange beyond the confines of the *shi* system, and imperial officials failed to re-assert the primacy of their administrative claims. As both markets and cities expanded, the state's capacity to govern commercial activity diminished, and the physical market institution vanished. Local governments seeking to regulate commercial activity after the demise of the Tang market system began to rely directly on market brokers and the *hang* organizations that survived the collapse of the Tang market system. The history of the *hang* will be outlined in greater detail in Chapter 5; this chapter will present the evolution of brokers and their changing place in the imperial market system.

Brokers (known variously as *yaren*牙人, *yalang*牙郎, *hushi*互市, *shikuai*市侩, and *yakuai*牙侩) had already been operating in specialized exchanges under the Tang market system.<sup>15</sup> They were sought out by merchants to create and ratify deeds of sale on capital-intensive commodities such as land, livestock, and slaves and were appointed by the Tang state to collect purchase taxes on these exchanges.<sup>16</sup> By the time of the Song dynasty, the growth of an empire-wide economy and the commercialization of exchange had led to the expansion and diversification of economic intermediaries. Brokers were capable of overcoming several barriers to transaction across large distances; in addition to providing a range of services such as lodging, transportation, and the storage of goods, these intermediaries were critical in the translation of standards of currency, measure, and transaction between regional markets.<sup>17</sup> The collapse of the market system made these intermediaries vital nodes in the new markets that emerged out of the entropic disarticulation and expansion of the imperial market system.

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<sup>15</sup> On brokers in the Tang see Twitchett, "The Tang Market System," 217.

<sup>16</sup> In his "Understanding the Ming and Qing Legal Regulation of the Market," Chiu Peng-sheng suggests that the merging of taxation and registration duties under the *ya* was complete by 783.

<sup>17</sup> On brokers in the Song, see Yoshinobu Shiba (斯波義信), *Research on the History of Commerce in the Song Dynasty* [*So dai sho gyo shi kenkyū* 宋代商業史研究] (Tokyo: Kazama Shobo, 1968): 400-418.

At the same time that brokers became important to merchants attempting to conduct trade over large distances, they also gained the attention of local governments seeking sources of revenue. By the tenth century, local administrations throughout the empire had incorporated market intermediaries into local administrations as “official brokers” (*guan ya* 官牙) through the issuance of licenses, in order to facilitate official supervision over the taxation of registered sales.<sup>18</sup>

From the Song to the Ming, official brokers became responsible not only for collecting commercial taxes, but also for the purchase of official requisitions and the reporting of information about price and exchange within the market. Each dynasty created laws to regulate economic intermediaries and prevent cheating. By the first decade of Ming rule, market brokers had become responsible not only for exchange, but also for keeping track of and registering individual merchants, their movements, and their commodities.<sup>19</sup> In the mid-Ming, a central licensing system was designed to register and regulate all brokers throughout the empire.

The national system of broker registration in the Ming mimicked the flow of information channeled through imperial systems of collective responsibility covered in Chapter Two. Their responsibility and authority as official conduits of information about the market was made legally compelling in the sixteenth century, when the Ming code was amended to explicitly forbid all forms of brokerage outside of the official system.<sup>20</sup> The diverse array of brokerages in the empire’s cities, which

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<sup>18</sup> Chiu, “Understanding the Ming and Qing Legal Regulation of the Market,” 17.

<sup>19</sup> By law, this information was recorded by each broker into a ‘shop book’ (店历) that could be submitted to the administration for monthly review. For more on this 1370 reform, see Yang Qimin, “The Historical Evolution of *Yaren* and *Yahang* Transaction Intermediaries: With an Explanation of the Newly-Discovered ‘Jiaqing *Ya* License,’” [*Maimai zhongjianshang ‘yaren,’ ‘yahang’ de lishi yanbian: jian shi xin faxian de ‘jiaqing yatie’* 买卖中间商‘牙人’, ‘牙行’的历史演变 – 兼释新发现的 <嘉庆牙贴>] *Shi lin* [史林] 04, (1994), 10 and the “Collection of taxes” [*shou shui* 收税] section of the 35<sup>th</sup> *juan* of the *Wanli huidian* [萬曆會典].

<sup>20</sup> Ming law forbade all non-official brokers from interfering in the market and invested the official brokers with all of the functions of market supervision and reporting. See the “Illicit undertaking of *yahang* and harbormaster offices” [*si chong yahang butou* 私充牙行埠頭] section of the Ming Code Lei Menglin (雷夢麟), 讀律瑣言 [*Du li suoyan*] (1557), Reprinted and annotated by Huai Xiaofeng (怀效锋) and Li Jun (李俊) (Beijing: Falü chubanshe, 2007), 200. On the licensing system see Huang Donghai, “A Secret Part of the History of China’s Commercial Legal

had expanded apace with the diversification and commoditization of the imperial economy, began to be replaced with officially licensed brokers.<sup>21</sup> This Ming system of imperially-regulated licensed brokers became the basis of the Qing market system.

### *The Qing Market System*

The Qing market system vested all market authority in the empire's licensed brokers, who became known as *yahang*. The *yahang* of the Qing were a regulated population of economic intermediaries. The only power given to these licensed brokers was the right to collect a "thousandth tax" (*lijin* 厘金 or 釐金) on each transaction to compensate them for the imperial commercial taxes that they were obligated to pay annually. Their exclusive right to tax commercial exchange entitled them to report illicit transactions between merchants attempting to evade taxation to local authorities. But *yahang* had no direct powers over the market (nor official monopolies over the products they brokered).

By the middle of the eighteenth century, *yahang* were the only legitimate intermediaries between the state and the market. The investment of administrative responsibility in licensed brokers, which began in the Ming and reached maturity in the Qing, allowed the imperial court to focus its policies toward the market by regulating and policing the empire's population of licensed brokers. The majority of the Ming-Qing sub-statutes in the "Market" (*shichan* 市廛) section of the code were dedicated explicitly to obtaining or operating brokerage licenses.

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Order: *Yaren and Yahang Systems from the Perspective of Systematic Change* [*Chuantong Zhongguo shangye fazhi de yi duan mi shi: zhidu bianqian shijiao xia de yaren yahang zhidu* 传统中国商业法制的一段秘史 – 制度变迁视角下的牙人牙行制度] *Zhongxi falü chuantong* [中西法律传统] vol. 7, Chen Jinglang (陈景良) ed., (Beijing: Beijing Daxue chubanshe, 2009), 338.

<sup>21</sup> On the history of the transition from legal responsibility invested market brokers to licensed brokers in the Ming, see Hu Tieqiu "The Formation and Development of the Operations of *xiejia yahang*," [*Xiejia yahang' jingying moshi de xingcheng yu bianqian* '歇家牙行'经营模式的形成与演变], *Lishi yanjiu* [历史研究], no. 03 (2007): 88–106.



In the first century of Qing legal reforms, the court began to lay the foundations for a regularized, empire-wide system of *yahang* license granting and auditing.<sup>22</sup> After these basic standardizing reforms, the Yongzheng emperor made the first move to establish full central control over the system of market management by removing the power to create official brokerage licenses at the local level. In the millennium since the emergence of brokers as state-market intermediaries, the implementation and control of these offices had remained a purely local matter. Worried that such authority would allow local officials to overtax the merchant population, the Yongzheng Emperor issued an edict in 1733 giving provincial governments oversight on the issue of new licenses and mandating that the number and distribution of licenses would be reported to and then fixed by the central government. The edict read:

In every province, the issuance of additional brokerage licenses must be handled by the Financial Commissioner. County-level authorities are not permitted to issue licenses on their own. This is a measure to guard against the illicit creation of brokerage licenses, and to protect the merchant population from excessive burdens. Of late, We have heard that the brokerage licenses of every province have been increasing yearly. In each place where people congregate to transact, small-time peddlers of miscellaneous goods have historically been exempted from the demands of *yahang*. But now even they have been given licenses, and wicked brokers who gather in the markets use these licenses as an excuse to coerce others and extract extra profits. For every additional brokerage, the merchant population is burdened with additional hardship. This is an extreme perversion of the principle that fair prices facilitate exchange. Every Governor-General shall order his attendant Financial Commissioner to fix a number of licenses for the province, depending on local conditions. The subsequent report will be placed on file, and no additions to the number of licenses may be made. From then on, whenever a license is retired, it should be examined and then reissued to another. If a new market is opened, and new licenses must be created, a decision should be made about the appropriate

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<sup>22</sup> The Kangxi Emperor introduced a quinquennial auditing cycle for local governments charged with maintaining up-to-date *yahang* licenses, and the Yongzheng emperor added punishments for failing to audit brokerage licenses properly when this Kangxi-era law was added to a new revision of the Qing code. In 1686, it was decreed that each official broker's license be returned to the local government every five years for examination, to ensure that the licenses were not being rented out or run by unscrupulous imposters, or engaging in any illegal activity or bullying. See HDZL *juan* 18, 33-34. In 1706, the a similar law was also included in the regulations of the Board of Revenue. See HDZL *juan* 50, 28. A later addition to the Board of Personnel regulations specified punishments for local authorities found guilty of allowing abuses in the *yahang* system. See the HDZL *juan* 18, 33-34. In 1724, the regulation on the quinquennial renewal of *yahang* licenses was made a part of the Qing penal code for merchants in the capital. Merchants found guilty of abusing a license were sentenced to one month in the cangue and military exile to a near border. See sub-statute three of the law on "Illicit undertaking of *yahang* and harbormaster offices" at DQLL1779, 330.

number, and a report filed. In such a manner all of the small-time traders may be spared the extortionate malfeasance of brokers.<sup>23</sup>

The efforts of the Ming and early Qing emperors to bolster the system of official brokerage through incorporation into the dynastic legal code were, in one fell swoop, given a new meaning. With this maneuver, the central bureaucracy removed these market agents from the jurisdiction of the empire's local governments, who had used brokers to fund government activities and collect of commercial taxes at the local level for well nigh a thousand years.<sup>24</sup>

The 1733 assertion of provincial control over and imperial regulation of *yahang* licenses marked the full centralization of regulation over official brokerages.<sup>25</sup> Under this framework, *yahang* became imperially-recognized agents of taxation and market regulation who operated *within* the economy and *beyond* the reach of local government. Their purpose was to benefit the merchants who sought their services while, at the same time, unobtrusively maintaining the interests of the empire by ensuring obedience to the law, reporting on important price information, and collecting *lijin* taxes on exchange.

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<sup>23</sup> YZSL: year 11, month 10, *jiayin* day and HDZL *juan* 50, 33.

<sup>24</sup> Although I treat this process from the perspective of the centralizing state, the scholarship of Chiu Peng-sheng has gone a long way to unpack the cultural dimensions of changing ideas about responsibility in long-term commerce. Readers interested in the other dimensions of this shift are directed to his “Commercial Lessons and Professional Education: A Discussion and Description of Economic and Moral Theories from the Sixteenth to the Eighteenth Century in China” [*Shangye xunlian yu zhiye jiaoyu: shiyou zhi shiba shiji Zhongguo de jingji yu daode lunshu* 商業訓練與職業教育：十六至十八世紀中國的經濟與道德論述], delivered at the “Education and Local Development in China’s Contemporary and Modern Eras” [*Zhongguo jinshi yijiang jiaoyu yu difang fazhan* 中國近世以降教育與地方發展] conference at Taiwan National University, August 1-2, 2005; available at <http://www.sinica.edu.tw/~pengshan/>; “An Analytical Description of Debt and Negligence in Eighteenth-century Chinese Commercial Law” [*Shiba shiji Zhongguo shangye falü zhong de zhaifu yu guoshi lunshu* 18 世纪中国商业法律中的债务与过失论述] in Fan Shuzhi (樊树志), ed. *Ancient China: Tradition and Transformation* 《古代中国：传统与变革》 Fudan Historical Studies Series vol. 1 (复旦史学集刊；第 1 辑) (Shanghai: Fudan Daxue chubanshe, 2005): 211-248; and the substantively different English version: “The Insolvency and Negligence Discourses in the Eighteenth Century China,” in Robert E. Hegel and Katherine Carlitz, eds. *Writing and Law in Late Imperial China: Crime, Conflict, and Judgment* (Seattle: University of Washington Press, 2007) 125–42.

<sup>25</sup> In 1734 an additional statute was added to the Qing Board of Personnel regulations declaring that county officials found issuing *yahang* licenses without approval from the provincial treasury were demoted by one pay grade, in accordance with the law on “Local Officials Using Official Seals Inappropriately.” See HDZL *juan* 18, 34.

With one, swift move, the empire's diverse local forms of commercial taxation and market regulation were made obsolete.

From this point forward, the struggle for central control over market administration began in earnest. The Qianlong Emperor's legal campaign to reform the market system began even before the emperor officially announced his reign, during the final months of the Yongzheng period. In 1735, the newly-enthroned Qianlong emperor began his efforts to complete the formation of an imperial system of licensed brokers by issuing an interdict against "municipal customs" (落地税) levies. The declaration of the emperor read:

I hear that in every place throughout the provinces, in addition to the customs barriers and miscellaneous taxes, there is now something being called "municipal customs." And for every rake, hoe, basket, broom, stick of kindling, chunk of coal, fish, shrimp, vegetable, or fruit – no matter how little its value – taxes must be handed over before the goods can be traded on the market. There are even those who go to some marketplace in the east, pay their due, and then take their goods to a marketplace to the west, where they must once more pay a heavy toll. Even in remote and inaccessible parts of the countryside, where the eyes and ears of the authorities do not reach, sometimes *yamen* employees or *yahang* are commanded to set up shop. A tiny fraction of the money collected is handed over to the office; the bulk is used to line the pockets of these treacherous and wily lackeys. How heavily the poor commoner feels the burden! A command about these municipal customs on local marketplaces is hereby sent down to every province: for those markets that are within the city walls of prefectural or county seats, in crowded urban areas where traffic converges and there is a great amount of trade, it is easy for officials to keep an eye on the practice, and taxes on trade may continue to be levied. But it is not permitted to extort anything beyond the limit established by precedent. And it is not allowed to demand onerous levies. Those stations in markets that are in the countryside are all banished permanently. Greedy officials and underlings may not use the excuse of "municipal customs" to pilfer even a single *wen* of cash. It is up to the provincial authorities to determine the best way to put an end to this practice, and then report back in detail...<sup>26</sup>

A great distance stretched between the imperial vision of a market system dependent entirely on economic intermediaries and the reality of local markets, which often hosted a cast of privileged

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<sup>26</sup> QLSL: Yongzheng year 13, month 10 *xinsi* day (this entry in the *Qianlong shi lu* records year 13 of the records year 13 of the Yongzheng era because it took place between the death of the Yongzheng Emperor and the enthroning of the Qianlong Emperor). This decree was made a part of the statutes and regulations of the Board of Revenue in 1739. See HDZL *juan* 50, 33-34.

individuals, local officials, and profiteers hoping to make a living off of helpless merchants. Between the Yongzheng Emperor's 1733 declaration and the end of the Qianlong Emperor's first decade of rule in 1745, more than a dozen laws about the *yahang* system were passed in an effort to realize the imperial vision of local markets protected from extractive demands and trans-local markets operating beyond the reach of local governments, taxed only by licensed economic intermediaries.

One of the largest obstacles facing imperial reformers was the existence of diverse and entrenched forms of local taxation. In many market towns the same individuals who had political power or social standing were long in the habit of asserting the right to collect fees on exchange in the market place as the privilege of their station. Powerful local figures, *yamen* employees, and even local governments had fueled the expansion of the brokerage system in a quest for profit and power that had lasted over a thousand years in the vacuum left by the disappearance of the Tang market system. By the time that the Yongzheng and Qianlong emperors claimed central authority over the system of official brokerage, both licensed and illicit brokers had cast a sprawling net of revenue collection even in the markets where commerce was supposed to be free from the taxation. In an effort to reduce this type of malfeasance, the Qing state passed several laws designed to protect the market space from political interference or the unfair wielding of social prestige.

In the early years of the Qianlong reign, the central court made a concerted effort to destroy the bases of privilege operating in the empire's markets. They began by holding magistrates accountable for abuses of the *yahang* system that had been happening at the local level for centuries. In 1736, the *yamen* offices responsible for local government were prohibited from making official procurements from *yahang* agents, noting that these obligations were only rarely compensated.<sup>27</sup> This was followed up by explicit punishments for local officials who failed to curb the abuse of merchants. Magistrates responsible for any

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<sup>27</sup> Sub-statute six of the law on "Coercion in the market" [*bachu hangshi* 把持行市], DQLL1779, 533. This particular sub-statute will be discussed in greater length in Chapter Five.

*yamen* workers who demanded illicit procurements from *yahang* could be expelled from officialdom permanently if they were found guilty of profiting from the abuse.<sup>28</sup>

In 1740, the same year that the Qianlong Emperor's ban on the official purchase system was incorporated into the Qing code, the emperor also declared an intention to bar workers in the empire's *yamen* from service as licensed brokers. The edict that he wrote asking for the opinion of the central ministries on how to punish this type of behavior outlined the reasons for his dismay at the practice:

.... The officially-established system of brokerage was created in order to allow purchasers and sellers to access correct information about prices, as a convenience to them. Anyone who illicitly purchases these brokerage licenses for coercive market behaviors (其项冒把持者) should be punished severely. Recently We have heard that many clerks in the *yamen* of the provinces have taken false names in order to obtain *yahang* licenses of their own, which they then use as a tool to cheat others and attempt to control the market for their own profit. These types make a meal for themselves out of the merchants plying their trades in the market. And whither shall the victims of this abuse turn, when their oppressors are so familiar with the workings of the *yamen* that no suit can be proffered? It is a great plague on the market, and cannot even be compared with other, more pedestrian attempts to coerce economic activity. It is fitting to prohibit this type of behavior in the strictest terms.<sup>29</sup>

In the Board of Revenue regulation that was finalized that same year, it was determined that any *yamen* employee found operating a *yahang* license would be punished with a hundred strokes and three years' exile, with additional provisions for any crimes or malfeasance committed during the offender's tenure.<sup>30</sup> When the Qing legal code was amended to include this new policy, a punishment of one hundred strokes and expulsion from office under the law on "miscarriage of justice" was fixed for any officials who allowed or failed to prevent any abuse of the *yahang* system.<sup>31</sup>

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<sup>28</sup> HDZL *juan* 18, 35-36.

<sup>29</sup> QLSL: year 5, month 9, *wuyin* day.

<sup>30</sup> HDZL: *juan* 50, 38-39.

<sup>31</sup> Additional punishments were specified for *yamen* workers who had used their licenses to successfully bamboozle merchants. See sub-statute six of "Illicit undertaking of *yahang* and harbormaster duties" at DQLL1779, 530.

In 1743, the Qianlong emperor followed up on the Qing policy of separation between official privilege and the *yahang* system by further prohibiting individuals protected by literati status from taking advantage of the market through *yahang* offices. In his edict, the emperor clarified the purpose and place of *yahang* in the Qing economy:

For trade among the subjects of the empire, the state has established official brokerages. These *yahang* negotiate market prices so that commerce may flow freely and convenience the people. In this way, both parties to a transaction may benefit. For this reason a statute has been written: those undertaking a *yahang* license must have a considerable estate and commoner status in order to file a pledge at the *yamen*. Only then may they receive the license and undertake their duties.<sup>32</sup>

Licensed brokers were required to demonstrate that they were secure forces within the marketplace, having both the resources and the status to freely trade with others. The proclamation detailed the reasons for prohibiting holders of imperial degrees from obtaining official brokerage licenses:

Requiring *yahang* to have commoner status means that they have no special privileges that they could use to bully others. Out of concern for their own welfare, they will tremblingly uphold legal discipline, and they dare not embezzle wantonly... Of late We have heard that out in the provinces there are many degree-holding literati who have taken up *yahang* licenses. Whenever they steal from merchants, or delay repaying money owed on goods, they may bully their victims and delay treacherously or they may use their status to extort from them. Among poor sojourning merchants from afar there are those who merely bear it and do not file suit. It is truly pitiable. Previously there were *yamen* workers who obtained *yahang* licenses under assumed names. An edict has already been issued on this matter, and now that those individuals are being strictly punished and that this form of malfeasance is being rooted out, degree-holding literati are starting to take up *yahang* licenses. The harm is commensurate with a *yamen* worker holding a brokerage license. All currently-held licenses should be examined in detail. If there are those held by degree-holding literati, they should be returned, and the shop should be closed up...<sup>33</sup>

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<sup>32</sup> QLSL: year 8, month 6, *jimao* day.

<sup>33</sup> *ibid.*

The decree ended by warning that magistrates who failed to adequately guard against the plots of degree holders to obtain licenses would be punished for their neglect.<sup>34</sup>

These laws forbidding individuals of special status from obtaining *yahang* licenses completed the Qing market system, which operated on a distinct set of principles. Goods travelling from one area of the empire for sale in another market would be taxed by the brokers operating in the city of sale, who should be licensed for proper supervision. The *yamen* responsible for licensing and overseeing these brokers was expressly forbidden from using *yahang* for their own purposes. Individuals with any connection to the bureaucracy or the wider world of title-holding literati were legally barred from holding *yahang* licenses. The line between the administrative power of the local government, the social status and official privileges of literati, and the economic role of *yahang* was clearly drawn by a Qing administration eager to cordon off market activity from interference by privileged groups. Producers and sellers of local products were exempt from commercial taxes, and thus were not permitted to own brokerage licenses.

These divisions between brokered trades and non-brokered trades, markets with brokers and markets without brokers, and individuals qualified or not qualified to operate as licensed brokers were motivated by a concern about the possibility that this system of taxation might be made into an instrument of monopoly or extortion at the local level. The market would operate without any interference from local governments or powerful local interests. Where the Tang market system had relied upon bureaucrats possessing direct authority over a physical market space, the Qing system of market regulation depended upon market actors to serve as caretakers and custodians of economic exchange. These economic intermediaries were raised up to a position of official responsibility for liaising with the bureaucracy and held responsible for balancing the needs of the market in a way that accorded with imperial dictates.

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<sup>34</sup> The following year, in 1744, both the Board of Revenue and the Board of Personnel introduced statutes outlining the punishments associated with official neglect of the *yahang* system or for any form of laxity in protecting the system of official brokerage against abuse by others. Local officials could be forced to forfeit one year's pay if they issued *yahang* licenses without proper grounds. Supervising officials who knew of these instances but failed to report or correct them could be demoted two pay grades or forced to surrender a year of salary for overlooking the offense. See HDZL *juan* 50, 39-40 and *juan* 18, 36.

Rather than policing the market itself, the Qing committed to policing the behaviors and powers of key actors within the market upon whom these special powers were bestowed. By placing the burden of market operation on market actors and removing the market space entirely from the local administrative framework, the Qing made a strong bid to preserve the sanctity of the market space as a place of unhindered economic exchange by destroying its administrative profile entirely. The licensed brokers assigned to administer to the needs of merchants were made responsible for providing fair access to the market, and for collecting taxes, but were otherwise left to organize the market according to economic, and not administrative, logics.

### **The *Yahang* of Chongqing**

Chongqing had been issued 360 taels worth of *yahang* licenses in the Ming, during its days as a regional trade outpost.<sup>35</sup> These licenses fell out of use in the turmoil of dynastic transition as a result of the depopulation of Sichuan and the devastation of its economy. The slow recovery of the province and the fallow-field approach to its administration meant that Chongqing's economy made modest gains in the early Qing, and that many of these gains were won under the shadow of the onerous exploitation of the provincial military apparatus. For the first four decades of Qing rule, no official commercial taxes were collected in the city. From 1682 to 1723, the local government of Chongqing paid an annual flat 60-tael commercial levy to the provincial government, collecting and administering funds from commercial exchange informally. It wasn't until the Yongzheng reform era that *yahang* licenses were once more issued to the city. In 1723, permission for 152 licenses was granted to the Ba county *yamen*.<sup>36</sup>

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<sup>35</sup> BXZQL *juan* 3, "Taxes" [*keshui* 課稅] section.

<sup>36</sup> *ibid.*



Many of the *yahang* licenses issued in Chongqing were held by long-term sojourners, who maintained their registration in another province but established residence in the city.<sup>37</sup> The firms opened by licensed brokers often expanded into partnership ventures, and handled a large volume of traffic as Chongqing's market expanded. The *yahang* of the city usually maintained shops that provided warehousing and brokering services for merchants dealing in goods that had been shipped from afar. Licensed brokers earned their profits from commissions as well as fees associated with the shipment and storage of goods.

The licenses active in the 1750s attest to the nature of Sichuan's emerging market: brokers dealt in a range of raw materials from the southwest gathered in Chongqing for wholesale downriver, as well as finished goods from other parts of the empire that were destined for sale within Sichuan.<sup>38</sup> The *yahang* of Chongqing each had a specialization, depending on the license issued by the state, which in the middle of the eighteenth century included: 55 licenses for mountain goods (*shan huo* 山貨 - herbs and medicinal plants harvested from the high-altitude plains of the southwest), 27 licenses for southern goods (*guang huo* 廣貨 - finished products and raw materials from the Guangdong region, such as metal implements, porcelain, fruit, and fish), 12 licenses for various grains (*za liang* 雜糧), 8 licenses for raw medicines (*yaocai* 藥材 - collected from the unique ecological environment of the southwest and sold throughout the empire), 8 licenses for indigo (*qingdian* 靛), 7 licenses for iron pots and pans (*tie guo* 鐵鍋), 6 licenses for bamboo and lumber (*zhumu* 竹木), 4 licenses for cloth (*bu* 布), 3 licenses each for ceramic items (*ciqu* 磁器), oil (*you* 油), and alcohol (*jiu* 酒), 2 licenses each for hemp (*jiang ma* 薑麻), pork (*zhu* 豬), silk (*si* 絲), "western goods" (*xi huo* 西貨), pelts (*mao huo* 毛貨), tea bushes (*da hong* 大紅), carved wooden screens (*shan ban* 衫板), and boats (*chuan hang* 船行), and one license each for satin (*sha duan*

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<sup>37</sup> Of the 109 *yahang* licenses being operated in Chongqing at the beginning of the Jiaqing era, only two were registered to Sichuan natives. See QJDBXXB, 253-256.

<sup>38</sup> On the services offered by brokers to sojourning merchants, see Susan Mann, *Local Merchants and the Chinese Bureaucracy, 1750 – 1950*, (Stanford: Stanford University Press), 1987, 64-65.

紗緞), finished cloth from Guangdong (*guang huo bupi* 廣貨布疋), oiled hemp (*youma* 油麻), piranha (*guang yu* 廣魚), and copper/lead (*tongqian* 銅鉛).<sup>39</sup>

Although the permissions for granting a fixed number of brokerage licenses were awarded at the provincial level and monitored by the Board of Revenue, the day-to-day needs of *yahang* brokers and the supervision of their tax collection methods were handled by several departments of the local *yamen*. The department of revenue (*hu fang* 戶房), the department of rites (*li fang* 禮房), and the department of works (*gong fang* 工房) divided up responsibility for reporting on and forwarding the collections of the city's licensed brokers. When the *yahang* taxes were not paid, *yamen* clerks were compelled to put up the money on their behalf, and then seek reimbursement from the brokers.<sup>40</sup> The day-to-day supervision of brokerages was performed in accordance with terms negotiated between each trade and the *yamen* department responsible for its supervision.<sup>41</sup>

The process of undertaking a *yahang* license resembled the procedure for taking responsibility as a *baojia* representative. Official recognition of the appointment was made after a pledge that the nominee was free from ulterior motives and that he was well established in the community. There were general standards about the type of merchant who could serve as a licensed broker. They were required to be “wealthy individuals of commoner status (殷實良民),” and to provide a pledge to the magistrate before undertaking a license.<sup>42</sup>

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<sup>39</sup> BXZQL *juan* 3, “Taxes.”

<sup>40</sup> Lin Hongzhang, “An Analysis of the Management of *yahang* in Qing Dynasty Chongqing” [*Qing dai Chongqing yahag guanli moshi tanxi* 清代重庆牙行管理模式探析], *Xue lilun* [学理论] 11 (Apr., 2011): 204-205.

<sup>41</sup> For more details on these arrangements and some of the more involved aspects of trade organization, see the sections of Chapter 5 that discuss *yahang* obligations and the negotiation of *chaiwu*.

<sup>42</sup> QLSL: year 8, month 6, *jimao* day.

A case from 1825 provides a full documentation of the licensing process, as well as the details of how one license came to be surrendered to the *yamen*. In the first document, Wang Laoyou (汪老有) submitted a pledge of surrender for the *yahang* license of a deceased family member after being discovered operating the brokerage illicitly:

Qu Shaozu (屈紹祖), the grandfather of my wife, received a brokerage license in 1762 to open a silk *hang*, for which every year he paid 1 tael in taxes. The file is on record. Recently, since both he and his son have died without an heir, the brokerage was unable to continue. Being their relative, I illicitly kept the business running, and was discovered by a *yamen* clerk, who reported me to the court. I was summoned. Knowing the truth of my own guilt, I tearfully plead the case, return the license, and beg for the merciful court to summon a buyer to take up the remainder of the term of the license. I will never more transgress or disturb the order in any other way. If I interfere, I am willing to be punished for twice the normal offense, without protest. This pledge of surrender contains no falsehoods, and is true.<sup>43</sup>

The license was taken back and less than a week later Yue Jicheng (樂集成) filed a pledge to take up the rest of the term. Yue Jicheng's request read:

I pledge that I hereby request to undertake the *yahang* license first issued on Day 6 of Month 5 of QL27 to Qu Shaozu, to open a silk brokerage and pledge responsibility for paying a yearly tax of 1 tael. Because Qu Shaozu died without issue, the husband of his granddaughter Wang Laoyou returned the license, and the magistrate's office hung out a notice summoning new buyers to take over the term of the license.<sup>44</sup> I have come together with my neighbors Qiu Ningyuan (邱寧遠) and Shu Tailai (舒泰來) to the *yamen* to undertake the license and have it re-issued. I plead before your honor to report the request. I will continue to pay the 1 tael tax at the conclusion of each year. I have no literati backers or *yamen* connections. This pledge contains no falsehoods, and is true.<sup>45</sup>

Along with this pledge, Yue Jicheng submitted three more documents. The first was a deposition by Yue himself, which read:

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<sup>43</sup> SPABX: 07-519; 2.

<sup>44</sup> In the text of the pledge, Wang Laoyou is called by his alias, Wang Youpeng (汪有鵬), although the alias has been written differently here than it was in Wang's original suit, where he recorded it as Wang Youpeng (汪有朋). For the sake of simplicity, I have retained the first name throughout the translation.

<sup>45</sup> SPABX: 07-519; 3.

I pledge that I am now 32 *sui*, with a medium build and a pock-marked face and [character obscured]-colored hair. I am a registered commoner of *Zhi li, jia* number 5, in this county. My estate is of substantial means, and I am willing to undertake the completion of the terms of the license from Qu Shaozu, to open a silk brokerage. I will pay 1 tael of taxes yearly according to the original terms, and I have no literati or clerk conspirators. This deposition is truthful.<sup>46</sup>

Next was the pledge of Yue's neighbor, Liu Jingzhu (劉經鑄), which stated:

I pledge that Yue Jicheng is a registered commoner of *Zhi li, jia* number 5, whose estate is substantial, and that he will undertake the returned license of Qu Shaozu to become a silk broker, open a silk brokerage, and manage the taxes. He has no literati or clerk conspirators. This pledge is truthful.<sup>47</sup>

Finally, in addition to the pledge from a collective responsibility member (above), Yue also submitted the pledges from two members of his own trade (*tong hang hujie* 同行互結), Qiu and Shu:

Yue Jicheng is truly a registered commoner in *Zhi li, jia* number 5, of this county. His estate is substantial, and he will undertake the remaining terms of the license returned from Qu Shaozu, the silk broker. He will open a brokerage and handle the taxes. He has no literati or clerk conspirators. This pledge is truthful.<sup>48</sup>

Having obtained all of the necessary paperwork, the Ba county magistrate summarized the application and submitted a copy of all of the materials to the provincial authorities the very next day, requesting the issue of a license.<sup>49</sup> The request arrived at the provincial office the following day, and a response arrived back at the county magistrate's *yamen* less than three weeks later, commanding local authorities to "execute the request as outlined in the proposal."<sup>50</sup> The prefectural magistrate was ordered to issue the requisite stamped register and license. A new *yahang* was appointed in just over a month from the time that Wang surrendered the original license.

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<sup>46</sup> SPABX: 07-519; 4.

<sup>47</sup> SPABX: 07-519; 5.

<sup>48</sup> SPABX: 07-519; 6.

<sup>49</sup> SPABX: 07-519; 7-10.

<sup>50</sup> SPABX: 07-519; 11.

The Qianlong-era Ba county gazetteer summarized the view of the city's official brokerage system from a magistrate's perspective. The long description translated almost in its entirety below was written by Wang Erjian (王爾鑒), the magistrate of Ba County from 1750 to 1752. He began his summary of the *yahang* system by remarking that Chongqing was home to the largest concentration of brokers in the province:

... As Ba (Chongqing) is one of the places where all goods and merchants converge, it has over 150 *yahang* licenses – more than 10 times that of the other settlements of Sichuan.<sup>51</sup>

Wang then remarked on the 1740 shift from local control over the licensing system to imperial control over the number issued and demands to keep licenses out of the hands of unqualified brokers:

Previously, local officials were responsible for dispensing *yahang* licenses. In 1740, the local government was ordered by the Board of Revenue to review and revise the system, distinguishing the real licenses from the counterfeit. Although this audit caught those commoners who posed as *yahang* even though they merely served as common guarantors in the myriad transactions, and forestalled the malfeasance that stemmed from this, it is hard to root out the real problem.

He then went on to outline what he perceived to be the real problems underlying the *yahang* system, noting that licensed brokers were not always innocent and disinterested economic intermediaries:

The purpose of a *yahang* is to make prices fair. But they muddle affairs from their superior vantage point and collude to benefit unfairly from the market. The purpose of the *yahang* is to prevent litigation, but their greed only leads to more and more legal suits... There are those who cheat others out of money by pretending to sell goods and vanishing upon payment, and those who offer payment for commodities at the beginning, but upon obtaining the goods it is found that there was no money to begin with, and in these cases when A must repay B they show themselves unable to do so, and flee instead.

And so do victims come to travel in a strange land, struggling over mountain passes and braving wind and billowing waves for thousands of *li* to trade. Having muddled their way here, their capital and their profits are all entirely lost, and they are left to sigh unhappily in this place that is not their home.

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<sup>51</sup> BXZQL *juan* 3, "Taxes."

Travelers from afar were not only vulnerable to cheating by treacherous *yahang*. They were also at a disadvantage in the courtroom, which had limited resources to right the wrong that had been done. Wang Erjian went on to depict the unfortunate fate of those merchants who were forced to bring claims against brokers that had breached the trust offered to them:

Even when a suit is filed at the local government, capturing the offender is not the work of a mere moment. Even when the offender is caught and punished and the court attempts to pursue the amount illicitly obtained it may be found that there is nothing left. The perpetrator is simply left to waste away in jail, unable to return what was taken. This is why it is better to proceed carefully from the beginning than to seek court orders and punishments when the harm has already been done.

Court action was a failsafe or a punishment for an offender who had already committed a wrong. Much more vital than the court's role in addressing these wrongs was its role in preventing them. Wang emphasized the paramount importance of maintaining a reliable process of screening *yahang* at the moment of licensing:

The first thing is to carefully select a *yahang*. Those without registered households and without substantial means are not allowed to open *hang* brokerages. *Yahang* have a difficult time bearing the burden of brokerage alone, and often must use brokerage agents (*guaping* 掛平). Those who join *hang* shops as agents are also not allowed to be unregistered and without substantial means, for any offense committed by a brokerage agent who flees may be brought before the *yahang* to take responsibility. If a *yahang* is the one who commits the offense, then those who pledged mutual responsibility on his behalf are responsible to the victim. Those who are captured and pursued for the amount owed, but do not repay, are punished in accordance with the law.

In conclusion, Wang opined that local supervision of the system was an imperative of successful administration and could prevent a host of abuses that were easier to prevent than to make amends for:

If local officials can expend enough energy in the maintenance of the brokerage system, merchants will benefit. Otherwise, the market will be full of greedy individuals who might never be satiated. If merchants travel from afar only to be cheated and bullied by wicked men, then what is the purpose of the market system?

Even without any powers over market exchange, local officials were tasked with the imperative to prevent abuse within the system and uphold the imperial directives that dictated the operation of the *yahang* system. This placed them in an important position at two vital points: the times when licenses were processed and the times when abuses to the system occurred. In the middle of the eighteenth century, after the institutional foundations of a centralized *yahang* system had been put into place, the magistrates of the empire were appointed the task of defending merchants who had been cheated by these brokers.

### *Brokers and the Legal Framework of Commercial Dispute Resolution*

The Qing market system reforms succeeded in creating an imperial framework for commercial taxation that was capable of protecting merchants from regular extortion through an administrative apparatus given authority over the market. As economic actors already participating in trans-local exchange, *yahang* could collect taxes on long-distance commerce without adding onerous demands for upkeep, since profits on brokerage consignment were already the major source of broker revenue. But at the same time that brokers solved the problem of extortion disguised as legitimate local taxation, they also posed a new threat to merchants from afar. Acting out of selfish economic interests, brokers could easily use their knowledge of prices, local practices, and transacting parties to cheat merchants who were strangers to a new market. Sojourning merchants cheated by brokers would have little recourse. Not only would they be at a disadvantage when pressing charges against brokers, who were the appointed intermediaries between the local government and the market, but they were also faced with the challenge of litigation in a foreign town due to Qing laws about the jurisdiction of cases pertaining to “complicated matters.”<sup>52</sup> To resolve this dilemma, the Qing state decided to make licensed brokers immediately

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<sup>52</sup> On the issue of jurisdiction of commercial cases, see page 103 of this work.

responsible for the transactions they brokered. This simple legal solution to an administrative dilemma was a major turning point in Qing policies on commercial dispute mediation.

In 1737 a series of memorials on the subject of corrupt *yahang* was presented to the imperial court. One of these, composed by Jalangga (查郎阿), Governor-General of Sichuan and Shaanxi and member of the Imperial Academy, became the basis of a new sub-statute designed to prevent the abuse of sojourning merchants by licensed brokers. Jalangga suggested that “cases of *yahang* who embezzle the money of sojourning merchants, even if they take place during the agricultural busy season [during which litigation between commoners was not allowed], should be reported, heard, and pursued in court...”<sup>53</sup> In response to the memorial, the Qianlong Emperor declared that this suggestion should be made into a law, adding that “We feel for merchants, far from home, who have been cheated. If it is during the cessation of litigation at the agricultural busy season, then they are held for long periods in a strange country. Truly this is pitiable...” The emperor demanded that Jalangga’s suggestion be formulated into law, and in 1738 the first sub-statute of the law on “Not responding to complaints” was modified to include a clause on suits related to *yahang* embezzlement. The new code read:

Every year from the first day of the fourth month to the thirtieth day of the seventh month, during the height of agricultural work, all personal complaints about household structure, land, and other such *xi shi* are not permitted for court. Accusations of rebellion, treason, theft, homicide, threatening the legal order through greed, and other such grave cases, as well as accusations of treacherous brokers or shops that cheat sojourning merchants of their goods, are excepted from this rule. If these accusations are substantiated, then they shall be handled as usual...<sup>54</sup>

The absence of an administrative apparatus designed to protect sojourning merchants from local market agents meant that the state no longer claimed to supervise exchange. In order to protect vulnerable buyers and sellers from predators, the state instead committed to hearing cases against local intermediaries who had failed in their duty to act faithfully on behalf of buyers and sellers from afar. The disappearance of

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<sup>53</sup> QLSL: year 3, month 12, *dingyou* day.

<sup>54</sup> See the first sub-statute of the law on “Not responding to complaints” at DZLL1779, 879-880.



administrative systems of protection had lead to the opening up of Qing local courts to merchant complaints throughout the year. At the center of this transition was the development of a legal notion of the responsibility of economic intermediaries.

The two forms of legal and commercial responsibility united in *yahang* to provide merchants and their brokered transactions with a credibility that arose from access to market information, repeated transaction, and state-backed notions of commercial responsibility. Even in lightly-administered frontier regions such as Qing Chongqing, merchants could be given streamlined and simplified access to overlapping systems of risk reduction and dispute mediation. Engaging a broker to transact meant not only dealing with a local informant, but also having access to his trusted network of contractors. In cases of misfortune or fraud, the state itself was formally committed to holding brokers accountable for their role in transaction. In this way, by the middle of the eighteenth century, the market capacities of brokers were folded into a system of official accountability for transaction.

The exit of the local state from the day-to-day administration of the market did not precipitate a withdrawal from the market, but rather a turn from administrative oversight to legal enforcement of relationships of economic agency. Unlike the Tang market system, which was based on direct supervision of trans-local exchange by a sophisticated state apparatus, the Qing system was predicated on a sharp division between the duties of taxation, which was handed over to *yahang*, and enforcement, which was entrusted to county magistrates. The state's role in the act of transaction was entirely diminished, while magistrates were required in their capacity as judges to punish local intermediaries who cheated others.<sup>55</sup>

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<sup>55</sup> This explanation accounts for the interaction of two other observations made by a prominent scholar of late imperial law and economy. Chiu Pengsheng postulates a shift from "direct interference" of the Tang, Song, Yuan, and early Ming market systems to the "regulation of the market" in the late Ming and Qing. See his "Understanding the Ming and Qing Legal Regulation of the Market." He also notes, in "Insolvency and Negligence" that from the eighteenth century forward, Qing officials began to espouse a great deal of concern about the risks run by sojourning merchants.

This feat of combining and separating responsibility for commercial transactions under the law was a singular success of the Qing. Rooted in earlier institutions and precedents, the Qing system of commercial responsibility presented a simple and elegant solution to the diverse and competing needs of the empire's market actors. Rather than incorporating rules and regulations about commercial transaction into the legal code of the dynasty, Qing officials placed the *yahang* at the center of both the economic and administrative systems of governing commerce and made them legally responsible for ensuring fairness in exchange. The terms of each transaction were sanctioned not through accord with legal or customary principles, but through the binding agreement of a licensed broker.

Rather than commit to a single legal vision of commercial fault and liability, the Qing crafted a system of responsibility for recording, reporting, verifying, and adapting the details of the myriad commercial transactions into a fluid system of liability centralized on the broker. The market contained too much information, too much potential for abuse, and too much diversity to be incorporated into an empire-wide legal framework, and so responsibility for maintaining information about and resolving disputes over commercial transactions was invested in the *yahang*, as a single identifiable group of caretakers of the market. These individuals kept track of all relevant information about local conditions, market trends, trading partners, transaction details, and commercial events in lieu of the state doing so itself and were made responsible for the successful resolution of any problems that might arise from exchange.

### **Economic Intermediaries in Chongqing's Court and Market**

In their dual capacity as economic mediators and legally responsible market agents, the *yahang* of Chongqing provided merchants from abroad with access to information and economic services that were buttressed with imperial guarantees of credibility. Qing law specified punishment for impostors without

licenses, for raising or lowering prices to prohibit competition, for forcing merchants to submit their goods for sale without consent, for using incorrect weights or measures, for knowingly selling sub-par items, and for embezzlement or fraud by *yahang*, who were held liable for the goods that they brokered. Any *yahang* found guilty of cheating a customer could be brought to the court for pursuit or – in cases of fraud – punishment. The local government would have no role in determining or interpreting economic agreements, but was required to use force to keep brokers in line. In its original conception, the job of the local court was one of straightforward policing.

A 1743 Board of Revenue statute made the obligation of magistrates to oversee *yahang* and to protect their customers explicit:

Local officials are commanded to publish a proclamation to this effect: Each *yahang* should allow merchants and shops to fix a price face-to-face and sign a three-way receipt. If official brokers are treacherous and fail to do this, merchants may report them to the magistrate, and the license for the broker will be revoked. If a shop passes the deadline and fails to pay or deliver in full, showing a clear intention to embezzle, they may be brought to court for pursuit. If the local court pretends to pursue the case but, in fact, does nothing and allows such cases to pile up, the magistrate will be punished in accordance with the statutes on “Careless Observation of the Peoples’ Distress.”<sup>56</sup>

This statute presented a clear vision of the relationship between market actors and the local state. Brokers were compelled to bring together buyers and sellers in a transparent discussion about the transaction and provide clear proof about the terms reached. Any party thereafter found violating the agreement undertaken could be held answerable before the local court, and the court itself was compelled to respond to these complaints swiftly and justly.<sup>57</sup>

This arrangement gave merchants access to a system of economic mediation that was designed to protect all parties and to legal recourse when any party failed to live up to agreed-upon obligations.

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<sup>56</sup> See HDZL *juan* 50, 39-40.

<sup>57</sup> In January of 1759, the Board of Punishments approved a memorial from the provincial treasurer of Yunnan specifying punishments for *yahang* in cases of embezzling. It was added to the penal code in 1761. See sub-statute seven of the law on “Coercion in the market” *bachi hangshi* 把持行市] in DQLL1779, 534.

Courts became responsible for ensuring that this system operated by punishing individuals who attempted to cheat or defraud the other parties involved. This positioned the court as an enforcer for the system of exchange and its participants without placing the details or habits of transaction into legal terms. Instead of a legal discourse of liability, what emerged was a rhetoric of concern about protecting the “lonely merchant,” which committed brokers and courts to the role of protecting market actors.<sup>58</sup>

This system did not provide explicit legal guarantees about the execution of contracts and transactions, but it was a system that was capable of incorporating the complexities of all of the empire’s markets into a legal framework of responsibility centered on the concept of economic agency. Market forces were left to determine which terms were agreeable to transacting parties, while the state remained agnostic and demanded only accountability for a small amount of taxes, obedience to important directives, prevention of crime, and faithfulness to economic arrangements. The institution of official brokerage allowed the state to demand all of these things without direct interference in or alteration of the logic of the market and without opening up the realm of economic activity to privation by bureaucrats in unnecessary supervisory offices.

### *Brokers as Defendants*

The legal commitment of the Qing state to defend merchants who had been taken advantage of by licensed brokers addressed one dimension of risk that was inherent to trans-local trade: the relative security of local merchants compared to ones operating in an unfamiliar market. The state offered a disincentive for cheating by promising detention, legal fees, and court scrutiny of brokers who attempted to profit at the expense of travelling merchants. This commitment to police local market agents was the key to maintain Qing jurisdictional policies, which commanded that commercial affairs and other

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<sup>58</sup> See Chiu, “Debt and Negligence in Eighteenth-century Chinese Commercial Law.”

“complicated matters” be tried at the local level. It allowed the merchants of the empire to conduct business in urban centers far from their own homes while still possessing some guarantee that, if things went wrong, someone could be held accountable for seeking a resolution on their behalf.

The Ba county archives provide several examples of brokers brought to court to answer for their own economic behaviors, as well as the actions of the parties that they invited to transact. These sorts of cases came closest of all to the dynamic explicitly constructed by the Qing code. Brokers had been raised to a special status in the market because of their valuable function, personal standing in their trade, and individual commitment to responsibility in market transactions. Whenever a broker was suspected of a transgression, it was the right of the wounded party to have him brought before the court, which was bound to pursue the matter and punish any “treacherous broker” (奸牙) that took advantage of the system.<sup>59</sup>

The 1781 case of Yang Donglai (楊東來) versus Wang Fanglan (王芳蘭) is an example of the classic “treacherous broker” case provided for in Qing law. Yang was a merchant from Shaanxi who came to sell a large shipment of ginger in Chongqing. Yang submitted his ginger to the brokerage owned by Wang Fanglan (王芳蘭) for storage and sale and accused Wang of plotting to embezzle the entire amount of money gained from the sale of Yang’s ginger, thus “cheating me, a lonely merchant from afar (欺蟻異孤)” and “taking me for a weak and tasty morsel to snack on (以為弱肉可嚼).”<sup>60</sup> In his suit, Yang argued that Wang had taken advantage of his difficult position as a stranger in the rough and wild commercial center of Chongqing and had left him in an untenable position: “trapped, and unable to return home (陷蟻不得回籍).” The magistrate permitted the case and issued a summons for the involved parties, but the case was settled before a trial was ever held.

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<sup>59</sup> The efficiency of this system is the subject of Richard Lufrano’s recent article: “Minding the Minders: Overseeing the Brokerage System in Qing China,” *Late Imperial China* 34 (June, 2013) no. 1: 67-107.

<sup>60</sup> SPABX: 01-01877; 1.

The magistrate's swift and unquestioning approval was the expected reaction given the responsibility of local officials to oversee licensed brokers. For just as surely as *yahang* could provide convenience and credibility by employing their local knowledge and connections to match buyers with sellers, they could use the same resources for profit at the expense of others. When *yahang* abused their positions to cheat these lone, helpless strangers in the big city, magistrates were compelled not only by a sense of fairness and by the laws on brokerage, but also by the statutes that dictated punishment for allowing abuse in the *yahang* system to flourish, to take up the case and aid the victim. These cases were uniformly accepted by the court.

In addition to the classic "treacherous broker" case, *yahang* were also brought to court to stand in for the default of parties for whom they had vouchsafed. The same logic that brought crooked *yahang* to the court as defendants could also implicate them in litigation on behalf of others. The jurisdictional laws demanding that commercial cases be tried in the place of transaction here combined with the court's sensitivity to claims of fraud perpetrated against helpless travelers to produce a slight modification of the classic "treacherous broker" case: that in which the broker was brought to court on behalf of another defendant. In these cases, it was not the evil intentions of the broker that warranted his inclusion in a legal suit, but rather a simple conviction that a broker was liable for the decisions that he made in mediating the transactions of others.

One example of such a case was brought to the court by Zhao Xincheng (趙信成), a merchant from Shanxi who brought a large shipment of straw hats to Chongqing for sale. Zhao came to the court after his broker Li Yuyan (李與言) made a suspicious investment in his son's money shop while still claiming to Zhao that the money for his grass hats had yet to be repaid by the customer who bought them. Zhao concluded that Li's investment suggested embezzlement and lamented ever having run into the "evil plots of this father-son pair to trick me out of my tiny profits, by pretending to buy my goods while in fact

stealing the money and drawing out the fraud, leaving me unable to return home (獲蠅頭，遭惡父子套買掣騙拖陷日久，不能回籍).”<sup>61</sup> The magistrate agreed to summon the broker to court.

When Li Yuyan was called upon to explain himself, he insisted that he and the plaintiff had been doing business with one another for over 20 years and that the delay in repaying Zhao was not due to any kind of treachery, but rather the logistical complication presented by the fact that the purchaser of the hats was from Luzhou, 90 miles from Chongqing. The magistrate found that this was grounds for some delay, since the collection of the debt presented some difficulty, and gave Li half a month to pay Zhao, on the condition that Li first obtain a guarantor. But in the remainder of the case that followed, Li was held accountable for paying back Zhao regardless of the fact that the customer from Luzhou did not make restitution within the allotted time. In cases such as this, even when the broker himself could be considered as much of a victim as the plaintiff, the intermediary was liable for the transaction that he had arranged, on the logic that it was a risk undertaken based on information provided by the *yahang*, and that the broker could more easily demand satisfaction from his customer.

Both types of cases illustrated above – those involving the personal failures of the broker, and those designed to hold the broker accountable for the others he had vouchsafed – were necessary to the function of the Qing market system. On the one hand, brokers were legal and administrative focal points of risk, trust, and exchange. On the other, the court required that commercial suits be brought before the *yamen* in the place of transaction, which presented considerable difficulty for merchants from far away. The court was able to extend the responsibility of brokers in order to keep merchants who had been victimized from being indefinitely stranded in the city. In both of the cases mentioned above, the presiding official upheld his commitment to act on behalf of the merchants who claimed to have been

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<sup>61</sup> SPABX: 01-01870; 2.

defrauded. When the tables were turned, however, magistrates could also come to the aid of brokers themselves, in a further extension of the Qing complex of laws about brokerage.

### *Brokers as Plaintiffs*

The same logic that made brokers liable for the transactions they took part in also empowered them to seek satisfaction from others in court. Since brokers assumed responsibility toward their merchant customers, they could be forced to settle out-of-pocket for the malfeasance of others. Their willingness to do so was integral to the function of the system of licensed brokerage. The court's recognition of this meant that magistrates also consistently aided brokers in their attempts to recover funds that had been lost in the name of settling with one customer while another remained delinquent.

This logic is clear in the 1805 case of Mao Dashun (毛大順) versus Li Chugao (李楚高). The plaintiff Mao operated a cotton brokerage in the city, “representing customers in sale and purchase (代客買賣).”<sup>62</sup> He reported that, three years ago in 1802, Li Chugao came to his brokerage and bought on advance some of the cotton that had been stored at Mao's brokerage by another customer. The purchase price of 400 taels was agreed upon, but Li took delivery of the goods and had continued to delay payment for three years, forcing Mao to “borrow in order to represent him in returning the debt, and pay 100 *jin* in interest every year.” The loan that Mao took out to repay his customers had pushed him to the edge of insolvency.

After repeated failed attempts to collect, Mao was forced to make a plea to the magistrate, reasoning that “brokers are in the business of representing customers in purchase and sale. If, like in this case, purchasers don't pay for goods, then the sellers pursue me to the brink of life – what can I do? (開行

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<sup>62</sup> SPABX: 05-04648; 2.



原系代客買賣，似此買客不還，賣客追由索命，莫可如何)” He pleaded with the magistrate to “wield court authority in strictly handling this treacherous behavior (法究奸刁).” The magistrate issued a summons immediately following Mao’s request, in recognition of the court’s responsibility to maintain the integrity of the brokerage system. Like the other cases reviewed above, the case was resolved before trial.

Brokers could also bring suit on behalf of the wronged parties for whom they had contracted even without first having paid out a settlement. This situation is demonstrated in the 1765 bankruptcy case of Zhang Tianxu (張天敘). Zhang had bought goods through Shen Hanshi (沈漢石), a broker from Zhejiang who operated a shop in Chongqing. Shen delivered the goods, but then Zhang sold off his store and house, declaring that his business was insolvent and settling with his creditors for a reduced rate. Shen discovered that Zhang still owned property within the city walls and had invested his ill-gotten gains secretly in another business as a silent partner. Shen had tried to bring suit against Zhang four years before, but accused the defendant of bribing *yamen* workers to bury the case.

In the interim, while this dispute dragged on, Shen had remained responsible for the debts brokered on his behalf, protesting in his suit that “it’s now been four years, and I haven’t been repaid any amount. I have been trapped in an impossible situation: all of my customers are pressing for fulfillment of their obligations, and I am on the verge of financial ruin. How can such a wicked villain impoverish a broker, pushing him to the very brink of death? Neither human decency (*renqing*人情) nor the law of the land (*wangfa*王法) can operate in these conditions.”<sup>63</sup> The magistrate recognized the responsibility of Shen to settle his customers’ accounts and the difficult position that the broker was placed in while the situation went unresolved and issued a summons to bring Zhang to court.

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<sup>63</sup> SPABX: 01-01848; 2.

Whether owing or owed, whether on account of their own actions or on behalf of others, *yahang* were frequent visitors to the courts of Chongqing. They were convenient figures in which to invest the power and responsibility of litigation: local, knowledgeable about their trade, and both party and witness to the transactions they brokered. They were also the ones in the best legal position to pursue a case, being accountable to both parties in each transaction and, by definition, local to the jurisdiction in which the exchange had taken place. Since brokers were able to act as agents on both sides of a transaction, they were compelled to bear the majority of the cost of bad information. In order to keep brokers motivated to bear such responsibility, the court supported their quests to recover funds that had been paid out on behalf of others.

#### *Further Ramifications of Transitive Responsibility*

The logic of sharing responsibility for a transaction in which one had participated even expanded beyond official brokers to include unofficial brokers and other forms of intermediaries (such as guarantors and recommenders).<sup>64</sup> In these cases, the explicit legal liability of brokers was applied by analogy to other kinds of intermediaries. Court demands for payment in these cases demonstrated that individuals who participated in any part of a transaction could be held responsible for its resolution even when they did not personally benefit from the malfeasance of someone for whom they had vouchsafed. These cases operated on general the notion of there being a “responsibility associated with mediating a transaction” (*jingshou zhi ze* 經手之責).

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<sup>64</sup> Even though it was illegal to pose as an official broker, unofficial brokers existed in large numbers throughout the empire. Mediation between economic actors was not the sole territory of licensed brokers, but only licensed brokers could collect taxes. Unlicensed brokers were permitted to broker exchanges (especially on untaxed trades), and were only required to remit taxes to licensed brokers in order to stay on the right side of the law.

In the 1790 case of Wu Yifa (吳億發) from Hubei versus Tang Heshun (唐和順) of Huguang (discussed previously in Chapter 2), the central question presented to the court was whether or not Tang could be held liable for the debts of his brother Tang Quanmao (唐全茂), who had fled. Before ever coming to court, the case had been presented to the *kezhang* representing the home territories of the two parties, and this neighborhood mediation had determined that Tang Heshun did, in fact, have “responsibility associated with mediating a transaction (經手之責).” The case wound up in court because Tang Heshun continued to resist Wu’s demands to settle even after mediation under the *kezhang* had concluded.

In his first suit, Wu summarized his dilemma: “It is only Tang Heshun, who participated in the transaction, that ought to be responsible (應惟經手之唐和順是問), but he bullies me and is insolent. How can the *kezhang* discipline him? Truly Tang Heshun represented his brother in the purchase of cotton from my shop. *The three of us met in person and agreed to a price, then set a date for the exchange and payment.*<sup>65</sup> The seller can provide testimony to this effect. *How can the legal order permit (法紀溪容) such embezzlement for personal profit, such collusion to hide and cheat?”*<sup>66</sup> The magistrate summoned the case to court immediately.

In his counter-suit, Tang Heshun insisted that he had not been a broker for the deal between Wu and Tang Quanmao, insisting that the plaintiff had no proof, and that he had not been present at the time of the deal.<sup>67</sup> Tang Heshun even reported that he had invited the plaintiff to witness him swear before the gods at a local temple, but that the plaintiff “did not dare to submit to the gods together with me (不敢與蟻憑神).” In Wu’s responding plaint and in his testimony at court, the plaintiff insisted that he had never

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<sup>65</sup> Emphasis added. Here Wu uses phrasing evocative of the Qianlong statute on licensed brokers being obligated to facilitate an in-person discussion of the terms and price of a transaction between two customers.

<sup>66</sup> SPABX: 01-01900; 2.

<sup>67</sup> SPABX: 01-01900; 4.

been invited to pledge the truth of his claims at the temple and that Tang had been using every trick in the book – including the physical threats to all of the witnesses discussed in Chapter 2 – to erase the evidence of his role as an intermediary, but that, at the end of the day, “When it comes to payment, one always consults the intermediary. Tang Heshun represented his younger brother in the purchase of cotton, coming in person to settle the price. *A man who has thus dirtied his hands cannot avoid responsibility* (竊銀問經手唐和順代弟買花親身議價染手者不得辭其責).”<sup>68</sup> The magistrate, presented with the account books and the testimony of individuals having tried to resolve the dispute between the two, found that Tang had indeed acted on his brother’s behalf and ordered him to pay half of the amount owed, further demanding that, when Tang’s brother returned from flight, he be brought to court to finish paying over the amount.<sup>69</sup>

Similar cases in the documentary record attest to the efficacy of suits against intermediaries beyond licensed brokers, such as guarantors of debts and recommenders of employees.<sup>70</sup> Any time when a plaintiff could make a solid case that he had entrusted another to act on his behalf in the character of an agent, the magistrate might call the individual to court to answer for his obligations (even though they were entered into on behalf of another). Therefore, much of the maneuvering in this category of cases hinged on the question of whether and which parties were bound to a jilted plaintiff by salient ties of economic agency.<sup>71</sup>

The notion of responsibility associated with participating in a transaction was so deeply entrenched in the culture of late imperial exchange that even much more tenuous claims were considered

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<sup>68</sup> SPABX: 01-01900; 5 In the phrase “A man who has thus dirtied his hands cannot avoid responsibility,” the plaintiff plays on the phrase for “mediation” (literally, “passing through the hands”) by suggesting that Tang Heshun has “dirtied his hands” in the transaction.

<sup>69</sup> SPABX: 01-01900; 10.

<sup>70</sup> For examples, see SPABX: 11-09999, 04-2552, and 25-5573.

<sup>71</sup> For an illustration of the challenge and urgency of claims about agency, see SPABX: 25-5855, in which the owner of a firm and the employee of a firm argue about which of them was the agent to whom the plaintiff entrusted his business.

by the court. Guarantors and other intermediaries who never even handled money or goods were even covered under this vision of liability.<sup>72</sup> One example of the creative application of transitive responsibility by analogy is found in the case of Xiao Ruiyu (蕭瑞宇).

When Xiao Ruiyu, of Jiangxi, came to the southwest to trade in Yunnan, he was called back suddenly to take care of his aging parents at home and decided to change his money in Chongqing for the journey to Jiangxi. A lodger staying at the same inn, named Xiao Lisheng (蕭立升), introduced him to the owner of the Yu Sheng money shop (豫盛錢舖), Wang Yuanzuo (王元祚). Xiao Ruiyu deposited his silver there. However, Wang reported that the price of silver had been low of late, and Xiao agreed to come back in a few days for payment. When Xiao arrived at the shop on the appointed date, Wang Yuanzuo was nowhere to be found, and his partner professed an ignorance of the deal. Xiao kept an eye on the shop for two days, but Wang never appeared to meet with him (the shop was only manned by a single young apprentice). “This,” reported Xiao, “was when I knew that I’d been had,” and he came to the magistrate’s *yamen* to file suit.<sup>73</sup> Rather than accept the plaint, the magistrate was incredulous and noted in his rescript that “Chongqing is the hub of a hundred rivers and roads. When you exchange silver you can take away cash instantly, what room is there to be taken for a fool? You have traded for many years. Once a broker (here he used the term *jingji*經紀, a generic term for brokers without licenses) deals with you, money is transacted easily. Why would the services of a third person (here indicating the other defendant, Xiao Lishen) be demanded?” The magistrate rejected the suit on the grounds that the entire summary of the affair was suspicious.

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<sup>72</sup> Guarantors could be brought directly to court to pay for the debts of defaulting businessmen whose transactions they had vouchsafed. A straightforward example of this type of litigation can be found in SPABX: 11-09999, where two guarantors were brought to court and settled their debts under court supervision.

<sup>73</sup> SPABX: 01-01101; 1.

In his second suit, Xiao restated the narrative, and insisted that “I am a simple and honest man, and this is my first time in the city of Chongqing. I have never engaged in trade before and am unable to distinguish the real from the false (不知虛實), and for this reason made the mistake of encountering the fraudulent plot. Now I cannot start on my journey and affairs back at home are desperate. What else can I do?”<sup>74</sup> The magistrate, compelled by the pleas of the helpless and unwitting sojourner, summoned the case, despite the protestations of the defendant Xiao Lisheng, who swore that he was not a broker, but rather another of Wang’s victims.

In this case, the magistrate agreed to involve the defendant Xiao Lisheng only on the grounds of the plaintiff’s desperate claim that he was a fool who had been taken and the possibility that the defendant had been complicit in that plot as the man who introduced Xiao to his persecutor. Cases such as these were not accepted because of any clear legal liability on the part of the defendants who were only tangentially involved in setting up a transaction, but rather in recognition of the vulnerability of some plaintiffs and of the court’s vital role as a champion of the disadvantaged. In such instances, the court did not simply extract full payment from the individuals partially responsible for a deal gone awry. But it brought official scrutiny to the terms and conditions of a particular transaction and held each member of the deal responsible for successfully concluding the affair.

When the court was called upon to hold individuals accountable on the basis of this expanded notion of transitive responsibility associated with participating in a transaction, the court was on more shaky ground than when it was dealing directly with brokers. But suits involving a wider range of actors appeared on the docket usually because other means of settlement were not available, and the court consistently acted as a champion and defender of the sojourning merchants who brought suit. This was not only because of the requirement that magistrates had to accept all valid complaints, but also because the vulnerable position of merchant was recognized and even provided for in the law, and their inability to

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<sup>74</sup> SPABX: 01-01101; 1.

navigate unfamiliar local systems of dispute mediation made the court a valuable ally. With each degree of removal from the straightforward transitive responsibility between brokers and their out-of-town customers, the court became less able to exact full and immediate payment from locals who had been brought to court. But the application of transitive responsibility by analogy was an invaluable tool for merchants from far away seeking to bring the state to bear on the market actors who might be able to provide more expedient resolutions when transactions had gone awry.

### **Transitive Responsibility and Cases without Court**

Of the fifteen cases from 1765 to 1875 reviewed for this chapter, only five went to trial after being permitted. Given how hard some of these plaintiffs worked to earn a summons (sometimes even submitting multiple complaints after being rejected, as in the case of Xiao Lisheng), how can this complete lack of interest in the rest of the court process be explained? In some instances, cases didn't make it to court because the *yamen* runners were unable to capture defendants who had already fled, and the summons was left open on the case docket for later use if the fugitives ever returned.<sup>75</sup> If and when the whereabouts of defendants were later discovered, the warrants could be invoked and the *yamen* runners asked to bring them before the court on standing charges. In the majority of cases, however, the summons never led to a court trial even though no such obstacle existed. The reason why so many of these cases never went to court was that the summons itself – and not the verdict – was the object of the suit, and resolution could be pursued using forums like the ones described in Chapter 2 with dependable efficacy, as soon as the court announced its commitment to enforcing the responsibility of an economic agent.

The struggle in cases about agency and transitive responsibility was not to get the court to countenance a specific settlement. As reviewed in Chapter 2, the magistrates of Chongqing were very

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<sup>75</sup> For examples, see SPABX: 25-4848 and SPABX: 05-4660.

circumspect about placing their *fiat* on settlements that contained exact numbers or conditions, and instead relied upon non-court forums of mediation to produce acceptable settlements. Rather, they key to winning a case was getting the magistrate to acknowledge whether or not an individual was *responsible* for negotiating a settlement. In many cases, these arguments took place over the course of filing suits and counter-suits. Most often, nothing more was required to induce a delinquent agent to enter a settlement process than the knowledge that the magistrate had summoned the case, finding enough merit in the plaintiff's suit to warrant a trial. In cases where several counter-suits were filed and where disputes made it all the way to court, the importance of establishing the nature of one's role in a transaction and one's relationship to a plaintiff is clear.

An illuminating example of the struggle to define relationships between litigants is found in the 1869 case of Huo Rongtai (霍榮泰) versus his nephew Huo Delong (霍德龍) and Chen Dengrong (陳登榮). The case began when Huo Rongtai accused the two defendants of embezzling the profits from some goods that he had stored at Hongxing brokerage (鴻興行), where Huo Delong worked together with Chen:

I run a cured vegetable shop. My nephew on my brother's side, Huo Delong, works as a trade agent (經貿) with Chen Dengrong in the Hongxing brokerage. Last winter they tricked me into storing one bale each of my oiled fish and lizard skins on consignment. They were worth more than 60 taels. Once the goods were in their hands they took them and closed up shop. I have searched for them for some time without success. It wasn't until the second day of this month I ran into Huo Delong and demanded payment from him... the dispute turned into a brawl, in which he grabbed a set of scale weights to beat me with... He refused to mediate, instead risking the court...<sup>76</sup>

In response to this suit, the magistrate agreed to summon the case after a physical exam substantiated Huo's claim about his injuries.

In the meanwhile, Chen filed a counter-suit disputing his alleged connection with the plaintiff. He explained that Huo's nephew, the co-defendant, was, indeed, an apprentice in the same brokerage where

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<sup>76</sup> SPABX: 25-5855; 2.



he was employed. But, added Chen, “Huo and his uncle were very close, and whether or not money is owed from their trade with one another has nothing to do with me, as I was not involved.” Rather, he reported, when the relationship between the two relatives soured, Huo Rongtai showed up at the brokerage and asked Chen where his nephew could be found. When Chen replied that he was ignorant of the whereabouts of the younger Huo, the plaintiff flew into a rage and “summoned together several toughs to rough me up, holding me against my will and humiliating me cruelly.”<sup>77</sup> He even included details about the intervention of his neighbors (*jielin*街鄰) in the fight, and protested that “Truly, I was not his intermediary in the sale of his goods at the brokerage (伊賣貨在行蟻實未經手).” He concluded by reporting that the neighbors gathered in the mediation all found Huo at fault for roughing up Chen, and that Huo had promised to drop the issue before unexpectedly bringing the case to court.

Next, Huo Delong filed his own account of the disagreement. In the account of the younger Huo, “Last winter Chen Dengrong brokered (*zuocheng*作成) a deal with my uncle Huo Rongtai to sell his products through the brokerage. I had no idea. In the winter the brokerage closed, and it was only then that I was made aware that my uncle had agreed to sell one bag each of his cured fish and lizard skins. I checked the inventory and discovered the parcel of lizard skins and called him to come and take it back. But the cured fish had already been sold to He Shunzhang (合順長). Twenty taels of the sale price still had not been collected, so I told my uncle to go together with Chen Dengrong to collect. But my uncle wanted the money on the spot, and beat me in anger. He abused me with the privilege of his seniority as my elder family member, and even though I bore his fists and his scolding I did not respond in kind.”<sup>78</sup> He, too, listed a series of witnesses and claimed to have taken the issue into mediation, and declared that the mediators had found that “I was not the intermediary for the exchange, and thus it has nothing to do with me.”

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<sup>77</sup> SPABX: 25-5855; 4.

<sup>78</sup> SPABX: 25-5855; 5.

In response to these counter-suits, the magistrate simply commanded the defendants to await testimony. When a court date was finally arranged, the defendants continued to avow ignorance of the plaintiff's transactions, instead only agreeing that they had fought with Huo Detai when he came to collect after the brokerage closed its doors. Furthermore, they argued, when the three of them went to mediate "Huo Rongtai simply refused to participate, instead coming to the *yamen* to report us to the magistrate."<sup>79</sup> The witnesses gathered in court testified only that they had seen a fight, and had intervened to stop the affray, and the plaintiff Huo continued to insist that he had been cheated and beaten by the two defendants. Finding on the side of the plaintiff, but keenly aware of his ignorance of what had actually occurred, the magistrate ordered the defendants taken into custody and commanded them to "go out and settle things... figure out how much is owed, and pay it (出外...說好酌量賠給)."

Chen Wenhua (陳文華), the elder brother of one of the defendants, protested the verdict in court, avowing that Chen Dengrong had nothing to do either with the consignment or the brawl that had ensued from Huo's attempt to collect. After the court was dismissed, he filed a new counter-suit claiming that his brother had been framed and that "when the Hongxing brokerage closed its doors and stopped business, my brother was let go, but even then Huo Rongtai forged a fake receipt and threatened him with it. They submitted to mediation and settled the affair, and this spring when Huo and his nephew fought, my brother was not on the scene."<sup>80</sup> Furthermore, Chen argued, after the court verdict Huo had refused further attempts at mediation. He begged the magistrate for another trial to clear up the issue. The magistrate's response was: "Respect the court verdict. There is no need to cause trouble through unnecessary suits." With this, the case ended.

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<sup>79</sup> SPABX: 25-5855; 8.

<sup>80</sup> SPABX: 25-5855; 9.

The one responsibility of the court in this case was determining the question of which of the defendants had acted as Huo's agent and then placing them under the burden of supervision by *yamen* runners until they could come to terms with the plaintiff. The magistrate had no stake in the nature of the settlement, nor even an obligation to monitor the settlement process. The mere fact of having placed both defendants under the obligation to settle was enough. Any attempt by the defendants to flaunt or confuse the settlement process could lead to further intervention by the court, continued custody, and even physical punishment for disobeying the magistrate's verdict. As long as the plaintiff was not satisfied by the cooperation of the defendants, the court was at his disposal to threaten them with further sanctions. Under these conditions, there was little need for the magistrate to demand reports about the outcome of the negotiation of a settlement, and, indeed, few of them remain on the record. The magistrate's work was finished before the real work of solving the issue had begun.<sup>81</sup>

## Conclusion

The intention of the Qing central court to protect market transaction from direct administrative oversight had the unintended consequence of introducing the legal notion of transitive responsibility to the court process. All manner of economic intermediaries became accountable to the local court system for participating in the resolution of commercial cases. The Qing solution for extending recourse to sojourning merchants through transitive responsibility not only brought licensed brokers in to the courts of Chongqing, but also opened up a host of commercial disputes to court enforcement.

In popular culture writings of the Qing, legal documents, and historical works, the figure of the broker has never been hailed as the hero or cornerstone of the late imperial market system. More often than not, *yahang* were reviled scapegoats for all of the ills of the Qing economy, accused of almost every

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<sup>81</sup> For the further argument about the relationship between magisterial judgments and the technical and local details surrounding the negotiation of commercial agreements and settlements, see Chapter 2.

form of corruption. But the high profile of condemnation for these intermediaries is more than just a clue to how they managed to abuse their positions for personal advantage despite imperial prohibitions; it is also a testament to the key role that they played in both transaction and dispute mediation. And the famous careers of embezzling licensed brokers notwithstanding, many of the empire's *yahang* filled exactly the function that they were intended to perform. The plentiful court records of cases involving brokers acting on behalf of their customers to pursue a debt from a defaulting client are an overwhelming testament to the critical role played by the empire's licensed intermediaries.

The simultaneous operation of the systems of collective and transitive responsibility bundled together the terms, conventions, individuals, and institutions that dictated each unique economic transaction with a uniform commitment from the local state to provide balanced access and redress to parties who were unable to negotiate systems of information and agreement on their own accord. The result was a legally-charged web of responsibility that crystallized with each act of transaction. Each transaction formed a small but concrete network of responsibility in a given place, and the local court in that jurisdiction was required to bind each individual together in a shared obligation to fulfill the commercial agreement that had been undertaken.

The equilibrium which followed produced results that strongly resembled arrangements in contract-based legal cultures. Defendants who were accused of defaulting on an agreement could be brought before the magistrate for a reckoning. But unlike those systems that relied upon the precise language of contract to dictate the terms of a settlement, Qing magistrates used local systems of collective responsibility to interpret information about the nature and validity of conflicting claims. Local sources of information gathering and validation, organized under the imperial system of collective responsibility, remained solely and strictly responsible for interpreting the truth of conflicting claims about the quality of a given transaction. The court retained its monopoly on the use of force and bore responsibility for requiring any and all parties to a transaction to cooperate with court-directed efforts at resolution, even at

the same time that those mediation efforts relied upon the work of collective responsibility forums outside of the courtroom.

The terms of court interaction with merchants were still mediated by the same factors that made commercial disputes “complicated matters.” Magistrates remained unable to apply legal force to the precise terms of commercial agreements when mitigating circumstances required a renegotiation of conditions. But they were able to require any participant in a transaction – including all manner of intermediaries – to participate in court-mandated processes of resolution (which will be covered in detail in Chapter 6).

This meant that, for many merchants facing litigation, the battle was not in the course of a trial, but rather in the careful maneuvering in suits and in the presentation of evidence before a case was called for examination. Parties to a suit struggled to get a case permitted on specific allegations or with precise claims about the role of each individual implicated in the accusations. Once a party fell under suspicion and a case was summoned, costly custody, curtailed freedom of movement, and litigation were sure to follow. The very threat of court scrutiny was often enough to trigger a settlement process before the case was brought before the magistrate. Many cases hinged on a summons alone and left the court as soon as this was obtained. The value of the court was not in its ability to sort out obligations, but to demand that responsible parties to do so.

CHAPTER 4:  
THE CULTIVATION OF LOCAL GOVERNMENT IN SICHUAN  
DURING A LONG CENTURY OF CRISIS (1775-1885)

There is more litigation in Sichuan than in any other province... In the past it was said that the people of Sichuan were magnanimous and simple. But these days they have grown degenerate. This is all because the offices of the local government have failed to maintain any semblance of discipline.

Liu Heng, Ba County magistrate from 1825 to 1828<sup>1</sup>

### **Introduction**

The nineteenth century is generally portrayed as the era in which “the government of China had grown steadily weaker, more ineffective, and more corrupt.”<sup>2</sup> It is known as an era of “administrative entropy”<sup>3</sup> and stands out in the history of the Qing as a century of “years of crisis (*années de crise*).”<sup>4</sup> In the study of Chinese history, it is broadly identified as the century of Qing dynastic decline. Different explanations about how and why the beginning of the end of the Qing took place in the nineteenth century have been offered by different scholars, but the majority focus on a dynamic tension between the prosperity of the first century of Qing rule – known as the High Qing – and the decline of state capacity in the era that followed. In particular the Qianlong-Jiaqing transition leading into the nineteenth century has

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<sup>1</sup> Liu Heng, “Ten Articles on Handling Litigation.”

<sup>2</sup> Mary Clabaugh Wright, *The Last Stand of Chinese Conservatism: The T'ung-Chih Restoration, 1862-1874* (Stanford: Stanford University Press 1957), 11.

<sup>3</sup> Philip Kuhn, “The T'uan-lien Local Defense System at The Time of The Taiping Rebellion,” *Harvard Journal of Asiatic Studies* 27 (1967), 228.

<sup>4</sup> Pierre-Étienne Will, “Histoire de la Chine Moderne,” Inaugural lecture, April 3, 1992, Collège de France, 762;

often been pinpointed as the watershed moment separating the prosperous High Qing from the nineteenth-century era of prolonged chaos and confusion.<sup>5</sup>

Assumptions about dynastic decline in the nineteenth century rely heavily on assumptions about two linear trends. First is the straightforward assertion that the prosperity of the Qianlong era led directly to steep population growth (it is estimated that, in the course of 60 years, the population doubled from around 150 million to around 300 million). Second is the assumption that, after more than a century of vigorous Qing rule, the emperors who took the throne in the nineteenth century were more or less uniformly helpless against a mounting trend toward corruption within the bureaucracy. The intersection of these two trends are supposed to have pushed the limits of the Qing bureaucracy beyond tenable bounds and finally tipped the scale toward inexorable decline. Starting from the nineteenth century, scholars agree, the dynamic growth of the empire was no longer managed properly by the central government, which became incapable of providing even basic services to its subject population.<sup>6</sup>

The White Lotus rebellion, which broke out in 1796 only months after the enthroning of the Jiaqing Emperor (r. 1796-1820), has long served as the symbol of this tension between growth and decline. The widespread anti-Qing rebellions that swept across the southwest (and similar uprisings in other parts of the empire) in the late eighteenth and early nineteenth centuries have been portrayed as both proof of and a further catalyst for the breakdown of a Qing bureaucracy no longer able to support, to

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<sup>5</sup> Susan Mann Jones and Philip Kuhn, "Dynastic Decline and the Roots of Rebellion," in John K. Fairbank, ed., *The Cambridge History of China*, Volume 10, "Late Ch'ing, 1800-1911, Part I," (Cambridge: Cambridge University Press), 107.

<sup>6</sup> For examples of this "expanding population, static bureaucracy" argument, see Seunghyun Han, "Re-Inventing Local Tradition: Politics, Culture, and Identity in Early 19<sup>th</sup> Century Suzhou," (PhD diss., Harvard University, 2005), iii, 4; Kwang-Ching Liu, "Nineteenth-Century China: The Disintegration of the Old Order and the Impact of the West," in Ping-ti Ho and Tang Tsou, eds. *China in Crisis: Volume 1: China's Heritage and the Communist Political System: Book One* (Chicago: University of Chicago Press, 1968), 93-106. The most recent and articulate of these arguments is presented by Wang Wensheng, who postulates that, as a result of population and state expansion in the Qianlong reign the Jiaqing emperor had no choice but to reign in administrative spending in the face of serious deficits. See Chapter 1 of Wensheng Wang, *White Lotus Rebels and South China Pirates: Crisis and Reform in the Qing Empire* (Cambridge: Harvard University Press, 2013).

harness, or to sustain the growth that had resulted from the first century of Manchu rule in China. This chapter follows recent works by focusing on the responses to crisis in the nineteenth century,<sup>7</sup> while articulating a new claim: that the administrative tensions of the nineteenth century were a critical stimulus for several state-building processes and that the result of this century of crisis was an administrative transformation centered on the cultivation of local government. I argue that this transformation was neither a sign nor a catalyst of state decline, but rather that it was a creative solution to the problems of High Qing statecraft and that it laid the foundation for the modernizing reforms of the twentieth century.

This chapter asserts that the ambitious aims of the High Qing state intersected with the austere fiscal and administrative policies of the eighteenth century to produce a serious resource crisis, which exaggerated the gulf between state commitments and local realities. The response to this resource crisis was that the gap between central demands and local resources was bridged by the growth of an illicit bureaucracy of *yamen* clerks and private staff, who were required to take over many of the administrative duties of the local state off of the books. The result of the arrogation of official duties by members of this illicit bureaucracy was a proliferation of *ad hoc* forms of governance and fundraising on the margins of legitimate state activity. Operating outside of normal bureaucratic support and constraints, this illicit administrative growth depended directly on the local population for material support. Unchecked by statutory bureaucratic strictures while at the same time indispensable to the operation of the local state, the illicit bureaucracies of the eighteenth century grew with little or no supervision in response to ambitious central demands of the High Qing era. I argue that it was this illicit bureaucratic growth and the eighteenth-century notions of political economy which necessitated it that led to pandemic social and administrative instability in the nineteenth century.

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<sup>7</sup> Some have focused on the crisis management of this era as unique and effective ways of forestalling doom. For examples of such an approach, see the essays collected in Robert J. Anthony and Jane Kate Leonard, eds. *Dragons, Tigers, and Dogs: Qing Crisis Management and the Boundaries of State Power in Late Imperial China* (Ithaca, NY: East Asia Program, Cornell University, 2002). Wensheng Wang, on pages 291 and 292 of his monograph, suggests that the nineteenth century resulted in more sustainable relationships between the central government and local systems of control. None have argued as I do here that the period was a productive era of state-building.



Many of the state-building efforts in the nineteenth century were framed in terms of crisis, as both central and local offices attempted to grapple with the problematic legacy of the High Qing. But I argue that, although there was no centrally-dicated and unified policy of reform, the innovations of the nineteenth century constituted a critical turning point in the development of local administrative institutions. In the nineteenth century, the gap between state commitments and state resources was bridged with new forms of administrative cooperation and experimentation that engaged both state and community resources. The local institutions that emerged from these joint administrative ventures were designed to curb the activities of the illicit bureaucracy, to rally the resources necessary for specific and basic tasks of governance at the local level, and to adapt the organization of local administration to local needs.

The emergence of new and powerful institutions of local governance was the result of repeated and overlapping cycles of innovation that followed the same basic sequence. First, a need or crisis was identified. In response, some group of individuals outside of the traditional statutory bureaucracy was delegated by the local state to marshal the resources required to respond to this need. In the process of organizing a means to fulfill this responsibility, rules or guidelines about handling similar crises in the future were negotiated between the local state and the individuals delegated to act on its behalf. The result was a proliferation of increasingly specialized, formal, and diverse local institutions throughout the province. Over time the needs and practices of each local administration were formalized, regulated, audited, and refined through this decentralized process of administrative triangulation.

In some ways this complicated form of state-building resembled a predatory cycle: state demands empowered brokers who then insinuated themselves into growing provincial and municipal bureaucracies. But to focus on the opportunities for graft that were generated from this state-building process is to

overlook the institutional significance of the innovations that resulted from it.<sup>8</sup> Indeed, it was only in this period that Chongqing finally began to emerge from over a century of chaos and administrative underdevelopment in the High Qing to begin the cultivation of sophisticated and dependable local systems of order. The end of the Qianlong era brought with it not the conclusion of an era of prosperity, but rather a climax of more than a century of desperate war and administrative dysfunction at the local level. Seen from the perspective of Chongqing, the outbreak of the White Lotus Rebellion (1795-1805), interpreted by others as a grim omen of dynastic collapse, instead seems more like the dying paroxysms of eighteenth-century systems of governance on the eve of an administrative transformation.

### **The Tipping Point: Rebellion at the End of the Eighteenth Century in Sichuan**

By the end of the eighteenth century the over-extension of military and civil resources in Sichuan had strained the precarious balance between state initiatives and government resources.<sup>9</sup> The mounting need for material support in the High Qing era of prolonged warfare had undermined the promise of the

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<sup>8</sup> Although most historians have dismissed this local proliferation of non-traditional modes of administration as mere corruption or decentralization, other historians have also pointed out the creative and positive potential of innovations in this period. Robert N. Weiss referred to the gap between bureaucratic rules and administrative practices in the nineteenth century as a realm of “administrative flexibility,” which was purposefully maintained to allow provincial authorities room to act both a) in accordance with specifically local needs and b) on the horizon of law/regulation production.. See Robert N. Weiss, “Flexibility in Provincial Government on the Eve of the Taiping Rebellion,” *Ch’ing-shih Wen-t’i*, 4, 3 (June, 1980): 1-42. Bradley Reed has conceptualized the cooperation between local government and “gentry” as an “augmentation of local administration via less formally constituted and centrally controlled mechanisms” which “represented a new articulation of political and social authority within informal administrative structures and practices” rather than “an incremental replacement of central state authority with that of a resurgent gentry.” See Bradley Ward Reed, “Gentry Activism in Nineteenth-Century Sichuan,” *Late Imperial China* 20, no. 2 (1999): 102-3. Marianne Bastid concluded that the proliferation of new actors in the administrative field “made the task of a unitary government even more difficult,” but that this shift precipitated the development: new state “machinery” had to be built on top of local networks, rather than out of purely state institutions. See Marianne Bastid, “The Structure of the Financial Institutions of the State in the Late Qing,” in *The Scope of State Power in China*, ed. S R. Schram (London : School of Oriental and African Studies, University of London, 1985), 51-79.

<sup>9</sup> For a picture of affairs in Sichuan at the end of the Qianlong reign, see Chapters 1, 2, and 3 of this work, as well as the final chapter of Dai’s “The Rise of the Southwestern Frontier.” For a detailed summary of the state of affairs throughout the empire at the turn of the nineteenth century (with an emphasis on the frontier regions), see Chapter 1 of Wang, *White Lotus Rebels and South China Pirates*.

elegant and sparing administrative reforms of the Yongzheng and Qianlong emperors (discussed in Chapters 2 and 3). Rather than reducing the burden of the administration, the constraints imposed in the eighteenth century forced local bureaucracies to finance their activities outside of sanctioned arenas. The operation of Sichuan's provincial and local bureaucracies took place further and further beyond the margins of normal bureaucratic procedure.

As statutory officials became less capable of handling the strenuous demands of the expanding state and its ambitious initiatives, a growing shadow bureaucracy staffed by illegitimate officials conducted more and more of the tasks of daily governance. The most common source of growth within the bureaucracy was the expansion of the ranks of *yamen* clerks, who performed official tasks on behalf of the state without salary, instead living on the fees and tips demanded from the subjects they encountered in the course of their duties.<sup>10</sup> The power of these illicit functionaries, who proliferated at every level, was derived from creative exploitation of the grey area between the authority of state offices and the complicated reality of *ad hoc* state expansion.<sup>11</sup> Reviled as the scourge of the empire, hundreds of thousands of individuals without official credentials began to fill the local offices and central ministries of the Qing to assist the statutory bureaucracy in its struggle to govern the empire.<sup>12</sup> The provision of local

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<sup>10</sup> Bradley Reed has referred to the proliferation of *yamen* employees as a “necessary illegitimacy.” See his *Talons and Teeth: County Clerks and Runners in the Qing Dynasty* (Stanford: Stanford University Press, 2000), 197.

<sup>11</sup> For a description of this set of problems, see David Faure, “Local Political Disturbances in Kiangsu Province, China, 1870-1911,” PhD diss., Princeton University (1976), 169-173 and Elisabeth Kaske, “Metropolitan Clerks and Venality in Qing China: The Great 1830 Forgery Case,” *T'oung-pao* 98, no.1 (2012): 217-269.

<sup>12</sup> Elisabeth Kaske, “Metropolitan Clerks and Venality in Qing China,” 241. By 1880, important posts – such as prefectural seats in busy urban centers – averaged several thousand clerks in administrative offices. See Bastid, “The Structure of the Financial Institutions of the State in the Late Qing,” 71. There were an estimated more than one and a half million clerks in the provinces and central bureaucracy of the second half of the nineteenth century. On p. 93 of *The Last Stand of Chinese Conservatism*, Wright gives the number 1,910,000. Bastid estimates her figures conservatively, reaching 1.5 million non-statutory administrators by the end of the nineteenth century. Even the central ministries were staffed with increasingly large numbers of non-statutory appointees, who made up around half of the staff of each board by 1895; for more on this see Bastid, “The Structure of the Financial Institutions of the State in the Late Qing,” 70.

services operated on an increasingly large margin of unplanned state activity in unchartered bureaucratic territory.

The operation of the illicit bureaucracy could be especially burdensome to the people, and often ran counter to the interests of both statutory officials and the subjects they governed. As early as the middle of the eighteenth century, the exploitative practices of the illicit bureaucracy began to drive members of communities throughout the empire off of the administrative grid. Some escaped to hinterlands and borderlands, and others – remaining in the villages and cities – formed bands and secret societies which resisted attempts at taxation and state penetration in increasingly daring ways. When news of underground communities engaged in resistance to the state reached the imperial court in the second half of the eighteenth century, the result was a spate of political persecutions and costly eradication campaigns.<sup>13</sup> Repression of groups deemed heterodox not only alienated the targeted communities but also exaggerated the burden borne by the populations required to pay for these new imperial campaigns. By the end of the eighteenth century the cycle of suppression and extraction triggered a series of “uprisings in response to the coercion of officialdom” (官逼民反) across the empire. The 1796-1804 White Lotus Rebellion was the largest and most costly of these episodes.

### *The White Lotus Rebellion in Sichuan*

The sources of bureaucratic strain and social disorder in Sichuan at the end of the High Qing were apparent from comparatively early on in the Qianlong reign. As early as 1748 the emperor expressed concern about the consequences of Sichuan’s long-term mobilization, recognizing that “Ever since the military campaigns in Sichuan began, the provincial authorities have required a great amount of material support for the war effort. Within the province, officials and their staff have become a plague upon the

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<sup>13</sup> Philip Kuhn, *Soulstealers: The Chinese Sorcery Scare of 1768* (Cambridge: Harvard University Press, 1992).

people, who cannot earn their living in peace.”<sup>14</sup> But even after signs of stress had reached all the way to the capital, the risk of a political crisis in the southwest remained secondary to military objectives in the region. The result of the strategic commitment of the Qing in the southwest was more than a century of sustained measures of extraordinary mobilization. The burden produced by almost constant warfare and administrative growth beyond the scope of normal bureaucratic checks pushed substantial sectors of the population to the edge of subsistence.

Although the conclusion of the Jinchuan campaigns in 1776 put a halt to warfare on the western border, tensions worsened in the last quarter of the eighteenth century as the gears of war screeched to a halt, and the creative momentum of the province’s society and economy lost its centripetal force. In the vacuum that resulted from the conclusion of the campaigns, crime and banditry spread across the province. Entire communities sought refuge from state extraction and criminal predation by retreating further and further into the mountainous recesses of Sichuan’s eastern borderland.<sup>15</sup> Many of these groups formed communities of refugees in the “Venerable Forest of Ba Mountains” (巴山老林) that straddled the boundaries between Sichuan, Shaanxi, and Hubei.<sup>16</sup>

There, on the edges of the Qing frontier, the desperately poor formed unlikely alliances with other marginal populations. New refugees to the area often struck precarious alliances with the *guolu* bandit populations that had long inhabited the region. They were also joined by military deserters, who fled to escape capture and punishment, and sometimes joined the *guolu* camps living in the hinterlands. To this mix of volatile populations was added the spark of Buddhist faith, when White Lotus sectarians joined the

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<sup>14</sup> QLSL: year 14, month 1, *dingmao* day.

<sup>15</sup> Wang, *White Lotus Rebels and South China Pirates*, 47-48.

<sup>16</sup> Wang Gang [王纲], *The History of Qing Dynasty Sichuan* [*Qing dai Sichuan shi* 清代四川史] (Chengdu: Chengdu keji daxue chubanshe, 1991), 955.

growing population of refugees after the persecution of their practice began in 1793.<sup>17</sup> Poor peasants, practitioners of the White Lotus tradition, *guolu* bandits, and military deserters were thus thrown together on the shrinking margins of the frontier. They composed a diverse community of Qing subjects who sought refuge from their own state.

This community of outsiders was unable to delay direct confrontation with the Qing state after the 1795 Miao rebellion broke out in the southwest. Military conflict in the region threatened to renew the vicious cycle of exploitation that accompanied war. All manner of illicit revenues were demanded from the population of Sichuan. It was alleged that, in the course of collecting the new levies, “unscrupulous officials and clerks send up one portion taxes for every ten that they collect, and engorge themselves on illicit profits through embezzlement.”<sup>18</sup> Shortly after the Qianlong Emperor resigned his throne in favor of the Jiaqing Emperor in the first month of 1796, violence broke out when the communities who had fled to the Sichuan-Hubei-Shaanxi border rebuffed efforts to collect taxes in support of campaigns against the Miao. Refusal to pay new levies escalated to full-scale armed conflict within months. In a chain of related incidents, uprisings spread over the course of the year, and the highlands became the base for a full-

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<sup>17</sup> It was from this constituency, of course, that the rebellion took its name, but the degree to which participants in the uprisings of the nineteenth century were inspired by religion is an open topic of discussion. For an overview of this topic, see Kwang-Ching Liu, “Religion and Politics in the White Lotus Rebellion of 1796 in Hubei,” in *Heterodoxy in Late Imperial China*, Kwang-Ching Liu and Richard Shek, eds. (Honolulu: University of Hawaii Press, 2004), 281-320; Blaine Campbell Gaustad, “Religious Sectarianism and the State in Mid Qing China: Background to the White Lotus Uprising of 1796-1804,” PhD diss., University of California, Berkeley 1994; and B. J. ter Haar’s *The White Lotus Teachings in Chinese Religious History* (Honolulu: University of Hawaii Press, 1999), especially pp. 247-304.

<sup>18</sup> Liang Shangguo (梁上國), “On the Basic Facts Concerning the Religious Rebels in Sichuan and Hubei” [*Lun Chuan-Chu jiaofei shiyi shu* 論川楚教匪事宜疏], from *juan 29* of the *Huangchao jingshi wenbian* [皇朝經世文編] As cited at Wang, *The History of Qing Dynasty Sichuan*, 964.

fledged rebellion.<sup>19</sup> By the end of the year, communities throughout the three provinces were engaging in both erratic and protracted forms of resistance to the Qing state.

The response to these conflicts under the early Jiaqing court (which remained dominated by the Qianlong Emperor and his supporters until 1799) only exaggerated the tensions plaguing the southwest. Troops overran the region once more, “charging to the east and attacking to the west, day after day without cease.”<sup>20</sup> Military suppression added fuel to the provincial war machine, which had never been dismantled. The mobilization of Qing forces led to further demands on the population, and the very troops charged with putting down the rebellion ignited further and more desperate forms of resistance.<sup>21</sup>

Costly imperial suppression efforts fueled further uprisings, and rebellion continued to spread throughout the southwest in the early Jiaqing years. Under the control of Heshen, the Qianlong Emperor’s favored courtier and a dominant court figure in the late eighteenth century, military funding and appointment were tied to sprawling networks of patronage. Heshen and his men managed funds for the war carelessly, giving out lavish rewards for minor military accomplishments and reporting material needs far in excess of actual expenses.<sup>22</sup> The cost of the war spun out of control, reaching 100 million taels in the first three years alone. By the time of the death of the Qianlong Emperor in 1799, the campaign to suppress the White Lotus rebellion had already overtaken the second Jinchuan war as the most costly military action in the history of the Qing dynasty.

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<sup>19</sup> For the details of the uprisings, see Yang Xianguo (杨先国), *The Events of the White Lotus Uprising* [*Bailianjiao qiyi shimo* 白莲教起义始末] (Chengdu: Sichuan minzu chubanshe, 1991); and Wang, *White Lotus Rebels and South China Pirates*.

<sup>20</sup> Wei Yuan [魏源] *Sheng wu ji* [圣武记], *juan* 9.

<sup>21</sup> For a fuller description of the problems plaguing the military response to the White Lotus uprising see Wang, *History of Qing Dynasty Sichuan*, 979-982.

<sup>22</sup> On Heshen’s role in the mismanagement of the suppression campaigns, see Wang, *History of Qing Dynasty Sichuan*, 195-215.

In 1798 the Jiaqing court was compelled to declare large-scale donation campaigns to replenish the exhausted imperial treasury.<sup>23</sup> The fundraising drives succeeded in raising millions of taels through the sale of office. But not even this unprecedented level of Qing fiscal mobilization sufficed to cover the expenses of imperial field armies. Indeed, reports indicated that rebellion only continued to spread. In 1800, in the fifth year of the suppression campaigns and at the beginning of his personal rule after the death of his father, the Jiaqing Emperor expressed an exasperated bewilderment: “Every day insurgents are killed, but never do their numbers dwindle. Every day our forces are strengthened, but never do their numbers increase! When will this business be finished?”<sup>24</sup>

### **The Growth and Consolidation of Local Institutions in the Nineteenth Century**

Exercising direct authority over the court for the first time in the final year of the eighteenth century, the Jiaqing Emperor was faced with grim prospects. Rebellion had exposed deep flaws in the territorial bureaucracy. In areas like the southwest, the shaky foundations of imperial control were threatened with final and complete destruction. Neither the military consolidation of the Kangxi Emperor nor the civil reforms of the Yongzheng Emperor nor the vigorous campaigns of the Qianlong Emperor had established a basis for the sustainable administration of the frontier regions. Military campaigns, local suppression efforts, and administration in much of the field took place in an atmosphere without even basic forms of regular administrative oversight. The exorbitant cost of White Lotus suppression had drained the imperial treasury. The military machine seemed to have jumped the imperial tracks, and neither the central court nor its subjects could bear the cost of it.

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<sup>23</sup> On these fundraising campaigns, see Elisabeth Kaske, “Fund-Raising Wars: Office Selling and Interprovincial Finance in Nineteenth Century China,” *Harvard Journal of Asiatic Studies* 71, no.1 (June 2011): 69-141

<sup>24</sup> As quoted on page 992 of Wang, *History of Qing Dynasty Sichuan*.



The Jiaqing Emperor made a declarative stance against the military complex in the first few months of his personal reign by sentencing Heshen to death. Several generals in the southwest were retired from the field and replaced by military officials who had proven themselves in battle. Crack troops were transferred in to execute efficient and quick campaigns against the rebels. Spending on White Lotus suppression was reined in drastically and many of the basic tasks of military suppression of rebellion were handed down to local governments, who were commanded to form local *tuanlian* (團練) militias.<sup>25</sup>

Within the civil bureaucracy, the court began to focus on the elimination of graft and the abuse of power at the local level. In 1799, the Jiaqing Emperor lifted the ban on filing appeals at the capital and required that each suit brought to Beijing be made available for his perusal.<sup>26</sup> He further demanded detailed reports on the suits coming before *yamen* in the provinces, so that he could review the causes for contention at the local level. Removing the constraints placed upon subjects filing complaints was a direct move toward supervision of the local state apparatus that had operated beyond central scrutiny for so long.<sup>27</sup> In addition to insisting on a greater attention to legal discipline at the local government level, the emperor demanded greater accountability for the fiscal disaster plaguing the territories.<sup>28</sup> Eschewing the

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<sup>25</sup> On the development and function of *tuanlian* systems in the White Lotus and Taiping eras, see Philip Kuhn, *Rebellion and its Enemies*; and “The T’uan-lien Local Defense System at The Time of The Taiping Rebellion.”

<sup>26</sup> *Edicts of the Jiaqing and Daoguang Courts* [*Jiaqing-Daoguang liang chao shangyu dang* 嘉庆道光两朝上谕档], edited by the Number One Historical Archives [*Zhongguo diyi lishi dang’an guan* 中国第一历史档案馆], vol. 4, 310-311.

<sup>27</sup> To deal with the increase in plaints and cases at every level that resulted from this official encouragement of voicing injustice, some provinces were required to set up bureaus dedicated to helping magistrates handle the growing case load. On the opening up of the appeal system as a Jiaqing-era measure of imperial supervision over the territorial bureaucracy, as well as some details about bureaus forhandling litigation, see Feng Yongming [冯永明] and Chang Bingxia [常冰霞], “Systems, Resources, and Law: The Multitude of Legal Cases in the Jiaqing Era and the Method of Dealing with them,” [*Zhidu, ziyuan, yu falü: Jiaqing nianjian de kongan fanduo yu yingdui zhi dao* 制度、资源与法律——嘉庆年间的控案繁多与应对之道], *Liaocheng Daxue xuebao (shehuikexueban)* [聊城大学学报 (社会科学版)] 6 (Oct., 2011): 36-41.

<sup>28</sup> In this era local officials were held directly responsible for paying back the deficits that had been accumulating at the county and prefectural levels for decades. See Zhang Xuemeng [张学檬] *A History of China’s Systems of Taxation* [*Zhongguo fuyi zhidu shi* 中国赋役制度史] (Xiamen: Fujian daxue chubanshe, 1994), 610-618.

ambitious imperial projects of the eighteenth century, the Jiaqing Emperor prioritized the search for a tenable balance between administrative commitments and resource claims.

The result of Jiaqing-era demands for local state accountability was an administrative proliferation at the provincial, prefectural, and county levels. The nineteenth-century expansion of the local state was fueled by two sources: expectant officials and bureau appointees. The appearance of a large pool of expectant officials (*houbu renyuanyuan* 候補人員)<sup>29</sup> was a result of the imperial fundraising drives that had begun in 1798, as tens of thousands of individuals increased their titles and rank modifiers for official office through purchase.<sup>30</sup> By the 1820s hundreds of men who had earned or purchased degrees but had not yet been appointed to office were sent to each provincial capital, where they could be appointed by provincial and prefectural administrators to serve on special commissions or as acting officials in statutory posts.<sup>31</sup>

At the same time that provincial and prefectural bureaucracies were vastly expanded by employing the labor of expectant officials, new forms of state-society coordination were fostered by the insistence of the Jiaqing court that the state withdraw from large-scale public works projects. No longer empowered to raise and direct funds for many local welfare and institutional projects, officials instead deputized wealthy community members (some of whom also happened to be expectant officials) to

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<sup>29</sup> The notion of an expectant official seems to have been a Qing invention. See Pierre-Étienne Will, “Expectant Officials in the Provincial Capitals in the Nineteenth Century,” unpublished draft (April 2009).

<sup>30</sup> From 1800 to 1820, provincial offices sold an average of 19,000 degrees per year. See the work of Tang Xianglong cited on p. 225 of Elisabeth Kaske, “Metropolitan Clerks and Venality in Qing China.” It has been estimated that, for the entire Qing, the number of degree sales must have reached over 1.5 million. See Lawrence Lok Cheung Zhang, “Power for a Price: Office Purchase, Elite Families and Status Maintenance in Qing China,” (PhD diss., Harvard University, 2010), 10.

<sup>31</sup> On the complex nature of the actual process of the acquiring office through the purchase of rank and privileges, see Zhang, “Power for a Price,” 38-46 and Elisabeth Kaske, “Fund-Raising Wars,” 83-85. On page 258 of her “Metropolitan Clerks and Venality in Qing China,” Kaske concludes that this entailed a “positive potential of venality as an agent of social mobility’ in a system whose “professed meritocratic equality... had not lived up to expectations for a long time.”

coordinate and manage these projects in cooperation with the state.<sup>32</sup> The community members in charge of these efforts often operated under the auspices of bureaus (*ju* 局) that received specific mandates from county, prefectural, or provincial officials.

The turn toward county-level management of state affairs spurred new forms of administrative growth. New local institutions sprang up to reclaim the spaces formerly inhabited by the illicit bureaucracy. These projects were staffed by new kinds of political actors and were influenced by a distinctly nineteenth-century combination of constraints and motivations. There seems to have been no formal imperial intent to radically alter the operation of the bureaucracy as a result of the Jiaqing-era reforms. But when the crises of the nineteenth century did not subside, these improvised administrative solutions matured into a full-fledged transformation of the operation and form of the local state.

#### *From Extraordinary Measures to Regular Measures in Extraordinary Times*

When, in 1804, the White Lotus Rebellion was declared over, the most pressing crisis of the Jiaqing reign was brought to an end. But before a full recovery could be made from the *fin-de-siècle* crises, new problems emerged. The Daoguang reign (1820-1850), for example, was marked by several instances of domestic and international aggression. The Turkish-speaking peoples of the northwestern province of Xinjiang rebelled in the first decade of the reign of the Daoguang Emperor, and in the second decade of his reign hostilities broke out on the southeastern boundaries of the Qing Empire when British merchants and soldiers clashed with the administrators in charge of eradicating the illegal opium trade in Canton. The resulting Opium War (1839-1840) led to the signing of the first of what came to be known as the “Unequal Treaties,” the 1842 Treaty of Nanjing, which entailed control of Hong Kong to the British,

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<sup>32</sup> Wang, *History of Qing Dynasty Sichuan*, 995. The quintessential example of this approach was the institution of *tuanlian* local militia forces. Intended to distribute the burden and responsibility of the war effort further away from the grasping expert hands in the central military apparatus, this strategy entailed the creation of local military troops based on the *baojia* system already implemented throughout the province. Communities became responsible for supporting their share of the defense effort, and became responsible for defending themselves against the deprivations of rebels. For details on the history of the organization of local militia (*tuanlian*) units, see Philip Kuhn, *Rebellion and its Enemies*, 37-63.

the end of the cohong system of controlled trade with foreign merchants, the opening of five treaty ports with low fixed tariffs, the granting of extraterritorial rights to foreigners, and an indemnity of 21 million silver dollars to the British crown. At the same time that negotiations with the British were concluding the Opium War, the Qing was also engaged in clashes on the southwestern frontier with the Sikh Empire in 1841 and 1842.

The danger of these border conflicts to the security of the Qing was heightened by the continued mounting of domestic turmoil in the Xianfeng era (1850-1861). It was in this period that the Qing's most powerful internal enemy – the rival state of the Heavenly Kingdom of Great Peace (*taiping tianguo*) – began its campaign against Manchu rule. Established in the province of Guangdong in January of 1851, the Heavenly Kingdom was led by a classically-educated scholar of Hakka background, Hong Xiuquan (1814-1864), who claimed to be the brother of Jesus Christ, and preached a millenarian faith based on a combination of Christian tracts and personal visions. In the eschatological formulation of Taiping cosmology, the Manchu elites of the Qing court were demonic forces threatening humanity, and nothing short of their extinction could save China from destruction. Shortly after the founding of the rival kingdom, its Taiping Army struck northward from its base in southeastern China, carving a path all the way up to the former capital of Nanjing, which was conquered and made the capital of the Heavenly Kingdom in 1853. Within two years of its founding, the Taiping Kingdom claimed two million subjects.

By the time that Taiping forces declared victory over the city of Nanjing, the Qing court was facing internal rebellion from other quarters as well. The local defense societies that had been raised in response to rebellions in the late eighteenth and early nineteenth centuries, for one, had grown in the intervening decades to an extent that they were no longer tools of the state. Several of these organizations skated a thin line between legitimate militia groups and powerful protection rackets. By the time these forces were called upon to defend Qing subjects against the Taiping rebels, many of them already held

unchallenged authority over the communities that they protected.<sup>33</sup> In the chaos of war and rebellion, some of these groups – especially the leagues of Nian (捻) militiamen in the Yellow River heartland – finally began to openly flaunt imperial authority by forming independent alliances and attacking towns held by Qing forces.<sup>34</sup> One particular group – the Small Sword society (*xiao dao hui* 小刀會) – managed to occupy the city of Shanghai from September 1853 to September 1855. In the 1860s the Long Spear society – once hired to fight against the bands of Nian mercenaries who had turned coat – themselves rose up in opposition to the Qing and reached a membership of over 50,000 before being suppressed in 1861.

Pressed by millenarian rebellion and the dissolution of the bonds of loyalty tying local defense groups to the Qing state in the 1850s the Xianfeng court was forced to countenance new forms of military mobilization. High-level Qing officials requesting permission to raise army units in their own home territories (in violation of Qing laws of avoidance) were given license to do so for the first time in the history of the dynasty. The first of these efforts was led by Zeng Guofan (曾國藩) in his native province of Hunan. Declared Commissioner of Local Defense (團練大臣 *tuanlian dachen*) by the Xianfeng court in 1852, Zeng recruited, trained, and commanded the Hunan Army (湘軍 *xiang jun*), which eventually grew to over 100,000 troops. In order to finance the growth of these provincial forces, in 1853 the central government granted permission to provinces to collect an *ad valorem* commercial tax, which became known as the *lijin*.<sup>35</sup> Almost immediately, provincial *lijin* revenues became the most lucrative source of state revenue.<sup>36</sup>

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<sup>33</sup> Philip A. Kuhn, “The Taiping Rebellion,” in *The Cambridge History of China* Vol. 10, 311-312.

<sup>34</sup> On Nian organizations and their resistance to the Qing state, see Elizabeth Perry, *Rebels and Revolutionaries in Northern China, 1845-1945* (Stanford: Stanford University Press, 1980).

<sup>35</sup> The new tax was simply called a “thousandth tax,” and employed the same name used by *yahang* to describe the surtax levied in Chongqing.

<sup>36</sup> See Luo Yudong (羅玉東), *China's Lijin History [Zhongguo lijin shi 中國釐金史]* (Taipei: Shangwu yinshu guan), vol. 2, 3-10.

In spite of these new and unprecedentedly large local defense initiatives and the millions of taels raised by provincial *lijin* taxes to support them, the Taiping campaigns continued to ravage the Qing Empire. After their conquest of Nanjing, the Taiping army made incursions as far north as Tianjin and cut a swath to the west through several provinces. In 1856, Taiping general Shi Dakai (石達開) led troops westward, clashing with Qing troops in Hunan, Hubei, Guizhou, Guangxi, and eventually Sichuan. In these tumultuous mid-century decades many of the non-Han groups populating Qing territories joined the melee. The Muslim populations of Yunnan rose up in the 1850s and fought with Qing forces until 1872. The Miao peoples of the southwest, which had risen up in reaction to bullying by Han residents of the era in the 1730s and again in the last decade of the eighteenth century, rose up again from 1854 to 1873. By the last quarter of the nineteenth century, not a single province in the empire had escaped one form or another of rebellion.

Foreign empires took advantage of the Qing domestic crises to pursue their own interests. The Russian Empire insisted upon several rounds of treaty negotiations over competing claims along the Qing northwestern border in the 1850s and 1860s and won several concessions from the beleaguered court. In 1856 the British, still dissatisfied with the terms of trade and diplomatic relations, found a new pretext for aggression and embarked upon the Second Opium War (1856-1860). This time joined by the French, British forces engaged in several skirmishes and aborted treaty negotiations with the Qing before, in the autumn of 1860, leading an expedition directly to the capital in Beijing. In October, Anglo-French troops arrived at the grounds of the 800-acre imperial Summer Palace on the outskirts of the capital, whereupon they looted its pavilions before burning them to the ground. That same month, Qing ministers ratified the Treaty of Tianjin, whose unsavory terms had been rejected in 1858, which promised new treaty ports, unrestricted travel of foreigners in the interior, the legalization of opium, and war indemnities to the British and French. The Xianfeng Emperor, who was forced to flee to the imperial summer residences in

Rehe (热河) during the Anglo-French attack on Beijing, died in August of 1861 before ever returning to the imperial capital.

### *Self-Strengthening and Administrative Proliferation*

The military, political, and fiscal resources required to meet the challenges of the mid-nineteenth century were staggering. When the Anglo-French offensive threatened the imperial residence in 1860, the court began to solicit opinions about the surest path to secure territorial integrity and national autonomy in the hostile century. The discourse of statecraft that emerged during this period emphasized the position of the Qing as one of many states struggling for supremacy in an era of global conflict. In light of the demands of this disharmonious age, many argued, the Qing must seek wealth and strength (*fuqiang* 富強) in order to survive. The rhetoric of reform melded with a growing fascination among Chinese intellectuals with Social Darwinist theories to form a discourse that was eventually known as Self-Strengthening (*zhiqiang* 自強).

Preoccupied with the most immediate threats to the security of the empire, early Self-Strengthening proposals focused on the immediate problems at hand. Many argued for the importance of the acquisition of Western military implements, the training of Chinese troops to employ current battle tactics, and the education of a new generation of specialists who could translate Western expertise in weapons, manufacturing, and sciences into practice in China.<sup>37</sup> Several of these proposed reforms were implemented by the same men who had received permission to raise their own troops: loyal and experienced political and military leaders such as Zeng Guofan, Zuo Zongtang (左宗棠), and Li

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<sup>37</sup> Prominent central court figures in the early stages of this movement tended to be associated with the *zongli yamen* – the imperial office of foreign affairs which was founded in 1861. On the general characteristics of the Self-Strengthening period see Ting-ye Kuo, “Self-strengthening: The Pursuit of Western Technology” in *The Cambridge History of China* Vol. 10, 491-542

Hongzhang (李鴻章).<sup>38</sup> With the permission of the court, these men raised “New Armies” (*xinjun* 新軍) of professional soldiers. The men in these units were organized by hired foreign experts, used weapons acquired from abroad, and were trained in accordance with the latest international standards.

The implementation of early military reforms was followed by larger debates about how to employ other categories of foreign expertise (generally labeled as *yangwu* 洋務, or “foreign matters”) in the defense of the Qing state.<sup>39</sup> In this larger framing of the notion of Self Strengthening, several prominent thinkers argued that economic development was the *sine qua non* of national superiority.<sup>40</sup> It became commonplace to assert that education, industrialization, improved infrastructure, and the exploitation of natural resources were essential components for establishing the domestic self-sufficiency that was required to weather the nineteenth-century storms.<sup>41</sup> Several Self-Strengthening officials undertook projects designed to update and expand the basic infrastructure of the empire: founding steamboat companies, constructing railroads, and building telegraphs. Beyond this, many further argued

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<sup>38</sup> For studies of the careers of specific individuals associated with the Self-Strengthening movement, see Richard J. Smith, “Foreign-Training and China’s Self-Strengthening: The Case of Feng-Huang-Shan, 1864-1873,” *Modern Asian Studies* 10, no. 2 (1976): 195-223; David Pong, “Keeping the Foochow Navy Yard Afloat: Government Finance and China’s Early Modern Defence Industry, 1866-75,” *Modern Asian Studies* 21, no. 1 (1987): 121-152; Thomas L. Kennedy, “Chang Chih-Tung and the Struggle for Strategic Industrialization: The Establishment of the Hanyang Arsenal, 1884-1895,” *Harvard Journal of Asiatic Studies* 33 (1973): 154-182; Kwang-ching Liu “The Confucian as Patriot and Pragmatist: Li Hung-chang’s Formative Years, 1823-1866,” *Harvard Journal of Asiatic Studies* 30 (1970): 5-45; Daniel H. Bays, “The Nature of Provincial Political Authority in Late Ch’ing Times: Chang Chih-Tung in Canton, 1884-1889,” *Modern Asian Studies* 4, no. 4 (1970): 325-347; Meribeth E. Cameron, “The Public Career of Chang Chih-Tung 1837-1909,” *Pacific Historical Review* 7, no. 3 (Sept., 1938): 187-210; Wellington K. K. Chan, “Bureaucratic Capital and Chou Hsüeh-Hsi in Late Ch’ing China,” *Modern Asian Studies* 11, no. 3 (1977): 427-439; Han-Yin Chen Shen, “Tseng Kuo-fan in Peking, 1840-1852: His Ideas on Statecraft and Reform,” *The Journal of Asian Studies* 27, no. 1 (Nov., 1967): 61-80; David Pong, *Shen Pao-chen and China’s Modernization in the Nineteenth Century* (Cambridge: Cambridge University Press 1994; and Samuel C. Chu and Kwang-Ching Liu, eds. *Li Hung-chang and China’s Early Modernization* (Armonk, New York: M. E. Sharpe 1994).

<sup>39</sup> On the *yangwu* movement, see Chapter 3 of Min Tu-Ki, *National Polity and Local Power: The Transformation of Late Imperial Power* (Cambridge: Harvard University Press, 1989).

<sup>40</sup> In 1863, Li Hongzhang concluded that the greatest danger facing China was “not so much military weakness as poverty.” As quoted on p. 39 of Kwang-ching Liu “The Confucian as Patriot and Pragmatist.” For a discussion of some of the various approaches to conceptualizing the role of economic development in the greater goals of Self-Strengthening, see Lloyd E. Eastman “Political Reformism in China Before the Sino-Japanese War,” *The Journal of Asian Studies* 27, no. 4 (Aug., 1968): 695-710.

<sup>41</sup> See, for example, Thomas L. Kennedy, “Chang Chih-Tung and the Struggle for Strategic Industrialization.”



that the government should actively participate in the growth of China's industry. Provincial administrations began to directly encourage the development of modern industries, funding cotton mills, match factories, textile plants, and glass manufactories. In order to secure the long-term benefits of economic growth, provincial officials also established schools, translation bureaus, and training programs to consolidate and increase gains in the military and industrial sectors.

Over the course of the second half of the nineteenth century, a host of new institutions arose to oversee the funding, administration, and promotion of these projects. Support for Self-Strengthening measures was pegged to the operation of an ever-expanding network of tax stations, municipal bureaus, and provincial fundraising measures. By the last decades of the nineteenth century, this remarkable growth of the funding and administrative apparatus at the local level was subjected to greater scrutiny from the imperial court as central officials began to express concern about the concentration of resources at the local level. As Imperial Censor Wu Shouling (吳壽齡) laid out in a memorial to the throne in the tenth year of the Guangxu reign (1884):

... In each of the provinces there are established bureaus (*ju* 局) of every kind.

Among those that have been reported to the Board of Revenue there are several dedicated to military needs, which include the General Reconstruction Bureau (善後總局), Branch Reconstruction Bureau (善后分局), General Military Material Bureau (軍需總局), General Expense Bureau (報銷總局), General Bureau for Defense Preparations (籌防總局), General Bureau for the Provision of Defensive Garrisons (防營支應總局), General Bureau for the Production and Management of Military Uniforms (軍裝製辦總局), General Bureau for the Manufacture of Powder and Munitions (造製藥鉛總局), Bureau for the Receipt and Shipment of Military Weapons and Ammunitions (收發軍械火藥局), Bureau for the Provision of Defense Troops (防軍支應局), Bureau for the Investigation, Handling, and Reckoning of Expenses (查辦銷算局), Bureau for the Transshipment of Military Weapons (軍械轉運局), *Tuanlian* Salary Bureau (練餉局), *Tuanlian* Defense Bureau (團防局), Expenses and Remittances Bureau (支發局), Receipt and Storage Bureau (收放局), Transshipment Bureau (轉運局), Purchase and Shipment Bureau (採運局), Military Material Bureau (軍需局), Military Munitions Bureau (軍械局), Weapons and Munitions Bureau (軍火局), Military Uniform Bureau (軍裝局), and Material Office (軍器所).

Those dedicated to implementing foreign projects (洋務) include the Foreign Projects Bureau (洋務局), Machine Bureau (機器局), Machine Manufacture Bureau (機

器製造局), Telegraph Bureau (電報局), Electrical Wiring Bureau (電線局), Steamship Provisions Bureau (輪船支應局), and Steamship Operations and Drill Bureau (輪船操練局).

Those dedicated to local projects include the Bureau for Thorough Reckoning of the Provincial Warehouse (清查藩庫局), Garrison Fields Bureau (營田局), Bureau for the Promotion of Land Reclamation (招墾局), Bureau for the Management of Fallow Official Lands (官荒局), Reception Bureau (交代局), Pure Source Bureau (清源局), Preparation for Court Examination Bureau (發審局), Pending Court Examination Office (候審所), Litigation Management Bureau (清訟局), Taxation Officials Bureau (課吏局), Baojia Bureau (保甲局), Public Bureau for the Reception of Orphaned Youth (收養幼孩公局), Public Relief Hall (普濟堂), Hall for the Spread of Benevolence (廣仁堂), Steel Donation Bureau (鐵絹局), Silk Thread Bureau (桑線局), Bureau for the Cessation of Opium Use (戒菸局), Periodical Printing Bureau (刊刻刷), Publications Bureau (印書局), Reception Office (採訪所), Bureau for the Reception of the Loyal and Frugal (採訪忠節局), and Bureau for the Reception of the Loyal and Righteous (採訪忠義局).

Those dedicated to the maintenance of the salt monopoly include all manner of Salt Bureaus (鹽局), Shipment Bureaus (運局), and Supervisory Sales Bureaus (督銷局).

Apart from *lijin* stations, there are also *Yahang Lijin* Bureaus (牙厘局) in addition to Commodity *Lijin* Bureaus (百貨釐金局), and Bureaus for the Management of Opium Contributions (洋藥厘捐局).

The local branch bureaus are too many to enumerate. And the number of those bureaus which have never even been reported to the Board cannot be known. But every time some affair requires exclusive delegation (有事應責成), the provincial and local officials are compelled to establish yet another “bureau” in order to dispose of the talents of unemployed officials. So long as there are individuals responsible at the local level then the officials can place themselves outside of these affairs (有地方之責者反可置身事外). The bureaus proliferate as trees in a forest – there is no limit whatsoever!<sup>42</sup>

Examining the growing network of local institutions in the last quarter of the nineteenth century, the view of the field had completely changed from a century before. While *yamen* clerks still performed many functions for local offices throughout the empire, a lion’s share of the work of administration and fundraising now took place under the guidance of expectant officials or locals working in state-sanctioned bureaus.

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<sup>42</sup>*Huangchao jingshi wen xu bian* [皇朝經世文續編, hereafter HCJSWXB] *juan* 26, “Memorial Outlining Regulations for Broadening the Source and Restricting the Flow” [*zou chen kaiyuanjeliu zhangcheng* 奏陳開源節流章程]

Indeed, state revenue practices had been profoundly altered by the administrative transformation of the nineteenth century. By the turn of the twentieth century, the ratio of income from land tax to income from commercial taxes had completely flipped: although the land tax revenues had roughly doubled, going from 54.2 million taels in 1753 to 102.4 million taels in 1908, the agricultural tax share as a portion of total revenue dropped from 73.5% to 35% over the same period, as locally-collected commercial taxes increased more than 950% to occupy the lion's share of state income.<sup>43</sup> These gains, and other fundraising initiatives, translated to steep increases in imperial revenues.<sup>44</sup> The effort to control the resources exploited by the illicit bureaucracy at the turn of the nineteenth century had led to an unprecedented mobilization of fiscal resources. By the end of the nineteenth century new and unprecedentedly large sources of revenue had been opened to legitimate exploitation by provincial and local authorities. So many projects and resources were now under the direct control of the local state that some central officials began to demand a higher level of imperial supervision over these local projects.

The demands for increased central oversight of local finances took place in a period of continued economic strain. The trials of war and rebellion had taken their toll on the imperial treasury: not even the massively increased revenue was enough to stay in the black. Millions of taels were required to finance Self-Strengthening projects of defense, industry, and infrastructure. And the cost of warfare continued to mount in the face of persistent domestic unrest. In 1862 the Muslim populations of the northwestern provinces of Gansu, Shaanxi, Ningxia, and Xinjiang also rose up against the Qing and clashed with imperial forces for more than a decade before being quelled in 1873. The sprawling network of Nian

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<sup>43</sup> Yeh-Chien Wang "The Fiscal Importance of the Land Tax During the Ch'ing Period," *The Journal of Asian Studies* 30, no. 4 (Aug., 1971): 829-842.

<sup>44</sup> The "regular" yearly intake of the Board of Revenue (戶部的常年財政收入) went from approximately 42,000,000 taels in the Daoguang era (1820 to 1850), to more than twice that amount by the year 1893, when annual revenues amounted to more than 88,979,000 taels. See Zhou Yumin (周育民) *Late Qing Government Finance and Social Change* [*Wan Qing caizheng yu shehui bianqian* 晚清财政与社会变迁] (Shanghai: Renmin chubanshe 2000), 236.

confederacies in the North, which had been harassing Qing cities for over a decade, were not defeated until 1868.

Further border conflicts with Japan on the southeastern seas and Russia in the Ili valley led to military clashes and treaty negotiations in the 1870s and 1880s. French incursions into Vietnam and Cambodia provoked the 1884-1885 Sino-French War, which resulted in a painful compromise for the Qing court: after centuries of tributary relations between Chinese empires and Southeast Asian states, the Qing was forced to agree to relinquish all claims to territory and influence beyond the China-Vietnam border. Foreign indemnities continued to mount in the face of military defeats. The Qing court was forced to borrow tens of millions of ounces of silver from foreign governments.<sup>45</sup> The burden of paying the interest on Qing debt fell to provincial administrations.

By the last quarter of the nineteenth century, when the majority of conflicts died down, the Qing state had won a fragile peace at a very high cost. The struggle to maintain the empire had required unprecedented mobilization of the state at the local level and had transformed the basic structure of the imperial bureaucracy. The austere administrative policies of the High Qing had been entirely forsaken, and new sources of central state revenue were now being exploited at a level that would have been hard to imagine at the beginning of the century. The administrative institutions created in the process had pulled the state so deep into local networks of authority that a graceful withdrawal from newly-forged channels of authority was impossible. Neither the implications nor the future of this transformation had been carefully plotted out in advance, as the ramifications of adaptations to each crisis unfolded in different administrative environments throughout the empire. As it emerged from a century of crisis to face some of its greatest challenges in the decades before and after the turn of the twentieth century, the Qing state was a complicated, uneven, sprawling mass of institutions that overlapped, intersected, and twisted into one another at all angles.

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<sup>45</sup> Zhou, *Late Qing Government Finance*, 284.

## The Literature of Dynastic Decline

In scholarly work on the nineteenth century, institutional growth at the local level has generally been portrayed as a sign of declining state capacity and increased political control by actors at the local level. These dual trends of decreasing central state influence and expanding fields of local political engagement are supposed to have triggered a cycle of dynastic decline and created a host of problems at the local level including corruption, inefficiency, factionalism, and political strife. The diverging political interests of important local and central-level state actors is presumed to have created an irreconcilable political discord that led to revolution in the early twentieth century.<sup>46</sup>

The mounting political crisis that eventually toppled the dynasty is thus directly attributed to the expansion of political activism at the local level. As discussed above, this expansion took place in roughly two ways: the expansion of the local territorial bureaucracy and the growth of local participation in government. Scholars who emphasize the threat of local bureaucratic expansion as a catalyst for imperial decline argue that the loss of central legitimacy by the turn of the twentieth century was the result of the rise of strong provincial authorities. I label this thesis the “regionalism” perspective on the nineteenth century.

Proponents of the “regionalism” hypothesis of state decline follow the arguments of many nineteenth-century officials that the large-scale sale of degree and rank beginning in the era of the White Lotus rebellion entailed fewer available positions for qualified individuals and more opportunities for the advancement of men whose background, education, and motives were questionable at best.<sup>47</sup> The

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<sup>46</sup> On this “constitutional crisis,” see Philip Kuhn, *Origins of the Modern Chinese State* (Stanford: Stanford University Press, 2002).

<sup>47</sup> For historical and contemporary evaluations of the notion that the sale of rank and office diminished the quality of the pool of officials, see Kwang-Ching Liu, “Nineteenth-Century China,” 116; Jonathan K. Ocko, *Bureaucratic Reform in Provincial China: Ting Jih-ch’ang in Restoration Kiangsu, 1867-1870* (Cambridge: Harvard University

widespread purchase of degrees is thus supposed to have led to a substantive shift in the composition of the *shenshi* (紳士) class of titled men, which swelled with individuals from military and commercial backgrounds.<sup>48</sup> By the turn of the century it became common for men in the capital to complain that the ranks of officialdom were half full of men of quality and half full of petty men (小人).<sup>49</sup> Overrun by individuals who had purchased office, appointment and performance were supposed to be defined by “exploitation, careerism, and inefficiency.”<sup>50</sup>

At the top of the bloated bureaucracies of the nineteenth century, the argument goes, sat the men who held real power: high-level provincial officials. Those who advocate the “regionalism” thesis tend to cite the Taiping rebellion (1850-1864) as the crisis that defined the rest of the century because it was the need to suppress this prolonged domestic rebellion that led to two large concessions to the provincial government: control over both the management of new standing armies and the administration of new commercial taxes.<sup>51</sup> Scholars have concluded that, once military and fiscal authority was invested in

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Press, 1983), 151; Mary C. Wright *The Last Stand*, 85-87; Kwang-Ching Liu “The Ch’ing Restoration” in *The Cambridge History of China* Vol. 10, 478; David Pong, *Shen Pao-Chen*, 309-310; and Pierre-Étienne Will, “Expectant Officials in the Provincial Capitals in the Nineteenth Century.”

<sup>48</sup> Kwang-Ching Liu, “Nineteenth-Century China,” 121. On the status of the *shenshi* class, see Yung-Teh Chow, *Social Mobility in Traditional Chinese Society: Community and Class* (New Brunswick and London: Transaction Publishers 2011), 3.

<sup>49</sup> Feng Guifen (馮桂芬), “On Changing the Donation Regulations” [*bian juan li yi* 變捐例議], in *Remarks of Protest from Jiaopin Studio* [校邠廬抗議].

<sup>50</sup> Susan Mann Jones and Philip Kuhn, “Dynastic Decline and the Roots of Rebellion,” in John K. Fairbank, ed., *The Cambridge History of China*, vol.10, 107.

<sup>51</sup> A classic statement of this thesis may be found in Franz Michael, “Military Organization and Power Structure of China during the Taiping Rebellion,” *Pacific Historical Review* 18, no. 4 (Nov., 1949): 469-483. See also Richard J. Smith, “Foreign-Training and China’s Self-Strengthening.” The fiscal aspect of this story is most prominent in the work of Hans J. van de Ven, who has argued that the decentralization of fiscal and military control marked not only the late Qing but also its successor states in the twentieth century. See Hans J. van de Ven, “Public Finance and the Rise of Warlordism,” In “War in Modern China,” *Modern Asian Studies* 30, no. 4, (Oct., 1996): 829-868. In other formulations, it was the increasingly marked inability of the nineteenth-century central government to provide for the needs of local administrations that led members of the territorial bureaucracy to seek their own forms of funding. See James T. K. Wu “The Impact of the Taiping Rebellion upon the Manchu Fiscal System,” *Pacific Historical Review* 19, no. 3 (Aug., 1950): 265-275. On the other hand, Elisabeth Kaske, has demonstrated that the complex

provincial groups, it was only a matter of time before the central court lost its political claim to legitimate rule, as the performance of the most vital tasks of governance were already invested in provincial bureaucracies.<sup>52</sup> Thus, some contend it was no coincidence that the 1911 revolution was actively supported by the new provincial armies and that provincial military leaders went on to dominate national and local politics in the early republic.

In contrast to this set of claims, the second group of scholars – whose views I treat under the rubric of the “localism” hypothesis – propose that a more serious challenge to the Qing state was presented by the increasingly widespread forms of political activism practiced by local elites throughout the empire in the nineteenth century. Historians who argue on the side of the “localism” hypothesis point out that the vacuum left by the withdrawal of the imperial state from large local projects opened up new opportunities for political expression and activism within the locale, which led to the steady replacement

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fiscal picture of the nineteenth century cannot be explained by a simple trade-off between central and provincial authority. See Kaske, “Fund-Raising Wars.”

<sup>52</sup> The men who filled these new offices – all of which were non-statutory appointments for “delegates” (*weiyuan* 委員) – were appointed by provincial authorities without the need of approval of the Board of Personnel. See Bastid, “The Structure of the Financial Institutions of the State in the Late Qing,” 66; Chen Yaping (陈亚平) *The Social Role of Merchants in the Eyes of Qing Law* [*Qing dai falü shiye zhong de shangren shehui juese* 清代法律视野中的商人社会角色] (Beijing: Zhongguo shehuixue chubanshe, 2004), 220. One scholar even refers to the expectant officials acting as delegates as the “personal agents” of the governor and other provincial bureaucrats. See Weiss, “Flexibility in Provincial Government on the Eve of the Taiping Rebellion,” 13. The relative importance of the provincial bureaucracy is situated not only in its proliferation, but in the fact that the tenure of provincial appointees was much longer than officials appointed by the central Board of Revenue. See Pierre-Étienne Will, “Expectant Officials in the Provincial Capitals in the Nineteenth Century.” On the appointment of expectant officials to posts within the provinces see Weiss, “Flexibility in Provincial Government on the Eve of the Taiping Rebellion,” 1-4. On page 6 of this article, Weiss calculates that, in 1853 Hunan, “the Board controlled appointments to fifty positions (sixty percent), while the governor filled thirty-four (forty percent) of the 84 posts.” Ho Ping-ti notes that the number of positions staffed by officials who had purchased rank rose from 29% in 1840 to 49% in 1895 as the number of local bureaucratic positions held by men who had purchased their rank more than doubled in the same period. See Ho, *Ladder of Success*, 49. By the second half of the nineteenth century, high-level officials associated with the “pure criticism” (*qingyi* 清議) school began to suggest that the bureaucracy had been crippled by the influx of untalented men. On the *qingyi* reaction to the political developments of the nineteenth century, see Philip A. Kuhn, “Ideas Behind China’s Modern State,” *Harvard Journal of Asiatic Studies*, Vol. 55, No. 2 (Dec. 1995), pp. 295-337.

of “high Qing state-activism” with “late Qing elite-activism.”<sup>53</sup> Throughout the course of the nineteenth century, the state developed more elaborate ways of encouraging and rewarding community activism, and local communities throughout the empire took over the management of water conservancy projects, the maintenance of community granaries, and the organization of a wide range of local charities within their jurisdictions.<sup>54</sup> The rise of “gentry” or “elite” activism in this period is juxtaposed against the withdrawal of imperial management from many spheres of public welfare and local defense to argue that the growth of community activism in this era took place as a direct result of diminished state control in a zero-sum game for control over the empire.<sup>55</sup>

In this framing, the growth of the provincial machines in the middle of the nineteenth century led to an even more critical shift: the development of a new stratum of local power-holders, whose community activism was sanctioned by purchased rank, based on local affiliations, financed by local resources, and directly contrasted with the center’s lack of political engagement. Several scholars have suggested that the very nature of political activism changed in this period and that the Qing state became less able to demand loyalty from increasingly disaffected political elites.<sup>56</sup> The growing involvement of

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<sup>53</sup> Wang, *White Lotus Rebels and South China Pirates*, 299-230. On the decrease of central state activism in the provision of social services and performance of public works, see R. Bin Wong and Pierre-Étienne Will, *Nourish the People: The State Civilian Granary System in China, 1650-1850* with James Lee, contributions by Jean C. Oi and Peter C. Purdue; Michigan Monograph Series 60 (Ann Arbor: Center for Chinese Studies, The University of Michigan, 1991) 86-92 and 96-97; and Han, “Re-Inventing Local Tradition,” 23.

<sup>54</sup> Han “Re-Inventing Local Tradition,” 82 and 55.

<sup>55</sup> James Polachek, “Gentry Hegemony: Soochow in the T’ung-chih Restoration,” in *Conflict and Control in Late Imperial China*, Frederic Wakeman, Jr. and Carolyn Grant, eds. (Berkeley: University of California Press, 1976), 211-256; Mary Backus Rankin, *Elite Activism and Political Transformation in China: Zhejiang Province, 1865-1911* (Stanford: Stanford University Press, 1986), 15-27.

<sup>56</sup> The classic formulation of this thesis is by Wright, who concludes in her monograph on the Tongzhi Restoration that the main crisis facing the late Qing state was one of a political and philosophical nature. For a different take on this argument, see Kuhn *Origins of the Modern Chinese State*; Albert Feuerwerker, *Rebellion in Nineteenth-Century China*, (Ann Arbor: Center for Chinese Studies 1975), 95-96; William T. Rowe, *Hankow: Commerce and Society in a Chinese City, 1796-1889*, (Stanford: Stanford University Press 1984), 105, 337. In one widely contested formulation of this thesis, several scholars argued that this shift resulted in the development of a “public sphere,” which widened the spectrum and scale of political participation in the late Qing and directly contributed to the



nineteenth-century elites in local affairs is supposed to have eventually led to a direct conflict of interest between the central state and the local elites who refused to surrender their newfound authority, and were instead pushed toward revolution.<sup>57</sup> The step-by-step desertion of the state over the course of the nineteenth century, according to this argument, rendered not only the daily functions of the state but also its legitimacy over to a new group of political actors, who would eventually pave the road toward the destruction of the state itself.<sup>58</sup>

### **The Golden Age of Administration: A New Perspective on the Nineteenth Century**

Scholarship on Qing dynastic decline has combined to produce a nuanced picture of the troubles faced by the Manchu state at end of the nineteenth century. But the general scholarly inclination to foreshadow the twentieth-century collapse of the Qing state has obscured the important history of institutional growth in this era of crisis.<sup>59</sup> The remainder of this chapter will highlight how the challenges of the nineteenth century promoted the development of diverse and sophisticated institutions of municipal administration throughout the empire. Many of the innovations of the nineteenth-century state were, in fact, the result of the very crises that are credited with triggering the political downfall of the Qing state.

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political crisis of the early twentieth century. See Rankin, *Elite Activism*; and William T. Rowe, "The Problem of 'Civil Society' in Late Imperial China," *Modern China* 19, no.2 (1993): 139-57.

<sup>57</sup> See Franz Michael, "State and Society in Nineteenth-Century China," *World Politics* 7, no. 3. (Apr., 1955): 419-433.

<sup>58</sup> Joseph Fewsmith, "From Guild to Interest Group: The Transformation of Public and Private in Late Qing China," *Comparative Studies in Society and History* 25, no. 4 (Oct., 1983), 619.

<sup>59</sup> Some of the few scholars to have studied the period from this perspective are Pierre-Étienne Will, who has argued that the proliferation of administrative manuals in the nineteenth century marked an expansion of the late imperial Chinese state-building activities (see his "From Political Theory to Administrative Reality: Researching Late Imperial Chinese Official Handbooks and Working Aids," Tuesday, November 4, 2013, UCLA.); Keith Schoppa, whose *Chinese Elites and Political Change: Zhejiang Province in the Early Twentieth Century* (Cambridge: Harvard University Press 1982) and subsequent works have taken a detailed and critical approach to the examination of local political activities; and Elisabeth Kaske, who has framed the history of non-statutory bureaucratic expansion as a purposeful tactic to approach the challenges of the nineteenth century. In this chapter I rely heavily upon the research of these scholars in order to present this new interpretation.

Officials struggling to cope with the legacy of High Qing policies under nineteenth-century constraints sought out new institutions which could strike a balance between local needs, provincial resources, and central directives. The result was a shift from the High Qing emphasis on administrative non-interference in local communities to a focus on creative deployment of local resources to solve state problems.

This shift in political and administrative framing is documented by the emergence and proliferation of the school of “practical statecraft” (*jingshi*) in the nineteenth century. The *jingshi* school, which is primarily associated with the scholar-official Wei Yuan (1794-1857) and his 1826 *Huangchao jingshi wenbian* (Collected Writings on Statecraft from Our August Dynasty), emphasized concrete problems of governance, the efficient conduct of local administration, and the cultivation of the technical and professional skills of the bureaucratic elite.<sup>60</sup> The popularity of *jingshi* writings in the nineteenth century is a testament to both the growth of the local bureaucracy, the spread of concern about making pragmatic and flexible decisions about the performance of tasks handled by the local government, and widespread experimentation with new forms of governance and administration within communities across the empire.<sup>61</sup>

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<sup>60</sup> On the popular reception of this text, others like it, and the growth of practical statecraft discussions in the larger commercial press, see Andrea Janku “Preparing the Ground for Revolutionary Discourse from the Statecraft Anthologies to the Periodical Press in Nineteenth-Century China [Aux origines du discours révolutionnaire: des anthologies sur l’art de gouverner à la presse périodique dans la Chine du XIXe siècle],” *T’oung Pao*, Second Series 90, Fasc. 1/3 (2004): 65-121. On the situation of this text within the larger context of late Qing intellectual trends, see Benjamin A. Elman, “The Relevance of Sung Learning in the Late Ch’ing: Wei Yuan and the *Huang-ch’ao Ching-shih Wen-pien*,” *Late Imperial China* 9, no. 2 (December 1988): 56-85 and Shen, “Tseng Kuo-fan in Peking.” On the statecraft thought of the nineteenth century, see also Kuhn, “Ideas Behind China’s Modern State.” On the utilitarian approach of the statecraft school, see Peter M. Mitchell “The Limits of Reformism: Wei Yüan’s Reaction to Western Intrusion,” *Modern Asian Studies* 6, no. 2 (1972): 175-204.

<sup>61</sup> On the popularity of statecraft through among the members of the lower ranks of the bureaucracy and those below, see also Mitchell, “The Limits of Reformism,” 182. On the emphasis on local government inherent in the philosophy of the school of practical statecraft, see Shen, “Tseng Kuo-fan in Peking,” 68.

## The Cultivation of Local Government in Sichuan

In Chongqing and the greater southwest, efforts to confront the crises of the nineteenth century slowly reversed the logic that had dictated state priorities up to that point. The Jiaqing and the Daoguang eras spanning from 1796 to 1850 were critical periods for reassessing the legacies of the eighteenth century and laying the groundwork for new institutions to govern the territory. The opening up of new avenues into bureaucratic positions – even non-statutory ones – both allowed a new stratum of society to participate in local affairs and increased the powers of the state by extending official purview over a host of new local projects. In this period the operation of “gentry management under official supervision” (*guandu shenban*) initiatives meant that, even though the statutory bureaucracy itself did not grow, the number of men acting legitimately on its behalf expanded to increase the administrative infrastructure of the historically under-governed city.<sup>62</sup> The state’s ability to monitor and direct activities beyond its statutory limits increased exponentially.<sup>63</sup> In the course of time and use, municipal and provincial institutions became more specialized, more heavily regulated, and more integrated into the bureaucracy.<sup>64</sup> By the end of the century, magistrates – once considered the sole representatives of the government at the local level<sup>65</sup> – began to operate more and more as merely single players in a much larger cast of officials, commissioners, non-statutory appointees, and community members engaged in local administration.<sup>66</sup>

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<sup>62</sup> On the thinness of administrative claims in Chongqing, see Chapter One of this work.

<sup>63</sup> On the way that the expanded sub-county bureaucracy expanded the abilities of the local administration in another context, see Robert J. Anthony, “Subcounty Officials, the State, and Local Communities in Guangdong Province, 1644-1860,” 27-59 in Anthony and Leonard, eds. *Dragons, Tigers, and Dogs*.

<sup>64</sup> These qualities of nineteenth-century institutions are also mentioned in Bastid, “The Structure of the Financial Institutions of the State in the Late Qing,” 72; and Reed, “Gentry Activism in Nineteenth-Century Sichuan,” 101. They are also noted in William T. Rowe, *Hankow: Conflict and Community in a Chinese City, 1796-1895* (Stanford: Stanford University Press 1992), 128; and Franz Michael, “State and Society in Nineteenth-Century China,” *World Politics* 7, no. 3 (Apr., 1955): 419-433.

<sup>65</sup> On the role of the magistrate at the county level, see John R. Watt, *The District Magistrate in Late Imperial China* (Studies of the East Asian Institute (New York: Columbia University Press 1972) and T’ung-tsu Ch’u *Local Government in China under the Ch’ing* (Cambridge: Harvard University Press 1962).

*The Reclamation of the Fallow Field and the Cultivation of New Administrative Plots*

By the beginning of the nineteenth century, the administrative austerity of the High Qing had given rise to an unwieldy illicit bureaucracy. When Liu Heng arrived to assume his position as Ba county magistrate in 1825, he reported finding over 7,000 illicit officials associated with the county *yamen*.<sup>67</sup> The early nineteenth-century state, its treasuries drained by the costly suppression of rebellion, could ill afford to co-opt these petty illicit officials by placing them on government salaries and creating an entire supervisory and statutory system to replace or integrate their functions. Officials at all levels expressed concern about policing the activities of the illicit bureaucracy and the men in charge of establishing legal order in the province. Memorials and complaints about the quality, habits, and misdeeds of Sichuan's officials in particular were routine in the nineteenth century. Reports from the field administration were met with incredulity.<sup>68</sup> There were several calls for the investigation and punishment of corrupt practices in Sichuan.<sup>69</sup>

The *ad hoc* and unsupervised nature of fundraising, administration, and promotion in the frontier province made it almost impossible for central officials to oversee the operation of the bureaucracy in the southwest. The desires of central officials to rectify the abuses of Sichuan's bureaucracy were checked by

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<sup>66</sup> This trend was exaggerated by a sharp decrease in the length of the average tenure of magistrates over the course of the nineteenth century. For a detailed discussion of this shift, see Weiss, "Flexibility in Provincial Government on the Eve of the Taiping Rebellion," 15-17. On page 29 of his *Talons and Teeth*, Reed calculates that between 1852 and 1899, 33 men were appointed to the position of Ba county magistrate – falling far short of the statutory 3 years of service in a county magistracy that was mandated.

<sup>67</sup> "Biography 265" [*Lie zhuan erbailiushiwu* 列傳二百六十五] of the *Draft History of the Qing* [*Qing shi gao* 清史稿]; and *A Book for Officials on Governance and Discipline* [*Zizhi guanshu* 自治官書], attributed to Liu Heng, 1830 preface.

<sup>68</sup> See, for example, JQSL: year 4, month 1, *xuzi* day.

<sup>69</sup> See, for example, JQSL: year 4, month 8, *guimao* day; year 5, month 2, *guimao* day; year 17, month 3, monthly summary; year 17, month 2, *jiyou* day; year 22, month 12, *xinwei* day; year 23, month 11, *jiachen* day; *Veritable Records of the Daoguang Emperor* [*Xiao Min Cheng huangdi shilu* 孝敏成皇帝實錄, hereafter DGSL] year 3, month 13, *dingyou* day; year 16, month 8, *guichou* day.

insuperable barriers separating the central court from the administration in the southwest and the lack of resources to overcome them. Incapable of re-inventing the administration entirely from scratch, the abusive practices of Sichuan's bureaucracy could only be slowly brought under the control of statutory officials through formalization, new forms of delegation, and the replacement of bureaucratic activity in several fields with new systems and functions of collective responsibility networks.

One of the first steps toward stability in the southwest was addressing the inequity of illicit systems of land tax collection, which had placed an unbearably heavy burden on some of the poorest residents of the region. Taxation in excess of statutory limits had begun even before the Yongzheng era and made relations between the local state and its subjects contentious from early on.<sup>70</sup> The Jiaqing state began by recognizing the fact that informal forms of taxation had already been in place for over a century, and that additional sources of revenue needed to be countenanced in order to keep local administrations in the black. Chongqing's administration had always been forced to operate primarily off the books, due to its artificially low income.<sup>71</sup> To address this problem, illicit revenue schemes with precedents in the Qianlong era were countenanced, but codified and brought under the nominal supervision of the imperial Board of Revenue.<sup>72</sup>

The further expansion of the local state into the administrative life of the city took place at the same time that Chongqing was emerging as the undisputed commercial hub of Sichuan. In the Jiaqing reign, the commercial vein first opened by grain sales and the provision of border troops in the eighteenth

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<sup>70</sup> Initial efforts to register and survey the land met with resistance in the area; see Entenmann, "Migration and Settlement in Sichuan," 131-142.

<sup>71</sup> In the first half of the nineteenth century, Ba County's yearly income was approximately 20,000 taels per year: over 17,000 taels from land tax, and 311 taels for "miscellaneous" taxes (雜稅銀). The *yanglian* salary of the magistrate was 1,000 taels per year. See Zhou Xun (周詢) *Shu hai cong tan* [蜀海丛谈] (Chongqing: Da gong bao 1948), 193.

<sup>72</sup> The most prominent and one of the earliest examples of this strategy was the official recognition of land tax surcharges, known as a *jin tie* (津貼), in the Jiaqing Era. The formal recognition of this category of income led to a doubling of the officially-collected revenues.

century flooded with new commodities.<sup>73</sup> The indigo, medicinal herbs, bamboo, timber, alcohol, animal pelts, silk, hemp, *tong* oil, tea, salt, brocades, and opium produced in Sichuan and the greater southwest were shipped down the Yangzi from Chongqing, and the cotton, ceramics, tobacco, iron cookware, and various finished products of other commercial and artisanal hubs of the empire gathered in the city for purchase and distribution in the southwest.<sup>74</sup> As much as 80% of the goods imported into and exported out of Sichuan in the Jiaqing era travelled on the Yangzi River, over which Chongqing presided as the major hub.<sup>75</sup> The second step to increasing local revenues was implementing several new forms of commercial taxation (the details of which will be discussed in Chapter Five).

Finally, in order to manage the increased administrative burden of the city since it had become a major imperial commercial center, Chongqing's systems of collective responsibility were refined and deployed in new ways. Active registration campaigns in the early years of the nineteenth century had ensured that the existing apparatus of collective responsibility grew apace with the population of the city. By 1824, the 82,053 residents living in the city of Chongqing were organized into 8,092 *pai* with 9,003 *baojia* heads.<sup>76</sup> At the same time that the number of household-based *baojia* registrations increased to accommodate the growing population, new schemes to register the non-traditional households and

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<sup>73</sup> Lin, "The Eastward Movement of Sichuan's Commercial Core."

<sup>74</sup> For general details on Chongqing's market during this period and the goods traded, see Xu Tan (许檀), "Chongqing's Commerce from the Qianlong to the Daoguang Eras of the Qing Dynasty" [*Qing dai Qianlong zhi Daoguang nianjian de Chongqing shangye* 清代乾隆至道光年间的重庆商业] *Qing shi yanjiu* [清史研究] 03 (1998): 30–40; Wang Di [王笛], "The Urban Systems and Market Structure of the Upper Yangzi Region in Modern Times," [*Jin dai Changjiang shangyou chengshi xitong yu shichang jigou* 近代长江上游城市系统与市场结构] *Jindaishi yanjiu* [近代史研究] 06 (1991): 105–123; 138; and Chiu Peng-sheng, "Order without Law? Negotiating Shipping Contract and Dispute in Ba County, 1750–1850 [*Qiyue yu bangui: shi xi Qing dai zhongye Baxian dang'an zhong de chuanyun jiu fen* 契約與幫規：試析清代中葉巴縣檔案中的船運糾紛]," delivered at the Conference on Cultural Studies Research and Authority in the Operation of Ming and Qing Legal Systems [*Ming-Qing sifa yunzuo zhong de quanli yu wenhua xueshu yantaohui* 明清司法運作中的權力與文化學術研討會] at the Philological Institute of Academia Sinica, Taipei, October 13–15, 2005.

<sup>75</sup> Lin, "The Eastward Movement of Sichuan's Commercial Core."

<sup>76</sup> As calculated on page 124 of Chen, "The *Xiangyue*, *Baojia*, and *Kezhang* Systems of Qing Dynasty Ba County."

residents of the city were introduced beginning in the last decades of the eighteenth century.<sup>77</sup> Throughout the nineteenth century, collective responsibility units and *ad hoc* mutual responsibility pledges were used to bridge much of the gap between state commitments and statutory administrative infrastructure.

By the second decade of the nineteenth century special “little *jia*” (*xiaojia* 小甲) units were formed to register the long-term boat-dwelling residents living along the city’s shore.<sup>78</sup> By 1826 court evidence documents the widespread operation of collective responsibility units designed to manage the movements and behaviors of even mendicant populations, with the election of beggar chiefs (丐頭).<sup>79</sup> In addition to the registration of the city’s floating and mendicant populations, owners of inns were required to keep “rotating registers” (循环号簿) containing the names, last destinations, travel plans, hometowns, and possessions of travelers who stayed in their facilities.<sup>80</sup> These registers had to always be available for the examination of *yamen* runners and were submitted to the local magistrates on a regular basis.

Examples of these registers still exist in the Ba *xian* archives. One page from an 1828 register provides a glimpse at how these documents were formatted:

Jin Jishun; Native of Dianjiang, [obscured] *chang*;<sup>81</sup> Selling cloth; 1 individual.  
Gao Xingshun; Native of Dianjiang, [obscured] *chang*; Selling cloth; 1 individual.  
Fu Jishun; Native of Dianjiang, Guo *chang*; Selling cloth; 1 individual.  
Chen Taishun; Native of Dianjiang; Selling printed cloth; 2 individuals.  
Qian San[obscured]; Native of Lingshui county; Selling cloth; 1 individual.  
Ma Chengmei; Native of Lingshui; Buying cloth; 3 individuals.  
[Obscured] Jinshun; Native of Jiangxi [obscured] county; On apprentice business; 2 individuals.  
Zhang Dianyi; Native of Shaanxi, Xi’an prefecture, [obscured]yang county; Collecting bills; 1 individual.

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<sup>77</sup> Registration of Chongqing’s floating population began as early as 1782. See the order quoted on page 381 of Chen Jianming (陈建明), “The Management of Chongqing’s Administrative Foundation’ [*Chongqing chengshi jiceng xingzheng guanli* 重庆城市基层行政管理],” 379-446 in Wei, *Studies on the Urban History of Chongqing*.

<sup>78</sup> For an example of the election of the head of one of these “little *jia*” units for boat dwellers, see SPABX 07-00819.

<sup>79</sup> For a colorful example, see SPABX 07-00220; 1.

<sup>80</sup> Systems of hotel registration were mandated by imperial law long before the Qing dynasty, but evidence of their implementation in the city of Chongqing does not appear until the nineteenth century.

<sup>81</sup> The *chang* (場) was a rural residential unit.

You Hongchun; Native of Chengdu, Huayang county; Dealing in printed cloth  
Yang Songlin; Native of Hunan, Changsha; Collecting bills; 1 individual.<sup>82</sup>

Appended to each register was a bond signed by the lodge owner, who was required to swear that “If I dare to harbor bandits or strangers, I am willing to share the punishment for their crimes. This is a truthful bond, and the statement contains no lies.”<sup>83</sup>

The expanded and updated systems of collective responsibility in Chongqing were made more powerful when they were combined with the system of local *tuanlian* militia organization in the early nineteenth century. The implementation of Chongqing’s *tuanlian* system took place under the tenure of the city’s most famous magistrate, Liu Heng (劉衡). Liu mandated extremely specific reporting requirements for collective responsibility units and declared that no settlement could be exempted from the requirement of registration.<sup>84</sup> Every unit of work and residence was thus connected not only to the city’s *baojia* network, but also to the systems of local defense and administration. The result was a far-reaching network of collaboration between local officials, collective responsibility heads, and subjects in the jurisdiction.<sup>85</sup> In the process of combining units for defense and administration, the city’s system of collective responsibility was expanded to cover new sectors of the urban population and was made more

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<sup>82</sup> SPABX; 07-00104; 8.

<sup>83</sup> SPABX; 07-00104; 42.

<sup>84</sup> On the reorganization of the city’s *baojia* system, see Liu Heng, “*Baojia* Regulations” [*Baojia zhengcheng* 保甲章程] in *Required Knowledge for Magistrates* [*Zhouxian xuzhi* 州縣須知], 1830 preface. Liu’s innovations to the *baojia* and *tuanlian* registration in Chongqing were innovative enough to warrant mention at Hsiao, *Rural China*, 56.

<sup>85</sup> This development seems to contrast with the way that *tuanlian* organization has been portrayed in the scholarship – most notably in Kuhn’s seminal works – as an institution primarily controlled by local elites. Presumably the difference between Kuhn’s findings and my own can be attributed to Chongqing’s urban status, and the pre-existing collective responsibility networks upon which *tuanlian* units were mobilized. On the refinement and expansion of systems of collective responsibility and defense see Liang, *Immigrant, Nation, and Local Authority*, 176-180.



flexible to support the needs of the local state in an era of crisis. Over time, the operation of these units became critical to the everyday operation of the state.<sup>86</sup>

In addition to the tasks that collective responsibility heads handled in earlier ages, such as the reading of the sacred edicts, the rooting out of heterodox teachings, the arrest of criminals, and the maintenance of prohibitions against gambling and prostitution, *baojia* heads<sup>87</sup> became responsible for new local projects related to basic public welfare and city maintenance.<sup>88</sup> Collective responsibility units oversaw water conservation efforts, famine and disaster relief, the maintenance of community granaries, the operation of charity schools, and the running of orphanages. The elaboration, consolidation, and systematization of *baojia* duties meant that many tasks which had been carried out by the illicit bureaucracy were shifted over to management by collective responsibility heads.<sup>89</sup>

In the course of managing so many basic administrative duties, *baojia* units also became responsible for a wide array of revenue collection responsibilities in the course of the nineteenth century.<sup>90</sup> This allowed members of the community to manage the burden of their own responsibility for

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<sup>86</sup> Liang Yong has suggested that the *tuanlian* began as an “extraordinary” system organized in response to the exigencies of the White Lotus uprising, but eventually became an “ordinary” system in peacetime. See Liang, *Immigrant, Nation, and Local Authority*, 211-212 and 328-330.

<sup>87</sup> When the *baojia* system was combined with the *tuanlian* defense scheme, the titles of its heads were changed. I continue to refer to them here as *baojia* for the sake of simplicity and continuity.

<sup>88</sup> On the responsibilities of *baojia* heads in the eighteenth century, see pages 82 to 86 of this work.

<sup>89</sup> The burden of the bureaucracy on local communities was also reduced by measures designed to restrain the ability of officials to demand material support from the population, such as Liu Heng’s mandate that county officials were no longer allowed to demand the provision of food, lodgings, and transportation from the communities to which they were dispatched on official duties. See Liu, “*Baojia* Regulations.”

<sup>90</sup> The collection of fees by *baojia* heads and their responsibility for the provision of goods and services to the state was also increasingly standardized in this period. Officially-approved fundraising schemes from the late Qianlong reign tended to commit members of collective responsibility units to regular, flat contributions for funds managed by *baojia* heads and earmarked for large categories of expenditures, such as providing the transportation, lodgings, food, and entertainment of traveling officials. For examples, see QJDBXXB, vol. 2, 238-239. By the Daoguang era, the sharing of official duties and expenses for specific activities or expenditures had been much more explicitly distributed as a means of reducing the possibility of graft by *baojia* heads and extortion by *yamen* workers. For an example of one detailed list of the services and provisions required from each of the city’s *fang* at various occasions throughout the year, see QJDBXXB, vol. 2, 252.

basic administrative tasks and reduced opportunities for extortion by *yamen* workers by holding members of the community directly responsible to the state.<sup>91</sup> Collective responsibility units were eventually made responsible for a variety of service obligations, including the arrangement of tables, chairs, beds, shelves, kitchen supplies, and labor in preparation for imperial examinations, visiting officials, and seasonal rites. By the end of the nineteenth century, collective responsibility heads had even become responsible for the shipment of weapons, the raising of military funds, and other forms of obligation related to local defense and *tuanlian* operations.<sup>92</sup> In order to facilitate communication between collective responsibility heads and the state, *baojia* appointees were given official seals that could be used to dispatch individuals on *baojia* business in cases where the county magistrate needed to be notified of “public affairs” (公事).

The new administrative structures and alliances forged in the first half of the century were only intensified and multiplied in the second half. The sudden and steep increase in imperial demands to finance the military forces handling domestic and international conflict led the Qing to require Sichuan to raise funds on behalf of other provinces. From the outbreak of the Taiping uprising in 1851, Sichuan’s place in the fiscal topography of the empire was altered when it was declared a supporting province (*xie ji sheng* 協濟省) and charged with the task of funding the war in other regions. Within a matter of a few years Sichuan became the largest contributor to the fiscal campaign to support the suppression of the Taiping Rebellion.<sup>93</sup> By 1854, Sichuan had supplied over 30 million taels to the war effort, and the

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<sup>91</sup> A similar observation is presented at Chen, “The *Xiangyue*, *Baojia*, and *Kezhang* Systems of Qing Dynasty Ba County,” 127. This trend appears to be related to what David Faure noticed in Jiangsu, when he noted that “after 1870, there was considerable development within the local communities for measures to ward themselves against the *xian* personnel.” See Faure, “Local Political Disturbances in Kiangsu Province,” 168.

<sup>92</sup> For examples and a discussion of the character and division of these responsibilities among various collective responsibility units in the city, see Chen, “The Management of Chongqing’s Administrative Foundation,” 385-386.

<sup>93</sup> Dai, “The Rise of the Southwestern Frontier,” 519.

provincial treasury was empty.<sup>94</sup> Hu Linyi (胡林翼), famed Qing general, considered Sichuan's fiscal contributions to the war effort so important that "if Sichuan is lost then there is no hope of suppressing the Taiping rebels.... To lose Sichuan would be a disaster of great magnitude; to protect it a blessing of the highest order."<sup>95</sup>

Local administrations grew rapidly to meet these new demands. Additional sources of revenue were revived from the days of White Lotus suppression, and new fundraising efforts were implemented. State "loans" were made to pawn shop merchants, who were required to produce interest on these investments.<sup>96</sup> Donation campaigns were revived, as the governors of supporting provinces were repeatedly exhorted to "urge officials, title-holders, scholars, and commoners to make sizeable donations."<sup>97</sup> In 1853, Sichuan revived the *jintie* surcharge on land taxes that had first appeared in the early nineteenth century.<sup>98</sup> Finally, in 1855 Sichuan began to collect a *lijin* tax on salt. In 1856 Chongqing established its first *lijin* bureau for the collection of commodity taxes.<sup>99</sup>

Municipal growth both generated and consumed increased tax revenues. An inescapable result of revenue mobilization was the further expansion and articulation of local administrative institutions. The population of expectant officials serving in Sichuan grew from fewer than two hundred in 1850 to more

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<sup>94</sup> Wei Yingtao (魏瀛涛), Li Youming (李有明), and Li Runcang (李润苍), eds. *The Modern History of Sichuan* [Sichuan jindai shi 四川近代史] Chengdu: Sichuansheng shehuikexueyuan chubanshe 1985), 34.

<sup>95</sup> *The Collected Works of Hu Wen Zhong Gong* [Hu wen zhong gong quan ji 胡文忠公全集], juan 16, as quoted on page 33 of Wei et al., *The Modern History of Sichuan*.

<sup>96</sup> Over the years, as the provincial treasury was exhausted, private and municipal funds were also invested in these "loans." For example, the *baojia* bureau was compelled in 1861 to replenish the funds on behalf of the provincial bureaucracy. See SPABX; 18-0600; 1.

<sup>97</sup> *Veritable Records of the Xianfeng Emperor* [Kuan Min Xian huangdi shilu 寬敏顯皇帝實錄, hereafter XFSL] year 2, month 3, *jiazi* day. For other examples, see also XFSL year 3, month 5, *xinwei* day; year 4, month 6, *xinchou* day; year 3, month 7, *renshen* day. For examples of the campaigns in Chongqing, see Wei et al, *The Modern History of Sichuan*, 35-36.

<sup>98</sup> XFSL: year 4, month 1, *xuwu* day.

<sup>99</sup> On the *lijin* practices of Sichuan, see Zhou, *Shu hai cong tan*, 45-51.

than a thousand at the turn of the twentieth century.<sup>100</sup> Over a hundred of the province's statutory positions could be staffed by expectant officials without the approval of the Board of Revenue.<sup>101</sup> Others were employed in the circuit, prefectural, or county offices as commissioned non-statutory officials for short-term assignments.<sup>102</sup> Expectant officials became the jacks-of-all trades of the administration and played a vital role in the expansion of the mid-century bureaucracy.<sup>103</sup> The very composition and function of the city's elite stratum began to change.<sup>104</sup>

In the poorest and most marginalized sectors of Sichuan society, the flourishing of local administrative institutions – as much as it entailed for the development of the state – seemed little more than a further burden. Uprisings in the southwest became common in the second half of the nineteenth century in response to the incursions of the hungry state.<sup>105</sup> Rebellions in the region often mixed with various heterodox religious practices to present millenarian interpretations of the crises of the age. In 1854 Yang Longxi (楊隆喜) initiated an uprising along the Guizhou-Sichuan border, and in 1855 another uprising was led by Zhang Laoba (長老八), followed by yet another uprising in 1857 under Liu Yishun (劉義順). The rebellions of Li Yonghe (李永和) and Lan Dashun (藍大順), which persisted from 1859 to 1863, spread throughout the southwest and even coordinated with Taiping armies, which entered Sichuan in the 1860s under the command of Shi Dakai. Chongqing itself was threatened with a combined rebel

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<sup>100</sup> *ibid.*, 323.

<sup>101</sup> Qing regulations specified that any post not considered *fanyao* (繁要) could be filled at the discretion of provincial authorities.

<sup>102</sup> Zhou, *Shu hai cong tan*, 320-321.

<sup>103</sup> For an overview of some of the ways in which these men were employed, see Philip Yuen-sang Leung, "Crisis Management and Institutional Reform: The Expectant Officials in the Late Qing," 61-77 in Anthony and Leonard, eds. *Dragons, Tigers, and Dogs*.

<sup>104</sup> The most comprehensive review of this shift can be found in R. Keith Schoppa, "The Composition and Functions of the Local Elite in Szechwan, 1851-1874," *Ch'ing-shih Wen-t'i* 2, no. 10 (Nov 1973): 7-23.

<sup>105</sup> On the uprisings in Sichuan during the Taiping era, see Wei et al., eds. *The Modern History of Sichuan*, 50-63.

attack in 1860, which made it to the banks of the Jialing River before being repulsed by Qing armies.<sup>106</sup>

The response of the local state to these uprisings was to further support the growth of local administrative institutions, and intensified state-building efforts followed hard upon the heels of resistance to further mobilization in a frenzied cycle of crisis and response.

### *The Zenith of Chongqing's Eight-Province Association*

In the nineteenth-century era of local institutional development, the collective responsibility heads serving on the board of the Eight-Province Association (previously discussed in Chapter Two) emerged as some of the most important leaders of the city's new municipal bureaus. At the beginning of the century, the activities of the city's *kezhang* were generally confined to the management of extraordinary administrative tasks that could not be handled directly by the local government.<sup>107</sup> But over the course of the nineteenth century, as more and more local administrative tasks were delegated to bureaus in the city, the heads of the *ba sheng huiguan* emerged as key actors in the new municipal landscape.<sup>108</sup> From the Xianfeng era (1850-1861) until the end of the nineteenth century, the *ba sheng*

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<sup>106</sup> On the Taiping campaigns in Sichuan, see Wei et al., eds., *The Modern History of Sichuan* 88-100.

<sup>107</sup> In the Qianlong, Jiaqing, and Daoguang eras these activities increased in scale rather than substance, and the *ba sheng huiguan* participated in fundraising for several building and infrastructure projects, such as the campaign to repair Chongqing's city walls in 1767 and the 1812 repairs of the street running out of the Taiping Gate of the city. On the 1767 city wall project, see Liang, *Immigrant, Nation, and Local Authority*, 266. On the 1812 road repair, see SPABX: 03-00030. The association also managed funds for several charity halls, many of which were founded in the second half of the eighteenth century. On the charity halls maintained by the heads of the Eight-Province association, see Liang, *Immigrant, Nation, and Local Authority*, 289-295.

<sup>108</sup> On the growth of the functions of the Eight-Province Association during the second half of the nineteenth century, see Zhou, "Urban Merchant Groups and Rhythms of Commerce," 84-85. See also Liang, "A Preliminary Investigation of The Eight-Province Association," 95. The irregular duties of the association in the nineteenth century included fundraising for projects such as the rebuilding of a Catholic church that was destroyed by a mob in 1868, and the repair of the city docks. See Shi "The Interactions between *Huiguan* and Government," 34-35. By the second half of the nineteenth century, the charity halls that had been operating for over a century had grown prosperous enough and offered a new range of services, including charitable education (义学), medical services, burial expenses, corpse removal services, and logistical support for community activities. See Liang, *Immigrant, Nation, and Local Authority*, 289-295.

*huiguan* heads were involved to some extent in every one of the bureaus founded in Chongqing. The rise of the Eight-Province Association leaders is both a sign and an outcome of the nineteenth-century administrative transformation.

Because of their status as representatives of the merchant population, the *ba sheng huiguan* heads were among the managers of the city's first bureau: the *lijin ju* established in 1856.<sup>109</sup> They were also involved in the *Fuma* (Conscript and Equine, 夫馬) Bureau of the city, which raised funds for the transport and logistical expenses of officials traveling to the city on business.<sup>110</sup> In 1859, when the outbreak of the rebellions of Lan and Li demanded the reorganization of *tuanlian* forces, the Eight-Province Association coordinated with several of Chongqing's degree-holding elites to found a *Baojia Tuanlian* Bureau (保甲團練總局).<sup>111</sup> By 1861, Ba County supported 6,000 militia men (*tuan ding* 團丁) and 600 full-time soldiers (練勇).<sup>112</sup> The *Baojia Tuanlian* Bureau handled the management of everything related to *tuanlian*: hiring soldiers, purchasing and manufacturing weapons and ammunition, feeding the on-duty militia, repairing walls and other defensive structures, clothing militia units, and providing a host of necessary incidentals such as coal, lamp oil, and tea, and various transportation costs.<sup>113</sup>

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<sup>109</sup> On the founding and operation of the *lijin* bureaus, see Liang, *Immigrant, Nation, and Local Authority*, 267 and Shi, "The Interactions between *Huiguan* and Government," 35.

<sup>110</sup> First founded during the White Lotus suppression campaigns of the Jiaqing era, these bureaus were re-established throughout the province in the 1850s and 1860s. For a description of the founding of Chongqing's *fuma* bureau, see SPABX 31-00105; 1. On the history of the *fuma* bureau, see Liang *Immigrant, Nation, and Local Authority*, 271-277 and Zhou, *Shu hai cong tan*, 357-359.

<sup>111</sup> On the creation of the *baojiatuanlian* bureau, see Liang, *Immigrant, Nation, and Local Authority*, 186-188 and 268-271.

<sup>112</sup> From the nineteenth century forward, many of Chongqing's *baojia* heads were holders of purchased and honorary degree. See Liang Yong, "Mid-Qing *Tuanlian* and Rural Society: From the Example of Ba County," [*Qing dai zhongqi de tuanlian yu xiangcun shehui: yi Baxian wei li* 清代中期的团练与乡村社会 ——以巴县为例] *Zhongguo nong shi* [中国农史] 1 (2010): 111-112.

<sup>113</sup> SPABX 18-00147, as cited at Zhou, "Traditional Commercial Institutions and Their Modern Transformation," 47.

The *baojia tuanlian* bureau was supported by income from a “new lijin” (*xin lijin* 新釐金) commercial tax, which was also instituted in 1859. This levy was managed by the heads of the Eight-Province Association.<sup>114</sup> By the last decades of the nineteenth century the Eight-Province Association heads were in charge of coordinating so many levies and donations that they were even granted authority to streamline systems of cash payment by establishing a Public Estimates Bureau (*gong gu ju* 公估局) in 1886. This institution was granted the right to provide official estimates on the purity of silver and the value of other forms of currency, a duty which was formerly conducted solely by local officials.<sup>115</sup> At the peak of its power toward the end of the nineteenth century, the *ba sheng huiguan* managed projects that could never have been entrusted to men working outside of the *yamen* in earlier decades.

Looking back on the course of the nineteenth century, in 1898 the heads of the Eight-Province Association produced the following idealized account of the organization’s history:

The Eight Province Association was created in the Yongzheng era.<sup>116</sup> The population of Chongqing had been reduced to a small fraction of its previous number after the chaos of war, and the commoners of each province had slowly begun to trickle in. A community of merchants began to settle in the city. When there were issues that involved different members, their customs and native styles clashed in myriad ways, and so even though officials attempted to get to the bottom of each issue, it was hard for them to apprehend the problems between merchants. For this reason, over the course of the Qianlong era each of the eight provinces established its own *huiguan* lodge.

Chongqing eventually became a major port for sojourning merchants and trading cliques, and from this time forward the heads of the eight provinces (八省首事) were appointed as honest and upright individuals of integrity whose good names led others to put them forward to serve in a new capacity. Every time an incident required attention in order to safeguard the trade and merchants of the city, they were called upon to manage it.

When the Taiping forces entered Sichuan in the Xianfeng era, the merchants grew concerned about how to provide for the defense of the city, and the heads of the eight provinces made a plan, which they proposed to the circuit intendant, to establish two bureaus – one for collecting a *lijin*

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<sup>114</sup> Shi, “The Interactions between *Huiguan* and Government,” 35.

<sup>115</sup> On this bureau and its operation, see Liang *Immigrant, Nation, and Local Authority*, 262-263.

<sup>116</sup> Liang Yong credits this claim, but I follow Zhou Lin in remarking that no evidence seems to substantiate the assertion. See Zhou, “Traditional Commercial Institutions and Their Modern Transformation,” 116-117. I find it most likely that, while the general *kezhang* form of collective responsibility may have been introduced in the Yongzheng era, the actual Eight-Province Association did not concretize until the late Qianlong era. For more discussion on this topic, see Chapter Two of this work.

and one for soliciting merchant donations (商捐). The merchants handled the collection of *lijin* on goods entering the city and sent the proceeds up to the provincial level. Proceeds from the new *lijin* were retained at the local level for public expenses and the maintenance of the *baojia* and *tuanlian* systems. Thus the *lijin* and *baojia* bureaus were managed by the heads of the Eight Provinces...<sup>117</sup>

The involvement of the Eight-Province Association in so many facets of local administration from the 1850s forward led Ho Ping-ti, in his *Zhongguo huiguan shi lun*, to conclude that the association “participated in a large share of the work of the municipal governance of the city.”<sup>118</sup> By the end of the nineteenth century, in their routine correspondence with the local state, the heads of the *ba sheng huiguan* began to employ forms of address which were reserved for communications between bureaucratic offices.<sup>119</sup>

The history of the *ba sheng huiguan* demonstrates several aspects of Chongqing’s state-building efforts over the course of the second half of the nineteenth century. First of all, new municipal projects were based on existing institutions and practices, such as the collective responsibility framework that had been implemented in the eighteenth century. Secondly, the proliferation of the functions and forms of existing institutions in this period were direct responses to immediate state needs. Thirdly, the *guandu shenban* bureaus were explicitly intended to replace or counteract the involvement of the illicit bureaucracy, as part of a larger province-wide exploration of new forms of collaborative governance. Fourthly, while the institutions in this era often had precedents in the first half of the nineteenth century (or earlier), it was in the second half of the century that they became more formal, more specialized, and based on more explicit labor-sharing between managers and the local state. Although none of these characteristics alone constituted a radical change, their combination was powerful enough to transform the systems of local governance. The change to the operation of Chongqing’s administration was so great

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<sup>117</sup> SPABX: 33-04611; 2.

<sup>118</sup> Ho Ping-ti (何炳棣), *A Historical Study of China’s Huiguan* [*Zhongguo huiguan shi lun* 中国会馆史论], (Taipei: Taibei xuesheng shuju, 1966), 112.

<sup>119</sup> On this point, see Liang, *Immigrant, Nation, and Local Authority*, 267.



that, by the last quarter of the nineteenth century, a serious re-assessment of local affairs began to take place.

### **Assessment, Reform, and Innovation in Self-Strengthening Sichuan**

It became apparent that the local state had been fundamentally altered when the state-building frenzy of the second half of the nineteenth century did not end with the conclusion of Taiping suppression campaigns in 1864. Even after the Taping Army was defeated, the funds required to support the central state and the expenses of the powerful new provincial bureaucracy far exceeded statutory income limits set decades before.<sup>120</sup> The new question of the era became: now that the highest pitch of the military crisis had subsided, which of the institutions of wartime mobilization should be phased out, which should be transitioned into peacetime operations, and how? Exact details on the expenses and revenues of Sichuan's administration in this era are not available, but a glimpse at the proliferation of expenditures is available from Chongqing *lijin* reports. The following 1875 report of the estimated yearly expenditure of *lijin* funds demonstrates the diversity of obligations even after the tide of war had turned:

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<sup>120</sup> The statutory (正供) revenue of Sichuan was just over 2,100,000 taels per year, but provincial expenditures were over 5,000,000 yearly. See Yang Gaosheng (杨亮升), "A Cursory Discussion of Ding Baozhen's Policies in Sichuan," [*Ding Baozhen zhi Shu jian lun* 丁宝桢治蜀浅论] *Sichuan difang shi yanjiu* [四川地方史研究] 2, (April, 1988): 71.

Contributions to troops in Gansu province:	30,000 to 40,000 taels
Cost of remitting Gansu contributions:	7,000 to 11,000
Railroad expenses:	10,000 to 20,000
Cost of remitting railroad expenses:	500 to 1,900
Contributions to troops in Yunnan province:	10,000
Bandit suppression expenses:	20,000 to 60,000
Tibet campaign expenses:	120,000 to 150,000
Cost of maintaining delegate staff in Tibet:	3,000 to 7,000
<i>Lijin</i> expenses:	60,000 to 80,000
International loan payments:	6,000 to 8,000
Reward contributions for civil and military officials:	7,400 to 8,400
Contributions to Jingyuan New Army garrison:	1,400 to 1,600
Packaging and shipment and related fees for capital remittances:	100 to 600
Total per year:	265,000 to 398,500 <sup>121</sup>

Much like the provincial military machine had grown beyond the control of central officials in the fallow field era, the continued growth of the machinery of the municipal funding machine of Chongqing seemed both inescapable and intolerable in the long run. The stopgap measures of the mid-century had “borrowed from the strength of the people”<sup>122</sup> to support the empire in a time of crisis, but seemed increasingly untenable in the post-war period.<sup>123</sup> Central officials began to call for the restraint and reappraisal of tax-collecting systems in Sichuan.<sup>124</sup> Complaints of abuse and inequity began to circulate widely. By the middle of the nineteenth century, even the heads of Sichuan’s local bureaus had

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<sup>121</sup> Source: Luo, *Lijin History*, 422 table 117.

<sup>122</sup> *Veritable Records of the Tongzhi Emperor* [*Gong Kuan Yi huangdi shi lu* 恭寬毅皇帝實錄, hereafter TZSL] year 13, month 9, *gengchen* day.

<sup>123</sup> On the fiscal crisis of the late nineteenth century, see Chapter Four of Paul Christopher Hickey, “Bureaucratic Centralization and Public Finance in Late Qing, China, 1900-1911,” Ph. D. diss, Harvard University, 1990.

<sup>124</sup> As early as 1857 Sichuan’s Governor-General Wang Qingyun (王慶雲) remarked that *jintie* levies and special contribution campaigns had made “the people restless (民情踴躍)...” See XFSL: year 7, month 12, *dingmao* day. In 1869 Imperial Censor Wu Zhen (御史吳鎮) remarked that, in addition to the existing burden of *jintie* surtaxes the residents of Sichuan were subjected to “illicit demands for the supply of Conscript and Equine service, the expense of arrests, the salaries of commissioners (委員薪水), and making up the deficits of previous years in all fields (及弥补历年欠项前任亏空等名目).” In spite of the fact that In 1860 Governor-General Luo Bingzhang had established a set of rules for the collection of donations and *lijin*, and created a General Donations and *Lijin* Bureau (捐輸釐金總局) dedicated to monitoring *lijin* activity throughout the province, Wu Zhen remarked that “there are *lijin* stations throughout the province which were compelled by imperial command to cease operation, but have continued to demand fees as always.” TZSL: year 9, month 10, *bingshen* day.

begun to attract allegations of malfeasance. Not even the *ba sheng huiguan* was immune from corruption scandals.<sup>125</sup> In 1875 after a series of accusations involving the managers of several of Sichuan's local bureaus,<sup>126</sup> the court decreed that, thenceforth, new levies could only be collected in cases of extreme need and under close supervision by local officials.<sup>127</sup> Although the municipal institutions of the mid-century had succeeded in providing the resources necessary for the survival of the empire, the question of their long-term viability could no longer go unanswered.

The unease communicated in sources documenting corruption and malfeasance in the late nineteenth century has been used as evidentiary support for the localism and regionalism theories of dynastic decline, which both rest on the argument that the Qing state collapsed because it was unable to control corrupt and self-interested practices at the local level. But such arguments mistake the rhetoric for the message and fail to appreciate that the mid-century fixation on local corruption was fuel for another fire: the central state's bid to co-opt local institutions of fundraising and administration. The full implementation of this late nineteenth-century trend would not be visible until they were fully articulated in the early twentieth-century New Policy reforms. But decades before this final Qing modernizing project was supposed to have begun, an empire-wide rhetoric of centralizing reform had already begun to lay the groundwork for an unprecedented move by the imperial court to capture and control local processes of state development.

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<sup>125</sup> See SPABX: 18-0905; 18-0147; 23-0049. On further allegations of corruption by the managers of Chongqing's *fuma* bureau, see Reed, "Gentry Activism in Nineteenth-Century Sichuan," 119.

<sup>126</sup> Expectant officials appointed to bureaus throughout the province were also caught in corruption cases. For one example involving the *fuma* bureau, TZSL year 1, month 8, *gengshen* day; year 2, month 3, *guihai* day. For a description of another embezzlement scandal involving men of purchased rank who had been asked to run bureaus in Sichuan, see *Veritable Records of the Guangxu Emperor* [*Kuan Qin Jing huangdi shi lu* 寬勤景皇帝實錄, hereafter GXSL]; year 1, month 3, *jiayin* day.

<sup>127</sup> GXSL: year 1, month 1, *jiayin* day.

*Ding Baozhen*

About ten years after the Guangxu Emperor ascended the throne in 1875 new writings on reform began to circulate throughout the political circles of the empire. Debates about the import of and response to the local administrative transformation resulting from a century of crisis were at the center of calls for deep reform. Several powerful officials were tasked with developing experimental programs to halt, reign in, or channel local institutions and bring local government back under the control of the larger state apparatus. The man tasked with reforming Sichuan's administration was Ding Baozhen (丁寶楨).<sup>128</sup>

Born in the year 1820 in a village of the Pingyuan prefecture (平遠府) of Guizhou, Ding had played an active role in the formation of *tuanlian* units in his hometown during the 1853 uprising of Yang Longxi and the 1855 outbreak of Miao rebellions in the area. In the 1860s he served in various posts in Hunan and Shandong, where he worked together with Li Hongzhang to suppress rebellions in the north. No stranger to danger and intrigue, in 1860 he personally led an attack on a division of Nian troops who were making an attempt on the capital, and in 1869 he orchestrated the assassination of palace eunuch An Dehai (安德海), a favorite of Empress Dowager Cixi.<sup>129</sup> In 1876, Ding was appointed Governor-General of Sichuan, where he immediately began several ambitious projects, such as the repair of Sichuan's water conservation system, as well as the founding of Sichuan's first arsenal (the *Sichuan jiqi zongju* 四川機器總局) to produce weapons for provincial armies. But beyond these infrastructural and industrial projects

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<sup>128</sup> On the details of Ding's life and career, see Gu Shucun (贾熟村) "An Overview of Ding Baozhen's Life Events" [*Ding Baozhen biannian shilüe* 丁宝楨编年事略] *Linyi shifan xueyuan xuebao* 26, no. 1 (Feb., 2004): 90-94.

<sup>129</sup> On Ding's plot to kill An Dehai, see Ceng Fanyan (曾凡炎), "A Preliminary Analysis of the Qing Official System and Late Qing Official Affairs: A Discussion of Ding Baozhen's Murder of An Dehai" [*Qing dai huanguan zhidu yu wan Qing huanguan shijian tanxi: jian ping Ding Baozhen sha An Dehai* 清代宦官制度与晚清宦官事件探析——兼评丁宝楨杀安德海] *Guizhou shifan daxue xuebao (shehui kexue ban)* [贵州师范大学学报(社会科学版)] 1, (2001): 84-86.

that identify him as a member of the loosely-defined class of Self-Strengthening officials, Ding was first and foremost a reformer of the late nineteenth century.

Upon assuming his office, Governor-General Ding concluded that the officers staffing the administration of the province – both statutory and non-statutory – relied upon the collection of exorbitant extralegal taxes for their own personal benefit and consumption.<sup>130</sup> Over the course of his tenure, Ding dismissed dozens of office-holders and expectant officials on charges such as “seeking personal profit and inciting the masses,” “inveterate greed,” “sloppy performance of duties and absence of mental clarity,” “lack of pity for the people,” and “exerting energies on frivolities and appearance.”<sup>131</sup> But he also understood that repeated purges and a straightforward ban of illicit taxation was an unrealistic solution to Sichuan’s problems. Instead, Ding focused on making the new provincial institutions more accountable and responsive to command.

Ding began his program with sweeping reforms to the salt monopoly system in an attempt to eradicate the vested interests of large merchants and corrupt clerks. In order to remove opportunities for graft in state programs of grain purchase and storage, he also ordered local administrations to delegate the maintenance of community granaries to local elites. He also attempted to reduce malfeasance in the bureaus of the province by making them more accountable to the bureaucracy. The most visible targets of his disdain were the *fuma* bureaus, which were singled out as a particularly egregious example of abuse at the local level.<sup>132</sup> Ding accused the men in charge of these bureaus of collecting fees several times in

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<sup>130</sup> Ding estimated that a governor-general could collect 100,000 taels per year from extralegal fees, that the fiscal commissioner and intendant could collect between 40,000 and 50,000, and that circuit intendants and prefects could collect around 10,000 taels; As quoted from Ding’s collected works at Yang, “A Cursory Discussion of Ding Baozhen’s Policies in Sichuan,” 71.

<sup>131</sup> See GXSL: year 3, month 7, *jiayin* day; year 4, month 2, *xinsi* day; year 4, month 10, *bingwu* day; year 7, month 9, *bingshen* day; year 12, month 1, *dingwei* day; year 12, month 2, *jiazi* day; and year 12, month 4, *xinmao* day.

<sup>132</sup> For Ding’s summary of the malfeasance of Sichuan’s *fuma* bureaus, see SPABX: 31-00105; 7. For a scholarly elaboration of his position, see Yang, “A Cursory Discussion of Ding Baozhen’s Policies in Sichuan.”

excess of the ones statutorily allowed, pilfering more than a million taels per year, and wasting funds on entertaining bureaucrats, bribing superior officials, and securing opportunities for self-advancement.<sup>133</sup>

After his first year in office, Ding ordered each and every *fuma* bureau in the province to close down. Six years later in 1783 he even requested that the central government approve a proposed precedent that any officials in Sichuan who later attempted to revive the bureaus be severely punished.<sup>134</sup>

To meet the needs that had been provided for by the *fuma* bureaus, Ding favored the further proliferation of “three-fees” bureaus (*sanfei ju* 三費局).<sup>135</sup> Three-fees bureaus had begun to appear in Sichuan shortly after *fuma* bureaus were revived in the 1850s.<sup>136</sup> These bureaus were initially dedicated to handling the collection of funds to pay for the operation of the local justice system. The eponymous three fees that they managed were intended to cover the costs of arresting suspects, housing prisoners, and handling medical examinations in cases of injury and death. By the 1870s, these bureaus had set forth detailed regulations about the amount and collection of fees in legal cases and had even become involved in investigating allegations of *yamen* worker abuse.<sup>137</sup> This organization was held up by Governor-

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<sup>133</sup> Summarized from the memorial on page 7 of *juan 5* of *Memorials of the Daoguang, Xiangeng, Tongzhi, and Guangxu Courts* [*Huang chao Dao-Xian-Tong-Guang zouyi* 皇朝道咸同光奏議], as cited in Liang, *Immigrant, Nation, and Local Authority*, 274; Bradly Ward Reed, “Gentry Activism in Nineteenth-Century Sichuan,” 106-107.

<sup>134</sup> Ding Baozhen, “Guangxu Year 9 Request to Establish a Precedent on the Dissolution of *Fuma* Bureaus,” [*Caisa fuma ju qing zhi li'an shu Guangxu jiunian* 裁撤夫馬局請旨立案疏光緒九年] in *Memorial Drafts of Ding Baozhen* [*Ding Wen Cheng Gong zougao* 丁文誠公奏稿] *juan 23*, 7-9.

<sup>135</sup> On the operation of the *sanfei* bureau, see Liang, *Immigrant, Nation, and Local Authority*, 274-277; Zhou, *Shu hai cong tan*, 361-364; and Bradly W. Reed, “Money and Justice: Clerks, Runners, and the Magistrate's Court in Late Imperial Sichuan,” *Modern China* 21, no. 3 (Jul., 1995): 368-371.

<sup>136</sup> Discussions of establishing one in Chongqing had begun as early as 1859, and the city's first *sanfei ju* was established in 1862. On the founding and funding of Chongqing's *sanfei* bureau, see Reed, “Gentry Activism in Nineteenth-Century Sichuan,” 99, 113, 116.

<sup>137</sup> Reed, “Gentry Activism in Nineteenth-Century Sichuan,” 114-115.

General Ding as a model of *guandu shenban* transparency, and in 1781, he published rules standardizing the collection, expenditure, and auditing of *sanfei* revenues.<sup>138</sup>

Over the course of his 10-year administration Ding won a host of new enemies. In the pursuit of his primary objective to uproot the private interests that had profited from the administrative growth of the last century, he upset so many of the established powers in the province that in 1880 several individuals – probably unaware of the historical irony of their actions – organized a plot to implicate him in a corruption scandal. In a memorial responding to these accusations (of which he was soon after cleared), Ding lamented the problems of the system he had been tasked with rectifying:

The flaws of Sichuan's government are so profound and insidious that truly they cannot be attributed to recent or immediate causes. The flourishing growth of each of the province's *yamen* is unlike that seen anywhere else in the empire. The counties carve up their own subjects in order to serve up flattery to superior officials. Wicked gentry (刁紳) unite with officials to share the spoils... Since arriving at my post both day and night I have anxiously considered how a way might be found to rectify county government so that a fear of the law may be felt (設法整頓州縣漸知畏法) and an honest effort to handle government affairs might be undertaken once more. On the outside it seemed as though there were great changes taking place, but hidden deep in the sickness of the province are accumulated practices so deeply embedded in the minds of men that my feeble virtue has not been able to move or change them. I saw that the people of Sichuan were sick with the pain of their bitter financial burden. Upon arrival at my post, I first dismissed all of the *fuma* bureaus out of pity for the population, and thus the root of hatred for me was born. Then I banished unlawful fees from each of the *yamen* out of care for the officials and in order to eradicate greed, and I further reduced the *lijin* operating expenses of every place, demanding a cessation to the pilfering of *lijin* funds so that wealth may flow back into the coffers of the state for proper expenditure. Then I reclaimed the great natural bounties of the salt monopoly so that the extraordinary contributions of normal years could be reduced in later years. Thus did I discomfort and inconvenience the officials and gentry, who grumbled and began to complain for all of these reasons. But in all of Sichuan there is not a single high-level official who lacks for food and whose halls are not overflowing with wealth...<sup>139</sup>

Ding's evocative description of the sufferings of the people under the weight of the state and the privileged classes is eerily familiar to historians with a knowledge of later twentieth-century rhetorics of revolution and class struggle. But the tension of the age could not be reduced to a simple tale of class

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<sup>138</sup> See SPABX: 31-000105; 6. Every year, the accounts of the *sanfei* bureau were submitted to local officials for inspection, and checked as well by the prefectural and provincial offices in order to avoid malfeasance. See Zhou, *Shu hai cong tan*, 161.

<sup>139</sup> HCJSWXB *juan* 18.

struggle in the minds of Ding and other reformers of his time. Rather, the problems faced by the Qing and its subjects in the late nineteenth century were understood as the result of the profusion of powerful and extractive local institutions operating beyond the control of the central state. The taming of this licit but illegitimate state growth and the cultivation of local governance became the aim of this and later generations of reformers.

## **Conclusion**

Ding Baozhen died in Chengdu in 1886 while still in office. The court gave permission for three temples to be built in his honor: one each in Shandong, Sichuan, and Guizhou. His administration had begun the process of transforming the local institutions of governance into durable instruments of administration. Though he was praised by his contemporaries as an extraordinary man, in many ways his leadership embodied the spirit of the time in which he lived. Having witnessed decades of warfare and rebellion, Ding approached his duties as Sichuan's Governor-General in the last decades of the nineteenth century with an urgent sense of his mission. He was able to appreciate the power and usefulness of the institutions that had emerged from the century of crisis, while at the same time he devoted his tenure to the task of cultivating those institutions into a form that could benefit both the state and its subjects. In his achievements, he was an early model of the political *zeitgeist* of the late nineteenth and early twentieth centuries.

By the last years of Ding's life, the rhetoric of reform, centralization, and standardization had reached even the central court. The extent and depth of this new perspective on the relationship between the local and central state is documented in the political writings and reform proposals of the era. Take, for example, the 1884 revenue reform proposal on "Twenty-Four Articles on Broadening the Source and Restricting the Flow" drafted by the officials of the Grand Council, the Board of Revenue, the *zongli*



*yamen*, and other ministries. Titled after a classic line from Xunzi's (荀子) treatise on "Enriching the State" (*fuguo* 富國), the proposed measures were designed to convert the massive sources of revenue that had been opened up over the course of the tumultuous century into a formal, rational, and uniform system of revenue collection linking the local administrative efforts made across the empire to the central ministries in the capital.

The proposal took for granted that Pandora's box could not be closed: the century-long mobilization of local resources in service of war, administrative development, and further state penetration into the locale had fundamentally changed the relationship between the central court, the local state, and the subjects of the empire. The question in this new age was: how could this mobilization of local society be made tenable in the long term? The Board of Revenue's proposal hinged on three tactics: formalization and expansion of existing revenue practices, regulation of these practices, and enforcement of statutory regulations outlining revenue collection at the local level.<sup>140</sup> In the first vein, new taxes would be recognized across the board: surtaxes being charged on opium, tea, salt, tobacco, and alcohol would be formally instituted at the central level. Following this wide-ranging recognition of *ad hoc* practices, the central state would then demand the reform of the systems designed to collect these and other revenues: the *yahang* system would be overhauled, state monopolies would be reorganized, and a new licensing system for private banks would be instituted. Finally, once new sources of revenue had been acknowledged and regulations for their collection outlined, the central state would begin to reign in revenue collection at the local level: officials would be punished for collecting taxes in excess of those allowed, members of the bureaucracy would be held directly accountable for missing or overdue amounts, and the expenses of institutions such as the *lijin* bureau would be drastically reduced.

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<sup>140</sup> HCJSWXB *juan* 26, "A Memorial Outlining Twenty-Four Articles on Broadening the Source and Restricting the Flow." [奏陈开源节流章程疏].

The state would, by its own *fiat*, transform existing practice into central policy, then begin to exert its regulatory influence over the new fields of revenue brought under its control, before finally asserting its prerogative in dictating the operation of these institutions of the local state. This proposed strategy was both the climax and the antithesis of state strategy in the High Qing. Rather than forcing the administration of the local state off of the bureaucratic grid, the central state made preparations for a final and all-encompassing bid to assert power over the massive apparatus of the local state.

It was a bold plan, and success was uncertain. The dynasty had weathered almost a century of crisis, and even greater upheavals were on the horizon. The chaotic overgrowth of local institutions would not lend themselves immediately to the firm grasp of the state, and attempts by the court to assert its prerogative in the competition for local authority and resources entailed a risky political competition with other power-holders throughout the empire. But what focus on the political turmoil of this era in previous scholarship has obscured is the most critical fact of all: that these institutions were, in fact, a part of the local state. At times it became difficult to see the forest for the trees, but this new growth at the local level was part of a larger state response to crisis and uncertainty. By the last quarter of the nineteenth century the central state and its reformers turned to the task of cultivating the institutions of local government that had emerged over the course of the century. The attempt to tame, train, and harvest the products of local state proliferation did, indeed, entail a treacherous political conflict. But beneath the danger of political instability and the struggle for legitimacy was a powerful process of negotiation and reform that laid the foundation for the transition from empire to nation-state in the twentieth century.

CHAPTER 5:  
SERVICE, RESPONSIBILITY, AND EXPERTISE:  
MERCHANT GROUP FORMATION IN CHONGQING (1750-1904)

The position of Chongqing is without compare. The commercial metropolis of the Sichuan theater, forming a crescent-shaped island amidst the long slopes, its buildings a tangle of capricious silhouettes of temples, white-walled yamen offices, and *hang* warehouses. At the top of the high cliffs stand old ramparts with portals all around whose steps descend into the four or five hundred markets of the city. From this vantage point, one may look over a whole jostling mass of boatmen, porters, and sedan-carriers while hundreds of junks rolling on the water disgorge the contents of their hulls: balls of wool from Tibet, the cottons of Hubei, boxes of opium, bags of salt, the wax cakes of Jiading...

Marcel Monnier, upon arriving in Chongqing, February 18, 1896<sup>1</sup>

### **Introduction**

One of the results of the nineteenth-century frenzy of local institution-building described in Chapter Four was a structural transformation of the city's market space. Both its economic activities and its administrative profile were altered by the creation and growth of a new set of organizations designed to mediate between merchants and the state. This section will study how the new administrative principles of the nineteenth century fundamentally altered the relationship between merchants and the state. It does this by outlining the history of the introduction, development, and function of Chongqing's merchant groups. It then explains some of the primary mediation activities undertaken by these organizations as a means of demonstrating the nature of their authority and practices in the court and market of the city.

The various merchant organizations of late imperial China have long loomed large in the history of dispute mediation. H. B. Morse, one of the earliest authors to write about these associations, cast the tone of assumptions about them for future generations, concluding that:

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<sup>1</sup> Marcel Monnier, *Le tour d'Asie* (Paris: Plon-Nourrit, 1903), 203.

... all Chinese trade guilds are alike in interfering with every detail of business and demanding complete solidarity of interest in their members, and they are alike also in that their rules are not a dead letter but are actually enforced. The result is a tyranny of the many over the individual, and a system of control which by its nature must hinder 'freedom of enterprise and an independence of individual initiative.'<sup>2</sup>

The image of trade groups bound together by the will of the many and subjugating the desire of the individual was a perfect fit with early twentieth-century expectations about Chinese individuals and the way that they conducted business. But even as the appraisal of the firms and markets of late imperial China has developed a more realistic hue over the last two generations of scholarship, the study of the trade associations that played such an important part of defining the Qing market experience has remained rooted in an unrealistic vision of the strict separation between legal (or administrative) realms of authority and social (or local) types of power.

Focus on the separation of merchant and state interests has led to a view of a Chinese market space that was obstructed, carved up, and haunted by the lack of an impartial, secure authority. Whether because of a "Confucian" condemnation of commerce, a fundamental ineptitude, or an inexplicable ignorance, the entirety of the Chinese state stands accused of constant neglect of the market space. Interested only in taxation, moral values, and the peaceful settlement of disputes – the argument goes – magistrates struck a bargain with the merchant populations of China's urban centers: total non-interference in the market in exchange for cooperation in securing the government's basic objectives. In exchange for their support of the government, the assumption runs, merchant groups were offered market fiefdoms and ran them with impunity. Thus, merchants in China's imperial markets were governed not by legal logics, public interest, or any other predictable measure, but by the whims of more powerful, better connected merchants. It is a grim picture.

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<sup>2</sup> Morse, Hosea Ballou L.L.D. *The Guilds of China: With an Account of The Gild Merchant or Co-hong of Canton*. (1909 repr. Shanghai: Kelly and Walsh, Limited. Second Edition: 1932), 28.

Fortunately for the traders of Chongqing, the documents of the Ba county archive suggest that it is also an inaccurate picture. A close study of the merchant organizations that emerged in this period indicates that merchant groups were not the result of state neglect, but of a conscious local state-building strategy that began as a part of the nineteenth-century intensive state-building processes of incorporation, cooptation, and systematization of local institutions. I conclude with the argument that this distinct view of merchant group authority and interactions between merchants and the state allows for a more accurate understanding of the role that merchant groups played in the disposition of court disputes. The exposition of merchant group dispute mediation practices further elucidates the complexity of nineteenth-century state-building processes and sets the stage for the discussion of local court practices in Chapter Six and the impact of twentieth-century New Policy reforms in Chapter Seven.

### **Merchants, Local Authority, and the Literature of Dynastic Decline**

The simple binary proposed between the ‘social’ power of China’s merchant associations and the legitimate authority of the state operates in the background of the established argument that these groups became more powerful as a result of a decline of state control over the market beginning from 1800 and climaxing with the outbreak of the Taiping Rebellion in 1850.<sup>3</sup> Scholars widely argue that the power

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<sup>3</sup> The arguments motivating conclusions about the state/society binary range widely, and cannot be reviewed in depth here (although they are the subject of a forthcoming article by this author). For examples of some of the formulations of the distinction between state and merchant group authority (and the division between legal and social legitimacy that they entail), see Fu Zhufu (傅筑夫), *A Collection of Essays on Chinese Economic History* [*Zhongguo jingji shi lun cong* 中国经济史论丛], (Beijing: Shenghuo, dushu, xin zhi san lian shudian: distributed by xinhua shudian 1980), 454-484; Susan Mann, *Local Merchants and the Chinese Bureaucracy*, 25 and 33; Fan Jinmin (范金民), “Monopolies and Government Contracts: Trade in Qing Dynasty Chongqing Seen from the Records of Legal Cases in Ba County [*Bachi yu ying chai: cong Baxian susong dang’an kan Qing dai Chongqing de shangmao xingwei* 把持与应差:从巴县诉讼档案看清代重庆的商贸行为]” *Lishi yanjiu* [历史研究] 3, (2009): 72; William T. Rowe, *Hankow: Commerce and Society in a Chinese City*, 8 and 298; Chen Yaping, “Market Competition in the Eighteenth and Nineteenth Centuries: Trade Associations, Society, and the State in the Qing Dynasty; A Case Study Based on Baxian County Archives [*Shiba shiji shiji de shichang zhengduo: hangbang, shehui yu guojia; yi Ba xian dang’an wei zhongxin de kaocha* 18-19 世纪的市场争夺:行帮、社会与国家——以巴县档案为中心的考察],” *Qing shi yanjiu* [清史研究] 1, (2007): 57–64; Zhou Zhiqian (周执前), “Change in the

vacuum created by the crises of the nineteenth century created opportunities for merchant groups to play an increasingly important part in the administration of urban space and conclude that cooperation between merchants and the local state in this period gave rise to a more vibrant, diverse, and active culture of commerce in China's cities. The result of merchant-state cooperation in the nineteenth century is presumed to have been an inversion of the "traditional" market order in late imperial China. Instead of suppressing merchant groups, goes the argument, the state came to depend upon them as state prerogative and authority was bargained away bit by bit, in exchange for indirect access to the social resources in the possession of merchant associations.<sup>4</sup> The second half of the nineteenth century in particular is portrayed as a period in which the local governments of the Qing Empire began to rely heavily upon social sources

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State Legal System and the Development of the Industrial and Commercial Economy in the Early and Mid-Qing [Guojia falü zhidu bianqian yu Qing dai qian zhong qi gongshangye jingji de fazhan 国家法律制度变迁与清代前中期工商业经济的发展.] *Bianyuan faxue luntan* [边缘法学论坛] 2 (2008): 6–15; L. Eve Armentrout Ma, "Fellow-Regional Associations in the Ch'ing Dynasty: Organizations in Flux for Mobile People. A Preliminary Survey," *Modern Asian Studies* 18, no. 2. (1984): 309; and Bryna Goodman, *Native Place, City, and Nation: Regional Networks and Identities in Shanghai, 1853-1937* (Berkeley: University of California Press, 1995), 109-110 and 128. Joseph Fewsmith, "From Guild to Interest Group;" Bradstock, Timothy R. "Ch'ing Dynasty Craft Guilds and Their Monopolies," *Tsing Hua Journal of Chinese Studies*. New Series XV. no. 1 & 2 (December, 1983): 143; Morse, Hosea Ballou L.L.D. *The Guilds of China*, 13-16, 25, and 31; Gary G. Hamilton, "Regional Associations and the Chinese City: A Comparative Perspective," *Comparative Studies in Society and History* 21, no. 3. (Jul., 1970): 347; Shi, "Interactions between *Huiguan* and Government;" Quan Hansheng (全漢昇), *A History of Trade Organizations in Chinese History* [*Zhongguo hanghui zhidu shi* 中國行會制度史] (Taipei: Shi huo chubanshe, 1986): 115-120. Zhou Zhiqian, "Trade Associations, Trade Association Law, and Municipal Management in the Early and Mid-Qing Dynasty [*Qing dai qian zhong qi de hanghui, hanghuifa yu chengshi guanli* 清代前中期的行会、行会法与城市管理]," *Hunan wenli xueyuan xuebao (shehui kexue ban)* [湖南文理学院学报(社会科学版)] 3, (2009): 75–78; Peter J. Golas, "Early Ch'ing Guilds," in Skinner, William G., ed. *The City in Late Imperial China* (Stanford: Stanford University Press, 1977), 569; and Qu Yanbin (曲彥斌) *A History of Trade Associations* [*Hanghui shi* 行會史] (Shanghai: Wenyi chubanshe, 1999), 68; John Stewart Burgess, *The Guilds of Peking*. Studies in History, Economics, and Public Law, 308, edited by Columbia University faculty of Political Science, 2<sup>nd</sup> ed (New York: AMS Press, 1928), 29, Sybille van der Sprenkel, "Urban Social Control," in Skinner, *The City in Late Imperial China*, 609-632. The draw of this vision of merchant-state interaction has proven so compelling that even recent works take it for granted. See Mu Yang Li, "Essays on Public Finance and Economic Development in a Historical Institutional Perspective: China 1840-1911," Ph. D. diss, Stanford University, 2003.

<sup>4</sup> Goodman, *Native Place, City, and Nation*, 129-137.

of power to engage the market and that this shift led to cooperation between merchants and the local state despite the fact that their interests sometimes conflicted.<sup>5</sup>

I argue that, contrary to these assumptions, the authority of merchant groups in the nineteenth and twentieth centuries resulted from direct state initiative and hinged upon on a new way of conceiving the relationship between merchants and the state. The history of Chongqing's merchant groups demonstrates the emergence of these new associations was not the result of decreased state capacity or the abandonment of state prerogative to anxious social actors. The power of these groups was not primarily based in social standing, mob rule, or secret fraternal bonds. Rather, it was the result of a complicated process of negotiation between local authorities, individual merchants, and merchant groups struggling to form frameworks of *exclusive responsibility* (*zhuan ze*) for the performance of *official service* (*guanchai*). This chapter places these two concepts at the center of its analysis in order to highlight how viewing merchant group formation as a local state-building process clarifies several of the unexplained aspects of the history of merchants, the market, and the state.

### **Qing Commercial Taxation: From Central Reform to Innovation in Sichuan**

In order to understand the full import the nineteenth-century shift from central market regulation to local merchant group formation, a basic introduction to several points in the history of Qing fiscal policy is required. This overview is necessary to illustrate how the central fiscal austerity measures pursued during the first century and a half of Qing rule were an increasingly burdensome obstacle to maintaining ambitious imperial programs at the turn of the nineteenth century.

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<sup>5</sup> Joseph Fewsmith, "From Guild to Interest Group," 623. Goodman, Bryna. *Native Place, City, and Nation*, 119-125; Rowe, *Hankow: Commerce and Society in a Chinese City, 1796 – 1889*, 321. Lloyd E. Eastman "Political Reformism in China Before the Sino-Japanese War," 697.

### *Early Qing Policies on Commercial Taxation and Procurement*

The untenable relationship between imperial policies on commercial taxation and the revenue demands of imperial projects in the early nineteenth century was rooted, first and foremost, in the austere fiscal policies of the seventeenth and eighteenth centuries. Over the course of the first half of the Qing, the unregulated local instruments of taxation surviving from the Ming dynasty were reigned in, simplified, and centralized. By 1724, the Yongzheng Emperor made all previous systems of merchant and commercial taxation obsolete by combining all forms of taxation and registration into a single system. This “entry of taxes into the land (*tan ding ru mu* 攤丁入畝)” simplification of the tax system reduced legitimate sources of government revenue down to a handful of categories. The resulting abolition of merchant groups and the system of official purchase meant that any material needs of the empire’s local governments would have to be satisfied through the market, rather than through direct procurement.<sup>6</sup>

### *The Hang*

The institution of the Qing market system and *yahang* licenses in the eighteenth century replaced a variety of institutions of commercial taxation and official purchase (*he mai* 和買) at the local level. From the Tang to the early Qing, many of the market revenues made obsolete by the Yongzheng-era reforms had been collected through the *hang* organization of trades. Originally formed in the Tang as units for the delegation of administrative tasks, *hang* groups were named after the aisles in the metropolitan market spaces. These units survived the collapse of the Tang market system as

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<sup>6</sup> Chen Wenping (陈文平) *A New Investigation into the Revenue System of the Qing Dynasty* [Qing dai fuyi zhidu yanbian xin tan 清代赋役制度演变新探] (Xiamen: Fujian daxue chubanshe 1988), 18.



administrative labels for the taxation of merchants plying the same trade and had multiplied into a host of new forms at the local level over the course of subsequent dynasties.<sup>7</sup>

From the Song onward, the Tang form of *hang* organization served as the basis of taxation by local offices, which demanded both compulsory *hang* obligations (*hangyi* 行役 and *mianhangyi* 免行役) and official purchase at below-market prices. The arrangements struck between merchants and local statesmen varied from place to place and over the course of time, but by the Zhengtong (正統) reign (1435-1449) of the late Ming, the use of *hang* for supplying the immediate or unbudgeted needs of the local government was already integrated into urban systems of taxation.<sup>8</sup> These systems of merchant mobilization were vital instruments in bridging the ever-widening revenue gap generated by outdated land registers and the increasing mobility of the growing population.<sup>9</sup>

Early Qing officials, responding to the Yongzheng-era efforts at market and revenue simplification, decried the *hang* institution and practice of official price as unwieldy and corrupt tools of market management from previous dynasties. Seeing that the shoring up and formal institutionalization of the Qing market system that began during the Yongzheng reign was designed to protect markets from

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<sup>7</sup> Katō Shigeshi, “On the Hang or the Associations of Merchants in China, with Especial Reference to the Institution in the T’ang and Sung Periods,” *Research Department of the Toyo Bunko (The Oriental Library)* 8 (1936): 53, 54, 57 – 59. Katō Shigeshi points out that the formation of these groups and their relationship to the local governments of the Song entailed *hang* rights to claim monopoly over their own trades. This argument was one of the earliest claims that Chinese systems of merchant and trade organization might resemble European guild systems. Richard von Glahn, in a recent review, revisits this thesis and rejects the argument by asserting that the formation of *hang* were in no way voluntary or merchant-initiated, being rather a straightforward system of taxation by the state. For this argument and a summary of related scholarship, see Richard von Glahn, “Revisiting the Song Monetary Revolution: A Review Essay,” *International Journal of Asian Studies*, vol. 1, no 1 (2004): 159-178.

<sup>8</sup> “Methods of Corvée (*yi fa* 役法)” in *juan 78 of Ming History [Ming shi 明史]*. Historians know very little about how these organizations evolved at the local level, but a hint is offered in Shen Bang’s account of his magistracy of Wanping (宛平) county of Shuntian prefecture (順天府) in the north of China in the last decade of the sixteenth century. See Shen Bang (沈榜), *Miscellaneous Records of Tenure in Wanping County [Wan shu zaji 宛署雜記]* (Beijing: Guji chubanshe, 1980), 103.

<sup>9</sup> On this phenomenon, see “Methods of Corvée;” Fuma Susumu, “Late Ming Urban Reform and the Popular Uprising in Hangzhou;” and Richard von Glahn, “Municipal Reform and Urban Social Conflict in Late Ming Jiangnan.” *The Journal of Asian Studies* 50, no. 2 (May 1991): 280–307.

local governments, officials began to issue proclamations and memorials about the necessity to abolish irregular local practices of merchant registration and official purchase. Tian Wenjing, pure yellow bannerman and a favorite of the Yongzheng emperor, argued that these practices equated to little more than extortion and robbery by officials:

The practice of “official *hang* service” is a most odious custom. Officials are the protectors and caretakers of the commoners, and it is most fitting that this practice be forbidden. Clearly, every object has its value, and every object has its price. If exchange is not fair, then the victim loses money. But in the empire’s county *yamen*, men eat, drink, wear, and use items that have all been purchased at below the market price. They pay less than half of what the items are worth. There are even cases where they take items by force and don’t even give a little bit of money. Or they give too little and call that the “official price.” Then they go and use the items for themselves and call it “official use.” The *hang* pay for all of it, and the merchants grin and bear it, while the officials rejoice in how thrifty they are... among the small-time con-men and drifters, if there is one who forces a low price in a sale, it is punishable under the offense known as “forcible purchase.” If a man takes something without paying, he is penalized as a thief... But what of these men who freely take from shops, without paying any price, or paying so little that the shop owners are driven to insolvency and hardship?<sup>10</sup>

The protests of Qing officials were formulated into dynastic policy in the first year of the Qianlong era. In a decree that was added to the Qing Code in 1740, local offices and their employees were unilaterally banned from using official purchase as a means to procure items below market price:

All commodities required for the official or private use of all municipal and provincial *yamen* must be purchased fairly and at market price. It is not permitted to require *yahang* to procure them or to allow *yamen* employees to illicitly demand them. If an official duty (*chai*) requires that an object be obtained, it must be done in a fair manner, and it is not permitted to use this as an excuse for extortion. If officials fail to properly observe *yamen* workers, who thus abuse their power, then they will be handed over to the Board of Personnel for a decision about proper punishment. The *yamen* worker in question will be punished in accordance with the statutes on *yahang* or unregistered vagrants who force merchants to submit their goods for sale...<sup>11</sup>

In this decree, one of the last late imperial institutions of local commercial taxation – the demanding of products at “official price” – was explicitly forbidden. Instead of relying on official procurement, Qing

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<sup>10</sup> Tian Wenjing (田文鏡), “The Affairs of a County [*Zhou xian shiyi* 州縣事宜],” in Ding Richang (丁日昌), ed. *A Complete Book for Magistrates* [*Muling quan shu* 牧令全書].

<sup>11</sup> “Coercion in the Market [*Bachi hangshi* 把持行市], sub-statute 8; see Xue Yunsheng (薛允升) *Duli cun yi* [讀例存疑, hereafter DLCY] *juan* 17.

local governments were ordered to obtain necessary materials at the going market price, and under the same conditions as other market actors.

### *From Official Procurement to Official Service*

Like many eighteenth-century economic policies, this measure designed to protect merchant interests failed to acknowledge the substantial needs of local governments, which relied on official procurement to secure services and goods at reduced prices. Unwilling to risk punishment for direct violation of this new prohibition, local officials sought out innovative new ways to demand access to urban market resources. The key to understanding this shift lies in the noun around which the declaration revolves: *chai* (差). The word *chai* appears often in the scholarship on merchant groups in the Qing, especially in its two-character form *chaiwu* (差務), which is generally understood as a type of exaction demanded of merchants by local officials.<sup>12</sup> In the scholarship on commercial regulation and taxation, *chaiwu* has been treated broadly as an informal system of taxation or procurement.<sup>13</sup> But despite the functional correctness of the way that the term *chai* and its variants have been reconstructed in the

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<sup>12</sup> Some scholars have even done the work of constructing their own taxonomies of *chaiwu* by reviewing the documentary evidence of official requests to merchants. Such work has concluded that *chaiwu* could be requested by local officials requiring goods and services for everyday tasks of administration, as well as for special activities sponsored by the local government, such as the performance of the seasonal rites and the hosting of exams. *Chaiwu* could also be demanded by military officials based on the needs of campaigning troops, and by provincial officials requiring service, logistical support, or entertainment during their time in the city of Chongqing. Since these levies were extralegal, they did not possess official categories. The taxonomy employed here is a combination of personal observations from archival materials and the classifications found in Liu Jun (刘君), “A Preliminary Exploration of Early Qing Ba County Obligations for Urban Industry and Commerce [*Qing qian qi Ba xian chengshi gongshangye zhe chaiyi chu tan* 清前期巴县城市工商业者差役初探],” *Lishi dang’an* [历史档案] 2, (1991): 87–92; and Fan Jinmin, “Monopolies and Government Contracts.”

<sup>13</sup> One scholar has summarized the meaning of the term *chaiwu* as “the funds, services, and commodities levied from commoners in the jurisdiction of a local government to meet the expenses of handling its regular public duties.” Zhou Lin “Traditional Commercial Institutions and Their Modern Transformation.” Chiu Pengsheng’s understanding of the term is close to my own, and predicts much of what I will argue here although he does not explicitly outline the ramifications of this difference of definitions. See his treatment of *chaiwu* in “Order without Law?”

modern scholarship, China historians to date have overlooked the root meaning of this word as it was employed in the 1740 law, and the implications of that meaning.

A “*chai*,” in Qing bureaucratic parlance, was *not* a type of tax. Rather, it was a commission from an official office to a specific delegate to carry out a specified service or duty.<sup>14</sup> This term appears in a number of fixed phrases, such as “*qin chai*” (欽差), which is a commission, handed down by the emperor to a special delegate, to handle imperial affairs in the provinces. Or “*chengchai*,” (承差) a noun used to apply to an individual who has been deputized to undertake an official duty.<sup>15</sup> It was in this sense that the term first appeared in relation to the procurement of market commodities, in the 1740 law. In one simple sentence, the legal framework for a new type of merchant-state interaction was put forth: “If an official duty (*chai*) requires that an object be obtained, it must be done in a fair manner, and it is not permitted to use this as an excuse for extortion (即有差辦，必須秉公提取，無許藉端需索).”<sup>16</sup> The subtle difference between procuring goods required for “official duty” and obtaining them through official purchase has been consistently overlooked by historians, but it triggered a profound alteration of merchant-*yamen* interaction in Chongqing.

Deprived of almost every existing means of extracting extra funds from markets and loathe to rely on the *yamen* underlings who were so notorious for finding personal profit at the expense of the public, local government officials grasped onto the one loophole provided to them in the 1740 law. In their desperation they revolutionized the concept of *chai* and the terms of the relationship between

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<sup>14</sup> For Qing-era explanations of these terms, see Li Pengnian (李鵬年) et al., *Terms of the Six Boards [Liu bu chengyu 六部成語]*. For an English-language translation and discussion, see E-tu Zen Sun, trans. and ed. *Ch'ing Administrative Terms: A Translation of the Terminology of the Six Boards with Explanatory Notes* (Cambridge, Mass.: Harvard University Press), 1961.

<sup>15</sup> It is interesting to note that the notion of *cha* also appeared in another very important context: in the titles of *yamen* employees, who were *chaiyi* (差役), which was a compound of “duty” and “service,” since their authority rested on nothing other than the fact that they were executing the commands of the magistrate.

<sup>16</sup> “Coercion in the Market [*Bachi hangshi* 把持行市], sub-statute 8; in the DLCY *juan* 17.

merchants and the local government.<sup>17</sup> Rather than being tasked with the provision of goods to the local government under illicit revenue-raising schemes, merchants were deputized to gather material and manpower for local and provincial projects on behalf of the state, as organizations empowered under the bureaucratic conventions of *chai* service.

### **Official Service and Merchant Taxation in Chongqing**

The early appearance of new commercial taxation schemes in Chongqing was due in part to the large gap that had existed between imperial policy and local practice in Sichuan since its incorporation into the Qing imperium. Sichuan's history, strategic position, and underdeveloped administration combined to form a perfect storm of long-term infrastructural stresses on the province. The *ad hoc* nature of the field administration and lax provincial attitudes toward the funding and execution of local projects meant that most of the income required for county-level administrative needs was collected on an informal or illicit basis.<sup>18</sup>

As wars continued to rage and the demands on Chongqing's municipal administration grew with time, the local government found itself trying to circumvent decrees about commercial taxation almost as soon as they were issued. By the time that local records of government requisitions appear in the Ba county archives for the middle of the eighteenth century, the language of *chai* service can already be seen in several cases, as this term for the delegation of official tasks became widely used to describe

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<sup>17</sup> A similar argument with some factual errors and a slightly more large-scale conclusion is made by Zhou Zhiqian, who argues that the popularity of merchant organizations such as *huiguan* and *gongsuo* in the mid-Qing marked the emergence of an era of self-management in the commercial sector. This argument is not predicated on a revised understanding of the notion of *chai*, but concludes that such a shift took place at roughly the same time pinpointed here, and thus serves as an interesting alternative perspective on the age. See Zhou, "Change in the State Legal System and the Development of the Industrial and Commercial Economy," especially p. 11.

<sup>18</sup> On the tensions behind the emergence of this "informal funding" and its many forms at the local level, see Madeleine Zelin, *Magistrate's Tael: Rationalizing Fiscal Reform in Eighteenth-Century Ch'ing China* (Berkeley: University of California Press, 1984), 25-71.

procurements for both regular and irregular expenses. Over the decades, what began in the late eighteenth century as illicit taxation in the name of *chai* slowly transformed, over the course of the nineteenth century, into a series of complex negotiations about the relationship between individual merchants, merchant groups, and the local state.

### *Eighteenth-century Demands: Yahang and Hang*

The earliest form of *chai* deputization in Chongqing was the mobilization of the city's existing base of licensed brokers, whose duties were expanded to include the procurement of materials handled within and related to the trade associated with each *yahang* license.<sup>19</sup> Rarely documented, the history of extralegal procurement for one trade is outlined briefly in a 1794 suit filed by two licensed silk brokers, Qu Shaozu (屈紹祖) and Jiang Jinhou (蔣晉侯), which read in part:

We operate under licenses issued by the Board of Revenue as *yahang* who represent customers in the sale of silk. Originally there were no obligations associated with the trade. In Qianlong 22 (1757), the broker of goods imported from Guangdong reported to the previous magistrate Wang that the colored bourette silks should be left to our trade to purchase on the *yamen*'s behalf. As for the white bourette silks for flags, we purchased those as well, agreeing on a price in accordance with the market value... and each shop exchanged the goods for the price from us, and there was no unnecessary burden. But in Qianlong 46 (1781) the Governor-General came to Chongqing, and the previous magistrate Wu ordered each ward to borrow colored damasks to prepare a festive reception. When Magistrate Xu took office, the *fang* heads all reported on the situation, and he ordered that the established precedent should be used to dictate procurements.<sup>20</sup>

The beginning of *chai* delegation was never at the initiative of the merchant, but rather at the demand of local officials. In order to maintain the resources necessary to respond to growing demands by the local government, *yahang* began to negotiate with the members of their trade about establishing a surtax on

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<sup>19</sup> On methods of *yahang* handling *chaiwu*, and the eventual monetization of *chai* services, see Zhou Lin "Traditional Commercial Institutions and their Modern Transformation," 113-114.

<sup>20</sup> SPABX: 01-01913; 1.

each transaction to raise funds for the purchase of goods required for official service.<sup>21</sup> These cash contributions were managed by the *yahang* of each trade and formed a liquid fund designated for use in performing *chai* obligations and in providing basic services for members of the trade.<sup>22</sup>

Shortly after the city's *yahang* were made responsible for the procurement of materials and the raising of funds for official service, the local government began to cast about for means of mobilizing those professions that fell outside of the purview of the Qing market system. Workshops and manufacturers producing items locally had been exempt from the licensed brokerage system since the Yongzheng Emperor prohibited the collection of taxes on local markets. In the second half of the eighteenth century, Chongqing's *yamen* began demanding contributions from these newly-mobilized trades in the name of *chai*. The groups that were formed to respond to these demands are referred to in documents at the time by a series of names depending on each trade, but are collectively known as the *hang* of Chongqing.

The dates of the founding of the city's various *hang* organizations are obscured not only by the incomplete documentary record of the eighteenth century, but also by the illicit nature of these organizations, which emerged decades after being unilaterally outlawed. But indirect and anecdotal evidence provides a partial picture of the rough chronology of the organization of local trades into *hang*.<sup>23</sup> The earliest *hang* for which we have direct evidence was organized by the tin trade in 1767, followed in the 1770s by organizations for the coal shops, bamboo shops, and aluminum craftsmen of the city. Other *hang* organized at some point before 1800 (but with an uncertain founding date) included retailers of

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<sup>21</sup> Zhou Lin remarks on the use of *yahang* to levy extra taxes at "Traditional Commercial Institutions and Their Modern Transformation," 92.

<sup>22</sup> These funds could be used for a range of trade activities, including the purchase of property and the performance of seasonal rituals. For a discussion on the handling of these funds, see Zhou Lin "The Preservation of Property: *Hang* and *Bang* Corporate Property Disputes in the Ba County Archives [*Chan heyi cun? Qing dai Ba Xian dang'an zhong de hang bang gongchan jiu fen* 产何以存?——清代《巴县档案》中的行帮公产纠纷]," forthcoming.

<sup>23</sup> The list that follows is based on my own research, as well as information from Zhou "Traditional Commercial Institutions and Their Modern Transformation," and Fan, "Monopolies and Government Contracts."

grass mats, retailers in the general store trade, print shops, pork butchers, wooden chest craftsmen, and milling houses. Over the course of the first three decades of the nineteenth century, further *hang* were registered for fruit producers, bronze lamp and lantern workshops, blacksmiths, cotton pulling firms, roof tile kiln operators, purveyors of the cow hides and bones trade, sedan shops, tea coolies, barrel makers, cement laborers, textile dyeing workshops, and craftsmen who specialized in carving and lacquer ware. Using *hang* organizations, the small, local, and newly-emerging trades of the city could be directly tasked with the procurement of various materials and funds. These demands were highly irregular, and at first at the discretion of the magistrate, who would demand materials based on the needs of the local state.<sup>24</sup>

Like collective responsibility heads and *yahang*, the city's new *hang* organizations were required to elect representatives responsible for liaising with the *yamen*. These individuals were required to sign a pledge (*ren zhuang* 認狀) at a local government office, indicating their obligation to become "responsible for handling all *chai* duties (*chengban yiqie chaiwu* 承辦一切差務)."<sup>25</sup> Few direct testimonies of this practice survive, but one legal suit filed in 1845 by Pu Yihe (濮義和), of the copper leaf trade, summarized the story of the early organization of his trade:

My ancestors came to Chongqing to operate a copper leaf workshop in the Qianlong era. Responsibility for performing *chai* duties were shared equally among all workshop owners, but my family was raised up as the head of the trade, so that there was clear leadership (承認差務，皆系開作坊人共同幫差，不過舉蟻一家為首，得有專司). This practice has been passed down through several generations to today, and each has preserved the established guidelines. The pledge on file in the War Department of the *yamen* is available for perusal (兵房卷宗可查). All those who open a new workshop, or hire new craftsmen from distant places, are by rule required to put money into the association (幫銀入會)...<sup>26</sup>

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<sup>24</sup> Whenever the *yamen* office required materials or labor from the city's trade obligation cooperatives, a receipt would be issued and kept on file. The docket of receipts from *hang* and craftsman obligations from December, 1789 alone contained over 75 vouchers (*cun zhao* 存照). See SPABX: 01-00148.

<sup>25</sup> Very few examples of *chai* pledges seem to have survived the rocky history of the Ba County archival collection, but it is possible that these documents were filed in an irregular manner, or were maintained strictly by *yamen* workers since there was no legal bureaucratic system for maintaining them. However, some examples of pledges do survive. See SPABX: 03-00483 and 03-00476; 4 and 5.

<sup>26</sup> SPABX: 12-10585; 1.



Lacking the existing structure of trades organized under *yahang* licenses, *hang* tradesmen were required to adopt their own organizations for the fair distribution of *chai* duties and compelled to appoint a single representative to represent their trade to the *yamen*. It was up to these liaisons to find a way to fairly distribute the demands of the magistrate's office.

Few rules about the performance of *chai* in the marketplace were recognized in this period, except for those concerned with the protection of Chongqing shops from the malfeasance of *yamen* employees and the protection of merchants from predatory extraction by Chongqing shops. From the middle of the eighteenth century, magistrates attempted to prevent the members of commercial groups responsible for "service" from extortion by *yamen* workers. The rules in this first category dealt primarily with the powers of *yamen* employees and the punishments for any malfeasance.<sup>27</sup> Attempts by *yamen* workers to procure materials without a receipt or beyond the specified amount approved by the magistrate could be reported to the local office, and any attempts by shops complicit with *yamen* workers in schemes related to procurement were eligible for punishment and investigation as well.<sup>28</sup>

Beyond the general measures adopted by the *yamen* to protect merchants from the predations of the illicit bureaucracy, members of *yahang* and *hang* groups could actively protect themselves from illicit demands through active negotiation with local and provincial offices.<sup>29</sup> Both *yahang* and *hang* merchants engaged in this sort of bargaining for *chai* precedents. An example of such tactics can be found in the 1794 suit of Qu Shaozu, the silk *yahang* whose description of *chai* was quoted above. In the same suit, Qu explained that in 1788 the *yahang* of his trade had received the permission of the Circuit Intendant to

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<sup>27</sup> See, for example, SPABX: 01-00146; 3.

<sup>28</sup> For an example of a case in which the *yahang* merchants of one trade reported such an incident, see SPABX: 01-01913; 3. For an example of a case in which the *hang* merchants of another trade reported *yamen* clerk malfeasance, see SPABX: 01-01911.

<sup>29</sup> For additional discussion of merchants receiving permission for proclamations or stone inscriptions detailing the limits of official procurement, see Richard Lufano, "Maintaining the Equilibrium: Balancing the Interests of Commerce and Local Government," 79-101 in Anthony and Leonard, eds. *Dragons, Tigers, and Dogs*.

restrict *chai* obligations to white silks only as a result of the substantial expense entailed in the purchase of colored silk. In addition to forcing the prefectural and county governments to respect this prohibition sent down from provincial authorities, they also actively sought payment for outstanding procurements by placing pressure on the local administration. Noting, in 1794, that the prefectural government still owed the silk merchants over 170 taels for previously-collected materials, Qu wrote:

When it comes to handling the steady stream of procurements from the *yamen* and official houses of the city, apart from those that have already been fulfilled there are 23 outstanding receipts for 292 bolts of colored fabric... we should perform this obligation even though it is burdensome in the extreme. But we truly fear that, afterward, the needs of each office would truly be difficult to fulfill. Therefore on the seventeenth day of this month, we filed a suit at the provincial office of the Imperial Censor, who ordered that the prefectural magistrate of Chongqing should look into the matter, and forbid any sort of undue burden...<sup>30</sup>

In response, the magistrate commanded the clerk responsible for collecting goods from the silk trade to look into and report on the situation. The case disappeared after that, presumably as a result of closer attention on the part of *yamen* employees to limits on the demands of the silk tradesmen.

*Hang* heads were also capable of negotiating with the state to limit their losses through the official procurement system. Such an example can be found in the 1789 suit filed by Liang Zhengzhao (梁正兆), and Zhang Shiwan (張仕萬), the heads of the kiln operators in the city. In their suit, they explained that the official price that had been set for the purchase of ceramic tiles was no longer adequate to cover the expense of production:

... In our past performance of *chaiwu* we have not violated commands in even the slightest way. The previous Circuit Intendant Xu took pity on our hardship and our poverty, and set a price of 3,200 *wen* for every 10,000 tiles. Today, however, the price of materials has gone up. The cost of coal has doubled, and the price of transport has also increased... we beg that you take pity on our impoverished state, in which even affording food to survive is a difficulty, and responding to *chai* demands is [characters missing]... mercy to grant an increase in the price.<sup>31</sup>

In response, the magistrate increased the price by 1,800 *wen* per 10,000 tiles. Following this increase, the kiln heads petitioned the *yamen* to help them “avoid any error in the handling of *chai*, since the duties are

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<sup>30</sup> SPABX: 01-01913; 1.

<sup>31</sup> SPABX: 01-01899; 2.

so many and complex... and in recognition of the fact that it is difficult for each of the *yamen* of the city uphold the same standard (各衙難歸劃一),”<sup>32</sup> and requested that the magistrate “graciously notify each *yamen* of the new guideline.” In response, a summary of the new price for tiles was sent out to the various offices operating in Chongqing.

The above examples demonstrate the range of commitments that the state made to each trade in an effort to keep the performance of *chai* from ruining the businesses thus obligated to the administration. Members of each trade could get officials at the local or provincial level to agree to a number of limitations: ranging from the type of good which could be levied to the price that had to be paid. These agreements were then kept on file, and in some cases were carved in stone, and could be cited if *yamen* workers ever presented demands in excess of these precedents, which applied to all local offices.<sup>33</sup>

In addition to limiting the extractive powers of the state and its agents, the Chongqing *yamen* in the eighteenth century also supported the promulgation of regulations about *chai* designed to protect merchants operating in the markets from predation by *hang* and *yahang* agents. The local state expressed consistent concern about being able to regulate the demands of *yahang* brokers for levies from merchants trading in the city and required trade-wide agreement on the collection of these contributions – usually known as *lijin* (although sometimes simply referred to as “extracted amounts” or *choufen*) – before they were allowed. Agreements on the collection of transaction levies in this period depended upon market convention and trade-specific logistics, left up to each trade to determine, as long as the policy was clear and consistent.<sup>34</sup> The aim of these regulations was to keep merchants from cheating customers.

Thus, in the first several decades of *chai* service by *hang* and *yahang* in Chongqing, the only regulations countenanced by the local state were those that protected from malfeasance either by *yamen*

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<sup>32</sup> SPABX: 01-01899; 3.

<sup>33</sup> For an example of *chai* regulations being carved in stone and displayed in the city, see SPABX: 03-0357.

<sup>34</sup> For another example of a two trades that negotiated *lijin* rules in the Qianlong era, see SPABX: 01-0322; 01-03975 and 01-01356, especially document 3.

employees or by the merchants who were now empowered to raise revenue on behalf of the state. Over time, the forms of organization associated with the performance of delegated responsibilities became more sophisticated and involved an increasingly large portion of the city's established and sojourning merchant populations. The accretion of arrangements between individual merchants within their groups on the one hand, and merchant liaisons and the *yamen* employees on the other hand, was a gradual one.<sup>35</sup>

### Merchant Organization in Chongqing's Nineteenth Century

The earliest use of *chai* to organize trades in the Qianlong era relied upon the existing structure of the Qing market system to interact with the market. The legitimate authority of *yahang* served at the earliest point as a basis for further revenue extraction and the mobilization of commerce for local and provincial needs. Since *yahang* were already empowered to tax commercial exchange by virtue of their Board of Revenue licenses, extra local revenues could be tacked on to existing levies with little need for innovation. The local government merely allowed *yahang* to agree upon standard levies and to report any instances of tax evasion or illicit exchange to the *yamen* for examination and punishment.<sup>36</sup>

Not long after *yahang* were thus empowered, however, the local state of Chongqing began to seek out ways to organize, sanction, and police new types of merchant organizations for those trades not yet organized under the Qing market system. The first of these innovations was the revival of the historical system of *hang* organization discussed above. But by the end of the 1700s, the simple *hang* organization already seemed insufficient. A more complex organization with larger scope was introduced: the *bang* (幫). In their basic logic, these *bang* resembled the *hang* that appeared before them, but several things

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<sup>35</sup> For a discussion on cases involving disputes over the payment of local levies, see Zhou "Traditional Commercial Institutions and Their Modern Transformation," 112-119.

<sup>36</sup> For instances of proclamations about the right of *yahang* to report tax evaders, or the punishment of those individuals, see SPABX: 07-00513, 07-00518, 18-00908, 23-00820, 23-00904, and 33-04618.

about this new style of organization set it apart from the other forms of commercial organization in the city.<sup>37</sup> First and foremost, the *bang* form of organization was used for merchants engaged in trades that were not based within the city. Unlike *hang* merchants, members of *bang* trade coalitions were sojourners (or involved in long-distance trade) operating in large and complex industries. In order to organize these larger trades, *bang* organizations were far more complex than their *hang* counterparts. The increasingly sophisticated merchant organizations that appeared in the nineteenth century reflected the further unfolding of *chai* logic in the organization of commerce.

Over time, what had started out merely as an *ad hoc* means of state extraction slowly morphed into a new kind of local state-building, which was linked with an equally important shift in commercial governance: from direct taxation of merchants to the delegation of official tasks to merchant organizations.<sup>38</sup> A new kind of bargain was struck between the magistrates of Chongqing and the city's new merchant organizations: the execution of "public duties" would be handled by merchants at their own discretion in exchange for taking on exclusive responsibility for fulfilling requests for service sent down by the city's officials. The key to this new perspective on market organization was the notion of "exclusive responsibility" (*zhuan ze* 專責) for the performance of *chai*.

#### *Exclusive Responsibility and Merchant Organizations in Chongqing from 1800 to 1850*

Although procurement and material support were formative needs spurring this transformation of merchant-state interaction in the late eighteenth century, over the course of the nineteenth century it became clear that the use of the notion of *chai* service was fundamentally different from other straightforward schemes of taxation or extraction. Chongqing's administration charged headlong into a

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<sup>37</sup> On the differences between *hang* and *bang* in Chongqing, see Zhou, "Traditional Commercial Institutions and Their Modern Transformation," 212-232.

<sup>38</sup> This shift may be, in some ways, considered the elaboration of the shift from direct interference in the market to indirect involvement first pointed out by Chiu in "Understanding the Ming and Qing Legal Regulation of the Market through the Evolution of the Market Codes."

new world of local state-building, as it frantically encouraged the development of merchant organizations capable of claiming to distribute the demands of the state fairly. The constant and underlying objective of all of the complex maneuvering around the creation of merchant associations in Chongqing was the formulation of *exclusive responsibility* for official functions. In an organizational pattern closely resembling the replication of collective responsibility units, over the course of the first half of the nineteenth century industries were organized into legible units with which the local state could interact. Local authorities were not only able to rely on these units for information, but for the task of mobilizing merchants for the performance of official duties. In exchange for the guarantee that the needs of the local government would be provided for and responsibly shared among the members of each trade, the city's merchants were allowed the ability to manage the organization of their own trades.<sup>39</sup>

The notion of “responsibility” (*ze* 責) was directly linked to the authority of statutory offices in Qing China. It appears that only individuals acting on direct bureaucratic orders or in their capacity as Qing officials could be described as performing duties associated with *ze*.<sup>40</sup> Not even the earliest extant pledges of collective responsibility heads frame their obligations in terms of *ze*.<sup>41</sup> It was only over the course of the nineteenth century that the notion of official responsibility began to appear in reference to collective responsibility heads and merchant delegates.<sup>42</sup> The shift from asking merchants to perform duties as part of their obligation to handle “public affairs” (*gong shi* 公事) to commanding them to

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<sup>39</sup> Only two boundaries were established for merchant groups serving in this capacity: they could not use *chai* as an excuse for extortion, and they could not break the long-standing laws against coercion in the market.

<sup>40</sup> In the earliest evidence I have found of the verb appearing in relation to merchants, for example, in one 1787 case a group of urban *kezhang* file a report on a commercial case, and describe that they performed their responsibilities as delegates (*feng wei zhi ze* 奉委之責) – under the direct orders of the court – to summon both parties to mediation. See SPABX: 01-01391; 2.

<sup>41</sup> SPABX: 01-00107; 19; other pledges simply require that the *kezhang* or *xiangyue* or *baozhang* “must diligently and carefully handle any public affairs encountered within the unit.” See the licenses reproduced at QJDBXXB, 294-295.

<sup>42</sup> See, for example, the *kezhang* and *keyue* licenses recorded in SPABX: 03-00061;2 and SPABX: 07-00108;1, as well as the later examples at SPABX: 31-01127; 1, 5; 31-01510; 31-01103; 31-01121.

undertake their “responsibility” indicates a subtle change in the labeling of the relationship between merchants and the state that has gone unnoticed in the scholarship. But, as this section will show, the implications of this shift were not only rhetorical, but practical as well.

The use of the concept of *chai* to organize merchant groups in Chongqing’s nineteenth century meant that the authority of these groups was framed in terms of exclusive responsibility to the state for the performance of official service. This relationship with the state gave merchant group heads the ability to act on behalf of the state in mobilizing the merchants participating locally in their industry. The result is that the *hang* and *bang* of this era were purely local groups that were imbued with the authority of the local state within specific parameters. This authority was not based on a legal recognition of local or trade custom. Rather, it was a type of authority bestowed upon individuals carrying out official orders on behalf of the state.

Merchant *hang* and *bang* were formed only after *chai* were defined by the local state, and in response to demands from the magistrate to mobilize particular trades.<sup>43</sup> The demand for *chai* in a particular industry would compel merchants who were not yet organized into a trade association to come together and discuss a means of fairly distributing the burden of government service. For the first half century of *hang* and *bang* development, the organization of these merchant groups followed a few basic principles: merchants were left to organize themselves as a means of effectively providing *chai* while reducing opportunities for illicit bureaucratic malfeasance.

At the core of this nineteenth-century transformation of merchant groups is the principle of self-organization (*zili* 自理). According to this principle, the members of each trade were allowed to handle

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<sup>43</sup> Some scholars have noted that *chai* demands came before the formation of merchant groups, although none have yet situated this observation within a basic reassessment of the relationship between the market and the state, as I do here. In his essay on *chai*, which he treats as a local tax on merchants, Fan Jinmin reviews the origin and nature of several of Chongqing’s *hang*; see Fan, “Monopolies and Government Contracts.” In his work on the merchants of Hankou, William Rowe notes that local officials sometimes demanded the appointment of *bang* heads were they did not yet exist, concluding that “in most cases” these groups were created as the result of administrative initiatives. See Rowe, *Hankow: Conflict and Community in a Chinese City, 1796-1895*, 242.

*chai* according to their own preferences, so long as they did not violate Qing laws about the free flow of goods.<sup>44</sup> Since this shift was, in essence, little more than a transition from direct market taxation by members of the illicit bureaucracy to market taxation by merchants themselves, both of which were illicit forms of revenue-raising, few pieces of direct evidence illuminate this critical point in the history of merchant organization in Chongqing. But one example of such a transition can be found in the 1793 case of Zhu Tingbiao (朱廷標) and his fellow grass mat craftsmen who, in a suit to the magistrate, complained:

We who operate the grass mat stores of the city are obligated to perform all large and small *chai* obligations for the city's civil and military *yamen*. In the borrowing and purchase of thousands of grass mats per *chai*, each item costs us 2 *fen*, which is already a deep loss for us. Historically the prefect commanded each office that, for each occasion requiring grass mats, the demanded quota should not exceed eight or nine hundred. But recently 2,000 mats were demanded by Wei Feng (魏俸), the *yamen* runner, who then dared to take our mats and illicitly sell them for his own profit. When we saw one merchant Liu selling them in a stall erected on Yifeng Street, we were shocked. Those mats had cost us our hard-won capital [lit. "blood capital," *xue ben* 血本]. The responsibility of *chai* obligations is already extremely difficult to bear... how could that runner use it as an excuse for illicit profit?<sup>45</sup>

In response to these allegations, the magistrate issued an order to arrest the runner Wei. But before the order had been carried out, a report arrived from several men who described themselves as the "neighbors (*jielin* 街鄰)" of the grass mat shops. Upon issuing the arrest warrant, they remarked, Wei had agreed to mediation with the plaintiffs.

These men did not explicitly substantiate the accusations of the plaintiffs, but reported that a compromise was struck to eliminate any future suspicion: "We judged that, henceforth, the grass mats needed for local purposes would be handed over directly by a person chosen by Zhu Tingbiao et al., so that none would be lost in the transfer, and the two parties were happy to submit to this agreement."<sup>46</sup>

Along with this report, the grass mat sellers submitted a pledge to personally handle the delivery of future

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<sup>44</sup> Qing laws dealing directly with commerce emphasized the importance of allowing goods to flow freely in the market; this is one of the standards to which magistrates were held in presiding over commercial cases.

<sup>45</sup> SPABX: 01-01911; 1.

<sup>46</sup> SPABX: 01-01911; 4.



mats required for *chai* purposes, and the magistrate commented that, although Wei should have been punished, an exception could be made since “Zhu et al. have been persuaded to settle the affair, and there is no disagreement. It is permitted to settle the affair provisionally and close the case.” In this unusually explicit account, the intermediary role of *yamen* employees was eliminated through the direct recognition of merchants as liaisons between their own trade and the local government.

In keeping with the administrative patterns of the era outlined in the previous chapter, the local state recognized that the burden of taxation by *yamen* workers was illicit, inefficient, and difficult for the magistrate to control. So long as merchants could be persuaded to be held accountable for the same procurements that had previously been carried out by *yamen* employees, self-organization for the fulfillment of *chai* obligations was a more efficient way of marshalling the resources of the market in support of the state. By the turn of the century, self-organized *chai* was the dominant form in the city.

Trades that handled their own *chai* organized according to their own customs, appointed their own leaders, and were expected to operate based on group consensus.<sup>47</sup> In the early stages of merchant group development, the *yamen* required only that the distribution of *chai* remain “fair” (*gong* 公), and held the appointed liaison responsible for the organization of the trade and quotas demanded by the local state. The *yamen* demanded that each group elect (*gong ju* 公舉) a responsible representative and kept track of the heads of each trade group as a means of demanding accountability for the performance of *chai*. Different *yamen* kept track of different *chai*, but each had a similar procedure for maintaining information about accountability for official service. Each group was required to elect one (or more) headsman, who was then required to file a pledge at the *yamen*.

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<sup>47</sup> This finding is in accord with, although subtly distinct from Susan Mann’s argument that, before 1853, merchants were allowed to dominate the neglected sphere of commerce by making their own rules without government interference or authorization. See Mann, *Local Merchants and the Chinese Bureaucracy*, 21. Similarly, Rowe concludes that merchants and tradesmen “evolved their own consensus” on the regulation of each trade in the absence of an imperial policy on craft and commercial regulation. See Rowe, *Hankow: Commerce and Society in a Chinese City, 1796-1889*, 193.

The text of each license varied with the trade in question and in accordance with the formulations of each of the city's *yamen*. Since the many trade *chai* were linked to offices other than the magistrate's county *yamen*, few records of these pledges and licenses survive. One example preserved in the county magistrate's office records is a draft of the text for a "waist placards" (*yao pai* 腰牌) issued to Zhang Rong (張榮) and Huang Hongshun (黃洪順) in 1837, after they were elected as headsmen responsible for organizing the *chai* services of the members of the Large River boat *bang* (*da he bang* 大河幫) read:

In accordance with this placard, given to the boat heads Zhang Rong and Huang Hongshun to preserve: henceforth on every occasion when large or small *chai* duties are encountered, diligently and carefully fulfill them without the slightest error or negligence, or else be punished severely!"<sup>48</sup>

These placards entitled the holders to command members of their own trade in the name of official responsibility for *chai*, upon the authority of the *yamen* with whom the pledge had been filed.

Officially, the heads of *hang* and *bang* were required and empowered only to fairly distribute the burden of *chai* within their trade. But within each *hang* and *bang*, merchants and tradesmen began to make agreements about how the funds for this responsibility should be raised, how they were managed, how their headsmen were elected, and how the discretionary funds could be spent outside of direct *chai* contributions.<sup>49</sup> In order to deal with the complicated demands of *chai*, both *hang* and *bang* began to formulate explicit rules about the structure and operation of their representative organizations and the trades that they governed.<sup>50</sup> These rules were the product of the state's formal recognition of group self-organization for the performance of *chai* duties and the need to fairly execute their duty to act as deputies of the local state in the procurement of goods and resources. The rules of merchant groups could cover a

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<sup>48</sup> SPABX: 07-00810; 2.

<sup>49</sup> For two examples of merchant group rules from this early period, see SPABX: 03-00357; 07-00634.

<sup>50</sup> On the raising, handling, and disposal of merchant group funds, see Zhou, "The Preservation of Property."

wide range of issues, but the central object was always the same: the management of the obligations of trade service.<sup>51</sup>

Negotiations between members of each trade, and between trade representatives and the *yamen*, were built on a network of consensus (*gongyi* 公議) that charted the relationships between members of a particular industry and the local state. This process of dialogue and slow accretion of commercial and organizational principles was borne out of purely local state needs and constituted a purely local state-building process. Only the principle that *chai* should be distributed according to “consensus” was formally recognized.<sup>52</sup> But working with even the limited frameworks of exclusive responsibility and consensus, merchants organized into trade groups were able to stake out increasingly defined territories of authority and responsibility.

Within each *hang* or *bang*, the resources needed to perform *chai* were mobilized in a number of ways. In smaller local trades, the labor of artisans or the provision of particular goods was rotated among shops according to a fixed schedule. In trades that participated in commerce, a group fund was often created, and every shop in a trade was required make contributions on a per-transaction basis, according to a flat rate, or based on an estimate of the shop business.<sup>53</sup> These surtaxes were levied in the name of

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<sup>51</sup> The rules of merchant associations might include rules on basic principles of business within an industry such as regulations about the use of weights and measures, monetary instruments, credit, liability for losses, and the length of loans or payment cycles. See Jernigan, *China in Law and Commerce*, 210-211. They might also cover the structure and operation of the merchant group itself, containing guidelines about the handling of disputes, the auditing of group accounts, the system of modifying group rules, and guidelines about the management of group property. See Zhou “Change in the State Legal System and the Development of the Industrial and Commercial Economy,” 9-10.

<sup>52</sup> The importance of consensus in merchant self-organization has often been conflated with hegemonic social authority, group monopoly, and “guild tyranny.” But, in fact, magistrates carefully circumscribed the authority of these groups and did not permit them to make demands for contribution to *chai* levies outside of their own membership. This point cannot be elaborated upon in this chapter because of the space required, but, for an example of such a case, see SPABX: 12-10585.

<sup>53</sup> On types of levies and their distribution in Ba County, see Zhou, “Traditional Commercial Institutions and Their Modern Transformation,” 112-114.

“assisting with the performance of trade services” (*bang ban chai wu* 幫辦差務), and were often simply referred to as “helping funds” (*bangyin* 幫銀). Those trades which had no formal *chai* obligations were strictly and actively forbidden from forming *hang* or *bang* organizations. Since they were linked to the performance of *chai* and thus entailed the right to tax products or services, these groups could not be founded at the will of the potential members. Illicitly established organizations that mimicked the profile of *hang* and *bang* were immediately disbanded by the court, and their leaders punished as “impostors” (*maochong* 冒充) who obstructed commerce.<sup>54</sup>

The regularization and institutionalization of trade service spurred the growth of sophisticated groups capable of negotiating the interests of their constituents and the state.<sup>55</sup> The *chai* quotas of each trade were increasingly defined and regularized, as negotiations between each trade and the state accumulated over the first decades of the nineteenth century.<sup>56</sup> In the course of systematizing *chai* demands and their execution, concrete organizations began to emerge. The rules of groups charged with the handling of *chai* were often submitted to the *yamen* in order to prevent untruthful claims about group agreements, but in the first half of the century these rules were not formally recognized by the magistrates of the city. The rules of these merchant organizations concretized a balance between the interests of the members, the local bureaucracy, and the interests of the trade associated with each organization.<sup>57</sup> They were the result of negotiations between individual merchants, group leaders, non-member merchants, and the local state.

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<sup>54</sup> For two examples, see SPABX: 12-10585 and 07-00834.

<sup>55</sup> Chiu Peng-sheng argues that the market space that emerged after the demise of the official price system gave merchants more leeway to organize and negotiate with local authorities in his “State Law and *Bang* Regulations,” 322.

<sup>56</sup> The difference between these nineteenth century responsibilities and earlier eighteenth century demands is perhaps most visible in the different descriptions of *chai* obligations for the same trade found in the 1794 suit at SPABX: 01-01913; 1 and those found in the 1814 suit at SPABX: 01-01913; 3.

<sup>57</sup> This observation is also made by Zhou Lin 周琳 at “Traditional Commercial Institutions and Their Modern Transformation,” 251.

### The Three River *Bang*: A Case Study

Snapshots of the developing complexity of merchant organization through local official mobilization can be seen throughout the Ba county legal archives, but few industries are well documented enough to trace as long of a trajectory as the shipping industry.<sup>58</sup> The transport industry was a major part of Chongqing's market.<sup>59</sup> In addition to the high demand for their services from merchants operating in and out of Chongqing, the ships plying the waters of the Upper Yangzi region were also targets for heavy official and military demands in a province where little could be transported large distances over land. This was especially true in the 1770s after the official fleet once maintained in the province was disbanded, and organizations for compelling transport labor were abolished in accordance with the Qing market reforms. From that point forward, the government was required to obtain ship services through the market.

Over the course of the military campaigns of the late eighteenth century, demand for river transport had already lead to the creation of several shipping *bang* to handle the associated service. Each *bang* represented a specific segment of the shipping industry, based on the commercial routes they plied, the size or cargo types of each ship, and the levies collected on each group under the old official procurement system. Each of these smaller *bang* were organized under the guidance of three federated groups by the turn of the eighteenth century – the Large River (*da he* 大河) *bang*, Downriver (*xia he* 下河)

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<sup>58</sup> A profile of the compilation of *bang* rules was first constructed by Chiu Peng-sheng in his “State Law and *Bang* Regulations.” A larger history of transport and organization in the city may be found in his “Order without Law?” The following narrative focuses more specifically on the rule-making process of the shipping organizations, but is still greatly indebted to his work on the subject.

<sup>59</sup> 71 of 300 households surveyed in the suburban Dingxiang ward of Chongqing reported belonging to a trade associated with transport. List compiled by Chiu Peng-sheng and produced at “State Law and *Bang* Regulations,” 398. The original publication of the data used for his figures may be found at Sichuan Provincial Archives, comp. [Sichuan sheng dang'an guan 四川省档案馆] *A Compilaton of Qing Dynasty Archives from Ba County* [*Qing dai Ba Xian dang'an hui bian* 清代巴县档案汇编], Qianlong volume (Beijing: Dang'an chu ban she, 1991), 310-311.

*bang*, and Small River (*xiao he* 小河) *bang*, who all together formed a single Three-River *bang* (*san he chuan bang* 三河船幫).

In 1803, the Little River *bang* sent two heads of their constituent organizations to sign pledges at the *yamen* to take responsibility for handling all of the *chai* service that fell under their jurisdiction. Shortly after, the prefectural magistrate ordered the five other shipping *bang* currently handling trade service obligations to send over representatives to make a similar pledge, in order to establish an “exclusive” means of coordinating *chai* (*zhuan chai* 專差).<sup>60</sup> A *yamen* worker was sent with an order for the heads of the respective *bang* to assemble at the local office. The very next day, the five heads of the summoned *bang* were present in the court room, where they were instructed to find a way to “handle service obligations for the county in accordance with the example of the Small River *bang*, by collectively backing an honest leader to handle all related matters.”<sup>61</sup>

The heads of each *bang* agreed to a division of responsibility for the service associated with the type of ships and routes that each association represented. For all large-scale commitments and military commitments that involved crossing a border, the leaders of all shipping *bang* were required to “work together to handle the request, in order to appoint exclusive responsibility and avoid the possibility of someone using trade service as an excuse to hassle or harm the others (各首人公同辦理以專責成庶免藉差擾害).” Each *bang* head submitted a pledge (*ren zhuang* 認狀) to the *yamen* proclaiming that, thenceforth, they would handle all of the *chai* assigned to their *bang*.<sup>62</sup>

After the pledges had been registered, the military and civil officials of the city published a proclamation “strictly prohibiting the use of *chai* as an excuse for extortion,” which demanded that the

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<sup>60</sup> SPABX: 03-00476; 1.

<sup>61</sup> SPABX: 03-00476; 3.

<sup>62</sup> SPABX: 03-00476; 4, 5. Other reports of the founding of *hang* or *bang* and the maintenance of *chai* pledges in this period employ similar terminology. See SPABX: 12-10585; 1 and 07-00810; 1.

duties appropriate to each *bang* be handled strictly by the *bang* within whose jurisdiction the duty fell.<sup>63</sup>

The proclamation was carved on a stone stele, which was “erected outside of the Hunan meeting lodge in the city, declaring that every ship arriving in Chongqing would pay a single *lijin* toll to defray the costs of service.”<sup>64</sup> The several groups that made up the three federated shipping *bang* were each assigned responsibility for collecting fees from its own membership to support the cost of performing *chai* transport labor.

In 1837, the heads of the Three River *bang* summarized the recent history of the development of their organization, writing:

In 1796, circumstances led to extremely pressing military needs, and military obligations fell to the responsibility of river shipping *bang* to offer logistical support, but there was great confusion, disagreement, and much shirking of responsibilities. In 1803, the members of the shipping *bang* reported to the prefectural authority Ying, who ordered that rules be set forth regarding the various service obligations of the Large River *bang*, which would handle those services exclusively, and the various service obligations of the Small River *bang*, which would handle those obligations exclusively, and the various services of the Downriver *bang*, which would handle those obligations exclusively, each without mutual interference. Whenever major provincial authorities visited the city, all of the duties of transporting them to and fro would be handled collectively by the Three River *bang*, and each head of each shipping coalition was authorized to dispatch ships to fulfill service obligations without dispute or resistance, in his capacity as a delegate responsible for handling the performance of *chai*...<sup>65</sup>

From the time that the dissolution of the official fleet in the 1770s had led to the organization of trade service under the auspices of a host of shipping *bang*, the merchants, their delegates, and the local state had begun a long process of bargaining about the fair distribution of the tasks required to provide for the needs of the government. This series of negotiations had resulted in a sophisticated, regularized system of

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<sup>63</sup> SPABX: 03-00476; 6.

<sup>64</sup> SPABX: 07-00556; 2.

<sup>65</sup> SPABX: 07-00556; 3.

clear expectations about the division of responsibility for service obligation.<sup>66</sup> Negotiations over the distribution of *chai* and the forms of organization required to perform it continued over the course of the nineteenth century.

### *Merchant Groups and the Court of Chongqing from 1800 to 1850*

In the several decades between the appearance of these merchant groups and the turn of the nineteenth century, their only presence in the documentary record is in those files that pertain to the taxation of commerce. It was not until the nineteenth century that *hang* and *bang* began to appear in the resolution of commercial disputes, and throughout the first half of the century, their participation was extremely limited. In the early years of the nineteenth century when these groups first appear in court records, the function of merchant groups in court-led dispute mediation resembled the function of *baojia* heads, insofar as new trade groups might be called upon to exercise their “public duty” in investigating and reporting on the details of commercial disputes. Even in these tasks, merchant groups were never called upon to operate alone but instead were required to work together with collective responsibility heads. In many ways, the court authority of *hang* and *bang* in these groups was supplementary or subsidiary to collective responsibility figures, with the one exception that, on rare occasions, their profile as groups endowed with “exclusive responsibility” allowed them to act on behalf of the court in the forceful execution of *yamen* commands.

It was the information-gathering capacity of merchant groups that was relied upon by the court in one of the earliest Chongqing cases to explicitly mention merchant coalitions, the 1811 dispute between Yin Zhenxiang (尹振祥) and two of his business partners. These Huguang natives had come together to form the partnership of the Ji Tai (集太) porter firm. A month before the suit was filed it was discovered,

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<sup>66</sup> In a similar line, Chiu Peng-sheng argued that *bang* legitimacy grew and received more recognition from the local authorities because of their ties to and recognition from locals and members of the trade. See Chiu, “State Law and *Bang* Regulations,” 326.



Yin claimed, that one of the partners, Tan Zhihe (譚志和), had begun to embezzle funds from the firm, and Tan had subsequently violently resisted mediation. On the second suit requesting court intervention, the magistrate sent out an official order to the *yueke* (約客) collective responsibility head of the Chaotian ward, which commanded that “The *yuelin* and *bang* heads shall be entrusted with this order to investigate Tan et al. and determine whether or not there was embezzlement, and then work fairly (*bing gong*秉公) to sort out a solution and file a truthful report at the county *yamen* for official apprehension.”<sup>67</sup> Merchant coalition insight into the history and function of a given firm could thus be not only analogous to, but employed in tandem with the collective responsibility framework of official access to information.<sup>68</sup>

A cursory glimpse at records of commercial disputes from this period generally indicate that *hang* and *bang* were, thus, little more than subsidiary participants in the mediation process. But the fact that merchant group representatives were exclusively responsible for carrying out official tasks within their trade also meant that, on rare occasions, *bang* authority sometimes resembled the power of *yamen* employees. The recognized ability of established merchant coalitions to execute official service (*chai*) granted them powers that exceeded the limits of collective responsibility authorities in cases when the *yamen* produced an official order to be executed by *bang* representatives. These orders could entitle merchant leaders to employ the threat of force in the execution of commands by directly representing the magistrate. In these cases the authority of *bang* leaders resembled the *yamen* runners who carried official warrants and commands out into the city to apprehend suspects and carry out official orders.

The earliest example of this is in the 1816 case of Li Xingju (李星聚), a Zhejiang native and registered *yahang* in the ceramics trade, who accused Yu Zhengxing (余正興) of operating an illicit

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<sup>67</sup> SPABX: 03-00497; 2.

<sup>68</sup> For other, later examples of merchant groups operating in conjunction with collective responsibility heads in the disposition of disputes, see SPABX: 44-27239 and 44-27507.

brokerage and aiding customers in evading every kind of tax.<sup>69</sup> Alerted to this potential threat to the commercial and administrative establishment of the city, the magistrate immediately issued a summons for the allegedly illicit broker and several of the customers who had been accused of buying goods without paying the required levies. But before the case was brought to trial, the magistrate was alerted by the two runners assigned to the case that Yu Zhengxing was nowhere to be found and had successfully gone into hiding. The powers of the *yamen* had run up against the familiar barrier of the chaotic physical, urban, and social geography of China's southwestern frontier. Hoping to detain the defendant, who was suspected of hiding on a ship owned by one Wu Yuantai (吳元太), the magistrate directed the heads of the city's shipping *bang* to "restrain Wu Yuantai's ship that is docked at Taiping gate. Under threat of punishment, do not permit it to escape."

The ability of the heads of the shipping *bang* to seize property and forcefully restrain ships from travel did not exist independent of the *yamen*. In normal circumstances, such actions by *bang* leaders would warrant official sanctions rather than support. But in cases where the *yamen* issued specific orders, *bang* heads were empowered by their particular relationship to the state to serve as direct representatives of the power of the magistrate. This power distinguished them from the collective responsibility heads and marked them as capable of serving in a capacity that resembled not a social form of power, but an official function. Over the course of the second half of the century, as *hang* and *bang* became more articulated and their relationship with the local state grew more intimate, the role that these groups played in both the administration of the market and the resolution of commercial disputes grew far more specialized and involved.

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<sup>69</sup> SPABX: 03-00324; 1.

*Merchant Organizations in Chongqing from 1850 to 1904*

By the middle of the eighteenth century, many of Chongqing's largest and most profitable trades, as well as several of its smaller industries, had already been organized into self-governed associations responsible for trade *chai*. When war and widespread unrest in the second half of the nineteenth century created a fundraising crisis throughout the province, the rhetoric of exclusive responsibility served as a ready tool for merchant-state cooperation on an order of higher magnitude and wider scope.<sup>70</sup> The burden of local demands grew exponentially during this period, and over the decades, Chongqing's merchant organizations actively participated in the creation, negotiation, and maintenance of local state-building projects.

The *chai* that had first given rise to merchant organizations in the city increased several-fold, as materials required for the defense of the city were requisitioned and placed at the disposal of local officers.<sup>71</sup> The revival of *tuanlian* units and the creation of new municipal organs provided a direct, local demand for funding.<sup>72</sup> By 1854, *hang* and *bang* were already committed to providing contributions for the city's *tuanlian* bureau.<sup>73</sup> In this year, the white cotton *bang* alone owed over 1,000 taels to this municipal institution.<sup>74</sup> Chongqing's merchants became responsible for not only the immediate needs of the

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<sup>70</sup> The rhetoric of exclusive responsibility was also appropriated in new ways. By this period, *yahang* also use the notion of exclusive responsibility in framing their requests for proclamations about and punishments of those who do not submit brokerage taxes. See, for instance, SPABX: 23-00904; 2.

<sup>71</sup> For example, see SPABX: 18-00444.

<sup>72</sup> Demands on the city's *yahang* increased as well, and suits from licensed brokers demanding held with the enforcement of *lijin* regulations or proclamations outlining guidelines for the remittance of contributions became common. A classic example of this type of plea, and attendant accusations of *lijin* evasion, may be found at SPABX: 23-00904.

<sup>73</sup> SPABX: 18-00127.

<sup>74</sup> SPABX: 18-00127; 3.

municipal administration, but also support for campaigns and infrastructural improvements throughout the province, as well as contributions to war efforts across the empire.

The increasing regularity and rationalization of revenue demands is most apparent in the implementation of *lijin* and municipal taxes in the city. This tax raised funds for county, prefectural, and provincial levels of the administration and represented the first time that larger administrative institutions countenanced the city's commercial taxation outside of the *yahang* system for legitimate revenue projects. The appearance of a legitimate and regular tax on commerce fundamentally altered the way that merchants related to one another, the market, and the state. To begin with, merchants became criminally liable for tax evasion, and could be brought to court directly by the *lijin* bureau when allegations of evasion surfaced.<sup>75</sup> The higher stakes and larger demands of commercial taxation in this period led to a flurry of disputes about the obligations of merchants participating in the exchange of taxed commodities in various capacities, who grappled with the transition from the early Qing market system model of *yahang* taxation of long-distance trade to the new regime of taxation on all forms exchange in the city's markets.

An example of the problems of this transition is found in one 1862 case, which began when the magistrate ordered that the four heads of the butcher *bang* and two pork *hang* representatives be brought in to court to report on the failure of the industry to collect adequate amounts for the municipal excise tax. These men complained that, although they had been empowered to collect a surtax on pork sales, merchants, peddlers, and customers from the surrounding countryside had started selling meat in the settlement of Jiangbei (江北), across the river from Chongqing, where no excise-collecting organization existed. The draw of pork sales free from levies had not only detracted from the ability of those responsible for *chai* to collect funds, but had even begun to effect their supply, as it became more and more difficult for them to procure meat within the city. In response to this conundrum, the magistrate

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<sup>75</sup> See, for example, SPABX: 18-00935 and 23-00905; 10.

ordered the representatives of these two groups to “find some way to extract a surtax and submit a detailed report for consideration.”<sup>76</sup> Five days later, the butchers and pork sellers filed their report:

We were ordered to report on the practice of *lijin* evasion and to come up with a way to collect an excise tax in our trade... This year because no pigs have been delivered from the provinces of Yunnan and Guizhou, the majority of meat is shipped from neighboring counties... Nowadays reckless men seeking profit (射利之徒) have remarked that in Jiangbei there is no tax and no *hang*, and thus they pay porters a fee to have meat delivered there for sale. The prices of butchers are cheaper there, as well, and people from all around have rushed to purchase meat in Jiangbei... in other areas of the city’s rural hinterland butchers sell meat in various rural communities, where it is then carried on bamboo pole to Chongqing and sold on the streets without being submitted to a *hang*... thus in recent years, even though there are over 100 meat shops in the city, which butcher 30 or 40 pigs per day, the amount of tax collected has been steadily decreasing.<sup>77</sup>

In the concluding section of their report, the butchers and pork vendors argued that the only solution to the problem was to prohibit the sale of meat from Jiangbei in Chongqing and to disallow peddlers from purchasing meat in other locations for sale on the streets of the city. The magistrate, however, concluded that this solution was both ineffective and threatened to block the free flow of goods in the region and instead ordered the men to “again go forth, examine their minds, and come up with another agreement to report for consideration.”

The unwillingness of city officials to enforce a monopoly or strict monitoring on the meat trade continued to haunt the men responsible for performing *chai* on behalf of the industry.<sup>78</sup> Over the years, several schemes were proposed to manage the difficulties of handling *chai*, including a contribution paid directly to the *yamen* by rural members of the trade whose transactions were exempt from taxation and *hang* demands.<sup>79</sup> But these attempts all eventually failed to address the basic crisis of cross-trade and long-distance coordination, and the members of the butcher *bang* and pork *hang* continued to show up in

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<sup>76</sup> SPABX: 23-00962; 2.

<sup>77</sup> SPABX: 23-00962; 4.

<sup>78</sup> This presented a serious problem for those trades that had previously been handled by *yahang*, who complained about a sharp decline in revenues during this period. Indeed, the steep drop in *yahang* numbers first noted by Zhou Lin in her dissertation may be attributed, in some part, to this new regime of commercial taxation.

<sup>79</sup> For details, see SPABX: 33-03721.

court asking for mercy or assistance in handling *chai* obligations.<sup>80</sup> The difficulty of collecting taxes from commerce within an entire trade without exercising monopolistic control over transactions plagued the merchant organizations of the city for the rest of the century and led to frequent court disputes over questions about how to define and enforce rules about exchange.<sup>81</sup>

Disputes over *chai* distribution, municipal taxation, and *lijin* collection across different fields within each of the city's trades triggered an almost constant process of negotiation between merchants, merchant groups, and the local state about how to distribute demands on merchants. The agreements that arose out of this process were designed to meet the needs of all agents involved in the taxation of commerce: from the sojourning merchants of the city to the shop owners of Chongqing and the local state as well. Each of these actors – even the magistrate himself – was confined by the parameters of the agreements adopted as a result of these processes of negotiation and consensus. Neither the *yamen* employees nor the magistrate were able to simply overturn standing agreements between merchant organizations and the state about the limit, form, or organization of trade contributions.<sup>82</sup>

This is abundantly clear in one case from 1865, in which *yamen* worker Zhou Fu (周福) sued the native cloth *bang*, the Guangdong cloth *bang*, the dye workshops of the city, and the cotton *bang* for refusing to supply him with the materials requested by the office of the Circuit Intendant, which had decided to replace its old pennants with new ones.<sup>83</sup> Called to court, the members of the two cloth *bang* explained that, historically, they had been exempt from *chai* requirements, but that they had been asked,

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<sup>80</sup> In addition to SPABX: 23-00962 and 33-03721, see also 33-03656.

<sup>81</sup> This finding is in stark contrast with the current assumptions in the literature, as other historians have all presumed that *hang* and *bang* did, in fact exercise monopolistic control over their respective trades. This is, however, both patently untrue and – perhaps more importantly – one of the reasons why scholars have yet to understand the crux of legal cases about merchant organization. The details of this problem, however, are so complicated that they cannot all be presented here, and will form the basis of a future paper.

<sup>82</sup> On the negotiation of *chai* duties between merchants and *yamen* workers, see Liu, “A Preliminary Exploration of Early Qing Ba County Obligations.”

<sup>83</sup> SPABX: 23-00905.

in 1842, to assist the local office in the purchase of needed supplies by contributing a flat cash levy. They complained that Zhou Fu's demands were in excess of established practice.

In response to Zhou's protestations that the *chai* could not be performed with the materials at hand, the magistrate could only order each of the *bang* and workshops involved in the obligation to "reach a common agreement for the provision of *chai* (公議籌款應差)."<sup>84</sup> The *yamen* issued a formal order bearing the text of this command. Negotiations over the handling of *chai* drew on for more than two months before finally resulting in a new court session. Each trade refused to take exclusive responsibility for future *chai* obligations and could only be persuaded – ultimately – to increase the cash levy to which they had agreed in previous years.

By the middle of the nineteenth century, the sparse and elegant structure of the Qing market system that operated in the background of state-merchant interaction in earlier years became obviously and woefully inadequate to handle the forms of collaboration that were now required to tax all commerce. The artificiality of the divide between long-distance and local trade in the Qing market system (and the differing forms of organization that marked each of these types of trade) became a problem as the government began to demand contributions from everyone, and the market was increasingly defined within the municipality, rather than within the empire.

In order to distribute obligations among different sectors of each industry, merchants and craftsmen struggled to define new rules about exchange that could incorporate agents involved in every part of production and transaction. Merchant group rules about the collection of taxes, the pooling of funds, and the handing of trade went from being recognized only within each group in the first half of the century to being the basis for municipality-wide conventions in the second. Market actors of all kinds were held up to the standards spelled out in these new guidelines, and the *hang*, *yahang*, and *bang* of the

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<sup>84</sup> SPABX: 23-00905; 3.

city became responsible for ensuring that all men and women operating in the market did so according to established regulations.<sup>85</sup>

One example of the creation of interlocking forms of commercial organization in the second half of the nineteenth century can be found in the medicine trade. Medicinal herbs harvested from the unique ecosystems of the southwest had made up a large portion of the trade flowing out of Chongqing since the market's revival in the eighteenth century. When *yahang* licenses were granted to the city in the Yongzheng era, those involved in the medicine (*yaocai* 藥材) and mountain goods (*shan huo* 山貨) trades, which specialized in these rare and expensive herbs, were granted a total of 63 out of the city's 152 licenses, making up over 40% of the total taxed trade coming in and out of the city.<sup>86</sup> The expansion of markets shipping goods in and out of the city only increased the flow of medicines being bought and sold in Chongqing, but by 1873 the twenty registered *yahang* of the medicine trade reported that the industry was facing a crisis:

We have accepted licenses from the Board of Revenue to open medicine brokerages, pay national taxes, and facilitate commerce. Since 1856, when the *lijin* bureau was established, rotating registers have been distributed and responsibility for collecting the medicine *lijin* has been invested in us (責成民等抽取藥厘)... last year all of the *yahang* licenses were audited and renewed, but who knew that in these last few years the revenues supporting the national tax would plummet and even *lijin* funds would decrease? If one examines the reason for it, it is all because there are treacherous commoners who plot together to operate medicine warehouses and collude with rootless adventurers (無業遊民) who call themselves 'brokers' (*jingji* 經紀), but have in fact never obtained a license or submitted tax revenue or even obtained a register for the payment of *lijin*. These men dare to represent customers in buying and selling and take a commission, but do not submit any part to the *lijin* bureau. Merchants from afar are conned by them, and thus fail to submit their goods to a licensed *hang*. They are cheated, and their goods embezzled, and the harm of it can barely be put into words. Those who open medicine warehouses originally confined themselves to feeding, lodging, and the storage of goods. But jealous of larger profits, they have refused to contribute to the national tax or the *lijin*... We beg you to graciously permit a proclamation and establish that this practice will be strictly prohibited, and the practitioners arrested, in order to protect the source of national revenues and maintain the integrity of the *lijin*.<sup>87</sup>

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<sup>85</sup> For examples, see SPABX: 31-03527 and 43-25981.

<sup>86</sup> "Taxes (*ke shui* 課稅)," in BXZQL, *juan* 3.

<sup>87</sup> SPABX: 23-00904; 2.



The magistrate agreed to the request and issued a proclamation “to all of the merchants and peddlers buying and selling in Chongqing, as well as the warehouses and brokers (*jingji ren*),” that “those of you who run medicine warehouses are only permitted to welcome merchants to store goods and are not allowed to represent customers in buying or selling.”<sup>88</sup> Furthermore, Magistrate Li added: “as for the peddlers who sell medicines from Guangdong, these must be submitted to a *hang* for reporting before sale. It is not permitted to trust a *jingji* broker to handle the transaction illicitly.” The proclamation concluded with a warning that any individuals found violating these commands could be reported to the magistrate for punishment by the *yahang* of the trade. The notice was posted in every ward and suburban neighborhood of the city.

Meanwhile, however, a group of men proclaiming themselves to be brokers from the medicine *bang* (*yao bang jingji* 藥幫經紀) protested against the claims of the *yahang*. In their own suit, they argued that “whenever short-distance peddlers come to Chongqing, it has always been we brokers who handle the transaction, collect the *lijin*, and issue an official receipt. The seller offers a small commission to us for our labors so that we may support our families.”<sup>89</sup> They then accused the medicine *yahang* of using their superior resources to bully and oppress the *jingji* trade, which had traditionally dominated the small, local traffic in medicines. Claiming that the magistrate’s support of the previous suit threatened the livelihoods of “several thousand” of the city’s *jingji*, these men won the permission of the *yamen* to hold a trial. In the two months before this trial was finally summoned, over a dozen suits were filed by various members of the medicine trade, debating whether or not *jingji* had a role in the trade, and what that role ought to be.

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<sup>88</sup> SPABX: 23-00904; 3.

<sup>89</sup> SPABX: 23-00904; 5.

When suits about the medicine trade began piling into the *yamen*, the Circuit Intendant commanded the *lijin* bureau to ask the heads of the Eight-Province Association to mediate between all of the parties involved.<sup>90</sup> In their report to the magistrate, the Eight-Province Association heads reported that, traditionally, it had been left up to the discretion of the merchant to decide which intermediaries to use in the sale or purchase of medicines and that it had been considered the responsibility of the merchant to report the sale of goods to the appropriate *yahang*. But, they noted, the decrease in reported *lijin* had led to litigation, and thus they were asked to broker a new agreement for the handling of trans-local sales of medicine.

Originally, the Eight Province heads concluded, there had indeed been a distinction between the functions of the *hang* and the warehouse, but the emergence of the *jingji*, who brokered small sales for a commission, had connected the two industries and made their functions less distinct from one another. In light of the fact that these *jingji* depended upon commissions for their livelihood, the *ba sheng huiguan* recommended that one third of each *jingji* commission be set aside to contribute to the *yahang* for trade expenses. In order to ensure that, in the growing city, all parties could be held accountable for collecting the *lijin*, they declared that “from now on, every time that medicinal goods arrive at Chongqing, the harbor porters shall first take them to the *lijin* bureau and report the number, types, name, *hang*, and warehouse where they are to be stored on a receipt.”<sup>91</sup> *Lijin* submissions could then be checked against the receipts on file at the bureau, and any inspections or reports of wrongdoing could use these records as proof of the movement of goods. Licensed *yahang* brokers could continue to specialize in the sale of large wholesale goods, and unlicensed *jingji* brokers who could not afford to purchase a *yahang* license could

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<sup>90</sup> In this period of widespread negotiation between the merchants, merchant groups, *yamen* employees, and local government of the city, the *ba sheng huiguan* played an important role in helping merchants negotiate, ratify, and maintain the trade guidelines that were established. For more on this process, see the Chiu, “State Law and *Bang* Regulations,” and Liang, *Immigrant, Nation, and Local Authority*, 261-262.

<sup>91</sup> SPABX: 23-00829.

sustain themselves with commissions from small sales. At both ends tax evasion could be prevented through the careful recording of the movement of medicine shipments.

In the court session that followed this report, both parties continued to offer protests: the unlicensed *jingji* brokers argued that handing over a third of their commission would make it difficult for them to make a living, and the *hang* merchants continued to insist that sale through a registered broker was the only legitimate way to ensure the payment of local and national taxes. But both were bound to uphold the agreement mediated by the Eight-Province Association at the command of the magistrate. Seven years later, when a similar dispute broke out among members of the trade, the magistrate referred the case back to the *lijin* bureau, which clarified the standing regulations of the trade with the help of the medicine *bang* and, with the magistrate's approval, had the rules of the trade "engraved in stone for preservation through the ages and dissemination throughout the land (出示刊碑以垂久遠至)."<sup>92</sup> In this case as in others, the priority of the court was to foster arrangements that could successfully produce revenue while also maintaining those institutions that facilitated commerce and restraining opportunities for monopoly and malfeasance.

The history of the regulations of the medicine trade represents the general shift in merchant organizations over the long nineteenth century. What started out as a trade taxed only by *yahang* merchants became, after 1856, subject to general *lijin* taxes. The challenge of taxing all commercial exchange (rather than only long-distance wholesale transactions) meant that *yahang* merchants had to work together with the warehouse owners and unlicensed brokers in the industry to establish trade-wide regulations. The negotiation and implementation of these regulations involved the Eight-Province Association, the *lijin* bureau, and even the porters of the city. By the end of the century they had been ratified by the magistrate's office and slated for inscription on large stone tablets to inform all men and women trading in the city about the regulations dictating exchange in the trade.

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<sup>92</sup> SPABX: 43-25981; 3.

The stone inscriptions of trade regulations were the product of negotiations between individual merchants, market organizations, and the magistrate's *yamen* or the *lijin* bureau – often with the help of the *ba sheng huiguan* – about how to tax and govern the entire market. These agreements were the product of negotiations between various *bang* and other members of the city's most important trades and began to appear in the last quarter of the nineteenth century.<sup>93</sup> In 1903, even the butcher *bang* and pork *hang* reached a set of agreements that were ratified by the city *yamen*.<sup>94</sup>

In this era, the guidelines of merchant associations finally began to move from the realm of internal, *ad hoc* policy within each organization to ratified local precedent. The appearance of these rules in the markets of the city marked the spread of commercial organization beyond the boundaries of single trade groups. The forms of organization that were limited to resource mobilization in the resource-hungry years of the Qianlong administration emerged, by the end of the nineteenth century, as sophisticated organizations that combined the principles of self-governance with local authority and negotiation between all actors of the market.

### **Merchant Groups in the Court of Chongqing from 1850 to 1904**

The development of merchant associations in the second half of the nineteenth century altered the ways in which merchants settled their disputes. The merchant groups that had been relegated to a relatively minor role in the past became, in this period, experts on commerce. They were seen as uniquely qualified to provide the court with information on commercial affairs and, in many cases, their

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<sup>93</sup> There are several examples of such rules resulting from intra-trade negotiations in this era. In addition to the rules of the medicine trade at SPABX: 43-25981 (discussed above), see the rules filed by the members of the thread *bang* and silk *bang*, who agreed on matters ranging from the election of officers to the exact amount of contributions required by each member SPABX: 44-27336; 3.

<sup>94</sup> The rules included guidelines regarding punishment for artificially lowering or inflating the price of goods, for purposefully delaying on the payment of a bill, for illicitly selling meat outside of sanctioned markets, and for failing to contribute to the *chai*. SPABX: 33-03656; 2.

deliberations were the basis of court judgments. The technical authority of merchant associations combined with their ability to perform official tasks on behalf of the *yamen* to interesting effect, as merchant groups were asked to handle the disposition of firm assets and market business in the stead of *yamen* workers. Much as administrative reliance on collective responsibility heads altered local uses of these forums before, during, and after litigation in an earlier century, in the last quarter of the nineteenth century merchants began to seek out mediation in *bang* forums to win footing in their own disputes.

The mediation functions of Chongqing's *bang* did not fully develop until the last 25 years of the nineteenth century, roughly at the same time that *bang* rules were first promulgated for dictating market behaviors. The import of this new authority may be observed in cases where *bang* were explicitly asked by the court to weigh in on commercial cases that involved technical questions. This is evident in the case that resulted from an 1882 suit, in which Liao Fuxing (廖福興) accused Tan Xingshun (淡興順) of fraud.

Liao alleged that:

In the first month of this year, the intermediaries Wan Huibi (萬輝碧) and Zhou Yifa (周義發) brokered an arrangement for me to purchase seven cases of rock sugar and nine cases of granulated sugar from Tan Xingshun. The price was agreed upon, and Wan Huibi et al. packed up the goods and shipped it downriver. I paid the full amount in cash and received a stamped receipt from Tang Xingsun, which is submitted to the court for inspection. I made no preparations against the possibility of treachery, and I was cheated by Wan and Tan in a grand plot, when they secretly swapped out the sugar for fake goods. I had no idea until I arrived in Lanzhou (蘭州) to sell the sugar. There, I saw that the sugar crates were full of fake sugar. They weighed 630 *jin* less than the Chongqing scales had registered. People saw that the sugar was fake and were unwilling to buy it, as a result of which I lost my capital and was forced to return to Chongqing then submit to *xiangyue* Wang Dehe (汪德和) et al. for mediation. The assembled individuals ordered Wan Huibi et al. to return 70 taels to me to make up for the missing weight and put an end to the matter. But those wicked men resisted violently, instead risking litigation, and so I am forced to tearfully beg for an investigation.<sup>95</sup>

In his rescript, the magistrate called upon the heads of the sugar *bang* to substantiate the plaintiff's claims, commanding that "The heads of the sugar *bang* shall call the two parties together for an investigation and mediation. If there was malfeasance on the part of the brokers or fraud, it shall be punished in accordance

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<sup>95</sup> SPABX: 44-26376; 2.

with the law...” Much as collective responsibility heads could be called upon to testify about local affairs (as described in Chapter 2), by the end of the nineteenth century merchant groups had secured a reputation as experts of their respective trades.

In his next suit, Liao reported that he had taken the rescript order to the heads of the *bang* to mediate, and they agreed to convene at the Eastern Marchmount temple to settle the affair “in the presence of the spirits” (*ping shen* 憑神).<sup>96</sup> He reported that he produced the fake sugar that had been shipped to Lanzhou, as well as the receipt, and that this evidence had substantiated his claims that Tan sold him fake goods. According to Liao, the assembled crowd agreed that Tan should pay for the missing weight, but Tan continued to resist. Liao pleaded for court oversight, and the magistrate agreed to temporarily summon the case. Still wary of Liao’s allegations, the magistrate reiterated his desire for information directly from trade representatives, declaring that the “*bang* heads who were present at the mediation should file a truthful report.”

When a report was finally filed by two sugar *bang* heads, two *baojia* heads, and two neighbors of Tan’s shop, they provided an alternative narrative of events. They reported that they had investigated at the command of the magistrate, but that when Liao produced the “fake sugar” they had determined that the goods in question were, in fact, real sugar. A small amount had merely congealed in shipment. “Truly,” they concluded, Liao’s allegations were “unreasonable (*shi shu bu he* 實屬不合).”<sup>97</sup> Furthermore, they added, they were in no position to confirm Liao’s claims about having weighed the goods in Lanzhou, since standard scale metrics varied across each province and market town. In court, the magistrate repeated the concerns of the *bang* heads that there was no way of determining whether or not the Lanzhou scales had recorded the correct weight of the disputed goods and reiterated their finding that

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<sup>96</sup> SPABX: 44-26376; 3.

<sup>97</sup> SPABX: 44-26376; 6.

the sugar was not false, ordering Tan to simply swap out the small amount of spoiled sugar that had been discovered by the *bang*.<sup>98</sup>

Merchant groups were called upon by the local state to serve in their capacity as commercial experts. The tasks thus assigned by the court were varied, but this capacity was most frequently invoked in cases where the resolution of a dispute hinged upon the reckoning of accounts. In these cases, *bang* heads were regularly ordered by the court to oversee the process.<sup>99</sup> The reckoning of commercial accounts entailed a good deal of commercial know-how (merchants even employed a special type of shorthand in recording numerical values, which presents problems for historians in the archives to this day), as well as technical acumen and a conversant knowledge of trade practices. In cases where *bang* mediation was employed to assist the court in grappling with complicated or technical commercial details, the conclusions of these merchant organizations directly formed the basis of court judgments. Defendants could be punished directly for flaunting the outcome of *bang* mediation even before such settlements had been explicitly adopted by the court.<sup>100</sup>

Like the information offered by collective responsibility heads, reports of *bang* leaders were accepted by the court as official and reliable. In their capacity as gatherers of and vouchers for information about commercial trades, *bang* managers could operate in a manner similar to *baojia* delegates. But beyond the task of investigation and official reporting, there were additional dimensions to *bang* authority that resulted from the relationship between these groups and the magistrate. In some situations, the ability of *bang* heads to act as direct representatives of the *yamen* was called upon in conjunction with their knowledge of the market. The most obvious examples of this are the cases in which merchant coalitions were put in charge of the liquidation of firm assets. In their capacity as liquidators, the expertise of *bang* heads was combined with their profile as representatives of the magistrate. In

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<sup>98</sup> SPABX: 44-26376; 9.

<sup>99</sup> See, for example, SPABX: 44-27239; 44-27270; 23; 44-27320; 6; 44-27507; and 44-26188.

<sup>100</sup> SPABX: 44-26884.

liquidating firm assets they were entitled to dispense with goods as they saw fit, according to market circumstances, in order to fairly distribute the assets of insolvent firms to creditors. This power was no trifling matter, as the disposition of the property of insolvent firms could involve dealing with caches of goods worth tens of thousands of taels.<sup>101</sup>

It did not take merchants long to determine how *bang* mediation could be creatively deployed in the courtroom. By the end of the nineteenth century, the intimate relationship between Chongqing's merchant groups and the local *yamen* led merchants to pursue *bang* mediation for their own purposes. Just as traders managed to plumb the contours of other court-employed dispute resolution mechanisms and employ them to best advantage, so was the role of merchant coalitions apprised and elaborated upon over time in a process of social imitation and innovation. The result of these social uses of merchant group mediation was the further extension of the logic of administrative dependence upon *bang* and *hang* and the reversal of the necessity of court direction in the use of these mediation forums.

In some commercial disputes, mediation or account reckoning under *bang* auspices was voluntarily pursued by merchants.<sup>102</sup> Like the creative deployment of collective responsibility forums described in Chapter 2, these instances of *bang* mediation were not simply “social” solutions to commercial problems. They were preemptive and strategic attempts to incorporate the authority of officially-recognized mediation forums on one side of a burgeoning dispute. When accounts and obligations were not in question, but a merchant was knowingly unable to fulfill his debts and could not reach an immediately satisfactory settlement with their creditors, members of the *bang* associated with

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<sup>101</sup> For one such example of *bang* oversight in the liquidation firm assets, see SPABX: 44-26509 and SPABX: 44-26326.

<sup>102</sup> Unfortunately, the exact nature of mediation pursued voluntarily outside of the courtroom is rarely described in detail in legal suits. But some court documents do provide insight into the circumstances under which *bang* mediation was undertaken independently. See, for example, SPABX: 40-18220; 2 and 8; 44-27270;14; 44-27515; 41-21326; 2; and 44-27089.



their trade might step in to broker a settlement under more complicated terms.<sup>103</sup> This was often the case especially for disputes involving insolvent firms.<sup>104</sup>

An example of the role that merchant coalitions could play in the reckoning and resolution of firm debts entirely independent of the court process is found in the 1887 case of Cui Yongmao (崔永茂) versus Mao Rongtai (毛榮泰), which only came to court after *bang* mediation had concluded. In his accusation, Cui claimed that Mao had purposefully cheated him:

I gathered up a capital investment in Month 6 of this year and personally travelled to Shanghai, where I purchased several commodities produced in the south of China (*guang huo* 廣貨). On Day 21 of Month 9, I returned to Chongqing. On Day 26 Mao Rongtai, who has a shop that sells Suzhou Goods (*su huo* 蘇貨), purchased several types of the Southern Goods that I had brought, for a bill totaling over 80 taels. He pressed me to deliver the goods, and we agreed that on Day 29 he would pay the bill. I believed him and took no precautions, and sent over all of the goods. The receipt for the delivery is presented to the court for inspection. On Day 28 the shop went bankrupt and, terrified, I went to inquire. Although the doors of the shop were open, Mao Rongtai had gone into hiding, and only a clerk was there to prevaricate in response to my questions. Upon inspection I discovered that the goods had already been whisked away. Although I made attempts, Mao would not meet with me. Then, on Day 6 of month 10, his wife requested that I take partial payment on the bill owed. Still Mao refused to meet and persisted in not returning my goods and not paying the price. This sort of cheating through plunder and refusing to meet is essentially the same thing as outright robbery, so I am forced to plead before the court for a decision...<sup>105</sup>

The magistrate immediately summoned the case. A few days after the summons was issued, Mao's wife filed a counter-suit, claiming that Cui's account concealed the important fact of existing *bang* mediation on the subject of Mao's debt.

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<sup>103</sup> For one example, see the description of the 1881 settlement between Xiong Songshan (熊松山) et al. and Wang Yongsheng (王永盛) described in the court testimony on SPABX: 44-26322; 9, which was negotiated by the medicine *bang*.

<sup>104</sup> For an example of a *bang*-mediated bankruptcy, see SPABX: 45-28154; 4. For a more detailed discussion of disputes about firm insolvency and the role of merchant groups in their mediation, see Maura Dykstra, "Beyond the Shadow of the Law: Firm Insolvency, State-building, and the New Policy Bankruptcy Reform in Late Qing Chongqing," *Frontiers of History in China* 8, no. 3 (September, 2013): 406-432.

<sup>105</sup> SPABX: 45-28154; 2.

Mao's wife explained that business at her husband's shop had been poor of late, and that his debts had piled up to over 2,000 taels. By Month 10, Mao had "invited his fellow *bang* members on several occasions to request an extension of his accounts because of the sad circumstances," but the group agreed instead to "purchase the goods that he currently held and a half-price discount to constitute a 20% settlement of the accrued accounts, with the agreement that he would continue to pay the rest of the owed amount over time."<sup>106</sup> She further reported that "every firm consented" to the settlement and that Cui Yongmao's 80 taels were not scheduled to be paid in full until the deadline in the forthcoming year. Furthermore, she added, her husband had not gone into hiding, but had rather gone off to collect all of the accounts due to his firm so that he could pay back his creditors as much as possible. Cui had merely taken advantage of Mao's absence to file false accusations, but, Mao's wife asked, "How could this be considered fraudulent bankruptcy? The deadline for payment to Cui still has not arrived. He is merely trying to take advantage and extort us with false accusations." Although the magistrate refused to take the word of Mao's wife at face value, the case disappeared suddenly – if a bankruptcy settlement had indeed been mediated by the members of her husband's *bang*, Cui's case was a helpless one.

Preemptive mediation of this kind was not strictly social and was not an attempt to operate in the shadow of the law. It was an attempt to employ the administrative systems of official information-gathering to creative use before ever even engaging the court system. As Cui's failed suit against Mao suggests, by the second half of the nineteenth century, *bang* mediation was one of the mechanisms that mediated court access. Reckoning and mediation by merchant coalitions was even used to determine whether or not the court had cause to intervene in merchant disputes and if or when a dispute should be escalated to litigation.<sup>107</sup>

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<sup>106</sup> SPABX: 45-28154; 4.

<sup>107</sup> In some cases, such as the charges brought by a group of Chongqing innkeepers Gao Yisheng (高義生) et al. against defendant Xiong Benli (熊本立) and two unnamed individuals in 1880, *bang* mediation was a first step to determine whether or not grounds for pursuit of legal action was necessary. See SPABX: 40-18628; 2

The legitimating effect of merchant group mediation was so pronounced that disputants occasionally even took for granted magisterial acquiescence of *bang* settlements where it could not possibly exist. An excellent illustration of this is found in Ming Xingfa's (明興發) 1898 accusations against Wu Bingchang (伍炳昌), in which Ming alleged that Wu was running a brokerage firm that had been operating under a *yahang* license registered in Ming's name. Ming had rented out the license ten years ago, but the rental agreement had lapsed and Wu refused to return the license. At the first sign of the dispute, Ming submitted the affair to mediation under the *bang* associated with his trade but reported that Wu had agreed to return the license only to renege later. In response to Ming's request to pursue official sanctions against Wu, the magistrate replied: "If your *ya* license mortgage contract specified a term of 10 years which has already expired, how would Wu Bingchang manage to refuse to return it? If your allegations are true, then he is being unfaithful. The illicit renting out of *yahang* licenses is a serious violation of the law. Await my order to the *yamen* clerks to order the return of the license and bring in all parties for investigation."<sup>108</sup> After this clear indictment of Ming's attempt to bargain away his rights and responsibilities as a *yahang*, the case quickly disappeared from the court docket – probably at no little expense to Ming, who would have been left with the dilemma of calculating a bribe big enough to deter the *yamen* runners assigned to the case from further prosecution.

In other cases, mediation under merchant group auspices could lead to court even if the dispute did not involve criminal wrongdoing. In the 1890 suit filed by Liu Quantai (劉全泰) against his employee Liu Xianzhang (劉憲章), for example, the defendant was accused of embezzling over 300 taels from his employer and then resisting the verdict of *bang* mediation, which had concluded that the employee should pay back the business owner.<sup>109</sup> The existence of a standing, agreed-upon resolution to the dispute made the defendant's refusal to settle a matter worthy of official attention.

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<sup>108</sup> SPABX: 44-26808; 2.

<sup>109</sup> SPABX: 41-21326; 2.

Some magistrates even came to expect that commercial suits should first be submitted to the appropriate mediation forum before entering the court system. When a jilted business owner filed a suit in 1882 accusing his partners of sticking him with loans of over 600 taels that he had taken out to keep the partnership out of debt and reported that they had defaulted on the mediation settlement pursuant to the dispute over firm assets, the magistrate simply noted: “If there was, indeed, a settlement... submit to the heads of the communications *bang* for a settlement between the parties, so that they may undertake the public duty and mediate. There is no need to litigate.”<sup>110</sup>

Rescripts like this one have understandably given scholars the impression that magistrates were either dismissive of the problems of supplicant merchants or permissive of a monopoly by merchant groups over commercial affairs. But what a deeper understanding of *bang* mediation and involvement in litigation reveals is not the extent of magisterial indifference, but rather the degree of *yamen* reliance on merchant coalitions to interpret and report on merchant disputes. The primary job of the court was to ensure that the groups deputized to assist the *yamen* in its work did not overstep their bounds or become remiss in their duties and that individuals involved in disputes did not cheat by threatening punishment for those who did not cooperate with established forms of mediation. This sort of labor division between the court, the merchant associations, and the other municipal institutions of the city – which will be the subject of Chapter 6 – has long been mistaken as the result of a reliance on social forms of authority in the absence of a clear legal vision about personal interaction and exchange in the Qing Code. But clearly the court behaviors and the merchant groups that the *yamen* relied upon were more than the result of state reliance on social mechanisms: they were the result of a complicated and sophisticated relationship between the state and the market, which was purposefully and carefully engineered by a local state attempting to control important resources in a challenging environment.

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<sup>110</sup> SPABX: 40-19113; 55.

## Conclusion

The function of merchant groups in dictating the commercial dispute resolution process has long been considered the result of impenetrable and unrestrained social authority. But the historical narrative and case analysis offered in this chapter belie this venerable truism. Merchant group power was not unpredictable, shrouded in secrecy, or untempered by municipal authorities. It was based on the clear expectations and routine administrative behaviors of the magistrate. Merchant group mediation even had precedents in other court tactics of investigation and arbitration involving collective responsibility heads and *yamen* staff. The limits of the power and authority of these groups were clearly delineated by the nature and form of the relationship between the magistrate and merchant groups.

That relationship was not the product of state decline or of the gradual expansion of social power in the market space unchecked by local magistrates. It was the product of an unprecedented type of collaboration between magistrates and merchant groups that emerged directly out of the nineteenth-century transformation of local administration. This development of Chongqing's urban and commercial infrastructure over the course of the nineteenth century was an important precondition for the transformations that resulted from the introduction of the New Policy reforms of the early twentieth century (which will be discussed in Chapter Eight). These humble institutions, eked out of merchant-state negotiation on the margins of the empire, would later serve as the foundation of a series of reforms that created the basis of merchant-state interaction in modern China.

CHAPTER 6:  
THE MAGISTRATE AND  
THE COURT OF CHONGQING (1770-1904)

官之所取於民者甚多民之所望於官者惟訟案為最急

The things that officials take from subjects are many in number. But of the things for which subjects look to officials, only litigation is absolutely urgent.

He Shiqi, “Litigation”<sup>1</sup>

### Introduction

By the turn of the twentieth century, the city of Chongqing was inhabited by a host of both imperially-sanctioned and locally-appointed administrative and economic intermediaries acting in collaboration with the state to govern the city’s market. The dispute resolution functions of these institutions have been reviewed separately in Chapters Two through Five. Collective responsibility heads, brokers, merchant groups, municipal bureaus, and individual intermediaries were bound in various ways to the execution of each transaction conducted in the city to form sophisticated and overlapping networks of responsibility. Depending on the needs of individuals engaging in economic exchange, these intermediaries could witness contracts and exchanges, expand the boundaries of responsibility for commercial agreements, offer an array of arrangements for structuring a transaction, serve as forums for the renegotiation of terms of business when mitigating circumstances made original agreements impossible, and even provide several solutions for carrying out complicated settlement processes when there was no immediate remedy for a transaction gone awry.

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<sup>1</sup> He Shiqi (何士祁), “Litigation” [*Cisong* 詞訟], in *Muling shu*, *juan* 17.

Where did the local state fit into this picture? This chapter and the next present a basic sketch of how the court was involved in dispute mediation. Both chapters offer summaries of an analysis of 107 cases spanning the 125 years between 1770 and 1904 as a starting point to understanding how the city's market and urban institutions interacted with the magistrate's office. This chapter focuses on the question of how the magistrates presiding over the county court understood, defined, and performed their particular role in dispute mediation. The next chapter will deal with the interaction between the magistrate and the intermediaries who played such an important role in the resolution process.

The key to understanding the magistrate's role (discussed in this chapter) and his interaction with administrative and economic intermediaries (discussed in the next chapter) is an appreciation of the purposeful legal ambiguity that defined the resolution of *xi shi* disputes. As reviewed in Chapters Two, Three, and Five, commercial disputes were resolved by invoking whichever agreements and conventions operated within the nexus out of which a transaction first emerged. Because transactions and exchange were, thus, bound to locally and temporally defined notions of obligation, the magistrates of Chongqing who handled commercial disputes were required to sit in judgment over a diverse world of economic obligations about which the state had little direct information, but remained committed to handling.

This chapter demonstrates that the Qing Code delimited the tools available to magistrates adjudicating complicated matters and that as a consequence magistrates were constrained to a specific range of actions in handling these disputes. This chapter outlines the implications of the Qing policy of bounded discretion by offering an overview of the choices faced by the magistrate at critical junctures in the court process. It pays particular attention to the problems of information and agency that could plague the negotiation and execution of a settlement. This is a necessary background for Chapter Seven, which shows how the magistrate's court was increasingly bound to rely on administrative and economic intermediaries to negotiate the space between legal fact and lived experience. Together, these two chapters illustrate the basic contours of a deliberate legal ambiguity imposed by the central state to

maintain, on the one hand, the state's prerogative to sit in judgment over a diverse world of experiences while, on the other, refusing to commit to a codified set of definitions about relationships between subjects in a series of contexts not deemed appropriate for legal statements.

I conclude that the construction of this legally ambiguous space for the resolution of complicated matters was an obvious and rational consequence of imperial claims to govern a large and diverse empire. In order to allow Qing courts to remain both powerful and flexible, this policy produced a gulf between legal truth and lived fact, within which *xi shi* cases existed. Out of necessity, the settlements that resulted from the court process represented some combination of free will, group initiative, and state coercion. It was only by combining these forms of authority that the complicated world of economic obligation could be preserved throughout the negotiation of a settlement. The central dilemma faced by magistrates presiding over this process was, thus, how to mix consensual processes of transaction and negotiation with the coercive power of the court to create solutions to commercial disputes.

### **About A Hundred Commercial Cases from the Ba County Archives**

The findings presented in this chapter and the next are based on an analysis of 111 case dockets (*an juan* 案卷) dating from between the years 1770 and 1904. This sample was taken from a larger collection of over 300 cases transcribed during a year in the Sichuan Provincial Archives and subsequent supplementary archival work in the Guo Tingyi Library of the Institute of Modern History at Academia Sinica.<sup>2</sup> The 111 cases studied here were selected from the larger sample based on three criteria: first of

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<sup>2</sup> The more than 200 cases that are not discussed in this chapter and the next are used at other points in this dissertation and the research that led up to it. A very large portion of the cases not represented here were excluded because they were about disputes involving the organizational or administrative functions of collective responsibility heads, licensed brokers, or merchant groups, and were used in the research and analysis presented in Chapters Two, Three Five. Another large group had to be omitted from this sample because details about the beginning of the case were missing or damaged. These cases were used to reconstruct the court process in my initial research, but only appear in this dissertation when they are used anecdotally since they could not be included in the sample. Thirty-eight other cases, which do fit the sample criteria, were from after the year 1904 and are discussed in Chapter Eight.



all, the case had to be filed before 1905; second, it had to include enough information to determine when the first action in the case occurred and who initiated it (for statistical purposes); and third, the case had to be about an event that occurred in the process of at least one litigant's attempt to conduct business. Of the 111 cases that fit these criteria, four contained charges that were related to accusations first filed in other sampled cases. These four dockets were combined, for consistency in coding and tabulation, with the other cases to which they were attached. For this reason, the 111 dockets used here are treated as a collection of 107 cases. In total, they contain 435 surviving legal suits, 192 trial records, 88 reports to the court, and over 100 supporting documents (such as pledges of resolution, court orders, etc.).

The disputes included in the sample are generally about classic problems of market enforcement. In seventy of the cases plaintiffs were filed by individuals against the other parties involved in a transaction: the buyer, the seller, the intermediaries involved, or shipping agents. Twenty-four of the remaining cases involve accusations among members of the same firm: owners filing suits either against partners or against employees with allegations of malfeasance within the firm. Of the remaining thirteen cases, eleven were filed by intermediaries against others involved in a transaction or business relationship that they had brokered. The two last cases – one brought by a plaintiff against the former business partner of his deceased father and one brought by a group of collective responsibility heads handling the liquidation of a bankrupt firm whose owner had fled – involved more complicated relationships between the plaintiffs and defendants because the original debtor in each case could no longer be directly brought to terms.

This sample offers a great deal of information about who the men and women doing business in Chongqing were, how they tried to prevent problems in the market, and what they did when problems arose. The transactions, business relationships, and problems of agency documented in the 107 cases demonstrate that, in spite of having few explicit legal guidelines for handling commercial cases, the magistrates of Chongqing were faced with a full range of problems and market actors in the *yamen* court.

The 107 cases sampled here involved a total of 664 named parties. The buyers and sellers that appear in the cases come from every stage in the cross-provincial trade that centered on the city: some were men who sold items in stalls on the street to urban customers for daily use, while others ran established Chongqing shops; yet others were the peddlers, farmers, artisans, or merchants from the greater southwest who came to Chongqing to sell or purchase goods in the regional market; also represented were the wealthy out-of-province merchants coming to deal in large shipments of wholesale goods. This world of buyers and sellers was supplemented by several kinds of brokers: not only the licensed *yahang* who dominated long-distance trade in the eighteenth century, but also non-licensed brokers who operated out of warehouses or procured business by hanging about the docks and commercial streets of the city.

The disputants were sometimes engaged in long-term relationships with other businessmen (even cases between relatives are represented), but were often more or less strangers to one another at the time of transaction.<sup>3</sup> Sometimes individuals bringing a plaint to court could not even provide the full name of a defendant with whom they had just conducted a transaction involving thousands of taels. Individuals often appear under commercial aliases, such as Dong of the Yi Hong Yuan shop (董義鴻元),<sup>4</sup> Wu of the De Tai Gong shop (吳德泰公),<sup>5</sup> and Qu of the Zhang Sheng Fu shop (屈長盛福),<sup>6</sup> just to name a few. In cases where the individual was not associated with a shop, or acquaintance was even briefer, suits might be submitted with whatever information was at hand, such as the 1781 plaint filed by Lin Canzhang (凌燦章) against Liao Baixin (廖白信), Jiang Fengyi (江風義), “someone surnamed Hu (胡姓)”, and

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<sup>3</sup> Any vestiges of the argument that Chinese business was based purely or even primarily on particularistic native place or family ties because Qing subjects did not (or could not) rely on the court for enforcement must be flatly denied.

<sup>4</sup> SPABX: 44-27047.

<sup>5</sup> SPABX: 44-27646.

<sup>6</sup> SPABX: 44-26929.

“someone surnamed Chen (陳姓).”<sup>7</sup> Especially in cases involving harassment by non-commercial interlopers who preyed on the market by running scams or extorting merchants, the details could become fuzzy. Nicknames could be involved, such in the case of Xiong Xingshun (熊興順) against several individuals charged with buying goods and refusing to pay for them, including one “Knivesblade He” (何刀頭).<sup>8</sup> In other words, the plaintiffs who showed up to file suit in the magistrate’s *yamen* could be seasoned businessmen with deep connections to the Chongqing market community, or hapless victims from out of town who had little idea about how to negotiate economic relationships in a strange milieu. The court was required to help men and women from every place on the spectrum between these two extremes – no matter how unconventional or ill-advised their arrangements might have been – to navigate the complex world of agreement and settlement negotiation in the market.

The individual directly responsible for overseeing the successful conclusion of each case was the presiding county magistrate. Each of the 92 magistrates who served during the 125-year period studied here acted with the support of a whole cast of *yamen* clerks, *yamen* runners, scribes, private secretaries, collective responsibility heads, merchant groups, neighboring shops, witnesses, litigation masters, lodge owners, guarantors, and a multitude of personal and economic intermediaries involved in the negotiation and execution of settlements in commercial disputes. In his place at the center of the court process, the magistrate sat at the nexus of the world of obligations. He alone was responsible for bringing cases to a resolution, and he could demand the cooperation of the larger world of administrative and economic intermediaries in order to determine and enforce the agreements that bound litigants together. But although market obligations arose from a known number of forms of mediation and accountability, their forms were limited only by the sparse boundaries of law and the more malleable parameters of individual willingness.

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<sup>7</sup> SPABX: 01-01873.

<sup>8</sup> SPABX: 44-26432.

The result was that the court process could not be navigated without considering the larger environment in which commercial disputes arose and were mediated. Indeed, the following examination suggests that magistrates were even more concerned about the aspects of dispute resolution that occurred outside of the courtroom than the ones that took place inside of the *yamen* gates, and rightfully so. Beyond the narrow margin of cases where the magistrate was called upon to simply enforce the law, dispute resolution veered into the territory of a larger, more dynamic, and patently imperial world of justice.

### **This Far and No Further: Law as the Limit of State Claims**

Some have asked: The laws are many and complicated. Which are the fundamental ones? Are there those which ought to be perused before others?

One might reply: The laws currently in effect were last published in the fifth year of the Daoguang era [i.e. 1825]. In sum there are 436 statutes. Each of the 1,766 sub-statutes extends the law explicitly in an attempt to balance out particular circumstances and principles. Every character of the text combines together with the others to form the boundaries of a harmonious path. But the fundamental message of the composite, if I may be so bold, can be covered in this phrase: Protect the common people and prohibit the wily and wicked from perpetrating abuse through false accusations (保全良民禁制棍蠹誣擾). For this task, the twelve laws on Litigation and the twenty-nine laws on Custody and Trial should be perused before all others...

Liu Heng<sup>9</sup>

The foundation of court justice was, of course, the law of the state. The dynastic code was steeped in the sanctity of tradition and bound up with structures of the imperial state that long pre-dated the founding of the Qing. Its laws embodied the “sacred narratives of right” that defined the explicit

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<sup>9</sup> Liu Heng, *Questions to and Answers from a Sichuan Official* [蜀僚問答], 1830 preface.

commitments of the state and its subjects and outlined the basic tenets of the imperial order.<sup>10</sup> In its unyielding precision, the execution of the law both bound the state to the subject and the official to the state. As the eighteenth-century magistrate Wang Shijun framed the relationship between the magistrate and the code that guided his actions in court: “Laws are like musical rites in both their form and internal workings: just as one cannot stray from the intended path in the performing of ritual music for even one second, one cannot stray from the intended path in executing the law for even one second.”<sup>11</sup>

The law was a bond: an inflexible and exacting set of boundaries that defined the parameters of acceptable behavior and the consequences for operating beyond those parameters. Its purpose was to proclaim the outlines of the project of the empire and to provide a guiding foundation for the execution of state power both within and beyond the bureaucracy. In cases where explicit legal penalties existed for alleged crimes, magistrates and other judicial officials were held up to an exacting set of standards in the technical execution of sentences.<sup>12</sup>

In the regular empire-wide system of judicial review for criminal cases, the legal and factual grounds for the decisions of each magistrate were scrutinized by superiors and reported – together with any mistakes or infractions – up the administrative ladder all the way to the capital in a fully centralized and bureaucratic system of legal supervision. The result was a system of control over legal judgment that was strictly monitored, triply redundant, and fixed by explicit legal boundaries for defining not only subjects’ behaviors but also the duties of the magistrates who sat in judgment over criminals.

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<sup>10</sup> I must acknowledge Ralf Seinecke for this phrase, which appears in his “‘Wozu Recht?’ and Legal Pluralism,” delivered at the “Wozu Recht?” conference at the Humboldt-Universität, Berlin on April 4-5 2013. He, in turn, cites a similar phrasing found in Martha Minow, Michael Ryan, and Austin Sarat, ed. *Narrative, Violence, and the Law: The Essays of Robert Cover* (Ann Arbor: The University of Michigan Press, 1993), 173-201.

<sup>11</sup> Wang Shijun, “Laws” [*Lü ling* 律令], in *Muling shu*, *juan* 17 (律令與禮樂相表裡故禮樂不可斯須雲身律令亦不可斯須去身也).

<sup>12</sup> On the several characteristics and administrative institutions of the application of the penal code, see Zhiqiang Wang “Judicial Reasoning and Political Legitimacy in Early Eighteenth-Century Criminal Justice: China, England and France,” Ph. D. diss, Yale University 2014, 44-71.

As precise and prescriptive as the Qing legal system could be, the dynastic code was not intended to prescribe solutions for every possible form of injustice that subjects might encounter. In spite of the fact that the legal code of the dynasty could be quite detailed in fixing punishments for an array of offenses (including economic crimes), the law was silent on many subjects of everyday justice.<sup>13</sup> Infractions of the legal and social order that were not related to explicit provisions in the law – the majority of those alleged in suits relating to commerce – fell under the category of “non-named offenses (*wu zuiming* 無罪名)” for which magistrates could issue any punishment up to beating with a heavy staff.<sup>14</sup> The distinction between non-named offenses and specifically sanctioned crimes constituted a boundary that defined both the severity of punishments allowed and the range of magisterial discretion in administering them.<sup>15</sup>

Disputes that could not be sentenced with reference to specific statutes and sub-statutes were handled instead by the procedural outlines found in the “Litigation” (*susong* 訴訟) and “Custody and Trial” (*duanyu* 斷獄) sections of the Qing Code. It is in these two sections that the definition of “complicated matters” discussed in Chapter Two is given. This is also where the law requiring that

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<sup>13</sup> As William C. Jones pointed out in his 1974 article, the Qing Code simply “does not purport to cover all aspects of human life – nor all the matters which would come before the magistrate for trial,” confining itself only to those matters requiring specific state punishments. William C. Jones, “Studying the Ch’ing Code-The Ta Ch’ing Lü Li,” *The American Journal of Comparative Law* 22, No. 2 (Spring, 1974), 340.

<sup>14</sup> For a description of the *wuzuiming* category, see Pierre-Étienne Will, “Adjudicating Grievances and Educating the Populace: Reflections Based on Nineteenth-Century Anthologies of Judgments,” *Zhongguo shi xue* [中國史學], forthcoming; and Liang, *Delivering Justice in Qing China*, 15.

<sup>15</sup> The first half of this distinction is noted by Shūzō Shiga in his “Criminal Procedure in the Ch’ing Dynasty – With Emphasis on its Administrative Character and Some Allusion to its Historical Antecedents” Memoirs (Research Department of the Toyo Bunko); no. 32 (Tokyo: Toyo Bunko) 1974, but he goes on to conclude somewhat differently than I do that “The distinction was based not on an assessment of the case’s importance for civil relations, but rather made by the negative assumption that a criminal case was, ipso facto, a problematic one. Consequently, from the institutional aspect, efforts were directed merely toward simplifying the procedure so as to prevent trivial cases from becoming troublesome for both officialdom and populace, and never toward establishing a principle of separation of judicial procedures.” I will argue here, in contrast, that the difference between named and non-named offenses was not one of severity (although this distinguished them in function), but actually one of substance.

magistrates “personally handle” (*zi xing shenli* 自行審理) *xi shi* suits may be found.<sup>16</sup> It is here, too, where the punishments for magistrates refusing to hear valid complaints are specified and where basic outlines of jurisdiction and appeal are laid out. These sections also outline the reporting requirements for *xi shi* cases, which were excepted from the system of judicial review for criminal cases. It is also in these sections where one finds laws about the capture and detention of criminals and guidelines for punishing false accusations, incitement to litigation, and the perversion of justice. In sum, these two sections defined several of the parameters and procedural matters involved in the handling of *xi shi* and other disputes involving non-named offenses. What it did not do was dictate the grounds of court action in determining verdicts.

In adjudicating complicated matters, magistrates were required to use administrative tools and local resources to find single-instance solutions to the ever-changing, quotidian problems of subjects that fell beyond the realm of state decree. In these cases the magistrate was not an arbiter of legal fact, but rather the authority charged with finding parity between parties involved in litigation.<sup>17</sup> In this sense, the law defined two spheres of court action: that in which dynastic assertions had to be enforced with explicitly sanctioned violence and that in which the magistrate could use a strictly constrained range of punishments in order to facilitate mediation in disputes that could not be and were not resolved according to the letter of the law.<sup>18</sup> Thus, in the majority of commercial cases, the question at stake was not which law to apply or how to apply it, but rather: how to negotiate and enforce commercial claims that had arisen out of explicitly non-legal institutions.

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<sup>16</sup> “Not handling Plaints [*Gaozhuang bu shouli* 告狀不受理]” sub-statute 4, DLCY *juan* 39.

<sup>17</sup> Li Zan (里赞), “Law or Governance? The Question of Adjudication in Qing Dynasty County Litigation [*Sifa huo zhengwu: Qing dai zhouxian susong zhong de shenduan wenti* 司法或政务:清代州县诉讼中的审断问题], *Faxue yanjiu* [法学研究] 05, (2009): 195-207, 200.

<sup>18</sup> For an eloquent summary of this contrast between justice that required a “perfect fit” and the “grass-roots” administration of justice for *xi shi* cases, see Pierre-Étienne Will, “Adjudicating Grievances and Educating the Populace.”

## The Magistrate

夫物不得其平則鳴此訟之所由來也

Whenever inequity exists in the things among the world, there is an outcry. This is the origin of litigation.

Dai Jie, “A Treatise on Dispensing with Litigation”<sup>19</sup>

Part of the reason why the importance of the law in defining the resolution of *xi shi* has been consistently overlooked is that, in their own writings, magistrates tend to describe their role as the empire’s judges in terms that seem moralistic to today’s historian. For this attribute, the officials of late imperial China have been summarily described as “Confucian.” This label has condemned the subtlety of the magistrate’s task to a reductive cliché. But by both design and function – and not just philosophical inclination or cultural imperative – the task of the magistrate handling mediation was not just to exert the law, but to draw on wider notions of right and wrong to find a way to relieve the suffering of subjects in the myriad circumstances out of which disputes arose.

The dynamic world of dispute resolution was the space where a critical dialogue between the state and its subjects took place. This resulting conversation was the changing script according to which the duties of the magistrate were determined on a day-to-day basis. As the well-regarded official Chen Hongmou (陳宏謀) commented in response to the famous Ming-era formulation of the magistrate’s duties written by Lü Kun (呂坤):

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<sup>19</sup> Dai Jie, “A Treatise on Dispensing with Litigation,” [*Qing song lun* 清讼论], in *Miscellaneous Records*.



It is only the magistrates that are called father-mother officials. Fathers and mothers are those who give life and nourish. This is why... when litigation and prosecution result from inequity, the magistrate brings balance. When the wicked and powerful are cruel and abusive, and the good and innocent are wronged, the magistrate weeds out abuses. When fraud and deceit multiply and the naïve and unsuspecting are harmed, the magistrate cuts through the lies... When corruption breeds in the *yamen*, and the people are preyed and feasted upon, the magistrate pursues the perpetrators. When clerks and officials extort, and wickedly demand things of the subjects, the magistrate prohibits them. When contributions are collected without regard for law, and the raising of revenue causes trouble to the people, the magistrate punishes those responsible. When vagrants quit their estates and leave their trades, it is the magistrate who punishes them... when the magnates of the market come together to form cartels, and monopolize profit at the expense of the commoners, the magistrate regulates them. When false charges are brought, and disaster is called down through wrongful suit, the magistrate prohibits it. When the wicked come together to plot in litigation, the magistrate exterminates their practices... There is no tiny detail that is not attended to (無微不照). This is why the title of the magistrate is called “The One who Knows the County”... Like the love of a benevolent mother, there is no moment when the magistrate cannot attend to the needs of his subjects, and there is no day when his duties can be neglected.<sup>20</sup>

In this light, litigation is not simply a top-down administration of law in the search to create order. It is also the vital link between the magistrate and his subjects. The magistrate’s court, in this formulation, is where the state grapples with the challenge of making the legal imperatives, administrative practices, and social needs of the empire meet.

It was this act of exchange between the subjects and the representatives of the state, its urgency, and its complicated nature that made litigation such a difficult and dangerous affair. In a realm where right and wrong were determined according to agreement and convention, every party involved in adjudication – even the magistrate himself – was exposed to risk. Whether the risk of state scrutiny, the risk of meddling by interlopers in search of private gain, or the risk of surpassing the boundaries of state power and becoming entangled in costly and fruitless litigation, neither plaintiffs nor defendants nor the magistrates who sat in judgment of them were safe from the ambiguity of the space in which *xi shi* existed.

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<sup>20</sup> Chen Hongmou (陳宏謀), “The Duty of the County Magistrate” [*Zhizhou zhixian zhi zhi* 知州知縣之職], in *Received Guidelines for Government* [*Congzheng yigui* 從政遺規], 1724 preface, *juan* 1.

The importance of providing justice for the population beyond the parameters of the state’s legal claims combined with the Sisyphean nature of the task to produce a widely-acknowledged and deliberately cultivated professional anxiety<sup>21</sup> among magistrates, who were given the mandate to represent the state in handling the everyday problems of subjects without the protection of a legal code to dictate their decisions.<sup>22</sup> This was no small accomplishment. A simple presentation of the number of cases surviving in the Ba County archives today provides a lower boundary estimate for the number of disputes that were brought before the *yamen* in the Qing:

6.1 Average Number of Cases per Year – Ba County 1770-1904

<b>Reign</b>	<b>Beginning<sup>23</sup></b>	<b>Duration</b>	<b>Cases</b>	<b>Case/Year<sup>24</sup></b>
<b>Qianlong</b>	1770	26	3827	147.19
<b>Jiaqing</b>	1796	25	8304	332.16
<b>Daoguang</b>	1821	30	20642	688.07
<b>Xianfeng</b>	1851	11	9183	834.82
<b>Tongzhi</b>	1862	13	15700	1207.69
<b>Guangxu</b>	1875	29	34896	1163.20
<b>Total</b>		<b>168</b>	<b>92552</b>	<b>547.64</b>

<sup>21</sup> My formulation of the concept of a professional anxiety takes, as its foundation, Thomas Metzger’s notion of the probationary ethic of the Qing bureaucracy. See Thomas Metzger, *The Internal Organization of Ch’ing Bureaucracy: Legal, Normative, and Communication Aspects* (Cambridge: Harvard University Press, 1973), 250, 255-265, and 276-287.

<sup>22</sup> For a nuanced and intimate depiction of the anxiety expressed by magistrates described in first-person case narratives, see Pierre-Étienne “Everyday Justice as Seen in Qing First-Person Casebooks” delivered at the conference “Le Code pénal et la justice au quotidien dans la Chine des Ming et des Qing [The Penal Code and Everyday Justice Administration in Ming and Qing China]”, Collège de France May 22 and 23, 2014.

<sup>23</sup> The dates given here are not commensurate with the actual reign periods, but the spans of each reign period that are covered in the case sample studied here. Thus, the Qianlong reign period begins at 1770 instead of 1736 and the Guangxu reign period ends in 1904 rather than 1909.

<sup>24</sup> The numbers for this column were obtained by subtracting the total number of files reported in the archival table of contents (which are grouped by reign period and type), *minus* the total number of cases classified under “administrative affairs (*nei zheng* 内政)” for each period. For the Qianlong reign period, the drastically reduced 29-year period is retained for these calculations since almost no records exist before 1780. For the Guangxu period, in order to keep this table roughly consistent with the one above, the total case number was multiplied by 0.85294, or 29 (number of counted years in the Guangxu reign) over 34 (total number of years in the Guangxu reign). As a result of the considerable margin of error for this method of estimation, these numbers should be considered only a very rough approximation.

While the lower numbers of the early Qing reign periods might signify a genuinely lower case load than later periods or increased loss and damage due to the age of the archives, it is at least clear that by the middle of the nineteenth century the magistrate saw an average of almost seven hundred cases per year – or an average of two new cases per day.<sup>25</sup> By the second half of the nineteenth century, this average had doubled to around 1,200 cases per year.

With such a large caseload (and many other duties to attend to), the magistrate could only navigate the minefield of prosecution and litigation with the assistance of others. But any form of reliance on the efforts of administrative intermediaries opened up the possibility of making the court vulnerable to the interests of institutions and individuals whose objectives might be at odds with the state. Clerks and runners had their money to make and could decide to thwart justice in the interest of profit. The same was true of a host of litigation advisors, ranging from the professional ‘litigation master’ to the owners of inns specializing in housing litigants and powerful or educated locals who could use their knowledge of the bureaucracy to manipulate a case. The task of blending all of these forms of interest and influence into service of the state was made all the more difficult by the generally short tenures of magistrates. For example, in Ba County, magistrates were only in office for a few years before moving on to their next post:

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<sup>25</sup> This average number of cases of day does not take into account the fact that magistrates only heard suits on fixed days, and that *xi shi* were only permitted to be heard outside of the agricultural busy season. Due to varying court rules on fixed days for accepting suits, the actual number of new cases and related complaints received on open court days would have been ten or twenty times this number.

## 6.2 Average Tenure of Ba County Magistrates 1770-1904<sup>26</sup>

Reign	Beginning <sup>27</sup>	Duration	No. of Magistrates	Longest Tenure (years) <sup>28</sup>	Avg. Tenure (years)
<b>Qianlong</b>	1770	26	10	7	2.6
<b>Jiaqing</b>	1796	25	12	6	2.1
<b>Daoguang</b>	1821	30	25	5	1.2
<b>Xianfeng</b>	1851	11	5	5	2.2
<b>Tongzhi</b>	1862	13	10	4	1.3
<b>Guangxu</b>	1875	30	21	7 <sup>29</sup>	1.4
<b>Overall</b>		<b>169</b>	<b>92</b>		<b>1.8</b>

While a handful of Ba County's magistrates served for five to seven years at a stretch, the above table shows that, on average, the tenure of these officials was consistently below the statutory three-year term. Several times in this sample two magistrates might even serve within the space of the same year. It was these individuals, assigned to the magistracy of Ba County for the space of only a few months or a handful of years, who were the only men in the jurisdiction with the legal authority to sit in judgment over disputes on behalf of the state.

With a large caseload and perhaps even little knowledge of the locale, the resolution of many *xi shi* depended upon the ability of institutions outside of the courtroom to provide easily enforceable solutions to disputes. In exploiting these institutions, the magistrate had to be aware of the ever-present potential for error and exploitation that unfolded in the distance between the individual litigant and the

<sup>26</sup> Source: Xiang Chu (向楚), ed. *Annotated Selections from the Ba County Gazetteers* [*Ba xian zhi xuan zhu* 巴县志选注] (Chongqing: Chongqing chubanshe, 1989), 366-370.

<sup>27</sup> The dates given here are not commensurate with the actual reign periods, but the spans of each reign period that are covered in the case sample studied here. Thus, the Qianlong reign period begins at 1770 instead of 1736 and the Guangxu reign period ends in 1904 rather than 1909.

<sup>28</sup> The shortest tenure is not covered here because no year reports more than one magistrate appointment, and the month of appointment is not noted in the source used to construct this table.

<sup>29</sup> The magistrate who served seven years was in office for the last three years of the Tongzhi reign period and the first four years of the Guangxu reign period.

direct authority of the magistrate. In this sense, because *xi shi* were mediated in the spaces where the state intersected with the society under its rule, commercial dispute resolution in Qing China was a truly imperial form of justice.

## Making the Case against Court

民間苦事莫甚於株連健訟

Of the sources of suffering among the people, none is more profound than becoming entangled in litigation.

Zheng Duan<sup>30</sup>

It has been presumed that the magistrates of Qing China were disdainful of individuals who brought litigation to court since doing so violated a blanket “Confucian” norm supporting mediation within the community. The most common types of evidence mustered in support of these claims are the proclamations and magistrate handbooks that feature warnings about the perils of litigation.<sup>31</sup> Before

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<sup>30</sup> Zheng Duan (鄭端 1659 *jinshi*), “Adjudicating Litigation” [*ting song* 聽訟] in *Record of a Study of Government* [*Zhengxue lu* 政學錄].

<sup>31</sup> For examples of such passages on litigation between subjects, see Wang Huizu (汪輝祖 1731-1807), “Administrative Matters” [*Xing shi* 省事] in *Prescriptions for Aiding in Government* [*Zuo zhi yao yan* 佐治藥言], 1785 preface; Liu Heng, “The Reasons Why Wealthy Individuals Involved in Litigation Always Lose their Estates,” [*Fumin shesong bi zhi pojia zhi gu* 富民涉訟必致破家之故], in *Questions to and Answers from a Sichuan Official* [*Shuliao wenda* 蜀僚問答]; Tian Wenjing (田文鏡 1662-1732) and Li Wei (李衛 1687?-1738), “Accepting Plaints” [*fang gao* 放告] in *Imperially Promulgated Instructions for Magistrates* [*Qinban zhouxian shiyi* 欽頒州縣事宜], 1730; and Zhang Jingtian (張經田), “Litigation” [*Cisong* 詞訟], in *Important Points for a Forceful Administration* [*Lizhi cuoyao* 勵治撮要], 1810 preface; Yu Qian (裕謙), “Statements Discouraging Litigation” [*Jie song shuo* 戒訟說], in *Muling shu*, *juan* 17, and Liu Heng, “Ten Items on Handling Litigation.” For a recent summary of the “harm of litigation” by a scholar, see Yao Zhiwei (姚志伟), “The Burden of Litigation and the Injurious Capacity of Qing Litigation: Medications on the Traditional Value of Non-Litigation” [*Song lei yu Qing dai sifa de shanghai gongneng: Dui chuantong wu song guan de fansi* 訟累与清代司法的伤害功能——对传统无讼观的反思] *Xinxiang Xueyuan xuebao (shehui kexue ban)* [新乡学院学报(社会科学版)] 25 (June, 2011) no. 03: 17-21, and other recapitulations at Philip C. C. Huang, “Between Informal Mediation and Formal Adjudication,” 273; Bradly W. Reed, “Money and Justice,” 368-371; and Susumu Fuma “Litigation Masters.”

moving forward in the next section to describe the court process, I would like to expand on the above mention of professional anxiety by demonstrating that magistrate writings on litigation, in fact, eloquently depict the magistrate's dilemma as the sole sanctioned state authority in a legally ambiguous world of multi-forum dispute mediation.

When analyzed from this perspective, a new realm of interpretation opens up, and magistrate writings about litigation can be understood as depictions of how litigants' interaction with the state could not be directly controlled by the magistrate himself.<sup>32</sup> Compelled by law to accept all properly filed suits, magistrates thus found themselves responsible for the consequences of litigation at the same time that they recognized how little control the court sometimes had over the process. In their writings on the dangers of litigation, magistrates tend to focus on the extent to which much of the court process was unregulated and the ever-present threat of abuse by knowledgeable interlopers.

Concerns about the perversion of justice in magistrate writings expose the dark side of the legal ambiguity that enabled Qing courts to retain authority over spheres of interaction which were not outlined or defined in law.<sup>33</sup> Since others were deputized to act on the state's behalf and since the state was forced to rely on information through indirect channels that could be manipulated, magistrates feared that the court itself could be made the instrument of private powers. The magistrate was forced to acknowledge that the distance between his court and its supplicants presented a wide field of opportunity for a reversal

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<sup>32</sup> In this way, exhortations against litigation resemble declamations about the proliferation of corruption in the era of local nineteenth-century state building discussed in Chapter Four of this work.

<sup>33</sup> In his review of Terada's article, Bourgon refers to the world of social compacts and local conventions as the "dark side of the law," in order to emphasize how many of the agreements Terada discusses operated beyond the purview of the state. This chapter builds on Bourgon's characterization of Terada's work, and further suggests that the world of group accord and conventions might not have been so much a power that the state could not penetrate so much as a power that the state could only benefit from so long as it remained shadowed by the court and its own claims. See Jérôme Bourgon "Aspects of Chinese Legal Culture – The Articulation of Written Law, State, and Society: A Review (Part Two). Private Law and Private Lawyers: A Discussion on the 'Fields' of Law" *International Journal of Asian Studies* 5, 1, (2008): 71-86, p. 81.

of court authority. It is for this reason (and not a general moralistic disdain of litigation) that court is often depicted not as a weapon for the upright, but instead a Sword of Damocles hanging over both the magistrate and the subjects for whom he was responsible.

Warnings about litigation are grounded in anxieties about the court's inability to know, to control, or to interact on even ground with the wider world of justice and administration. From without, the danger of interference is embodied in the character of the litigation master, as in this warning by Wang Youfu, an official who lived in the late eighteenth and early nineteenth century:

When reading complaints and writing rescripts, one must first see through to the motivations behind the words. Those cases which are false allegations can be known by the way in which they dress up the circumstances to incite litigation... if the magistrate gives permission for these complaints to come to trial, he has already fallen into the trap (予準訊即已墮其術中)! The skill of these fiends lies in only plotting for permission, and never planning on trial. As soon as the summons is issued, the panic-stricken and helpless defendant who has been framed finds a *yamen* runner already hidden at his home at the arrangement of the plaintiff, ready to take advantage of the situation by extorting him and subjecting him to a host of humiliations. A counter-suit is filed and he waits for trial: meanwhile, his livelihood is suspended and he has lost a worthy sum.<sup>34</sup>

Threats to the sanctity of court authority hid between the lines of every legal complaint, and danger lurked in the shadow of every summons and court order sent out into the jurisdiction.

Just as outsiders might plot to entail away the court's authority by offering up half-truths to the state in the guise of genuine distress, so might the court's efforts to respond to the needs of its subjects be thwarted by its own agents, as danger lurked within the exercise of power itself. Threats to the court process existed just as much inside of the *yamen* as outside of it, and magistrates often wrote at length on

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<sup>34</sup> Wang Youfu (王有孚), *Some Things that I have Grasped* [*Yide outan* 一得偶談], 1805 preface.

how the very runners, clerks, and secretaries who kept the office functioning could easily undermine the authority of the magistrate.<sup>35</sup> As Liu Heng warned:

The local official must act of his own accord. Not even the labor of writing out a single summons may be delegated out under the authority of clerks. Not even the tiny detail of going out to issue an order may be left to a servant of the official's house. When an official delegates to subordinates, he trusts in the intelligence of others [lit. he lends out his eyes and ears 寄以耳目]. This is how ties are bound. This is how factions of influence are formed.<sup>36</sup>

Any literal interpretation of these and other warnings to fellow magistrates would lead to a vision of a Qing officialdom that was populated with paranoid and distrustful men. But just as writings on corruption in the nineteenth century were grounded in the *angst* of the time, so do these writings reflect the increasingly explicit recognition of local officials that the instruments and paths of state power had been expanded in such a way that no expression of official authority was direct. The magistrate's position at the apex of the local complex of imperial authority made him keenly aware of the vast margins across which the state operated, which contained abundant potential for abuse within the liminal spaces between direct state-subject contact.

The dangers of revenge, self-interested profit, violence, and the translation of state authority into private power all combined to make the act of litigation one of the most poignant and fraught forms of contact between the state and its subjects. This sometimes made the relationship between a magistrate, his

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<sup>35</sup> Writings on handling *yamen* workers in order to restrain the malfeasance that resulted from direct contact between the state and its subjects in the course of litigation constituted almost an entire genre of its own. For examples, see Liu Heng, "Do Not Use *Yamen* Workers to Transmit Case Notices" [*Bu yong chaiyi chuan an piao'gao* 不用差役传案票稿] in *Required Knowledge for Magistrates*; Dai Jie (戴杰), "Office Rules" [*shu gui* 署规] in *Miscellaneous Records on the Study of Government in the Respect for Simplicity Hall* [*Jing jian tang xue zhi zalu* 敬簡堂學治雜錄], *juan* 4, preface 1881; Wang Huizu *Personal Views on Learning Government* [*Xuezhi shuozhui* 學治說贅], 1800 preface; Gangyi (剛毅), "Arriving at One's Post" [*li ren* 莅任] in *Essential Knowledge for Magistrates* [*Muling xuzhi* 牧令須知], 1888 preface, *juan* 1; Xu Shouzi (徐壽茲), "Proclamation on Immediate Trial after Accepting a Complaint" [*Shouli cisong sui dao sui shen shi* 受理词讼随到随审示] in *A Starting Point for the Study of Governance* [*Xuezhi shi duan* 學治識端], 1901 preface; He Shiqi (何士祁), "Litigation" [*Cisong* 詞訟], in *Muling shu*, 1838 preface, *juan* 17; Yuan Shou Ding (袁守定), "Adjudicating Complaints" [*Ting song* 聽訟], in *Muling shu*, *juan* 17. For a scholarly study of the *yamen* staff, see Reed, *Talons and Teeth*.

<sup>36</sup> Liu, "Ten Items on Handling Litigation."



employees, and the subjects in his jurisdiction seem adversarial. But suspicions about court use and abuse were not straightforward signs of the inadequacy of the Qing justice system: they were the underpinnings of it, as the magistrate – who was poised at the center and beleaguered from all sides – was required to decide how and when to exercise the state’s monopoly of violence. For once a suit was summoned, the consequences of mediation became the direct responsibility of the court.

### **Part One of the Court Process: The Politics of Making a Case**

Heavily punishing wrongful accusations, in order to dispel abuse of litigation: Two merits per occasion...

Accomplishing parity when adjudicating: One merit per occasion. If able to lead unruly subjects to calm their anger, and thus dispel contention and reduce litigation, ten merits...

When affairs are brought, issuing a correct verdict in accordance with the facts, so that the case is not brought before other *yamen* to continue disputing, and the litigants do not feel agitated and attempt to re-try the case. Five merits per occasion...

Needlessly permitting suits. One demerit per suit...

Not directly deciding on cases. Requiring individuals to remain in custody or in lodgings. Causing cases to spring forth from other cases.

Ruining an individual. Ten demerits per occasion...

When all of the offenders are already brought for trial, but because of laziness or indulgence the date is changed without due consideration, so that several individuals must bear the burden and anxiety of paying to attend court. One demerit per occasion...

Jueluo Wuertong’a, “A List of Merits and Demerits for Officials”<sup>37</sup>

The question of how and when to deploy court force was central to all decisions in a *xi shi* case and began with the determination of whether or not to permit (*zhun* 准) a suit to go to trial.<sup>38</sup> In the majority of commercial cases would-be litigants would go to the *yamen* and pay to have a suit drafted

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<sup>37</sup> Jueluo Wuertong’a (覺羅烏爾通阿), “A List of Merits and Demerits for Officials,” [*Dang guan gongguo ge* 當官功過格] in *A Manual for the Daily Self-Examination of Officials* [*Juguan rixing lu* 居官日省錄], 1852 preface.

<sup>38</sup> For a detailed outline of the court process, see Susumu Fuma, “Litigation Masters and the Litigation System of Ming and Qing China,” *International Journal of Asian Studies*, 4, 1 (2007): 79–111.

containing their allegations.<sup>39</sup> These suits would then be presented to the magistrate, who recorded his decision about whether or not to accept the case – in the form of a rescript (*pi* 批) – directly on the plaint in his own handwriting. The content of each rescript was then posted on the wall outside of the *yamen* gate to announce the decision of the court.

Officially, defendants and other individuals listed in an accepted plaint were merely summoned to court for testimony, but the act of calling together individuals for a trial had immediate implications. If a case was permitted, a summons (*huan piao* 喚票) would be given to a *yamen* employee with the command to order all of the parties named in the suit to come to court. Although there was no sanctioned legal system of custody for defendants in cases involving non-named offenses, the summons was used to compel defendants to remain in the area, often under one form of custody or another. The burden that this could place on litigants was considerable enough that it had to be weighed against the allegations under consideration and the possibility for malfeasance before a magistrate agreed to initiate the court process. The first time when the magistrate came into contact with a case, he was already forced to grapple with one of the enduring questions of magistrates handling cases featuring non-named offenses: whether or not the accusations warranted the use of court-sanctioned force.

### *Grappling for Permission*

Just as summoning a case was the first stage at which the state expressed its commitment to a resolution, it was also the first opportunity that could be exploited by the other institutions and actors who inhabited the space between the court and its supplicants. Concerns about abuse of the court discouraged

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<sup>39</sup> In cases involving very serious or urgent accusations, an accuser could circumvent this first step and directly go to the *yamen* and “cry out” (*han* 喊 or *ming* 鳴) for an immediate hearing. Although this was relatively rare in commercial cases, it is documented in several of the cases collected for this study. See SPABX: 11-9999; 10-7809; 19-3493; 25-5951; 44-26079; and 44-26117.

magistrates from “unnecessarily” permitting litigation between subjects. Of the 107 cases used in this chapter, twenty-five (23%) were first rejected:

6.3 Cases Not Summoned on First Suit and Never Summoned 1770 to 1904:

Cases	Years	Not Summoned (First Suit)		Never Summoned
20	1770 to 1805	5	25%	3
18	1806 to 1860	2	11%	0
16	1861 to 1875	7	44%	4
19	1876 to 1885	9	47%	2
16	1886 to 1895	1	6%	1
18	1896 to 1904	1	6%	0
107		25	23%	10

In spite of the fact that nearly a quarter of the cases sampled here were first sent back out of the courtroom for mediation without trial, plaintiffs who persisted in demanding court satisfaction usually received permission for a hearing. Fifteen of the twenty-five cases first rejected were later accepted after subsequent complaints, meaning that only ten (9% of the total) left court without ever being summoned.

The magistrates’ motivations for only cautiously accepting suits become more apparent when one considers what happened after the remaining ninety-seven cases were permitted for trial. Most apparent was the initial problem of even getting litigants to court. So many factors could complicate, delay, or thwart the court’s command to summon parties that more than half of the ninety-seven cases summoned to court never went to trial.<sup>40</sup> The below table shows the number of cases in each period that were summoned, as well as the number of those cases which eventually resulted in at least one trial. The latter

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<sup>40</sup> These figures are more or less in line with what Philip Huang describes on page 191 of his *Civil Justice in China*.

number is then divided by the former to produce the percentage of the number of summoned cases that actually went to trial:<sup>41</sup>

6.4 Cases that were Summoned, Cases that were Tried,  
and the Percentage of Tried Cases as a Subset of Total Summoned Cases 1770 to 1904:

<b>Cases</b>	<b>Years</b>	<b>Summoned</b>	<b>Tried</b>	<b>T/S</b>
<b>20</b>	1770 to 1805	17	6	35%
<b>18</b>	1806 to 1860	18	12	67%
<b>16</b>	1861 to 1875	12	3	25%
<b>19</b>	1876 to 1885	17	10	59%
<b>16</b>	1886 to 1895	15	12	80%
<b>18</b>	1896 to 1904	18	11	61%
<b>107</b>		97	54	56%

On average, about half of the cases summoned for trial never went to court. The exact portion of tried cases to summoned cases varies over time without any obvious pattern, suggesting that the factors influencing the likelihood of trial could vary widely and were not strictly the result of historical changes in court or litigant behaviors.

The forty-three cases that were summoned but never tried apparently flaunted imperial prohibitions against not personally trying and ruling on all summoned suits.<sup>42</sup> How and why did the court allow such a flagrant violation of its own duties? The details of cases that leave court without trial are often unclear, but attempting to piece together the answer to this question illustrates some of the basic challenges faced by a court trying to foster mediation between two conflicting parties.

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<sup>41</sup> The two or three cases that began with a trial after a plaintiff “cried out” for justice in person at the *yamen* (see footnote 41 on page NN above) are only counted as having gone to court if they subsequently return, since the case would not be officially summoned until after the magistrate gave an order to do so at the conclusion of the first trial for this type of plaint.

<sup>42</sup> On this prohibition, see Chapter Two of this work.

Sometimes, it was clearly the inability of the state to summon all of the parties to court that prevented cases from getting to the trial phase. Cases falling into this category could sometimes feature colorful depictions, like the 1847 case of *jiansheng* degree-holder Peng Shicheng (彭士成) versus warehouse owner Li Desheng (李德盛). In his first suit, Peng reported that he had stored a shipment of cotton in Li Desheng's warehouse in the neighboring town of Hezhou (合州), but that Li then sold off the stored goods and refused to hand over the profits from the sale. Peng reported that "several times I have tried to collect, and he has delayed and even forcefully resisted," but that on the day of his plaint he had unexpectedly come across the defendant, who had come to Chongqing to run some errands.<sup>43</sup> Peng demanded a payment on the spot, and Li "not only refused to give the money, but even attempted to cheat me, like before." Fearing that his debtor would flee, Peng brought him before the magistrate's court, where he was held pending trial. Two days after Li was brought in, however, the *yamen* runners Chen Sheng (陳升) and Xie Shun (謝順) filed a report:

On Day 27 of this month the *jiansheng* Peng Shichen brought Li Desheng to court... We took Li to the Da Xing lodge [大興棧] to await trial in supervised custody. But on the evening of the 28th a martial degree holder from Hezhou assembled several men to bust Li Desheng out. We tried to reason with them and obstruct them, but we were beaten and injured by these wicked rogues...<sup>44</sup>

The magistrate ordered an exam of the runners' injuries, and in a report filed a few days later their allegations were confirmed by the coroner.<sup>45</sup>

Five days later, the runner Xie Shun filed a new report, claiming that he had heard news that Li had fled back to his hometown in Hezhou.<sup>46</sup> A court order for a cross-border summons was issued five

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<sup>43</sup> SPABX: 12-10696; 2.

<sup>44</sup> SPABX: 12-10696; 3.

<sup>45</sup> SPABX: 12-10696; 4.

<sup>46</sup> SPABX: 12-10696; 5.

days later.<sup>47</sup> Eleven days after that, however, Xie filed a report claiming that Li Desheng was colluding with the runners in Hezhou to evade capture.<sup>48</sup> In spite of the fact that the magistrate sent an order to Hezhou to hasten the summons, the case docket suddenly ends at this point, with the Ba County magistrate's requests unheeded. In cases like these, the state lost its battle against misinformation: whether through the ingenuity and lawlessness of fleeing subjects or the collusion of *yamen* runners themselves, the state found itself literally unable to bring defendants to justice.<sup>49</sup>

At the other end of the spectrum of court cases that never made it to trial, the summons of a case might not lead to court if the summons itself was the sole object of a suit. In these cases, the magistrate's agreement to permit a suit was solicited for the express purpose of harassing defendants or forcing them into compromising settlements with the threat of litigation. The potential for using a summoned case in order to bully would-be defendants is well documented in magisterial writings about the dangers of litigation, but does not often appear explicitly in the court record. One example, however, survives in the text of a plaint filed by Wu Qizi (吳奇子) in 1785.

In his suit, Wu alleged that one Huang Ru'an (黃汝安) had previously brought false accusations against his son Wu Shaoyuan (吳紹元) and his son's business partner Zhu Qiyuan (祝其元). At the trial held on the basis of these false allegations, the plaintiff's plot was uncovered and the magistrate had Huang slapped for bringing false suit. Wu's father reported that, in spite of this warning, "Who could expect it? On the 24<sup>th</sup> day of last month Huang again filed false allegations against my son Wu Shaoyuan

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<sup>47</sup> SPABX: 12-10696; 6, 7.

<sup>48</sup> SPABX: 12-10696; 9.

<sup>49</sup> Other cases that are summoned, but then include an explicit report from *yamen* workers about not being able to find the defendant: SPABX: 05-04648; 05-04660; 27-08767; 44-26806; and 44-27403.

and Zhu Qiyuan, claiming untruthfully that they owed him 500 taels and winning a summons from the court.”<sup>50</sup> Having obtained this summons unscrupulously, Wu reported, Huang then put it to use:

Several prefectural runners gathered together from all over to search out my son and Zhu Qiyuan, who did not dare to poke out their heads. Then, on the morning of day 7, my son Wu Shaoyuan was in Jiangbei being ferried across the river to enter the city, but the head runner surnamed Zhao gathered together a bunch of others – whose names I do not know, a total of about eight people –and, seeing my son crossing the river, those corrupt underlings all got into little boats to block the river and grab my son. He was shocked and frightened, and in a moment of panic and helplessness he jumped into the river. Fortunately, a man surnamed Wang had a small boat and saved him, but then the corrupt underlings chained him up and put him in the prefectural detention cell.

When Huang’s plot to use the court to bully the defendants came to light, he was brought in for trial, and the magistrate ruled that he should be sent back to his home jurisdiction with the warning that he was “extremely apt to litigate in wicked ways (刁訟已極).”<sup>51</sup>

Even though the court came to the aid of the two men who were harassed by the plaintiff, this suit demonstrates how even individuals with a known propensity for using the court to pressure others could ply their schemes in relative anonymity with some help from cooperative allies in the *yamen*, with the aid of a constant and overwhelming stream of litigation to keep the magistrate from ordering and accessing information about all previous trials, and with a little bit of luck.

Of course, not all suits that were summoned but not tried were the result of treacherous plots to thwart the authority of the state. Indeed, existing case evidence suggests that many suits resolved with the threat of litigation after a summons were settled to the satisfaction of both parties under the renewed motivation offered by a desire to avoid court.<sup>52</sup> But although these “peaceful resolutions” may have produced the desired outcomes for all involved, they fell into a realm of legal ambiguity that did not serve

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<sup>50</sup> SPABX: 01-01355; 9.

<sup>51</sup> SPABX: 01-01355; 2.

<sup>52</sup> For a concrete discussion on the possibilities and realities for mediation outside of the court, see Chapter 7.

the larger interests of the state: a space where the authority of the state was used blindly in the private disputes of locals.

It was this danger of the magisterial prerogative being arrogated by administrative intermediaries that led the Qing court to adopt the 1764 sub-statute dictating that, once a case had been accepted, it must be tried.<sup>53</sup> Examination and trial before a magistrate was intended to combat the pernicious influence of the authority of administrative intermediaries and to provide a fair chance for inequity to come to light, so that injustice might be corrected by the state. But as the next sections document, this process, too, was plagued with uncertainty for the magistrate.

## Part Two of the Court Process: The Art of Adjudication

戶婚田土細事總以速結為美

For complicated matters such as marriage and land disputes, it is always the case that a swift resolution is most felicitous.

Wang Huizu, ca. 1793<sup>54</sup>

Trials in Qing courts were conducted by summoning the parties mentioned on the initial suit to the court on an appointed day for interrogation. At the conclusion of each trial the magistrate was required to issue a verdict.<sup>55</sup> In cases where the magistrate concluded that one party had been guilty of an offense that warranted one of the punishments at his disposal in *xi shi* cases, the punishment would be directly

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<sup>53</sup> On this law, see Chapter Two of this work.

<sup>54</sup> Wang Huizu, “In Normal Circumstances Do Not Hastily Report on Litigation,” [*Xunchang song'an bu yi qingshuai shen xiang* 尋常訟案不宜輕率申詳], from *Some Personal Views on the Study of Government*.

<sup>55</sup> Some cases were not tried directly by magistrates, but rather by delegated (*wei* 委) judges acting in the magistrate's place. Records documenting this practice exist in a handful of the cases that I collected from the archives, but the details of this phenomenon will have to be covered in a later study for reasons of space, and thus I will describe the court process throughout this section from the perspective of the magistrate.



administered. These two possible conclusions to a trial – court decisions and court-administered punishment – were employed at the magistrate’s discretion. The key to a swift and successful adjudication was the careful and strategic wielding of these two tools.

The fastest way to resolve a case at trial was to find one party guilty of wrongdoing, punish him, and declare the issue settled. Of the 107 cases reviewed here, this is what happened in a total of four cases; magistrates rarely encountered a dispute that could be swiftly dispensed in this manner. But in the few cases where one party had clearly and undeniably committed an insupportable act, the court could declaim the offender’s inappropriate behavior, administer punishment, and thus order the two parties to settle the dispute. This sort of case was the one over which the magistrate could exert the most control: the intervals between offense, suit, trial, court, and resolution could be collapsed into a small space of time, the possibility of intermediating influence in determining the outcome was minimized, and the judgment of the state was the final and declaratory action in the case.

An example of what sort of case lent itself to this straightforward kind of resolution can be found in the 1793 docket created when silk brokerage owner Ru Jintai (儒錦泰) brought a case against his employee Han Zhengde (韓正德) and the defendant’s relative Zhu Yuqi (朱郁奇) for plotting to embezzle money from the plaintiff’s shop.<sup>56</sup> Two days after the allegations were filed Han Zhengde was brought into the court for trial, and the magistrate ordered the *yamen* runners assigned to the case to take the defendant to the location where he was supposed to have hidden the ill-begotten notes to investigate the truth of the allegations.<sup>57</sup> Two days later the *yamen* runners assigned to the case reported that they had recovered the stolen notes and brought them together with the defendant back to court.<sup>58</sup> In a session held the very next day the employee was beaten as a punishment for his wrongdoing and the stolen notes were

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<sup>56</sup> SPABX: 01-01090; 2.

<sup>57</sup> SPABX: 01-01090; 5.

<sup>58</sup> SPABX: 01-01090; 6.

handed back over to the plaintiff. The day after the trial, Han signed a pledge admitting his guilt, and the court closed the case less than a week after charges were brought.

Another example of swift punishment for clear wrongdoing can be cited in the 1880 case filed by Gao Yisheng (高義生) and several other Chongqing innkeepers, which began when the plaintiffs dragged Xiong Benli (熊本立) into the courtroom. In the suit, they alleged that Xiong and two other men were guilty of both impersonation and fraud:

We, the plaintiffs, operate lodges. We obey proclamations and do not disobey the law, but lately abuses have begun to proliferate, and we have even on several occasions encountered treacherous subjects (奸民) who impersonate official merchants (假冒官商), and not only do not store their silver in the inn deposit vaults,<sup>59</sup> but even bring counterfeit goods (假貨) into our storehouses to mix in with the real goods, then they fake a robbery and claim that their counterfeit goods are real, thus harming warehouse owners with their false allegations and filing a string of lawsuits that carry on for years. The nature of the harm that arises from this practice is multifarious. This month, on the afternoon of the 23<sup>rd</sup> day, three men came to the lodge operated by Gao Yisheng carrying a leather package on a pole, saying that they were from Guang'an (廣安) and had come to sell opium in the city. Gao further inquired into their business, and discovered that they had no money and that the opium was fake. Once the treacherous bunch knew that their plot had failed, two of them ran away, but Xiong Benli was caught... We have brought the defendant to court for trial, so that this wickedness may be rooted out and an example may be made for others (除弊以儆效尤)...<sup>60</sup>

In the court session that was held the same day, the *yamen* officers confirmed that the opium was fake, and the magistrate had Xiong slapped for actions that “truly flaunted the law” (實是藐法) and for being a “dishonest roustabout” (不安分之徒).<sup>61</sup> Xiong was then taken into custody, pending an order to deport

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<sup>59</sup> In 1819 the Ba County magistrate had ordered that, thenceforth, all guests staying in lodges should be required to store their silver at the main counter to avoid theft and fraud; see SPABX: 03-00203.

<sup>60</sup> SPABX: 40-18628; 2.

<sup>61</sup> SPABX: 40-18628; 5.

him back to his home jurisdiction together with a report on his dishonest dealings in the city of Chongqing.<sup>62</sup>

Even before trial, if a suit presented to the court featured a clear violation of the legal order, magistrates might remark in rescripts that the allegations suggested an “infringement on legal discipline (*gan faji* 干法紀)” or constituted “flaunting the law (*miao fa* 藐法).”<sup>63</sup> In many commercial cases, however, allegations did not intersect neatly with the Qing Code or easily-discerned notions of right and wrong. Instead, the issue at stake in the majority of commercial cases was the nature and degree of economic responsibility for a particular transaction.

As outlined in previous chapters, interpretations about commercial obligations could depend on a host of circumstances, and knowledge of these circumstances was available to the court through an array of administrative and economic intermediaries. But even though the terms and interpretations of commercial transactions were left to be dictated by the customs, practices, and preferences of the individuals involved, the state reserved the prerogative of judgment over all kinds of disputes. It was in these disputes that the magistrate faced the challenge of navigating the territory between the state’s monopoly on violence and its commitment to resolving commercial disputes in keeping with local and individual practice without recourse to an explicit legal definition of commercial obligations.

The most common response to this challenge in the first trial on a commercial matter was to make a simple and direct command: to settle. Of the 107 cases reviewed, 36 of the 56 that went to trial – constituting one third of the whole and 64% of the number of cases taken to court – were first issued an order commanding both parties to reckon, mediate, settle, or finish paying the amount owed. For sixteen

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<sup>62</sup> SPABX: 40-18628; 6-7.

<sup>63</sup> Presumably it was these sorts of cases to which Philip Huang gestures when he claims that magistrates might signal their intentions to would-be litigants, but only two cases in this sample solicited such a rescript. One was an allegation made in 1870 that the defendant had impersonated a *yamen* runner SPABX: 25-05951 and one was an accusation from 1880 that a customer had tried to use counterfeit silver in a transaction SPABX: 40-18591.

of these (44% of the 36 cases that began with an order to settle), the case docket ended with just such a command:

#### 6.5 Cases Handled with Only Commands to Settle 1770 to 1904

<b>Total</b>	<b>Years</b>	<b>Cases</b>
<b>20</b>	1770 to 1805	1
<b>18</b>	1806 to 1860	6
<b>16</b>	1861 to 1875	2
<b>19</b>	1876 to 1885	1
<b>16</b>	1886 to 1895	3
<b>18</b>	1896 to 1904	3
<b>107</b>		<b>16</b>

Commands to settle could take many forms depending on the circumstances of each case, but in their various permutations they served as all-purpose mandates to both parties to remain faithful to whatever obligations they had undertaken, regardless of the fact that those obligations had no legal form or content.

At the simplest level, this command could be handed down to defendants who had proven truculent or unlawful in their refusal to reckon accounts. In these situations, the threat of continued court scrutiny and the cost of custody could be powerful motivations to set aside unimportant obstacles to an agreement and produce a quick settlement. An example of this type is found in the case between Zi Sheng Yuan owner Liu (劉資生源)<sup>64</sup> et al. and Zhang Yuqin (張雨琴) et al. In their suit, Liu and several other cloth merchants accused Zhang and his partners in the Yuan Xiang money shop (源祥銀錢舖) of fraudulently declaring insolvency and attempting to force their creditors to settle a debt in excess of 20,000 taels at an excessively low rate of repayment.<sup>65</sup> Once brought to court, Zhang alleged that the

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<sup>64</sup> It was not uncommon for partners in established firms to be presented in legal cases not with their given names, but rather the names of their businesses and their surnames only.

<sup>65</sup> SPABX: 44-27231; 2.

plaintiffs had received the bulk of their settlement and that only the tail end of accounts remained. The magistrate's verdict in this case was simple and direct: Zhang Yuqin was ordered into the custody of a runner and told to “settle and pay the tail-end accounts with each firm (將各號尾項理楚)”<sup>66</sup> In cases such as this, defendants would be placed under restricted custody and personally liable for all of the fees associated with having a runner assigned to monitor their movements until they were able to reckon with their accusers: the motivations to settle thus mounted day by day.

Even though an order to settle accompanied with runner custody for the defendant thus produced incentives to quickly settle disputed accounts, sometimes the delay in resolving a commercial dispute was not simply a matter of “tail accounts,” and was connected to more involved questions of obligation. In such cases the court might order litigants to seek out a settlement with the help of a third party outside of the court room. In one 1882 case between two partners – where plaintiff Feng Haishan (馮海珊) accused Zhou Pinchen (周聘臣) of embezzling from their now-insolvent firm – the magistrate even noted that, because Zhou had behaved improperly, he should be punished and taken into custody, but that the court would “exercise mercy (從寬)” and instead command him to find a guarantor with a deadline of five days to return the entire sum owed to his wronged partner.<sup>67</sup>

Two weeks after the verdict (during which Zhou had remained in custody), a guarantor's pledge was filed at the *yamen* by owner Shi of the Jixuan Shop (石集賢店). The text of the pledge reiterated the content of the verdict and then remarked that “Zhou Pinchen has respected the verdict and beseeched a third party to plead with Feng for mercy and return the amount owed in installments.”<sup>68</sup> Shi, the

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<sup>66</sup> SPABX: 44-27231; 4.

<sup>67</sup> SPABX: 22-09769; 4.

<sup>68</sup> SPABX: 22-09769; 5.

guarantor, then swore that “Zhou Pinchen shall not flee. If he flees or goes into hiding, I, the guarantor, alone will be held responsible.” The magistrate permitted the guarantee, and Zhou was released from custody.

In cases where other individuals were already implicated in the obligations of a defendant or were willing to undertake such a burden, the court could source out the supervision and negotiation of a settlement to an interested third party, as a more graceful and less costly solution to the problem than direct court supervision. In this manner the court simply closed the distance between litigants and between the beginning and the end of the court process by widening the sphere of responsibility for settlement.<sup>69</sup>

As the most common verdict, magistrate orders to settle a debt were by far the likeliest outcome of a trial that did not involve allegations of violence. In cases involving both punishable offenses *and* disputes over commercial obligations, the command to settle might be issued right after a punishment for wrongdoing. Out of the 107 cases studied here, a total of four were handled in this way. One example of an order to settle issued directly after a punishment for wrongdoing – the 1775 case between butcher Zhu Ji and peddler Chang Xiang – was already described in Chapter Two.<sup>70</sup> In this and other cases involving punishments followed by orders to settle, a straightforward punishment for flaunting the legal order was handed down and the parties were commanded to then find a settlement to their economic dispute on their own terms.

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<sup>69</sup> See, for example SPABX: 45-28179 and 12-10668, where the recommenders of employees judged guilty of malfeasance were required to settle on behalf of the men for whom they had vouchsafed. See SPABX: 44-26322 for a case in which one partner was judged liable for the partial payment of his partner’s share of firm debts if the partner himself was unable to pay. See also the much more complicated arguments and decisions about the liability of one man who is accused of backing a firm that later went bankrupt, at SPABX: 44-27270.

<sup>70</sup> SPABX: 01-01863. In this case, Chang responded to a dispute over accounts by threatening Zhu with a knife and smashing several articles of furniture in his shop. Chang was both slapped for his unlawful outburst, and then taken into custody pending payment of his accounts. This dispute was mentioned previously on page 97 of Chapter 2.

Even when defendants had shown a propensity for violence or cheating, orders to settle were the easiest way for the court to insist upon the priority of maintaining agreements without explicitly bestowing the power of law upon the institutions that generated them. And for many cases some combination of punishment and commands to settle sufficed. Just over one fifth of cases (22%)<sup>71</sup> were resolved with only a punishment, an order to settle, or a punishment followed directly by an order to settle. Combined with the fact that another 48% of cases left court without trial, this means that almost three quarters of the total number of cases were settled within the first few moments of contact with the state.

### **Complex Cases**

The remaining 30% of cases were not settled so easily. In spite of the fact that these longer and more complicated cases comprised less than a third of the total number of dockets, the documentary footprint that they left is larger than the combined total of all of the other types of cases. For it was in these disputes that the court was forced to deploy its limited range of tools repeatedly and in tandem to solve some of the more intractable problems brought before it.

The court's response to cases that failed to settle after the first few court sessions might be escalated by administering (additional) punishments,<sup>72</sup> issuing additional summonses, or both:

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<sup>71</sup> This figure is the sum of the cases described in the above section (cases handled with a single punishment, with an order to settle, or with a punishment followed by an order to settle) divided by the total number of cases

<sup>72</sup> In this discussion, I count elevated forms of custody – such as being transferred from runner custody to being placed in jail – as a type of punishment.

6.6 Court Escalation Involving Punishment, Summons, or Both 1770 to 1904:

<b>Total</b>	<b>Years</b>	<b>Punishment</b>	<b>Summons</b>	<b>Both</b>
<b>20</b>	1770 to 1805	2	0	0
<b>18</b>	1806 to 1860	1	0	0
<b>16</b>	1861 to 1875	0	0	0
<b>19</b>	1876 to 1885	2	0	1
<b>16</b>	1886 to 1895	0	2	2
<b>18</b>	1896 to 1904	1	1	5
<b>107</b>		<b>6</b>	<b>3</b>	<b>8</b>

*Escalating Punishment to Demand Compliance*

The first type of complex case noted in the table above required the additional or repeated use of punishment for non-compliance with a court order to settle. Since failing to settle was tantamount to flaunting a court order, uncooperative parties could be punished for disobedience if they did not make demonstrable efforts toward the resolution of the dispute. In the application of these kinds of punishments (compared with the swift delivery of verdicts in cases of clear wrongdoing discussed in the above section), the court tended to take a broad and generous view of facts and usually insisted upon a lenient interpretation of the deadlines from both court and mediation settlements, sometimes waiting months before punishing an individual for delay and non-compliance. But when litigants proved unwilling to cooperate with the court's order to reckon, mediate, or settle over a period of months, the court would eventually respond with physical punishment.

Court attempts to force compliance usually escalated in stages, beginning with the confinement of the defendant to a higher and more unpleasant level of custody. In cases where a defendant had originally been released on a guarantee he might be taken into custody after passing the original deadline for settlement. In cases where the defendants already in custody he might be placed in a more restraining



form of detention (such as being handcuffed, or even sent to the *yamen* jail.)<sup>73</sup> When stricter kinds of custody failed to motivate defendants to obey the instructions of the court, physical punishment would be administered for flouting the court's authority. These punishments are handed down together with verdicts that remark a defendant is "obviously attempting to shirk (實屬有意狡賴),"<sup>74</sup> "clearly being cunning and deceitful (殊屬狡詐),"<sup>75</sup> "obviously being an extreme fraud who cheats the innocent (實屬昧良狡詐已極),"<sup>76</sup> guilty of "the truly damnable offense of faking a guarantee and refusing to pay (朦保抗繳實屬可惡),"<sup>77</sup> or "deceitfully delaying with the intent to cheat (狡賴拖騙)."<sup>78</sup>

In all of these circumstances, it is important to note that the individuals disciplined with escalated forms of custody and corporal punishment were not judged guilty of not living up to the terms of an original commercial agreement or even a subsequent settlement, but rather of disobedience to the court. By beginning cases with a general command to settle, to mediate, to reckon, or to pay a sum that both parties had already agreed upon, the court gave itself the ability to punish defendants for non-cooperation without having to commit to an explicit interpretation of commercial obligations between the two parties. In this way the court was able to remain committed to the task of seeing a dispute to the final resolution by insisting upon nothing more than fidelity to the mediation process itself and punishing defendants who were guilty of willful trickery.

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<sup>73</sup> For two examples see SPABX: 01-01870 and 44-27515.

<sup>74</sup> SPABX: 41-21951; 18.

<sup>75</sup> SPABX: 44-26322; 11.

<sup>76</sup> SPABX: 44-26418; 37.

<sup>77</sup> SPABX: 44-26418; 22.

<sup>78</sup> SPABX: 44-26449; 31.

*Additional Summons to Overcome Mediation Deadlock: Cases within Cases*

The second type of complex case that the court dealt with was complicated not necessarily by willful disobedience, but by extenuating circumstances which made a clear settlement impossible. In these cases, the magistrate combined his limited range of actions to transform the court into a forum for all of the disputes or problems of agency related to the original accusation. This might be done by summoning additional plaintiffs so that their demands could be settled at the same time as the original plaintiffs, or by summoning debtors of the defendants, so that the resources for a settlement could be gathered together to put an end to a case. In these instances the court used its power to summon new parties and command them, as well, to participate in or facilitate the settlement process so that the larger network of obligations and relationships sometimes involved in a dispute could be negotiated at once. By attaching additional parties to a dispute already on the docket, the court was able to collapse, fold, or intersect the ties that bound several sets of private obligations to a single settlement process.

Litigation could be settled after a mediation deadlock through the single act of issuing additional summonses to bind new individuals to the settlement process currently underway in an existing case. This happened in three of the cases studied here. More commonly – in eight of the cases from this sample – new parties were only added in cases where escalation had already occurred through the application of punishment and elevation of custody, as plaintiffs and magistrates grew increasingly frustrated with the inability of those already involved in a particular suit to conclude the affair at hand.

In these complex cases, every facet of possible court intervention could surface. In the most involved forms of litigation the court was, at once, responsible for summoning all parties to court, insisting upon relationships of economic agency where they entailed transitive responsibility, binding them to the process of settlement, and policing their settlement behaviors. Cases involving multiple forms

of court involvement could unfold over several trials, extend to one or two levels of secondary plaintiffs or defendants, and might take months or even years to resolve.<sup>79</sup>

### Ending Things

As long as a defendant failed to settle a case that a magistrate had ruled upon, the plaintiff could continue to demand that the court escalate the stakes until a conclusion was reached. In cases where a satisfactory resolution seemed impossible in both the short and the long term, the possibility for drawn-out litigation threatened to make a farce of the justice system. Defendants might be required to languish in custody, or plaintiffs forced to remain near the *yamen* for long periods of time, all the while subject to the demands and dangers of the larger world of justice.

In cases where court remedies seemed to demand a toll in excess of the original stakes of the dispute, the court reserved the prerogative to demand that litigants accept a compromise. As the following table shows, this happened in about one in every twenty-one cases sampled here:

6.7 Cases Concluded with Either (1) An Order to Compromise or (2) An Order to Settle Followed by a Later Order to Compromise 1770 to 1904:

Total	Years	1	2
20	1770 to 1805	1	0
18	1806 to 1860	1	0
16	1861 to 1875	1	1
19	1876 to 1885	2	1
16	1886 to 1895	0	3
18	1896 to 1904	0	0
107		5	5

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<sup>79</sup> For obvious reasons examples of such cases cannot be given here. But for one narrative of a particularly extreme example of complex litigation, see Maura Dykstra, “Going Under: Debt, Liability, and Litigation in the *Hu Wan Chang* Remittance House Bankruptcy,” presented at “Chinese Legal History/Culture/Modernity,” Columbia University, May 5-8, 2012.

Direct court orders to compromise were generally reserved for cases in which a defendant was able to demonstrate that he or she was incapable of successful mediation because of a lack of resources. In these cases, courts could demand reduced payments, administer corporal punishment in lieu of restitution, or decide on a token sum of money to sever a contested obligation. After the court declared a compromise, it would close the case. In these moments, the court came closest to producing its own interpretation of obligations between plaintiffs. But these verdicts were not legal rulings based upon custom, juridical reasoning, or philosophical considerations. Rather, as Liang Linxia has observed, they were outcomes that resulted when the state was “to some extent forced... by having no other, or better, choice.”<sup>80</sup>

One example of a court-ordered compromise is found in the 1832 case of Xu Yuanxing (徐源興), the owner of a firm that sold a batch of goods to one Luo Sihai (羅四海), a peddler from the countryside. Luo committed to pay just over 50 taels in exchange for the purchased items, but gave nothing at the time of the deadline and pushed back payment on several occasions. In his suit, Xu alleged that he was “forced to submit to my neighbors Chen Changtai (陳長泰) and Wang Chaoyuan (王朝源) et al. to mediate and demand payment from him, but he unexpectedly responded with abuse and threats, and now, although it’s hardly imaginable, the goods have been taken and the debt for them drawn out for a full two years.”<sup>81</sup>

Having failed to settle the issue for so long, Xu determined that there was no recourse other than court. At trial the defendant Luo testified that his business had collapsed. He also claimed that he had offered to give Xu 10 taels at the turn of the year, and further payments in future years, but that Xu had rejected his proposal. The mediation witnesses who attended the trial substantiated Luo’s defense.<sup>82</sup> In keeping with the testimony of the defendant and the mediation witnesses, the magistrate gave the

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<sup>80</sup> Liang, *Delivering Justice*, 190.

<sup>81</sup> SPABX: 12-10179; 2.

<sup>82</sup> The support of mediation witnesses for the claim of the defendant was an important part of determining this verdict. This issue – and even this specific case – will be discussed in Chapter Seven.

defendant a deadline to find a guarantor and pay out 20 of the 50 taels owed.<sup>83</sup> He further ordered that Xu forgive (*yi mian* 議免) the remaining portion of the debt and accept the 20 taels as the conclusion to the case. Luo was given a physical punishment for the offense of fraud and treacherous appropriation (奸掣 誑騙), and the two litigants were required to sign pledges of resolution committing to end the case.<sup>84</sup>

In this and similar cases, destitute men who had undertaken commercial obligations that they could not or did not intend to honor could not be detained indefinitely and were instead released with a punishment, a token payment, and the agreement of the plaintiff to end the matter after this settlement.<sup>85</sup> Both the defendant and the plaintiff were awarded some consideration, but neither was granted the full support of the court, since their dispute was unable to be resolved without costing more resources than the original dispute entailed. In this way both the court and the litigants could be spared the trouble of litigation that might exceed the gravity of the offense in question, while at the same time offering some diminished form of compensation to the wronged party.

Perhaps it is verdicts like these that other scholars have interpreted as Confucian efforts at “didactic conciliation.”<sup>86</sup> Certainly in these cases it is the personal connection between two parties that rests at the heart of the ruling, and the obvious aim is for a reasonable resolution rather than adherence to some legal standard of obligations between individual subjects. But in the commercial suits from Chongqing sampled here, it appears more likely that the overriding concern in these judgments was not a vaguely-defined “principle” (*li* 理) or a moralistic notion of “human feeling” (*renqing* 人情) so much as

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<sup>83</sup> SPABX: 12-10179; 5.

<sup>84</sup> SPABX: 12-10179; 7, 8.

<sup>85</sup> For a similar case – involving a store owner and an employee who embezzled from him – see SPABX: 19-03623.

<sup>86</sup> Shūzō Shiga, “A General Analysis of the Origins of Civil Legal Order in Qing Litigation [*Kiyoshiro soshō seido ni okeru minji-teki-hō-gen no gaikatsu-teki kentō* 清代訴訟制度における民事的法源の概括的検討]” *Tōyōshi kenkyū* [東洋史研究] 40, no. 1(1981): 74-102.

a practical and concrete desire to ensure that a case ended. These court endings were not idealized prescriptions designed to Confucianize the population, so much as careful strategies by the court in an attempt to curtail what could become a very contentious suit with very serious consequences. As Liu Heng put it:

Trials in cases of litigation must be handled swiftly ... If there is even a slight delay then old cases will go unresolved and new cases will continue to arise, and they will pile up, causing the people to suffer. The fees associated with a legal case often lead to the ruin of an entire family, causing them to seek higher and higher forms of appeal and sometimes even escalating to homicide. The harm of it cannot be easily conveyed with words. Furthermore, legal cases - whether delayed or speedy - all must end with a trial and resolution... any delay or hesitation opens the opportunity for a litigation master to get his foot into the door and turn the case into a mess of circumstances that will be difficult to resolve. Thus may a case that is not handled speedily turn into one that cannot be handled easily...<sup>87</sup>

Cases must end not only because confusion and contention threatens the sanctity of agreements and menaces the fates of litigants, but also because unresolved cases flaunted the authority of the court and could have negative consequences for the career of the individual magistrate. Any space left open between the dispute, the litigants, and the authority of the court was possible ground for the schemes of interlopers whose interests might be served by complicating the court's already-precarious grasp of the affairs of its subjects.

### **Closing the Gap**

In spite of the dangerous and unsavory nature of mediation on the margins of legal and administrative authority, the court was drawn further and further into the world of *xi shi* mediation over the course of the nineteenth century. The distance across which the magistrate and the subject navigated this complicated exchange shrunk dramatically over the 125 years covered in this chapter. On the one

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<sup>87</sup> Liu, "Ten Items on Handling Litigation."

hand, the court's predictable reliance on commands to settle, reckon, or mediate in other forums (discussed in greater detail in the next chapter) meant that, for simple disputes involving easily-overcome obstacles, disputants who were able to secure a clear mediation verdicts could confidently threaten court sanctions against a foot-dragging debtor. The efficacy of this threat is one of the most likely explanations for a sudden dip in the amount of litigation – as a portion of the city's population – after the year 1875. As the below table shows, there were fewer cases per 1,000 city residents in the Guangxu reign than there were at any other point in the city's history:

6.8 Average Number of Cases per 1,000 Residents per Year 1770-1904

<b>Reign</b>	<b>Beginning</b>	<b>Cases</b>	<b>Case/Year</b>	<b>Cases per 1,000 residents<sup>88</sup></b>
<b>Qianlong</b>	1770	3827	147.19	6.7
<b>Jiaqing</b>	1796	8304	332.16	6.9
<b>Daoguang</b>	1821	20642	688.07	8.9
<b>Xianfeng</b>	1851	9183	834.82	7.4
<b>Tongzhi</b>	1862	15700	1207.69	8.2
<b>Guangxu</b>	1875	34896	1163.20	5.5
<b>Total</b>		<b>92552</b>	<b>547.64</b>	<b>7.3</b>

This remarkable dip in the ratio of cases to population figures is made even more interesting when one notes that, among the cases brought before the magistrate, the county court of Chongqing was steadily being pulled deeper into the process of mediating disputes over commerce between litigants. This suggests that, at the same time that simpler cases were less likely to ever result in a legal suit, the cases that did arrive at court were becoming more and more difficult to solve.

The complexity of cases and the frequency and intensity of court involvement increased across the board roughly after the year 1875. For example, the sum of the total proportion of cases solved

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<sup>88</sup> This figure was created by finding the average population figure for each period (using the data from table 9-8 on page 235 of Zhou Yong's *Survey of Chongqing History*), then dividing the number of cases by the number of thousands of registered city residents.

without escalation of punishments or additional rounds of summons clearly declines over the long century:

6.9 Percentage of all Cases Resolved without Escalation 1770 to 1904<sup>89</sup>

<b>Total</b>	<b>Years</b>	<b>Resolved</b>
<b>20</b>	1770 to 1805	85%
<b>18</b>	1806 to 1860	89%
<b>16</b>	1861 to 1875	94%
<b>19</b>	1876 to 1885	74%
<b>16</b>	1886 to 1895	75%
<b>18</b>	1896 to 1904	56%

These figures indicate a sudden and increasing incidence of complex cases in the last quarter of the nineteenth century and beyond. While approximately nine out of every ten cases could be solved with a summons, a punishment, or an order to settle before 1875, this number dropped to only three out of every four from 1876 to 1895 and plummeted to only half in the last period sampled. Clearly, by the end of the century the court of Chongqing was being asked to participate more actively in the resolution of increasingly complex cases.

In some ways, this trend might be explained by the increasing sophistication of merchants and their businesses in what had become – by the end of this period – a busy commercial center. This explanation is supported, for example, by a steady growth in the numbers of individuals implicated in suits, as the below table on average number of individuals named in each case documents:

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<sup>89</sup> This table was made by combining the totals in Table 6.8 (summary of case escalation) and Table 6.11 (summary of court-ordered compromises), then subtracting the sum from the total number of cases for each period, then dividing that sum by the total number of cases per period.



6.10 Average Number of Individuals Named per Case 1770 to 1904

<b>Total</b>	<b>Years</b>	<b>Avg. no. of people</b>
<b>20</b>	1770 to 1805	3.2
<b>18</b>	1806 to 1860	4.4
<b>16</b>	1861 to 1875	5.6
<b>19</b>	1876 to 1885	7.3
<b>16</b>	1886 to 1895	7.6
<b>18</b>	1896 to 1904	9.7
<b>107</b>		<b>6.3</b>

An increase in the number of plaintiffs, defendants, third parties, and witnesses to a dispute suggests that, by the time the increasingly complex cases of the late nineteenth and early twentieth century made it to court, the disputes at the center of litigation involved not only complicated business arrangements but also complicated mediation issues.

This second explanation – that the issues involved in commercial cases presented to the court were becoming more complicated on average – is supported by the fact that, by every measure, court participation in mediation became more intense over this period. This is clearly indicated by a demonstrable increase in the amount of time that the court spent adjudicating cases:

6.11 Number of Months between First Court Date and Last Case Action 1770 to 1904<sup>90</sup>

<b>Total</b>	<b>Years</b>	<b>1 or fewer</b>	<b>2 to 5</b>	<b>6 to 12</b>	<b>over 12</b>
<b>20</b>	1770 to 1805	17	2	1	0
<b>18</b>	1806 to 1860	11	7	0	0
<b>16</b>	1861 to 1875	16	0	0	0
<b>19</b>	1876 to 1885	10	4	2	3
<b>16</b>	1886 to 1895	8	3	2	3
<b>18</b>	1896 to 1904	9	4	2	3
<b>107</b>		<b>71</b>	<b>20</b>	<b>7</b>	<b>9</b>

<sup>90</sup> Cases that do not go to court are in the column; cases that were resolved at any point in the first month are in column 1 even if they did not go to court. For each additional month, a number is added.

As this table shows, in the last decades of the nineteenth century and the first years of the twentieth, cases were much more likely than before to require longer periods of time before reaching a resolution. The length of cases in this sample, in fact, reach unprecedented levels after 1875 – and this phenomenon is not constrained to a small minority of cases. In keeping with this trend toward longer and more complicated forms of court involvement, so too does the total number of court sessions climb steadily higher after 1875:

6.12 Number of Court Sessions per Case 1770 to 1904<sup>91</sup>

<b>Total</b>	<b>Years</b>	<b>0 Court</b>	<b>1 to 2</b>	<b>3 to 5</b>	<b>6 to 10</b>	<b>&gt;10</b>
<b>20</b>	1770 to 1805	13	6	1	0	0
<b>18</b>	1806 to 1860	5	13	0	0	0
<b>16</b>	1861 to 1875	13	3	0	0	0
<b>19</b>	1876 to 1885	7	7	0	4	1
<b>16</b>	1886 to 1895	4	8	2	1	1
<b>18</b>	1896 to 1904	6	5	1	3	3
<b>107</b>		<b>48</b>	<b>42</b>	<b>4</b>	<b>8</b>	<b>5</b>

Taken together, these trends indicate a court that tended to get more involved in more commercial cases over time. More punishments were handed down, more summonses were made to tie secondary or tertiary persons of interest to a case, more time was spent from the beginning to the end of each case, more court sessions were summoned to hear testimony, and more individuals were involved in each suit on average. Indeed, this trend toward increasing complexity and court investment is one of the few clear and linear pictures that emerge from the data assembled from the cases surveyed.

What does this growth mean, in light of the information presented here, about the importance of the court’s ability to maintain a precarious balance that hinges upon *not* becoming too involved in litigation? In the next chapter, I will present the argument that this escalating court involvement directly

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<sup>91</sup> This total does not count court sessions where a case was summoned but the defendant was not present for a verdict.

reflects the expansion of the local state that can be traced back at least to the early nineteenth century. This expansion, in turn, altered the logic, patterns, and use of the institutions linking the state to its subjects. What the increasing level of court involvement of courts in the last decades of this period documents is how these groups began to tear down and redefine the barriers between the state and its subjects. At the local level, this triggered a crisis as the balance of imperial justice was threatened with heightened intimacy between the state, its subjects, and the groups that represented them. This crisis offered the preconditions for the transformation of the justice system in the early twentieth century, which will be covered in Chapter Eight.

CHAPTER 7:  
MAGISTRATES AND  
MEDIATION INTERMEDIARIES (1770-1904)

有司統理一州一邑之刑名錢穀舉凡地方之利弊

The root of advantage and abuse in every county  
and every settlement is the administration of law  
and public finance in a single office

Xu Wenbi, ca. 1756<sup>1</sup>

### Introduction

The legal ambiguity that defined *xi shi* cases meant that, even after a commercial dispute went to court, decisions about how to interpret obligations between individuals were pushed back down to the networks out of which economic relationships first emerged. This chapter will discuss how and when the court interacted with the groups that determined, witnessed, and negotiated bonds of obligation.

First, it demonstrates that court handling of commercial disputes changed over time as a product of the state's shifting relationship with the administrative and economic intermediaries. At the same time that officials and their offices were pulled closer to the complicated world of local institutions in their search for more information about the lives of subjects, so was the non-state world of obligations increasingly formalized over the course of the tumultuous 1800s. By the end of the century of crisis, what began as *ad hoc* accommodations had begun to coalesce into powerful local institutional arrangements. The result of this administrative transformation (covered in Chapter Four) was a steady and remarkable increase in mediation use over time.

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<sup>1</sup> Xu Wenbi (徐文弼), "Prohibiting Jejeune Amusements" [*jin huang xi* 禁荒嬉] in *A New Edition of A Mirror Suspended for Officials* [*Xin bian lizhi xuan jing* 新編吏治懸鏡], 1765, *juan* 1.

The implications of this shift altered the basic processes of dispute mediation. Non-court mediation forums can be seen, over the course of the years, handling an increasing and increasingly clear range of dispute mediation functions: first in tandem and then in collaboration with the court. The end result of this cooperation was an implicit but clear division of labor, which emerged in the last quarter of the nineteenth century and took for granted that all of the work of interpreting obligations and arranging settlements should be handled by non-court mediation forums, while the court handled problems of enforcement.

By the last quarter of the nineteenth century, some of the same worries about private interest and corruption that dominated discussions about local reform began to come to the fore in the dispute mediation process. In this later period, the increasing magistrate reliance on non-court mediation groups highlighted the basic dilemmas associated with the legal ambiguity of this system of multi-forum mediation. As a result of the expansion of cooperation between the state and the intermediaries upon whom it relied, the fundamental tension between practice and explicit state policy was highlighted in dramatic relief.

As this chapter will show, the authority of these groups was the direct product of predictable patterns of court use. From 1770 to 1904 there was a dramatic and steady trend toward more and diverse forms of mediation in the resolution of commercial disputes, which consolidated the expertise and role of non-court mediation forums. While this trend increased the likelihood that disputes with clear mediation settlements could be settled without court intervention (as discussed in Chapter Six), the expanding authority of administrative and economic intermediaries also began to menace the ability of the court to stand apart as the mediation forum of mediation forums. In the murky territory between legal imperative, administrative solutions, and mediation intermediaries, the state's deliberate and required agnosticism eventually caused a profound dilemma. The very profusion and expertise of mediation forums heightened the court's vulnerability as a forum that operated on borrowed information.

## Increasing Use, Frequency, and Diversity of Pre-litigation Mediation

Over the course of the nineteenth century merchants and magistrates alike came to incorporate non-court groups into the dispute resolution process in a greater number of ways. The assistance of collective responsibility heads, neighbors, third-party intermediaries, and merchant groups became more common both before and during litigation. By the end of the nineteenth century, very few cases entered the court without first having been through at least one other forum of mediation.

As Table 7.1 shows, the likelihood that a dispute arrived at court without first being mediated in the nineteenth century was less than half as high as it was in the eighteenth century, and disputes in the last quarter of the nineteenth century were far less likely to go to court without mediation than cases from earlier in the 1800s:

7.1 Cases Entering Court with No Mediation 1770 to 1904<sup>2</sup>

Cases	Years	No Mediation	%
20	1770 to 1805	10	50%
18	1806 to 1860	5	28%
16	1861 to 1875	4	25%
19	1876 to 1885	3	16%
16	1886 to 1895	1	6%
18	1896 to 1904	2	11%

The particularly low instance of pre-court mediation in the late Qianlong and early Jiaqing periods (50%) is consistent with the argument made earlier in this work that both the magistrate's *yamen* of Chongqing and the administrative and economic intermediaries of the city were only beginning to establish their roles in governing the market at the close of the eighteenth century. But after the violence of the White Lotus

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<sup>2</sup> Cases in which only one party claims to have mediated before court are counted as having mediation, even if the other party disputes the claim.

uprising that marked the transition into a new era of administration, merchants became far more likely to pursue dispute resolution before resorting to litigation. This preference only increased with time.

Mediation took place in a variety of contexts. Disputes might be hashed out in any number of forums, but meetings were usually held in what might be considered public or common spaces in front of a group of individuals. Parties to a dispute might meet, for example, at the prefectural temple<sup>3</sup>, the county temple,<sup>4</sup> the shrine located on *yamen* grounds,<sup>5</sup> at the shop belonging to the individuals involved in the dispute (in cases of partnership),<sup>6</sup> or in halls belonging to corporate groups and charitable associations.<sup>7</sup> These meetings might be presided over by members of the same collective responsibility unit, heads of a collective responsibility unit, members of the same trade, *bang* or *hang* representatives, or any economic intermediary who had a prior relationship with one or both parties.

Mediation was so common and its forms so varied that it is often represented in legal suits as an uninteresting detail. In spite of the fact that pre-court mediation could be a very important part of the litigation process, concrete information about pre-court mediation is often obscured in the legal record by the proliferation of general terms used for mediation. Litigants might simply claim to have “submitted [the issue] to a crowd” (*tou zhong* 投眾),<sup>8</sup> “submitted [the issue] before a group of individuals for mediation and reckoning several times” (*die tou renzhong lisuan* 迭投人眾理算),<sup>9</sup> “submitted [the issue]

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<sup>3</sup> SPABX: 27-8789; 2.

<sup>4</sup> SPABX: 44-27280; 2.

<sup>5</sup> SPABX: 44-27239; 5.

<sup>6</sup> This was most often the case when one individual claimed bankruptcy, and the creditors gathered some mediators before the insolvent business to inspect accounts. See, for example, SPABX: 44-27131; 15. For more on this practice, see Dykstra, “Beyond the Shadow of the Law.”

<sup>7</sup> A reckoning of accounts under several collective responsibility heads, for example, is reported to have taken place in the Hall of Cultivating Virtue (培德堂) at SPABX: 44-27239; 5.

<sup>8</sup> SPABX: 27-8848; 2.

<sup>9</sup> SPABX: 27-8591; 2.

in mediation” (*tou li*投理),<sup>10</sup> “submitted [the issue] before an assembled [group] for mediation” (*tou ji li* 投集理),<sup>11</sup> “submitted [the issue] in mediation and discussion” (*tou lijiang*投理講),<sup>12</sup> “appealed to a crowd” (*ping zhong*憑眾),<sup>13</sup> “appealed to mediation” (*ping li*憑理),<sup>14</sup> “appealed to mediation and debate” (*die ping lilun*迭憑理論),<sup>15</sup> “mediated and demanded payment” (*litao*理討),<sup>16</sup> or simply “mediated” (as in the phrase “mediated several times,” or *die li*迭理).<sup>17</sup>

The habit of mentioning, but not specifying, dispute resolution forums before court often appears to have been an issue of expedience or convenience (since legal suits had strict word limits, and the accusations around wrongdoing might not especially concern the course of earlier mediation attempts). It was also not a matter of grave concern for the court, which could always demand that litigants produce witnesses to report on previous mediation attempts.<sup>18</sup> However, since the court itself rarely required exact information about the terms of mediation efforts or the identity of mediators, the historian is left with many questions about the mediation activities of litigants. But in spite of the fact that so many litigants only referred to mediation outside of the courtroom obliquely, enough data exists in the historical record

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<sup>10</sup> SPABX: 44-26855; 2; 27-8854; 2; and 44-26322; 2.

<sup>11</sup> SPABX: 44-27345; 2.

<sup>12</sup> SPABX: 44-26929; 2.

<sup>13</sup> SPABX: 27-8848; 2; 44-27131; 15.

<sup>14</sup> SPABX: 44-26809; 4.

<sup>15</sup> SPABX: 44-26870; 2.

<sup>16</sup> SPABX: 41-20179; 2; 44-27646; 2; 25-5951; 2; and 38-14395; 1.

<sup>17</sup> SPABX: 44-27403; 2.

<sup>18</sup> As a matter of course, mediation witnesses would always be listed on the roll call for each trial, although in many cases they never attended trial. In cases where there were disputed accounts of mediation, however, their testimony could be extremely important in determining the verdict of a trial, as later sections of this chapter will demonstrate. For examples of testimony by mediation witnesses, see SPABX: 12-10179; 12-10636; 20-5992; 27-8854; 44-26750; 44-26418; 45-28179; 42-22100; and 55-04177.



to document an increasing incidence of overlapping attempts at dispute mediation over time. The following table breaks down the number of cases reporting to have mediated in each type of forum per period:

7.2 Reports of Mediation in Non-Court Forums before Litigation 1770 to 1904<sup>19</sup>

Years	Third Party	Collective Responsibility	Merchant group	Other/Unknown*
1770 to 1805	2 (10%)	8 (40%)	0 (0%)	2 (10%)
1806 to 1860	0 (0%)	8 (44%)	0 (0%)	3 (17%)
1861 to 1875	6 (38%)	2 (13)	0 (0%)	5 (31%)
1876 to 1885	2 (11%)	9 (47%)	2 (11%)	7 (37%)
1886 to 1895	2 (13%)	4 (25%)	4 (25%)	9 (56%)
1896 to 1904	0 (0%)	5 (28%)	4 (22%)	10 (56%)

This disaggregated summary of reports of mediation before litigation shows a clear trend, over time, toward mediation in diverse forums.<sup>20</sup> Compared to disputants in the late eighteenth century who were likely to rely primarily collective responsibility unit members, this table shows that in the last quarter of the nineteenth century merchants were increasingly likely to seek out mediation in a range of forums.

With the exception of the era of unrest surrounding the Taiping Rebellion (during which many cases were litigated differently in ways that cannot be discussed in detail here), one also sees a general strong upward trend in the likelihood that a case which makes it to court will involve a command from the

<sup>19</sup> This table summarizes all reports of mediation forums employed before court, including multiple reports per case. Multiple mediation in a single forum is counted once. Mediation in multiple forums is counted once per forum.

<sup>20</sup> This table also shows that none of the cases entering my sample before 1875 reported pre-litigation mediation in a forum that could be explicitly labeled as a “merchant group.” This reflects the fact that no cases before 1878 mention mediation before a “hang,” a “bang,” or a “merchant head” (as later ones do), but it conceals two important things about commercial dispute mediation groups: 1. that much mediation took place among “neighbors,” which often meant neighboring groups of shops, and 2. that I have decided, here, to label mediation under *kezhang* (who are referred to both as *kezhang* and *keyue* in early cases) as mediation under collective responsibility groups, rather than merchant groups. I only later count *kezhang* mediation as merchant mediation when those individuals are referred to as members of the Eight-Province Association. In this decision, I contradict the general consensus on when and how the *kezhang* of Chongqing became explicitly and primarily viewed as representatives of the merchant community. For more on this topic, see Chapter Two of this work.

magistrate to engage third party intermediaries, collective responsibility heads, or merchant groups in finding a settlement. The following table documents the increasing number and likelihood of court orders to delegate some part of the mediation process to non-court groups:

7.4 Magistrate Orders to Involve Other Mediation Forums for Cases in Court 1770 to 1904

<b>Court Cases</b>	<b>Years</b>	<b>Orders to Groups</b>	
<b>6</b>	1770 to 1805	3	50%
<b>12</b>	1806 to 1860	6	50%
<b>3</b>	1861 to 1875	1	33%
<b>10</b>	1876 to 1885	9	90%
<b>12</b>	1886 to 1895	9	75%
<b>11</b>	1896 to 1904	10	91%

By the end of the period surveyed here, court orders to administrative and economic intermediaries to oversee at least one aspect of the mediation process had increased sharply. Compared to court delegating to non-court forums half of the time before 1860 (and a dip to one third of the time between 1861 and 1875), the last quarter of the nineteenth century and the first few years of the twentieth saw between three quarters and 90% of cases appearing in court given an order from the magistrate to another mediation forum. By the end of the nineteenth century it became uncommon for magistrates not to explicitly command other groups to act on the court’s behalf in resolving disputes.

Increasing merchant and court use of mediation forums meant that, from roughly 1875 forward, commercial disputes were also more likely than before to engage multiple mediation forums in the course of resolution. The following table illustrates this trend by displaying the average number of mediation forums involved before and during court adjudication of commercial disputes. It does so by taking the average of the number of forums – including the court – reported as being involved in the process of resolving each case. The maximum possible number would be four, for cases involving the court, a third

party, collective responsibility heads, and merchant groups, while the minimum number of one would result if a suit only recorded mediation in court:

### 7.3 Average Number of Forums Employed in Each Case 1770 to 1904

Cases	Years	Avg.
20	1770 to 1805	1.8
18	1806 to 1860	1.9
16	1861 to 1875	1.8
19	1876 to 1885	2.5
16	1886 to 1895	2.5
18	1896 to 1904	2.3

This table shows that before 1875, cases were generally likely to include at least one forum outside of the court in mediating disputes. After 1875, the average case included at least two total mediation forums, and many incorporated a third and a fourth as well.

The data represented here trace the basic dimension and scope of a clear trend toward more and overlapping mediation over the course of the nineteenth century, with a notable increase after the year 1875. The next section will detail how the court's increasingly systematic reliance on collective responsibility institutions, merchant groups, and third-party intermediaries began to coalesce, over the course of the nineteenth century, resulting in a new understanding of the division between court responsibilities and other mediation functions which were best handled outside of the *yamen*.

### **The Division of Labor**

Over the course of the nineteenth century the efforts of non-court mediation forums were more fully integrated into specific junctures of the court process. The court's predictable and routine use of mediation intermediaries meant that it became increasingly clear, to all involved in a court case, how and

when groups could critically alter the resolution of a dispute. For one, mediation might preclude the need for trial at all; if a clear mediation settlement had been reached, the reliance of the court on group interpretations directly foreshadowed the magistrate's verdict. Even after a case had entered court, the negotiation of a mediation settlement could be taken as more or less equivalent to the conclusion of a case, since court rulings cleaved so closely to mediation outcomes. Mediation forums and intermediaries also became important in the supervision and execution of long-term settlements. Over the course of the nineteenth century, it became increasingly clear that the court's goal was to offer support – and not to substitute for – mediation in other forums. In other words, the primary concern of the magistrate was usually not how or why any particular litigant might be obligated to another, but rather how and why mediation was not working.

The first unambiguous example of an explicit recognition of this division between the duties of the court and the functions of other dispute mediation forums appears in a case from 1823. In this year, Wang Ruifeng (王瑞豐) filed the following suit:

I founded the Rui Feng commodities brokerage in Chongqing, where I represent customers in buying and selling. One Liu Zhao (劉照) and his partner Second Brother Fang (范老二), the operators of the De Da Capital Produce firm, came to my shop on several occasions between last winter and month three of this year, and purchased several commodities. Aside from the amount that has already been collected, they still owe me a total of over 370 taels. My account books have been submitted as proof for the court's inspection. Several times I attempted to mediate and demand payment (迭理討), but all along the two of them delayed and prevaricated. When the merchants who originally entrusted these goods to me returned to the city, it was to me that they looked for payment, as I was the broker. Who could expect that, as soon as Liu got his hands on these items, he would take me for a simple fool and plot to cheat me and gobble them all up (計騙鯨吞)? Most recently when I went to collect he even persisted in refusing to meet me. I am being harassed for payment by my customers, and it is not that the De Da firm lacks the strength to pay: they are still open and doing business, and Liu Zhao is even involved in Zhang Yufa's (張玉發) money shop. For these reasons I plead before the court for a decision to reward permission for this suit and summon the defendants to court for trial, investigation, and pursuit of the money, so that this treacherous plot may be punished with the force of law (法治計騙) and the investments of my customers may

be returned, and I may be spared from further trials. I supplicate myself before the court with extreme obeisance.<sup>21</sup>

In detail and form, this suit resembled others filed by brokers against customers who had defaulted on payments owed to others, which were accepted immediately for trial.<sup>22</sup> But in this case the magistrate responded: “If Liu Zhao owes you money for goods and delays, failing to pay completely, you may simply submit to a group to mediate and demand payment (僅可憑眾理討). There is no need to escalate this affair to litigation (毋庸涉訟).” Fifteen days later, when Wang filed a second suit claiming that the magistrate’s refusal to hear the case had only led Liu to more flagrantly resist attempts at settlement,<sup>23</sup> the case was summoned and later went to trial, where a verdict was handed down in Wang’s favor.<sup>24</sup>

This suit, which is almost completely unremarkable for as much as it resembles the basic elements found in so many Ba County cases, is the earliest one in the hundreds that I transcribed in the field (and, to my knowledge, the earliest one yet reported in scholarship using these archives) to explicitly state that the resolution of a dispute involving documented accounts should be submitted to a mediation forum other than the court. Later magistrate rescripts were sometimes even more precise in outlining the distinction between commercial disputes that should be funneled into non-court mediation forums and those that should be summoned for trial.

One of the most striking features of some of the cases being rejected by the court is the clear and unquestioned assumption that, with written proof or witnesses, almost any normal commercial dispute could be resolved without the assistance of the court. For example, in one 1865 case when the plaintiff complained that his business partner had tried to cheat mediation by modifying the account books, the magistrate responded with a concrete statement about the procedure for reckoning partnership accounts,

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<sup>21</sup> SPABX: 11-09843; 2.

<sup>22</sup> For example, see SPABX: 05-04648;2, and 20-05793; 2.

<sup>23</sup> SPABX: 11-09843; 3.

<sup>24</sup> SPABX: 11-09843; 6.

writing in his rescript that: “When partnership accounts are unclear then it is the witnesses to whom one ought to submit for mediation and reckoning (夥帳不清著仍憑證理算).”<sup>25</sup> In another suit, from 1867, after the plaintiff suggested that his creditor was purposefully delaying mediation in order to put off having to pay for goods that had already been delivered, the magistrate curtly replied: “Submit to other individuals<sup>26</sup> for mediation and demand repayment. There’s no need for these meddlesome pleas (著憑人理討不得稟瀆).”<sup>27</sup>

On some occasions, magistrates even expressed disbelief that an issue could not be handled directly in mediation. For example, in an 1880 suit where the plaintiff claimed that a debtor had failed to pay on some notes that were involved in a transaction, the magistrate seemed almost incredulous, writing: “Wei Heting (魏鶴亭) et al. exchanged silver with you, and now as clear proof of the transaction there are stamped notes, as well as a stamped receipt with a deadline. What opportunity is there in this case for setting up a plot to cheat you? Continue to bring this before the witnesses for mediation and payment of the owed funds. Don’t lightly undertake litigation and welcome troubles!”<sup>28</sup>

The magistrate responded similarly in 1898 when a jade merchant – reporting that he had lost a large store of goods in a warehouse fire – filed suit claiming that his partner had agreed to dissolve the firm and committed to a settlement to the shop’s creditors, but then privately attempted to renege on the agreement. In his rescript the magistrate pointed out that shared, public information was one of the essential fail-safes of mediation in groups, writing: “If you and [the defendant] Wei Qingtang (魏慶堂) were engaged as partners in a jade enterprise and your goods were destroyed in a fire, and the partnership

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<sup>25</sup> SPABX: 27-8591; 2.

<sup>26</sup> This is a literal translation of the rescript, which appears to be incorrectly written, and probably ought to read “Submit to the witnesses,” or “著憑人證” in the first phrase.

<sup>27</sup> SPABX: 27-8789; 4.

<sup>28</sup> SPABX: 40-18605; 1.

agreed to share responsibility for reduced payments to the creditors, how can Wei Qingtang possibly contradict this alone? Submit to the collective responsibility heads for mediation in order to find a resolution. Do not meddle with unnecessary plaints.”<sup>29</sup>

The many magistrate rescripts resembling the ones above have been represented in previous scholarship as proof of a Chinese (or a “Confucian”) preference for mediation over litigation. The frequency of court use by individuals from every segment of the population and the seriousness with which *xi shi* were treated, as documented in this and previous chapters, exposes this interpretation as completely lacking a foundation in historical reality. But even more importantly than revising this overly simplistic interpretation, an appreciation of the changing relationship between the court and other mediation forums suggests that these statements – which have been used to represent general “Qing” or “traditional” modes of justice – are in fact a product of the nineteenth-century shift in court behaviors, which stemmed from an increasingly recognizable division of labor between the court and other local institutions.

This division hinged upon a basic and increasingly recognized assumption that seems either unimportant or incredible to scholars in search of re-framing a China’s legal history in contemporary frameworks: that the administrative link between the state, its court, the magistrate, and the groups into which each locale had been divided were so powerful and viable that this connection alone could be invoked as a basis for motivating mediation. It was not a belief that these cases were unimportant which led magistrates to defer their resolution to other forums: it was a belief that the other institutions capable of handling them were as important as the court.

When cases thus dismissed by the magistrate continued to face enforcement or mediation problems, the court would almost always agree to oversee a settlement process.<sup>30</sup> This is because the

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<sup>29</sup> SPABX: 41-21343; 2.

magistrate was keenly aware of the motivation that the threat of court scrutiny could provide to hasten a settlement (as discussed in Chapter Six). Although the court might have been wary of accepting suits that had not yet been vetted by other forums, when mediation mechanisms outside of the courtroom were flaunted, only the court could legitimately force participation in a process of resolution and settlement. In the 1880s, an intermediate solution to this dilemma of soliciting court enforcement emerged to keep even more disputes in non-court forums before escalating to mediation. Magistrates began to issue direct court orders commanding would-be litigants to settle.

The first suit to garner such an order in the sample used here is from 1881. The case that followed from it, however, demonstrated that by the closing decades of the nineteenth century the problems which were brought to court increasingly only wound up in litigation because they hinged upon questions that could not be resolved by other mediation groups. The case in question began with a plaintiff by Wang Yongsheng (王永盛) against Xiong Songshan (熊松山) and Mou Hai (牟海) in which Wang alleged that the two defendants had colluded with his employee, Yang Shicheng (楊世成), to falsify over 400 taels of his shop accounts in a scheme to make off with several of Wang's goods. When this treachery was discovered, Wang reported, he confronted Yang Can (楊燦), the father of his errant employee, and the elder Yang had agreed – under the guarantee of Zhang Bingshun (張炳順) – to sign a contract to repay everything within two months. When the deadline approached, however, Wang accused Yang and Zhang of pushing responsibility for payment back and forth between one another, which forced him to take the two before mediation in an unspecified forum. There, reportedly, the two men “taunted me, saying that disputes over accounts are small affairs, and that they should not fear even a hundred lawsuits against them (吼稱債賬細故百控不畏).”<sup>31</sup> He pleaded for a summons, and the magistrate replied with the

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<sup>30</sup> In the six cases cited above five were eventually summoned and only one (SPABX 27-8789) was rejected twice before leaving court.

<sup>31</sup> SPABX: 44-26322; 2.



rescript: “Await an official order to submit to the witnesses and return the money. If they disobey this order, then the case will be summoned for trial and pursuit (侯簽飭憑證措給違即? 案訊追).”

Within a week, the court’s official order had been drafted. The text of it read, in part:

The court commands the specified *yamen* employee to go forth to the Chuqi ward of the city, and cooperate with the *yuelin* and *baojia* collective responsibility heads, to issue an order in the case of Wang versus Xiong and Mou... to speedily repay all amounts owed to Wang Yongsheng in exchange for goods purchased. If any dares to violate or disobey this order, the specified *yamen* employee is commanded to take the defendants Xiong, Mou, Yang, and Zhang, as well as the other individuals mentioned in the suit: broker Yang Shicheng, neighbor and mediation witnesses Zhang Jinshan (張金山) and Chen Baoshan (陳寶善), together with the plaintiff Wang Yongsheng and his co-plaintiff Li Fu (李福), and summon all of them together to report to the county office for trial...<sup>32</sup>

After the order had been issued, defendants Xiong and Mou each filed their own counter-suits.

Xiong declared that the dispute was the result of a misunderstanding, and Mou instructed the court that he had separated from his partnership with Xiong before the affair in question took place. In response to both counter-suits, the magistrate ordered the defendants to submit their claims before a mediation forum for sorting out. When Yang Can and his guarantor Zhang filed their own account of events in a third counter-suit, the magistrate held firm to his command, writing in his rescript:

In this case there has already been an order handed down. The both of you are implicated in the responsibility attached to an individual who has accepted a deadline and undertaken a guarantee. Hurriedly invite together some individuals to reckon accounts and mediate. Order Xiong et al. to repay all of the funds owed and end the affair. There is no need to disobey and delay, which can only result in further troubles.<sup>33</sup>

When Xiong filed yet another counter-suit, the magistrate continued to order the defendants to mediate, but a month after the first suit was filed the parties were all brought into court for trial.

In court, it was reported that the medicine *bang* to which Wang belonged had brokered a settlement for partial payment now, and delayed payment for the rest of the amount owed. The magistrate

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<sup>32</sup> SPABX: 44-26322; 3.

<sup>33</sup> SPABX: 44-26322; 5.

commanded the defendants to immediately pay over the portion owed, and then find a guarantor to vouch for the amount that would be paid later. The case wound up in court six more times, as the defendants repeatedly handed over small portions of the sum owed but then failed to make further payments, pleading poverty. It wasn't until six months after the first court date, at the final trial, that the plaintiff reported that the defendants had "found another individual to plead on their behalf, who arranged everything to my satisfaction (託人換勸與職說好)."<sup>34</sup>

Unlike the majority of disputes which were resolved swiftly (or never appeared in court to begin with), the complex cases, which began to appear with increasing frequency in the nineteenth century, exhibited a failure of pre-litigation mediation which was revealed, ultimately, to have been the product of deeper and more complicated difficulties that precluded the possibility of a straightforward settlement. It was in cases such as these that the court was a critical ally of the wronged party, for although mediation could settle some of the critical questions of information and liability, it was the court alone that retained the prerogative to command individuals to obey at the peril of punishment.

In addition to demanding that individuals involved in commercial disputes seek out the assistance of another mediation forum before escalating a dispute to court, magistrates increasingly continued to command disputants to settle even after litigation had begun. As discussed in Chapter Six, orders to settle were by far the most common court verdict handed down in commercial cases. In some of those, an order to settle would directly end in the resolution of a dispute. This was the case, for example, in the 1870 suit filed by Wang Jianqing (王鑿清) and Luo Yangsheng (羅陽生). In their plaint to the Ba County magistrate they explained that one Zhang Yishun (張義順) had partnered with Wang and Luo's father Luo Quanshun (羅全順) to run the Quan Xing Warehouse (全興棧). Zhang soon turned out to have a

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<sup>34</sup> SPABX: 44-26322; 24.

proclivity for running scams and eventually used the name of the shop to “defraud and take illicit possession of goods from other firms (撞掣各號貨物).”<sup>35</sup>

Upon discovering the illicit activities of their partner, Wang and the elder Luo demanded repayment from Zhang. Now, the two plaintiffs claimed that in response to these demands Zhang went into hiding, and one week before the suit was filed he had kidnapped the elder Luo, holding him without food and without allowing him contact with the outside world. The magistrate summoned the case immediately. Eight days later, in court, the plaintiffs repeated their side of the story. For his part, the defendant Zhang swore that he had not embezzled or defrauded anyone. He had simply run out of funds while on firm business and instead purchased several goods on advance. He further complained that he had been handed over to the court only because the firm recently went bankrupt. The other partners had blamed him for this, and the disagreement had degenerated into a fight. Two men identifying themselves as neighbors of the warehouse testified in court that, several months ago, “Wang Jiaqing came to us saying that Zhang Yishun had falsely assumed the name of his warehouse to purchase goods on advance from others.”<sup>36</sup> They reported that they had pleaded (*quan wei* 勸慰) with the two parties to reconcile, but that the dispute failed to die down, so that now everyone found themselves in court.

Faced with this version of events, the magistrate ordered Zhang to find a guarantor, so that he might be released to “go out and submit to the neighbors for a thorough investigation of which goods from which firms were purchased on advance, and then reckon those amounts clearly and return them in full (取保出外憑街鄰清查賒取何號貨物算明還楚).” Four days later, a group of neighbors filed a report of the mediation that had taken place two days after the trial at the Li Ming temple (離明宮). They concluded that “truly, Zhang went out and illicitly appropriated goods... and those accounts should be

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<sup>35</sup> SPABX: 25-5812; 1.

<sup>36</sup> SPABX: 25-5812; 4.

repaid by Zhang Yishun, as they were not undertaken by the Quan Xing firm.”<sup>37</sup> The magistrate’s comment on the rescript reiterated the findings of the mediation and concluded that the court would “Order [Zhang] to return everything, in order to settle the case (令清還以憑結案).” The docket ends with this document. Any failure on Zhang’s part to repay the amount owed, of course, would have subjected him to further court scrutiny and a very high likelihood of some combination of physical punishment and detention.

When a clear mediation settlement – especially one conducted under court order – had been reached, any attempt by a defendant to prevaricate or delay was part of a very risky game, which few but the seriously inveterate or the truly desperate dared to play. According to this institutional arrangement, a resolution in one forum was tantamount to a resolution in the others. Court cases moved smoothly out of litigation and into other forums for negotiation, on the understanding that any agreement which could be produced may end the case. Even cases where the litigants were not directly ordered to mediate or reckon would often continue to be negotiated in some forum outside of the court while undertaking litigation. If the two parties were able to reach a compromise through these efforts, a resolution could be reported to the court, and the case dismissed.<sup>38</sup>

Because of the validity of a final settlement from any source, it was common for litigants to mediate in multiple forums simultaneously. In these cases, the court was primarily a witness to and enforcer of the mediation process. In cases where the court was required, for one reason or another, to closely supervise the mediation process, defendants might even be required to remain in custody. This happened, for example, in the 1812 case of Hong Ren (洪仁) versus Wang Zhonglin (王中麟) and Pan Yuanning (潘源寧). Seven years previous the three men had opened the Heng Xiang brocade shop (恒祥

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<sup>37</sup> SPABX: 25-5812; 6.

<sup>38</sup> For examples, see SPABX: 01-01057; 01-01391; 01-01403; 01-01898; 05-04628; 19-03623; 27-08767; 27-08761; 25-05812; 44-26322; and 44-26418.

緞店). Hong and Pan each put up 500 taels in capital and Wang was invited to work in the shop as manager for a salary of 80 taels per annum. When the firm went bankrupt, the three men began to argue about who ought to be liable for which portions of the firm's debts.

The disagreement hinged on the fact that, four years after the firm was formed, the two investing partners agreed to publicly leave the partnership but had secretly remained investors. Hong and Pan each claimed that, after this point, Wang behaved wantonly and drove the business into the ground. The month before the first suit was filed the original plaintiff Hong had submitted to the neighbors in his ward for a reckoning of the accounts, but Wang had refused to fully cooperate. In the month between the first suit and the initial trial, all of the parties to the case filed cross-allegations of cheating and violence. In court, confronted with these serious and irreconcilable accusations, the magistrate delegated the *ba sheng kezhang* to reckon accounts (委八省客長清算).<sup>39</sup>

Two and a half months after the order, Hong filed a suit reporting that the *kezhang* had established a settlement and instructed each of the three men from the firm to write up promissory notes for the portions that they owed, but that Wang and Pan had not made good on their obligations and had even been embezzling from the remaining store of goods. When he discovered this, Hong had brought the two others before mediation with his neighbors and filed suit once more, but no resolution was forthcoming. Finally, one of his creditors went to court to file a suit against the firm, forcing Hong to plead with the court to summon the case once more, as “the Eight Province [*kezhang*] were hard-pressed to oversee payment (八省礙難繳委), and I have several times invited them to host a mediation with Wang and Pan, but the two delay and refuse to meet.”<sup>40</sup>

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<sup>39</sup> SPABX: 05-4770; 3. Incidentally, this order is the first one in my sample of 107 cases to count as a direct court order to a merchant group. It is the first time in a court order that the *kezhang* are mentioned as the Eight-Province *kezhang*.

<sup>40</sup> SPABX: 05-4775; 1.

Two runners were dispatched to report on the truth of these allegations. In their report to the magistrate they related that the creditor who filed suit had been paid under the supervision of the Eight-Province heads and that, since “the accounts between Hong, Wang, and Pan had still not been cleared, the Eight-Province [heads] truly fear that Wang and Pan will use the opportunity to flee, so they have handed them over to we runners to take to the *yamen*.”<sup>41</sup> The magistrate commanded to have the defendants placed under guarantee until the *ba sheng kezhang* had settled the affair, and subsequently three men reported to the court to take responsibility for Wang and Pan as guarantors “to await the re-reckoning of the Eight-Province [heads].”<sup>42</sup>

In this instance, the expertise of a merchant mediation forum was necessary to find a resolution. After the Eight-Province Association performed this task at the command of the magistrate, they in turn requested that the court involve a third party to oversee the successful conclusion of the case. The magistrate sought out the assurances of a guarantor to ensure the eventual fulfillment of the settlement. In a formulaic conclusion to their pledge, the guarantors promised to “guarantee that Wang and Pan would await a trial and resolution outside of the court,” and acknowledged that they “must not travel far distances or flee,” and that “if a defendant did flee, only we guarantors are responsible (倘有脫逃惟蟻保人是問).” The magistrate permitted the pledge, and the defendants were released into the custody of the men who had thus undertaken responsibility for seeing the case through to its conclusion. The case leaves no other record and ends with the shift from court custody to guarantee as many other cases do.<sup>43</sup>

In this early nineteenth-century case one finds features common to many other disputes whose history is recorded in the Ba County archives. First, the court is called upon to intercede in a dispute that

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<sup>41</sup> SPABX: 05-4775; 3.

<sup>42</sup> SPABX: 05-4775; 2.

<sup>43</sup> For other examples of cases which end with a guarantee by a third party to undertake responsibility for the defendant(s), see SPABX: 01-01031; 01-01090; 04-02440; 12-10668; 40-18605; 44-26855; 44-27089; 44-27131; and 44-27646.

has failed to be resolved in previous mediation. When the magistrate finally hears the case after several counter-accusations involving starkly different claims, he calls upon the expertise of another mediation forum to sort out the facts. The mediation process then leaves the direct supervision of the court until an enforcement issue arises, at which point the court employs yet another tactic of state-group cooperation by releasing the defendants to the guarantee of a third party who will, thenceforth, be accountable to the state for ensuring that the defendants comply with the settlement procedures.

Even in forcing litigating parties to accept a compromise the court relied heavily upon administrative and economic intermediaries. In cases where mediation had reached a conclusion but one or both parties refused to accept the judgment of the mediators, the court could even decide to enforce the mediation settlement under its own authority. This happened, for example, in the 1832 suit between the vegetable shop owner Xu Yuanxing and the peddler Luo Sihai, which was discussed in Chapter Six.<sup>44</sup> When it was testified by both the defendant and the mediation witnesses in court that the plaintiff had already been asked by the mediators to accept a partial settlement and forgive the rest of the debt owed by Luo, the plaintiff's case was finished. The magistrate, upon learning the conclusion of the mediation, ordered a compromise: Luo was released under the custody of a guarantor and given ten days to pay Xu 20 taels. Xu was ordered to forgive the rest of the debt.<sup>45</sup>

The explicit and implied forms of cooperation between the court and other mediation forums appear messy and chaotic on the ground, but when viewed in the aggregate and over time, a steady trend toward cooperation and predictable use becomes clear. By the closing years of the nineteenth century, one can even find court verdicts that directly and explicitly adopt the resolutions reported by other mediation forums.<sup>46</sup> The increased incorporation of the efforts of non-court mediation forums into the court's

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<sup>44</sup> See Chapter Six, PP NN-NN

<sup>45</sup> SPABX: 12-10179; 5.

<sup>46</sup> SPABX: 41-20236 and 44-27646.

handling of disputes was contemporaneous with and linked to the larger processes of systematization, concretization, and formalization of the responsibilities of administrative intermediaries over the course of the nineteenth century. This general tendency was augmented, in the case of commercial dispute resolution, with the growing acceptance of the idea that the court should only be invoked to punish and enforce cases that could not be solved without the threat of violence, while groups grew more and more capable of handling the standard range of tasks associated with commercial dispute mediation.

*Multi-Forum Mediation as Legal Pluralism?*

The combined effect of increasing merchant use of mediation forums before, during, and after the court process taken together with increasing likelihood of direct magistrate orders to mediate in forums outside of the court is that, over the course of the period studied, fewer and fewer cases relied on the court alone for resolution. As the below table shows, by the end of the nineteenth and the beginning of the twentieth century it was increasingly uncommon for cases to leave the court without having engaged the services of other mediation forums, either by the voluntary will of litigants themselves or by the command of the magistrate:

7.5 Cases Resolved in Court without Recourse to Other Mediation Forums 1770 to 1904

Cases	Years	Court Only	%
20	1770 to 1805	5	25%
18	1806 to 1860	3	17%
16	1861 to 1875	2	13%
19	1876 to 1885	2	11%
16	1886 to 1895	0	0%
18	1896 to 1904	1	6%
107		13	12%



Perhaps tellingly, the only case from the eighteen sampled between 1896 and 1904 to involve no report of mediation before or during court involved allegations of default against a group of several *baojia* heads, in which the plaintiff accused the defendants of relying on their position to delay payment. In this case, as soon as a summons was issued the case disappears from the record – presumably (but not explicitly) settled outside of court.<sup>47</sup>

This single case from the last temporal sample, while it mars the clean and dramatic trend toward multi-forum dispute resolution in the table above, is a reminder of the function that the court served in the resolution of commercial disputes: it offered external scrutiny, the threat of force, and a credible demand for accountability to mediation processes that were not otherwise dependent on the court. The court might be called upon to put an end to the treacherous schemes of an unruly businessman who could not otherwise be brought to terms. The court might be asked to help two parties find a third solution when conflicting interpretations (or conflicting mediation forums) had caused a deadlock. And the court might, in cases where one litigant was clearly less privileged, less wealthy, or less savvy than another, even out the playing field by advocating for a fair resolution on behalf of the weaker party.

It was in these cases where mediation conditions were uneven or the process of settlement negotiation was threatened by violence or attempts at flight that the court could solve some basic dilemmas of commitment to and the enforcement of mediation which, for the most part, could usually be conducted without the knowledge or support of the court. Although there was no legal statement on cooperation between the magistrate and local institutions to resolve *xi shi* disputes, the contours of the court process highlight a consistent, yet dynamic boundary between the court and the groups upon which it relied, which was bounded by the parameters of the magistrate's commitment and his limitations.

Because of the court's tendency to insist upon mediation outside of the yamen, much of the outcome of any given dispute was a function of litigants' attempt to settle an issue within their own

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<sup>47</sup> SPABX: 44-27641.

networks of responsibility and mediation. The third parties and groups who determined so much of the outcome of commercial dispute mediation were a reflection of the groups and networks to which disputants belonged. Some of these networks were purely social or unique to the individual in question, while others were sub-sets of empire-wide or local schemes of administrative responsibility. But the court process presumed multiple and overlapping forms of membership in a host of institutions that offered different skills and conducted different styles of dispute resolution. The primary role of the court was merely to insist upon the integrity of the institutions within which individual obligations were intended to be created and negotiated.

In some obvious ways this system resembles a legally pluralistic order.<sup>48</sup> Parties to a commercial dispute could choose from a range of forums in which to press their cases, and there was an increasingly common recognition over time of how each mediation forum interacted with the others. The court might be involved in several stages of the mediation process, but magisterial approval was not necessarily required to give a settlement force. Mediation outcomes were directly and even explicitly upheld by the court and were only ever contravened by the magistrate if treachery in the resolution process could be clearly demonstrated or if the resolution proved hopelessly impracticable.

But while this institutional diversity and interlocking complexity qualifies the commercial dispute resolution milieu of Qing Chongqing as a legally pluralistic system in some senses, the label is a poor fit in other ways. This is primarily because the state itself – and indeed each magistrate who was asked to represent the imperial bureaucracy – was so careful to distinguish between cases requiring legal action and *xi shi*. Thus, although it is clear that the non-court groups were capable of enforcing rules and

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<sup>48</sup> In Chapter Two I explicitly rejected the assumption of earlier scholars that the resolution of commercial disputes in non-court forums resulted from a jurisdictional divide between the handling of “criminal” cases in court and “civil” cases within the village, guild, or clan. This picture, which dominated the scholarship on Chinese law in the first half of the twentieth century, resembles depictions of what is generally described as a “strong” or “colonial” or “post-colonial” legal pluralism. Here, I refer to the term in its “weak sense” or “social science” sense, which defines law as any enforceable set of norms and posits the coexistence of several social spheres, which each create their own “legal order” for members. On these definitions of legal pluralism, see John Griffiths, “What is Legal Pluralism?” *Journal of Legal Pluralism* 24, (1986): 1-55; and Sally Engle Merry, “Legal Pluralism,” *Law & Society Review* 22 (1988): 869-896.

producing judgments that had “legal force” (to the extent that they were upheld in court), none of the individuals involved in these mediation forums would have made the error of mistaking this authority for the authority of law, which was the jealously guarded territory of the state.

What may have seemed like legal pluralism in its generalities or in practice was never explicitly rendered so in the rhetoric of the state or the practitioners of justice. Thus, the dynamic ambivalence that defined the boundary between the court and other mediation forums was the product of the legal ambiguity between the *de facto* authority of non-court groups (as authorities on practice, and witnesses to fact) and the *de jure* claims of the state to exercise its authority as arbiter over all mediation processes.

It was this basic tension between legal authority in practice and legal authority in name that, in fact, dictated the behaviors of the court. So even though the historian must recognize the legal force with which mediation forums could offer resolutions,<sup>49</sup> so she must also inquire into how the boundary – as thin as it seems – between law and non-law was negotiated. As the second half of this chapter demonstrates, an appreciation of this deeply-embedded tension at the heart of Qing China’s commercial dispute mediation complex is key to understanding how courts related to individual merchants and to mediation intermediaries over time.

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<sup>49</sup> On the legal force of merchant group rules and rulings see Chiu, “State Law and *Bang* Regulations,” 329.

## The Problem of Peaceful Mediation

...When (a responsible *yamen*) hears a legal case, or handles any public affair great or small (whether undertaken at his own discretion or sent to him by a superior), the resolution of the task falls directly to the original *yamen* and may not be transferred or delegated to another. When this law is violated (and such an action leads to a perversion of justice or harm), then punishment will be meted out in accordance with the gravity of the charged crime...

Excerpt from the law on “Not Handling Plaints” in the 1740 Qing Code<sup>50</sup>

Merchants, administrative intermediaries, economic intermediaries, and the court of Chongqing had developed a sophisticated system of overlapping responsibility for dispute mediation by the conclusion of the nineteenth century. This system was so pervasive and its results so consistent that, in the late 1800s, magistrates asked to adjudicate disputes even responded with incredulity to claims that a host of problems couldn't be directly handled by non-court institutions. Evidence from cases that were handled by the court clearly demonstrate just how capable the city's various mediation forums were in working – either alone or together – to resolve nearly every kind of mediation problem.

The picture of increasing savvy, sophistication, and coordination presented here, however, begs the question: If mediation forums had become so good at handling disputes, and if their claims to do so were considered credible by the state and its subjects alike, why did complex cases and the intensity of court involvement spike so steeply in the closing decades of the century? How can it seem that the court was having *more* difficulty in solving the cases that came before it?

The first and most obvious answer to this question is that, as non-court mediation forums became more capable (and also more well-known for being capable) of solving a host of dispute problems, it was only the trickiest and most intractable of problems that were reported to the court. This is borne out both

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<sup>50</sup> “Not handling Plaints [*Gaozhuang bu shouli* 告狀不受理],” DLCY *juan* 39. The text in parentheses indicate the in-line commentary and additions to the Ming Code made in the Qing Code.

by the patterns of court use discussed in Chapter Six and by anecdotal evidence presented above that the disputes at the end of the century were, on average, more complicated than the ones in the historical record from the Qianlong and Jiaqing eras. The problem of increased demands on the court is also explained, in a related fashion, by the apparent fact that business itself had become more complex over the course of Chongqing's rise to empire-wide prominence as a center of trade. These two factors – the decreasing likelihood that simple disputes would be brought to the court and the increasing likelihood that the average dispute involved more complicated problems because business had become more complex – combine to explain a good deal of how and why the court was required to expend more effort in settling disputes even at the same time that other mediation forums became more expert in handling them.

Indeed, as the first half of the chapter demonstrated, the predictability of the court's reliance went a long way in eliminating many of the straightforward disputes from court, leaving only some of the tougher problems left for court supervision. But there is one more answer to the problem of increasing court involvement which must also be noted before moving on in Chapter Eight to explain the reforms of the late nineteenth and twentieth centuries. In order for the motivation and impact of the late Qing reforms to be fully appreciated, one must also recognize that the increasingly apparent dilemma of the Qing court at the end of the nineteenth century was a product of the very legal ambiguity that defined the world of imperial justice.

As merchants and magistrates alike became more avid and sophisticated users of non-court mediation forums, the growing familiarity between the court, the administrative and economic intermediaries of the city, and individual merchants began to undermine the independence – and thus the authority – of the *yamen*. By the end of the nineteenth century, it became clear that the magistrates of Chongqing could not use the labor of other dispute mediation forums without exposing themselves to the possibility of being used *through* the influence of those very intermediaries. The legal ambiguity that defined the resolution of complicated matters, in these situations, created an irremediable dilemma: as

long as the information that the court used to resolve disputes between individuals was the product of consensus and accord – rather than legal *fiat* – the court was prone to serious problems of agency, which could not be resolved without information. And the court did not and could not control the information that it used.

### *Conflicting Authority in Qing Adjudication*

As use of mediation forums became increasingly common, questions about agency at the heart of the relationship between the court, collective responsibility units, merchant groups, and economic intermediaries became both more urgent and more difficult to answer. This was especially true since, as discussed in the sections above, litigants became increasingly aware of the advantage of pursuing mediation outside of the court. At the same time that the use of these forums spread, so did knowledge about how to manipulate the division of labor between the court and other mediation groups. The consequences of this sort of cheating could be costly and severe, as litigants attempting to vie for position outside of the courtroom found themselves engaged in a struggle for credibility that could take on dramatic proportions.

The next several pages are dedicated to outlining the course of one particular case, which illustrates several extreme forms of mediation manipulation and the helplessness of the court that could result from them. While the scope of the cheating documented in this case is remarkable and highly unusual, the narrative is presented here as an illustration of the extent to which the court's reliance on non-court forums tied the magistrate's hands on the occasions that a group of defendants managed to garner the complicity of others in distorting the information that the court received.

The case in question began in 1882, when Zheng Shaochen (鄭紹臣) filed the following suit outlining his suspicions against the manager of his firm and a former partner:

I partnered with Wang Xianting (王顯廷), Chen Defu (陳德孚), Xu Zonghui (徐宗輝) alias Qian Tai Chang (乾泰昌), and Gong Fuchen (龔輔臣) in the Hui Lan Xuan (繪蘭軒) Suzhou Goods firm. The partnership contract is attached to this plaint. Gong Fuchen received profits from his dry shares [i.e. shares rewarded in exchange for labor, rather than capital], and last year Xu Zonghui left the partnership. All of the partners submitted to witnesses among our neighbors to thoroughly reckon and pay the money owed between the partners, and we wrote up a clear contract about which there was no disagreement. This year in month seven Xu Zonghui convinced Gong Fuchen to take advantage of the absence of the other partners – none of whom were in Chongqing at the time – to collude with the cashier Liao Huanzhang (廖煥章) and the apprentice Jiang Ziqing (江子清) to brazenly declare the bankruptcy of the firm, and take more than 1,000 taels in cash and 2,000 taels in outside accounts and 1,000 taels in goods and store them secretly in Xu Zonghui’s home. This month I returned to the city and discovered these circumstances... They have defrauded and embezzled more than 5,000 taels in cash and profits. The circumstances are the same as brazen theft...<sup>51</sup>

In his rescript, the magistrate expressed incredulity at the outlandish nature of the accusations, but permitted a temporary summons to get to the bottom of the affair. He warned Zheng that, if his accusations were false, he would be forced to bear the punishment for the alleged crimes.

In response to Zheng’s accusations, the defendant Gong Fuchen filed a counter-suit in which he asserted that the plaintiff had purchased one share in the business two years ago by investing 400 taels, and had collected his share of the interest over that time, but that “in month six of last year Xu Zonghui needed funds to pay off his debts, so we submitted to a group of witnesses to ratify the accounts and disband the partnership (憑證批簿拆夥).”<sup>52</sup> Zheng Shaochen, Gong noted, had been out of town on business at the time. “I wrote him a letter to notify him,” Gong charged, and “this year when he returned we submitted to a group to thoroughly reckon the partnership accounts of the last two years.” The result of this mediation, Gong reported, was that the business was over 1,000 taels in debt. Zheng Shaochen, according to this account, was liable for 100 taels to the firm creditors, but had “plotted to cheat by not paying, and had even extortionately demanded money from the partnership, turning the affair upside

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<sup>51</sup> SPABX: 44-26750; 3.

<sup>52</sup> SPABX: 44-26750; 4.

down to falsely report embezzlement and beleaguer us with litigation, wantonly alleging that Xu had stored goods in his home and other such outrageous accusations.”

In the first court session, Zheng gave a detailed deposition on the structure of the business partnership and reiterated his accusation that his former partner Xu had taken advantage of the absence of all of the investing partners from Chongqing to collude with Gong and the two other shop employees to falsely declare bankruptcy and steal all of the assets of the firm. In conclusion, he detailed the outlines of his theory about the plot that the four defendants had agreed upon:

They colluded in a scheme to cheat the partnership of over 5,000 taels in interest and profit, and have hidden away all of the accounts, resisting all attempts at reckoning. Several times I have attempted to mediate, but they refuse. They have only produced a single written summary saying that the shop has gone bust, and that my petty cash expenses and liabilities from the last two years total 500 taels. Now Gong Fuchen has gone out and entrusted a third party to repeatedly entreat me to voluntarily pay out 300 taels of the money owed, and thus leave the partnership without having to fully reckon the amounts owed by the firm. But the more I contemplated this, I realized that at the time of the bankruptcy none of the members of the partnership were in Chongqing, and at this moment I am the only member currently in the city. Gong Fuchen insists that the firm is massively in debt, and has made up accounts which he refuses to have reckoned properly. In the future when the other partners – Chen and Wang – return, they must demand a reckoning of the accounts, and at that time I am sure Gong Fuchen will already have fled far away and I will be the one who has been set up to take responsibility for all of the disaster that will follow. In this sort of situation I do not dare to pay out the funds. If the business is in debt or if it has reaped profits, this must be settled by a reckoning of the accounts. If I should receive money or pay it out, I am equally willing to do so, but only after a reckoning. For this reason, I was forced to submit to the court for a judgment.<sup>53</sup>

For his part, Gong Fuchen continued to insist that the firm had sunk into debt and that the entire partnership had been dissolved in Zheng’s absence, and that Zheng owed money to the firm’s creditors rather than being owed. None of the witnesses summoned to court were willing to testify that they had participated in any mediation on either side, and no partners other than the plaintiff Zheng were there to testify to the current structure of the firm.

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<sup>53</sup> SPABX: 44-26750; 9.



In response to these conflicting and very serious allegations, the magistrate handed down a command to the plaintiff Zheng, whose deposition included the text of the verdict:

The court commands that we two parties each only have a single account summary submitted as evidence, and it is an insufficient basis for credibility (不足憑信) therefore it is difficult to produce a verdict and resolve the case (礙難斷結). We are both commanded to go out and each invite a fair and upright individual from among our neighbors to work together with [the landlord of the shop] *jiansheng* degree-holder Liu Xiangtai (劉祥泰) et al., as well as a clerk from the *yameni*, to demand that Gong Fuchen produce the partnership accounts and the accounts of sales and stores and to submit them all to the group for investigation and reckoning. Whether there are profits or losses, the petty funds used by each partner should be taken into account and a final reckoning should be made to clearly determine who should pay out funds to whom. We will then write out a clear account and a list in accordance with the truth of the matter and submit it to the court to serve as the basis for the next court interrogation and judgment.

Less than a week after this court session, a general reckoning was held at the shrine in the county yamen. The neighbors and fellow *bang* members of the Hui Lan Xuan shop were present, and the mediation was presided over by Liu Xiangtai.

The conclusion of the mediation, Liu reported, was that the business was truly 1,000 taels in debt, and that each share thus entailed a 100-tael debt to the group of firm creditors. A list of the debts was attached to the report, upon which the magistrate's rescript read:

Since you have submitted the accounts from each party to witnesses and fairly and thoroughly reckoned them, and have found that there is clearly and truly a loss of 1,000 taels and that each share thus commits its holder to pay out 100 taels, then each holder should commit to dispense the funds, file a report of the resolution, and thus end the case. If there are any who dare to resist or cheat or who refuse to take responsibility, then report to the court and the runner assigned to the case will be given permission to summon the parties to court for interrogation and punishment.<sup>54</sup>

Having received notification of a clear mediation verdict, the magistrate predictably commanded both parties to obey the resolution and thus settle the matter.

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<sup>54</sup> SPABX: 44-26750; 12.

In the days surrounding the filing of Liu's mediation report, the defendants and plaintiffs submitted their own accounts of the mediation. First, Gong Fuchen claimed that Zheng Shaochen and his son Zheng Huanzhang (鄭緩章) had refused to accept the clear mediation verdict that the firm had failed, and "not only refused to assume responsibility for the funds owed," but had tried to muddy the process by "falsely accusing me of producing fake accounts," and trying to forcefully grab the account books away during mediation.<sup>55</sup>

The suit filed on behalf of the plaintiff was not submitted by Zheng himself, but rather dictated by his wife. She reported that, in the course of mediation, the assembled witnesses had determined that Gong Fuchen's accounts contained several internal inconsistencies, and had been able to calculate that over 3,300 taels had been embezzled. "The crowd commanded him that he should return the money," she reported, "but he repeatedly responded with threats and force, humiliating my husband before the assembled group."<sup>56</sup> Flustered and angry, Zheng returned home in a fury, where he was struck down by anxiety and illness and had ever since been confined to bed without the power to speak, thus compelling his wife to file a plea on his behalf. The magistrate rebuffed the suit of Zheng's wife, noting that the accounts had already been reckoned under the supervision of the appointed witnesses, and noting that both parties had already been commanded to obey the mediation settlement.

But a week after her suit was dismissed, the official report from the *yamen* clerks present at the mediation cast doubt upon the details that had been filed earlier by Liu Xiangtai and the *bang* members and neighbors of the troubled firm. Like Liu, the *yamen* clerks remarked that the accounts submitted by Gong Fuchen noted a loss of over 1,000 taels. But they also documented several accusations that had gone unnoted in the first mediation report: they remarked that Zheng Shaochen had pointed out that the numbers in the accounts produced by Gong did not add up properly, that the amounts recorded in the

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<sup>55</sup> SPABX: 44-26750; 10.

<sup>56</sup> SPABX: 44-26750; 14.

books were not uniformly recorded in Chongqing silver,<sup>57</sup> and also that Zheng Shaochen had recently shipped back a large store of goods to the firm which cast serious doubt upon whether or not the firm could have possibly been insolvent. In concluding their report, the *yamen* representatives could only say: “The two parties each have their own account of the affair (伊等兩造各執一詞).”<sup>58</sup> Confronted with this confusion of accounts, the magistrate was forced to call the case to trial once more.

At the subsequent interrogation, Zheng’s allegations had taken on a much more specific dimension. He documented evidence of several discrepancies in the accounts and pointed out that several dealings with another shop that Gong Fuchen had conducted were highly suspicious. In a suit before the trial, Zheng had even gone so far as to suggest that Liu Xiangtai had been bribed to favor Gong Fuchen in mediation. But in spite of this evidence, Liu and Gong continued to report that a mediation settlement had been successfully reached. Now, however, they noted that in addition to the 100 taels owed by Zheng Shaochen to the creditors, there was a mysterious 600 taels of interest owed to the plaintiff from over the years. Remarking that Zheng had used 500 taels in petty cash, they concluded that the firm could pay out approximately 30 taels of the remaining 100 owed to Zheng, and that “We pleaded with Zheng Shaochen to take the amount,”<sup>59</sup> but that he had refused to settle, instead preferring litigation. Seeking a quick resolution to the case and in light of this new compromise, the magistrate ordered Zheng to accept the payment of 30 taels and dissolve the partnership, thus ending the liability of all involved and shuttering the firm.

After this court session, Zheng refused to take the payment – which amounted to a total of 32 taels – from Gong, and Gong eventually sought and received an order from the court forcing Zheng to accept the amount as a partnership-ending settlement. But in spite of a direct court order, Zheng refused

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<sup>57</sup> Some of the amounts were reported in Nanjing silver, which had a different purity than the Chongqing standard, and thus concealed a difference of a substantial total of 440 taels.

<sup>58</sup> SPABX: 44-26750; 15.

<sup>59</sup> SPABX: 44-26750; 17.

to take the settlement. He continued to file allegations that Liu Xiangtai's position as a mediator had been compromised by a bribe from Gong, and he insisted that the business had continued to be profitable all the way up until the partners left Chongqing and the firm had unexpectedly gone bankrupt. In one suit, he even remarked that Liu Xiangtai himself was indebted to the firm for over 200 taels, and pleaded: "My fellow partners are still not in Chongqing. If the court does not re-try the case and thoroughly investigate the situation it will be truly difficult to prevent further wrongs."<sup>60</sup> Eventually the court was forced to summon all of the parties to court once more.

At the third trial, more than two years after charges had first been brought, the magistrate tried to put an end to the suit by proposing a second compromise: since Zheng continued to insist that the reckoning and dissolution of the partnership could not take place without the participation of his fellow partners, the court would directly accept the payment of 32 taels from Gong, and no one would be required or permitted to take this small remaining sum until the other partners returned and a general reckoning could take place.

Four months after this court date, a new magistrate had taken up office in Chongqing, and Zheng filed a suit detailing a summary of his past accusations.<sup>61</sup> He accused Gong of embezzling goods and money from the shop, charged Liu Xiangtai with aiding Gong in forging the accounts and frustrating attempts at a fair reckoning of firm debts, and noted that the earlier verdict had been handed down not directly by the previous magistrate, but by an unnamed functionary presiding in court on his behalf. Noting that he had finally received a letter from one of the other partners to re-open the shop, Zheng pleaded with the court for a new trial to try to recover the assets that had been embezzled by Gong, and the court complied by issuing a summons.

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<sup>60</sup> SPABX: 44-26750; 23.

<sup>61</sup> It was not uncommon for cases that had become inactive to be taken up once more after the arrival of a new magistrate. Upon assumption of his office, a local official would be presented with various claims about malfeasance or injustice by litigants claiming that they hoped to have a long-neglected injustice righted.

In another month, after the summons had still not been executed, Zheng filed a suit against Liu Xiangtai and the two runners assigned to the case.

Now I have the misfortune of encountering a new disaster. Liu Xiangtai has bribed and colluded with the runners assigned to the case to set aside the warrant and not summon for trial. Several times I have tried to hasten the case, but they delay and do not act. Who would have imagined that a case brought to court last winter would still not be settled?<sup>62</sup>

By this point in the case, Zheng seemed to be facing obstacles from every side: his partners had yet to return to the city, and his attempts at mediation had repeatedly failed. He alleged that the surviving account books were mere forgeries, the man appointed by the court as supervisor to the mediation had been complicit in a plot to force the profitable firm into bankruptcy, and now even the *yamen* clerks had been purchased.

The court re-iterated the summons, but three months later the case had still not been tried, and Zheng was forced to file another plea. The court commanded a trial once more. The runners reported that Gong had gone away on business, and the summons could not be executed. Two months later – six months after the case had been re-summoned, a court trial was finally held, but only Zheng and the two runners assigned to the case were present. The runners reported that Gong Fuchen had been released under guarantee to Liu Xiangtai last year at the conclusion of the case and that Liu had been unable to hand Gong over for trial. The court gave permission to summon Liu directly to answer on behalf of his delinquent charge, and two weeks later another court session was held.

At trial, Liu Xiangtai insisted that the case had been successfully settled last year and that the only problem was that Zheng refused to respect the verdict. Furthermore, Liu noted, the remaining partners of the firm still had not come back to Chongqing, so the general reckoning still could not take place, and at any rate Gong Fuchen had gone way on business and could not be produced. Zheng, for his part, continued to insist that Gong and Liu had engineered the outcome of a large plot to embezzle the

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<sup>62</sup> SPABX: 44-26750; 29.

assets of his firm. The magistrate ordered both parties to come to terms, commanding them to “Invite members from the same *bang* to come together and reckon the accounts thoroughly to settle affairs between the two parties and end this affair.”<sup>63</sup> Months after the verdict, Zheng Shaochen reported that Gong Fuchen’s brother was keeping the defendant in hiding, and the two were commanded to wait until one Ma Xilin (馬西林) – a member of the same *bang* – returned to Chongqing to oversee the reckoning.

Mediation over the disputed accounts began in the last month of the year. By that time, it had been fifteen months since the first suit was filed in the case. Soon after mediation under Ma began, however, Zheng reported that Gong Fuchen remained in hiding and no efforts to produce the accounts had proven successful. The magistrate ordered that “A runner attached to the case command Gong Hengqi (龔衡齊) to produce his brother Gong Fuchen to submit to the witnesses to reckon the accounts and resolve the case.”<sup>64</sup> Less than a month after this order, a runner attached to the *yamen* was summoned to appear before the magistrate to answer questions about why the case had not yet been settled. In his testimony, the runner reported:

I am responsible for handling the case of Zheng Shaochen. Last month your Honor held a trial and commanded the two parties to go together and invite some members of their *bang* to reckon the accounts, so that Gong Fuchen may hand over the amount owed to Zheng Shaochen and the case may be resolved. We went out and they reached an agreement of 160 taels. But now Zheng Shaochen has died. We went to his home to urge his widow, but she refused our entreaties, saying that she was too busy handling the funeral affairs. Now there is no one to accept the settlement.”<sup>65</sup>

The magistrate ordered them to meet with the neighbors of the deceased firm owner and to invite the two parties and their witnesses to come together in court so that they case might be officially settled.

In her own suit, the widow of Zheng Shaochen presented another version of the matter:

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<sup>63</sup> SPABX: 44-26750; 36.

<sup>64</sup> SPABX: 44-26750; 40.

<sup>65</sup> SPABX: 44-26750; 42.

Two years ago my husband filed a suit... Last year he pleaded to re-open the investigation, and a summons was issued. Gong Fuchen, however, persisted in hiding and would not meet. A new trial was summoned, and it was ordered that Ma Xilin resolve the case upon his return to Chongqing. The next month Ma returned, but Gong and his brother continued to hide away the accounts and would not produce them. They only admitted to owing 160 taels, which they would pay out to end the case. My husband refused to accept this settlement and the affair dragged on until he was overcome with anxiety, became ill, and eventually died. Previously Ma Xilin tried to end the case with a settlement of 300 taels but my husband was still not willing to accept it. Now my husband is dead, and I have ceased the funeral procession here before the gates of the *yamen*, resting his corpse here in order to collect enough funds to carry him back to his home province.<sup>66</sup> But Gong Hengqi and his brother continue to cheat me, and so I have no choice but to file suit...<sup>67</sup>

A month later, in court, the widow complained that the defendants refused to come to terms because she was a powerless woman and had thus been forced to seek the aid of the court. She objected that, since her husband had refused to accept the small settlement of 160 taels, she should not be forced to do the same.

The defendants, however, persisted in their offer, citing Ma Xilin (who was not present in court for the interrogation) as an authority on the mediation. The court ordered the defendants to add a 10-tael gift to pay for the cost of the funeral in addition to the 160 taels owed, and commanded Zheng's widow to accept the funds and end the affair. Two years and two months after the first suit had been filed, the widow of the plaintiff was required to accept a final partnership-ending settlement in court and sign a resolution to end the case.

Three years later, more than five years after the case was begun, the widow of Zheng Shaochen returned to the court of Ba County. She filed a suit, which began with even more dramatic accusations of a nefarious ring of collusion and fraud operating in the background of her deceased husband's suit:

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<sup>66</sup> In cases where an injustice had resulted in the death of an innocent individual, the corpse would sometimes be brought to the *yamen* in an evocative display of grief when the family members went to demand the aid of the magistrate in righting the wrong that had been done. Although Zheng's widow does not explicitly claim that she brought her husband's corpse to the *yamen* to demand justice for his death, the message sent by the mere act of transporting his corpse was a powerful one.

<sup>67</sup> SPABX: 44-26750; 43.

In the spring of sixth year of the Guangxu reign [now seven years previous], my husband Zheng Shaochen wrote up a contract with Xu Zonghui and Wang Xianting and Chen Defu to lay out funds and begin a partnership as the Hui Lan Xuan Suzhou Goods shop. My husband resided in Nanjing and purchased goods which were sent to Chongqing, where they were handed over to the managing partner Gong Fuchen, the cashier Liao Huanzhang, and the apprentice Jiang Ziqing to sell. At the end of the year there was a profit of over 1,000 taels, and due accounts worth over 2,000 taels, and a store of goods worth more than 800 taels. Gong Fuchen... wrote up a summary of accounts to give to my husband for reckoning, and the yearly accounts may be used as proof to corroborate this. But Ma Xilin, who was one of the members of the trade – and also a “litigation master (*songgun* 訟棍)” – became jealous of the firm. He waited until my husband and his two partners returned to their home provinces to treacherously cajole Xu Zonghui into publicly declaring the dissolution of the partnership and then privately pay off Jiang Ziqing and Liao Huanzhang to shutter the firm and ferret away the goods and money...

Not only did Zheng’s widow accuse his former business partner of colluding with the firm employees, but she insisted that Ma Xilin – who only showed up in the court record in the final rounds of reckoning and mediation – was present from the very beginning of the plot and had been instrumental in planning it. After thus asserting that the depth of the schemes had exceeded even what Zheng had imagined, his widow went on to document the chain of bribes and promises that implicated others in the plot:

... the former magistrate Han permitted the case, but Xu Zonghui was afraid of being brought to court and listened to the advice of Ma Xilin to bribe the runners into having the case tried by a delegated judge, where it was ordered to have the accounts reckoned. My husband respected the verdict and invited the firm neighbors, fellow *bang* members, and *yamen* workers to come to a public place for a reckoning, and there it was discovered that more than 3,300 taels had been embezzled. The assembled crowd ordered them to return the money, but Ma Xilin took advantage of my husband’s naiveté to manipulate the situation. Not only did he bribe Liu Xiangtai and Xu Yongfa (徐永發) to falsify the accounts, he also worked together with Yi He Chang (義和長) and Wu Tingshao (吳廷昭) et al. to file false reports of bankruptcy. Then he even bribed the clerks to participate in the plot.

In her description of the case, the widow implicated not only the “litigation master” Ma, the treacherous business partner Xu, and the self-interested employees who had agreed to the initial plot, but also a chain of *yamen* clerks and even a delegated judge, in addition to the community leaders who had been charged with overseeing mediation. The conclusion of her case narrative accused the scheming defendants of



having more or less engineered her husband's death, and then orchestrating strange and suspicious plots to use even this tragedy as a means of forcing a resolution on the helpless widow:

When the case was re-tried it was difficult to fix a verdict, forcing my husband into abject poverty. My husband fell desperately ill and thereupon died... Ma Xilin and the others took advantage of my lack of funds to persuade me with sweet words to allow them to move my husband into Xu Zonghui's home and promised me that they would pay for the funeral expenses. But my heart was unwilling to accept their propositions, so I plead with Magistrate Guo for a trial... They accused me of loving to litigate, but truly it was Ma Xilin and Xu Zonghui and Liu Xiangtai who engineered this plot to enrich themselves and then bully my husband to death, trapping myself, my children, and my grandchildren into a life of poverty.<sup>68</sup>

In response, the third magistrate to hear the case wrote in his rescript: "The previous magistrate Guo awarded a judgment of 170 taels. Resolutions were filed. The affair was settled. Do not meddle with unnecessary suits..." Twice more, in the two months following her unsuccessful attempt to bring the case back to court, Zheng's impoverished widow filed suit. Twice more her complaints were rebuffed, and with this the case docket ends.

The historian of today is unable to determine how much – if any – of the widow's accusations are true. But the allegations that she and her husband levied against the members of an expanding ring of co-conspirators were serious. Neighbors, degree-holders, *bang* members, employees, partners, and even *yamen* employees were all implicated in a sophisticated plot to deny Zheng Shaochen access to justice. They were able to do so (if, indeed, they were guilty as charged) only by orchestrating a nefarious and detailed scheme. Account books had to be falsified. Opposing witnesses had to be silenced (probably by being paid off). A consensus about pre-existing partnership dissolution agreements and bankruptcy agreements had to be crafted. Bribes had to be paid to ensure that the case was heard not directly by the magistrate but instead by a delegated judge who might be "more easily influenced" (which probably required further bribes). And a trap had to be set: the plaintiff, who was at first supposed to be liable for 100 taels, was offered settlements in slightly increasing increments over the months, as his own fortunes –

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<sup>68</sup> SPABX: 44-26750; 50.

mostly lost in the failure of his business – were sunk into the mounting costs of litigation. Through a combination of silence, delay, and forced accord, a few men managed to turn the several thousand taels owed to Zheng Shaochen and his partners into a settlement of less than two hundred.<sup>69</sup> Although at least three magistrates and one delegated judge were called to preside over this case, none of them had the tools or the resources to overcome a plot of this sophistication.

In cases where the potential payoff for treachery was sufficient, and co-conspirators might be willing to invest the time and energy, the court could be trapped by its own predictable reliance on administrative and market intermediaries if the key players in these forums could be tricked, cajoled, bribed, or convinced to act in concert. The average individual was not capable of mounting this sort of plot. It required connections to important members of the community, cunning, and a large amount of resources. Cases featuring schemes of this magnitude are, thus, uncommon. But they do appear with increasing frequency toward the end of the nineteenth century.<sup>70</sup>

As discussed in Chapter Six, one of the main purposes of litigation was to aid the truly desperate and helpless in the struggle against inequity and the abuse of privilege. But the court struggled in its own right to overcome the privilege entailed away to the groups upon which it relied, as the very accord between individuals and administrative or economic intermediaries upon which the court was supposed to be able to base its verdicts became a complicating factor in litigation. By the last quarter of the nineteenth century, the problem of having to sort out one type of claim in one mediation forum from another type of claim in another forum became a serious issue for the court of Chongqing.

By the end of the period studied, roughly one third of the cases entering the court were complicated by two or more conflicting accounts of pre-court mediation, compared with generally lower levels before 1875:

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<sup>69</sup> The silence of Zheng Shaochen's partners, it might also be noted, is suspicious as well.

<sup>70</sup> For another and much longer example of such a case see Dykstra, "Going Under."

### 7.6 Cases Entering the Court with Conflicting Mediation Accounts 1770 to 1904

Cases	Years	Conflicting Accts	%
20	1770 to 1805	1	5%
18	1804 to 1860	5	28%
16	1861 to 1875	2	13%
19	1876 to 1885	7	37%
16	1886 to 1895	6	38%
18	1896 to 1904	5	28%

On the one hand, it was only when problems like conflicting mediation accounts plagued the resolution process that the court was truly needed to sort out the upright from the crooked. But when the issue at stake was conflicting mediation claims, it quickly became clear that the court could be used as a weapon of the privileged even more easily than it could be used to aid the weak and helpless.

In the last twenty five years of the nineteenth century, it became not uncommon for a defendant, in his first counter-suit, to insist that the plaintiff was only undertaking litigation to undermine an existing mediation verdict.<sup>71</sup> In the cases where these allegations could be substantiated to the satisfaction of the court, individuals who brought false suit to undermine other kinds of mediation were punished in an attempt to discourage such abuse.<sup>72</sup> But as more and more litigants rushed to secure favorable mediation settlements in multiple and sometimes conflicting forums, the court became trapped as a result of its inability to distinguish between conflicting claims about a world of mediation from which it had remained deliberately aloof.

The magistrates of Chongqing were hard-pressed to handle the challenges presented to the court by litigants who were increasingly savvy users of non-court mediation forums. On the one hand, the increased use of diverse mediation forums documented in the first half of this chapter is a testament to the

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<sup>71</sup> SPABX: 44-27210; 41-20179; 45-28154; 44-26136; and 44-27231.

<sup>72</sup> See, for example, SPABX: 44-26136 .

growing recognition that cases would not have to be brought to court for enforcement if a mediation settlement could be reached without litigation. But this widespread use of mediation forums unexpectedly began to threaten court prerogative in the late nineteenth century when it became clear that magistrates were not capable of detecting and dealing with schemes deliberately incorporating or misrepresenting the mediation efforts of multiple mediation forums.

In a world where mediation was supposed to be the product of each individual's economic and administrative ties, the lack of any hierarchy or explicit court endorsement of a single forum meant that, when litigants managed to each rally a specific mediation forum behind their cause, the court could be caught in a very difficult position since it had no reliable means of distinguishing between the credibility of forums pitted against one another. Thus, as the court was drawn further and further into the world of individual disputes and group mediation through continued and increased reliance on non-court forums, so its role as a mediator among mediators was made more challenging. The court could order mediation in more forums, or repeated reckoning, or a *yamen* investigation alongside mediation in another forum, but it struggled to even out the odds on a playing field that was increasingly complicated. In extreme cases, the entire court process could be drawn to a halt by conflicting mediation claims.<sup>73</sup>

One illustration of how misinformation about mediation outside of the court could successfully defeat efforts at a fair trial can be found in Xiong Xingshun's (熊興順) 1883 case against Peng Zixiang (彭子相) et al. There were six total defendants in the suit, each of whom was accused of refusing to make full payment on goods purchased from Xiong's firm. In his suit, Xiong reported that when he demanded payment he had excited their anger, and they "brazenly destroyed a stool in my shop, brandished the leg of it, then cruelly beat me, injuring my right arm and flank."<sup>74</sup> Compelled by this violence to seek other means of settlement, Xiong reported having submitted to his neighbors and collective responsibility heads,

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<sup>73</sup> For examples, see SPABX: 44-27270; 44-27343; and 39-16459.

<sup>74</sup> SPABX: 44-26432; 2.

but claimed that the defendants had resisted and, later, sought revenge by destroying several objects in his shop and beating up his wife. When Xiong took his claims to court, the magistrate had his wounds examined and immediately summoned the other parties to the case to court for a trial. In the ensuing days, one defendant filed a counter-suit, and the plaintiff Xiong re-iterated his accusations, while the magistrate continued to insist that *yamen* workers execute the summons for trial.

Then, two weeks after the first suit was filed, several men with collective responsibility titles filed a report at the magistrate's office. It referred to the main defendant Peng by a different first name and gave a different narrative of events:

..On the fifth day of the month Martial Degree holder Peng Ziyi (武童彭自易) purchased some shredded damask at Xiong Xingshun's shop, and the transaction degenerated into a fight. Both were injured, and Xiong filed suit against Peng... The members of the *tuanlian* organization mediated and exhorted them to foreswear litigation, in order to avoid further entanglement (團眾理勸息訟, 勉受拖累). They obeyed, have settled the issue, and are willing to be reconciled (伊等聽從解息, 甘願和好). We know that Your Honor bestows a benevolent love upon the people, as a parent would upon his children... we have come together to beg for a rescript dismissing the case, to dispense with future troubles.<sup>75</sup>

In response, the magistrate's rescript read: "Since the dispute has already been successfully resolved and both parties are willing to settle (果已理明甘願了息), both parties should obey procedure by submitting reports [of the resolution]..."

Rescripts were often written some time in the several days following the filing of a suit, so it seems only barely worth remark that two days later the court issued an order to three of its runners to report on the physical damage from the affray. This initiative could have been undertaken right before the case was settled by magistrate *fiat*. Two weeks after the order was issued the *yamen* runners had executed their order. In addition to the report of the physical injuries, the *yamen* workers described the other items that had been ruined in the fight. In the course of the brawl on the fifth day, for example, they reported

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<sup>75</sup> SPABX: 44-26432; 10.

that a stool, a set of counter-weights, and a pouch of tobacco had been destroyed. Several other objects, over one hundred bolts of fabric, an account book, and the shop's entire set of chops and seals had been subsequently taken by force.

In a strange move, an official summons was issued by the court one month after this report was filed, in spite of the fact that the case had nominally been settled. A month after the re-summoning of the litigating parties, the plaintiff made a new report that the matter had been resolved. He submitted a resolution pledge, which summarized the conclusion of the case:

I filed a suit against Peng Zixiang et al. ... Later, I engaged several *jianbao* and *yuelin* collective responsibility heads to invite him to mediate and settle the affair. We are no longer willing to end this issue in court... and we plea with your Honor to allow us to settle peaceably and officially dismiss the case, so that the charges may never more be revived in court...<sup>76</sup>

This resolution pledge was followed by an almost identical document signed by the defendant Peng Zixiang. The magistrate's rescript simply read "It is permitted to settle (準結)."

Right after these two documents on the case docket, however, there appears a plaint from Xiong – dated from the day before of the supposed resolution pledge.<sup>77</sup> Its allegations explained why the case had continued to move forward even though it had been settled twice:

... An exam for my wounds and a summons was granted by the court, and several times I have hastened trial, but Peng Zixiang insisted on delaying the trial until after the county exams were finished. Patiently I have waited, and on the first day of this month I came to the *yamen* to draw up a list of the individuals involved in the case for summons to court. On day four, without event, the *yamen* runners were engaged to call the trial. But it was delayed until day nine, and suddenly the summons order was cancelled and the case

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<sup>76</sup> SPABX: 44-26432; 11.

<sup>77</sup> Although it is not common for documents to appear out of order, in general case dockets are arranged according to the order in which the documents were handled. Since a plaint might be dealt with immediately or several days after being submitted, it is thus possible that the suit was submitted before the pledge translated above, but that the magistrate received and permitted the pledge before reading the accusations that were filed beforehand.

dismissed. The parties to the case can no longer be brought to court, and now some unexpected event has led to a suspension of my case...<sup>78</sup>

In response to this plea, the magistrate's rescript read:

This case has been settled peaceably, and now all of a sudden you revive the accusations. It is hard to rule out the possibility that the case was deceitfully dismissed due to malfeasance by the *yamen* staff. Await an order to the runner assigned to the case to investigate and then order that the parties be gathered for a trial in court.

Nothing further happened in the case until, five months later, two *baojia* heads filed a report. It recounted Xiong's allegations against Peng, and then asserted that the resolutions that had been submitted to court were the product of a mediation that they had overseen. They suggested that Xiong's refutation was a ruse to incite unnecessary litigation and begged once more that the case be dismissed. In his rescript, the magistrate responded: "... it is difficult to believe these allegations. Whether or not the case should be dismissed shall wait until the runners attached to the case summon everyone to court in person for a thorough and clear examination and apprehension of the facts."<sup>79</sup> The magistrate's suspicions were confirmed when a new suit from Xiong reported that Peng had bribed the collective responsibility heads of his ward to "bring false accusations in an attempt to force me [into an unfair agreement] three times."<sup>80</sup> In response, the magistrate instructed Xiong to await the trial that had been summoned, but the case docket ends at this point before Xiong ever got his day in court.

The magistrate could have insisted that the *yamen* runners go investigate the case once more, or commanded them to summon the parties to court. If the plaintiff was being outmaneuvered again, he had the option to continue to file accusations of malfeasance against the defendants. But as this rather extreme case of mediation tampering (indeed, there is no other like it in the more than 300 cases used in this dissertation) demonstrates, any struggle against misinformation in the court process was an uphill battle.

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<sup>78</sup> SPABX: 44-26432; 13.

<sup>79</sup> SPABX: 44-26432; 16.

<sup>80</sup> SPABX: 44-26432; 18.

## Conclusion

The sophisticated mediation practices for resolving *xi shi* allowed for great freedom in conducting economic affairs. It enabled the court to sit in judgment over affairs about which it maintained no expertise and still produce acceptable settlements. But the ambiguous nature of the relationship between the court and the groups upon which it relied was a fundamental fact of this institutional arrangement and could seriously hamper the authority of the court. This became increasingly clear as disputes became more complicated, as the court became more involved in solving them, and as disputants became more practice in the use and manipulation of mediation forums.

What the cases of Zheng Shaochen and Xiong Xingshun make clear is that the difference between voluntary and coerced forms of agreement was difficult for magistrates to perceive even when their own courts were being used to trap litigants into unfavorable situations. This tension not only accounts for the rise of complicated cases at the same time that mediation was becoming more common: it also sheds light on the fuller implications of reliance on mediation, which historians have also tended to portray in a primarily positive light.<sup>81</sup> Because the court's decisions were not based on legal fact but on a practical and sometimes problematic reliance on administrative and personal intermediaries, the court itself was subject to capture by the very networks of information and privilege which it had created.

The dilemmas faced by litigants caught in sophisticated schemes to tie the hands of the court with maneuvering in mediation forums outside of the *yamen* shed light on one of the controversial

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<sup>81</sup> Philip Huang, who has probably written most about the subject in English, has characterized the mediation activities of "community or kin mediators" after a court order as more effective than before because either the plaintiff or the defendant might "become more conciliatory," thus "preparing the way for a settlement" without the need for direct court oversight of a resolution. See Philip C. C. Huang, "Between Informal Mediation and Formal Adjudication: The Third Realm of Qing Civil Justice," *Modern China*, Vol. 19, No. 3 (Jul., 1993), 226. At least one other historian has challenged this rosy portrayal of mediation in recent years. See Hiroaki Terada, "The Nature of Social Agreements (Part One)."



observations by several members of the field: the lack of finality in judgments. First noted by Shiga Shūzō in 1984,<sup>82</sup> it has been further documented by other scholars that “disputes would continue until the parties concerned accepted the judgment as established fact” and that officials had no option in mediating disputes except to continue offering compromises until both parties could be convinced to agree to honor them.<sup>83</sup>

The phenomenon of repeated and failed attempts at court-mandated dispute resolutions has been at the heart of several questions about whether or not and how the magistrates of the empire were capable of effectively brandishing the legal authority of the state. But in consideration of the evidence offered in this chapter, I argue that the question of the finality of judgments in *xi shi* cases was not directly related to the problem of whether or not the state was capable of performing its role as a legal arbiter. Rather, it reflected the dilemma of agency that stemmed from Qing magistrate’s need to rely on administrative means and non-court forums to negotiate settlements in a realm that was legally pluralistic in function, but not in name.

This dilemma was the direct result of the deliberate policy of legal ambiguity that set non-named offenses apart from those that were explicitly handled in the Qing Code. The more intimate that the working relationship between the court and other mediation forums became, the more that the court’s own vulnerability in this system became apparent. It was this dilemma and the serious implications it had for the resolution of commercial disputes that became a part of the larger discussion, toward the end of the nineteenth century, about the centralization and standardization of local institutions. This process and its results are described in the next chapter.

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<sup>82</sup> See Chapter Three of Shiga Shūzō, “Law and Adjudication in Qing China [Shindai Chūgoku no hō to saiban 清代中国の法と裁判] (Tokyo: Sombunsha, 1984).

<sup>83</sup> Hiroaki Terada, “The Nature of Social Agreements (Part Two),” 127.

CHAPTER 8:  
THE NATIONALIZATION OF JUSTICE  
IN THE ERA OF FIN-DE-SIÈCLE REFORM (1875-1911)

Gentlemen! Gentlemen! What is a man? A man cannot fly like creatures with wings. In his stride he cannot match the wild animal. And yet, among all the living creatures, he alone is most noble. This is because bird and beast cannot form groups, while man can combine the strength of others with his own strength, and thus dominate the living world. This is why man must form groups in order to truly be human.

And what is a nation? It is divided into provinces, and those provinces are further divided into settlements and villages. But in this world there are only several dozen ancestral groups, and they cannot coordinate their interests with only the strength of a single settlement or town. They must combine into a multitude in order to form a nation. This is how the nation is formed, and why only with unity does it become a nation.

Huang Zunxian, May 11, 1898 inaugural speech of the Southern Studies Society<sup>1</sup>

### Introduction

This chapter describes how the impulse toward administrative centralization in the late nineteenth century, described at the end of Chapter Four, culminated with a series of central reform initiatives in the last decade of the nineteenth century and the first decade of the twentieth century to alter the balance between court and non-court mediation described in Chapters Six and Seven. It finds that, although the era of *fin-de-siècle* reform has been associated with a sort of modernization-by-borrowing in many previous works, the institutional innovations of this period were, in fact, the culmination of the state-building efforts of the nineteenth century and the crises that followed from it.

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<sup>1</sup> Huang Zunxian (黄遵宪), “Inaugural Speech of the Southern Studies Society [*Nanxuehui di yi ci jiangyi* 南學會第一次講義]” in Zheng Dahua (郑大华) and Ren Qing (任菁), eds., *Zhongguo qimeng sixiang wenku: Qiangxue, wuxu shilun xuan* [中国启蒙思想文库 《强学——戊戌时论选》], 243; (Shenyang: Liaoning renmin chubanshe, 1994).

The calls to simplify, rationalize, and standardize the tasks of local government in the middle of the nineteenth century were increasingly articulated in subsequent decades, and – by the early twentieth century – began to employ elements of an emerging global language of law and nation. But in spite of the fact that the reforms of the 1898 Hundred Days program and the nineteenth-century New Policy era (ca. 1901 to 1911) were framed in a language that explicitly engaged international discourses of modernization, these measures were not simply top-down efforts to implement a new political program cobbled together from the systems of other nations. They were, even more importantly, the culmination of decades of effort to incorporate existing local state-building institutions into the imperial bureaucracy.

Over the period of reform, the actual functions and conduct of the court, collective responsibility heads, merchant groups, and other local institutions did not change in any fundamental way. Organizations were given new titles and new offices, but the role they played in dispute resolution was much the same as before. This fact has led others to conclude that, by giving little more than a new façade to a set of institutions over which the central state exerted little control, the New Policy reform efforts were superficial, and could not help but to fail in the ambitious project of modernization. But names are powerful things. And just as the project of incorporating Chongqing into the early Chinese empire began with the naming of the space within which it was situated (see Chapter One), so did the incorporation of existing local institutions of governance begin with the simple, yet powerful, act of labeling the space that they inhabited. The results of this act of recognition and the legitimation it entailed were immediate and profound.

This chapter argues that the late nineteenth and early twentieth century reforms initiated a process of *nationalization* of the imperial world of justice. It shows that the central state's recognition of local groups and their labor in supporting the administration both drew the function of those groups closer to the daily operations of the state and expanded the state's claim further into the field of everyday knowledge and authority. This process began when the reforms of the late nineteenth and early twentieth

century gave local groups a place – even if it was only a nominal place – in the larger bureaucratic structure of the empire. The result of this inclusion of what had formerly been illicit or *ad hoc* institutional forms of collaboration was that, almost overnight, the relationship between the state, its subjects, and the local groups that connected them began to transition out of the realm of legal ambiguity and into a new, explicitly national, framework.

Even before a concrete set of policies were drafted to determine exactly how the state would relate to newly-enfranchised local groups, the very recognition of their existence and function in central reform writings meant that government offices at every level were suddenly able to discuss and handle issues that formerly had to be negotiated outside of the texts that circulated within the bureaucracy. The names of these institutions, many of which had grown up in the shadow of illegitimate state expansion, could now be written in official reports without fear of reprisals or accusations of corruption. Information from newly-recognized institutions and offices could circulate within the bureaucracy, as many of these groups were given the authority to officially report to the local and central state. This administrative shift, which completed the long trajectory of local state expansion that may be dated back to the early nineteenth-century Jiaqing transformation, reversed the court crisis of the late nineteenth century by finally absorbing the “forest” of local institutions that had grown up over the last hundred years into a vastly expanded vision of the Qing state.

Almost every aspect of local governance was changed as a result of the widespread formalization of county-level administrative intermediaries in the early twentieth century. In the world of Chongqing commercial dispute mediation, this important moment in the nationalization of institutions of local rule began with a single regulation: the fifteenth item of the Clear and Simple Regulations for Chambers of Commerce (*Shanghai jianming zhangcheng* 商會簡明章程). This chapter will demonstrate how, as soon as the door to official state-group collaboration in solving commercial disputes was opened, the

repercussions of formalizing the diverse world of non-state institutions of governance at the local level were understood almost immediately.

The result central state recognition and appropriation of local institutions unfolded quickly and more or less without the need for detailed policies from the central state. Indeed, the act of recognizing and nationalizing the administrative intermediaries who linked the individual to the state was so profound that its effects continued to unfold over the remaining course of the twentieth century even after the Qing state collapsed in 1912. For this reason, I conclude this dissertation with the assertion that the twentieth-century story of the modern Chinese state must be studied as the historical legacy of empire.

### **The Reforms of the Late Nineteenth and Early Twentieth Centuries**

The political and institutional transformations of the late eighteenth and nineteenth centuries culminated with a series of mounting calls for reform. From the end of the Taiping Rebellion to 1911 the state-building achievements of the nineteenth century were subjected to widespread scrutiny as intellectuals and officials debated how to train the proliferation of diverse local institutions into a single, unified, functioning state system. In this period the rhetoric of political decay from earlier periods in the nineteenth century dominated the discourse of reform.<sup>2</sup>

Feng Guifen, whose *Remarks of Protest* had not made a particularly large impact at the time of its authorship in 1860, became a posthumous representative of the spirit of a new movement that focused largely on the need for the simplification and reduction of an overgrown state. Playing on the homophonous relationships between three characters all pronounced *li*, Feng had declared that there were

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<sup>2</sup> On the influence of earlier nineteenth-century political and reform writings in the late nineteenth century see Philip A. Kuhn, "Ideas Behind China's Modern State;" and Min Tu-Ki, *National Polity and Local Power*.

three “great evils” (大弊 *da bi*) of the contemporary age: officials (*li* 吏), statutes and precedents (*li* 例), and profit (*li* 利):

To wit: officials wield statutes and precedents to their own profit, and the result is chaos throughout the empire. As for precedents, why are they established? It is said that in governing the empire, precedents are the foundation and the structure required to execute the task. But when their numbers continue to grow and proliferate, there arises discord among them...<sup>3</sup>

His prescription for the confused state was a radical simplification of the structure of the imperial bureaucracy:

To cure any illness, one must find the cause and eradicate it, and then a recovery may be made. What is the cause of the illness of officialdom? It is in the proliferation of statutes and precedents. Under these conditions, unless the statutes and precedents are revised by gathering them together and eliminating the useless chaff, the empire cannot be governed.

The regulations of the state should be simplified and kept current to prevent the byzantine mechanisms of governance from providing a breeding ground for malfeasance. In Feng’s work and many others that followed in the second half of the nineteenth century, the conviction that the bureaucracy was getting in the way of the government bred a common and powerful yearning for a more intimate and direct relationship between the state and its subjects.

Decades of a growing sense of dismay at the proliferation of dispersed and difficult-to-control instruments of state administration was paired, in the final years of the century, with a heightened sense of urgency on the international stage. The number of “unequal treaties” that China was compelled to sign with other powers had only continued to multiply in the decades after the 1842 Treaty of Nanjing. The dawning realization that these defeats had undermined the sovereignty of the Chinese state in the international family of nations gave rise to a mounting sense of panic, which culminated with the signing of the Treaty of Shimonoseki after China’s military defeat in the first Sino-Japanese War (1894-1895). China’s loss to Japan and the Qing government’s willingness to cede territorial claims to a country that

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<sup>3</sup> Feng, “On Provincial Statutes and Regulations [*Sheng zeli yi* 省則例議],” from *Remarks of Protest*.

had formerly been seen as a minor tributary state became a symbol of the dynasty's inability to stand shoulder to shoulder against her rivals in what was increasingly conceived as a struggle between nations for not only supremacy but survival.

When the Treaty of Shimonoseki was ratified in April of 1895, the outcry was immediate and impassioned. Members of the bureaucracy resigned their posts and memorialized in opposition to the capitulation. Thousands of scholars, who had gathered in Beijing for the metropolitan exams, organized in protest and filed petitions proposing radical reforms.<sup>4</sup> In the following years, the rhetoric of reform reached an ever-widening audience, as newspapers<sup>5</sup> and commercial presses took up the subject of the Qing political crisis.<sup>6</sup> In the ensuing debate, the troubles of the century were increasingly interpreted as signs of national dissipation. The call to reinvent and unite the state was heard loudly. As, in 1889, Liang Qichao framed the challenge of the nation-state of the age:

It is not merely to have rulers, officials, students, farmers, laborers, merchants, and soldiers, but to have ten thousand eyes with one sight, ten thousand hands and feet with only one mind, ten thousand ears with one hearing, ten thousand powers with only one purpose in life; then the state is established thousandfold strong... When mind touches mind, when power is linked to power, cog to cog, strand around strand, and ten thousand roads meet in one center, this will be the state.<sup>7</sup>

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<sup>4</sup> The most well known instance was Kang Youwei's 10,000-character memorial (although it was actually closer to 18,000 characters) which – although it never reached the emperor in its original form – is said to have been signed by over a thousand like-minded petitioners and sold “several tens of thousands of copies” in commercial circulation. Luke S. K. Kwong, *A Mosaic of the Hundred Days: Personalities, Politics, and Ideas of 1898* (Cambridge; Council on East Asian Studies, Harvard University, 1984), 91.

<sup>5</sup> Chongqing's first reform paper was the *Chongqing Report* [*Yu bao* 渝報] which was founded in 1897.

<sup>6</sup> Andrea Janku “Revolutionary Discourse.”

<sup>7</sup> As translated at Roger R. Thompson, *China's Local Councils in the Age of Constitutional Reform: 1898-1911* (Cambridge: Council on East Asian Studies, Harvard University, 1995), 71.

Utopian visions of a state capable of unifying the nation and reclaiming China's sovereign equality in the league of nations were made popular by a new generation of thinkers.<sup>8</sup> Arguments about the future survival of China were increasingly constructed around the single most important objective of realizing an all-encompassing construction of the state-as-nation.

In the new world of national contest and strife, private interest (*si* 私) had to be subsumed under and made subordinate to public or group interests (*gong* 公) to form a corporate state capable of competing with the other nations of the globe. Externally, this required the mastery of the weapons of global warfare: not only military superiority, but commercial dominance and expertise in international law. Within the nation, this must entail the rooting out of personal profit from public enterprises, the expansion of state commitments, the appropriation of private groups by an all-encompassing political and legal framework of the state, and the forging of political and national accord reaching all the way from the emperor at the apex of the state down to the individual subject.

### *The Hundred Days (1898)*

The call for a new political order coalesced into a central reform program for the first time in the summer of 1898. Cut short by a series of political intrigues after only three months, from June 11 to September 21 of 1898 the Guangxu Emperor issued approximately two hundred reform edicts to “revitalize (*weixin* 維新)” the empire over the course of what later became known as the Hundred Days.<sup>9</sup>

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<sup>8</sup> Perhaps the most famous of these were Kang and Liang, whose utopian political writings – while not universally well received – were defining statements of the crisis of the age. On the writings of these two men, see Kung-Chuan Hsiao *A Modern China and a New World*; Li Guangyi “Peace under Heaven: The (Re)making of an Ideal World Order in Chinese Utopianism (1902-1911),” Ph. D. diss., University of California, Los Angeles, 2013; and Hao Chang, *Liang Ch'i-ch'ao and Intellectual Transition in China, 1890-1907* (Cambridge: Harvard University Press, 1971).

<sup>9</sup> For accounts of the Hundred Days and the reform movement surrounding it, see Kwong, *Mosaic*; Kung-chuan Hsiao, *Modern China and a New World*; Rebecca E. Karl & Peter Zarrow, eds., *Rethinking the 1898 Reform Period*:



One of the hallmarks of this brief period of reform was the circulation of a new vision of a centralized, disciplined, and vastly expanded central government designed to replace the propagating intermediary structures that Feng and other intellectuals had bemoaned.<sup>10</sup> As the Guangxu Emperor<sup>11</sup> declared in his edict announcing the reform, it was necessary to “re-order the imperial bureaucracy (整飭吏治),” which had “failed in the execution of public tasks and become a plague upon the people (誤國病民).”<sup>12</sup>

Many of the reforms from this period were designed to simplify and centralize the fractal, diverse, and complicated array of administrative institutions mediating the state’s relationship with its subjects. Prohibitions against directly memorializing the emperor were lifted, to facilitate communication between the central court and the territories. The regulations of the central ministries were supposed to be simplified. Sinecure posts were supposed to be abolished. The system of imperial exams and education was supposed to be transformed. Provinces were commanded to begin sending more detailed reports on their fiscal activities with an eye to revenue reform.

In addition to these efforts to restrain the institutional proliferation of the nineteenth century, steps were made to expand the field of government intervention. A new central Bureau of Agriculture, Industry, and Commerce was created to oversee the transformation of the state economy, as well as a new bureau for the planning of railways and mining projects. Laws of foreign nations were ordered to be evaluated in preparation for a revision of the legal system of the dynasty. Although these boards and

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*Political and Cultural Change in Late Qing China*, (Cambridge, Mass.: Harvard University Asia Center, 2002); Luke S. K. Kwong, *T’an Ssu-T’ung, 1865-1898: Life and Thought of a Reformer* (Leiden: E. J. Brill, 1996); Maribeth E. Cameron, *The Reform Movement in China, 1898-1912* (Stanford, Calif.: Stanford University Press, 1931), 35-36; and Kwang-Ching Liu, “Nineteenth-Century China.”

<sup>10</sup> Kwong, *Mosaic* 92-93, 170-171. Pao Chao Hsieh, *The Government of China: 1644-1911*, Johns Hopkins University Studies in Historical and Political Science (Baltimore: Johns Hopkins Press, 1925), reprint (New York: Octagon Books, Inc., 1966), 344-346.

<sup>11</sup> In the last decade of the nineteenth century, Feng’s call for a fundamental reassessment and reorganization of the imperial bureaucracy struck a chord with the emperor himself, who had the collection of essays reprinted and distributed to officials for comment at the beginning of the Hundred Days reform period (at the recommendation of Sun Jianai).

<sup>12</sup> GXSL: year 24, month 6, *dingyou* day.

initiatives were barely begun before the momentum of the Hundred Days period was suddenly halted by the persecution of some of its high-profile proponents under the command of the Dowager Empress Cixi, they formed the rough outline of a new vision of the central bureaucracy.

The person with whom this vision is most often and closely associated is Kang Youwei (康有為).<sup>13</sup> Kang proposed a purposeful and centralized course of reforms, which would be overseen by a central planning office, known as the Institutional Bureau (*zhidu ju* 制度局).<sup>14</sup> This central office would be responsible for supervising the implementation of a new system of central ministries. Kang proposed that the six existing Boards of Rites, Personnel, Works, War, Revenue, and Punishment be replaced with twelve new ministries governing law, finance, education, agriculture, industry, commerce, railways, postal communications, mining affairs, international exchange, military affairs, and naval affairs. Combined, these twelve ministries would directly oversee all of the critical matters of governance.

Kang insisted that the implementation of these new systems purposefully incorporate central planning with local structures. He proposed that each circuit establish a Bureau of Civil Affairs (*minzheng ju* 民政局) responsible for monitoring the implementation of each project at the local level, where each county would operate a Branch Bureau of Civil Affairs (*minzheng fen ju* 民政分局) whose staff would coordinate with local leaders to negotiate the implementation of every new institution. “Thusly,” Kang

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<sup>13</sup> In the overwhelming majority of scholarly works, Kang’s writings have been taken as representative of the spirit of the Hundred Days reforms because he is assumed to have been the primary force behind the engineering of Guangxu Emperor’s edicts. This proposition has been called into question by the works of Huang Chang-chien (黃彰健), who has demonstrated that many of the writings later edited by Kang Youwei and his protégé Liang Qichao were modified from their original form in order to represent a different picture of Kang’s role in the Hundred Days reform activities. See Huang’s *Study of the History of the 1898 Reform* [*Wuxu bianfa shi yanjiu* 戊戌變法史研究] Special Publications of Academia Sinica’s Institute of Philology and History [*Zhongyang Yanjiuyuan Lishiyuyan Janjiusuo zhuan kan* 中央研究院歷史語言研究所專刊] 54, (Taipei: Zhongyang Yanjiuyuan Lishiyuyan Yanjiusuo, 1970). Luke S. K. Kwong took Huang’s assertions as the basis of a heavily revisionist representation of Kang’s career in his *Mosaic*.

<sup>14</sup> For a detailed and expanded iteration of Kang Youwei’s reform proposal (which was very likely later edited to reflect changes after the 1898 Hundred Days period), see his *Ying zhao tongchou quanju zhe* [應詔統籌全局摺] at China Historical Society, eds., *The 1898 Reforms* vol. 2, 197-202. For the record of the actual memorial submitted to the throne proposing reform, in which he proposes a slightly different set of ministries, see GXSL year 24, month 5, *dingchou* day.

proposed, “with cooperative efforts inside of the ministries and outside in the territories, acting in concert like an arm and its fingers, may policies be carried out as soon as they are drafted. As soon as reform can be realized, then the new administration will be in force (變法可成，新政有效也).”

Whether or not the Guangxu Emperor intended to propose the full extent of Kang’s plan or another like it is still a subject of debate, but it seems clear that, at a minimum, the emperor himself blamed internal conflict within the imperial bureaucracy for the collapse of the reform movement. Just days before several reformers associated with the Hundred Days were sentenced to death in a coup by the political faction loyal to Empress Dowager Cixi, the Guangxu Emperor decried the “unworthy officials” (不肖官吏) and “conservative ministers” (守舊之士大夫) who had not only failed to carry out the message of reform but had, instead, used his edicts as a cause for “agitating and terrifying the common people (使小民搖惑驚恐).”<sup>15</sup> He complained that many subjects had “still never received word of the new policies (不獲聞新政者),” and thus the personal machinations of individuals within the bureaucracy had foiled his hope that “the aspirations of the common man would be bent in sympathy with the royal mind (使百姓咸喻朕心).” Before the emperor was able to implement any of his reforms on an empire-wide level, his program of reform was truncated to a mere Hundred Days. Famous reformers Kang Youwei and Liang Qichao fled into exile to escape execution, and memorials proposing new reforms quickly ceased to flow into the capital.

### *The New Policies (1901-1911)*

The nature of political machinations at the highest levels of the Qing bureaucracy that cut short the early Hundred Days program of reform are still unclear. But whatever the forces against the Guangxu Emperor’s bold initiatives had been in 1898, and however they succeeded, the impetus toward reform was

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<sup>15</sup> GXSL: year 24, month 7, wuyin day.

only momentarily slowed. It was only three years later, after China's defeat in the wake of the 1900 Boxer Rebellion that a new call for change was issued from the central court.<sup>16</sup> This time the Dowager Empress Cixi joined the Guangxu Emperor in preparing reforms from their exile in Xi'an after fleeing the capital.<sup>17</sup> An imperial edict announcing the throne's intent was issued on January 29, 1901. In it, the Dowager Empress declared that "all government affairs must be thoroughly reorganized" and that "the shortcomings and failings of China's system of government shall be supplemented" by "adopting the strengths of the systems of other nations."<sup>18</sup>

High-level officials were commanded to offer memorials outlining their recommendations about how to beneficially employ western methods, strengthen the state, improve the livelihood of the people, update the system of education, strengthen the military, reform public finance, and improve the bureaucracy. In April of 1901, the Office of the Supervision of Government Affairs (*duban zhengwu chu* 督辦政務處) was founded to oversee the program of reform. With this, the most expansive reform project of the Qing state was inaugurated: it would last a full decade, and entail not only the promulgation of hundreds of edicts but also the full-scale reevaluation and revision of the imperial state.<sup>19</sup>

From early on in the days of the New Policy movement it was assumed that a revision of the Qing Code would be required to achieve the goals of the reform.<sup>20</sup> As early as 1901, Chinese officials began to bargain for – and eventually obtained – clauses in treaties with other nations explicitly providing for the

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<sup>16</sup> For a general outline of the events of the New Policies era, see Chuzo Ichiko, "Political and Institutional Reform 1901-1911," in Denis Twitchett and John K. Fairbank, eds. *The Cambridge History of China*, vol. 11, "Late Ch'ing 1800-1911, Part 2," 375-415.

<sup>17</sup> For one perspective on the political atmosphere after the failure of the Hundred Days and the Boxer Uprising as a pivotal moment leading up to the New Policy era, see Daniel Henry Bays, "Chang Chih-tung and the Politics of Reform in China, 1895-1905," PhD diss, University of Michigan, 1971, 99-157.

<sup>18</sup> GXSL year 26, month 12, *dingmo* day.

<sup>19</sup> A recent published edition of the new laws (and related edicts) from 1901-1911 spanned over six thousand pages in 11 volumes, with a 129 pages of tables of contents.

<sup>20</sup> In their inaugural edict on reform presented in June of 1901, Zhang Zhidong and Liu Kunyi proposed that the justice system of the Qing required reevaluation and reform.

end of extraterritoriality when China's legal and court system was fully reformed.<sup>21</sup> In May of 1902, Shen Jiaben (沈家本) and Wu Tingfang (伍廷芳) were appointed by the court to revise the dynasty's codes.<sup>22</sup> In 1902 Qing envoys and students abroad were ordered to acquire copies and translations of legal codes from other nations for the reference of the heads of the commission. In 1904 the project was expanded with the founding of an Office for the Compilation of Laws (*faliu bianzuan guan* 法律編纂館), which was reorganized in 1906 as the Office for the Revision and Compilation of Laws (*xiuding faliu guan* 修訂法律館).<sup>23</sup>

These efforts were contemporaneous with the work of an Office on the Investigation of Governmental Systems (*kaocha zhengzhi guan* 考察政治館), established in November of 1905 with the purpose of considering other models of administration and organization for the Qing state. To supplement these efforts the Qing court dispatched a retinue of officials and imperial family members on a Constitutional Mission in 1905 to visit, survey, and collect materials on the political institutions of several foreign nations in North America and Europe, as well as Japan.<sup>24</sup>

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<sup>21</sup> The first such example was the Sino-British Mackay Treaty of 1902.

<sup>22</sup> On the careers of Shen Jiaben and Wu Tingfang, see Jérôme Bourgon, "Shen Jiaben et le droit chinois à la fin des Qing," PhD diss., École des Hautes Etudes en Sciences Sociales, 1994; Cheng, Joseph Kai Huan, "Chinese Law in Transition: The Late Ch'ing Law Reform, 1901-1911," PhD diss., Brown University, 1976; and Xiaoqun Xu, *Trial of Modernity: Judicial Reform in Early Twentieth-Century China, 1901-1937*, (Stanford, Calif.: Stanford University Press, 2008).

<sup>23</sup> On the process of legal revision, see Cheng, "Chinese Law in Transition;" Xu, *Trial of Modernity*; Philip C. Huang, *Code, Custom, and Legal Practice in China: The Qing and the Republic Compared*, (Stanford, Calif.: Stanford University Press, 2001). On the making of the civil and commercial codes, see Jérôme Bourgon, "Rights, Freedoms, and Customs in the Making of Chinese Civil Law, 1900-1936," in William C. Kirby, ed., *Realms of Freedom in Modern China*, 84-112 (Stanford, Calif.: Stanford University Press, 2004).

<sup>24</sup> On the constitutional mission, see Richard S. Horowitz, "Breaking the Bonds of Precedent: The 1905-6 Government Reform Commission and the Remaking of the Qing Central State," *Modern Asian Studies* 37, no. 4 (Oct., 2003): 775-797; Amy Epstein Gadsden "Building the Rule of Law in Early Twentieth Century China (1905-1926)," PhD diss., University of Pennsylvania, 2005 Chapter 2 and Chapter 2; and E-Tu Zen Sun, "The Chinese Constitutional Missions of 1905-1906," *The Journal of Modern History* 24, no. 3 (Sep., 1952): 251-268; Norbert Meienberger, *The Emergence of Constitutional Government in China (1905-1908): The Concept Sanctioned by the Empress Dowager Tz'u-hsi* (Bern, Switzerland: Peter Lang 1980) 26-32; and Chapter Six of Cheng, "Chinese Law in Transition."

It was not long after the return of the mission in July of 1906 that the court followed the recommendation of its members and, on September 1, 1906, declared the intention of the throne to draft a constitution. In November a full reorganization of the central ministries was announced.<sup>25</sup> The Zongli Yamen had already been reorganized as the Ministry of Foreign Affairs in 1901, and the Ministry of Education – which had been established in 1905 – also remained in its original formation. The Board of Revenue was replaced by a Ministry of Finance (*duzhi*度支) and the Board of Punishment by a Ministry of Justice (法部). The Boards of War and Rites were left unchanged, but the Board of Works was combined with the Board of Commerce (商部) that had been created in 1903 to form the Ministry of Agriculture, Industry, and Commerce (農工商部). Three new ministries – Civil Affairs (*minzheng*民政),<sup>26</sup> Territories (*lifan*理藩), and Communications (*youzhuan*郵轉) were created.

Within each ministry and in the vast territorial bureaucracy, reforms were deep and widespread. The systems of collecting and reporting of revenues were overhauled.<sup>27</sup> New policies on the appointment and management of bureaucratic personnel were introduced.<sup>28</sup> The training and recruitment of civil officers was re-envisioned.<sup>29</sup> The imperial exams were suspended. The entire form and function of the bureaucracy was reworked – on paper at least – by the August, 1908 promulgation of the Qing “Principles of Constitution,” which marked the beginning of a nine-year program of reform leading up to the

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<sup>25</sup>GXSL: year 32, month 9, *jiayin* day

<sup>26</sup> This ministry was responsible for implementing a national police system, sanitation drives, and other social initiatives.

<sup>27</sup> See Philip A. Kuhn, “Local Taxation and Finance in Republican China,” in Susan Mann Jones, ed. *Select Papers from the Center for Far Eastern Studies*, No. 3 1978-79: Proceedings of the NEH Modern China Project, 1977-1978: Political Leadership and Social Change at the Local Level in China from 1850 to Present, pp. 100-136; and Paul C. Hickey, “Fee-Taking, Salary Reform, and the Structure of State Power in Late Qing China, 1909-1911,” *Modern China* 17, no. 3 (Jul., 1991): 389-417.

<sup>28</sup> See Luca Gabbiani “‘The Redemption of the Rascals’: The Xinzheng Reforms and the Transformation of the Status of Lower-Level Central Administration Personnel,” *Modern Asian Studies* 37, no. 4 (Oct., 2003): 799-829.

<sup>29</sup> Julia C. Strauss “Creating ‘Virtuous and Talented’ Officials for the Twentieth Century: Discourse and Practice in Xinzheng China,” *Modern Asian Studies* 37, no. 4 (Oct., 2003): 831-850.

transformation of the structure of imperial authority itself.<sup>30</sup> By the end of the period, a national parliament would be elected by assemblies representing each province,<sup>31</sup> and the implementation of New Policy programs would be overseen by a network of self-government bureaus operating out of every town and village in the nation.

### A New Merchant for a New Age

然裕知商戰則商務得失不可不通盤籌畫而確知其消長盈虛也。  
孔子曰知彼知己百戰百勝。

If you would know the meaning of commercial warfare, it is: to always plan for and execute plots for the attainment of trade, and to understand clearly the means of the rise and fall of fortunes. As Confucius said, “To know another, and to know oneself, is to win a hundred victories in a hundred wars.”

Zheng Guanying, “Commercial Warfare”<sup>32</sup>

Over the course of the transformation of the Qing state in the late nineteenth and early twentieth centuries, the merchant became a prominent symbol of past injustices and the future hope of the empire.<sup>33</sup>

At the center of this surge in interest was the idea that a “commercial warfare” (*shang zhan* 商戰) was currently being waged between nations and that its outcome was critical to determining the future geopolitical order. First used by Zeng Guofan in 1862, this term spread in the late 1880s to describe the

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<sup>30</sup> For a detailed narrative of the early formulation of self-government policies, see Chapter Four of Thompson, *China's Local Councils in the Age of Constitutional Reform*.

<sup>31</sup> On the formation and history of the Qing Provincial Assemblies, see Chapter Five of Min, *National Polity and Local Power*.

<sup>32</sup> Zheng Guanying (鄭觀應), “Commercial Warfare [*Shang zhan* 商戰],” in *Words of Warning for a Prosperous Age* [*Sheng shi wei yan* 盛世危言], 1893.

<sup>33</sup> On trends in economic and political thought in the second half of the nineteenth century, see Li Dajia (李達嘉), “From Restraint to Encouragement of Commerce: An Investigation into Ideas and Policies,” *Zhongyang Yanjiuyuan Jindaishi Yanjiusuo jikan* [中央研究院近代史研究所集刊] 82 (Dec. 2013): 1-53; Kung-ch'uan Hsiao, “Economic Modernization: K'ang Yu-wei's Ideas in Historical Perspective,” *Monumenta Serica* 27 (1968): 23-37.

increasingly popular idea that one of the main causes of China's failure to prosper in the new age was the economic imperialism of Western nations.<sup>34</sup> Earlier arguments in support of developing China's military superiority were widely ridiculed as a new generation of intellectuals began to argue that both the objective and the tool of real and meaningful conquest was nothing other than the accomplishment of commercial domination.

The recent history of international conflict in China was quickly redefined in this new framework. As Zheng Guanying (鄭觀應) argued in his 1893 *Words of Warning for a Prosperous Age* (*Shengshi weiyán* 盛世危言), armed conflicts between China and the West were merely events punctuating turning points in a prolonged and subtle struggle for power and advantage:

In each of the Western nations, it is commerce that enriches the state, and it is military force that protects commerce. Warfare is not waged with military strength alone, but with commercial strength as well. Even as the duration of military conflict is short and its repercussions immediate, commercial conflict is waged on a longer horizon, and the disaster it brings is far greater.<sup>35</sup>

This realization, for Zheng and others who began to speak of the age of commercial warfare, was a warning call to China:

Ever since the opening of the Chinese ports to international exchange, the other nations have behaved wantonly and without reason toward us. Every day the people of our nation suffer abuse and humiliation at their hands. Encountering such incitation, who would not want to tie up his hair, brandish a weapon, and seek out a decisive battle with this kind of enemy? Thus have we purchased warships, and built cannon, and manufactured guns, and created naval mines. Thus have we established a navy, and drilled our forces on land: all in the quest for military superiority. No effort has been spared... and yet the men of other nations, witnessing our efforts, stifle their laughter at the spectacle. And why is this? It is because their schemes run deeper... they are staging an offensive using their capital and their assets, not their soldiers, and cleverly they have obtained their secret objective: treaties and pacts are their weapons. They will wait patiently until all of our energies are spent, and there is no living force left, and then they will accomplish their victory with

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<sup>34</sup> For a history of the early use of the phrase "commercial warfare," see Li Dajia, "From Restraint to Encouragement."

<sup>35</sup> Zheng, "Commercial Warfare."



ease! For a defeat by military strength is easily perceived by its victims, but conquest by commerce is imperceptible to the beleaguered nation! For every day that our trade fails to flourish is another day that their plots continue to unfold... For this reason the situation may be summed up on a single phrase: The practice of war with weapons is not as critical as the practice of war with trade!<sup>36</sup>

By the time that China was defeated in the Sino-Japanese war, this framing of international economic conflict was so widely accepted that Kang Youwei's memorial of protest to the Guangxu Emperor, which was signed by more than a thousand metropolitan exam candidates, could declare:

When China stood in isolation, it was necessary to regard agriculture as the [economic] foundation of the state, so that the people's minds could be set at rest. But when she stands among contending nations [as she now does], it is inevitable that commerce should be considered the foundation of the state ... In the past, nations have been destroyed by wars; everyone knows that. Now a nation can be ruined by commerce, but nobody pays attention to it.<sup>37</sup>

Increasingly over the course of the late nineteenth and early twentieth centuries the search for economic prosperity or "commercial strength" (*shang li* 商力) was bound up in a more abstract discourse about a larger struggle for advantage and rights (*liquan* 利權) in the quest for national sovereignty.

In this vision of the shifting geopolitical order, merchants were seen – as before – as part of a fundamental program to develop the infrastructure of the nation. But in contrast to the Self-Strengthening rhetoric of earlier times, private enterprise was now considered the key to promoting the welfare of the nation. The corollary of this new assumption was that earlier visions of merchant-official cooperation had failed because free enterprise was not allowed to flourish. In new formulations it was argued that it was not the purpose of the merchant to support the state but, rather, that the point of the state was to support merchants.

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<sup>36</sup> *ibid.*

<sup>37</sup> China Historical Society, *The 1898 Reforms*, vol. 2, 145. As translated at Hsiao, *A Modern China and a New World*, 305.

Authors of the last decades of the nineteenth century remarked that the infrastructure of other nations – such as railroads and mining ventures – had been undertaken not by direct official management, but by creating business forms and legal protections that allowed merchants to raise the massive funds to finance projects under expert business management.<sup>38</sup> In the 1880s and 1890s the rhetoric of projects under “merchant management with official supervision” was entirely replaced by a new set of visions. Private initiative was expected to take over where official guidance had failed to prepare China for the challenges of the new age.<sup>39</sup> In this new age of “officials not being equal to merchants (*guan buru shang* 官不如商)”<sup>40</sup> and “official management not being equal to merchant management (*guanban buru shangban* 官辦不如商辦),”<sup>41</sup> control over the management of these projects, it was now argued, should be left entirely in the hands of merchants themselves.<sup>42</sup> Merchants were now “called” (*zhao* 招) to finance and manage critical projects such as the exploitation of China’s mineral resources and the building of its railroads by seeking out profit.<sup>43</sup>

The imperial bureaucracy, freed from the obligation to manage these products directly, was supposed to focus its efforts on the protection of merchants. First and foremost, this meant protecting merchants *from* officials. In the late nineteenth century, the aim of “pitying the merchant (*xu shang* 恤商)” underlies several arguments about the importance of how the burdens placed on commerce had to be

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<sup>38</sup> Liu Xihong (劉錫鴻), “Outlining the Various Differences between Affairs in China and the West and a Rough Description of Why Rail and Lines Have Not Been Implemented [*Lü chen zhong xi qingxing zhongzhong butong huoche tielu shi bu ke xing shu* 縷陳中西情形種種不同火車鐵路勢不可行疏], HCJSWXB *juan* 87.

<sup>39</sup> GXSL: year 21, month 7, *dinghai* day.

<sup>40</sup> GXSL: year 24, month 6, *guisi* day.

<sup>41</sup> GXSL: year 22, month 2, *jiaxu* day.

<sup>42</sup> GXSL: year 16, month 8, *renzi* day.

<sup>43</sup> GXSL: year 16, month 8, *renzi* day; year 21, intercalary month 5, *bingyin* day; year 22, month 6, *guiyou* day; year 22, month 10, *yiyou* day; year 23, month 6, *guiyou* day.

minimized. In this way, both the state and the people could flourish.<sup>44</sup> There were calls to reduce taxes.<sup>45</sup> Some excess levies which were deemed non-critical were dismissed out of “sympathy for the difficulties of the merchant” (體恤商艱).<sup>46</sup> Officials were explicitly ordered to not interfere in the new enterprises of merchants and businessmen.<sup>47</sup> Local officials and clerks were blamed for turning “unavoidable measures” such as the collection of *lijin* taxes into a source of personal profit.<sup>48</sup> Some were expelled from office after being accused of treating merchants unfairly or profiting from the abuse of commerce.<sup>49</sup>

At the same time that the central state sought ways to reduce official interference in the field of commerce, new ideas were also proposed about how to actively protect the merchants of the empire. As early as 1878, it had been commented by Guo Songtao (郭嵩燾) during his travels abroad that, in contrast to Western nations where “the people and their government... joined hands to develop economic resources,” China had been unable to foster a “community of interest between the government and the people.”<sup>50</sup> In 1888 Governor-General Zhang Zhidong (張之洞) proposed that consulates should be established in the South Seas to support Chinese commerce abroad.<sup>51</sup> In his *Words of Warning*, Zheng suggested that a central ministry of commerce could orchestrate efforts to protect the merchants and businessmen struggling on China’s behalf in the age of commercial warfare. In 1878 Li Fan (李璠), a

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<sup>44</sup>For examples of the use of this phrase in economic and policy proposals, see GXSL: year 21, intercalary month 5, *bingyin* day; year 20, month 12, *jiazi* day.

<sup>45</sup> GXSL: year 23, month 2, *gengwu* day; year 15, month 4, *jiachen* day; year 15, month 7, *wuxu* day; and Xue Fucheng (薛福成), “Advantage and Rights (*liquan* 利權),” at HCJSWXB *juan* 116.

<sup>46</sup> GXSL: year 18, month 5, *wuchen* day.

<sup>47</sup> GXSL: year 21, month 10, *dinghai* day; and year 16, month 8, *renzi* day.

<sup>48</sup> GXSL: year 20, month 6, *dingsi* day; and year 20, month 11, *renyin* day.

<sup>49</sup> GXSL: year 21, month 7, *guimao* day; and year 22, month 10, *yiyong* day.

<sup>50</sup> Modified from the translation of Guo’s letter to Li Hongzhang at Hsiao, “Economic Modernization,” 25-26.

<sup>51</sup> GXSL: year 13, month 12, *guisi* day.

censor, had suggested that merchants might form their own societies to suggest measures for state action in support of the economy.<sup>52</sup>

During the Hundred Days reform movement, commerce and industry were the targets of several edicts.<sup>53</sup> The throne proposed rewards for new technological inventions, treatises, and trade schools successfully promoting commerce, as well as the successful founding of well-funded businesses dedicated to new forms of industry. Edicts were promulgated to circulate publications and spread information about new methods of production. The governor of each province was instructed to foster agriculture, to reward artisanal achievements, and to dispatch high-level officials to the cities along riverways to oversee commercial affairs. A bureau was established in the capital to support the expansion of mining and railroad construction.

The throne also responded to calls for new forms of merchant-official cooperation. In response to several proposals from previous years,<sup>54</sup> the court ordered Liu Kunyi (劉坤一) and Zhang Zhidong to establish pilot Bureaus of Commerce (*shangwu ju* 商務局) in Shanghai and Hankou and to lead discussions between merchants and officials about how to foster trade, encourage economic study, produce trade periodicals, and found commercial societies.<sup>55</sup> A General Bureau of Agriculture, Industry, and Commerce (*nong gong shang zong ju* 農工商總局), was created in the capital.<sup>56</sup> Each province was instructed to create its own branch bureau to oversee, within its jurisdiction, the creation of schools, societies, periodicals, and exhibitions to promote agriculture and industry. The basic outlines of a national

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<sup>52</sup> Hsiao, "Economic Modernization," 23.

<sup>53</sup> GXSL: year 24, month 5, *jisi* day; and year 24, month 6, *dingyou* day.

<sup>54</sup> GXSL: year 21, month 11, *guichou* day; year 24, month 7, *jiaxu* day; and year 24, month 7, *jiazi* day.

<sup>55</sup> GXSL: year 24, month 6, *jichou* day.

<sup>56</sup> GXSL: year 24, month 7, *bingyin* day.

network with local nodes of merchant-official cooperation, linked to a central imperial office, were thus sketched out in a series of memorials and experiments.

Most of the commercial bureaus mandated during the Hundred Days were either never established or, once founded, soon became inactive. But the grand project of coordinating bureaucratic efforts to foster commerce was revived in the New Policy era when, in April of 1903, the court ordered the creation of a central Bureau of Commerce (*shang bu* 商部). The heads of the new bureau were required to promote mining and railroad construction, to author regulations for business incorporation, and to foster trust both within the merchant community and between merchants and officials.<sup>57</sup> The implementation of these initiatives was supposed to be supervised by a network of provincial bureaus to promote trade, industry, and commerce, which would coordinate their efforts in important commercial centers with newly-founded chambers of commerce (*shang hui* 商會). As the Bureau of Commerce summarized in its valedictory memorial, “The revival of commerce at the current moment depends entirely upon the connection and communication between merchants and officials (全在官商联络一气) in the interest of the creation of a mutual faith (以信相孚) and so that the strength of each may be used to support the other (内外合力维持).”<sup>58</sup>

One of the most ambitious and formative efforts by the Bureau of Commerce to realize this plan was the drafting of a commercial code (*shang lü* 商律).<sup>59</sup> This idea had been advocated in the early reform memorials of Liu Kunyi and Zhang Zhidong, and in 1902 the court had already ordered several officials

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<sup>57</sup> GXSL: year 29, month 7, *jiyou* day; and year 29, month 8, *dingsi* day.

<sup>58</sup> GXSL: year 29, month 8, *dingsi* day.

<sup>59</sup> On the drafting of the commercial laws, see William C. Kirby, "China, Unincorporated: Company Law and Business Enterprise in Twentieth Century China," *Journal of Asian Studies* 54, no. 1 (Feb., 1995): 43-63; and Cheng, "Chinese Law in Transition," 99-112.

to begin drafting commercial laws.<sup>60</sup> In 1903, the task of drafting a full commercial code fell directly under the purview of the new Bureau of Commerce.<sup>61</sup> The work of drafting the code began with the compilation of a Company Law (*gongsi li* 公司律), which was promulgated in January of 1904. This law was combined with the General Regulations for Merchants (*shangren tongli* 商人通例) released in the same month and a Bankruptcy Law (*pochan li* 破產律) published in 1906 to form the first commercial code of the Qing dynasty. Over the course of the next several years, regulations on subjects such as the registration of companies, the issue of rewards for industrial and commercial achievements, and the protection of copyright were added to the Bureau's list of regulations for the protection and encouragement of commerce.

The stated goal of much of this legislation was to revive trust among merchants, encourage faith in the Qing government's efforts to support commerce, and provide concrete protections for the conduct of trade and industrial production. In this way, the New Policy drafting of the beginnings of a commercial code harkened back to earlier calls from the Hundred Days era for the government to take the support of commerce more seriously.

#### *Dispute Resolution as Protection of Commerce*

One of the main components, in the 1890s, of these demands were direct requests to the magistrates of the empire to attend more closely to the resolution of commercial disputes in order to

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<sup>60</sup> GXSL: year 28, month 2, *guisi* day.

<sup>61</sup> GXSL: year 29, month 3, *gengchen* day.

restore faith and allow commerce to prosper.<sup>62</sup> As one edict from the 1898 Hundred Days reforms decreed, local officials would have to actively protect merchants in the courtroom if the economy was to thrive:

Of late the commerce of each province has not flourished or revived. This is all due to the lack of a connection or communication between officials and merchants (官商不能聯絡). When there is a criminal bankruptcy conspiracy and it comes to court for litigation, clerks and functionaries extort the individuals involved. How can the hopes of merchants be realized under such conditions? We are now on the threshold of a re-ordering of commerce. This kind of malfeasance must be energetically rooted out. Order the Governor-General of each province to strictly order each local official: commercial affairs must be personally examined and wholeheartedly protected (盡心保護). Any case involving embezzlement and purposeful insolvency must be clearly investigated and the sum must be returned. Clerks and functionaries must be prohibited from extortion...<sup>63</sup>

But in spite of the fact that – as discussed in Chapter Six – the court of Chongqing was dedicating more energy to the resolution of commercial disputes, it was also – as discussed in Chapter Seven – more often encountering cases that it was incapable of settling swiftly. The legal ambiguity that formed the crux of this dilemma, furthermore, was such an integral part of the way that Qing courts handled disputes it could not be resolved with redoubled efforts of sincere magistrates to handle the disputes of merchants. Mediation problems remain a striking part of the legal record in the closing years of the nineteenth century and the early years of the twentieth.

The revived interest in commerce and administration in the New Policy era led to renewed calls for magistrates to take the handling of commercial disputes seriously. In their form and content these exhortations seem similar to their earlier counterparts in every way. Take, for example, the 1905 memorial from the Bureau of Commerce that instructed courts to handle litigation between merchants strictly. In this document the failure of courts to resolve commercial disputes was framed as a major cause for the lack of the development of trust between merchants. Local officials were charged with “seeing disputes over debt as small matters, and thus failing to handle them thoroughly,” and for this reason “faith

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<sup>62</sup>GXSL: year 24, month 5, *wuyin* day.

<sup>63</sup> *ibid.*

and trust did not flourish, and funds did not circulate freely, thus retarding the development of commerce.”<sup>64</sup>

The officials of the territorial bureaucracy were commanded to take the difficulties of merchants seriously and to extend serious effort in the eradication of commercial malfeasance in order to promote commerce and growth. The New Policy administration, like those before it, recognized easily that mediation deadlock, cheating, and unenforceable judgments were a serious problem in what was now viewed as a national struggle to promote commerce. But repeated efforts at new legislation to resolve this issue failed to have any visible effect.<sup>65</sup>

### **The Call to Form Chambers of Commerce**

When the system of commercial dispute mediation was radically altered, it was from an unexpected corner: through the reorganization of merchant groups. This task – long discussed by late nineteenth-century reformers – began in earnest in the New Policy era with the January 1904 call to establish chambers of commerce (*shang hui* 商會) throughout the empire. In an imperially-endorsed statement, the Bureau of Commerce outlined its ambitions for the new institution:

If one searches out the origins of the sickness plaguing commerce in China today, they will find it in the lack of commercial strength, and in the immaturity of commercial knowledge, and in the troubled relationship between officials and merchants, and in the lack of communication between merchants, and in the lack of a connection between the various industries, and in the lack of accord even within the same industry... This bureau was established in order to protect commerce... there is no first step toward building commercial strength and increasing commercial knowledge more critical than establishing chambers of commerce within the trades. Each should put forth elected

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<sup>64</sup> GXSL: year 31, month 4, *jiazi* day. The memorial noted in the *shi lu* may be found in the *Eastern Miscellany* [*Dongfang zazhi* 東方雜誌]. Shanghai: *Dongfang zazhi she*. 1905, vol. 2, no. 9 88-91.

<sup>65</sup> For one such example, see Dykstra, “Going Under.”



leaders and meet regularly to discuss... the reasons for the failure or success within each industry, and the positive and negative behaviors in the market that account for the flow and stagnation of goods. Together with members of each trade, merchants should carefully investigate and outline the roots of advantage and disadvantage, and the origins of gains and losses in the market, and thus form the basis of a connection and communication about how to save commerce (聯絡一氣務思所以補救之法)... Each chamber of commerce, when established, may thus root out the alienation between merchant and merchant and between merchant and official in order to make commerce flourish (去商與商隔膜之弊且可以去官與商隔膜之弊為益商務).<sup>66</sup>

The late nineteenth-century vision of federated organizations to coordinate merchant-official cooperation was thus fully adopted in the 1904 Bureau of Commerce plan for the revival of commerce.

These organizations were supposed to facilitate the coordination of local knowledge and central initiative by providing a space for state-merchant collaboration.<sup>67</sup> In the standard historical literature, the founding of chambers of commerce is supposed to represent the imperial turn away from “suppressing commerce”<sup>68</sup> and toward supporting merchant interests,<sup>69</sup> which was coincidental with and in support of

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<sup>66</sup> *The Eastern Miscellany*, 1904, no. 2 199-202.

<sup>67</sup> On the institutional transformation entailed by this reform and its influence on networks and local organization, see Zhongping Chen, *Modern China's Network Revolution: Chambers of Commerce and Sociopolitical Change in the Early Twentieth Century* (Stanford, Calif.: Stanford University Press, 2011).

<sup>68</sup> An entire genre of historical literature on the late imperial market centers on the notion of “suppression of commerce (*yi shang* 抑商)” as a primary cause for the failure of Qing China to develop modern capitalism. On this mode of scholarship, see Qi Liang (启良), “Comparative Research on Ancient Chinese and Western Suppression of Commerce [*Gudai zhong-xifang yi shang wenti de bijiao yanjiu* 古代中西方抑商问题的比较研究],” *Shijie lishi* [世界历史] 3 (1988): 12-22; Zhu Ying (朱英), “Some Considerations on the Suppression of Commerce in Comparative Research between China and Western Ancient History [*guanyu duibi yanjiu gudai zhong xi fang yi shang wenti de yidian yijian* 关于对比研究古代中西方抑商问题的一点意见],” *Shijie lishi* [世界历史] (May, 1989): 153-154; Qi, “Regarding Zhu Ying’s Response on A Study of Ancient Chinese and Western Suppression of Commerce [*Jiu gudai zhong-xifang yi shang wenti da Zhu Ying tongzhi* 就古代中西方抑商问题答朱英同志],” *Shijie lishi* [世界历史] 4 (1990): 114-116; Li Guihai (李桂海) “An Analysis of Feudal Thought on Favoring Agriculture and Suppressing Commerce [*Fengjian zhuyi “zhong nong yi shang” sixiang po xi* 封建主义“重农抑商”思想剖析],” *Xueshu luntan* [学术论坛] (May, 1981): 68-72; Li Qin (李勤), “Early Qing Policies of Favoring Agriculture and Suppressing Commerce and their Legal Background [*Qing qianqi “zhong nong yi shang” zhengce ji qi falü sixiang* 清前期“重农抑商”政策及其法律思想], *Dalian haishi daxue xuebao (shehui kexue ban)* (Aug., 2009): 72-76.; and Yan Shoucheng (阎守诚), “An Analysis of Favoring Agriculture and Suppressing Commerce [*Zhong nong yi shang shi xi* 重农抑商试析],” *Lishi yanjiu* [历史研究] (Aug., 1988): 136-146.

the rise of a petty bourgeois class in the commercial centers of the empire. But when the import of chambers of commerce is weighed with an appreciation of the forms of merchant organization and merchant-state collaboration that were already underway in the nineteenth century, the novelty of this institutional change seems less substantive and more formal.

From the perspective of courts and in the field of commercial dispute mediation, it seems that the real shift was not toward merchant organization – which had already existed in several forms – but rather in the formal and institutional recognition of forms of administrative intermediation that had already existed for decades. The next section will present a brief outline of the founding of Chongqing’s chamber of commerce before going on, in the later sections, to outline how the imperial recognition of this already-existing form of corporate organization altered the disposition of commercial disputes.

### *The Chongqing General Chamber of Commerce*

Organization of a chamber of commerce in Chongqing began early, when it was noted that the city was mentioned by the name in the Bureau of Commerce call to establish *shang hui*.<sup>70</sup> Just one month after the text was released, Sichuan Governor-General Xi Liang (錫良) forwarded a proclamation to be posted throughout the streets of the city of Chongqing, which declared that the establishment of a chamber of commerce was the first step in a revival of commerce in the city.<sup>71</sup> One month later, in March

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<sup>69</sup> The most explicit iteration of this very common argument can be found in Fewsmith, “From Guild to Interest Group.”

<sup>70</sup> “Ministry of Commerce Imperially Approved Clear and Simple Regulations for Chambers of Commerce – 26 Items [*Shang bu zouding shanghui jianming zhangcheng ershiliu tiao* 商部奏定商會簡明章程二十六條],” in *Complete Compilation of Laws and Regulations of the Qing Dynasty* [*Da Qing fagui da quan* 大清法規大全, hereafter DQFGDQ], 6 vols. 1910. Reprint, Taipei Hongye shuju. 1972, 2992.

<sup>71</sup> SPABX: 32- 03765.

of 1904, a full copy of the Bureau of Commerce call to establish chambers of commerce was forwarded to the Ba County magistrate.<sup>72</sup>

In a provincial proclamation printed the following month in the newly-established Sichuan Official Paper (四川官報), the Eastern Sichuan General Commercial Bureau, whose main objective was to “revive commerce, and prevent advantages and rights from being lost to others (免致利權外溢),” announced its plan to attend to four major undertakings.<sup>73</sup> First, in its dedication to “connecting commercial affairs to avoid estrangement (聯絡商情以免隔閡),” it declared that all of the *bang* and merchant associations of the city – including the as-yet-unformed *shang hui* – should feel free to report any cause of economic advantage or abuse for apprehension by the local state, so that “the spirit of officials and merchants may be linked, and the affairs of each may be united (通官商之氣而聯上下之情).” Second, the bureau pledged to protect commercial shipments through the region by dispatching armed escorts for a flat fee to any ship that requested them.<sup>74</sup> Third, the bureau promised to “severely prohibit fraudulent insolvency schemes” by more strictly demanding the repayment of debts owed by firms that had declared bankruptcy. Fourth and last of all, the bureau also declared its intent to eradicate extralegal fees imposed on commerce “out of pity for the hardships of merchants (以恤商艱)” and so that commerce may be revived.

With this, Sichuan’s efforts to realize the New Policy vision of merchant-state cooperation began. Two months after the provincial government’s declaration, however, no initiative had been taken by the merchants of Chongqing to organize a chamber of commerce in response to this display of good will. In a

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<sup>72</sup> SPABX: 32-03770.

<sup>73</sup> “An Announcement on Protecting Merchants by the General Commercial Bureau [*Shangwu zong ju bao shang gaoshi* 商務總局保商告示],” *Sichuan guan bao* [四川官報] *jiachen* year (1904) month 2, *xia xun* no. 4, collected at National Library Document Reproduction Center [全國圖書館文獻縮微復制中心], eds. *Collection of Late Qing Official Gazettes* [*Qing mo guan bao huibian* 清末官報匯編, hereafter QMGBHB], vol. 48, 23958.

<sup>74</sup> It seems that no progress on this initiative had been made by 1911, when a similar resolution was once more adopted by the Chongqing Municipal Assembly. See SPABX: 54-00391.

subtle gesture, the Bureau of Commerce forwarded a copy of its memorial on the formation of chambers of commerce, together with the attending regulations, to Governor-General Xi in late June. In early August, the Governor-General forwarded the materials to Sichuan's Financial Commissioner, who sent them to the acting prefectural magistrate of Chongqing. They arrived in the city on September 17, 1904 and ten days later the prefect forwarded it to the Ba County magistrate.<sup>75</sup>

That month, it was reported in the Sichuan Official Paper that the Zhou Kechang (周克昌), head of the Chongqing Commercial Affairs Bureau, had recently invited the heads of each *bang* operating in the city to meet at the county temple, and that he had ordered them to each put forward two representatives to meet with the office and “combine the spirit of officials and merchants into one force... in order to gain advantage in the war of commerce (官商一氣消息憲通當可收商戰之利矣).”<sup>76</sup> The next month, in October of 1904, it was reported that five nominees from the textile trade and two from the medicine *bang* had been put forth.<sup>77</sup> The provincial administration's push to encourage the founding of a chamber of commerce in Chongqing seemed to be off to a lackluster start.

In late February of 1905, the Eastern Sichuan Military Intendant (川東道) and the head of the Eastern Sichuan Bureau of Commercial Affairs (川東商務局) announced suddenly in the official paper that the Chongqing General Chamber of Commerce had been founded in the October of the previous year. In their full report, which was published in the official paper, they remarked that “commoners are often afraid of new things,” and that the call to establish a chamber of commerce in Chongqing had been responded to by the city's merchants with trepidation. Initially, explained the two men, the merchants had been afraid of more demands for donations and levies, but once they explained to Chongqing's

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<sup>75</sup> SPABX: 32-03760.

<sup>76</sup> *Sichuan guan bao* 1904, month 8, *zhongxun* (no. 21), at QMGBHB, 24318.

<sup>77</sup> *Sichuan guan bao* 1904, month 9, *zhongxun* (no. 24), at QMGBHB, 24386.

businessmen that commerce in the city could never flourish so long as the energies of its traders remained dispersed and disorganized, the merchants of the city rejoiced at the prospect and began to report to the bureau to plan for the future of merchant-official cooperation.<sup>78</sup> The heads of the Eight-Province Association were asked to make arrangements for electing the leadership of the new chamber of commerce. After a series of consultations, it was reported, the new heads of the Chongqing General Chamber of Commerce (重慶商務總會總) were elected at the county temple on October 18, 1904.

On October 27 the founding ceremony was held at the Temple of the Brotherhood of Three (三忠祠). In addition to electing a general and an assistant manager (*zongli* 總理 and *xieli* 協理), sixteen merchant managers (*shang dong* 商董) were chosen for the board of the chamber of commerce. Each *bang* of the city was further required to name a Primary and Vice Manager (*zheng dong* 正董 and *fu dong* 副董) to represent its trade and to register officially with the provincial government. A series of bylaws were adopted, and with this the Chongqing General Chamber of Commerce was officially founded.

The establishment of Chongqing's chamber of commerce technically<sup>79</sup> superseded or subsumed all other existing forms of merchant organization.<sup>80</sup> By the Xuantong (宣統) era (1909-1911) it had fully replaced the Eight-Province Association as the primary liaison between the local state and the city's merchant population and became an official clearinghouse for all sorts of information about the merchant

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<sup>78</sup> *Sichuan guan bao* 1905, month 1, *xiagun* (no. 1), at QMGBHB, 24581.

<sup>79</sup> "Clear and Simple Regulations for Chambers of Commerce," DQFGDQ, 2992.

<sup>80</sup> The *ba sheng huiguan* was more or less replaced by this new organization although the transition from one to the other took several years and was not a straightforward story of substitution. 8 of the 16 manager positions of the 1905 COC were held by BSHG heads, as was the assistant manager (協理), but not the *zongli*. Still, the COC eventually eclipsed the BSHG. On the decline of the BSHG in the late nineteenth and early twentieth centuries, see Liang Yong, "Chongqing's Qing Dynasty Eight-Province *Huiguan* [*Qing dai Chongqing ba sheng huiguan* 清代重慶八省會館]," *Lishi dang'an* [歷史檔案] 2, (2011) and Liang, *Immigrant, Nation, and Local Authority*, 304-305; Some former collective responsibility heads resigned their posts to assume offices as representatives in the Chongqing General Chamber of Commerce. One example, from 1908, of such a resignation can be found at SPABX: 54-1291; 14.

population and the market. Among other things, the chamber of commerce compiled information about the status of official funds stored in private firms for the accrual of interest,<sup>81</sup> reported on behalf of individual merchants about the loss of notes that subsequently had to be cancelled by their issuers,<sup>82</sup> and gathered statistics on industry-wide market performance for official use.<sup>83</sup>

At the administrative level, the chamber of commerce was entrusted with joint supervisory responsibilities for maintaining up-to-date pledges of mutual responsibility for the men hired to ship goods and silver<sup>84</sup> and was solicited for creating guidelines about commerce, such as those governing the opening and registration of money shops.<sup>85</sup> As the *ba sheng huiguan* had done in previous times, the Chongqing General Chamber of Commerce also represented the city's merchants to the state in the course of negotiations over the city's policies of taxation.<sup>86</sup> The empire's new chambers of commerce were thus employed in a range of tasks pertaining to collaboration between merchants and officials in governing the market and facilitating the growth of Chinese business. But in spite of being officially charged with these functions for the first time, none of these duties of coordination between the market and the local state indicate a major substantive shift from the activities of earlier merchant groups and other administrative intermediaries. The same can be said of the new policies about the disposition of commercial disputes in chambers of commerce.

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<sup>81</sup> SPABX: 54-0969.

<sup>82</sup> SPABX: 54-1224.

<sup>83</sup> SPABX: 54-3587.

<sup>84</sup> SPABX: 54-1408.

<sup>85</sup> SPABX: 54-0964.

<sup>86</sup> SPABX: 54-1236.

## Commercial Disputes in New Policy Chongqing

On paper, the dispute mediation duties of China's new chambers of commerce were not particularly noteworthy. On the one hand, they were explicitly appointed as forums of first instance for disputes between Chinese and foreign merchants, so that commercial disputes involving individuals protected under extraterritoriality treaties could be solved without recourse to court.<sup>87</sup> On the other hand, the fifteenth regulation in the Clear and Simple Rules for Chambers of Commerce, which addressed mediation between Qing subjects, amounted to little more than a formal statement of conventions that had been practiced for over a hundred years in port cities throughout the empire. The text read:

Each Chinese merchant who encounters a dispute may report the affair to the chamber of commerce. The general manager and vice manager will set a date to invite the merchant managers to come together, mediate and discuss the issue in a fair manner, and issue an arbitration verdict on behalf of the group (從眾公斷). If the two parties will not submit to the verdict, it is permitted to submit the case to local authorities for investigation and handling.<sup>88</sup>

The historian finds nothing new in the content of this characterization of merchant mediation, beyond a few phrases that resemble a later twentieth-century language of courts and litigation.

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<sup>87</sup> "Clear and Simple Regulations for Chambers of Commerce," DQFGDQ, 2992.

<sup>88</sup> "Clear and Simple Regulations for Chambers of Commerce," DQFGDQ, 2992. In 1890 Chongqing was officially made a treaty port. On March 1, 1891, Chongqing is officially made an Open Port, as the Maritime Customs office is established. According to historiographical conventions, the opening of the port to foreign exchange marks the beginning of Chongqing's "semi-colonial" age. Chongqing's transformation into a treaty port led some of the more adventurous foreigners in China to establish businesses there, but their number peaked at around 50 firms (See Zhou, *The Rise of an Inland City*, 125) and their presence seems to have had no impact on trends in commercial dispute mediation in the city. For several perspectives on the economic, social, and political impact of Chongqing's 1891 inclusion in the foreign treaty port system, see the various essays assembled in Meng Guanghan (孟广涵) et al., eds., *The Course in Last 100 Years: The Centennial Anniversary of Chongqing Opened as a Port for Foreign Trade* [一个世纪的历程——重庆开埠 100 周年], (Chongqing: Chongqing chubanshe, 1992.) On the economic development of Chongqing from 1876 to 1911 and beyond, see Zhou Yong and Liu Jingxiu (刘景修), eds., *The Economic and Social Development of Modern Chongqing* [*Jindai Chongqing jingji yu shehui fazhan* 近代重庆经济与社会发展] (Chengdu: Sichuan daxue chubanshe, 1987). The Ba County archives contain several examples of cases between foreign and Chinese merchants that employed chambers of commerce. For examples of disputes filed by foreign firms that involved chambers of commerce, see SPABX: 31-02424; 31-02395; and 55-00725.

In fact, this rule – the fifteenth regulation in a list of twenty-four regulations on forming chambers of commerce – simply gave explicit expression to practices of merchant mediation that had been common for at least a century. But in spite of the lack of novelty (or, indeed, perhaps because of it), this regulation changed the way that commercial disputes were handled in Chongqing. It did so by offering something that more than a hundred years of state-building and dispute resolution experience could not: explicit sanction. By providing a formal and explicit acknowledgment of the mediation labor that had been performed by merchants and courts for more than a century, this regulation provided a new set of solutions to the one irremediable problem of the magistrate: the legal ambiguity of *xi shi* cases. The next section will detail how commercial dispute resolution changed immediately after the promulgation of the 1904 regulations on chambers of commerce, in order to illustrate how and why this shift effected the relationships between the court of Chongqing and the administrative intermediaries upon which it relied.

#### *From Legal Ambiguity to Legal Transformation*

The fifteenth regulation of the Simple and Clear Rules for Chambers of Commerce gave imperial sanction to the idea that a non-court mediation forum could resolve a commercial dispute in a way that the larger world of bureaucratic information could account for.<sup>89</sup> The central state's recognition of the mediation verdicts of a single kind of institution, to be sure, did not provide a panacea for all of the ills that plagued the commercial dispute mediation process. But it changed the way that these cases were handled almost overnight. The world of mediation went from being legally pluralistic in fact, but not in

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<sup>89</sup> Chiu Pengsheng concludes that the founding of chambers of commerce changed mediation by merchant groups from “informal” to “formal;” see his “Urban Courts: Changes in the Litigation Behaviors of Late Qing Suzhou Merchants [*Chengshi zhong de fating jizhi: Wan Suzhou shangren susong moshi de bianqian* 城市中的法庭機制：晚清蘇州商人訴訟模式的變遷],” delivered at “Examining Chinese Modernity from the City [*Cong chengshi kan Zhongguo de xiandaixing* 從城市看中國的現代性],” Taipei, Academia Sinica Modern History Institute, June 28-29, 2007.



name, to being a system of nested hierarchies over which the state now claimed ownership and provided recognition.

Chongqing's overworked *yamen* quickly and easily made the shift to delegating more mediation tasks and collaborating more closely with non-court groups in the resolution of commercial disputes. As soon as there was a clear dynastic commitment to the possibility of employing non-court mediation forums in the process of *xi shi* mediation, cases became much more likely than ever before to be delegated to other forums on the occasion of the first suit. This is demonstrated in the below table, which records the number of cases delegated to other forums in the rescript on the first suit:

#### 8.1 Cases Delegated to Other Forums in the First Suit 1770 to 1911

Cases	Years	No.	%
<b>20</b>	1770 to 1805	3	15%
<b>18</b>	1806 to 1860	1	6%
<b>16</b>	1861 to 1875	2	13%
<b>19</b>	1876 to 1885	5	26%
<b>16</b>	1886 to 1895	0	0%
<b>18</b>	1896 to 1904	1	6%
<b>33</b>	1905 to 1911	13	39%
<b>140</b>		25	18%

The portion of cases sent directly to other mediation forums from the magistrate's court after 1904 was more than one and a half times greater than any period before, and more than four times the portion of the period immediately preceding it.

At the same time that the court became more capable of consistently enforcing the division between issues that required court attention and issues that could be mediated in other forums, the likelihood that cases delegated out to other groups for mediation would be resolved without further court intervention increased dramatically. The following table documents the number of cases which, after first being delegated to other forums in the initial suit, were not later brought back to the court:

## 8.2 Cases that End on Delegation to Other Forums without Court 1770 to 1911:

Cases	Years	No.	%
<b>20</b>	1770 to 1805	3	15%
<b>18</b>	1806 to 1860	0	0%
<b>16</b>	1861 to 1875	1	6%
<b>19</b>	1876 to 1885	1	5%
<b>16</b>	1886 to 1895	0	0%
<b>18</b>	1896 to 1904	0	0%
<b>33</b>	1905 to 1911	10	30%
<b>140</b>		15	11%

The proportion of cases settled after delegation to another forum without further court action was double, after the promulgation of the fifteenth regulation, than what it was in any period before. In contrast to a peak of 15% of cases resolved after delegation in the Qianlong era, and minimal numbers throughout the nineteenth century, after 1904 almost one third of cases were resolved outside of the court at the magistrate's command before a trial was ever summoned.

Neither the ability of the court to recognize the division of labor between its functions and the functions of other groups nor the validity of settlements from non-court groups were innovations in this period. The thing that mattered, in this case, was not the practice but the rationale behind it as the chamber of commerce regulations provided the first centrally-recognized rationale for moving cases out of the court and into other forums in the century and a half since the practice was made illegal in the 1764 sub-statute discussed in Chapter Two. The existence of a formal statement of the division of labor that had existed for over a hundred years in the realm of legal ambiguity meant that, after 1904, the court was able to completely and finally shift the information burden of dispute mediation to other forums. This led to unprecedented forms of integration between the court and other mediation forums in commercial cases.

One example of this change can be cited in the 1908 case filed by a member of the De Feng Yuan (德豐元) mountain goods<sup>90</sup> firm suit against Luo Fengxiang (羅鳳祥). The first suit of this case read:

Two years ago, Luo joined the firm and collected capital on several occasions to procure mountain goods. For several years, accounts between his purchases and disbursements were reckoned without any issue. In the sixth month of this year we demanded a shipment from him to Shanghai, and he delayed repeatedly. The firm was required to send one of its employees out to bring Luo back so that he may be submitted to members of the *bang* for a reckoning of accounts. All told he owed the shop over a thousand taels. Minus the portion that was forgiven him, he owed a total of 822 taels, 4 *qian*, and 6 *fen*. The totals were written on the firm account registers. On Day 27 of the eighth month he shipped over 100 taels-worth of goods, leaving just over 700 taels owed. A detailed list has been submitted to the court for inspection. It was agreed that he would continue to pay by the ninth month, but he delayed without sending anything until the tenth month [the month before the suit was filed]. The firm sent an apprentice to hasten the shipment, but he treacherously delayed and wouldn't listen. Clearly he is attempting to defraud us. But since I am in another jurisdiction and would be alone if I went to demand payment, and have encountered such a plot, my business is threatened and I am forced to submit a plea that this account be kept on file so that, when he returns to Chongqing, he may be brought to trial for pursuit of the amount owed. I humbly submit to the court in supplication.<sup>91</sup>

Three “reckoning witnesses” (*suan zheng* 算證) were listed on the complaint. The magistrate responded, simply, that it was “Permitted to keep the record on file (準存案).”

Nothing was heard of until six months later, when De Feng Yuan filed a second suit. This time, Luo was physically handed over to the court. The plaintiff explained that Luo had come back to Chongqing to buy goods, but had refused to settle. “He dared to threaten me,” De Feng Yuan reported, “and has embezzled and cheated me. If the court does not grant permission to pursue the full amount owed, just as the previous deadlines to return the money were ignored, so will all future attempts to recover the money be fruitless. I fear that he will flee together with the goods, and the money owed to me

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<sup>90</sup> Mountain goods (*shan huo* 山貨) is a general term used in Chongqing business to describe the commodities harvested from the mountains and plateaus of the greater southwest to markets downriver. They include mushrooms, several dozens of kinds of medicinal herbs, and animal pelts.

<sup>91</sup> SPABX: 45-28044; 2.

will disappear, so I have brought him to court to plead for a trial so that the remaining payment may be pursued.”<sup>92</sup>

The magistrate permitted the requested trial, but nothing was heard again until, a month later, the plaintiff filed suit once more. He reported that Luo had begged a third party, one Wang Yunji (王雲集), to discuss the matter on his behalf, and that after the defendant had forgiven another 80 taels it was agreed that the remaining 600 owed would be guaranteed by Wang, who would pay over the amount as soon as a shipment of the defendant’s goods slated for sale in Guangdong were sold off. De Feng Yuan accepted the terms, and reported that “although I have already assented to show lenience to the defendant, I have not yet received any money from him. If the goods are sold and he does not repay the money owed to me, I will request once more for the court to grant me a trial.”<sup>93</sup> In response, the magistrate’s rescript read: “According to your report the affair has already been settled. If Luo Fengxiang sells the goods and does not repay the money owed, then it will be permitted to request a trial and pursuit of the money.”

Among the cases assembled for this project, this is the first instance where an individual was ever allowed to place a dispute mediation outcome “on file” at the magistrate’s office. Not only did this action sanction the result of a mediation settlement with official recognition, it also tied the fulfillment of its terms to the threat of court execution. These things, for the reasons outlined previously in Chapters Six and Seven, were not possible when *xi shi* existed in the realm of legal ambiguity. But as soon as information from mediation groups was able to be handled officially, it became a feasible solution to forestall the potential of a debtor to evade payment of a recognized obligation.

The integration of mediation resolutions and court processes only increased with time. By 1908, the year of the case above, the Chongqing General Chamber of Commerce was even commanded to

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<sup>92</sup> SPABX: 45-28044; 4.

<sup>93</sup> SPABX: 45-28044; 5.

report all settlements to the relevant courts so that the decisions could be kept on file.<sup>94</sup> The existence of a formally recognized and exclusive forum of merchant expertise solved several of the most basic dilemmas of court mediation for commercial disputes. Even cases that previously might have dragged out for years could now be resolved as soon as the magistrate could compel both parties to mediate under the auspices of the Chamber of Commerce.

Take, for example, the following case. In 1908, Tang Jingxuan (唐經軒) filed a suit claiming that Chen Zihe (陳子鶴) had partnered with him in a venture selling cow hides, sheep pelts, and pig bristles. The two men each raised 80 taels in capital, and named their firm Hong Tai He (洪泰和). Within a year, however, the business had gone bust, and Tang reported that although Chen Zihe had returned to Chongqing five months ago, his partner was refusing to reckon, thus “forcing me to submit to the collective responsibility heads and the members of the *bang* at the Fragrant Garden for mediation, but he continued to resist and would not allow the group to reckon.”<sup>95</sup> Tang requested a trial, and the magistrate ordered him to submit to the *bang* and collective responsibility heads once more for “a thorough reckoning,” to dissolve the partnership, and to portion out responsibility for the remaining accounts, noting that “any resistance or cheating will warrant punishment and investigation (違估干究).”

A week later, Tang reported that he had invited Chen Zihe and his brother (who had also been involved with the firm) for a reckoning at the Donghua Temple (東華觀), but they had “violated the rescript and refused to reckon (藐批不算).”<sup>96</sup> He pled with the court for a trial, and the magistrate permitted the suit. In a countersuit Chen Zihe claimed that it was Tang who embezzled from the firm and that Tang’s allegations were false. Two weeks later, the parties were in court and both sides continued to

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<sup>94</sup> SPABX: 323-01740; 6.

<sup>95</sup> SPABX: 45-28096; 2.

<sup>96</sup> SPABX: 45-28096; 3.

dispute the terms of the partnership and accounts, and the magistrate issued a verdict ordering the men to “submit to the witnesses on file for a clear reckoning of accounts, and then await a second trial.”<sup>97</sup>

A few days after trial several *bang* representatives and a collective responsibility head reported that the accounts had been reckoned, and the magistrate summoned the parties back to trial. However, on the very next day, the defendants insisted that Tang’s accounts had been forged, and, as a result, the mediation verdict was mistaken. After one more court order to mediate and another failed attempt the magistrate showed signs of exasperation at the third trial: “The two parties have a dispute over unclear accounts. But who is telling the truth and who is lying?”<sup>98</sup> Then he said: “Send a communication to the chamber of commerce to meet together with the original mediation witnesses, and reckon everything clearly, then summon for trial.” An official request was then sent to the Chongqing General Chamber of Commerce, and a month later the chamber sent word to the magistrate. They wrote that they had uncovered discrepancies in Chen Zihé’s accounts, and also that Tang’s records had clearly been altered. Failing to uncover the truth, the heads of the chamber of commerce instead suggested that Chen Zihé had agreed to pay over a settlement of 40 taels and the two parties had agreed to settle the issue. The chamber of commerce submitted two pledges of resolution by each party, and the case concluded. The dispute was resolved after only six months of mediation.

Unlike before, the court of Chongqing now had a pretext for treating mediation settlements as formal outcomes. Furthermore, in cases where mediation had stalled, it could explicitly order another forum to sort out conflicting claims and directly resolve disputes. The magistrate’s ability to handle information from non-court sources as official and reliable lessened the ambiguity and problems of agency that had defined *xi shi* litigation in earlier decades and allowed the court to move more swiftly

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<sup>97</sup> SPABX: 45-28096; 8.

<sup>98</sup> SPABX: 45-28096; 20.

through the mediation process. As the following table shows, after 1904 the total proportion of cases requiring more than six months was halved:

8.3 Cases Requiring Six or More Months after the First Court Date to Resolve, 1770 to 1911<sup>99</sup>

<b>Total</b>	<b>Years</b>	<b>6 or more months</b>
<b>20</b>	1770 to 1805	5%
<b>18</b>	1806 to 1860	0%
<b>16</b>	1861 to 1875	0%
<b>19</b>	1876 to 1885	26%
<b>16</b>	1886 to 1895	31%
<b>18</b>	1896 to 1904	38%
<b>33</b>	1905 to 1911	18%

Cases after 1904 were much more likely to be resolved five months after the court date than they had been at any time in the previous thirty years when complex cases first began to drive up the intensity and length of court involvement in dispute resolution. This was in spite of the fact that business arrangements became even more sophisticated after the turn of the century, and the complexity of commercial disputes did not diminish.

One of the most important contributing factors to the increasing speed with which the court handled disputes after 1904 was the changing relationship between the court, the groups that it relied upon, and the information that passed between them, which could now be treated as official. As a result of their formal recognition, chambers of commerce were given explicit permission to report to local officials and the Bureau of Commerce in the regulations according to which they were formed in 1904.<sup>100</sup> Initially, this power was not directly intended to play a role in commercial dispute resolution. Rather, merchants were expected to use the forum of chambers of commerce to relay information about commercial abuse,

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<sup>99</sup> These percentages were arrived at by adding the number of cases taking over six months to resolve (in Table 8.3) and dividing by the total number of cases.

<sup>100</sup> “Clear and Simple Regulations for Chambers of Commerce,” DQFGDQ, 2992.

problems or solutions within the market, suggestions for how to improve trade, quarterly reports, new inventions, or methods that deserve reward for official apprehension and dissemination.

But it took almost no time at all for the import of the reporting functions of merchant groups and other forums to show up in the way that cases were handled. The case sample shows a sharp spike after 1904 in the number of resolutions – which could now be formally accepted by the court once more – reported to the court:

#### 8.4 Cases that End on Reports of Resolution after court 1770 to 1911

<b>Cases</b>	<b>Years</b>	<b>No.</b>	<b>%</b>
<b>20</b>	1770 to 1805	3	15%
<b>18</b>	1806 to 1860	2	11%
<b>16</b>	1861 to 1875	2	13%
<b>19</b>	1876 to 1885	3	16%
<b>16</b>	1886 to 1895	2	13%
<b>18</b>	1896 to 1904	4	22%
<b>33</b>	1905 to 1911	13	39%
<b>140</b>		29	21%

Taken together with the cases resolved by delegation above, these combined changes show that the number of cases explicitly handled by non-court groups went from around one quarter to more than two thirds after 1904:

#### 8.5 Cases Handled by Delegation or Ending with Resolution Reports: 1770 to 1911

<b>Cases</b>	<b>Years</b>	<b>No.</b>	<b>%</b>
<b>20</b>	1770 to 1805	6	30%
<b>18</b>	1806 to 1860	2	11%
<b>16</b>	1861 to 1875	3	19%
<b>19</b>	1876 to 1885	4	21%
<b>16</b>	1886 to 1895	2	13%
<b>18</b>	1896 to 1904	6	28%
<b>33</b>	1905 to 1911	21	67%
<b>140</b>		44	31%



From 1904 forward more cases were resolved by mediation after the court instructed litigants to seek out other forums. More cases were resolved directly after the court ordered other groups to participate in the resolution process. And fewer cases required long periods of direct court enforcement before settlement.

None of the changes that led to more rapid court resolutions were related to fundamental shifts in the ways that the court relied upon groups. Rather, the trend toward swifter settlements resulted from the notion that non-court forums could officially operate in the public interest and with the recognition of the state. The central government's recognition of what had been presumed in local practice for over a hundred years gave new meaning to existing behaviors. Information from mediation groups that previously had to be couched in verdicts with circumspection, to leave room for possible error and cheating, could now be directly and explicitly cited by the court. Without granting administrative intermediaries the power to make or enforce law, this regulation and the institutional trends surrounding it sanctioned the basic division of labor that had unfolded over the course of more than a century of court-merchant negotiation of commercial disputes.

Once the division between court prerogative and non-court mediation functions was recognized by the central state, it was rapidly absorbed into both practice and policy at the local level. In the years following the promulgation of the chamber of commerce regulations (and the 1909 Qing court reform policies which cannot be reviewed here because of space constraints), the distinction between mediation – which could happen voluntarily in a range of forums – and punishment or enforcement – which could only happen in court under court supervision – became a critical component in the way that disputes in every sector were handled.

The distinction between mediation and enforcement can be documented in local policy at least as early as 1908, the year that the Sichuan Planning Office for Courts (四川審判廳籌辦處) released a “Letter Outlining Several Views on the Preparation for Courts.” In this document it was noted that

commercial issues resolved by the chamber of commerce were, by nature, mediation (仲裁性), in contrast to court verdicts which implied the threat of force for non-compliance.<sup>101</sup> As soon as the distinction between the mediation duties of non-court forums and the enforcement powers of the state was made explicit and credible, the court became increasingly identified with its long-established role as enforcer and required more and more of the mediation functions of the resolution process to happen under the auspices of other forums.

The mediation of commercial disputes was, by 1911, directly identified with the Chamber of Commerce. As the Sichuan police bureau concluded in a report on the use of mediation and its relationship to the court process, “Every time that a merchant has a purely commercial dispute (純全商事糾葛) it may be handled by open mediation at the chamber of commerce (由商會公斷).” By this time, the ability of merchant mediation forums to handle disputes was also explicitly linked to court supervision of settlements. The police commission on mediation concluded that when two parties to a mediation in the chamber of commerce were unable to settle and unable to find others willing to serve as guarantors, “[t]he Chamber of Commerce may send both parties to the Court to initiate litigation, so that a verdict to continue to settle (再行斟酌) may be handed down and the defendant may thus be retained in the custody of the court until, after the notification of a settlement by the Chamber of Commerce, the case is dismissed.”<sup>102</sup> In this framing, the distinction between the mediation and information functions of dispute resolution – which had been handled almost exclusively by non-court forums for over a century – were linked to the enforcement duties of the state in a fully integrated and formal policy of cooperation. In keeping with this new, unified vision of multi-forum commercial dispute resolution, it was finally and explicitly declared that “[if] a dispute cannot be settled, and the two parties initiate litigation, then the Chamber of Commerce may outline the circumstances of the case and the decision of the open mediation

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<sup>101</sup> SPABX: 32-01740; 6.

<sup>102</sup> SPABX: 54-1777; 1.

(由商會敘明事實及公斷理由) in a report to the court as reference.” Like the other policies and initiatives discussed above, these local regulations did not propose to alter anything at all about the division of labor between the court and non-court mediation forums, but the explicit statement of practices that were already well established was an important part of the nationalization of instruments of mediation and interpretation into a single, connected complex of dispute resolution systems.

The policy of formalization and standardization of existing practices and institutions of commercial dispute mediation turned what had been a mounting crisis of court authority into a sophisticated, articulate, and rapidly-improving system of integrated dispute resolution forums in the early years of the twentieth century. The implications of this shift were both logical and predictable outcomes of the resolution of the legal ambiguity that had previously plagued the court process. An example of the extent to which non-court mediation dovetailed with court enforcement and judgment in these years is found in the 1910 case filed by Li Jisan (李級三). In his suit, Li claimed that the three men who had partnered with him and his older brother, Li Yunfeng (李雲峰), had implicated themselves in the suspicious death of Li Yunfeng, who had fallen ill while away on business in Hankou.

Li Jisan reported that he had received news from one Liu Bingwen (劉炳文) that before Li Yunfeng’s death he had written a letter in his own hand for the plaintiff. When the other members of the firm finally returned to Chongqing, Li charged, they refused to return the letter written by his deceased brother and avoided him in spite of the fact that his brother’s investment in the firm had yet to be reckoned and paid out. Li reported that these actions combined with the fact that Li Yunfeng’s corpse had been buried in Hankou without his permission to “arouse further suspicion in my mind.”<sup>103</sup> In his suit, in which he wondered: “Can it be that they actually plotted his death with the intent to embezzle the money and goods? Is this why they failed to inform me of his death? Truly there is some treachery in all of this!”

The seriousness of these allegations led to a swift trial, and the magistrate interrogated the

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<sup>103</sup> SPABX: 55-02695; 2.

involved parties two days after the suit. The defendants, in their deposition, reported that after Li Yunfeng's sudden death, "We submitted to the heads of the Sichuan Ancestral temple (川祖宮首事) to serve as witnesses to the burial," and claimed that Li Jisan's allegations had been brought under the advice of Liu Bingwen to try to extort money from the partnership.

The magistrate's verdict reflected the subtle but critical shift in the role of non-court mediation forums in the New Policy era. He ruled that "Li Jisan's elder brother Li Yunfeng died of illness in Hankou last year, and so the body was taken to the Sichuan Ancestral Temple for examination and the partnership accounts were reckoned. The account books were stamped and noted accordingly, and the body was buried. Truly this is an unfounded suit (妄控) and verily does it fly in the face of reason! Liu Bingwen shall be slapped for inciting litigation and will be taken into custody pending pursuit of the amount that he owes. He is given a deadline of three days to hand over the money and will be punished if he delays." With this, the magistrate rejected the allegations of the plaintiff Li and punished the witness Liu for attempting to undermine a standing settlement. By 1910, it was not only preposterous to claim that non-court forums could not resolve disputes (as the court had begun to presume in the last decades of the nineteenth century): it was punishable to even question them without serious evidence.

In the last decades of the nineteenth century, magistrates had already begun to respond with incredulity to plaintiffs' claims that a wide range of issues could not be settled in mediation without court assistance. As this case demonstrates, by the conclusion of the first decade of the twentieth century asking the court to intervene in a dispute when a settlement had already been reached outside of court was not only preposterous, but punishable. And this logic did not hold only for chambers of commerce. Even mediation in a non-local, not officially recognized forum carried force in Chongqing's local court after 1904. Understanding how and why this was the case is the final piece to appreciating the truly sweeping scope of the shift from legal ambiguity to a national framework for the resolution of commercial disputes.

## Conclusion

It has been assumed that, by the time formation of chambers of commerce across the empire, merchant groups had accumulated such an expertise in handling disputes that recognizing the authority of chambers of commerce to resolve commercial disagreements was little more than an official capitulation to the monopoly over commercial governance that “guilds” had previously retained. This assumption is in line with nineteenth-century and twentieth-century observations by non-Chinese writers that the conduct of commerce had never fallen under the purview of the state and was instead governed by merchants themselves in a purely social realm. Observations by contemporaries and historians alike that chambers of commerce played an important role in the resolution of commercial disputes after their founding initially seemed to support the idea that the state had never managed to assert its authority over this private domain of merchant authority.

The dispute mediation patterns covered in earlier chapters of this work belie the simplicity of the standing presumption that merchant groups directly or even primarily controlled the outcome of commercial disputes, which must instead be understood within the context of a much larger, more distinctly defined, and sophisticated world of imperial justice. The complicated nature of state-group cooperation expanded well beyond the authority of merchant groups alone, and even in the age of chambers of commerce, mediation forums were only one small part of a much larger and more complicated world of mediation. For this reason, the tendency of scholars to study the history of commercial dispute resolution as nothing more than an outcome of the history of commercial groups (such as *huiguan* and *bang*) must be dismissed as too narrow a focus to appreciate the truly imperial scope of the history of commercial obligations and their negotiation.

To begin with, it can be irrefutably demonstrated that in Chongqing merchant groups were neither the sole nor even the main forum of first instance for disputes between merchants before 1904, and that even after this year commercial disputes were settled in a number of forums outside of merchant groups:

8.6 Reports of Mediation in Non-Court Forums before Litigation 1770 to 1911<sup>104</sup>

<b>Years</b>	<b>Third Party</b>	<b>Collective Responsibility</b>	<b>Merchant Group</b>	<b>Other/ Unknown</b>
<b>1770 to 1805</b>	2 (10%)	8 (40%)	0 (0%)	2 (10%)
<b>1806 to 1860</b>	0 (0%)	8 (44%)	0 (0%)	3 (17%)
<b>1861 to 1875</b>	6 (38%)	2 (13)	0 (0%)	5 (31%)
<b>1876 to 1885</b>	2 (11%)	9 (47%)	2 (11%)	7 (37%)
<b>1886 to 1895</b>	2 (13%)	4 (25%)	4 (25%)	9 (56%)
<b>1896 to 1904</b>	0 (0%)	5 (28%)	4 (22%)	10 (56%)
<b>1905 to 1911</b>	3 (9%)	15 (45%)	17 (52%)	6 (18%)
	15 (11%)	51 (36%)	27 (19%)	42 (30%)

Furthermore, merchant associations were directly commanded by the court to handle parts of the resolution of commercial disputes with no more frequency than the other forums which might be engaged to assist the magistrate in negotiating a settlement. As the below table shows, not even the 1904 order to found a chamber of commerce seems to have fundamentally altered the relatively even distribution of court orders to non-court mediation intermediaries:

8.7 Court Orders to Non-Court Mediation Intermediaries, 1770 to 1911<sup>105</sup>

<b>Years</b>	<b>Third Party</b>	<b>Collective Responsibility</b>	<b>Merchant Group</b>	<b>Other/ Unknown</b>
<b>1770 to 1805</b>	1 (5%)	6 (30%)	0 (0%)	0 (0%)
<b>1806 to 1860</b>	5 (28%)	0 (0%)	2 (11%)	1 (6%)
<b>1861 to 1875</b>	2 (13%)	1 (6%)	0 (0%)	1 (6%)
<b>1876 to 1885</b>	6 (32%)	3 (16%)	4 (21%)	3 (16%)
<b>1886 to 1895</b>	8 (50%)	3 (19%)	1 (6%)	2 (13%)
<b>1896 to 1904</b>	7 (39%)	4 (22%)	5 (28%)	5 (22%)
<b>1905 to 1911</b>	12 (36%)	8 (24%)	9 (27%)	2 (9%)
	41 (29%)	25 (18%)	21 (15%)	14 (10%)

<sup>104</sup> This table summarizes all reports of mediation forums employed before court, including multiple reports per case. Multiple mediation in a single forum is counted once. Mediation in multiple forums is counted once per forum.

<sup>105</sup> Double-counting in cases with orders to multiple parties.

What does this diversity of dispute resolution activity in overlapping forums mean in estimating the importance of the fifteenth regulation of chambers of commerce if we cannot presume that it simply legitimated the exclusive authority of merchant groups over the market? It suggests that the real importance of a formal recognition of merchant mediation in chambers of commerce lies in the larger recognition that it signaled.

The evidence suggests that even the recognition of a single forum as part of a larger vision of cooperation between the court and other local institutions was enough of a pretext to countenance and officially incorporate more complicated processes of non-court mediation in the early twentieth century. The implications of this innovation were not confined to merchant groups alone, and without delay spread to every node of the dispute mediation process. In other words, although the major shift in dispute mediation patterns occurred after the 1904 promulgation of the Clear and Simple Regulations for Chambers of Commerce, changes in dispute mediation patterns cannot be attributed to the novelty or relative efficacy of the organizational form of chambers of commerce. They must instead be considered a product of state recognition of official collaboration with a wider range of local institutions.

We can know this, in part, because when the head of the Sichuan Bureau of Commerce and the Eastern Sichuan Circuit Intendant reported that the Chongqing General Chamber of Commerce was founded in October of 1904, he lied.<sup>106</sup> Perhaps, as Zhou had earlier reported, a handful of representatives from a small number of Chongqing's *bang* had gathered at a temple to express their support for another

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<sup>106</sup> On conflicting accounts of the year of the founding of Chongqing's chamber of commerce, see Deng Xiaolin (邓小林), "A Brief Discussion of the Import of the Founding of Sichuan's General Chamber of Commerce – A Comparison with Shanghai's General Chamber of Commerce [*Lüe lun qing mo Sichuan shang hui de jianli ji qi yiyi: jian yu Shanghai zong shanghui zuo bijiao* 略论清末四川总商会的建立及其意义——兼与上海总商会作比较]," *Fulin Shifan Xueyuan xuebao* [涪陵师范学院学报] 20, no. 1 (Jan. 2004): 85-89. This author concludes, in keeping with Zhou's report, that the Chongqing General Chamber of Commerce was officially founded in October of 1904, despite noting that other sources – such as the Ba County gazetteer – give a founding date of 1907. I did not suspect that this version of events might be wrong until, in the course of surveying the legal cases used here, I eliminated mention of the Chengdu and Shanghai *shang hui* only to find that no mention in either the legal documents or the administrative documents which I was able to collect may be dated back to 1905. For this reason, the 1907 date given by the Ba County gazetteer should probably be credited, but further investigation will be required to fix the date of the beginning of chamber of commerce operations in the city.

vague-sounding program of “reviving commerce” and “establishing accord between merchants and officials.” But regardless of whether or not they signed a piece of paper or performed a ceremony that technically resulted in the founding of a chamber of commerce for the city, I have so far been unable to find any evidence of activity by a body claiming to be the Chongqing General Chamber of Commerce before December of 1908.<sup>107</sup>

The regulation on chambers of commerce thus changed the way that disputes were handled in Chongqing several years before a chamber of commerce even existed in the city. Mediation groups did not suddenly become more proficient at finding resolutions to merchants’ problems. Indeed, the mediation groups do not seem to have changed at all from 1904 and before. The court did not suddenly gain the ability to issue its own interpretations of commercial obligations. It did no such thing in the cases assembled here. But what did happen is that, in the fifteenth regulation on the founding of *shang hui*, the central state gave the local courts of the empire the permission to do something that could never technically, officially, or legally be done before: mediation could be considered technical, official, and legal.

With this move and all of the attendant rhetoric and practice, the Qing state began the process of nationalizing the system of dispute mediation. The chamber of commerce regulations were merely the first explicit statement of this new commitment, and as soon as permission to collaborate openly with local groups – which were increasingly recognized and reorganized in successive New Policy reforms – was given, the process of rationalization and formalization of dispute mediation activities (not to mention the other diverse forms of governance) spanned all the way from the central state to the local level.

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<sup>107</sup> For this mention, see SPABX: 45-28096; 16, 20. The two earliest mentions of chamber of commerce mediation which I was able to track down, at SPABX: 31-02395 (April, 1906) and 31-02424 (October, 1907), reference mediation in Shanghai and Chengdu, respectively.



The regulation itself was only nominally important. The Chongqing General Chamber of Commerce – although it went on to play a critical role in the administration of the city in later decades of the twentieth century – did not even have to exist for the power of formal recognition of merchant organizations to electrify the web of responsibility that connected individuals to groups and thence to the state in the process of commercial dispute resolution. All that the local world of dispute mediation needed, after all, was exactly what Feng Guifen remarked: precedent.

The strength, with which existing local institutions bound together the individual, the groups within which he circulated, and the state that presumed to preside over them, was so durable and the act of formally recognizing them was so powerful that they survived not only 100 years of purposeful obfuscation, but the collapse of the Qing dynasty itself in 1911. The reforms that marked the last decade of the imperial state, long portrayed as the desperate last gasp of an empire trying to emulate the modern nations which were so superior to it, must be understood as something more powerful and built directly on the imperial legacy.

The language of law and the dream of nationhood was, indeed, borrowed or translated from the late nineteenth and early twentieth-century global discourses of rule to make a new statement about the relationship between the state, the court, the subject, and all of the groups that existed in between. But the Qing reforms embodied were more than a feeble attempt to introduce a foreign system of governance to the Chinese empire, as they have been previously characterized. This dissertation shows that historians' preoccupation with finding analogues to Western economic and legal history – in the influence of “guilds,” in the division between “civil” and “commercial” law, in the critical importance of codifying local practice to the creation of a modern judiciary – has led them to overlook the most sublime and ambitious implications of the era of fin-de-siècle reform, which were not the result of a straightforward borrowing but, instead, the culmination of over a century of institutional change and shifting political discourses.

When the nationalizing reforms of the New Policy era are considered in this light, it becomes clear that the notions of global modernity that jurists and officials drew upon did not entail the importation of political institutions from one culture into another, but rather the adaptation of a powerful discourse of statehood and sovereignty to the local institutions and dynamics of state-market-merchant relations in Qing China. From this perspective, it becomes clear that although the central state did codify several new principles of economic standards, behavior, and organization into its laws in the early twentieth century, historians should expect that the most important shift in the way that commercial disputes were handled occurred, instead, as the result of the organization and recognition of local groups and their collaboration with the state. It was through this channel, and not just the court reforms of the era, that the twentieth-century process of nationalizing the world of imperial justice began. The history of how this process continued to unfold after the fall of the Qing is, thus, not just a history of revolution and state failure: it is a history of China's encounter with and interpretations of a globally-shared experience of modernity.

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- DGSL *Veritable Records of the Daoguang Emperor* [*Xiao Min Cheng huangdi shilu* 孝敏成皇帝實錄].
- DLCY Xue Yunsheng (薛允升). *Duli cun yi* [讀例存疑]. 1905.
- DQFGDQ *Complete Compilation of Laws and Regulations of the Qing Dynasty* [*Da Qing fagui da quan* 大清法規大全], 6 vols. 1910. Reprint, Taipei Hongye shuju. 1972.
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- HCJSWXB Ge Shijun (葛士浚), comp. *Further Collected Writings on Statecraft from Our August Dynasty* [皇朝經世文續編 *Huangchao jingshi wen xu bian*]. 1888.
- HDZL *Qin ding da Qing huidian zeli* [欽定大清會典則例]. 1764.
- KXSL *Veritable Records of the Kangxi Emperor* [*Shengzu Ren huangdi shilu* 聖祖仁皇帝實錄]
- QJDBXXB Sichuan Daxue lishi xi [四川大學歷史系] and Sichuan Sheng Dang'an Guan [四川省檔案館], editors, *Selections from the Qing Qianlong, Jiaqing, and Daoguang Ba County Archives* [*Qingdai Qian, Jia, Dao Baxian dang'an xuanbian* 清代乾嘉道巴縣檔案選編]. Chengdu: Sichuan Daxue chubanshe. 1996. 2 volumes.
- QLSL *Veritable Records of the Qianlong Emperor* [*Gaozong Chun huangdi shilu* 高宗純皇帝實錄].
- QMGBHB National Library Document Reproduction Center [全國圖書館文獻縮微復制中心], editors. *Collection of Late Qing Official Gazettes* [*Qing mo guan bao huibian* 清末官報匯編].
- SPABX Sichuan Provincial Archives, Ba Xian collection.
- SZSL *Veritable Records of the Shunzhi Emperor* [*Shizu Zhang huangdi shilu* 大清世祖章皇帝實錄].
- TZSL *Veritable Records of the Tongzhi Emperor* [*Gong Kuan Yi huangdi shilu* 恭寬毅皇帝實錄].
- XFSL *Veritable Records of the Xianfeng Emperor* [*Kuan Min Xian huangdi shilu* 寬敏顯皇帝實錄].
- YZSL *Veritable Records of the Yongzheng Emperor* [*Shizong Xian huangdi shilu* 世宗憲皇帝實錄].

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