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**Adjudicating Grievances and Educating the Populace:  
Reflections Based on Nineteenth-Century Anthologies of Judgments**

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This very preliminary essay is dealing not with the history of Chinese law per se, but rather, with how it was implemented and what was its social impact at grass-roots level.

In a way, criminal cases involving heavy punishments (penal servitude and above), which were systematically reviewed by the upper echelons, even the emperor in some cases, can be said to be straightforward affairs in the sense that what was pursued was a perfect and unambiguous fit between the crime and the punishment, as prescribed in the relevant statutes of the Penal Code. This was the theory, of course. In practice, achieving the “perfect fit” could be extremely difficult because of the rigidity and, more often than not, very general nature of the Code, on the one hand, and the infinite variety and complexity of illegal acts in real life (or should we say the limitless imagination of criminals), on the other. Hence all the appeals, revisions, arguments along the hierarchy of courts, and discussions among the Ministry of Justice specialists, of which such a large amount have been preserved in the archival and published record; hence, too, the ongoing creation of new laws (the *tiaoli*, or statutes) aimed at meeting an ever larger variety of situations. But in all cases, the one-to-one relation between a crime and a punishment was the rule.

The situation seems to have been rather different at what I call “grass-roots level”. What I mean by this term is the sector of judicial administration that was left to the initiative of local magistrates; or in other words, whatever cases entailed no graver punishment than a beating. Of course the litigants could appeal to the higher courts if they were not satisfied with the judgment, and they appear to have done so quite often; but the magistrate’s decisions were supposed to be final, and he did not have to submit them to his superiors for review. This, as we shall see, appears in many cases to have left him with a large amount of freedom, not to say improvisation, in making them. These “home judgments”, as it were, are sometimes called *tangpan* 堂判 (court decisions) in the anthologies of administrative documents discussed below.

One reason for this flexibility is that the sort of affairs the local courts had to adjudicate were far from always, or even in a majority of cases, involving “crimes”. They were, rather, private disputes that materialized in the form of lawsuits, i.e. accusations (*gao* 告) lodged with the magistrates, to which would usually respond counter-accusations (*su* 訴) on the part of the defendants. These accusations and counter-accusations could very well cite criminal acts, such as injuries inflicted during a brawl, homicides, theft, pressure leading to suicide, sexual crimes, and many more, of which the magistrate would have to ascertain the reality and for which, if they were confirmed, he would have to propose a punishment and submit it to the review of his superiors. They could also cite various sorts of light offences, real or

assumed, for which it was in his power to decide on a sanction and have it enforced. But the important point is that most of these procedures had their source in private conflicts that private arbitration had not been able to resolve.<sup>1</sup> Even when no legal offences had been committed, it was the role of the magistrate to arbitrate the conflicts and impose a resolution that might or might not involve a punishment which he decided on his own initiative.

In other words, we are dealing here with this convenient but very elusive notion (in the case of imperial China), “civil law”. This is a rather murky area. As is well known, scholars disagree, sometimes violently, on the very existence of civil law in traditional China.<sup>2</sup> The term is rather often used to designate affairs dealing with family and marriage, real estate, and indebtedness (*huhun tiantu qianzhai* 戶婚田土錢債), for which there existed a certain number of statutes and substatutes, mostly in the “households” section of the penal code (*hulü* 戶律). However, the judicial archives and published judgments show that the magistrates’ decisions only occasionally referred to these laws, which were of a rather general nature anyway and cannot by any means be assimilated to a civil code. The question therefore arises of what were the sources of those decisions, which might or might not involve a punishment such as a beating or the cangue. When it was not the general principles formulated in the code, or local or provincial regulations, it could be more flexible and subjective notions such as “feelings” (*qing* 情), “reason” (*li* 理), local customs (*su* 俗), or even the observance of certain rites.<sup>3</sup> For his part, Wejen Chang has suggested that the body of internal rules adopted by the myriad self-governed organizations that structured Chinese society (be it lineages, professional organizations, village covenants, secret societies, or whatever) should be regarded as a sort of informal “civil code”,<sup>4</sup> and these rules too could be used as a source for legal decisions. In short, magistrates could very well resort not to the unbreakable rules of state law, but to something else that would be considered acceptable or even convincing by the locals provided it was regarded as “just”.

All of this left the judge, as I said, with no little freedom to arbitrate and impose decisions in “civil” (as opposed to criminal) matters. In fact, these decisions were often compromises that avoided a clear-cut allocation of right and wrong, helped save faces, and allowed life to continue without creating or maintaining lifelong, even multigenerational, enmities. That is why, even when family or community relationships were involved, people would not hesitate to submit their conflicts to official courts once the possibilities of private arbitration had been exhausted—or even well before that.<sup>5</sup>

<sup>1</sup> Cf. Wejen Chang, *Administration of Punishments in Late Imperial China* (draft), chap. 5, p. 1.

<sup>2</sup> At the turn of the twentieth century, Herbert Giles, a keen observer of China, where he had spent many years as a consul, considered that the Chinese are hardly constrained by law in their daily life because “there is nothing at all in the way of law, civil law being altogether absent as a state institution.” See Giles, *China and the Chinese* (New York: Columbia University Press, 1902), p. 88.

<sup>3</sup> See for example the interesting discussion in Zhang Xiaoye 張小也, *Guan, min yu fa: Ming Qing guojia yu jiceng shehui* 官、民與法：明清國家與基層社會 (Beijing: Zhonghua shuju, 2007), esp. p. 100; also her “Legitimate, but Illegal: Case Studies of Civil Justice in the Ming and Qing Dynasties”, *Études chinoises*, 28 (2009), p. 73-94, esp. p. 93-94 on the importance of rites to establish property claims.

<sup>4</sup> Wejen Chang, “Classical Chinese jurisprudence and development of Chinese legal system”, p. 52. I would hesitate, however, to speak (as does Chang) of “an informal ‘legal system’ that coexisted with the formal one”—or we would have to take the word “system” in a very loose sense. For the opposite view—that imperial legal culture and practice were exclusively penal—see for example Jiang Yonglin 姜永琳, “Cong Mingdai falü wenhua kan Zhonghua diguo falü de xingshixing: xiang Yang Yifan deng jiaoshou qingjiao” 從明代法律文化看中華帝國法律的刑事性——向楊一凡等教授請教 », *Ming Qing luncong*, n° 6 (2005), p. 111-128.

<sup>5</sup> In this sense I am not in complete agreement with Chang’s views, op. cit., p. 54, on a “daoistic” relativism in private relationships that would keep people away from the strictness of state-administered justice: state-administered justice was not necessarily strict and the two “branches”—state law and the “informal system”—were not necessarily separated and non-communicating.

In any case, these “local” affairs, which were not referred to the central government as long as there was no homicide involved, and which for this reason are absent from the capital archives, feature in abundance in the collections of their own judgments that were compiled and, for a significant proportion of them, published by a variety of field officials from the late Ming through the end of the imperial period.<sup>6</sup> I will come back later to these publications. The point here is that, by all testimonies, magistrates had to devote a great amount of time to dealing with “civil” cases, and that if it was so the reason was that in a general way people were prompt to go to court, even for trifles, to the extent that quite often magistrates had to receive and handle hundreds of complaints on a court day. This does not necessarily mean that Ming or Qing (or Song, for that matter) Chinese were naturally prone to litigation, although some of them certainly were; rather, as soon as they considered to have been offended or victimized in any way they tended to rush to the magistrate, assumed to be the fountain of justice, and definitely the ultimate source of authority, to have their wrongs righted and their opponents punished. This is of course something officials complained loudly about, as can be seen in many administrative handbooks: the small folks are not only stupid but also quick-tempered, they get into fights on the smallest pretext, they are urged by their relatives and friends to go to court right away, not to speak of their susceptibility to the influence of the infamous litigation masters (infamous in the official literature, at least). It was to deal with such impulsiveness that the best specialists were in favor of limiting the reception of complaints to a few days scattered over the month in order to allow people that had entered a fight to cool down and, hopefully, be amenable to mediation or reconciliation, before embarking on a lawsuit with all the costs, trials and risks involved.<sup>7</sup>

But, again, such tricks were not enough to prevent sizable numbers of aggrieved or furious litigants to bring their disputes to the courts in the hope of obtaining a decision in their favor. To be sure, it was not all emotional conflicts that erupted on the spur of the moment. It could also be protracted disputes that had exhausted all the possibilities of mediation. Moreover, some litigants were scheming types who tried coldly to take advantage of their opponents, or to intimidate them by going to court. And finally, certain “civil” conflicts, like those opposing rival lineage for the control of local resources, were endless affairs that might continue year after year, or even generation after generation, and be brought to the courts again and again.<sup>8</sup>

### The Paternalistic Approach

What was the attitude of magistrates (and sometimes higher officials, as we shall see) when confronted with this variety of more or less minor disputes, none of them “criminal affairs” properly speaking? On the one hand, lawsuits were seen as a bad thing: a good official was one with few lawsuits, proof that society was peaceful under his enlightened government. Indeed, magistrate handbooks and specialist anthologies of administrative papers do not lack proclamations to the populace encouraging them not to go to court, or even

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<sup>6</sup> They also feature in the few county or prefectural archives that have survived. I have described a number of these collections in my *Official Handbooks and Anthologies of Imperial China: A Descriptive and Critical Bibliography* (draft available on demand). See also the recent inventory in Miki Satoshi 三木颯, Yamamoto Eishi 山本英史 and Takahashi Yoshirō 高橋芳郎 (eds.), *Dentō Chūgoku hantoku shiryō mokuroku* 傳統中國判牘資料目錄 (Tokyo: Kyūko shoin, 2010).

<sup>7</sup> See for example Liu Heng’s 劉衡 remarks in his “Ten items on managing lawsuits” (*Lisong shitiao* 理訟十條), in *Yongli yongyan* 庸吏庸言 (1830 pref.) (Hubei Chongwen shuju ed., 1868), 2/44a-b. Also Chang, chap. 5, p. 34, as well as chap. 6, p. 18-23 on magistrates’ efforts to convince people to drop lawsuits and seek private mediation.

<sup>8</sup> I am thinking of the multi-generation conflicts between two lineages over the control of a lake in Hanchuan (Hubei), brilliantly analyzed by Zhang Xiaoye using judicial materials still kept in the families today. See “Legitimate, but Illegal”, p. 80-87.

forbidding them to do so for wrong reasons and let themselves be manipulated by litigation professionals. But on the other hand, everybody knew that lawsuits were a fact of life and that, in addition, the court was an important place for direct contact between the official and his constituents. As we shall see in the few examples introduced below, a dispute brought to court was both an occasion to sort out the ins and outs of the conflict from the maze of accusations and counter-accusations with which the magistrate was bombarded, and thus force the people involved to come back to reason, as it were, *and* to lecture them in the proper values and conducts. In both cases the magistrate's words and actions illustrate the strongly paternalistic nature of local governance in imperial China.

In Wejen Chang's words, "Traditionally it was up to the judicial officials to find the truth and render a judgment and, like parents deciding disputes between children, the 'parent officials' needed facts, not arguments, and considered arguments, most likely the work of litigation masters, liable [to complicate] the issues."<sup>9</sup> Yet officials did more than just ascertain the facts to decide disputes. As "parent officials" they were also supposed to take advantage of lawsuits to educate the people involved in the case, and the population at large beyond them, and at least the more committed among them took this very seriously. Chang also notes that "In cases where family members sued each other, it was thought to reflect a failure on the part of an official to educate his people", and that some officials went to great lengths to preach forbearance and encourage the litigants to put an end to the litigation.<sup>10</sup> It is a fact that conflicts, some of them quite vicious, between family (or lineage) members make up a significant proportion of the cases listed in the anthologies of judgments. They may concern inheritance, adoption, the division of assets and real estate, the position of widows, tombs, family rituals, or any combination of the above; and, incidentally, my impression is that a significant number of those that ended up in court occurred among well-to-do families, quite often with some lower gentry involved—*shengyuan* and *jiansheng* are frequently mentioned—in other words, families where there were indeed significant resources to squabble over. Whether magistrates actually took such family disputes as a personal failure is difficult to say, considering in particular that, especially in the nineteenth century, their tenure in any one locality was usually very short and they had not much time to "improve customs" and "rectify the gentry's ways".<sup>11</sup> But many were certainly shocked by the sight of members of a respectable family trying to take advantage of each other and publicly airing their enmity. In such cases—and in many other "civil" cases as well—the judgments posted at the yamen's gate would lecture the litigants and include admonitions motivated by the affair and directed at the entire constituency.

### The Collections of Judgments

As I said, not a few officials would compile and often publish their judgments—or more appropriately, anthologies of their judgments. They could do this either in works specifically devoted to this genre, or in particular sections of their anthologies of administrative papers (or *gongdu* 公牘). Individual anthologies of judgments seem to make their appearance in the late Ming (i.e., Wanli and later).<sup>12</sup> Both specialized anthologies and collections of judgments inserted in *gongdu* collections multiplied exponentially in the Qing.

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<sup>9</sup> Chang, chap. 5, p. 20.

<sup>10</sup> Chang, chap. 6, p. 20.

<sup>11</sup> Fan Zengxiang's six-year tenure in Weinan county, Shaanxi, in the late nineteenth century (see below) is clearly an exception. Whether the innumerable judgments and proclamations he posted during these years did anything to "change customs" is up to anybody to guess.

<sup>12</sup> Tam Ka-chai, "Justice in Print: Prefectural Judges of Late Ming China in the Light of *Mengshui zhai cundu* and *Zheyu xinyu*" (Ph.D. Diss., University of Oxford, 2009) speaks of about fifteen of them. (The two named in

Of course, judgments can be found in other places than the anthologies published by individual authors, from which my examples will be extracted. To begin with, they can be found in the more or less complete dossiers kept in a few accessible local archives, or sometimes (albeit rarely) in printed books published for pedagogical purposes.<sup>13</sup> They can also be found in a few collective anthologies, featuring texts from many writers, the first examples of which go back to the Song. In the late imperial period, half of the massive and famous anthology of administrative pieces from late-Ming and early-Qing authors published in 1663 as a commercial venture by the playwright Li Yu 李漁, the *Zizhi xinshu* 資治新書, is devoted to judgments (*panyu* 判語). And finally, judgments can be found in the collections of “leading cases” (*cheng'an* 成案)—that is, final decisions on criminal affairs approved by the emperor—that were published privately in ever increasing quantity from the early eighteenth century.

In fact, what is called here “judgment” for the sake of convenience covers a variety of documents which had different statuses in the judicial process, but whose common feature is that they all express the conclusions of their author on a given affair. There is, first of all, the important distinction between final judgments and judgment proposals. The former, which were delivered at various levels of the hierarchy depending on the gravity of the punishment incurred,<sup>14</sup> were immediately enforceable except in case of appeal, and the same is true of decisions in civil lawsuits that arbitrated between the litigants and did not involve a penal sanction. As for judgment proposals, they would be made final and enforced only after having passed through the review of the higher courts, which could involve lengthy exchanges and new rounds of investigation. In the anthologies the judgments, final or not, are called by a variety of terms, such as *panyu* 判語, *pandu* 判牘, *yanci* 讞詞, *yanyu* 讞語, *kanyu* 勘語, *shenyan* 審讞, and others; the proposals were often forwarded in the form of “communications” (*xiang* 詳, *bing* 稟, etc.) to the higher courts. But there were other sorts of documents, for example what we might call “findings”, or “investigation reports”, sometimes termed *kanxiang* 勘詳, which were presenting the results of the magistrate’s investigations and his first conclusions.

And finally, there is the very large corpus of “rescripts” (*pi* 批), which are essentially answers to the litigants’ complaints, accusations and other communications. From a formal viewpoint the main difference between the rescripts and judgments (between the *pi* and *pan*) is that the former are directly addressing the litigants, calling them “you” (*er* 爾), whereas the judgments are proffering their conclusions in an impersonal manner: in a sense, they are a public act whereby the state notifies its decisions to society (and indeed, they were not handed over to the litigants but posted at the gate of the *yamen* for everyone to consult). In practice—at least in the case of “civil” affairs involving more arbitration than legal sanction—the two types may be very close in content and in tone: the main difference in content being that, while a judgment is supposed to expose the circumstances that led to the judge’s conclusion in their entirety, even though all the details may not be included, rescripts are often limited to certain aspects of the case, especially when they intervene in the course and not at the end of

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his title are discussed in detail in the dissertation.) For my part I have been able to examine and describe seven titles. For a study of another of these late-Ming collections, Zhang Kentang’s *Xunci* (around 1630), see Jiang Yonglin, “Defending the dynastic order at the local level: Central-local relations as seen in a late-Ming magistrate’s enforcement of the law”, *Ming Studies*, 43 (2000), p. 16-39. Jiang is also preparing important work on yet another collection, Mao Yilu’s *Yunjian yanlüe* (published in the 1610s).

<sup>13</sup> One interesting example is the twenty cases published in 1838 as *Xue'an chumo* 學案初模 (Elementary models to study cases) by the governor general of Yunnan and Guizhou, Yilibu 伊里布, with twenty more cases published the following year as a *xubian*.

<sup>14</sup> See on this the convenient table in Derk Bodde and Clarence Morris, *Law in Imperial China, Exemplified by 190 Ch'ing Dynasty Cases* (Cambridge, Mass.: Harvard University Press, 1967), p. 116.

the procedure—in which case the texts are significantly shorter than judgments and the ins and outs of an affair may be difficult to understand. But *pi* may also convey a final decision and be the equivalent of a judgment.<sup>15</sup>

The various documents described above, as they are found in the anthologies of judgments (or judgments and rescripts), are, in principle at least, original, non-rewritten texts: they are the equivalent of an archive. There exist, however, “casebooks” of a very different sort, in which every entry *is* a recomposed narrative. The final decisions or proposals, or intervening rescripts, are rarely quoted in full, but the cases are recounted in their entirety, with an emphasis on the sometimes tortuous process of investigation that eventually led to the establishment of the truth and on the central role of the judge. These casebooks have their origin in three famous Song-period collections devoted to the resolution of difficult cases by sagacious judges, the *Yiyu ji* 疑獄集 (A Collection of Doubtful Cases), *Zheyu guijian* 折獄龜鑒 (The Magic Mirror for Solving Cases) and *Tangyin bishi* 棠陰比事 (Parallel Cases from under the Pear Tree), which went through numerous editions and amplifications during the ensuing centuries.

While these Song collections draw their material from historical sources (the *Tangyin bishi* actually draws it from the two other works), we have in the Qing several collections of such case narratives devoted to one particular official and composed by himself: the narrative is in the first person—that of the author-judge, who recounts the entire process from his own point of view: starting with the receipt of the complaint, describing his own investigations and those entrusted to his underlings, reporting in sometimes vivid exchanges the interrogation of the litigants and witnesses during court audiences or in more private sessions, and explaining how he has reached his conclusions and final decision. Lan Dingyuan’s 藍鼎元 *Luzhou gong’an* 鹿洲公案 (1729), composed by a model magistrate based on his two-year tenure in a Guangdong county, may be the best-known example of such casebooks.<sup>16</sup> The narratives, which can be quite extensive, involve a lot of rewriting of the original complaints, depositions, testimonies, official correspondences, etc., and the final result can be quite lively—much more at least than the more factual and sober accounts inserted in the formal judgments. Indeed, we are sometimes not far from the more literary *gong’an* genre, to the extent that some authors have been accused by commentators of bordering dangerously on fiction in the narration of their own cases.

These “rewritten cases” by individual authors won’t be used in this essay, but most of the time they offer the same sort of legal and social information as the judgments, occasionally with even more details. So, what is the value of this information for the historian?

### *Judgments as Historical Sources*

It seems to me that the judgments collected in the anthologies just described are valuable to the historian for two sorts of reasons. First, they are extremely useful as a source on the actual procedures and practices that prevailed in everyday judicial administration, with all conceivable variations depending on the region, the time, and the particular official. It does

<sup>15</sup> In the preface to his *Fanshan pipan*, discussed later in this essay, Fan Zengxiang notes that there is no lack in this work of *pi* which are *pan* (以批為判者，正自不乏), and that the reader will see for himself. He also says that *pi* are much more numerous because these are comparatively simple affairs which are arbitrated as they come in.

<sup>16</sup> 24 cases are narrated in great detail. To mention a few more collections I consider particularly interesting: Gu Linzhi’s 顧麟趾 *Shanyou yanyu ji* 山右讞獄記 (fifteen cases from the Jiaqing period, published at the end of the nineteenth century); Zha Guangtai’s 查光泰 *Shizheng lu* 實政錄 (early Guangxu period, of which there are two manuscripts at the National Library of Beijing); and a collection of anecdotes on his official career by a certain Su Tingyu 蘇廷玉, entitled *Congzheng zalu* 從政雜錄 (1843 preface), which includes many judicial cases, among others in the capital in the 1820s when the author was an official at the Ministry of Justice.

seem that a magistrate's or a prefect's idiosyncrasies, ideas, commitment, etc., could make quite a difference in the way affairs were treated. It would also seem—although much more research is needed to be more precise on this point—that the citizens' relationship with justice varied depending on time and place: the propensity to go to court, the social structure, the rate of literacy, the role of the legal specialists that were the “litigation masters” (*songshi* 訟師), and more generally the distribution of legal culture among the population at large—a legal culture that appears to have been disseminated to a significant extent through the so-called handbooks for litigation masters (*songshi miben* 秘本), whose audience exceeded that particular profession—none of these factors can be described in general and in the abstract. In short, the anthologies of judgments allow us to get a better grasp of “lived justice” in all of its variety.

More generally—and this is the second sort of reason—the collections of judgments are an invaluable source on local society (or should we say local societies). One of my favorite quotes comes from Miyazaki Ichisada's 宮崎市定 postscript to his translation of Lan Dingyuan's *Luzhou gong'an*: “There is no book more interesting on traditional Chinese society.”<sup>17</sup> By Lan's own admission, the twenty-four cases he selected for his anthology were cases whose circumstances were “somewhat exceptional” (*shaoyi* 稍異). It might actually be argued that, in a way, the more trivial the affairs, the more informative about society they are. The texture of everyday life—or should we say “real life”<sup>18</sup>—is more easily revealed in banal disputes than in sensational criminal affairs (although these too can be full of interesting information<sup>19</sup>). In any case, such stories frequently allow us to see ordinary people as autonomous, subjective actors, with their ordinary feelings and petty jealousies (or generosity and niceness), everyday worries and money problems, beliefs and values, and so on and so forth—in other words, not just the anonymous mass of “ignorant populace” (*yumin* 愚民) or conventional good and bad types of the elite discourse. Another feature is that judiciary documents in general are produced in the course of a process wherein by definition *facts* are ascertained with as much precision as possible in order to establish “the truth” and decide on sanctions—and along the way circumstances, places, people, occupations, social and economic relations, local customs, and so forth, are sometimes described with great realism.<sup>20</sup>

With this kind of source we are in fact faced with an immense field that largely awaits exploration—let's call it: a socioeconomic reading of ordinary conflicts. There have been some attempts, to be sure. To give but one example, David Faure has published a preliminary, but quite illuminating, study of commercial practices and litigation as revealed in the *Jiangqiu gongji lu*, an early-nineteenth century collection to which I will return right away.<sup>21</sup> I have myself gone through a number of such published cases in various collections, and it is from two of these that I am taking my examples in what follows, trying to suggest what they tell us of the judiciary relation between officials and people and what bits of social life they reveal.

<sup>17</sup> *Roshū koan*, presented and translated by Miyazaki Ichisada (Tokyo: Heibonsha, 1967), p. 216.

<sup>18</sup> That is to say, such as it might be observed in field investigations by a sociologist or anthropologist, for example—as opposed to the representations informed by ideology, class prejudice, government preoccupations, rhetorical tradition, and so on, which are the usual stuff of Chinese sources.

<sup>19</sup> The criminal archives held by the central government, mostly concerning cases of homicide, have already been used in several important studies devoted to their socio-economic content. One good example is Thomas Buoye, *Manslaughter, Markets, and Moral Economy: Violent Disputes over Property Rights in Eighteenth-Century China* (Cambridge: Cambridge University Press, 2000).

<sup>20</sup> In some ways judiciary dossiers in late imperial China, of which the judgments offer a kind of abstract, can be compared to police archives in the West—a great source for the social historian.

<sup>21</sup> David Faure, “The local official in commercial litigation in early nineteenth-century China”, *University of Tokyo Journal of Law and Politics*, 1 (2004), 144-155. Also from the same author, “Commercial cases in a court diary” (unpublished), based on a manuscript seemingly from the early Jiaqing period entitled *Shusong pi'an* 蜀訟批案, held at the Tōyō Bunko in Tokyo. My thanks to the author for sending me these two texts.

### Dysfunctional Families: Cases from the *Jiangqiu gongji lu*

The *Jiangqiu gongji lu* 講求共濟錄 (a title I propose to translate “Speaking of mutual benefits”) is a composite anthology of public documents (*gongdu*) published in the early nineteenth century—its prefaces are dated 1811 and 1812. The contents correspond to the same two years, during which the author of the documents,<sup>22</sup> a certain Zhang Wuwei 張五緯, was heading in succession the large prefectures of Tianjin 天津 and Baoding 保定 in Zhili metropolitan province, plus stints in Daming 大名 and Guangping 廣平 in south Zhili in an acting capacity; at that point he seems to have had a long administrative experience already.<sup>23</sup> The value of the work stems from its coherent regional coverage, the richness of what it reveals of everyday life, its matter-of-factness and absence of high-flown rhetoric, and, finally, the pieces it includes on topics little discussed elsewhere, such as prisons, or women.

But here we are interested in court documents, of which the book contains two series—13 “court decisions” (*tangduan* 堂斷) (in *j.* 3), which are in effect judgments (most end with the words *ci pan* 此判, “this is my judgment”), and 69 “rescripts to complaints” (*pici* 批詞) (in *j.* 5). They all belong to the “civil” category. Most complaints were submitted to Prefect Zhang as appeals, though some of them went to him directly, which in principle was not permitted.<sup>24</sup> Depending on the case, Zhang would adjudicate the affair himself, or review it and then send it back to the magistrate for further investigation. These court documents seem to me especially interesting in the contrast they offer between the “correct” social vision expressed by Zhang Wuwei in his admonitions and commentaries, on the one hand, and the glimpses of everyday reality offered by the facts recorded in the judgments and rescripts, on the other. As in other similar anthologies, we observe a dialectical relationship between the Confucian representation of ethics and conduct conveyed in the official’s discourse and the realities he denounces; and in fact, his constituents experienced in their own lives the same cognitive tension between correct values that were deeply interiorized, even by the most ordinary people, and the “deviant” behavior caused by their desires, urges or feelings, by the accidents of life, by economic circumstances, or whatever other cause. Administering justice at the local level therefore appears as a constant negotiation between the officials’ assignment—“transform the people” (*huamin* 化民) through enforcing state-sponsored values—and their awareness that a degree of deviance from these values on the part of their constituents is unavoidable.

In any case, there is in a general way more admonition and lecturing than legal reasoning Zhang’s judicial pieces, even though the latter is by no means absent: the educational, as opposed to judicial, function of such texts is everywhere in evidence. Indeed, browsing

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<sup>22</sup> “Author” means they were signed by him. Most were in fact drafted by private secretaries. Some authors insist they wrote their judgments in their own hand, however.

<sup>23</sup> The *Jiangqiu gongji lu* was published as a set with two other collections by the same author: the *Weinengxin lu* 未能信錄, which contains the first-person narratives of nine cases dating to his tenure as a magistrate in Jiangxi in the late eighteenth century, plus other materials; and the *Jingyang Zhang gong liren Yue Chang Heng sanjun fengxing lu* 涇陽張公歷任岳長衡三郡風行錄, which features a wealth of documents on his tenure in several prefectures in Hunan at the turn of the nineteenth century.

<sup>24</sup> There were rules specifying to what official complaints had to be presented; from 1728, the general rule for minor matters was that they would go to the magistrate in whose jurisdiction the affaire had occurred. But “many complaints were brought to the wrong officials”, for a variety of reasons, such as proximity, or the reputation of certain officials to whom the litigants would try to entrust their complaints even though they were not “their” magistrate. See Chang, chap. 5, p. 23-31. In Zhang Wuwei’s case it seems that both factors were at play: his reputation for justice, and the fact that his *yamen* was seen as a natural venue for the inhabitants of the prefectural city where he had his seat, although there was also a magistrate there.



through the “orders” (*shiyu* 示諭) and “proclamations” (*gaoshi* 告示) in the same anthology, one may come across exactly the same considerations as in some judgments or rescripts, whose “public” nature is manifest; likewise, the judgments and rescripts occasionally quote from the public “admonitions and prohibitions”.

### *Public Order*

The range of problems and situations dealt with in even the limited number of judicial documents featured in the *Jiangqiu gongji lu* is remarkable. One of the judgments, for example, is about public order on the streets of Daming prefecture (3/10a-11b): a brawl between *yamen* and military types in which the owner of a hardware store and his employees were unwittingly involved; and this shows us many interesting things in less than four Chinese pages. For example, we can see the neat division of labor and smooth cooperation between the civil and military authorities of Daming: the soldiers and civilians involved go to their respective *yamen* to complain, the garrison chief does not try to protect his soldiers but forwards them to the local magistrate for investigation, and later he sends to the prefect the testimonies he has collected to help him disentangle a further accusation.<sup>25</sup> Also interesting to observe is how conscious of procedural details people who have been caught in an absolutely unpremeditated fight seem to be: the soldiers take hold of a spade picked up by their opponent in a nearby store with a view to bringing it to their superiors as evidence, and the clerks of the store try to grab it away from them because they are afraid of being involved if some wound is inflicted with the tool; but we also see the naïve tricks attempted by some to direct the judge’s wrath toward people they have a grudge against even though they know they are innocent.<sup>26</sup>

Then—and we will soon see the same thing in very different cases—Prefect Zhang, far from reproaching the people involved in such a minor squabble to go complain to the officials, considers it perfectly normal that soldiers who have been publicly abused report to their superiors or that an aggrieved shopkeeper rush to the court to cry for reparation; in other words, it is seen as a duty for ranking officials to intervene immediately in disputes occurring among their flock.

And finally, we remark the relative leniency that was often displayed in this category of affairs: in the present case, while the soldiers’ brutality and the shopkeeper’s wrongly accusing them of stealing his wares are clearly “unreasonable” (*bu heli* 不合理) and would warrant punishment—indeed, a wrong accusation is a crime—Zhang considers that since everybody has admitted his wrongs when “brought to the desk” (*dao an* 到案) and the soldiers have even taken care to mend the clothes ripped during the arrest of the employees, everybody is pardoned and sent back to his daily occupations. Only the clerk who has started the brawl is punished: he has already been submitted to a serious beating by the magistrate, and for good measure he is also condemned to bear the cangue by his direct boss, Prefect Zhang.<sup>27</sup>

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<sup>25</sup> The parties to the fight were immediately handled by the local magistrate, as it was supposed to be, but the owner of the hardware store, who did not know about it and whose employees had been a little roughed up by the soldiers, went directly to the prefect’s *yamen* to “cry out about his grievance” (*hanbing* 喊稟)—in fact he wrongly accused the soldiers of having stolen one of his spades, when in fact it had been picked up by the prefectural *yamen* runner who had started the brawl, but he was afraid to incur his enmity by denouncing him to his boss!

<sup>26</sup> See previous note.

<sup>27</sup> As in several other entries Zhang has the phrase “out of leniency will bear the cangue in public” (*gukuan jiahao shizhong* 姑寬枷號示眾). Yet he was not always as generous when it came to the maintenance of public order. In another case (3/26a-27a), where prostitution and gambling have been denounced in the prefectural city,

This case treats us with a nice vignette of city life, but most pieces in Zhang's selection of court decisions and rescripts are about family or lineage disputes, violence against daughters-in-law, fights, gambling, commercial conflicts, unpaid money debts, and more. It is of course impossible to discuss everything (although nothing is uninteresting), but here I'd like to concentrate on a few entries that provide us with an unusual view of the difficulty some families had to keep control of their youngsters, how they would call on the authorities to help them solve their problems, and how seriously the authorities would take their role of peace-keeper and enforcer of family harmony.

### *Li Mei and his Uncles*

Thus, two entries on the same affair (3/7a-9b) tell us of the extremely painful relationship between a widow, Mrs. Li *née* Li 李李氏 (a rare occurrence) and her unfilial son, Li Mei 李梅. The latter, whom she had brought up and provided with both a wife and a house going through many hardships, turned out to be an uncontrollable and extremely nasty young man. She had gone to court twice: first to ask he be punished (*jiuze* 究責) for drunkenness, gambling and violent behavior, and later for being “disobedient”, or “rebellious” (*wuni* 忤逆). The latter accusation was quite serious: to repay his gambling debts Li Mei had illegally pawned the entirety of his mother's land allowance (*yangshan di* 養贍地, i.e., as a widow)—to the tune of the not inconsiderable amount of 60 *mu*. This was in itself a crime, and for this reason he is called a *fan* 犯 (criminal) in the text; besides, his case could not be concluded locally and a punishment would be duly proposed to the higher courts (照例議擬詳辦).<sup>28</sup>

The family aspects of the conflict are interesting. For one thing, the relations between Mrs. Li and her son must have been terrible indeed, since we hear that he not only abused his mother when she reproached him for his behavior, but also threatened her physically by flourishing his cutlass and stick at home; and that when he was tortured in the court during interrogation, it was before his mother's very eyes. In any case, while admitting that as a woman it was hard for Mrs. Li to prevent her son's misdeeds, Zhang Wuwei is scandalized by the indifference of the young man's two uncles (the younger brothers of his late father), who claim to be unconcerned by their nephew's misdeeds because they do not live under the same roof. For this, says Zhang, they deserve to be blamed for “failure to educate” (*shijiao* 失教): when hearing of Li Mei's violent ways with his mother they should have inflicted a severe punishment on him based on “family rules” (*jiafa* 家法); and if he proved to be definitely uncontrollable they should have joined their sister-in-law to hand him over to the administration for punishment. For such dereliction of the “avuncular way” (*weishu zhi dao* 為叔之道) and lack of brotherly sentiment (*shouzu qing* 手足情), the two men are to be seized by the magistrate and delivered to the prefect for interrogation. In the second text devoted to the same case, which is a rescript directly addressed to them, we learn that they

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both the organizers and customers are severely punished. Zhang takes advantage of the affair to order an investigation of all the gambling dens, brothels and other such enterprises, which are likely to be particularly active since an examination session is proceeding at this very time: the students who assemble in the prefectural city to pass the tests and are eager to celebrate once it is over are an easy prey for such lawbreakers!

<sup>28</sup> Li Mei's pawning of his mother's land is called *daodian tiandi* 盜典天地 in Zhang's text; it obviously fell under the statute on “fraudulently selling fields and houses” (盜賣田宅, statute #093 in the Qing Code), which has a clause explicitly mentioning “selling in written contracts of conditional sale without real money” (虛[寫價]錢實[立文]契典賣). This is apparently what Li Mei did: he did not receive money from the buyers since the land was paying for his gambling debts. Because of the quantity of land involved he incurred penal servitude, a punishment that a local official could not inflict by himself. His crime was of course made worse by the fact that the victim was his mother, which made him guilty of “lack of filial piety” (*buxiao* 不孝), one of the so-called “Ten Abominations” listed at the beginning of the Code.

were lower gentry—a military student and a student by purchase (*jiansheng*); indeed, while they had been treated with leniency at first, now they have the effrontery to ask for pardon because of their status. Zhang orders to hand them over to the Daming county educational official for a beating.

### *Threatened Estates*

Then this case raised a problem of social order that comes up more than once in Zhang Wuwei's small selection of "court decisions". The integrity of family estates was threatened by certain dubious types active in gambling and real estate, who apparently targeted the weak link in the generational chain—impressionable or wayward young men who could not be controlled by a widowed mother or an ageing father ("not a rare occurrence" according to another judgment by the same author)—to manipulate them to their own ends. For Zhang Wuwei it was the duty of local authorities to "correct harshly" such rebellious sons and insist that the uncles of fatherless youngsters take control of them. Indeed, the conclusion of the judgment, which was obviously intended for wide circulation, includes an order to the magistrates depending on Daming prefecture to take care of this.

As for the gambling entrepreneurs and real estate brokers (*maidì jìngjì* 賣地經紀) who have induced Li Mei illegally to sell his mother's land, they are also referred to as "criminals" (*fan*). In at least one other case (3/20a-22b) we see them operating in a much organized way. The "weak link" in this affair was a certain Wang San 王三, a "stupid village youngster" (*xiangyu nianshao* 鄉愚年少) whose father, Wang Chengming 成名, a "powerless old man" (*shuailao wuneng* 衰老無能), was unable to control him and went to court after finding that his own land was in danger of being sold to redeem his son's gambling debts.<sup>29</sup> That there was a deliberate plan to strip him of his assets is clearly explained in the judgment: the couple of swindlers indicted in the complaint knew that Wang had acquired a pawned piece of land to support himself in his old days (they were all living in the same village), and decided to "set a trap" (*sheju* 設局) to lure the youngster into gambling and losing; then they used violence to get their money back, hence the father's complaint.

Although in this particular case the plan for stealing Wang Chengming's land was stopped in time, the judgment features a long development on the problem of threatened assets in general. One interesting point is that, according to Zhang Wuwei, it is not just a question of a few scoundrels spotting widows with wayward sons and trying their luck; it may also be lineage members who are impatient to get the "old-age estate" (*yanglao chanye* 養老產業) of their weaker relatives for a good price and won't wait until their demise. Then, there are the brokers and *yamen* secretaries<sup>30</sup> who are eager to get fees, or perhaps a bribe, for facilitating a transaction that is illegal: they don't care whether the seller has living parents and, if so, whether they are aware of the transaction, and they accept incomplete and unsigned deeds.<sup>31</sup> And finally, if such terrible misdeeds, which it is difficult for the authorities to know about because they are too far away, are made possible, it is because the local networks of lineage and vicinity lack virtuous leaders able to enforce justice. In short, what is described is a kind

<sup>29</sup> This is another example where the plaintiff goes directly to the prefectural *yamen*.

<sup>30</sup> Zhang uses several times the term *guanzhong* 官中, which in the context clearly designates the *yamen* employees who would quietly register an illegal transaction.

<sup>31</sup> The judgment includes a directive to the effect that, from now on, the parties involved in deeds that do not bear the written and signed agreement of the seller's parents, or bear false signatures, will be punished according to the statute on "fraudulently buying/selling real estate". The very detailed rules Zhang Wuwei decides to impose on the form and content of real estate deeds to make sure that the seller's parents are not being unwittingly despoiled were clearly designed to become an enforceable local, and possibly provincial, regulation (*li* 例).

of general malfunction of local society that forces officials to step in—and this is only possible when the victims go to court.

Gambling—“l’un des plus grands vices du peuple chinois” according to Father Boulais, one of the translators of the Qing Code—is obviously a crucial link. Zhang Wuwei recalls that in his public prohibitions “lack of filial piety” and “luring people into gambling” (*youdu* 誘賭) rank first and second, respectively; and he claims that among all the bad types who are presently subjected to the rigor of the law, cases of offences against one’s seniors and of gambling are many. Indeed, gambling, which was forbidden by law, comes up as an obsession in many of the pieces in the *Jiangqiu gongji lu*: either it has effectively occurred and is going to be harshly repressed, or it is used as a convenient and threatening accusation when one wants to defeat an enemy: it is enough to have seen the latter in a room with other people to accuse him of setting up a gambling den.

### *Neighborhood Disputes*

Though the connection between gambling and family troubles (as in the cases just analyzed) is frequent, it is of course not systematic. Uncontrollable junior family members (*zidi* 子弟) were not necessarily denounced as gamblers, but even when they were not they could be very nasty indeed. The last case from the *Jiangqiu gongji lu* I will mention seems to me particularly interesting in the way it illustrates how desperate parents would go to the officials and ask them to do something, and how officials—or at least some of them—would try to analyze the disputes submitted to them, impose solutions and compromises, and see to it they were duly enforced. The story is somewhat complicated and features several loosely connected episodes. The “hero” here is a rather unsavory youth by the name of Qian Qiushi 錢秋實 who, according to testimony, had been badly educated since he was little and had ended up throwing in his lot with lawbreakers (*liuru feidang* 流入匪黨). In the end his father, Qian Peimei 錢培梅, took him to the magistrate; and since he refused to take his son back, the magistrate convinced his younger brother Qian Peizhen 錢培楨 to take his nephew to his home as an adopted son and try to restrain him. This proved impossible to achieve, however, and a year later Qian Peizhen, who feared that his nephew/adopted son’s wild behavior and dangerous associates end up implicating him in some nasty affair, went back to the same magistrate and asked that the young man “be dealt with” (*jiuban* 究辦) by the administration. Some time later, Qian Qiushi was involved in a case of theft in a neighboring county, arrested, and thrown in jail, where he fell ill. The magistrate first ordered the *dibao* to take care of him, and then, as his condition did not improve, he again had Qian Peizhen take him back home for medical treatment. But the doctors were unsuccessful and Qian Qiushi died two months later.

At this point Qian Peizhen made a mistake. Instead of reporting the death to the magistrate, as he should have done, he wrapped his nephew’s body in a mat and hastily buried him with the help of his sons. But he was seen by a neighbor called Zhang Ticheng 張體誠, who asked for explanations and received only violent abuse as an answer. At first he was talked out of going to court and denouncing Qian by an old friend of both men, but as more abuse was coming from the Qians, he decided to go to the prefect in the end<sup>32</sup> and reveal the stealthy burial, accusing in effect his neighbor of having killed his adopted son. It was in fact this wrong accusation that motivated the judgment reproduced in the *Jiangqiu gongji lu*, arrived at after Zhang Wuwei had all the people involved brought to his desk to be questioned. And there it was revealed that there was an old grudge behind Qian’s repeated abuse of Zhang and Zhang’s attempt at wrongly accusing Qian of homicide—a typical neighbourhood petty dispute involving a party wall between the two houses that Zhang and Qian had agreed to tear

<sup>32</sup> Yet another case of a plaintiff bypassing the magistrate; but Zhang Ticheng does not seem to have been reproached for this breach of the standard procedure.

down and rebuild, but which remained unfinished for reasons which are explained in great detail.

Zhang's judgment and the considerations that accompany it are extremely interesting. To begin with, he fully approves Qian Peimei's denouncing his son's behavior to the administration: these unworthy sons are a shame for their parents and ancestors, their behavior is known to everybody, the community hates it when their seniors attempt to protect them, and their misdeeds are a cause for constant lawsuits. But the magistrate had been wrong not to propose immediately a punishment for the young man's crimes, instead of displaying his magnanimity by forcing his uncle Peizhen to take him back and adopt him. For his part Qian Peizhen was to be commended for obeying the magistrate's order and demonstrating his brotherly love by agreeing to adopt his impossible nephew. On the other hand he should not have waited so long to denounce once again the latter's lawlessness—which left him time to get implicated in a grave criminal case. As for his assumed desire to shorten the young man's life, if it had been the case he would surely have asked, with good reasons, that he be returned to jail, where he would no doubt have rapidly perished of cold and hunger. So there was no reason to doubt Qian Qiushen's dying a natural death after two months of unsuccessful treatment. But of course Qian Peizhen was entirely wrong to bury him without informing the administration.

Yet the judgment pardoned him; and Zhang Ticheng was likewise forgiven for wrongly accusing Qian of having killed his adopted son, on the grounds that after all there was some cause for doubt. Why such leniency (*kuandian* 寬典)? Prefect Zhang obviously desired to put an end to the enmity between the two families and, especially, prevent further lawsuits. And to make sure that this would be the case, not only did he save both litigants' face by exempting them from punishment, he also ordered the party wall to be rebuilt at once, decreed a 40/60 sharing of the cost, had the litigants put on a "harmonious face" (*hemian* 和面) in front of the court to demonstrate their neighborly affection, designated the same common friend to select a day for starting the construction and report to him, and finally, had them sign a guarantee that was attached to the file.

### *Strictness and Leniency*

The cases described above are only a few examples. In fact the *Jiangqiu gongji lu*, like so many other anthologies of judgments and rescripts, is replete with conflicts within families and lineages, illustrating in particular the weak position of widows, the frequent absence of intra-lineage solidarity, how certain individuals attempted to use lineage rules (real or invented) to pursue their own ends, and of course the constant conflicts about or among daughters-in-law, which I have not touched here. The existence of a strong lineage leadership able to resolve such disputes and prevent such manoeuvres seems to have been lacking more often than not—hence the appeals to official courts. Whether this situation describes the particular North China environment where the affairs discussed in Zhang Wuwei's collection took place remains to be researched. In any event, for militant officials like Zhang, who considered their judgments and rescripts important enough to publish them, it went without saying that the state *had* to intervene to correct dysfunctions and prevent conflicts that society's customary institutions were clearly not up to dealing with efficiently.

For this to do it was not enough to shower the populace with proclamations encouraging harmony and virtue and forbidding disputes and disorderly behavior, when they were not giving advice to preserve conjugal peace and prevent fits of anger leading to suicide. It seems that every local official did this as a matter of routine, and, again, the *gongdu* anthologies are full of such admonitions, involving of course a lot of repetition and stockphrases. Court hearings and publicized judgments, on the other hand, were considered as a more efficient means to "educate the people", both because of the concreteness of the problems involved and

of the immediacy of the contact between officials and people. (It has been justly remarked that for many officials judicial affairs were the only occasion to get acquainted with the ways of their more modest constituents.) And what is fascinating to observe is how judges could navigate between the strictness of the law and rigidity of conventional values, and their desire to defuse tensions in society and help people improve their behavior. To achieve this they made full use of the flexibility that was allowed them in affairs incurring no more than beatings or the cangue,<sup>33</sup> not to speak of simple arbitration. The compromises decided on by Zhang Wuwei in the cases seen above involve a combination of leniency, stern lecturing, and in some instances the promulgation of new regulations to prevent the same problems for recurring. It is in general striking to see how often he “lets it go” in his decisions by forgiving punishments, even when they are ordered by the law, once the parties to a conflict have admitted their errors, showed repentance, and accepted to be reconciled.<sup>34</sup> Harsh punishment was reserved to people for whom no excuse could be found (such as the trouble-raising *yamen* runner in the first case mentioned); and of course crimes punishable by penal servitude and over were passed on to the higher courts for decision “according to the law”. (It was incumbent on local officials to propose such decisions, and being subjected to review their margin of creative interpretation of the code was extremely narrow.)

Whether many local officials devoted themselves to balancing strictness against leniency with as much dedication as Zhang Wuwei and the comparatively small elite of model officials who insisted on publishing their administrative papers as an example to the profession (and to show how good they were), is difficult to say. But here let me turn to another anthology of judgments which will reveal a somewhat different style of affairs.

### Cases from the *Fanshan pipan*

While *Fanshan's Rescripts and Judgments* (*Fanshan pipan* 樊山批判) is comparable in form and function to the sections of the *Jiangqiu gongji lu* devoted to court decisions and rescripts, the author's personality and the circumstances of publication are not exactly the same. Compared with Zhang Wuwei, of whom we know nothing beyond what is found in the prefaces to the anthologies mentioned above, Fan Zengxiang 樊增祥 (1846-1931)—whose style, *Fanshan*, features in the title of this and others of his anthologies of administrative papers—had a rather prominent career. In his native Hubei he became very early a protégé of the famous governor general and modernizer, Zhang Zhidong 張之洞 (1837-1909), who had been impressed by his literary talent—during his entire life Fan was an extraordinarily prolific poet and he is still regarded as a master of late-Tang style *shi*. After his doctorate, earned in 1877, and a stint at the elite Hanlin Academy, from 1884 to 1899 and with few interruptions he served as a magistrate in several counties in Shaanxi, in the Northwest, including at the end a six-year stay in Weinan 渭南; at the same time he maintained his association with Zhang Zhidong and his team of technocrats and literary advisers. He became a prefect in 1899, still in Shaanxi. The following year he was remarked by the Dowager Empress during the flight of the court to Xi'an and distinguished himself by his service with the cabinet in exile, which earned him a promotion to Shaanxi provincial judge and later provincial treasurer. In 1908 he

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<sup>33</sup> Beating (with several degrees) was one of the regular “five punishments” listed at the beginning of the Code. On the other hand inflicting the cangue for a given number of months was a “free” punishment not mentioned in the statutes, which it was up to the local officials to decide on in order to intimidate lawbreakers.

<sup>34</sup> Such leniency extends in some instances to crimes that would have incurred punishments higher than those a magistrate could inflict on his own initiative, such as wrongly accusing someone of homicide in the last case analyzed: but Zhang decided that Zhang Ticheng had reasons to believe it was true. It should also be remembered that as a rule repentance was not considered a mitigating circumstance in the administration of penal law (Jérôme Bourgon, personal communication).

was appointed to the quite important position of Nanking provincial treasurer,<sup>35</sup> in which he seems to have earned much reputation and where he was surprised by the 1911 revolution. After some hesitation he turned down offers to serve in the Republican government.

Fan Zengxiang published several quite substantial anthologies of his administrative papers and judgments, most of which appear to have enjoyed fairly wide circulation and went through several editions (including under the Republic). The *Fanshan pipan*, which was published in 1897 during Fan's magistracy at Weinan, comprises 14 chapters of rescripts (*pi*) and a short chapter of judgments (*pan*).<sup>36</sup> In his preface Fan Zengxiang insists that all his rescripts were composed by himself and written in his own hand. In the preface to another collection, the *Fanshan pandu* 判牘 (first published in 1911), he explains that it was only in 1892 that he started having copies of them made by his scribes for his archives, but unfortunately he lost a large part of it during a move to a new post. Even so, many hundreds have been preserved in his published collections: apparently Fan was as prolific as a rescript-writer as he was as a poet. His *pi* are written in simple, occasionally sharp, language, and indeed Fan claims in the preface to the *Fanshan pipan* that colloquialisms, repetitions, angry or jocular expressions help get the point to the litigants. However, the judgments (*pan*), which are much less numerous and significantly longer than the rescripts, are written in more formal language. It is from them that I will take my examples.

### *Fleeing Famine and Remarrying*

First is a rather complex dispute, involving repeated complaints to the magistrate by two women, a mother-in-law and a daughter-in-law.<sup>37</sup> The story needs to be recounted in some detail for the judge's conclusions to be better understood. The central character is a woman, Mrs. Zhang *née* Xue 張薛氏, who had fled her native Shanxi during the dreadful 1877 famine along with her son and daughter, to land up at Yichuan 宜川, in the north of Shaanxi. There she had sold her daughter to a Li family and had prostituted herself to survive; then, using as a dowry the two strings of cash she had been able to save this way she had sold herself into marriage (*ziyu wei fu* 自鬻為婦) to one Wu Yonghe 吳永和;<sup>38</sup> her sixteen-year old son went with her, the contract stipulating that after three years he would return to his father's family (which the following suggests he did not). After four years of childless marriage Wu Yonghe died, leaving Mme Xue alone with her mother-in-law, the old Mrs. Wu *née* Wang. In 1881 the latter, who claimed to be destitute and with nobody to support her, denounced her daughter-in-law to the magistrate (Fan's predecessor) for unruly behavior and all sorts of unfilial acts. The magistrate ruled that Mme Xue would go live elsewhere with her son, taking with her the money she had brought to the marriage and her son's salary for his work (presumably as a servant, or a laborer), for a total of 16 strings of cash, plus her personal belongings. Then Mme Xue counter-attacked: according to her there was plenty of money, opium, sheep, etc. at old Mme Wang's home, she (Mme Xue) was refused any access to it, and far from being alone Mme Wang was constantly seeing an adoptive daughter (*yiniu* 義女: the term does not imply a legal process of adoption, which as far as I know did not exist for daughters)—or

<sup>35</sup> That is, one of the two administrative commissioners of Jiangsu, the other having his seat at Suzhou.

<sup>36</sup> Here I am quoting it from the modern edition, in *Lidai panli pandu* 歷代判例判牘, Yang Yifan 楊一凡 and Xu Liwhi 徐立志 eds. (Beijing: Zhongguo shehui kexue chubanshe, 2005), vol. 11.

<sup>37</sup> *Fanshan pipan*, 15/609-610.

<sup>38</sup> There is some ambiguity on "selling oneself" here. The word used for "to sell" is *yu* 鬻 when Mme Xue sells her daughter, and then again when she "sells herself as a wife" (鬻... 為婦); in between she "sells herself to survive" (*maishen qiuhuo* 賣身求活), and it is unclear how she could sell herself (i.e. lose her status as a free person) twice. One of the meanings of *maishen* is "to prostitute oneself", which would seem to make sense in the context; on the other hand the text later refers to the contract whereby she sold herself into the family of her new husband as *maishen wenyue* 賣身文約.

perhaps, two adoptive daughters, as is implied at the end of the text. This time the magistrate ruled (with tongue in cheek, one imagines) that Mme Wang's property—we are given to understand it was her personal property, not the family's—would remain hers until age 100: only after would it return to the Wu estate, implying that Mme Xue would then have access to it since technically speaking she was a Wu widow; the adoptive daughter was forbidden to have any more relations with Mme Wang. But Mme Xue did not accept this and she submitted a petition saying the old Mme Wang was still strong and that waiting until she reached a hundred years would be hard. During the following year the two women attacked each other at court “twice and thrice”, but the magistrate did not rule a (posthumous) repudiation of Mme Xue. After several more years had elapsed in this situation, allegedly very hard on the old and weak Mme Wang, the two women had a very nasty fight when visiting the tomb of the late Wu Yongming at the Qingming festival, and again Mme Wang went to court to complain. Now the magistrate was Fan Zengxiang, and the text I am quoting here is his judgment in this last round of the conflict.

His final decision—pronouncing a repudiation and sending back Mme Xue to her original husband—offers an interesting combination of legal, moral, economic, and circumstantial considerations. To start with the last, the hardships of the early Guangxu famine justified in his eyes that Mme Xue should flee and get remarried in another place to survive instead of staying and “preserving her chastity”: doing this she escaped certain death for herself and, more importantly, her son, who could thus continue the Zhang family line. In other words, given the circumstances Fan did not see this case of bigamy as a problem. Incidentally, this strategy of Mme Xue's—probably decided in agreement with her husband—adds an interesting footnote to Kathryn Edgerton-Tarpley's considerations in her recent book on the so-called “Incredible famine of 1877-78” (*dingwu qihuang* 丁戊奇荒), to the effect that women were in a better position to survive than men because they could sell themselves (or be sold by their family) and thus be taken away from the more deadly famine areas.<sup>39</sup> In contrast with the heart-rending descriptions in the Western and Chinese sources quoted by Edgerton-Tarpley, however, what seems remarkable in the case of Mme Xue is the calculated and efficient way she managed by herself to settle down, she and her children, without any thought of returning home once the famine was over.

But in her new situation Mme Xue had failed morally: she treated her new mother-in-law badly, to the extent that the latter did not regard her as a “wife” (i.e., of her deceased son); and if Mme Xue for her part insisted on regarding Mme Wang as a mother-in-law, it was only in the hope of laying hands on her property to establish herself. Yet according to the judgment she did not need it since she had a 25-year old son who could support her, and could also get help from the daughter she had sold into a local family, where she had been married (*shi* 適). So there were no feelings or needs that might justify her continuing to belong to the Wu family; and her suggestion to have a nephew of the late Mr. Wu adopted as a posthumous heir (whose stepmother she would become) was rejected on the grounds that she would be no better to him than she had been (and would be, if she stayed) to her mother-in-law.

All of this, plus the fact that her four-year marriage to Mr. Wu had been childless, and also that she had long retrieved her assets and belongings from the Wu family, was reason enough to decide that the marriage relationship with the Wus should be terminated. Yet to rule on what was in effect a posthumous divorce (*duanli* 斷離), Fan Zengxiang took care to avail himself of the statute on repudiation (*chuyi* 出妻) in the Penal Code (# 116), which lists the seven causes for which a wife can be sent away (*qichu* 七出): the first is “lack of filial piety” towards one's parents-in-law, and Mme Xue's treatment of her old mother-in-law gave ample

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<sup>39</sup> Kathryn Edgerton-Tarpley, *Tears from Iron: Cultural Responses to Famine in Nineteenth-Century China* (Berkeley: University of California Press, 2008), chap. 7-8.



ground to cite it. The severance from the Wu family was to be confirmed by the cancellation of her contract of bondage by the administration.

And finally, there was the question of Mme Xue's relation to her original family, the Zhangs, back in Shanxi. She claimed it would be embarrassing to go back after having married into another family,<sup>40</sup> but as we saw Fan did not see this as a problem. Quite the contrary, her first husband would be overjoyed to know she had saved his son: while from the viewpoint of the Wus she was just a rejected wife, from that of the Zhangs she was a "meritorious statesman" (*gongchen* 功臣)! Mme Xue was therefore ordered to return to the Zhang family along with her son. In conclusion, Fan added a last legal flourish by threatening to punish her according to the statute on "remarried widows who abuse the parents of their deceased husband" in the event she tried to pick up a new fight with Mme Wang.<sup>41</sup>

In short, what we see at work here is a mix of legal, moral and circumstantial considerations to disentangle a rather complex situation involving ordinary individuals in a difficult environment. The statutes cited deal with family conflicts in a very general way—they are of the "whoever" (*fan* 凡) type—and are used to clinch the decision, as it were; but the judgment contains several clauses that were determined by circumstances not provided for by the law—fleeing famine to another province, losing one's status as a free person, and so on. These circumstances it was incumbent on the magistrate to analyze and find his own solutions to deal with them.

#### *The Seduced Widow and her Virtuous Sons*

The situation is more straightforward in the other case I will examine here, which involves people of a significantly higher status and where we find again the problem, already discussed, of widows' threatened position. But the nature of the threat is entirely different from what we have seen in Zhang Wuwei's judgments.<sup>42</sup>

The main character is a widow, Mrs. Tang *née* Liu 唐劉氏, over forty years of age. Mme Liu was obviously a lady of means: she had more than enough to keep herself "fed and warm", and her two teenage sons, Ruiqi 瑞琪 and Ruilin 瑞琳, were being privately tutored by a provincial graduate named Li Leshan 李樂善 in a nearby school (*xuetang* 學堂). The man who was to bring trouble to this "home harmonious and free from disagreements" (*jiating hemu wuyi* 家庭和睦無異) appears to have been a somewhat colorful adventurer, a man "neither gentry nor merchant" with a strong inclination to dabble in matters that were none of his business, who one year before the lawsuit discussed here had married a distant cousin of Mme Liu (this was a second marriage). His name was Zhang Mingfu 張明福. Taking advantage of the family relationship created by his marriage, he did everything to insinuate himself into the Tang/Liu household, calling Mme Liu "elder sister", going repeatedly to her house and smoking opium with her, even taking her to a trip to the Wutaishan to burn incense. Mme Liu's sons were incensed by such familiarities;<sup>43</sup> and they were all the more so since

<sup>40</sup> And after such a long period of time: the judgment is not dated but we can calculate from her son's age at the beginning and end of the affair that it was nine years.

<sup>41</sup> This is statute # 331; the punishment is the same as for a wife abusing her parents-in-law (# 329), that is, strangulation.

<sup>42</sup> *Fanshan pipan*, 15/614-615.

<sup>43</sup> Although there is no sexual innuendo in the text, reading it through it is hard to believe that Mme Liu's attraction to Zhang rested only on doing drugs and religious tourism (the latter in fact implying an unusual degree of intimacy on the part of a self-respecting lady). It may be that Fan Zengxiang, obviously intent on protecting the honor of the Tang family, simply ignored this aspect of things in his judgment. In any case we can rest assured that, had such a scenario found its way into some late-Ming *huaben* short story (where widow-seducing is not uncommon), we would have been treated to a lot of sex.

Zhang Mingfu was clever at creating discord between mother and sons, to the extent of having them administered a thrashing more than once.

Things seem to have gone rather far indeed. The affair came to a head when Zhang Mingfu, accompanied by several persons, helped Mme Liu attach her younger son Ruilin—the fifteen-year old obviously was the one who hated him most—and started abusing and whipping him furiously. As the shouting could be heard from the street, the boys' tutor and a colleague (another provincial graduate, named Bian Baoqian 邊葆謙) rushed out of their school to see what was happening and managed to free poor Tang Ruilin, who was by then nearing his last breath. Then Zhang Mingfu did what one does in these circumstances, he attacked first. He went to the *yamen* to denounce Ruilin for being disobedient (*wuni*) and unfilial (*buxiao*), claiming that Mme Liu had entrusted him with reprimanding her son; and he accused Ruilin of having assembled a group of henchmen to attack and injure *his* (Zhang Mingfu's) son. In his accusation he took care to call Mme Liu his "aunt" (*dayi* 大姨): we find here an echo of the theme, discussed above, of the duty of male relatives to help a powerless widow control her rebellious sons.

But of course in Zhang's case it did not work. Based on Ruilin's and the two scholars' counter-accusations,<sup>44</sup> and after he had questioned everybody—except Zhang's supposedly beaten son, who did not show up at court to have his bruises inspected—Fan Zengxiang ruled that Zhang Mingfu, who was "salivating over Mme Liu's estate", had schemed to provoke her sons into unfilial behavior. In any case, members of her late husband's family should have resolved her conflict with her sons, instead of allowing such provocation and violence by someone who was neither a parent nor an old acquaintance and should never have been acknowledged as "husband of the mother's younger sister" (*yifu* 姨夫).

The punishment decided on by Fan Zengxiang was unusually harsh, and does not correspond to anything in the Code: he ordered to inflict "innumerable blows" (*tongchi wusuan* 痛答無算) on Zhang, which it is difficult not to understand as "to beat him to death". This was to "console the Tang family ancestors" and "appease the hearts of the people of the entire county". The Tang ancestors may have been pleased with the beating, but we may wonder whether the county populace was really interested in what was essentially a *drame bourgeois* involving the propertied middle class. In any case, Fan was clearly scandalized by Zhang Mingfu's cynicism and his manoeuvres to throw a respectable and literate family into confusion and lay his hands on the estate of a psychologically vulnerable widow. Assuming he would survive his endless beating, he was strictly forbidden to go to Mme Liu's house again, and if he did her sons were allowed to bind him hand and foot and bring him to court. The boys were to go back home and take care of their mother. The latter was excused from her erratic behavior—after so many years of exemplary conduct—on the grounds that women are prone to favor parents on their native family side, but she was warned not to put her children's respect for her to shame any more. And finally, the two *juen* teachers, who after all had done no more than rescuing a boy who was being viciously beaten, were extolled for their chivalrousness and guts, Fan wished them a promotion in the future, and he ordered Mme Liu's sons to serve them as fathers.

In short, this is a perfect example of a "civil" case in which the magistrate restores order in a troubled family, protects a respectable widow against the dishonest views of a swindler and her own weaknesses, and inflicts a punishment of his own devising to the main culprit, who is also prevented from doing any more harm by having to sign a guarantee, after which the case will be closed (*qujie wan'an* 取結完案). No law is cited—after all Zhang Mingfu's behavior was abominable, but technically speaking he did not commit any crime. There were no "local customs" to cite either. The judgment rested on moral considerations, and it reflected the

<sup>44</sup> The document is entitled "Judgment on the mutual accusations of Tang Ruilin and Zhang Mingfu".

magistrate's will to put an end to a situation that threatened to be the cause of many more lawsuits—assuming that Zhang Mingfu succeeded in misappropriating Mme Liu's property and breaking up her family definitively. But above all, it seems to me, it was determined by Fan Zengxiang's concern for preserving the reputation and honor of what had been a model middle-class household composed of a virtuous widow and two serious and hard-working boys. Allowing the Tang/Liu family to fall apart under the deleterious influence of an unscrupulous adventurer would have created a problem of social order. That is why Mme Liu, whose conduct had bordered on waywardness, and her younger son, who had let himself to be unfilial toward his mother, were let go with a slap on the hand, while the two noble teachers were publicly congratulated as models of uprightness.

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In the introductory chapter to their edited book on civil law in Qing and Republican China, Philip Huang and Kathryn Bernhardt say that “Property, debt, marriage, and inheritance-succession... might have been of ‘minor’ importance to the Qing state”, but that they seem fundamental to them.<sup>45</sup> They were indeed called “minor affairs” (*xishi* 細事) in everyday parlance, as opposed to serious criminal affairs; but they were certainly not regarded as being of minor importance by the local officials who had to deal with them. Quite the contrary, arbitrating business or family disputes, defeating behavior that was seen as antisocial even though it was not technically criminal, trying to prevent such malfunction by pronouncing judgments that were also admonitions directed at the population at large, carefully allocating punishments and sanctions so as to discourage disruptive conduct, intimidate lawbreakers, and maintain a modicum of social harmony at the same time—all of this was at the foundation of “good government” and made up the very texture of state-society relations. “Law” in the narrow sense of the term played only a limited role in this; but the legal process, embodied in the never-slackening activity of busy courts, was of central importance.

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<sup>45</sup> Kathryn Bernhardt and Philip C.C. Huang, eds., *Civil Law in Qing and Republican China* (Stanford: Stanford University Press, 1994), p. 1.