# Agnostic Courts and Extralegal Arbitration:
## Business as Usual in Qing Chongqing

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A fundamental misapprehension of the interaction between local mediation forums and magistrate's courts has led scholars of China's legal and economic history to an overly simple view of the relationships between merchants and the court. For the last hundred years, scholars have examined China's legal, political, and economic history for evidence about how courts handled commercial disputes or influenced non-court forums in which those disputes might be mediated. The prevailing impression has been that China's courts were weak, unimportant, or even arbitrary and dangerous forces in the process of commercial dispute mediation. This paper presents an alternative explanation for the behavior of China's courts which has been regarded, hitherto, as largely unexplainable. It does this by proposing that out-of-court mediation forums, and not the court itself, should be taken as the primary and ultimate sources of authority on commercial disputes. With this simple adjustment to the framing of the merchant-court relationship, a new pattern and logic of commercial dispute mediation in late imperial China emerges.

Instead of being an alternative to other mediation forums for commercial disputes, the court of Chongqing was a referee among mediation forums and an enforcer of order within those forums. It contributed to the resolution of commercial disputes not by offering new or independent interpretations of commercial obligations, but by working as a force outside of the settlement process to keep actors invested in the negotiation of settlement terms. It did this by refusing to interfere in the normal processes of settlement negotiation (except for rare circumstances, which will be covered later), by punishing individuals who attempted to undermine mediation by fraudulent or criminal means, and by acknowledging and insisting upon sanctioned local mediation forums as the appropriate place for the negotiation and arrangement of settlements.

The city of Chongqing offers unique qualities for the study of mutual responsibility groups, imperial courts, Chinese merchants, and commercial disputes. It is the site of the only mainland Chinese *yamen* (magistrate's office) whose records from the Qing dynasty have been preserved and made public today.[1]

[1] Taiwan's *dan-xin* archives are a similarly precious archival cache, but the island's particular situation in the wider maritime Southeast Asian trading network makes the dispute mediation practices there more specific to the place. Other Qing archives are being discovered with some frequency in mainland China today, but access to these new

The archives for Qing Chongqing are the largest known cache of legal documents from the last dynasty, and contain tens of thousands of cases related to commercial disputes. These materials are an invaluable resource in the study of China's economic and legal traditions.

The history of the city of Chongqing also provides special conditions for the study of merchant associations. Previously studied as Chinese "guilds," these groups have been considered powerful social institutions with monopolistic power over their respective trades. Their authority has usually been attributed to the powerful social connections and personal fortunes of group members, their willingness to resort to violence to maintain their supremacy, and the inability of others – including magistrates – to restrain them. These groups have historically been portrayed by some historians as barely distinct from criminal organizations. In the last two decades, some American scholars have challenged this view by highlighting the extent of social involvement and community embeddedness evinced by these associations.[2] But despite this revision, the inherently social nature of these groups has never been questioned. Chongqing's history provides a rare opportunity to study the social, legal, and administrative background of these groups because they were only formed in that city in the eighteenth century, unlike other commercial cities where these institutions were up to three hundred years old by that time. The late formation of these groups in Chongqing is due to the fact that it was situated in the province of Sichuan, where war raged so fiercely from the middle of the seventeenth to the early eighteenth century that scholars have estimated as much as a 99% population loss. The reemergence of merchant associations (and other mutual responsibility groups) was, thus, covered by the surviving documentary record, and was not as fully obscured by other social institutions, which abounded in China's other urban commercial centers. The reevaluation of the nature of these groups is the foundation of the conclusions offered in this paper, and are visible to the historian only because of the particularly brutal nature of Chongqing's history in the late Ming and early Qing.

This paper is split into two parts. The first part is a history of mutual responsibility groups in Chinese history, and their operation in the city of Chongqing. This section is an overview of findings discussed in a dissertation chapter that is currently being written. It is based on general historical writings, secondary scholarship, and a mix of legal cases and administrative documents from the Qing dynasty Chongqing magistrate's office. Since this section is offered primarily for informational purposes, and is intended as an overview. A wide range of materials are summarized in a general synopsis.

The second part of the paper is a closer description of an ongoing analysis of case evidence. The observations in this section are based on a sample of 285 cases (ranging from 1 page to over 300 pages each) that were transcribed during a year of field research. The anecdotal evidence reviewed in the second part of the paper is drawn from this entire body of cases. The statistical evidence offered is a

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sources has proven problematic, and the historical reevaluation that will surely follow from the materials contained in them will have to wait for future generations of scholars.

[2] One such historian, William Rowe, earned the disdain of other members of the field by even proposing that these merchant associations were analogous to Habermasian "civil sphere" forums.

first-pass attempt to describe the general disposition of the material, and is based on a sample of 50 cases of the 285 collected. Those 50 cases were selected at random from the sections on fraud and commercial disputes in the archives. All of the official decisions attached to each of the 50 randomly-selected cases were then compiled in a single data set, which consists of 459 total court decisions for the 50 cases – 113 verdicts and 326 rescripts.[3] This data set is the foundation of the statistical descriptions in the second part of the paper.

## PART ONE: A BRIEF HISTORY OF MUTUAL RESPONSIBILITY IN CHINA

The arbitration of commercial disputes in Chongqing's court took the imperial tradition of mutual responsibility for granted. It is because this central mechanism for the resolution of disputes has been overlooked that historians have sought in vain for a unifying logic of court mediation practices in cases involving private agreements. This is because all such cases were supposed to be mediated by mutual responsibility groups, and not by courts. While this paper will not review the evidence relating to the formation and day-to-day operation of these groups, a substantial introduction to their history and types is required before proceeding with the case analysis.

The notion of community-level mutual responsibility has existed in the Chinese empire since at least the Zhou dynasty (c. 1050–256 BC). Ruling over a large territory with a minimal administrative structure, the Chinese imperial bureaucracy never reached below the county level. The lowest ranking officials were thus each responsible for tens of thousands (or hundreds of thousands) of subjects. The dilemma of implementing legal and social order was met, in part, by a multitude of private staffs working in every local *yamen* office run by county and prefectural magistrates. These unsalaried local government clerks and bailiffs carried out many of the responsibilities of the county administration, and earned a living through wages provided by extra local taxes, and through demanding fees for the provision of government services. The *yamen* workers were largely considered a necessary evil, and were often blamed for all of the inadequacies, inequities, and malfeasance that occurred at the local level. But without this massive force of unofficial agents of the magistrate, local government could not function.

At various times throughout Chinese history, schemes were introduced to eliminate the need for these *yamen* workers without increasing the size of the official bureaucracy. Most commonly, these reforms involved delegating responsibility for official programs to the local communities themselves, in the form of mutual responsibility groupings. These programs were based on pre-existing community organization

[3] There were two types of official court opinions in Chinese law: 1. A rescript is a short comment written by the magistrate (or his assistant) at the end of each suit received by the court, after having read it. The rescript was a formal court opinion, and was often terse and non-committal, dealing primarily with the question of whether or not to call a trial. 2. Verdicts were the judgments handed down at the end of each trial session (each case could be summoned to trial multiple times, and a verdict would be handed down at the end of each trial).

units, which existed for a number of purposes: there were units of taxation, units of corvée labor or military recruitment, and units of legal responsibility for criminal offense. Mutual responsibility units were a solution designed to fulfill a number of pressing needs in imperial China: they monitored the population for tax purposes and to implement local security measures, reported illegal or suspicious activity to local officials, and were given responsibility for overseeing all manner of "public works," including the planning of irrigation projects, charity programs, educational drives, and all of the funding and logistical support that came along with these efforts. In times of great danger, they were even responsible for organizing militia units.

**Qing Mutual Responsibility Institutions (*baojia*)**

Each of these types of organization was handled differently throughout the imperial era, but in the Qing (1644-1911) they were organized into one system: the *baojia* mutual responsibility network. Based in both the Board of Revenue codes for taxation and the Board of Punishment codes for legal responsibility, this system was a combination of several mutual responsibility institution precedents from previous dynasties. First and foremost, it was a unit for population registration. By central codes and imperial fiat, *baojia* units throughout the empire were responsible for maintaining registers of the population in their jurisdiction. The units themselves were the outcome of the process of registration. The *baojia* unit was based on a system of decimal organization: every ten households constituted a *pai* unit, and among those ten households one individual was nominated as a representative. Ten *pai* units then constituted a *jia* unit, and each *jia* had its own representative. At the top level, ten *jia* formed one *bao*. Thus, each *bao* unit of the *baojia* system had one top-level delegate, ten mid-level representatives, and 100 low-level representatives, and represented 1,000 households. One of the primary duties of *baojia* delegates was the maintenance of the information on the household registers within their units. The registers compiled by these units were then used as a basis for tax collection.

In the Qing, the system of taxation and registration was combined with local security duties. Each household was given a placard with the names of its inhabitants, and these placards were displayed on the door of each household. *Baojia* representatives were responsible for ensuring that any new residents were entered into the system, for checking the background of any strangers to the area, for maintaining patrols of the neighborhood, and for reporting any suspicious behavior to the magistrate or to the *yamen* bailiffs assigned to each ward. *Baojia* heads were empowered to command *yamen* bailiffs to detain suspicious or unruly individuals in their jurisdiction, and were expected to report to the local government on any security risks requiring the attention of the magistrate. When a problem or suspicious event took place in one's neighborhood, the *baojia* head was supposed to be the first person brought in to solve or report the issue.

*Baojia* heads were also responsible for organizing local government initiatives at the community level. They raised funds and organized materials for local festivals. They reported on city facilities requiring maintenance and organized funding drives for repairs. They collected extra taxes for educational

initiatives. They worked together with philanthropists and social groups to oversee the provision of charity services at the local level.

In all of these activities, they were the mediators between government demands and community members. Because of their role as representatives of both the community and the administration, the heads of mutual responsibility units were imbued with an authority that made them important figures at the sub-county level. *Baojia* heads could use their relationship with the magistrate's office and the ward-level bailiffs to settle disputes among neighbors, to serve as an official witness to an agreement or contract, and to represent community needs to the local government offices. Any questions from the magistrate about the local community and any problem that required official attention went through *baojia* delegates. Where *yamen* workers were responsible for executing the laws and everyday operations of the local government, *baojia* heads were the liaisons between the magistrate and the community. The individuals in these positions tended to hold them for a long period of time, and received licenses from the local government in after signing a pledge at the *yamen* to perform their public duty to the best of their ability.

**The Organization of Commerce**

The *baojia* units were responsible for a city's stable, registered population. Over the course of the dynasty, other institutions emerged (either by central mandate or through local innovation) to manage more mobile populations. In Chongqing, for example, bonded lodges were expected to maintain (and submit) official registers of guests, and pier-masters were chosen from among the ship-dwelling population to report on the movements and cargos of the transport vessels that moved in and out of the city. Furthermore, the cross-provincial sojourning population was so large that a "guest chief" system arose for the registration and maintenance of the newly-immigrated and sojourning populations. These overlapping series of institutions were all formal and based in imperial law and precedents. Together with the *baojia*, they managed to create a roughly complete framework for managing both the stable and moving populations of the city.

Then there was the problem of trade. Merchants brought their own problems to the port, and the local offices were no more capable of attending to their complicated array of problems or collecting commercial taxes than they were for the city's registered population, or household-based taxation. So there were two systems that existed to handle the needs and collect the taxes from the market: the system of official brokerage and the system of illicit trade organizations. The system of official brokerage was enshrined in law, and marked the Qing culmination of hundreds of years of market regulation policies. It combined the duties of tax collection, economic brokering, and commercial liability in one institution, which was imperially sanctioned. The system of illicit trade organizations was a product of local innovation, formed in direct violation of imperial edicts and legal codes. The two most common types of illicit trade organizations – the *hang* and the *bang* – will be reviewed here. These trade organizations were based on historical precedents from previous dynasties, and designed to perform the

third function of *baojia*-style mutual responsibility, which was not handled under the official brokerage system: the organization and implementation of local initiatives.

*Official Brokerages (yahang)*

The official brokerage (or *yahang*) system began in the ninth century, when the Tang dynasty invested market brokers (*ya*) with the power to collect taxes and register sales (of large items, such as real estate, horses, and slaves) at the point of transaction. By the mid-Ming (the fifteenth century), the system of official brokerage was placed inside of an empire-wide framework for the collection of commercial taxes, and an official process of *yahang* registration was accompanied by legal sanctions against unofficial brokers. By the Qing, these official brokers were responsible for every aspect of the supervision of commerce and the taxation of transactions at the local level.

Official brokers were merchants who applied to the local *yamen* for a brokerage license, which was issued by the provincial government in fixed numbers to each commercial center. The brokerage license entitled these merchants to set up *hang* (brokerages), to which merchants bringing goods in to town for sale were required to report their commodities. Merchants were not required to sell their goods through these official brokerages, but were required to report sales to them. *Yahang* were required to ensure that the local and provincial taxes for each transaction were paid. Official brokers also could and did serve in their historical capacity as market intermediaries, linking up merchants from out of town with producers and purchasers in the city. The Qing law contained provisions against embezzlement or fraud by official brokers, and charged *yahang* with financial responsibility for each transaction undertaken under their license.

But *yahang* licenses were only issued in small numbers (the city of Chongqing was awarded 152 licenses in 1729), and the licenses were only issued for important staples of the regional trade. Not every commodity had its own official brokerage, and a good deal of trade happened outside of these institutions even when they existed. Furthermore, local governments were explicitly forbidden by law to use *yahang* as agents of local fundraising. To deal with these challenges at the local level, additional organizations were founded. Although produced by compulsion in response to fiscal demand, the formation and operation of these groups were framed in a language of community and social collaboration. These were illicit trade obligation cooperatives and, in larger industries, merchant associations.

*Illicit Trade Obligation Cooperatives (hang)*

The trade obligation cooperative (*hang*) is a form of commercial governance that predated the eighth-century appearance of *ya* as official brokers. It originally emerged as an informal organization of each trade within the Tang central markets, which were physical areas within large cities where centrally-

administered tax stations had been set up. The members of each trade operating out of the market would appoint a representative, who would liaise between his constituency and the director of the market. After the breakdown of the Tang market system in the late eighth century, the *hang* system survived outside of the walled markets as a forum for the organization and fulfillment of trade obligations at the local level. From the eleventh century onwards, these units became official units for the procurement of materials and skilled labor by local governments throughout the empire. This system survived in various forms through the Yuan and Ming dynasties, and into the early Qing, until it was outlawed in 1740.

In 1740, the Qianlong emperor's 1735 decree against the formation of local trade obligation cooperatives was published as a part of the revised Qing Code. Local officials would procure their materials through the official brokerage system, at market prices, and were prohibited from using *hang* organizations as instruments of local fundraising. The *hang* themselves were abolished, and decried as backward tools of administration that impeded the free flow of goods and encouraged privation by officials and *yamen* workers. This is the end of the official history of trade obligation cooperatives and local merchant organizations. But in Chongqing, the 1740 ban on these organizations was only a prelude to their appearance.

No evidence exists on whether or not Chongqing had organized its merchant community into trade obligation cooperatives before the Qing. This is primarily because, up until the eighteenth century, Chongqing was considered a faraway and unimportant post in the extreme southwestern reaches of the empire, and much of the city's history before the Qing was never recorded. But the link between the early history of the city's commercial organization and its eighteenth- and nineteenth-century rise to one of China's primary centers of commerce is made even more tenuous by the fact that the entire population of the city (and almost the entire population of the province of Sichuan) was wiped out by decades of warfare in the seventeenth and eighteenth centuries, as a result of local rebellions, dynastic transition from the Ming to the Qing, and regional uprisings. In fact, the first step towards Chongqing's new profile as a commercial hub in the nineteenth century was its importance as a point of transshipment for military supplies between the agriculturally productive areas of Sichuan and the troops on the frontier. The city's position at the confluence of the Jialing and Yangzi rivers made it an ideal place for storing and dispatching items for consumption by the troops, and the material needs of Sichuan's growing military attracted a host of merchants from throughout the empire to establish trades in the city.

The military enterprise in Sichuan (which consisted primarily of campaigns in Tibet, but also involved engagements to the south in Yunnan and Guizhou, and to the north in Xinjiang and Qinghai) was funded entirely by the province itself. The material and financial burden of the war effort fell squarely on the shoulders of Sichuan's population, and that the central government (hard-pressed to provide a convincing administrative presence in the province even in normal times) turned a blind eye to extralegal forms of government finance. Thus, even after the official laws against *hang* organization were enshrined in the legal code in 1740, local governments struggling to keep up with the demands of

wars on the frontier were forced to turn to Sichuan's growing merchant population to finance the administration. In Chongqing, *hang* started to appear in the 1750s, just a decade after their prohibition.

Trade obligation cooperatives were formed at the behest of the local government, in response to local material needs and pressures to produce funding at the provincial level. At the beginning, exactions might be sporadic, and the organization of "donations" by merchants *ad hoc*. Eventually, responsibility for organizing the provision of these demands was modeled on the classic mutual responsibility unit for trades: the *hang*. Artisans or merchants in local trades (those untaxed and unorganized by *yahang*) were compelled to report to the local magistrate, appoint a liaison, and then bargain within their own groups about how to fairly distribute demands for labor, materials, and cash. The government would simply call on a trade's representative to produce required items, and leave it to that individual to figure out how to fulfill the request.[4] Although the practice was illegal, it was a way of raising funds for a cash-strapped administration, which had ample historical precedent. And as long as the frontier campaigns raged on, the local government of Chongqing answered to a provincial administration staffed by generals, rather than a central government run by civil officials thousands of miles away.

*The Advent of Merchant Associations (Bang)*

In the fifty years following the 1750 advent of illicit trade obligation cooperatives in Chongqing, a new form of mutual responsibility group for merchants appeared. A century of unceasing warfare marched forward in the province and on the frontier, the costs of supporting the military continued to pile up, and the market that tied the material needs of the war effort to merchants throughout the empire had continued to expand. By the turn of the nineteenth century, the city was host to a small army of traders big and small, who specialized in the supply of finished goods and the purchase of Sichuan's natural resources, which were being unloaded onto the market to fund the war effort. The growing merchant establishment in Chongqing was far too complicated to permit a simple trade obligation structure of administration, and growing military demands were too onerous to be satisfied with impromptu fundraising efforts. Thus, in the second half of the seventeenth century, a new form of merchant organization emerged. These groups were larger, more complex, and more articulated than the traditional *hang*. These were known as *bang*, or merchant association.

Merchant associations were formed earliest in those industries that dealt in strategically important or high-volume trades. Since these lines were mostly practiced by merchants hailing from other regions of the empire, and since each industry had a complicated internal structure (and many consisted of several sub-industries), they were not conducive to the classical *hang* style of organization. Instead, when the levies and wartime demands became too onerous to meet without an industry-wide structure to respond to them, the industries formed *bang*. The official requests to establish these organizations cite

[4] This could produce a good deal of friction within these groups, and led to legal suits in which merchants who were responsible for organizing these obligations accused their fellow tradesmen of turning a blind eye to pleas for assistance in meeting official demands.

the need to "concentrate responsibility" (以專責成) to handle government obligations through a single organization. The main tasks of these units was as fair a division as possible of the financial and material burden placed on each trade, but at the formation of these *bang* the members of a trade often also agreed upon a set of rules for the trade. When a magistrate endorsed the formation of a *bang*, he also published the rules associated with the trade. A suit from 1845 filed by Pu Yihe (濮義和) described the basic arrangement struck between owners of the city's copper leaf workshops:

> I came to Chongqing in the Qianlong reign (1735-1796) to open a copper leaf workshop, and took responsibility for handling the trade obligations. All who run workshops work together to pay the levies. Whenever a new shop opens, and whenever they invite apprentices or new masters, there are rules that specify that they have to pay into the association. As for the peddlers that come and go, market prices have been set and it has been agreed to take a surcharge from each of their sales in order to help pay the levies. There is no obstruction (to commerce) and no extortion or raising of prices.[5]

Members of these trades met their obligations to the local government by agreeing upon a set of rules about how funds would be raised (usually involving fixed contributions, rotating responsibility for material demands, and surcharges on purchases). Those rules were then recorded at the local *yamen* and any violation of the agreement warranted the personal attention of the magistrate. Furthermore, merchants earned some modicum of protection from excessive government demands by meeting exactions as a group. As levies increased, *bang* sometimes even attempted to negotiate with *yamen* workers about the terms of government confiscations. By the end of the nineteenth century, these practices were largely regularized and institutionalized.

This series of agreements – first among members of a trade, as to how to distribute the burden of trade obligations, then between that group and the *yamen* – constituted a powerful form of illicit authority at the local level. The archives are full of cases where individuals attempt to "register" a *bang* that doesn't exist, as a means of demanding surtaxes from merchants, as well as disputes between *bang* or between the members of a *bang* and some peddlers or merchants who refuse to recognize the rules of the organization. In every case, magistrates were wary of the potential for abuse that came along with these forms of organization, and ruled against any proposal that might have led to a trade monopoly, while still upholding the government demand that taxes be paid.

**Mutual Responsibility and Administrative Authority**

Originally, the mutual responsibility attached to Qing *baojia* units was a factor of the legal definitions of the institution. Any wrongdoing committed within a *baojia* unit could lead to members of the

[5] ID: 131 DG 商貿清 6-12-10585 ID_Suit: 806 Doc: 1

neighborhood being punished along with the criminal, on the grounds that the members of these units were responsible for one another's behavior. In practice, however, this legal institution was rarely invoked. The day-to-day authority of mutual responsibility units rested not in its legal dimensions, but in its administrative importance. It was the position of *baojia* heads as interlocutors between the official world and the local community that expanded their responsibilities and broadened their authority beyond the initial legal outlines. Similarly, the trade obligation cooperatives and merchant associations of the city – which were not endowed with any legal authority, and were in fact illicit forms of local organization – were powerful because of their link to the magistrate's office. Like the *baojia* units, the duties of Chongqing's trade organizations became broader with time.[6]

Both the city's *baojia* heads and its merchant associations played an important role in the resolution of commercial disputes. The *baojia* heads were common figures in the court process from at least the middle of the eighteenth century, when the Chongqing legal cases in the archives begin. Trade organizations are rarely mentioned in early disputes, but start to appear as mediators in legal cases by the nineteenth century. Over the course of the nineteenth century, their role in resolving commercial disputes became more involved. The ways in which *baojia* leaders and merchant groups intervened in commercial disputes were quite similar to one another, and seem to have been interchangeable (except when the official authority of the *baojia* head seemed preferable to the disputants, or when the trade-related expertise of merchant groups was required instead). Together, they were responsible for every facet of the negotiation and settlement of merchant disputes.

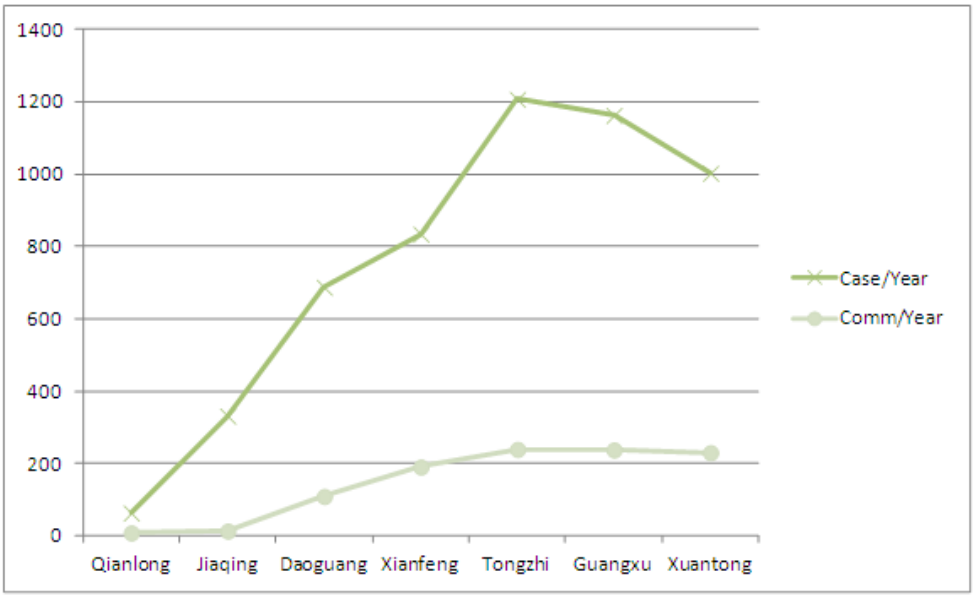
## PART TWO: DISPUTE MEDIATION

The availability of these forums did not mean that Chongqing's court was not used by disputants. Litigation was common among all types of merchants in the port city: natives and sojourners, rich and poor, degree-holding and illiterate, young and old traders of all profiles appeared before the magistrate.. By the turn of the nineteenth century, the courts of Chongqing were quite busy, and commercial cases comprised a significant portion of the disputes heard by the magistrate (consistently comprising between 15 and 20 percent of the total case load, even without counting other types of disputes involving money, such as land, rent, and loan disputes). The number of commercial disputes per year in Chongqing climbed steadily in the Qing, reaching a peak of between 230 and 240 from 1861 onwards:

[6] The *yahang,* on the other hand, became less and less important. The city's number of licenses reduced over time, even as its population and economy grew. When *yahang* do appear in legal cases, they tend to do so in two capacities: 1. Filing suits against merchants or unlicensed brokers who haven't submitted taxes, or 2. As brokers, without anything to distinguish them from the other market brokers that operated in the port. *Yahang* were market actors, but were not important agents in the process of dispute mediation.

Table 1: Total number of cases preserved, number of commercial cases preserved for Qing Ba county[7]

| Reign | Cases | Comm | Years | Case/Year | Comm/Case | Comm/Year |
|---|---|---|---|---|---|---|
| Qianlong | 3827 | 545 | 60 | 63.78333333 | 0.142409198 | 9.083333333 |
| Jiaqing | 8304 | 354 | 25 | 332.16 | 0.042630058 | 14.16 |
| Daoguang | 20642 | 3296 | 30 | 688.0666667 | 0.15967445 | 109.8666667 |
| Xianfeng | 9183 | 2104 | 11 | 834.8181818 | 0.229119024 | 191.2727273 |
| Tongzhi | 15700 | 3120 | 13 | 1207.692308 | 0.198726115 | 240 |
| Guangxu | 39549 | 8104 | 34 | 1163.205882 | 0.204910364 | 238.3529412 |
| Xuantong | 3010 | 693 | 3 | 1003.333333 | 0.230232558 | 231 |




[7] Source: Ba Xian Qing Archives official index. (Commercial includes fraud [over-counting] and commerce/trade and shipment, and bang cases (Xuantong only), NOT including land, loans, or mining). NOTE: The cases for the Qianlong reign are mainly from the last two decades of this 60-year reign, so the figures for that reign cannot be considered representative.

Despite the frequent use of courts for commercial cases by the second half of the nineteenth century, the utility of litigating over commercial disputes has frequently been questioned by historians. Most scholars studying what have been dubbed as "civil disputes" focus on two aspects of the judicial process that have proven difficult to explain. The first concerns the place of the law in "civil matters," and the question of how courts navigated those disputes where the legal code provided scarce guidance. The second major thrust of the scholarship has been the search for a central logic uniting the verdicts handed down in these cases. Conclusions on these two points have varied widely, and often read as either dismissive portraits of lawlessness or contrived apologies.

Indeed, although magistrates – aided by competent and well-versed assistants – did comment on the laws that applied to a case, this did not happen often in commercial disputes. In the fifty random cases analyzed in this section, only one case mentioned a legal sanction (and the law mentioned was not related to commerce).[8] The unavoidable truth is that, no matter how hard American scholars have tried to describe court actions in legal terms, there was simply no legal foundation for adjudicating the average commercial dispute in Qing China. Existing evidence suggests that magistrates were aware of and capable of applying the dynasty's legal codes, but codes for navigating commercial disputes didn't exist. Courts were not places for legal disputes about the terms of trade.

Nor were courts places for determining the extent or nature of commercial obligations. With a few exceptions (discussed in the "Exception" section below), the Chongqing court offered no new interpretations about the amount that should be paid by one party to another at the conclusion of a failed business transaction. The court, in fact, consistently protested its ignorance of commercial affairs, declaring that such matters were too difficult to judge fairly. Thus, despite the eagerness of many disputants to convince the court to back one particular outcome over another, the court remained aloof, and adamant that these affairs were not fit for judgment by a magistrate.

These two conditions – the absence of laws to determine commercial liability and the unwillingness of magistrates to directly tackle these questions on their own – have led scholars into a century of debate and confusion about what Chinese courts offered litigants. No scholar has yet suggested that Chinese courts were prepared with any knowledge or capability designed to assist merchants in resolving their disputes. Many historians continue to assume that businessmen preferred to stay out of the court system because of this. But despite scholars' insistence that Chinese courts failed to offer litigants any reasonable assistance, and despite contemporary generalizations that Chiense culture inspired a social disinclination toward litigation, Chinese subjects in general and Chongqing merchants in particular continued to file suits against one another. So what were these businessmen and traders doing in court? And why did they keep coming back?

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[8] (1878) 102: GX 商貿清 6-44-26117; Doc 42. The magistrate threatened a reluctant defendant with the punishment of exile for directly disobeying a court order. This punishment was not exacted.

This paper suggests that the operation of the Chongqing court was dictated by its role as a support system for mediation, and not a substituting or competing forum for dispute resolution. The Qing court and its officials maintained the notion that private agreements should be resolved by the parties to those original agreements, and the mutual responsibility groups designed to govern them. The same groups that were responsible for the mobilization of the community for administrative purposes were also charged with arranging settlements between individuals whose transactions had gone afoul because of complicated circumstances. In these situations, the job of the court was to ensure that participants in the mediation process did not cheat, delay, or fail to participate. The court was an enforcer of the legitimacy of mutual responsibility groups as arbiters of disputes over private agreements.

**The Function and Purview of Mutual Responsibility Groups**

The combined social and administrative profile of mutual responsibility groups meant that their functions and their authority were rooted in both knowledge about the community and their affiliation with the *yamen*. On the one hand, their decisions and standards represented the common conventions of their own constituency, and the culmination of an intimate knowledge of the neighborhood. On the other hand, mutual responsibility institutions were one of the foundations of local government, and operated with the authority of the magistrate in the performance of their administrative duties. In the case of commercial litigation, mutual responsibility group forums exercised both forms of authority, and – by combining their social and official profiles – maintained a reputation of informed and impartial insight into complicated commercial disputes. This dual authority gave their judgments a sanctioned privilege.

The social profile of mutual responsibility units meant that they were considered especially fit to root out the causes of disagreements between individuals. Because the outcome of litigation could be costly for both parties and for the state, and because the court only knew about those things that were testified and written up in legal suits, mutual responsibility groups were consistently considered safer and more appropriate forums than the courtroom for digging up the truth. Before even accepting a case based on suspicious allegations, the magistrate could ask *baojia* heads or merchant groups to investigate the matter and determine whether or not grounds for litigation existed.[9] This was especially

[9] See, for example, ID: 58 GX 商貿清 6-44-26376 ID_Suit: 389 Doc: 2. In this case, the plaintiff accused the defendant of switching out the purchased goods for faked goods, and the magistrate ordered the filer of the suit to take his purchase to the *bang* through which those items were purchased, to determine of the broker really did try to cheat the plaintiff. In case Case 117 (ID: 117 QL 商貿清 6-01-1857 ID_Suit: 727 Doc: 7, 8, 10): before summoning for court, the magistrate requested *kezhang* and neighbors (hanglin) to examine the details of the partnership in question and report to the court. In case (ID: 55 GX 欺詐清 6-42-22332 ID_Suit: 377 Doc: 1) the magistrate felt suspicious of the plaintiff's claim that the defendants, having successfully concluded a transacton with the plaintiff, proceeded to force him to take drugs and gamble away his remaining money; or the

the case in disputes involving partnerships and written contracts, which were considered straightforward exercises in mediation. [10] Mutual responsibility groups were thus relied upon to determine the important facts of the dispute, and to report any necessary details back to the *yamen*. This function of mutual responsibility group forums did not terminate with the permission to summon a case, either. Any questionable areas of court testimony or the details of the case could continue to be referred to these forums for examination. This was especially the case when accounts and transactions were the subject of debate, and merchant associations were called upon to sort out and reckon the financial affairs of a firm.[11]

Mutual responsibility groups could also be deputized to perform official functions throughout the litigation process. Because these groups were responsible for keeping tabs on their members for normal administrative business, they were useful agents of the court. While *yamen* clerks and runners were responsible for handling official paperwork and employing force to execute court orders, mutual responsibility group representatives were responsible for carrying out all of the other out-of-court duties associated with the mediation process. The most common duty of mutual responsibility groups was assigned to *baojia* representatives, who were charged with helping *yamen* bailiffs track down parties wanted for a dispute. Trade groups were requested for official duties less often, perhaps because of their illicit status, but could be contacted to handle complicated commercial tasks requiring the attention of an impartial third party.[12]

When both social and court attempts to settle a dispute proved inadequate to bring about an agreement between litigants, the ultimate disposition of cases was often left to the expert opinion and irrefutable testimony of mutual responsibility group delegates who had been involved in the mediation process. Magistrates might order mutual responsibility groups to declare a resolution in cases where different interpretations or claims withstood the magistrate's ability to interrogate parties to litigation.[13] In these cases, the testimony of these groups was considered authoritative. Magistrates sometimes directly adopted the settlement figures proposed aftera reckoning under the auspices of mutual

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case (22 欺詐清 6-42-22386 Doc. 1) when the deal in question is over a year old, and no action has been taken), he kicks it to jianbao et al. to sort out the truth.

[10] GX 商貿清 6-45-28096 ID: 78 Doc: 8; ID: 78 GX 商貿清 6-45-28096 ID_Suit: 535 Doc: 2

[11] See, for example, GX 商貿清 6-44-27270 ID: 94 Doc: 5

[12] 27 商貿清 6-44-26509; In this bankruptcy case, both the owners and the employees had fled (or committed suicide). Members of the cotton *bang* were asked by the magistrate to work together with *yamen* employees to collect the bales of cotton that the firm had stored throughout the city, store them in a public place (gongsuo), and sell them at market price to reimburse the creditors. They also liquidated his Chongqing properties

[13] See GX 商貿清 6-44-27507, ID: 72 Doc: 41 and ID: 58 GX 商貿清 6-44-26376 ID_Suit: 392 Doc: 6

responsibility groups.[14] The court also proved willing to accept settlements merely reported by mutual responsibility groups, despite the fact that this was an ill egal practice.[15]

The function of even illicit mutual responsibility groups was such a sanctioned part of the mediation process that suits could be thrown out in spite of the fervent protests of plaintiffs, on the word of these groups. In one case from 1910, Li Jisan brought the business partners of his deceased brother Li Yunfeng to court. He accused these two men of plotting to steal his brother's share in the business, and of allowing him to die under very questionable circumstances. Li Jisan protested that their decision to bury his brother's corpse over a hundred kilometers away in the port of Hankou was too suspicious to escape scrutiny. The defendants reported that, after Li Yunfeng fell ill in Hankou, they submitted the affair to the local Sichuan merchants worship society (川祖宮會) to verify the partnership accounts, and agreed to bury the brother in Hankou at their own expense. Upon receiving this information, the magistrate dismissed the case, concluding that the death of Li's brother and the reckoning of the firm accounts had been undertaken under the auspices of the Sichuan merchants worship society, and that any legal action on the matter would be frivolous.[16] Lacking an official market presence below the county level (other than the marginalized *yahang* community), magistrates in Chongqing relied on mutual responsibility groups to perform all of the most important informational tasks associated with dispute mediation.

Mutual responsibility groups were such a central part of even the litigation process that the magistrates of Chongqing proved unwilling to summon cases that hadn't been through mediation in the neighborhood or in a trade group first, unless the suit was accompanied with clear evidence of foul play that warranted immediate intervention. In the course of court involvement, litigants who refused to fully participate in mediation attempts were distrusted, and sooner or later encountered punishment. This function – the refereeing of the mediation process – was the central purpose of the court.

**The Function and Purview of the Court**

The court was wary of false claims and unnecessary lawsuits, and refused to hear cases that had not been mediated unless exigent circumstances, such as the flight of a debtor, existed. This was because the primary function of the court was to wield force. Litigants in commercial disputes were not punished for breaking laws or even for violating binding agreements, but for taking advantage of a business

[14] 12 欺詐清 6-41-20236 7; ID: 94 GX 商貿清 6-44-27270 ID_Suit: 602 Doc: 25; GX 商貿清 6-44-27507 ID: 72 Doc: 26

[15] ID: 119 JQ 商貿清 6-05-4628 ID_Suit: 742 Doc: 2; After being permitted, but before being tried, the Huguang *kezhang* reported a resolution; and the case was subsequently dismissed.

[16] 46 欺詐清 6-55-02695 5

partner's good faith and failing to cooperate in the mediation process. Punishment was a persistent incentive for mediation in commercial cases, and was resorted to when other avenues of exhortation had been exhausted, or when it became clear that one or both parties had been unfaithful to the settlement process or that a settlement couldn't be reached without compulsion. Out of the 50 sample cases, 30 wound up in trial. Of those 30 cases, 22 (73%) eventually entailed punishment for the defendants.[17] In the course of those 22 cases, a total of 50 punishments were ordered (out of a total of 133 court verdicts, 50 of them specified punishments).[18] Litigants facing the court process after a suit had been permitted for trial could expect that parties not cooperating in mediation would be punished. It was up to the court to decide how, when, and why to use the state's monopoly on violence to ease the mediation process.

The majority of punishments – 26 out of the 50 – were the direct result of a defendant's unwillingness ot pay the amount agreed upon in mediation. Considerable delay was often permitted before the first punishment for repeated refusal to pay (an average of 2.8 months from the time of the first suit filed), especially if defendants had legitimate reasons for failing to live up to their obligations. It was only when defendants revealed themselves to be trenchant procrastiantors flauinting mediation forums that the court resorted to punishment. But, when it did, the fact that a *baoija* forum or *bang* mediation had come to a certain figure and that the defendant refused to pay it was enough grounds for punishment. [19] Similarly, defendants could also be punished for refusing to mediate. Punishments for repeated failures to engage in mediation were handed down in 8 of the 50 instances, such as in one case where the defendant was punished for not handing over accounts for reckoning.[20]

In addition to punishing delay, the court also provided consequences for direct forms of cheating (in both the mediation process and in the business dealings themselves). Punishments for cheating took place with an average of two times the speed of punishments that resulted from refusals to pay or mediate.[21] Punishment for cheating happened in 10 out of the 50 sentences (20%). Five of those 10 punishments were for a breach of faith at the point of transaction: selling goods that the plaintiff had entrusted the defendant without permission to sell, purchasing such goods, and absconding after taking payment without delivering the promised goods. The other five punishments were related to cheating in

[17] Not counted: 5 Runner Punishments, 2 Plaintiff Punishments (4 Lost Custody, 1 Failed Arrest, 1 Fighting in Court, and 1 False Testimony)

[18] Punishments here are defined as escalated detention (losing mobility) and corporal punishment (being slapped or caned).

[19] 29 商貿清 6-44-26884 6; GX 商貿清 6-45-28096 ID: 78 Doc: 13

[20] GX 商貿清 6-44-27270; ID: 94 Doc: 5

[21] Average time to first punishment (in months): RRTP/RRTM Time to first punishment Average 2.784615385; Cheating time to first punishment Average 1.514285714

the court or mediation process: giving false testimony, illicitly collecting accounts without using the funds to pay off creditors, and forging account books to try to alter mediation outcomes.[22]

The seriousness and danger of the litigation process were so well known that the mere threat of a trial was enough to resolve a large number of disputes that were reported to the *yamen*. Fourteen of the fifty cases sampled (28%) fall under this category. The plaintiffs, having received the magistrate's permission to call a trial (sometimes after more than one suit was filed), were able to persuade their debtors to settle before being dragged in to court. Some desperate plaintiffs filed suits in rapid succession after repeated rejections by the magistrate, explaining that the court's refusal to hear the case made their antagonists bolder and less likely to come to mediation. For the majority of litigants and non-litigating disputants, the main role played by the court was that of the menacing disciplinarian, who did not make up the rules for private exchange and personal commitments, but punished parties who failed to live up to their own promises or flaunted mediation processes.

In addition to punishing cheaters and parties delaying settlement, the court could also use its resources to arrest and detain figures of interest. The court could summon defendants from other areas, or issue warrants for accused individuals who had been found sufficiently suspect.[23] It could also add secondary or tertiary defendants (who had acted in league with the primary defendant) to a court case to force them to also take responsibility.[24] A small number of punishments were issued for these reasons, when the magistrate feared that the failure of the mediation process was imminent. When a debtor fled rather than face mediation, the court did everything in its power to locate him and keep him in custody. Direct relatives and guarantors of the debtor could be taken into custody, and the defendant himself could be locked up after finally being detained (each one of these three situations occurred once in the 50 punishments). The court proved willing to use force to keep defendants in mediation, or bring them to the table.

Beyond straightforward punishment for cheating or delay and the prevention of flight, the court could also ease the mediation process by officially recognizing a third party as responsible for some part or all of the settlement process. The denouement of a court case often involved assigning responsibility for the oversight of a resolution to a guarantor as a way of getting the defendant out of court (but keeping someone officially accountable). Defendants were usually released to guarantors when the only element remaining in the case was arranging and producing a settlement because settlement execution was considered the realm of mutual responsibility groups. Guarantors pledged on "the person and the money," (人銀兩保) it being excpected that, if they could not deliver one, they would deliver the

[22] For a table with the reason and number for each punishment, see the appendix table "Punishment Reason"

[23] JQ 商貿清 6-05-4779 ID: 125 Doc: 4;

[24] 28 商貿清 6-44-26870; Doc 9

other.[25] Sometimes defendants were simply ordered to find a third-party merchant to settle with creditors (斷眾夥託人商酌付給了案).[26] Others were granted permission to find guarantors so that they could be relased from custody in order to collect bills and negotiated a settlement that had stalled. [27]Of the thirty cases of the sample of fifty that wound up in court, seventeen (57%) involved at least one instance of adding a guarantor to the case. Guarantors would be required to report to the *yamen* (and sometimes even appeared before the magistrate in court) to leave a bond of surety on file. One example of a guarantor's bond from 1898 read:

> Lu Jintang: Wang Demao brought the brothers Ke Lisheng and Ke Liyuan in to court on charges of illicitly collecting accounts worth more than 290 taels, and the magistrate handed down a verdict finding that the circumstances were as charged, and ordered that Ke Lisheng be taken into custody, and that Ke Liyuan be let out on a guarantee to go and find a way settle with Wang Demao and make good. I am a neighbor of Ke Liyuan's, and I couldn't stand to sit by and watch, so I came to the *yamen* to serve as Ke Liyuan's guarantor, so that he can go and settle with Wang Demao. It is not permitted to let him flee. If such a thing happens, I will be personally responsible. The contents of this bond are true.[28]

Once a guarantor was placed on file, cases tended to move out of the court. But if new problems arose, both the defendant and the guarantor (who was required to be a person of means) could be held responsible. Guarantors who backed defendants that had escaped could be held directly responsible for the sum owed.[29]In rare cases, guarantors themselves could be punished or detained for non-payment and non-compliance. [30]

*Summary*

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[25] 25 商貿清 6-44-26418 Doc 11

[26] GX 商貿清 6-44-27507, ID: 72 Doc: 14

[27] ID: 102 GX 商貿清 6-44-26117 ID_Suit: 657 Doc: 14, 25; ID: 25 商貿清 6-44-26418 Doc 14; 32 商貿清 6-44-27047

[28] ID: 135 DG 商貿清 6-12-10668 ID_Suit: 826 Doc: 5

[29] 25 商貿清 6-44-26418 26

[30] 28 商貿清 6-44-26870

Taken together, these descriptions of the litigation process suggest a picture of the court as one station in the escalation of a commercial dispute: a suit first had to be accepted by the court, and then had to be brought to trial (there was usually some time between the two events, allowing disputants to settle in the interim). If a case made it to trial, as it did in 60% of the random sample of 50 cases, there was a strong likelihood (73%) that the defendant would be punished. The court acted deliberately and sternly toward defendants who failed to earnestly participate in mediation, and thus provided a strong incentive for debtors and creditors to place their faith in mediation overseen by mutual responsibility groups.

Without an understanding that mutual responsibility groups were at the center of commercial dispute mediation (and not simply an alternative to court mediation), the behaviors of the Qing court could seem illogical indeed: they did not cite laws, did not specify settlements, consistently referred litigants back out of the court system, were often not the last stage in mediation, and administered punishment for "trickiness" or unfaithfulness. These behaviors cannot be understood from a perspective that takes law or the court as the primary institution upon which merchant disputes were settled.

But once one takes mediation as the starting point, it becomes clear that the Qing court was a referee, auditor, or disinterested third party to which disputants could refer when the mediation process itself broke down, due to non-cooperation, incomplete information, or exigent circumstances. The role of the Qing court in these instances was not to hand down its own interpretation, but to try to fix the mediation process itself. The court's position vis-à-vis mutual responsibility mediation forums dictated the forms of assistance that potential litigants could hope to avail themselves of. The court could compel suspicious defendants to remain in the locale pending the resolution of a dispute. It could also punish defendants attempting to cheat or avoid the settlement process (and it could encourage litigants to settle at the mere threat of such interference). The court could also transfer responsibility for settlement to a willing guarantor, who might prove more capable than the original defendant.

At any one of these stages of intervention, the case might revert back to mediation only. Of the 50 cases sampled, only 12 of the dispute-ending resolutions happened in court or were communicated to the *yamen* after happening. The other 38 (76%) left the court without any indication of what become of the litigants.[31] Ultimately, the court was not the most important actor in the resolution process.

*The Exceptions Prove the Rule*

These principles of commercial litigation were not explicit guidelines so much as administrative realities. Magistrates were responsible for a large number of tasks, and were almost always unfamiliar with the

[31] See appendix table "Ending Disposition" for a list of the ways in which each case left court.

locale in which they served.[32] Their reliance on mutual responsibility networks in commercial dispute mediation was not only a comfortable analogue with the involvement of these groups in other tasks of local administration. It was also the most ready solution for the dilemma of arbitrating many commercial cases with little or no administrative support and legal guidelines. Since magistrates could be fined, demoted, or expelled from the bureaucracy for both neglect of cases and overzealous decisions in the courtroom, a minimum level of intervention was the safest option for magistrates eager for continued employment. The city's mutual responsibility groups fit into this vacuum perfectly: possessed of a knowledge of local practices, a familiarity with the litigants themselves, and a desire to solve the problems in the most agreeable terms, they were able to reside over commercial disputes using their social and administrative status, but without invoking the law. The court was able to refrain from making costly, risky, or dangerous decisions about commercial cases.

For all that, the court did occasionally intervene in commercial disputes. These instances were in the minority, but they bear mention here because most of the scholarship on the cour'ts position has been based on these aberrant cases (since the usual examples provide scant material for discussion) and because even the exceptions to the general rule of court nonintervention illustrate the argument offered in this paper. The following three examples are drawn from the sample of 285 cases:

> 1. In one case from 1786, the plaintiff accused his business partner of taking over the firm while the plaintiff was on a long trip back to his home province. The defendant filed a counter-suit, claiming that the plaintiff was not a partner, but an employee from when the defendant's now-deceased father had run the business. The defendant claimed that the plaintiff had no controlling shares, but that his father had awarded the former employee one "dry share" (interest-bearing stocks that are awarded without capital investment; a common form of remuneration for higher-level employees), which the plaintiff had sold over to another individual. The magistrate ordered the merchant association responsible for immigrants from the province whence the two parties hailed to investigate. The association concluded that the plaintiff was, indeed, a former employee, and suggested that the defendant issue him the equivalent of a severance bonus of 200 taels, out of gratitude for the employee's loyal service. The defendant refused, on the grounds that the employee had left the firm and given up his stake. When the case came to court, the magistrate ordered the defendant to pay 80 taels to the plaintiff "out of consideration for the bonds of feeling." The case was then dismissed.[33]
>
> 2. In a case from 1832, a shop owner filed suit against a peddler with him he had been doing wholesale business for many years, on the grounds that the peddler was two years late on his last payment. The plaintiff had run into the defendant unexpectedly on the streets of Chongqing, and brught him directly before his shop neighbors (a sub-set of the *baojia* institution) for

[32] This is due to two important characteristic of the Qing administration. The first is the law of avoidance, which was the Qing policy that officials could not serve in their home provinces. The second is the short tenure of magistrates, who normally served for three years in any given county or prefecture before being moved (almost always to a new province). The tenures of magistrates in Chongqing, which was a politically sensitive and dangerous post, were even shorter than those in most of the rest of the empire. Several magistrates could serve in one post in a single year.

[33] Case 117

> mediation. The assembled group agreed that the defendant should pay, bu the defendant failed to make good. The plaintiff resorted to litigation. In court, the magistrate ordered that the defendant – who plead poverty – should pay 20 taels of the 50 taels owed, and that the plaintiff should forgive the rest. The magistrate also had the defendant flogged for evading the matter, and declared the case over.[34]
>
> 3. In 1811, a shop owner brought suit against a low-level employee of another firm and an accomplice, who had been caught forging the seal of the firm at which one of the defendants was employed to purchase goods illicitly on the employer's credit. The goods were worth a total of 13 taels, and the magistrate ordered each defendant to pay half of the sum. One defendant obeyed, but the other continued to protest his innocence, saying that the shop employee had acted on his own. The withholding defendant then fell ill after a month in prison, and the magistrate had him beaten and released, and dismissed the case.[35]

In each of these three instances, the presiding magistrate broke the usual pattern of non-intervention. In the first and second cases, the magistrate struck a compromise between fairness and liberality: the shop owner in the first case and the peddler in the second were both compelled to pay, but the verdicts were limited victories for the plaintiffs and took a measured approach to exacting payment. In the first case, the amount handed down was a restrained estimation of the original decision from mediation, and in the second case it was a recognition of the defendant's limited means. Poverty played a role in both cases two and three, where the magistrate substituted punishment for payment. These types of verdicts are often described as motivated by pity, but can also be explained from a more practical standpoint: as water cannot be wrung from a stone, so was demanding payment from impecunious defendants a futile task. The detention and trial of impoverished defendants was an expensive and dangerous frivolity, and public shame and corporal punishment could be substituted for payment in cases of small debts.

In each of these cases of direct court intervention, there was no possibility of a clear and satisfactory mediation outcome. In the first case, the plaintiff's argument for recompense was built on an argument about the intangible benefits of long-term firm loyalty and on the personal plea of a poor, aged ex-employee to the son of his former employer. In the second case, the indebted peddler who had fallen on hard times was from a poor rural area, and had done favorable business with the plaintiff for many years. The defendant's inability to pay, although clearly wrong, was not considered more harmful than the possible consequences of long-term imprisonment, and was mitigated by loyalty he showed to his business counterpart over the years. In the third case, the second defendant's refusal to pay was the result of his poverty, the case was tainted by the lack of proof about his role in the scheme, and he had already suffered a serious illness in prison.

In cases of court intervention, no party received his wish. Plaintiffs were compensated, but never to the extent desired. Defendants were spared from the full extent of the plaintiff's demands, but were not completely forgiven. The court's decisions were always second-best; they were conservative attempts to

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[34] Case 130: DG 商貿清 6-12-10179

[35] Case 122 JQ 商貿清 6-05-4749

force a resolution where mediation was unlikely to produce results. Mediation might fail because of irreconcilable accounts of a transaction, because of an absence of evidence, because of complicating personal relationships, or because of the inherent unfairness entailed when one party held a superior social status (this holds for all three of the above cases), greater economic means (also true of all through cases), or local connections that the other party did not enjoy (two of the three). In these cases, the best way to referee the mediation process was, in the opinion of magistrates wary of social scandal, to cut the process short by proposing a compromise in which neither side emerged entirely satisfied, but both were rewarded. If litigants felt that they could reach a more satisfactory agreement outside of the court process, they were free to do so.

## CONCLUSION

None of the normal or exceptional court behaviors depicted above make sense if one presumes that the d tseveral contemporary observers and most later historians wrote about the Qing legal system, they found the courts inconsistent and incompetent. Observing the power of mutual responsibility group forums, in contrast, they concluded that the state was not as powerful as the social elite, and suggested that local mediators and high-profile merchant heads somehow ruled over illicit domains of social authority that flaunted the legitimacy of the state. What these commentators did not see was that, in local practice, there was no absolute division between mediation outside of and within the court system. The mutual responsibility groups that oversaw commercial settlements outside of the *yamen* office were just as vital to dispute resolution as the courtroom itself because they were both a part of the *same* imperial administrative system.

The merchant groups that partook of this responsibility have been considered social because they were illegitimate (or semi-legitimate, since their rules were on file). But their illicit nature was an important component of their roles as official liaisons between the market and the state. On the one hand, their power over the market itself was kept at bay by magistrates' unwillingness to acknowledge the complete authority of these groups over their respective trades.[36] On the other hand, the authority of these groups was kept separate from the courtroom in order to maintain the flexibility of personal agreements about commercial exchange. Every verdict in the court was not only a precedent that could be invoked in later cases, but was also potential grounds for an official opinion by the Board of Punishments (or the emperor). If contracts, notes, agreements, and commercial conventions were brought under official scrutiny in the court system, a single legal standard would be applied to all

[36] The Qing state was – like many imperial Chinese dynasties – very committed to the destruction of monopolistic forces in the market. Statesmen argued that monopoly enriched the few at the expense of both the consumer and would-be competitors. In the section of the Qing Code that covered "Market Laws," the prohibition of monopolies was one of five laws, and contained nine substatutes.

merchants, peddlers, producers, and farmers across the empire. This was not only an impossibly large undertaking, but was considered beyond the purview of the state. It was the place of any given pair of people, or partnership, or group venture, or trade, or locale to determine the conditions of exchange that suited their needs and conditions. This was a central logic of the Qing court's approach to commerce.

If the parties to a business deal had a problem, they would first turn to the others involved: the mutual acquaintance who recommended one to the other, or the broker who arranged the transaction, or the witnesses who signed a receipt or contract. If the first-hand parties to the transaction were helpless to solve the problem, or did not exist (the majority of cases in the sample contained no more proof of transaction than a simple receipt, the report of an oral agreement, or a line in an account book), the dispute could escalate to secondary agents in a radiating network of responsibility and authority. A third-party merchant acquaintance, the owners of shops inhabiting the same street as the business involved, or a neighborhood forum near the residence of one party might be called upon to sort out the affair. The heads of *baojia* units or of merchant *bang* could even be asked to mediate between the two parties. Only when all of these options were eliminated would a judge hear a commercial case, and most of those cases heard were sent back to mediation outside of the courtroom before they were finally resolved.

Every transaction, every loan, every business relationship, every contract or note or receipt or account book was the located in a dense web of overlapping networks of responsibility. These relationships were constructed out of social connections, but they were charged with powers more well-defined and easily invoked than reputation and in-group solidarity, which were merely useful fictions. These relationships were backed by and created by the state itself.

The court's role in this system was not to judge the commercial practices of its supplicants. The court's job was to ensure the efficacy of mutual responsibility forums. It punished cheaters and liars swiftly. It punished bungling, incompetent, or delaying debtors slowly, but surely. It dismissed outright suits that had not first attempted other forms of mediation, and it frequently instructed litigants to employ these resources throughout the litigation process. At the end of the day, Chongqing's court was not responsible for interpreting the validity of any given commercial transaction, or defending its parties. It was only committed to the principle of business as usual.

APPENDICES

First Court Action

| | |
|---|---|
| Suit Allowed | 35 (70%) |
| Kicked to mediation | 7 (14%) |
| Court Deadline | 3 (6%) |
| Kicked (preexisting case/resolution) | 2 (4%) |
| Exam | 1 (2%) |
| Punishment for False Suit | 1 (2%) |
| Court Custody | 1 (2%) |

Punishment Reason

| | |
|---|---|
| Repeated refusal to pay | 26 |
| Repeated refusal to mediate | 8 |
| Cheating (daomai) | 3 |
| Cheating (false testimony) | 3 |
| Pending arrival of defendant | 2 |
| Failed guarantor | 2 |
| Cheating (daokong) | 1 |
| Cheating (illicit account collection) | 1 |
| Cheating (illicit purchase of daomai goods) | 1 |
| Punishment in lieu of pay | 1 |
| Cheating (fake accounts) | 1 |
| Arrest After Flight | 1 |

Stage at Closure

| | |
|---|---|
| Cases in Court | 30 (60%) |
| Summoned, no court | 14 (28%) |
| Cases not Summoned | 6 (12%) |

Ending Disposition

| | |
|---|---|
| Summoned (No other action) | 10 |
| Report of Resolution | 4 |
| Warrant | 3 |
| Mid-case Summons | 3 |
| Prisoner Released (Illness) | 3 |
| Command Payment Deadline | 3 |
| Command Runner to Urge Payment | 2 |
| Resolution Filed | 1 |
| Kicked (MRG) | 2 |
| Kicked (Jurisdiction) | 2 |
| Payment in Court | 2 |
| Kicked (After final court verdict) | 2 |
| Court Contract Signing | 2 |
| Court exonerates one defendant | 1 |
| Punishment (Failure to Pay) | 1 |
| Command to Settle | 1 |
| Prisoner Released (Guarantor) | 1 |
| Kicked (Failed Exam) | 2 |
| Failed Plea for Exoneration | 1 |
| Court Contract Signing | 1 |
| Punishment for False Suit | 1 |
| Command Runner to Work with Bang | 1 |
| Report of Escape | 1 |