



PROJECT MUSE®

The Gendered Body in the Qing Courtroom

MATTHEW H. SOMMER

Stanford University

THIS ARTICLE PRESENTS A VARIETY OF court cases, including homicides and marriage disputes, from eighteenth- and nineteenth-century China in which magistrates scrutinized bodies for evidence about gender performance. In order to judge these cases properly, magistrates needed to find out whether the persons under scrutiny were physically capable of normative gender roles or had violated the rules governing such roles; their judgments aimed to repair kinship networks and reinforce patriarchal hierarchies. These boundary-crossing “hard cases” help us understand the complex interweaving of bodily sex and social gender in the Qing: they provide insight into how magistrates (as well as midwives and others who gave evidence) would interpret the body in terms of what society demanded of it.

For some time now it has been conventional to posit a clear distinction between sex and gender: sex is transcultural, biologically determined, and grounded in the body, whereas gender is socially and culturally constructed and therefore learned and performed according to varying scripts. As convenient as this sex/gender distinction may be, it has provoked intense debate among feminist theorists about exactly where to draw the line between them—or whether it is even possible to discern a stable, unmediated category of sex (or the body) prior to discourse.¹

It seems, however, that a tentative consensus has emerged, at least among historians of gender and sexuality: while there does exist a real, physical

This article originated in a talk I gave at the University of California Los Angeles some years ago titled “The Truth of the Body: Forensic Examination and Gender Identity in the Qing Dynasty”; its revision has benefited from the advice of Kathleen Brown, Lynn Hunt, Jennifer Sessions, Shao Dongfang, and especially Margaret Kuo. I would also like to thank Weijing Lu and two anonymous readers for their valuable comments, as well as the archivists in Beijing and Sichuan who made available the legal cases cited here. This research received financial support from the Committee for Scholarly Communication with the PRC, the American Philosophical Society, and the Social Science Research Council.

¹ This debate has generated a vast literature: for an overview of key issues, see Linda Alcoff, “Cultural Feminism versus Post-structuralism: The Identity Crisis in Feminist Theory,” in *The Second Wave: A Reader in Feminist Theory*, ed. Linda Nicholson (New York: Routledge,

body, it is difficult, if not impossible, to observe that body in any purely empirical or unmediated way. Thomas Laqueur's history of the shift in Western science from a one-sex model of the body to a two-sex model is foundational for this perspective.² The old one-sex model interpreted female reproductive organs as inverted, inferior male organs on a vertical scale of more or less realized versions of an ideal male body. In contrast, the new two-sex model clearly identified female anatomical difference, and to our modern eyes it seems far more objective than its predecessor; nevertheless, the scientists and doctors who articulated the new model argued that the female organs were the sources of feminine weakness, thereby establishing a new biological rationale for the social subordination of women. In this way, Laqueur shows that the shift in paradigms masked deeper continuities in the shaping of perception by gender ideology and in the use of scientific observation to rationalize social hierarchy. Although he does concede the existence of "the real, transcultural body," Laqueur concludes that "sex, like being human, is contextual. Attempts to isolate it from its discursive, socially determined milieu are as doomed to failure as the *philosophe's* search for a truly wild child or the modern anthropologist's efforts to filter out the cultural so as to leave a residue of essential humanity."³

In other words, it would be misleading to treat the body as "a biological given which emits its own meaning. It must be understood instead as an ensemble of potentialities which are given meaning only in society."⁴ The historian's challenge is not so much to discover the real body itself—which by definition is transhistorical and transcultural—but rather to explore the ways the observed body has acquired meaning in particular historical contexts.

Such meaning has a strong performative dimension, since typically the body is judged in terms of what it is expected (or forbidden) to do. This perspective is closely associated with feminist theorist Judith Butler, who argues that gender comes into existence only through its performance, and to persist it must be repeatedly performed.⁵ In Butler's view, all gender performance is a kind of "drag," because there is no real gender grounded in nature. Furthermore, the need for repetition opens up the possibility

1997); Mary Hawkesworth, "Confounding Gender," *Signs* 22 (1997): 649–85; and Lynn A. Hunt, "The Challenge of Gender: Deconstruction of Categories and Reconstruction of Narrative in Gender History," in *Geschlechtergeschichte und allgemeine Geschichte*, ed. H. Medick and A. Trapp (Göttingen: Wallstein, 1998), 59–97. The pose of extreme skepticism is exemplified by Judith Butler, "Is there a 'physical' body prior to the perceptually perceived body? An impossible question to decide," in *Gender Trouble: Feminism and the Subversion of Identity* (New York: Routledge, 1990), 114.

² Thomas Laqueur, *Making Sex: Body and Gender from the Greeks to Freud* (Cambridge, MA: Harvard University Press, 1990).

³ *Ibid.*, 16.

⁴ Jeffrey Weeks, *Sexuality and Its Discontents* (New York: Routledge, 1990), 122–23.

⁵ Butler, *Gender Trouble*.

of incorrect performances—and of purposely subverting the dominant script through parody and invention. She envisions a world of radical self-determination in which there come into being as many genders as there are individuals to perform. But her theory also implies that correct performance might be reinforced and rewarded, while incorrect performance might have to be corrected and punished. Law comes into the picture as a codifier and enforcer of correct standards.

In China during the Qing dynasty (1644–1912), the expectation that all women marry and produce sons was the organizing principle and stable reference point for gender discourses that made the female body legible. Rates of marriage and fertility vary in different societies and historical periods, but in China, marriage at an early age (shortly after menarche, in the late teens) was a nearly universal experience for women.⁶ For the vast majority, conjugal intercourse, pregnancy, and child-rearing were simply fate—these bodily constraints were real, even if imposed by society rather than nature.⁷ For women, compulsory marriage and reproduction were something like the Qing equivalent of our own society's "compulsory heterosexuality," and a woman's body acquired social meaning within this circumscribed frame of reference.

Thus, for example, Charlotte Furth has shown that discourses of *fuke* (women's medicine) in late imperial China simultaneously articulated two different paradigms of the body: the androgynous body of *generation* versus the specifically female body of *gestation*. The body of generation was an ideal type in which male and female principles complemented one another in a shifting balance so that difference was a matter of degree; the body of gestation, on the other hand, emphasized female difference and materiality as sources of impurity and weakness that caused medical problems specific to women. The latter paradigm clearly reflects gender hierarchy in society, whereas the former seems to suggest timeless complementarity and equivalence. Nevertheless, even within the apparently androgynous generative body, the female essence, blood, was "encompassed" by the male essence, *qi*, in a process that consistently reestablished gender hierarchy at "ever-ascending levels."⁸ The underlying theme was the "necessary subordination of women to men in society."⁹ Moreover, what linked both paradigms was the common mission of marital procreation: medical discourse treated women

⁶ Arthur P. Wolf and Theo Engelen, "Fertility and Fertility Control in Pre-revolutionary China," *Journal of Interdisciplinary History* 38, no. 3 (2008): 362.

⁷ This was certainly true for poor women but probably for most prosperous women as well. Francesca Bray argues that elite wives could sometimes avoid the reproductive duties of the wife-mother role by displacing them onto the subordinate women of the household who were also sexually available to their husbands (see n. 31).

⁸ Charlotte Furth, *A Flourishing Yin: Gender in China's Medical History, 960–1665* (Berkeley: University of California Press, 1999), 49 and fig. 3.

⁹ *Ibid.*, 306.

“primarily as childbearers,” and the “primary agenda” of medicine was to “safeguard female primary vitalities and to make sure that other illnesses in fertile, pregnant and postpartum women were not prescribed for in a way that might damage their reproductive health.”¹⁰ In sum, it was women’s vital role in reproducing the family that organized and motivated *fuke*.¹¹

Like medicine, law required the direct scrutiny of bodies for evidence, and the regulation of gender roles and sexual behavior according to the Confucian family scheme was a fundamental priority for the Qing judiciary. All the legal cases I present here in one way or another challenged the marital frame of reference, straining the legibility of the gendered body and the coherence of the normative categories that informed judicial reasoning. In some of these cases, it seems as if a *real* body that defies simple categorization is struggling to break through the veil of discourse that stretches to encompass it. Several of my cases center on “stone maidens” (*shinü*) who were rejected by their new husbands on grounds of vaginal impenetrability and yet had to be placed somewhere in society; another case involves a Buddhist nun who was raped and whose legal treatment helps clarify how jurists conceptualized the category of woman to include individuals outside the family who eschewed procreation; another concerns a husband rejected by his wife because of the inadequate size and performance of his penis; and the last concerns the kind of physical evidence needed to exculpate a husband who had killed his wife and a neighbor when he found them together in bed. I also summarize what I have argued elsewhere about how Qing jurists conceptualized the male rape victim. These cases are artifacts of normative discourse, but the body does not appear in them as a blank surface to be filled arbitrarily with words; rather, we find jurists and others working to contain a disorderly world of physical anomaly and transgressive behavior within a contingent yet surprisingly elastic set of norms.

THE STONE MAIDEN WHO BECAME A CHASTE WIDOW

A case from Tianmen County, Hubei Province, memorialized in 1739,¹² involves a poor widow named Xie Shi, aged nineteen, who remarried following the death of her first husband, He Hanzhang.¹³ After He’s death,

¹⁰ Ibid., 183.

¹¹ See Matthew H. Sommer, review of Charlotte Furth, *A Flourishing Yin: Gender in China’s Medical History, 960–1665* (Berkeley: University of California Press, 1999), *Harvard Journal of Asiatic Studies* 61, no. 1 (2001): 273–79.

¹² *Xingke tiben* (routine memorial on criminal matters), #74/Qianlong 4.3.27. (Originals are held at the First Historical Archives, Beijing; cases collected before 2000 are cited by the bundle number/Chinese date; cases collected since 2000 are cited by serial number, Chinese date; all are from the archival category “marriage and sex offenses.”)

¹³ Ages, when known, are given in *sui*; an age reckoned in *sui* is on average one more than the same age reckoned in years old: for example, a person aged eleven *sui* is probably ten years old.

Xie Shi had depended on relatives for support and with their help had negotiated her second marriage, to a peasant from her husband's village named Dong Xianzhao. Problems arose when this new husband tried to consummate their marriage. As Xie Shi later testified, "Five or six days after I joined him in marriage, Dong Xianzhao tried to have intercourse with me [literally, "get close to my body"—*jìn xiaofuren de shēn*], but he couldn't [*bù néng jìn*], and he told me that I am a stone maiden [*shíniǚ*]. He was so unhappy that he couldn't even eat."

A couple of days later, Dong went in search of one of the matchmakers, Dai Luzhi, with the intention of canceling the marriage and demanding a refund of the brideprice he had paid for Xie Shi. The matchmaker was not at home, so Dong confronted his son, Dai Zhenxia, aged twenty. As Zhenxia later confessed, "Dong Xianzhao came over and told me that my father as matchmaker had swindled him with a stone maiden, so he wanted to cancel the marriage. I said, 'Xie Shi was married into the He family for several years, and I never heard anyone say she was a stone maiden then. Now she's been married into *your* family for only a few days—how come she's suddenly a stone maiden?'" This implied insult to Dong's masculinity—that if there were any problem in consummating the marriage, then something must be wrong with the groom, not the bride—provoked him to attack Zhenxia. In the fight that followed, Zhenxia kicked Dong Xianzhao in the abdomen, wounding him mortally.

When this homicide came before the county magistrate, one of his first priorities was to interrogate Xie Shi. Was she really a "stone maiden"? If so, then what sort of conjugal relations had she had with her *first* husband? Xie Shi testified, "I am a stone maiden. My first husband and I were married for several years, but he didn't have intercourse with me [literally, "get close to my body"] even a single time [*méi yǒu jìn shēn yí cì*]." Note the ambiguity of her testimony: she does not say explicitly whether he even tried. The magistrate then ordered the court midwife, Wang Li Shi, to examine Xie Shi in a "private room" (*mì shì*); the midwife reported: "Even a finger can't penetrate [*zhítóu dòu jìn bù qū*] Xie Shi's lower body [*xiàshēn*]. She is definitely a stone maiden. On her upper body, her breasts are collapsed flat [*píngtǎ de*], like a man's breasts [*yú nánrén de rǔ yíban*]. Your Honor can see for himself."¹⁴ Thereupon, as the magistrate wrote in his case report,

¹⁴ For midwives as forensic examiners of female anatomy, see Charlotte Furth, "Androgynous Males and Deficient Females: Biology and Gender Boundaries in Sixteenth- and Seventeenth-Century China," *Late Imperial China* 9, no. 2 (1988): 22; Furth, *A Flourishing Yin*, 282; Matthew H. Sommer, *Sex, Law, and Society in Late Imperial China* (Stanford, CA: Stanford University Press, 2000), 83–84; and Janet Theiss, *Disgraceful Matters: The Politics of Chastity in Eighteenth-Century China* (Berkeley: University of California Press, 2004), 139–40. For the contrasting roles of female midwives and male doctors in women's medicine, see Charlotte Furth, "Concepts of Pregnancy, Childbirth, and Infancy in Ch'ing Dynasty China," *Journal of Asian Studies* 46, no. 1 (1987): 7–35.

“this humble official ordered Xie Shi to expose her bosom, and he personally examined her breasts, finding them exactly as described by the midwife.”

The magistrate summarized this physical evidence as follows: “Xie Shi’s body is that of a stone maiden [*shen xi shiniū*], so she cannot engage in sexual intercourse [*bu neng ren shi*].” His precise word choice is significant: what he wrote, literally, is that Xie Shi “cannot engage in human activity.” “Human activity” (*ren shi*) is a polite term for sexual intercourse (similar to *ren dao*, literally “the way of being human”); in this context, it would seem to imply that conjugal relations are a definitively human activity: if one becomes human, in part, through conjugal intercourse, then Xie Shi’s disability might suggest some incompleteness of her personhood. I will return to this point presently.

The magistrate sentenced Dai Zhenxia to strangulation after the assizes (for “homicide in a fight”) and forwarded his case up through the judicial hierarchy for review (as required in all capital punishment cases). Upon reinterrogation at the provincial capital, however, Dai recanted his confession and insisted that he had been framed; among other things, he denied that Xie Shi was a stone maiden. For this reason, the provincial governor ordered the case retried by the magistrate of nearby Qianjiang County, who immediately ordered his own court’s midwife, Guo Shi, to “take Xie Shi to a private place where there are no other people [*wu ren mi chu*] and make a careful and detailed examination of her body to find out the exact truth.” Guo Shi confirmed the testimony of the first midwife: “Even the tip of a finger cannot penetrate Xie Shi’s lower body [*zhitouding ye bu neng ru*]: she’s definitely a stone maiden. Both breasts are collapsed flat [*liang ru pingta*], in no way different from a male’s [*yu nanzi wu yi*].” In the end, Dai Zhenxia confessed once again, and his original sentence was confirmed.

Aside from solving the homicide itself, a key priority in this adjudication was to determine whether the crime of marriage fraud had been committed. This priority helps explain the careful attention paid to Xie Shi’s anatomy. The very first statute of the Qing legal code’s chapter on marriage provides that “when male and female are betrothed, if either party has some crippling defect [*canfei*] or disease [*jibing*] . . . then the other family must be clearly informed of the facts.” In such circumstances, if a bride’s family committed fraud by passing her off (*wangmao*) as normal and healthy, then those responsible (including matchmakers, if complicit) were liable for eighty blows of the heavy bamboo, and the brideprice would be returned; if the groom’s family committed this kind of fraud, then the penalty would be increased by one degree, and they would forfeit the brideprice they had paid; and in either instance, the marriage would be canceled.¹⁵

The question, therefore, was whether those who had arranged Xie Shi’s marriage to Dong Xianzhao had known that she was a stone maiden. The

¹⁵ Xue Yunsheng, *Duli cunyi chongkanben*, ed. Huang Jingjia (Taipei: Chinese Materials and Research Aids Service Center, 1970), substatute #101-001.

magistrate pressed Xie Shi on this point; she testified: “I knew about this secret illness [*an bing*] myself, but I never told anyone else about it.” The matchmaker was pressed even harder: “Xie Shi is a stone maiden; how could you, in your capacity as matchmaker, dare to use her to swindle Dong Xianzhao?” The matchmaker answered: “This is a secret illness of a woman’s body [*nüren shen shang de an bing*]*—*why on earth would I have known anything about it? If I’d known she was a stone maiden, I never would have dared to act as matchmaker and arrange for Dong Xianzhao to take her in marriage!” The magistrate also interrogated relatives of Xie Shi’s first husband, but they had been unaware of any disability and described the couple’s marriage as harmonious. Therefore, the magistrate concluded, “With regard to Xie Shi: her body is that of a stone maiden, but her relatives were all ignorant of this fact, and they definitely did not commit the crime of fraudulently representing a crippled person as a healthy one in order to marry her off [*yi canfei wangmao jia ren*]. Therefore, the brideprice and matchmakers’ fees need not be returned, and Xie Shi should be entrusted to the custody of her brother-in-law, Dong Yinzhaoh, to be taken home.” This time, the judgment was approved on review.

In other words, Xie Shi’s marriage was legal, and so she should return to her rightful place in her husband’s family. What made this judgment tenable was the convenient fact that this stone maiden was now a widow, which solved the social problem raised by her vaginal impenetrability. Everyone involved clearly saw Xie Shi’s condition as a disability that made it impossible for her to perform the sexual and reproductive roles of a wife. But the death of her husband had opened a place for her within the family system that did not require sexual intercourse or reproduction, namely, widowhood—a role that required only the ritual and social dimensions of wifedom and depended on the widow’s complete abstention from sexual intercourse. Impenetrability certainly guaranteed a sort of chastity, although it seems an odd legerdemain to equate physical disability with virtuous self-restraint (I will return to this point below). From a judicial point of view, however, nothing further needed to be done. As a widow, Xie Shi enjoyed the rights to remain unmarried in her husband’s lineage, to gain custody of her husband’s estate, and to have an appropriate nephew appointed as her husband’s heir (to perform ancestor worship, inherit his property, and care for her in her old age).¹⁶ Of course, this solution ignores the fact that under the circumstances, her relationship with her in-laws was likely to be awkward at best.

I have no interest in trying to diagnose Xie Shi’s condition in modern biomedical terms; but it seems significant that no one involved in her case doubted she was a woman. She had been raised as a daughter, and she had already been married and widowed once before being exposed

¹⁶ Sommer, *Sex, Law, and Society*, chap. 5. For the chastity cult during the High Qing, see Theiss, *Disgraceful Matters*; and Weijing Lu, *True to Her Word: The Faithful Maiden Cult in Late Imperial China* (Stanford, CA: Stanford University Press, 2008).

and rejected as a stone maiden.¹⁷ All parties in the case record referred to her as “Xie Shi,” the form appropriate for a mature woman. As to judicial treatment, we find that the magistrate ordered her examined by a midwife rather than by the court’s male forensic specialist (whose duties included, for example, the examination of male victims of homosexual rape). The choice of midwife reveals the magistrate’s a priori categorization of Xie Shi as a woman. Also telling is the way the magistrate ruled out marriage fraud. He interrogated the matchmaker and Xie Shi’s male relatives closely about whether they had known of her disability, and it is clear that they would have been punished (and the marriage canceled) if they had been shown to have deceived the other party to the marriage; but Xie Shi’s own knowledge of her “secret illness” was deemed irrelevant—or so we can infer, since she was not punished for failing to reveal it. Apparently, modesty and passivity were expected of her, confirming that the magistrate (and everyone else) had cast her in a woman’s role.

WHAT IS A BODY FOR?

But what sort of woman was a stone maiden like Xie Shi? The sixteenth-century medical authority Li Shizhen organized sex-related anomalies in two categories, *fei nan* and *fei nü*.¹⁸ This categorization takes for granted that anomaly can be comprehended within the male/female (*nan/nü*) binary division of the sexes; less obvious is what Li Shizhen meant by *fei*.¹⁹ *Fei ren*, which might be literally translated as “nonhuman” or “not a human,” is a venerable classical term for a crippled or deformed person; it can also mean an evildoer or traitor, and there may be a connection between these meanings, given the variety of mutilating punishments used on criminals in early China.²⁰ The most straightforward rendering of Li Shizhen’s terms may be “deformed males and females.” This translation resonates with the language used in the case report to characterize Xie Shi’s condition: “crippled” (*canfei*) or “ill” (*bing*).²¹

¹⁷ Charlotte Furth notes that in many cultures, infants with ambiguous genitalia tend to be raised as girls by default, reflecting the widespread assumption that a female is somehow an incomplete or lesser version of a male (“Androgynous Males,” 19).

¹⁸ The writings of Li Shizhen (1518–93) retain much of their authority even today; his *Bencao gangmu* was cited by Qing forensic manuals, and it remains the foundational text for traditional Chinese medicine. Cf. Carla Nappi, *The Monkey and the Inkpot: Natural History and Its Transformations in Early Modern China* (Cambridge, MA: Harvard University Press, 2009); and Matthew H. Sommer, “Abortion in Late Imperial China: Routine Birth Control or Crisis Intervention?,” *Late Imperial China* 31, no. 2 (2010): 97–165.

¹⁹ For the original text, see Li Shizhen, *Bencao gangmu* (Beijing: Renmin Weisheng Chubanshe, 1975), 52:2971–72 (under “human anomaly,” *renkui*).

²⁰ *Hanyu dacidian* (Shanghai: Shanghai Cishu Chubanshe, 2008), 11:778.

²¹ Charlotte Furth translates *fei nan* and *fei nü* as “those who are neither male nor female; or false males and false females” (“Androgynous Males,” 4–5). Tani E. Barlow translates these terms as “non-males” and “non-females” (“Theorizing Woman: *Funiü*, *Guojia*, *Jiating*

The individuals that make up Li Shizhen's taxonomy all suffer from some crippling defect or deformity related to sex, but they are still considered male or female; he explains that these defects prevent males from becoming fathers and females from becoming mothers, implying a sort of arrested development that precludes the full realization of adult gender roles. As Charlotte Furth explains, "Four of the five terms applied to women refer to genital abnormalities of the sort that would make sexual penetration impossible" (including the "stone maiden," also known as the "drum," *gu*); the fifth term refers to highly erratic menses, which were associated with infertility. Those found in the male category are "largely the functionally impotent."²² Normalcy, therefore, depended on an ability to play the role appropriate to one's sex in heterosexual intercourse and reproduction: the "deformed" male and female were anomalies that defined normalcy by contrast.

Tani Barlow invokes Li Shizhen's taxonomy to support her thesis that gender in late imperial China derived exclusively from family roles and not from bodies: "The foundational or categorical figure is mother/father, not woman/man."²³ She is certainly correct, insofar as Li Shizhen takes for granted that the defining purpose of anatomy is to fulfill normative sexual and reproductive roles. Indeed, the perspective of "crip theory" would suggest that reigning heteronormative assumptions about the proper use of bodies are what actually *create* such anomalies or disabilities, in the sense of giving them social meaning.²⁴ But it seems significant that Li Shizhen did not cite the binary of mother/father: he nowhere spoke of "deformed mothers" versus "deformed fathers." Instead, he chose the binary of females versus males, implying broader categories grounded in anatomy that are somehow prior to specific social roles and that include individuals whose disabilities prevent them from completely fulfilling those roles.

As I have argued elsewhere, in late imperial China the sexual consummation of marriage constituted a key rite of passage into social adulthood, in which male and female took up their respective roles in the division of sexual labor (penetrator/penetrated) and in the division of gendered social labor (husband/wife).²⁵ From this perspective, the stone maiden's disability arrested her development into a mature woman: it prevented her from taking up the

[Chinese Women, Chinese State, Chinese Family]," in *Body, Subject, and Power in China*, ed. Angela Zito and Tani E. Barlow [Chicago: University of Chicago Press, 1994], 258, 279n8).

²² Furth, "Androgynous Males," 5.

²³ Barlow, "Theorizing Woman," 279n6.

²⁴ Cf. Robert McRuer's analysis of the connection between "compulsory heterosexuality" and "compulsory able-bodiedness" in contemporary society (*Crip Theory: Cultural Signs of Queerness and Disability* [New York: New York University Press, 2006], introduction). See also Alison Kafer, "Compulsory Bodies: Reflections on Heterosexuality and Able-Bodiedness," *Journal of Women's History* 15, no. 3 (2003): 77–89.

²⁵ Sommer, *Sex, Law, and Society*, 162–63, 306–7.

sexual and gender roles within marriage that defined gendered maturity and trapped her in the permanently juvenile condition of a virgin daughter.²⁶

All this helps us to interpret the midwives' testimony about their pelvic examination of the stone maiden Xie Shi. First, both the midwives and their magistrates believed that a penetrable vagina and full breasts were definitive of normal female anatomy: they were necessary "props" for the correct performance of the wifely role. Second, the purpose of that anatomy was heterosexual intercourse and reproduction. The midwife's finger stood in for a husband's penis, implying a prior judgment about the purpose of the anatomy being tested ("even the *tip* of a finger cannot penetrate"). Third, Xie Shi was not a male but rather a female with a problem: a deficient female, to borrow Furth's term. It is important to note what the midwives who searched Xie Shi's body did *not* report: they found nothing recognizable as a penis. In the absence of that organ, they categorized her as a female—albeit a deficient one.²⁷

The contrast between Xie Shi's two marriages raises the question of when exactly she can be said to have become "disabled." We do not know exactly what went on between her and her first husband, aside from her euphemistic testimony that he did not *jin shen*—literally, "get close to my body," by which she apparently meant vaginal penetration. But since her first husband did not insist on vaginal intercourse—in fact, we cannot tell from her testimony whether he even attempted it—she seems to have had no trouble acting as his wife: he accepted her without complaint, and her in-laws, who testified that the couple got along well, were unaware of any problem. The fact that they had a harmonious relationship suggests that her disability derived as much from what others expected to do with her body as from her body itself: a vagina can be considered "impenetrable" only if someone expects to penetrate it. Her anatomy acquired social and legal significance *as a disability* only when her *second* husband made her condition public ("outing" her, in effect) and cited it as grounds for divorce. In short, the disability of the stone maiden was not simply an anatomical fact, it was a social problem "in anatomical disguise."²⁸

²⁶ "Stone maiden" is Charlotte Furth's apt translation of *shinü* (see "Androgynous Males"). In the context of this term, *nü* means "maiden" or "unmarried daughter" rather than the "female" of the male/female binary, reinforcing the implication of arrested maturation.

²⁷ An interesting contrast is the case of Thomas/ine Hall, a seventeenth-century Virginian colonist who provoked controversy and eventually litigation by alternating male and female dress. Hall's genitals were examined several times in order to ascertain his/her sex, but they were so ambiguous in appearance that observers could not agree whether Hall was male or female (some recognized a penis, others did not). In the end, the court ordered Hall to wear a combination of male and female dress as a public marker (warning?) of Hall's defiance of anatomical and social categories. See Kathleen Brown, "'Changed . . . into the fashion of man': The Politics of Sexual Difference in a Seventeenth-Century Anglo-American Settlement," *Journal of the History of Sexuality* 6, no. 2 (1995): 171–93.

²⁸ The phrase is Laqueur's (*Making Sex*, 236). Cf. Kafer, "Compulsory Bodies"; and McRuer, *Crip Theory*.

THE STONE MAIDEN WHO REMAINED A WIFE

In Xie Shi's case, the problem of where to place a stone maiden achieved solution through a separation of the different dimensions of the wifely role. A widow was not expected to have sexual intercourse or to reproduce—indeed, she was forbidden to do so. Xie Shi's condition in no way disqualified her from the role of widow.

An 1865 case from Nanbu County, Sichuan Province,²⁹ resulted in a different solution to the problem of placing a stone maiden, but one that shared the same logic of separating the biological and social dimensions of the wifely role. In this case, the groom, Wang Guicai, aged sixteen, explained in his petition that “it was only when I slept with [my bride] Zou Shi that I discovered she is a two-formed cripple and cannot bear children [*er xing fei ren, bu neng shengyu*].” The term *er xing* or *er xingzi*, which I translate as “two-formed,” was another term for the stone maiden.³⁰ The groom's statement was confirmed by the bride, Zou Shi: “My body has a crippling illness, and I cannot bear children [*shen you canji, bu neng shengyu*], so my husband and I are not happy together.” After this discovery, Wang and his father demanded that Zou Shi's natal family pay them thirty strings of cash in compensation. When her father, Zou Shaopan, refused to pay, the Wangs insisted on divorcing her and getting a refund of her brideprice (amount unspecified); but her father also refused to take her back. Finally, the groom and his father filed charges in the Nanbu County court.

Since the facts were not in dispute, the magistrate did not bother to order a pelvic examination of Zou Shi. Instead, he simply ordered her father to pay the Wangs the thirty strings of cash they had demanded so that they could buy a concubine for Wang Guicai “to secure his line of descent”; in exchange, the Wangs would agree to keep Zou Shi as Wang Guicai's main wife. Zou Shaopan was not happy with this decision, so the magistrate scolded him and told him to consider what was best for his daughter:

Since Zou Shaopan's daughter has a “crippling disability” [*canfei*], it would be appropriate according to law to return her to her natal family. But for her sake as well [as the groom's], this judgment is a better solution: this way, your daughter will have sons even though she cannot bear them herself [*wu zi er you zi*], she will have successors and her incense fire will continue—that is what is most important! You should not begrudge this small payment, because if you fail to pay, you will force your daughter to bear a lifelong burden of pain [*shi nü bao zhongshen zhi tong*].

²⁹ Nanbu County #6-30-318, Tongzhi 4.5.13. (Originals are held at Nanchong Municipal Archive; each case is cited by serial number and Chinese date.)

³⁰ For example, an early Qing story contains the following line: “That woman was a ‘stone maiden’ [*shiniu*], also known as a ‘two-formed person’ [*you jiao zuo er xingzi*]” (Tianhua Zhuren, *Yunxian xiao* [Shenyang: Chunfeng Wenyi Chubanshe, 1983], 2:29).

Zou Shaopan pledged to pay the required amount, but later he dragged his heels, provoking the Wangs to file a complaint. In response, the magistrate ordered Zou to take custody of his daughter until he saw fit to pay up: in other words, if he wanted to secure a place for her in the Wang family, he would have to compensate them.

The magistrate's decision in this case confirms Francesca Bray's insights into the politics of the polygynous elite household. Bray argues that polygyny was based on the performance of different aspects of the wife-mother role by different women within a single family: the main wife (*qi*), who came from the same elite background as her husband and who was the titular mother (*dimu*) of all her husband's children, would perform the *social* and *ritual* aspects of motherhood. Meanwhile, she could displace the *biological* aspects of motherhood (sexual intercourse, pregnancy, childbirth, and so on) onto the subordinate women of the household: the concubines (*qie*) and maidservants (*beinü*), who were also sexually available to her husband (these women had been purchased through brokers from poor families). In this way, an elite wife could enjoy the prestige and authority conferred by the social-ritual aspects of motherhood without the burden of the risky and possibly distasteful biological aspects of that role. Bray's analysis lays bare the class exploitation at the heart of the elite family and helps us to understand how polygyny could actually serve the interests of the elite women who cooperated in its perpetuation.³¹

The present case did not involve members of the elite, although the magistrate's decision did assume a certain level of prosperity. (The magistrate must have believed that Zou Shupan could afford thirty strings of cash, or he would not have ordered him to pay that much.)³² If Wang Guicai acquired a concubine, then—as the magistrate explicitly pointed out—that second woman could perform the biological role to secure his line of descent, leaving Zou Shi—as main wife—to play the social-ritual role only. The ability to separate the social from the biological through polygyny created a space within marriage that could accommodate a stone maiden.³³

³¹ Francesca Bray, *Technology and Gender: Fabrics of Power in Late Imperial China* (Berkeley: University of California Press, 1997), 335–68. Bray's claim that elite wives used abortifacient drugs to avoid child bearing is controversial and may be incorrect (see Sommer, "Abortion in Late Imperial China"). From anecdotal evidence, it is clear that many elite wives did in fact bear children of their own. For gender roles and the division of labor among females within the elite household, see Susan Mann, *The Talented Women of the Zhang Family* (Berkeley: University of California Press, 2007).

³² Thirty strings of cash (about thirty thousand cash) was a large amount of money for most people. To put this price in perspective, in the wife-selling cases I have collected from the Nanbu County archive, the average price of a wife in open sales during the mid-nineteenth century was about fifteen thousand cash. It makes sense that the price to acquire a concubine would have been higher than the average price in a wife sale, because wife selling carried a certain amount of stigma; also, men pressed by poverty to sell their wives usually had to accept the first offer received and could not afford to hold out for a higher price.

³³ A similar logic guided one of the forms of "delayed transfer marriage" that were practiced in Guangdong Province: in "compensation marriage," a woman with an independent

THE STONE MAIDEN WHO BECAME A NUN

Other cases involving stone maidens ended with a very different solution. In 1851 Liao Ronghua of Ba County, Sichuan Province, married his eldest daughter Zhanggu, aged thirteen, to Tan Xinxu, the son of Tan Tianyuan. The two families were already connected by marriage, as Liao Ronghua's uncle Liao Yongtai was Tan Tianyuan's father-in-law, and this man served as matchmaker for the marriage. At first all appeared to go well, but after six months, the groom reported to his father and maternal grandfather, the matchmaker, that the bride's "vagina is solid" (*yin shi*); as Liao Ronghua later explained in his plaint to the Ba County magistrate, this condition made it "impossible to use her as a wife" (*nan yi wei qi*). "Solid vagina" is another expression for the impenetrability of a stone maiden: in Chinese, "solid maiden" and "stone maiden" are homonyms as well as synonyms.³⁴ The Tan family sought to cancel the marriage, and the matchmaker helped negotiate a settlement.

The settlement was that Zhanggu would leave both families and become a Buddhist nun. The groom's family was expected to pay some amount of money in order to gain her natal family's agreement to take her back and place her in a temple; that money would help establish her in her new life (apparently a financial endowment was necessary for the temple to accept her as a novice).³⁵

The matter ended up in court because of a dispute over how much the groom's family should pay; at first, they paid eight strings of cash, and Liao Ronghua wrote out a "receipt" (*lingyue*) and took his daughter home. Later, however, Ronghua pressed the Tans for a larger sum, and when he failed to get it, he sued Tan Tianyuan for canceling the marriage (without mentioning the girl's disability in his plaint). Tan Tianyuan then filed a counterplaint frankly explaining the situation and suggesting that his son may have been the victim of marriage fraud. After this exchange of plaints, the dispute was mediated by neighbors and settled out of court. The mediators reported to the magistrate that the marriage indeed had to be canceled because the bride's "womb is afflicted with solidity of the vagina" (*tai huan yin shi*); therefore,

income who did not wish to play the biological role of wife could buy her husband a concubine to perform that role in her place; this maneuver enabled the main wife to live independently as long as she liked while securing the right to move into her husband's household in old age and to claim a place on his ancestral altar after death. See Janice Stockard, *Daughters of the Canton Delta: Marriage Patterns and Economic Strategies in South China, 1860–1930* (Stanford, CA: Stanford University Press, 1989), 48–69.

³⁴ Cf. Furth, "Androgynous Males," 5n9.

³⁵ We find similar solutions in other cases. In an 1863 case from Ba County, Sichuan Province, the groom's family paid the stone maiden's natal family thirteen taels of silver in exchange for a divorce; the divorce contract authorized the woman "to enter a temple as a nun" but also stipulated that "if she recovers from her disability, she is entitled to marry someone else" (Ba County #5-7213). For a similar example from Baodi County, Zhili Province, see Baodi County #170/Guangxu 33.11.19. (Ba County cases are cited by serial number; Baodi cases are cited by bundle number and Chinese date.)

the groom's father, Tan Tianyuan, had agreed to pay fifteen strings of cash in exchange for Liao Ronghua's agreement that his daughter be divorced and "shave her head to enter a temple as a nun" (*pi ti ru miao wei ni*). The magistrate approved this settlement and ordered both parties to come to the county court to file affidavits confirming its terms.³⁶

The most common Chinese expression for joining the clergy (which appears several times in this case's record) literally means "to exit the family" (*chu jia*), and that is precisely what was involved: male and female clergy lived outside the family system, did not marry, and were expected to remain entirely celibate. In the previous cases, the problem of the stone maiden's placement was solved by finding places *inside* the family that did not require sexual intercourse or reproduction from a woman. In the present case, the problem was solved by finding a corresponding place *outside* the family, in the celibate clergy.

In social practice, clerical celibacy may have been the solution of choice to the problems posed by a stone maiden, since widowhood and purchase of a concubine were not always practical options. (Disabled sons were sometimes donated to monasteries to become monks, too, if unable to perform necessary labor.) In Ming and Qing fiction, the stereotype of the stone maiden mostly depicts her as a Buddhist or Daoist nun. As Furth has pointed out,³⁷ the most famous example is the character "Sister Stone" (Shi Daogu) in the sixteenth-century drama *Mudanting* (*The Peony Pavilion*), who explains, "Driven by yin and yang, people rush pell-mell in pursuit of marriage, but Heaven denied me woman's proper parts and so my sole recourse was to the Way, to don the shaman's robe."³⁸ Sister Stone goes on to recount that she did originally marry, but her husband was unable to consummate their marriage; so he acquired a concubine and "abandoned" (*qi*) her, after which she then became a Daoist nun.³⁹ Another stone maiden turned nun can be found in the Qing novel *Xu Jinpingmei* (*Plum in the Golden Vase: The Sequel*); she is the reborn Pan Jinlian, notorious heroine of the Ming novel *Jinpingmei* (*Plum in the Golden Vase*), and her disability is depicted as karmic retribution for the excessive licentiousness of her previous life.⁴⁰

The stone maiden posed a practical problem: somewhere in society a place had to be found that would obviate her disability by making sexual intercourse and reproduction unnecessary. It is striking that the normative gender system could accommodate such anomalous individuals, for whom

³⁶ Ba County #4-4919.

³⁷ Furth, "Androgynous Males," 21.

³⁸ Tang Xianzu, *The Peony Pavilion*, trans. Cyril Birch (Boston: Cheng & Tsui, 1980), 70.

³⁹ Tang Xianzu, *Mudanting* (*The Peony Pavilion*) (Beijing: Renmin Wenxue Chubanshe, 1997), 83–86.

⁴⁰ Li Mengsheng, *Zhongguo jinhui xiaoshuo baihua* (Shanghai: Shanghai Guji Chubanshe, 1994), 252. In Ming and Qing fiction, infertility is portrayed as one of the negative effects of licentiousness; see Keith McMahon, *Causality and Containment in Seventeenth-Century Chinese Fiction* (Leiden: E. J. Brill, 1988), 102.

magistrates seem to have felt considerable sympathy. My sources document two basic solutions to this problem. The first was to separate the social and ritual requirements of the wife/mother role from the biological requirements of that role; the second was for a stone maiden simply to “exit the family” by joining the celibate clergy. We can find a hybrid solution in a fictional tale from the early Qing collection *Yunxian xiao* (*Laughter of Cloud Fairies*). In this tale, the hero’s wife turns out to be a stone maiden. After he acquires a second woman who can bear him sons, the stone maiden becomes a Buddhist nun, which she asserts is her fate, and the hero provides a cash endowment at a temple to support her. This resolution combines the two solutions found in our legal cases: the second wife performs the biological role, freeing the stone maiden to “exit the family.” Eventually, the hero’s son wins top honors on the civil service examination, and everyone lives happily ever after.⁴¹

A third “solution,” which hardly bears contemplation, appears in yet another legal case (from Shunyang County, Henan Province, dated 1743). When peasant Liu Cao’er, aged twenty-three, discovered that his bride, Jiang Shi, aged seventeen, was a stone maiden, he tried to return her to her natal family to be sold off so that he could marry someone else with the proceeds. But her natal family refused to cooperate. The protagonists in this case were far too poor to consider buying a concubine or endowing a place for Jiang Shi at a temple, and Liu Cao’er saw his wife as a useless burden. He became frustrated and irate, and finally he murdered the unfortunate young woman, attempting to pass off her death as a suicide. As extreme as this scenario is, it seems a logical result of the fundamental difficulty of finding a place in Qing society for a woman who could not perform the biological role of wife. Jiang Shi’s life chances were constrained by her body—but it was society that imposed those constraints.⁴²

THE BUDDHIST NUN WHO WAS RAPED

We know that in late imperial China, the dominant ideology linked gender norms very closely to the archetypal roles of husband/father and wife/mother. As I have shown elsewhere, legal reforms of the Yongzheng and early Qianlong reigns tightened this link considerably.⁴³ Nevertheless, we also know that Qing society contained many individuals—including

⁴¹ Tianhua Zhuren, *Yunxian xiao*, 29–36.

⁴² *Xingke tiben*, #198-8, Qianlong 8.3.20. In this case, the magistrate had not brought a midwife to the inquest, so he ordered two neighbor women to examine the corpse’s pelvis, and they confirmed that she was “truly a stone maiden”; the male forensic examiner had already determined the cause of death to be strangulation rather than suicide.

⁴³ Sommer, *Sex, Law, and Society*, esp. 8–12, 308–16. Barlow (“Theorizing Woman”) goes so far as to argue that gender discourse recognized no general category of woman based on anatomy; instead, individuals were gendered exclusively by performance of family roles: that is, strictly speaking, there were no “women” or “men” but only wives/mothers/sisters/daughters and husbands/fathers/brothers/sons.

an increasing number and perhaps proportion of single men—who lived outside the family system. If such individuals failed to perform family roles, did they constitute a category outside gender? If not, what criteria defined their gender?

Clergy provide obvious material for pursuing this inquiry, since by definition they had “exited the family” (*chu jia*) and were expected to remain unmarried and to abstain from all sexual activity; moreover, Buddhist monks and nuns shaved their heads and wore gender neutral clothing. For these reasons, it might be appropriate to regard clergy as a category beyond gender, or perhaps as some sort of third gender.⁴⁴ It would logically follow that a nun should not be considered a woman, even if she had a woman’s body. In fact, this logic might help to explain our cases in which stone maidens became nuns: such a solution placed them outside the family and therefore, in effect, outside womanhood altogether.

But before we accept these conclusions, can we test them? An opportunity is provided by legal cases in which nuns were raped. For example, in a 1745 case from Huaining County, Henan Province, the young Buddhist nun Zhao Wan, aged twenty-three, was raped by three men who lived near her temple.⁴⁵ Zhao Wan lived alone with her elderly mother in a small rural temple. She had been in the temple since childhood, when her widowed mother had moved there with her, and had never married; the nun who had been her teacher and supervisor had recently died, leaving her in charge of the temple. The ringleader in the gang rape, an unmarried barber named Chen Yuan, aged twenty-six, got the idea to rape her one day when she thanked him politely for helping to catch her runaway mule. Chen noticed that no one else was at the temple, and his lust was aroused, so he took the nun by the hand; she pulled back her hand and scolded him loudly, so he ran away. But he was consumed by desire, and he persuaded two friends, both single landless peasants who worked as casual laborers, to help him rape her. Late that night, the three men broke into the temple and took turns raping her in her bed at knife-point.

The next day, Zhao Wan reported the rape to the county magistrate, bringing along her bedding, soiled with the men’s semen and her own blood, as evidence. The magistrate personally inspected the scene of the crime, noting evidence of the break-in, and then ordered the court midwife to perform a pelvic examination on the nun. The midwife testified that the nun was “definitely a virgin who has just been penetrated for the first time” (*shi xi chuzi chu poshen*). The rapists confessed immediately upon arrest and testified to the nun’s chastity by confirming that she had resisted

⁴⁴ Like clergy, eunuchs were said to “exit the family” (*chu jia*) upon being castrated and entering imperial service (Melissa Dale, personal communication). Mitamura Taisuke has characterized eunuchs as “the artificial third sex” (*Chinese Eunuchs: The Structure of Intimate Politics*, trans. Charles A. Pomeroy [Rutland, VT: Charles E. Tuttle, 1970], 21).

⁴⁵ *Xingke tiben*, #119/Qianlong 10.12.10.

Chen Yuan's initial advance and that they had used "violent coercion" (*qiangbao*) to rape her, threatening to kill her if she cried out. Chen Yuan, as ringleader, was sentenced to immediate beheading, and his two accomplices were sentenced to strangulation after the assizes, according to the substature against "gang rape" (*lun jian*); this sentence was upheld upon review and confirmed by imperial edict.

The significance of this case for our discussion is that it was handled in exactly the same manner as the rape of a chaste wife or daughter; the fact that the rape victim was a nun made no difference whatsoever.⁴⁶ The law cited and the penalties imposed were the same that would apply in any other gang rape case. One interesting detail is the pelvic examination: performing such examinations in rape cases was the most important forensic duty of midwives, but they were ordered to do so only when the alleged victim was unmarried and presumed to have been a virgin prior to being raped. Midwives were expected to read female genitalia for evidence of penetration: had the alleged victim indeed been penetrated—literally, had her "body been broken" (*poshen*)? Pelvic examinations were never performed on married women who claimed to have been raped, presumably because any readable evidence might be the result of her husband's legitimate actions; in such cases, conviction for rape depended on other kinds of proof.⁴⁷ Usually a woman of Zhao Wan's age would have been married; but since this nun had lived a life of clerical celibacy since childhood, her body could be read for evidence in the same manner as that of an unmarried virgin daughter.

In other words, for purposes of rape prosecution, eighteenth-century jurists equated a nun's celibacy with the virginity and chastity of the classic rape victim defined by law: "a wife or daughter of good/commoner family" (*liang jia funü*). She shared the same anatomy as females within the family system and for that reason shared the same vulnerability to rape. This conclusion is confirmed by evidence from the system for canonization of chastity martyrs: in 1747 a Daoist nun who "preserved her purity [*quan zhen*] in the face of violent attack" (that is, she was murdered while resisting rape without yielding to penetration) was canonized by imperial edict, "even though she does not fall within the ranks of wives and daughters of military personnel or civilians" (*bu zai bing min funü zhi lie*).⁴⁸ With this precedent established, celibate female clergy became eligible for canonization if they died resisting rape. This evidence shows that legal authorities during the

⁴⁶ For Qing rape law and trial procedure, see Sommer, *Sex, Law, and Society*, chap. 3.

⁴⁷ *Ibid.*, 79–84.

⁴⁸ *Qing huidian shili* (Beijing: Zhonghua Shuju, 1991), 403:508. In the High Qing, women whose heroic martyrdom in the cause of chastity was recognized by imperial edict would be honored by the local magistrate in the Confucian temple and have memorial arches erected in their honor by their families at state expense; in English-language scholarship it is conventional to refer to this official recognition of chastity heroines as "canonization."

High Qing defined a broad category of woman in terms of shared anatomy and “rapability” that included females outside the family system.⁴⁹

The notion that women are defined by a shared vulnerability to rape recalls a tradition of feminist theory that sees sexuality and sexual relations as central to women’s subordination within a patriarchy. For example, Susan Brownmiller (whose pioneering work helped make rape a focus of feminist concern) sees sexual assault as a key factor in the subordination of women, arguing that even women who are not themselves assaulted are made more dependent on men by *fear* of rape.⁵⁰ The crime itself she explains through a crude anatomical determinism: “What it all boils down to is that the human male can rape. Man’s structural capacity to rape and woman’s corresponding structural vulnerability are as basic to the physiology of both our sexes as the primal act of sex itself.”⁵¹ In Brownmiller’s view, it is this shared vulnerability to rape that defines women politically.⁵² More sophisticated is the approach of Catherine MacKinnon, who uses the conceptual structure of Marxism to explain, by analogy, the role that sex plays in patriarchy: “Sexuality is to feminism what work is to Marxism: that which is most one’s own, yet most taken away.”⁵³ MacKinnon rejects Brownmiller’s anatomical determinism while extending her insight that sexual domination has played a critical role

⁴⁹ The three rapists in this case—a barber and two casual laborers, all young and single—were precisely the sort of dangerous male that eighteenth-century jurists had in mind when they promulgated harsh laws against “rootless rascals” (*guang gun*, literally, “bare sticks”), including the Yongzheng statute against gang rape cited here (which applied, by analogy, “the statute against rootless rascals” [*guang gun li*]). See Sommer, *Sex, Law, and Society*, 96–101; and Matthew H. Sommer, “Dangerous Males, Vulnerable Males, and Polluted Males: The Regulation of Masculinity in Qing Dynasty Law,” in *Chinese Femininities/Chinese Masculinities*, ed. Susan Brownell and Jeffrey Wasserstrom (Berkeley: University of California Press, 2002), 67–88.

⁵⁰ Susan Brownmiller, *Against Our Will: Men, Women, and Rape* (New York: Simon and Schuster, 1975). Sharon Marcus builds on Brownmiller’s insight to interpret rapability as a consequence of a “cultural script” rather than anatomical vulnerability. “Even though women in fact are neither the sole objects of sexual violence nor the most likely target of violent crimes, women constitute the majority of fearful subjects; even in situations where men are empirically more likely to suffer from violent crimes, they express less fear than women do, and tend to displace this fear onto a concern for their mothers, sisters, wives, and daughters which usually takes the form of restricting their mobility by means of warning these women not to go out alone at night” (Marcus, “Fighting Bodies, Fighting Words: A Theory and Politics of Rape Prevention,” in *Feminists Theorize the Political*, ed. Judith Butler and Joan Scott [New York: Routledge, 1992], 394).

⁵¹ Brownmiller, *Against Our Will*, 4–5.

⁵² Brownmiller’s anatomical determinism has some obvious problems: for example, if the decisive factor were human anatomy, then the incidence of heterosexual rape should be constant across cultures and over time (which it is not), and it could not be changed without modifying the anatomy in question. Cf. Catherine A. MacKinnon, *Toward a Feminist Theory of the State* (Cambridge, MA: Harvard University Press, 1989), 56. Nor does Brownmiller’s theory consider why some males commit *homosexual* rape, let alone why others would be vulnerable to it.

⁵³ MacKinnon, *Toward a Feminist Theory*, 3.

in the shared experience and definition of womanhood: "To be rapable, a position that is social not biological, defines what a woman is."⁵⁴

Ironically, this position has a great deal in common with the way Qing jurists conceptualized womanhood (although, needless to say, their political ends had nothing in common with Brownmiller's or MacKinnon's). Theirs was a phallogentric conception: they understood female sexuality fundamentally in terms of penetrability and viewed male sexual predators (stereotyped as rogue "rootless rascals" outside the family system) as a constant and ubiquitous threat; female virtue they defined in terms of how much a woman was willing to suffer in order to defend that penetrability, to reserve it exclusively for her husband.

To sum up, Qing jurists imagined a general category of woman defined by a shared vulnerability to penetration. Chastity and rapability were the two sides of this coin. The stone maiden fits into this picture, albeit imperfectly, in that she was deficient or incomplete according to a standard that equated normalcy of both anatomy and gender role with penetrability. From this perspective, the stone maiden was an exception that proved the rule: her disability prevented her from fully realizing a standard of womanhood that applied generally—just as unchaste women confirmed by negative example the standard of virtue to which all women were held.⁵⁵

THE MALE RAPE VICTIM

MacKinnon's observation that to be rapable is to be socially a woman, regardless of biological sex, leads us to the male victim of homosexual rape. What made the rape of a male comprehensible to Qing jurists?⁵⁶ The first laws in imperial China explicitly prohibiting homosexual rape were promulgated by the Qing dynasty. These laws, and the procedure that Qing jurists developed for dealing with homosexual rape, were based by analogy on pre-existing laws and procedures for prosecuting heterosexual rape; this analogy extended to the male rape victim himself, who in various ways was put in a female position.

For example, when a male alleged that he had been raped, the magistrate would order the court's forensic examiner to inspect his anus for evidence

⁵⁴ Ibid., 178.

⁵⁵ If male or female clergy engaged in consensual sexual acts, they were punished under the same statutes that applied to laypeople (for "consensual illicit sexual intercourse"), but they would receive a penalty increased by two degrees to reflect their violation of clerical vows as well as the penal code; they would also be forced to return to laity (Xue Yunsheng, *Duli cunyi*, statute #372-00). High Qing law maintained that the only legitimate context for sexual acts was marriage, and it prohibited any that took place outside that context (Sommer, *Sex, Law, and Society*, esp. 8–12, 65, 305–16).

⁵⁶ I have treated this subject in detail elsewhere, so here I confine myself to a brief summary. See Sommer, "The Penetrated Male in Late Imperial China: Judicial Constructions and Social Stigma," *Modern China* 23, no. 2 (1997): 77–130; Sommer, *Sex, Law, and Society*, 132–38; and Sommer, "Dangerous Males."

of penetration, much the same way midwives examined female rape victims who were presumed to have been virgins. The logic for such examination is outlined in a 1788 statement from the Board of Punishment reprimanding the Guangdong authorities for mishandling the investigation of a homicide involving sodomy. The coroner in this case had failed to examine the anus of the homicide victim, with whom the killer claimed to have had a long-term sexual relationship:

It is true that the code contains no explicit measure providing for examination of the anus of a male who has been sodomized. Nevertheless, the code *does* contain a statute mandating the examination of the vagina of a female virgin [*chunü*] who has been raped in order to ascertain whether she was really a virgin, and that logic can certainly be extended by analogy [*yi ke tuilei*] to sodomy cases. Especially in cases where the victim has provided no testimony before death, it is absolutely necessary to examine his anus to determine whether it is stretched out [*kuansong*]. Only then is it possible to establish proof of a prior illicit sexual relationship.

Coroners' manuals explained that the anus of a male who "has been sodomized over a long period of time" (*jiu bei jijian*) will be "stretched out, not tight at all" (*kuansong, bing bu jincou*), whereas the anus of a "virgin" male who has been raped will be "open, with the inside red and swollen" and possibly bleeding.⁵⁷ The stakes were high in such examinations, because if a murder took place in the context of a rape attempt, it was supposed to receive penalties of even greater severity. Therefore, it was necessary to ascertain whether the killer had indeed had consensual sodomy with his victim or had instead raped him. Moreover, the penetrated anus was evaluated strictly as evidence of crime, since Qing law allowed no legitimate context for homosexual penetration: the point of forensic examination was to distinguish between "virgins" who were *victims* of crime and habitual sodomites who were *themselves* criminals.

Thus, males who had been used in the "female" sexual role would be examined for evidence in the female way.⁵⁸ This treatment of male rape victims implies that Qing jurists to some extent shared MacKinnon's view. To pursue this logic further: if "rapability" defined the category woman, then were male rape victims considered in some sense to be women?

The key here is not anatomy per se but age. Men, as a category, were defined not by penetrability but by its opposite, the "active" sexual role of penetrator. A male could be imagined as vulnerable to rape, like a woman, only by being imagined as powerless, like a woman; and what made this possible was the physical weakness of childhood. Therefore, Qing jurists imagined

⁵⁷ Ruan Qisi, *Chongkan buzhu Xiyuanlu jizheng* (Taipei: Wenhai Chubanshe, 1968), 35a-b.

⁵⁸ For a detailed example, see Sommer, *Sex, Law, and Society*, 127-28.

the plausible male victim as an adolescent or even younger boy assaulted by a powerful mature man. This image is clearly expressed by the language of the Qing code, which, for example, characterized the male rape victim as “a son or younger brother of good/commoner family” (*liang jia zi di*); and it is confirmed by the records of cases where homosexual rape was actually prosecuted, which invariably concern children or youths assaulted by significantly older and more powerful men. Moreover, it is quite clear from both legal case records and a wide variety of literary sources that the male youth was feminized and eroticized as an object of masculine possessive desire. In this way, the weakness of a young boy corresponded to the gendered vulnerability of women generally, and male vulnerability to rape, like male erotic appeal as a sex object, was considered a temporary transitional phase that ended with the empowered masculinity of adulthood. In a way, this androgynous ambiguity of the adolescent male corresponded to the arrested development of the permanently juvenile stone maiden: both conditions make sense when we understand that normative gender identity was fully realized only with adulthood, marked above all by marriage and reproduction.

A related question is whether homosexual rape law can shed light on how jurists conceptualized male clergy. Just as the rape of a Buddhist nun was handled in the same manner as the rape of a “wife or daughter of good/commoner family,” case records show that the rape of a male novice in the Buddhist or Daoist clergy was punished exactly like the rape of “a son or younger brother of good/commoner family.” Therefore, for purposes of rape prosecution, Qing jurists recognized a broad category of males, whose immaturity made them temporarily vulnerable to rape, that included individuals both inside and outside the family system.

THE HUSBAND WHOSE PENIS WAS TOO SMALL

I have yet to find a Qing legal case involving a clear example of one of Li Shizhen’s “deformed males” (*fei nan*) to correspond to the stone maidens discussed above. But a 1748 case from Licheng County, Shandong Province, comes close.⁵⁹ In this case, the peasant Ren Mei, aged thirty-two, killed his new wife, Zhang Shi, aged eighteen, one night after less than two months of marriage. In his confession, Ren explained that his wife had been very unhappy with his attempts to consummate their marriage: “She resented me because she thought my penis was too small [*zeng xian xiaode xiashen xiao*], and she wasn’t willing to sleep with me. . . . Every night Zhang Shi was annoyed at me because I performed unsuccessfully [*bu ji shi*], and she refused to sleep with me.” He would kowtow to her and beg her to let him try again, and usually she would eventually give in. But on that fatal night, she adamantly refused and demanded that he

⁵⁹ *Zhongyang Yanjiuyuan Lishi-yuyan Yanjiusuo xian cun Qingdai Neige Daku yuan cang Ming-Qing dang’an*, ed. Zhang Weiren (Taipei: Academia Sinica, 1986), case #156-87.

divorce her: “She cursed me, saying: ‘A guy like you shouldn’t expect to get married, because you only harm someone else by doing so! I’m not willing to be married to you any longer. The sooner you divorce me, the better! [*nǐ zhèyàng yí gè rén jiù bù gāi qǐ xīn tāo lǎo pǒ kēng hǎi bié rén, wǒ rú jīn bù kěn tóng nǐ zuò liáng kǒu zǐ de le, nǐ zǎo xié ba wǒ xiū le ba*].” Then she pushed him off the bed, and he fell over backward on the floor. This was too much for him, he testified: he threatened to kill her if she did not submit, but she continued cursing him, so he hacked her to death with a kitchen knife.

After hearing this confession, the magistrate ordered Ren Mei to expose himself for inspection: “This humble official then examined Ren Mei’s penis [*xiati*]: it appears impotent and small [*wei xiao*].” Aside from this briefest of statements, the magistrate made no comment on the genitals that played such a pivotal role in this homicide. His report summarizes the couple’s conjugal difficulties without going into detail: “After they married, Ren Mei failed to satisfy Zhang Shi in bed,⁶⁰ so that whenever he wanted to sleep with her she would curse and scold him; this had happened many times.” Ren Mei was sentenced to strangulation after the assizes, according to the statute against “purposeful killing of one’s wife”; the magistrate charged no one else with any crime.

The whole matter of just what was wrong with Ren Mei is left a bit vague. From his own testimony, it would appear that his problem involved both size and performance; and the magistrate’s two-character opinion—*wei xiao*, itself the epitome of brevity—seems to confirm that impression. But we have no way of knowing what standard the magistrate was using to judge either size or performance. (Nor can we answer the interesting question of what standard Ren’s wife was using.) In medieval and early modern Europe, when a woman sued her husband for divorce on grounds of impotence, it was not uncommon for the court to delegate a group of experienced matrons to attempt to arouse the man by kisses, manual stimulation, and so forth and to report back on the results of their efforts.⁶¹ But I find no evidence of such heroic investigative zeal on the part of Qing courts, at least with regard to male potency.

The vagueness about Ren Mei’s problems seems remarkable in contrast with the graphic precision of the midwives’ testimony about the stone maiden

⁶⁰ This statement sounds euphemistic and literary in the original Chinese: *yu zhenxi zhi jian wei cheng Zhang Shi zhi xin* (literally, “between pillow and sleeping mat, he failed to fulfill Zhang Shi’s heart”).

⁶¹ See, for example, R. H. Helmholz, *Marriage Litigation in Medieval England* (Cambridge: Cambridge University Press, 1974), 89. In China during the Republican era, after legal reforms based on Western models introduced male impotence as grounds for a wife to sue for divorce, court-ordered physicians would conduct similar tests (by applying chemicals) to determine whether a man was capable of erection. See Margaret Kuo, “The Handmaid of the Revolution: Gender Equality and the Law of Domestic Relations in Republican China, 1912–1949” (PhD diss., University of California Los Angeles, 2003).

Xie Shi in the first case recounted above.⁶² What explains this reticence? Do we detect, perhaps, some measure of tacit masculine solidarity on the part of the magistrate, expressed in a reluctance to press the matter too far? A more likely explanation is Ren Mei's lack of any obvious physical anomaly severe enough to trigger charges of marriage fraud. Presumably, the magistrate's purpose in examining Ren Mei's penis was to check for such deformity. Since no one was charged with or even questioned about marriage fraud, the magistrate evidently judged that Ren Mei's penis fell within the range of normalcy, even though it appeared to be "impotent and small." Apparently, Ren Mei's problems did not meet the standard of "crippling deformity" (*canfei*) or "disease" (*jibing*) specified by the statute against fraud.

With fraud ruled out, why include so much testimony about Zhang Shi's sexual dissatisfaction in the case report? The answer is that aside from justifying the provisional sentence imposed on Ren Mei (by proving that he had killed his wife and explaining his motive), this report was designed to inform the review process undertaken annually. The Qing code mandates death for some scenarios of wife killing but in every instance with the qualification that "execution should take place after the Autumn Assizes" (*qiu hou chu jue*). Published regulations for the Autumn Assizes specify that any husband who killed his wife because she had been "defiant" (*bu shun*) or "unfilial" (*bu xiao*) should have his sentence commuted significantly.⁶³

There can be little doubt that Ren Mei's sentence of strangulation was radically commuted: the way his wife had defied, cursed, and pushed him would have been interpreted as mitigating circumstances, any one of which justified a certain amount of violence on his part. (Qing law permitted a husband to beat his wife as long as he broke no bones or inflicted worse injury.)⁶⁴ This is the main reason that Ren's testimony about his wife's sexual dissatisfaction was included in the case report. In this respect, the report follows the standard pattern for cases of wife killing: if the wife had provoked her husband's violence through some egregious failure of gender duty (defying, cursing, or striking him; disobeying or abusing his parents; leaving home without permission; committing adultery; or the like), then her misbehavior would be recorded in detail so that his sentence could be commuted appropriately.⁶⁵

We should note that, in contrast with the stone maidens, Ren found himself in court only because he had killed his wife. If he had simply failed to satisfy her sexually or to sire descendants for his ancestors, then he might have been unhappy, but he would have suffered no formal consequences. In other words, he would not have been forced to divorce his wife or to become a monk, let alone to provide her with a second husband capable of sexual intercourse.

⁶² Both Xie Shi's case and Ren Mei's case are recorded in the same kind of routine memorial (*xingke tiben*) from the same reign period.

⁶³ Sommer, *Sex, Law, and Society*, 41.

⁶⁴ Xue Yunsheng, *Duli cunyi*, statute #315-00.

⁶⁵ Sommer, *Sex, Law, and Society*, 40-43.

THE COUPLE CAUGHT IN ADULTERY

The Qing code also specified that if a husband caught his wife or concubine in the act of adultery and killed her and/or her sexual partner, then he would be charged with no crime as long as he had killed them immediately (presumably motivated by “righteous indignation,” *yifen*) at the scene of adultery.⁶⁶ But what sorts of evidence enabled a magistrate to make such a judgment? After all, imperial law had always jealously reserved the taking of life to the emperor alone, and it delegated this power only in a very few circumstances; thus, for example, there was no doctrine of justifiable homicide in self-defense, except in defense against rape or against an intruder entering one’s home in the middle of the night.⁶⁷

One morning in 1888, a peasant named Cui Yuming, aged thirty-three, presented himself at the court of Baodi County, Zhili Province; he was covered with blood, and he handed over to the astonished attendants a pair of human heads and a cleaver, wrapped up in a blood-soaked pair of pants. He announced that the heads belonged to his wife, Gao Shi, aged twenty-nine, and their neighbor, Teng Qiyun, aged thirty-two: Cui had arrived home unexpectedly to find them asleep together in bed and had murdered and beheaded them. Then he had come straight to the court to report his deed. (The bloody pants belonged to Teng Qiyun.)⁶⁸

Cui Yuming was arrested, and the county magistrate visited the scene of the slaughter, together with his forensic examiner and a midwife. The headless corpses were found sprawled on the floor of the bedroom in Cui’s three-room house: he had hacked the couple to death before beheading them, and they were naked except for their footwear; the rest of their clothing was strewn on the floor. The headless corpses were immediately identified as male and female—and, therefore, as Teng and Gao Shi, respectively—by their genitalia and by the shape and clothing of their feet: Gao Shi had bound feet, whereas Teng’s natural feet wore socks. The forensic examiner fitted the heads to the corpses to make sure they matched. Then he and the midwife made a detailed inspection of the corpses and found that “there are remnants of semen leaking out [*yu jing liu chu*] of both Teng Qiyun’s penis [*jingwu*] and Gao Shi’s vagina [*chanmen*]”; evidently, the couple had engaged in intercourse shortly before being killed.

⁶⁶ For a detailed study of this law, see Marinus Meijer, *Murder and Adultery in Late Imperial China: A Study of Law and Morality* (Leiden: E. J. Brill, 1991).

⁶⁷ Derk Bodde and Clarence Morris, *Law in Imperial China: Exemplified by 190 Ch’ing Dynasty Cases* (Cambridge, MA: Harvard University Press, 1967), 312, 510.

⁶⁸ There seems to have been a well-known and widely shared “script” for how to perform such a deed. The same basic scenario can be found in many other Qing cases of revenge killing; it is also strikingly similar to a famous episode of the Ming novel *Shuihu zhuan* (*The Water Margin*), derived from folklore, in which Wu Song avenges his brother by killing and beheading his sister-in-law, Pan Jinlian, and her lover, Ximen Qing, after which he turns himself in to the authorities (chaps. 25–26). It is hard to say whether the fiction was scripted by social practice or vice versa—there may have been a mutually reinforcing feedback loop between them.

On this basis, the magistrate concluded that “their corpses have been found at the site where they committed adultery” and that Cui Yuming had “killed them immediately upon discovering their adultery”; therefore, the magistrate ruled, Cui was innocent of any crime and should be released without penalty. In other words, the forensic evidence in this case proved the crime of adultery, which legitimized the subsequent homicides. Cui’s neighbors and the relatives of the dead testified that they knew of no evidence to contradict this judgment, and on the magistrate’s orders, they filed affidavits to confirm that they accepted it. The magistrate’s superiors approved his judgment, so he released Teng’s corpse to his mother and Gao Shi’s to her husband and killer for burial.⁶⁹

In reading this case record, one’s attention is arrested by the sheer materiality of the murdered couple’s bodies and by the violence of their butchery. They provide a stark reminder that bodies really do exist on some level beyond discourse and that “power is exerted on people; it is not an intangible aura.”⁷⁰

And yet, one cannot visualize these bodies in some purely natural form, abstracted from what society demanded of them. Even the basic, empirical task of sexing the bodies for identification depended as much on their physical shaping through socially mandated gender performance as on their natural anatomy: Gao Shi’s bound feet matched her vagina, just as Teng’s natural feet matched his penis, and the examiners’ gaze took in both sets of features simultaneously. Moreover, the legal significance of these corpses depended entirely on social imperatives—and there could be no stronger testimony to how far Qing law backed the power of husbands over wives: it even delegated the power to kill when a wife crossed the red line of adultery. The pathetic “remnants of semen” discovered by the examiners meant that Cui Yuming would get away with murdering two people and mutilating their corpses: *that* was the truth these bodies told.

A LITERARY DIGRESSION

Late imperial popular fiction is rich with fanciful episodes that call into question the links between anatomical sex and gender performance, and the same judiciary that sought to regulate gender and sexual behavior in society also banned much of this literature. In these works, the body exhibits an extraordinary plasticity, and anatomy poses no barrier to any particular role: sexual predators with protean genitalia masquerade as women, cross-dressing woman warriors pass as men, castrated males serve as “female” concubines, and sexual vampires and stone maidens prove to be ideal wives.⁷¹

⁶⁹ Baodi County, #171/Guangxu 14.2.10.

⁷⁰ Bray, *Technology and Gender*, 46.

⁷¹ See, for example, Judith Zeitlin, *Historian of the Strange: Pu Songling and the Chinese Classical Tale* (Stanford, CA: Stanford University Press, 1993); Sophie Volpp, “The Discourse on Male Marriage: Li Yu’s ‘A Male Mencius’s Mother,’” *Positions* 2, no. 1 (1994):

Such fiction provides both complement and antidote to our grim legal narratives. Whereas the legal cases show that anomalous bodies imposed constraints on the performance of normative gender, this fiction brings to mind Judith Butler's utopian vision of radical self-determination, in which there come into being as many genders as there are individuals who perform. Its category-defying phantasmagoria suggests the alternative scripts and subversive performances that a world without laws and norms might generate.

A fantastic story by the seventeenth-century parodist Li Yu draws together many of the themes of this article.⁷² The young hero marries one of three sisters. She is exceptionally beautiful, and he looks forward eagerly to their wedding night; but upon attempting sexual intercourse he discovers, to his shock, that she is a stone maiden. She begs him not to reject her but instead to acquire concubines who can bear sons in her place (an echo of our case in which the stone maiden problem was solved in precisely this way). Her beauty and charm inflame his desire, they embrace passionately, and after some fumbling he finally satisfies himself by penetrating her anus: "When it came time to vent his passion, he gave up on the front and rushed to the rear [*she qian qu hou*]⁷³—under the circumstances, it was the only reasonable thing to do!"

The next day, however, his parents learn about her disability, and without telling the groom they exchange her for one of her sisters. ("After all, there's no way that one family could produce more than one stone maiden!") Late that night, the groom returns from a party, drunk, to find his new bride waiting in bed in the dark. Groping her, he is pleased, though startled, to discover that her disability has magically disappeared, and he manages to consummate their marriage the usual way; when it grows light, however, he discovers that instead of his beautiful stone maiden, he is in bed with her ugly, coarse sister, who has a disgusting bladder condition that makes her wet the bed constantly.

Horried, he prevails on his parents to exchange her so that he can get back the beautiful stone maiden. Instead, they swap her for the *third* sister. This one turns out to be just as beautiful as the first; but upon having her naked in bed, he discovers that she is no virgin: her vagina is open and slack, unlike that of the bed-wetting sister, who at least was a virgin. (The hero can read female anatomy like a midwife!) To make matters worse, she is six months pregnant. Alas, she too must be rejected.

After this Goldilocks-like series of failures, the hero works through several other brides, but in every instance the woman either proves unacceptable or dies shortly after their wedding. In the meantime, his first bride, the beautiful

111–32; and Rania Huntington, *Alien Kind: Foxes and Late Imperial Chinese Narrative* (Cambridge, MA: Harvard University Asia Center, 2003).

⁷² Li Yu, *Shi'er lou*, in *Si jia mi cang jin hui xiaoshuo jing hua* (Beijing: Xinhua Shudian, 2001), 11/3504–13.

stone maiden, has been circulating through the marriage market: more than twenty grooms have tried her out and in turn rejected her upon discovering her disability. Finally, she and the hero end up back together: through a broker, the hero marries her again, without realizing until the wedding night that his latest bride is she. They recognize that they are fated to be together and resolve to make the best of the situation. At first, they engage in anal intercourse, but this act leaves the bride unsatisfied, and eventually her unrequited desire causes an ulcerated sore to develop between her legs where a vagina should be. The hero discovers that he can penetrate this sore instead of her anus; and eventually, this makeshift intercourse cures the bride's karmic condition: in place of the ulcer, she develops a normal vagina and is able to bear him sons! They live happily ever after.

Like much of Li Yu's fiction, this tale interweaves a number of lines of subversive parody. The comic series of wedding night disasters recalls Butler's idea of gender as a repeated performance susceptible to failure or subversion. If the consummation of marriage was supposed to signal the adoption of adult gender roles, then these repeated failures undermine the coherence of normative gender and highlight its contingent and fragile nature.

Instead, the hero's makeshift intercourse with his stone maiden bride suggests the possibility of alternative forms of sexual satisfaction that are not linked to procreation; it also brings to mind the relationship that the stone maiden Xie Shi was able to have with her first husband, who did not require vaginal intercourse as a prerequisite for harmonious marriage. Moreover, Li Yu's pairing of a penetrable anus with an impenetrable vagina—each taboo being the mirror image of the other—reminds us of the unstable parallel that Qing law drew between male and female rape victims. Qing jurists understood the male anus as a sexual organ only for the limited purpose of proving crime. But this maneuver seems simultaneously to deny but also tacitly acknowledge the ubiquitous phenomenon in their society of the young male as object of possessive desire.

Finally, the stone maiden's preservation of her "purity" for her one true husband, despite trial by ordeal with more than twenty other grooms, is a hilarious parody of the female chastity so fetishized by Ming-Qing elites. It echoes the absurdity of equating the disability of a stone maiden with the chastity of a faithful widow—"to follow one true husband for life" (*cong yi er zhong*), despite all temptation and the pressure of poverty—an absurdity we first noticed in the case of Xie Shi. After all, as Li Yu shows us, a stone maiden was not disabled from *all* forms of sexual activity, let alone passion and desire, any more than a nun was incapable of fornication.

What can we learn from the legal cases presented here? Each illustrates how Qing magistrates interpreted bodily evidence in order to enforce orthodox norms of gendered behavior. Each supports the insight that perception of the body is shaped by the prior influence of gender ideology, revealing the body

as “an ensemble of potentialities” that acquires meaning largely through social expectations. In particular, these cases highlight the *performative* aspect of bodily gender, blurring the distinction between the physical and social dimensions of being. As many scholars have argued, the body acquires meaning through what it is expected (or forbidden) to do.

These cases all involve anomalous anatomy or transgressive behavior that defied such expectations and therefore subverted the normative script of gender. Qing jurists sought to enforce conformity to Confucian family roles; but there were always some individuals whose bodies or behavior defied category and somehow had to be accounted for. As the stone maiden cases show, to perform normative gender required normal anatomy; without that “prop,” a woman could not fulfill the procreative mission of a wife, and to place such a woman in society required some complex discursive and financial maneuvering. The purpose of Qing rape law was to defend the chastity of “wives and daughters of good family,” but cases involving nuns show that jurists in practice defined a broader category of woman in terms of a shared anatomical vulnerability to rape, a category that included individuals outside the family system. As a corollary, rape prosecution required the peculiar legerdemain of stretching Confucian wifely chastity to include Buddhist monastic celibacy.

Even odder, perhaps, is the unstable analogy that Qing jurists drew between woman defined in terms of rapability and the plausibly rapable male. Like the impenetrable stone maiden, the taboo of the penetrable male is an example of reading the body in performative terms. Women, of course, were legitimately penetrable within the context of marriage, procreation being what gave their bodies social purpose and meaning. For males, however, feminine vulnerability to penetration was a transient and aberrant condition that they were expected to outgrow, and the law allowed no space for legitimate male homosexual acts. Nevertheless, Qing jurists tacitly acknowledged that some boys *welcomed* penetration, as shown by laws that made thirteen *sui* the age of liability for consent to sodomy.⁷³ Moreover, the open secret of elite men in the Ming-Qing era was an intense erotic fascination with the young male, especially the cross-dressing boy actors of the opera who moonlighted as escorts and prostitutes.⁷⁴ Of course, it was erotic objectification that made the young male vulnerable to rape in the first place. It is as if the young male were simultaneously expected and forbidden to submit to sodomy.⁷⁵

In the legal cases recounted above, magistrates restored order by interpreting the material evidence of bodies according to cultural and

⁷³ Xue Yunsheng, *Duli cunyi*, substatute #366-03; cf. Sommer, *Sex, Law, and Society*, 125.

⁷⁴ Wu Cuncun, *Homoerotic Sensibilities in Late Imperial China* (London: Routledge Curzon, 2004).

⁷⁵ Part of the solution to this puzzle is that elite males were prosecuted for sodomy only rarely; the main focus of such prosecution was marginalized single males.

legal norms and, on that basis, assigning people to their proper places. In contrast, Li Yu appears to transcend the limits of official imagination: he mocked the linkage between physical bodies and social roles that legal and medical authorities strove to maintain. But his story works only because he, his protagonists, and his readers all took for granted those very norms and standards. Everyone understands that only a fertile virgin is a suitable bride (hence the problem that the story must solve), and by the end of his tale Li Yu too managed to restore order through the proper alignment of reproductive capacities and duties. The stone maiden's faithfulness to the hero is rewarded by a karmic cure that transforms her into the fertile wife he needs; and although this happy end rewards the hero's willingness to accept her as she is, his rejection of her sisters reveals the limits of his tolerance. Ultimately, the story follows a normative trajectory: its happy ending is a marriage in which vaginal intercourse produces sons.

Li Yu opened up Butlerian vistas of possibility; but in an ironic dovetailing with the judicial imagination, he ended by restoring the same sexual order that magistrates worked so hard to defend. One's lingering impression is of both the elasticity and the tenacity of empowered values.

GLOSSARY

an bing 暗病

beinü 俾女

Bencao gangmu 本草綱目

bing 病

bu ji shi 不濟事

bu neng jin 不能近

bu neng ren shi 不能人事

bu shun 不順

bu xiao 不孝

bu zai bing min funü zhi lie 不在兵民婦女之列

canfei 殘廢

chanmen 產門

chu jia 出家

chunü 處女

cong yi er zhong 從一而終

dimu 嫡母

er xing 二形

er xing fei ren, bu neng shengyu 二形廢人, 不能生育

er xingzi 二形子

fei 非

fei nan 非男

fei nü 非女

fei ren 非人

fei ren ye 非人也

fuke 婦科

funü 婦女

gu 鼓

guang gun 光棍

guang gun li 光棍例

jibing 疾病

jingwu 莖物

Jinpingmei 金瓶梅

jin xiaofuren de shen 近小婦人的身

jiu bei jijian 久被雞姦

kuansong 寬鬆

kuansong, bing bu jincou 寬鬆並不緊湊

liang jia funü 良家婦女

liang jia zi di 良家子弟

liang ru pingta 兩乳平塌

lingyue 領約

lun jian 輪姦

mei you jin shen yi ci 沒有近身一次

mi shi 密室

Mudanting 牡丹亭

nan 男

nan yi wei qi 難以為妻

ni zheyang yi ge ren jiu bu gai qi xin tao laopo kenghai bieren,

wo rujin bu ken tong ni zuo liang kouzi de le,

ni zao xie ba wo xiu le ba 你這樣一個人就不該起心討老婆坑害別人，
我如今不肯同你做兩口子的了，你早些把我休了罷

nü 女

nüren shen shang de an bing 女人身上的暗病

pingta de 平塌的

pi ti ru miao wei ni 披剃入廟為妮

poshen 破身

qi (main wife) 妻

qi (to discard) 棄

qiangbao 強暴

qie 妾

qiu hou chu jue 秋後處決

quan zhen 全貞

ren dao 人道

renkui 人傀
ren shi 人事
shen xi shinü 身係石女
shen you canji, bu neng shengyu 身有殘疾, 不能生育
she qian qu hou 舍前趨後
Shi Daogu 石道姑
Shi'er lou 十二樓
shinü (solid maiden) 實女
shinü (stone maiden) 石女
shi nü bao zhongshen zhi tong 使女抱終身之痛
shi xi chuzi chu poshen 實係處子初破身
Shuihu zhuan 水滸傳
tai huan yin shi 胎患陰實
wangmao 妄冒
wei xiao 痿小
wenpo 穩婆
wu ren mi chu 無人密處
wu zi er you zi 無子而有子
wuzuo 忤作
xiashen 下身
xiati 下體
xin 心
xingke tiben 刑科題本
Xu Jinpingmei 續金瓶梅
yi canfei wangmao jia ren 以殘廢妄冒嫁人
yifen 義忿
yi ke tuilei 已可推類
yin shi 陰實
you jiao zuo er xingzi 又叫做二形子
yu jing liu chu 餘精流出
yu nanren de ru yiban 與男人的乳一般
yu nanzi wu yi 與男子無異
Yunxian xiao 雲仙笑
yu zhenxi zhi jian wei cheng Zhang Shi zhi xin 於枕席之間未稱張氏之心
zeng xian xiaode xiashen xiao 憎嫌小的下身小
zhitouding ye bu neng ru 指頭頂也不能入
zhitou dou jin bu qu 指頭都進不去