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The Penetrated Male in Late Imperial China

Judicial Constructions and Social Stigma

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Sexual relations between men in the late imperial era should be seen, not as constitutive of a stable homosexual identity, but as acts that profoundly destabilized the gendered social hierarchy by treating some men (the penetrated) like women. Official anxiety about homosexual intercourse increased during the early eighteenth century, a time when fixed, heritable status differences eroded, while elite concern with gender performance intensified (Sommer, 1994; Mann, 1991). The result was a spate of new laws against sodomy (*ji jian*). Even so, the prohibition of sodomy predated the Qing dynasty and derived from long-standing perceptions by no means limited to official or elite circles.

The focus of the Qing code's section on "illicit sex" (*jian*) is heterosexual intercourse outside marriage; its basic aim, to control male access to females. There is no mystery why heterosexual acts would have concerned the Qing judiciary (or its predecessors): the defense of patriarchal marriage was part of the larger, venerable project of upholding familial order and social hierarchy as means to political order (Sommer, 1994).

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140

But why prohibit sex between men? Three scholars have tried to explain Qing laws against sodomy. According to Meijer (1985), consensual sex between males was not banned until the mid-Qing; in fact, its prohibition dates from the Ming dynasty, at latest. He also suggests that laws against sodomy were simply part of a consistent effort to ban all sexual activity outside marriage. But the Qing code does not ban sex between women—indeed, I find not a single mention, let alone prohibition, of female homosexual acts in any Qing or earlier legal source (not to mention other extra-marital practices familiar from the Western legal tradition, such as masturbation and bestiality).

Ng (1987, 1989) argues that Qing “homophobia” was part of an ideological campaign to gain the allegiance of the conservative Chinese elite. She also claims that the penalty for “male homosexuality” was more severe than that for “unchaste female behavior,” speculating that sex between men “was viewed as a direct challenge to the requirements of filial piety” because it could produce no sons (1989: 88-89). In fact, the penalty for consensual sodomy between adult males which she cites (100 blows of the heavy bamboo and a month in the cangue) was exactly the same as that for consensual heterosexual acts outside marriage (Sommer, 1994: 428).

Hinsch (1990) adopts the conclusions of Meijer and Ng, which suit his own theory of a “general tolerance toward homosexuality” up to the Qing dynasty, when “the new Manchu morality” induced the regime to prohibit consensual sex between men for the first time in Chinese history (1990: 4, 142). Neo-Confucianism and Westernization reinforced this bigotry, resulting in the homophobia of current Chinese regimes (1990: epilogue).

Hinsch offers valuable insights—for example, that age and status hierarchies tended to parallel the hierarchy of roles in anal intercourse. Nevertheless, as Furth points out (1991), Hinsch’s desire to recover a “tradition” to contrast with the homophobic present may obscure more than it reveals.¹ His notion of “imported Manchu concepts of sexuality” (1990: 162) also is questionable. Arguably, no one was more obsessed with defending Manchu values than the Qianlong emperor, yet he was widely reputed to enjoy erotic relations with males, as were the Xianfeng and Tongzhi emperors (Hinsch, 1990: 142-143). Manchu legal texts from the period prior to sinicization and conquest show no

bias against same-sex activity. Manchu tradition forbade sex in fewer contexts than did Ming law; the Qing founders even abandoned certain marriage customs to conform to Chinese incest taboos (Zhang and Guo, 1988: 485).

A further possibility, that desire for a member of the same sex was perceived as illness or perversion, has been ruled out by Furth's study of contemporary medical texts: "No kind of sex act or object of desire was singled out in medical literature as pathological" (1988: 6). Qing sodomy legislation was not a product of Foucault's "perverse implantation" (1978).

Meijer, Ng, and Hinsch all use "homosexual" to denote a male who had sex with males, and "homosexuality" to denote such activity and erotic attraction for members of the same sex generally. Such usage goes to the heart of a basic controversy in historical studies of sexuality, namely, whether sexual orientation today is primarily a biologically determined constant, independent of historical change, or primarily a modern social and cultural construct (Foucault, 1978; Stein, 1992).

To refer generally to "homosexuals" and "homosexuality" risks the anachronism of assuming that a fundamental *social* identity based on the sex of the person's object of desire has always and everywhere existed and been experienced in the same way.² In many societies, the sex of one's object of desire has yielded in priority to a hierarchical division between penetrant and penetrated.³ In late imperial China, legal and literary texts strongly suggest that only penetrated males were perceived as "different"; desire for another male in and of itself seems to have carried little significance for popular attitudes and none at all for law. (In legal texts, homoerotic desire requires no special vocabulary, just the same clichés used to describe heterosexual lust—for example, *yin xin*.) This division of roles was understood to involve multiple hierarchies, especially that of gender, the model being heterosexual intercourse. Penetration of a male upset the proper hierarchy of gender, in which masculinity was defined by the penetrant role in intercourse, corresponding to the husband/father role in society.

Such a perspective conformed to an attitude widespread in Qing society, especially in settled peasant communities, which stigmatized the penetrated male. In reviewing Qing legal cases, it becomes clear

that there was a fundamental coherence between popular perceptions of homosexual relations and judicial standards. The judiciary sought to protect vulnerable masculinity as part of its larger agenda of upholding legitimate social hierarchy.

LEGISLATIVE HISTORY

BEFORE THE QING

Sexual relations between males, even when prohibited, were long treated as a category fundamentally different from *jian*, the standard term for “illicit sex” used in legal codes for two millennia. The classic definition of *jian* specified a heterosexual context: “a male and female engage in intercourse without basing it on a relationship of moral duty” (*nan nü bu yi yi jiao*) (Xue, 1990: 26/14b). The Qing jurist Xue Yunsheng confirms that anal intercourse between males “originally could not be judged according to the provisions on illicit sex” because “there is a great difference between [sex with] a male and [sex with] a female” (*nanzi yu funü da xiang xuan shu*) (the agent of action is presumed male). He does not elaborate on the exact nature of this difference (1970: 285-33).

Hence the classic purpose of legislation against *jian* had nothing to do with same-sex acts, regardless of whether they were considered crimes. But in the Qing, the definition of this legal term expanded: new laws assimilated homosexual offenses to heterosexual ones, labeled them a subcategory of *jian*, and included them in the *jian* section of the code. Underlying this shift, however, was a basic continuity: from the Song dynasty through the Qing, judicial interest in male homosexual acts consistently focused on phallic penetration of the anus, the division of sexual roles thereby implied, and the stigma of the penetrated male. This division of roles held far greater significance than that the object of desire was of the same sex. No other sexual act between men or disposition to perform such acts was ever singled out in legal discourse.

The earliest evidence of laws against homosexual relations in any form emphasizes the gender inversion attributed to the penetrated

male. Song sources report that a law of the Zhenghe era (1111-1118) punished “males who act as prostitutes” (*nan wei chang*) with 100 blows of the heavy bamboo and a fine of 50,000 cash, paid to whomever reported the culprit.⁴ (*Chang* implied female gender; male prostitutes were referred to as *nan chang*—literally, “male prostitutes.”) Another Song text mentions the prosecution of cross-dressing male prostitutes for the offense of *bu nan*—literally, “being not male” (Xue, 1970: 375-03; Wang, 1988: 226; Van Gulik, 1974: 163).

This fragmentary evidence suggests that Song lawmakers associated the penetrated role with cross-dressing and the debased legal status of prostitutes, and that they sought to punish males who consented to such degradation. (The texts do not mention the penetrant role, nor do they use *jian* to denote homosexual acts.) The apparent purpose of Song lawmakers was to fix boundaries: to prevent persons of commoner status (*liang min*) from being degraded by occupation to mean status (*jian min*—which included prostitutes) and to prevent males from being degraded by penetration or cross-dressing into females.⁵

The earliest statute explicitly banning sexual intercourse between males dates from the Jiajing reign (1522-1567) of the Ming dynasty. The Ming code’s section on illicit sex includes no reference to such activity. Instead, the following measure adopted during the Jiajing reign appears in a supplementary set of “statutes applied by analogy” (*bi yin lü*), each of which cites a preexisting measure to be applied to offenses not covered in the code proper. (This supplement systematized the long-standing practice of judgment by analogy, so the punishment of male/male intercourse in this way may well predate its Jiajing codification.) The statute reads: “Whoever inserts his penis into another man’s anus for lascivious play (*jiang shenjing fang ru ren fenmen nei yin xi*) shall receive 100 blows of the heavy bamboo, in application by analogy of the statute on ‘pouring foul material into the mouth of another person’ (*hui wu guan ru ren kou*)” (Xing tai falü: bi fu zafan zui lü/48b; Xue, 1970: 285-33).

This statute contrasts sharply with those against heterosexual offenses found in the section on illicit sexual activity of the Ming code. First, it could hardly be more explicit about the act being punished—far more so than the illicit sex statutes, which use *jian* to stress

extramarital context without reference to specific gestures or anatomy. The statute quoted above never mentions jian at all, let alone the Qing legal term for sodomy, *ji jian*.

Second, the statute does not employ the dichotomy of “coercion” (*qiang*) and “consent” (*he*) used to define sexual offenses in Chinese legal codes since antiquity. While the analogy to assault might seem to imply the punishment of rape, the only example I have found of this law’s use in practice (from the Qing) involves the punishment of a man who had *consented* to being penetrated (Chang Wejen, 1986: 40-73). Ming lawmakers may simply have assumed it impossible to rape a male—an assumption that continued, with some qualification, to inform legislation during the Qing (see below). At any rate, the penalty (100 blows of the heavy bamboo) approximated contemporary penalties for consensual heterosexual offenses (80 to 100 blows); it was far less severe than that for heterosexual rape (strangulation) (Xue, 1970: 366-00).

The most significant feature of the statute is its analogy between anal penetration and a crime listed in the “fighting” (*dou ou*) section of the Ming code: “pouring foul material into the mouth of another person” (Xue, 1970: 302-00). Lawmakers evidently found this a more exact analogy than any of the heterosexual offenses in the illicit sex section, implying that penetration was an assault, with subject acting upon object.

But the fighting section lists dozens of crimes, so this particular choice begs analysis. It contains three key elements: penetration, “foul material,” and targeting the mouth. Such assault could surely cause physical injury. But “foul material” suggests pollution and humiliation more than physical danger; also, most cultures associate the head and face with personal dignity (another clause of the same fighting statute punishes “whoever pollutes the head or face of another person with foul material”). In other words, pollution and humiliation were more important than battery to defining the crime of anal penetration. Moreover, such harm clearly affected the penetrated person only: *being* penetrated corresponded to having foul material poured into one’s mouth. The stigma would stain the penetrant no more than foul material would sully one who poured it.

EARLY QING LAW: THE TRANSITIONAL PHASE

Like most Ming laws, the “statutes applied by analogy” were adopted into the first edition of the Qing code in 1646.⁶ Thereafter, as new statutes were added, many “statutes applied by analogy” became obsolete and were eliminated (Xue, 1970: 52/bi yin lü). Xue Yunsheng reports that the one on anal intercourse was applied during the Kangxi reign (1662-1723); it remained on the books until 1725 (Xue, 1970: 285-33; Wu, 1992: 1141-1144).

As early as 1655, however, Qing courts began using the term *ji jian*—“sodomy”—to refer to homosexual anal intercourse (Chang Wejen, 1986: 23-85). In 1679, legislation against *ji jian* appeared for the first time, in the illicit sex (*jian*) section of the code. By the end of the Yongzheng reign (1723-1736), the code contained substantial legislation on the subject. This legislation represented a break with earlier practice, in that homosexual intercourse was for the first time directly assimilated to heterosexual offenses under the rubric of “illicit sex.”

The origins of the term *ji jian* are not clear. In Qing legal sources, a logograph meaning “chicken” is used to represent the sound *ji*. This usage appears to be a later substitution for an obscure logograph, also pronounced *ji*, which, according to the late Ming scholar Yang Shiwei, meant “to use a male as a female” (*jiang nan zuo nü*) (Higashikawa, 1979: 295; Ci hai, 1978: 1/827).⁷ The construction of this obscure logograph is suggestive: the lower half of the logograph *nan*, meaning “male,” has been replaced by the logograph *nü*, meaning “female” (see Glossary). The essence of the term is the gender inversion imposed on a male who is anally penetrated, as implied by Yang Shiwei’s definition and by the logograph’s construction.⁸

The 1679 statute marked the first appearance of *ji jian* in the code itself: “If evil rascals gather in a gang and abduct a young man of good family and use coercion to sodomize him, then the ringleader shall be immediately beheaded, and the followers shall all be sentenced to strangulation after the assizes. If it is consensual (*he tong zhe*), then the crime shall be punished according to statute” (Qing huidian shili: 990).

In 1696, the following amendment was added: "If degenerate evil characters abduct a young man of good character and use coercion to sodomize him, then the followers shall be sentenced to strangulation after the assizes, and they shall not be granted clemency under any amnesty. If it is consensual, then the crime shall be punished in the usual way" (Qing huidian shili: 825/990).

This measure introduces the dichotomy of "coercion" and "consent" to divide the newly named crime into the traditional subcategories of illicit sex. It specifically addresses gang rape, but its penalties could also apply to a rapist who acted alone, at least in extreme cases. In a 1733 example from Guangdong, Yu Zidai (fifty-seven sui) lured Chen Amai (sixteen sui) into a sugarcane field, raped him, and beat him to death.⁹ Yu was sentenced as follows: "Yu Zidai did not gather a gang, but nevertheless, he did lure Chen Amai away and raped (*qiang jian*) him; in addition, he killed him immediately afterwards. This is lecherous evil in the extreme! Yu Zidai should be beheaded immediately, according to the substatute's provision on 'ringleaders' " (Chang Wejen, 1986: 41-7).

The 1679 substatute also confirms that "consensual" sodomy should be punished "according to statute," or as the amendment adds, "in the usual way." This language refers to the Ming "statute applied by analogy": the 1679 law added new penalties for rape but confirmed the old analogy's application to consensual acts.

We see an example of the latter in a 1724 homicide case from Fujian involving three soldiers: Tu Lian (thirty-six sui) had had a sexual relationship with Zheng Qi (early twenties) for four years (Tu penetrating Zheng), and they shared a bed; their roommate, Wu Zongwu (twenty-four sui), slept separately. One night while Tu Lian was out, Wu was bothered by mosquitoes, so he crawled in bed with Zheng, who had a mosquito net. When Tu returned, he killed Wu in a jealous rage. Tu Lian was convicted of "purposeful homicide"; more pertinent is the judgment of his lover:

Zheng Qi allowed Tu Lian to sodomize him; we find that the code contains only penalties which uniformly apply to males and females who engage in illicit sexual intercourse; it contains no standard provision prescribing penalties for two males who engage in sodomy. Therefore, Zheng Qi shall be sentenced according to the supplementary statute applied by analogy, which provides that "whoever inserts his

penis into another man's anus for lascivious play shall receive 100 blows of the heavy bamboo, in application by analogy of the statute on 'pouring foul material into the mouth of another person.' "

This judgment, approved by imperial rescript, shows that the Ming statute might punish not only penetrants but also any male shameless enough to submit to sodomy. Its language reflects the point of transition at which it was written: the sexual activity is called "sodomy" and compared to the "illicit sexual intercourse" of "males and females." But there existed as yet no measure on illicit sexual intercourse by which to judge a consensual homosexual offense, so the old Ming analogy had to be used (Chang Wejen, 1986: 40-73).

THE ASSIMILATION OF SODOMY TO ILLICIT SEXUAL INTERCOURSE

Earlier measures were superseded in 1734 by a substature in the illicit sexual intercourse section, which remained in force until the early twentieth century (see Appendix A). This law (together with complementary measures that followed) achieved a precise assimilation of sodomy to heterosexual *jian*. The breakdown into specific offenses paralleled preexisting categories of illicit sex; moreover, the penalties for sodomy now equaled in almost every detail those for corresponding heterosexual offenses. The correspondence is too exact to have been accidental.

Gang rape of a person of either sex was punished according to the substature on "rootless rascals" (*guang gun*), ringleaders by immediate beheading and followers by strangulation after the assizes. Rape by one offender of a person of either sex over twelve sui was punished by strangulation after the assizes; rape of a child of either sex between ten and twelve sui, by beheading after the assizes; rape of a child under ten sui, by immediate beheading.

Rape of a person over twelve sui of either sex that was "not accomplished" (*wei cheng*—i.e., the vagina or anus was not penetrated) was punished by 100 blows of the heavy bamboo and life exile at 3,000 *li*. If the victim were twelve sui or under, the offender was enslaved to the military forces in Heilongjiang.

"Consensual" sex with a child aged twelve sui or under of either sex was automatically treated as coercive and punished by strangula-

tion after the assizes. Consensual sex with a person over twelve sui of either sex was punished according to the substature on “soldiers or civilians engaging in illicit sex” (*jun min xiang jian*), by 100 blows of the heavy bamboo and one month in the cangue.¹⁰ Prostitution by male or female, as well as sex with a prostitute, received the same penalty.¹¹

After 1734, any sodomy offense not covered in the code was judged by precise analogy to the corresponding heterosexual offense. For example, in an 1833 case from Beijing, Du Zhuer (thirty sui) penetrated his half-brother (same mother, different father) Fan Erge (eleven sui). The code did not treat incest between males, so Du was sentenced by analogy to the substature on “illicit sex with a sister by the same mother but a different father”; because of Erge’s youth, the penalty was increased by one degree (*Xing Bu dang*: 06194).

In a complementary process, the legal discourse of sodomy adopted key terms and standards long used in the prosecution of heterosexual offenses, especially rape. During the Ming-Qing period, certain factors disqualified a woman from full treatment as a rape victim by automatically indicating lighter penalties for her rapist (Sommer, 1994; Ng, 1987). This weighting of penalties shows that the law did not define rape from the victim’s point of view, but rather in terms of a loss of status inflicted on the victim by the experience of forced penetration outside a legitimate context.

If the victim had previously engaged in illicit sex, then the damage caused by the rape was measurably less, since the chastity at stake had already been polluted; the lighter penalty for the rapist reflected this prior pollution. The same was true if the hierarchy of penetration somehow conformed to the relative status of rapist and victim: a master crossing status lines downwards to rape a servant, or a commoner raping a person of mean status, would receive lighter penalties, in the unlikely event of prosecution, than if they violated status equals. (On the other hand, extra penalties applied to any male who crossed status lines upwards by penetrating a female of higher status—e.g., a woman of his master’s household.) This formal matching of status to sexual role is one of the clearest expressions in Chinese law of the gendered hierarchy of penetration.

After the assimilation of homosexual offenses to heterosexual ones, the same logic framed the evaluation of the male rape victim. The 1679 and 1734 laws characterize the penetrated male as a *liang ren zi di*. In

this phrase, *liang* carries the double meaning of sexual virtue and commoner legal status, so that precise translation is awkward: “a son or younger brother of good character/of a commoner.” Such a characterization matches closely that of the ideal female victim of rape or abduction as *liang jia fu nü*—“a wife or daughter of good character/commoner family”—or *liang ren fu nü*—“a wife or daughter of good character/of a commoner” (e.g., Xue, 1970: 366-02).

In this way, standards for evaluating female chastity and defining legitimate access to women were adapted to measure the loss suffered by a penetrated male. Below, we examine how these standards applied in practice to cases of homosexual rape. But Qing jurists never imagined men to be exactly the same as women. As we see, the exact parallel between homosexual and heterosexual offenses broke down over the question of resistance to rape. The difference between the plausibly rapable male and female articulates most clearly the Qing judicial construction of sex between men.

EVALUATING THE PENETRATED MALE

RELATIVE LEGAL STATUS: MASTERS AND SERVANTS

No measure in the Qing code addresses the issue of homosexual relations between masters and servants, slaves, or hired laborers. Seventeenth century novels like *The Plum in the Golden Vase* (*Jin ping mei*) and *The Carnal Prayer Mat* (*Rou pu tuan*) suggest that homosexual intercourse (master penetrating servant) was not uncommon; like intercourse with female servants, it was unlikely to be prosecuted, regardless of the degree of coercion involved.

In 1798, however, the governor of Shandong memorialized about a case he found difficult to judge. A landlord named Pan Junting had attempted to rape his male hired laborer (*gu gong*) of two years, Shao Xing. Resisting, Shao had kicked his master in the testicles with such violence that Pan died. The problem was how to balance the statute that mandated leniency for “males who commit homicide while resisting rape” (see Appendix B) with the vital principle of maintaining household hierarchy. In this case, had the men been social equals, it is most likely that Shao’s penalty would have been strangulation

after the assizes for the “unauthorized killing of a criminal,” with the certainty of eventual reprieve. But for a long-term hired laborer to kill his master was a heinous violation of Qing law—if the homicide resulted from fighting, then even if it was unintentional, the laborer would be beheaded immediately (Xue, 1970: 314-00).

The governor recommended leniency and the Board of Punishment severity, so the emperor struck a balance. The final judgment confirmed that Shao’s master had been trying to rape him; nevertheless,

for a hired laborer to kick his master to death holds the gravest implications for the principle of status difference. . . . It is inappropriate to judge this case according to the substatute on “committing homicide while resisting rape,” which applies to status equals (*chang ren*), so that the offender would be sentenced [merely] to strangulation after the assizes; such a sentence would show reckless indulgence.

Therefore, Shao received the more severe sentence of beheading, with the qualification “after the assizes,” keeping open the possibility of a reprieve (Xing an hui lan: 53/16a-17a). Although Shao’s sentence was more severe than it would have been had the two men been social equals, it was much lighter than if his master had not been trying to rape him. This judgment parallels that of a 1738 case from Zhili, in which a male servant used violence to defend his sister-in-law against rape by their master (Sommer, 1994: 47).

LIANG AS COMMONER LEGAL STATUS

Prostitutes, male or female, violated the standard of liang in both senses of the word. As an occupational group, they, like other entertainers, possessed the despised legal status of mean persons, being excluded from the ranks of commoners. At the same time, prostitutes could not be considered liang in the sense of virtue: penetration outside marriage disqualified a female, while *any* experience of being penetrated disqualified a male.

But what if a male rape victim were liang in one sense, but not in the other? In 1824, the governor of Shaanxi memorialized on a case in which Zhang Laijia and Wang Deyu, who were armed with knives and clubs, waylaid and raped Wang Ke’er and another man on a road (each attacker raped one victim). The case was complicated by the fact

that the victims were both actors who performed female roles (*xiao dan*), and therefore, the governor argued, “they cannot be treated as ‘young men of good character/commoner status,’ ” as would be required for the rapists to receive the full penalty for coercive sodomy (strangulation after the assizes). But such a vicious crime could not go unpunished. The solution, approved by imperial rescript, was to reduce the full penalty one degree, to 100 blows of the heavy bamboo and life exile at a distance of 3,000 li.

There was no evidence that either victim had previously been penetrated by another man, so they could be considered *liang* in terms of sexual virtue at the time of the rape. But their occupation clearly debased their legal status, so they could not be considered *liang* in the sense of being commoners. Moreover, as female impersonators, these men already embodied the gender inversion suffered by a victim of anal penetration. The judgment, therefore, balanced the principle of legal status hierarchy against that of punishing rape—exactly mirroring the sort of compromise made when a chaste (*liang*) woman of mean legal status (not *liang*) was raped by a commoner (Xu zeng xing an hui lan: 14/2a-b; Sommer, 1994: 59-61).

LIANG AS SEXUAL VIRTUE IN MALES

Any previous experience of penetration disqualified a male from being considered *liang* in the sense of sexual virtue. Therefore, like debased status (absolute or relative), such experience was also judged to lessen the harm caused by rape, indicating a reduced penalty for the rapist. This was the logic used to evaluate an unchaste woman who had been raped.

In a case reported by the governor of Shanxi in 1815, Guo Zhengqi had been raped by Li Lengsan, but admitted that earlier he had already consented to being “sexually polluted” (*jian wu*) by another man. As the governor reasoned, “There is a difference between [Guo] and ‘a man of good character’ (*yu liang ren you jian*). Therefore, Li Lengsan should be sentenced to 100 blows of the heavy bamboo and life exile at a distance of 3,000 li, a reduction by one degree from the penalty of strangulation after the assizes that is prescribed by the statute for ‘committing coercive sodomy without injuring the victim.’ ” In other words, if a man were shameless enough to consent to being

penetrated, the harm he might suffer by being raped could not be great enough to warrant the death penalty for the rapist. Moreover, for his earlier consensual penetration, Guo himself received 100 blows of the heavy bamboo and one month in the cangue, according to the provision against “consenting to be sodomized” (*he tong ji jian*) (Xing an hui lan: 52/7b-8a).¹²

HOMICIDE IN THE COURSE OF ATTEMPTED RAPE

Previous experience of penetration could affect homicide judgments, too, as seen in a 1762 case from Zhili. In 1751, the widow Ma Shi had hired an unmarried, landless peasant, Lin Ermengdong (twenty sui), to help her orphaned grandson, Li Changzuo (ten sui), work their land in exchange for 60 percent of the harvest. During crop-watching, Lin and Li shared a hut in the fields, and Lin began penetrating the boy, in a friendly relationship that lasted several years.

In 1758, when Lin and Li were twenty-seven sui and seventeen sui, respectively, they became the subject of village gossip, and the younger man broke off both the sexual and work relationships. But one evening in 1761, Lin encountered Li and propositioned him. As Lin later confessed, Li rejected him, saying: “Before, we were seen screwing around together (*zan liangge gan de goudang*) . . . and the whole village talked until it was unbearable. Who would want to do that shameful thing with you again?” A quarrel ensued, and Lin beat his former lover to death.

In evaluating this homicide, the magistrate first considered a clause of the 1734 sodomy statute: “Whoever murders a young man of good character in the course of an attempt at illicit sex . . . shall also be immediately beheaded according to the statute on ‘ringleaders of rootless rascals’ ” (see Appendix A). Upon reflection, he rejected this measure, reasoning that “Li Changzuo had previously submitted to illicit sex with Lin Ermengdong, so Lin Ermengdong cannot be compared to someone who schemes to sodomize and murders ‘a young man of good character.’ ” Accordingly, he sentenced Lin to the lesser penalty of beheading after the assizes, which kept open the possibility of reprieve (Xingke tiben: 173/QL 27.3.18).¹³

Evidently, homosexual rape was defined from the victim’s perspective no more than heterosexual rape. In judicial discourse, being

penetrated involved a stigmatized loss of status for males; this loss to a certain extent corresponded to a woman's loss of chastity, and its effects were measured in similar ways by the penal system. Males of debased status and males who had already been penetrated did not suffer the full degree of harm when raped; it followed that their rapists did not deserve the full penalties mandated by law.

However, there remained fundamental differences between the loss suffered by a penetrated male and a female's loss of chastity. By definition, a woman was legitimately penetrable—but she had to reserve that penetrability for her husband. The chastity promoted by the Qing state was at root a form of loyalty, explicitly associated with political allegiance (like filial piety). An adulteress offended against her husband, so the burden on the female rape victim was to prove that she had not committed a betrayal. This interpretation was reflected in the penalty for consensual illicit sexual intercourse, identical for heterosexual and homosexual couples except for one significant detail: Ming-Qing law provided that a wife convicted of adultery could be “sold in marriage” by her husband (Xue, 1970: 366-00).

No comparable measure applied to a male who engaged in illicit relations with a woman or played either sexual role with another male. The Qing state orchestrated no cult of virtuous males who died guarding their penetrability to correspond to the female chastity martyrs canonized on a regular basis. Males were not expected to be weak, fatalistic, or suicidal; theirs was not to reserve themselves as vessels for one legitimate master. They were not supposed to be penetrable at all, but rather penetrants, subjects rather than objects of action.

Yet Qing law acknowledged that males could be raped and that they might consent to sodomy. But for this penetrability to make sense, the male had to be somehow less than male. To grasp this unstable masculinity, let us turn to the standards of evidence for homosexual rape. What sort of male did the judiciary imagine as a credible rape victim?

COERCION, YOUTH, AND POWERLESSNESS

Unlike the Qing code's original statute on heterosexual illicit sex (Xue, 1970: 366-00), the sodomy statutes do not spell out an exact

standard of evidence for coercion. Case records show that the standard long established for the rape of a female was generally applied, but with some notable modifications.

A woman was expected to defend her chastity to the death; otherwise, she bore the burden of proof that she had been overpowered in spite of fierce resistance. Persuasive evidence included a confession from the rapist, injuries, torn clothing, threat with a weapon, and witnesses who confirmed her resistance. It was best if she had been violated within her proper domestic space, and she needed the full support of patriarchal guardians in order to file charges.

When a male alleged that he had been raped, some of the same kinds of evidence were required: case records cite torn and bloodstained clothing, and judges asked if victims had cried out and struggled. Even so, the male rape victim was imagined as fundamentally different. The issue of domestic space, for example, never comes up in cases of homosexual rape: it was perfectly legitimate for men and even young boys to be outside the home for a wide variety of reasons. Indeed, case records show that it was common for unrelated men to share beds at night, a practice which did not necessarily imply sexual activity.

The crucial distinction in the prosecution of heterosexual versus homosexual rape is that judges saw men as fundamentally powerful, whereas women were assumed to be weak. Of course, a woman should resist, but her strongest evidence of coercion was that she had been killed or had committed suicide; barring death, serious injury was the best defense. These were decidedly weapons of the weak.

In contrast, the judiciary was highly skeptical that a man could be raped at all: if sodomy had been accomplished upon an adult male, then it must have been consensual. Only a powerless male could be penetrated against his will—and the most unambiguous form of male powerlessness was youth. The statutory language specifies the male rape victim as a *liang ren zi di*; I have translated this as “a young man of good character/commoner status,” but the literal meaning of *zi di* is “son or younger brother.” Such phrasing implies that the male rape victim was a young, junior member of a family unit. The corresponding phrase for the female rape victim is “a wife or daughter of good family.” “Daughter” implies youth, to be sure, but “wife” does not;

the emphasis here is gender subordination within the family, not youth. (The phrase for males says nothing about husbands.)

Indeed, the victim's youth and family seem to have been crucial factors in the prosecution of homosexual rape. In archival records that I have seen of homosexual rape cases (not involving homicide), the oldest victim was fourteen sui; every case was reported to the authorities by a parent of the victim. Every archival case record I have seen of attempted rape of an *adult* male by a single attacker ended up in court because one of the men killed the other. That does not mean adult males were never raped, but rather that there existed a judicial bias against accepting an adult male as a rape victim.

Even with an adolescent victim, judges might exhibit great skepticism about whether coercion had truly been used to accomplish sodomy. In an 1851 case from Zhili, the victim was Chen Shang'er (fourteen sui), a peasant who worked on the village watch with three older men; one of the other men, Han Yunrui (fifty-two sui), was an ex-convict recently released after several years of internal exile. One night when the others were out on duty, Han raped Chen Shang'er. The boy's father reported the rape, and forensic examination established that Shang'er's anus had been penetrated. Arrested, Han confessed. The magistrate recommended strangulation after the assizes for "forcibly sodomizing a young man of good character, without injury"; but the provincial judge of Zhili overturned the judgment for the following reasons:

In cases of "accomplished rape," if violent coercion has truly been employed, then the rape victim should exhibit physical injuries from the struggle. . . . In this case, *Chen Shang'er is already 14 sui, and absolutely cannot be considered a child.* When Han Yunrui pulled at his pants and he was startled awake, *it should not have been difficult for him to escape immediately; why is it that all he could do was weep and cry out?* . . . He did not struggle vigorously, and thereby allowed himself to be sexually polluted. Moreover, [the other watchmen] must have been in the vicinity; how is it that they heard nothing when Chen Shang'er was being sodomized and cried out? In addition, . . . his body exhibited not even the slightest injury. [emphasis added]

Here, the provincial judge cited the standard of evidence for rape applied to women in Ming-Qing law, but his emphasis of the boy's

age did not figure in this way when the victim was female. He ordered the case retried to establish beyond doubt whether coercion had been used (Shuntian fu dang'an: 167/XF 1.2.6).

The clearest expression of judicial skepticism came in the prosecution of men who committed homicide in self-defense, they claimed, against rape. Most cases involved the use of a knife or other edged weapon to kill the alleged rapist. Qing judges deemed it so unlikely that a teenage male would have to resort to such a weapon to prevent rape that they treated any such claim with great suspicion, assuming the claim was a lie that obscured the true motive for murder.

Still, Qing law sometimes granted leniency to males who committed homicide while resisting rape. Until the late eighteenth century, the procedure was for the provincial governor reporting the case to recommend formally that the prisoner be executed according to the relevant homicide statute, but to add an explanation of the mitigating circumstances, with a suggestion that the sentence be commuted. The final decision would be made at the palace (Wu, 1992: 785).

But the age of the killer (i.e., the alleged victim of sexual assault) was key to whether leniency would be granted. In a 1744 case from Zhili, a man named Ma Zhongxiao used an ax to kill one Wu Guodong, with whom he was sharing a bed, and who he claimed was trying to rape him. The governor-general recommended leniency, but the palace refused: "If Ma Zhongxiao was already 20 sui, then he was a strong man in the prime of life. How could Wu Guodong possibly coerce him into sodomy?"

So the case was sent back to the local magistrate for retrial. When pressed about his age and strength, Ma testified, "I was only 19 sui, and I have always been weak. He was a very strong man, and when I was held tightly by him, there was no way I could struggle free." The magistrate reported:

According to the offender, he was only 19 sui at the time, and although that is not so young, the offender is not really very strong either. This humble official personally examined the offender in court, and it was obvious that his constitution is not tough or strong at all. Moreover, Wu Guodong was more than twice the offender's age, and it seems credible that he could have sought to use coercion to sodomize him, taking advantage of his youthful weakness.

The governor-general then personally inspected the prisoner, drew the same conclusion, and confirmed his original recommendation to the palace (Chang Wejen, 1986: 133-99).

A degree of leniency toward males who committed homicide while resisting rape was codified in the late eighteenth century, but in addition to unimpeachable evidence of a rape attempt, any offender to be granted leniency had to meet strict qualifications based on age. A statute of 1783 specified that for a reduction of penalty to be considered, it was necessary for "the dead man to be at least 10 sui older than his killer"; furthermore, "if the dead man and his killer are of the same age, or if the dead man is only a few sui older," then the case should be judged according to the basic homicide statutes without any reduction of penalty. Twelve years later, an amendment granted that even if the dead man were "not quite 10 sui older than his killer," but strict evidential requirements were met, then a reduced sentence could apply. In 1823, a final measure absolved boys of fifteen sui or under of any penalty for killing men at least ten sui older who tried to rape them, as long as strict evidential requirements could be met; if the evidence did not quite meet the strict standard of the statute, but authorities were persuaded the boy was resisting rape, then he would receive a nominal sentence to be commuted to a fine (see Appendix B; Qing *huidian shili*: 801/769).

The intent of this legislation was to prevent murderers from escaping with penalties lighter than they deserved (Wu Tan, 1992: 785; Meijer, 1985: 124-126). However, by spelling out the narrow circumstances that partly excused such homicide, the judiciary also articulated its image of a plausibly rapable male. Only a boy or a young, weak man attacked by someone older and more powerful might be successfully raped, and therefore might be excused for resorting to an equalizing weapon like a knife in self-defense.

No such equation of youth with powerlessness appears in the elaborate judicial discourse on heterosexual rape. Any woman who immediately killed a man attempting to rape her was excused punishment; the code mentions no qualification based on age (Xue, 1970: 285-20). Among males, only those fifteen sui and under could be granted such complete clemency, and only if they were at least ten sui

younger than their attackers and could meet an unusually strict standard of evidence (including confession of the rapist prior to death). The implication was to associate the powerlessness and penetrability of being very young with being female: the weakness (and consequent need for an equalizing weapon) of *any* woman was on a par with that of a young boy.

Adult males were seen as powerful and nonpenetrable; therefore, penetration of a male could be explained only in terms of youthful powerlessness or shameful consent. Females of all ages were seen as powerless and penetrable, but were expected to safeguard that penetrability by whatever means necessary, the classic scenario being chaste martyrdom rather than homicide in self-defense.

Thus the Qing judiciary imagined the male rape victim as juvenile, therefore powerless; powerless, therefore penetrable; and, being both powerless and penetrable, therefore approximating the condition of being female. It was such a condition that made it possible to conceive of males as rapable. The discourse of *liang* never included men who penetrated other males, any more than it included men who engaged in illicit sex with women; *liang* applied only to males and females positioned in the “female” sexual role. Feminists argue that to be rapable is to be socially female, regardless of biological sex (e.g., MacKinnon, 1989: 178). The Qing judiciary seems to have taken this view quite literally.¹⁴

PATTERNS OF SOCIAL PRACTICE

PARALLEL HIERARCHIES

The judicial perspective corresponded closely to widespread social practices and perceptions. Most obviously, the penetrated male was younger than his penetrant, so that the gendered hierarchy of sexual roles coincided with that of age. This is true in all case records I have seen, including both rapes and amicable sexual relationships, with only two exceptions. Both exceptions (examined below), however, prove the rule that the hierarchy of sexual roles was seen properly to conform to age hierarchy.

Not only was the penetrated male younger, but in the majority of cases he was unmarried and in his teen years or younger (again, this includes both rapes and consensual unions). The youth of the penetrated male is accentuated by its eroticization: penetrants frequently testified that they were attracted to the youth and to such youthful and feminized features as the “clean and white skin” of those they penetrated.¹⁵ Here we see a conflation of eroticized youth, femininity, and penetrability.

Hierarchies of age and of sexual role often parallel others: status (e.g., Buddhist or Daoist clergy penetrating novices), class (employers/masters penetrating employees/servants), and economic means (with the penetrant providing money or other valuables to his partner). The effect is to reinforce the gendered power relations already inherent in the hierarchy of sexual roles. This finding is supported by contemporary fiction, in which the homosexual roles conform to and are confirmed by parallel hierarchies (Hinsch, 1990: 134-136; Vitiello, 1992).

In the consensual same-sex unions reported in legal cases, there are signs apparently gendering the penetrated male as female. Some involve economic division of labor: in one case, the penetrated male wove cloth at home, which his lover sold at market. In many cases, two or more penetrants fought over a penetrated male, but I have yet to see the opposite; the penetrated male appears as an object of possessive desire.¹⁶ Sometimes, the relative authority of partners mimicked that of contemporary heterosexual couples. In a 1762 example from Guangdong, Pan Asan (eighteen sui) lived with and was informally apprenticed to a barber, Miao Aliu (twenty-six sui), who penetrated him. Pan ran away for several days, staying with another man, whom he allowed to penetrate him; finally, Miao tracked him down, took him home, and scolded him. After that, Pan often defied and cursed his partner. One evening, he refused to sharpen razors in preparation for the next day's work, so Miao beat him; later that night, Pan refused to be penetrated, so Miao strangled him (Xingke tiben: 170/QL 27.4.18). This scenario closely fits the pattern of wife killings recorded in Qing legal archives, in which a wife's failure in gender duty (adultery, leaving home without permission, refusing sexual

intercourse, and other defiance) provokes her husband to homicidal rage.

THE ADULT MALE AS PENETRANT

Legal cases suggest that a male's sexual role could change, depending on his stage in life (cf. Hinsch, 1990: 136). Most basic is the sense that a fully socialized adult male should be a married householder, whose role is to penetrate (his wife), not to be penetrated. Marriage represented the key rite of passage in attaining social adulthood; with consummation, both male and female took up their respective social and sexual roles, as husband (penetrant) and wife (penetrated).

Several cases reveal a change in perceived role of a male who had in his youth consented more or less willingly to being penetrated by an older man. Sometimes the younger man, having matured, rejects the advances of his former lover: "I'm grown up now, and I'm not going to do that" (Xingke tiben: 177/QL 27.3.30).

Sometimes this change in attitude coincides with taking a wife. In a 1739 case from Sichuan, the peasant Zhou Jiu (nineteen sui) killed an older monk named Qing Yue. According to Zhou's confession, he lived not far from Qing's temple; in 1736, Zhou had gone there to play, whereupon Qing Yue persuaded Zhou to let him penetrate him in exchange for some walnuts. They had sexual intercourse once, after which Zhou did not return to the temple. One day in 1738, Qing Yue tried to repeat their sexual encounter by force, so Zhou killed the monk with a knife. When arrested, he claimed self-defense, but the magistrate was skeptical: "Since Qing Yue had already sodomized you, why did you reject him on this one occasion? . . . Obviously there was some other reason why you wished to stab him to death." Zhou responded: "Before, I was still young, and was sodomized by him because I was greedy to eat walnuts. When I later recalled this, I was deeply ashamed. Now, I've already grown up, and have also taken a wife. How could I still be willing to do this shameful thing?" The magistrate accepted this explanation, as did his superiors (Xingke tiben: 71/QL 4.7.12).

A male's changing sexual role figured too in a 1739 case from Shandong, in which the peasant Dong Er (twenty-eight sui) killed an

older monk surnamed Sun. Dong testified: "When I was a boy, I often went to the temple to play, and was seduced by monk Sun, who gave me sweets to eat, and sodomized me. Later, monk Sun moved to Fengshan Temple, a little over four li from [our village]. He often came to our village to collect alms, and when it got late he would spend the night at our house, and would have illicit sex with me."

Then, in late 1734 or early 1735, at the age of twenty-one sui, Dong Er took a wife. As Dong recounted, "Monk Sun told me many times that he wanted to sleep with my wife, but I didn't let him. But in Qianlong 1 (1736), I was too poor to get by, and I often asked monk Sun to lend me a hundred cash or so to buy rice; then I let him have sex with my wife. After that, he often came and went, and I spent several hundred cash of his." Poverty finally forced the couple to move in with the wife's natal family, which hampered Sun's sexual access to the woman. Shortly thereafter, Dong went to Sun's temple to ask for another loan to get through the winter; Sun refused to pay unless Dong brought his wife to live nearby. Dong then revealed his plan to travel to the east in search of employment. Sun got into a huff and went to bed (it was evening); Dong (who was spending the night at the temple), climbed onto the *kang* with him and went to sleep. Later, however, Sun woke him up and again pressed him to move nearby so they could continue their arrangement of trading sex for money; a quarrel ensued, in which the monk cursed Dong, who then beat him to death.

In six years, then, Dong went from being Sun's willing penetrated partner, to taking a wife and becoming a penetrant in his own right; at this point, Sun's sexual interest shifted from Dong to his new wife, and, in exchange for money, Dong began sharing his wife so that both men could penetrate her. The focus of Sun's lust had shifted so completely that on his last, fatal night, he evinced no interest whatever in having sex with Dong himself, even though the two men were in bed together (Xingke tiben: 69/QL 4.6.20).

What stands out is not simply that hierarchy of age-reinforced hierarchy of sexual role, but that fully socialized adult males should be penetrants only. Such a transition might involve several elements: age (growing up); marriage (taking up the social role as husband, reinforced by the sexual role as penetrant); and avoidance of being

penetrated (if it had happened before, preventing it from happening again).

THE STIGMA OF BEING PENETRATED

Cases from various regions of China reveal a pervasive, powerful stigma attached to the penetrated male, a stigma that did not touch his partner. Some men who wanted to penetrate others violently refused to be penetrated themselves.

In a 1738 case, Wang Si (twenty sui), a poor man from Gu'an county, was looking for work in Beijing as a casual laborer. One winter evening, having no money to pay for space in a heated public room at an inn, Wang squatted at the base of the city wall by Chongwen Gate to get through the night. In the middle of the night, Wang was accosted by another man—later identified as Dong Kui (mid-twenties), an impoverished bannerman who beat a drum in funeral processions—who planned to sleep by the wall as well. As Wang later testified,

[Dong] said, "If the two of us sleep together, we'll be warmer." I said, "I'm not sleeping next to you," and he said, "If you don't sleep with me I'll beat you up." I saw he was big and strong, and that I couldn't win a fight with him, so I [agreed to] sleep next to him.

Then he felt my pants, . . . saying, "If you let me sodomize you, I'll buy you a pair of cotton pants to wear." I said, "If you let *me* sodomize *you*, I'll give *you* a pair of cotton pants." He cursed me, saying, "If you don't let me sodomize you, I'll beat you to death!"

It was the middle of a dark night, and no-one was around, . . . so I was afraid; I tricked him, saying, "Now it's still early, and someone might walk by and see us; that would be embarrassing. Why don't you sleep for a while and then we'll talk about it?" So he went to sleep.

After Dong fell asleep, Wang Si murdered him.

Even if his retort about reversing roles may have been facetious, Wang seems to have felt that penetrating Dong would be better than being penetrated *by* him—and Dong took the retort as an insult, growing belligerent in response (Xingke tiben: 74/QL 4.3.2).

Sometimes, the shame felt by the penetrated male contrasts sharply with the bravado of the man who has penetrated him. A 1738 case from Zhili clearly shows this contrast. One night, Li Xuan (twenty-nine sui),

a casual laborer from Wenshui County, Shanxi, was sleeping at the home of two friends, Niu Yongtai and Chi Tingguang; these two lived and farmed together (one wonders about their relationship). The three men were sharing the same *kang*; as Li later testified:

I was already sound asleep, when that Niu Yongtai started to sodomize me. I was awakened by his sodomizing me (*bei ta jian xing le*), but at the time, since Chi Tingguang was also on the *kang*, and since this kind of shameful thing is not easy to speak of, all I could do was bear it and keep silent.

Some days later, Li met an acquaintance, Wei Minghou, in a wine shop:

He said to me, "You men from Wenshui County are all born to be rabbits." I thought of Niu Yongtai sodomizing me, and suspected that Niu Yongtai hadn't kept his mouth shut and had told people about it, so that Wei Minghou had that in mind when he made this comment; because of this, I felt ashamed.

Li went to Niu's home to confront him; it was night, and Niu was already in bed:

I said, "You sodomized me, but I bore it without saying anything, but now you've gone and told other people about it—what is this supposed to mean? Get up, so we can settle this!" He said, "But I'm not going to get up. What are you going to do about it?" I saw there was a rock sitting on the stove, so I picked it up to threaten him, saying, "If you don't get up, I'm going to beat you!" Niu Yongtai said, "I'll bet a rabbit like you wouldn't dare!"

Li Xuan took the dare, and beat him to death. After confessing, he summarized his motive:

In truth, because Niu Yongtai sodomized me, and then I was ridiculed by others, and then, when I went to confront Niu, he cursed me as a "rabbit"—because of all this, I became so extremely angry that I wanted to beat him to death.

Clearly, Niu Yongtai was not ashamed of his lust for another man; he did not consider himself a "rabbit" (slang for a male prostitute).¹⁷ Li, in contrast, felt deeply shamed by having been penetrated and especially by publicity of that fact. It seems that his role in the act was far

more shameful than any sense of having been taken advantage of or coerced. It was more important to Li that Chi Tingguang, asleep beside them, not find out that he was being penetrated than it was to stop the intercourse itself—so he suffered the act to continue. Equally, it was public loss of face, more than the fact of having been penetrated, that provoked Li to confront and kill Niu (Xingke tiben: 76/QL 4.3.23).

Men penetrated in amicable relationships feared public exposure as well. This seems especially clear when the sexual partners inhabited a larger community of peasant households. (In contrast, same-sex unions in all-male contexts outside mainstream communities—e.g., among soldiers, sailors, or clergy—appear to have been less secretive; case records show that such relationships were often well-known to couples' associates.) In several court cases, public knowledge that one had been penetrated was described as a powerful loss of face: the phrases most commonly used are “to have no face” (*mei lianmian*); “to lose face” (*diu lian*); and “to be unable to face people” (*jian bu de ren*). The force of humiliation through village gossip is a major factor in a large proportion of cases involving the gamut of sex offenses, both heterosexual and homosexual. It is repeatedly cited as a motive for desperate acts, including homicide (to avoid or avenge exposure of rape, adultery, or homosexual relations), suicide (by women despairing over the stigma caused by rape or sexual proposition), and amateur abortion (most often by widows, to avoid the exposure of an affair).

A case from Zhili illustrates the pressure of stigma on an amicable relationship between two young men. Zhang Qibao and Huang Niuer were hired as long-term laborers by peasant Bai Chengwen in 1727, when they were twenty-four and nineteen sui, respectively; neither was married, so they shared a bed at Bai's house and soon began having sex. Early on, the men may have alternated roles—Zhang confessed that he and Huang had “sodomized each other,” although later, Zhang played the penetrated role, in spite of being older than Huang. As Zhang recalled, “At that time we swore not to tell anyone else,” and then “had a good relationship for these four or five years.”

In 1731, the two men began working separately for other employers, and since they no longer lived together, they met at the village temple to have sex. One time, a villager happened upon them and asked what they were doing, and to Zhang's horror, Huang told him that he had been sodomizing Zhang. As Zhang later confessed, “I

couldn't believe it. . . . I thought to myself, I'm a man of almost 30 sui, but here he goes telling other people about this; everyone in the village will find out—how will I be able to face them? I felt incredibly angry. . . . To my surprise, he wouldn't admit he was wrong, but instead argued and began to curse me. I became even angrier." Zhang later used an ax to kill Huang while he was taking a nap.

In the first hearing of his case, Zhang made no effort to deny the murder, but in an apparent attempt to protect his reputation, he did not confess the sexual relationship—instead asserting that Huang had "defamed" (*wu mie*) him by *claiming* to have penetrated him. He did not reveal the truth until a second hearing (the record does not say why he confessed, but clearly no one in the community had suspected the men were more than casual friends).

As an unmarried, poor laborer, Zhang had few claims to status in his community. The only ones, perhaps, were his maturity and masculinity, yet even these meager enough claims would be severely undermined by public knowledge that he had been penetrated, and by a younger man to boot. Huang Niuer obviously did not share Zhang's concern: Huang told Bai that *he* had penetrated Zhang, bragging about an act that apparently enhanced his own masculinity (Chang Wejen, 1986: 50-54).

Similar pressures were at work in a 1762 case from Hubei, in which three men from Xiaogan county worked as hired laborers in Zaoyang county (about 200 kilometers to the northwest). Wu Damou (thirty sui) had been sexually involved with his sworn older brother, Shi Shikong (thirty-one sui), for six years. As their relative ages would suggest, Shi penetrated Wu. Wu actually had a wife and daughter back in Xiaogan; because of poverty, he had left them in 1761 to accompany Shi to Zaoyang, where they were employed by Zhu Fengqi working ten *mu* of land, and lived in a room of Zhu's house. Wu supplemented their income by weaving cloth, which Shi sold at market (note the apparent gendering of household roles). According to Wu, the couple "got along extremely well."

After six months, they met another immigrant laborer from Xiaogan, Liu Huaizhi (twenty-four sui); he moved in with the couple and swore brotherhood with them. Within three days of moving in, however, Liu had discovered the couple's sexual relationship *and* the division of roles within it; on the third day he caught Wu alone and gave him an ultimatum: if Wu would not let Liu penetrate him as well,

Liu would expose Wu as Shi's penetrated sexual partner. Wu submitted. Shortly thereafter, an outraged Shi Shikong discovered their liaison; Wu then moved out with Liu, but two weeks later, jealousy provoked Shi to murder Liu.

Shi Shikong and Wu Damou were arrested, and at trial the magistrate pressed Wu to explain his behavior: "You had had sodomy with Shi Shikong for several years, so your affection (*qing yi*) for him must have been greater. Why did you stop living with Shi Shikong, and instead move in with Liu Huaizhi, with whom you had been having sodomy for only a short time? Furthermore, Liu Huaizhi is younger than you; how could you let yourself be sodomized by him?"

Wu's answer:

At first my affection with Shi Shikong was stronger. But our illicit relationship had been discovered by Liu Huaizhi, so that one day when he saw Shi Shikong was not at home, he trapped me [with his knowledge] and demanded to sodomize me; even though he's younger than I am, I had no choice but to submit.

Afterwards, we were discovered by Shi Shikong, and he made a big scene. . . . I feared that outsiders would find out and I would lose face. At that point, Liu Huaizhi told me that all three of us living together in a single room made things inconvenient, so he rented another place and asked me to move there with him. I thought to myself that if I moved out with him . . . at least we could avoid quarrels and the risk of being overheard and ridiculed by outsiders.

At a second hearing, pressed again by the magistrate, Wu added: "As far as me being somewhat older than Liu Huaizhi—I had done this vulgar thing with Shi Shikong, and because this had been found out by Liu Huaizhi, I was trapped and extorted by him so that I had no choice but to let him do as he wished."

Everyone seems to have found it strange that a younger male should penetrate an older one—but the magistrate finally accepted Wu's explanation that fear of exposure as a penetrated male forced him to submit to the private humiliation of submitting to a younger man. Wu's fear was so great that it induced him finally to abandon the lover for whom he had had such affection and to move in with his blackmailer. It was Liu's awareness of the stigma of being penetrated that enabled him to manipulate Wu in this way (Xingke tiben: 185/QL 27.9.24).

The interrogation of Wu underscores the coherence between judicial standards and popular perceptions in this area. It seems that stigma would attach to any male who was penetrated, but that penetration might be more comprehensible if it conformed to the sexual partners' respective positions in other hierarchies: age, class, wealth, and so on. Only a violation of the "natural" congruence of these hierarchies required special explanation.¹⁸

Homosexual relationships could obviously be more complex—both physically and emotionally—than an exclusive focus on anal intercourse would imply. Case records show magistrates developing evidence about particular acts to be prosecuted as crimes: it was the judicial fixation with sodomy which gives that act much of its prominence. We cannot hope to learn from these sources the entire meaning of such relationships to the participants.

Nevertheless, legal cases provide enough information on the symbolic meaning of sodomy to show that the judicial construction of that act conformed to a more pervasive pattern of understanding. The judicial analogy between sodomy and heterosexual illicit sex codified the contemporary common sense of what phallic penetration meant for both penetrant and penetrated.

MARGINALIZED MALES

The great majority of legal cases of both coercive and consensual homosexual acts involve men excluded from mainstream patterns of marriage and household by some combination of economic condition, social status, and occupation. They are hired laborers, beggars, Buddhist and Daoist clergy, soldiers, sailors, pirates, itinerant barbers, peddlers, and so on. A fair number are impoverished immigrants; almost all are unmarried and without family ties. In short, these are the marginalized individual males left out of the mainstream of Qing society.

That is not to say that elite men never engaged in sex with other males. But it went without saying that men of means would be expected to marry and to beget sons who could carry on the patriline and inherit family property. Such men might penetrate servants or patronize actors and prostitutes (more marginalized males), but such

pleasures would not likely be allowed to interfere with heterosexual duty. A paradigmatic example might be the Qianlong emperor, who managed to sire twenty-seven children in spite of his reputed taste for men (Hummel, 1970: 372).¹⁹

To the extent that there existed a social identity linked to homosexual relationships, it was probably associated with the marginalized males who for whatever reason could not buy into the valorized pattern of marriage and household, and who bonded with other men of similar condition as a way to satisfy a range of human needs. The consensual relationships found in legal cases often coincide with some form of resource-pooling, co-residence, and fictive kinship (sworn brotherhood, master/novice ties). Sexual bonding seems to play a partly functional role, as one element of multifaceted alliances in a world hostile to individuals on their own.²⁰

The late Ming literatus Shen Defu took for granted same-sex unions among men isolated from sexual contact with women:

Sometimes, males are taken as sexual objects (*nan se*) because there is no alternative. For example, men who live in monasteries must take leave of the female quarters, and the statutes binding on Buddhist priests prohibit illicit sex [with females]. It is the same with those private tutors who live as guests in dormitories. These men must all adapt to circumstances (*jian jing sheng qing*) and settle for second best (*tuo wu bi xing*)—the situation cannot be avoided. In addition, there are criminals in prison for a long time who, if given the chance, will inevitably seek out a man to serve as a mate. . . . Also, in the northwest, the soldiers of the frontier garrison are too poor to pay to sleep with prostitutes, so they always pair up with fellow members of their ranks. . . . It is lonely, bitter, and distasteful, but such men do these things because they have no choice. . . . It is laughable, but also inspires pity.

Shen contrasted this “normal” pattern with what he saw as a new, decadent fashion among “gentlemen of ambition who install young catamites (*luan tong*) among their servants,” or who pursued actors. What made this fashion decadent, Shen implied, was that elite men enjoyed more than adequate outlets for sexual energies within marriage (and concubinage); for such men, sodomy was a wanton indulgence of lechery (Shen, 1976: 24/26a-b; Furth, 1988: 13-16).

Such stereotypes may have influenced the judicial characterization of homosexual penetrants, whose unsullied masculinity did not nec-

essarily earn them respectability. Legislation against homosexual rape portrayed the rapist as an “evil rascal” (*e gun*), an “evil character” (*e tu*), a “degenerate evil character” (*bu xiao e tu*), or a “rootless rascal” (*guang gun*, literally, “bare stick”; *gun*—“stick”—meaning an unmarried rogue with no family ties). Such characterization implies that the law aimed to protect the vulnerable males of proper households from penetration by rogue individuals not bound by family or community—an implication reinforced by the legal case records. It also parallels the Qing judiciary’s stereotype of heterosexual rape, in which a poor, unmarried male rapes a chaste woman of upright household—most of the men prosecuted for raping women also seem to have been marginalized males. Such stereotypes reflect the state’s fear that individuals not subject to socializing bonds threatened the family network underpinning social and political order (Sommer, 1994).

CONCLUSION

The model for the judicial construction of sexual relations between males was heterosexual intercourse in conditions of gender inequality, in which the roles of penetrant and penetrated were perceived as fixed to the male and female, respectively. Male subject acted upon female object; in such circumstances, the act became inextricably bound up with the unequal distribution of power in the gender hierarchy and constituted both an expression of that unequal power and a means of inscribing it on the bodies and psyches of partners. Penetration became both the metaphor and physical expression of gender domination.

In the proper order of things, as seen by jurists, sexual intercourse took place only within marriage. The husband and master penetrated his wife: by doing so, he reproduced the patriarchal household and reinforced the axis of gender hierarchy at its heart.

In late imperial China, males and females came of age socially with marriage; a key transition point was its sexual consummation. Qing legal sources and common parlance referred to consummation as *cheng qin* or *cheng hun*: literally, “to complete/accomplish marriage,” this *cheng* being the same word used for the “accomplishment” of rape through penetration. Without consummation, a bride might be rejected, as sometimes occurred when she refused intercourse or when

some anomaly of her anatomy prevented the groom from achieving penetration (Xingke tiben: 74/QL 4.3.27).

With consummation, male and female took up their respective social roles as husband and wife, embodied in their sexual roles as penetrant and penetrated. Penetration represented an initiation into gendered and hierarchized roles: in Bourdieu's terms, these symbolic connections represent a homology between sexual and sociopolitical domains (1990: 71).

During the Ming and Qing dynasties, both chastity cults and criminal penalties codified this vision of penetration. If a woman were penetrated outside of legitimate marital context (by illicit sex, widow remarriage, or rape), then she suffered a pollution of her chastity, an objective degradation that imperial chastity cults symbolized by disqualifying her from canonization (if she were a victim of rape/murder or rape/suicide). Such pollution corresponded to that of debased status: therefore, the rape or abduction of a woman polluted by illicit sex or by debased status caused less harm than that of a chaste commoner woman and would be punished less severely.

This vision of penetration and pollution informed both the popular perception and the judicial construction of anal intercourse between males. For males, too, penetration positioned both roles on a hierarchy; the penetrated suffered a loss interpreted as an inversion or degradation of masculinity. The penetrant suffered no such loss, as he played the definitively masculine role.

The prosecution of illicit sex (*jian*) originally aimed to control access to women; therefore, the earliest laws against intercourse between males did not call that act *jian*. Nevertheless, even Song and Ming legislation against homosexual acts shared with *jian* a fixation with the polluting danger of penetration out of place. This shared fixation informed the Qing innovation of reconstructing sodomy as a variant of *jian*: hence the logic of equal penalties for "parallel" homosexual and heterosexual offenses. Eighteenth century concern about sodomy, like the contemporary obsession with female chastity, did not appear *ex nihilo*; heightened anxiety about gender performance prompted Qing jurists to scrutinize sodomy more closely, but their construction of that crime reveals a basic continuity with what came before.

In law and popular perception, then, penetration (of male or female) was understood as a potent and even dangerous act. Depending on its context, penetration could impose or overthrow legitimate hierarchies; it

could reproduce or invert gender order; it could initiate persons into social adulthood, or inflict a polluting stigma that provoked homicide and suicide.

We begin to understand why no Qing or earlier legal text even refers to, let alone bans, female homosexual activity. The lack of legal references does not, of course, imply that women never formed erotic relationships with each other—there are plenty of references in *nonlegal* sources (see Dai Wei, 1992; Hinsch, 1990; Topley, 1975; Van Gulik, 1974). Nor does it mean that Qing lawmakers were necessarily ignorant of such matters. Sex between women was simply not constructed as a crime. This makes sense, given the phallocentrism of both law and social norms: if gender and power were keyed to a hierarchy of phallic penetration, then sex without a phallus would seem to undermine neither.

The conflation of eroticized youth, femininity, and penetrability implies an instability in the gender of young males, especially prior to transition with marriage to adult masculinity. It seems that young males were perceived as vulnerable to penetration, and, in that sense, as potentially female. (Some of our cases show adolescent males being relatively open to penetration, an attitude some abandoned with maturity.) Thus, in the statutory language, it is the unpenetrated (*liang*) “sons and younger brothers” of commoner (*liang*) status who must be protected—vulnerable junior males who have not yet emerged from ambiguous youth into masculine adulthood.²¹ Moreover, they must be protected from the rogue male threatening the household from without.

Qing jurists aimed not to protect individual rights, but rather to channel behavior into accepted gender roles—an ever greater priority as other social boundaries blurred. The spate of new laws against sodomy betrayed greater fear of the threat to vulnerable males, but also, perhaps, of their possible enjoyment of roles that conflicted radically with the demands of order. Pollution of female chastity threatened the gendered hierarchy of the household, but the degradation of masculinity did so too.

APPENDIX A: The 1734 Substatute on Sodomy

If evil characters (*e tu*) gather in a gang and abduct a young man of good character/commoner status (*liang ren zi di*—literally, “a son or younger brother of someone of good character/commoner status”) and forcibly so-

domize him (*qiang xing ji jian*), then the ringleader shall be sentenced to immediate beheading, according to the substatute on "rootless rascals" (*guang gun*). The followers, if they have also sodomized the victim, shall all be sentenced to strangulation after the assizes; remaining offenders [who did not commit sodomy] shall be deported to *Heilongjiang to serve as slaves for the armored troops there*; these sentences shall apply regardless of whether the offenders have committed homicide in the course of the crime.

Even if he has not gathered a gang, whoever murders a young man of good character/commoner status for illicit sex (*jian*), or lures away a young boy of 10 sui or under and forcibly sodomizes him, shall also be immediately beheaded according to the substatute on "ringleaders of rootless rascals."

Whoever rapes (*qiang jian*) a young boy of between 10 and 12 sui shall be sentenced to beheading after the assizes; whoever consensually sodomizes (*he jian*) a boy of such age shall be sentenced to strangulation after the assizes according to the statute that provides that "whoever engages in illicit sex with a young girl shall receive the penalty for coercion even if she consents."

If one man by himself commits forcible sodomy (*qiang xing ji jian*), but has not injured the victim, then he shall be sentenced to strangulation after the assizes. If the offender injures the victim but the victim does not die, then he shall be beheaded after the assizes. Whoever attempts rape but does not accomplish the act (*wei cheng*), and does not injure the victim, shall receive 100 blows of the heavy bamboo and life exile at a distance of 3000 li. If the offender injures the victim with an edged weapon but the victim does not die, then the offender shall be sentenced to strangulation after the assizes.

If a man consents to be sodomized (*ru he tong ji jian zhe*), then the offenders shall receive one month in the cangue and 100 blows of the heavy bamboo according to the substatute on "soldiers or civilians engaging in illicit sex" (*jun min xiang jian*).

If someone falsely accuses another man of sodomy, or commits other such fraud, and the truth comes out in a court hearing, then the offender shall receive the penalty mandated for the crime he has falsely accused the other of committing, with the exception that death penalties shall be reduced by one degree; if the penalty mandated [for the sodomy falsely alleged] is immediate beheading, then the offender shall be deported into military exile at the farthest frontier at the maximum distance of 4000 li, according to the substatute on "evil characters who cause trouble and commit violent acts" (*e tu sheng shi xing xiong*).

BACKGROUND OF THE SUBSTATUTE

This substatute was added to the Qing code in the second lunar month of 1734, in response to a memorial from Xu Ben, the governor of Anhui. Originally, the substatute provided that

continued

APPENDIX A Continued

Someone of 16 or 17 sui can still be considered a child who misbehaves out of ignorance; if [a young man of such age] rapes a young boy or girl, then his penalty should be reduced from those mandated by statute for rape that is "already accomplished" or "not accomplished."

Subsequently, senior officials protested that a male of 16 or 17 sui was already an adult and should be held accountable for his actions; in 1740 the provision was eliminated from the substatute.

The brief portion in italics specifying site of deportation was added in 1851 (Qing huidian shili: 825/989; Xue, 1970: 366-03; Wu, 1992: 951-952; for an alternate translation, see Hinsch, 1990: 143).

APPENDIX B:

Males Who Commit Homicide While Resisting Rape

If a male commits homicide while resisting rape (*nanzi ju jian sha ren*), and he is 15 sui or under, then he shall not be punished, regardless of whether he has committed planned or purposeful homicide or has committed homicide in a fight, as long as three conditions are fulfilled: (a) the dead man is at least 10 sui older than the killer, (b) there is testimony and other proof at the scene to allow an accurate assessment of the facts of the case, and (c) the dead man, prior to death, confesses in a manner compelling enough to serve as proof, or his relatives testify in a reliable manner acknowledging his guilt; if the homicide was not committed immediately upon the rape attempt, then the offender shall be sentenced to 100 blows of the heavy bamboo, to be redeemed in cash according to the statute [on crimes committed by minors].

If the offender is at least 16 sui, and he committed the homicide immediately upon the rape attempt, then he shall receive 100 blows of the heavy bamboo and three years of penal servitude; if the homicide was not committed immediately upon the rape attempt, then he shall receive 100 blows of the heavy bamboo and life exile at a distance of 3000 li.

If one of the following three conditions is fulfilled: (a) the dead man provides no confession prior to death, but he is at least 10 sui older than his killer, and it is clear that the homicide was committed while resisting rape and for no other reason; or (b) the dead man is not quite 10 sui older than his killer, but there is compelling testimony and other proof that the homicide was committed while resisting rape; or (c) the dead man, prior to death, confesses in a manner compelling enough to serve as proof, or his relatives testify in a reliable manner acknowledging his guilt—then, as long as the

offender is 15 sui or under, and he committed the homicide immediately upon the rape attempt, he shall receive 100 blows of the heavy bamboo and three years of penal servitude; if he did not commit the homicide immediately upon the rape attempt, he shall receive 100 blows of the heavy bamboo and life exile at a distance of 3000 li; the above penalties shall all be redeemed in cash according to the statute [on crimes committed by minors].

If the offender is at least 16 sui then, regardless of whether the homicide was committed immediately upon the rape attempt, he shall be sentenced to strangulation after the assizes, according to the statute on "unauthorized homicide of a criminal" (*shan sha zui ren*).

If the dead man is the same age as his killer, or is only a few sui older, or if interrogation proves there is some other reason for the homicide, and it has been falsely testified that the homicide was committed in resistance to rape to conceal this other reason, then the penalty shall be determined according to the basic [homicide] statutes, depending on whether it was premeditated or purposeful homicide, or homicide in a fight; in the Autumn Assizes, the determination of execution or reprieve shall also be made in the usual manner.

If the offender testifies that he was resisting rape, but there is no witness or confession provided by the dead man prior to death to confirm this, and interrogation produces no evidence of another reason for the homicide, then the penalty shall be determined according to the basic statutes on premeditated homicide, purposeful homicide, and homicide in a fight, and the offender shall be granted a reprieve in the Autumn Assizes.

If the offender was first sodomized, but later regretted this and rejected [the sodomist's subsequent advances], and there is definite proof of this, and he killed the sex offender (*jian fei*) when again being forced to engage in sodomy, then he shall be sentenced to strangulation after the assizes according to the statute on "unauthorized homicide of a criminal," regardless of whether the homicide was premeditated, purposeful, or committed in a fight, and regardless of the relative ages of the offender and the dead man. If the homicide was committed for some other reason, then the offender shall still be sentenced according to the basic statutes on premeditated homicide, purposeful homicide, and homicide in a fight.

BACKGROUND OF THE SUBSTATUTE

This substatute was created in 1823 by combining laws from the Qianlong and early Jiaqing periods; the last clause was added in 1824 (Xue, 1970: 285-33; Wu, 1992: 785; Qing huidian shili: 801/768-769; for an alternate translation, see Meijer, 1985).

APPENDIX C

bei ta jian xing le 被他姦醒了	jiang shenjing fang ru ren fenmen nei yin xi 將腎莖放入人糞門內淫戲
bi yin lü 比引律	jun min xiang jian 軍民相姦
bu xiao e tu 不肖惡徒	liang jia zi di 良家子弟
chang 娼	liang min 良民
chang ren 常人	liang nan ji jian 兩男雞姦
chen qiang yu zhu jian 臣強與主姦	liang ren fu nü 良人婦女
cheng hun 成婚	liang ren zi di 良人子弟
cheng qin 成親	luan tong 變童
diu lian 丟臉	mei lianmian 沒臉面
dou ou 鬥毆	nan chang 男娼
e gun 惡棍	nan nü bu yi yi jiao 男女不以義交
e tu 惡徒	nan se 男色
e tu sheng shi xing xiong 惡徒生事行兇	nan wei chang 男爲娼
gu gong 顧工	nanzi ju jian sha ren 男子拒姦殺人
guang gun 光棍	nazi yu funü da xiang xuan shu 男子與 婦女大相懸殊
he jian 和姦	qiang 強
he tong ji jian 和同雞姦	qiang jian 強姦
he tong zhe 和同者	qiang xing ji jian 強行雞姦
hui wu guan ru renkou 穢物灌入口	qing yi 情意
ji ("chicken") 雞	ru he tong ji jian zhe 如和同雞姦者
ji ("to use a male as a female") 屌	shan sha zui ren 擅殺罪人
ji ba 雞巴	tuo wu bi xing 託物比興
ji jian 雞姦	tuzi 兔子
jian bu de ren 見不得人	wei cheng 未成
jian fei 姦匪	wu mie 污蟻
jian jing sheng qing 見景生情	ye ji 野雞
jian min 賤民	yin xin 淫心
jian wu 姦污	yu liang ren you jian 與良人有間
jiang nan zuo nü 將男作女	zan liangge gan de goudang 咱兩個幹 的句當

NOTES

1. See Hinsch's claim, based on a single work of fiction, that "male marriage was prevalent enough in Fujian that the men of that region even felt compelled to sacrifice to a patron deity of homosexuality" (1990: 133). The deity is a rabbit; since, as Hinsch notes, "rabbit" (*tuzi*) was

derogatory slang for a male prostitute, it seems unlikely that the author of the story expected to be taken seriously. For a more sophisticated treatment of the discourse of "male marriage," see Volpp (1994).

2. This article uses "homosexual" and "heterosexual" as adjectives for their literal meanings of "same-sex" and "different-sex," and to characterize practices or relationships only.

3. In classical Greece, legal codes used separate vocabulary to refer to penetrant and penetrated but no clear equivalents for the nouns "homosexual" and "homosexuality." Sanctions of sex between males focused on maintaining proper hierarchy, not unlike the prioritization of legal status in Chinese codes. On the other hand, there is evidence in Greek sources for about the same range of "sexual orientations" *in practice* as are familiar in late twentieth century America. Orientation, in and of itself, was simply not granted the primacy many people now accord it. Indeed, perceptions today are by no means uniform around the world; in much of Latin America only the penetrated male is considered "a homosexual," while the penetrant role confers "macho" status (Boswell, 1980, 1992).

4. Hinsch thinks he has found still earlier evidence. He quotes a law of the Qin dynasty (third c. B.C.) as mandating penalties for a servant who "forcibly fornicates with his master or mistress"; on this basis, he claims that "the Qin code lumps heterosexual and homosexual rape together" (1990: 142). In fact, the translations he cites render the law thus: "When a slave rapes his owner" (Hulsewé, 1985: 169) and "If a servant forcibly fornicates with a master" (McLeod and Yates, 1981: 116). Some interpret the law to mean a male slave who raped a *female* of his master's household and cite it as an early example of the priority of legal status (Zhang, Wang, and Lin, 1992: 424). The original—*chen qiang yu zhu jian*—seems to stress status difference rather than the sex of the person raped; in the absence of other evidence, caution seems appropriate.

5. For legal status in late imperial law, see Jing Junjian (1993), and Ch'u (1965).

6. Each date has been converted to the likely equivalent year according to the Western calendar.

7. Yang adds that "the statutes include a measure against *ji jian*" (using the obscure logograph for *ji*), but no such "statute" appears in any Ming or earlier legal code. Yang may well be referring to Buddhist prohibitions (also known as "statutes," *lǚ*); the possible influence of such prohibitions on secular law awaits further research.

8. It is not clear exactly when or why the logograph for "chicken" came into use, but it already connoted obscenity, appearing in slang for "penis" (*ji ba*—"chicken tail") and "streetwalker" (*ye ji*—"wild chicken"/"pheasant").

9. An age expressed in *sui* is one or two years lower than when expressed in the Western "years old": a person aged thirty *sui* is either twenty-eight or twenty-nine years old.

10. This substitute (Xue, 1970: 366-01) superseded the Ming statute on "consensual illicit sex" (*he jian*—366-00) in 1688, being cited thereafter to punish consensual heterosexual offenses among civilians (Sommer, 1994: 428; Hoang, 1915: 139; Wu, 1992: 951).

11. Heterosexual offenses: Xue, 1970: 366-00, 01, 02, 04, 07, 10, and 375-03, 04; homosexual offenses: Xue, 1970: 366-03, 07, 10, and 375-03, 04.

12. Guo's age is not given, so he must have been over twelve *sui*; we do not know his exact age, since the source for the case is a brief summary in a casebook. If he was an adult, then his case is unusual, since in every archival example that I have seen, the attempted rape of an adult male by a single rapist ended up in court only because one of the men had been killed (see below). For another case of gang rape, this time involving Manchu bannermen, see Xing an hui lan (52/8a-b).

13. This reasoning received formal codification in a substitute of 1775 (Xue, 1970: 366-10).

14. Laws promulgated by the Taiping rebels in the mid-nineteenth century reveal similar assumptions about rape: males under thirteen sui who had been coerced would be spared punishment, but *any* older male who had been penetrated was assumed to have consented. No such age qualification applied to females (Sommer, 1994: 161; Qiu Yuanyou, 1991: 50).

15. Qing erotica depicts the penetrated male with lighter skin than his penetrant (Hinsch, 1990: 146).

16. Prohibitions of sodomy in the "laws" of Qing secret societies assume that hierarchies of age and sexual role conformed with each other and portray "young and fair boys" and "younger brothers" as objects of sexual rivalry between older secret society "brothers" (Davis, 1977: 147).

17. In a 1739 case from Shaanxi, a man propositions a young boy: "People say you're a 'rabbit.' Now, I want to have sex with you—are you selling?" (Xingke tiben: 70/QL 4.9.5.). Also see Hinsch, 1990: 133.

18. Vitiello finds similar evidence in contemporary Daoist discourse on male homosexual relations (1992: 357).

19. To an extent, China resembled the Greco-Roman world, where "surrendering to penetration was a symbolic abrogation of power and authority—but in a way which posed a polarity of domination-subjection rather than of homosexual-heterosexual" (Boswell, 1992: 155).

20. Among pirates, anal penetration initiated male captives into the ranks and solidified fictive kinship/patron-client ties (junior pirates submitting to penetration by those whose favor they sought) (Murray, 1987, 1992). Fictive kinship could also frame homosexual relations among women outside the mainstream pattern of marriage and family (Topley, 1975).

21. One recalls Jia Baoyu—hero of the eighteenth century novel *Dream of the Red Chamber*—whose ambiguous gender performance acts out his reluctance to grow up (see Edwards, 1994).

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