CHAPTER 6

Between Informal Mediation and Formal Adjudication: The Third Realm of Qing Civil Justice

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Abstract

Litigation in the Qing can be separated into three stages: the first was the filing of the complaint by the plaintiff and the initial response of the yamen (court), the last was the final court session rendering a decision. Between the two was the intermediate stage in which the members of the lineage and the community, faced with the intensification of the dispute, generally redoubled or renewed their efforts at mediation. In that process, they and the litigants would unavoidably consider the court's reactions and the progress of the case. Thus did societal mediation interact with the official court system. If societal mediation succeeded, the court generally followed the basic principle of allowing society to deal with "minor matters" disputes by itself and would allow the case to be withdrawn. I call this intermediate space and stage between societal mediation and the official court system "the third realm"—in order to highlight the point that what was distinctive about the legal system of the Ming and Qing was not just its informal societal mediation system but also the interaction between that and the formal official court system in the intermediate third realm.

Keywords

magistrate – xiangbao – runners – formal system – informal system

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Our images of the Qing civil justice system have been shaped mainly by the two ends of the system. One is the formal end, as delineated in the code and exemplified by court-adjudicated cases. The other is the informal end, as described in ethnographic accounts of community or kin mediation. Virtually nothing has been written about the area in between, where the formal and official met the informal and communal. This article suggests that the Qing civil justice system actually operated in large measure in that intermediate third realm where the formal and informal overlapped.

The workings of the civil justice system may be seen in fact as a particularly good illustration of the nature of Qing government as a whole. In modern society, we are accustomed to a state of immense infrastructural scope. In the Qing, however, the reach of the official state apparatus was quite limited, and much of the work of government was undertaken in a third realm in which the state and society collaborated.[1] Indeed, for the majority of the population, contact with the state occurred largely in and through the third realm rather than directly with salaried bureaucrats.

The participation of both the formal and informal in the third realm of Qing civil justice accounts in part for the debates in past scholarship about the nature of the system.[2] The intermeshing of the formal and informal enabled each side to make its case. Thus some scholars emphasized the role played by community and kin mediation (e.g., Bodde and Morris, 1967; Cohen, 1967; Hsiao, 1979), while others stressed the role of the formal courts (e.g., Buxbaum, 1971; Allee, 1987). This article suggests that to clarify how civil justice worked in the Qing, we need to delineate three realms of that system: the informal realm of community and kin mediation, the formal realm of court adjudication, and the third realm in which both systems operated, often in a negotiatory type of relationship. I have analyzed in separate articles both the strictly formal part of the Qing civil justice system (Huang, 1994) and the strictly informal part (Huang, 1991) and will not deal with those here. My focus instead is on the third realm between the two.

This article, a part of a larger study of civil justice in China, draws on a total of 628 Qing cases pertaining to land, debt, marriage, and inheritance, the four major types of "civil" cases. Of those cases, 308 come from Baxian County 巴县 (Sichuan Province) from 1768 to 1853, 118 from Baodi 宝坻 County (in the capital prefecture of Shuntian) from 1814 to 1908, and 202 cases from Danshui 淡水 subprefecture and Xinzhu 新竹 County (in Taiwan)[3] from 1833 to 1894 (Tables 6.1, 6.2a, 6.2b, 6.2c). The Baxian and Baodi materials have become available only recently with the opening of Chinese local archives to foreign researchers.[4] The Danshui-Xinzhu cases have been available for some time and have been used by other researchers (Dai Yanhui, 1979; Buxbaum, 1971; Allee, 1987).

TABLE 6.1 *Cases Studied, by County and Decade*

Decade	Baxian	Baodi	Dan-Xin	Total
1760s	20			20
1770s	82			82
1780s	40			40
1790s	38			38
1800s	0			0
1810s	3	2		5
1820s	60	7		67
1830s	6	18	1	25
1840s	3	10	1	14
1850s	56	11	10	77
1860s		25	8	33
1870s		12	62	74
1880s		14	102	116
1890s		8	18	26
1900s		11		11
Total	308	118	202	628

TABLE 6.2A *Numbers of Baxian Cases Studied, by Decade and Category*

Decade	Land Related	Debt Related	Marriage Related	Inheritance Related	Total
1760s	7	13	0	0	20
1770s	38	37	7	0	82
1780s	0	0	40	0	40
1790s	19	0	18	1	38
1800s	0	0	0	0	0
1810s	0	0	0	3	3
1820s	19	26	15	0	60
1830s	0	0	2	4	6
1840s	0	0	0	3	3
1850s	17	20	17	2	56
Total	100	96	99	13	308

TABLE 6.2B *Numbers of Baodi Cases Studied, by Decade and Category*

Decade	Land Related	Debt Related	Marriage Related	Inheritance Related	Total
1810s	0	1	1	0	2
1820s	0	3	4	0	7
1830s	6	7	4	1	18
1840s	1	5	3	1	10
1850s	1	4	3	3	11
1860s	6	8	7	4	25
1870s	3	6	2	1	12
1880s	5	5	4	0	14
1890s	0	5	2	1	8
1900s	1	7	2	1	11
Total	23	51	32	12	118

Three Stages in a Qing Lawsuit

Lawsuits concerning civil matters in the Qing may be broken down into three distinct stages. The first extended from the filing of a plaint to the initial response of the magistrate. Next came the stage before the formal court session, during which there was usually a good deal of interaction between the court and the litigants and their would-be informal mediators. The final stage was the court session, at which some definitive judgment was usually rendered.[5] The three stages marked respectively the first actions of the formal system, the subsequent interaction between the formal and informal systems, and the final action of the formal system. The interval between the first and final stage was generally no more than a few days to a few months, but could sometimes be as long as several years, especially in the overburdened late nineteenth-century Danshui and Xinzhu court.

A large proportion of civil cases during the Qing ended in the intermediate stage, after the initial plaint and before a formal court session. As shown in Tables 6.3a, 6.3b, 6.3c, only about one-third of all the cases studied here actually proceeded to the final stage of a formal court session: 98 of 308 in Baxian, 45 of 118 in Baodi, and 78 of 202 in Dan-Xin. Of the remainder, a substantial proportion are documented as having been resolved informally in the inter-

TABLE 6.2C *Numbers of Dan-Xin "Civil" Cases Studied, by Decade and Category*

Decade	Land Related	Debt Related	Marriage Related	Inheritance Related	Total
1830s	1	0	0	0	1
1840s	0	0	0	1	1
1850s	9	1	0	0	10
1860s	6	1	0	1	8
1870s	38	14	2	8	62
1880s	61	30	6	5	102
1890s	10	5	1	2	18
Subtotal	125	51	9	17	202
Missing	6	1	0	0	7
Other	3	2	0	0	5
Total	134	54	9	17	214

Note: Cataloguer Dai Yanhui applied present-day, Western-style categories to the classification of the Dan-Xin archives, while mainland Chinese archivists have stayed much closer to the original Qing classifications. I have not attempted to tamper with Dai's major categories: "administrative," "civil," and "criminal." His "civil" categorization is roughly comparable with the scope of this study, with 214 of the total 222 falling readily under the four categories of cases covered in this study. The main caveat comes with the "marriage related" category, under which mainland Chinese cataloguers included adultery and sale of wives and daughters, cases which Dai placed under "criminal."

Within Dai's "civil" category, I have made some minor adjustments to render the subcategories more nearly comparable with the Baxian and Baodi cases. Dai classified ten cases concerned with the conditional sale and redemption of land under "debt," subcategory "mortgaging and pawning" (*diandang* 典当). I have placed them under "land related," following the practice of mainland archivists. Dai also classed thirteen cases concerned with inheritance and succession under "land and houses," subcategory "property disputes" (*zhengcai* 争财). I have placed them under "inheritance." Two of the cases (22602, 22613) in this subcategory of fifteen cases do concern land. In addition, one of Dai's "land and houses," subcategory "collective property" (*gongye* 公业) cases (22705) actually concerns inheritance, two "land and houses," subcategory "forcible removal" (*chaoya* 抄押) cases (22901, 22902) actually concern debt, and two "debt" cases, subcategories "buying and selling" (*maimai* 买卖) (23103) and "retrieval" (*taowu* 讨物) (23602), actually concern land.

mediate stage, most of them by community and/or kin mediation (but, as will be seen, under the influence of the formal system): 53 in Baxian, 45 in Baodi, and 28 in Dan-Xin. Another large proportion of the case files ended in the intermediate stage without clear resolution, at least not in the written records: 152 in Baxian, 26 in Baodi, and 86 in Danshui-Xinzhu (Tables 6.4a, 6.4b, 6.4c). There are complex reasons, to be discussed below, why those records show no resolution.

The Initial Stage

Would-be litigants coming to the yamen were screened first of all through regulations governing the filing of a plaint. The required plaint forms generally came printed with stipulated conditions under which the court would not accept a suit. Some of those were uniform across different counties; others reflected the particular local concerns of specific counties. Common stipulations in the forms used in eighteenth- and nineteenth-century Baxian, nineteenth-century Baodi, and nineteenth-century Danshui-Xinzhu included evidentiary requirements: assault and battery complaints, for instance, required proof of injury, and robbery a list of the items lost. The Baodi and Baxian forms stipulated further that marriage suits required the matchmaker's name and date of the marriage, illicit sex cases "definite proof," and land and credit cases the relevant documents. Other stipulations in the Baodi and Baxian forms were procedural in nature: degree holders and women must be represented by proxy, previous judgments must be reported honestly, and no more than three (five in Baodi) defendants and three witnesses may be named. Still others concerned matters of form: a plaint must bear the seal of the scribe and the name of the petitioners, no more than one character may be entered in each square, and no more than one line in each column. Others, finally, reflected the particular concerns of a particular local court: a scribe who arbitrarily alters the content or text of a plaint would be punished (Baxian in the nineteenth century and Danshui-Xinzhu), false accusations would be punished (Baxian in the nineteenth century and Danshui-Xinzhu), and clerks and runners may not have others file suits on their behalf (Danshui-Xinzhu).

Would-be litigants who did succeed in filing a plaint were generally limited to one standard form sheet, consisting of a grid with squares for just a few hundred characters: 288 (12 lines of 24 squares) in the case of Baodi, 320 (16 lines of 20 squares) plus a head line (wider and not squared) in the case of Danshui-Xinzhu, and 325 (13 lines of 25 squares) in the case of Baxian. After self-identification, the plaints were expected to contain only a concrete and straightforward summary of the petitioner's version of the facts. They were not expected to provide legal arguments or to cite the code.

TABLE 6.3A *Outcomes of Baxian Cases*

Outcome	Land Related	Debt Related	Marriage Related	Inheritance Related	Total
Adjudicated[a]	32	28	33	5	98
Informally settled	22	13	17	1	53
By mediation	(22)	(13)	(17)	(1)	(53)
By litigants themselves	(0)	(0)	(0)	(0)	(0)
Incomplete	46	55	45	6	152
Rejected	0	0	0	1	1
Other	0	0	4	0	4
Total	100	96	99	13	308

a. Includes court-arbitrated cases.

TABLE 6.3B *Outcomes of Baodi Cases*

Outcome	Land Related	Debt Related	Marriage Related	Inheritance Related	Total
Adjudicated[a]	8	17	15	5	45
Informally settled	10	19	13	3	45
By mediation	(10)	(15)	(8)	(3)	(36)
By litigants themselves	(0)	(4)	(5)	(0)	(9)
Incomplete	5	13	4	4	26
Rejected	0	2	0	0	2
Total	23	51	32	12	118

a. Includes court-arbitrated cases.

TABLE 6.3C *Outcomes of Dan-Xin Cases*

Outcome	Land Related	Debt Related	Marriage Related	Inheritance Related	Total
Adjudicated[a]	55	12	0	11	78
Informally settled	14	12	1	1	28
By mediation	(13)	(10)	(1)	(1)	(25)
By litigants themselves	(1)	(2)	(0)	(0)	(3)
Incomplete	50	24	7	5	86
Rejected	4	2	1	0	7
Other	2	1	0	0	3
Total	125	51	9	17	202

a. Includes court-arbitrated cases.

TABLE 6.4A *Breakdown of Incomplete Baxian Case Files*

Outcome	Land Related	Debt Related	Marriage Related	Inheritance Related	Total
Damage or loss of records[a]	9	0	10	1	20
Plaintiff or defendant not found	7	10	5	0	22
Magistrate will not handle himself	0	0	0	0	0
Ends with summons	30	45	30	4	109
Other	0	0	0	1	1
Total	46	55	45	6	152

a. Evidenced by absence of earlier stage documents when later stage ones present, by damaged sheets, and the like.

TABLE 6.4B *Breakdown of Incomplete Baodi Case Files*

Outcome	Land Related	Debt Related	Marriage Related	Inheritance Related	Total
Damage or loss of records[a]	0	1	0	0	1
Plaintiff or defendant not found	2	6	4	0	12
Magistrate will not handle himself	1	2	0	3	6
Ends with summons	2	3	0	1	6
Other	0	1	0	0	1
Total	5	13	4	4	26

a. Evidenced by absence of earlier stage documents when later stage ones present, by damaged sheets, and the like.

TABLE 6.4C *Breakdown of Incomplete Dan-Xin Case Files*

Outcome	Land Related	Debt Related	Marriage Related	Inheritance Related	Total
Damage or loss of records[a]	5	3	0	0	8
Plaintiff or defendant not found	0	3	1	0	4
Magistrate will not handle himself	22	4	3	2	31
Ends with summons	21	12	3	3	39
Other	2	2	0	0	4
Total	50	24	7	5	86

a. Evidenced by absence of earlier stage documents when later stage ones present, by damaged sheets, and the like.

On receipt of the plaint, the magistrate might decline to accept the case. He might do so for lack of the required documentation, particularly loan and land contracts. In those cases, the magistrate noted accordingly in his comments on the plaint, usually ending with the notation "permission not granted" (*buzhun* 不准) (e.g., Dan-Xin 23405, 1876.9).[6] Or he might find the assertions of a plaint clearly untrue. He would so note, sometimes giving his reason, and end with "permission not granted," or, alternatively, a less definitive comment such as "it will be hard to grant permission to accept [this plaint]" (*ai nan zhun li* 碍难准理) (e.g., Dan-Xin 22519, 1887.7.1; 22520, 1887.10). Finally, the magistrate might decide that the matter was more appropriately handled by the lineage, the community, or the middleman. This happened especially in disputes among close relations over household-division or informal loans. In those cases, he might simply reject the lawsuit outright (Dan-Xin 23417, 1884.12; 22312, 1887.1; 22522, 1888.2.11 and 22524, 1891.2.23; Baxian 6:3:9761, 1850.10).[7] In my three-county sample of 628 cases, 10 were turned back in this manner from the start (Tables 6.3a, 6.3b, 6.4c).

If the magistrate accepted the plaint in principle for consideration, he might then decide that the matter was too minor for him to handle personally and that it should be handled by the *xiangbao* (乡保). As I have detailed elsewhere, the xiangbao of nineteenth-century Baodi was an unsalaried quasi-official nominated by the community and confirmed by the magistrate. Each oversaw an average of 20-odd natural villages (Huang, 1985: 255–232). This figure was usually known as the *xiangyue* (乡约) or *diyue* (地约) in mid-eighteenth to mid-nineteenth-century Baxian and as the zongli (总理)[8] in nineteenth-century Danshui-Xinzhu (Dai Yanhui, 1979: 9–20, and Allee, 1987: 415–417). In this article, I shall refer to this figure simply as xiangbao, which was the official nomenclature used in the Qing code (substatute 334–8).[9]

The magistrate might also decide to leave matters to the yamen's own runners, often in conjunction with the xiangbao and/or the original middleman of a land or credit transaction. In these cases, he may simply instruct that they look into the matter (chaqing 查情) and use their best judgment to resolve it (*binggong lichu* 秉公理处) (e.g., Baodi 104, 1862.2.10).[10] Or he may express an opinion about how he wants the matter to be settled, as for example: "Look into the complaint. If it is indeed the truth, then. . ." do such and such (Baodi 190, 1861.6.25).

In delegating such matters to the xiangbao or runner, the magistrate was in fact violating the Qing code. In 1765, a substatute had been added stipulating that the magistrate "may not order the xiangbao to settle minor matters [*xishi* 细事, the nearest Qing equivalent to the notion of 'civil' litigation],

but must adjudge them himself [*qin jia pouduan* 亲加剖断]" (No. 334–8). The intent of the provision was probably to check xiangbao and runner abuse. Initially, it seems to have successfully curbed the practice of the delegation of civil matters to xiangbao and runners. We find accordingly not one instance in the mid-eighteenth to mid-nineteenth-century Baxian cases in which the magistrate ordered the xiangbao or runners to settle a suit on their own. But the mounting caseloads of the local courts, from population growth and from commercialization, led to increasing violations of the substatute. Thus, in the 118 Baodi cases, mainly of the second half of the nineteenth century, we find 6 cases in which the magistrate chose not to handle the case himself and instead ordered the runners and/or xiangbao to investigate and settle the matter on their own authority. In the more heavily burdened Danshui-Xinzhu court of the late nineteenth century, we find fully 31 instances in which the magistrate delegated the handling of the disputes to his runners and xiangbao. As can be seen in Table 6.4c, those account for a large proportion of the cases that remained unresolved, at least in the records.

Once the magistrate decided to take on a case himself, he might first request documentation or more information. In land-transaction disputes, he might order the plaintiff to submit his land deed for examination. In land-boundary disputes, he might order the runners or the xiangbao to conduct a formal measurement of the land (*kanzhang* 勘丈). Sometimes, he would request a drawing of the respective plots. On other matters, he might simply order the runners, sometimes along with the xiangbao, to investigate the assertions of the plaint (and counterplaint) and report back (*chafu* 查覆). Seldom did the magistrate make a definitive ruling on the basis of the plaint alone. In the entire three-county case sample, there was just one such instance.[11]

A magistrate's most common response to a plaint was to issue forthwith a summons to a formal court session of inquiry or investigation (*tangxun* 堂讯). The simplest instruction was the notation: "Permission granted (*zhun* 准). Summon for court inquiry (*chuanxun* 传讯)" (or *huanxun* 唤讯 in eighteenth-century Baxian). Most often, both parties to the dispute would be summoned. When there was a counterplaint setting forth a different version of events, the magistrate may use the term *zhixun* 质讯, a reference to a cross-examination with both parties present. He may then order: "Summon to the bench (*chuan'an* 传案) for cross-examination (with both parties present) (*zhixun* 质讯)."[12] If there were multiple parties involved, including witnesses, community or kin leaders, or xiangbao, whom the magistrate wished to have present to aid in his inquiry, then he might use the term "gather together for [court] inquiry" (*jixun* 集讯).

If the matter before the court carried with it probable criminal implications (e.g., adultery, kidnapping, assault and battery), the magistrate's language sometimes underwent a subtle shift. Chuanxun was the most neutral term. It could be applied to anything ranging from an inquiry with no threat of punishment to an investigation ending in a severe sentence. Because of the connotation of a mere inquiry, however, it was a less threatening term than its alternative, *jiu* (究, investigate), or *chuanjiu* (传究, summon for investigation), which conveys immediately a sense of gravity, with the implication that the court might take some punitive action after the investigation. I shall render *xun* (讯) in most instances as "inquiry," and use "investigation" for jiu and for those instances of xun when the context suggested possible punishment.

The distinction between xun and jiu was certainly not hard and fast. Sometimes the two words would be used together, as in *chuan xun jiu* (传讯究) or *chuan'an xunjiu* (传案讯究, bring to the bench for inquiry and investigation), in which case both meanings would be conveyed. A magistrate might use both words on purpose, especially with cases that fell in the grey area between the punishable and nonpunishable.

There were other subtle differences among the terms commonly used. Thus "settle reasonably" (*lichu* 理处) or "mediate" (*tiaochu* 调处) was usually used in reference to community or kin leaders, the xiangbao, or the runners, and almost never to the magistrate. The weightier term "determine the facts" (*duo* 夺 or *heduo* 核夺), on the other hand, generally did not refer to community or kin action, but rather to actions of the magistrate or his staff. The weightiest term "adjudge" (*duan* 断) or "investigate and adjudge" (*xunduan* 讯断, *chaduan* 查断, *jiuduan* 究断) was generally reserved for the magistrate alone.

In most instances, the magistrate's order to issue a summons came only at the end of a longer comment and instruction, in which he had registered his first reactions. He might indicate some skepticism by questioning "whether the assertions made in the plaint are true" (*shifou shushi* 是否属实). He might indicate stronger doubt by noting, for example, that "these are exaggerations intended to alarm" (*weiyan songting* 危言耸听), or "there's obviously more to it than meets the eye here" (*qi zhong xian you bieqing* 其中显有别情, or *xian you yinni bieqing* 显有隐匿别情), or "there are gaps in the story" (*qingjie zhili* 情节支离), or "there might be disputed facts here" (*qi zhong kong you jiuge* 其中恐有纠葛). If he suspects fraudulence, he might note that the plaint seems to him deceitful or crafty (*diao* 刁). And he may warn that "if this turns out to be false, the matter will be handled severely" (*ru xu ding xing zhongban* 如虚定行重办).

When the occasion for the filing of the suit was a fight involving some injury, the office of punishment (*xingfang* 刑房) would examine the injury

and attach a detailed description of it to the plaint. The "injury slip" (*shangdan* 伤单) would note the exact locations of the wounds, the condition of the skin if broken, the color of the swelling, and the like. The magistrate would then write his instructions on the basis of both the plaint and the injury report. Evidence of injury usually required some reference to it in later stages of the suit, such as "the slight wounds suffered have now healed" (*suo shou weishang quanyu* 所受微伤痊愈), before the case could be officially closed. In general, light injuries had little effect on the magistrate's consideration of the case. The root cause of a physical fight would be quickly identified for what it was—whether a land, credit, marriage, or inheritance dispute, and so on—and the basic issue addressed. More serious injuries, of course, made the case a matter of assault and battery (*dou'ou* 斗殴), subject to treatment by criminal procedures.

Once in the criminal realm, the language and actions changed. Instead of a simple summons, there would be a warrant for arrest (*ju* 拘), or the offender would be detained at the yamen (*ya* 押). Those terms and actions were reserved for criminal offenses and were almost never used in simple civil disputes. Cases that fell between the two areas of the law could be handled by the addition of qualifiers to accentuate the severity and urgency of the summons. The most commonly used qualifier was *yan* (严), as in "summon sternly" (*yanchuan* 严传), suggesting something more serious than a simple civil matter. The qualifier "yan" could also be applied to arrest, as in "arrest vigorously" (*yanju* 严拘), and to punish, as in "punish severely" (*yancheng* 严惩).

The magistrate's comments on a plaint became part of the public record. The plaintiff and defendant might learn of their contents while still at the yamen or later from the runner serving a court summons. The standard procedure was for the clerk to issue a formal summons (*chuanpiao* 传票) on the basis of the magistrate's instructions. It would summarize the contents of the plaint and the magistrate's substantive comments, if any. The runners would take the summons with them as proof of their authority. On confronting the concerned parties, they would normally convey the contents of the document to them.

It would thus be a mistake to think of the magistrate's comments on a plaint as words intended only for his staff. Indeed, the comments sometimes addressed the plaintiff specifically, using the direct superior-to-inferior "you" (*er* 尔). Instructions to the clerks, by contrast, were always couched in a detached, impersonal form, most frequently using simply the word *chi* (饬), "order" or "instruct," as in "order the runners to summon for a court inquiry" (*chi chai chuanxun* 饬差传讯). In fact, the magistrate's comments on a plaint sometimes served to initiate a dialogue between him and the relevant party, leading to further clarifying statements and petitions in which the parties involved attempted to answer the magistrate's queries or doubts.

The Middle Stage

In the middle stage of a lawsuit, after the plaint and the magistrate's initial response but before a formal court session, there was once again quite a range of possible actions on the part of the magistrate, the runners and xiangbao, and the litigants. One common occurrence after the initial plaint was for the defendant to file a counterplaint setting forth his side of the story. As noted earlier, when faced with two different versions of a dispute, a magistrate typically responded by calling both parties to court to confront one another before the bench. One wordy magistrate noted, "Who's right and who's wrong, let's wait until everyone is gathered at court, and [I will] determine by cross-examination" (Baodi 106, 1882.2.18).

If the magistrate wanted more information, he might in his comments either instruct the runners and xiangbao to investigate and report back or, on occasion, ask the litigants themselves to supply additional material. In one case, for example, the magistrate, noting the discrepancies between the two stories, ordered each petitioner to file a clarifying statement to answer his queries, provide documentation, and name witnesses. That led to further submissions (Baodi 166, 1837.7.30).

Sometimes one or both parties might decide on their own initiative to present additional information or to prevail upon some third party to file a statement or petition on their behalf. The litigants might also file additional plaints if the situation changed, as when, for example, one party engaged in aggressive action against the other after the initial plaint and counterplaint (e.g., breaking into the other's house to argue, forcibly removing property, beating up the other, and so on). Or, one or the other might simply emote with further plaints. It was standard form in these additional plaints for the litigants to begin by referring precisely to the magistrate's instructions and comments on the earlier plaint.

Cases with a large number of plaints and counterplaints and multiple court sessions generally had as their principals wealthy and powerful individuals or lineages, rather than simple peasants. In some of those, professional agents were engaged for assistance. Danshui-Xinzhu stands out in this respect from Baxian and Baodi, especially Baodi, where the overwhelming majority of the litigants were simple peasants. While the Baodi and Baxian cases were generally simple and brief and were usually settled by a single court session, the Danshui-Xinzhu cases frequently involved multiple plaints and counterplaints and often required multiple court sessions.[13]

The magistrate generally read and commented on each additional submission from the litigants. When impressed with new evidence, he might amend his earlier orders. He might order, for example, that a matter he had delegated

to his runners be brought back to court, or that more witnesses be summoned, or that his runners investigate the matter further. If unimpressed, he might respond with a mildly irritated "[I have] already instructed that the parties be summoned" (*yi pishi chuanxun* 已批示传讯) or "wait for the court inquiry" (*hou tangxun* 候堂讯), or a stronger "don't annoy the court" (*wu du* 勿渎), or "don't annoy the court with exaggerations" (*wu yong song du* 勿庸耸渎).

In the heavily burdened late nineteenth-century Danshui-Xinzhu court, in which runners often took an inordinate amount of time (by Qing standards) to carry out a magistrate's instruction, litigants often had to file prompting petitions (*cuicheng* 崔呈) to impress upon the court the urgency of the matter. In those instances, the magistrate would sometimes respond with an obliging "order the runners to hurry with the summons" (*cuichai chuanxun* 崔差传讯) or "order the runners to hurry with the investigation and report back (or settle the matter reasonably)" (*cuichai chafu* 崔差查覆, or *cuichai chali* 崔差查理). If he felt unnecessarily pestered, he would indicate his annoyance with "wait for the court inquiry; don't annoy the court" (*houxun, wu du* 候讯, 勿渎).

Sometimes a magistrate would be displeased with the work of his runner(s), whether for delays or for failing to clarify a particular matter, and he would so indicate on the runner's report. He might instruct the runner(s), for example, to "go back once more and try to find a way to settle the matter" (*zai qianwang shefa chuli* 再前往设法处理). He might also reprimand or even punish a runner for failing to carry out his instructions, although this was comparatively rare (e.g., Baodi 190, 1860.7.7; Dan-Xin 22430, 1886.11.10). In exceptional circumstances, he might replace the runner(s) initially assigned to the case, as with the instruction "change the runner, and order as before to . . ." (*gaichai, rengchi* 改差, 仍饬 . . .) (Baodi 105, 1881.9.3; Dan-Xin 22526, 1888.5.15).

While the principals to a litigation were obligated to obey a summons and come to court, witnesses or third parties sometimes would plead to be excused. In one instance, for example, a summoned witness put his version of the facts into a written petition and asked to be excused from appearing in court. The magistrate was satisfied with the account and granted permission (Baodi 105, 1902.3.7). The term for such a "release" was *zhaishi* (摘释), and these case records contain a number of such petitions. Sometimes the magistrate may note "permission not granted," and he may give reasons, saying that the party was needed, for example, for the face-to-face cross-examination.

Resolution in the Middle Stage

As noted earlier, about two-thirds of the three-county sample of case records ended in the middle stage. A few of those were resolved among the litigants themselves shortly after the filing of a plaint. The majority were resolved by

community or kin mediation, galvanized by the lawsuit. In the remainder of the cases, the files are incomplete, and we can only make some educated guesses about what might have happened. I turn below to each of these categories of case records that terminated in the middle stage of a lawsuit.

Among the Litigants Themselves

The mere act of going to court raised the stakes in a dispute. One party might decide to give in: the defendant to pay up and settle or the plaintiff to withdraw his complaint. Or both parties might become more conciliatory and work out an understanding themselves. Nine of the Baodi cases and three of the Dan-Xin are documented as having been resolved in these ways by the litigants themselves after the initial stage of the lawsuit (e.g., Baodi, 187, 1850.5.17; Dan-Xin 22709, 1887.3; Baodi 169, 1866.2; Baodi 168, 1867.9).

In these situations, the plaintiff was expected to submit a petition detailing the reasons for his wish to close the case. The magistrate would usually grant permission, unless he had reason to believe that some criminal offense was being concealed (e.g., Baodi 169, 1866.2). However, as will be seen below, once a dispute was satisfactorily resolved, the litigants often did not take the trouble to come to court to petition to close the case. The records for such cases thus end without apparent resolution.

By Mediation

More commonly, the filing of a plaint intensified the efforts of community or kin mediators to work for an out-of-court resolution of the dispute. A court summons only increased the pressures, especially when accompanied by some strong comment from the magistrate. A plaintiff or defendant would for good reason take the magistrate's comments as a preliminary indication of the way a court judgment, if rendered, would go. One or the other might therefore become more conciliatory, thus preparing the way for a settlement without a formal court session. As Tables 6.3a, 6.3b, and 6.3c show, a total of 114 cases in the three-county sample were documented as having been resolved by informal mediation.

Upon satisfactory resolution of the matter, the plaintiff was expected to petition to close the case, explaining how it had been settled. Alternatively, the group of mediators—community or kin leaders, the local xiangbao, or one or more local notables—might submit the petition to close the case and recount how the dispute had been settled. Such petitions usually mentioned that the two parties had observed the appropriate ritual of apologizing to one another (*bici jianmian fuli* [or *peili*] 彼此见面服礼/赔礼), or that the offender

had apologized or otherwise made amends, and that both parties wished to end the suit (*juyuan xisong* 俱愿息讼). In the event injury was involved, some reference also would be made to the fact that the wounds had healed (*shang yi quanyu* 伤已痊愈).

The magistrate usually welcomed such petitions, noting "permission granted to close the case" (*zhun xiao'an* 准销案). If a summons had been issued, he might add "the summons is cancelled" (*xiaopiao* 销票) or "the court inquiry/investigation is waived" (*mianxun/jiu* 免讯/究). Often, he would preface these orders with the phrase "the court will be lenient" (*gu congkuan* 姑从宽), lest anyone underestimate his austere bearing. Sometimes, he would attach a warning to the effect that "if this person should cause trouble again, the matter will be dealt with severely" (*ruo zai zishi, ding xing zhongjiu* 若再滋事, 定行重究), or "if this person should engage in such unseemly behavior again, he will definitely be arrested and punished" (*ruo zai wang wei, ding xing ju cheng* 若再妄为, 定行拘惩).

In exceptional circumstances, the magistrate might refuse to allow the petition to end a suit. With civil disputes that involved also serious injury, for example, the magistrate might insist on a formal court session. Thus, in response to a petition to close a case from the mediators of a rent dispute, the Baodi magistrate observed that "this involved assault and battery, with verified serious injury. . . . The matter may not be settled [this way] to close the case" (Baodi 100, 1839.5.18).

When a magistrate accepted a petition to end a suit, it was routine practice for the plaintiff or both parties "to file with the court a pledge of willingness to end the lawsuit" (*ju ganjie* 具甘结).[14] If the matter had been mediated, such a pledge would mention that "kin and friends/neighbors have mediated" (jing qinyou/lin shuohe 经亲友/邻说和) or else name the actual mediators. Then it would relate the content of the settlement, which may involve no more than the fact that one or both parties have apologized or which may involve complex terms resolving the issue in dispute. Then the petitioner would note that he has no disagreement with the terms (*bing wu yishuo* 并无异说) and wishes to end the suit (*qinggan xisong* 情甘息讼). He would end with a plea to the magistrate to waive the court inquiry (*ken en mianxun* 恳恩免讯). Often the mediators would also file a pledge verifying the terms of the agreement, thereby adding the moral weight of the community or kin group to the agreement. The case would then be officially closed.

Once again, however, litigants who settled outside the formal system did not always take the trouble to petition formally to close the case. In those instances, the official records would not show that the dispute had been resolved.

Incomplete Records

As has been mentioned, fully 42% (264 of 628) of all case records in the three-county sample show no resolution. Unlike the cases with clearly documented court adjudication or community or kin mediation, these records require that we speculate a little beyond the written record as to what actually occurred. The documentary evidence provides only suggestive clues.

One easily discernible cause of incompleteness in the case records is simply damage or loss, evidenced by the fact that only fragments of sheets remain or that earlier documents are missing when later ones are present. Of the sample studied, 20 Baxian, 1 Baodi, and 8 Dan-Xin case files belong to this category (Tables 6.4a, 6.4b, 6.4c). With these cases, it would be pointless to attempt to speculate on the actual outcomes.

The largest category of case records showing no clear resolution are those that end with the issuance of the court summons: 109 for Baxian, 6 for Baodi, and 39 for Dan-Xin (Tables 6.4a, 6.4b, 6.4c). A substantial proportion of this category of unresolved cases, as suggested earlier, might be the result of a missing link in the judicial process that concealed from the records successful resolution of the case by community or kin mediation. Often, between the time a plaint was filed and a summons reached the litigants, or between the time of the summons and the time of the court session, a dispute would be settled for one of the reasons outlined above. Once settled, of course, the litigants lost most of their incentive to go through all the trouble of dealing with the court. But they did not have the option of formally declining a summons, nor of asking the runners to convey back to the court that the dispute had been settled. The job of the runners, as agents of the yamen, was only to serve the summons; they were not expected to report on informal community or kin settlements. That was up to either the xiangbao or the litigants to do as part of a petition to close a case. If the xiangbao was lax and the litigants savvy enough to know that the courts were not particularly vigilant about seeing a civil dispute to its conclusion, a case would simply be left at this point. The court itself would do nothing more.

Such unresolved cases, of course, might also result from runner corruption or inefficiency. The records show a number of instances of runner delays or outright negligence, documented by the magistrate's expressions of irritation. Those problems could have been just the result of inefficiencies in the system, or case overload, or both. We can only speculate here that some of those might have been due also to corruption, in which the runners were bribed by a litigant to refrain from serving a summons. By not reporting on the outcome of a summons, runners could effectively sabotage the investigative intentions of the court (more below).

Another group of incomplete case files are those that end with the runners reporting that they were unable to serve the summons issued by the court. The reports gave various reasons: one or both principals were in hiding, had run away, were ill or otherwise immobilized, and so on. Of the case files, 22 Baxian, 12 Baodi, and 4 Dan-Xin are recorded thus (Tables 6.4a, 6.4b, 6.4c).

The Final Stage: The Court Session

If a lawsuit reached the stage of a formal court session, the magistrate usually came to some kind of decision on the spot. Most frequently, those decisions found simply for one or the other party. Of the 98 cases that reached a formal court session in Baxian, the court found unequivocally for the plaintiff in 47 instances and for the defendant in 22. In Baodi, of 45 cases, the court ruled for the plaintiff in 21 instances and for the defendant in 17. And in Dan-Xin, of 78 cases, the court ruled for the plaintiff in 44 instances and for the defendant in 19. Three-quarters (76.9%) of all cases heard by the courts, in other words, resulted in unequivocal rulings for one or the other party (Tables 6.5a, 6.5b, 6.5c). I have analyzed elsewhere the judicial bases for these court rulings (Huang, 1994). Suffice it to say here that it would be a mistake to imagine that the Qing court system was somehow a mediatory rather than an adjudicatory system or that it generally resolved disputes by compromise rather than by unequivocal rulings.

On occasion, the court would provide for some kind of face-saving compromise even when it found decisively for the plaintiff or the defendant. Those instances may be understood either as the incorporation of moral considerations (of harmony among kin) into legal rulings or as practical measures to make it easier for those living in close proximity to maintain a tolerable relationship. A common example was when the court found a rich person in the right but instructed him to make a token charitable concession to his poorer kin or neighbor (e.g., Baxian 6:1:720, 1769.11; 6:2:1416, 1797.6; 6:4:2552, 1852.11.19). The surprise, however, is how seldom the court acted in this manner as a peacemaker. As Tables 6.5a, 6.5b, 6.5c show, only a small minority of court rulings for one or the other party were accompanied by compromises in the interest of maintaining kin or community harmony: 7 of 69 such rulings in Baxian, 1 of 38 in Baodi, and 3 of 63 in Dan-Xin, for a total of just 6.4%.

In a second major type of ruling, the court found for neither party. Sometimes the court served to clarify facts and remove misunderstanding, thereby resolving a dispute. For example, in several Baxian and Baodi cases, a party to a betrothal contract mistook another's actions for bad faith, but, on the investigation of the court, came to understand what had really transpired (Baxian 6:1:1760, 1784.3.19; Baodi 168, 1871.8). Sometimes the court found the

TABLE 6.5A *Cases Heard by the Baxian Court, by Type of Ruling*

Ruling	Land Related	Debt Related	Marriage Related	Inheritance Related	Total
For plaintiff	13	19	14	1	47
By law	(13)	(19)	(14)	(1)	(47)
With compromise[a]	(3)	(2)	(0)	(0)	(5)
For defendant	10	4	6	2	22
False accusation	(5)	(4)	(6)	(0)	(15)
Other legal principle	(4)	(0)	(0)	(2)	(6)
Extralegal principle	(1)	(0)	(0)	(0)	(1)
With compromise[a]	(1)	(0)	(1)	(0)	(2)
No winner	5	2	6	1	14
Compromise settlement	(4)	(2)	(3)	(1)	(9)
Further investigation ordered[b]	4	0	1	0	5
Other	0	3	6	1	10
Total	32	28	33	5	98

Note: Where there were multiple court sessions and more than one court judgment, the case is counted by the first judgment.
a. Ruling for one or another party did not preclude minor face-saving compromises, even if only symbolic.
b. Includes only those not followed by another court session.

claims of both parties legitimate and ruled accordingly. In disputes over family property among its legal inheritors, for instance, the court ruled simply for equal division (e.g., Dan-Xin 22601, 1845.6.19). And sometimes the court found both parties at fault, or both claims equally illegitimate, and ruled accordingly (e.g., Baodi 188, 1832.7.9). In all, such rulings of the court accounted for 23 of a total of 34 "no-winner cases" (Tables 6.5a, 6.5b, 6.5c).

In the remaining 11 no-winner cases, the court acted as an arbitrator to work out a binding compromise between the litigants with conflicting but equally legitimate claims rather than as judge to determine the right and wrong of each party's claim (Tables 6.5a, 6.5b, 6.5c). Land boundary disputes often resulted in this kind of ruling, especially when old boundaries had shifted from flooding, as frequently occurred in Danshui-Xinzhu (e.g., Baxian 6:1:733, 1773.3; Dan-Xin

TABLE 6.5B *Cases Heard by the Baodi Court, by Type of Ruling*

Ruling	Land Related	Debt Related	Marriage Related	Inheritance Related	Total
For plaintiff	4	5	8	4	21
By law	(4)	(4)	(8)	(4)	(20)
Extralegal principle	(0)	(1)	(0)	(0)	(1)
With compromise[a]	(0)	(0)	(1)	(0)	(1)
For defendant	3	10	3	1	17
False accusation	(1)	(6)	(1)	(0)	(8)
Other legal principle	(2)	(4)	(2)	(1)	(9)
With compromise[a]	(0)	(0)	(0)	(0)	(0)
No winner	0	2	4	0	6
Compromise settlement	(0)	(0)	(1)	(0)	(1)
Further investigation ordered[b]	1	0	0	0	1
Total	8	17	15	5	45

Note: Where there were multiple court sessions and more than one court judgment, the case is counted by the first judgment.
a. Ruling for one or another party did not preclude minor face-saving compromises, even if only symbolic.
b. Includes only those not followed by another court session.

22506, 1878.2). These cases come closest to the conventional image of magistrates acting more as mediators than as judges.

There were, of course, cases that were not settled even with a formal court session. The magistrate might find, for example, that he did not have sufficient evidence for a judgment and order further investigation or another court session. A definitive court ruling may come only at a subsequent session. Sometimes the case files ended with the order for further investigation: 5 instances in Baxian and 1 in Baodi. In those instances, the dispute may have been resolved by mediation, or the case record may simply have ended through inaction on the part of the litigants or the court. However, the vast majority of cases that reached a formal court session ended in some kind of magisterial judgment, if not in the first session, then in a subsequent one.

TABLE 6.5C *Cases Heard by the Dan-Xin Court, by Type of Ruling*

Ruling	Land Related	Debt Related	Marriage Related	Inheritance Related	Total
For plaintiff	32	9	0	3	44
By law	(30)	(9)		(3)	(42)
With compromise[a]	(2)	(0)		(0)	(2)
For defendant	12	2	0	5	19
False accusation	(6)	(2)		(5)	(13)
Other legal principle	(5)	(0)		(0)	(5)
Extralegal principle	(0)	(0)		(0)	(0)
With compromise[a]	(1)	(0)		(0)	(1)
No winner	10	1	0	3	14
Compromise settlement	(1)	(0)		(0)	(1)
Further investigation ordered[b]	0	0	0	0	0
Other	1	0	0	0	1
Total	55	12	0	11	78

Note: Where there were multiple court sessions and more than one court judgment, the case is counted by the first judgment.
a. Ruling for one or another party did not preclude minor face-saving compromises, even if only symbolic.
b. Includes only those not followed by another court session.

Even with a definitive judgment, standard practice called for all parties to file a pledge of willingness to end the suit. The document would summarize briefly the basic facts of the case and the court's judgment, followed by the litigant's pledge to accept the verdict. In a Baodi land dispute, for example, the pledger wrote "[the court has ruled that] I am hereafter not permitted to roll my cart over [my neighbor's] crops. This [document] certifies that I willingly file this pledge [to end the lawsuit]." In the case of a credit dispute, the pledge would usually spell out how much was to be paid when (Baodi 191, 1871.1; Baodi 193, 1876.11).

Justice in the Third Realm

It was, then, largely in the middle stages of lawsuits that formal and informal justice interacted to make up the third realm of Qing justice. Disputes that did not reach the initial stage of the formal judicial process, of course, were largely settled by community or kin mediation, which was primarily concerned with peacemaking in accordance with common sense and human compassion. Those that reached the final stage of a formal court session, on the other hand, were largely settled by magisterial adjudication, which was mainly concerned with judgments of right or wrong in accordance with codified law. It was in the stages after the initial plaint and before the formal court session that the two sets of considerations worked together to resolve disputes.

What follows is a closer look at the various ways in which the formal and informal systems influenced one another. The emphasis will be on illustrating with case examples how third-realm justice operated.

The Court as Catalyst Prompting a Settlement

The act of filing a plaint inevitably brought the formal system into the ongoing process of informal negotiations toward a settlement. Both litigants had henceforth to consider the legality of their respective positions and how the magistrate was likely to act if matters reached a formal court session. They also had to weigh potential gains against actual costs. There were the statutory costs of filing counterplaints and petitions, of charges for witnesses if any, and of the fees for a formal court session. Dai Yanhui gives figures for late Qing Taiwan of 0.4–0.5 *diao* (吊 one *diao* = 1,000 *wen* 文, or copper cash) for a petition form, 0.4–0.5 silver yuan[15] for the fee for filing the form, 0.4–0.7 yuan for the scribe's fee, 0.3–1.0 yuan for the summons fee, and 3.0–4.0 yuan up to 10.0+ yuan (sometimes as much as 100.0+ yuan) for court fees (Dai Yanhui, 1979: 706–708). There was also the extra cost of entertaining or paying off the runners, clerks, and xiangbao. If one had to wait at the county seat for the court session, there were also the extra living expenses.

The threat of a court session alone could induce the disputants to settle their quarrel on their own, as occurred in 12 instances in my three-county sample (Tables 6.3a, 6.3b, 6.3c). In Baodi in 1850, for example, Wang Dianfa had purchased on credit from Yue Xiang 11 pieces of sheepskin, worth 4.4 diao. He had repaid 2 diao of the debt. Yue sought payment for the rest. When Wang made excuses, Yue seized some of his clothing, a sickle, and a pipe. In anger, Wang brought suit on the seventeenth day of the fifth month. The magistrate issued a summons on the twentieth for Yue to come to court. Their initial anger

gone and faced with the prospect of a court appearance, the two men quickly settled. On the twenty-second, Wang petitioned to close the case, stating that he had paid Yue the balance and Yue had returned his property (Baodi 187, 1850.5.17).

More commonly, a lawsuit intensified community or kin efforts to mediate a settlement. On the ninth day of the sixth month in 1814, in Baodi, Liu Zhenkui filed a complaint with the court as follows: his wife often returned to her natal home for long visits, but recently he and his brother had divided up their household, and there was no one else to take care of his aged parents. For that reason, he did not want his wife to continue to return to her natal home. But his wife's father, Zhang Qi, insisted, and a fight broke out between them, causing light injury to Liu. Because of the injury, Liu was immediately examined by the office of punishment, which noted that he had "a wound to the left side of his forehead, about six-tenths (*fen* 分) of an inch long and two-tenths of an inch wide. No other injury." The magistrate instructed: "Permission granted. Summon for a court inquiry." Within eight days, on the seventeenth, mediating neighbors Li Guoying, Chen Maolin, and Wang Junheng reported that they had brought the father-in-law and son-in-law together, both regretted what had happened, and both wished now to end the dispute and to close the case. The mediators therefore petitioned that the summons be cancelled. The magistrate observed, "Since you people have mediated and settled the matter, permission is granted to cancel the summons and close the case. Order both parties to file pledges of willingness to end the lawsuit" (Baodi 170, 1814.6.9).

Mediation sometimes did not succeed until the very late stages of a lawsuit. On the ninth day of the ninth month, 1771, in Baxian, Li Kunzhang complained that he had pledged his land in conditional sale (*dang* 当 here, *dian* 典 in nineteenth-century Baodi) two years earlier to defendant Zeng Rongguang for 200 diao, but that Zeng refused to let him redeem it, beat him, and injured him. The magistrate accepted the case, noting "zhun." Defendant Zeng countered that Li had since borrowed a total of 7 diao but had not repaid him, tried to keep him from planting the winter crop on the land, and beat him and injured him. The magistrate issued a summons on the next day for both parties and several witnesses to come to court for cross-examination. Two runners went out on the eleventh day and brought back the litigants, but could not get the witnesses to come. Both parties were examined for their injuries, which turned out to be much less serious than they had reported. On the twentieth day, the magistrate instructed that the witnesses be summoned. The next day, Li filed another plaint charging that Zeng had sent some relatives to his house, and they had forcibly cut down and removed a tree. He urged that the guilty parties be arrested. The magistrate noted on this second plaint, "Wait quietly for cross-

examination; do not meddle further." At this point, on the twenty-sixth day, five individuals representing themselves as the xiangyue petitioned to close the case. They had gathered both parties together and clarified what happened: plaintiff Li had pledged the land to Zeng for 200 diao, but wanted to raise that price (*jia dangjia* 加当价) (presumably because the price of land had risen in the meantime). Zeng had refused. The mediators resolved the dispute by getting both parties to agree to a new pledge price of 207 diao (which added to the original price what Li had later borrowed from Zeng). They destroyed the old pledge document and made up a new one. Both parties agreed to abide by these terms and to file a pledge of willingness to end the dispute (Baxian 6:1:728, 1771.9.9).

We catch a glimpse here of the powerful incentives at work on both litigants to reach a mediated settlement. There were the mounting costs of staying in town to await the court session. There were also the impending witness fees, once the court issued the summons. And, of course, there were the court fees to come. Add to that the consideration that the magistrate had indicated some displeasure at the fact that both parties had exaggerated the injuries they received, it becomes understandable why they would willingly accept a mediated settlement even after coming this far in the litigation.

The Role of Court Opinion

When magistrates expressed their preliminary opinions on plaints, counterplaints, and petitions, the influence of the court on the ongoing process of community or kin mediation was that much greater. Any indication of magisterial displeasure, suspicion, or predisposition alerted the litigants to the likely outcome of a court session and therefore affected their posture in the ongoing mediation process. For example, in Baodi in the fifth month of 1896, plaintiff Mrs. Feng, née Tu, a widow whose husband and son had both died and who was left with just her child-bride daughter-in-law, was being taken advantage of by the defendant, a fellow villager Li Wanlai, who tried to marry off the daughter-in-law to a Tang in another village for his own gain.

On her plaint, the magistrate observed, "Li Wanlai is not even a relative. How dare he try to marry off your son's bride to a Tang? If what you say is true, then he has indeed broken the law. Wait for the order to summon them quickly to court." This reaction by the magistrate was enough to prompt defendant Li to make concessions and accept mediation: Li was to pay Mrs. Feng 36 diao as a betrothal price for her deceased son's child-bride (Baodi 171, 1896.5).

Alternatively, the magistrate's opinion might prompt a plaintiff with a weak case to make concessions, which would then lead to a mediated settlement. In Baodi on the twenty-fifth day of the ninth month, 1850, Zhang Guoqi filed

a plaint that defendants Zhang Liu and his son Zhang Han had forcibly kidnapped his wife in the second month of that year. The magistrate commented, "You have only just brought suit, more than half a year after it happened. There's clearly more to the story. Wait for the summons and the court investigation and determination." For plaintiff Zhang, that was indication enough that his fabricated story was not likely to go unchallenged. Just ten days later, on the fifth day of the tenth month, he filed another petition, this time telling the truth. He explained that he was so poor that he had to go away to work and could not take care of his family. Therefore he married his wife to Zhang Han and entrusted his children as well to Zhang Han and his father Zhang Liu. When he returned, however, he learned that they were not treating his wife and children well. He got in a fight over it with Zhang Han, and Zhang Han told him to take his family back. He therefore brought suit on trumped-up charges. But he in fact is not in a position to take care of his family. Relatives and friends have now mediated, and defendants Zhang Liu and Zhang Han have agreed to continue to house his family and will return his children when they are grown. He is therefore petitioning to end the suit. The magistrate commented, "You were wrong to bring suit as you did, but in consideration of the fact that you have submitted this petition yourself, the court will be lenient and will not investigate further and hold you accountable . . ." (Baodi 164, 1850.9.25).

When a magistrate reacted against both plaintiff and defendant, both would feel the pressure to settle. In Baodi in 1898, Han Yanshou charged that Jing De and Han Xi had borrowed 40 diao from him, set up gambling in Jing De's house, and refused to repay the money. Defendants Jing and Han countered that Han Yanshou had a long criminal record and owed them money. The magistrate commented that he thought the plaintiff and defendants were clearly fellow gamblers arguing over winnings and losses. He ordered that they be brought to court for investigation. That was enough to motivate both parties to settle. Just one day after the summons was issued, mediator Rui Wenqing petitioned to close the case: the two parties, he said, were relatives who had been involved in some financial dealings. Neither was involved in gambling. The accounts between them have now been clarified and settled. Plaintiff Han Yanshou regrets his actions and has apologized. The two sides have restored their good relations. On this representation, the magistrate agreed to cancel the summons, but not without reiterating his conviction that the dispute actually involved gambling debts. He warned both the litigants and the mediator against future offenses (Baodi 193, 1898.2.18).

In another pattern, the court's investigations helped to clarify matters and lay the basis for a mediated settlement. In Baodi in the tenth month of 1845, neighbors Xu Wanfa and Yang Zongkui got into an argument over a fence that

Xu had built at the boundary between their respective residential properties. Defendant Yang maintained that the fence encroached on his property. Since plaintiff Xu rented his place, the case also involved his landlord. And since the two got into a brawl, a neighbor was involved as a witness. Defendant Yang submitted a counterplaint, with drawings, and charged that the witness had helped to instigate the suit. Plaintiff Xu then submitted a follow-up plaint, also with a drawing, and charged that several other people were helping Yang with his suit. The magistrate ordered that everyone be brought to court. The other parties named in the plaints filed a petition to be excused from the court summons, but the magistrate denied their request. The runners managed to bring in most of them, but the court inquiry produced no definitive results. The magistrate then ordered his runners and one of the witnesses brought to court to go out and measure both plots according to their original deeds. Those measurements backed up plaintiff Xu's claims. Yang submitted yet one more statement to argue his case, but the magistrate commented that the facts had now been established and summoned both parties to court for a repeat session (*fuxun* 复讯). At this point, defendant Yang gave in. The mediators marked out both plots and got the disputants to agree to abide by the settlement. Yang and Xu then both petitioned to end the suit, and the magistrate agreed to let the matter rest without a second court session (Baodi 100, 1845.10.7).

The Xiangbao

The two-way interaction between formal and informal justice is perhaps best seen through the person of the xiangbao. As I reported in my 1985 book, nineteenth-century Baodi records on xiangbao appointment and removal show that they ranged in background from men of real wealth and prominence to mere owner-peasants. And they ranged in power from towering presences in the community to lesser lights propped up by the truly powerful. For some, the post offered a coveted opportunity for gain while, for others, it was a dreadful and thankless burden to be avoided. We have examples of xiangbao enriching themselves through tax embezzlement; we also have examples of nominated xiangbao who ran away to avoid having to serve (and in one case, of someone blackmailing another with the threat of nominating him as xiangbao) (Huang, 1985: 225–231).

As someone who was confirmed by the county yamen but nominated by community leaders, the xiangbao was intended to be at once an agent of the court and a representative of the local community. It was up to him, along with the runners, to convey to the litigants and their communities the opinions, summons, and warrants of the court. In very minor disputes, as noted earlier, he was sometimes even asked by the magistrate to settle matters on behalf of

the court. At the same time, he was responsible for conveying community or kin opinion and mediatory efforts back to the court (which distinguished him from the official runners). On occasion, he himself became involved in the process of mediating a settlement.

The xiangbao's role might be limited to serving as one member of a group of community mediators. For example, in Baodi on the eighth day of the eighth month in 1851, Zhang Yusheng stated in his plaint that he had received a four-mu plot as security for a loan and had planted wheat on it. But his neighbor, the defendant Bian Tinglu, claiming that half a mu was inside the boundaries of the Cai's grave site for which he had responsibility, went ahead and harvested the wheat on it with three members of the Cai lineage. Plaintiff Zhang stated that he had then contacted the village leaders (*shoushi* 首事) Yuan Qi et al. to help to resolve the dispute, but that the latter had declined to intervene. The magistrate indicated his skepticism right from the start, "If you are merely cultivating land used as security for a loan, as you claim, why would Bian and the others take your harvest for no reason, and why would village leaders Yuan Qi and the others refuse to intervene? There must be more here than meets the eye. It is hereby ordered that the xiangbao investigate the matter with the village leaders Yuan Qi and the others and report back." Whatever the actual truth of the matter, this instruction set in motion a mediation process that ended with the xiangbao Liu Fuwang, along with village leaders Yuan Qi, Wang Lin, and Li Yi, submitting a petition on the seventeenth day of the month to close the case. They explained that they had investigated the situation and found that the dispute stemmed from unclear boundaries between the land plaintiff Zhang took in as security and the Cai grave site. They had suggested that Zhang rent the one-half mu in dispute from the Cai family for 1,500 wen. Plaintiff Zhang and defendant Bian both accepted the arrangement and were willing to end the lawsuit. The magistrate noted, "Since this has been settled reasonably, permission is granted to close the case" (Baodi 101, 1851.8.8).

Sometimes the xiangbao assumed a more prominent role in the mediation process. For example, in a plaint filed on the second day of the fourth month, 1886, in Baodi, Ma Zhong stated that he had borrowed 1,830 wen from defendant Zhang Enpu and had paid off the loan in two separate payments, one to Zhang and one to his son. But Zhang continued to press for payment, which led to a fight, and injuries to Ma. The office of punishment examined Ma and noted in the injury slip that he had been "scratched by nails in two spots on the left side of the forehead, punched and scratched under his left eye, where the flesh swelled some with a greenish tint, and his skin above the lip had been scratched open in one spot. Otherwise, no injury." The magistrate commented in response to the plaint that "there are gaps in the story" and ordered the

xiangbao to investigate. Next came a plaint from plaintiff Ma's nephew Ma Fugang on the ninth day of the month, claiming that Ma's injuries had gotten worse and that he was running a fever and had no appetite. This time the magistrate noted, "I have ordered the xiangbao to investigate and report. Do not make false statements and offend the court."

We can surmise that a comment like this from the magistrate would have enhanced the power of the xiangbao. By the eighteenth day of the month, the xiangbao Gao Shenglin reported that he had looked into the matter: Plaintiff Ma in fact had not yet cleared his debt in full, and defendant Zhang's insistence that he do so had led to the argument. Gao therefore arranged for plaintiff Ma to pay the rest of the debt. Both parties agreed to the settlement and both now wanted to end the lawsuit. Plaintiff Ma's wounds had healed. Gao therefore petitioned to close the case. The magistrate noted, "The court will be lenient and allow the case to be closed" (Baodi 192, 1886.4.2). In this instance the xiangbao clearly played a central role. In the Baodi sample, the xiangbao is documented to have played a similarly critical role in seven of the thirty-six cases of mediation.[16]

Runners, by contrast, seldom played a role in mediation. Their official functions were to serve as investigators, messengers, law enforcers, and arresting officers. Unlike the xiangbao, they had neither the status in the local community nor the official authority to act as mediators. In the three-county sample, there was just one documented instance in which runners acted as mediators, along with the xiangbao, in the settlement of a case (Baodi 107, 1882.2.18).

Sources of Abuse in the Third Realm

The semiformal nature of third-realm justice was the source both of its strength and of its weakness. When the system worked as it should, the concerns of both formal law and informal justice were served through a kind of dialogue and negotiatory interaction. On the other hand, the fact that third-realm justice worked in largely ad hoc and semiformal ways, without clearly spelled out guidelines and procedures, meant considerable scope for abuse.

Xiangbao Power and Abuse

As the critical intermediary between the court and society, the xiangbao could abuse the justice system in both directions. As the eyes and ears of the court, he could be pivotal in the stance the court took and could thereby greatly influence the outcome of any dispute. It was a power that could be used to abuse society. At the same time, by foot-dragging, dereliction of duty, or outright

misrepresentation of facts, he could also stump even the best-intentioned efforts of the court to get at the truth and uphold the law.

There was, however, some check on xiangbao abuse in that the court relied simultaneously on both the xiangbao and its own runners for information. A xiangbao could not easily falsify the facts without the collusion of the runners, and vice versa. There was, moreover, the practice of routinely assigning more than one runner to carry out a court order, whether for investigation or to serve a summons, which also provided some protection from abuse.

In the Baodi loan dispute between Ma Zhong and Zhang Enpu presented above, the xiangbao's influence derived not only from his mediatory role but even more from how he represented the facts. His siding with defendant Zhang Enpu's rather than plaintiff Ma Zhong's version of the facts, whether or not consistent with the actual truth of the matter, could have been decisive in persuading Ma to settle out of court. Had plaintiff Ma persisted in his litigation, he would have faced a magistrate strongly predisposed against him on the basis of the xiangbao's representation of the facts.

In eighteenth-century Baxian, to give another example, one frequent source of dispute was the moral claims of a land-seller to retain access to the ancestral grave site on the land he had sold. Some exploited the claim for material advantage, even long after the sale. Thus, in 1797, defendant Yang Wenju camped out on the ancestral grave site of land that his grandfather had sold three decades earlier and cut the bamboo on the site for his own use. On receiving the owner Xu Yuyin's plaint, the magistrate ordered the local xiangbao to investigate and report back. Neighbors attempted to mediate the dispute, but defendant Yang refused to cooperate. In the meantime, the xiangbao reported back that the facts were indeed as plaintiff Xu represented them. The magistrate then ordered that Yang be summoned to court. At this point, Yang gave in, and the community mediators petitioned the court to close the case (Baxian 6:2:1418, 1797.3).

The power of the xiangbao was the greatest when a magistrate decided not to handle the matter himself but to delegate it to the xiangbao and/or the runners. We have 6 documented instances of such delegation in Baodi and fully 31 for Danshui-Xinzhu. As shown in Tables 6.4b and 6.4c, those cases ended unresolved in the records. Here we can only speculate on what actually occurred. Perhaps the xiangbao simply lacked the clout to bring a dispute to clear-cut resolution, especially where the litigants were wealthy and powerful lineages, as was often the case in Danshui-Xinzhu. On the other hand, the xiangbao obviously enjoyed great latitude in such cases: from inaction to siding with one party over another in return for bribes and favors.

The most elusive and yet probably the most important and frequently exercised power wielded by the xiangbao consisted in their ability to stall the judicial process by simply failing to perform their assigned duties. Our case sample permits only a glimpse of how this might have been done. In one marriage dispute in Baodi in 1868, for example, the magistrate ordered that a defendant be summoned. The local xiangbao, however, reported that the defendant had gone somewhere and could not be found. Evidently irritated, the magistrate noted that he would send a runner to summon the defendant and reprimanded the xiangbao pointedly, "Do not try to cover things up again by claiming that the defendant had gone out." But the magistrate's irritation apparently made no difference, for the records of the case end there (Baodi 168, 1868.10). In another instance in Baodi in 1860, involving the claims of a widow for repayment of a debt, the magistrate ordered that both parties be brought in for cross-examination. But the xiangbao reported that the widow actually lived in another county and that her relatives and friends verified that her claims were groundless. This conscientious magistrate noted his skepticism of the xiangbao's report and instructed that a record be entered of this xiangbao's behavior. Once again, however, no further action was evidently taken, the magistrate's best intentions notwithstanding (Baodi 190, 1860.7.7).

Runner Power and Abuse

In contrast to the semiofficial xiangbao, who were situated entirely in the third realm, the yamen runners belonged more to the first realm of formal justice, or at least to the borderline between that realm and the third realm. As hirelings of the yamen, they could not formally represent the community and/or kin group before the court: they could not, for example, petition that a case be closed because it had been successfully resolved by community and/or kin mediation. On the other hand, they were only partly salaried. According to an 1888 Xinzhu source, they received just 6.3 yuan annually, compared to 1,000 yuan for the magistrate's judicial assistant (*xingming muyou* 刑名幕友), and 800 yuan for his tax assistant (*qiangu muyou* 钱谷幕友) (Dai Yanhui, 1979: 698, 703–711). They had therefore to rely on gifts and squeeze for a living. Unlike the magistrate and his personal staff, moreover, they were generally permanent residents of the county, subject to multiple tugs of local influence networks.

Where the local xiangbao office was for whatever reasons defunct, the runners became the magistrate's sole source of information on a case. In a Danshui-Xinzhu case from 1890, for example, the plaintiff, Mrs. Wu, had some years earlier taken as a child-bride the daughter of the defendant, Mrs. Guo. When the girl grew up, however, she and Wu's son did not get along. Wu therefore pressed defendant Guo to redeem her daughter. Guo did so for 40 yuan.

Later she married the girl to Yang Rui. But plaintiff Wu, in order to extort more money from Guo, suddenly fabricated the charge that Guo had "kidnapped" her daughter and abetted in her adultery with Yang. On receipt of the plaint, the magistrate noted that the charge, if true, was a serious one and ordered the runners to investigate and bring Guo to court. Defendant Guo, in the meantime, filed a counterplaint explaining the background to the dispute. The runners, after investigation, reported that the facts were indeed as defendant Guo explained them in her counterplaint. There was no report from the xiangbao nor any mention of him in the case file. Given the runners' report, plaintiff Wu had little choice but to give in. The case was mediated on that basis. A group of mediators then petitioned to close the case. The magistrate required both parties to file pledges of willingness to settle and close the case (Dan-Xin 21207, 1890.11.28). Here the runners' representation of the facts was clearly decisive in shaping the outcome.

My three-county case sample contains a small number of files that together offer a few clues about how runner abuse might have worked.[17] In Xinzhu on the fifteenth day of the fifth month in 1888, plaintiff Xiao Chunkui charged that his neighbor Lin Jiao had enlarged his land at Xiao's expense by taking advantage of a recent flood to fill in an old ditch on his own land and dig a new one on Xiao's. The magistrate first ordered Xiao to submit his land deed for examination and then, upon a prompting petition from Xiao on the twenty-fourth, ordered that runners be sent to investigate. A week later, runners Wang Chun and Li Fang reported that they could find no evidence that the ditch was newly dug. On the twenty-eighth day of the seventh month, Xiao filed another petition charging that Lin Jiao had bribed the runners and asking that new runners be sent. The magistrate's initial reaction was that "there is no need to change the runners," but he also ordered further investigation. On the fifteenth day of the eleventh month, runner Wang Chun (Li Fang having since died) reported that he now had found some signs of the possible digging of a new ditch. Two weeks later, plaintiff Xiao filed a statement claiming he had been vindicated and charging again that Wang Chun had been bribed by Lin Jiao. On this petition, the magistrate agreed to assign two new runners to the case. Four and a half months later, the new runners reported that since the disputed area where the old ditch supposedly lay had already been planted, there was no way they could tell whether there had ever been a ditch there. Still determined to uncover the truth, the magistrate then instructed the runners to question local residents. On the ninth day of the fifth month, the runners returned with an ambiguous report saying that it was possible that the ditch had been moved. For his part, the magistrate, evidently out of steam, noted that he would wait for the plaintiff's prompting petition before taking further action. At this point,

the record ends. Presumably, Xiao finally gave up (Dan-Xin 22526, 1888.5.15). Defendant Lin Jiao, it would seem, had managed to thwart Xiao's efforts by successfully bribing both sets of runners.

In another case of possible bribery, on the eighteenth day of the second month of 1882, in Baodi, Feng Zhihe filed a plaint that his cousin Feng Fude had repeatedly encroached on his eight mu of land. The magistrate instructed, "Order the runners to investigate and settle things reasonably." Defendant Feng Fude turned out to be a wealthy and powerful person who had been titled for meritorious military service (with the equivalent of an official rank of the sixth grade [*liupin* 六品]). He countered that Zhihe had dug a ditch between their two fields, causing problems of access for others. On the twenty-first day, he further charged that plaintiff Zhihe had broken into his house, damaged its contents, and terrorized everyone. In response, the magistrate ordered that the parties be summoned for an investigation. On the twenty-seventh day, plaintiff Zhihe's father, Feng Fusheng, petitioned that his son had been injured by defendant Fude and suffered from dizziness as a result. He further charged that Fude had a criminal record for sodomizing a young child. The magistrate's comment was that he had already ordered an investigation. On the twenty-ninth day, the runners, with the local xiangbao, reported that they had "in accordance with the household-division documents of the two parties, clearly delineated the two plots" and that "both sides now wish to end the suit." The magistrate obliged readily, "Cancel the summons." The records end there (Baodi 107, 1882.2.18). While we cannot tell for certain what the truth of the matter was in this case, it seems quite possible that defendant Feng Fude had managed to avoid going to court by bribing the runners and the local xiangbao into reporting an amicable settlement.

Like the xiangbao, the runners could also shape the outcome of a lawsuit just by foot-dragging and failing to bring the summoned parties to court. In one case, after the runner reported that the defendant could not be found, the plaintiff charged that this runner had been bribed by the defendant acting in collusion with a "litigation monger." In a similar case, the irate magistrate punished the errant runner with 100 blows of the heavy stick. But neither case went any further (Dan-Xin 22420, 1882.3.3; 22430, 1886.11.10). The runners in both cases, it would seem, had successfully sabotaged the process.

We can only speculate here that a substantial proportion of the very large number of incomplete case records in our sample might have involved runner abuse. This would include those instances in which the records end with runners reporting that one or the other party could not be found, as well as those that end simply with the issuance of a court summons. Those two categories, as shown in Tables 6.4a, 6.4b, 6.4c, accounted for 131 of the total of 152

incomplete case records in Baxian, 18 of the 26 in Baodi, and 43 of the 86 in Danshui-Xinzhu.

Formal, Informal, and Third-Realm Justice

Justice in the third realm, then, needs to be distinguished clearly from more strictly informal justice. In the latter, court opinion played little or no role in dispute resolution. Community and kin mediators operated on their own to try to maintain social harmony, or at least tolerable relations, among people who had to live in close proximity to one another.

Household-division, as I have argued elsewhere (Huang, 1991), was perhaps the best example of informal justice. Over time, customary practices evolved that were remarkably effective for dealing with the stressful situation of parcelling out family property among brothers. First, community and kin leaders joined with the heirs in protracted discussions to divide up family property into equal shares. Assignment of the shares was often decided by the drawing of lots. The process was then formalized by written documents witnessed by the participating mediators.

Qing law took the stance that it was immoral for close relatives to engage in litigation; disputes like those over household-division were therefore normally to be handled by the community or kin group itself. Thus, in a Danshui-Xinzhu case in which a younger brother sued his elder brother who controlled the family's property and refused to divide up, the magistrate rejected the complaint with the comment that "blood relations should not crawl prostrated around a court" (Dan-Xin 22524, 1888.2.23). In a loan dispute between affinal kin, similarly, the magistrate commented, "You two are close relatives but have come to court over a minor matter of debt. That violates the proper affectionate relationship among marital kin" (Dan-Xin 23312, 1887.1).

This is not to say that informal justice operated entirely separately and independently of formal law. In the case of household-division, the customary practice of equal division among sons was given formal legal sanction during the Tang. Thereafter, the congruence between social custom and legal stipulation made for nearly universal observance of the principle and minimized disputes and litigation (Huang, 1991). That situation contrasted sharply with the conditional sale of land, in which the divergence between the legal ideal of permanent ownership and the social practice of frequent buying and selling made for many disputes. There the law tried to guarantee the essential inalienability of land by providing for virtually unlimited rights of redemption of land

pledged for conditional sale, while it tried at the same time to accommodate social reality and to ensure state tax revenue by acknowledging, taxing, and regulating the conditional sale and purchase of land. The resulting ambiguities in the law made for frequent litigation over such sales and purchases (Huang, 1991; cf. Huang, 1990: 106–108).

Third-realm justice must also be distinguished from the more strictly formal justice of court adjudication. In civil no less than criminal cases, magisterial adjudication was governed above all by codified law. The great majority of the 221 verdicts in the three-county sample, as has been seen, consisted of unequivocal judgments based on the Qing code.

Once again, this is not to say that the formal system operated entirely independently of informal justice. Although the great majority of cases heard by the court ended in unequivocal rulings according to law, a small number of cases did result in compromise-type resolutions (Tables 6.5a, 6.5b, 6.5c). In one instance, for example, the court simply upheld a solution that had been arrived at by the mediators (Baodi 171, 1885.5.18). In another, the court ruled that matters should be turned over to community and/or kin mediation (Dan-Xin 22513, 1884.3).

Even in the majority instances of a clear-cut ruling by law, the court might also take into consideration community or kin ties. In one case, for example, instead of jailing a wayward son for his offense, the court turned him over to the charge of his pleading elderly father (Baodi 189, 1830.6.8). In another, the court turned to a defendant's kin to ensure repayment of a loan and to a community leader to guarantee future good behavior (Baodi 100, 1845.6.15). On occasion, the court also ruled for face-saving compromises, presumably to help maintain tolerable relations among close kin or neighbors. And, finally, the court generally required from both parties the filing of a pledge of willing compliance to maintain the appearance of harmonious compromise. Such acts by the courts, however, generally followed a clear-cut judgment in accordance with the law. They were secondary to the main adjudicatory action.

It was only in the third realm that formal and informal justice operated in a relatively equal relationship. The magistrate's opinion, to be sure, carried all the weight of the official legal system. But that opinion was expressed within an ideology that deferred to informal justice, so long as that justice worked within the boundaries set by the law. Thus peacemaking compromise settlements worked out by community and kin mediators were routinely accepted by the magistrate in preference to continuing on to court adjudication. Even when legal violations were actually involved, mediators could gain court acceptance of their informal settlement by papering over those actions. We

have seen, for example, how a dispute which likely involved illegal gambling was settled informally to the court's approval by being represented as a clearing up of accounts in legitimate transactions.

The framework within which formal and informal justice interacted was partly institutionalized and partly ad hoc. Mediators (as well as the litigants) could almost always address the magistrate through petitions, and the magistrate's comments, in turn, were almost always conveyed back to them. Those practices ensured the routinized interaction between the two. At the same time, however, the communications were extremely abbreviated. Petitioners were limited to a single sheet of 300-odd characters each time, while the magistrate usually wrote no more than a few extemporaneous words or sentences. Much reliance, moreover, was placed on the semiformal xiangbao and the runners as intermediaries, which allowed much scope for corruption and abuse.

At its worst, then, the semiformal working together of formal and informal justice saw formal law undermined by runner and xiangbao abuse, or false community representation, and informal justice misshaped by arbitrary court opinion. At its best, however, third-realm justice successfully resolved disputes by attending to the twin considerations of peacemaking and of law, through the joint working of the two. The system was one that embodied both the positive and negative aspects of Qing justice.

State and Society Seen Through the Judicial Process

In modern society, we are accustomed to thinking in terms of a gigantic state bureaucracy functioning through salaried officials who reach individual citizens directly. That was not the case for Qing China, however. The lowest-level imperial appointee was the county magistrate. For a great majority of his functions, including judicial administration, tax collection, public security, famine relief, and the maintenance of public works, the magistrate typically relied on the collaboration of local society. In addition to the xiangbao, who were responsible for judicial administration and tax collection, there were the *baozhang* (保长, or *paizhang* 牌长) and *jiazhang* (甲长) for public security, and the gentry and other local leaders for public services. For the common folk of rural China, contact with "the state" was mainly through such quasi-officials and leaders of the third realm. Very few ever had direct contact with the magistrate and his salaried officials in the county yamen, which, it must be remembered, oversaw an average of about 250,000 people in the nineteenth century.

In the judicial area, the third realm between state and society was, of course, much larger than just the persons of the semiofficials. For civil disputes, the

entire area between the filing of a plaint and the formal court inquiry was one in which the formal court system and informal community and/or kin mediation worked together to resolve disputes. If we include among such mediated settlements only one half, say, of the cases with incomplete records, then we would be talking about 258 of 628 cases being resolved through the semiformal process, compared with 221 adjudicated cases and 149 cases from other categories (Tables 6.3a, 6.3b, 6.3c).

For peasants involved in litigation, therefore, the "probabilities" for third-realm resolution were perhaps greater than those for formal court adjudication. Even after a plaint was filed, there was still a long road to a formal court inquiry, with many alternate paths along the way. The act of filing a plaint, in fact, probably seemed to peasant litigants rather far removed still from formal adjudication. It was more an act threatening such than an irrevocable resort to such, and it was more a resort to combined formal-informal resolution than a resort to the formal system pure and simple.

Seen through the legal system, therefore, the Qing state operated to a great extent in the semiformal third realm. A graphic representation might be in the form of three separate blocks stacked one on top of the other. The smallest, at the top, represents the formal apparatus of the state, and the largest, at the bottom, peasant society. In between lay the third realm, neither simply society nor simply the state, but a realm defined by the coparticipation of the two. It was in this realm that many, perhaps most, lawsuits were resolved. Standing between society and the state, this was the realm where, for most people, the state took on concrete meaning and import.

Notes

1 This theme is discussed in detail in Huang (1993).

2 Past scholarship on civil law in the Qing is reviewed in greater detail in Bernhardt and Huang (1994).

3 Danshui subprefecture was divided into Jilong subprefecture and Xinzhu and Danshui Counties in 1878. The cases come from the Danshui subprefectural court up to 1878 and from the Xinzhu County court thereafter.

4 Huang (1982) is an early report. The Baodi case records were used to study tax relations in Huang (1985), and the Baxian records to study landlord-tenant relations in Zelin (1986).

5 Of course, sometimes an adjudicated case continued on because of a lack of definitive action, or was reopened by further plaints and then again went through all or parts of these various stages. Those occurrences were particularly frequent in Danshui-Xinzhu for reasons to be considered in another part of my larger study.

6 All citations from the Dan-Xin archive below will be by cataloguer Dai Yanhui's numbers, followed by the lunar date of the first plaint by year, month, and day (if available).

7 The Baxian cases kept at the Sichuan Provincial Archives (Sichuan sheng dang'an guan) are catalogued by category number, catalogue number, then *juan* (bundle) number. All citations below will follow this format. The date by year, lunar month, and day refers to the date on the original plaint if available. If not, then it refers to the first documented date.

8 The *zongli* (总理) was also known on occasion as the *zongbao* (总保) (e.g., Dan-Xin 23408, 1880.12), suggesting a possible tendency toward a merging of the two originally separate posts of zongli and dibao as in Dan-Xin 22407, 1870.12.21. In this respect, what was happening in Danshui-Xinzhu might have paralleled the process in Baodi, where the xiangbao emerged out of a meshing of the originally separate posts of xiangyue and dibao (Huang, 1985: 224).

9 All references to the Qing code below will be to the compilation by Xue Yunsheng (1970) (1905), punctuated and edited by Huang Tsing-chia. The first number refers to the relevant statute as numbered by Huang. If a substatute, the subnumber is given after the statute number.

10 All citations below from the Baodi archives will follow this format: the juan (bundle) number, the date of the first plaint in year, lunar month, and day if available; otherwise, the first documented date.

11 In 1832, a hired laborer who had worked for a family for three years filed a plaint claiming that he had been dismissed without cause, denied his pay, and beaten. Such a suit from a social inferior against a social superior was very rare (Huang, 1991). In this case, the magistrate commented, "This impoverished individual from afar has labored for three years and has had a hard life. It seems to me not right to abruptly expel him. I am ordering the runners on duty to carry this instruction to Yang Fugui [the employer] and to tell him that if Jin Wende [the hired worker] has not behaved in a manner unbefitting his station, he should be kept, to avoid litigation." The three runners reported back the next day that they had verified that Jin was a good worker and that Yang had agreed to keep Jin. No mention was made of paying Jin what he sought nor of the fact that he had been beaten (Baodi 188, 1832.7.9).

12 As Alison Conner (1979) has observed, the bringing together of two different parties with different versions of events to confront one another before the magistrate was a frequently employed method of judicial investigation.

13 The differences between the ways in which civil adjudication operated in Baodi-Baxian and in Danshui-Xinzhu are the subject of a separate chapter of my larger study.

14 Matthew's Chinese-English dictionary renders *ganjie* not quite accurately as "bond." *Gan* is as in *qinggan* (情甘), or willingly, *jie* is as in *jie'an* (结案), or close the case. Hence my translation of pledge of willingness to end the suit.

15 The exchange rate between the silver dollar and copper cash varied between 800 and 2,000 from the 1810s to the 1860s (see Usui, 1981: 77–79).

16 In the Danshui-Xinzhu records, the xiangbao do not appear to have played as prominent a role as in Baodi: they were instrumental in just one of 25 documented mediated resolutions (Dan-Xin 23203, 1877.10.28). The reasons for this difference are unclear. In the Baxian records, finally, the xiangbao's role in mediation cannot be clearly separated out from community and kin mediators, since the records generally referred to the mediators

with the ritualistic term of *yuelin* (约邻) to include both the xiangbao (xiangyue) and "relatives and neighbors" (*qilin* 戚邻 or *zulin* 族邻).

17 Bradley Reed is doing a dissertation at UCLA to investigate systematically the role of the clerks and runners of the county yamen in Qing and Republican administration. Reed is using the large quantities of Baxian archival materials on administration and corruption.

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