

**LAW and
LOCAL
SOCIETY
IN LATE
IMPERIAL
CHINA**



**Northern Taiwan
in the Nineteenth
Century**

MARK A. ALLEE

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M.A.A.

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Note to the Reader

BELOW I list the Qing reign periods, describe my practice in the use of Chinese and Western dates, and provide a summary of common weights and other measures used frequently in the text.

REIGN PERIODS

Shunzhi (SZ 1-18), 1644-61	Daoguang (DG 1-30), 1821-50
Kangxi (KX 1-61), 1662-1722	Xianfeng (XF 1-11), 1851-61
Yongzheng (YZ 1-13), 1723-35	Tongzhi (TZ 1-13), 1862-74
Qianlong (QL 1-60), 1736-95	Guangxu (GX 1-33), 1875-1907
Jiaqing (JQ 1-25), 1796-1820	Xuantong (XT 1-4), 1908-11

CHINESE AND WESTERN DATES

In most instances in the text, lunar dates are rendered as they appear in the source documents in year, month, and day order and then are followed in parentheses by the corresponding Western dates: for example, GX 8/4/23 (8 June 1882). Intercalary months are indicated by an "i" before the month number: for example, GX 13/i4/5.

MEASURES OF WEIGHT AND DISTANCE

16 *liang* = 1 *jin* or catty

1 *jin* = 0.597 kg or 1.3 lb.
(approximately)

100 *jin* = 1 *dan* or picul

1 *li* = 0.576 km or one-third
mile (approximately)

CURRENCY EQUIVALENTS

1,000 cash = 1 tael
(approximately)

1 tael = 1 *liang*, a Chinese
ounce of silver

1 *yuan* = 0.7 *liang*
(approximately)

10 *jiao* = 1 *yuan*

1 *yuan* = 1 dollar

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1

Introduction: History and Law

SOCIETY THROUGH COURT RECORDS

"History from the bottom up" has been the rallying cry of more than one generation of historians. The struggle to shift the focus of writers and readers of history from the conspicuously obvious actions and attributes of elites, central governments, and (inter)-national politics to the finer detail of local society and government, ordinary people, and their everyday lives and concerns has achieved a significant degree of success. Such an approach reminds us that many of the political, economic, and social forces that engender historical change are generated by the interplay of social groups composed of common men and women. Having lived unremarkable lives as individuals, they have left relatively few traces of themselves or their activities to assist those who come after in understanding the past. Nevertheless the bottom-up approach to history, while a valuable corrective to a profession that once seemed to focus too much on governments and great men, often fails to live up to our or its own expectations.¹

The failures of social history sometimes result from an excessive swing of the pendulum to a perspective that seems to portray

societies and people for whom politics, government, and the state did not exist or were irrelevant. One of my objectives in this study of a nineteenth-century Chinese locality is to strike a balance between methodological approaches that describe at one extreme a polity without subjects or conversely autonomous social groups to which the state is almost irrelevant. In the field of Chinese history the former kind of distortion has been more common. The success and continuity of the traditional Chinese state long rendered it nearly impossible for historians of China to see much else but government. Still, there has been some tendency to view the ordinary Chinese peasant's existence as one in which the imperial state was merely an unpleasant but occasional intruder extracting wealth or compelling donations of labor and returning little of worth.

This disjunction between state and society is of course a distortion produced by our limited ability to perceive very clearly the loci of interaction between Chinese government and the Chinese people. In traditional times, these nodes of interaction were the lowest levels of government, the counties, departments, and sub-prefectures that formed the interface between the entire multi-layered, hierarchical state structure and the peasants, artisans, shopkeepers, intellectuals, and other members of most social groups in the country. This study attempts to inch closer to these vital points of intersection by utilizing records of litigation filed at a local court toward the end of the imperial period.

These case records suggest the great significance of law in traditional Chinese society and the importance of understanding the relationship between the two if we wish to comprehend either. The relationship was dynamic, and each exerted a powerful influence stimulating change in the other. It is commonly accepted that laws and legal systems reflect in some general way the society that produced them and change, however imperfectly, in response to new social realities. It is no less true, in China as elsewhere, that powerful institutions such as legal systems shaped or even initiated social transformation. Each of these points—but especially the second—will be argued in greater detail through the rest of this study. The evidence from these cases will show how the decisions of a local court in inheritance disputes, charges of refusal to pay land rents, problems between different ethnic and subethnic

groups, and other cases operated to encourage the evolution of local society in specific ways.

The local court that generated the case records on which this study relies was situated in a town just a short distance from the seacoast in the northwestern quadrant of the island of Taiwan. This town, first named Zhuqian and later rechristened Xinzhu,² was the seat of successive basic-level administrative units that were part of the Chinese state ruled by the Qing dynasty, whose demise in 1911 marked the end of two millennia of imperium. The officials in charge at the lowest level of the imperial government hierarchy administered counties (*xian*), subprefectures (*ting*), or departments (*zhou*). The subprefects³ and county magistrates posted to Zhuqian and Xinzhu were responsible in ascending order to prefects, provincial-level officials (governor-general, governor, judicial commissioner, financial commissioner, circuit intendant), and the central government ministries. All were ultimately subservient to the emperor.

China's long imperial epoch terminated in early-twentieth-century revolution. Already by that time, however, Taiwan had been lost to China as a result of the Treaty of Shimonoseki ending the Sino-Japanese War of 1894–95. The island remained a Japanese colony until the end of World War II. For that reason, this study concludes in 1895, when the Chinese court system in Xinzhu ceased to function. The next chapter will set the scene and sketch the history of the political units and of the process of Chinese settlement in the area governed by local chief administrators headquartered in Zhuqian/Xinzhu.

Other historians of China have taught us that the interaction of state and society was most intense and thus most likely to have produced usable historical evidence when crimes were committed. When rebellion, first on the list of the ten most serious crimes, was successfully suppressed, the records and accounts of the government campaign and, sometimes, the testimony and confessions of those involved in the uprising have revealed in often intimate detail the lives of ordinary people, albeit in extraordinary circumstances.⁴ Summaries of more ordinary cases appealed to the highest judicial organ, the Board of Punishment in the capital, have also been a productive resource in getting closer to Chinese society.⁵ These somewhat more prosaic legal records,

however, have been so severely compressed and shorn of detail that often only issues of legal technicalities remain clear, while the circumstances surrounding the original crimes or disputes that gave rise to the cases have nearly disappeared from view. Recently the availability of routine memorials on criminal cases (*xingke tiben*) in the First Historical Archives, Beijing, has begun to produce very interesting and important work on late imperial society and law.⁶ These routine memorials, while extremely valuable, also suffer, although perhaps to a lesser degree, the defects of compression and abstraction characteristic of other central government documents.

The virtues of these sources and methods of exploiting them are manifest, but the realities they describe are to some degree illusions. Rebellions and those who hatched them, even when unsuccessful, were not part of everyday life in Qing China. Nor were bizarre crimes or ambiguous legal issues representative of the quotidian criminal trials and civil litigation handled by local courts. It is precisely the unremarkable nature of the disputes and minor offenses ordinarily dealt with by local courts that make such cases valuable for their insight into daily life.

To a lesser degree the approach adopted in this research cannot avoid the same criticism of atypicality. A criminal trial is a symptom of some breakdown of the social order. Assaults, armed affrays, robberies, murders, and kidnappings described in the cases were symptoms of social pathology. Civil cases, even though considered less serious, indicated that one or both parties to a transaction felt their relationship so out of kilter that only the courts could redress the balance. Rent payment disputes, arguments over land boundaries, and struggles within families over inherited property, while not of course unknown, were also not everyday occurrences.

Law case records have conspicuous imperfections as historical evidence. Certainly criminal suspects with life or liberty to lose and litigants hopeful of material gain had clear reasons to conceal the facts. But local officials hearing cases were well aware of this and usually tried to ferret out the truth. With careful, skeptical evaluation the petitions, statements, reports, testimony, and findings included in the legal cases prove to be extremely valuable and thus far underutilized sources for historical inquiry.

A less obvious analytic ambiguity is introduced by distinguish-

ing between criminal and civil legal cases in traditional China. The sharp distinction drawn between the two categories in the Western tradition was not nearly so clear in China. Of course, even in the West, a single act may render one liable for both civil and criminal penalties. The possibility of dual liability postulated by Western legal philosophy is, however, not the same as the attitude of Chinese jurists that the analytical and procedural differences between what we now think of as criminal and civil cases were insignificant. What I will refer to throughout as civil cases were, to the Chinese courts, merely "minor matters" that were handled with procedures that differed only slightly from those used in criminal cases. A single legal system handled all cases (except those involving bureaucrats charged with administrative malfeasance). However, even though the procedures of "civil" adjudication were usually not significantly different from those of "criminal" trials, it will occasionally be convenient for the purposes of our discussion to make the distinction. I shall have more to say about the two kinds of cases later in this chapter in a discussion of the sources for this study. Here let me simply assert that for this locality the records of civil litigation in many ways are more useful than criminal cases in revealing fundamental socioeconomic institutions and processes.⁷

Such a statement is merely another way of pointing out that local court case records such as those I use are invaluable materials for anyone hoping to comprehend the lives and concerns of ordinary men and women who have otherwise disappeared from the record of the past. Law case records also take us a giant step closer to understanding the relationship between local courts and local society. Only after we have taken this step will we begin to be able to evaluate properly the role and significance of the legal system in the Chinese tradition. First, however, in order to understand both the possibilities and limitations of a study such as this one, it is imperative to understand the nature of the case records and their history.

SOURCES FOR THIS STUDY

The Dan-Xin Archives

Preserving the records of over 1,000 proceedings, the Dan-Xin archives (*Dan-Xin dang'an*) are a collection of case files that until

1895 were stored in the archives of the local government offices in Zhuqian and Xinzhu. These cases, although a substantial body of material, are only a small fraction of all the litigation handled by the local yamen during the years between 1789 (the date of the earliest case in the collection) and 1895. David C. Buxbaum has already described and characterized the Dan-Xin archives in a general way.⁸ The preliminary observations and conclusions drawn by Buxbaum remain valid, although certain details require correction. In what follows, I shall draw on my own research in the cases as well as Buxbaum and other sources to sketch the history and nature of these cases.

When Japanese troops moved into Xinzhu in 1895, the yamen and its contents passed intact into the hands of the new colonial authorities. These documents included an extensive collection of records of all kinds, including those now known as the Dan-Xin archives, the only portion of the collection known to have survived to the present. The new Japanese administrators were able to draw up a quite useful and in the main accurate outline description of Xinzhu's former administrative system using the yamen materials.⁹ During the first years of the colonial period, at least one Japanese researcher probably relied on the legal case records when formulating a description of the legal process under the former regime.¹⁰ According to Dai Yanhui, after 1895, custody of the Dan-Xin cases, then prosaically denoted as the "Taiwan documents" (*Taiwan bunsho*), was assumed successively by the Xinzhu local court, the Court of Appeals, and eventually the Literature and Political Science Department of Taihoku (Taipei) Imperial University.¹¹ With the end of World War II, Taiwan reverted to Chinese control. The university, eventually to be renamed National Taiwan University, retained the Dan-Xin materials, which were nominally part of the law school collection.

Even before the end of Japanese rule, Dai, a Japanese-trained Taiwanese lawyer, had begun to utilize the cases for research purposes. Over the years Dai, with the help of others, sorted, put in order, and classified the cases into three broad categories: administrative, civil, and criminal (see below). Selections were published in 1955 (35 documents) and in 1971 (475 documents), in both instances taken from the administrative cases.¹² So far no further publication of any Dan-Xin cases has yet appeared.¹³ Ac-

cess to the documents has been limited, but fortunately the cases are available on microfilm at several institutions in the United States and abroad.¹⁴

The Dan-Xin cases have received relatively little scholarly attention. Dai himself has written several important articles, since collected and republished, that rely heavily on administrative cases from the archives.¹⁵ Ke Fangzhi utilized several of the civil cases in an article on residential lease contracts, and recently Shi Tianfu has found deeds and other documents from several of the cases useful in illuminating the early settlement of the region just north of Xinzhu.¹⁶ In English, so far as I am aware, there is only Chang Bin Liu's study of commercial law.¹⁷ In Japanese, there is Shiga Shūzō's introduction to the types of documents found in the case files.¹⁸

Several reasons may help account for the archive's neglect. In the first place, for many years virtually the only resources available for the study of the traditional Chinese legal system were either legal codes and other prescriptive legislation issued by the imperial government or drastically compressed summaries of legal cases that had been appealed to the highest judicial authorities in the capital. Although some excellent work based on these sources has been done,¹⁹ and much remains that could be accomplished in this area, legal history and sociological jurisprudence are underpopulated fields of sinological study. A new translation of the Qing Code has now been completed, although as of this writing it has not yet been published.²⁰ Of earlier dynasties, only codes of the Qin (221–207 B.C.), Tang (618–907), and Yuan (1264–1368) have been translated even in part.²¹

Others have used somewhat different approaches to the study of law in Chinese history with some success. William Alford, for example, was able to find many details on one particularly notorious murder case that became a center of national attention in the 1870s. Hugh Scogin has shown how Han period land documents can help us understand the legal treatment of contracts in early (and perhaps late) imperial China.²² Brian McKnight has published useful studies of imperial amnesties and forensic medicine.²³ Japanese historians, particularly Niida Noboru, have been the most imaginative in sifting through literature, drama, and other nonlegal sources for material. In the People's Republic of