International Journal of Asian Studies, **4**, 1 (2007), pp. 79–111 2007 Cambridge University Press
doi:10.1017|S1479591407000551 Printed in the United Kingdom

LAW, STATE AND SOCIETY IN CHINA [6]

LITIGATION MASTERS AND THE LITIGATION SYSTEM OF MING AND QING CHINA

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Litigation masters (songshi), who flourished in traditional China, have long been associated in the minds of the public with questionable legal behaviour, taking advantage of the lack of legal know-how of plaintiffs. Though they existed outside the law and their existence was constantly castigated by the authorities, they played a very important role in society. This article examine the reality of what it meant for ordinary people to go to law, in an attempt to reassess how the litigation system actually worked, as opposed to how it was described ideally by the state. It first looks at litigation procedures and the trial process, and concludes that the Chinese were extremely litigious, challenging the notion that people preferred to resolve disputes by mediation rather than by going to court. Court procedures were complicated and costs high, and not all plaints submitted to the court were accepted. To ensure that the correct forms were followed, expert help was necessary, and this help often took the form of the litigation master. He acted as proxy for litigants, for he was unable to appear in court in person, and he played a vital role in negotiating with the lower court functionaries whose support was vital for the success of a case. He also wrote plaints in a form acceptable to the courts, and coached litigants in their presentation. The litigation master was often a former civil service examination candidate, and so trained in the kind of writing skills the court required. Failed students often had to choose between becoming a private secretary to a magistrate or a litigation master, and there was a continuum between the two. Thus it was the examination system itself that fostered litigation masters. Because the state refused to recognize litigiousness, it also had to refuse to recognize the lawful existence of litigation masters. Nevertheless they met an important social need.

INTRODUCTION

In present-day China lawyers are called *lüshi* 律師. When discussing the modern *lüshi* system, Chinese scholars never fail to mention that there used to be legal facilitators called

This article is a translation of "Min Shin jidai no shōshi to soshō seido," which appeared in Kaoru Umehara, ed., *Chūgoku kinsei no hōsei to shakai.* Kyoto: Kyōto daigaku jinbun kagaku kenkyūjo, 1993. A Chinese translation appeared in 1998.

songshi 訟師 ("litigation master") who provided lawyerly services, but they are equally quick to point out that while lawyers are sanctioned by the state, litigation masters never had been. In other words, despite their apparent similarities, litigation masters were in fact totally different from the modern lawyer.[1]

As those scholars note, litigation masters, often called "litigation hooligans" (*songgun* 訟棍), had a unsavoury reputation. They were associated with a variety of questionable legal behaviour, which epithets to describe them reflect: inciting litigation (*jiaosuo cisong* 教唆詞訟), proxy litigation (*baolan cisong* 包攬詞訟), reversing right and wrong (*diandao shifei* 顛倒是非), calling black white (*bianluan heibai* 変亂黑白), habitual erasers (*guanlong daobi* 慣弄刀筆), falsifying and passing appeals (*jiaci yuegao* 架詞越告), bribing yamen officials (*dadian yamen* 打點衙門), colluding with corrupt officials (*chuantong yadu* 串通衙蠹), ensnaring country bumpkins (*youxian xiangyu* 誘陷鄉愚), cheating good people (*qiya liangmin* 欺壓良民), stealing commissions (*congzhong quli* 從中取利), and extorting and swindling (*kongxia qicai* 恐嚇欺財). Thus, according to public perception at least, litigation masters encouraged unnecessary litigation, protected the guilty, employed tricky means to secure success, embellished litigation documents, colluded with yamen functionaries such as clerks and runners, and robbed good people of their money. In short, they were ruffians who committed every evil deed imaginable. *Songshi* has often been translated into English as "pettifogger," but this term is inadequate to describe the extent to which the authorities loathed litigation masters, nor does it reveal, conversely, how important a role litigation masters played in society.

Because litigation masters existed outside the law and were regarded as thugs, they have attracted very little scholarly interest. Although studies of the judicial and litigation systems of the Ming and the Qing periods almost always mention them, little research has been done about litigation masters themselves or about the litigation system in which they played such a considerable role.[2] This is because it seemed absurd to build an argument that centred on shadowy professionals who operated outside the boundaries of the law, and who wilfully disrupted legal procedures and trials. Legal specialists in the modern sense (i.e. *lüshi*) only emerged in the closing years of the Qing dynasty and it must have seemed utterly meaningless, in a country still struggling to modernize its judicial system, to examine such a dubious product of pre-modern society as litigation masters. Local magistrates loathed litigation masters "as if they were snakes or scorpions," and the governments of the successive dynasties banned the profession as illegal. We should not, however, let the aversion of the authorities towards litigation masters affect our views when reviewing how important a role they played in the litigation system, particularly for ordinary people.

The litigation master already existed in the Song period (960–1279).[3] For the next thousand years, though successive dynasties assiduously denounced and banned litigation mastery, arguing that the litigation master incited people to file lawsuits and eventually

1 For example, You 1972, Zhou 1985.

2 Tao 1972, Yang 1978, Na 1982, Zhang 1983, Zheng 1988.

3 Miyazaki 1954 (1992). The word *songshi* appears in several places in the *Minggong shupan qingmingji* [Luminous Collection of Judgments by Illustrious Officials, 1261], for example pp. 473, 481 (1987 edition). Kawakatsu 1981 states that litigation masters "appeared in the changes that occurred at the end of the Ming and the beginning of the Qing," but this argument does not hold up.

led the litigants to financial ruin, the state was not able to rid society of them. On the contrary, they became increasingly active towards the end of the Qing dynasty. Surely this is an indication of how indispensable litigation masters were in the lives of ordinary people, as well as in the litigation system. Had they done nothing but prey on ordinary people, they would have been shunned with or without state intervention. In actuality, litigation mastery thrived. Thus it cannot be denied that litigation mastery served a purpose, however harshly local magistrates attacked it.

It is time that we re-examined the litigation system of imperial China, not from above as a static system as the authorities defined it, but from below as an active process that ordinary people had to follow when going to court. By reviewing litigation cases closely, we will be able to assess the true meaning of the derogatory terms that magistrates used when referring to the litigation master (inciting to litigation, proxy litigation, and bribing and colluding with corrupt officials). Only then will we be able to understand what the litigation master really was.

This article aims to answer these questions and shed light on what ordinary people actually did when filing suits and how litigation masters involved themselves in the process, and furthermore what their involvement signified in the litigation system itself. By doing so, I hope to be able to clarify what part the litigation master, a shadowy figure existing outside the law, played in the law of the state.

LITIGATION PROCEDURES AND THE TRIAL PROCESS

Enjoying and Tenaciously Following Litigation

When describing the manners and customs of the Ming and Qing periods, historical documents often use terms such as "a trend to enjoy litigation" (*haosong* 好訟) and "a trend to follow litigation tenaciously" (*jiansong* 健訟). As early as the Song period, the authorities had lamented the litigiousness of ordinary people, but it is hard to assess the actuality, since most documents mentioning *haosong* and *jiansong* give only sketchy and abstract explanations of these lamentable trends. But what the documents and records of judicial precedents do reveal is that ordinary people filed an extraordinarily large number of lawsuits. Shiga Shūzō speculates that the practice of going to law in Qing China must have been far more common in the everyday lives of ordinary people than bringing civil suits is in Japan today. His point is extremely thought-provoking.[4] Shiga cites as part of the evidence for his contention the example of a magistrate of the department of Liuan in Anhui province, who processed 1,360 pieces of litigation in the ten months he was in office during the Jiaqing era (1796–1820). It is impossible to know how many lawsuits were brought annually in the whole of China, but I will cite a few more examples that back Shiga's supposition.

Zhang Woguan 張我觀, magistrate of Huiji county in Zhejiang province at the beginning of the eighteenth century, said that he received daily more than a hundred accusations and rebuttals to the accusations, but for every ten of them only one or two were the truth.[5] A plaintiff would submit an accusation, while the defendant handed in a rebuttal;

4 Shiga 1984, p. 260.

5 Zhang Woguan, *Fuwengji* [Jar Cover Collection], Xingming, 1-3a. (Yongzheng 4 [1725]).

the written legal documents presented by the plaintiff and defendant were called *chengci* 呈詞, *chengzhuang* 呈状 or *cizhuang* 詞状. Unless their petitions called for urgent review, plaintiffs were allowed to submit accusations and defendants were permitted to hand in rebuttals to those accusations only in certain periods, generally eight months out of the year from the first day of the eighth month till the last day of the third month of the following year. In each of these eight months, there were certain days set aside for submission, days, according to one system (*sanba fanggao* 三八放告), with three or eight in their dates (thus the third, eighth, thirteenth, eighteenth, twenty-third or twenty-eighth). When Zhang said "daily," he meant on one of these prescribed days, not every day of the calendar month. There is no record which system Zhang used, but if it was that described above, he would have received 150 petitions per submission day, 900 a month, and 7,200 petitions in eight months. Wang Huizu 汪輝祖 (1730–1807), appointed magistrate of Ningyuan county in Hunan province in 1787 (Qianlong 52), recalled that he had used the *sanba fanggao* system and received 200 legal documents per submission day.[6] If we apply the same formula, he would have received nearly 10,000 petitions a year. A magistrate from Xiangxiang county in Hunan province in the same period claimed to have received between 300 and 400 documents per submission day,[7] in which case, following the same formula, he would have received between 14,400 and 19,200 documents per year. During the Qianlong era, Hunan officials stated that some departments and counties received more than a thousand documents per submission day, but even the less litigious counties still received a few hundred.[8] Zhang Qi 張琦, deputy magistrate in Zhangqiu county, Shandong province, for instance, claimed to have received more than 2,000 petitions within a single month during the Daoguang era (1821–1850).[9] Ningyuan and Xiangxiang were by no means isolated cases.

If one district received ten or twenty thousand petitions, or even more, per year, it cannot be denied that people were definitely litigious, that they "enjoyed litigation" and "tenaciously followed" it. According to the *Guangxu Hunan tongzhi* (Encyclopedia of Hunan, Compiled in the Guangxu Era), in 1816 (Jiaqing 21) there were 23,366 households in Ningyuan and 77,750 in Xiangxiang. Neither was populous.[10] In the case of Ningyuan, then, 23,000 or so families submitted as many as 10,000 petitions a year.

As Wang Huizu pointed out, however litigious the counties tended to be or however many legal documents the newly appointed magistrate was flooded with, newly submitted accusations were on average no more than ten per day, and the rest were rebuttals to the accusations handed in by the defendants, or prompting plaints.[11] Supposing each submission day produced ten new plaintiffs, ten new defendants were spawned per day.

6 *Bingta menghen lu* [A Record of Dreamscapes from a Sickbed]. Qianlong 52 (1787). Contained in *Wang Longzhuang yishu*, p. 420.

7 *Hunan shengli cheng'an* [Legal Cases from Hunan], Xinglü susong, 8-13a.

8 *Hunan shengli cheng'an* 8-20a.

9 *Qingbai leichao* [Classified Collection of Qing Notes], note 25, p. 174. According to Zhang Zi zhuan, there were around two thousand suits settled during the set annual period. *Qingshigao* [Draft History of the Qing], p. 13054.

10 *Guangxu Hunan tongzhi* [Encyclopedia of Hunan in the Guangxu Era; 1885]. 48-35a, 48-21a.

11 *Xuezhi shuozhui*. See *Wang Longzhuang yishu* p. 164.

Since Wang adopted the 3–8 system in Ningyuan, he generated 48 submission days a year, and faced 480 plaintiffs and 480 defendants annually, a total of 960 individuals who participated in litigation per year. There is, however, reason to believe that the plaintiffs and defendants were not equal in number: according to the records the plaintiff tended to sue a number of people at one go, pushing up the total number of litigants even more. It would not be far from the mark to assume that more than a thousand people, at least, joined the ranks of litigants annually in any county. Wang Huizu served as a magistrate only in Ningyuan, and if he based his argument on his experience there, it meant that a district with about 23,000 households produced more than 10,000 new litigants a year.

This figure represents only ordinary cases of litigation, excluding petitions submitted outside set days. Neither does it include plaints submitted but not accepted by the authorities. As I will discuss later, department and county magistrates sorted accusations into two categories, those to be accepted (*zhun* 准) and those to be rejected (*fou* 不准). Zhang Woguan complained that many accusations he received had proved to be groundless and insubstantial. As is frequently observed in archival documents, his contemporaries seemed to have shared the same dismal view. In Hunan province, a department or county received at least a few hundred legal documents per submission day, some getting even more, yet the number of new accusations taken up by the local magistrate were as few as ten. This discrepancy was due to the exclusion of rebuttals to the accusations and prompting plaints, as Wang Huizu pointed out, but also to the high number of accusations turned down by the magistrate. All said, estimating the number of new litigants, both plaintiffs and defendants, as over a thousand per year in a county with 23,000 households, is conservative, since this number only represents part of the total number of litigation cases brought to the magistrate. The actual number must have been far greater than that.

There is no denying that people were litigious, and tenaciously so, and that an individual or a member of a family was involved in litigation at least once or twice in his life. Accepted notions are that society was largely agrarian in the Ming and Qing periods, and that therefore ordinary people could not have had any contact with or use for lawsuits, and that people must have tried to resolve a dispute through mediation within a village, a clan or a small organization like a guild rather than bringing it to court. We must, however, discard these conventional views and preconceptions. Quite the contrary, ordinary people seemed to have become involved in litigation as a matter of course.

I have cited figures illustrating the litigious trend, but they were those gathered under ordinary circumstances. When a serious problem arose, the number of petitions must have ballooned to a staggering degree. One example was a litigation frenzy in Songjiang prefecture at the end of the Ming period when people rushed to court in order to recover land snatched by a powerful landlord, Xu Jie 徐階 and others. According to an eyewitness account by Zhu Chaqing 朱察卿, a native of Shanghai county in the same prefecture, plaintiffs fought over litigation forms, and as a result the price of litigation paper went up momentarily to such a degree that one retailer made a sale of thirty taels (1 tael is about 38 grams, 1½ oz) of silver.[12] "Nine out of every ten families in the towns and eight out of every ten families in the villages became involved in litigation." Granted that the author was a government official who loathed litigiousness in people, and therefore might

12 *Zhu Bangxian ji* [Collection of Zhu Bangxian], Vol. 14 [1578].

have inflated the numbers, his account nevertheless shows very clearly how wide the range of people there were who became embroiled in litigation. It also illustrates that, when it came to having access to litigation, there was no unbridgeable gap between the villagers and town-dwellers in a prefecture like Songjiang. Such was the time and society in which litigation masters thrived.

What sort of disputes did ordinary people bring to court? I can safely say that most of them were "matters destined for the department and county courts" (*zhouxian zili* 州縣自理) which did not require consultation with any level of administration higher than the prefectural. Punishments at this level were clubbing or caning, and the guilty might even be let off with simply a reprimand. Disputes centred on issues concerning marriage, family registers, land, brawling, theft and land taxes. Wang Huizu called such minor cases "ordinary legal matters" (*xunchang song'an* 尋常訟案).[13] This demonstrates that matters to be resolved at department and county levels were considered regular legal cases. Let us look more closely now at the procedures ordinary people followed when going to court.

Litigation Procedures

Whether it was a dispute over marriage or land, the litigant had to submit an accusation in the department or county where the defendant lived. It was strictly forbidden to hand in an accusation directly to a prefectural or higher court. To go over the head of the local magistrate was called a "passing appeal" (*yuegao* 越告 or *yuekong* 越控), that is, appealing to a higher court in an irregular manner. In extraordinary cases it was possible for a plaintiff to go to the relevant government office immediately the incident happened, beat the gong hanging in the hall and state his case. It was also possible for a plaintiff to make a direct appeal verbally, choosing a moment when the magistrate came out of the yamen. These actions, however, were limited only to very special cases. Under normal circumstances everybody had to lodge their petitions in writing. Even in the case of a private dispute, it seems, once the dispute was brought to official notice, habitual reverence for the written word prevailed.

Like any administrative writing, litigation documents were subject to an intricate set of rules and regulations, even though the litigants were private individuals. An accusation submitted by a plaintiff was called *gaoci* 告詞 or *gaozhuang* 告状, and the rebuttal to the accusation handed in by the defendant was called *suci* 訴詞 or *suzhuang* 訴状. Supplementary documents explaining the case after the accusation was accepted, and litigation documents in general were called *touzhuang* 投状 or *touci* 投詞. As a rule, the plaintiff was allowed to submit an accusation, and the defendant a rebuttal, only one time,[14] and if the accusation was turned down, the litigant would lose the chance to have his case heard. Therefore, it was imperative to write out the accusation, carefully observing all the rules.

The style that plaintiffs had to follow in writing accusations for submission was called *zhuangshi* 状式, or "litigation formula". The *Zhipu* 治譜 by She Ziqiang 佘自強 published in 1639 (Chongzhen 12), lists the following six conditions as local litigation guidelines.

13 *Xuezhi yishuo* and *Xuezhi Shuozhui*. See *Wang Longzhuang yishu*, pp. 48, 49, 50, 162.

14 *Fuwengji* 1-3a; *Shouhe riji* 2-3a (Qianlong 4 [1739]).

1. Involving a large number of people in the plaint – not accepted
2. Involving women in the plaint – not accepted
3. Involving gentry in the plaint – not accepted
4. If the plaint is old – not accepted
5. If the *lijia* village, name and household registration of the plaintiff do not match with those in the taxation register held by the local government – not accepted
6. If there is not the name of the person who wrote the plaint, or the name of the inn is not inserted – not accepted. False plaints fabricated by the inn or litigation master – torture[15]

Qing authorities added more conditions to the litigation formula, in number between ten and sixteen.[16] During the Qing period, the litigation form was printed with these conditions, together with blank columns left for the plaintiff, defendant or witness to fill in his name and address and the date of submission, as well as a section with grid lines to accommodate about three hundred characters, where the petition had to be written out. The form was widely available throughout the country; the litigant had to fill in the blanks and submit it.

The plaintiff had a choice of writing the plaint himself, or having somebody else do it, as long as the facts were stated correctly (and not falsified). Both the Ming and Qing governments forbade proxy litigation, which meant the plaintiff himself had to bring the plaint to the *yamen* court. Exempted from this rule were government students (*shengyuan* 生員), national university students (*jiansheng* 監生), women, old men, children and the physically handicapped. They were all required to have somebody else hand in their plaints. Ming authorities however allowed government and national university students to submit the plaints themselves if the matter was of critical importance to them. Under the Qing, such students, as well as the gentry, were prohibited from submitting their own plaints. This was partly out of consideration for their social status, but also because they often took advantage of their privileges and abused the law, so threatening the independence and authority of the local magistrate.

If plaintiffs lived in remote villages, they had to make overnight trips to the *yamen* courts in designated cities. According to Wang Huizu, people in his native Daiyi village in Xiaoshan county had to spend two days travelling there and back to the county city to submit their plaints, a round trip of around thirty kilometres.[17] Generally they stayed at inns called *xiejia* 歇家.[18] The litigation guidelines outlined above stipulated that innkeepers who acted as scriveners were, along with litigation masters, to be regarded as authors of false legal documents. However, since the innkeeper-scrivener had insider knowledge of the *yamen*, court, and made himself indispensable for litigants by providing various types of information necessary for lawsuits, litigants found it advantageous to stay at *xiejia* rather than regular inns.

15 *Zhipu*. See *Guanzhenshu jicheng*, vol. 2, p. 109, bottom.

16 See Na 1982, pp. 80–83; Zhang 1983, Vol. 2, p. 14. The *Taihu liminfu wenjian* lists 15 conditions.

17 *Xuezhi shuozhui*. See *Wang Longzhuang yishu*, p. 173.

18 These were similar to the *kujiyado* 公事宿 of Edo-period Japan, where lawyers/scriveners provided services at specialized inns for ordinary people. See Takigawa 1984.

One of the differences between the Ming and Qing submission procedures is that the latter made it obligatory for the plaintiff to have had his plaint reviewed by an officially licensed scrivener (*guandaishu* 官代書). To register with the local magistrate as a scrivener, candidates had first to pass a local examination. Scriveners were commissioned by the authorities to examine legal documents, and were licensed to write legal documents such as plaints and rebuttals. They held an official chop, and stamped it on legal documents as proof that they had reviewed them and made fair copies of them. Among archival litigation documents from the National Diet Library in Tokyo are copies of a litigation form printed with seven characters stating that the document would not be read without the official stamp, and bearing the red scrivener's seal affixed underneath.[19] The stamp fee was fixed at ten *wen* per document, which was not very high, but in actuality scriveners charged, on various pretexts, more than the amount prescribed by the state.[20]

Once the official seal had been stamped by a scrivener, plaintiffs would go and submit their plaints to the local magistrate. The *sanba fanggao* system was not practised nationwide, and in fact submission dates differed from department to department and from county to county. They could be everyday, or nine times a month (as in the case of the *sanliujiu fanggao* 三六九放告 system), and in areas with fewer lawsuits, submissions might be twice a month, on the second and the sixteenth.[21] In all cases litigants had to check the submission dates of their local magistrate' office before arrival. Sometimes the magistrate made exceptions, and accepted petitions on days other than the *fanggao* days, but special fees were exacted.

In the case of *yamen* courts which received between one and several hundred petitions per submission day, litigants with petitions in hand queued up, and when their turn came, they walked up to a table placed in the big hall, at which sat the department or county magistrate, and left their petitions there one by one. If stopped for behaving suspiciously, or for being suspected of lodging a false accusation or being manipulated by a litigation master, the litigant would be questioned on the spot and tried summarily. Most official handbooks instructed that trials should be swift and simple, that as soon as a petition was received, questioning should take place and a verdict delivered without delay. On the other hand, it was stipulated that the department and county magistrates had to accept the plaints if they were satisfied the criteria mentioned earlier had been met, and if those submitting them appeared to be above suspicion. The *Da Minglü* 大明律 (Great Ming code) and *Da Qing lüli* 大清律例 (Great Qing code with sub-statutes) stated that local magistrates would be subject to punishment if they turned petitions away, even if they concerned minor disputes to be processed at local (department or county) courts, such as those arising over brawling, marriage, or land.[22] If the magistrate of a designated department or county *yamen* would not accept a petition, and if the litigant was prepared to travel, he could go to a higher *yamen*, such as that of the prefecture or circuit, explaining that the department or county court would not accept his petition.

19 *Taihu liminfu wenjian* [1870]. For more on this document, see Fuma 1993.

20 *Hunanshengli cheng'an* 8-13a [1741]. See also *Shenbao* Guangxu 4.2.11 [1878.3.14].

21 *Zhipu* 4-1a (1997 ed. 2-108 top).

22 *Da Minglü*, p. 174; *Da Qing lüli*, p. 513.

The next step in the process of lodging a petition (*fanggao* 放告) was for the *yamen* to decide whether or not to accept a petition, and to inform the plaintiff of the outcome, a procedure called *pishi* 批示 or *pifachengci* 批發呈詞. Having received the petition, the department or county magistrate would review the documents and decide whether to accept them officially and bring the case to court, and then notify the plaintiff of his decision. An archival litigation document found at the National Diet Library in Tokyo shows an example of such a notification expressed in just five characters, clearly stating acceptance and ordering the petitioner to wait for the yamen to send a runner to summon the plaintiff and defendant to the court on a later date for questioning.[23] If the magistrate deemed the petition as unfit for review, he had to specify his reasons, an act called *pibo* 批駁. Then the plaintiff would either give up, or appeal to a higher court such as that of the prefecture or circuit, claiming that the rejection at the lower court was unjust. Otherwise he would have to try a completely different course of action.[24]

The Trial Process

Having accepted a petition, the magistrate had to process it swiftly. Qing law said that ordinary, local-court level cases must be tried and resolved within twenty days.[25] The magistrate first had to decide which clerk (*xuli* 胥吏) to assign the case to. The clerk assigned to the case was called *chengxing xuli* 承行胥吏 or *chengxing lishu* 承行吏書, and the act of a clerk being assigned to handle a case was called *xuli chengxing* 胥吏承行 or *lishu chengxing* 吏書承行. The magistrate himself appointed clerks, but during the Qing period he often delegated this task to his private secretaries (*muyou* 幕友). According to Wang Huizu, it was the private secretaries who set the dates for hearings and who supervised the clerks.[26] What case should be assigned to which clerk required special attention, for handling a case was more a profitable undertaking than a duty.

Once a clerk was appointed to the case, the plaintiff and defendant had to decide certain things with him; this illustrates the nature of the appointment as a profitable undertaking rather than a duty. The plaintiff had to negotiate with the clerk assigned to his case concerning service fees (*fangfei* 房費) to cover the clerk's "office expenses."[27] Only when this was done would the clerk start handling the legal documents, and sending out a runner (*chaiyi* 差役). The runner would not go and summon the defendant without payment. Even when the local magistrate pressed the runner to bring the defendant to court, the runner might send a false report, saying that he had failed to see the defendant because the latter had bodily resisted or hid himself.

The defendant also had to prepare himself. To plan moves to counter the plaintiff's, the defendant had to learn the content of the accusation; to obtain this document, he had

23 Note 19, *Taihu liminfu wenjian.*

24 *Mulingshu*, vols. 17–19; *Guangzhenshu jicheng* 7, pp. 420–54.

25 *Guangxu qinding Da Qing huidian shili* 836–9 (reprint p. 15523). *Xijiang zhengyao* 116-7a [1869].

26 Wang Huizu, *Zuozhi yaoyan* [Handbook for Subordinate Officials] [1785]. See *Wang Longzhuang yishu*, pp. 195, 198. Ed. note: Private secretaries were "non-official specialists" hired to serve officials and magistrates at all levels from provincial down to county. See Hucker 1985, item 4075.

27 *Mianyizhai xucungao* 6-18a (Daoguang 14 [1834], tenth month).

to bribe the clerk or runner.[28] After studying the accusation, the defendant would have to submit a rebuttal, which would be possible only after he had greased the palms of the clerk and runner; the scrivener would not stamp the official seal on it otherwise. In Jiangsu province during the Daoguang era (1821–1850), these "legal service" fees were set according to the size of the cases in question and to the family backgrounds and financial state of the litigants; they ranged from a few *yuan* to 100 *yuan* or 200 *yuan*. The defendant also had to give the runner "travel expenses" (*panfei* 盤費) as a tip when the runner came to summon him to court; this averaged between three and six *yuan*.

Litigation was indeed very costly for both plaintiffs and defendants, and the above expenses were only the tip of the iceberg. No wonder successive magistrates advised ordinary people to avoid lawsuits at all costs. Litigants had to travel to the county or department city, and stay there until judgement had been given. In Chengdu prefecture in Sichuan province during the Ming period, huts were erected by the gate of the prefectural government building. They were equipped with cooking stoves and cauldrons, and the litigants had to camp there till their cases were resolved.[29] Runners more or less compelled litigants to take rooms at an inn (*xiejia*), an arrangement which also suited the litigant. As we have seen, the litigation formula in the *Zhipu* stipulated that the litigant must state the name of his lodging so that the magistrate's officials could call on the innkeeper to summon the litigant when the need arose. The innkeeper also detained defendants at the request of the magistrate, or acted as a bailsman for defendants found guilty. By providing these services, the innkeeper was able to make connections with the *yamen*, establishing ties with the clerks and runners there. The innkeeper would also give advice and information to those of his lodgers who were not familiar with the litigation procedure or the workings of the *yamen* court. According to the *Hunanshengli cheng'an* 湖南省例成案, local people, when bringing cases to court, stayed at *xiejia* in a department or county city, or took up lodgings in the provincial capital when their native villages were far away.[30] The *Xijiang zhengyao* 西江政要 says that litigants from rural areas always took up lodgings at *xiejia*, where they discussed fees for proxy petition-writing and services rendered by clerks and runners. Only after that could the litigants submit petitions.[31] The clerks and runners followed the innkeepers' instructions, and took 60 percent of the fees that the litigants agreed to pay, while the innkeepers pocketed the other 40 percent. Huang Liuhong, who lived in the early Qing period, observed that there were a great number of lodgings and inns, many of which were run by local gentry or government students. These inns charged exorbitant amounts for lodging, which sometimes amounted to tens of *taels* by the time the trial ended.[32]

How was the trial conducted? Cross-examination in court was called *tingsong* 聽訟. The word trial first brings to our minds questioning at court. It is true that many official handbooks (*guanzhenshu* 官箴書) emphasized the importance of cross-examination, but some

28 *Fuhui quanshu* 11-2b; *Guanzhenshu jicheng* (1997 edn) 3-327 top.

29 *Renyu leibian* 17-11b.

30 *Hunanshengli cheng'an* 10-19b.

31 *Xijiang zhengyao* 36-2a (Jiaqing 2 [1797]).

32 *Fuhui quanshu* 11-18b; *Guanzhenshu jicheng* 3-335 top.

observed that in general 70 percent of effort was spent on reviewing the litigation documents and 30 percent on cross-examination,[33] indicating that reviewing the documents was central to the trial in ordinary cases at local courts. Enormous importance was attached to the accusations submitted by plaintiffs, the rebuttals to the accusations by defendants, and the written evidence that supported the arguments. Indeed, the power of the assigned clerk could sway the outcome of the trial.

The verdict was called *tangyu* 堂諭, *mianyu* 面諭 or *mianduan* 面斷. The magistrate's admonition given in court (*xunyu* 訓諭) was itself considered the verdict. Upon receiving the verdict the plaintiff and defendant signed their names as proof that they both accepted the verdict, an act called *zunjie* 遵結. The written verdict was not necessarily handed to the litigants, and the plaintiff and defendant again had to pay the clerk in charge to copy the verdict so that they could keep it as evidence in case the dispute flared up again.[34]

The lawsuit and trial would come to a conclusion at this point. Local magistrates did not have to send the cases meant for lower courts to the prefectural or circuit courts. All they had to do was to send a summary report of the cases tried once every few months to the prefectural or circuit office. However, if they were dissatisfied with the verdict, both plaintiffs and defendants were allowed to appeal to higher courts, a step called *fankong* 翻控. Litigants who thought that "the local officials had not tried the case fairly and had delivered an unjust verdict" or that "officials had abused the law by accepting bribes and putting their own interest before their duty" were permitted to appeal to the prefectural court if they had no other arena where they could plead their innocence.[35] If they found the prefectural verdict unfair, litigants could appeal to even higher levels – to the circuit magistrate, to the provincial-level judicial commissioner's office or the financial commissioner's office, or to the provincial governor. The route of higher appeals led all the way to Beijing; the act of going to the capital for appeal was called *jingkong* 京控. I refrain from going into the issue of appeal any deeper here as the system was very complex. I should however like to point out that there were a great number of appeal cases. During the Xuande era of the Ming dynasty (1426–1436), Kuang Zhong 況鐘, magistrate of Suzhou prefecture, stated: "no less than one hundred people lined the street, following close on the heels of one another, on their way to the prefectural magistrate to submit accusations," and that "more than one thousand people filed suits daily."[36] In the course of the Daoguang era (1821–1850), the magistrate Yu Quian 裕謙 of Jingzhou prefecture in Hubei province adopted the *sanba fanggao* system and received between fifty and sixty petitions per *fanggao* day at the beginning; this he later reduced to about twenty.[37] Zhao Shenqiao 趙申喬, governor of Hunan province in the Kangxi era (1661–1722), was said to have accepted only a few out of the one hundred submissions per *fanggao* day, which meant that he too received as many as one hundred petitions per *fanggao* day.[38] These figures suggest that the system of appeal was not one of name only, but was an integral part of the litigation machinery.

33 *Mulingshu* 18-14b; *Guanzhenshu jicheng* 7-403 top.

34 *Pingpingyan* 4-26a; *Guanzhenshu jicheng* 7-698 top.

35 *Hunanshengli cheng'an* 8-39a.

36 *Kuangtaishouji* pp. 90, 140.

37 *Mianyizhai xucungao* 1-41a (Daoguang 7 [1827], first month).

38 *Zhao Gongyi gongsheng gao* 3-8b.

The following points will help clarify the Ming and Qing litigation system. First, not only was litigation accessible to everybody, but many people also participated in it. If one department or county received between ten and twenty thousand petitions a year, it was proof that the right to litigation was guaranteed. Not only was the litigation system open to all, but it was also equipped with a well-functioning structure of appeal leading to prefecture, circuit, province and ultimately to Beijing. Second, the Chinese reverence for the written word manifested itself abundantly in the litigation system. This tendency actually provided an opening to litigation for all people. If a plaint was written correctly according to the format, it was to be accepted. Indeed, the magistrate was obliged to take it. And at trial, more effort was spent on reviewing the litigation documents than on cross-examination. Third, litigation was extremely costly, as it required bribes every step of the way. One official handbook listed as litigation expenses the following: stamp fee, registration fee, courier fee, stationery fee, porter's travel expenses, fee to prepare the court, porter and horse fee, fee paid to clerks, fee paid on the conclusion of the case, and the settlement fee.[39] On top of these, there were accommodation fees to be paid to the innkeeper, and, above all, bribes to be given to the *yamen* clerks and runners. Employing a litigation master as well to handle one's case incurred yet more costs.

Those three points are important both for an understanding of the Ming and Qing litigation system, and as a starting point for reviewing the various functions the litigation master played, which will be examined in the next section.

SERVICES RENDERED BY THE LITIGATION MASTER

Proxy Litigation and Inciting to Litigation

What exactly did litigation masters do in the litigation and trial process? To begin with, I would like to examine two epithets often applied to litigation masters when criticizing their activities: "proxy litigation" (*baolan cisong* 包攬詞訟) and "inciting to litigation" (*jiaosuo cisong* 教唆詞訟).

The word *baolan* 包攬 in the phrase *baolan cisong* means "to act as proxy" or "to represent." Representing a litigant meant something very different for the litigation masters of imperial China than it does for modern lawyers. A lawyer representing a plaintiff at a trial or defending the accused in a criminal case in court is a familiar image for us today; and this activity is indeed deemed an integral part of the lawyer's job. For litigation masters of imperial China, though, openly representing their clients in court would have been beyond their wildest dreams.

Proxy litigation meant in a broader sense handling the whole process of litigation for litigants, and in a narrower sense bringing a lawsuit to court. There were a few terms concerning proxy litigation in the broader sense of the term, such as *baogao* 包告, submitting a plaint by proxy; *baozhun* 包准, seeing it accepted by proxy; and *baoshen* 包審, attending a trial by proxy. Some litigation masters took on the whole process of the trial, from writing the plaint through to receiving the verdict, selling their services as a sort of package deal with the promise to win an advantageous verdict. Some among them however were rogues,

39 *Pingpingyan* 2-33b, *Guanzhenshu jicheng* 7-638 top.

who cooked up cases themselves in order to sell their services, and then either pressed for a suit or opted for a settlement out of court, depending on how the cases evolved. Examples of such rackets are often cited in case books, such as *Luzhou gong'an* 鹿州公案 (The Cases of Mr Luzhou) by Lan Dingyuan 藍鼎元. In the eighteenth-century *Hongloumeng* 紅楼夢 (Dream of the Red Chamber), Xue Pan commits a murder and his family hires Daobi xiansheng (Mr Knife Brush) to get the verdict reduced. "Knife Brush," was an epithet of a litigation master. When people got into trouble, they often consulted litigation masters for advice on how to get reduced sentences for their crimes, or how to get off scot-free. From the modern perspective, providing such advice is the province of men of dubious trades such as trouble fixers, rather than of legitimate lawyers. However, this side of their business cannot be ignored when we examine the role of litigation masters.[40] Such are examples of the many aspects of proxy litigation in the broader sense.

Proxy litigation in the narrower sense, on the other hand, seems to indicate negotiating with clerks and runners, only one step in the long process of litigation. The *Hunanshengli cheng'an* puts litigation masters into two categories according to the services rendered: coercing people into litigation and writing petitions for them (*suosong guntu* 唆訟棍徒) and frequenting the *yamen* to negotiate with *yamen* clerks and runners (*baosong guntu* 包訟棍徒).[41] *Suosong* evidently indicates incitation to litigation, and *baosong* signifies litigating for other people. Apparently, dealing with clerks and runners was thought to be the major part of the litigation master's work. As this involved bribes, naturally the state banned it as illegal.

Incitation to legislation, was, as we have seen, discussed in the *Hunanshengli cheng'an* in conjunction with writing plaints for other people. Many documents employ the term *jiaosuo cisong* 教唆詞訟 in relation to drafting litigation documents for others, and it appears as the heading of the sub-statute proscribing incitement in the Ming and Qing codes: "Those who incite people to litigation and write plaints for them, falsifying evidence or incriminating innocent victims in the hope of obtaining lighter punishment, must be punished as strictly as the accused themselves. . . . Those who assist helpless and ignorant victims who are incapable of vindicating themselves in litigation, by writing legal documents without falsification, will be not be punished." In actuality, however, it was extremely difficult to ascertain exactly what conversations took place, and what words were exchanged between litigation masters and their clients. What was relatively easy to prove, however, was whether or not the plaint was written by the litigant. This is probably why the term *jiaosuo cisong* 教唆詞訟 often appears in conjunction with the proxy drafting of plaints. The Qing government punished inciting to litigation very severely. A case cited in the *Xing'an huilan* 刑案匯攬 (Conspectus of penal cases) tells of an old litigation master in his seventies. "He drafted five legal documents for another person. All of these were of an ordinary nature, with no evidence of his having colluded with government clerks, cheated country bumpkins or extorted money from them." Nevertheless he was deemed guilty of the crime of "habitual litigation hooliganism" (*jiguan songgun* 積慣訟棍) and received a

40 This type of image is very strong, and it is one which prevails in popular literature, from *Qingbai leichao* to Jin Xiage zhuren's *Esongshi daobi gushi.*

41 *Hunan shenli cheng'an* 10-26a.

penalty one degree lighter than the maximum: temporary exile.[42] He was not guilty of proxy litigation in the strict sense of the term, and did not swindle his client out of his money. His crime was nothing more than having written five legal plaints for another person.

The major activities of the litigation master were to write petitions for his clients and to represent them in negotiations with clerks and runners. In the next section we will see how the litigation master conducted these.

Writing Legal Plaints for Clients

Litigation masters were often called "plaint masters" (*zhuangshi* 状師), which demonstrates that the most important and distinct part of their business was to draft accusations and rebuttals and prompt plaints.

Writing accusations were of the utmost importance; if they were rejected, the process of litigation would end before it had the chance to begin. Zhang Woguan, magistrate of Huiji county, when issuing litigation forms, defined unsatisfactory plaints as follows: "Plaints which are incoherent in stating the cases or which present no evidence for land (ownership) or marriage.[43] Citing one case, he said: "Reading the plaint, I noticed an inconsistency in the choice of words. In one place it said one thing, in another place, something different. I suspected the hand of a litigation master in this document. Therefore I dismissed the petition."[44] The magistrates would thus accept accusations only when they considered them logical and persuasive. Otherwise, plaints would be dismissed, sometimes stamped simply with the words "talking nonsense" (*hushuo buzhun* 胡説不准).[45]

The magistrate of Xiushan county in Sichuan, Wu Guangyao 吳光燿, the author of the casebook *Xiushan gongdu* 秀山公牘, criticized an accusation that a woman had submitted: "It was the mother's fault that her child became a juvenile delinquent. She had spoiled him rotten, and did not intervene in time. Yet she goes on and on (in her plaint). How can you not see that the authorities see through you? Or do you think that the authorities are so blind as to be cheated by you? How dare you work as a litigation master. All you do is to swindle money out of ignorant men and women for a paper fee and a brush fee. It is really a loathsome act."[46]

This reprimand was meant for the litigant. True, Magistrate Wu was addressing the litigant, at least in the beginning, but halfway through he starts attacking the litigation master. Naturally, litigation masters were proscribed from drafting accusations for other people, but the magistrate was in fact reading the plaint under the assumption that it had actually been written by a litigation master.

Magistrate Wu criticized the petition and rebuked the litigation master:

42 *Xing'an huilan* 49-25b.

43 *Fuwengji, xingming* 1-3a (Kangxi 59 [1719], third month).

44 *Fuwengji* 5-1a.

45 *Fanshan zhengshu* 1-3b.

46 *Xiushan gongdu* 3-35a.

> "(The author of this document) is plotting to deceive the *yamen* by stringing together words that make no sense whatsoever. It must be an inexperienced plaint writer who has written these pretentious passages. He takes stationery fees from people who can ill afford them, and he utterly wastes their money. Tell the litigant Tian Zongwan to drag the litigation master to the *yamen*. He should be slapped on the cheeks, to stop him harming other people."[47]

Although litigation mastery was banned, local magistrates and their private secretaries read the plaints assuming that they had been written by litigation masters. As we have seen, it was imperative for the plaint to be written in a logical and persuasive fashion. If embellished excessively, however, it would arouse the suspicion it had been written by a litigation master. The Qing litigation form was marked off in squares to write the characters in, and so the number was automatically restricted. According to the *Weixinbian* 未信編, this restriction was a deliberate attempt to stem the onslaught of redundant words, but a good "knife-brush" writer was able to express himself concisely and articulately in the limited space so as to persuade the magistrate that what is stated is nothing but the truth.[48] It was a great feat to write a plaint that would stand out of the countless others, deceive a magistrate who warily watched for signs of proxy writing, and pass as genuine. Litigation masters judged the competence of local magistrates based on what documents they accepted or turned down and boasted when they managed to have their plaints accepted.[49] Apparently the plaintiff also took enormous pride in getting his submission accepted: "If he had his petition accepted by the *yamen*, he announced that he was the plaintiff at such and such a *yamen*. He not only carried the successful passage of his plaint around proudly, but boasted before the good and innocent. The onlookers were in awe of him and would avoid eye-contact."[50]

For ordinary people who were only able to put a few sentences together at best, could it have been possible to draft accusations that would not only stand out among many others and catch the magistrate's eye, but also be accepted without fail? If the litigant had followed the government's decree, and drafted accusations or rebuttals themselves, or had scriveners take down dictation from them word for word, would they have stood a chance of having their submissions pass successfully? People in imperial China themselves thought it very unlikely. The *Chongzhen waigangzhi* 崇禎外岡志 states:

> "The plaint is there to convey the truth. Ordinary people who cannot clear themselves of false charges try to have their plights known through their plaints. (As they are telling the truth), they will not have to falsify or embellish their writings. That is why the government has repeatedly prohibited false plaints and officially licensed scriveners from writing claims on behalf of litigants. But plaints written by scriveners tend to be plain and artless, thus fail to 'prick the

47 *Xiushan gongdu* 3-37a.

48 *Weixinbian*, Xingming 1-6a.

49 *Qianjiang changzhouxian zhi* 10-12a; Fan Zengxiang, *Fanshan pipan*, author's preface, 1a.

50 *Zhengxing daguan*, Gaoshi, 306a.

> ears of the readers or make their eyes widen,' and often end up lying untouched with no chance of trial. The litigants had no choice but consult litigation masters, and exaggerate a simple land dispute into murder or a fistfight into robbery."[51]

If written in a plain scrivener's style, most plaints "ended up untouched with no chance of trial," even if they stated the truth. Wang Youfu 王有孚, a long-time private secretary, wrote:

> "When good people who know their place in society are cheated or taken advantage of by the more powerful, or framed as culprits by thieves or those plotting to get their own back, the victims and their families are ruined at the worst, or have their honour stained. They would beat their chests in chagrin and swallow their bitter anger, as they could not clear themselves of crimes that they did not commit. If they simply asked mediocre scriveners to draft a plaint, the scriveners would either write so clumsily as to fail to get the truth across, or present such lackadaisical accounts as to put off the reader altogether."[52]

The magistrate's private secretaries also thought that plaints written by mediocre scriveners were likely to "put off the readers and fail to get the truth across (to the authorities)," and so stood little chance of acceptance. The government was really asking the impossible; while demanding that the plaint should be stated truthfully, it would not accept it if the plaintiff or scrivener wrote it plainly as instructed. The plaint that we have seen earlier, which was dismissed as gibberish, might have been too honest and artless to appear logical and persuasive. Would the magistrate who rejected the plaint with the words "such a pretentious style of writing could only have been that of a novice litigation master" have accepted it if it had been written plainly? It is, I think, open to question.

Both plaintiffs and defendants, if they wished to win, had little choice but to turn to litigation masters to draft their plaints, though they knew full well it was illegal. According to *Chongzhen waigangzhi*, plaint-writing experts were called *zhuangyuan* 状元 or *huiyuan* 會元, and they took great pride in the persuasiveness of their compositions in court.[53] As Xu Fuzuo 徐復祚 says in his *Huadangge congtan* 花當閣叢談, there was a hierarchy in this profession, with the highest rank called *zhuangyuan* 状元 and the lowest *damai* 大麥. The *zhuangyuan* class commanded large fees and built big houses, but even those of the *damai* class were able to rely on their pens to earn enough to live on. According to Xu Fuzuo 徐復祚 most of those litigation masters were sons of literati, and a litigation master named Zhang Zhuangyuan 張状元, whom Xu Fuzuo encountered, also used to be a government student (*shengyuan* 生員).[54]

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51 *Chongzhen waigangzhi*, p. 17.

52 Wang Youfu, *Yide outan*, Chuji, 39b.

53 *Chongzhen waigangzhi*, p. 17.

54 *Huadangge congtan* 3-18b. Ed note: The term "government student" refers to subsidized students in Confucian schools at prefectural and lower levels of territorial administration, who were eligible to take part in provincial examinations, the first stage in the civil service examination system. See Hucker 1985, Item 5193.

Drafting litigation documents was by far the most important part of a litigation master's business, and the Qing government's issuance of a decree ordering the scrivener's seal on petitions added a new dimension to this part of the litigation master's job. As a result, he had to negotiate, on behalf of the litigant, with a scrivener to have him copy out the petition based on the litigation master's draft and then affix the scrivener's seal on the petition.

Gui Chaowan 桂超萬 mentions the following incident in his *Huanyou jilue* 宦遊紀略. A certain woman, probably a widow, entered a lawsuit against her male cousins, and adopted son (heir) and his wife. As it turned out, the litigant was having an affair with a litigation master, who was freeloading in her house. The magistrate summoned the scrivener and asked him who the woman had been with when she had asked him to write a plaint. The scrivener said that the litigation master had come into the room, dictated the plaint and edited it when it was done.[55]

The following is another example from *Huanyoujilue* that Gui Chaowan witnessed when he was the county magistrate of Luancheng in Zhengding prefecture, Hebei. A widow took her plaint to the prefectural *yamen*, bypassing the county court. In a case like that, the plaint would customarily be sent back from the prefectural court to the county court. Gui Chaowan summoned the woman's son and questioned him about who had incited her to press the suit. The son replied that it was a man called Liu Dian. When Magistrate Gui asked him if it was Liu Dian who had written the plaint, the son replied that Liu Dian had recommended a government student, Yin Mutang, for the task. Further investigation revealed that Yin Mutang was an infamous litigation master. Having interrogated Yin and a carriage driver, the magistrate learned that Liu Dian and the widow had taken the carriage to a market town called Yehepu in Luancheng county, where they picked up Yin, and together headed for the capital of Zhengding prefecture. Yin collaborated with a prefectural scrivener in writing the plaint for submission. The widow and Liu Dian had gone to the prefectural capital on the previous *fanggao* day to look for Yin, but they were unable to meet him that day.[56] This is proof that Yin Mutang lived in Yehepu, but made frequent trips to the prefectural capital, and knew the prefectural scriveners quite well.

These two examples indicate that the scriveners wrote out the plaints that the litigation masters dictated, and affixed the official seal. The government ordered the use of the scrivener's seal chiefly in an attempt to stamp out litigation masters, but already in the early Qing period it was pointed out in Zhejiang province that "many plaints submitted lately have actually been drafted by litigation masters, who then had scriveners copy them out and affix the official seal to them."[57] A similar observation was also made in Hunan province: "Litigation masters drafted plaints and had scriveners make a fine copy of them, calling them official documents awaiting the scrivener's seal."[58] The central government had to admit in 1747 (Qianlong 12) that "the efforts of instituting the licensed scrivener system did not serve its purpose. Instead, scriveners and litigation masters colluded and

55 *Huanyou jilue* 3-29b; *Guanzhenshu jicheng* 8-368 bottom.

56 *Huanyou jilue* 3-17b (fasc. 8, p. 362 *xia*); *Guanzhenshu jicheng* 8-362 bottom.

57 *Fuwengji, xingming* 1-2a.

58 *Hunan shengli cheng'an* 10-5a.

committed frauds together. Although all plaints carry the names of the scriveners, they have actually been drafted by the litigation masters."[59] The scrivener's seal system did not fully serve its intended purpose. Worse, it spawned a new type of business for litigation masters.

We have so far reviewed the proxy writing of plaints, but the same applied to defendants. It was customary that "the defendant obtained a copy of the accusation, and asked the Mr Knife-Brush, the litigation master, to review the content carefully to identify any weaker points, so that the defendant could mount a pre-emptive attack on them."[60] If the plaintiff's accusation had been drafted by a litigation master, the defendant had to make sure that his rebuttal was written by an able litigation master as well. Otherwise, the defendant would expect near certain defeat in court.

Negotiations with Yamen Clerks and Runners

Another major service the litigation master rendered was to represent the litigant in negotiations about the handling of his case with the clerk in charge (*chengxing xuli* 承行胥吏) or a runner. The epithets, *dadian yamen* 打點衙門 and *chuantong yadu* 串通衙蠹, meaning collusion with corrupt officials, derived from this aspect of the litigation master's work. Not only litigation masters but also anybody with access to the local *yamen* would have been able to do it, however. As we have seen, innkeepers also performed this service.

Once his accusation was accepted by the *yamen*, the plaintiff had to negotiate with the clerk in charge about the fees, while the defendant had to copy down the plaintiff's petition. The plaintiff and defendant could not have avoided these steps. A case record says: "When the plaintiff's accusation is accepted and sent to a clerk, the defendant, without fail, asks to copy it. The clerk considered this a great chance to make some extra income, and nitpicked endlessly, before determining the amount of bribe to be paid to him according to the size of the lawsuit."[61] For ordinary people unfamiliar with the workings of the *yamen*, it could not have been easy to handle negotiations of this sort. Litigation masters were often criticized for extorting money from litigants, by saying that "I used to frequent the *yamen*, and I have close ties with the clerks and runners, so I can represent you in the handling all *yamen* affairs." Yet it was highly questionable if the litigant could have sailed through the litigation process without help from the litigation master.

The money that clerks and runners took from litigants under these circumstances, however, was difficult to define either as legitimate fees for services rendered or as outright bribes. So far I have called a bribe the money given by the litigant to a lower-ranking official, but both the litigants (plaintiffs and defendants) who paid money and the clerks and runners who took it must have found it difficult to distinguish business expenses from bribes. They spoke of "deciding on a fee," but had it been a fixed fee, there would have been no need for negotiation. Neither clerks nor runners were paid enough to live on, and in fact they relied on the handling fees that they collected from litigants for survival. In this sense we can safely say that the government applied the benefit principle to the litigation

59 *Guangxu qinding daQing huidian shili*, Vol. 819 (Xinwenfeng chuban gongsi, ed., p. 15365).

60 *Fuhui quanshu* 11-2b; *Guanzhenshu jicheng* 3-327 top.

61 *Fuhui quanshu* 11-2b; *Guanzhenshu jicheng* 3-327 top.

system to the hilt, while at the same time telling people to avoid lawsuits at all costs. The government discouraged the practice of fee-charging by low-ranking *yamen* functionaries. Tian Wenjing 田文鏡 argued that one must watch runners closely to prevent them from taking bribes. Yuqian 裕謙 countered, saying:

> "Tian Wenjing is right about the need for supervision, but I dare say he does not understand how these people have to live. In the old days, ordinary people engaged in government service were paid as much as lower-ranking military officers, receiving sufficient salaries to support their parents and wife and children. Today, runners are paid a pittance by comparison, not even enough to support themselves. One can't ask them to dedicate themselves to work with an empty stomach. It will solve nothing if the state forbids them to extort money from litigants without giving them alternative ways to generate income. It is only natural that they should continue to ignore the proscription against bribe taking. If some magistrate forced strict measures on a runner with no consideration for his plight, the runner will comply for a while, but then try to recoup the lost income at some future time. If all magistrates acted as strictly, the runners would either flee, or perish . . . A sense of honour belongs to gentlemen; even when salaries and bonuses they receive from the state are insufficient, they will endure hunger and remain loyal to their principles: indeed it is their duty to do so. Clerks and runners are not gentlemen. How could you expect them to act honourably when they do not have enough to eat? They have parents. They have wives and children. They need food and clothing themselves. Compassionate and honorable gentlemen should consider these points."[62]

Yuqian contended that the state was asking the impossible when it did not pay its clerks and runners enough to support their families, but at the same time expected them to observe the ban on bribe taking. Indirectly, the state was also asking the litigants the impossible: although it enforced a strict prohibition on the giving and taking of bribes between the litigants and the clerks and runners, in actuality it had the litigants pay those sub-functionaries their living expenses in the form of a bribe. Not only that, but the state also deliberately blurred the distinction between the payment's being a fee or a bribe. It was the litigation master who acted as an intermediary between the two parties. We have come to the point where we must think carefully about what really *dadian yamen* and "colluding with corrupt officials" (*chuantong yadu*), which were summarily criticized in contemporary documents, really entailed. In particular, we must re-examine what they signified to the litigants.

There is no doubt that this fee-cum-bribe ambiguity regarding the nature of payment and the way litigation masters contracted to "win" cases made them resort to all measures available to them, with no holds barred. They paid the clerks in charge of their cases to speed up or slow down the process of the lawsuits. The government required that a case

62 *Mianyizhai xucungao* 5-18b. Also *Xiushan gongdu*, Preface 1b where it is suggested that there were thousands of clerks and runners in the departments and counties.

must be tried and resolved within twenty days from the submission of the plaint, but this stricture frequently went unobserved. The local magistrate often left plaints lying around for quite a while after receiving them, so in a way it was necessary for the litigation master,on behalf of his client the litigant, to bribe the clerks and runners to speed up their passage. But the litigation master also used it as a tactic to inconvenience the defendant and thus increase his chance of winning the case for his client.

Some unscrupulous litigation masters bribed the clerks in charge to tamper with submitted accusations, rebuttals and evidence, or worse still, to rewrite case records. Wang Huizu cited an egregious case of abuse that a clerk committed in a lawsuit over a case of land purchase; the clerk first shaved off the character "final" from the two-character phrase "final sale – never to be repurchased," then later put the character back in again, to make it look as if one of the litigation parties had defaced the evidence.[63] A Ming document shows an instance of the clerical abuse of a cross-examination record; it transpired that the record did not correspond to the verdict the magistrate had delivered. He knew nothing about the falsification, nor that consequently the case was sent back repeatedly by a higher court that had picked out the inconsistency.[64] The authors of those accounts did not specify that the corrupt clerks had committed these abuses in collusion with litigation masters, but it was quite normal that they might have done so, since litigation masters in general contracted to "win" the case. Deals that fall in the same line of racket as this are those that litigation masters contracted in the guise of trouble fixers, which I mentioned earlier.

Before the case went to trial, the litigation master had one more important job to do. That was to coach his client, either the plaintiff or the defendant in the case, on what to say and how to say it when questioned in court. If the plaintiff hired a famous litigation master, the defendant naturally provided himself with an able master, too; in actuality the trial would be fought between the two litigation masters, while the plaintiff and defendant would be "sitting on the fence, gazing down at the battle" waged on their behalf.[65] Today, also, two lawyers plead a case for their respective clients, but the difference is that the Ming and Qing litigation masters were not able to represent their clients in court. The concerned parties themselves had to attend a trial. This meant that they had to be thoroughly briefed beforehand. Not surprisingly, it sometimes happened that the concerned parties, having failed to memorize their lines sufficiently, could not withstand the cross-examinations adequately, and ended up receiving punishment. That failure incensed the litigation masters enormously; they not only reprimanded their clients, but also castigated them for having spoiled their own reputation. Citing the proverb that "if one speaks too much in pleading one's case, one is bound to lose," an official handbook instructs the magistrate to encourage the plaintiff to speak at length so that he would forget what his litigation master had taught him to memorize, and begin contradicting himself.[66]

What tasks the litigation master had to perform once the trial was over varied, depending on whether he won the case or not. Let us first look at the losing side. As we have seen earlier, those who were dissatisfied with the verdicts were able to appeal to

63 *Xuezhi yishuo. Wang Longzhuang yishu* p. 49.

64 *Renyu leibian* 30-2a.

65 *Hunanshengli cheng'an* 10-26a.

66 *Mulingshu* 17-43a; *Guanzhenshu jicheng* 7-392 top.

higher courts. It was frequently reported that litigation masters incited defendants to take their case higher.[67] As well, litigation masters often acted as stand-ins for the appellants.

Gui Chaowan reports in the *Huanyou jilue* on a lawsuit that had been brought to the provincial financial commissioner's office, and then sent back to the county court. When the local magistrate summoned and questioned the plaintiff and asked him the route to the provincial capital where the office was, the plaintiff said he did not know. He could not explain the process whereby he had appealed to the provincial court. The county magistrate eventually found out that a government student (*shengyuan* 生員) had acted as a stand-in for him. As it transpired, the plaintiff had lost his case at the county court, and was pressed to appeal, but since he recoiled from doing so himself, the *shengyuan* went to the provincial capital in his place.[68]

We must be careful when identifying the reasons for appeal, as many documents attest. In the case-record book *Xingan huilan* 刑案匯覽, the Daoguang emperor commented, citing a case brought to Beijing: "The litigants would appeal to higher courts because the department and county courts did not conduct fair trials."[69] An official handbook called *Tuminlu* 圖民録 says that "when cases are brought to higher courts, it often transpires that the local courts which originally tried the cases are at fault."[70] Another official handbook, *Xingqian zhinan* 刑錢指南, says that "a certain magistrate declares one must not accept plaints lightly, but in fact he is simply shirking his duty. Is he now aware that if ordinary people feel their pleas have not been heard properly at local courts, they end up appealing to higher courts?"[71] Thus it was already acknowledged that appeals were made, not only because the litigants were coerced into action by litigation masters, but also because in many cases the department and county magistrates had not ruled fairly, or worse, given a misruling, or else the local magistrates had been remiss in their duty in some way. Once again we must reassess the conduct that met harsh criticism by the authorities, such as "falsifying a case and making an appeal" (*jiaci yuegao* 架詞越告) and as "ensnaring country bumpkins" (*youxian xiangyu* 誘陷鄉愚), and determine what it really consisted of.

For ordinary people it must have been already onerous to bring their suits to *yamen* courts situated in the capital of a county or department. For litigants dissatisfied with the verdicts delivered at the local courts, it must have been truly formidable a feat to have to travel all the way to the prefectural capital or even farther away to the provincial capital. Some case records assert that local "crooks" banded together with litigation masters in the provincial capital and coerced the litigants into appeal. But when the litigants deemed unfair or wrong the verdicts they had received at the department or county court, or when they regarded the local magistrate's dismissal of their plaints as negligence of duty, what could they have done without these "crooks" and litigation masters? Many of the cases brought to provincial capitals tended to be so complex that the litigants could not get a fair trial by being "artless" and "honest." Both the appellant and the opposing parties needed

67 *Jiaqing changsha xianzhi* 17-28b.

68 *Huanyou jilue* 2-6b.

69 *Xing'an huilan* 45-20b.

70 *Tuminlu* 2-16b.

71 *Xingqian zhina*, Zhong 1b.

help from litigation masters all the more because of the complexity of their cases. The need for litigation masters at the higher courts must have been more urgent than it was for the suits processed at department or county courts.

Now let us look at the winning side. After winning a case for his client, the litigation master had one more task to complete: self-advertisement. The financial commissioner of Jiangxi Province appointed in 1762 (Qianlong 27) said in his report:

> "I entered Jiangxi Province via Jiujiang prefecture, and proceeded to the provincial capital of Nanchang. All along the way I saw posted everywhere printed copies of the decisions of cases already tried and concluded at various department and county courts throughout the province. Some of those rulings had additional passages penned in by litigation masters, boastfully describing how they had won the cases."[72]

The financial commissioner dismissed these acts of self-promotion as the evil custom of "litigation hooligans," but winning cases must have provided great material for self-advertisement. Needless to say, litigation mastery was outlawed, but if litigation masters printed their successful cases and proudly displayed them everywhere, it meant that the prohibition had little effect and that the litigation masters held the local authorities in contempt. It also reflected the saturation of litigation masters, and how that drove them into fierce competition for clients.

We have seen all aspects of the litigation master's involvement in routine civil cases at the department and county courts. This involvement illustrates how difficult it must have been for ordinary people, when compelled to lodge plaints, to do so in the litigation system in imperial China without help from litigation masters. First, the litigant had to write a plaint; it was highly questionable if a litigant with only a rudimentary level of literacy would be able to compose a plaint eloquent enough to be accepted by the local magistrate. Even today most of us doubt if we can write a satisfactory petition ourselves when filing a suit. Late-Ming China was a highly litigious society, and some local magistrates strove to lighten their caseloads by accepting as few petitions as possible; to that end they went to great lengths to find fault with the documents submitted. How could ordinary people, even when they were able to string letters together, write plaints articulately enough to grab the attention of those reluctant magistrates? The petition had not only to be written exactly according to the prescribed formula (see above), but also to be composed to the point, in logical and persuasive language. Furthermore, it had to be moving enough to stand out from many other petitions and catch the magistrate's wary attention. An accusation about an ordinary dispute, even if the plaintiff was in the right, would often be passed up; the litigant would then turn to a litigation master to write the petition in such an exaggerated way as to attract the attention of the magistrate. This act of enlivenment often led to falsification, but a competent litigation master would coach the litigant on how to talk in court in order to avoid a charge of calumny. The local magistrate repeatedly issued decrees cracking down on litigation masters, and ordered that litigants write accusations and rebuttals themselves, or else have licensed scriveners write them, but to no avail, for the

72 *Xijiang zhengyao* 6-32a.

authorities were simply asking the nearly-impossible. It was highly questionable if the litigants could write petitions that were good enough to be accepted, and if they could win the cases even if their petitions were accepted. It was wiser to consult a litigation specialist and to have him write the plaint and follow his advice throughout the litigation process.

The litigant had to retain his litigation master even after his plaint had been accepted. For some local magistrates, and almost all clerks and runners, lawsuits signified a source of extra income. When *yamen* officials accepted a plaint, they routinely expected a bribe as well. It was unclear, however, how the concerned parties, the giver and taker of the money, regarded the act, and how their perception of that act differed from today's notion of a bribe. After all, without greasing the official's hand, the litigant would have risked waiting forever to plead his case, still more winning it. How then would ordinary people go about dealing with the crafty clerks and cunning runners in charge of their cases? The *Qingmingji* 清明集 says: "Most country bumpkins have never set foot in a department or county *yamen*. Neither have they ever seen clerks in person. They do not know how to speak well or how to write."[73] Most of the litigants had never been to local courts, and therefore had no choice but to rely on litigation masters, knowing full well that these intermediaries were as cunning as *yamen* functionaries. Had it not been for litigation masters whom the local magistrates criticized for "frequenting the *yamen* and colluding with clerks and runners," how could the litigants have negotiated "bribe-cum-fees" with *yamen* sub-functionaries? From this perspective, the litigants were in no position to obey the order to stay away from litigation masters.

On the contrary, would-be-litigants "always asked litigation masters to write their plaints," and those who came from the country to the provincial capital in search of litigation masters "filled the doorway and blocked the gateway almost everyday."[74] It was the litigation system itself that made the litigation master an indispensable part of the mechanism.

WHO WERE LITIGATION MASTERS? WHERE DID THEY COME FROM AND WHERE DID THEY WORK?

With litigation masters an inevitable part of the litigation mechanism in imperial China, it is inevitable to concede that they were rooted not only in the litigation system but also in Chinese society itself as well as in its political system. The Ming and Qing litigation system was based on, and revolved around, the extremely high esteem in which society held written documents. For this reason the system was open to everybody. The system of appeal was also well established, linking county and department courts with prefectural and provincial authorities, and ultimately the imperial capital Beijing. Litigation masters were required to possess the ability to write brilliantly for their petitions to stand out, being apparently worthy of trial, among countless documents. In this regard what was expected of litigation masters seems similar to what was required of candidates in the civil

73 *Minggong shupan qingmingji*, p. 479.

74 *Wanli jiangle xianzhi* 1-29b, 1-29a.

service exams. Government students who devoted all their energies to mastering the strict style of the so-called *baguwen* 八股文 ("eight-legged" essay) genre[75] were the mirror image of the litigation masters who toiled in a shadowy realm writing plaints within the confines of the litigation formula.

In fact many litigation masters were former government students, and even those who did not became full-time litigation specialists, such as litigation masters, often wrote petitions on a part-time basis for litigants. The *Huadangge congtan* 花當閣叢談 points out that many litigation masters were the sons of literate men, and one famous litigation master was actually a former government student. I will cite a few examples from the Ming and Qing records that I have quoted earlier. In the *Huanyou jilue*, Gao Chaowan tells the story of Yin Mutang and a man who stood in for a litigant when appealing to a higher court. Both were government students. The *Xiushan gongdu* also introduces two cases of a government student-turned-litigation master: one was formerly a student who went to school in the capital on the recommendation of the governor of his province but did not complete the course, and the other was a dropout.[76] The *Huanyou jilue* also tells a story of several impoverished government students engaged in proxy litigation, and how Gao arranged for them to receive family allowances and quit litigation mastery for legitimate occupations.[77] Zhong Renjie, who headed a revolt in Chongyang county in Hubei during the Daoguang era (1820–1850), was also a government student-turned-litigation master.[78] A dropout called Ding Shiqing, who incited a rebellion during the Wanli era (1573–1620), was a cram-school tutor, but quite possibly worked as a litigation master on the side.[79] In addition to these individual cases, phrases referring to government students-turned-litigation masters appear regularly in various ordinances and government announcements: "inferior government students and national university students manage inns and act as proxy for litigants" (*zuoxie baosong*, 作歇包訟), and "do not care for themselves but are concerned with litigation" (*shifou ziai naihao gansong* 士不自愛　乃好干訟). Many litigation masters were either government students or former government students, national university students, or candidates (*tongsheng* 童生).[80] In short, they were all government students, or close to it.

Needless to say, it was poverty that drove government students into litigation mastery. Only a very tiny percentage of them were able to pass the highest state exams, and the majority who failed could not live on the incomes they earned as tutors. An article in the newspaper *Shenbao* 申報 from 1876 reported that government students who lived where they could profit from collecting tribute rice from others engaged in bribery by contracting for payment, while students who were not in a position to collect tribute rice "acquired the skills of the

75 Ed. note: For details of this style, see Man-Cheong 2004, pp. 67–68, 92.

76 *Xiushan gongdu* 1-38a, 1-54a.

77 *Huanyou jilue* (1908), *shang* 22b.

78 Kuhn 1970, pp. 98-99; Kuhn and Fairbank 1986.

79 Fuma 1977, p. 237; Kawakatsu 1981, p. 128.

80 Ed. note: "Candidates" refer to those studying for the civil service examination who had never been a student at a state school. To gain this status it was necessary to pass an examination given by the county magistrate. See Hucker 1985, Item 7501.

knife-brush and made a living by inciting people to litigate." The article also said that if government students strove to live up to their official status, conscientiously observing the rules and regulations, people laughed at them, branding them as inept.[81] The state trained government students to sit for the civil service exams, and appointed those who passed as bureaucrats, but it generated in the process an enormous number of students with no marketable skills other than excelling in the technique of writing skilful essays, and who constituted a large reserve body of future litigation masters. After all, it was an easy and natural transition to make, to go from writing exam passages sprinkled with Confucian words in a limited space, which were logical and persuasive yet striking enough to catch the examiners' attention, to drafting petitions embellished with elegant knife-brush phrases in a limited number of words fitting the restricted space of the petition form, logical, persuasive yet striking enough to catch the magistrates' eyes. A feeble deterrent to prevent this leap was the outlawing of litigation mastery and a general sense of ethics. Already in the Song period there were examples of government students-turned-litigation masters. As we have seen, the practice not only persisted but also flourished down to the 1911 Revolution. It reflects the close linkage between the existence of litigation masters and the state exam system.

When government students had lost any hope of getting government posts, they had a choice of becoming private secretaries to a magistrate or some other official, apart from litigation masters. According to the casebook *Xiushan gongdu* 秀山公牘, private secretaries well versed in law tended to be those who "had failed to master the Confucian classics and turned to law."[82] In the sense that they had studied the classics, but did not pass the exams and so opted for law, private secretaries were no different from litigation masters. In short, of the government students who had no hope of an official post, some chose to become private secretaries, and others litigation masters. Furthermore, it was easy to move from one to the other, from private secretary to litigation master, or from litigation master to private secretary, and it did happen quite frequently. The introduction to *Wangkentang jianshi* 王肯堂箋釋, published in 1612 (Wanli 40), observing how magistrates worked and behaved, relates that contemporary bureaucrats would not study law themselves, but left all matters relating to litigation documents to *yamen* clerks, or else "they brought with them, from the places registered as their legal domicile, litigation masters and retired clerks to perform the task".[83] It indicates how prevalent it was at the time for litigation masters to take -up the post of a private secretary well versed in law. An example is found in *Tuisitangji* 退思堂集 published in 1636 (Chongzhen 9): A native of Jiashan county in Zhejiang province, when appointed assistant magistrate (registrar) in Xinning county, Sichuan, moved there with an old litigation master, who left just two months later as he found the government residence in Xinning too bleak for his taste.[84] This act suggests this old litigation master was rather like a private secretary, "who could leave the post if

81 *Shenbao* Guangxu 2.9.11 (27 October 1876).

82 *Xiushan gongdu*, author's preface, 1b.

83 *Wang Kentang jianshi*, original preface, 3a (Wanli 40).

84 *Tuisitangji* yanyu 2-72b.

it did not suit him". The assistant magistrate, then, must have invited the old litigation master to work for him as a private secretary.

Private secretaries and litigation masters, who could move freely between both categories, belong to a shadowy underworld. If the litigation master represents the shadowy flip side of the government student, the private secretary is the flip side of the litigation master, though he remains in the same realm of shadows. The profusion of private secretaries and the ubiquity of the litigation master represent different manifestations of the same phenomenon. A litigious society created an increased need for litigation masters, while local magistrates had to rely ever more heavily on private secretaries. Bureaucrats with no knowledge of the law hired private secretaries to deal with litigants, as well as the *yamen* clerks and runners, whereas litigants, who also lacked a knowledge of the law, hired litigation masters to deal with the magistrates, clerks and runners. This phenomenon suggests that the litigation master was deeply rooted in the political system of the Ming and Qing. Where there was a need for private secretaries, there arose a surge of litigation masters. As long as the state exam system and the custom of hiring private secretaries existed, litigation masters continued to appear, to meet an ever growing demand for their services.

Where did the litigation masters work? The answer is relatively easy. If litigation masters came from the same roots as government students and private secretaries, the most likely places would be the department and county capitals, and other cities of even larger size. Because of the nature of their work, it was natural that they should settle in the places where trials were held, and where they gained contact with their clients. In fact, one official handbook gives advice on how to smoke out litigation masters: if a petition looks as if it is written by a litigation master, ask the age and address of the author, and go and arrest him; he should be found living somewhere near the local *yamen*.[85] *Xiushan gongdu* gives two examples of litigation masters residing in county capitals.[86] Furthermore, it was often litigation masters themselves who ran inns providing legal services.[87]

It was logical that litigation masters lived near where their work was, but that does not give the whole picture when discussing Ming and Qing litigation masters. A considerable number of them lived in the country. As we have already seen, *Hunanshengli cheng'an* makes a distinction between two types of "hooligan" (*guntu* 棍徒): those who coerce people into litigation and write plaints for them, and those who frequent the *yamen* to negotiate with clerks and runners. "There are those who do incite people to litigate and write plaints for litigants, but do not negotiate with *yamen* clerks and runners. Some local loafers with a certain knowledge of letters write plaints for litigants before taking them to the residence of the person who does this kind of negotiation"[88] A great number of litigation masters limited themselves to writing petitions, and thus they had no need to live in cities. The *Hunanshengli cheng'an* also contains an account of Ningyuan county in Hunan during the Qianlong era (1735–1796): "Both plaintiffs and defendants tend to ask plaint writers to draft

85 *Mulingshu* 17-40b; *Guanzhenshu jicheng* 7-390 bottom.

86 *Xiushan gongdu* 1-47a, 1-48b.

87 *Hunanshengli cheng'an* 10-19b; 10-26a.

88 *Hunanshengli cheng'an* 10-26a.

petitions to submit on *fanggao* days. This type of litigation facilitator is found living in the city and countryside, and there are dozens and more of them, as many as a hundred."[89] Quite a few of these hundred men probably lived in the country, as opposed to more urban districts. In Jiangxi province too many litigation masters lived in the country, and one government ordinance ordered that they be exposed through the community security (*baojia* 保甲) system.[90] The *Chongzhen waigangzhi* relates that in Jiangsu province at the end of the Ming period, even "a porter wearing nothing but a loincloth in a village so small as to only have three houses wrote litigation documents."[91] The *Pingpingyan* states that if the magistrate fails to arrest litigation masters, he should ask the rural gentry, when next he went into the rural areas, to spread word to the effect that the department and county magistrates have vowed to arrest litigation masters and punish them severely, to the extent that "litigation masters may never enter the walls of cities again."[92] The *Xiushan gongdu* reports that one litigation master got the wind of danger, and vanished from the city.[93]

These documents show that large numbers of litigation masters lived in the countryside. The expression, "never enter the walls of cities" suggests that a considerable number of them led a double-life between urban areas and the countryside. As we have seen earlier, the government student Yin Mutang, whom Gui Chaoman caught, seems to have made frequent trips to the Zhengding prefectural capital from Yehepu where he lived, although Yehepu was a considerable distance from either the Zhengding prefectural capital or the Luancheng county capital. Perhaps it was a safer arrangement than living in prefectural or county capital. Well-known litigation masters, who were also government students, living in the countryside, must have lived in central places such as local market towns or places with periodic markets. No doubt the litigious tendencies apparent in the Ming and Qing periods were fed by litigation masters and plaint writers residing in cities as well as those scattered around smaller towns and villages. "Those who incite people to litigate and write plaints for litigants" and "local loafers with a certain knowledge of letters who write plaints for litigants" may not have possessed enough skills to qualify as litigation masters, and the term "litigation hooligan" was probably a more fitting term to describe them. Many historical records quote cases involving "fortune-tellers," in which magistrates, suspecting that petitions have been written by litigation masters, demand answers from the litigants, but plaintiffs and defendants alike would simply say that they did not know the true identity of the authors, because they were just itinerant fortune-tellers; they would in fact never divulge the names of the litigation masters, even if it meant risking their life.[94] This was probably because they were bound by a vow never to tell. It is also true that itinerant fortune-tellers did double as petition writers. Litigation masters were ubiquitous: even

89 *Hunanshengli cheng'an* 8-10a.

90 *Xijiang zhengyao* 3-19b.

91 *Chongzhen waigangzhi*, p. 17.

92 *Pingpingyan* 3-45a; *Guanzhenshu jicheng* 7-677 top.

93 *Xiushan gongdu* 1-47a, 1-48b.

94 *Hunanshengli cheng'an*, Panlü susong, 10-38a; *Yongzheng zhupi yuzhi*, pp. 1884, 4303; *Qianlong changsha fuzhi* 23-29b.

in "villages so small as to have only three houses" there lived a considerable number of individuals offering their knife-brush skills, and there were also itinerant "wielders of the knife-brush." Litigation masters congregated in local market towns and in the capitals of counties, departments and prefectures. From the countryside to the walled cities, litigation masters rendered services to the people who needed them.

County, department and prefectural capitals were at the apex as arenas for litigants and litigation masters. Avenues leading to the gate of *yamen* offices in those places were lined with inns providing legal services where visiting litigants stayed, and with restaurants where various negotiations took place. Litigation masters must have frequented these places. Innkeepers are said to have invited litigation masters to discuss strategy and sometimes even plotted to hire paid witnesses for lawsuits. Probably those inns served as intermediaries when litigants were arranging for appeals to higher courts.

Furthermore, some cities were even equipped with buildings where litigation masters could congregate and discuss their cases. One example was a hall called Cangxiemiao 蒼頡廟 ("Cangxie temple") in the eastern section of Huitong county, Hunan province. According to the *Guangxu huitong xianzhi*, in 1834 (Daoguang 14) Long Daomo, Zhou Jinpeng and others formed a group and called themselves the "thirty-six heroes," pooling funds to buy and build a hall for "proxy litigation and mingling and gathering". After a while they started to fear that somebody might report them, and decided to enshrine there Cangxie, a legendary figure who was said to have invented letters, and so very fitting as a deity for a guild of knife-brushes and litigation masters. Around that time, a litigant brought a suit concerning the irrigation of his fields, but it became so hopelessly entangled that the litigant gave up and donated the land to the "temple" and it was agreed that the hall would be called the Cangxie Society 蒼頡会.[95] From the fact that they described themselves as performing proxy litigation, the men must have been litigation masters. As litigation mastery was a serious offence, they took the precaution of enshrining the deity Cangxie in an effort to camouflage their identity, lest the authorities should be notified.

This sort of trade association for litigation masters and a building for meeting in the county capital reminds us of a lawyers' guild and its guild hall in medieval and early modern Europe. Unfortunately, there are no other records that shed more light on litigation masters' guilds. All that we know is that a small, provincial city had as many as thirty-six litigation masters, that they were structured into an association and a working network through the Cangxiemiao, and that litigation masters in the county used the hall as a base for their activities. Huitong county is situated in the southern part of Hunan province, and according to the 1818 census it had 14,693 households and 110,000 inhabitants.[96] Huitong was fairly typical of a city of its size regarding litigation. It is thus probable that other cities also had associations of litigation masters, the nature of which was half secret society and half guild, which had halls like the Cangxiemiao to congregate in.

Just one department or county had no fewer than a hundred litigation masters and plaint writers, which made it possible to produce a staggering number of petitions, maybe as many as 10,000 to 20,000 per year. The litigation facilitators had their places of business in small towns and villages, as well as in cities. There were also networks

95 *Guangxu huitong xianzhi* 12-33a.

96 *Guangxu huitong xianzhi* 3-2a.

connecting those in small towns and villages with those in cities, and those in county and department capitals with those in prefectural and provincial capitals. Thus they were able to accommodate effectively litigants filing suits or appealing to higher courts. We have historical proof for this process in the provinces of Jiangsu, Zhejiang, Jiangxi, Hunan and Sichuan. Local magistrates tried "a million measures" to stamp out litigation masters, but to no avail. Already in the closing years of the Ming, litigants "always asked litigation masters to write their plaints." As Yuan Shouding 袁守定 says in his official handbook *Tuminlu* 圖民録 published in the Qianlong era (1736–1795), "in later times, after the Golden Age, litigation masters handle many lawsuits" and in the south "litigation masters can be found everywhere, even in remote, mountainous departments and counties."[97] Litigation masters operated on every corner, and penetrated deep into the litigation process of ordinary people. Yuan Shouding laments: "Litigants keep coming in droves the way a big river heaves and dashes against the banks. It is unstoppable. There is no way to process all suits brought to the magistrate, just as you cannot scoop water out of a flowing river to empty it." Rather than frustration at having failed to eradicate litigation masters and amend the litigious trend, there is a sense of resignation in his voice. The litigation system of pre-modern China was hopelessly bogged down, without hope of escape.

CONCLUSION

The root cause generating the litigious trend was the fact that the Ming and Qing litigation system was open to everybody. Litigation was costly, but as long as litigants had the means to finance their suits, anyone could have their case heard. Society had become complex, and accordingly people had become wealthier.

Paying scant attention to reality, the bureaucrats wrongly held litigation masters and their activities of inciting and proxy responsible in large part for generating this litigious tendency. Their blame was manifestly misplaced. What spawned litigation masters was the litigation system itself, its rigid observance of and reverence for written documents and procedures, and its principle of having the beneficiaries pay for the process. If we continue to ignore litigation masters as outlaws, and fail to determine what role they played in the judicial system, we will never be able to discover how people in imperial China dealt with state law and the judicial system itself.

It was the civil service examination system that was instituted to recruit bureaucrats that fostered litigation masters. They were changelings that the examination system inadvertently engendered. This is well reflected in the quasi-titles given to competent litigation masters, such as *huiyuan* 會元 and *zhuangyuan* 状元, which were originally titles given to the top candidate in the metropolitan and palace exams respectively. The government absorbed legal specialists into the state litigation system as private secretaries, but it could not possibly acknowledge litigation masters as a legitimate part of the judicial mechanism, even though litigation masters and private secretaries were as alike as twins.

The government could not acknowledge the existence of litigation masters, for, if it did so, it would have had to change the principles governing the litigation system that had

97 *Tuminlu* 2-10b; *Guanzhenshu jicheng* 5-158 top.

been in place for nearly two thousand years, and even the administration system itself. Had it recognized litigation masters as they were, the government would have had to tolerate the tendency towards litigiousness, and prepare itself for a hellish flood of suits and a staggering number of petitions. It could have blamed the people for turning the world into a litigation hell, but how could it have handled a snowballing number of petitions when, as it was, one county was already being bombarded with 10,000 to 20,000 of them annually. An increase in submissions would have called for more bureaucrats, and many more clerks and runners, and where would the state have found the money to pay them? It would have been out of the question for a country under the rule of law to let its sub-functionaries (clerks and runners) force even more bribes and commissions from ordinary people. The state would have had to procure a staggering sum to pay official salaries, but how? It could have chosen one of two ways: one was for the state to shoulder the burden of what the beneficiaries (litigants) were paying, which meant increasing tax to subsidize it; and the other was for the state to legitimize the principle of having beneficiaries pay for services rendered, by making the commission-cum-bribe official and increasing the rate considerably, at the same time monitoring transactions so they should be transparent. But it would have been too gargantuan an endeavour for the government to consider such a plan.

During the Song period, Chinese society went through a complete transformation, yet its litigation system fundamentally remained more or less unchanged. As time went on, ordinary people became able to participate in lawsuits, yet the state did not increase the number of bureaucrats handling the suits, but instead made do with "hiring" a greater number of sub-functionaries like clerks and runners who received little or no salary from the state, thus straining the system to breaking point. Local magistrates, for their part, abhorred the litigious society. Rather than facing reality and working on administrative and litigation reforms, they studied law only on a voluntary basis and performed their duties assiduously, trying to manage the formidable situation by keeping clerks and runners under their control. This was one reason for the publication of a large number of official handbooks. Most instructed the reader to crack down on litigation masters in order to reduce the number of petitions; litigation masters helped people file lawsuits, therefore they must be barred from doing so.

Wang Youfu 王有孚, who worked as a private secretary during in the Jiaqing era (1796–1820), was an exception in his view of the litigation master. As we have seen above, he pointed out that if a litigant asked a mediocre scrivener to draft a document, "the petition would be off-putting and hardly able to express a heart-felt plea," and the litigant would not stand a chance of clearing himself of the false accusation. Wang contrasted litigation masters with those scriveners:

> "If the litigant had the good fortune to have a competent litigation master draft the rebuttal, the litigation master would dig deeper to expose the evil design of the opponent in such a way as to move the heart and soul of the reader. Litigation masters would coach their clients to keep a firm belief that they were in the right when appearing in court, and to say nothing but what was absolutely necessary. Thanks to good consultation, the falsely accused would be able to prove their innocence, while the evil plaintiffs would be charged with calumny. Thus the general public would be greatly satisfied with the justice done. Such

> litigation masters do society no harm. On the contrary, they do great good. I have seen from time to time some of my old friends in my birth place, Suzhou, apply their brilliant knife-brush skills to help innocent victims, but there are not many such people. (Because they helped others,) it is quite natural that their descendants should prosper, have a good social standing and live in big houses. The *DaQing lüli* also specifies that 'when litigation masters help innocent, helpless victims clear themselves of false accusations, they should not be punished.' Even the King of Hell would not condemn those litigation masters but grant them good judgment. Those people should not feel ashamed to be called litigation masters. On the other hand, those who cheat country bumpkins and scare good people, in order to swindle money out of them, are nothing more than litigation hooligans. How could we call such crooks 'master'? I believe that litigation hooligans should be cracked down on, but there is no need to stamp out litigation masters."[98]

Such views, though exceptional, already existed in the Qing period, and I am convinced that my analysis of litigation masters is accurate. Wang Youfu was not a bureaucrat but a mere private secretary. His background, though, enabled him to see litigation masters in a clear-sighted way. Litigation masters as he defined them are no different from how modern lawyers ought to be. The litigation hooligans Wang cites in contrast to litigation masters remind us of crooked lawyers, who specialize in settling out of court or in incitement. Naturally, Wang never contemplated the possibility that litigation masters might represent their clients in court. Nor did he maintain the necessity of judicial and administrative reforms. The lack of these points in Wang's argument shows clearly that he was a product of China's history.

The litigation master was firmly rooted in the litigation and political system that was unique to pre-modern China, while also being an unsavoury character belonging to a shadowy world. Indeed, he was the product of a country with a unique history. But the Qing Chinese must also have been subconsciously seeking something universal amidst this very uniqueness.

Translated by Michiko Okubo

98 *Yide outan*, Chuji 39b.

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