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ARTICLE

Cross-Jurisdictional Trade and Contract Enforcement in Qing China

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Abstract
This article argues that claims about the different economic trajectories of early modern Europe and late imperial China have incorrectly focused on the importance of formal contract enforcement mechanisms. As a first step toward more productive conversations about the history of economic development across world regions, this article provides a look at the factors in the development of the late imperial Chinese economy that led to the emergence of contract enforcement mechanisms not based on codified contract law. Several case studies from the Qing dynasty Chongqing archives are presented to illustrate how the mechanisms of contract enforcement operated.

Keywords: contract; broker; *yahang*; Ming and Qing economic institutions; law and economy

Intermediaries and the Path to the Modern Economy

One of the most important distinctions between the market that evolved in China from the sixteenth to the nineteenth century and those in early modern European economic history is the way that the jurisdictional complexity of the pre-modern era was overcome by long-distance traders and the courts that served them.[1] In the markets of northern Europe the international nature of long-distance trade disputes is now understood to have made princely courts, law, and international treaties major factors in the enforcement of commercial disputes in port cities.[2] The national diversity of early modern European markets favored intensive state-backed initiatives to promote basic market principles in formalistic, legal terms to guarantee the state enforcement of contracts. The creation of these contract-centered legal institutions is widely considered foundational for legal and economic modernity.

In the study of the evolution of contract enforcement mechanisms, China has consistently served as an example of a nation that failed to develop formal institutions.[3] Throughout the twentieth century and into the twenty-first, China has been widely regarded as a place where rule of law did not develop sufficiently enough to play a primary role in governing markets. This article argues that these characterizations of China all overlook one basic problem: that the nature of the jurisdictional geography of late imperial China was fundamentally different from that of early modern Europe. This article examines court cases from the Ba county archives to demonstrate how Qing imperial policies designed to protect sojourning merchants against abuse by local agents became the backbone of a larger system of

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[1]For a discussion of this problem, see Rosenthal and Wong 2011, pp. 1–17, 80–98.

[2]For a narrative on this process in one European context, see Gelderblom 2013.

[3]One of the more recent representations of this line of argument are the essays collected in Ma and van Zanden, 2011. The editors propose a "Neo-Weberian" perspective on Chinese economic history, and flatly dismiss the arguments of the previous generation of scholars that Chinese market institutions were "rational" in spite of not formally resembling European ones.

court-backed contract enforcement mechanisms that did not rely directly on a codified collection of normative commercial behaviors.

The core of this system, as it emerged from the sixteenth to the nineteenth centuries, was transitive responsibility (*jingshou zhi ze* 經手之責). This form of liability, which may be translated as "responsibility associated with mediating a transaction" or, more literally, "responsibility [resulting from a commodity or payment] passing through [one's] hands," essentially meant that any intermediary could be brought to court to stand in for any party to an exchange, since liability for a dispute could be transferred to the person of the broker for the purposes of settlement.[4] This approach constituted a wholly distinct understanding of the role that local courts could or should play in resolving commercial disputes, against which any claims about China's "failure" to develop legal contracting mechanisms should be checked.

The Ghost of the Tang Market System in Late Imperial China

Late imperial policy toward long-distance exchange must be understood in the context of the decline of the Tang Dynasty market system. In the Tang the problem of taxing and policing long-distance exchange was solved with a high-investment state strategy not unlike those pursued in early modern Europe: cross-provincial trade was only permitted in state-supervised markets in the physically closed-off wards of the empire's capital, prefectural, and county cities.[5] Formal enforcement of contracts took place in specialized courts.[6] But the integrity of this system – which depended on the close regulation of merchant organizations inside highly regulated urban spaces – began to break down soon after its zenith when, sometime during the eighth century, markets expanded beyond urban centers.[7] Central state officials failed to re-assert the primacy of their administrative claims over commercial exchange for the rest of imperial history.

In the centuries following the decline of central state-controlled markets two institutions that used to operate within the Tang system – "market-row" trade organizations (*hang* 行) and brokers (*ya* 牙) – were adapted by local administrations to tax, regulate, and procure from the market.[8] The result was a mixed and inconsistent approach to the governance of trans-empire trade in the post-Tang era, as many institutions of economic governance developed in purely local contexts.

By the time of the founding of the Ming dynasty, the local institutions of market governance seemed desperately in need of reform. The unevenness of *hang* and *ya* organizations across the empire presented a basic problem to the central state: the diversity of local market institutions made them impossible to regulate uniformly.[9] Commercial revenue schemes were so idiosyncratic that merchants complained about every locale having a more absurd taxation system than the last. The emergence of so many local institutions after the decline of the Tang market system had also created a sharp division between local and sojourning merchants in any given market. There was widespread resentment over abuses by *hang* and *ya* who took advantage of their position of privilege vis-à-vis the local state to prey on less enfranchised merchants.

[4]In highlighting the centrality of this concept, this paper builds on the foundational work of earlier scholars who pointed out the sophistication of mediation in late imperial markets. On the freedom and scope of the late imperial market and the extent to which intermediaries – including brokers – facilitated broad networks of commercial exchange, see Yūji 1949, pp. 178–86. In spite of this early work attesting to the critical nature of various types of brokers, the predominant trend in recent scholarship has been to critique intermediaries as an inherently inefficient and costly means of transacting. For an early discussion of the abuses of intermediaries in the late imperial market see Wu 1985. The characterization of licensed brokers as abusive characters in the late imperial market – especially in the Ming – is repeated at Lufrano 2013. For a reassessment on the extent to which *yahang* presented a threat to merchants, see Zhou 2013.

[5]On the Tang market system, see Twitchett 1966.

[6]On contracts in the period, see Hansen 1995.

[7]On this commercial trend that would culminate in the Song commercial revolution, see Shiba 1968.

[8]Katō 1936, pp. 53, 54, 57–59.

[9]For a more comprehensive and broader perspective on late Ming attempts to reform commercial taxation with a focus on the Jiangnan region, see Aramiya 2017, pp. 275–303.

Ming legislation focused on efforts to curb the power of these intermediaries between the local state and market.[10] New laws were primarily concerned with preventing abuse and excessive taxation.[11] Frustrated with the continuation of abuses, the Hongwu emperor attempted to outlaw *hang* and *ya* outright.[12] But early Ming efforts to reduce malfeasance or stamp out local institutions of non-sanctioned taxation floundered.[13] For the duration of the Ming, local systems of market governance did not reflect the policies of the empire.[14]

Despite the failure of the Hongwu emperor to quash the proliferation of local institutions of market taxation, one Ming innovation from the middle of the fifteenth century addressed a fundamental tension in dispute resolution on commercial matters: the question of jurisdiction. The Ming solved the problem of unclear jurisdiction over commercial cases by demanding that "sojourning merchants in the provinces buying and selling in each place, if they encounter issues related to debt and money, are only permitted to bring suit in that place for investigation and disposition."[15] This solution to the problem of multiple possible jurisdictions for long-distance trade had a cost: it made sojourning merchants particularly vulnerable to local intermediaries and local officials. This inequality became the subject of considerable policy efforts in the Qing.[16]

The Qing Market System

With the jurisdiction over commercial disputes now fixed, and in light of the Ming failure to address the abuses that stemmed from the diversity of local taxation schemes, the Qing state took a new approach to governing the market. In the Qing market system all responsibility for exchange and taxation was invested in the very brokers that the Hongwu emperor had tried to outlaw. Local governments were no longer responsible for taxing commerce directly, and only supervised the licensing of the economic agents empowered to tax on behalf of the central state. Pursuant to this shift, brokers became the locus of new market policies in the Qing.

Centralizing Broker Registration in the Qing

In the beginning, Qing attempts to make the brokerage licensing system uniform and centralized faced the same problem as their Ming counterparts: state laws could not be directly implemented as long as legitimate taxation was taking place through highly irregular and localized state–broker

[10]A comprehensive review of the history of brokers in the Ming and the Ming court's attempts to regulate brokerage is not possible here due to space constraints. Readers interested in these subjects are encouraged to consult Hu 2007 on the business of intermediaries in the Ming, and Chiu 1998 on the institutional evolution of brokers in the Ming.

[11]See the discussion of "Exercising Undue Authority in the Market 把持行市" in Xue Yunsheng's 薛允升 *Unified Compilation of Tang and Ming Laws* (*Tang Ming lü hebian* 唐明律合編, p. 737 of the 1999 edition) and *Hongwu yuannian daming ling* 洪武元年大明令 at p. 12 in Yang ed., *Zhongguo zhenxi falü dianji jicheng* 中国珍稀法律典籍集成 (hereafter ZZFDJ), *Yi* edition (乙编) vol. 1, 1994.

[12]For the initial attempts at outlawing these institutions, see the *Yahang* 牙行 section of the *Da gao xubian* 大誥續編 and the commandment on "Illicit Brokers Cheating Subjects" (*si ya pian min* 私牙騙民) from the *Yuzhi da gao sanbian* 御製大誥三編 at pp. 160–61 and 229, respectively, of ZZFDJ *Yi* edition (乙编) vol. 1.

[13]By the time of the first major edition of Ming sub-statutes – the *Hongzhi wenxing tiaoli* 弘治問刑條例 of 1500 – the illegality of brokers was completely overlooked. See, for example, the new regulation against "Impersonating an Officer" (*Zha jia guan* 詐假官), which explicitly forbade individuals from "illicitly opening a *yahang* business" (*si kai yahang* 私開牙行) at p. 261 of ZZFDJ *Yi* edition (乙编) vol. 2. For examples of *hang* organization in Ming Suzhou and attempts at prohibiting the use of these organizations for extraction, see Aramiya 2017, pp. 216–26.

[14]On Ming dynasty *yahang* organization and taxation using both local and central-level evidence, see Aramiya 2017, pp. 241–74, 304–25.

[15]DLCY "Penal Laws (*xinglü* 刑律) on Plaints and Litigation (*susong* 訴訟)": "Yuesu" 越訴 sub-statute thirteen.

[16]Although I treat this process from the perspective of the centralizing state, the scholarship of Chiu Peng-sheng has gone a long way to unpack the cultural dimensions of changing ideas about responsibility in long-term commerce. Readers interested in the other dimensions of this shift are directed to Chiu 2005 and the substantively different English version at Chiu 2007.

arrangements.[17] The first step toward establishing meaningful control over these local institutions was taken in 1687 when the Kangxi emperor announced an empire-wide system of *yahang* registration, making local officials directly responsible for monitoring the *yahang* in their jurisdiction.[18] Uniform systems of registration and audit brought the central state back into the picture of broker regulation; Beijing's nominal control over local market agents was made even more substantial in 1733 when the Yongzheng emperor decreed that, henceforth, the central state would supervise the issue of all brokerage licenses.[19] With this maneuver, the central bureaucracy removed these market agents from the jurisdiction of the empire's local governments.

The Qing assertion of imperial control over *yahang* licenses marked the centralization of an empire-wide system for checking the power of local brokers operating throughout the empire. Under these centralizing reforms, the authority of brokers was officially recognized at the same time that it was strictly constrained. The only power given to *yahang* was the right to collect a "thousandth tax" (*lijin* 厘金 or 釐金) on each transaction to compensate them for the imperial licensing fee that they submitted annually to the state. The purpose of brokers was to benefit the merchants who sought their services while, at the same time, unobtrusively maintaining the interests of the empire by ensuring obedience to the law in the market. With one move, the empire's diverse local forms of commercial taxation and market regulation were made obsolete. For almost a millennium, control over these offices had been a purely local matter. Under the new framework, *yahang* became imperially-recognized agents of taxation and market regulation who operated *within* the economy and *beyond* the reach of local government.

Exemption of Commercial Cases Involving Brokers from the Agricultural Interdict

After the regulatory dimensions of the Qing market system were outlined, the central state turned to the fundamental problem of the advantage held by local *yahang* agents vis-à-vis their sojourning merchant customers. In 1737 a series of memorials on the subject of corrupt *yahang* was presented to the imperial court. One of these, composed by Jalangga 查郎阿, Governor-General of Sichuan and Shaanxi, became the basis of a new sub-statute designed to prevent the abuse of sojourning merchants by licensed brokers. Jalangga suggested that "cases of *yahang* who embezzle the money of sojourning merchants, even if they take place during the agricultural busy season [during which litigation between commoners was not allowed], should be reported, heard, and pursued in court …."[20] In response to the memorial, the Qianlong emperor declared that "We feel for merchants, far from home, who have been cheated. If it is during the cessation of litigation at the agricultural busy season, then they are held for long periods in a strange country. Truly this is pitiable …." In 1738 the first sub-statute of the law on "Not responding to plaints" was modified to explicitly exempt "accusations of rebellion, treason, theft, homicide, threatening the legal order through greed, and other such grave cases, as well as accusations of treacherous brokers or shops that cheat sojourning merchants of their goods" from the agricultural interdict.[21]

[17]This problem is remarked in the 1658 report of Jia Hanfu 賈漢復 to the Shunzhi emperor (Shunzhi year 15, Month 5, Day 21) in the Grand Council Archives, 088493-001. Available online at: http://catalog.digitalarchives.tw/item/00/27/a7/4c.html.

[18]See the 1687 regulations under "Thorough Examination of *Yahang*" ("Qingcha yahang 清察牙行") in the "Transit Taxes" ("Guanshui 關稅") section of the Board of Personnel (Libu 吏部) regulations collected in the 1899 edition of the *Qinding Da Qing Huidian Shili* 欽定大清會典事例 (hereafter HDSL), published by the Zhonghua Shuju in 1990.

[19]Yongzheng Veritable Records (*Shizong xianhuangdi shilu* 世宗憲皇帝實錄, hereafter YZSL): year 11 (1733), month 10, day 6, item one. For the regulatory iteration of this command see HDSL "Prohibitions" ("Jinli 禁例") in the "Miscellaneous Taxes" ("Za shui 雜賦") section of the Board of Personnel (Libu 吏部) regulations. For a review of the Qing policy on *yahang* see Yamamoto 1993.

[20]QLSL, year 3, month 12, day 19, item five.

[21]See the first sub-statute of the law on "Not responding to plaints" ("Gaozhuang bu shouli 告狀不受理") at DLCY Penal Laws (*xing lü* 刑律) on Plaints and Litigation (*su song* 訴訟).

Together with the nationwide system of licensing and registration, the several laws prohibiting illicit forms of local taxation, the new statutes on magisterial responsibility for abuse of the market system, and the commands to implement a system of pledges and guarantees to hold more individuals responsible for the character of *yahang*, this special exception to the agricultural interdict on litigation also made brokers especially susceptible to lawsuits lest they be tempted to use their privilege for private profit at the expense of merchants. In order to protect vulnerable buyers and sellers from predators, the central state committed local officials to hearing cases against intermediaries who had failed in their duty to act faithfully on behalf of buyers and sellers from afar.

Drawing a Line between State and Market

The next and final step in the creation of the Qing market system was to target the privilege of *yahang*. In 1740, the Qianlong emperor declared his intention to bar workers in the empire's *yamen* from service as licensed brokers.[22] Any *yamen* employee found operating a *yahang* license would be punished with a hundred strokes and three years' exile, with additional provisions for any crimes or malfeasance committed during the offender's tenure. When the Qing legal code was amended to include this new policy, a punishment of one hundred strokes and expulsion from office under the law on "miscarriage of justice" was further fixed for any officials who allowed or failed to prevent any abuse of the *yahang* system.[23] In 1743, the Qianlong emperor followed up on the Qing policy of separation between official privilege and the *yahang* system by further prohibiting individuals protected by official titles from taking advantage of the market through *yahang* offices.[24]

The Dimensions of the Qing Market System

The laws forbidding individuals of special status from obtaining *yahang* licenses completed the Qing market system, which operated on a distinct set of principles. Goods travelling from one area of the empire for sale in another market would be taxed by the brokers operating in the city of sale, who should be licensed for proper supervision. Producers and sellers of local products were exempt from commercial taxes, and thus were not permitted to own brokerage licenses. The *yamen* responsible for licensing and overseeing these brokers was expressly forbidden from using *yahang* for their own procurements or taxation above the statutory rate. Individuals with any connection to the bureaucracy or the wider world of title-holding individuals were legally barred from holding *yahang* licenses. The line between the administrative power of the local government, the social status and official privileges of literati, and the economic role of *yahang* was clearly drawn by a Qing administration eager to cordon off market activity from interference by privileged groups.[25]

These divisions between brokered trades and non-brokered trades, markets with brokers and markets without brokers, and individuals qualified or not qualified to operate as licensed brokers were motivated by a concern that this system of taxation might be made into an instrument of monopoly or extortion at the local level. Rather than policing the market directly, the Qing committed itself to

[22]QLSL, year 5, month 9, day 10, item one. For the text of the regulation, see HDSL: "Prohibitions" ("Jinli 禁例") in the "Miscellaneous Taxes" ("Za shui 雜賦") section of the Board of Personnel (Libu 吏部) regulations.

[23]Additional punishments were specified for *yamen* workers who had used their licenses to successfully bamboozle merchants. See sub-statute six of "Illicitly Serving as a *Yahang* or Harbor Master" ("Si chong yahang butou 私充牙行埠頭") at DLCY "Revenue Laws (*hulü* 戶律) on Markets (*shichan* 市廛)."

[24]QLSL, year 8, month 6, day 28, item two.

[25]In reality, although the *yahang* taxation scheme was designed to prevent extralegal taxation in local jurisdictions, it was indeed not long before magistrates found a way to use even this new system of organization for the procurement of funds and resources at the local level. This is the subject of a forthcoming article by the author, "From Obligation to Organization: Merchant Groups, Magistrates, and Market Authority in Qing Chongqing." On the organization of *yahang* taxes in the Qing (with specific examples of the ways in which some local administrations managed to add extra revenue demands to the licensing system from the province of Henan), see Yamamoto 2002a, pp. 187–90. For examples from Chongqing, see Fan 2009.

policing the behaviors and powers of key caretakers within the market whose duties were linked to highly circumscribed authority. By placing the burden of market operation on market actors and removing the market space entirely from the local administrative framework, the Qing made a strong bid to preserve the sanctity of the market space as a place of unhindered economic exchange by destroying its administrative profile entirely.

Brokers and the Legal Framework of Commercial Dispute Resolution

The Qing market system cast the relationships between markets, courts, intermediaries, and merchants in a new framework. By the middle of the eighteenth century, unlike the international courts of European ports, the offices of China's local governments were not tasked with the responsibility of determining or interpreting economic agreements. Rather, the job of the local court was one of assigning responsibility. A 1743 Board of Revenue statute made explicit the obligation of magistrates to oversee *yahang* and to protect their customers:

> Local officials are commanded to publish a proclamation to this effect: each *yahang* should allow merchants and shops to fix a price face-to-face and sign a three-way receipt. If official brokers are treacherous and fail to do this, merchants may report them to the magistrate, and the license for the broker will be revoked. If a shop passes the deadline and fails to pay or deliver in full, showing a clear intention to embezzle, they may be brought to court for pursuit. If the local court pretends to pursue the case but, in fact, does nothing and allows such cases to pile up, the magistrate will be punished in accordance with the statutes on "Careless Observation of the People's Distress."[26]

This statute presents a vision of dispute resolution that decidedly pitted the responsibilities of the magistrate against the selfish interests of the *yahang*. Local magistrates were not given more power to intervene in trade or disputes connected with it, but rather more responsibility to check the agents that the state relied upon (and whose authority was therefore considered the biggest threat to merchants).

This positioned the court as an enforcer for the system of exchange and its participants without placing the details or habits of transaction into legal terms. Instead of a legal discourse of liability, what emerged was a rhetoric of concern about protecting the "lonely merchant" (*gu shang* 孤商) conducting business outside his own jurisdiction.[27] Rather than incorporating rules and regulations about commercial transactions into the legal code of the dynasty, the Qing crafted a system of responsibility for recording, reporting, verifying, and adapting the details of the myriad commercial transactions into a fluid system of liability centralized on the broker.[28] The terms of each transaction were sanctioned not through accord with legal or customary principles, but through the binding agreement of a licensed broker. These individuals kept track of all relevant information about local conditions, market trends, trading partners, transaction details, and commercial events in lieu of the state doing so itself and were made responsible for the successful resolution of any problems that might arise from exchange.

This emphasis on the local state's duty to demand that brokers be held accountable for all transactions they mediated paved the way for Qing courts to recognize and implement the common notion of the "transitive responsibility" of intermediaries. According to this notion, if one party to a transaction failed to live up to a commercial agreement, the wronged party could seek satisfaction directly from the broker, rather than having to track down the wayward party (who might live and work hundreds of

[26]See HDSL "Prohibitions" ("Jinli 禁例") in the "Miscellaneous Taxes" ("Zafu 雜賦") section of the Board of Personnel (Libu 吏部) regulations.

[27]See Chiu 2007.

[28]Later, in January of 1759, the Board of Punishments approved a memorial from the provincial treasurer of Yunnan specifying further punishments for *yahang* in cases of embezzling. It was added to the penal code in 1761. See sub-statute seven of the law on "Exercising undue influence in the market" (*bachi hangshi* 把持行市), DLCY Revenue Laws (*hulü* 戶律) on Markets (*shichan* 市廛).

miles away from the place where the transaction had been conducted). In this way, the role of both creditor and debtor could be transferred to the broker, collapsing the space between two distant transacting parties to the distance between each party and the broker. This solution balanced imperial demands that sojourning merchants be given access to justice by placing brokers in a position of special vulnerability to claims against them.

Economic Intermediaries in Chongqing's Court and Market

This system did not provide explicit legal guarantees about the execution of contracts and transactions. Rather, it incorporated the complexities of all the empire's markets into a framework of responsibility centered on the concept of economic agency. To prevent undue influence of the local state and its agents in the market, merchants were left to determine which terms were agreeable to transacting parties, while the state remained agnostic and demanded only accountability for a small amount of taxes, obedience to important directives, prevention of crime, and faithfulness to economic arrangements. This emphasis on holding those with the most access to local privileges most responsible for problems in exchange led to distinct institutions of dispute resolution. In what remains of this article, I will provide anecdotal evidence from cases preserved in the magisterial archive of one late imperial trading center – Chongqing – to demonstrate how these principles worked in action.

The city of Chongqing produced very little in the Qing dynasty. It was a rocky peninsula perched at the intersection of two rivers – the Yangzi, which ran east–west and connected China's fertile and forested southwest (where Chongqing was located) to the well-developed east coast, and the Jialing, which connected Chongqing to the many north–south waterways connecting the surrounding region.[29] The city and its hinterland had been almost completely depopulated over the course of several wars and rebellions in the seventeenth century, but by the eighteenth had already emerged as an important node in long-distance commerce. Merchants from all over the empire ran their ships to Chongqing or established shops for one or two decades to deal in the pelts, medicinal materials, lumber, and valuable forest commodities from the larger southwest. In this city, the long-distance nature of trade and the tumultuous past of the region meant that few people dealing with one another had deep personal connections, in spite of the fact that a great deal rested on the average transaction. The following sections are devoted to sketching out how brokers and courts were used together to solve the serious problems of coordination and trust in Chongqing.

Brokers as Defendants

The commitment of the Qing state to defend merchants who had been taken advantage of by licensed brokers addressed one dimension of risk that was inherent to trans-local trade: the relative security of local merchants compared to ones operating in an unfamiliar market. The state offered a disincentive for cheating by promising detention, legal fees, and court scrutiny of brokers who attempted to profit at the expense of travelling merchants. This commitment to police local market agents was the key to maintaining Qing jurisdictional policies, which mandated that commercial affairs be tried at the local level. This allowed the merchants of the empire to conduct business in urban centers far from their own homes while still possessing some guarantee that, if things went wrong, someone could be held accountable for seeking a resolution on their behalf.

The Ba county archives from Chongqing's court of first instance provide hundreds of examples of brokers brought to court to answer for their own economic behaviors, as well as the actions of the parties that they represented. This evidence is crucial in understanding the nature of dispute resolution

[29]On Chongqing's place in the Sichuan economy and its evolution over time, see Zhou and Liu 1987. For a more specific survey of the Chongqing economy in the Qing dynasty, see Tanii 2015. On the structure of the Sichuan economy in the Qing more generally, with an emphasis on the cotton trade and notes on the number of brokers in Chongqing and their role in both commerce and revenue collection, see Yamamoto 2002b, pp. 11–50.

for commercial affairs, since – as remarked by several scholars and as noted in the introduction – any of the contract enforcement problems encountered by merchants fell outside of the realm of law.[30] The most straightforward application of the principles described above that can be found in the Ba county case records are lawsuits in which brokers were sued as defendants. As mentioned above, whenever a broker was suspected of a transgression, it was the right of the wounded party to have him brought before the court, which was bound to pursue the matter and punish any "treacherous broker" (*jianya* 奸牙) that took advantage of the system.

The 1781 case of Yang Donglai 楊東來 versus Wang Fanglan 王芳蘭 is an example of the classic "treacherous broker" case provided for in Qing law. Yang was a merchant from Shaanxi who came to sell a large shipment of ginger in Chongqing. Yang submitted his ginger to the brokerage owned by Wang Fanglan for storage and sale, but later accused Wang of plotting to embezzle the entire amount of money gained from the sale of the ginger, thus "cheating me, a lonely stranger from afar (*qiyi yigu* 欺蟻異孤)" and "taking me for a weak and tasty morsel to snack on."[31] In his suit, Yang argued that Wang had taken advantage of his difficult position as a stranger in the rough and wild commercial center of Chongqing and had left him in an untenable position: "trapped, and unable to return home (*xianyi bude huiji* 陷蟻不得回籍)." The magistrate permitted the case and issued a summons for the involved parties, but the case was settled before a trial was ever held.

The magistrate's swift and unquestioning approval was the expected reaction, given the responsibility of local officials to oversee licensed brokers. For just as surely as *yahang* could provide convenience and credibility by employing the officials' local knowledge and connections to match buyers with sellers, they could use the same resources for profit at the expense of others. When *yahang* abused their positions to cheat these lone, helpless strangers in the big city, magistrates were compelled not only by a sense of fairness and by the laws on brokerage, but also by the statutes that dictated punishment for allowing abuse in the *yahang* system to flourish, to take up the case and aid the victim. Unlike many other commercial disputes, cases against *yahang* accused of cheating were regularly accepted by the court.

In addition to the classic "treacherous broker" case, *yahang* were also brought to court to stand in for the default of parties for whom they had provided guarantees. In these cases, it was not the evil intentions of the broker that warranted his inclusion in a legal suit, but rather the simple conviction that a broker was liable for the decisions that he made in mediating the transactions of others. One example of such a case was brought to the court by Zhao Xincheng 趙信成, a merchant from Shanxi who brought a large shipment of straw hats to Chongqing for sale. Zhao came to the court after his broker Li Yuyan 李與言 made a suspicious investment in his son's money shop while still claiming to Zhao that the money for his grass hats had yet to be repaid by the customer who bought them. Zhao concluded that Li's investment suggested embezzlement and lamented ever having run into the "evil plots of this father-son pair to trick me out of my tiny profits, by pretending to buy my goods while in fact stealing the money and drawing out the fraud, leaving me unable to return home."[32] The magistrate agreed to summon the broker to court.

When Li Yuyan was called upon to explain himself, he insisted that he and the plaintiff had been doing business with one another for over twenty years and that the delay in repaying Zhao was not due to any kind of treachery, but rather the logistical complication presented by the fact that the purchaser of the hats was from Luzhou, ninety miles from Chongqing. The magistrate found that this was grounds for some delay, since the collection of the debt presented some difficulty, and gave Li half a month to pay Zhao, on the condition that Li first obtain a guarantor. But after the deadline, Li was held accountable for paying back Zhao regardless of the fact that the customer from Luzhou did not make restitution within the allotted time. In cases such as this, even when the broker himself

[30]On this problem see Tanii 2015 and Shiga 2009, pp. 16–22.

[31]Sichuan Provincial Archives, Ba County Collection (*Sichuan sheng dang'an Ba xian wenxian* 四川省档案巴县文献, hereafter SPABX): 01-01877; 1.

[32]SPABX: 01-01870; 2.

could be considered as much a victim as the plaintiff, the intermediary was liable for the transaction that he had arranged, for the reason that it was a risk undertaken based on information provided by the *yahang*, and that the broker could more easily demand satisfaction from his customer.

Both types of cases illustrated above – those involving the personal failures of the broker, and those designed to hold the broker accountable for the others he had guaranteed – were necessary to the function of the Qing market system. Brokers were, of course, held directly responsible for their own dealings. Courts were furthermore able to extend the responsibility of wayward businessmen to the brokers who represented them in order to keep merchants who had been victimized from being indefinitely stranded in the city. In both of the cases mentioned above and the many others like them, the presiding official upheld his commitment to act on behalf of the merchants who claimed to have been defrauded. When the tables were turned, magistrates could also come to the aid of brokers themselves, in a further extension of the Qing complex of legal practices surrounding the institution of brokerage.

Brokers as Plaintiffs

The same logic that made brokers liable for the transactions they took part in also empowered them to seek satisfaction from others in court. Since brokers assumed responsibility for their merchant customers, they could be forced to settle out-of-pocket for the malfeasance of others (as briefly outlined above). Their willingness to do so was integral to the function of the system of licensed brokerage. The court's recognition of this meant that magistrates also consistently aided brokers in their attempts to recover funds that had been lost in the name of settling with one customer while another remained delinquent.[33]

This logic is clear in the 1805 case of Mao Dashun 毛大順 versus Li Chugao 李楚高. The plaintiff Mao operated a cotton brokerage in the city. He reported that, three years before in 1802, Li Chugao came to his brokerage and bought some of the cotton that had been stored at Mao's brokerage by another customer. The purchase price of 400 taels was agreed upon, and Li took delivery of the goods but continued to delay payment for three years, forcing Mao to "borrow in order to represent him in returning the debt, and pay 100 taels in interest every year." The loan that Mao took out to repay his customers had pushed him to the edge of insolvency.

After repeated failed attempts to collect, Mao was forced to make a plea to the magistrate, reasoning that "brokers are in the business of representing customers in purchase and sale. If, like in this case, purchasers don't pay for goods, then the sellers pursue me to the brink of life – what can I do?"[34] He pleaded with the magistrate to "wield court authority in strictly handling this treacherous behavior." The magistrate issued a summons immediately following Mao's request, in recognition of the court's responsibility to maintain the integrity of the brokerage system. The case was resolved before trial.

Brokers could even bring suit on behalf of the wronged parties for whom they had contracted even without first having paid out a settlement. This is demonstrated in the 1765 bankruptcy case of Zhang Tianxu 張天敘. Zhang had bought goods through Shen Hanshi 沈漢石, a broker from Zhejiang who operated a shop in Chongqing. Shen delivered the goods, but then Zhang sold off his store and house, declaring that his business was insolvent and settling with his creditors at a reduced rate. Shen discovered that Zhang still owned property within the city walls and had invested his ill-gotten gains secretly in another business as a silent partner. Shen had tried to bring suit against Zhang four years earlier, and accused the defendant of bribing *yamen* workers to bury the case.

In the interim, while this dispute dragged on, Shen had remained responsible for the debts brokered on Zhang's behalf. The broker protested in his suit that "it's now been four years, and I haven't been

[33]For another perspective, see the interesting argument about the relationship between tax collection and privilege in local litigation – which focuses on collective responsibility figures and *yamen* employees but nevertheless highlights some related issues – in Chongqing in Komachi 2015. While licensed brokers are not explicitly mentioned in this work, it is worth remarking that the tax-collecting responsibilities of *yahang* might have further encouraged magistrates to support their suits as plaintiffs.

[34]SPABX: 05-04648; 2.

repaid any amount. I have been trapped in an impossible situation: all of my customers are pressing for fulfillment of their obligations, and I am on the verge of financial ruin. How can such a wicked villain impoverish a broker, pushing him to the very brink of death? Neither human decency (*renqing* 人情) nor the law of the land (*wangfa* 王法) can operate in these conditions."[35] The magistrate recognized the difficult position that the broker was placed in and issued a summons to bring Zhang to court.

Whether owing or owed, whether on account of their own actions or on behalf of others, *yahang* were frequent visitors to the courts of Chongqing. They were convenient figures in which to invest the power and responsibility of litigation: local, knowledgeable about their trade, and both party and witness to the transactions they brokered. They were also the ones in the best position to pursue a legal case, being accountable to both parties in each transaction and, by definition, local to the jurisdiction in which the exchange had taken place. Since brokers were able to act as agents on both sides of a transaction, they were compelled to bear the majority of the immediate cost of bad information. In order to keep brokers motivated to bear such responsibility, the court supported their efforts to recover funds that had been paid out on behalf of others.

Further Ramifications of Transitive Responsibility

The logic of sharing responsibility for a transaction in which one had participated even expanded beyond official brokers to include unofficial brokers and other forms of intermediaries (such as guarantors and recommenders).[36] In these cases, the explicit legal liability of brokers was applied by analogy to other kinds of intermediaries. Court demands for payment in these cases demonstrated that individuals who participated in any part of a transaction could be held responsible for its resolution even when they did not personally benefit from the malfeasance of someone for whom they had provided a guarantee. These cases employed the same notion of transitive responsibility invoked in cases involving brokers to demand that other intermediaries be held accountable for the "responsibility associated with mediating a transaction."

In the 1790 case of Wu Yifa 吳億發 from Hubei versus Tang Heshun 唐和順 of Huguang, the central question presented to the court was whether or not Tang could be held liable for the debts of his brother Tang Quanmao 唐全茂, who had fled. Before ever coming to court, the case had been presented to the *kezhang* representing the home territories of the two parties, and this neighborhood mediation had determined that Tang Heshun did, in fact, have "responsibility associated with mediating a transaction" (*jingshou zhi ze* 經手之責). The case wound up in court because Tang Heshun continued to resist Wu's demands to settle even after mediation under the *kezhang* had concluded.

In his first suit, Wu summarized his dilemma: "It is only Tang Heshun, who mediated the transaction, that ought to be responsible (*ying wei jingshou zhi Tang Heshun shi wen* 應惟經手之唐和順是問), but he bullies me and is insolent. How can the *kezhang* discipline him? Truly Tang Heshun represented his brother in the purchase of cotton from my shop. The three of us met in person and agreed to a price, then set a date for the exchange and payment. The seller can provide testimony to this effect. How can the legal order permit such embezzlement for personal profit, such collusion to hide and cheat?"[37] The magistrate summoned the case to court immediately.

In his counter-suit, Tang Heshun insisted that he had not been a broker for the deal between Wu and Tang Quanmao, insisting that the plaintiff had no proof, and that he had not been present at the

[35]SPABX: 01-01848; 2.

[36]Even though it was illegal to pose as an official broker, unofficial brokers existed in large numbers throughout the empire. Mediation between economic actors was not the sole territory of licensed brokers, but only licensed brokers could collect taxes. Unlicensed brokers were permitted to broker exchanges (especially on untaxed trades), and were only required to remit taxes to licensed brokers in order to stay on the right side of the law.

[37]SPABX: 01-01900; 2.

time of the deal.[38] Tang Heshun even reported that he had invited the plaintiff to witness him swear before the gods at a local temple, but that the plaintiff "did not dare to submit to the gods together with me." In Wu's responding plaint and in his testimony at court, the plaintiff insisted that he had never been invited to pledge the truth of his claims at the temple and that Tang had been using every trick in the book – including physical threats toward all of the witnesses – to erase the evidence of his role as an intermediary, but that, at the end of the day, "When it comes to payment, one always consults the intermediary. Tang Heshun represented his younger brother in the purchase of cotton, coming in person to settle the price. *A man who has thus dirtied his hands cannot avoid responsibility* (*ranshouzhe bude ci qi ze* 染手者不得辭其責)."[39] The magistrate, presented with the account books and the testimony of individuals who had tried to resolve the dispute between the two, found that Tang had indeed acted on his brother's behalf and ordered him to pay half of the amount owed, further demanding that, when Tang's brother returned from flight, he be brought to court to finish paying over the amount.[40]

Similar cases in the documentary record attest to the efficacy of suits against intermediaries beyond licensed brokers, such as guarantors of debts and recommenders of employees.[41] Any time a plaintiff could make a solid case that he had entrusted another to act on his behalf in the character of an agent, the magistrate might call the individual to court to answer for his obligations (even though they were entered into on behalf of another). Therefore, much of the maneuvering in this category of cases hinged on the question of whether and which parties were bound to a jilted plaintiff by salient ties of economic agency.[42]

The notion of responsibility associated with participating in a transaction was so deeply entrenched in the culture of late imperial exchange that even claims that were far more tenuous were considered by the court. Guarantors and other intermediaries who never even handled money or goods could also be covered under this vision of liability.[43] One example of the creative application of transitive responsibility by analogy is found in the case of Xiao Ruiyu 蕭瑞宇.

When Xiao Ruiyu, of Jiangxi, came to the southwest to trade in Yunnan, he was called back suddenly to take care of his aging parents at home and decided to change his money in Chongqing for the journey to Jiangxi. A lodger staying at the same inn, named Xiao Lisheng 蕭立升, introduced him to the owner of the Yu Sheng money shop (Yu Sheng qianpu 豫盛錢舖), Wang Yuanzuo 王元祚. Xiao Ruiyu deposited his silver there. However, Wang reported that the price of silver had been low of late, and Xiao agreed to come back in a few days for payment. When Xiao arrived at the shop on the appointed date, Wang Yuanzuo was nowhere to be found, and his partner professed ignorance of the deal. Xiao kept an eye on the shop for two days, but Wang never appeared to meet with him (the shop was only manned by a single young apprentice). "This," reported Xiao, "was when I knew that I'd been had," and he went to the magistrate's *yamen* to file suit.[44]

Rather than accept the plaint, the magistrate was incredulous and noted in his rescript that "Chongqing is the hub of a hundred rivers and roads. When you exchange silver you can take away cash instantly, what room is there to be taken for a fool? You have traded for many years. Once a broker [here he used the term *jingji* 經紀, a generic term for brokers without licenses]

[38]SPABX: 01-01900; 4.

[39]SPABX: 01-01900; 5. In the phrase "A man who has thus dirtied his hands cannot avoid responsibility," the plaintiff plays on the phrase for "mediation" (literally, "passing through the hands") by suggesting that Tang Heshun has "dirtied his hands" in the transaction.

[40]SPABX: 01-01900; 10.

[41]For examples, see SPABX: 11-09999, 04-2552, and 25-5573.

[42]For an illustration of the challenge and urgency of claims about agency, see SPABX: 25-5855, in which the owner of a firm and the employee of a firm argue about which of them was the agent to whom the plaintiff entrusted his business.

[43]Guarantors could be brought directly to court to pay the debts of defaulting businessmen whose transactions they had guaranteed. A straightforward example of this type of litigation can be found in SPABX: 11-09999, where two guarantors were brought to court and settled their debts under court supervision.

[44]SPABX: 01-01101; 1.

deals with you, money is transacted easily. Why would the services of a third party [here indicating the secondary defendant, Xiao Lishen] be demanded?" The magistrate rejected the suit on the grounds that the entire summary of the affair was suspicious.

In his second suit, Xiao restated the narrative, and insisted that "I am a simple and honest man, and this is my first time in the city of Chongqing. I have never engaged in trade before and am unable to distinguish the real from the false, and for this reason made the mistake of encountering the fraudulent plot. Now I cannot start on my journey and affairs back at home are desperate. What else can I do?"[45] The magistrate, compelled by the pleas of the helpless and unwitting sojourner, summoned the case, despite the protestations of the defendant Xiao Lisheng, who swore that he was not a broker, but rather another of Wang's victims.

In this case, the magistrate agreed to involve the defendant Xiao Lisheng only on the grounds of the plaintiff's desperate claim that he was a fool who had been taken in and the possibility that the defendant had been complicit in that plot as the man who introduced Xiao to his persecutor. Cases such as these were not accepted because of any clear legal liability on the part of defendants who were only tangentially involved in setting up a transaction, but rather in recognition of the vulnerability of "guest merchants" attempting to negotiate complex local market institutions. Although the court was on shakier ground when it was dealing directly with intermediaries other than brokers, suits involving a wider range of actors appeared on the docket usually because other means of settlement were not available.

With each degree of removal from the straightforward transitive responsibility between brokers and their out-of-town customers, the court became less able to exact full and immediate payment from locals who had been brought to court. In cases involving tangentially-related "intermediaries," the court could not simply extract full payment from the individuals partially responsible for a deal gone awry. But it brought official scrutiny to the terms and conditions of a particular transaction and held each member of the deal responsible for successfully concluding the affair. The application of transitive responsibility by analogy could thus be an invaluable tool for merchants from far away when they had trusted the wrong stranger in a strange market.

Transitive Responsibility and Cases without Court

Fewer than half of cases involving intermediaries went to trial after being permitted. Given how hard some of these plaintiffs worked to earn a summons (sometimes even submitting multiple plaints after previously being rejected, as in the case of Xiao Lisheng), how can this complete lack of interest in the rest of the court process be explained? In some instances, cases did not make it to court because the *yamen* runners were unable to capture defendants who had already fled, and the summons would then be left open on the case docket for later use if the fugitives ever returned.[46] If and when the whereabouts of defendants were later discovered, the warrants could be invoked and the *yamen* runners asked to bring them before the court on standing charges. In the majority of cases, however, the summons never led to a court trial even though no such obstacle existed. The common reason why many such cases never went to court was that the summons itself – and not the verdict – was the object of the suit, and resolution could be pursued using non-court means with dependable efficacy as soon as the court announced its commitment to enforcing the responsibility of an economic agent.

The struggle in cases about agency and transitive responsibility was not to get the court to countenance a specific settlement. Rather, the key to gaining the upper hand in a dispute involving any kind of economic intermediary depended on getting the magistrate to acknowledge that an individual was *responsible* for negotiating a settlement. In many cases, these arguments took place over the course of filing suits and counter-suits. Most often, nothing more was required to induce a delinquent agent to enter into a settlement process than the knowledge that the magistrate had summoned the case, finding sufficient merit in the plaintiff's suit to warrant a trial. In cases where several counter-suits

[45]SPABX: 01-01101; 1.

[46]For examples, see SPABX: 25-4848 and 05-4660.

were filed and where disputes made it all the way to court, the importance of establishing the nature of one's role in a transaction and one's relationship to a plaintiff is clear.

An illuminating example of the struggle to define relationships between litigants is found in the 1869 case of Huo Rongtai 霍榮泰 versus his nephew Huo Delong 霍德龍 and Chen Dengrong 陳登榮. The case began when Huo Rongtai accused the two defendants of embezzling the profits from some goods that he had stored at Hongxing brokerage (Hongxing hang 鴻興行), where Huo Delong worked together with Chen:

> I run a cured vegetable shop. My nephew on my brother's side, Huo Delong, works as a trade agent (*jingmao* 經貿) with Chen Dengrong in the Hongxing brokerage. Last winter they tricked me into storing one bale each of my oiled fish and lizard skins on consignment. They were worth more than sixty taels. Once the goods were in their hands they took them and closed up shop. I have searched for them for some time without success. It wasn't until the second day of this month I ran into Huo Delong and demanded payment from him … the dispute turned into a brawl, in which he grabbed a set of scale weights to beat me with … He refused to mediate, instead risking the court …[47]

In response to this suit, the magistrate agreed to summon the case after a physical exam substantiated Huo's claim about his injuries.

In the meanwhile, Chen filed a counter-suit disputing his alleged connection with the plaintiff. He explained that Huo's nephew, the co-defendant, was, indeed, an apprentice in the same brokerage where he was employed. But, added Chen, "Huo and his uncle were very close, and whether or not money is owed from their trade with one another has nothing to do with me, as I was not involved." Rather, he reported, when the relationship between the two relatives soured, Huo Rongtai showed up at the brokerage and asked Chen where his nephew could be found. When Chen replied that he was ignorant of the whereabouts of the younger Huo, the plaintiff flew into a rage and "summoned together several toughs to rough me up, holding me against my will and humiliating me cruelly."[48] He even included details about the intervention of his neighbors in the fight, and protested that "Truly, I was not his intermediary in the sale of his goods at the brokerage (*yi mai huo zai xingyi shi wei jingshou* 伊賣貨在行蟻實未經手)." He concluded by reporting that the neighbors gathered in the mediation all found Huo at fault for roughing up Chen, and that Huo had promised to drop the issue before unexpectedly bringing the case to court.

Next, Huo Delong filed his own account of the disagreement. In the account of the younger Huo:

> Last winter Chen Dengrong brokered (*zuocheng* 作成) a deal with my uncle Huo Rongtai to sell his products through the brokerage. I had no idea. In the winter the brokerage closed, and it was only then that I was made aware that my uncle had agreed to sell one bag each of his cured fish and lizard skins. I checked the inventory and discovered the parcel of lizard skins and called him to come and take it back. But the cured fish had already been sold to He Shunzhang 合順長. Twenty taels of the sale price still had not been collected, so I told my uncle to go with Chen Dengrong to collect. But my uncle wanted the money on the spot, and beat me in anger. He abused me with the privilege of his seniority as my elder family member, and even though I endured his fists and his scolding I did not respond in kind.[49]

He, too, listed a series of witnesses and claimed to have taken the issue into mediation, and declared that the mediators had found that "I was not the intermediary for the exchange, and thus it has nothing to do with me."

[47]SPABX: 25-5855; 2.
[48]SPABX: 25-5855; 4.
[49]SPABX: 25-5855; 5.

In response to these counter-suits, the magistrate simply commanded the defendants to await testimony. When a court date was finally arranged, each of the defendants continued to avow ignorance of the plaintiff's transactions, instead only agreeing that they had fought with Huo Delong when he came to collect after the brokerage had closed its doors. The witnesses gathered in court testified only that they had seen a fight, and had intervened to stop the affray, and the plaintiff Huo continued to insist that he had been cheated and beaten by the two defendants. Finding on the side of the plaintiff, but keenly aware of his ignorance of what had actually occurred, the magistrate ordered the defendants taken into custody and commanded them to "go out and settle things … figure out how much is owed, and pay it."[50]

Chen Wenhua 陳文華, the elder brother of Chen Derong, protested the verdict in court, avowing that his brother had nothing to do either with the consignment or the brawl that had ensued from Huo's attempt to collect. After the court was dismissed, he filed a new counter-suit claiming that his brother had been framed and that "when the Hongxing brokerage closed its doors and stopped business, my brother was let off, but even then Huo Rongtai forged a fake receipt and threatened him with it. They submitted to mediation and settled the affair, and this spring when Huo and his nephew fought, my brother was not on the scene."[51] Furthermore, Chen argued, after the court verdict Huo had refused further attempts at mediation. He begged the magistrate for another trial to clear up the issue. The magistrate's response was: "Respect the court verdict. There is no need to cause trouble through unnecessary suits." With this, the case ended.

The one responsibility of the court in this case was determining the question of which of the defendants had acted as Huo's agent and then placing them under the burden of supervision by *yamen* runners until they could come to terms with the plaintiff. The magistrate had no stake in the nature of the settlement, nor even an interest in monitoring the settlement process. The mere fact of having placed both defendants under the obligation to settle was enough. Any attempt by the defendants to flaunt or confuse the settlement process could lead to further intervention by the court, continued custody, and even physical punishment for disobeying the magistrate's verdict. As long as the plaintiff was not satisfied by the cooperation of the defendants, the court was at his disposal to threaten them with further sanctions. Under these conditions, there was little need for the magistrate to demand reports about the outcome of the negotiation of a settlement, and, indeed, few of them remain on the record. The magistrate's work was finished before the real work of solving the issue had begun.

Conclusion

The intention of the Qing imperial court to protect market transaction from direct administrative oversight had the unintended consequence of placing the widespread custom of transitive responsibility at the center of commercial disputes in the empire's courts. By the late Qing, all manner of economic intermediaries had become accountable to local courts for participating in the resolution of commercial cases. In popular culture writings of the Qing, legal documents, and historical works, the figure of the broker has never been hailed as the hero or cornerstone of the late imperial market system.[52] More often than not, *yahang* were reviled scapegoats for all the ills of the Qing economy, accused of almost every form of corruption. In academic writings on China's economic history, the broker has furthermore been associated with the particularistic, network-based nature of China's "closed" markets. But the condemnation of these intermediaries as corrupt agents of a greedy state and symbols of backwardness has obscured the role that they played in solving both transaction and enforcement problems in trans-empire trade.

The ubiquity of brokers, guarantors, and recommenders in the Chinese market has been both taken for granted and remarkably under-theorized in the scholarship, perhaps because the dense world of "personal relationships" has fitted so well with the established picture of the Chinese business

[50]SPABX: 25-5855; 8.
[51]SPABX: 25-5855; 9.
[52]On the reputation of brokers as cheats, see Lufrano 2013.

world as network-based and particularistic in nature. But a closer examination of the use of third parties to prevent and resolve disputes reveals that the rationale for this practice was clearly embedded in the late imperial systems of trade and jurisdiction. Rather than incorporating rules and regulations about commercial transactions into the legal code of the dynasty, late imperial officials placed brokers at the center of both the economic and administrative systems of governing commerce by making them legally responsible for ensuring fairness in exchange. The result was a system of commercial dispute resolution that *essentially enforced* but *did not recognize* commercial obligations.

What was at stake in late imperial court disputes over long-distance trade, then, were not the explicit terms of exchange, but the *legal responsibility* of economic agents. For, although conventional terms of exchange were not recognized by the late imperial state, the responsibility of economic agents to answer both to the state and to those on whose behalf they operated was the foundation of a series of interlocking institutions designed to facilitate long-distance trade within the empire. This constellation of obligations and institutions combined to roughly resemble a contract regime, but was in fact designed to keep local courts *free from* ever having to recognize or enforce contracts directly. In this way, instead of recognizing individual agreements, the Qing complex of commercial and court institutions fostered and protected exchange by fixing responsibility for settlements on local agents.

The result was a legally-charged web of responsibility that crystallized with each act of transaction. Each transaction formed a small but concrete network of responsibility in a given place, and the local court in that jurisdiction was required to bind each individual together in a shared obligation to fulfill the commercial agreement that had been undertaken. The equilibrium that followed produced results that strongly resembled arrangements in contract-based legal cultures. Defendants who were accused of defaulting on an agreement could be brought before the magistrate for a reckoning. But unlike those systems that relied upon the precise language of contract to dictate the terms of a settlement, Qing magistrates used local systems of collective responsibility to interpret information about the nature and validity of conflicting claims.[53]

Local sources of information gathering and validation remained solely and strictly responsible for interpreting the truth of conflicting claims about the quality of a given transaction. The court's most important role in resolving trans-local disputes did not involve the scrutiny of contracts or judgments about normative economic relations, but rather hinged upon the naming of those individuals who would be held responsible for answering to the other parties to a transaction. This practice and the institutions out of which it emerged developed in a complicated and wide-ranging imperial market far away from the world of northern Europe where institutions that would later be hailed as patently "modern" first developed.

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[53]The resulting combination of mixed mediation and adjudication is, interestingly for scholars of Chinese law, a sort of middle ground between the representations of Chinese litigation by Shiga Shūzō as completely beyond the realm of law (Shiga 1987) and Philip Huang as mediation in the shadow of the law (Huang 1993). By employing mediation outside the law but within the administrative systems governing the market, a distinct approach to dispute resolution that hinges on political authority and administrative priorities is suggested. This framing is in keeping with the recent work on dispute resolution at Li 2009 and Dykstra 2014.

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