CHAPTER 4

Elite Engagement with the Judicial System in the Qing and Its Implications for Legal Practice and Legal Principle

Janet Theiss

Historians of Chinese law are much concerned these days with questions about the extent to which the Qing judicial system functioned according to the “rule of law,” informed by ideas of justice, impartiality, and legal professionalism. Most research done on the Qing judicial system has been based on the vast extant case record of crimes and disputes involving commoners and, occasionally, lower level gentry. My current research into the legal entanglements of two elite Zhejiang families linked by marriage, the Wangs, an extremely wealthy merchant family, and the Feis, a long-respected family of officials, suggests that the Qing judicial system functioned very differently for the wealthy and well-connected than it did for commoners. Patterns of elite engagement with the judicial system had significant implications for judicial principle and practice that challenged the legitimacy and integrity of the judicial system. While historians commonly assume that the wealthy and powerful had the resources and guanxi either to avoid airing their conflicts in the courts or to prejudice judicial outcomes in their favor, little attention has been paid to the mechanisms of such evasion and manipulation and their effects. The legal system was a critical arena, for the interaction of local elites and officialdom, and its workings demonstrate the mutual dependence between the two that made legal process essentially a negotiation of power. Degree status, professional connections to officialdom from their own service in the bureaucracy, wealth, and business ties to local officials influenced both family decisions on how and when to take disputes to court and the response of local magistrates, prefects, and governors to their lawsuits.

Literati families were, of course, uniquely dependent on the state for their status, careers and reputation. Linked to officialdom through personal, political, professional and business networks, elite families encountered the judicial system not as fathers and mothers of the people, as the locus of state authority or justice, but as a set of relationships to be worked and manipulated. Local officials dealt with elites as allies, enemies, competitors, and sometimes creditors, within the complex web of local politics. In effect, magistrates,
prefects, and governors unavoidably had conflicts of interest and tangled connections with the elites whose cases entered their purview.

The Wang and Fei cases came into public focus (and into the historical record) in 1741, when the Governor of Zhejiang Province, Lu Zhuo, was impeached for taking advantage of his post for personal gain and accepting bribes from subordinates. The charges focused on several instances of officials bribing him with one or two thousand taels of silver to support their promotions and two intertwined cases in which the governor accepted bribes from women in the Fei and Wang families to prejudice the outcome of lawsuits resulting from internal family conflicts.

The Wang Family Inheritance Case

The first case involved the family of Wang Wenbo, a well-known poet and art collector from Tongxiang County, Zhejiang whose grandfather, a wealthy salt merchant, had migrated from Xiuning County, Anhui in the early Qing. Wenbo and his two older brothers, Wang Sen (1653–1726) and Wang Wengui, known in Tongxiang as “the three brothers of the Wang Clan,” were all highly accomplished poets, who were friends of prominent scholars like Huang Zongxi (1610–1695). After Wenbo’s death, a dispute broke out between his eldest son, Wang Zhaojing and his second son’s widow, Wang Sun Shi, who, having no sons of her own, had adopted one of Zhaojing’s sons as an heir. Wang Sun Shi was anxious to divide the property between the heirs quickly and sent her adopted son in 1738 (QL 3) to file a petition in the Jiaxing prefectural court requesting division. It is not clear exactly why she wanted the intervention of the court in this matter, but one might surmise from the later unfolding of the case and subsequent behavior of Wang Zhaojing, that he was, in fact, trying to give her adoptive heir less than his fair share. As soon as her plaint was filed, Wang Zhaojing and his eldest son Wang Kentang, fled to Suzhou to avoid appearing in court and the case was suspended with the prefect ordering that the lineage mediate the dispute on its own. The inability and/or unwillingness of county magistrates to exercise their authority in civil disputes within large lineages is a common theme in this and the Fei family case as it is in the case record in general.1 But given the fact that the status and wealth of the Wang and Fei families far exceeded that of the magistrates and given their

---