

The Status and Rights of Women in China during the Ming and Qing Periods: An Examination of Ming-Qing Contracts and Litigation Archives

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The status and rights of women in traditional Chinese society was determined by their position within the family system. In his *Principles of the Chinese Family system (Law?) (Chūgoku kazokuhō no genri)*, Shiga Shūzō articulated a view that has become widely accepted in academia. Family assets in traditional China were the “common property” of the family members as a whole. In this family community, the father was the representative of a family. When he was alive, the wife remained hidden behind her husband; it was as if she did not exist. After he died, the widow was hidden behind her adult son; her opportunities to exercise independent power were extremely limited.



Thus, almost all studies on Chinese civil law have usually assumed males as the parties of contracts.

However women appeared with a high frequency in Ming-Qing legal contracts. In many ways this does not conform to Shiga’s understanding of the inherent principals governing disputes within Chinese family system. Thus, it is essential to examine the extant documents and to then reevaluate the place of women in the legal norms governing disputes within the Chinese family.

This dissertation’s primary materials come from the “Huizhou Legal Documents,” a collection of legal documents that range from the 1300s to the 1950s. They include documents related to the sale of land, the division of family assets, the purchase and sale of individuals, and marriage. They provide empirical evidence on nearly every facet of family life. Further, I have made an extensive use of the rich and well-preserved Danxin Archives from late Qing Taiwan, one of the most critical sources for the research on the Qing legal system. The use of both publicly and privately held contracts and litigation archives sheds important light on the status and rights of women in the Chinese civil legal order.

Chapter One, “The Status and Rights of Women in Families with Jointly Held Assets,” reviews the scholarship related to the traditional legal norms governing

disputes within the Chinese family. Special attention is paid to a re-evaluation of Shiga's basic theories of the legal norms related to family disputes. Next, it examines the historical factors that influenced the status of women during the Ming and Qing periods. I argue that a great number of "mother-son households" appeared because of the increasing widowed women and the practice of adopting one's brother's son as inheritor when there was no son in the family. In households with widowed mothers and male children, women had no choice but to participate in legal affairs.

Chapter Two, "The Status and Rights of Women in Inheritance Documents," examines the property rights of women in their fathers' and husbands' households. Discussion is based primarily on documents related to daughters' dowry, the division of family property, and inheritance.

Chapter Three, "The Status and Rights of Women in Land Contract Documents," examines more than five hundred land contracts, and presents the changes in the rights of widows and male children and how "mother-son households" managed land assets.

Chapter Four, "The Status and Rights of Women in Documents Related to the Slave Trade and Irregular Marriage," examines the role of women as sellers, as objects of sale and purchase, and as mediators in documents related to the slave trade. Secondly, it investigates the status and rights of women in such irregular marriages as the male marrying into the wife's family or marrying a widow and living with her family.

Chapter Five, "The Status and Rights of Women during the process of Civil Litigation," first examines the changing regulations regarding women's status in civil litigation from the Tang and Song periods to the Ming and Qing periods. Secondly, using judgments from the Song dynasty and litigation documents from the Ming and Qing periods, the chapter investigates the role of women as plaintiffs and defendants in the litigation process.

Based on the analyses in the preceding chapters, the Conclusion offers some observations regarding the status of women in everyday life during the Ming and Qing periods. When managing family matters in the public sphere, such as the purchase and sale of land or litigation struggles, women's role was basically determined by their status in the family system. Women could participate in these affairs only as "widowed mothers." However, when managing the family's internal affairs, such as the division of patrimony or the establishment of an heir, although the father held the dominant status, we cannot overlook the power of mothers. In Huizhou documents related to the division of family property, one finds many instances of fathers and mothers jointly dividing the family property. This clearly illustrates the fact that the status and rights of women in legal matters varied according to context, that is whether they involved the families in internal or external affairs.