

The Old Paradigm of Status Performance

Throughout the imperial era, legally defined duties and privileges varied, depending on one's position in hierarchies of family and status. T'ung-tsu Ch'ü (1965) identifies three broad levels of status that framed the law until the end of the imperial era: officials, commoners, and mean persons. But within that overall framework, both social structure and legally defined status hierarchy underwent considerable change. Chinese society gradually became more "egalitarian" over the last centuries of the imperial era, in conjunction with the emergence of imperial autocracy.⁹ The Period of Division (A.D. 220–589) and the Tang dynasty (618–907) had been characterized by relatively weak imperial houses, surrounded by elaborate hierarchies of hereditary aristocrats, who reproduced their wealth and status through legally defined birthright to lucrative office, and who

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were served by a variety of hereditary laborers (slaves, serfs, and bondservants) whose unfree status defined them in legal terms as debased or mean people (*jian min*). The proportion of free commoners (*liang min*) was relatively small, consisting mostly of peasants taxed directly by the imperial state, which claimed ultimate title to their lands (in a sense, the imperial house was simply the biggest aristocratic family, and the “free” peasantry its serfs). Most people were fixed in place, both geographically and socially, and function matched status in ways that were transparent and obvious to all.

People at different status levels were held to different standards of sexual and familial morality. Indeed, the guiding principle for the regulation of sexuality from at least the Tang through the early Qing dynasty¹⁰ may be termed *status performance*: the assumption that one must perform the role conferred by a particular legal status. Status performance took other forms: for example, sumptuary law imposed particular kinds of dress on different status groups, and adornment above one’s station was a criminal offense. Hierarchy was further enforced by the differential weighting of penalties for acts of violence involving persons of different status. But sexual standards were a critical factor; in particular, the stigma attached to unfree, mean status derived in large part from the assumption that such people did not live according to the Confucian ritual norms (*li*) that regulated proper relations between the sexes. Sexual immorality can be seen as the defining factor in debased-status stigma.

The most obvious manifestation of this principle is the question of female chastity. From antiquity, a sex offense was defined basically as heterosexual intercourse outside marriage (see Chapter 2). But this definition *always* deferred to the principle of status performance. At root, mean status meant *unfree* status, unfree in the sense of owing labor service (Niida 1943, 959 and 963–64; 1962, 1/16); and for women, such service had a distinctly sexual dimension. Commoner and elite women were expected to remain absolutely chaste, and sexual intercourse between a commoner woman and a man not her husband was always considered a serious offense. People of mean status were not expected to conform to this standard; more accurately, they were not *entitled* to conform to it. Female slaves and bondservants, married or not, were sexually available to their masters, a fact explicitly recognized by law. The only offense identified in this area was intercourse with a female slave belonging to another man, suggesting that the offense was not against the woman herself but against her master; even this crime

was punished rather lightly, however. Males and females of debased status were prohibited from extramarital sexual intercourse with each other, but this offense was punished more lightly than commoner adultery (see chapters 1 and 2).

In addition, certain debased-status groups (notably the *yue* households) were expected to perform sexual and other entertainment services. This was not exactly “prostitution” (which implies a commercial sex market), but rather a form of hereditary penal servitude or slavery to the imperial state. Sexual intercourse between commoner males and women of such status was never defined as a crime, regardless of whether the women were married. Moreover, legal codes from Song through Qing held it a crime for a commoner husband to pimp his wife (or otherwise acquiesce to her infidelity), punishable by a beating and compulsory divorce; by contrast, among the *yue* households and other mean-status groups associated with sex work, many prostitutes were pimped by their husbands or fathers, an arrangement deemed normal and not interfered with by the authorities (see Chapter 6). Nor would a male slave whose wife was “favored” (*xing*) by their master be held to the commoner standard of husbandly responsibility for her chastity.

→ Thus female chastity, and the norms of marriage that went along with it, were assumed to be attributes of free-commoner (*liang*) status. A mean-status husband did not have the exclusive claim to his wife's sexual labor, nor the obligation to guard that claim, that a commoner husband had. Moreover, if a male of debased status offended *upward*, by engaging in sexual intercourse with a woman of higher status (especially a woman of his master's household), that act was punished far more severely than would illicit intercourse between commoners (let alone that between mean persons).

In some respects, officials (and their families) were held to an even stricter standard of sexual and familial morality than commoners. From at least the Song dynasty, they were prohibited from marrying or even sleeping with prostitutes. Officials who committed illicit intercourse with women in their jurisdictions would be stripped of rank and degree, after which they would receive the regular corporal penalties. Commoner widows were allowed to remarry after completing three years' mourning for their husbands; however, from the Yuan dynasty forward, the widows of degree-holding officials were prohibited from ever remarrying. In Yuan law, an official's wife who eloped with one of her retainers would be executed.

To sum up, sex served as a key marker of status distinction, and

the regulation of sexual behavior amounted to the regulation of status performance: that is, it ensured that people behaved in a manner appropriate to their station. The contrast between different standards of sexual morality (especially the relative availability of women) played a fundamental role in marking status strata as distinct from one another. Indeed, the term *liang*—which literally means “good” but was used to denote free commoner status—always carried a moral dimension, and the sexual immorality attached to debased status helped define, by contrast, all that was “good” about the “good people” (*liang min*)—that is, free commoners.

The New Paradigm of Gender Performance

By the eighteenth century, all but a tiny percentage of the population could be considered free commoners.¹¹ Aristocracy had disappeared entirely (except for a minuscule layer of elite Manchus). Instead, the dominant social class was a landlord gentry that could claim nothing as birthright and feared downward mobility through property division. This gentry sought wealth and prestige through competition in civil service examinations (now requisite for office-holding), which had been introduced by centralizing emperors in order to break down independent aristocratic power. Gentry were treated as ordinary commoners, except for office-holders and higher level degree-holders; even this upper gentry could not reproduce its legal privileges except through new examination degrees. Moreover (to quote Francesca Bray):

The aristocratic elite of pre-Song China had protected their status and maintained the social order through practices of exclusion: their status was transmitted through descent, and their marriage practices, family rituals, and other markers of status were forbidden to commoners. From the Song, however, the new political elite were meritocrats who worked through a strategy of inclusion. They strove to build an organic social order, ranked but open to all, that would bind the whole population into a shared culture of orthodox beliefs, values and practices. (1997, 42)

A free peasantry, bound by contractual obligation (if any at all), comprised the overwhelming majority of the population. There remained a small proportion of mean persons (including some domestic slaves), but commercialization and social mobility had blurred the traditionally fixed connections between legal status and occupation—a phenomenon especially obvious in the area of sex work, where an archaic system of official penal servitude had been transformed by the rise of a pervasive commercial sex market (see Chap-

ter 6 and Wang Shunu 1988). Servile labor no longer played an important role in the agrarian economy; mean status gradually came to be associated less with bonded servitude per se than with certain stigmatized occupational or regional subethnic groups, whose members were not slaves despite their hereditary mean status. Accordingly, the original meaning of the *liang/jian* dichotomy as free/unfree was gradually displaced by the nuance of moral judgment, and fixed, hereditary status labels became more of a legal fiction than an accurate description of social reality.¹²

The Qing dynasty—especially the Yongzheng reign (1723–35)—marks a watershed in the regulation of sexuality, when the age-old paradigm of status performance yielded to a new one, gender performance. This new paradigm sums up the cumulative effect of a whole range of legislative initiatives of the Yongzheng reign, shored up by complementary legislation of the Qianlong reign that followed. To summarize broadly:

1. Prostitution was entirely prohibited, in conjunction with the elimination of the debased-status categories associated with tolerated sex work (notably the *yue* households); these people would henceforth be held to a commoner standard of female chastity and criminal liability. At a stroke, prostitutes, their pimps (often their husbands), and the commoner males who had enjoyed their services as a perquisite of status all became criminals (see Chapter 7).

2. The sexual use of servile women by their masters was sharply curtailed, and the law obliged masters to arrange timely marriages for female domestic slaves. The law implied that if masters wanted to sleep with their female slaves, they should promote them to legitimate concubine status. These measures extended commoner norms of marriage and chastity to servile women and, in conjunction with the ban on prostitution, extended the prohibition of extra-marital intercourse to *all* women (see Chapter 2).

3. Qing lawmakers increased the basic penalties for “consensual illicit sexual intercourse” (see appendixes A.2 and A.3), but they also further relaxed the conditions for immunity from punishment for a husband who murdered his wife (or her partner) if he discovered she had committed adultery (see Meijer 1991). The Qing judiciary also consistently defined wife-selling as a form of adultery, even if no illicit intercourse preceded the transaction (see Chapter 2; Sommer 1994).

4. Lawmakers imposed new draconian penalties on a number of variations of rape. The worst-case scenario was reformulated not in

terms of the old **status transgression** (that is, a male slave assaulting his master's women, as in the Tang code) but rather as the pollution of a chaste wife or daughter of humble family by a rogue male outside the family order. A plethora of new **measures aimed to suppress the "rootless rascals" (*guang gun*)** who were now imagined as sexual predators (see Chapter 3).

5. Consensual anal **intercourse between males** had been prohibited since the Ming dynasty; now, for the first time, lawmakers defined an explicit crime of homosexual rape, for which they imposed harsh penalties. Sodomy offenses were assimilated to the previously heterosexual category of "illicit sexual intercourse" (*jian*) by mapping a new hierarchy of offenses and penalties that precisely matched those for the "parallel" heterosexual offenses. The homosexual rapist was imagined as the same "rootless rascal" feared to threaten the pollution of chaste women, and the male rape victim was imagined as an adolescent male of good family. The Qianlong judiciary also issued unprecedented legislation on self-defense against homosexual rape, which became a mitigating factor in the punishment of homicide (see Appendix B.2). These measures implied a new anxiety over vulnerable masculinity, corresponding to the new anxiety over female chastity, as well as a new imperative that males act as husbands and fathers, corresponding to the imperative that females act as wives and mothers (see Chapter 4).

6. The **imperial chastity cult** was greatly expanded over its Ming and early Qing precedents, and the Yongzheng Emperor pointedly shifted the distribution of honors from elites to humble commoner women, praising especially the poor widow who struggled to support her children without compromising her chastity (Elvin 1984; Mann 1987). Lawmakers and propagandists invented **new categories of chastity heroine and martyr**, as well as **new crimes against chastity**; moreover, the penalties for old crimes against chastity were greatly increased. But instead of greater diversity, this proliferation involved a further reduction of different female roles into "wife," implying an even stricter expectation that every female act the part of a chaste wife, regardless of her stage in life (see Chapter 5).¹³

The cumulative thrust of these initiatives was to extend a uniform standard of sexual morality and criminal liability to all. This uniform standard, based on rigid interpretation of the normative marital roles expected of commoners, left less room for variation and exception than before. Previously tolerated spaces for extramarital sexual intercourse were eliminated from the law, and the impe-

rial center mandated that local officials intensify their surveillance of sexual behavior and gender roles (for example, administrative penalties were imposed on magistrates who “failed to detect” and eliminate any prostitution within their jurisdictions). Much of the old status-based legislation remained on the books, but it was displaced in practice by the new measures. Out of 56 new statutes related to sex offenses promulgated by 1780, only three had any direct connection with status difference—and all three had the effect of *reducing* the privileges of hierarchy (see chapters 2 and 3).¹⁴ This shift of emphasis is equally clear in the Qing archives: central cases from the Shunzhi reign (1644–61) include a fair number involving status transgressions of some sort that are judged according to the old Ming statutes, but such cases are unusual in the Qianlong and later reign periods. Moreover, *every single one* of my county-level sex offense cases (the earliest of which date from 1758) involves offenses between legal status equals. Even the ubiquitous agricultural laborers in central cases from the late eighteenth and early nineteenth centuries are almost always treated as the legal status equals of their employers.¹⁵

The heightened emphasis on stereotyped gender roles demanded their *performance*, sometimes on the stage of a magistrate’s court. This demand is most obvious in the area of female chastity (as we see in chapters 3 and 5). The prosecution of rape required a prior exoneration of the female victim, based on intense scrutiny of her conduct before, during, and after the rape attempt itself. For a widow to preserve her independence and her control of property and children required a very public performance of the role of “chaste widow” that had to meet specifically coded expectations. But appropriate gender performance was also required of males, as seen in the prosecution of sodomy, wife-selling, prostitution, and other crimes.¹⁶

With the shift in paradigms, old dangers yielded to new ones. No one worried much anymore about the rebellious slave who might violate his master’s wife—instead, people feared the rogue male outside the familial order altogether who might covet the women and young sons of better-established householders. A new cast of characters appeared in legal discourse as targets for suppression: the “bare stick” or “rootless rascal” (*guang gun*), the homosexual rapist, the pimp, the morally lax husband. Others appeared as new objects of protection or even quasi-religious veneration: the adolescent male, and the chaste wife or daughter of *humble* family. Certain familiar figures took on greatly heightened significance: the lewd widow, the

chaste widow, and the avaricious in-law. Other familiar figures were slated for elimination: for example, the penetrated male and the legal prostitute, along with her husband/pimp and the commoner male who enjoyed her services as a privilege of his status.

CHAPTER EIGHT

Conclusion

In the Tang code, offenses of “illicit sexual intercourse” were listed under the “miscellaneous statutes,” and there were only a few of them. The Ming code contained many more statutes on illicit sex, and now the *substatutes* on this crime far outnumber even the Ming statutes. Those included in the present chapter [on “illicit sexual intercourse”] by no means exhaust the list—for example, the code’s chapter on “forcing another person to commit suicide” does not hesitate to treat this crime in great detail. The vexatious pile-up of cases related to illicit sex may well be the result of this proliferation of laws; but also, *one can see in this phenomenon the condition of the present age.*

—Xue Yunsheng, late nineteenth century (DC, 375-04, commentary)

From Status to Gender, and the New Focus on the Peasant Family

The underlying phallocentrism of the law underwent little or no change during the period covered by this study: penetration continued to imply a gendered hierarchy of domination, regardless of what else happened. What did in fact change was the judicial conceptualization of what kind of social order needed to be protected from the threat of penetration out of place, and what sort of outside male posed the greatest threat.

I should reiterate that a number of important changes well preceded the eighteenth century, although that era certainly witnessed rapid and transformative change. The exaltation of female chastity and fixing of gender roles accompanied the decline of fixed status categories in a gradual process that began long before. Indeed, the Yuan and Ming dynasties may also be considered watersheds in the regulation of sexuality. The Yuan established the basic system for honoring chaste widows on which the Ming and Qing cults were modeled; Yuan lawmakers also imposed death penalties for some scenarios of rape, and issued the first law that equated wife-selling with "illicit sexual intercourse." In addition, the Yuan attempted to quash an emerging commercial sex market that threatened to blur status boundaries, by issuing explicit prohibitions against commoner husbands prostituting their wives (or masters their slaves). (Actually, one edict to this effect had already been issued in the Southern Song.) Building on this foundation, the Ming dynasty extended chastity honors to martyred victims of attempted rape, expanded the death penalty to cover all rapes between status equals, imposed a stricter standard of evidence for rape conviction, and banned consensual homosexual sodomy for the first time. Qing jurists were well aware of what their predecessors had done, and they clearly perceived the general direction of change implied by that record. From this longer historical perspective, the remarkable and profuse initiatives of the High Qing judiciary can be seen as a logical outgrowth of all that had come before.

The classic organizing principle for regulating sexual behavior had been to uphold a *status* hierarchy rooted in an aristocratic vision of fixed social structure. What most worried Tang-dynasty jurists was the pollution of descent through the violation of free women by servile males, especially within a single household; in this context, "free" (*liang*) referred primarily to aristocratic women,

since the typical peasant was not likely to own slaves (see Appendix A.1). The parallel with imperial Rome is striking: “What mattered to the ancient Roman when it came to sex was the status of the individual(s) engaging in sexual activity. Furthermore, Roman law with regard to sex ignored most of the population, since its purpose was to defend the values of the elite, ruling class. These values include the production of legitimate heirs and the protection of people with freeborn status from debasement” (Clarke 1998, 279). For most of the imperial era, the purpose of sexual regulation in China was never to ban any particular behavior altogether, but simply to confine it to its proper place. The absence of any mention of sodomy in early law reflects, I suspect, an aristocratic assumption that homosexual penetration was something one did to one’s slave or servant as a pastime; in this context, the gender inversion of the penetrated male simply confirmed his subordinate position in the more important hierarchy of legal status.

In the Qing, however, the regulation of sexual behavior was reorganized to uphold a gender order defined in terms of strict adherence to family roles—and the family that jurists seem to have had in mind was the settled peasant family. The regulatory regime that took shape in the eighteenth century envisioned as its worst-case scenario the violation of chaste women and adolescent boys of good yet humble family, by males outside the family order altogether. The important cleavage was not between the elite and a servile labor force, but rather between the peasant family and the various antisocial individuals who supposedly threatened it from without. In other words, the shift from status performance to gender performance also involved a refocus downward toward the common people. From this perspective, the emergence of the penetrated male in late imperial legal discourse is a key mark of transition: it represents a shift in point of view, from the elite penetrator who is sure of his privileges, to the peasant householder anxious that sodomy was something a rogue male might do to his “son or younger brother.”

Recent scholarship on gender in late imperial China has tended to focus on various concerns of the elite: dowry inflation, rising competition in the marriage market and in civil examinations, female literacy and education, women’s poetry and publishing, the courtesan as symbol of loyalty and carrier of high culture, and so on. It is absolutely clear that elite gender discourse underwent major shifts in the eighteenth century—and these shifts must have affected legal developments, since the judiciary was staffed by degree-

holding members of the elite. Specifically, the marginalization of the courtesan as a cultural ideal and the reaffirmation of wifely moral authority that occurred on the level of elite discourse (Mann 1997) coincided with the prohibition of prostitution and the extension of a *liang* standard of female chastity to all women. But key figures like the Yongzheng and Qianlong emperors and the veteran official Chen Hongmou² clearly saw the enforcement of normative gender roles as part of a larger civilizing project that targeted the common people (as well as the non-Han natives of new frontier territories—Rowe 1992). This new attention to gender performance among ordinary commoners went hand in hand with the project of status leveling, which extended what Kuhn (1992) has termed “formal commoner equality” to include practically everyone in the empire.

If we train our focus on the Qing judicial system, the centrality of non-elites becomes especially clear. For one thing, nearly all the people who appear in Qing legal cases (especially criminal records) are peasants, petty urbanites, or marginalized individuals of one kind or another; they possess at most only very modest means. These were the people that the eighteenth-century judiciary actually dealt with. In addition, Qing legislation appears to have been marked by what Kathryn Bernhardt (with regard to marriage and women’s property claims) has called the “peasantization” of the law, namely a decisive shift away from the aristocratic priorities found in early codes toward those of the common peasantry (1996). Innovations in the regulation of sexuality seem to have been prompted less by any specific concern of (or on behalf of) the elite than by an imperative to strengthen the humble household seen as the foundation of late imperial order, and this urgency may have accurately reflected the anxieties and priorities of settled peasant householders themselves.

There has been a tendency to attribute Qing legislation against sodomy, in particular, to a disgusted reaction against “decadence” at court and among the elite in the late Ming (including rich men who patronized male prostitutes and actors, or installed catamites among their servants) (see especially Ng 1987 and 1989). This theory depends in part on mistaken chronology (since the prohibition of consensual sodomy predated the Qing conquest). But also, the disgusted reaction to “decadence” posited by this theory would seem more typical of a modernist, May Fourth-era perspective on sex (see Dikötter 1995) than of a seventeenth- or eighteenth-century

perspective; the late Ming literatus Shen Defu, for one, seems to have been disgusted with excessive self-indulgence rather than with same-sex attraction or sexual acts per se.³ In contrast, Ba Jin's 1931 novel *Family* (*Jia*) uses the lecherous patronage of effeminate actors by elderly Confucian scholars to symbolize the decadent hypocrisy of the doomed older generation. The novel's puritanical younger generation reacts with appropriate disgust to this and all other displays of carnal desire; the young people's relationships are characterized instead by fraternal solidarity and physical self-denial for the sake of a higher spiritual and political cause.⁴

Whether we look at the language of the statutes, or at the actual cases to which they were applied, it is clear that Qing innovations on sodomy had nothing to do with the elite. Elite men who were disposed to patronize cross-dressing actors and male prostitutes continued to do so, regardless of the law; this fact reflects their practical privileges, but also, perhaps, the older aristocratic assumption that the gender inversion of the penetrated male was no cause for concern as long as it conformed to the proper order of status domination. The new Qing concern with vulnerable masculinity would seem to reflect not elite gender trouble, but commoner gender trouble—in other words, the anxieties of the peasant householder struggling against downward mobility and confronted by the specter of the rogue male who had already fallen through the cracks.

The ban on prostitution (like that on wife-selling) seems to have had nothing to do with elite tastes and practices either. The prohibition certainly included all prostitution, but none of the records of actual prosecution that I have seen involve anyone remotely connected with the elite. In fact, it may well have been the "democratization" of both the personnel and clientele in sex work, through the development of a pervasive commercial sex market by the end of the Ming, that prompted its total prohibition by the Qing. When the newly enthroned Qianlong Emperor exhorted his ministers to enforce this prohibition with renewed vigor, he characterized prostitution as a scourge on the lives of ordinary peasants. Practical enforcement at the county level involved punishing pimps, cracking down on husbands who pimped or sold their wives, and rescuing women who wanted to leave prostitution by marrying them off to proper husbands. These initiatives reflect not a crisis of *elite* mores, but rather an acute awareness of the growing number of people at the margins of society for whom sexual behavior criminalized by the state had come to play a basic role in survival.

The Changing Concept of *Liang*

The shift from status performance to gender performance is clearly reflected in the changing meaning of the legal term *liang*. Jurists used this ancient legal term right down to the end of the imperial era, but its meaning changed significantly. As we have seen, from the Tang through the eighteenth century, the term's emphasis shifted from free commoner legal status to moral goodness, especially in a sexual sense. For example, where *cong liang* had originally meant for any servile laborer "to be freed to become a commoner," by the end of the eighteenth century it was used almost exclusively to mean a prostitute who "reformed" herself by taking up the normative female role of chaste wife. Similarly, as Angela Leung has pointed out, the usage in philanthropic discourse of the term *jian* (mean, debased) gradually shifted to emphasize moral degeneracy instead of legal status debasement (1993b).

In subtle ways, the legal category *liang* continued to change. We can even detect signs of a softening in the absolutism of chastity discourse, an even greater flexibility in who could be honored as exemplars of female excellence. During the Qianlong and Jiaqing reigns, chastity martyr eligibility was extended to new categories of women who had previously been excluded, further eroding long-standing distinctions between social groups in a logical continuation of Yongzheng policy.⁵ For example, in 1746, reduced honors (money for a memorial arch, but no tablet in the temple of chastity and filial piety) were granted to chaste widows among a formerly debased servile group within the banner forces. The same policy was applied to domestic female slaves and wives of servants and hired laborers generally (QHS, 403/508, 513–14). In 1782 and 1783, the Qianlong Emperor granted canonization to chaste widows among non-Han tribes, singling out these "barbarian wives" (*fan fu*) for particular praise; these women received full honors (QHS, 403/513). An edict of 1793 canonized a woman who had died resisting rape, even though she was the wife of a yamen runner (long considered a debased-status occupation because of its historical roots in compulsory labor service);⁶ the only concession to status considerations was the same reduction in her honors (QHS, 403/513). In 1806, a woman who died resisting her mother-in-law's pressure to submit to prostitution was canonized, in spite of the fact that she had married into a family of "local prostitutes" (*tu chang*); the only qualifi-

cation was that the money for her memorial arch be awarded to her natal family instead of to her husband (QHS, 404/517).

The Jiaqing reign also witnessed an **unprecedented blurring of the strict distinction between the penetrated and the chaste**. In 1803, an edict extended chastity martyr eligibility for the first time to rape victims who had been penetrated, as long as their “intent to resist chastely” (*kang jie zhi xin*) was beyond doubt, and they had been overpowered by at least two attackers. If a woman had been polluted by a *single* rapist, then as long as she had been overpowered and tied up in advance, provincial governors could nominate them to the Board of Rites, which would decide each case on its own merits. This new policy appears to have been implemented for the first time in the following year, when a woman who committed suicide after being gang-raped was approved for chastity martyr status; however, her family received only half the usual grant of silver for her memorial arch. The same year saw the canonization of a woman who committed suicide after being raped by a single attacker; again, however, her family received only half the standard sum (QHS, 404/516–17). The memorialist who had advocated this change argued that an official captured by rebels might be forced to kneel, but that to do so would prove no disloyalty on his part; so too, a wife overpowered and penetrated by a gang of rapists should not necessarily be considered unchaste (HC, 92/33a–b).

In 1840, a “beggar girl with no name” (*wu ming gai nü*) who had been raped and murdered by a single attacker (another beggar) was approved for canonization, but again, only half the silver was granted, and no memorial tablet was set up at the local temple. In this final example the two trends intersected, when a female of the humblest possible station who had been penetrated qualified as a chastity martyr (QHS, 404/521).⁷

Each of these cases is recorded because it set a new precedent to be followed in subsequent decisions. In many instances, some reduction of honors preserved the sense that the woman was somewhat polluted, either by debased status or by penetration. Yet inclusion of these women at all suggests that purity of intent gradually came to outweigh absolute categories in determining what sort of woman could epitomize female excellence (Elvin 1984, n. 177; Sommer 1994, 415–19).

Another suggestive change was the introduction of the idea of reform into the judicial evaluation of individuals who had previously

committed offenses of illicit sex. For example, a statute of 1814 codified the traditional practice of reducing the penalty for gang rape if the victim had previously committed offenses of illicit sex. But the same statute added a new qualification: if there was "definite proof" that the woman had "already repented and renewed herself (*hui guo zi xin*)" since committing such offenses, then she should be treated as a *liang ren funü*—that is, as *liang* in the sense of chaste—and her rapists should receive the full penalty of death (DC, 366-12). (Significantly, *zi xin*, "self-renewal," was the term used by the Yongzheng Emperor to characterize the second chance being offered to people formerly classified as *yue* households.) We find a comparable innovation in the law on "males who commit homicide in self-defense against rape": an amendment of 1824 mandated lenience for a male who had consented to being penetrated but later "repented" (*hui guo*) and rejected the penetrator's subsequent advances, finally killing him in order to avoid being raped (see Appendix B.1, final clause). Previously, self-defense against rape would have carried no weight with the judiciary in such cases, and the killer (that is, the victim of attempted rape) would have received the full penalty for homicide. The implication of these innovations was that a reformed attitude could cleanse a person of the pollution of having consented to illicit penetration, restoring her or him to *liang* status for purposes of penal law. (This recovery of virtue through willed self-reform follows the same logic as the post-Yongzheng usage of *cong liang* by ex-prostitutes.)

Increasingly, then, to judge someone as *liang* involved an evaluation of individual conduct and subjective consciousness. The shift is nowhere better illustrated than in an 1822 case from Shandong, reported by *Conspectus of Legal Cases*, in which a girl aged ten *sui* was abducted; she happened to be the adopted daughter of a prostitute. The governor of Shandong was not sure how to categorize the girl in order to fix the correct penalties for her abductors—as with rape, the penalty depended on whether the victim was *liang*, and this girl could hardly be considered a daughter of "good family." Moreover, prostitutes often adopted girls with the intention of inducting them into the same occupation. The governor asked the Board of Punishment for a ruling: specifically, how should the statutory requirement that the victim be *liang* apply in such a case? The board replied that the relevant law focused not on the victim's family background but on her own conduct and attitude: had she herself

committed offenses of illicit sex? And if so, had she since repented and reformed herself? The victim in this case was young enough that these questions did not apply; therefore, even though she had been adopted by an unchaste woman, “her own body was pure” (*zi shen qing bai*), and she could be considered *liang*. Her abductors suffered the full penalty.

Before 1723, the mother’s occupation as prostitute would have fixed the mean status of her entire household, and vice versa. But a century later, the Board of Punishment could assert that this girl’s family background had no bearing on whether she was *liang*—so much had the legal sense of that term changed. All that mattered was the girl’s own individual conduct and attitude (XA, 8/4b–5a). This reasoning parallels the 1806 canonization (cited above) of a woman who had married into a family of “local prostitutes” and died resisting her mother-in-law’s pressure to sell sex.

The underlying logic of the changing interpretation of *liang* was that morality demonstrated in conduct should determine status before the law, instead of the other way around, as had long been the case. We can read this development as a logical outgrowth of the expansion of commoner legal standards in recognition of the increasingly fluid nature of social relations: for the Qing judiciary, willed conduct rather than the accident of birth or social position had become the most useful factor in distinguishing between most persons. One result was greater equality of individuals before the law. But we would be mistaken, I believe, to read this shift in terms of the Western paradigm of progress in the law.

William Rowe argues that the thinking of veteran official Chen Hongmou with regard to gender was characterized by a new, “early modern” individualism that downplayed old differences of status or class. But Rowe is careful to qualify this judgment: “He shares an emerging early modern valuation of the individual (female as well as male) within the family or household unit, at the same time that he views society as necessarily composed of households, not individuals, and thus fully endorses subordination to the patriarch’s authority. The person embedded within the social role engages his sympathetic attention, but remains of secondary importance to the role itself” (1992, 34). This characterization is not what we think of as individualism in a modern, Western sense, but rather part of a broader leveling that asserted, in the place of anachronistic status labels, the importance of strict gender performance in subordina-

tion to family roles. The redoubled emphasis on normative gender performance went hand in hand with extension of the reach of penal law and of moral surveillance over the lives of common people.

All these changes aimed less to emancipate or repress individuals, I believe, than to clear away outdated distractions and to concentrate on new dangers. Much of the legislation and propaganda that we have examined was designed to exalt, empower, and protect the chaste wife of humble background, a category that became broader and more inclusive over time. The unprecedented importance attributed to the chastity of humble women—which implied that their own conscious choices with regard to sex actually mattered—signifies a new responsibility being imposed on such women. They stood on the frontlines to defend the normative family order, and the standard of chastity they maintained would determine its fate. Through their endurance and suffering they could preserve it; through promiscuity and sloth they might destroy it. Given our liberationist paradigm for thinking about women's history and gay-lesbian history, it is possible to miss the fact that Qing initiatives aimed not so much to repress women (let alone sexual minorities) as to strengthen an embattled peasant family against the moral implications of downward mobility and the possibly very real predations of a swelling underclass of "rootless rascals."