

Cross-Jurisdictional Trade, Intermediaries, and Transitive Responsibility in Late Imperial China

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Abstract:

This paper explores the relationship between policies of market taxation, limits of local court authority, and the liability of intermediaries in China from the sixteenth to the nineteenth century. It begins with a review of the institutionalization of brokers as tax-collecting intermediaries in the eighth century, and then traces the elimination of other systems of market governance – and their concentration around the licensed broker – up to the eighteenth century. This background serves as a foundation for a more detailed illustration of how licensed brokers were assigned legal responsibility for the transactions that they mediated, the role that they played in bridging limited local court jurisdiction, and the eventual expansion of “transitive responsibility” for mediated transactions to other (non-licensed) brokers in Qing courts.

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 written about 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. 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 negotiation, fixing, and enforcement of commercial disputes in port cities hosting traders not unified by a single political regime.¹ The national diversity of markets favored intensive state-backed initiatives to enshrine basic market principles in formalistic, legal terms that guaranteed the state enforcement of contracts. The creation of these contract-centered legal institutions are widely considered the basis of global legal and economic modernity, and have become a hallmark of histories of economic development.²

¹ Gelderblom, R&W

² Greif, North.

In the spectrum of contract enforcement mechanisms (since there is presumed to be a roughly linear relationship between “modern” formal property right regimes and the “pre-modern” informal enforcement of property claims), China has consistently served as an example of a nation that failed to develop formal institutions.³ Indeed, it is demonstrably true that there were very few laws in the Ming (1368-1644) and Qing (1644-1911) dynasties about *how* private individuals were supposed to trade and what “rights” or obligations were associated with economic transaction.⁴ There were very few laws directly about transaction, contract, or normative economic relationships until the importation of German-style civil laws via Meiji Japan in the early twentieth century. Even after a civil code was introduced, its implementation was slow and incomplete. Throughout the twentieth century and into the twenty-first, China has been regarded internationally as a place where law does not play a primary role in governing markets or resolving economic disputes.

The relative unimportance of law to developing universal expectations of contract and exchange in courts is, I argue, the outcome of a heretofore unrecognized critical institutional difference in the way that Europe and China dealt with long-distance trade and jurisdiction. This difference may be traced to two important histories: the breakdown of the market-ward system in the eighth century, and the development of jurisdictional equality between counties from the fifteenth century forward. In this paper, I argue that these two institutional shifts combined to *rule out* the possibility of state-backed formal institutions for enforcing contract and instead develop an intermediary-centered notion of “transitive responsibility” for solving contract problems within the vast imperial market.

Commercial Disputes and Jurisdictional Uniformity in the Late Empire

Due to the decline of the Tang market-ward system (which will be discussed in the following section), the Ming solved the problem of unclear jurisdiction over commercial cases between traders from different provinces by demanding from the middle of the fifteenth century forward that “sojourning merchants in the provinces buying and selling in each place, if they encounter issues related to debt and money, are

³ Ma and van Zandt. This work marks the emergence of what the authors classify as a “Neo-Weberian” perspective on Chinese economic history, which contradicts the efforts of the previous generation of scholars to demonstrate that Chinese market institutions were “rational” in spite of not formally resembling European ones (see, for example, Ramon Meyer). Although this approach is not embraced by many current historians of China, the recent interest in new institutional economic history approaches to the study of China among U.S. economists and the compilation of large data sets has made this perspective once more relevant to the field, in spite of having been set aside by historians long ago.

⁴ This is gainsaid by Huang, who asserts that there were “principles” embedded in the code, but few people today continue to argue this point.

only permitted to bring suit in that place for investigation and disposition (直省客商在於各處買賣生理，若有負欠錢債等項事情，止許於所在官司陳告提問發落).”⁵ The legal reforms connected with this jurisdictional shift⁶ were designed to maintain the absolute equality and separation of all courts of first instance (one in each county of the empire), and to prevent cheating or the purposeful infliction of “hardship through litigation (*song lei* 訟累)” through jurisdictional manipulation by the privileged and wealthy.

Thus in the late empire, all cases were first tried in the county where the event under question had occurred, no matter how far the court was from the home jurisdiction of litigants. The only way that cases traveled outside of their appropriate jurisdiction was through appeal up the bureaucratic chain *after* a local trial had already been held.⁷ Some forms of information and punishment – particularly those involving heinous crimes or threats to the state – were deemed critical enough to always require the oversight and attention of multiple levels of the imperial bureaucracy.⁸ After trial in a court of first instance, crimes that warranted sentences of penal servitude and life exile were routinely sent up the bureaucratic chain for review at the provincial level before being executed.⁹ Death sentences and a certain number of grave crimes had to be reviewed both at the provincial and at the capital level before being carried out.¹⁰

Disputes whose allegations warranted anything less than penal servitude were classified as “self-handled cases (*zili anjian* 自理案件),” and were not subject to regular review.¹¹ In these cases, both punishments and the discretion of the magistrate were circumscribed. “Self-handled” cases thus constituted the administrative line between those affairs which were handled in accordance with law and those which

⁵讀例存疑卷三十九; 刑律之十五 訴訟之一; 越訴 13 This version preserved in a Qing sub-statute is the final Ming version of this sub-statute, published in the Hongzhi tiaoli edition from 1500. It was changed to this wording in 1493 from its original 天順 era (1457-1464) wording, which originally specifically mentioned the example of Jiangxi merchants, who had gained the reputation for taking their trading partners to court in Beijing. For the final wording, see 中國珍稀法律典籍集成, 乙編, 第二冊; 問刑條例 – 皇明弘治六年條例; 253

⁶ This fifteenth-century insistence upon the jurisdictional priority of the place of trade over all other courts was, by the middle of the eighteenth century, expanded to include all forms of litigation between subjects, which were required to be brought before the local magistrate “in the place where the offense was committed (於事犯地方告理).” 讀例存疑卷 39 刑律之十五 訴訟之一 / 越訴-11-YZ6 一。 This is a 1727 law.

⁷ Exceptions existed for cases involving military personnel (see Szonyi), non-Chinese subjects (see Zhang Ning), and land involving mixed jurisdiction, but these were all exceptions and won't be discussed here.

⁸ On regular review, a system with complex regulations whose details will not be covered in depth here because of this essay's focus on local cases, see Wang Zhiqiang JSD dissertation.

⁹律/lü 411 | Yousi jueqiu dengdi

¹⁰ There were crimes that were considered so heinous and whose punishment was thought to be so urgent that a sentence of “instant death” could be handed down, but these were unusual.

¹¹ These cases could move up the bureaucratic chain through appeals, but only under fixed circumstances. For more on this system and its evolution and implications, see Dykstra, “The Case against the Law”

were handled in accordance with local needs and conditions, within prescribed boundaries. Since most commercial disputes fell under the category of “self-handled” cases, magistrates were required to use a mix of consensus, bargaining, and information gathering within non-court local institutions and mediation forums, such as collective responsibility groups and merchant associations, to produce verdicts.¹²

The great advantage of this approach to purely local court processes for disputes between subjects, in the eyes of late imperial authors who wrote on the subject, was that the world of everyday life and exchange could continue (within certain parameters) across a vast and diverse empire according to local or individual conventions, experiences, customs, and agreements. The transactions of private individuals were thus oriented within a flexible, adaptable, diverse world of institutions that did not have to be made uniform or legible to the administrative gaze of the state. But in spite of accommodating great diversity and flexibility, this system of divided geographical and bureaucratic jurisdiction made law a poor candidate for resolving commercial disputes that crossed borders, and it seriously disadvantaged any trader operating outside of his native jurisdiction, where knowledge and access to local institutions could prove costly.

This paper demonstrates how the evolution of late imperial long-distance trade dispute resolution mechanisms centered around the question of how to protect sojourning merchants under conditions that obviously privilege traders native to the jurisdiction of exchange, one the one hand, without having to invest in an empire-wide set of normative trading expectations, on the other. The solution to this dilemma, as it emerged from the sixteenth to the nineteenth centuries, was the increasing importance of 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,” emerged first as a merchant custom of holding local brokers responsible for the long-distance transactions that they brokered. Over a series of institutional shifts, it was eventually combined with late imperial laws on brokered exchange to serve as a framework for assessing legal responsibility in cross-jurisdictional commercial disputes.

By the time that the custom of transitive responsibility was fully institutionalized by the Qing state in the early eighteenth century, court insistence upon the legal liability of licensed brokers overcame the gap between buyers and sellers who were not based in the same locally-bounded system of court justice. Local intermediaries were made legally responsible for negotiating local systems of dispute prevention and mediation on behalf of sojourning customers. If one party to a transaction failed to live up to a

¹² These processes are the subject of my dissertation.

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 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 and simplifying complex webs of obligation down into disarticulated relationships between each party and the broker. This solution balanced imperial demands that sojourning merchants be given uniform access to justice within the purely local realities of exchange.

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 the court *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 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 fit so well with the established picture of the Chinese business 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 transaction 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.

The Middle Imperial Market System and its Decline

The late imperial convention of recognizing intermediaries rather than explicit obligations may lead one to conclude that the Chinese state simply never developed positive laws about normative exchange. But in fact, early and middle imperial laws on commerce primarily focused on contract and fair exchange. These

laws operated in an economic regime that entailed exactly the type of formal enforcement associated with the modern market in economic history literature in spite of existing in China only up to the middle imperial age.¹³ A rough outline of the administration of this mid-imperial style of cross-provincial markets at their height in the Tang (618-907) dynasty will provide a background for understanding why intermediaries were chosen to regulate market behaviors after the breakdown of the market-ward system and the rise of the late imperial economic regimes.

In the middle imperial period, the problem of taxing and policing long-distance exchange was solved with a high-investment state strategy: cross-provincial trade¹⁴ was only permitted in state-supervised markets. At the zenith of this system in the Tang, markets (*shi* 市) for trans-local exchange were physically closed off wards of the empire's capital, prefectural, and county cities,¹⁵ which were directly managed by imperially-appointed Market Directors (*shi ling* 市令).¹⁶ The Tang Market Director and those below him were responsible for the tasks of taxation, official procurement, commercial and artisanal regulation, price reporting, and market governance. The market office registered shops and merchants, inspected weights and measures, prevented the circulation of counterfeit money, monitored the quality of commodities, registered certain types of sales, and regulated market prices.¹⁷

In order to facilitate the high degree of supervision and control required to perform the duties of the Market Director, the market wards for long-distance exchange were highly ordered spaces. Within the Tang *shi*, each merchant was a licensed and registered member of a given trade,¹⁸ and each trade was assigned to a particular row – or *hang* (行) – of stalls. Each trade was required to appoint a *hang* leader (*hangtou* 行頭 or *hanglao* 行老) to liaise with the office of the Market Director. The administrative and regulatory units of the *shi* and the *hang* were, thus, defined by both their physical and administrative form: control over the market was exercised by direct control over the actual space in which exchange was conducted, and the delegation of the tasks of market regulation within each trade was modeled on the physical layout of the market itself.

¹³ The Chinese state had laws about the registration and enforcement of contracts as early as the Zhou. See Creel.

¹⁴ It should be noted that this discussion of the state's relationship with the market excludes the voluminous details relating to the tribute and monopoly trades, which were dictated by special laws. In these areas, the state's intervention in market activities was much more pronounced. For more on the systems dictating tribute and monopoly trade, see

¹⁵ Much smaller, rural markets were not supervised by the central state, but in theory those markets dealt in the circulation of goods that either were locally produced (and thus not subject to commercial taxes) or those that had already been taxed through purchase in urban markets before filtering down to the village market level.

¹⁶ Imperial market spaces also existed on frontiers and within the imperial court for exchange with non-Han populations, but these spaces will not be covered here.

¹⁷ Denis Twitchett, "The T'ang Market System." *Asia Major*, new series, 12:2(1966): 207 – 208.

¹⁸ Article on 市籍??

The accord between market institutions, the supervising duties of directors, the activities of merchant groups, and the physical organization of market wards entailed a high degree of cooperation and communication between the economic and administrative institutions in the market space. In contrast to North's and Greif's champagne fairs, Tang markets featured *both* merchants who were familiar with the members and conditions of their own trade *and* state officials who were committed, by law, to "Fairly Modulating Prices," "Prohibiting the Manufacture of Substandard Instruments and Textiles," and "Prohibiting Unfair Exchange."¹⁹ Commercial cases could be brought both by subjects of the empire and by their counterparts from other polities, and were heard directly by the Market Director presiding over the ward.²⁰

But whatever promise this system of combined market expertise and state enforcement had, and whatever its possible implications if it had slowly matured along with the market, the geometric accord between physical and administrative market boundaries began to break down not long after their full implementation at the height of the Tang. It is estimated that the *shi* system began to collapse "as early as the eighth century... [as] markets moved out of their strict boundaries and, thus, out of the direct oversight of officials."²¹ The spread of commercial activity pulled economic exchange beyond the confines of the *shi* system, and central state officials failed to re-assert the primacy of their administrative claims. By the middle of the ninth century, the physical market institution had completely vanished.²²

The spread of market activity beyond controlled urban spaces in subsequent centuries led to a mixed and inconsistent approach to the governance of trans-imperial trade, as many institutions of economic governance developed in purely local contexts.²³ Two institutions that used to operate within the Tang system – "market-row" trade organizations (*hang*) and brokers (*ya*) – became critical tools in the centuries of local market regulation that followed. Instead of operating inside of a market space strictly monitored by central state officials, these institutions from the Tang market system remained in use for their economic utility after the market ward itself disappeared, as they were co-opted by local governments seeking the ability to tax and regulate commerce in an era of diverse and prolific trans-imperial exchange.

¹⁹ Wallace Johnson

²⁰ Hansen; Dunhuang contract/suit materials

²¹ DT230

²² Katô Shigeshi, "On the Hang or the Associations of Merchants in China, with Especial Reference to the Institution in the T'ang and Sung Periods," Research Department of the Toyo Bunko (The Oriental Library) No. 8 Tokyo. The Toyo Bunko. 1936. pp. 45 – 83. 54

²³ A brief exception may be considered in the case of the New Laws reforms based on the ideas of the Song-era reformer Wang Anshi. See James T. C. Liu, *Reform in Sung China; Wang An-Shih (1021-1086) and His New Policies*, (Cambridge: Harvard University Press, 1959).

Trade Organizations (*hang*)

Without controlled market spaces and direct supervision of market wards, the registration of individual merchants participating in long-distance trade became impossible. The merchant registration schemes of earlier dynasties were adapted into the organization of merchants based on trade, and the model adopted for this form of registration was the market-row, or *hang*, unit. The market rows themselves no longer existed, since the breakdown of closed market spaces led in subsequent centuries to new economic hubs in special commercial streets, shop districts, and market centers in Chinese cities throughout the empire. Instead of attempting to re-assert the physical organization of the *hang*, local governments began to revive the institution as a unit of shared trade responsibility. The label was used to group together merchants in various ways: physical proximity, relationship through trade, and connections to special markets.²⁴ As the variation of new meanings associated with the term *hang* suggests, the “market row” came to encompass various elements of the two, now uncoupled, geographic and administrative components of the Tang market administration.

In the first few centuries after the collapse of the Tang system, *hang* registered directly with the local governments of the empire continued to supply public offices directly with needed commodities and services under the institution of *hang* obligations (*hangyi* 行役). From the middle of the 12th century, as merchant groups became larger and more diverse, the system of direct *hang* procurement was generally replaced by the practice of official purchase (和買), in which *hang* members became responsible for setting official ‘market prices’ (時估) at which the goods could be purchased by the state.²⁵ These official market prices were consistently below the trading price of commodities, and the system of official purchase was thus widely considered a form of taxation by local governments. In exchange for bearing these demands, *hang* organizations were allowed to exercise considerable power over the markets in which they operated, and were not infrequently accused of wantonly asserting their “monopolistic” privileges within local markets.²⁶

²⁴ KS 53, 54, 57 – 59.

²⁵ QPS 1998 p. 15, KS 62. In fact, this system was often used to create fictional “market prices” that allowed local officials to demand goods at well below market price, and therefore attained a reputation as instruments of graft.

²⁶ Interestingly, the early legacy of the *hang* and its association with market privilege went on to play a major role in shaping much twentieth-century scholarship on Chinese merchant organization, in which scholars traced a direct line of descent from these organizations to the *huiguan* and *gongsuo* of the late imperial age. See, for example, Peng Zeyi.

Brokers (*ya*)

The other institution that emerged as critical to post-Tang market regulation – and the one at the center of this paper – is the broker. While trade-based obligations were linked to local *hang* organizations, the transaction-based functions of taxation and commodity registration were invested in brokers whose role in the market ensured that they would be present at the time of exchange. Even during the Tang, brokers (牙人, 牙郎, 互市, 市侩, 牙侩) operating in specialized local exchange of high-cost sales of land, livestock, and slaves (which required registration by the state) were held responsible for certification and taxation of commodities outside of the supervised market system.²⁷

The growth of an empire-wide economy outside of imperially-sanctioned spaces led to the expansion and diversification of economic intermediaries.²⁸ By the Song (960-1279) dynasty, brokers had taken over many of the functions previously associated with the directors of Tang markets: they provided critical information on the translation of standards of currency, measure, and transaction customs between regional markets. They also took on a whole host of new duties, including the provision lodging, transportation, and the storage of goods, in addition to the negotiation of transaction terms. The collapse of the market system made these intermediaries – whose role was previously peripheral – more important in regulating long-distance commerce by virtue of their nodal function in markets that had grown beyond their physical boundaries. After the dissolution of Tang systems, local governments began to issue licenses to these intermediaries to tax long-distance trade.²⁹ Although systems of brokerage licensing and taxation varied from place to place, this new class of intermediaries became generally referred to as “official brokers” (官牙).

Writings from the Song and Yuan (1279-1368) associate the *ya* with extortion both by local governments and by intermediaries. By the time of a thirteenth-century amendment to Yuan regulations on the market, it was reportedly not uncommon for local government clerks to demand taxes as “official brokers” without actually acting as market intermediaries, and for market intermediaries to claim taxes as “official brokers” without actually operating under the permission of the state.³⁰ Like the *hang* the

²⁷ In his 1998 work, Chiu Pengsheng suggests that the merging of taxation and registration duties under the *ya* was complete by 783. On the taxation and registration duties of the *yaren* in the late Tang, see QPS 1998 p. 16 – 17. On brokers in the Tang see DT 217.

²⁸ On brokers in the Song, see Yoshinobu Shiba (斯波義信), *Research on the History of Commerce in the Song Dynasty* [S

institution of the broker had become ubiquitous at the same time that its purely local methods of implementation allowed plenty of room for abuse and little possibility of widespread regulation.

Early Ming Market Regulations

By the time of the founding of the Ming dynasty (1368-1644), the unevenness of *hang* and *ya* organizations across the empire had led to a basic crisis for central state legislators: their diversity made local market administrators impossible to supervise uniformly at the same time that they made the transaction cost and risk of operating in markets extremely high for those without local connections. In the founding regulations on markets, released in the first year of the dynasty both merchant organizations and brokers had become so widely associated with corruption that they were not given official functions.³¹

Early Ming regulations on markets were primarily concerned with establishing boundaries for local powers of taxation and procurement. Indeed, it was only in these explicit prohibitions against abuse that *ya* and *hang* were explicitly named. The founding Ming emperor explicitly outlawed commercial taxation in excess of national quotas (through any institution whatsoever), and further insisted that the system of official price and procurement was “disruptive to commoners (擾害于民)” and must be abandoned. The only legislation endorsing any of the functions associated with these old institutions was a recognition of one of the functions of intermediaries that had emerged after the Tang collapse: their roles as innkeepers for traveling merchants.³²

certain items (property, slaves). 元典章刑部--> 17-刑部卷十九

【斛斗秤尺牙人】〔〕■

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³¹ Neither *hang* nor *ya* were mentioned as officers in markets. The Hongwu Emperor further explicitly commanded that if the officials of a jurisdiction required goods from the market they should be purchased at the fair market price. 洪武元年大明令: PAGE 12 OF YIBIAN, VOL 1: COMMANDMENT ON CONSENSUAL SALE IS BASICALLY AGAINST PROCUREMENT BELOW MARKET PRICE: 凡内外军民官司, 并不得指以和顧和買, 擾害于民。如果官司缺用之物, 照依時值, 財物平收買, 或客商到來中買物貨, 并仰隨即給價。如或減駁價值及不即給價者, 從檢查御史, 按察司體察, 或赴上司陳告, 犯人以《不應》治罪。

³²By the Ming, many brokers simply operated as lodges in commercial districts 杨其民, “买卖中间商‘牙人’, ‘牙行’的历史演变 – 兼释新发现的<嘉庆牙贴>”《史林》[Historic Review] 1994 年 04 期 p. 10. Author quotes 《万历会典》卷 35 收税条载: ‘洪武三年令, 凡客店每月置店历一扇。在内赴兵马司, 在外赴有司签押讫, 遂日附写到店客商姓名, 人数, 起程月日, 月终各赴所司查照。’ On the history of brokerages before this period and the impact of the passage of this law, see Hu Tieqiu 胡铁球. “歇家牙行’经营模式的形成与演变 Formation and Development of ‘Xie Jia Ya Hang’ as an Operational Model.” 历史研究, Historical Research no. 03 (2007): 88–106. For more on this 1370 reform, see Yang Qimin, “The Historical Evolution of *Yaren* and *Yahang*

The Hongwu Emperor decreed that the owners of inns and warehouses would be made accountable for keeping track of and registering individual merchants, their movements, and their commodities:

All guest lodges (客店) each month establish a “shop book (店历)” stamped with the seals of the military and civil officials of the jurisdiction in which, each day, is written the following information about sojourning merchants (客商): name, number of individuals, and route. At the end of each month, each is submitted to the appropriate official for inspection and verification. If a guest merchant falls ill and dies, the goods left behind – if there is no family member present – shall be reported to the official for documentation, and then notification sent to the father, brother, son, or wife of the decedent for return upon verification of their identity. If, after one year, none is verified, the goods enter the official coffers.³³

In this new regulation, brokers did not appear by name, but rather as the heads of lodges for traveling merchants. Although obviously a law about the brokers who lodged merchants, this law vested authority in owners of “guest houses” as a way of working around explicit mention of official brokers, whose continued existence was apparently still under debate by the law-makers of the Ming.

This first piece of legislation on market institutions in the Ming demonstrated the ambiguity of the central court towards recognizing the institution of official brokers. It also marked a new turn toward legislation about the “sojourner merchant,” literally a “guest merchant (*ke shang* 客商),” as an individual conducting business outside of his own jurisdiction. The notion of a “sojourner merchant” can be found infrequently in general writings from before the Ming, but only emerged as a legal concept from this 1368 regulation forward. This category would have been more or less meaningless to merchants and administrators at the height of the market-ward system, as merchants existed within these spaces as registered individuals operating within a uniform long-distance trade system. But the emergence of so many local institutions after the decline of the *shi* had created a sharp division between local and sojourning merchants in any given market. The Ming was the first dynasty to pay explicit attention to regulations designed to protect *ke shang* by checking the privilege of local actors.

Formalization of Brokers in the Ming Code

Transaction Intermediaries: With an Explanation of the Newly-Discovered ‘Jiaqing Ya License,’” [Maimai zhongjianshang ‘yaren,’ ‘yahang’ de lishi yanbian: jian shi xin faxian de ‘jiaqing yatie’ 买卖中间商‘牙人’, ‘牙行’的历史演变 – 兼释新发现的<嘉庆牙贴>] *Shi lin* [史林] 04, (1994), 10 and the “Collection of taxes” [*shou shui* 收税] section of the 35th *juan* of the *Wanli huidian* [萬曆會典].

³³ 明洪武元年大明令 ON SHOP REGISTERS: PAGE 12 OF YIBIAN, VOL 1

The Ming Code (first promulgated in 1368 and revised several times before the final edition in 1397) offered the first empire-wide legal summary of market institutions since the Tang *shi* system. The market system reflected in this early Ming codification represented both the general evolution of intermediary institutions over the several hundred years since the decline of the walled markets, as well as a new emphasis on controlling market actors with local privilege to make trade in strange ports less risky for sojourning merchants. The *hang* of the empire were completely omitted from official market functions.³⁴ New legislation on the broker – now frequently referred to as a *yahang* (combining the characters for “broker” and “market row”) – was primarily concerned with preventing abuse.

The Ming section on market laws began with a new prohibition: one against illicitly posing as a harbor-master (an individual capable of inspecting and taxing goods traveling through or into a port) or a *yahang*. In this regulation, brokers and their function were legally defined by the central state for the very first time. The law read:

In every city or village the brokers (*yahang*) and harbor-masters are selected from among the registered residents with collateral property [to pledge] and given an official seal and account book wherein they shall inscribe the names of all out-of-town merchants or incoming boats, their place of registration, name, route, and the quantities of goods they bear. Each month the book shall be submitted to an official for examination. Those illicitly assuming the post are beaten with 60 blows of the heavy staff, and the brokerage fees obtained by them confiscated by the state. Official brokers (*guanya*) or harbor-masters who collude to conceal them are beaten with 50 blows of the light staff, and expelled from office.³⁵

In this law the local practice of appointing official brokers was countenanced in dynastic statutes for the first time. But although “brokerage fees (牙錢)” were mentioned in the text of the law, the widespread use of brokers as tax farmers was carefully omitted from the code and the broker appeared merely as an individual responsible for registering the movements of sojourning merchants.

In other early Ming laws about the market and the role of brokers in exchange, three main trends can be pinpointed. First, as in previous dynasties, intermediaries in any capacity were broadly and explicitly

³⁴The institution of the *hang* is mentioned only once in the Ming Code. Where the Tang laws on fair prices commanding that “all market officials” had to record prices fairly and accurately were re-written with the presumption that brokers were at the center of all market transactions, and by the Ming dictated that “All members of *hang* for various goods must evaluate the prices of goods fairly, and any who raises or lowers a price unfairly will be punished as though the gains were illicit.” This legislation suggests that the Ming understood but did not countenance the cartel functions of the *hang*, whose role as liaisons for corvee were explicitly outlawed.

³⁵中国珍稀法律典籍集成__乙编__第一册_刘海年, 杨一凡主编
大明律值解所載明律卷第十; 戶律; 市廛; 501

responsible for upholding the laws in the empire's markets, and could be held criminally liable for participating in or concealing knowledge of transactions that entailed infractions upon dynastic law.³⁶ Second, as mentioned above, the broker's only explicit duty to perform on behalf of the state involved the management of information about merchants doing business out of their home jurisdictions. All other duties were excluded from explicit mention. Third, brokers were banned from exercising their official privilege in the market. This third category of laws reveals the underlying ambiguity of the treatment of the broker in Ming law.

The Ming Code introduced specific prohibitions against using the privilege and knowledge of the broker's position against the interests of "guest merchants" or the natural operation of the market. In the most striking example, the Ming Code adapted the Tang regulation on non-consensual sale (賣買不和較固) – which originally forbade "the one-sided seizure of profits and obstruction of the market through non-consensual sale or purchase" by either side of a transaction into a new law on Exercising Undue Influence in the Market (把持行市). In this new law, the "sale and purchase of all items, when both sides do not fully consent" was characterized as exercising "undue influence in the market" in order to "monopolize profit," and any person guilty of "concocting a treacherous plot with a *yahang* to sell cheap goods dearly or purchase expensive goods cheaply" would be punished.³⁷

Before this law was created, the specific phrase "exercising undue influence" (*bachi* 把持) had only ever appeared in earlier laws forbidding the abuse of privilege by local officials. It appeared in the context of market exchange for the first time in this Ming law, and entirely took the place of regulations on fairness

³⁶ Punishments for taking part in illegal transactions but not reporting them – such as those involving human trafficking, illegal double-mortgaging of land, the sale of illicit salt, or meddling of monopoly prices on salt – could all be punished together with the individuals guilty of purchase or sale, usually with one degree less of severity. This form of legislation was consistent with Tang laws serving the same function (such as, for example, the law against human trafficking 略人略賣人), in recognition of the broker's complicity in illegal transactions. These types of regulations were present both in laws made at the time of the drafting of the Code and in subsequent sub-statutes adopted over the course of the dynasty. See, for example, 讀例存疑卷 42 刑律之十八 詐偽; 私鑄銅錢-10; 讀例存疑卷 09 戶律之一 戶役; 收留迷失子女 (律); 讀例存疑卷 10 戶律之二 田宅; 典買田宅 (律); 讀例存疑卷 15 戶律之七 課程鹽法 (律 and 2); 讀例存疑卷 15 戶律之七 課程阻壞鹽法 (律); 私茶-02; 舶商匿貨 (律); AND 人戶虧兌課程-03 ; 讀例存疑卷 30 刑律之六 賊盜下之一; 略人略賣人 (律); 讀例存疑卷 31 刑律之七 賊盜下之二 發塚 (律 and 發塚-22); 讀例存疑卷 23 兵律之四 厩牧宰殺馬牛-03; 讀例存疑卷 43 刑律之十九 犯姦買良為娼 (律 and 買良為娼-01)

³⁷ (表一之 3) 〈把持行市〉 / 〈賣買不和較固〉律文 明律 I. 凡買賣諸物，兩不和同，而把持行市，專取其利；及販鬻之徒，通同牙行，共為姦計，賣物以賤為貴，買物以貴為賤者，杖八十。唐律 I. 諸賣買不和，而較、固取者（較，謂專取其利。固，謂障固其市）；及更出開閉，共限一價（謂賣物以賤為貴，買物以貴為賤）；若參市（謂人有所賣買，在傍高下其價，以相惑亂），而規自入者：杖八十。

in exchange between equals in the market. Thus, in one revision, the Ming state recognized the official privilege of brokers at the very moment that they sought to restrain that privilege without giving it concrete form. This disposition demonstrates a cautious and uneven relationship between central authorities and the local institutions of taxation and regulation which they acknowledged at the same time that they strove to limit. A basic tension existed at the heart of these new laws, which entailed a partial recognition of brokers at the same time that their official functions were placed outside of the realm of legal institutions. Brokers thus appeared in the law as powerful, critical figures whose privilege made them threats both to the customers they served and the state they nominally represented. In this regard, they represented the gap between central ambitions to police market behaviors and the local realities of exchange.

Unsurprisingly, this approach to regulation-without-institutionalization failed. Reports of brokers colluding with local officials to profit at the cost of traders began to make it to the capital even before the end of the reign of the first emperor. Incensed by accusations of abuse by local officials exercising undue influence in the market, in taxation, in courts, and in other areas of governance, the Hongwu Emperor issued a series of three Great Commandments (大誥) in 1385, 1386, and 1387 with the aim of correcting the institutions laid out in earlier laws to gain a tighter hold on the sources of corruption and graft throughout the empire. In these commands, one of the institutions attacked by the emperor was the system of official brokers.

In the second series of commandments, in an item prohibiting excessive taxation, the emperor directly outlawed both official brokers and their private counterparts:

In all of the market towns, counties, and departments of the empire, it is not permitted to allow official or private brokers. All sojourning merchants arriving with commodities, after they have submitted the taxes required by regulations, shall sell their own goods and their own discretion. Any who dares to call himself an official or a private intermediary is permitted to be apprehended by local collective responsibility heads and sent to the capital for punishment of exile beyond the boundaries of the empire. If the person is an “official intermediary,” then the entire family of the official is exiled together with the guilty party. Any individual living adjacent to one daring to call himself an official or private broker who does not report them is subject to the same punishment.³⁸

In this description of “official intermediaries,” the Hongwu Emperor attested to the fact that the class of “official brokers” was so poorly regulated that it included not only market intermediaries collecting

³⁸中国珍稀法律典籍集成__乙编__第一册__洪武法律典籍_12342620_P992_刘海年, 杨一凡主编 大誥續編: PAGE 12 OF YIBIAN, VOL 1; 160-1 ON YAHANG

sanctioned taxes on behalf of the local state, but also officials who demanded taxation without brokering transactions and intermediaries who collected “taxes” without official sanction. The practice of “official brokerage” was so widely recognized and yet so inconsistent that it had expanded to encompass a large field of opportunities for extra-statutory taxation and extortion. The emperor attempted to outlaw official brokers as an entire class. He promised – and later delivered – harsh punishments for any found guilty of posing as an official broker.³⁹

Mid-Ming Laws on Intermediaries and Local Market Institutions

The Hongwu Emperor’s frustrated bid to outlaw brokers altogether failed to resolve the fundamental tension of Ming market laws, given the weakness of the central state vis-à-vis local institutions. Indeed, just over a century after the Hongwu Emperor’s last Great Commandment, when the first major edition of Ming sub-statutes was published in 1500, the illegality of brokers was completely overlooked. From this edition of the Ming sub-statutes forward, brokers became increasingly conceived of as a class of individuals under whom market duties were increasingly concentrated.

In the 1500 sub-statutes, a regulation about brokers was even added to the Ming law against impersonating an officer of the imperial bureaucracy (詐假官). Individuals guilty of “privately or illicitly opening a yahang business (私開牙行)” would henceforth be punished as pretenders to imperial office.⁴⁰ In this first legal statement about brokers since their prohibition, the central state directly recognized the official status of brokers as representatives of the state. This concession to the local importance of brokers – in spite of their ambiguous reputation and their operation outside of the control of the central state – marked a final turning point in regulations about intermediaries.

From this point forward their activities were no longer targeted for blanket prohibition. Instead, sub-statutes increasingly attempted to prohibit the abuses of *yahang* privileges that were presumed to exist.⁴¹

³⁹ In the text of the Hongwu Emperor’s Third Commandment, Ming Taizu reported that an individual (?? Individuals???) guilty of “calling himself a *yahang* and attempting to control and obstruct the transactions of guest merchants” had been reported to the capital, and was subsequently put on public display in the cangue until he died from exposure, after which point his entire family was commanded into exile outside of the boundaries of the empire. THIRD COMMANDMENT 229 ON TREACHEROUS YA 私牙騙民。

⁴⁰ FROM YIBIAN, VOLUME 2: Page 261 The 弘治問刑條例 is published in 1500, and holds for 50 years.

⁴¹ Along with this concession, extra provisions against *yahang* using their privilege to force exchange were added along with punishments for any official presiding over a market where such abuse occurred. It should be noted,

The actual functions and duties of brokers were, beyond the initial Hongwu-Era requirements to register sojourning merchants (which were now listed under a law explicitly about *yahang* for the first time),⁴² still left to the discretion of local governments, which began to implement their own systems of registration and control over the remainder of the Ming.

Qing Laws on Markets and Mediation

The early Qing (1644-1911) state grappled with the same diverse set of local commercial institutions that the Ming had attempted to reign in. Like the Ming before it, the early Qing attempted to circumscribe opportunities for local corruption by limiting local powers of taxation⁴³ and publishing general laws prohibiting the use of privilege to profit from cheating “guest merchants” in local markets. Over the years, the Qing bureaucracy implanted a new strategy: governing local markets by removing all authority of county-level officials over them and fixing all responsibility for exchange and taxation in the brokers,⁴⁴ now uniformly referred to as *yahang*.⁴⁵

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 a highly irregular and localized state-broker arrangements.

however, that punishment for presiding officials was only specified in cases where the cheated merchant died as a result of the mistreatment. FROM YIBIAN, VOLUME 2: The 弘治問刑條例 is published in 1500, and holds for 50 years. Page 253 (PDF 278): 明代律例彙編卷十 戶律七 市廛 私充牙行埠頭 弘治問刑條例

⁴² 明代律例彙編卷十 戶律七 市廛 私充牙行埠頭 弘治問刑條例

⁴³In SZ4, a prohibition against establishing illicit “municipal customs” levies: 欽定大清會典則例卷五十, 二十六頁: 戶部, 雜稅下: 雜賦禁例 (PDF 53): SZ4 順治四年議準嚴禁州縣借落地稅銀名色及勢宦土豪不孝有司設立津頭牙店擅科私稅. In KX12 it was made explicitly illegal to tax the goods that subjects sold in small amounts on the streets, such as cloth, rice, and vegetables. 欽定大清會典則例卷五十, 27 頁: 戶部, 雜稅下: 雜賦禁例: KX12 康熙十二年覆準小民肩挑背負尺布斗米蔬果食物貿易者地方官不許徵稅. In 1729 the YZ E explicitly forbade the collection of commercial taxes on small-volume markets in poor and remote areas. 欽定大清會典則例卷五十, 30 頁: 戶部, 雜稅下: 雜賦禁例 YZ7 雍正七年題準州縣徵收稅銀凡窮鄉僻社些小生理無關課稅者永行革除. See also the declaration from YZ13 at QLSL: Yongzheng year 13, month 10 xinsi day; HDZL juan 50, 33-34, discussed below.

⁴⁴In SZ4, a prohibition against establishing illicit “municipal customs” levies, it was made explicitly illegal for county officials to allow locals to establish their own tax-collecting brokerages. 欽定大清會典則例卷五十, 二十六頁: 戶部, 雜稅下: 雜賦禁例 (PDF 53): SZ4 順治四年議準嚴禁州縣借落地稅銀名色及勢宦土豪不孝有司設立津頭牙店擅科私稅

⁴⁵In the Sunzhui3 publication of the Qing Code, the law originally referring to *hang* organizations fixing and reporting prices (市司評物價) was, in according with the Jiajing-era emendation, altered to be about “yahang.” 大清律例通考校注, 市司評物價, 531:

This problem was remarked as early as 1658, when the Inspector General (巡撫) of Hunan, Jia Hanfu (賈漢復), submitted a memorial reporting that, although *yahang* taxes were still being collected in his jurisdiction, the standard bureaucratic mechanisms for licensing and tax collection had not yet been implemented. As a result provincial-level offices could not scrutinize the collection of commercial taxes by brokers. He concluded his memorial with the suggestion that *yahang* licensing and taxation policies be made uniform throughout the empire to facilitate control over these local institutions.⁴⁶

In 1687 a system of national registration capable of laying the foundation for such a proposal to regulate licensing and taxation was first introduced into the Qing bureaucratic regulations. In this year the Kangxi Emperor commanded that:

The *yahang* in every place procure licenses, which are registered at five-year intervals after which they are examined thoroughly and exchanged for new ones. If some rootless vagrant rents a license together with others as a pretext for opening a general brokerage (總行) in order to force merchants to do business only with his shop, or ties up the investments of sojourner merchants for long periods and thus threatens commerce, the local official of that place who fails to discover, apprehend, and punish such an individual will be punished according to the law. If the official of that place intentionally protects or conceals such behavior, demotion of two degrees and transfer. If a bribe is received to participate in such a plot, then handle it in accordance with the laws on Miscarriage of Justice according to the amount received.⁴⁷

For the first time, local officials were made directly responsible for maintaining local registers of brokers and accountable for failing to regulate the *yahang* in their jurisdiction.⁴⁸ What remained, now that the central state had finally made a claim to the prerogative to supervise the regulation of all local brokers, was the institutions to implement this initiative.

In 1733 the Yongzheng Emperor made the first move to establish central control over the system of market management by removing the power to create official brokerage licenses at local discretion. In an effort to both control taxation and regulate licensing, the Yongzheng Emperor issued an edict giving provincial governments oversight on the issue of new licenses and mandating that the number and distribution of licenses be reported to and then fixed by the central government. The edict read:

⁴⁶順治 15 年 5 月 21 日;

⁴⁷欽定大清會典則例卷十八, 33-34 頁: 吏部, 關稅, 一清察牙行: (PDF65): KX25

⁴⁸ In YZ3, this regulation was made a part of the Qing penal code, with a sanction attached: punishment for abusing a license was one month in the cangue and military exile to a near border. 大清律例通考校注, 私充牙行埠頭第 3 條例文, 530.

In every province, the issuance of additional brokerage licenses must be handled by the provincial Financial Commissioner. County-level authorities are not permitted to issue licenses on their own. This is a measure to guard against the illicit creation of brokerage licenses, and to protect the merchant population from excessive burdens. Of late, We have heard that the brokerage licenses of every province have been increasing yearly. In each place where people congregate to transact, small-time peddlers of miscellaneous goods have historically been exempted from the demands of *yahang*. But now even they have been given licenses, and wicked brokers who gather in the markets use these licenses as an excuse to coerce others and extract extra profits. For every additional brokerage, the merchant population is burdened with additional hardship. This is an extreme perversion of the principle that fair prices facilitate exchange. Every Governor-General shall order his attendant Financial Commissioner to fix a number of licenses for the province, depending on local conditions. The subsequent report will be placed on file, and no additions to the number of licenses may be made. From then on, whenever a license is retired, it should be examined and then reissued to another. If a new market is opened, and new licenses must be created, a decision should be made about the appropriate number, and a report filed. In such a manner all of the small-time traders may be spared the extortionate malfeasance of brokers.⁴⁹

From 1734, county officials found issuing *yahang* licenses without approval from the provincial treasury were demoted by one pay grade, in accordance with the law on “Local Officials Using Official Seals Inappropriately.”⁵⁰

The efforts of the Ming and early Qing emperors to bolster the system of official brokerage through incorporation into the dynastic legal code were, in one fell swoop, given a new meaning. In the millennium since the emergence of brokers as state-market intermediaries, the implementation and control of these offices had remained a purely local matter. With this maneuver, the central bureaucracy removed these market agents from the jurisdiction of the empire’s local governments.⁵¹ The 1733

⁴⁹ YZSL: year 11, month 10, *jiayin* day and HDZL *juan* 50, 33.

⁵⁰ 欽定大清會典則例卷十八，34 頁：吏部，關稅，一清察牙行

⁵¹ 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 his “Commercial Lessons and Professional Education: A Discussion and Description of Economic and Moral Theories from the Sixteenth to the Eighteenth Century in China” [*Shangye xunlian yu zhiye jiaoyu: shiyou zhi shiba shiji Zhongguo de jingji yu daode lunshu* 商業訓與職業教育：十至十八世紀中國的經濟與道德述] delivered at the “Education and Local Development in China’s Contemporary and Modern Eras” [*Zhongguo jinshi yijiang jiaoyu yu difang fazhan* 中國近世以教育與地方發展] conference at Taiwan National University, August 1-2, 2005; available at <http://www.sinica.edu.tw/~pengshan/>; “An Analytical Description of Debt and Negligence in Eighteenth-century Chinese Commercial Law” [*Shiba shiji Zhongguo shangye falü zhong de zhaifu yu guoshi lunshu* 18 世纪中国商业法律中的债务与过失论述] in Fan Shuzhi (樊树志), ed. *Ancient China: Tradition and Transformation* 《古代中国：传统与变革》Fudan Historical Studies Series vol. 1 (复旦史学集刊；第 1 辑) (Shanghai: Fudan Daxue

assertion of provincial control over and imperial regulation of *yahang* licenses marked the full centralization and regulation of official brokerages.

Under this framework, *yahang* became imperially-recognized agents of taxation and market regulation who operated *within* the economy and *beyond* the reach of local government. The only power given to these licensed brokers was the right to collect a “thousandth tax” (*lijin* 厘金 or 釐金) on each transaction to compensate them for the imperial commercial taxes that they were obligated to pay annually. But *yahang* had no direct powers over the market (nor official monopolies over the products they brokered). Their purpose 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, reporting on important price information, and collecting *lijin* taxes on trans-local exchange. With one move, the empire’s diverse local forms of commercial taxation and market regulation were made obsolete.⁵²

From this point forward, the struggle for central control over market administration began in earnest. In many market towns the same individuals who had political power or social standing were long in the habit of asserting the right to collect fees on exchange in the market place as the privilege of their station. Powerful local figures, *yamen* employees, and even local officials had fueled the expansion of the brokerage system in a quest for profit and power that had lasted over a thousand years in the vacuum left by the disappearance of the Tang market system. By the time that the Yongzheng Emperor claimed central authority over the system of official brokerage, both licensed and illicit brokers had cast a sprawling net of revenue collection even in the markets where commerce was supposed to be free from the taxation. In an effort to reduce this type of malfeasance, the Qing state passed several laws designed to protect the market space from political interference or the unfair wielding of social prestige.

The Qianlong Emperor’s campaign against local abuse and privilege began even before the emperor officially announced his reign, during the final months of the Yongzheng period. In 1735, the newly-enthroned Qianlong emperor began his efforts to complete the formation of an imperial system of licensed brokers by issuing an interdict against “municipal customs” (落地税) levies. The declaration of the emperor read:

I hear that in every place throughout the provinces, in addition to the customs barriers and miscellaneous taxes, there is now something being called “municipal customs.” And for

chubanshe, 2005): 211-248; and the substantively different English version: “The Insolvency and Negligence Discourses in the Eighteenth Century China,” in Robert E. Hegel and Katherine Carlitz, eds. *Writing and Law in Late Imperial China: Crime, Conflict, and Judgment* (Seattle: University of Washington Press, 2007) 125–42.

⁵² This swift and elegant declaration, of course, did not lead to a universal change in practice throughout the empire. On the problems and implementation of the *yahang* system and the outlawing of “municipal customs,” see Chapter 3 of my dissertation

every rake, hoe, basket, broom, stick of kindling, chunk of coal, fish, shrimp, vegetable, or fruit – no matter how little its value – taxes must be handed over before the goods can be traded on the market. There are even those who go to some marketplace in the east, pay their due, and then take their goods to a marketplace to the west, where they must once more pay a heavy toll. Even in remote and inaccessible parts of the countryside, where the eyes and ears of the authorities do not reach, sometimes *yamen* employees or *yahang* are commanded to set up shop. A tiny fraction of the money collected is handed over to the office; the bulk is used to line the pockets of these treacherous and wily lackeys. How heavily the poor commoner feels the burden! A command about these municipal customs on local marketplaces is hereby sent down to every province: for those markets that are within the city walls of prefectural or county seats, in crowded urban areas where traffic converges and there is a great amount of trade, it is easy for officials to keep an eye on the practice, and taxes on trade may continue to be levied. But it is not permitted to extort anything beyond the limit established by precedent. And it is not allowed to demand onerous levies. Those stations in markets that are in the countryside are all banished permanently. Greedy officials and underlings may not use the excuse of “municipal customs” to pilfer even a single *wen* of cash. It is up to the provincial authorities to determine the best way to put an end to this practice, and then report back in detail...⁵³

Between the Yongzheng Emperor’s 1733 declaration and the end of the Qianlong Emperor’s first decade of rule in 1745, more than a dozen laws were passed to restrain the local powers of taxation and create an apparatus of broker licensing and regulation capable of being supervised by the imperial bureaucracy.

In 1735, the *yamen* offices responsible for local government were prohibited from making official procurements from *yahang* agents.⁵⁴ Magistrates responsible for any *yamen* workers who demanded illicit procurements from *yahang* could be expelled from officialdom permanently if they were found guilty of profiting from the abuse.⁵⁵ This was followed up over the next few years by explicit commands that *yahang* submit pledges of guarantee from locals attesting to their character and accepting responsibility in case of any scandals involving the intermediaries,⁵⁶ as well as punishments for local officials who failed to operate a *yahang* licensing system within the new parameters.⁵⁷

These measures were complimented by a move to make general prohibitions against abuse of privilege by *yahang* more salient by making brokers more vulnerable to legal accusations from their

⁵³ See QLSL: Yongzheng year 13, month 10 *xinsi* day (this entry in the *Qianlong shi lu* records year 13 of the records year 13 of the Yongzheng era because it took place between the death of the Yongzheng Emperor and the enthroning of the Qianlong Emperor). This decree was made a part of the statutes and regulations of the Board of Revenue in 1739. See HDZL *juan* 50, 33-34.

⁵⁴ Sub-statute eight of the law on “Exercising undue influence in the market” [*bachi hangshi* 把持行市], DLCY 讀例存疑卷十七 戶律之九 市塵.

⁵⁵ HDZL *juan* 18, 35-36. For the text of the original memorial, see Grand Palace Archives 協理陝西道事監察御史奏請飭禁 牙行 蠹役由; 1 12 4

⁵⁶ 品名: 《明清檔案》 卷冊: A088-040; 登錄號 043304-001 and QLSL 乾隆三年。戊午。十二月。○丁酉

⁵⁷ 乾隆四年。六月。丁酉。禁州县增设牙行。

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 and member of the Imperial Academy, 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...”⁵⁸

In response to the memorial, the Qianlong Emperor declared that this suggestion should be made into a law, adding 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...” The emperor demanded that Jalangga’s suggestion be formulated into law, and in 1738 the first sub-statute of the law on “Not responding to complaints” was modified to include a clause on suits related to *yahang* embezzlement. The new code read:

Every year from the first day of the fourth month to the thirtieth day of the seventh month, during the height of agricultural work, all personal complaints about household structure, land, and other such *xi shi* are not permitted for court. 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, are excepted from this rule. If these accusations are substantiated, then they shall be handled as usual...⁵⁹

Together with the nation-wide 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. The absence of a local apparatus designed to supervise or interfere in the market meant that local offices could no longer claim to directly regulate exchange.⁶⁰ In order to protect vulnerable buyers and sellers from predators, the central state instead committed local officials to hearing

⁵⁸ QLSL: year 3, month 12, *dingyou* day.

⁵⁹ See the first sub-statute of the law on “Not responding to complaints” at DZLL1779, 879-880.

⁶⁰ This case has already been made in Chiu Peng-sheng “Understanding the Ming and Qing Legal Regulation of the Market through the Evolution of the Market Codes,” [*You shichan lüli yanbian kanming Ming-Qing zhengfu dui shichang de falü guifan* 由市廛律例演變看明清政府對市場的法律規範], in *Historical Studies: A Collection of Conference Papers on the Study of Continuity and Change* [*Shixue: chuancheng yu biaoqian xueshu yantaohui lunwen ji* 史學：傳承與變遷學術研討會論文集,] edited by Shen Gangbo (沈剛伯) (Taipei: Guoli Taiwan daxue lishi xuexi, 1998).

cases against intermediaries who had failed in their duty to act faithfully on behalf of buyers and sellers from afar.⁶¹

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.⁶² The edict that he wrote asking for the opinion of the central ministries on how to punish this type of behavior outlined the reasons for his dismay at the practice:

.... The officially-established system of brokerage was created in order to allow purchasers and sellers to access correct information about prices, as a convenience to them. Anyone who illicitly purchases these brokerage licenses in order to exercise undue privilege (其頂冒把持者) should be punished severely. Recently We have heard that many clerks in the *yamen* of the provinces have taken false names in order to obtain *yahang* licenses of their own, which they then use as a tool to cheat others and attempt to control the market for their own profit. These types make a meal for themselves out of the merchants plying their trades in the market. And whither shall the victims of this abuse turn, when their oppressors are so familiar with the workings of the *yamen* that no suit can be proffered? It is a great plague on the market, and cannot even be compared with other, more pedestrian attempts to coerce economic activity. It is fitting to prohibit this type of behavior in the strictest terms.⁶³

In the Board of Revenue regulation that was approved that same year, it was determined that 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.⁶⁴ 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.⁶⁵

⁶¹ The law against cheating was attached issued not long after regulations on enforcing fair trade through *yahang* were added to the Board of Revenue Regulations, which will be discussed below. See HDZL *juan* 50, 39-40. Other, similar, measures followed in later years. For example, in 1759, the Board of Punishments approved a memorial from the provincial treasurer of Yunnan SPECIFYING PUNISHMENTS FOR YAHANG IN CASES OF EMBEZZLING. Added to the penal code in 1761. DLCY [把持行市-05](#)

⁶² In his Second Commandment, Ming Taizu issued a similar command. See 157 (pdf page 246)

⁶³ QLSL: year 5, month 9, *wuyin* day. For the text of the law as it was entered into the *huidian*, see 欽定大清會典則例卷五十, 38-39 頁: 戶部, 雜稅下: 雜賦禁例

⁶⁴ HDZL: *juan* 50, 38-39.

⁶⁵ Additional punishments were specified for *yamen* workers who had used their licenses to successfully bamboozle merchants. See sub-statute six of "Illicit undertaking of *yahang* and harbormaster duties" at DQLL1779, 530.

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 literati status from taking advantage of the market through *yahang* offices. In his edict, the emperor clarified the purpose and place of *yahang* in the Qing economy:

For trade among the subjects of the empire, the state has established official brokerages. These *yahang* negotiate market prices so that commerce may flow freely and convenience the people. In this way, both parties to a transaction may benefit. For this reason a statute has been written: those undertaking a *yahang* license must have a considerable estate and commoner status in order to file a pledge at the *yamen*. Only then may they receive the license and undertake their duties.⁶⁶

The proclamation then detailed the emperor's reasons for prohibiting holders of imperial degrees from obtaining official brokerage licenses:

Requiring *yahang* to have commoner status means that they have no special privileges that they could use to bully others. Out of concern for their own welfare, they will tremblingly uphold legal discipline, and they dare not embezzle wantonly... Of late We have heard that out in the provinces there are many degree-holding literati who have taken up *yahang* licenses. Whenever they steal from merchants, or delay repaying money owed on goods, they may bully their victims and delay treacherously or they may use their status to extort from them. Among poor sojourning merchants from afar there are those who merely bear it and do not file suit. It is truly pitiable. Previously there were *yamen* workers who obtained *yahang* licenses under assumed names. An edict has already been issued on this matter, and now that those individuals are being strictly punished and that this form of malfeasance is being rooted out, degree-holding literati are starting to take up *yahang* licenses. The harm is commensurate with a *yamen* worker holding a brokerage license. All currently-held licenses should be examined in detail. If there are those held by degree-holding literati, they should be returned, and the shop should be closed up...⁶⁷

The decree ended by warning that magistrates who failed to adequately guard against the plots of degree holders to obtain licenses would be punished for their neglect.⁶⁸

These 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

⁶⁶ QLSL: year 8, month 6, *jimao* day.

⁶⁷ *ibid.*

⁶⁸ The following year, in 1744, both the Board of Revenue and the Board of Personnel introduced statutes outlining the punishments associated with official neglect of the *yahang* system or for any form of laxity in protecting the system of official brokerage against abuse by others. Local officials could be forced to forfeit one year's pay if they issued *yahang* licenses without proper grounds. Supervising officials who knew of these instances but failed to report or correct them could be demoted two pay grades or forced to surrender a year of salary for overlooking the offense. See HDZL *juan* 50, 39-40 and *juan* 18, 36.

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 literati 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.

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 itself, the Qing committed to 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 final step toward implementing 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 the obligation of magistrates to oversee *yahang* and to protect their customers explicit:

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.”⁶⁹

This statute presented a clear vision of the place of the local court in disputes over brokered trades. Brokers were compelled to bring together buyers and sellers in a transparent discussion about the transaction and provide clear proof of the terms reached. Any party thereafter found violating the agreement undertaken could be held answerable before the local court, and the court itself was compelled to respond to these complaints swiftly and justly.

This arrangement gave merchants access to a system of economic mediation that was designed to protect all parties and to legal recourse when any party failed to live up to agreed-upon obligations. Courts became responsible for ensuring that this system operated by punishing individuals who attempted to cheat or defraud the other parties involved. 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,” which committed brokers and courts to the role of protecting market actors.⁷⁰

The Qing system of commercial responsibility presented a simple and elegant solution to the diverse and competing needs of the empire’s market actors. Rather than incorporating rules and regulations about commercial transaction 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.⁷¹ 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.

Economic Intermediaries in Chongqing’s Court and Market

⁶⁹ See HDZL *juan* 50, 39-40.

⁷⁰ See Chiu, “Debt and Negligence in Eighteenth-century Chinese Commercial Law.”

⁷¹ 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] in DQLL1779, 534.

This system did not provide explicit legal guarantees about the execution of contracts and transactions, but it was a system that was capable of incorporating the complexities of all of the empire's markets into a legal framework of responsibility centered on the concept of economic agency. Market forces 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. In what remains of this paper, 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. 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 very much rested on the average transaction. The following sections are devoted to sketching how brokers and courts were used together to solve the serious problems of coordination and trust in Chongqing.

Brokers as Defendants

The legal 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 maintain Qing jurisdictional policies, which commanded 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 invited to transact. 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” (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 (王芳蘭) for storage and sale later accused Wang of plotting to embezzle the entire amount of money gained from the sale of Yang's ginger, thus “cheating me, a lonely merchant from afar (欺蟻異孤)” and “taking me for a weak and tasty morsel to snack on (以為弱肉可嚼).”⁷² 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 (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 their 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. These cases were uniformly 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 vouchsafed. In these cases, it was not the evil intentions of

⁷² SPABX: 01-01877; 1.

the broker that warranted his inclusion in a legal suit, but rather a 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 (獲蠅頭，遭惡父子套買掣騙拖陷日久，不能回籍)." ⁷³ 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 20 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, 90 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 could be considered as much of a victim as the plaintiff, the intermediary was liable for the transaction that he had arranged, on the logic 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 vouchsafed – 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, 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.

⁷³ SPABX: 01-01870; 2.

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 toward 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.

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 before ago in 1802, Li Chugao came to his brokerage and bought on advance some of the cotton that had been stored at Mao's brokerage by another customer. The purchase price of 400 taels was agreed upon, but Li took delivery of the goods and had 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? (開行原系代客買賣，似此買客不還，賣客追由索命，莫可如何)"⁷⁴ He pleaded with the magistrate to "wield court authority in strictly handling this treacherous behavior (法究奸刁)." 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 for a reduced rate. Shen discovered that Zhang still owned property within the city walls and had invested his ill-gotten gains

⁷⁴ SPABX: 05-04648; 2.

secretly in another business as a silent partner. Shen had tried to bring suit against Zhang four years before, but 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 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."⁷⁵ The magistrate recognized the responsibility of Shen to settle his customers' accounts and the difficult position that the broker was placed in while the situation went unresolved 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 quests 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).⁷⁶ 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 vouchsafed. These cases

⁷⁵ SPABX: 01-01848; 2.

⁷⁶ 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.

operated on general the notion of there being a “responsibility associated with mediating a transaction” (*jingshou zhi ze* 經手之責).

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 (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 (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.*⁷⁷ The seller can provide testimony to this effect. *How can the legal order permit (法紀溪容) such embezzlement for personal profit, such collusion to hide and cheat?*”⁷⁸ 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 time of the deal.⁷⁹ 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 (不敢與蟻憑神).” 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 the physical threats to 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* (竊銀問經手唐和順代

⁷⁷ Emphasis added. Here Wu uses phrasing evocative of the Qianlong statute on licensed brokers being obligated to facilitate an in-person discussion of the terms and price of a transaction between two customers.

⁷⁸ SPABX: 01-01900; 2.

⁷⁹ SPABX: 01-01900; 4.

弟買花親身議價染手者不得辭其責)。”⁸⁰ The magistrate, presented with the account books and the testimony of individuals having 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.⁸¹

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.⁸² Any time when 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.⁸³

The notion of responsibility associated with participating in a transaction was so deeply entrenched in the culture of late imperial exchange that even much more tenuous claims 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.⁸⁴ 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 (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 an ignorance of the deal. Xiao kept an eye

⁸⁰ 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.

⁸¹ SPABX: 01-01900; 10.

⁸² For examples, see SPABX: 11-09999, 04-2552, and 25-5573.

⁸³ 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.

⁸⁴ Guarantors could be brought directly to court to pay for the debts of defaulting businessmen whose transactions they had vouchsafed. 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.

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 came to the magistrate’s *yamen* to file suit.⁸⁵

Rather than accept the complaint, 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) deals with you, money is transacted easily. Why would the services of a third person (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 (不知虛實), 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?”⁸⁶ 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 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 the 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 more shaky ground when it was dealing directly 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

⁸⁵ SPABX: 01-01101; 1.

⁸⁶ SPABX: 01-01101; 1.

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

Less 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 complaints after 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 didn't make it to court because the *yamen* runners were unable to capture defendants who had already fled, and the summons was left open on the case docket for later use if the fugitives ever returned.⁸⁷ 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 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 a settlement process than the knowledge that the magistrate had summoned the case, finding enough merit in the plaintiff's suit to warrant a trial. In cases where several counter-suits 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

⁸⁷ For examples, see SPABX: 25-4848 and SPABX: 05-4660.

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 (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 (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 60 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...⁸⁸

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."⁸⁹ 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 (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 together with Chen Dengrong to collect. But my

⁸⁸ SPABX: 25-5855; 2.

⁸⁹ SPABX: 25-5855; 4.

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 bore his fists and his scolding I did not respond in kind.⁹⁰

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.”

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 Detai when he came to collect after the brokerage 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 (出外...說好酌量賠給).”⁹¹

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 go, 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.”⁹² 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

⁹⁰ SPABX: 25-5855; 5.

⁹¹ SPABX: 25-5855; 8.

⁹² SPABX: 25-5855; 9.

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 central 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. All manner of economic intermediaries became accountable to the local court system 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.⁹³ More often than not, *yahang* were reviled scapegoats for all of 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-imperial trade.

The simultaneous operation of the systems of collective and transitive responsibility bundled together the terms, conventions, individuals, and institutions that dictated each unique economic transaction with a uniform commitment from the local state to provide balanced access and redress to parties who were unable to negotiate systems of information and agreement on their own accord. 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.

⁹³ On the reputation of brokers as cheats, see Richard Lufrano, "Minding the Minders: Overseeing the Brokerage System in Qing China," *Late Imperial China* 34 (June, 2013) no. 1: 67-107.

The equilibrium which 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. 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.