Sex, Law, and Society in Late Imperial China

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For my parents,
Donna M. Sommer, M.D., and
John L. Sommer, M.D.
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CHAPTER ONE

Introduction

The Issues

The Manchus who conquered the Ming empire in 1644, founding on its ruins the Qing ("pure") dynasty, have been vilified in many ways. Perhaps the most novel accusation leveled at them is that they took all the fun out of sex and made prudes of the Chinese. R. H. Van Gulik writes, "With the crumbling of the Ming Empire the robust pleasures of these full-blooded men and women faded away, their buoyant spirit evaporated, sex tending to become a burden rather than a joy" [1974, 333]. The charming pornography so warmly appreciated by Van Gulik gave way to puritanical Confucian tracts. Other scholars tell us that the "homophobic" Qing dynasty destroyed an old culture of tolerance toward same-sex love; that it modified rape law in order to suppress women more effectively; that it allowed the high arts of the courtesans to fall into decay; and that it largely succeeded in supplanting "a world of robust popular practicality and sensuality" with a state religion of female chastity.¹

I have long wondered about this image of the Qing, especially about the extraordinary efficacy it attributes to a supposedly alien regime of sexual repression. Given the vast territory of the empire and the limited technology and communications available to any premodern regime, the Qing must have been a fantastic engine of repression, centuries ahead of its time, to achieve such dramatic results. I have wondered too about all that "robust" sensual pleasure and license attributed to the conquered society, which after all consisted overwhelmingly of poor peasants who depended on family
farming for survival. To the Sinologist of a certain persuasion, seventeenth-century China resembles some exotic Tahitian shore as seen through the eyes of one of Captain Bligh’s lonelier sailors. With the Qing legal archives open for research, it’s time we took a closer look both at the regulation of sexuality, and at the sexuality being regulated, during the late imperial period.

I first began reading Qing case records with an eye to their potential as sources for social history. I found, however, that I had to clarify the legal issues before I could see through to the social ones, and this prior task became my principal focus. I then decided to present a synchronic snapshot of the regulation of sexuality in the Qianlong reign (1736–95), a period when the Qing state functioned as effectively as it ever did, and from which the richest sources survive. But it soon became clear that the eighteenth century was a time of radical change in the regulation of sexuality, my “snapshot” of a system in motion was likely to blur. I found I could not avoid pushing my project back in time in order to make sense of what I saw in the Qianlong case records.

My basic goal is empirical: to explain the regulation of sexuality in late imperial China, especially legislation and central court practice during the Qing. What principles informed this judicial project, and how did it work? What changed, and why? I hope to understand the Qing regulation of sexuality in terms of broader historical changes, and also to locate such regulation in a wider social context. How did it relate to attitudes and practices not necessarily limited to official or elite circles—let alone Manchu ones?

The Western Paradigm of Progress in the Law

Most scholarship has portrayed law in imperial China in largely static terms. The implied standard against which it appears static is the Western paradigm of historical progress in the law, which emphasizes the development of individual rights, contractual obligation, and constitutional limits to government power over the last few centuries. This legal paradigm is a subset of the “metanarrative” of modernity, which interprets history since the Enlightenment as linear progress toward a better, freer, more scientifically advanced future. Many in the West appear to assume that the expansion of individual liberty constitutes the essence of historical change in the legal-political sphere, and that the future will witness the inexorable spread of human rights and democracy around the globe.

This paradigm captures an important dimension of recent West-
us to other kinds of change that did in fact take place. For example, T'ung-tsu Ch'ü's classic Law and Society in Traditional China (1965) downplays whatever changes did occur, for the sake of arguing the uncontroversial point that "legal modernization" along Western lines did not occur. He assumes that if Chinese law did not experience this particular kind of progress, then there must have been no significant change at all, because the Western model represents the only kind that matters.4 The Western paradigm of progress in the law is especially important for the regulation of sexuality, because the concepts of rights and privacy that have emerged imply individual sovereignty over the body—and over the last century, a number of Western nations have greatly expanded individual freedom in decisions related to sex, marriage, and reproduction. Michel Foucault opens his introductory volume to The History of Sexuality with a shrewd critique of the notion that the last century has witnessed a liberation from "Victorian repression" (1978, 3–12), but his own unconventional life is itself powerful testimony to the erotic liberation that has taken place. This ideal of erotic liberation has influenced some historical studies of sex in China, which seem to assume that the only important story is one of a struggle between individual freedom and narrow-minded repression. Thus, the Qing dynasty (with its officially sponsored cults of domesticity and female chastity) is seen as imposing a sort of Chinese "Victorian" regime that repressed an earlier culture of sensual license, and that later persisted in the guise of Communist neo-puritanism. After Mao's death this repressive regime began to crumble, and one can now hope that [to borrow Foucault's words] "tomorrow sex will be good again" (1978, 7).7

But there are other stories to be told. In this connection, Foucault's critique of the stereotyped view of the Victorian era is highly relevant. What happened, he argues, was not "repression" so much as a fundamental shift in configurations of "power-knowledge": instead of enforced silence, there was a "proliferation" of new discourses centered on sex, and "sexuality" emerged as the key to modern identity. Specifically, the authority to define and to judge shifted from the Church to the newly emerging medical and psychiatric professions, so that what had been sin was now "medicalized" as pathology: for example, the sodomy who had confessed his acts of sin to a priest for absolution became the homosexual who confessed his symptoms to a doctor for diagnosis and treatment (1978, 42–43, 66–68). In the process, new social "species" were invented as foci for anxiety and regulation: the perverse adult, the masturbatio child, the hysterical woman, and the Malthusian couple (1978, 104–5).

I intend nothing so ambitious as a Foucaultian analysis of Chinese sexuality, and late imperial China was emphatically different from the Europe that Foucault describes. [In particular, nothing like "medicalization" occurred until the early twentieth century, when China's modernizing urban culture and new mass media were so strongly influenced by the West—see Dikötter 1993.] Still, there are certain parallels. If the history of Chinese law does not involve the progressive unfolding of individual freedom, then what happened in the Qing was not a simple repression of the individual, either. Instead, Qing innovations [especially of the eighteenth century] represented a fundamental shift in the organizing principle for the regulation of sexuality: from status performance, whereby different status groups had been held to distinct standards of familial and sexual morality, to gender performance, in which a uniform standard of sexual morality and criminal liability was extended across old status boundaries and all people were expected to conform to gender roles strictly defined in terms of marriage. This reordering of priorities prompted an intensified surveillance, which aimed to rechannel sexual intercourse in order to enforce a uniform marital order, to defend it against internal subversion and external attack. It also provoked a proliferation of discourse of practically Foucaultian proportions, as new crimes were invented, old criminal categories were reinterpreted and expanded, and a new cast of characters emerged as objects of apprehension and regulation.8

The Old Paradigm of Status Performance
Throughout the imperial era, legally defined duties and privileges varied, depending on one's position in hierarchies of family and status. T'ung-tsu Ch'ü (1965) identifies three broad levels of status that framed the law until the end of the imperial era: officials, commoners, and mean persons. But within that overall framework, both social structure and legally defined status hierarchy underwent considerable change. Chinese society gradually became more "egalitarian" over the last centuries of the imperial era, in conjunction with the emergence of imperial autocracy.9 The Period of Division (A.D. 220–589) and the Tang dynasty (618–907) had been characterized by relatively weak imperial houses, surrounded by elaborate hierarchies of hereditary aristocrats, who reproduced their wealth and status through legally defined birthright to lucrative office, and who
were served by a variety of hereditary laborers (slaves, serfs, and bondservants) whose unfree status defined them in legal terms as debased or mean people (jian min). The proportion of free commoners (liang min) was relatively small, consisting mostly of peasants taxed directly by the imperial state, which claimed ultimate title to their lands (in a sense, the imperial house was simply the biggest aristocratic family, and the “free” peasantry its serfs). Most people were fixed in place, both geographically and socially, and function matched status in ways that were transparent and obvious to all.

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

The most obvious manifestation of this principle is the question of female chastity. From antiquity, a sex offense was defined basically as heterosexual intercourse outside marriage (see Chapter 2). But this definition always deferred to the principle of status performance. At root, mean status meant *unfree* status, unfree in the sense of owing labor service [Niida 1943, 959 and 953–64; 1962, 1:16], and for women, such service had a distinctly sexual dimension. Commoners and elite women were expected to remain absolutely chaste, and sexual intercourse between a commoner woman and a man not her husband was always considered a serious offense. People of mean status were not expected to conform to this standard; more accurately, they were not entitled to conform to it. Female slaves and bondservants, married or not, were sexually available to their masters, a fact explicitly recognized by law. The only offense identified in this area was intercourse with a female slave belonging to another man, suggesting that the offense was not against the woman herself but against her master; even this crime was punished rather lightly, however. Males and females of debased status were prohibited from extramarital sexual intercourse with each other, but this offense was punished more lightly than commoner adultery (see chapters 1 and 2).

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

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

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

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

The New Paradigm of Gender Performance

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

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

A free peasantry, bound by contractual obligation (if any at all), comprised the overwhelming majority of the population. There remained a small proportion of mean persons (including some domestic slaves), but commercialization and social mobility had blurred the traditionally fixed connections between legal status and occupation—a phenomenon especially obvious in the area of sex work, where an archaic system of official penal servitude had been transformed by the rise of a pervasive commercial sex market (see Chapter 6 and Wang Shunu 1988). Servile labor no longer played an important role in the agrarian economy; mean status gradually came to be associated less with bonded servitude per se than with certain stigmatized occupational or regional subethnic groups, whose members were not slaves despite their hereditary mean status. Accordingly, the original meaning of the liang/jian dichotomy as free/unfree was gradually displaced by the nuance of moral judgment, and fixed, hereditary status labels became more of a legal fiction than an accurate description of social reality.

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

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

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

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

4. Lawmakers imposed new draconian penalties on a number of variations of rape. The worst-case scenario was reformulated not in
terms of the old status transgression (that is, a male slave assaulting his master's women, as in the Tang code) but rather as the pollution of a chaste wife or daughter of humble family by a rogue male outside the family order. A plethora of new measures aimed to suppress the "rootless rascals" (guang gun) who were now imagined as sexual predators [see Chapter 3].

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

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

The cumulative thrust of these initiatives was to extend a uniform standard of sexual morality and criminal liability to all. This uniform standard, based on rigid interpretation of the normative marital roles expected of commoners, left less room for variation and exception than before. Previously tolerated spaces for extramarital sexual intercourse were eliminated from the law, and the imperial center mandated that local officials intensify their surveillance of sexual behavior and gender roles (for example, administrative penalties were imposed on magistrates who "failed to detect" and eliminate any prostitution within their jurisdictions). Much of the old status-based legislation remained on the books, but it was displaced in practice by the new measures. Out of 56 new statutes related to sex offenses promulgated by 1780, only three had any direct connection with status difference—and all three had the effect of reducing the privileges of hierarchy [see chapters 2 and 3]. This shift of emphasis is equally clear in the Qing archives: central cases from the Shunzhi reign (1644-61) include a fair number involving status transgressions of some sort that are judged according to the old Ming statutes, but such cases are unusual in the Qianlong and later reign periods. Moreover, every single one of my county-level sex offense cases (the earliest of which date from 1738) involves offenses between legal status equals. Even the ubiquitous agricultural laborers in central cases from the late eighteenth and early nineteenth centuries are almost always treated as the legal status equals of their employers.

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

With the shift in paradigms, old dangers yielded to new ones. No one worried much anymore about the rebellious slave who might violate his master's wife—instead, people feared the rogue male outside the familial order altogether who might covet the women and young sons of better-established householders. A new cast of characters appeared in legal discourse as targets for suppression: the "bare stick" or "rootless rascal" (guang gun), the homosexual rapist, the pimp, the morally lax husband. Others appeared as new objects of protection or even quasi-religious veneration: the adolescent male, and the chaste wife or daughter of humble family. Certain familiar figures took on greatly heightened significance: the lewd widow, the
chaste widow, and the avaricious in-law. Other familiar figures were slated for elimination: for example, the penetrated male and the legal prostitute, along with her husband/pimp and the commoner male who enjoyed her services as a privilege of his status.

**Gender Anxiety and Fear of the Rogue Male**

What else was happening in the eighteenth century that can help us understand this shift in the regulation of sexuality? Fixed, heritable status had by and large become an anachronism by the Yongzheng reign, and the shift in the regulation of sexuality represented in part an effort to update the law to fit a changed social reality: the *de jure* extension of commoner standards of morality and criminal liability followed, after a certain delay, the *de facto* expansion of commoner status. Moreover, the eighteenth century witnessed a broader shift in Qing jurisprudence to focus on *conduct* as the most useful way to distinguish between individuals for purposes of law. One is tempted to compare it to that in the early modern West: "a progress from *status* to contract in which men's duties and liabilities came more and more to flow from willed action instead of from the accident of social position recognized by law" [Pound 1954, 150]. But that is only part of the story, and it does not help us explain the new obsession with fixing and policing family-based gender roles, or the growing anxiety about that new bogey of the Qing judiciary, the "rootless rascal" outside the family order altogether.

One long-term factor behind the revolutionary upheaval of the late nineteenth and early twentieth centuries was a gradually worsening subsistence crisis among much of the peasantry, driven in part by overpopulation and agricultural involution. A rising proportion of men lacked the resources to marry and reproduce, and so fell through the cracks of society. By the nineteenth century, the proliferation of surplus males was fueling endemic low-level violence in poor regions. Elizabeth Perry (1980) has shown that in rural Hualbe (where perhaps a fifth of adult men never married), such violence in "predatory" and "protective" forms played a critical role in peasant survival strategies, and at times might explode into open rebellion against the imperial state. Eventually, such men—for whom "liberation" meant wives and farms of their own—would play a major role in the Red Army and in violent land reform. But the problem of a dangerous underclass of surplus males was already evident in the eighteenth century.  

The demography of premodern China is notoriously difficult; we simply do not have precise population figures before the Communist era, except for isolated examples. But there is consensus on a few basics. Between 1700 and 1850 the empire's population roughly tripled, from about 150 million to about 430 million, while cultivated acreage only doubled [Ho 1959; Perkins 1969]. One result was further intensification of an already labor-intensive agriculture, at the cost of diminishing returns [the vicious circle of "involution" analyzed by P. Huang 1985 and 1990]. A related development was [in the words of demographic historian Ted Telford] "a chronic shortage of marriageable women—an endemic 'marriage crunch' felt most keenly by lower-class males" [1992, 924]. The precise dimensions and causes of the shortage of wives are open to debate, but widespread crisis strategies included female infanticide and the sale of daughters and wives [to become prostitutes, servants, concubines, and so on]. These strategies skewed the overall ratio between the sexes and removed countless females from the pool of potential wives for poor men. There is evidence of female infanticide skewing the sex ratio as far back as the Song dynasty; even without infanticide, the longstanding practice of polygyny among the elite would have reduced the supply of wives for poor men [since concubines came from poorer backgrounds than their husbands]. But the situation was worsening in the Qing. By the eighteenth century, the proportion of males who never married had almost certainly begun to rise; but even if the proportion of surplus males in the overall population did not rise, their *absolute numbers* surely did, in concert with the steady population growth that continued until at least the mid-nineteenth century.  

Philip Kuhn (1990) has commented eloquently on the paradoxical character of the eighteenth century as an age of both prosperity and anxiety. The Qing state was at the height of its powers, and both economy and population grew to unprecedented levels. At the same time, there was a creeping awareness of fundamental problems, symbolized by growing fear of the swelling underclass of vagrant males; this fear, shared by both the imperial state and settled communities, at one point crystallized in a mysterious sorcery panic that swept across some of the most prosperous regions of the empire. Kuhn's evidence that a large vagrant underclass existed in China's most prosperous regions as early as the mid-eighteenth century—and that imperial officials feared such vagrants as a grave security threat—bears special relevance to our understanding of the paradigmatic shift in the regulation of sexuality. The sexual preda-
tor imagined by the eighteenth-century statutes was stereotyped as a "rootless rascal" (guang gun), that is, the superfluous rogue male who threatens the household order from outside. The term guang gun appears in legal discourse for the first time in the late seventeenth century, and the eighteenth century witnessed a flood of new edicts and statutes (including many related to sex offenses) that explicitly targeted the guang gun for suppression. 20

Eighteenth-century demographic trends implied not just rising competition in the marriage market but also the growth of a crowd of rogue males who lacked wives, family, and property. Left out of mainstream patterns of marriage and household, they also lacked any obvious stake in the normative moral and social order: no wonder the imperial state regarded such men with fear and loathing. Indeed, Kahn stresses that anxiety about this vagrant underclass was not limited to official circles; on the contrary, the sorcery panic that he recounts afflicted ordinary members of settled communities, and expressed their deep fear of outside, rogue males (1990).

Kathryn Bernhardt has recently argued (in regard to marriage and women's property claims) that between the Tang-Song and Ming-Qing periods, the emphasis of codified law shifted away from aristocratic priorities toward those of ordinary commoner peasants. She characterizes this process as the "peasantization" of the law [1996, 56–58]. Something similar seems to have occurred in criminal law, at least in the area of sex offenses. In Tang-dynasty law, female chastity applied to the unfree status categories no more than did aristocratic standards of succession and inheritance, and the irrelevance of the one was directly linked to the irrelevance of the others. The "peasantization" of these civil law questions paralleled the extension of commoner standards of sexual morality and criminal liability.

From this standpoint, Qing innovations in the regulation of sexuality can be interpreted as the defense of a generalized normative family order against the predations of males left out of that order. This new priority reflects the leveling of social structure that had taken place, and may reflect the genuine fears of the settled peasant household as well. (It seems probable that new terms like guang gun ("rootless rascal" and ji jian ("sodomy") entered legal discourse from the vernacular, since they do not appear in legal texts prior to the Qing dynasty but can be found in Ming vernacular fiction.) The heightened stress on fixed gender roles, especially among ordinary commoners, implies a strengthening of household defenses in which the chaste wife stood on the frontlines to defend the familial order.

The sexual choices and experiences of poor women became the subject of countless memorials and imperial edicts.

The very vehemence of exhortation about female chastity in the eighteenth and nineteenth centuries suggests increasing alarm at the breakdown of moral and social order under the pressure of socioeconomic realities. Such exhortation—and the legislation that gave it force—implies an effort to enroll women as "moral police" to guard the family's fragile boundaries against assault by the growing crowd of rogue males at the bottom of Qing society.

How the Other Half Lived

The best recent work on women in late imperial China has focused on the Yangzi Delta elite, because only in that privileged stratum did some women enjoy the resources to write and publish. The contributions of this research are enormous (as my frequent citations testify), but it helps us to understand the lives of the poor majority only in the most tentative and indirect ways. 21 In contrast, Qing legal cases tell us precious little about the elite, who (one suspects) had better ways to solve their problems than going to court. Instead, the legal archives provide an unprecedented opportunity to glimpse the lower strata of society, to look beyond the state and elite to learn something firsthand (or close to it) of the lives of peasants and marginalized people.

For example, most studies of prostitution in the Ming and Qing focus on elite courtesans whose appeal to their upper-crust clients was more cultural than carnal (Ko 1994; Mann 1997; Widmer and Chang, eds., 1997). I have yet to see a courtesan appear in the archives. Instead, we find peasant women pimped by their husbands or working in urban brothels—or "music households" (yue hu), found in early Qing legal cases, offering services quite unrelated to music. The same is true of same-sex union: in legal cases, we find not the refined setting of opera patronage or the wealthy libertine who sodomized his adolescent pages for diversion, but rather alliances among beggars, mendicant monks, laborers, and the like that probably had more to do with sheer survival than with pleasure per se.

In a separate section below, I address the challenges of using the ethnographic evidence in Qing legal cases as the basis for social history. For now, I wish to emphasize that such evidence offers the clearest view we are ever likely to get of how peasants and marginalized people actually lived in the late imperial period, and of how they thought about sex, gender, marriage, and family. Such evidence
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seen by Qing officials as they engaged society in the arena of county and central court adjudication. Official perceptions of social trends may not have been perfectly accurate, but they mattered: eighteenth-century innovations in the regulation of sexuality typically resulted from the proposals of provincial officials, based on their perception that problems they encountered in the courtroom required statutory redress.22

Sources

The principal source for this study is Qing-dynasty legal case records, which became available in large numbers only in the nineteen-eighties and nineties, with the opening of archives in the PRC and the publication of documents held by the Academia Sinica in Taiwan. Most of the cases cited here I collected during research trips to the PRC in 1991–92, 1996, and 1997. They represent both the very bottom of the judicial hierarchy (the county level) and the very top (central courts at the provincial and palace levels).

County Case Records

The county- [xian] level yamen (that is, government office) was the court of first instance in the Qing judiciary. The richest collection of county cases by far is the Ba County Archive, held at the Sichuan Provincial Archives in Chengdu, which includes over 100,000 files [juan] of legal records dating as far back as the mid-eighteenth century. Ba County centered on the city of Chongqing (Chungking), which also served as the capital of Chongqing Prefecture and the headquarters of the Eastern Sichuan Circuit Intendant. The far smaller Shuntian Prefecture Archive [held at the First Historical Archives in Beijing] and Danshui-Xinzhu Archive [widely available on microfilm] together contain no more than a few thousand files of all kinds, mostly from the last fifty years of the dynasty. Many local archives in China hold a dozen or so files, but these scattered materials have yet to be systematically surveyed by historians. The paucity of county-level records is stark testimony to the scale of destruction that afflicted China intermittently from the Taiping Rebellion through the Cultural Revolution. I have heard, for example, that the Taiping rebels burned down the yamen in every county seat they occupied; it is probably no coincidence that the three major archives to survive come from regions unvisited by the rebels.

County-level case files typically include plaintiffs and counter-
CHAPTER FOUR

The Problem of the Penetrated Male: Qing Sodomy Legislation and the Fixing of Male Gender

The Issues

Conspicuously absent from classical definitions of sexual offenses were acts between members of the same sex. The earliest unambiguous prohibition of male homosexual intercourse appeared in the sixteenth century, and only in the Qing dynasty did homosexual rape become a priority for legislation and prosecution. Moreover, it is only in the Qing that lawmakers included such acts in the venerable criminal category of “illicit sexual intercourse” (jian). The Yongzheng reign, in particular, witnessed a major initiative to systematize the prohibition of sodomy precisely along the lines of pre-existing laws against heterosexual offenses.

The task of this chapter is not only to explain late imperial anxiety about anal intercourse between males but also to locate the criminalization of such acts in a larger context. What logic guided the Qing reconstruction of sodomy law according to standards and penalties already applied to heterosexual offenses? Was this initiative an alien imposition on an older culture of tolerance? Or did Qing constructions of sodomy somehow make sense in terms of older judicial thinking and wider contemporary perceptions not limited to official or elite circles?

Previous Scholarship

It is no great mystery why heterosexual acts would have concerned the Qing judiciary or its predecessors. But why prohibit sex between men? Three scholars have offered explanations of Qing laws against “sodomy” (ji jian).

According to Marinus Meijer (1985), consensual sex between males was not banned until the mid-Qing, in fact, its prohibition is two hundred years older than that. He also suggests that this law was simply part of a consistent effort to ban all “sexual intercourse” outside marriage (1985, 109). Depending on exactly what he means by sexual intercourse, this observation may be accurate, but it begs the question why lawmakers singled out anal intercourse between males over other possible scenarios. For example, they never banned sex between women—indeed, I find not a single mention, let alone prohibition, of female homosexual acts in any Qing or earlier legal source (not to mention other extramarital practices familiar from the Western legal tradition, such as masturbation and bestiality).

Vivien Ng (1987 and 1989) argues that Qing “homophobia” was part of a propaganda campaign orchestrated by Manchu conquerors to win the allegiance of conservative Chinese elites who had been alienated by the decadence of the late Ming court. She also claims that the penalty for “male homosexuality” was more severe than that for “unchaste female behavior,” speculating that sex between men “was viewed as a direct challenge to the requirements of filial piety” because it could produce no sons (1989, 88–89). In fact, the penalty for consensual sodomy that she cites (100 blows of the heavy bamboo and a month in the cantue) was exactly the same as that for consensual heterosexual offenses [see appendixes A.3 and B.1].

Bret Hirsch (1990) adopts the conclusions of Meijer and Ng, which suit his own theory of a “general tolerance toward homosexuality” up to the Qing dynasty, when “the new Manchu morality” induced the regime to prohibit consensual sex between men for the first time in Chinese history (1990, 4, 142). Neo-Confucianism and Westernization reinforced this bigotry, resulting in the homophobia of current Chinese regimes (1990, epilogue). Hirsch offers many valuable insights—for example, that age and status hierarchies tended to parallel the hierarchy of roles in anal intercourse. Nevertheless, as Charlotte Furth has pointed out in a perceptive review (1991), his desire to recover a “homosexual tradition” to contrast with the homophobic present may obscure more than it reveals. His notion of “imported Manchu concepts of sexuality” (1990, 162) also provokes skepticism. Arguably, no one was more obsessed with defending Manchu values than the Qianlong Emperor, yet he was widely reputed to enjoy erotic relations with males, as were the Xianfeng and Tongzhi emperors. Manchu legal texts from the period prior to sinicization and conquest reveal no special bias against
same-sex activity. Manchu tradition forbade sex in fewer contexts than did Ming law, the Qing founders even abandoned certain marriage customs to conform to Chinese incest taboos (Zhang Jinfan and Guo Chengkang 1988, 485). [In fact, I have found no evidence of ethnic Manchu influence on any aspect of the Qing regulation of sexuality.]

A further possibility, that desire for a member of the same sex was perceived as illness or perversion, has been ruled out by Furth’s seminal investigation of contemporary medical texts: “No kind of sex act or object of desire was singled out in medical literature as pathological” (1988, 6). Qing sodomy legislation had nothing to do with the “perversion implantation” that in Foucault’s view characterized the new sexuality of the modernizing West (1978).

**Sexual Orientation Versus Penetration Hierarchy**

Meijer, Ng, and Hirsch all identify the prohibition of consensual sodomy as the critical feature of Qing legislation, interpreting it as a new form of oppression, even homophobia. This focus seems to imply that the central story in the history of sexual regulation must be a struggle between individual erotic freedom and narrow-minded persecution. But if one reads the Qing sodomy legislation, consent appears almost as an afterthought, and the original proposal that inspired the Yongzheng initiative does not mention consent at all. Furthermore, in the Qing archives I have yet to find a single case of consensual sodomy being punished in the absence of other, more serious crimes. What bothered Qing lawmakers the most was homosexual rape, and it is the draconian penalties they imposed for that crime that were truly unprecedented. Also, because penalties for homosexual offenses were no more severe than those for “parallel” heterosexual ones, it would seem that persecution of sexual minorities was not the point.

These scholars also use the noun “homosexual” to denote a male who had sex with males, and “homosexuality” to denote such activity and erotic attraction for members of the same sex generally. Such usage goes to the heart of a basic controversy in historical studies of sexuality, namely, whether sexual orientation as experienced in the West today is primarily a biologically determined constant, independent of historical change, or primarily a modern social and cultural construct. Of course, homoeroticism and same-sex union are nothing new, nor are they uniquely Western. But to refer generally to “homosexuals” and “homosexuality” (or, for that matter, “heterosexuals” and “heterosexuality”) risks the anachronism of assuming that a fundamental social identity based on the sex of a person’s object of desire has always and everywhere existed and been experienced in the same way.

In many societies, the sex of one’s object of desire has yielded in priority to a hierarchical division between the penetrant and penetrated roles. In late imperial China, legal and literary texts strongly suggest that only penetrated males were perceived as “different”; desire for another male in and of itself seems to have carried little significance for popular attitudes and none at all for law. [In legal texts, homoerotic desire requires no special vocabulary, just the same clichés used to describe heterosexual lust, such as yin xin.] This division of roles was understood to involve multiple hierarchies, especially that of gender, the model being heterosexual intercourse.

We have seen that the penetration of women outside marriage threatened the disruption of patrilineal family order and the pollution of female chastity. But also, penetration in its proper place initiated individuals into adult gender roles: in a fundamental way, one became socially male or female to the extent that one played a specific role in a stereotyped act of intercourse. Charlotte Furth has shown that late imperial medical literature defined “false males” and “false females” primarily in terms of inability to penetrate or to be penetrated, respectively (Furth 1988). In other words, to become a real male or female required successful performance of the appropriate sexual role.

Gender implied hierarchy, and since gender roles defined gender roles, the act of sexual intercourse was seen as a gendered expression of domination. When a male penetrated a female, he put her in her place—both literally and figuratively. A fundamental concern, then, was to ensure that this pattern of domination not conflict with normative patterns of domination. That is why the highest priority of Tang-dynasty statutes against illicit sex was to prevent a male slave from penetrating the women of his master’s family, an act that would violate the “natural” flow of status domination. (On the other hand, it was long taken for granted that a master should enjoy sexual use of his slaves; the diminution of such privileges implied an erosion of the legal absolutism of slave ownership.) By a similar logic, the penetration of a male upset the proper hierarchy of gender, in which masculinity was defined by the penetrant role in the division of sexual labor, corresponding to the husband/father role in the division of social labor. In late imperial China, common
sense held that to be penetrated would profoundly compromise a male's masculinity, for this reason, powerful stigma attached to a penetrated male. This stigma was especially powerful, it appears, in settled peasant communities, where social status and economic viability depended above all on marriage, reproduction, and family farming.

This basic perspective had been around for a long time. But classic tales of same-sex union from the formative and early imperial eras tend to locate homosexual penetration in a context in which status domination apparently overrode any disturbing aspect of gender inversion. The most famous tales tell of feudal lords or emperors favoring catamites who are celebrated for youth and feminine beauty. Indeed, such gender inversion in and of itself must not have troubled lawmakers of earlier dynasties nearly to the degree that it troubled Ming and especially Qing lawmakers, or they would have addressed it more explicitly. As with female chastity, masculinity took on greatly heightened significance in the late imperial era. The two developments were parallel and closely related. As traditional status distinctions became obsolete, and official anxiety over demographic trends grew, the regulation of sexual behavior focused ever more closely on narrowing and fixing normative gender roles for both females and males. It was this context that accorded such unprecedented priority to the penetrated male.

Legislative History

**Before the Qing: A Separate Category**

Sex between males, even when prohibited, was long treated as a category fundamentally different from jian. As we saw in Chapter 2, Fu Sheng's classic definition of a sex offense, later used to define jian, specifies a heterosexual context: "If a male and female engage in intercourse without morality [na nü bu yi yi jiao]." The Qing jurist Xue Yunsheng confirms that anal intercourse between males "originally could not be judged according to the provisions on illicit sexual intercourse" because "there is a great difference between [sex with] a male and [sex with] a female" [nanzi yu funny da xiang xuan shu] [the agent of action is presumed male] [DC, 285-33, commentary].

Hence, the classic purpose of legislation against jian had nothing to do with same-sex acts, regardless of whether they were considered crimes. But in the Qing, the definition of this legal term expanded: new laws assimilated homosexual offenses to heterosexual ones, labeled them a subcategory of jian, and included them in that chapter of the code. Underlying this shift, however, we can identify a basic continuity: from the Song dynasty through the Qing, judicial interest in male homosexual acts consistently focused on phallic penetration of the anus, the division of sexual roles thereby implied, and the stigma of the penetrated male. This division of roles held far greater significance than that the object of desire was of the same sex. To my knowledge, no other act or disposition to perform such acts was ever singled out in legal discourse.

The earliest evidence I find of laws against homosexual acts in any form emphasizes the gender inversion attributed to the penetrated male. Song-dynasty sources report that a law of the Zhenghe era (1111-18) punished "young males who act as prostitutes" [nanzi wei chang] with 100 blows of the heavy bamboo and a fine of 50,000 cash, paid to whomever reported the culprit. [Chang implied female gender, male prostitutes were referred to as nan chang—literally, "male female-prostitutes."] Another Song text mentions the prosecution of cross-dressing male prostitutes for the offense of bu nan—literally, "being not male" [Zhou Mi 1987, 1040/58; Zhu Yu 1987, 1058/312; also see DC, 375-03, commentary]. This fragmentary evidence suggests that Song lawmakers associated the penetrated role with cross-dressing and with the debased legal status of prostitutes, and that they sought to punish males who consented to such degradation. (The texts do not mention the penetrant role, nor do they use jian to denote homosexual acts.) The apparent purpose was to fix boundaries: to prevent persons of free, commoner status from being degraded by occupation to mean status (which included prostitutes), and to prevent males from being degraded into females by penetration or cross-dressing.

To my knowledge, the earliest statute explicitly banning intercourse between males dates from the Jiaying reign (1522-67) of the Ming dynasty. The Ming code's chapter on illicit sex includes no reference to such activity. Instead, the Jiaying measure appears in a supplementary set of "statutes applied by analogy" [bi yin li], each of which cites a preexisting measure to be applied to offenses not covered in the code proper. [This supplement systematized the longstanding practice of judgment by analogy, and thus the punishment of male-male intercourse in this way may predate its Jiaying codification.] "Whoever inserts his penis into another man's anus for
lascivious play [jiang shenqing fang ru ren fenmen nei yin xi] shall receive 100 blows of the heavy bamboo, in application by analogy of the statute on ‘pouring foul material into the mouth of another person’ [hui wu guan ru ren kou] [Huang Zhangqian, ed., 1979, 1968]. This statute contrasts sharply with those against heterosexual offenses found in the illicit sex chapter of the Ming code. First, it could hardly be more explicit about the act being punished—far more so than the illicit sex statutes, which use jian to stress extramarital context without reference to specific gestures or anatomy. The statute quoted above never mentions jian at all, let alone the Qing legal term for sodomy, ji jian.

Second, the statute does not employ the dichotomy of coercion and consent used to define sex offenses since antiquity. Although the analogy to assault might seem to imply coercion, my only example of this law’s use in practice involves the punishment of a man who had consented to being penetrated [MQ, 40-73]. Ming lawmakers may simply have assumed it impossible to rape a man—an assumption that continued, with some qualification, to inform legislation during the Qing [see below]. At any rate, the penalty (100 blows of the heavy bamboo) approximated contemporary penalties for consensual heterosexual offenses [60 to 100 blows], it was far less severe than that for heterosexual rape (strangulation) [DC, 366-00].

The most significant feature of the statute is its analogy between anal penetration and a crime listed in the “fighting” [dou ou] chapter of the Ming code: “pouring foul material into the mouth of another person” [DC, 302-00]. Lawmakers evidently found this a more exact analogy than any of the heterosexual offenses in the illicit sex chapter. But since the fighting chapter lists dozens of crimes, this particular choice begs analysis. It contains three key elements: penetration, “foul material,” and targeting the mouth. Such assault could surely cause physical injury. But foul material suggests pollution and humiliation more than physical danger; also, most cultures associate the head and face with personal dignity. In other words, pollution and humiliation were more important than battery to defining the crime of anal penetration. Moreover, such harm clearly affected the penetrated person only: being penetrated corresponded to having foul material poured into one’s mouth. The stigma would attach to the penetrator no more than foul material would suit the one who poured it.

Early Qing Law: The Analogy Between Heterosexual and Homosexual Rape

Like most Ming laws, the “statutes applied by analogy” were adopted into the first edition of the Qing code in 1646. Thereafter, as new statutes were added, many “statutes applied by analogy” became obsolete and were eliminated [DC, 52/bi yin lü]. Xue Yunsheng reports that the one on anal penetration was applied during the Kangxi reign [1662-1722], and I have a 1724 case in which it was applied. It remained on the books at least until 1725 [DC, 285-33, commentary; Wu Tan 1992, 1141-44, MQ, 40-73].

By 1655, however, Qing courts had begun using the term ji jian (“sodomy”) to refer to homosexual anal intercourse [MQ, 23-85]. In 1679, a statute against ji jian appeared for the first time, in the illicit sex [jian] chapter of the code. By the end of the Yongzheng reign, the code contained substantial legislation on the subject, superseding the old Ming analogy, which was finally dropped. This legislation represented a break with earlier practice, in that homosexual intercourse was for the first time directly assimilated to heterosexual offenses under the rubric of “illicit sex.”

The origins of the term ji jian are not clear; I have not seen it in any pre-Qing legal text. In Qing legal sources, a logograph meaning “chicken” is used to represent the sound ji. This usage appears to be a later substitution for an obscure logograph, also pronounced ji, which may be an invention of the Ming dynasty (since dictionaries cite no earlier usage of the term). The fifteenth-century literatus Lu Rong defines this obscure logograph as “what Hangzhou people call a male who has a female appearance [nan zhi you nü tai zhe]” [Lu Rong 1965, 132]. According to the late Ming scholar Yang Shiwai, the logograph means “to use a male as a female” [jiang nan zuo nü] in a specifically sexual sense.” The construction of the obscure logograph is suggestive: the lower half of nan, meaning “male,” has been replaced by nü, meaning “female” (see Character List). The essence of the term is gender inversion, especially that imposed on a male who was anally penetrated—as implied by Yang Shiwai’s definition and by the logograph’s construction. It is not clear just when or why the logograph for “chicken” came into use, but it already connoted obscenity, appearing in slang terms for “penis” [ji ba—“chicken tail”] and “streetwalker” (ye ji—“wild chicken”/“pheasant”).
The 1679 statute marked the first appearance of *ji fuan* in the code itself:

If evil rascals (*gou*) gather in a gang and abduct a son or younger brother of commoner family (*liang jia zi di*) and use coercion to sodomize him (*liang xing ji fuan*), then the ringleader shall be immediately beheaded, and the followers shall all be sentenced to strangulation after the assizes [by analogy to the statute on “rootless rascals”]. If it is consensual (*he tong zhe*), then the crime shall be punished according to statute.

In 1696, the following amendment was added: “If degenerate evil characters (*bu xiao e tu*) abduct the son or younger brother of a commoner (*liang ren zi di*) and use coercion to sodomize him, then the followers shall be sentenced to strangulation after the assizes, and they shall not be granted clemency under any amnesty. If it is consensual, then the crime shall be punished in the usual way” (QHS, 825/990). This law differs from the Ming statute applied by analogy in several important ways. First of all, it introduces the dichotomy of coercion and consent to divide the newly named crime into the traditional subcategories of illicit sex—and there is no question that coercion is the focus of concern. Moreover, where the old Ming law in no way distinguished between penetrator and penetrated, except to imply the one-way pollution caused by the act, this statute makes a strong, clear distinction between the two. The homosexual rapist is our familiar rootless rascal, who was also the target of Qing legislation against heterosexual rape; in addition, the putative victim sounds suspiciously like a *male* version of the chaste wife or daughter imagined as the victim of heterosexual rape.

The 1679 statute specifies gang rape, but it ended up being applied to a wide variety of scenarios. In a 1733 example from Haiyang County, Guangdong, Yu Zidai (fifty-seven *sui*) lured Chen Amai (sixteen *sui*) into a sugarcane field, raped him, and beat him to death. Yu was sentenced as follows:

According to the established statute, “If degenerate evil characters gather in a gang and abduct a young man of good character and forcibly sodomize him, then the ringleader shall be sentenced to immediate beheading.” Now, Yu Zidai did not gather a gang, but nevertheless, he did lure Chen Amai away and raped (*liang fuan*) him; in addition, he killed him immediately afterwards. This is lecherous evil in the extreme! Yu Zidai should be beheaded immediately, according to the statute’s provision on “ringleaders.” (MQ, 41-7)

In this instance, rape was followed by murder; however, the provision on “ringleaders” was cited to sentence rapists even if they had acted alone and committed no violence other than the rape itself (MQ, 59-60). In other words, from 1679 until 1734, the penalty for simple homosexual rape (immediate beheading) was more severe than that for simple heterosexual rape (strangulation after the assizes).

For some decades, the 1679 statute was the only law on the books that mentioned gang rape of either male or female; therefore, central courts cited it by analogy to punish the gang rape of a female as well (e.g., XT, 50/YZ 1.4.26). In effect, such citation applied the “statute on rootless rascals” to heterosexual gang rape in a two-step process, via the 1679 statute. The analogy between heterosexual and homosexual gang rape, along with the inclusion of sodomy in the heretofore-heterosexual category *fuan*, implied that the sex of the victim was increasingly relevant to how judges perceived rape.

What about consensual sodomy? The 1679 statute confirms, as an afterthought, that consent should be punished “according to statute” or, as the amendment adds, “in the usual way.” This language refers to the Ming “statute applied by analogy.” The 1679 law added new penalties for rape, but confirmed the old analogy’s application to consensual acts. We see an example of the latter in a 1724 homicide case involving three soldiers from Zhangpu County, Fujian. Tu Lian (thirty-six *sui*) had had a sexual relationship with Zheng Qi (in his early twenties) for four years (Tu penetrating Zheng), and they shared a bed; their roommate, Wu Zongwu (twenty-four *sui*), slept separately. One night while Tu Lian was out, Wu was bothered by mosquitoes, so he crawled in bed with Zheng, who had a mosquito net. When Tu returned, he killed Wu out of jealous rage. Tu Lian was convicted of “purposeful homicide”; more pertinent is the judgment of his sexual partner:

Zheng Qi allowed Tu Lian to sodomize him; we find that the code contains only penalties which uniformly apply to males and females who engage in illicit sex (*lian nan *li fuan*); it contains no standard provision prescribing penalties for two males who engage in sodomy (*liang nan li fuan*). Therefore, Zheng Qi shall be sentenced according to the supplementary statute applied by analogy, which provides that “whoever inserts his penis into another man’s anus for lascivious play shall receive 100 blows of the heavy bamboo, in application by analogy of the statute on ‘pouring foul material into the mouth of another person.’”

This judgment, approved by imperial rescript, shows that the Ming statute was used to punish not only penetrators but also any male
shameless enough to submit to sodomy. Its language reflects the point of transition at which it was written: the sexual activity is called *ji jian* and compared to the “illicit sex” of “males and females.” But there existed as yet no illicit sex measure by which to judge a consensual offense, and thus the old Ming analogy had to be used [MQ, 40-73].

**The Assimilation of Sodomy to Illicit Sex**

Early Qing rape law was something of a mess. Jurists had begun to draw a parallel between heterosexual and homosexual offenses, but penalties varied, and depended on a confusing hodgepodge of old Ming laws, new ad hoc statutes, and a number of direct and indirect analogies. It was just the sort of situation to appeal to the rationalizing impulses of the Yongzheng regime.

Earlier measures were superseded in 1734 by a statute in the illicit sex chapter of the code which remained in force until the early twentieth century [see Appendix B.1 for translation]. The initiative for this new law came from Xu Ben, the governor of Anhui. Xu Ben argued that the 1679 statute against gang rape lacked sufficient precision to cover the actual variety of homosexual rape cases that occurred [some involved homicide, but not all; some involved more than one rapist, but not all]; nevertheless, it was being cited indiscriminately to impose immediate beheading in all types of cases, because no other law was available. Governor Xu himself had just sentenced a man to immediate beheading on the basis of the statute, even though the rapist had acted alone and had not harmed his victim aside from the rape itself; the penalty seemed too harsh, since it would have been only strangulation after the assizes, had the victim been female. Moreover, Governor Xu observed that the Yongzheng Emperor had recently issued an edict providing detailed guidance for the punishment of different variations of heterosexual rape. “Now, it seems that the statute against coercive sodomy should be subdivided in the same way, into specific crimes and penalties.” The emperor referred Xu Ben’s memorial to the Board of Punishment for deliberation. The board agreed, and offered a detailed proposal, which became the 1734 sodomy statute [MQ, 59-10].

This law (along with complementary measures that followed) achieved a precise assimilation of sodomy (*ji jian*) to heterosexual *jian*. The breakdown into specific offenses paralleled preexisting categories of illicit sex. Moreover, the penalties for sodomy offenses now equaled in almost every detail those for corresponding heterosexual ones. This rationalization of penalties for sodomy was a logical result of the increasingly close analogy drawn by Qing jurists between sodomy and heterosexual offenses for the preceding fifty years.

Gang rape of a person of either sex was punished according to the statute on “rootless rascals,” ringleaders by immediate beheading and followers by strangulation after the assizes. Rape by one offender of a person of either sex over twelve *sui* was punished by strangulation after the assizes; rape of a child of either sex between ten and twelve *sui*, by beheading after the assizes; rape of a child under ten *sui*, by immediate beheading, according to the statute on “rootless rascals.”

Rape of a person over twelve *sui* of either sex that was “not consummated” (*wei cheng*—that is, in which the vagina or anus was not penetrated) was punished by 100 blows of the heavy bamboo and life exile at 3,000 li. If the victim were twelve *sui* or under, the offender was enslaved to the military forces in Heilongjiang.

“Consensual” sex with a child aged twelve *sui* or under of either sex was automatically treated as “coercive” and punished by strangulation after the assizes. Consensual sex with a person over twelve *sui* of either sex was punished according to the statute on “soldiers or civilians engaging in illicit sex” (*jiun min xiang xian*), by 100 blows of the heavy bamboo and one month in the cangue. 13 Prostitution by male or female, as well as sex with a prostitute, received the same penalty.

After 1734, any sodomy offense not covered in the code was judged by precise analogy to the corresponding heterosexual offense. For example, in an 1833 case from Beijing, Du Zhuer (thirty *sui*) penetrated his half-brother (same mother, different father) Fan Erge [eleven *sui*] in exchange for a few cash. As the code did not address incest between males, Du was sentenced by analogy to the statute on “illicit sex with a sister by the same mother but a different father”; because of Erge’s youth, the penalty was increased by one degree [XB, FT/06194].

In a complementary process, the legal discourse of sodomy adopted key terms and standards long used in the prosecution of heterosexual rape. As we have seen, certain factors disqualified a woman from full treatment as a rape victim by automatically indicating lighter penalties for her rapist. This weighting of penalties shows that the law did not define rape from the victim’s point of view, but rather in terms of an objective loss inflicted on the victim.
by penetration outside a legitimate context. After the assimilation of homosexual offenses to heterosexual ones, the same logic framed the evaluation of the male rape victim. The 1679 and 1734 statutes characterize the penetrated male as a liang jia zi di or liang ren zi di—literally, “a son or younger brother of commoner family” or “of a commoner.” Such characterization matches closely that of the ideal female victim of rape or abduction as liang jia fu nü or liang ren fu nü—literally, “a wife or daughter of commoner family” or “of a commoner.” As we have seen, by the mid-eighteenth century, the literal meaning of liang as commoner status yielded to the new emphasis on female chastity; so, too, in sodomy law, the requirement that the victim be liang implied a judgment of his sexual history and virtue. In this way, standards for evaluating female chastity and defining legitimate access to women were adapted to measure the loss suffered by a penetrated male.

Nonetheless, Qing jurists never imagined men to be exactly the same as women! As we see below, the exact parallel between homosexual and heterosexual offenses broke down over the question of resistance to rape. The difference between the plausibly rapable male and female articulates most clearly the Qing judicial construction of sex between men.

Adaptation of Heterosexual Standards to Sodomy

The following examples show how Qing jurists adapted the concepts of consummation, status distinction, and liang as an appraisal of the rape victim’s sexual history to the judgment of homosexual rape. Each case closely parallels one or more cases examined in the last two chapters, demonstrating the remarkable precision with which previously heterosexual standards were extended to cover this new terrain.

Consummating Homosexual Rape

The 1734 statute distinguished between homosexual rapes that were consummated [cheng] and those that were not [wei cheng], borrowing terminology long used to evaluate the rape of a woman (see Appendix B.1). Consummation of homosexual rape required phallic penetration of the anus. The penal consequences were identical to those in heterosexual rape: death for the offender, as opposed to a beating and exile if the act were not consummated. There was no ritual consequence for the victim of a consummated homosexual rape that corresponded to a female victim’s loss of chastity [made official by her disqualification as a chastity martyr if she died]. Nevertheless, the stigma attached to being penetrated by another man appears to have been powerful and pervasive.

Given such serious consequences, Qing judicial officials made an intense effort to determine whether acts of coercive sodomy had been consummated. This process closely paralleled [and no doubt was based on] the investigation of consummation in heterosexual rapes. Young males who alleged they had been raped would be inspected by the forensic examiner, in counterpart to the midwife who examined young female rape victims. We find the process mentioned in many central cases from the eighteenth and nineteenth centuries. It is illustrated in great detail in a Beijing case referred to the Board of Punishment for “immediate examination” in 1904 (when the 1734 sodomy statute was still in force). The widow Chen Hu Shi accused bannerman De Shan of raping her fourteen-sui son, Chen Qishier [De Shan fled and was not apprehended]. A rough draft of the boy’s testimony [his answers to questions that are not recorded] found in the case file shows the board trying to establish exactly what had been done to him:

De Shan pulled down my pants and sexually polluted [jian wen] me, the rape was consummated; I wanted to scream but De Shan held my mouth tight . . . with his left hand and didn’t let me cry out . . . With his right hand, he pulled my pants down, and forcing me to bend at the waist, he also bent at the waist, and pushed towards inside [wang li nong]. . . He moved wildly [juan nong] with his penis and made water [liu shui] on my thighs. De Shan tore my pants; De Shan consummated sodomy with me; De Shan scratched me with his hand.

The board ordered a forensic physician to examine the boy. He reported that “just below the anus, there is a scratch made by a fingernail; it is now completely healed. Close examination reveals that the crease of the anus is tight, and the anus has not been opened. In fact the sodomy was not consummated.” Therefore, in the official version of the boy’s testimony recorded by the board, the incident is described as follows: “. . . On that evening, I was seized by De Shan, who used coercion to sodomize me but did not consummate the act [qiang xing ji qian wei cheng], and used his hand to scratch and injure my anus.”

It appears that the rapist had scratched the boy in his attempt to achieve penetration and had even ejaculated. But since his penis never penetrated the boy’s anus, “sexual pollution” did not occur.
This logic resembles the Qing policy that manual penetration of the vagina did not consummate heterosexual rape [XB, SC/19959].

**Sodomy Between Masters and Servants**

No law addressed the issue of homosexual relations between masters and their servants, slaves, or hired laborers. Unlike the sexual use of servile females, which had long been explicitly tolerated but was increasingly ruled out by Qing jurists, there was never any specific exemption or prohibition of the sexual use of servile males. Seventeenth-century novels like *Plum in the Golden Vase* and *The Carnal Prayer Mat* ([Rou pu tuan](#)) suggest that such activity was not uncommon (master penetrating servant); like sex with female servants, it was unlikely to be prosecuted, regardless of the degree of coercion involved.15

But the *Conspectus of Legal Cases* reports an unusual test case from 1798 that addresses coercive sodomy between master and servile laborer. The governor of Shandong had asked for advice about this case because he felt unsure about how to reconcile two conflicting legal principles. The facts were not in dispute: a landlord named Pan Fuming had attempted to rape his worker-serf ([gugongren](#)), a man named Shao Xing; resisting, Shao had kicked his master in the testicles with such violence that the man died. As we know, Qing law treated homosexual rape as a heinous offense, and no explicit exception was made for masters raping servile males. The judiciary even considered self-defense against homosexual rape a mitigating factor for homicide, as long as there was proof of the rape attempt. In this case, had the men been status equals, Shao's most likely sentence would have been strangulation after the assizes for the "unauthorized killing of a criminal," with the certainty of eventual reprieve (see Appendix B.2). But they were not status equals. By the late eighteenth century, most hired laborers were being treated as their employers' equals for purposes of law, but there remained exceptions, depending on precise terms of employment. Evidently, Shao was considered a worker-serf in the classic sense as his master's status inferior, and as a consequence, the old Ming statute on a worker-serf killing his employer-master ([guzhu](#)) still applied: if the homicide resulted from fighting, then even if it were unintentional, the penalty would be immediate beheading ([DC, 314-00]).

The question, then, was how to balance status distinction against leniency for self-defense against rape. The governor recommended leniency and the Board of Punishment severity, so the emperor struck a balance. The final judgment confirmed that homosexual rape was an abomination; nevertheless: "For a worker-serf ([gugongren](#)) to kick his master to death holds the gravest implications for the principle of status difference. . . . It is inappropriate to judge this case according to the statute on 'committing homicide while resisting rape,' which applies to status equals ([chang ren](#)), so that the offender would be sentenced [merely] to strangulation after the assizes; such a sentence would show reckless indulgence." Therefore, Shao received the more severe sentence of beheading, but with the qualification "after the assizes," which kept open the option of a reprieve ([KA, 51/16a–17a]). Shao's sentence was more severe than it would have been had the two men been social equals, but much lighter than if his master had not been trying to rape him. This judgment parallels that of a 1738 case from Zhili, discussed in Chapter 2, in which a male servant used violence to defend his sister-in-law against rape by their master. Like that earlier case, its most remarkable feature is the extent to which senior jurists showed sympathy for a servile laborer's defense against rape by mitigating his punishment.

**Sodomy as a Pollution of Status**

In the last chapter, we examined an unusual test case of gang rape, in which the victim was a chaste woman of debased occupation—that is, she was liang in the new sense of sexual virtue but not in the traditional sense of legal status. *Conspectus of Legal Cases* reports a parallel example of homosexual rape, at least as unusual as the other, memorialized in 1824 by the governor of Shaanxi. A pair of thugs, armed with knives and clubs, had waylaid and raped two men on a road, each attacker raping one victim. The case was complicated by the fact that the victims were both actors who performed female *xiaodan* roles in opera, and therefore, the governor argued, "they cannot be treated as 'sons or younger brothers of a commoner' ([liang ren zi di](#))" as would be required for the rapists to receive the full penalty for coercive sodomy (strangulation after the assizes). But such a vicious crime could not go unpunished. The solution, approved by imperial rescript, was to reduce the full penalty one degree, to 100 blows of the heavy bamboo and life exile at a distance of 3,000 li.

The victims were not prostitutes, and there was no evidence that either had previously been penetrated by another man, and thus they could be considered liang in terms of sexual history. But because their profession clearly debased their legal status, they could
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not be considered liang in the sense of being commoners. Moreover, as female impersonators, these men already embodied the gender inversion suffered by a victim of anal penetration. The judgment, therefore, balanced the principle of status hierarchy against that of punishing rape—exactly mirroring the sort of compromise made when a chaste (liang) woman of mean status (not liang) was raped by a commoner.

Sodomy as a Pollution of Masculine Purity

Previous experience of being penetrated disqualified a male from being considered liang in the sense of sexual history. Therefore, like status subordination or debasement, such experience also was judged to lessen the harm caused by rape, justifying a reduced penalty for the rapist. This logic was the same used to evaluate a female rape victim known to be unchaste. But it is awkward to translate liang as applied to male sexual history—it makes no sense to refer to “chaste” males. Female chastity was a form of loyalty, and women penetrated in the context of marriage were considered just as chaste as unmarried virgins. But Qing law recognized no legitimate context for homosexual intercourse that corresponded to marriage. In short, a liang male was a euphemism for an unpenetrated male. (To maintain that euphemistic nuance, I translate liang in this context as “of good character.”)

The Conspectus of Legal Cases contains many examples of such judgments. In a case reported by the governor of Shanxi in 1815, Guo Zhengqi had been raped by Li Lengsan but admitted that earlier he had already consented to being “sexually polluted” (jian weiyi) by another man. As the governor reasoned, “There is a difference between Guo Zhengqi and ‘a man of good character’ (yu liang ren yu jian). Therefore, Li Lengsan should be sentenced to 100 blows of the heavy bamboo and life exile at a distance of 3,000 li, a reduction by one degree from the penalty of strangulation after the assizes that is prescribed by the statute for committing coercive sodomy without injuring the victim.” In other words, if a man were shameless enough to consent to being penetrated, the harm he might suffer by being raped could not be great enough to warrant the death penalty for the rapist. Moreover, for his earlier consensual penetration, Guo himself received 100 blows of the heavy bamboo and one month in the cangue, according to the provision against “consenting to be sodomized” (he tong ji jian) [XA, 52/7b-8a].

A similar approach was followed in a Beijing case of gang rape judged in 1815. The principals were all Manchu bannermen. Because of a personal grudge, Jilin’a had filed false charges of theft against Zhabuzhan. Zhabuzhan was aware that Jilin’a had an ongoing sexual relationship with another man named Guangning (who took the penetrated role). To get revenge on Jilin’a, Zhabuzhan enlisted two friends to help him abduct and gang-rape Guangning. Because Guangning had previously been penetrated by his lover, his attackers would not receive the death penalty. Instead, they were punished with military slavery and exile by analogy to the statute against the gang rape of “a woman who has previously committed offenses of illicit sex” [DC, 356-12]. Both Jilin’a and Guangning were sentenced to 100 blows of the heavy bamboo (converted to whipping, since they were Manchus) and one month in the cangue under the provision against consensual sodomy. Also, in a mark of the stigma specific to the penetrated male, Guangning was expelled from his banner registry. None of the others had been penetrated, so none were expelled [XA, 52/8a-b].

Previous experience of penetration could affect homicide judgments, too, as seen in a central case from the Department of Zhiyi, memorialized in 1762. In 1751, the widow Ma Shi had hired an unmarried, landless peasant, Lin Ermengdong (twenty sui), to help her orphaned grandson, Li Changzuo (ten sui), work their land in exchange for 60 percent of the harvest. During crop-watching, Lin and Li shared a hut in the fields, and Lin began penetrating the boy, in a friendly relationship that lasted several years. In 1758, when Lin and Li were twenty-seven sui and seventeen sui respectively, they became the subject of village gossip, and the younger man broke off both the sexual and work relationships. However, one evening in 1761, Lin encountered Li and propositioned him. As Lin later confessed, Li rejected him, saying, “Before, we were seen screwing around together (zan liangge gan de goudang) ... and the whole village talked until it was unbearable. Who would want to do that shameful thing (mei lian de shi) with you again?” A quarrel ensued, and Lin beat his former lover to death.

In evaluating this homicide, the magistrate first considered this clause of the 1734 sodomy statute, “Whoever murders a young man of good character (liang ren zi dij) in the course of an attempt at illicit sex ... also shall be immediately beheaded according to the statute on ‘ringleaders of rootless rascals’” [Appendix B.1]. Upon reflection, he rejected this measure, reasoning that “Li Changzuo had previously submitted to illicit sex with Lin Ermengdong, so Lin
Judicial Stereotypes of Vulnerable and Dangerous Males

In judicial discourse, being penetrated involved a stigmatized loss of status for males; this loss to a certain extent corresponded to a woman's loss of chastity, and its effects were measured in similar ways by the penal system. Males of debased status and males who had already been penetrated did not suffer the full degree of harm when raped. It followed that their rapists did not deserve the full penalties mandated by law.

But there remained fundamental differences between the loss suffered by a penetrated male and a female's loss of chastity. By definition, a woman was legitimately penetrable—however, she had to reserve that penetrability for her husband. An adulteress offended against her husband, thus, the burden on the female rape victim was to prove that she had not committed a betrayal. This fact was reflected in the Ming-Qing penalty for consensual intercourse, identical for heterosexual and homosexual couples except that a wife convicted of adultery could be sold in marriage by her husband. No comparable measure applied to the male who engaged in illicit intercourse with a female or played either sexual role with another male—a penetrated male could not be sold off by his wife, if he had one! Nor did the Qia n state orchestrate a cult of virtuous males who died guarding their penetrability to correspond to the female chastity martyrs canonized on a regular basis.

Here we see an essential difference in the way jurists imagined male and female gender. Males were not expected to be weak, fatalistic, or suicidal; theirs was not to reserve themselves as vessels for one legitimate master. They were not supposed to be penetrable at all, but rather penetrators, subjects rather than objects of action.

Even so, Qing law acknowledged that males could be raped, and that they might consent to sodomy. But for this penetrability to make sense, the male had to be somehow less than male. To grasp this unstable masculinity, let us examine more closely the standard of evidence for coercion applied to sodomy cases. What sort of male did the judiciary imagine as a credible rape victim?

Coercion, Youth, and Powerlessness

Unlike the Qing code's original statute on illicit sex (Appendix A.2), the sodomy statutes do not spell out an exact standard of evidence for coercion. Case records show that the standard long established for the rape of a female generally applied: they cite injuries and torn and bloodstained clothing, judges asked if victims had cried out and struggled, confession was required for conviction, and it was best to have witnesses. Even so, the male rape victim was imagined as fundamentally different. The issue of domestic space, for example, never comes up in cases of homosexual rape. It was perfectly proper for men and even young boys to be outside the home for a wide variety of reasons, and the most common site of homosexual rape in cases I have seen is on a road or path out in the fields between villages. Indeed, case records show that it was routine for unrelated men to share beds at night—a practice that did not necessarily imply sexual activity but certainly provided such opportunity.

The crucial distinction in the prosecution of heterosexual versus homosexual rape is that judges saw men as fundamentally empowered, whereas they assumed women to be weak. Of course, a woman should resist, but her strongest evidence of coercion was that she had been killed or had committed suicide; barring death, serious injury was the best defense. These were deadly weapons of the weak. In contrast, the judiciary was highly skeptical that a man could be raped at all: if sodomy had been consummated with an adult male, then it must have been consensual. Only a powerless male could be penetrated against his will—and the most unambiguous form of male powerlessness was youth. The statutory language specifies the male rape victim as a “son or younger brother [zì dì] of a commoner,” or “of commoner family.” Such phrasing implies that the male rape victim was a young, junior member of a family unit. The corresponding phrase for the female rape victim is “a wife or daughter [qì nà or fù nà] of commoner family.” “Daughter” implies youth, to be sure, but “wife” does not; the emphasis here is gender subordination within the family, not youth. Sodomy legislation says nothing about husbands to correspond to the “wife” envisioned as a potential rape victim.

Indeed, the victim's youth and family seem to have been crucial factors in the prosecution of homosexual rape. I have collected 39
central cases involving homosexual rape [including thirteen cases of homicide in self-defense against rape, where judges credited such claims]. The youth of the victim (and relative maturity of the rapist) is the most consistent and striking feature of the sample: in every case, the rapist is older than his victim, by an average of fifteen sui in the rape cases, and twenty sui in the self-defense homicides. The average age of homosexual rapists is thirty-three sui, while that of victims [including killers in the homicide cases] is only sixteen sui.

These data confirm that the Qing judiciary imagined the male rape victim as a young boy who was attacked by a much older man. In cases that involved homicide (of either rapist or rape victim), that homicide itself became the main focus of judicial inquiry and guaranteed prosecution; thus, if we exclude all such cases, we come even closer to the judiciary’s ideal homosexual rape, in which rape alone was the focus of concern. In these “pure” cases, the average age of victims falls to thirteen sui, strongly reinforcing the stereotype of the credible male rape victim as a young boy. All these cases were reported to authorities by a parent or other senior relative of the victim, suggesting that, as in heterosexual rape, this crime was envisioned as an assault on the family as much as on the person of the victim.

We should not conclude that older males were never in fact raped, but rather that there existed a strong judicial bias against accepting an older male as a rape victim. Even with an adolescent, judges might exhibit great skepticism about whether coercion had truly been used to consummate sodomy. In an 1851 case from Baodi County, Zhili, the victim was Chen Shang’er, a peasant who worked on the village watch with three other men. One of the other men, Han Yunrui, was an ex-convict recently released after several years of penal servitude. The men worked in pairs in alternate shifts, and the pair off duty would sleep in the watch-shed. One night when the others were out on duty, Han raped Chen Shang’er. The boy’s father reported the rape, and forensic examination established that Shang’er’s anus had been penetrated. Arrested, Han confessed. The magistrate recommended strangulation after the assizes for “forcibly sodomizing a young man of good character, without injury.” However, the provincial judge of Zhili overturned the judgment for the following reasons:

In cases of consummated rape, if violent coercion has truly been employed, the rape victim should exhibit physical injuries from the struggle. . . . In this case, Chen Shang’er is already fourteen sui, and absolutely cannot be considered a child . . . it should not have been difficult for him to escape immediately, why is it that all he could do was weep and cry out? When he was forced down on the kang, it is not to struggle vigorously, and thereby allowed himself to be sexually polluted. Moreover, [the other watchmen] must have been in the vicinity; how is it that they heard nothing when Chen Shang’er was being sodomized and cried out? In addition . . . his body exhibited not even the slightest injury. [Emphasis added]

Here, the provincial judge cited the standard of evidence for rape applied to women in Ming-Qing law—but note his emphasis of the boy’s age, an element that did not figure in this way when the victim was female. He ordered the case retried in Baoding Prefecture to establish beyond doubt whether coercion had been used. The Baoding prefect evaluated the facts as follows:

Just as [Han] was about to penetrate Chen Shang’er, [the boy] was startled awake, refusing to cooperate, the boy got up and shouted and cursed. But Han Yunrui’s lust had not been satisfied, so, deciding to rape the boy, he grabbed Chen Shang’er and forced him face down on the kang. Using his hands to pin down Chen Shang’er’s upper body and arms, he pressed down on Chen Shang’er’s lower body with his own body. Not being strong at all, Chen Shang’er was unable to struggle free. He wept and yelled loudly, but since there were no neighbors close by, no one heard him. Therefore, he ended up being sexually polluted by Han Yunrui.

Persuaded, the provincial judge accepted the original sentence [SE, 167/XF 1.2.6].

Homicide in Defense Against Homosexual Rape

The clearest expression of judicial skepticism came in the prosecution of men who committed homicide in self-defense, they claimed, against rape. Most cases involved the use of a knife or other edged weapon to kill the alleged rapist. Qing judges deemed it unlikely that even a teenage male would have to resort to such a weapon to prevent rape, and they treated any such claim with great suspicion, assuming it was a lie that obscured the true motive for murder.

Still, Qing law sometimes granted leniency to males who committed homicide while resisting rape. Until the late eighteenth century, the procedure was for the provincial governor reporting the case to recommend formally that the prisoner be executed according to the relevant homicide statute, but to add an explanation of the mitigating circumstances, with a suggestion that the sentence be commuted. The final decision would be made at the Palace [Wu Tan 1992, 785].
But the age of the killer (that is, the alleged victim of sexual assault) was key to whether leniency would be granted. In a 1744 case from the Four Banners region of Zhili, a man named Ma Zhongxiao used an axe to kill one Wu Guodong, with whom he was sharing a bed, and who he claimed was trying to rape him. The governor-general recommended leniency, but the Palace refused: “If Ma Zhongxiao was already twenty sui, then he was a strong man in the prime of life. How could Wu Guodong possibly coerce him into sodomy?” The case was sent back to the local magistrate for retrial. When pressed about his age and strength, Ma testified, “I was only nineteen sui, and I have always been weak. He was a very strong man, and when I was held tightly by him, there was no way I could struggle free.” The magistrate reported:

According to the offender, he was only nineteen sui at the time, and although that is not so young, the offender is not really very strong either. This humble official personally examined the offender in court, and it was obvious that his constitution is not tough or strong at all. Moreover, Wu Guodong was more than twice the offender’s age, and it seems credible that he could have sought to use coercion to sodomize him, taking advantage of his youthful weakness.

The governor-general then personally inspected the prisoner, drew the same conclusion, and confirmed his original recommendation to the Palace (MQ, 133-99).

A degree of leniency toward males who committed homicide while resisting rape was codified in the late eighteenth century; however, in addition to unimpeachable evidence of a rape attempt, any offender to be granted leniency had to meet strict qualifications based on age. A statute of 1783 specified that for a reduction of penalty to be considered, it was necessary for “the dead man to be at least ten sui older than his killer.” Furthermore, “if the dead man and his killer are of the same age, or if the dead man is only a few sui older” (literally, “three or five sui older”), then the case should be judged according to the basic homicide statutes without any reduction of penalty. Twelve years later, an amendment granted that even if the dead man were “not quite ten sui older than his killer,” but strict evidential requirements were met, then a reduced sentence could apply. In 1823, a final measure absolved boys of fifteen sui or under of any penalty for killing men at least ten sui older who tried to rape them, as long as strict evidential requirements could be met. If the evidence did not quite meet the strict standard of the statute, but authorities were persuaded the boy was resisting rape, then he would receive a nominal sentence to be commuted to a fine (Appendix B.2; QHS, 807/769).

The intent of this legislation was to prevent murderers from escaping with penalties lighter than they deserved (Wu Tan 1992, 785; Meijer 1985, 124-26). However, by spelling out the narrow circumstances that partly excused such homicide, the judiciary also articulated its image of a plausibly capable male. Only a boy or a young, weak man attacked by someone older and more powerful might be successfully raped—and therefore might be excused for resorting to an equalizing weapon like a knife in self-defense.

No such equation of youth with powerlessness appears in the elaborate judicial discourse on heterosexual rape. Any woman who immediately killed a man attempting to rape her was excused punishment; the code mentions no qualification based on age (DC, 285-286). Among males, only those fifteen sui and under could be granted such complete clemency, and only if they were at least ten sui younger than their attackers and could meet an unusually strict standard of evidence (including confession of the rapist before witnesses prior to death). The implication was to associate the powerlessness and penetrability of being very young with being female: the weakness (and consequent need for an equalizing weapon) of any woman was on a par with that of a young boy.

We find confirmation of this thinking in two edicts of 1765 that imposed administrative sanctions on local magistrates who failed to apprehend “rootless rascals” who had raped “young girls, young boys, or women” (you nü, you tong, funü). These edicts make clear by omission that any male other than a “young boy” was not considered a possible rape victim (QHS, 128/658-59).

Unlikely as it may seem, laws promulgated by the millenarian Taiping rebels in the mid-nineteenth century reveal the same assumptions about rape. One statute mandates that “in cases of sodomy of a younger brother among the faithful [lao dui], if that younger brother is at least thirteen sui, then both shall be beheaded. If the younger brother is under thirteen sui, then only the penetrator [xing jian zhe] shall be beheaded; but if the sodomy is consensual [he jian], then both shall be beheaded [in spite of the younger brother’s youth].” In other words, any male over thirteen sui who had been penetrated was assumed to have consented, but no such age qualification applied to females (Qiu Yuan you 1991, 50). That rebel and dynastic law would agree on this principle suggests that it derived from basic assumptions about gender performance that were very widespread.
Adult males were seen as powerful and nonpenetrable; therefore, penetration of a male could be explained only in terms of youthful powerlessness or shameful consent. Females of all ages were seen as powerless and penetrable, but they were expected to safeguard that penetrability by whatever means necessary, the classic scenario being chaste martyrdom rather than homicide in self-defense. The Qing judiciary imagined the male rape victim as juvenile, therefore powerless; powerless, therefore penetrable; and, being both powerless and penetrable, therefore approximating the condition of being female. It was such a condition that made it possible to conceive of males as rapable. The discourse of liang never included men who penetrated other males, any more than it included men who engaged in illicit sex with women; liang applied only to males and females positioned in the “female” sexual role. Feminists argue that to be rapable is to be socially female, regardless of biological sex (e.g., MacKinnon 1989, 178). The Qing judiciary seems to have shared this view.

Profile of the Ideal Homosexual Rapist

As with heterosexual rape, the evidence in cases of homosexual rape tends to confirm the statutory stereotype of the rapist as a “rootless rascal.” My sample of 39 central cases includes 42 rapists (two cases involved gang rape). Their average age was thirty-three sui. We know the occupations of 37 men: two are described as having no proper occupation, and another seventeen did work that can be considered disreputable or marginal: they include five soldiers, four itinerant porters/peddlers, three clergy, two beggars, two casual laborers, a night watchman, and a barber. Twelve of those engaged in more respectable work were peasants. Among the rest, we find an innkeeper, a tavern keeper, an apprentice, a student, and one man who was “in trade.” Almost all are described as very poor.

We know for sure the marital status of 28 men in the sample: 24 were single (57 percent of the total of 42 rapists), four married. For the other fourteen rapists we have no explicit information, but I believe it is reasonable to assume that most of these men were single as well (for reasons explained in the last chapter). Their unmarried status should not be mistaken for a voluntary lifestyle choice. In Qing China, as in many contemporary societies, the decision of whether and whom to marry usually depended very little on the personal preferences of individuals.

Most of the rapists knew their victims at least slightly, but in nine instances they were complete strangers, and in twelve they were outsiders (from a different village or county). Four were ex-convicts, and another four were characterized by witnesses as “evil rascals” (guren), and so on. At least ten were drunk when they attempted rape.

Once again, we recognize the rogue male who lacks property or family and who, though still young, is old enough perhaps to resent his lack of prospects. It is no accident that this profile closely resembles that of the heterosexual rapist outlined in the last chapter. Qing jurists imagined the same rootless rascal to be a sexual threat to the wives and daughters of upright householders, and to their “sons and younger brothers” as well.

The Bisexual Object Choice of the Rootless Rascal

What can we say about the sexuality of this rogue male, who is stereotyped as a rapist of both chaste women and young boys? Several cases portray a single rapist as bisexual in object choice: he pursues both male and female objects, but consistently plays the role of aggressive penetrator. But this bisexual targeting of lust in and of itself does not seem problematic; jurists do not single it out for special explanation or commentary. Rather, it is the rootless rascal’s incontinence, his lack of respect for all boundaries, that threatens social order.

One example is a 1745 case from Suining County, Hunan, in which Long Xiwen (twenty-two sui) attempted to rape and then strangled his neighbor’s son, Hu Yanbao (thirteen sui). Long was a poor peasant, single and without prospects, who secretly engaged in sexual relations with a neighbor girl. She was betrothed, but Long planned to elope with her before she could be taken in marriage. One day, however, Long saw Hu Yanbao working in a field and felt aroused by the boy’s youth and by the way “he looked so white and clean” (sheng de bai jing); he then lured Yanbao to a remote place and tried to rape him. When the boy resisted, Long strangled him—and conceived the idea of dismembering the boy’s corpse sufficiently that he would appear to have been killed by animals. He also hoped that after he and the neighbor girl had eloped, her parents might mistake the mutilated corpse for her, and not think to pursue them. After being caught with incriminating evidence, Long was sentenced to immediate beheading for the rape and murder of “a son or younger brother of commoner family.”
The memorial on this case stresses Long Xiwen’s abominable defiance of all convention. Fornication, elopement, rape, murder, and disembowelment—he seems willing to violate every conceivable taboo in order to indulge his criminal impulses. But there is no particular emphasis on the fact that he happened to desire both males and females [XT, 119/QL 10.12.3].

A second example is a 1752 case from Nanzheng County, Shaanxi, involving one Li Shishou (mid-thirties), an unmarried, impoverished barber from another county. Li befriended a neighbor boy named He Tingzhu (seventeen sui at the time); one day, he pinned Tingzhu down and “forcibly sodomized” him. Tingzhu was too ashamed to tell anyone what had happened, but perhaps he did not mind so much, since he continued to visit Li, and was “frequently” sodomized by him. But Tingzhu eventually contracted a case of “syphilitic sores,” so that his father found out what had been going on and ordered him to stop seeing the barber (Tingzhu no longer submitted to sodomy, but secretly continued to spend time with Li). Later, when Tingzhu married, Li began pressuring him to share his wife. Tingzhu refused; however, one night, Li jumped over the wall of the He family compound, confronted Tingzhu with a knife, and tried to rape his wife. Tingzhu finally rescued his wife by stabbing Li to death.21

Li Shishou represents as well as anyone the Qing judiciary’s quintessential rootless rascal: he is an outsider without family or property who seems bent on destroying an upright family, violating multiple sacrosanct boundaries in the process. The case report concludes by observing that the magistrate’s men discovered among Li’s effects a pair of woman’s bound-foot shoes, ultimate proof of his dangerous, transgressive sexuality [he must have stolen the shoes—and what did he want them for, anyway?] [XT, 144/QL 17.7.4].

In the depiction of these rootless rascals, bisexual object choice seems almost taken for granted. The focus is on their aggressive penetrant role and utter disregard for convention. Homoerotic desire is singled out for no greater or lesser censure than heterosexual desire (both being described with the same vocabulary); apparently jurists did not find such appetites particularly noteworthy or hard to comprehend.

In vernacular fiction from the late Ming and Qing, we find a counterpart to this aggressive penetrator, in the role of the libertine. In object choice, the libertine is bisexual, too, although his primary obsession is women. Like the rootless rascal, the danger that the libertine represents is his insatiable pursuit of sexual objects, not his eclecticism. Thus, when Ximen Qing (hero of Plum in the Golden Vase) penetrates his page boy Shutong, the episode serves to underscore the protagonist’s indiscriminate self-indulgence, Ximen’s more dangerous behavior consists of his promiscuous seduction of other men’s wives, leaving a series of wrecked households in his wake. Again, when Vespertus (hero of Li Yu’s The Carnal Prayer Mat) finds no female vessel at hand, he substitutes the “south gate” of one of his male pages; but his energies, too, are spent primarily in the pursuit of other men’s wives. These novels present their heroes’ transgressive overindulgence as harmful to health. But more important, it ruptures the boundaries that frame familial and social order.22

The fictional libertine differs from the stereotypical rootless rascal represented in rape cases by being a member of the privileged elite who enjoys material and social resources, and therefore rarely falls afoul of the law. But he shares with the rootless rascal the aggressive penetrant role, bisexual in object choice, which represents a specifically phallic threat to social order.

Eroticization of the Young Male

The judicial stereotype of the rogue male as a threat to sons or younger brothers of commoner families resonates with widespread evidence that in late imperial China, the young male was eroticized as an object of possessive desire. For the aggressive penetrator, in Qing legal cases as well as in Ming-Qing fiction, the young male is cast in the “female” role as a penetrated object, and the penetrator seems attracted to the same kinds of feminized features regardless of the sex of the individual who possesses them.

It is routine for the memorials that report homosexual rape cases to note that a rapist’s lust was aroused when he saw that his victim was “young” [nian yu] or “young and beautiful” [shao ai]. The latter term carries a strong connotation of femininity, and frequently appears in the same context in reports of heterosexual rape as well. The confessions of homosexual rapists are sometimes more specific. For example, in a 1729 case from Guangdong, Yu Zidai [fifty-seven sui] explains that his victim [sixteen sui] “was young and lovely” [nian shao mei hao] [MQ, 41.7]. In a 1739 case from Shaanxi, Wang Chongye [twenty-two sui] says of his victim [nine sui]: “Sanbaor’s face looked clean and attractive [mian miao de gan jing], so I had wanted to sodomize him for some time” [XT, 70/QL 4.9.5]. In a 1745 case from Hunan, Long Xiwen [twenty-two sui] explains that
because his victim (thirteen sui) "looked so white and clean (sheng de bai jing). I suddenly had the impulse to sodomize him" [XT, 119/QL 10.12.3]. These sentiments were not limited to rapists—we find such language also in cases of consensual sodomy.

Just as the bisexual object choice of rapists warranted no particular judicial analysis, this sort of testimony is transcribed without comment. Clearly, then, the memorialists assumed that no special explanation was necessary to make the rapists' comments understandable to the senior officials who would review them. The reason they could make this assumption is that the eroticization of the young male as a penetrated, feminized object was by no means peculiar to a subculture of marginalized sexual predators.

In *Plum in the Golden Vase*, males who play the penetrated role are uniformly eroticized for their youth and feminine refinement. For example, an encounter between Ximen Qing and his adolescent page Shutong begins thus: "Shutong had been drinking wine, so his fair face was glowing; his lips were red and fragrant, and his teeth were as white as grains of glutinous rice—how could one not be enchanted [ru he bu ai]? At once, Ximen Qing's lust was aroused [yin xin che ai]." While they engage in intercourse, Ximen Qing addresses the boy as "my child" (wo de er), and Shutong calls him "Daddy" (die—a term also used by Ximen's concubines) [34/11b-12a]. Later in the novel, we find the following account of the Daoist priest Jin Zongming's attraction to the males he penetrates:

Under his supervision he had two novices who were fresh, clean, and young (qing jie nian xiao), and who shared his bed, but this had gone on for some time, and he was getting bored of them. He saw that Jingji had white teeth and red lips, and his face was as white as if it had been powdered; Jingji looked fresh, refined, and charming (qing jun guai jie) . . . so the priest arranged for Jingji to stay in the same room with him.

The novel notes in passing that Jin Zongming also patronizes female prostitutes [93/104].

In *The Carnal Prayer Mat*, Li Yu explains the hero's sexual attraction to his pages ("Satchel" and "Sheath"—appropriate nicknames for the penetrated!) in similar terms: "Both boys were attractive, indeed, apart from their big feet, they were on a par with the most beautiful women." The hero prefers Satchel, because he is the more "artful" and "coquettish" of the two, and can manipulate his buttocks "like a woman" [Li Yu 1996, 120-22]. In his story "A Male Mencius' Mother," Li Yu presents the young male as a third gender,

possessing a femininity more "natural" and alluring than that of a genuine woman. The willow-waisted boy Rui liang is described as "a woman of peerless attraction," when he begins to develop masculine attributes (his genitals are growing and he feels an insatiable penetrative lust), however, he castrates himself, so as to retain the characteristics that make him attractive to his "husband" [Volpp 1994].

In all these texts, both legal and fictional, the male sex object appears attractive to the extent that he possesses a certain feminized standard of beauty. Youth, whiteness and cleanliness, clarity of complexion, red lips and white teeth, a willowy physique—all these features are conflated and eroticized. [Ming-Qing pornography depicts both women and penetrated males with lighter skin and less facial and body hair than their masculine partners.] The aggressive penetrator depicted in these sources seems attracted to the object of his desire more by these gendered features than by the object's biological sex.

This evidence helps us to understand the threat from which, jurists believed, the "sons and younger brothers" of good families had to be protected. The legal discourse of the vulnerable male is pervaded by anxiety over the ambiguous gender of the adolescent boy, whose adult masculinity has not yet been confirmed by the social and sexual roles taken up with marriage. Jurisprudence was guided by the assumption that to be penetrated feminized a person in a profound and important way: it gendered a biological female as a woman (that is, as wife and mother), just as to penetrate gendered a biological male as a man (as husband and father). For a young male to be penetrated threatened to derail his delicate journey to adult masculinity, by degrading or inverting his gender.

**Popular Perceptions of Hierarchy and Stigma**

But how widespread, really, were such views? So far, we have examined legislation and central cases involving homosexual rape in order to identify judicial stereotypes of the rootless rascal and of the male who was vulnerable to his sexual predation. We have seen that some of the basic assumptions behind these stereotypes are reflected in contemporary vernacular fiction. But what about ordinary people, who were neither officials nor novelists? What does the evidence in Qing case records tell us about their views of sodomy? And
what about consensual same-sex union—can we learn anything of the circumstances in which such union actually occurred? How did the partners in such relationships perceive themselves, and how were they perceived by others?

Parallel Hierarchies

The evidence in case records shows a clear coherence between basic judicial thinking and very widespread practices and perceptions. Most obviously, the penetrated male was younger than his penetrator, and thus the gendered hierarchy of sexual roles coincided with that of age. This is true in rape cases, as we have seen. But it is also true in all examples I have seen that the judiciary treated as consensual, with only two exceptions. Both exceptions (examined below) can be seen to prove the rule that the hierarchy of sexual roles was seen properly to conform to age hierarchy. Not only was the penetrated male younger, but in the great majority of cases he was unmarried. In relations deemed consensual by the judiciary, hierarchies of age and of sexual role often parallel others: seniority or status (for example, Buddhist or Daoist clergy penetrating novices), economic means (with the penetrator supplying money or other resources to his partner), and sometimes class (employers penetrating employees). The effect is to reinforce the gendered power relations already inherent in the hierarchy of sexual roles.

In the consensual same-sex unions reported in legal cases, we also notice signs apparently gendering the penetrated male as feminine. Some involve division of labor: in one example, the penetrated male wove cloth at home, which his partner sold at market. In many cases, two or more penetrators fought over a penetrated male, but I have yet to see the opposite; the penetrated male appears as an object of possessive desire. Sometimes, the relative authority of partners mimicked that of heterosexual couples. In a 1762 example from Raopeng County, Guangdong, Pan Asan [eighteen sui] lived with and was informally apprenticed to a barber, Miao Aliu [twenty-six sui], who penetrated him. Pan ran away for several days, staying with another man, whom he allowed to penetrate him. Finally, Miao tracked him down, took him home, and scolded him. After that, Pan often defied and cursed his partner. One evening, he refused to sharpen razors in preparation for the next day's work, so Miao beat him. Later that night, Pan refused to be penetrated, and Miao strangled him [XT, 170/QL 27.4.18]. This scenario closely fits the pattern of wife-kilings recorded in Qing legal archives, in which a wife's failure in gender duty (adultery, leaving home without permission, refusing sexual intercourse, and other defiance) provokes her husband to homicidal rage.

The Adult Male as Penetrator

Case records suggest that a male's sexual role could change, depending on his stage in life (cf. Hinsch 1990, 136). Most basic is the sense that an adult male should be a married householder, whose role was to penetrate (his wife), not to be penetrated. Marriage represented the key rite of passage: with consummation both male and female took up their respective roles in the division of sexual and social labor, as husband (penetrator) and wife (penetrated).

Several cases reveal a change in perceived role on the part of a man who had in his youth consented more or less willingly to being penetrated by an older man. Sometimes the younger man, having matured, rejects the advances of his former lover: “I'm grown up now, and I'm not going to do that” [XT, 177/QL 27.3.30]. Sometimes this change in attitude coincides with taking a wife. In a 1739 case from Luojiang County, Sichuan, the peasant Zhou Jiu (nineteen sui) killed an older monk named Qing Yue. According to Zhou's confession, he lived not far from Qing's temple; in 1736, Zhou had gone there to play, whereupon Qing Yue persuaded Zhou to let him penetrate him in exchange for some walnuts. They had sexual intercourse once, after which Zhou did not return to the temple. One day in 1738, Qing Yue tried to repeat their sexual encounter by force, and Zhou killed the monk with a knife. When arrested, he claimed self-defense, but the magistrate was skeptical: “Since Qing Yue had already sodomized you, why did you reject him on this one occasion? . . . Obviously there was some other reason why you wished to stab him to death.” Zhou's response: “Before, I was still young, and was sodomized by him because I was greedy to eat walnuts. When I later recalled this, I was deeply ashamed [hao bu xiu kuil]. Now, I've already grown up, and have also taken a wife. How could I still be willing to do this shameful thing [mei lian min de shu]?” The magistrate accepted this explanation, as did his superiors [XT, 71/QL 4.7.12].

A male's changing sexual role figured too in a 1739 case from Wendeng County, Shandong, in which the peasant Dong Er [twenty-eight sui] killed an older monk surnamed Sun. According to Dong,
When I was a boy, I often went to the temple to play, and was seduced by monk Sun, who gave me sweets to eat, and sodomized me (ba xiaoda ji jian le). Later, monk Sun moved to Fengshan Temple, a little over four li from our village. He often came to our village to collect alms, and when it got late he would spend the night at our house, and would have illicit sex with me.

At the age of twenty-one sui, Dong Er took a wife, Xiang Shi. As Dong recounted,

Monk Sun told me many times that he wanted to sleep with my wife, but I didn't let him. But in 1736, I was too poor to get by, and I often asked monk Sun to lend me a hundred cash or so to buy rice, then I let him have sex with my wife. After that, he often came and went, and I spent several hundred cash of his.

Poverty finally forced the couple to move in with Xiang Shi's natal family, which hampered Sun's sexual access to her. Shortly thereafter, Dong went to Sun's temple to ask for another loan to get through the winter. Sun refused to pay unless Dong brought his wife to live nearby. Dong then revealed his plan to travel to the east in search of employment. Sun got into a huff and went to bed (it was evening), Dong (who was spending the night at the temple) climbed onto the käng with him and went to sleep. Later, however, Sun woke him up and again pressed him to move nearby so they could continue their arrangement of trading sex for money. A quarrel ensued, in which the monk cursed Dong, who then beat him to death.

In six years, then, Dong went from being Sun's willing penetrated partner to taking a wife and becoming a penetrator in his own right. At this point, Sun's sexual interest shifted from Dong to his new wife, and, in exchange for money, Dong began sharing Xiang Shi so that both men could penetrate her. The focus of Sun's lust had shifted so completely that on his last, fatal night, he evinced no interest whatever in having sex with Dong himself—even though the two men were in bed together (XT, 69/QL 4.6.20).

A 1739 case from Gaoling County, Shaanxi, illustrates attitudes toward changing sexual roles in the male life cycle from a different angle. Zhao Quanfu (fifty-three sui), a Daoist mendicant from Henan, had taken a disciple, Miao Zhenglai (thirteen sui), at the behest of Miao's father, a peasant who could not provide for him. Zhao began penetrating the boy on the morning after he took him as his disciple. When the boy tried to resist, Zhao threatened him with a beating. After that, the two wandered from place to place, begging alms in exchange for ritual services. Miao always slept with Zhao, who penetrated him at will. After four months, they fell in with another Daoist mendicant, Yang Zhangming (thirty-nine sui), whom Zhao engaged to teach scripture to Miao. Shortly thereafter, Yang also began penetrating Miao. When Miao first refused, Yang told him he had not memorized his lesson properly, and threatened to beat him and to tell his master, so Miao submitted.

Not long thereafter, Yang tried to persuade Miao to abandon Zhao and go off with him. “Why should you leave family life to join the clergy (chu jia)? If you follow me and return to secular life (hiian sui), I will arrange for you to take a wife.” Zhao overheard this, and later accused Yang of plotting to abduct the boy. Zhao also suspected that Yang was having sex with his disciple, and was jealous. In the fight that ensued, Yang was killed.

The most interesting detail is the promise Yang made, no doubt insincerely, to persuade Miao to leave with him. Miao was both a Daoist novice and a homeless beggar (in a year or so, he and his master wandered through much of northern Henan and central Shaanxi). Returning to secular life and taking a wife implied leaving behind both sorts of marginalized status in exchange for the rooted life of a married householder, a life to which most landless peasants probably aspired. It also held out the promise of a clear transition to male adulthood, both in age and in sexual role, from dominated, penetrated boy to adult penetrator in his own right, with his own wife to subordinate and use sexually. The offer seems to have been attractive; Zhao jealously noted that Yang and the boy were getting along famously (XT, 75/QL 4.5.11).

So many sodomy cases show an older monk (or Daoist priest) penetrating an adolescent novice, as a sort of initiation, that we can speculate that many of these older men themselves had been penetrated as boys by older clergy. It seems plausible that a division of sexual labor existed, with the boys serving the older men in an unofficial quid pro quo for their training and care, later growing up and themselves penetrating newer, younger novices. This speculation is strengthened by the parodic representation of sodomy among male clergy in vernacular fiction.

What stands out in the case evidence is not simply that hierarchy of age reinforced hierarchy of sexual role, but that fully socialized adult males should act as penetrators only, and that a transition to that role was extremely desirable. Such a transition might involve several elements: age (growing up), marriage (taking up the social
role as husband, reinforced by the sexual role as penetrator); and avoidance of being penetrated (if it had happened before, preventing it from happening again).

The Stigma of Being Penetrated

Cases from various regions reveal a pervasive, powerful stigma attached to the penetrated male, a stigma that did not touch his partner. Some men who wanted to penetrate others violently refused to be penetrated themselves. In a 1738 case, Wang Si (twenty-six), a poor man from Gu'an County, Zhili, was looking for work in Beijing as a casual laborer. One winter evening, without money to pay for space in a heated public room at an inn, he squatted at the base of the city wall by Chongwen Gate to get through the night. In the middle of the night, Wang was accosted by another man who planned to sleep by the wall as well. He was later identified as Dong Kui (mid-twenties), an impoverished bannerman who beat a drum in funeral processions. As Wang later testified,

[Dong] said, "If the two of us sleep together, we'll be warmer." I said, "I'm not sleeping next to you," and he said, "If you don't sleep with me I'll beat you up." I saw he was big and strong, and that I couldn't win a fight with him, so I agreed to sleep next to him.

Then he felt my pants, . . . saying, "If you let me sodomize you, I'll buy you a pair of cotton pants to wear." I said, "If you let me sodomize you, I'll give you a pair of cotton pants." He cursed me, saying, "If you don't let me sodomize you, I'll beat you to death!"

It was the middle of a dark night, and no one was around, . . . so I was afraid, I tricked him, saying, "Now it's still early, and someone might walk by and see us—that would be embarrassing. Why don't you sleep for a while and then we'll talk about it?" So he went to sleep.

After Dong fell asleep, Wang Si murdered him. Even if his retort about reversing roles may have been facetious, Wang seems to have felt that penetrating Dong would be better than being penetrated by him—and Dong took the retort as an insult, growing belligerent in response [XT, 74/QL 4.3.2].

Sometimes, the shame felt by the penetrated male contrasts sharply with the bravado of the man who has penetrated him—as illustrated by a case from Bagou Sub-prefecture, Zhili, memorialized in 1739. One night, Li Xuan (twenty-nine), a casual laborer from Wenshui County, Shanxi, was sleeping at the home of two friends, Niu Yongtai and Chi Tingguang. These two lived and farmed together (one wonders about their relationship). The three men were sharing the same kang. As Li later testified: "I was already sound asleep, when that Niu Yongtai started to sodomize me. I was awakened by his sodomizing me [bei ta jian xing le], but at the time, since Chi Tingguang was also on the kang, and since this kind of shameful thing is not easy to speak of, all I could do was bear it and keep silent." Some days later, Li met an acquaintance, Wei Minghou, in a wineshop: "He said to me, 'You men from Wenshui County are all born to be rabbits [tuzi].' I thought of Niu Yongtai sodomizing me, and suspected that Niu Yongtai hadn't kept his mouth shut and had told people about it, so that Wei Minghou had that in mind when he made this comment, because of this, I felt ashamed [lian shang haixiu]." Li went to Niu's home to confront him. It was night, and Niu was already in bed:

I said, "You sodomized me, but I bore it without saying anything, but now you've gone and told other people about it—what is this supposed to mean? Get up, so we can settle this!" He said, "But I'm not going to get up. What are you going to do about it?" I saw there was a rock sitting on the stove, so I picked it up to threaten him, saying, "If you don't get up, I'm going to beat you!" Niu Yongtai said, "I'll bet a rabbit like you wouldn't dare [liao ni tuzi ye bu gan]."

Li Xuan took the dare, and beat him to death. After confessing, he summarized his motive: "In truth, because Niu Yongtai sodomized me, and then I was ridiculed by others, and then, when I went to confront Niu, he cursed me as a 'rabbit'—because of all this, I became so extremely angry that I wanted to beat him to death."

Clearly, Niu Yongtai was not ashamed of his lust for another man; he did not consider himself a "rabbit" (slang for a male prostitute). Li, in contrast, felt deeply shamed by having been penetrated and especially by publicity of the fact. It seems that his role in the act was far more shameful than any sense of having been taken advantage of or coerced. It was more important to Li that Chi Tingguang, asleep beside them, not find out that he was being penetrated than it was to stop the intercourse itself—so he suffered the act to continue. Equally, it was public loss of face, more than the fact of having been penetrated, that provoked Li to confront and kill Niu [XT, 76/QL 4.3.23].

Penetration Stigma and Family Shame

The stigma of being penetrated attached not only to the individual himself. A number of cases suggest that the family of a penetrated
male suffered an acute loss of face, too, especially if that penetration were made public. For example, in a 1742 case from Baoji County, Shaanxi, Li Chuanjia [twenty-six sui] raped a boy from the next village, Yang Siija [sixteen sui], after getting him drunk. The boy was too ashamed to tell anyone what had happened. About a month later, however, he encountered Li on the street with a group of friends, in front of the others, Li demanded to sodomize him again. As the boy recounted, “I refused, and he hit me and cursed me. Crying, I went home, and my father asked me again and again what had happened, so I told father how Li had sodomized me.” The boy’s father, Yang Guihua, was particularly enraged by this public aspect of his son’s humiliation, and he confronted Li at a teahouse in the nearby market town. As Yang Guihua later testified, Li retorted (again, in public), “So I f**ked your son—do you have the nerve to do anything about it [wo jian ni erzi, ni gan ba wo zenyang]?” Then, Yang Guihua killed him with a cleaver.

Once again, the bravado of the penetrator contrasts sharply with the humiliation felt by the penetrated male, which was intensified by Li Chuanjia’s publicity of the rape. This public shame became unbearable for the boy’s father, who felt he must face down the bully or else suffer even greater shame [XT, 184/QL 27.2.20].

Sometimes, such shame provoked family members to violent acts against the penetrated male himself. A case memorialized by the governor of Henan⁵⁹ in 1739 involved the agricultural laborer Song Chaohan and his younger brother, Song Wu. Their parents had died long before, and Chaohan had raised his younger brother to adulthood. They were very poor, and both were unmarried. According to Chaohan, Song Wu had been “stupid and silly” since childhood, he spent his time “hanging out with beggars,” and “did not work at any honest occupation.” One day, according to the summary, Chaohan noticed that his brother was walking with difficulty:

Questioning him, [Chaohan] learned that [his brother] had an ulcerous sore on his anus, which had been caused by other men sodomizing him. Song Chaohan considered this a disgrace to the family’s reputation [you dian jia shang], and ordered his brother not to go outside anymore. Then Song Chaohan went out to work, but when he came home in the evening, he saw Song Wu lying outside in the gateway. Song Chaohan ordered him to go inside, but Song Wu did not obey.

Chaohan became so incensed that he strangled his brother [XT, 74/QL 4.4.25].

Sometimes, Qing magistrates took a family’s loss of face into account as a mitigating factor when judging such violence. Conspectus of Legal Cases reports an 1822 case, also from Henan, in which a man named Su Yongmu attempted to rape a boy aged nine sui. The boy’s father, Su Fengjia, complained to Yongmu’s father, who scolded Yongmu severely. Because of this, Yongmu went to Fengjia’s gateway and loudly insulted and taunted the family, referring openly to what he had done to the boy. Su Fengjia became so upset at the public loss of face that he strangled his own son, the victim of the attempted rape. The magistrate who judged this homicide decided that the boy’s death “was caused, in fact, by [Su Yongmu’s] attempt to sodomize the boy.” He found Yongmu guilty of coercive sodomy of a young boy (not consummated), but to reflect Yongmu’s responsibility for the boy’s death, the judge changed his penalty from ordinary life exile [liu] to the much harsher one of military slavery in Xining. It appears that Su Fengjia was not punished at all [XA, 52/6b].

These examples reinforce our sense that to be penetrated was perceived not just as a matter of individual shame, but also as a humiliating assault on the family as a whole. They suggest that the judiciary’s image of the vulnerable male as “a son or younger brother of commoner family” reflected widespread assumptions about the damage inflicted by such an assault.

**Stigma and Secrecy in Consensual Relationships**

Many men who were penetrated in affectionate relationships feared public exposure as well. This seems especially clear when the sexual partners inhabited a larger community of peasant households. (In contrast, same-sex unions in all-male contexts outside mainstream communities—for example, among soldiers, sailors, or clergy—are said to have been less secretive, though equally hierarchical; case records show that such relationships were often well known to couples’ associates.) In a number of previous examples, public knowledge that one had been penetrated was described as a powerful loss of face: the phrases most commonly used are “to have no face” [mei lianmian], “to lose face” [dui lian], and “to be unable to face people” [jian bu de ren]. In fact, the force of humiliation through village gossip is a major factor in a large proportion of cases involving the gamut of sex offenses, both heterosexual and homosexual. It is repeatedly cited as a motive for desperate acts, including homicide (to avoid or averge exposure of rape, adultery, or
homosexual relations), suicide (by women despairing over the stigma caused by rape or sexual proposition), and crude attempts at abortion (most often by widows, to avoid the exposure of an affair).

A case from Ding Department, Zhili, illustrates the pressure of stigma on an affectionate sexual relationship between two young men. Zhang Qibao and Huang Niu'er were hired as long-term laborers by peasant Bai Chengwen in 1727, when they were twenty-four and nineteen sui, respectively. Neither was married, and so they shared a bed at Bai's house and soon began having sex. Early on, the men may have alternated roles—Zhang confessed that he and Huang had "sodomized each other" [bi ci ji jian]—although later, Zhang played the penetrated role, in spite of being older than Huang. (Perhaps in a loving relationship, stereotypical role-playing mattered less.) As Zhang recalled, "At that time we swore not to tell anyone else," and then "had a good relationship for these four or five years." In 1731, the two began working for separate employers, and since they no longer lived together, they met at the local temple to have sex. One time, a villager happened upon them and asked what they were doing—and, to Zhang's horror, Huang told him that he had been sodomizing Zhang. As Zhang later confessed, "I couldn't believe it.... I thought to myself, I'm a man of almost thirty sui, but here he goes telling other people about this; everyone in the village will find out—how will I be able to face them? [yi you she mei huan min qu jian ren] I felt incredibly angry.... To my surprise, he wouldn't admit he was wrong, but instead argued and began to curse me. I became even angrier...." Zhang later used an axe to kill Huang while he was taking a nap.

In the first hearing on this case, Zhang made no effort to deny the murder, but in an apparent attempt to protect his reputation, he did not confess the sexual relationship—instead asserting that Huang had "defamed" [yu mie] him by claiming to have penetrated him. He did not reveal the truth until a second hearing [the record does not say why he confessed, but no one in the community had suspected that the men were more than friends]. As an unmarried, poor laborer, Zhang had few claims to status in his community. The only ones, perhaps, were his maturity and masculinity, yet even these meager enough claims would be severely undermined by public knowledge that he had been penetrated, and by a younger man to boot. Huang Niu'er obviously did not share Zhang's concern: Huang told Bai that he had penetrated Zhang, bragging about an act that apparently enhanced his own masculinity [MQ, 50-4].

Similar pressures were at work in a 1761 case from Hubei, in which three men from Xiaogan County worked as hired laborers in Zaoyang County (about 200 kilometers to the northwest). Wu Danou [thirty sui] had been sexually involved with his sworn older brother, Shi Shikong [thirty-one sui], for six years; as their relative ages would suggest, Shi penetrated Wu. Wu actually had a wife and daughter back in Xiaogan. Because of poverty, he had left them in 1761 to accompany Shi to Zaoyang, where they were employed by Zhu Fengqi working ten mu of land, and lived in a room of Zhu's house. Wu supplemented their income by weaving cloth, which Shi sold at market [note the apparent gendering of household roles]. According to Wu, the couple "got along extremely well."

After six months, they met another immigrant laborer from Xiaogan, Liu Huaizi [twenty-four sui]; he moved in with the couple and swore brotherhood with them. Within three days of moving in, however, Liu had discovered the couple's sexual relationship and the division of roles within it; on the third day he caught Wu alone and gave him an ultimatum: if Wu would not let Liu penetrate him as well, Liu would expose Wu as Shi's penetrated sexual partner. Wu submitted. Shortly thereafter, an outraged Shi Shikong discovered their liaison. Wu then moved out with Liu, but two weeks later, jealousy provoked Shi to murder Liu.

Shi Shikong and Wu Danou were arrested, and at trial the magistrate pressed Wu to explain his behavior: "You had had sodomy with Shi Shikong for several years, so your affection [qing yi] for him must have been greater. Why did you stop living with Shi Shikong, and instead move in with Liu Huaizi, with whom you had been having sodomy for only a short time? Furthermore, Liu Huaizi is younger than you; how could you let yourself be sodomized by him?" Wu answered:

At first my affection with Shi Shikong was stronger. But our illicit relationship had been discovered by Liu Huaizi, so that one day when he saw Shi Shikong was not at home, he trapped me [with his knowledge] and demanded to sodomize me [xiao zhu yao jian]; even though he's younger than I am, I had no choice but to submit.

Afterwards, we were discovered by Shi Shikong, and he made a big scene.... I feared that outsiders would find out and I would lose face. At that point, Liu Huaizi told me that all three of us living together in a single room made things inconvenient, so he rented another place and asked me to move there with him. I thought to myself that if I moved out with him ... at least we could avoid quarrels and the risk of being overheard and ridiculed by outsiders. So I moved out with him.
At a second hearing, pressed again by the magistrate, Wu added: “As far as me being somewhat older than Liu Huaizhì—I had done this vulgar [xia lü] thing with Shi Shikong, and because this had been found out by Liu Huaizhì, I was trapped and extorted by him so that I had no choice but to let him do as he wished.”

Everyone seems to have found it strange that an older male would be penetrated by a younger one. Even so, the magistrate finally accepted Wu’s explanation that fear of public exposure as a penetrated male forced him to submit to the private humiliation of submitting to a younger man. Wu’s fear was so great that it induced him finally to abandon the partner for whom he had had such affection and to move in with his blackmailer. It was Liu’s awareness of the stigma of being penetrated that enabled him to manipulate Wu in this way [XT, 185/QL 27.9.24].

The interrogation of Wu underscores the coherence between judicial standards and popular perceptions in this area. (This is the only case I have seen of a magistrate commenting on the relative ages of sexual partners.) It seems that stigma would attach to any male who was penetrated, but that penetration might be more comprehensible if it conformed to the sexual partners’ respective positions in other hierarchies: age, class, wealth, and the like. Only a violation of the “natural” congruence of these hierarchies required special explanation.10

Homosexual relationships obviously could be more complex, both physically and emotionally, than an exclusive focus on anal intercourse would imply. Case records show magistrates developing evidence about particular acts to be prosecuted as crimes: the judicial fixation with sodomy was what gave that act much of its prominence. We cannot hope to learn from these sources the entire meaning of such relationships to the participants. Nevertheless, legal cases do provide enough information on the symbolic meaning of sodomy to demonstrate that the judicial construction of that act conformed to a more pervasive pattern of understanding. The judicial analogy between sodomy and heterosexual illicit sex codified the contemporary common sense of what phallic penetration meant for both penetrator and penetrated.

Stratification and Male Sexualities

One senses that opportunities for marriage, reproduction, and erotic expression depended far more on material and social resources than on any individual, personal inclination. The knowledge that males outnumbered females, especially among the poor, only strengthens this impression. From this perspective, we can map a tentative hierarchy of male “sexualities”—here I simply mean typical patterns of sexual practice—against the hierarchy of social stratification. At very least, we can speculate about how the extreme ends of that hierarchy might look—a picture quite different from the dichotomy of sexual orientation familiar today.

Marginalized Males: Sex as Survival Strategy

As must be obvious by now, it was not only the stereotypical rapist who existed on the margins of society, outside the settled family order. Indeed, the overwhelming majority of cases I have seen of homosexual relations deemed consensual by the Qing judiciary also involve marginalized males—that is, men excluded from mainstream patterns of marriage and household by some combination of poverty, status, and occupation. Here, I am talking about both sexual partners, penetrator and penetrated. They are agricultural laborers, beggars, Buddhist and Daoist clergy, soldiers, sailors, pirates, barbers, peddlers, and so on. A fair number are impoverished immigrats; almost all are unmarried and without family ties. In short, these are the marginalized individual males left out of the mainstream of Qing society.

That is not to say that elite men never engaged in sex with other males—far from it. The fictional libertine is only the most familiar example. But it went without saying that men of means would be expected to marry and to beget sons to ensure the continuity of descent and property transmission. Such men might penetrate servants, or patronize actors and male prostitutes (more marginalized males), but these diversions would not likely be allowed to interfere with filial duty. A paradigmatic example might be the Qianlong Emperor, who managed to sire 27 children in spite of his reputed taste for men [Hummel, ed., 1970, 372].

To the extent that there existed a social identity linked to sodomy, or a sexual practice based exclusively on same-sex union, it was probably associated with the marginalized males who for whatever reason could not buy into the valorized pattern of marriage and household. In case records, we find marginalized males bonding with each other as a way to satisfy a range of human needs. These relationships are a subset of the larger pattern of “unorthodox households” found in Qing legal cases: in such relationships, sex coincides
to the red-bordered banner and lived in Beijing. His age is not given, but he is described as “a foolish young man.” Together with his friend Funing’a (who held the same rank in the same banner), Wudang’a had served in the retinue of the Qianlong Emperor during the southern tour of 1753. In Hangzhou the two barons had patronized one Wang Erguan, a young Han Chinese who worked as a barber and as a homosexual prostitute. Subsequently, Wang Erguan had come to Beijing to seek employment as a servant in Funing’a’s household. After several months, however, Funing’a was sent into exile for “engaging the sexual services of actors, drinking, and committing offenses” (xi yu yin jian shi). [Unfortunately, the details of this scandal are not provided.] With Funing’a out of the picture, Wudang’a tried to persuade Wang Erguan to come work for him, but the barber declined, finding employment in a Beijing barbershop-brothel, where he was on call to serve clients at their homes. Wudang’a paid to sodomize him several times, and then paid off the barber’s debt to the barbershop owner (thereby buying him out of service). Wang finally agreed to move in with the baron. Over the next five months, Wudang’a bought fancy clothes for Wang, supplied him with cash, and had intercourse with him many times, even so, Wang felt underpaid, and he left. Nine days later, Wudang’a persuaded him to come back, but after two months, Wang left once again. Hoping to frighten the barber into submission, the baron reported him to the police as a runaway slave. Wang Erguan was arrested, but the police commander who interviewed the men found the situation suspicious, and held both of them in custody overnight. The next day, Wudang’a admitted that his accusations were false, however, a well-connected uncle of his [a former county magistrate] pulled strings to get both men released.

Still the besotted baron could not master his passion. Over the next month, he continued to pursue the barber, trying to force him to return. More than once, the two men got into public altercations. Desperate, Wudang’a finally returned to the police and again accused Wang of being a runaway slave and a thief. This time, the matter was referred to the Board of Punishment, in which the truth of their relationship was exposed, and now the baron’s connections proved useless. The board saw this as no ordinary case of sodomy:

Baron Wudang’a, who has been stripped of his rank, is a Manchu who held a responsible position as a military officer, but he did not remain content and obey the law. Instead, he invited the vulgar, debased barber Wang Erguan [ti tou xian jian] into his home and retained him there, consensually

The Case of the Manchu Liberte: Sex as Personal Indulgence

We see an example of what provoked Shen Defu’s disapproval in a case from 1764 in which a Manchu nobleman highly exceptional in being prosecuted for sodomy. This is the only example I have seen in the archives of an obvious member of the elite being punished for this sex offense. [Unfortunately the only document I have on this contains no record of testimony, so many details are unprovable; it is a brief memorial summarizing the judgment for imperial approval.] Wudang’a was a baron of the third degree who belonged
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when Wang Erguan ran away on several occasions, sodomizing him; also, before him, Wudang'a was exiled to Yili to serve as the offender against him. Such behavior is unusually shameless!

Like Funing’s extra-statutory penalty warranted by his multiple petitions [Funing’s sentence was the standard month in the Punishments]. Wang Erguan of the heavy bamboo for “consensual sodomy.” He was briefly employed as a servant in Wuchang (barber previously characterized in the record as deceased), all excused their sodomy. (By 1764, the judiciary had broadened its room for same-sex male servants; it seems sharpened.) The military officials released his uncle and the police commander who had released the pair at his behest were punished as well, and an imperial reprimand was issued.

The brief memorial on this case mentions no female sexual partners for any of the men. Still, it is safe to assume that men of leisure or those who were able to afford servants had wives, whether they desired women or not—just as some low-class men more typically prosecuted for sodomy did not have sex with female servants. This is a particularly modern case, as it demonstrates a broader awareness of same-sex male sexuality in the late Qing.

The conduct of Wudang’a emphasizes a different point than that of the Manchu nobleman. Nevertheless, his reckless behavior as a Manchu nobleman two years before he finally ended up being proscribed, and he came to the attention of the police only because he had brought himself to their attention by twice filing false charges. In other words, a man of Wudang’a’s status had many sexual options, and with even the slightest discretion he could have indulged his desires for men without any trouble at all.

The Decline of Chen Jingji

We conclude with Chen Jingji, Ximen Qing’s son-in-law in Plum in the Golden Vase: the story of Jingji’s declining fortunes in the later part of the novel maps the hierarchy of sexual roles and opportunities against social stratification in a way that pulls together the many themes of this chapter. Shortly after Ximen Qing’s death, Jingji begins an affair with Ximen’s notorious concubine Pan Jinlian. This is the consummate penetrant role: a great deal of attention is paid to Jingji’s penis, by Pan Jinlian (and her chambermaid Chun Mei) and by the novel’s narrative voice [see Figure 1]. Some chapters later, however, Jingji loses both fortune and wife and becomes homeless, he takes refuge with a gang of beggars who sleep in a night-watch shed, and they lead him to sodomize him. At night, he dreams of the good old days with Pan Jinlian, and bursts into tears when he awakes and finds himself surrounded by beggars.) Next, Jingji takes refuge as a novice in a Daoist temple, where he shares a bed with the priest Jin Zongming:

That evening, the priest drank wine with Jingji until midnight and got him very drunk, and then they laid down to sleep on the same bed. At first they slept heads in opposite directions, head to toe, but the priest complained that Jingji’s feet stank, and had him turn around and share a pillow with him. Then, after a while, he complained that Jingji’s breath stank, and had him turn to face away, so that Jingji’s buttocks pressed against the priest’s belly. Jingji just pretended to sleep and ignored him.

The priest manipulated his penis until it was very hard, a stick standing straight up, as Jingji smeared some spittle on its head, and then thrust it right into Jingji’s anus. Now it happens that Jingji had already been fucked (nong guo) by the beggar boss Flying Demon Hou Lin at the night-watch shed, and his anus was already stretched out, so the priest’s penis slipped right in, without any difficulty.

Jingji said nothing, but thought to himself, “This rascal is certainly taking advantage of me—I don’t know who he thinks I am, treating me like this.” (93/104–b)

Chen Jingji’s fate epitomizes the ironic logic of Plum in the Golden Vase. A major theme of the novel is karmic retribution, which visits each of its villains in turn [in the penultimate chapter, Jingji is murdered by one of the husbands he has cuckolded]. Jingji’s descent down the hierarchy of sexual roles symbolizes the karmic decline of his fortunes: this rich, arrogant penetrator of other men’s wives ends up playing the female role himself, in ignominious service to beggars and clergy. Jingji’s descent into this Hobbesian world of marginal males requires him to submit in order to make the best of a bad situation. In each instance of sodomy, there is a quid pro quo: the beggars give Jingji shelter and sustenance to survive the winter, while the Daoist becomes his patron and protector within the temple.
Figure 1. Chen Jingji as penetrator in *ménage à trois* with Pan Jialian and her chambermaid, Chun Mei, frontispiece to chapter 82 of *Plum in the Golden Vase*. The caption reads: "Chen Jingji fucks one and ends up with two." [Chongzhen-era print]

Figure 2. Chen Jingji penetrated by Jin Zongming, frontispiece to chapter 93 of *Plum in the Golden Vase*. The caption reads: "Daoist Jin debauches the young disciple." [Chongzhen-era print]
Moreover, Jingji—a man of twenty-four sui—is caricatured in this new sexual role as a feminized youth. Jin Zongming’s lust is aroused when he notices that “Jingji had white teeth and red lips, and his face was as white as if it had been powdered” [93/16a]. The original woodblock illustration of this scene depicts the penetrated Jingji as a beardless youth, in contrast with the full-bearded priest. The caption reads “Daoist Jin debauches the youthful disciple [shao di]” (see Figure 2). Jingji’s reversal of sexual roles is a direct consequence of his loss of wealth, status, and power, and it is confirmed by a corresponding loss of masculine maturity. His fate sums up the contemporary common sense of what phallic penetration meant, a common sense that informed judicial thinking.\(^{35}\)

The Meaning of Penetration

Penetration implied a gendered hierarchy of domination. In this respect, China resembled the Greco-Roman world, where “surrendering to penetration was a symbolic abrogation of power and authority—but in a way which posed a polarity of domination-subjection rather than of homosexual-heterosexual” (Boswell 1990, 155). In late imperial China, the model for the judicial construction of sex between males was heterosexual intercourse in conditions of gender inequality, in which the roles of penetrator and penetrated were perceived as fixed to the male and female, respectively. Male subject acted upon female object. In such circumstances, the act became inextricably bound up with the unequal distribution of power in the gender hierarchy and constituted both an expression of that unequal power and a means of inscribing it on the bodies and psyches of partners. Penetration became both the metaphor and physical expression of gender domination.

In the proper order of things, as seen by High Qing jurists, this act took place only within marriage. The husband and master penetrated his wife: by doing so, he reproduced the patriarchal household and reinforced the axis of gender hierarchy at its heart. In late imperial China, males and females came of age socially with marriage; a key transition point was its sexual consummation. Without consummation, a bride might be rejected, as sometimes occurred when she refused intercourse or when some anomaly of her anatomy prevented the groom from achieving penetration [XT, 74/QL 4.3.27]. With consummation, male and female took up their respective social roles as husband and wife, embodied in their sexual roles as penetrator and penetrated. Penetration represented an initiation into gendered and hierarchized roles: the division of sexual labor reflected and defined the division of social labor. In Bourdieu’s terms, these symbolic connections represent a homology between sexual and sociopolitical domains (1990, 71).

During the Ming and Qing dynasties, both chastity cults and criminal penalties codified this vision of penetration. If a woman were penetrated outside of legitimate marital context (by illicit sex, widow remarriage, or rape), she suffered a pollution of her chastity, an objective degradation that imperial chastity cults symbolized by disqualifying her from canonization (if she were a victim of rape-murder or rape-suicide). Such pollution corresponded to that of debased status; therefore, the rape or abduction of a woman polluted by illicit sex or by debased status caused less harm than that of a chaste commoner woman, and it would be punished less severely. This vision of penetration as initiation, possession, or pollution informed both the popular perception and the judicial construction of anal intercourse between males. For males, too, penetration positioned both roles on a hierarchy: the penetrated suffered a loss interpreted as an inversion or degradation of masculinity. The penetrator suffered no such loss, as he played the definitively masculine role.

We begin to understand why no Qing or earlier legal text even refers to, let alone bans, female homosexual activity. The lack of legal references does not, of course, imply that women never formed erotic relationships with each other—there are plenty of references in non-legal sources.\(^{36}\) Nor does it mean that lawmakers were necessarily ignorant of such matters. Sex between women was simply not constructed as a crime. This interpretation makes sense, given the phallocentrism of both law and social norms: if gender and power were keyed to a hierarchy of phallic penetration, then sex without a phallus would seem to undermine neither.\(^{37}\)

This chapter has told a story of both continuity and change. The continuity was profound: that is why anecdotes from Ming fiction can help us make sense of eighteenth-century legislation. The proscription of illicit sexual intercourse [jian] originally aimed to control access to women; therefore, the earliest laws against intercourse between males did not call that act [jian]. Nevertheless, even Song and Ming legislation against homosexual acts shared with [jian] a fixation with the polluting danger of penetration out of place. This shared fixation informed the Qing innovation of reconstructing sodomy as a variant of [jian]: hence, the logic of equal penalties for “parallel”
homosexual and heterosexual offenses. Eighteenth-century concern about sodomy, like the contemporary obsession with female chastity, did not appear ex nihilo: heightened anxiety about gender performance prompted Qing jurists to scrutinize sodomy more closely, but their construction of that crime reveals a basic continuity with what came before.

What changed in the Qing dynasty? The Ming sodomy statute could hardly be more explicit about the sexual act itself, yet it makes no reference to coercion, to the age of the penetrated male, or to the character or social background of either sexual partner, and the penalty it imposes is still on the low end of the scale. In the Qing, we see the emergence of the rootless rascal, and fear of homosexual rape comes to parallel fear of heterosexual rape. For both females and males, as the concept of liang lost its nuance of legal status, it took on the meaning of normative gender roles. The Yongzheng legislation, in particular, shows a new, intensive focus on fixing male gender in self-conscious analogy to female gender, in an effort to defend chaste wives and daughters and young boys of upright households against the predatory rootless rascal.

It stands to reason that the growing numbers of surplus males would have raised the profile of same-sex union and of homosexual rape in both peasant society and judicial caseloads. Perhaps this helps explain the new perception of a threat to masculinity. In his 1780 commentary, jurist Wu Tan notes that in the past there had been no explicit policy on “males committing homicide in self-defense against rape”; but in the Qianlong era such cases were common enough that it had become necessary to issue a substatute to guide magistrates (1992, 785). In addition, the new judicial attention to the penetrated male in Ming and Qing law may be another sign of the “peasantization” we have already considered in heterosexual rape law. The intense stigma of the penetrated male in settled peasant society may reflect in part the profound anxiety of a poor peasantry about downward mobility: if homosexual union was associated with desperate, marginal males, then the penetrated role was the lowest a male could possibly sink. It seems plausible that to a peasant eking out a bare subsistence, the penetrated male might represent the distilled essence of his greatest fears: the risk of falling into the most desperate poverty and marginalization, losing livelihood, family, and even masculinity.

The conflation of eroticized youth, femininity, and penetrability implies an instability in the gender of young males, especially prior to transition with marriage to adult masculinity. It seems that young males were perceived as vulnerable to penetration, and, in that sense, as potentially female. (Some of our cases show adolescent males being relatively open to penetration, an attitude some abandoned with maturity.) Thus, in the statutory language, it is the unpenetrated (liang) “sons and younger brothers” of commoner (liang) status who must be protected—vulnerable junior males who have not yet emerged from ambiguous youth into masculine adulthood. Moreover, they must be protected from the rogue male threatening the household from without.

Qing jurists aimed to channel behavior into accepted gender roles—an ever greater priority as other social boundaries blurred. The spate of new laws against sodomy betrayed increasing fear of the threat to vulnerable males, but also, perhaps, of their possible enjoyment of roles that conflicted radically with the demands of order. Pollution of female chastity threatened the gendered hierarchy of the household—but the degradation of masculinity did so, too.