

Widows in Property Disputes: Reflection from Two Cases Recorded in the Enlightened Judgments Ching-ming Chi

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This article was originally written in Chinese submitted for the course “History of the Chinese Legal System”. The author explored the status and identity of women in Song Dynasty against the background of traditional China through two cases contained in The Enlightened Judgments-- Ch’ing-ming Chi 名公書判清明集, a work which hitherto does not receive much attention from researchers. The choice of the subject is unique.

The author kicked off her article with a literature review and a description of the methodology employed. These were followed by a discussion and analysis of two cases of property dispute in which widow was involved from legal, social and humanitarian perspectives. Whilst one may not be in entire agreement with the conclusion founded on two cases, it is beyond doubt that this article demonstrates the author’s good grasp of the messages conveyed in the said work and her profound knowledge of the substance and operation of the legal system of Song Dynasty.

All in all, it is a well-researched article which relates well to the theme of “identity”. Further, the author’s knowledge of the subject matter is over and above that is required of an undergraduate. It can be further improved if the author can go beyond the ambit of the two lawsuits discussed and make use of other cases contained in The Enlightened Judgments-- Ch’ing-ming Chi to fortify her ideas and arguments.

-- Dr. HUI Chun Hing

Abstract

Although historical and social debates on gender identity in the West thrive, little has been known about how Chinese women identified themselves and were identified in Song Dynasty, a period of commercial boom and rising citizen elites. This study is an attempt to analyse, from the perspective of property lawsuits, how widows’ identities were built both by themselves and others. In the two cases, we examine the interaction between widows as agencies and magistrates as deciders. My article therefore argues that it is this interactive process that reflects widows’ identities as active participants in social life, and reveals how Confucian patriarchal values responded to women’s rising subjectivity.

Keywords

Gender identity, *The Enlightened Judgments Ch'ing-ming Chi* (名公书判清明集), Confucian patriarchy, Property lawsuits.

Introduction

Song dynasty was a crucial period when women went through great changes in their social status. On the one hand, Confucian scholars argued to implement tighter constraints on women, identifying them as obedient subjects to their fathers, husbands or sons. As Neo-Confucian Cheng Yi (程颐) claimed, 'Death by starvation is preferable to loss of chastity' (饿死小事, 失节大事) (Cheng, 2000, 192). On the other hand, women began to participate in public affairs more actively against the background of booming economy (Wu, 1997, 60). Along with the increasingly active participation in public affairs and progress in laws dealing with property disputes in Song, more women appeared in lawsuits when conflicts occurred (Li, 2004, 6043). Among these women, widows were one of the most typical. Having lost the husband and his support and protection, a widow often ran into two kinds of property disputes, the allotment of dowry and the distribution of husband's bequest. Therefore, this study will draw on two cases of dowry and bequest respectively to analyse how society and women themselves contributed to the establishment of their own identities.

The Enlightened Judgments-- Ch'ing-ming Chi 名公书判清明集 is a compile of lawsuits in late Nan-Song dynasty. It consists of fourteen chapters in total, recording lawsuits under different categories such as Bureaucrats (官吏), Marriage (户婚), and Guilt Punishment (惩恶). Among them, the lawsuits of Marriage (户婚) were most abundant, covering Chapter Four to Nine, so the book offered plentiful examples of widows' property disputes (Chen, 1987). By using the lawsuit compile this study is expected to be less biased, compared with the use of strange tales (志怪) and funerary biographies (列女传), where widows' images were distorted most of the times. Also, this study tries to offer a new perspective to delineate widows' identities from a legal standpoint, through which the relationship between individuals and authority can be reflected. However, it should be noted that the book has its limitations when used as a source to analyse

Chinese widows' identities. Most of the cases recorded in the book took place in Southern China, such as Liangzhe (两浙), Fujian (福建) and Jiangnan (江南) areas, and therefore the living conditions of widows in Northern China will not be discussed here.

Literature Review

Scholars from the East and the West have made contributions to gender studies on imperial China, among which are works by Susan Mann, Patricia Ebrey and Shiga Shuzo. Mann tries to elaborate that women's subjectivity is embedded in their compositions. She pays particularly close attention to talented women from the upper class in Jiangnan area (Susan, 1994, 78-120). Like Mann, feminism historian Dorothy Ko also conducts research on talented women (才女) (Ko, 1994). Ebrey has made great efforts in gender studies on Song China. Her comprehensive book, *The Inner Quarters: Marriage and the Lives of Women in the Song Period*, covers a wide range of women's functions inside the family, as daughters, wives, widows, mothers-in-law and so on. In the East, the family historian Shiga Shuzo establishes the principle of 'couple is an inseparable entity', 'father-son is an inseparable entity', and has influenced later discussions about family identities in imperial China (Shiga, 2003).

Despite these contributions made to gender studies on imperial China, it is noteworthy that some deficiencies exist. Firstly, in terms of subject matter under analysis, attention is lavished on aristocratic and affluent women, whereas ordinary women are largely neglected by scholars like Mann, Ko and Ebrey. This is due to the fact that fame and high social status contribute to better preservation and prevalence of their works, compared with those by ordinary women. Secondly, early research on women's identity mainly focused on women inside the family, that is, women's private sphere, but how women acted in such public spheres as lawsuits and political arenas remains unknown (Scott, 1986, 1067-8). As a result, the book *The Enlightened Judgments—Ch'ing-ming Chi* is highly valuable because most female agencies in these cases were plebeians in court (a public platform), thus compensating for the insufficiency of previous research.

Methodology

This study combines case study, double spheres (into domestic and public spheres) and critical discourse analysis (CDA) to discuss widows' gender identities in Song dynasty. To elaborate, this study uses two cases about dowry and bequest to acquire details of social interaction of widows. It also connects the domestic sphere (family disputes) with the public (court). As feminist historian Joan Kelly has argued, despite women's activities being mainly within the family, a 'woman's place is not a separate sphere or domain of existence but a position within social existence generally' (Kelly, 1984, 51-62). In this way, this study analyses how family as a small unit and society as a wider one influenced each other, and how widows' identities were influenced by the double spheres.

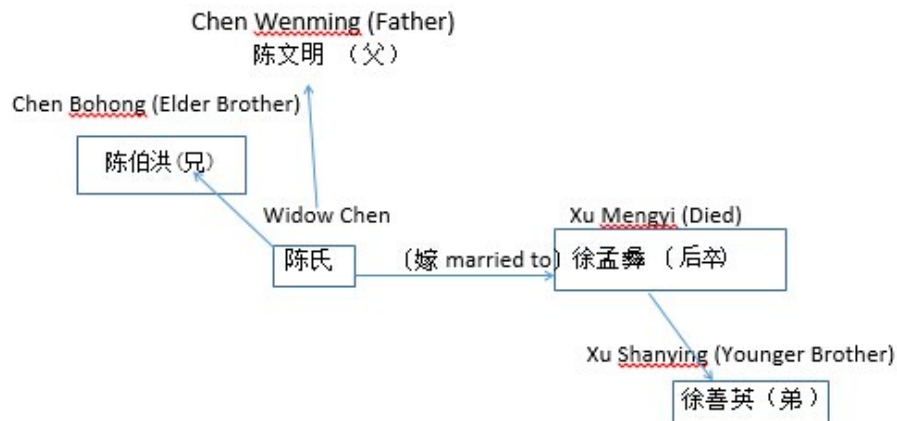
Furthermore, critical discourse analysis (CDA) is applied in the study. Since the compile is lawsuit records written by local officials, it reflects the relationship between the authority and individuals. As Michel Foucault argues, discourse, especially laws, can reflect differing degrees of power and influence (Foucault, 1980, 94). In this sense, power cannot be held by someone stillly, but is realised through dynamic interaction between agencies (Foucault, 1980, 94). This study therefore tries to construct how court decisions identified widows, and how women reacted to and influenced the authority, from the perspective of power relations.

Case Study 1 - Conflicts of Dowry

The laws of Song dealing with dowry (including land, money, and jewelry) conflicts maintain the principle that 'couple is an inseparable entity', as Shiga Shuzo Cho points out (Shiga, 2003, 340-5). In other words, a woman's identity is shadowed and hidden when her husband is alive, and the dowry she brought with her will be merged into common property (Chen, 1987, 237), usually controlled by the husband, whose wife is expected to stay in the private sphere (the family). However, if the husband passes away, she will inherit the rights from her husband to deal with her dowry. Shiga Shuzo Cho interprets a widow's identity as a 'continuation of their deceased husband', meaning widows still do not have their own identities as independent individuals (Shiga, 2003, 340-4). However, as to whether widows in history claimed their independence in property distribution, this study argues differently, showing that widows revealed their independent identities reasonably, with evidence in elaboration afterwards.

Case I:

i.) The Relation Map of the Main Characters in the Case I (Huang, 2005, 481)



Case Description:

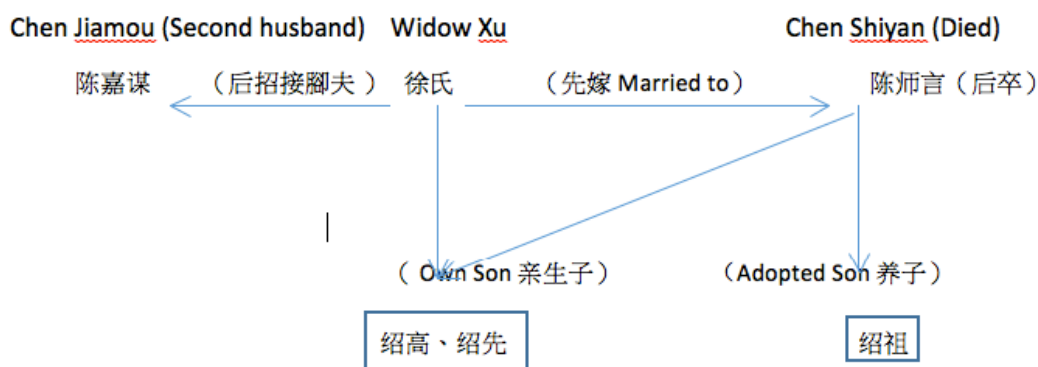
In this case, after Xu Mengyi (徐孟彝) died, his wife Widow Chen (陈氏) did not fulfil her expected role of staying in her husband's home and taking care of family members; instead, she took her dowry away and went back to her own family (娘家). Therefore, Xu Shanying (徐善英), younger brother of Xu Mengyi, blamed Widow Chen, and argued that Widow Chen could not take the dowry away if she wanted to leave Xu Mengyi, her husband's family.

For the court decision, the magistrate identified Widow Chen as an inseparable subject to her husband's family and therefore, condemned Chen for abandoning her mother-in-law (婆婆) and her children, '既不以身奉其姑，而反以子累其姑，此岂复有人道乎?' (Huang, 2005, 418). As Confucian patriarchal values foregrounded, fulfilment of wives' obligation was the pre-condition for widows to rights. In other words, a widow is expected to stay in her husband's family and take care of parents-in-law and children, only through which she will be permitted to use the dowry (Xing, 2004, 122). Therefore, Widow Chen was not allowed to leave, and her identity as subject of patriarchy signified the authority's repression on female. However, the magistrates did not ascribe responsibility on Widow Chen alone, but also severely reprimanded Chen Bohong (陈伯洪), Widow Chen's elder brother, for allegedly abetting Widow Chen to leave her family. The magistrates opined that Widow Chen as a frail woman could not make such decisions

by herself; she must have been instigated by others. To conclude, the final judicial decision reflects the interaction between a widow as a female agency and magistrates as representatives of the bureau, through which widows' moral obligation and pardon rights are disclosed.

Case Study 2 – Conflicts of Bequest

i.) The Relation Map of the Main Characters in the Case II (Chen, 1987, 296-7)



Case Description:

Compared with case I, case II is more complicated as it pertains to the re-marriage of widows. After Widow Xu's (徐氏) husband Chen Shiyuan (陈师言) passed away, Chen remarried to Chen Jiamou (陈嘉谋), under the title of summoned-in husband (接脚夫) (Xu, 1995, 7588). Then Widow Xu divided her ex-husband's property into five portions, with four going to herself and her two sons Shao Gao (绍高) and Shao Xian (绍先), and only one going to her adopted son Shao Zu (绍祖). Discontented with the bequest apportionment, Shao Zu accused Widow Xu of being unfair in property distribution; and in response, Widow Xu complained that Shao Zu was not obedient.

In this case, the magistrate firstly denied the legality of Chen Jiamou's identity (陈嘉谋) as summoned-in husband (接脚夫). That is because according to Song's law, a widow can re-marry a summoned-in husband only on condition that 'her husband has died and her children are still young (夫亡子幼)' (Chen, 1987, 297). However, when Widow Xu re-married Chen Jia Mou, all her three sons Shao Gao(绍高), Shao Xian(绍先) and Shao Zu(绍祖), were over thirty years old (Chen, 1987, 297). In other

words, any of them was capable of the responsibility to take care of the family. For this reason, Chen Jiamou could not be seen as summoned-in husband (接脚夫) to Widow Chen, and their relationship was ordinary re-marriage.

Having decided Widow Xu was in another marriage, the magistrate adjudicated that Widow Xu would lose rights to interfere any affairs in her ex-husband's family, including instructing children, arranging marriage for the offspring, and using bequest left by ex-husband (Chen, 1987, 297).

It is interestingly apparent, however, that magistrates argued, as the adopted son of Widow Xu, Shao Zu should not accuse his mother either: the kinship line between mother and son could not be abruptly cut off, and therefore Widow Xu still maintained parental prestige towards her son. In the end, the magistrate decided to resolve the dispute by educating and moralising both Widow Xu and adopted son Shao Zu.

Conclusion

From Cases I and II, it is evident that widows' identities were built both by the authority and by women themselves. The authority, on the one hand, propagated women's virtues of obedience and chastity, and on the other, protected their prestige as mothers of a parental and authoritative status.

Confucian dictum 'Three Following' (三从) constrained women's independent identities to some extent: at an early age, a woman should follow her father and elder brothers; in a marriage, her husband; after her husband's demise, her son. As Shiga Shuzo Cho and the anthropologist Francis L. K. Hsu (许烺光) argue, in imperial China, where patriarchal values are the dominant powers, the relationship between males such as father-son principle is much more important than other kinships in family morality (Hsu, 1949, 58-9). In this sense, women do not have an independent, stable and lasting status or identities.

However, that is not to say women were receptive to their identities as being inferior and obedient in patriarchy; in actuality, women responded to the outside world actively in Song dynasty. As Foucault argues, the power between men and women cannot be expressed simply as 'men have power' and 'women are deprived of it'; rather, the power is achieved through real, dynamic interactions (Foucault, 1980, 94). From both cases we can see the conflicts and compromises between widows and the patriarchal authority. In Case

I, after Widow Chen's (陈氏) husband died, Widow Chen did not fulfil her expected role to remain at her deceased husband's home; instead, she chose to take her dowry away and went back to her own family. In Case II, Widow Xu (徐氏) re-married to another man, and intended to dispose of the property on her own initiative, which was obviously against Confucian moral values. Under this circumstance, if the magistrates made court decisions strictly following laws, Widow Xu should have been dismissed from the family, deprived of all rights to use her dead husband's bequest. However, the magistrates made mediation between Widow Xu and her adopted Son to settle the dispute. This mediating role can shed some light on power conflicts and compromises between the authority and widows. To conclude, a scrutiny of these cases informs us not only of contemporary laws but also of the social reality, that is, how magistrates made judicial decisions under specific circumstances.

Reasons behind the relatively active struggle of gender identities by women in Southern Song dynasty can be sought in its historic context. To begin with, these women enjoyed a relatively high social status with increasing access to the public sphere, conducting economic activities and artistic practices. With the abatement of dawn-to-dusk curfew and fusion of living area (坊) and market (市), namely residential and commercial usages of lands, commercial activities were enhanced greatly, and women gained increasing access to employment. Many hotel owners, dealers and brokers were women. As socialist feminist Alice Clark argues, women's productive power can solidify their independence and self-consciousness (Clark, 1976, 92). For example, women in Song dynasty enjoyed more rights in property ownership when compared with women in other dynasties (Ebrey, 1993, 12-3). Apart from more employment opportunities and property rights, some women produced their own writings to express their subjectivity as well. For example, compositions of Li Qingzhao (李清照) and Zhu Shuzhen (朱淑真), many of which are still studied today, can well reflect women's awareness of the self.

To conclude, this study focuses on two cases of property lawsuits, offering a new perspective to analyse ordinary widows' gender identities in Southern Song, in both private and public spheres. In spite of the prevailing moral virtues for women, such as obedience and chastity, this study shows that widows' in Southern Song responded to the outside world actively and strived to claim independent identities (Dai and

Guo, 2011, 287). Clearly, women's gender identities in imperial China are embedded with power struggles and cannot be seen as either fully realized or repressed.³¹ Therefore, widows' social status in Southern Song cannot be labeled simply as improved or declined, but it was fluid in the dynamic discourse between individuals and the authority.

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