

# Haggling over Property: Land Sales Lawsuits during Late Ming China<sup>1</sup>

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## *Abstract*

Abstract: The commercialization of the economy in the late Ming dynasty profoundly affected people's values, social relations, and everyday life. This essay, focusing on local litigations regarding new practices in land sales—demanding price markups and land redemption, examines two interrelated issues: how justice was perceived and constructed in the late Ming local communities, and how local justice construction and socio-economic change affected each other. Drawing on one of the late Ming local court records—*Yunjian yanlüe* by Mao Yilu, I demonstrate that drastic social change led to adjustment in legal culture, which in turn facilitated social change. I further argue that in the course of local adjudication, all litigation participants, both judicial and non-official, took active part in the judicial process; and, by negotiating among each other, they together created situated justice—the contingent and particularistic legal judgment of competing claims based on specific circumstances.

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<sup>1</sup> Parts of the essay were presented at the “Research Colloquium,” History Department, Oklahoma State University, April 2007; Mid-America Historical Conference, Tulsa, September 2007; and Academia Sinica and National Chi Nan University, Taiwan, March 2008. I appreciate the criticisms and comments from a number of scholars and colleagues on various occasions, especially Edward Farmer, Ann Waltner, Sarah Schneewind, Elizabeth Williams, Jim Houston, Leslie Rimmel, Joseph Byrnes, Tom Buoye, Fang Qiang, Wu Jen-shu, Chiu Peng-sheng, Wang Hung-tai, Rick Hamilton, Paul Smith, Huang Shizhe, Hank Glassman, and Pauline Lin. I am particularly grateful to my wife Wu Yanhong for her insightful suggestions and critiques. I am also deeply indebted to Bruce Tindall and the reviewer of *Études chinoises* John Finlay, both of whom carefully edited the text.

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Drastic socio-economic transformations took place during the last one hundred years of the Ming dynasty (1368-1644).<sup>2</sup> The commercialization of the economy, including the expansion of foreign trade and influx of silver, the growth of cities, the increase and specialization of the production of commodities and cash crops, and the expansion of market networks, profoundly affected people's values, social relations, and everyday life.<sup>3</sup> In our scholarly efforts to comprehend the societal change in late Ming China, however, partly due to the scarcity of sources, we have not explored fully the dynamic interaction between socio-economic change and legal values and practices. This essay, focusing on local litigations regarding one particular commercial activity—land sales—examines two interrelated issues: namely, how justice was perceived and constructed in the late Ming local communities, and how local justice construction and socio-economic change affected each other. I will draw my sources primarily from one local court record—*Yunjian yanlüe* 雲間讞略 (Court opinions from Songjiang Prefecture, hereafter *Court Opinions*) by Mao Yilu (d. 1629) 毛一鷺, who served as the prefectural judge of Songjiang in the early 1600s.<sup>4</sup> I will

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<sup>2</sup> For an overview of the socio-economic changes in sixteenth- and seventeenth-century China, see Cynthia Brokaw, *The Ledgers of Merit and Demerit: Social Change and Moral Order in Late Imperial China*, Princeton: Princeton University Press, 1991, pp. 3-27. For an assessment of studies of the Ming-Qing socioeconomic history, see Evelyn S. Rawski, "Research Themes in Ming-Qing Socioeconomic History—The State of the Field," *The Journal of Asian Studies*, 1991, 50.1, pp. 84-111.

<sup>3</sup> For some general studies of the Ming commercial activities, see Timothy Brook, *The Confusions of Pleasure: Commerce and Culture in Ming China*, Berkeley: The University of California Press, 1998; William Atwell, "Ming China and the Emerging World Economy, c. 1470-1650," in Frederick Mote and Denis Twitchett, eds., *Cambridge History of China*, vol. 8, New York: Cambridge University Press, 1998, [hereafter CHC8], pp. 376-416; Martin Heijdra, "The Socio-Economic Development of Rural China during the Ming," CHC8, pp. 417-578; and Richard von Glahn, "Myth and Reality of China's Seventeenth Century Monetary Crisis," *Journal of Economic History*, 1996, 56.2, pp. 429-54.

<sup>4</sup> Jiang Yonglin 姜永琳, ed., *Yunjian yanlüe*, in Yang Yifan 楊一凡 and Xu Zhili 徐志立, eds., *Lidai panli pandu* 歷代判例判牘 (Dynastic judicial precedents and judgments), Beijing: Zhongguo shehui kexue chubanshe, 2005, vol. 3, pp. 397-603. For a brief introduction to Mao and his court record, see Jiang Yonglin and Wu Yanhong 吳艷紅, "Satisfying Both Sentiment and Law': Fairness-Centered Judicial Reasoning as Seen in the Casebooks of the Ming," in Charlotte Furth, Judith Zeitlin and Hsiung Pingchen, eds., *Thinking with Cases*, Honolulu: University of Hawaii Press, 2007, pp. 32-35; Jiang Yonglin, "Yunjian yanlüe," pp. 6-7.

demonstrate that drastic social change led to adjustment in legal culture, which in turn facilitated social change. I will further argue that in the course of local adjudication, all litigation participants, including both judicial officials and non-official participants such as plaintiffs, defendants, witnesses, litigation specialists, family and community members, took active part in the judicial process; and, by negotiating among each other, they together created situated justice—the contingent and particularistic legal judgment of competing claims based on specific circumstances.

### **Changing Land Sales Practices and Legal Regulations**

During Ming China, as the most important form of productive resource, land was mostly possessed by private households and could come into the market freely. In land sales, the parties to the transactions had to conclude contracts. These contracts specified the items such as the seller's and buyer's names, the seller's administrative unit, the nature, location, size, and four boundaries of the land, the amount of tax to be paid, the reason to sell the land, the price of the sale, the sanction for breaking the contract, the signatures of the seller(s) and middleman.<sup>5</sup> Based on the contract, the seller should go to government authorities to pay sales tax (*shuiqi* 税契).<sup>6</sup> The transfer of the land should also be registered in the buyer's name in the government registers known as “yellow registers” (*huangce* 黃冊, i.e., the

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<sup>5</sup> Lin Ganquan 林甘泉, Tong Chao 童超 and Zhou Shaoquan 周紹泉, *Zhongguo tudi zhidu shi* 中國土地史 (A history of land systems in China), Taipei: Wenjin chubanshe, 1997, pp. 329-333; Yang Guozhen 楊國楨, *Ming Qing tudi qiye wenshu yanjiu* 明清土地契約文書研究 (A study of land contractual documents during the Ming and Qing), Beijing: Renmin chubanshe, 1988, pp. 21-42. See also Timothy Brook, “Communications and Commerce,” in CHC8, pp. 641-42.

<sup>6</sup> For some sample contracts see Tian Tao 田濤, Hugh Scogin, Jr. and Zheng Qin 鄭秦, eds., *Tian cang qiye wenshu cuibian* 田藏契約文書翠編 (Traditional Chinese Contracts and Related Documents from the Tian Collection), Beijing: Zhonghua shuju, 2001, no. 5. See also Luan Chenxian 欒成顯, *Mingdai huangce yanjiu* 明代黃冊研究 (A study of the yellow register in the Ming dynasty), Beijing: Zhongguo shehui kexue chubanshe, 1998, pp. 94-103; Wang Yuquan 王毓銓, ed., *Zhongguo jingji tongshi, Mingdai jingji juan (shangce)* 中國經濟通史, 明代經濟卷 (上冊) (A general history of Chinese economy, Ming economy), Beijing: Jingji ribao chubanshe, 2000, vol. 1, pp. 177-83.

registers of arable lands and labor service liability) and “fish-scale records” (*yulin tuce* 魚鱗圖冊, i.e., cadastral records with maps).<sup>7</sup> This would confirm not only the buyer's ownership of the land, but also his duties of paying land taxes and performing corvée labor services.<sup>8</sup>

Land could be sold either irrevocably (*juemai* 絕賣) or conditionally (by mortgage, or *dianmai* 典賣). In an irrevocable sale, the seller simply transferred the full rights of the land to the buyer, and was not entitled to redeem the land. In a conditional sale, the seller could redeem the land at the price of the original purchase before the sale contract expired. If the seller was unable to redeem the land at the end of the term, he could sell the title to the land outright to the buyer by paying the balance between the original pledge price and the fair market price of the land. In that case, they could make another contract of “irrevocable sale” and, in principle, the original owner had no further connection with the land.<sup>9</sup>

Throughout the Ming dynasty, the basic law code that was applied to handle land sales lawsuits was the *Great Ming Code* (1397; hereafter

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<sup>7</sup> Tsurumi Naohiro 鶴見尚弘, “Genmatsu Minsho no gyorinsatsu” 元末明初の魚鱗冊 (Fish-scale records in the late Yuan and early Ming), in Mindaishi kenkyukai and Mindaishi ronso henshu iinkai 明代史研究會 明代史論叢編集委員會, eds., Yamane Yukio kyoju taikyū kinen Mindai shi ronso 山根幸夫教授退休紀念明代史論叢, Tokyo: Kyūko shoin, 1990, pp. 665-80; Wei Qingyuan 韋慶遠, *Mingdai huangce zhidu* 明代黃冊制度 (The system of yellow registers in the Ming dynasty), Beijing: Zhonghua shuju, 1961; Luan Chengxian, *Mingdai huangce yanjiu*; Kang Chao, *Man and Land in Chinese History: An Economic Analysis*, Stanford: Stanford University Press, 1986, pp. 74-79.

<sup>8</sup> Tong Guangzheng 童光政, *Mingdai minshi pandu yanjiu* 明代民事判牘研究 (A study of court judgments on civil matters during the Ming dynasty), Guilin: Guangxi shifan daxue chubanshe, 1999, pp. 25-29.

<sup>9</sup> For the practices of irrevocable and conditional sales, see Niida Noboru 仁井田陞, *Chugoku hoseishi kenkyū: Tochiho, Torihikiho* 中國法制史研究: 土地法, 取引法 (A Study of Chinese Legal History: Law of Land and Law of Transactions), Tokyo: University of Tokyo Press, 1960, pp. 376-86. See also Kishimoto Mio 岸本美緒, “Ming Qing shidai de ‘zhaojia huishu’ wenti” 明清時代的找價回贖問題 (The problem of “price markup and [land] redemption” during the Ming and Qing periods), in Terada Hiroaki 寺田浩明, ed., *Zhongguo fazhi shi kaozheng* 中國法制史考証 (Evidential research on Chinese legal history), Part III, vol. 4, Beijing: Zhongguo shehui kexue chubanshe, 2003, pp. 423-24.

*Code*).<sup>10</sup> The *Code* stipulates the rights and duties of the parties and the procedures of transactions. It requires, for example, that the parties to the transaction conclude contracts, and that the transfer of the land be registered in the buyer's name in the official "yellow registers" and "fish-scale records" (Art. 101).<sup>11</sup> It prohibits anyone from selling the same piece of land to multiple buyers. For conditional land sales, the law states explicitly that the original seller may redeem the land before the contract term expires and that the buyer shall not obstruct the redemption (*ibid.*). In addition, the *Code* also punishes the practice of selling others' land or selling land by mortgage without paying real money, and prohibits government officials from purchasing land in locations of their services (Art. 99). Although the law leaves the details of transactions (such as contract format) to popular customary practices, it regulates the basic elements in land sales, especially regarding government revenue and administrative order.

The *Code* was finalized in 1397 and remained unchanged throughout the dynasty. While it satisfied the needs of the people in the early years of the dynasty when the government endeavored to establish and maintain a simple agrarian economy and the volume of land sales was relatively small, its rules were not sufficient to deal with the new challenges in the late Ming.

Indeed, by the late 15<sup>th</sup> century, largely due to the commercialization of the economy and the growth of the population, the land market became more and more active. High-ranking officials, large landowners, and rich merchants were eager to purchase land as a way to accumulate and preserve wealth.<sup>12</sup> Using the revenue of commercial activities, for example, from 1572 to 1642, the household of Zhu Xueyuan 朱學源 (48 adult male and female members) in Huizhou Prefecture increased their land from 200 plus *mu* (one *mu* 畝 equals about 1/6 of acre) of land to more than 800 *mu*. Meanwhile, in order to obtain money for their daily or urgent needs or to

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<sup>10</sup> For an introduction to and translation of the *Code*, see Jiang Yonglin, *The Great Ming Code*, Seattle: University of Washington Press, 2005.

<sup>11</sup> All references to the *Great Ming Code* are to Jiang, *The Great Ming Code*.

<sup>12</sup> Lin Ganquan and others, *Zhongguo tudi zhidu shi*, pp. 303-04; Gao Shouxian 高壽僊, *Mingdai nongye jingji yu nongcun shehui* 明代農業經濟與農村社會, Hefei: Huangshan shushe, 2006, pp. 132-33; and Li Sanmou 李三謀, "Mingdai tianchan maoyi" 明代田產貿易, *Nongye kaogu* 農業考古 (Agricultural Archaeology), 2002, 3, pp. 207-214

avoid heavy government tax burdens, a large number of landholders, including some large landholders, sold their land on the market.<sup>13</sup>

In the course of active land transactions, there emerged two particular new practices—demanding price markups (*zhaojia* 找價) or land redemption (*huishu* 回贖) after an irrevocable land sale. That is to say, having sold a parcel of land outright to someone else, even decades later the seller could still request either additional payment or redemption of the land, as if he had still retained the entitlement to the property. The acquisition of land ownership, therefore, did not necessarily guarantee land rights. The well-known late Ming scholar-official and traveler Xie Zhaozhe 謝肇淛 (1567-1624)<sup>14</sup> once complained that one of his lineage brothers sold a piece of land to his father; after his father had passed away and he himself became the household head, his distant relative still demanded price markups. He found that this “evil custom” was popular not only in his home province of Fujian but also prevalent across the country, and that it caused numerous lawsuits.<sup>15</sup>

Apparently, demanding price markups or redemption after irrevocable land sales challenged the very conception of property rights in the legal order. In the mid-15<sup>th</sup> century (1466) already, some officials complained about the litigations in which people requested price markups after land sales on the ground that, because the market price of the land increased greatly, the original price was not sufficient.<sup>16</sup> But the *Code* did not contain any rule to deal with this new problem and, in order to maintain a stable legal order, the Ming dynastic founder Zhu Yuanzhang (1328-1398, DMB 381-92) had required his descendents to treat the *Code*

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<sup>13</sup> Luan Chengxian, *Mingdai huangce yanjiu*, pp. 399-406; 234-40, 403-06.

<sup>14</sup> On Xie, see L. Carrington Goodrich and Chaoying Fang, eds., *Dictionary of Ming Biography*, New York: Columbia University Press, 1976, pp. 550-54 (hereafter DMB).

<sup>15</sup> Xie Zhaozhe, *Wu zazu* 五雜俎[俎] (Five Assorted Offerings), Taipei: Xinxing shuju, 1976, vol. 1, p. 335. For brief studies of such practices, see Niida, *Chugoku hoseishi*; Kishimoto, “Zhaojia huishu”; Chen Keng 陳鏗, “Zhongguo budongchan jiaoyi de zhaojia wenti” 中國不動產交易的找價問題 (The problem of price markups in China’s real estate transactions), *Fujian luntan*, 1987, no. 5, pp. 29-35; and Tong Guangzheng, *Mingdai minshi pandu yanjiu*, *op. cit.*, pp. 66-82.

<sup>16</sup> Liu Hainian 劉海年 and Yang Yifan, eds., *Huang Ming tiaofa shilei zuan* 皇明條法事類纂 (Regulations of the August Ming, topically arranged), in Yang Yifan, Tian Tao, eds., *Zhongguo zhenxi falü dianji jicheng* 中國珍稀法律典籍集成 (Rare Chinese legal documents), Beijing: Kexue chubanshe, 1994, ser. 2, vol. 4, p. 551.

as an important part of “ancestral institutions” and forbidden them to change a single word of its text. To cope with the new problems, therefore, succeeding emperors issued ad hoc regulations (*li*). In 1500, the imperial court promulgated the first comprehensive compilation of such regulations, known as *Wenxing tiaoli* 問刑條例 (*Itemized regulations for trying penal matters*), as a legal response to changing social situations.<sup>17</sup>

With respect to land sales, the new *Itemized Regulations* of 1500 adds two articles. The first intends to protect the seller in a conditional sale:

In a conditional sale (*diandang* 典當, i.e., by mortgage) of land or movables, it is not permitted to make profits against the *Code*. If the [contract] term expires and [the seller/mortgager] gets the money ready to redeem [the property], or if, upon the calculation of the interest received [by the seller], the amount has already reached that of the principal, [the property] shall return to the original proprietor. The damaged objects shall be compensated for and returned. If [the seller] is not financially capable of redeeming the land, the buyer may till the land for two years and then return it [to the seller].<sup>18</sup>

The second article purports to establish a redemption deadline for land sales:

In lawsuits related to family property and land [*jiacai tianchan* 家財田產], if the matter is already five years old, or even if the matter is less than five years old, but investigation reveals that relatives have drawn up a document of division which takes account of the sale, and the sales contract is valid, then it shall be ordered that the present proprietor continue in his possession of the property, and redivision or subsequent redemption shall not be permitted, nor shall further lawsuits be accepted for adjudication.<sup>19</sup>

These new regulations show the government’s efforts to ease the tension between the existing law (the *Code*) and new social problems. The first one on conditional sales clearly protects the seller. It guarantees the

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<sup>17</sup> This body of legislation was subsequently modified by later emperors in 1549 and 1585. See John Langlois, Jr., “Ming Law,” in CHC8, pp. 176-77; Huang Chang-chien 黃彰健, *Mingdai lüli huibian* 明代律例彙編 (Compendium of the code and regulations in the Ming dynasty), Taipei: Zhongyang yanjiuyuan lishi yuyan yanjiusuo, 1979.

<sup>18</sup> Huang Chan-chien, *Mingdai lüli huibian*, p. 493.

<sup>19</sup> Huang Chan-chien, *Mingdai lüli huibian*, p. 493, translation modified from that in Jing Junjian, “Legislation Related to the Civil Economy in the Qing Dynasty,” p. 71.

seller (mortgager)'s right to redeem the land when the contract term expires, and reiterates the prohibition against usury (more than 35% per year) as prescribed in the *Code* (Art. 168). It even revises the rule in the *Code* that allows the buyer to retain the ownership of the land if the seller is not financially capable of redeeming the land, but forces the buyer to return the land even though the seller pays both the principal and the interest that amounts to the principle. In case the seller is not capable of redeeming the land, the new regulation only compensates the buyer by permitting him to cultivate the land for two more years. This effort to promote social justice seems neither reasonable nor practical: it challenges property rights and contradicts market practice, and will be bound to cause more lawsuits. In the revision of the *Itemized Regulations* in 1585, this article was deleted.<sup>20</sup> By the time when Mao Yilu judged law cases at Songjiang, then, this article was not available anymore.

The second article makes up a deficiency in the *Code* by providing a temporal criterion to clarify land ownership, which is supposed to prohibit land sellers from demanding price markups or redemption. But this short and vague rule seemed insufficient to handle the widespread custom. First, it is not clearly stated if the injunction is applied only among relatives or to the general populace as well. Second, the boundary line between irrevocable and conditional sales is still ambiguous: what if the sale had occurred within five years and no document or contract was written by relatives? And third, as Kishimoto Mio points out, it is not clear whether the five-year time limit or the documentary requirement should claim precedence.<sup>21</sup> The application of this vague rule then would surely depend on the litigation participants' interpretation and lead to variations in legal results. Therefore, although it survived the later revisions, this rule could hardly be useful in handling land sales disputes.

By the 17<sup>th</sup> century, then, Chinese imperial law regulated limited aspects in land sales: it required the payment of sales taxes and transfer of land ownership (for the purposes of land taxes and labor services); it prohibited selling others' land, selling the same land to multiple buyers, and purchasing land by officials in locations of their services; and it protected the seller's right to redeem the land in a conditional sale. For the widespread

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<sup>20</sup> *Minglü jijie fuli* 明律集解附例 (Ming code with collected commentaries and regulations), Taipei: Chengwen chubanshe, 1969, 5 vols., p. 621, (hereafter JJFL); Huang Chang-chien, *Mingdai lili huibian*, pp. 493-95.

<sup>21</sup> Kishimoto, "Zhaojia huishu," p. 437.

new customs of demanding price markups and redemption of land after an irrevocable sale, the *Code* carried no specific rules to handle the problem and the new regulation only sought to control the practice by establishing a time limit.

Mao Yilu served as the prefectural judge at Songjiang; and his *Court Opinions* records his rulings on law cases and his superiors' judicial instructions during his judgeship. Songjiang was located in the Lower Yangzi area, arguably the most economically advanced region of Ming empire. By the late Ming, as one of the commercial centers of the country,<sup>22</sup> Songjiang experienced both the general trend of commercialization and the particular customs of demanding price markups and land redemption in land sales. The late Ming scholar He Liangchun 何良俊 (1506-1573, DMB 515-18), a native of Songjiang who was born to a landlord family and had a foster father serving as a tax collector, observed an active land market: in his native place, some 60-70% of the poor peasants lost their land, and even among the rich land often changed hand within five or six years.<sup>23</sup> Meanwhile, as another Songjiang native commented, the practice of demanding price markups or redemption after irrevocable land sales became widespread throughout the prefecture, which caused considerable social disturbance.<sup>24</sup> In Mao's *Court Opinions*, all twelve law cases concerning land sales involve either price markups, land redemption, or both.<sup>25</sup> With very limited legal rules, then, how did local people pursue and defend their perceived entitlements and how did judicial officials handle litigants' claims in the new socio-economic environment?

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<sup>22</sup> Songjiang was the center of cotton textile industry; its markets rose from 44 to 61 between 1520-1640. See Wang, ed., *Mingdai jingji*, pp. 693-94; Fan Shuzhi 樊樹志, *Wan Ming shi (1573-1644)* 晚明史 (1573-1644 年), Shanghai: Fudan daxue chubanshe, 2003, pp. 90-93.

<sup>23</sup> He Junliang, *Siyou zhai congshuo* 四友齋叢說 (Writings in the four friends hall) (Beijing: Zhonghua shuju, 1959), pp. 112, 312.

<sup>24</sup> Li Shaowen 李紹文, *Yunjian zashi* 雲間雜識 (Miscellaneous observations of Songjiang) (Shanghai: Shanghai xian xiuzhiju, 1936), *juan* 2, 2a.

<sup>25</sup> For a list of these land sale cases, see Appendix. The sequential numbers are assigned by myself for the convenience of reference.

## Litigants: Striving for Entitlements

### *The Participants*

The litigants in land sales lawsuits included a diverse spectrum of rural people. First, poor community members often claimed entitlements to the land they had sold. Small land-holding peasants would more likely lose their land in the rapid circulation of land. Land sales became a common practice to pay the owners' debts or avoid heavy taxes and labor services, and the frequent transfer of land ownership intensified the polarity between rich and poor in society. Meanwhile, some landlords also became impoverished. With the commercialization of the economy land ownership changed swiftly. Just as some late-Ming contemporaries observed, there were no permanent land owners; land could change hands shortly after a previous transaction.<sup>26</sup> Years after they had sold their land, some poor peasants or former landlords could accumulate some money to redeem the land, or they simply demanded price markups.

In Case 8,<sup>27</sup> for example, the old Wei sued in court for the redemption of a small piece of land he had sold a long time ago because he had no place to live and his life depended solely on the land. And in Case 7, while Zhu Fang's father still had some land and slaves and even the slaves had a house and some land, Zhu himself had sold all his land and slaves and possessed nothing but bare walls. He then was found guilty of squeezing ransom from his former slaves. When the court ordered him to redeem some of his former land to the former slaves, he had to redeem the land on credit. In short, when poor people had nothing to rely on they were liable to fight for something from their former property.

In land sales lawsuits, rich villagers (usually landlords) tended to act as defendants, trying to protect their land rights against poor people's claims. Sometimes, however, they would also initiate lawsuits as plaintiffs to fend off others' aggressions. In Case 5, for example, Tang Ji's father purchased some land from Tan Cheng. Years later, having already obtained price markups four times, Tan, in utter destitution, again demanded addi-

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<sup>26</sup> Lin Ganquan and others, *Zhongguo tudi zhidu shi*, pp. 322-23, 327-28; Timothy Brook, *The Confusions of Pleasure*, p. 145.

<sup>27</sup> The case numbers refer to those involving price markup and redemption in *Court Opinions* as listed in the Appendix of this essay.

tional money from Tang. When Tang rejected the request, Tan colluded with his fellow tenant farmers and threatened to refuse payment of rent. Tang realized that he was not able to satisfy their greed, but was not willing to await his doom. He therefore falsely accused Tan and his collaborators of “assembling a crowd to seize grains” before the court.

Local government students (*shengyuan* 生員) also actively involved themselves in land disputes. As civil service examination degree holders, they constituted a special social group. They were not government officials yet, but they enjoyed certain legal and social privileges, such as a government stipend and exemption of land taxes and labor services.<sup>28</sup> In the beginning of the dynasty (1382), in order to make the students concentrate on learning and prevent them from interfering with government affairs, the imperial court forbade students to lodge lawsuits for anyone, unless the matters were critically important to themselves.<sup>29</sup> In the late Ming, however, many government students enthusiastically engaged in lawsuits; some even acted as “litigation masters” (*songshi* 訟師).<sup>30</sup>

In *Court Opinions*, four land sales lawsuits involve local government students. One has to do with a former student. In the Ming, a government student might be deprived of his status due to transgressions, or give up his status voluntarily. In Case 4, Zhu Zhou, a former student who lost his status because of “evil deeds,” had sold his land to his future son-in-law’s father some twenty years earlier. Since the transaction, Zhu had requested price markups several times and seized back some land through lawsuits. Eventually, he illegally sold eight *mu* of his son-in-law’s land and instigated the buyer to sue his son-in-law.

Another case is concerned with a senior government student. Under the system of official recruitment, the goal of government students was to pass higher civil service examinations and win official ranks. Since the mid-Ming, however, due to population pressure and fierce competition,

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<sup>28</sup> Ho Ping-Ti, *The Ladder of Success in Imperial China: Aspects of Social Mobility, 1368-1911*, New York: Columbia University Press, 1962, pp. 34-38; Chen Baoliang 陳寶良, *Mingdai ruxue shengyuan yu difang shehui* 明代儒學生員與地方社會 (Government students in Confucian schools and local society during the Ming dynasty), Beijing: Zhongguo shehui kexue chubanshe, 2005, pp. 414-24.

<sup>29</sup> Huang Chang-chien, ed., *Da Ming Taizu Huang huangdi shilu* 大明太祖高皇帝實錄 (Veritable Records of the Exalted Emperor, the Grand Progenitor of the Great Ming), Taipei: Academia Sinica, 1962, pp. 2301-02.

<sup>30</sup> Chen Baoliang, *Mingdai ruxue shengyuan*, pp. 334-42.

only a small portion of the student body succeeded in moving further up the social ladder; most of them would have to stay outside officialdom throughout their lives. Many secured a livelihood as tutors, secretaries, doctors, merchants, and office runners; some even failed to land a job.<sup>31</sup> In Case 9, the landlord Shen Xun offered to redeem the land he had sold to the Yin family more than twenty years earlier. When Yin rejected the request, Shen asked Yin's maternal uncle Zhou Daoguang, a senior government student, to persuade him. Coveting financial gain, Zhou accepted the money despite Yin's refusal, which caused a serious lawsuit.

The two other cases are related to some students who were still in school. The students were both first falsely accused by others in disputes regarding price markups and redemption. They then lodged their counter-claims against the original plaintiffs. One student even displayed contempt of court during the course of the suit: he refused to attend the trial, tried to resist law enforcement officials' pressure, and then, at the trial, falsely accused the officials of putting shackles on him. Out of pity, the district magistrate released him for fear that "a Confucian student should be maltreated." Obviously, local government students often ignored legal rules and were actively involved in lawsuits. With privileged status, they could even abuse the judicial procedure.

Relatives often sued each other in court for land entitlements. In the late Ming, land sale disputes among relatives ensued from frequent land transactions. In *Court Opinions*, in the aforementioned Case 4, the father-in-law relied on his superior family status and caused his son-in-law serious legal trouble. In Case 11, when Zhao En's demand for price markups was rejected, he brought an action against his brother-in-law. In fact, the *Code* prohibits close relatives such as father-in-law and son-in-law and brothers-in-law from accusing each other in land sales disputes. Under financial pressure, however, many relatives viewed each other as enemies, and the Confucian value of family harmony was severely damaged by economic motives.

Women also represented themselves in land sales lawsuits. In Case 3, for example, the old lady Xue's husband had sold their land to an official about 10 years earlier. The land was again sold to two successive owners.

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<sup>31</sup> Frederic Wakeman, Jr., "Introduction: The Evolution of Local Control in Late Imperial China," in Frederic Wakeman, Jr. and Carolyn Grant, eds., *Conflict and Control in Late Imperial China*, Berkeley: University of California Press, 1975, p. 3; Chen Baoliang, *Mingdai ruxue shengyuan*, pp. 296-357.

After Xue's husband died, in order to redeem the land Xue falsely accused the current owner of "homicide" before the court. In the Ming, women were generally not encouraged to go through legal trials, because on such occasions they would have to confront others in public and were likely to suffer legal torture. According to the *Code*, women were not permitted to appear in court except for such serious issues as rebellion, homicide, and breach of filial piety (Art. 362). But in the late Ming, as shown in the court records, women did not limit themselves to what the rules permitted. They took active part in lawsuits by either challenging or circumventing the rules. That women appeared in court frequently alerted some local magistrates. For instance, Linzhang 臨漳 District Magistrate Zhang Erzhong 張爾忠 blamed women for appearing in court. He believed that going through legal trials would make women suffer the same experience as prostitutes, which would not only besmear their reputation but also corrupt public morality.<sup>32</sup> It seems certain that women did not shy away from utilizing the legal system to make their claims.

Slaves (*nupu* 奴僕) often played an important role in land sales lawsuits. In Case 9, for example, when Shen Xun attempted to redeem the land he had sold a long time ago, his slave Shen Zong not only served as his representative to deal with the current owner, but, later, lodged a lawsuit on his behalf. In Case 11, for another example, Zhao Jing had sold land to his brother-in-law some time ago. When Zhao became critically ill, his wife went to his brother-in-law to request a price markup for urgent medical needs. It happened that the brother-in-law had gone on a tour. His slave, who seemed to be the household manager, did not reason with the lady. Instead, he haughtily used bad languages against her. The slave's attitude and behavior caused a serious lawsuit between the brothers-in-law. In the Ming, slaves constituted an inferior social class. Known as "mean persons" (*jianmin* 賤民), they were forbidden to sue their masters (Art. 360), and their offenses against ordinary people (especially their masters) would be subject to more severe penalties (Arts. 336, 350, 197). In social practice, however, slaves could found families and own property, including land. While many slaves were poor and performed demeaning work and services, some became rich managers of their masters' households and enterprises. The

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<sup>32</sup> Zhang Erzhong 張爾忠, *Zhi Zhang zuilie* 知漳罪略 (Handling criminal cases at Linzhang 臨漳), Ming edition, prefaced 1636.

cases in *Court Opinions* show that slaves often had a hand in land sales disputes and actively participated in lawsuits.

In contending over land rights, litigants were not fighting alone. They often relied on lineage members—especially relatives—to claim or defend their entitlements. As a closely knit community, the lineage created a strong group identity through the institutions of ancestral worship, genealogy, and communal land.<sup>33</sup> Lineage members provided significant support to litigants in land sales lawsuits. As recorded in *Court Opinions*, in Case 1, when the blind land buyer Zhang Shixiu was demanded by the seller for redemption, Zhang's two uncles, in defending him, rejected the demand and engaged in a brawl, which eventually led to a lawsuit in court. In Case 11, when the land seller Zhao Jing became critically ill and his wife failed to obtain a price markup from the buyer, Zhao's brother constantly harassed the buyer, eventually obtaining 10 *mu* of land for the widow.

Non-lineage individuals could make a significant impact on the litigants as well. They could cause them to lodge lawsuits and assist them as collaborators and witnesses. In Case 8, for example, the old poor peasant Wei Si had sold his land years earlier. It happened that the current owner of that piece of land evicted his tenant Zhuang Song because Zhuang withheld rent. Filled with anger, Zhuang instigated Wei to bring a suit against the current owner. Wei followed the advice, and was allowed to redeem the land in the lawsuit. In Case 2, for another example, Wang Shan had purchased some land from Wang He's father many years earlier. When Wang He demanded to redeem the land on the ground that his ancestral tombs were surrounded by it, Wang Shan asserted that the ancestral tombs were a fraudulent claim. To support his argument, Wang Shan brought his friend Qu Yi as a witness to the court. Qu's statement became an important factor that made Wang Shan and his brother falsely accuse Wang He of homicide in order to gain the upper hand in the case. Largely due to that false accusation Wang Shan was granted the right to redeem half of the land while his brother was sentenced to penal servitude. In these two cases, thus, Zhuang Song's instigation made the old widow start the lawsuit, and Qu

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<sup>33</sup> Maurice Freedman, *Lineage Organization in Southeastern China*, London: The Athlone Press, 1970; Xu Yangjie, *Song Ming jiazhu zhidu shi lun* 宋明家族制度史論 (A history of lineage system in the Song and Ming), Beijing: Zhonghua shuju, 1995; Li Wenzhi 李文治 and Jiang Taixin 江太新, *Zhongguo zongfa zongzu zhi he zutian yizhuang* 中國宗法宗族制和族田義莊 (Chinese clan and lineage system and lineage land and estate), Beijing: Zhongguo shehui kexue chubanshe, 2000.

Yi's testimony fueled the confrontation of the two parties and directly influenced the result at court. Such figures often occupied an important position in lawsuits.

In the late Ming dynasty, therefore, people of various social backgrounds actively participated in land sales lawsuits. They either acted as litigants or assisted litigants in claiming land rights. Their demands for price markups and land redemption challenged the existing legal order on land sales and the concept of land ownership. And their active involvement in legal activities played an important part in deciding the allocation of entitlements.

### *The Strategies*

In land sales lawsuits, litigants adopted a number of strategies to present their cases. First and foremost, they used false accusation: in 11 of the 12 cases involving land sales in *Court Opinions*, all plaintiffs and most defendants and witnesses—men or women, rich or poor, peasants or gentry, honorable persons or slaves, relatives or strangers—did so.<sup>34</sup> No matter what socio-economic background one came from, what moral or legal values one upheld, as long as one engaged in lawsuits, false accusation would be employed as a weapon.

When they made false accusations, the accusers, be they sellers or buyers, brought sensational charges. Of the 11 cases, at least 5 charges were homicide, others included robbery, gathering a mob to intercept grain, seizing land, seizing “salt furnaces” (*yanzao* 鹽竈), and destroying houses. None of the crimes was concerned with the land transaction per se. Because the Ming government encouraged “trivial disputes” such as those on land, debt, and marriage to be settled by local elders or lineage organizations instead of government authorities, and set up restricted time periods during which such lawsuits were allowed to be brought to court, by falsely accusing others of more serious crimes the accusers intended to impress the magistrates and thus have their cases accepted. It was also more likely

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<sup>34</sup> In the sole case where false accusation is not recorded (Case 10), the offender simply killed the land buyer after he requested price markups several times but failed to obtain them. It is quite possible that the offender might have also used false accusation prior to the homicide.

to alert the magistrates, thus becoming a tactic to circumvent relevant legal restrictions.

To make false accusations more effective, the litigants would usually try to find stories to support the fabricated charges. To accuse others of homicide, for example, they would take advantage of incidents in which some people did die, although the deaths had been caused by illness, accident, or some other factors (Cases 1 and 2). When one accuser brought charge of having destroyed his house, the house had indeed been pulled down by the defendant. But it was in the latter's land and he had pulled down the house according to a court order in a previous lawsuit (Case 8)! The litigants used such tricks to affect the magistrates' judgment.

We have to note that, as a statutory crime, making false accusations should be punished by reciprocal penalties, which could amount to strangulation (Art. 359). So the accusers risked a great deal when they made false accusations. Still, they were willing to pay a price in order to gain what they believed they deserved.

In order to have their cases heard, many litigants challenged the prescribed judicial procedure. In the Ming, below the provincial government there were three levels of judicial offices in local areas, namely, district magistrate, prefectural judge, and provincial circuit intendant of various kinds. Ming law required that litigants start lawsuits from the basic level, i.e., district magistrate. Those "bypassing appropriate jurisdiction" (*yuesu* 越訴) would at least receive 50 strokes of beating with the light stick (Art. 355).<sup>35</sup> *Court Opinions* reveals, however, that many litigants ignored such procedural requirements and brought lawsuits to different judicial levels simultaneously, or to higher judicial authorities directly. As Case 6 shows, three months after the plaintiff had falsely accused his uncle of killing his son before Huating District magistrate, and before the said magistrate had delivered the judgment, the plaintiff again brought the suit to the circuit intendant of state farm (*tuntianyuan* 屯田院). In *Court Opinions* at least, no one was punished for such violations.

In lodging lawsuits, litigants displayed incredible perseverance. They would not readily give up if they failed to get what they demanded. In Case 8, for example, the plaintiff brought suits six times. This was, in the prefectural judge's words, just like "wisteria twining around the old tree branch."

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<sup>35</sup> Yang Hsüeh-feng 楊雪峰, *Mingdai de shenpan zhidu* 明代的審判制度 (The judicial system in the Ming), Taipei: Liming wenhua shiye gufen youxian gongsi, 1978, pp. 167-69.

As we know, legal torture was used in the judicial process during the Ming dynasty. When a charge was brought against somebody, the plaintiff as well as the defendant were likely to be tortured with the investigating stick (Arts. 420, 428, 444).<sup>36</sup> In other words, each time someone made an accusation, he would suffer enormous physical pain and possible financial loss. Yet such harsh institutions could not stop people from pursuing their aims.

To improve their chances of winning their case, litigants would try to make good use of available human resources. They would collude with their relatives (especially their fathers or sons), neighbors or other fellow villagers, litigation masters, or even slaves to have them arguing for their case. One of the most effective schemes was to use children. In Case 3, for instance, when the old widow lodged her suit, she brought her young grandson. The image of a lonely old woman and a weak young child tugged at the heartstrings of the prefectural judge, whose judgment allowed her to redeem half of the land she demanded without legal ground.

Litigants could employ nasty tricks to attain their goals. In Case 5, for example, the seller gathered the buyer's tenant farmers to occupy his house and refuse the payment of land rent. And in Case 11, the seller's brother chased the buyer to a friend's home and smashed the friend's household utensils. Mao Yilu, the prefectural judge, was dreadfully bothered by such tricks: "Their sinister and crafty nature is not different from that of demons. They often alter each others' words. They either make accusations on their own or lodge joint lawsuits by signing names together. Their tricks are just like ingenious military moves, launching numerous attacks from all directions."<sup>37</sup> He could see that litigants would stoop to anything to gain the upper hand in the suits.

Playing tricks, however, did not mean taking rash actions. On the contrary, the litigants tended to be sensitive to situations and make choices accordingly. In Case 9, when the seller Shen Xun wanted to redeem the land that he had sold to an official some 20 years before, he was not only aware of the illegality of the redemption but also afraid of the official's power. So he chose to wait rather than dispute with the powerful figure. Only after the official had died did Shen start the lawsuit to demand the redemption to the official's weak-natured brother named Tingnan. In claiming the land right, Shen falsely stated that the original transaction had been

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<sup>36</sup> Yang Hsüeh-feng, *op. cit.*, pp. 256-66.

<sup>37</sup> Mao Yilu, *Court Opinions*, pp. 470.

a conditional sale. He did not confront Tingnan directly, but entrusted Tingnan's uncle to persuade him. Tingnan turned down the request, but his uncle kept the ransom [the money to redeem the land]. Although Shen, like his fellow villagers, knew that Tingnan had rejected the redemption offer and refused to accept the ransom, he took advantage of his uncle's greed and ordered his slave to forcefully collect the grains on the land. Eventually, although Shen failed to redeem the land, he received a price markup of 200 *liang* of silver (which could purchase about 100 *mu* of land), and was able to shake off some criminal liability due to the involvement of Tingnan's uncle. In this case, apparently, Shen shrewdly evaluated the situation and worked out practical solutions.

In land sale lawsuits, litigants strenuously sought their land entitlements. They utilized various resources, repeatedly made false accusations, brought lawsuits to different districts and different levels of courts, applied a variety of schemes, and adjusted their actions to carefully defined situations. They were willing to try by hook or crook to achieve their goals.

### *The Goals*

In land sales lawsuits, to be sure, the litigants went after the most important forms of wealth at the time—silver and land. Seventeenth-century China was a money-minded society. As the late Ming scholar Zhang Tao 張濤 (fl. 1607) observed: “The lord of silver rules heaven and the god of copper cash reigns over the earth. Avarice is without limit.”<sup>38</sup> In this “floating world,” commerce and merchants were valued and profit-seeking spirit was promoted. In many contemporaries' eyes, the late Ming commercialization corrupted public morals and increased people's selfish desires.<sup>39</sup> In *Court Opinions*, Prefectural Judge Mao Yilu often blamed “greed” (*tanxin* 貪心) or “desire” (*yu* 慾) as the cause of disputes (Cases 4, 5, and 9).

The desire for tangible assets, however, was only part of the reason for land sales lawsuits. Along with economic interest, litigants expressed a strong sense of fairness and justice. In other words, as either sellers or buy-

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<sup>38</sup> Timothy Brook, *The Confusions of Pleasure*, p. 238.

<sup>39</sup> Timothy Brook, “Communications and Commerce,” pp. 699-707; Chen Baoliang 陳寶良, *Mingdai shehui shenghuo shi* 明代社會生活史 (A history of social life in the Ming dynasty), Beijing: Zhongguo shehui kexue chubanshe, 2004, pp. 649-55.

ers, they contended for a fair allocation of land rights under changing social circumstances.

In their pursuit of fair allocation of land rights, litigants tended to employ several major lines of arguments to justify their claims. A most commonly used justification was the indispensability of the land to their life. People in abject poverty or enormous difficulty, including elderly widows and widowers, orphans, the childless and the disabled, could request price markups or redemption purely on the grounds of need. In their perception, apparently, claiming land rights became a matter of life and death, and their destitute situation made them deserve compassion. In *Court Opinions*, in three of the five cases caused by poverty, the prefectural judge allowed the poor sellers to either redeem the land or obtain the land for free. In the two other cases, the judge rejected the requests only after the sellers had already acquired price markups several times. That is to say, all the poor sellers who brought the lawsuits achieved their rights in one way or another.

In Case 8, for example, an old peasant wanted to redeem a small piece of land (about one *mu*) from the current proprietor. The land had been sold many years earlier and had changed hands three times; and the current proprietor had already built a house on it and rented the land out to a tenant farmer. The old man falsely accused the current owner before different authorities, but could not gain what he demanded. He then brought the same false charge to Mao Yilu. At the trial, his son argued that this small piece of land had a direct bearing on their life. Mao Yilu took their stance very seriously. He stated clearly that according to law, the land indeed belonged to the current owner. But he believed that, for this rich owner, the land only served as a kind of decoration: having it or not would make no difference to his life; for the poor family, on the other hand, the land became a crucial support of their life. Mao Yilu judged that the current owner should “abandon this tiny piece of land to save the lonely old man, which would also make him stop bringing lawsuits.” In other words, he allowed the false accuser to redeem the land. In a sense, the have-nots and judicial officials together constructed a version of social justice at the expense of the haves’ right to ownership and of a stable land market.

Another commonly used situation had to do with the striking price difference between two land sales, which was certainly related to the rising inflation under commercialization and population pressure. When sellers’ families (the sellers themselves or their descendants) saw that land prices had soared for some years (occasionally it could be over 100 years) after

the land had been sold, they sensed strong injustice: they viewed the inflation as their financial loss in the land transaction, for which they deserved compensation. In Case 9, when the former owner demanded land redemption and price markup 20 years after he had sold the land, he put forward two arguments. One was that the original transaction was a conditional sale; and the other, that there was a huge price difference between then and now and that he had never obtained any price markup. The first claim was easily proved false when the current owner showed the contract of the irrevocable sale. The second claim, however, was easily accepted by the judge. So the former owner was refused land redemption but allowed to collect 200 *liang* of silver as compensation. The changing social conditions certainly encouraged a sense of injustice for uncompensated land sales, which justified the efforts to seek redemption or price markups.

The lineage system also served as an effective mechanism for the litigants to justify their claims. As mentioned above, lineage organizations advocated the principles of solidarity, affection, and harmony.<sup>40</sup> In *Court Opinions*, five cases regarding price markups and redemption in land sales are primarily concerned with kinship relations, and they illustrate different dimensions of lineage justice.

In Case 2, the seller wanted to redeem the land because, he claimed, both his house and ancestral tombs were located on it. The buyer did not argue about the house, nor did he insist on his land ownership. What he argued, instead, was that the seller's claim about ancestral tombs was fraudulent. In order to make his case, he asked one of his friends to offer testimony. It appears that both parties shared a firm conviction that the location of the ancestral tombs was critical in deciding the case. In other words, it was a just claim to redeem the land on which ancestral tombs were located.

In Case 4, the father-in-law repeatedly requested price markups and redemption because he complained that his son-in-law did not treat him with respect and idled about, wasting money. Relying on his superior status, this father-in-law, in the judge's words, "behaved evilly, unlike a human being."

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<sup>40</sup> See also Patricia Ebrey and James Watson, eds., *Kinship Organization in Late Imperial China*, Berkeley: University of California Press, 1986; Cohen Myron, "Lineage Organization in North China," *Journal of Asian Studies* 1990, 49.3, pp. 509-534; David Faure, "The Lineage as a Cultural Invention: The Case of the Pearl River Delta," *Modern China*, 1989, 15.1, pp. 4-36.

In Case 6, the seller demanded the redemption because the buyer had succeeded in using the death of the seller's son to redeem his own land (which was sold to someone else). The loss of the young child and close kin relationship between the seller and buyer (the buyer was the seller's uncle [father's sister's husband] and the seller's son's adoptive grandfather) became important factors for the seller to regain the land without paying the redemption price.

In Case 11, the elder brother's wife requested a price markup from his foster sister's husband simply because the foster sister had been adopted and raised by his father and thus owed a debt of gratitude to the family. Therefore, although the foster sister's family was falsely accused, they would have to return 10 *mu* of land without any compensation so as to pay back the old grace.

In such cases, litigants supported their claims with various forms of lineage-based justice. Retaining ancestral graves on one's own land was by no means merely a matter of convenience. At a time when ancestral rights occupied the central place in lineage identity, acquiring the land became an important measure to strengthen agnatic bonds. By the same token, the respect for superior kinsmen and the appreciation for kin affection were also essential building blocks for lineage solidarity. These socio-cultural values made litigants feel strongly that they deserved what they demanded in land sales lawsuits.

In short, as demonstrated in *Court Opinions*, litigants conveyed a strong sense of fairness and justice in their competing claims. Their justice principle was based on need, land value, or lineage organization. By “seeking justice” (*qiuzhi* 求直) or “complaining of injustice” (*mingyuan* 鳴冤), the litigants pursued the fair allocation of their land rights. In their complaints, they endeavored to achieve their goals by opting for non-legal situations; very few of them claimed their rights on the basis of legal rules, the nature of the sales, or the principle of land ownership. And, ironically, they all used illegal false accusations to strive for what they perceived as justice.

## Judicial Officials: Balancing Sentiment, Reason, and Law

### *Mao Yilu: The Prefectural Judge's Adjudication*

As mentioned above, neither the *Code* nor the *Itemized Regulations* stipulate adequate rules governing the customary practice of demanding price markups or land redemption after irrevocable land sales. The *Code* only implies that through irrevocable sales, land titles and tax obligations are transferred to the new owners, and they should not be interfered with by the sellers. The *Itemized Regulations* only sets up a five-year limit for indefinable land transactions. In his judgments, Mao Yilu basically maintained that, after irrevocable land sales, it was illegal to request either redemption or price markup. He made such an explicit statement in 11 of the 12 cases.<sup>41</sup> On the other hand, unlike in cases involving other matters, he never cited or referred to any specific legal rules prohibiting the claims on redemption or price markup. His general and abstract statement might have indeed indicated the vagueness of the law.

The lack of clear and straightforward legal regulations on price markups and land redemption left enormous room for the judge's discretion. In addition to law, Mao Yilu frequently used two other pronounced principles: reason (*li* 理) and sentiment (*qing* 情). From the point of view of judicial officials, reason denoted sound and rational judgment about human situations. Sentiment, however, referred to the special "feelings" generated by situations outside the law and thus might lead to changing legal rules. In judicial culture, the ideal was to take all three aspects into full consideration and balance them in judgments.<sup>42</sup>

Case 3 is illustrative of how Mao Yilu played with all the three judicial principles. When an old widow took her young grandson to demand redemption of land by falsely accusing the current owner of homicide, the former prefectural judge found that the false accuser's pitiable situation deserved favorable treatment. So he judged that the old lady should redeem the land. Nevertheless, Mao Yilu, the incumbent judge, argued that although the old widow's plight was pitiable, her demand contradicted not only law but also "reason." He reasoned that the land had been sold ten

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<sup>41</sup> The only exception was that land redemption was granted to punish the unreasonable former slave owner (Case 7).

<sup>42</sup> Jiang and Wu, "Satisfying Both Sentiment and Law."

years earlier and had passed through three owners since then. If it could be redeemed by the old lady, it could also be redeemed by all the other former owners. If land could be redeemed by any seller at any time, how could the interest of the buyer be protected and how could property rights be secured? So, although the widow and boy deserved sympathy, Mao argued that “the *Code and Regulations* should not be violated, and wicked customs should not be encouraged” (*lüli buke yue, diaofeng buke zhang* 律例不可越, 刁風不可長). Meanwhile, however, the widow and orphan indeed deserved mercy. So Mao “deliberated on the middle way between sentiment and law” (*can qingfa zhi zhong* 參情法之中) and ruled that the old lady [the false accuser] redeem half of the land and the current owner keep the other half for his livelihood. But he still specifically pointed out that the old lady was permitted to redeem some of the land “only” (*du* 獨) because of her special circumstance, and that due to legal regulations she was still not permitted to redeem all the land. This judgment, Mao sensed, preserved the law and safeguarded people’s property on the one hand, and did not contradict his predecessor’s ruling for providing succor for widows and youngsters on the other. Mao believed that he had balanced sentiment, reason, and law and intentionally adopted the “middle way,” thus making a fairer judgment than his predecessor’s.

In this case, while Mao claimed to defend the law—the official version of justice—he did not specify what rules he intended to defend. He might have referred to the law on land sales, or on false accusation, or both. Whatever law he endeavored to apply, he did not carry it out to the letter. He only implemented halfway the law on land redemption, if it indeed existed; he totally ignored the law on false accusation, punishing only the two people who had instigated the woman seller. The reason, based on property rights, clearly tallied with the law that prohibited redemption after irrevocable sale. It could serve as the main argument by the defendant (the buyer). But, similarly, it was only carried out halfway. The sentiment, the compassion based on the old widow’s plight, was clearly weighed from the seller’s perspective. Mao, therefore, carefully evaluated each side’s stand and made a delicate compromise. In other words, he did not simply represent the dynasty’s position; rather, he combined the interests of all parties in his ruling. And he felt proud of himself for this artful construction.

Among law, reason, and sentiment, the crucial tension was between law and sentiment, the two often competing criteria in adjudicating lawsuits. A number of situations would generate law-overriding sentiment.

The aforementioned rapid increase of land value due to commercialization and population pressure, the wretched living conditions of the impoverished common folks, and the lineage institutions and values all contributed to considering sentiment. In Case 4, for example, in order to obtain a price markup and then the redemption of the land, the father-in-law had someone falsely accuse his son-in-law, which, according to Mao Yilu, “showed his inhuman cruelty and savageness.” Mao acknowledged that according to law, the false accusation should lead to a reciprocal penalty; even the father-in-law’s superior status would not entail a reduction of the penalty. Nevertheless, Mao still believed that status hierarchy and kinship sentiment did exist between in-laws. If the false accuser was punished strictly by law, the hierarchy would be nullified and the sentiment would be destroyed. So he reduced the penalty to beating with the heavy stick to preserve the hierarchy; and he ordered the son-in-law (the victim of the false accusation) to give 30 *liang* of silver to his father-in-law (the false accuser) so as to “strengthen the sentiment between them.”

In his efforts to balance law and sentiment, Mao Yilu not only paid much heed to the voices of the litigants, he also relied heavily on lineage organizations. In adjudication, especially in lawsuits regarding land sales, he often entrusted lineage heads to conduct investigations and to proffer opinions. In addition, he would also depend on the small group of the most influential male members of the organization to settle disputes by way of “public opinions” (*zhongyi* 眾議). Indeed, lineage members valued the “public opinions” so much that they often incorporated them into land sale contracts.<sup>43</sup> In Case 12, a salt worker falsely accused a fellow lineage member, demanding for a price markup and redemption for land his grandfather had sold some 40 years earlier. Mao Yilu held that neither the redemption nor the price markup was legal. But he still granted the false accuser 20 *liang* of silver as compensation on the basis of the lineage “public opinions.” To a significant degree, therefore, the result of the litigants’ requests and the judicial officials’ rulings depended on the lineage members’ involvement in the case and assessment of the situation. In such cases, Mao extended his courtroom from the government compound to local communities.

In a word, sentiment served side by side with the legal codes as one of the two basic elements in making judgments. It could supplement, support, or override law. Mao Yilu, of course, was clearly aware of the tension

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<sup>43</sup> Lin Ganquan and others, *Zhongguo tudi shi*, p. 340.

between sentiment and law. He viewed law as the “constant principle” (*jing* 經), and sentiment as “expediency” (*quan* 權). He admitted that from time to time he would have to modify legal rules in consideration of sentiment. This “violated ‘constant principle’ but enacted ‘expediency’” (*fan-jing er xingquan* 反經而行權). When he tried to “adjust between sentiment and law” (*tiaoting yu qingfa zhi jian* 調停於情法之間), his purpose was to “satisfy both sentiment and law” (*qingfa liangping* 情法兩平). His ultimate goal was to achieve harmony and fairness in society by considering both legal rules and sentiment/circumstances.<sup>44</sup>

It should be noted that in official legal culture, balancing sentiment and law was viewed as a deviation from the just course but praised as a judicial virtue. In his preface to Mao’s *Court Opinions*, the Prefect of Songjiang, Zhang Jiude 張九德, followed many Ming administrative guidebooks when he emphasized the classical precedents for such jurisprudence. Quoting the statement from the Confucian classic *Book of Changes* (*Yijing* 易經)—“[In deciding] major or minor cases, sentiment must be taken into account”—he contended that there was no difference between law and sentiment. What Mao Yilu did, according to Zhang, was to gain an understanding of sentiment and circumstances from the litigants and accordingly punish them by law, only hoping that there would be no mistake and, ultimately, that punishments would cease to be used.<sup>45</sup> To make fairness prevail, the really good judge sees the underlying harmony of law and sentiment and rules accordingly.

### *Mao Yilu and His Colleagues: Judicial Officials’ Interaction*

In balancing law and sentiment in land sales lawsuits, Mao Yilu also intensively interacted with his colleagues in the judicial system. Serving as a prefectural judge, he was responsible for reviewing the cases submitted from his subordinate district magistrates and reporting his rulings to the superior offices, such as the provincial circuit intendants of various kinds. *Court Opinions* shows that Mao Yilu enjoyed tremendous discretionary

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<sup>44</sup> In his study of price markups and redemption after land sales, Kishimoto Mio does not find any law cases involving the use of sentiment by prefectural judges (“Zhaojia huishu,” p. 450). This study can be a complement to his work.

<sup>45</sup> Mao Yilu, *Court Opinions*, p. 399.

power. In Case 3, for example, based on the consideration of sentiment, his predecessor had ruled that the old widow could redeem the land. Mao, however, emphasizing the significance of complying with law and reason, only allowed her to redeem half of the land but acquitted her of the false accusation. In Case 8, again, when the old man sought to redeem the tiny piece of land for his livelihood, the Huating District magistrate judged twice, based on the law, that the land should not be redeemed. But Mao stressed sentiment and reversed the verdicts, granting the old man the right to redeem the land. In the same way he changed many verdicts of his predecessors or of district magistrates.

Meanwhile, his decisions were subject to review by his superiors, and occasionally his opinions were overruled or revised due to considerations of legal requirements or sentiment situations. In Case 2, where an ancestral tomb was involved, for instance, the lower court had allowed the plaintiff to redeem a small piece of land. On appeal, Mao stated that the redemption was contrary to law and that it had been a “luxury” for the plaintiff to get it. Still, allowing for lineage-based sentiment he let the ruling stand and even increased the boundaries of the redeemed land so that it would actually include the ancestral tombs. Mao also used lineage grounds to reduce the legally required penalty against the plaintiff’s brother, who had lodged a false accusation, because the brother’s action had “involved sentiment.” But Mao’s superior, the Salt Circuit Intendant, held that “the land dispute may be handled with appeal to sentiment, but the false accusation of homicide must be punished according to law.” He remanded the judgment and urged Mao to decide on the penalty on the basis of the *Code*, which Mao did.

In this case, both the district magistrate and the prefectural judge violated law and made judgments on the basis of a balance of sentiment and law, and both their judgments were revised by their respective superiors on the same basis of balancing sentiment and law. And land ownership was altered without any legal ground. This case illustrates the dynamic negotiation among the judicial officials at the three authority levels. These officials all claimed to balance law and sentiment, but they made very different assessments of the relationship between the two. Indeed, in many law cases there was no question or doubt about facts, but at each authority level the adjudicating official made a different decision. In the judicial process, the interaction among judicial officials often seems to have focused on the claims and discourse of the balance of sentiment and law. The adjudication

outcome was situated in the combination of legal, non-legal, and illegal efforts and norms.

To Mao Yilu and his colleagues, balancing sentiment and law did not mean arbitrary adjudication. Instead, they envisioned upholding justice and redressing injustice as their lofty goal. Like litigants, judicial officials promoted distributive justice, granting people what they deserved on principles such as need, equity, hierarchy, and harmony. Unlike litigants, judicial officials were also seriously concerned with retributive justice, meting out penalties to those they believed “evil” and “greedy.” Balancing sentiment and law, therefore, concerned not only the allocation of land rights, but also the decision to make the wicked suffer, just as their dictums claimed: “Never unjustly sentencing a person” (*buyuan* 不冤) and “never letting off a bad element” (*feizong* 非縱). And to them, fairly allocating rights and justly punishing the evil could entail cosmological ramifications: It would preserve the harmony between Heaven and Earth and thus avoid causing summer frost, an indication of injustice. Their pronounced goal was to achieve harmony and fairness in society by considering both legal rules and specific situations.

In conclusion, I would like to suggest ways in which this short examination of land sales lawsuits adds to our understanding of local justice construction in late imperial China.

First of all, this study indicates dynamic interaction between social change and legal culture in late Ming China. During this period in the Jiangnan area where Songjiang was located, drastic social change, especially the commercialization of the economy, not only affected people’s everyday life, but also challenged legal culture, including values, norms, and practice. In order to achieve property rights and financial gains, litigation participants, regardless of their gender, age, socio-economic status, physical conditions, and moral values, sought their entitlements in lawsuits by resorting to any means, legal, non-legal, and illegal. They pursued every possible mechanism to achieve what they perceived as justice, based on a network of situations in light of which they deserved a remedy.

Meanwhile, judicial officials would have to deal with a situation in which either the law codes lacked adequate rules to handle new socio-economic problems, or many regulations in the law codes were constantly challenged by changing circumstances and thus fell into oblivion. In order to solve legal disputes, consequently, judicial officials would have to reinterpret existing rules to fit the new situations and use non-legal criteria

(including their own discretion, local customs, and lineage opinion) to negotiate with various parties. In the process of justice construction, local adjudication defended the dynastic order and facilitated social change, but societal change also invested the legal system with new meanings.

Secondly, this study suggests that both judicial officials and non-official participants negotiated actively in the process of local justice construction. Judicial officials enjoyed considerable discretionary power, but their power was not unlimited, and their decisions could be influenced by non-official participants. In the process of negotiation, the participants—both official and non-official—did not simply act in a structured manner; rather, they constantly revised their perception of their socio-legal situation and employed a variety of ways to seek their goals of justice. Within this negotiated order, of course, judicial officials and litigation participants did not act on an equal footing. As representatives of the government authority who judged law cases and drafted court opinions, judicial officials exercised enormous legal and discursive power over the negotiation process. And litigation participants, who most likely would have to face legal torture and often came from the bottom of the social hierarchy, tended to submit to the officials' decisions. On the other hand, in order to achieve the goal of justice, judicial officials would have to define and redefine complex situations (including various kinds of norms, values, practices, circumstances, social relations and structures) and constantly negotiate with colleagues, litigants, and local community members. Non-official litigation participants were by no means passive recipients of court verdicts; they would often take the initiative to interact with magistrates, fellow community members, and litigation opponents so as to attain the desired legal results.

In this process, judicial officials and other litigation participants assumed a very pragmatic attitude towards resolving disputes, and would not make a dichotomous “either/or” choice regarding the kinds of norm, method, space, and role in resolving disputes. Law was an important variable in achieving justice; but it was only one factor in determining judicial decisions. Judicial officials were expected to deliberate on all available information on particular situations. They emphasized the particularity of each case, and paid close attention to individual situations. Because of the specific circumstances, each case became a unique event, and as a result the judicial judgment turned out to be quite flexible. Resolving lawsuits, then, sought not to apply legal rules strictly and mechanically but to achieve a social goal with flexible means. The general and fixed law codes were

modified by particular and ever-changing circumstances. Accordingly, by negotiating within a broad socio-cultural framework, official and non-official participants together created “situated justice”—a contingent and particularistic legal result based on concrete circumstances.

Thirdly, this study further suggests that local court verdicts in the late Ming represented a compromise, a combination of various interests, norms, values, and practices. The Ming dynasty promulgated their official version of justice in law codes, including the limited regulation of land sales, the condemnation of false accusations, and judicial procedural requirements. But when people in local communities acted contrary to the law to demand land redemption and price markups, they believed they were striving for justice by obtaining what they deserved in a changing social environment. Justice did not mean a sheer implementation of the government-advocated legal order. Rather, it focused on balancing the interests of all adjudicating parties. Although it took the form of court verdict sent down by judicial officials, it was not created by judicial officials alone. Instead, it was constructed by all participants through an intensive process of negotiation. As a result, justice was not fixed. Nor was it imposed. Rather, it was a process in which people selected and reinterpreted rules and adjusted them to specific situations.

Finally, this investigation indicates an unstable land ownership situation in late imperial China. As a matter of fact, from 1500 through 1950, for about four and one-half centuries, the custom of price markups and redemption after permanent land sales had been prevalent across the entire country.<sup>46</sup> Practiced among the general populace and encouraged through adjudication, it made land transactions an on-going process: it did not end with the transfer of land titles but rather lasted for decades or even over a century. Depending on specific situations, former land owners could still demand their entitlements after they had permanently sold the land. While demonstrating a unique sense of justice, this socio-legal practice also reveals the lack of a clear definition and sound legal protection of land rights. It not only exerted profound effects on people’s everyday life but also jeopardized their chance to engage in business. I speculate that the lack of legal definition and protection of land ownership should be viewed as a crucial feature in Chinese socio-economic life before industrialization and may have accounted in part for the relatively slow pace towards industrialization. Indeed, even in the present, peasants in mainland China have not

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<sup>46</sup> Niida Noboru, *Chugoku hoseishi*; Chen Keng, “Zhaojia wenti.”

recovered their land rights, and the most recently promulgated *Property Law* (*Wuquan fa* 物權法, 2007) still fails to settle the issue of land ownership. I contend that, together with civil rights, land rights are an essential component of the human rights issue in China. If the land issue is not addressed, China may encounter serious political, economic, and social problems in the near future. The study of social practices and legal culture in imperial China can certainly facilitate our understanding of the country's contemporary concerns.

**Appendix:** Cases Involving Real Estate Price Markup and/or Redemption in *Court Opinions from Songjiang Prefecture*

Sequential Number	Case Title	Page Number(s) in <i>Court Opinions</i>
Case 1	“A Case of Homicide” ( <i>Yijian renming shi</i> 一件人命事)	414 (1/21b-22a)
Case 2	“A Case of Homicide” ( <i>Yijian renming shi</i> 一件人命事)	424-26 (1/38a-40b)
Case 3	“A Case of Ridding Three Evil Persons for Heaven” ( <i>Yijian weitian zhu sanhai shi</i> 一件爲天誅三害事)	446 (2/33a-34a)
Case 4	“A Case of Suffering” ( <i>Yijian daoxuan shi</i> 一件倒懸事)	470-71 (3/30a-31b)
Case 5	“A Case of Assembling a Crowd to Seize Grain” ( <i>Yijian juzhong jieliang shi</i> 一件聚衆截糧事)	472 (3/32b-33b)
Case 6	“A Case of Brutally Killing a Boy” ( <i>Yijian cansha nanming shi</i> 一件慘殺男命事)	498-99 (4/32a-33b)
Case 7	“A Case of Betrayal and Misfortune” ( <i>Yijian panjiao yibian shi</i> 一件叛剿異變事)	512-13 (7/10b-12b)
Case 8	“A Case of Destroying a House” ( <i>Yijian chaojiao quanjia shi</i> 一件抄剿全家事)	528-29 (7/35b-36b)
Case 9	“A Case of Discarding the Law and Destroying Family Property” ( <i>Yijian miexian tujia shi</i> 一件滅憲屠家事)	529-30 (7/36b-39a)
Case 10	“A Case of Going on an Inspection Tour” ( <i>Yijian chuxun shi</i> 一件出巡事)	536-37 (8/8a-9b)
Case 11	“A Case of Consecutively Killing Two People” ( <i>Yijian liansha erming shi</i> 一件連殺二命事)	556-57 (8/39b-40b)
Case 12	“A Case of Urgently Saving Costal Salt Furnaces” ( <i>Yijian jizheng binzao shi</i> 一件亟拯濱竈事)	558-59 (9/1a-3a)