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RESEARCH ARTICLE

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Beyond the Shadow of the Law: Firm Insolvency, State-Building, and the New Policy Bankruptcy Reform in Late Qing Chongqing

Abstract This paper modifies the historical assessment of the 1906 Qing Bankruptcy Code by proposing a new approach to the history of commercial dispute resolution. It argues that the Qing bankruptcy reform cannot be understood by evaluating only published sources, and that a thorough understanding of dispute mediation techniques must serve as a foundation for assessing the historical importance of the law. It offers a description of Qing insolvency dispute practices by providing an analysis of cases from the Ba county archives. The results of that analysis suggest that, although the Qing Bankruptcy Code was repealed soon after its introduction, the reform ambitions behind the new legislation were realized through the implementation of another New Policy reform, which allowed chambers of commerce to resolve bankruptcy disputes differently. This conclusion suggests that the basic vision of the Qing economic reforms of the New Policy movement had more of a lasting impact than has been assumed to date.

Keywords bankruptcy, New Policy reforms, Qing, Chongqing

Introduction

The New Policy (*xinzheng*) reforms of 1902–11 radically altered the Qing empire's approach to the legal foundations of local governance. One of the most unprecedented components of this reform movement was the series of economic laws that comprised the Qing Commercial Code (商律). Undertaken piecemeal, the general objective of the Qing Commercial Code was to "cast aside bureaucratic habits, and create a new order" for the relationship between officials,

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merchants, and the market.[1] The emperor instructed the authors of the code to "seek out the roots of malfeasance, and spare no effort" in their quest to "protect and support economic activity." In its first year of drafting, the Bureau of Commerce compiled regulations for chambers of commerce, laws of incorporation for Chinese firms, and general guidelines for merchants. The Bureau of Commerce then requested that merchants from every commercial center in the empire provide suggestions about further directions for the Qing Commercial Code.

In 1906 the Bureau announced that, while the new laws of incorporation could provide some protection for merchants, there were still cases in which insolvency brought "opportunities for a myriad of corrupt practices, and great harm."[2] Noting that bankruptcy had become more common in recent years, the famous jurists Shen Jiaben and Wu Tingfang consulted with the laws on bankruptcy in nations from the east and the west, and the statutes of chambers of commerce in all of the Chinese ports, and the customs of merchants, and used them as a reference for a new addition to the commercial code: "the Bankruptcy Code." The new law on bankruptcy was promulgated in May of 1906 and declared valid from August of that year. To this day, it remains one of the least studied pieces of legislation from the late Qing New Policy era (1902–11). Because the law was repealed in the December of 1907 less than one and a half years after its creation, it was dubbed a failure.

This paper sheds new light on the 1906 Bankruptcy Code by proposing that scholarship on this reform has yet to move beyond the shadow of Chinese law. Studies on China's first piece of bankruptcy legislation have been doomed from the outset by limited use of sources, historiographical insistence upon the derivative and halfhearted nature of the New Policy reforms, and expectations that Chinese merchants approached business failure without any reference to law or the court system. Presuming from the outset that the Qing Bankruptcy Code was legislative folly, no possibility of an honest assessment of the law's background, origins, and impact has existed.

This article attempts to overcome the boundaries of contemporary scholarship on the 1906 bankruptcy law by placing it within a larger trajectory of the history of bankruptcy in Qing China. First, it widens the depth of scholarly inquiries on the history of bankruptcy in Qing China by looking beyond the central legal and national news sources to uncover how bankruptcy disputes were handled in practice. Second, it increases the temporal horizon within which the import of the 1906 Bankruptcy Code is considered by placing the New Policy reform within a

[1] *Qing shilu* (QSL): Guangxu 29, Month 3, Gengchen. The Qing Commercial Code was also intended to serve as the regulations for the Bureau of Commerce, which had been founded in early 1903.

[2] QSL: Guangxu 32, Month 4, Yihai.

longer history of interaction between merchants and government officials over the role of the state in handling insolvency cases. Third, it proposes a new interpretation of the legacy of the Bankruptcy Code by examining its brief career in the context of early twentieth century commercial dispute resolution practices.

Seventy insolvency cases from the Chongqing Ba county archives, collected over a year of research in the field, serve as the foundation of a descriptive analysis of bankruptcy practices in Qing China. Although the cases are all from the archives of the Chongqing *yamen*, almost none involve only Chongqing natives. The city was an empire-wide trading depot where large merchant groups sojourning from other ports traded with first-time wholesale traders from other provinces, local shops, and producers operating throughout the greater southwest. The practices employed by merchants handling firm insolvency in Chongqing had to be recognized by commercial actors from throughout the empire. Single firm bankruptcies could involve satellite branches, debtors, and creditors from all of the other major commercial centers of Qing China. The Ba county archives thus allow an opportunity to examine how diverse commercial actors of various geographical backgrounds, levels of wealth, and amounts of experience managed to negotiate one of the most complicated forms of commercial disputes: the lose-lose series of negotiations determining how to distribute the losses associated with firm failure.

The analysis of insolvency disputes in Chongqing offers several new conclusions about the history of bankruptcy in the Qing and the place of the 1906 Bankruptcy Code in future historiography. It demonstrates that several overlapping and interlocking systems of dispute mediation existed for insolvent firms and their creditors, and that bankruptcy mediation took place both inside and outside of the court room. The magistrates who arbitrated insolvency disputes are shown to have actively sought to resolve the cases that wound up on the docket at the same time that they relied upon the participation of litigants and other dispute mediation forums to reach viable and enforceable settlements. It also finds that the processes of insolvency dispute mediation were standard across merchant communities in the Qing. Bankruptcy conventions in general practice were entirely consistent with the framing of the 1906 Bankruptcy Code. The new law was an elegant summary and codification of existing practices that proposed to integrate court sanction into the bankruptcy settlement process.

In stark contrast to those who have argued that the bankruptcy law and other New Policy reforms failed because they were imperfect and hasty imitations of Western legal traditions, this series of new findings suggest that the main failure of the bankruptcy law was its very fidelity to current practices. The new law was unable to offer new answers to any common problems facing litigants in insolvency cases. On the other hand, an earlier New Policy reform—the law on chambers of commerce—did manage to provide solutions to some of the common enforcement dilemmas of bankruptcy disputes, and led to a general shift

in the way that insolvency cases were handled in the twentieth century. The link between the failure of the 1906 bankruptcy reform and the success of chambers of commerce in changing insolvency dispute mediation is a testament to an important shift in the way that bankruptcy cases were handled starting in the early twentieth century. This change in the resolution of insolvency disputes was only one indicator of the realization of the ambitious program encapsulated by the 1906 Bankruptcy Code and other New Policy commercial reforms. Together, these central legislative initiatives began the process of reshaping the way that businesses, merchant groups, and the Chinese state interacted in the twentieth century.

Writing a preface in August of 1907 for Chang Nieh-Yün's published translation of the Qing Bankruptcy Code of 1906, J. H. Teesdale—named partner at the Shanghai legal firm of Platt, Teesdale & Macleod—offered a bleak estimate of the future China's recent New Policy reforms. Teesdale wistfully recalled the exuberant spirit of innovation that had accompanied the early days of the New Policy movement, when the Bankruptcy Code was first proposed. It was:

> A time when the cry of Reform was very loud and aggressive, and when, I think, the majority of Europeans in the foreign ports of China were of opinion [sic] that the judicial and administrative systems of the Imperial and Provincial Governments of China would be completely Europeanized in form, though they were possibly sceptical of such system ever being carried into effect…[3]

He then went on to explain that, in the interim, enthusiasm for reform had failed to crystallize into enthusiasm for implementation, and the spirit of change had dissipated:

> But have the Chinese during the last twelve months continued to exhibit that anxiety for foreign judicial systems? And do we see, where those systems have become law, that readiness to put them into force?... I doubt very much whether, if Counsel pleading in [the Mixed Court of the international settlement in Shanghai] quoted one of the Articles of the Bankruptcy Code, the Magistrate would have a copy of his own to refer to…[4]

In the more than one hundred years that have passed since Teesdale's tepid estimation of the New Policy reform movement, scholars have yet to agree about how to assess the campaigns for reform that took place toward the end of the Qing. Some have credited the reforms of the New Policy legislation with laying

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[3] Chang Nieh-Yün, *Translation of the Chinese Bankruptcy Code of 1905*.
[4] Ibid.

the foundations of the modern Chinese state. Other scholars conclude that the New Policy reforms (1901–11) were simply ineffective: even profound administrative and political change did not prevent the collapse of the dynasty in 1911, and many of the programs born under the auspices of the reform movement never fulfilled their initial promise.[5]

The Bankruptcy Code of 1906 is one of the laws whose mixed legacy has led to a lackluster treatment in histories of China's law and commerce.[6] The life of the Bankruptcy Code was extremely brief. It had met with vocal opposition from merchants, and, as Teesdale suggested, it had been all but ignored by magistrates presiding over bankruptcy cases across the empire. The framers of the code were accused of making a hasty adaptation of Western laws that produced a poor fit for Chinese society. In 1909 Yoshimasa Matsuoka 松岡義正, employed at the Bureau of Commerce office in charge of drafting laws, finished a new draft of the bankruptcy code, but it was never made into law. A new Bankruptcy Code was not introduced to China until 1935.

Much of what we know about the fleeting life of the Qing Bankruptcy Code depends on very few types of sources. Scholarship primarily consists of studies on the formal attributes of the code itself and the debates over the new law printed in one or two national papers. The local impact of the bankruptcy law on any particular market or court has never been studied. Lacking a study designed to assess the history of insolvency disputes and bankruptcy practices among Chinese merchants, historians have been unable to probe into the historical import of this brief reform effort.

This paper draws on court documents from seventy insolvency cases from the Chongqing Ba county archives to evaluate a local environment into which the

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[5] Roughly speaking, the division between these two perspectives is chronological. Early treatments of China's reform era tended toward a measured assessment of the New Policy programs. Both Meribeth E. Cameron's early 1931 study and Norbert Meienberger's 1980 monograph concluded that an evaluation of the policies was impossible because of the collapse of the dynasty before the first phase of reform was complete. Chuzo Ichiko's chapter in *The Cambridge History of China* offers a much dimmer estimation of the reforms, framing them as little more than an insincere attempt to garner popular support for a fading dynasty. A reevaluation and rehabilitation of the New Policy era has taken place over the last generation. For a range of examples, see the series of essays by Jérôme Bourgon, Luca Gabbiani, Richard S. Horowitz, Julia C. Strauss, and Roger R. Thompson published in *Modern Asian Studies*, vol. 37, no. 4 (2003). Monograph-length studies include Douglas R. Reynolds' *China, 1898–1912: The Xinzheng Revolution and Japan*, and Kristen Stapleton's *Civilizing Chengdu: Chinese Urban Reform, 1895–1937*.

[6] In spite of the fact that the bankruptcy law is usually passed over in general works, several scholars have made efforts to document and begin discussion about the history of bankruptcy in China. The works of Thomas Mitrano, Kwan Man Bun, Yao Xiulan, Wang Xuemei, Roman Tomasic, Margaret Wang, Zhang Heng, Yang Fulin, and Chen Xiahong have illuminated key aspects of the history of the Bankruptcy Code.

bankruptcy reform was introduced. It assesses the extent of the reform's impact by studying the history of dispute mediation in Chongqing from the mid-eighteenth century to the 1911 Republican Revolution.[7] Although neither Chongqing nor any other market can be considered representative of conditions throughout China, the bankruptcy and insolvency dispute mediation practices of this cosmopolitan commercial center reflected an empire-wide accumulation of customs and practices: the port hosted traders from throughout China's southwest as well as merchants from the commercial and production centers across the empire. The businessmen who worked and lived in Chongqing were primarily sojourners or long-term residents of the city from other cities and provinces. Thus, the city's economic practices consisted of a mix of customs maintained by various trade and regional groups representing a wide range of Qing China's merchant population.

Even though the Bankruptcy Code was never implemented, its promulgation was an important historical landmark in the history of the relationship between merchants, local courts, social mediation forums, and the central state. Court records show that insolvency and bankruptcy issues were part of an optative discourse about the mutual reinforcement of the state and the market. An examination of insolvency cases from Chongqing reveals that the source of merchants' dissatisfaction with the court was not addressed by the new law. But even as the Bankruptcy Code fell into disuse, another reform institution—chambers of commerce—began implementing the very vision for merchant-court cooperation outlined in the bankruptcy reform. Fixation on the doomed legal life of the Bankruptcy Code has prevented historians from appreciating the dimensions of the administrative program outlined in its framing. It was this administrative innovation—and not the legal process itself—that became the enduring legacy of the Bankruptcy Code.

Bankruptcy in Chongqing Before the New Policy Reforms

A number of factors conspired to ensure that bankruptcy and insolvency became increasingly common phenomena in Chongqing over the course of the nineteenth and twentieth century. The city's profile as a point of transshipment for goods flowing between the greater southwest and the "downriver" regions of the middle and lower Yangzi River basin meant that its economic position in the empire

[7] Sixty-nine of the cases used in this study were transcribed by the author from the Sichuan Provincial Archives' Ba county collection. One of the cases was copied from the Stanford collection of the Huang and Bernhardt archival series. The earliest case is from 1767, and the latest court action covered in the materials took place in January of 1911. A complete list of the cases can be found in Appendix.

developed in synch with the growing importance of the Yangzi River as a commercial artery. The devastation of Sichuan's population during the Ming-Qing transition, followed by rapid settlement in the first century of Qing rule and relative economic prosperity in the region, meant that the entire province—and Chongqing in particular—experienced exponential demographic growth over the course of the Qing and remained a city populated primarily by immigrants, rather than natives. Economic prosperity brought migrants and sojourners from across the empire to settle and trade in the increasingly cosmopolitan port, where wholesale trade in both finished and raw goods flourished.

Fortunes were made and lost in Chongqing at a fast pace: most business in the city was based on wholesale transactions, which were high-risk commitments made among merchants who were often complete strangers. In the lawsuits that sometimes resulted from these business deals, plaintiffs frequently failed to report the name of their business counterpart correctly, often producing only mangled approximations or only the name of a firm. In addition to the risks of dealing with strangers, misfortune of other sorts could strike at any time: a dip in the price of a hotly-traded commodity, a currency shortage, or an ill-fated shipment down the notoriously treacherous passes of the upper Yangzi River might turn a business venture from a promising investment into an unmitigated disaster. The city's role as a point of transshipment and wholesale exchange made merchants in Chongqing particularly sensitive to booms and busts.

By the time of the Guangxu era (1875–1908), the city's reputation as a center of trade was well established. Magistrates and provincial officials concerned about the social effects of rapid growth and economic risk struggled to exhort merchants to moderation and reason, to take fewer risks and shore up the stability of the market. Some of the most common targets of government proclamations during this time were market fraud and criminal bankruptcy.[8] The unpredictable turns in the market engendered real fears about criminal plots to turn fair trade into opportunities for individual profit at the expense of honest businessmen. Proclamations about the evils haunting the market stalls became increasingly frequent over the course of the twentieth century. The following example, from September, 1891, is representative of the genre:

> The city of Chongqing is at the intersection of land and water routes. Merchants converge here like the spokes of a wheel. Trade flourishes and a host of goods abound. This is truly the place where the best and most

[8] I use the term "criminal bankruptcy" to refer to the Chinese words *daobi* 倒閉 and *daopian* 倒騙. These terms combine the notions of intentional default and fraudulent claims of bankruptcy.

> beautiful of the entire province gathers. As for the peaks and troughs of the market here, they are intimately tied with the economies of Huguang and Zhejiang downriver, and Gansu, Yunan, and Guizhou over the mountain passes. As of late, cases of default have been piling up for shops in every kind of trade. When it is a true insolvency, the extent of the deficiency must be calculated and the greatest energies must be exerted in order to pay back what remains…. Some are guilty of deliberately plotting fraud… others open a brokerage, or set up a firm, and then empty the stores. This is not dependable business: as soon as debts begin to pile up, they take the capital and abscond, or hide away the money in some other place, leaving behind only damaged remnants of the goods…. Although others take a loss, the defaulting firm reaps a profit… the capital investments of a host of others thus fattens the pocket of one. This type of plotting to cheat is tantamount to fraud. Even if the con-men escape the law of the empire (國法), they are sure to encounter divine punishment (神譴)…. Let this notice be posted in all of the wards of the city so that each broker and firm shall be apprised: … Insolvent firms must find a way to add funds to the partnership in order to repay the accounts owed, and above all must not disappoint the trust of others. Thus will business recover of its own accord.[9]

Despite the proclamations of dozens of Chongqing magistrates and vocal threats from provincial officials promising harsh punishment for insolvent firms that failed to settle with their creditors, traders in Chongqing continued to take risks, firms continued to fail, and bankruptcy disputes continued to threaten the fortunes of the city's merchants.

Bankruptcy Settlements in Chongqing

The normal process of bankruptcy in late Qing Chongqing was one that happened entirely outside of the courts.[10] It was a process that operated without legal guidelines, and it was largely the product of negotiation between individual merchants, trade groups, and local mediation institutions.[11] The bankruptcy

[9] Ba county Qing Archives (BXQA) 32–3761; 1.

[10] There were three options for an insolvent firm: (1) continue business by inviting new partners to invest or taking out loans; (2) declare bankruptcy and dissolve the firm; (3) default on the firm's debts and go into hiding. Since the first option has more to do with partnership structures and the management of business capital, I will cover it in other work. This paper will focus on disputes that emerge out of options 2 and 3.

[11] The term "local mediation institutions" is used here to refer to mediation forums that correspond to geographical entities. For bankruptcy cases in Chongqing, these were the *jianbao* 監保 collective responsibility heads, neighborhood assemblies, and street shop committees. For a more detailed description of these systems and other merchant-specific dispute resolution forums, refer to my forthcoming dissertation.

procedure in Chongqing was remarkably uniform over time: from the earliest case in 1767 all the way to the ending of the last case in 1911, the standards for establishing a firm's bankrupt status were clear and consistent. The process was not outlined in the Qing legal code, nor mentioned in Qing administrative guidelines. Its details were not enumerated in any published source that I have found, and none of the sources I encountered in my year in the archives explicitly describe the entire practice, but the customs associated with it were recognized by provincial officials, magistrates, and merchants from all over the Chinese empire. Not a single legal case I encountered successfully circumvented the steps in this process. Thus, despite the fact that there was no official status of "bankrupt" in Qing legal and economic rhetoric, a firm's debts could be firmly settled without full payment, and bankruptcy negotiations were upheld by the empire's courts even when they had been conducted without legal recourse.

In every case, a final bankruptcy settlement depended on three components: (1) A thorough accounting of firm debt; (2) an agreement by all of the creditors to a settlement; and (3) a final authorization of the bankrupt firm's account books. To prevent any sort of cheating, each stage took place at gatherings of trade groups, local mediation institutions, or the entire group of creditors. Since these steps fell firmly under the purview of social mediation forums, the court record usually only offers oblique hints about their normal operation (especially since bankruptcy proceedings only ended up in court after having gone awry). We are afforded a rare glimpse of the settlement process, however, from a copy of the records of the bankruptcy settlement of the Yuhe 裕和 cotton firm, which were recorded into evidence in the course of a dispute between one creditor and one partner of the bankrupt firm.

Among the documents copied into the court docket was a "Letter of Assent" (允單), in which the individual firms first agreed to the terms of the initial settlement in 1839. This document described the settlement in detail:

> Because the Yuhe firm owes the "Western *bang*" and the "Yellow *bang*" merchants over 29,000 taels from cotton purchases, and the owners of Yuhe have been overcome with outside debts, they cannot pay. On Day 13 of this month, the owners of Yuhe went out to collect on outstanding accounts, and sent a letter asking dispute intermediaries to beseech the creditor firms on their behalf. On Day 26 all of the firms were invited to come together, and it was agreed by each firm that the Yuhe firm's owners should continue to collect the firm's receivable accounts, and that the creditor firms would wait until Month 8, 9, or 10—but before the end of the year—to receive the amount collected, and then the parties to the settlement would arrange two disbursements of equal payments to each firm. Within the dispersed amount, there were sales contracts for several firms purchasing cotton which came

> due in Month 5, and the creditor group split the agreed-upon rate of disbursement for Yuhe's outstanding debts, at 1/5 the original amount. A further 1/5 of the total owed was disbursed to restore good faith. The firm owners are exhausting their efforts in collecting outside accounts to return the remaining funds owed to creditors. The remaining debt will be apportioned to each of the four partners, who will each write personal notes, which will be paid in installments. Each firm has consented and agreed, and it is not permitted to privately demand payment.[12]

At the end of the note, eight firms belonging to the Western *bang* and eleven belonging to the Yellow *bang* affixed their firm seals, and added the single character *yun* (允, "assented") underneath the imprint. The next creditor agreement, in 1842, marked the completion of the round of group disbursements specified in the original agreement, and described how the remaining debt was allotted in equal portion to the individual partners, and paid out via non-interest-bearing notes issued by each partner and then distributed among the creditor firms. At the conclusion of the first stage of settlement and the beginning of this second stage, the Yuhe cotton firm ceased to exist, and the bankruptcy process was concluded. Further payments would be made in accordance with the individual means of each partner within the terms specified by each note.

At the end of a bankruptcy, an insolvent firm ceased to exist and its partners were no longer held liable for the firm's debts beyond whatever responsibility they had been assigned in the settlement. Often, one partner would be given final oversight and responsibility for the completion of the settlement, but the amount owed might also be divided evenly among a firm's partners (as in the example above). The agreements that emerged from these proceedings were considered binding and defined the extent to which the court was willing to pursue debtors in the cases where insolvent firms reneged on standing agreements and refused to pay creditors. New claims could not be brought against the defunct business unless the validity of the bankruptcy process itself was called into question. An out-of-court bankruptcy settlement was an irrevocable and inviolable precedent, with which courts could not meddle.[13]

Merchant and community institutions demonstrated a capacity to handle

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[12] Huang-Bernhardt Collection of Chinese Legal Documents (HBCCLD) 04–2566; 8, 9, 10.

[13] On the rare occasions when magistrates did attempt to skip over or interfere with the bankruptcy process it was usually because of outside factors, and it often resulted in stalled or unsuccessful litigation. For a detailed case analysis of such an example, see Maura Dykstra, "Going Under: Debt, Liability, and Litigation in the *Hu Wan Chang* Remittance House Bankruptcy," delivered at the International Workshop on Chinese Legal History/Culture/ Modernity, May 4–6, 2012, Columbia University.

almost all of the logistical demands of the bankruptcy settlement process. They maintained knowledge about locale- or trade-specific customs and conditions. They witnessed, ratified, and sometimes even guaranteed the terms of contracts and settlements. They sometimes even arranged or provided the means of a settlement, by offering long-term notes or overseeing payment plans to creditors. Only after payment had been arranged to the satisfaction of all parties could the firm close its accounts. Once a firm's account books were closed, the partners ceased to bear liability for any firm obligations. The eagerness of creditors to recover their funds and of firm partners to end their liability meant that compromises were often struck quickly in bankruptcy negotiations.[14]

Bankruptcy Cases in Court

Analysis of the Chongqing insolvency cases reveals a consistent labor-sharing arrangement between the court and other mediation forums available to merchants. Social mediation institutions were responsible for the negotiation, agreement, and arrangement of settlements outside of the courtroom. Because merchants and local mediation parties were capable of handling all of the basic tasks associated with the negotiation of a settlement, the average dispute never required the interference of the court. What the magistrate handled was the punishment of individuals who refused to cooperate in the settlement process, or attempted to circumvent it through fraud or deception. The detention of flight risks, enforcement of agreed-upon obligations, or punishment for noncompliance with groups attempting to reach a settlement were handled by the court system, which maintained a monopoly on the use of force. Every other aspect of dispute mediation was handled by out-of-court institutions: the interpretation of obligations, the calculation of amounts owed, the restructuring of insolvent firms that were not liquidated, and the arrangement of long-term payment plans for dissolved firms were negotiated in out-of-court forums or with the aid of third-party mediators. Since all three of the components of a successful bankruptcy were supposed to be settled in social dispute mediation forums, courts were only supposed to be invoked when these processes broke down. Even then, the role of the magistrate was to urge and enforce settlements, and not to decree them.

Even when cases had already been accepted by the court, magistrates relied upon the groups already involved in the settlement process to handle the

[14] None of the cases recorded in the legal record specify a settlement that resulted in a full repayment of debts, but it is impossible to estimate the average rate of repayment, since the terms of settlements were not often reported to the court, and were sometimes not reached until after a case had left the court system.

negotiation of bankruptcy settlements. Thus, although magistrates usually permitted requests to investigate claims of wrongdoing in insolvency disputes, the court's role in interpreting the validity of these claims remained minimal, and never infringed upon or provided alternative interpretations to those reached outside of the courtroom.[15] Plaintiffs in insolvency cases would be referred to non-court mediation forums if they had not made a good-faith effort at third-party mediation before coming to court. If a bankruptcy settlement had been reached in mediation and the defendant showed no signs of flight or physical resistance, or if settlement had not been earnestly attempted, the magistrate normally would insist that the would-be litigants continue to pursue out-of-court forms of settlement. This was especially true when clear evidence of the debt or an agreed-upon settlement existed. The equivocation of magistrates handling insolvency disputes was based on several important anxieties: (1) Anxieties about information. Magistrates realized that, even in the presence of written evidence, they usually lacked a great deal of information about the details of commercial disputes, which often involved several actors; (2) Anxieties about knowledge. In addition to lacking information specific to any given case, magistrates also recognized that they had little knowledge about the normal conduct of commercial affairs, which usually entailed a host of local, trade-specific, and ad hoc arrangements; and (3) Anxieties about the inflexibility of court verdicts. Magistrates recognized that, especially in insolvency cases, settlements were always second-best solutions that required compromise. Since court verdicts would clearly create winners and losers, and might be founded upon incorrect information and flawed knowledge about the original circumstances, magistrates remained loathe to produce concrete verdicts.

Chongqing's magistrates responded to the court's limitations by incorporating non-court mediation institutions into the process of arbitration. The court's lack of information was addressed by commanding collective responsibility heads, merchant groups, and the city's Eight-Province Association to investigate the

[15] Magistrates were very likely to permit cases about bankruptcy and insolvency. More than half of the cases (40 of the 70, or 57%) either began with a court session (after plaintiffs were allowed to request a trial by bringing the defendant in to the *yamen* office), or were accepted immediately upon the first suit being filed. Of the remaining cases, 29% (16 cases) appeared in the sample after already having been to court (either because the first suit had been lost, or because the first part of the case was contained in another docket), 3 cases were accepted pending an examination of plaintiff's physical injuries (because the suits alleged violence), another 3 cases were negotiated between the magistrate, provincial authorities, and foreign consuls outside of the court system because they were charges brought by foreign firms; and only 11% (8 cases) were not permitted upon the instance of the first suit. Bankruptcy cases were both more likely to be accepted on the first suit and more likely to begin with a court session than other forms of commercial disputes, such as cases involving default on payment for or delivery of goods.

causes and nature of commercial disputes.[16] The same groups were also called upon to produce balanced interpretations of liability in complicated cases, to overcome the court's inability to navigate unfamiliar commercial agreements. The magisterial reluctance to hand down court verdicts in which one party was made victor by state fiat was dealt with by insisting that litigants themselves agree to settlements.

The link between magistrate's verdicts and the negotiation of settlements in social mediation forums meant that extralegal mechanisms of settlement were quite powerful. Negotiations between litigants could be flexible, at the same time they could incorporate the coercive authority of the court. The state maintained its monopoly on the use of force, while merchant networks or local mediation forums used their expertise to arrive at settlements that could be negotiated to suit the varied interests of disputants.

It was thus only when parties to the bankruptcy process threatened to undermine settlement negotiation or back out of standing agreements by unfair, treacherous, or violent means that the court had to be involved in the resolution of commercial disputes. In spite of its reluctance to make precise judgments, Chongqing's court proved willing on several occasions to use its authority to pressure creditors and debtors to produce settlements. In twenty-six of the seventy cases (37%), one or several defendants who had failed to pay the amount of an agreed-upon settlement were taken into custody pending payment.[17] This type of punishment was usually only handed down after repeated warnings, and custody often lasted less than a month, but detention pending payment could drag out for more than a year.[18] In cases where treachery was suspected of a debtor who had been delaying payment, or where a litigant disobeyed a direct court order to participate in the settlement process, physical punishment could be

[16] The Eight-Province Association is one of Chongqing's famous institutions of merchant representation and dispute mediation. Several studies have been published on the character and functions of this institution. For detailed examinations, see Zhou Lin, "Chengshi shangren tuanti yu shangye zhixu—Qingdai Chongqing basheng kezhang tiaochu shangye jiufen huodong wei zhongxin," 80–99; Liang Yong, "Qingdai Chongqing basheng huiguan chutan," 93–97; and Shi Yuhua, "Huiguan yu zhengfu de hudong guanxi—jianlun Qingdai Ba xian de basheng huiguan," 34–36. The organization is similar to what William Rowe describes in Hankou as the "Eight Great Guilds" (八大行 or 八大幫), which suggests that this type of federated merchant association was not uncommon in commercial centers. For Rowe's description, see Rowe, William T. *Hankow: Commerce and Society in a Chinese City, 1796–1889*, 331–34.

[17] See BXQA: 12–10082, 44–26117, 40–18605, 37–13815, 44–26509, 44–26809, 44–26929, 44–27060, 44–27131, 31–02370, 44–27210, 44–27231, 44–27507, 39–16459, 42–22049, 44–27981, 32–3847, 45–28096, 39–17177, 55–2633, 55–2704, 55–4177, 55–2804, 55–2824, 55–2793, 55–2835.

[18] Cases in which custody lasted between one and three years included BXQA: 44–26117, 40–18605, and 32–3847. In one extraordinary case, one defendant died in custody after three years of detention, and another was held for seven years. See BXQA: 12–10082.

administered. Eleven of the seventy cases (16%) involved either striking or caning as punishment for the debtor or the debtor's guarantor for treacherously delaying settlement.[19] Most of these punishments were handed down in cases where the debtor was already being held in custody, and had continued to prove unwilling or unable to settle. In the overwhelming majority of instances of punishment, the court did not use force to realize its own settlement verdict, but to compel litigants to cooperate in producing their own agreement.

In many of the debt and bankruptcy cases brought before Chongqing's court, the local administration was required to provide only the threat of punishment or costly litigation, in order to encourage compliance with the dispute mediation processes already functioning outside of court. One case from 1889 provides an excellent illustration of the court's role as a neutral enforcer of settlements that emerged from processes operating entirely outside of the boundaries of the court. The plaintiff, Chen Zhongcheng, brought Xue Taosheng to court with accusations that the defendant had closed up his shop and fled the city, and then resisted mediation after he was finally discovered by his creditors.[20] The magistrate permitted the first suit with the simple stock phrase "Await summons, testimony, investigation, and pursuit of the issue" (侯喚訊察追).[21] The magistrate then issued a summons, but the suit disappeared from court until six months later, when the plaintiff brought the debtor into the *yamen* office. The plaintiff explained that, in the six months since the summons was issued, the defendant had paid more than half of the sum owed, but that he had now started to delay his payments once more. The magistrate concluded that the defendant "should return the silver owed to Chen Zhongcheng and Da Yushan according to his own deadline of 10 days," ordered him to find a guarantor, and threatened punishment for any violation of the defendant's self-imposed deadline.[22] The case once again and finally disappeared from the court. The court's predictable insistence upon participation in and fidelity to the normal bankruptcy processes was well enough understood by merchants that many cases were settled with a summons alone, and never required a trial.[23]

The cooperation between the local administration and out-of-court systems maintained the same equilibrium in Chongqing from at least the Qianlong (1735–96) period down to the turn of the twentieth century. Bankruptcy

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[19] See BXQA: 44–26117, 40–18605, 44–27507, 39–16459, 44–27646, 42–22049, 32–3847, 39–17177, 55–2633, 55–2804, 55–2793.

[20] BXQA: 44–26855, 2.

[21] Ibid.

[22] BXQA: 44–26855, 5.

[23] Of the forty-nine cases from 1767 to 1904, ten of them (20% of the total) consisted only of one or two suits, and disappeared as soon as the magistrate agreed to summon the litigants to court. This total does not include the case discussed above or others like it, where the plaintiff brought the defendant in to the *yamen* and initiated a court investigation in lieu of filing a suit.

proceedings outside of court were able to accommodate just about any contingency except for a complete inability or refusal to repay. Plaintiffs could and did use the threat of court punishment as a means to bolster their own out-of-court settlements. But the court only wielded its power to punish defendants with circumspection. Litigants were ordered to participate in the bankruptcy settlement process outside of the court system, and were threatened with punishment for willful obstruction or fraud, but only after repeated warnings or flagrant violations. In this way, the court's role as a silent enforcer could be a much-needed incentive to get disputants to reach a speedy and mutually-agreeable settlement, at the same time that the court maintained as limited a role as possible, in order to prevent the expenditure of the court's limited resources and to refrain from unfair punishments and court orders based on incomplete knowledge.

In their response to magisterial reluctance to quickly hand down verdicts with heavy sentences, plaintiffs sometimes suggested that the state did not go far enough in punishing merchants who intentionally defaulted on business accounts. Writers of plaints often alleged that defendants' actions were "tantamount to theft" and "threatened the security of the entire market," and pleaded with magistrates to "prosecute the defendants to the full extent," in keeping with the bold pronouncements and proclamations of the local and provincial government. But magistrates remained bound by their own precarious role in the mediation process and their perennial lack of information. They could do little else than urge litigants to employ mediation processes beyond the boundaries of the court and punish those who flaunted mediation processes. At its best, this system urged disputants to find reasonable compromises for all parties involved. At its worst, this system could produce years-long litigation deadlock, if one or both sides of the dispute failed to produce needed information or accept a compromise. For better or worse, in these cases magistrates protested their own inability to intercede without information and agreement on both sides. It was a system that required disclosure and participation on all sides.

Merchant Demands for a New Approach to Bankruptcy

Merchant calls for more government involvement in the bankruptcy process were not unique to Chongqing. As the dawn of the twentieth century drew near, merchants in commercial centers throughout the empire began to demand that the central government provide guidelines for local officials to take a more active role in the bankruptcy process. The earliest Qing statute on bankruptcy was a result of this general movement. It was adopted in response to a memorial submitted in 1899 by Liu Kunyi 劉坤一, the Superintendent of Trade for the Southern Ports and Governor-General of the wealthy province of Liangjiang

(which included the commercial centers of Shanghai, Suzhou, and Hangzhou). His memorial was motivated by the pleas of Shanghai merchants, who filed a request under the aegis of the Shanghai Bureau of Commercial Affairs. The Shanghai merchant portrayal of the dilemmas surrounding bankruptcy resembled both the characterizations of Chongqing merchants and the rhetoric of Chongqing magistrates. Their plea to Liu was included in his memorial to the throne. It read:

> In recent times the market grows daily. Fraudulent bankruptcy has become more and more common. The perpetrators are protected by their proclivity for coercion, and they obtain their aims by prolonged litigation. It is has reached the point where one may raise capital funds and purchase goods at daybreak, and flee with everything at nightfall. Yesterday the goods were delivered; today they are already hidden away, the deeds of ownership for the shops or warehouses concealed, and the perpetrator fled. Everything has been sold off at low prices. Malfeasance flourishes, and the harm is great. If these offenses were all sentenced in accordance with the statutes on fraud and misappropriation, the punishment would still be light, although the offense grave.[24]

In response to the Shanghai merchants' pleas, Liu memorialized the throne with a proposal that:

> From this day forward, whenever there is a case of insolvency, it shall be handled in one of two ways: those cases in which little is lost in the insolvency shall be tried in accordance with the normal statutes on financial fraud, and sentenced by analogy in accordance with the statutes on theft and robbery, but without tattooing. In those cases where the capital funds are secreted away, and the goods of other firms are hidden somewhere, when the serious offense involves a large amount of money, it involves the entire market. Thus in these circumstances the case will be handled in accordance with the regulations governing embezzlement among the money shops in the capital city. Defendants will be sent to a military garrison on the frontier while awaiting death by strangulation after the assizes, and the amount owed shall be pursued under government supervision.

The Board of Punishments responded to the memorial by affirming Liu's request. The Board of Punishments then requested and received an imperial

[24] The text of the following excerpts of Liu Kunyi's memorial is from the Bureau of Punishment's summary and response, which is published in *Guangxu zhengyao*, Guangxu 25, Month 10.

rescript expressing approval for Liu's memorial. In its published opinion, the Board cited the pressing need for a uniform policy to address the empire-wide increase in bankruptcy disputes and insolvency cases:

> So that all of the treacherous merchants shall know and be chastened, whereupon the market will regain its vitality day by day. Furthermore, regarding fraudulent bankruptcies, there are more piling up in every province of late. They should all be handled according to this statute, so that there is a clear standard…. This is the report of how the Board of Punishments came to craft its "Established Regulations for the Punishment of Treacherous Merchants who Commit Fraudulent Bankruptcy (奸商倒騙定例治罪)."

When the imperial court began the task of composing new laws in the early twentieth century, bankruptcy was placed on the list of issues that required address in China's first commercial code. This early memorial demonstrates that, even if the pressing need for an imperial policy on the issue was only articulated at the end of the nineteenth century, local improvisation had already formed into established practice in commercial centers throughout the empire.

Chongqing is one of the places where local bankruptcy measures were adopted before the promulgation of the official code, in response to merchant demand. In Chongqing, negotiations between merchants and officials over the implementation of a different New Policy reform—the creation of chambers of commerce—were only settled when provincial officials promised to more strictly enforce new guidelines on the punishment of insolvent firms who attempted to defraud their creditors.

When the 1904 imperial edict to form Chambers of Commerce was issued, Chongqing was listed among the cities that should form General Chambers of Commerce and the provincial authorities in Sichuan invited the merchants of the city to establish one (this process could only be initiated by the merchants themselves, via petition). When the Chongqing merchants expressed hesitation, provincial officials responded by introducing a renewed pledge to fight bankruptcy, the "Regulations for the Strict Punishment of Fraudulent Bankruptcy" (嚴懲倒騙章程).[25] In subsequent reports, the provincial officials of Sichuan claimed that this reiteration of their dedication to crack down on

[25] Indeed, Chongqing was one of the first cities to establish a Chamber of Commerce after the edict was issued. For administrative accounts of this story of the founding of Chongqing's Chamber of Commerce, see the *Sichuan guanbao*, *yisi* year volume 1 and *jiachen* year volume 21, as cited in Zhou Yong, *Chongqing tongshi* and summarized in Liu Chonglai, "Chongqing zong shanghui de chengli," in Lu Dayue, ed. *Jindai yilai Chongqing 100 jian dashi yaolan*, 7–8.

fraudulent bankruptcy was just the bargaining chip required to convince Chongqing merchants to establish the Chongqing General Chamber of Commerce:

> The Eastern Sichuan Bureau of Commercial Affairs created "Regulations for the Strict Punishment of Fraudulent Bankruptcy,"… and published them along with a proclamation, to make the masses of merchants aware, and ordered the leaders of every *bang* to establish a chamber of commerce as the foundation for the enactment of the guidelines. The merchants finally began to appreciate the idea; morale improved and, slowly, they reported to the bureau to begin the process of creating a chamber of commerce.[26]

It was only with the reassurance of the provincial administration that bankruptcy cases would be handled more strictly that Chongqing merchants were convinced to file a petition and form a local chamber of commerce. Two years later, however, after the passage of the Bankruptcy Code, it was only the Chongqing General Chamber of Commerce that played an important role in settling insolvency disputes in a new way, and the new law itself was simply disregarded by litigants, merchant groups, and magistrates alike. Why and how did such a greatly anticipated reform fail to garner the interest of local actors who had shown such enthusiasm? The next section will review the contents, innovations, and limitations of the 1906 Bankruptcy Code, as a prelude to discussing the reception of the reform in Chongqing.

The Legal Implications of the 1906 Bankruptcy Code

The promulgation of a national bankruptcy law in May of 1906 provided the magistrates and merchants of the empire with an entirely new legal framework in which to arbitrate insolvency disputes. In the 1906 law, a formal bankruptcy process was articulated in legal terms for the first time. The bankruptcy law also represented the first effort of imperial lawmakers to mandate the specific procedure used in the resolution of an economic dispute.

To a high degree, the bankruptcy process specified in the 1906 law resembled late imperial custom before the reforms. A bankrupt firm would announce its insolvent state. A third party would be appointed to handle the settlement. The creditors would then agree to a settlement before liquidating the firm's assets and dissolving the firm by closing its accounts. At the same time that the new law managed to summarize and codify existing practice, it also proposed to

[26] *Sichuan guanbao*, *jiachen* year volume 21.

fundamentally alter the bankruptcy process in its formulation of the roles that each agent was supposed to play. In the new law, settlement negotiations were conducted under the supervision of chambers of commerce, so that a single organization served as a clearinghouse for all firm bankruptcies. In addition, several redundancies in the bankruptcy process were introduced to require an unprecedented level of interaction between local courts and these new merchant organizations.

Whereas the bankruptcy process previously entered the court only when enforcement issues threatened to halt mediation, and could be conducted entirely outside of the local court system, the Bankruptcy Code of 1906 proposed a procedure that involved formal cooperation between local officials, the chamber of commerce, and the individuals involved in a bankruptcy settlement. As a result of this legal reform, customary bankruptcy processes would be brought into the court for oversight, ratification, and resolution. Statutes were created to dictate the punishment of individuals responsible for fraudulent bankruptcy. Clear guidelines were given for the duties of both the court and the local merchants belonging to the recently-mandated chambers of commerce.

The settlement process mandated by the 1906 law can be broken down into five steps.[27] In the first step (Articles 1–5) the insolvent firm would submit a request to initiate bankruptcy proceedings to both the local magistrate and the relevant chamber of commerce, along with the accounts and goods in the shop. In the second step (Articles 9–12 and 16) the chamber of commerce would appoint a trustee to oversee the settlement and then report back to the chamber of commerce. In the third step (Articles 17–18 and 22) all of the insolvent firm's creditors were expected to notify either the court or the chamber of commerce about their claims, and the chamber of commerce was required to compile a list of claimants, which was managed by the trustee, who then called a general meeting to negotiate a repayment plan on behalf of the insolvent firm. In the fourth step (Article 42) receipts of payment were filed at the local court. In the final step (Articles 15, 66–68) public notices were posted inviting any complaints about mismanagement of the process, and if neither the chamber of commerce nor the court was apprised of any malfeasance after two months of waiting, the case would be closed and the local court would submit a full description of the process to provincial officials, the Bureau of Commerce, and the Bureau of Punishments.

This proposed system required new ways of sharing information and coordinating between magistrates and merchants that far exceeded any formal

[27] See *Daqing fagui daquan*, vol. 6, 3036–42. Several of the translation choices that follow in this discussion of the Bankruptcy Code were informed by the translation by Chang Nieh-Yün, translated under the title *Chinese Bankruptcy Code of 1905*.

procedure or existing practice up to that point in China's history of commercial governance. The long-established distinctions between settlement in social mediation forums and enforcement by the court were recognized by the new law at the same time that the process was subtly remapped to intertwine social and legal forms of authority. Although magistrates were not expected to intervene in the settlement negotiations any more often than before, the courts were supposed to become official witnesses at several important junctures in the bankruptcy process.

In addition to the proposed change to court involvement in bankruptcy, chambers of commerce were appointed as official partners of and liaisons to the court at several points in the bankruptcy settlement. By forging a legitimate, formal, and exclusive bureaucratic connection between chambers of commerce and local courts overseeing insolvency cases, the new law placed bankruptcy practices within the framework of a set of relationships between local government and social institutions, which was exemplary of the New Policy perspective on state-building. The state maintained a monopoly on violence, but now the local and central governments were supposed to communicate with, reiterate the functions of, learn from, and eventually integrate the social institutions upon which the bankruptcy process had depended for so long.

The Bankruptcy Reform in Chongqing

In contrast to Chongqing merchants' enthusiasm for stricter bankruptcy measures and their reluctance to form a chamber of commerce, when it came time to implement the New Policy commercial reforms, the new bankruptcy procedure was simply ignored, while the chamber of commerce played an increasingly important role in settling insolvency disputes. The following discussion posits that the difference between the responses to these two reforms is rooted in the ways in which each of the new laws interacted with and improved upon long-standing practice.

Although the Bankruptcy Code of 1906 did an excellent job of encapsulating contemporary standards, and presented a new vision of the potential for interaction and support between courts, merchants, and chambers of commerce, it failed to provide adequate incentive to bring insolvency disputes under court supervision. The new powers bestowed on the court to gather information, sanction negotiations, and publish settlements were functions that had already been handled—without question—by merchant groups and local mediation forums. Although court supervision provided an opportunity for bureaucratic or legal recognition for bankruptcy settlements, this recognition had never been required because of the court's unswerving dedication to the sanctity of social

processes of bankruptcy negotiation.

At the same time that the new function dictated for courts in the disposal of bankruptcy cases was not adopted enthusiastically by either merchants or magistrates, the law failed to address the existing problems of agency that plagued standing bankruptcy practices. The court was no more able to overcome its information and knowledge gaps, and no more able to hand down a concrete verdict than before. It was also no more capable than before of detaining the owners of bankrupt firms who had fled, or of seizing assets that could not be located, which were the other major causes of settlement problems. Presented with the option of going to court more often in exchange for nothing more than a series of redundant functions already performed by other institutions, both merchants and magistrates continued to litigate as if the Bankruptcy Code had never been written.

The code itself was mentioned by name in only one out of the twenty-one sampled cases from between 1906 to 1911. The context of that single mention, however, is telling. The document is a plea from 1908 (after the Bankruptcy Code had already been repealed), submitted by a group of creditors who protested the defendant's efforts to renege on a standing mediation settlement:

> We have already submitted to the *bang* for reckoning, but over the course of the last few months [the two defendants in the case] have embezzled an additional 14,000 taels. It really makes one loath to submit to peaceful mediation. Plus it has been discovered that the defendants have several properties, in addition to their ancestral estate, worth hundreds of *shi* in grain rents... and now they resist repayment, and have fled and escaped the court. *The Commercial Code and Bankruptcy Code have already been promulgated* and the defendants were previously ordered to pay. How can such stubbornness and defiance be allowed? Our money has vanished, and our hard-won capital has been cheated away. It is tantamount to robbery. Please seal up all of the defendants' properties and strictly punish them and pursue the debt.[28]

The plaintiffs who submitted this plea were not making any request to invoke the formal procedures outlined in the defunct law. Rather, it was cited as a reminder of the state's commitment to prosecute those who flaunted market practices and the general tenets of legal order, as part of the plaintiff's plea for an aggressive response by the court. In their discussion of the bankruptcy law (and, for that matter, proclamations and regulations about bankruptcy in the time

[28] BXQA: 39–17177, 49 (emphasis added).

before the New Policy era), merchants consistently expressed a desire that the state would be more able and willing to enforce settlements.

The resources actually required to mediate insolvency disputes—trade knowledge, information about local conditions, systems of negotiation, networks of shared responsibility, and flexible instruments of payment—were still accessible to the courts only through reliance on social mediation forums. No matter how dedicated courts were to rooting out fraudulent bankruptcy and other sources of insolvency and instability, their lack of access to information in the local market continued to prevent magistrates from exerting the full force of the law, and the administration remained unwilling to use violent force to compel defendants to act in accordance with the wishes of the leaders of social mediation institutions, so long as there was no settlement or consensus.

Unlike the bankruptcy law, the chamber of commerce reform had managed to legitimate and improve upon local practice in a way that was immediately realized by Chongqing merchants. The chamber of commerce reform was able to build on expertise, practice, and institutional connections that already existed at the local level at the same time that it offered a platform for merchant negotiation that could capitalize on the formal connection between court and chamber posited in the Bankruptcy Code. Over 40% of the twenty-one cases sampled from after 1906 involved the settlement efforts of the Chongqing General Chamber of Commerce. In some instances, the chamber of commerce performed the same tasks that merchant groups and local forums had been responsible for since before the New Policy reforms. They were asked by individual litigants and by the magistrate to reckon and mediate creditor claims, and act as a trustee in the process of assessing firm accounts and liquidating the assets of bankrupt businesses.[29] In these functions, the chamber of commerce was equivalent to and performed the same functions as the non-court mediation forums that had participated in bankruptcy negotiation for over a hundred years.

At the same time, the Chongqing General Chamber of Commerce had the unprecedented ability to officially communicate its findings to the court. This simple innovation considerably narrowed the gap that merchant organizations and magistrates had been working across. The chamber of commerce became capable of single-handedly reckoning the debts of insolvent firms, collecting a firm's remaining assets, and liquidating them for distribution among the creditor group. Since the successful completion of these tasks marked the specific point at which a bankrupt firm ceased to exist (and, thus, the specific point in time at which the debts of an insolvent firm were forgiven), the chamber of commerce became capable of dictating the final resolution of bankruptcy disputes, and even

[29] See BXQA: 31–02424, 39–17177, 55–02804, and 55–02824.

of ordering the court to release defendants from custody and close the books on pending cases.[30]

The vision of cooperation between courts and merchant groups depicted in the 1906 Bankruptcy Code made accommodations for, and even seemed to predict, the authority that would be wielded by the Chongqing General Chamber of Commerce. In this manner, the Bankruptcy Code was realized in practice despite no longer existing on the books. Collaboration between courts and chambers of commerce could rely on existing practices, and were more capable of solving the problems of deadlock that had plagued the courts before. This did not require reference to the legal procedures spelled out in the Bankruptcy Code. Instead, merchants used the new bureaucratic and mediation tools offered to them through the chamber of commerce to maintain and improve upon the division of labor that already existed in practice.

Conclusion: Evaluating the Legacy of the Qing Bankruptcy Reform

Shanghai newspapers published the most vocal condemnations of the new law. These critiques emphasized the cultural differences between Chinese businessmen and their European or Japanese counterparts, and the vast gulf between the practice of debt and liability mediation in China and the theory of civil rights and obligations practiced abroad.[31] No matter how much a bankruptcy law might be needed, it was argued, thousands of years of cultural tradition stood in the way, and the state had first to build a whole series of legal and administrative institutions to replace the *status quo* with conditions amenable to court intervention in commercial disputes.

In August of 1906, the Bureau of Commerce published a response to detractors of the newly-promulgated Bankruptcy Code. The authors of the response took a defensive tone, pointing out that the new law was based on none other than the suggestions of the empire's merchants: "This Bureau drafted the new law last year with nothing but facilitating commerce in mind, and it first solicited the comments of every chamber of commerce and commercial representative throughout the empire before compiling them and using this as a basis for the draft law." The letter then went on to directly address detractors' claims that the Bankruptcy Code was not in keeping with Chinese custom, declaring that "Most

[30] For examples of the Chongqing General Chamber of Commerce's range of authority in this capacity, see BXQA: 39–17177, 55–02590, and 55–02835.

[31] For a focused examination of the types of criticism of the bankruptcy law that emerged from the merchant community, see Wang Xuemei's "Cong shangren dui 'pochan lü' de piping kan Qingmo de shehui falü huanjing," 120–26.

of the Bankruptcy Code was drawn directly from this process of consultation.… Very few parts were borrowed from foreign nations." Confused about how the new law had come to be labeled as an ill-fitting adaptation of foreign laws, the response letter's authors beseeched detractors to reconsider or substantiate their condemnation: "Since the Bankruptcy Code has been promulgated, all of the newspapers of Shanghai have been arguing that the law does not suit China's customs and thus cannot be implemented… but this is without basis.… The Bureau beseeches them to specify: which parts of the Bankruptcy Code are unhelpful? Which parts of the Bankruptcy Code are difficult to implement?" Confused and defensive, members the Bureau of Commerce were required to defend the new law from the beginning of its promulgation.

In spite of the Bureau's attempt to rally merchant support for the new code, the law was never adopted by the empire's courts. Not even the merchants who had campaigned for bankruptcy legislation ever took the code seriously, and it was not long before the Bureau of Commerce quietly withdrew the law from its books. Its announcement recalling the law in December of 1907 was almost sheepish:

> Following upon the repeated recommendations of chambers of commerce from every province to the effect that wisdom about commerce in the current age in China has still not matured, and furthermore since commerce and industry have yet to rally, it is requested that the implementation of the Bankruptcy Code be temporarily suspended. The Bureau of Commerce finds that, as the… penal and civil procedural codes have yet to be implemented, and since the Bankruptcy Code has an intimate relationship with procedural law, they should naturally be handled together… the Bankruptcy Code should be sent to the Bureau of Legal Codes for revision…[32]

What seemed like a temporary delay was, in actuality, the end of the Qing bankruptcy reform effort. Even the completion of a new code in 1909 did not inspire the Bureau of Commerce to broach the issue of bankruptcy and insolvency law again.

But to focus on the more obvious failures of the Bankruptcy Code and to take the assessments of its contemporary critics at face value is to miss almost entirely the real innovation at the heart of the reform: the state's (admittedly ambitious) bid to accommodate and incorporate the strengths of social mediation forums into the court process by placing itself in an explicitly supervisory position, and concentrating responsibility within the body of a single institution—the chamber

[32] *Shangwu guanbao*, Guangxu 33, Month 11, day 15, no. 30.

of commerce—that would be formally tied to the imperial bureaucracy. This innovation did not rely on the careful implementation of the new legal procedures outlined in the Bankruptcy Code. But it was directly related to the compelling vision embodied in the early Bankruptcy Code, which endured the demise of the law itself. And at the same time that Chongqing's merchants rejected the new legal procedures that constituted the bulk of the Bankruptcy Code, they realized the basic vision of cooperation between courts and chambers of commerce of their own accord by building upon existing practices and needs.

The main obstacle to the implementation of the Bankruptcy Code in Chongqing was the existence of a diverse, finely-balanced, and functional set of institutions designed specifically to deal with merchant disputes and honed over hundreds of years of practice. A change to this system would have been possible, but would have to involve intensive and expensive forms of state-building at the same time that it would necessitate the destruction, elimination, or absorption of a world of mediation intermediaries that was almost too complex for the state to even navigate, let alone accommodate.

On the other hand, the chamber of commerce reform of 1904 was framed in such a way that state reform could take place on the existing foundations of local innovation. The Chongqing General Chamber of Commerce quickly took advantage of the new privileges offered by virtue of its legal and bureaucratic status. The role played by the Chongqing General Chamber of Commerce was exactly the one predicted by the 1906 Bankruptcy Code. It was only the court system that went neglected, as this new and more powerful merchant forum became more capable than its predecessors of solving commercial disputes.

When the 1935 Bankruptcy Code was introduced by the Nationalist regime, it chose to pick up where its New Policies antecedent left off, by building on the dispute mediation infrastructure that existed since the late imperial era. By the time of the 1935 Bankruptcy Code, chambers of commerce had remained the primary forum for settling contentious insolvency disputes. The new code framed this fact in law, by proclaiming the chambers of commerce the exclusive forum of bankruptcy settlements for merchants. The success of the 1935 Bankruptcy Code underlines the foundational importance of its 1906 successor which, despite its early revocation, first framed the vision of merchant-court cooperation that came to fruition later in the twentieth century.

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Appendix

The 70 cases used in this study were obtained during a year of field work in the Ba county collection of the Sichuan Provincial Archives between 2010 and 2011 and a visit to the Huang-Bernhardt Collection of Chinese Legal documents at Stanford University in the summer of 2011. Since the Ba county materials in both collections employ the revised archival classification currently used by the Sichuan Provincial Archives, that system of citation is used in the following list of the 70 cases. All are from the Qing-6 (清-6) archival category (quanzong).

(1767) 01–1848, (1812) 05–4770, (1830) 12–10082, (1847) 10–7809, (1849) 12–10599, (1852) 04–2566, (1866) 27–8595, (1870) 27–8848, (1870) 27–8843, (1871) 27–8854, (1875) 43–26007, (1877) 44–26079, (1878) 44–26117, (1880) 40–18605, (1882) 44–26339, (1882) 37–13815, (1882) 44–26750, (1884) 44–26509, (1885) 45–28340, (1885) 44–26806, (1887) 45–28154, (1888) 44–26809, (1889) 41–20236, (1889) 44–26855, (1890) 41–20532, (1890) 31–03829, (1890) 44–26929, (1892) 44–27060, (1892) 44–27089, (1892) 42–22686, (1893) 44–27082, (1893) 44–27131, (1895) 31–02370, (1897) 44–27210, (1898) 44–27231, (1898) 44–27239, (1899) 44–27343, (1899) 44–27345, (1900) 44–27403, (1901) 44–27507, (1901) 44–27467, (1901) 44–27483, (1902) 44–27495, (1902) 31–2390, (1903) 39–17879, (1903) 39–16459, (1904) 44–27646, (1905) 42–22049 (1905) 42–22089, (1906) 31–2395, (1906) 39–16870, (1907) 42–22329, (1907) 31–2424, (1907) 44–27981, (1907) 44–27223, (1907) 32–3847, (1907) 53–45775, (1907) 31–17050, (1908) 45–28096, (1908) 39–17177, (1908) 55–4546, (1909) 55–2633, (1909) 55–2590, (1909) 55–2704, (1909) 55–4177, (1910) 55–2804, (1910) 55–2824, (1910) 55–2766, (1910) 55–2793, and (1910) 55–2835.

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