

“WOUNDING OUR CUSTOMS AND DEBASING OUR TRADITIONS”:  
LAW, GENDER, AND PLURALISM IN THE CHINESE COMMUNITY AT BATAVIA,  
1740-1811

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## Abstract

Mass migration of male Chinese merchants and laborers to maritime Southeast Asia in the 17<sup>th</sup> and 18<sup>th</sup> centuries fundamentally reshaped world trade networks and colonial state-building, but it also catalyzed social and cultural interactions between Chinese migrants and the Europeans and Southeast Asians they encountered overseas. The existing literature focuses almost exclusively on the bilateral exchanges between Europeans and various Asian groups, paying little attention to the ways that Chinese migrants constructed and adjusted their own group identity in response to the multilateral cultural interactions that were an inescapable part of life in overseas port cities. This study examines how elite Chinese merchants managed to carve out a political and legal constituency in Batavia (modern Jakarta), the capital of the Dutch East India Company in Asia, and how they and their subjects turned that constituency into a forum for the negotiation of what constituted proper Chinese behavior. First, I use Dutch administrative documents to show how a Chinese council staffed by wealthy male merchants solidified their control over a constituency composed of nominally “Chinese” households, although most female members were of Indonesian descent. Second, I show how elite men on the Chinese council attempted to use Dutch legal codification projects to impose a highly patriarchal vision of proper gendered behavior within those households. Finally, using the minutes of the law court administered by the Chinese council, I explore the ways that ordinary male and female litigants articulated their own notions of justice, and how the judges of the Chinese council used their privileged position as judges to intervene in the lives of their subjects. The image of the Chinese elite that emerges is one consumed by anxieties over the supposed failure of Chinese-status women to conform to elite standards of behavior: seeking divorces, behaving disgracefully in public, and engaging in interethnic sexual relationships. This paper illustrates the tension between a Chinese political elite whose jurisdiction was predicated on a relatively distinct Chinese community and the widespread tendency of their subjects to blur the lines between ethnic groups and articulate counterhegemonic constructions of Chinese customs.

### Lay Summary

This study explores how Chinese migrants to the important Indonesian port city of Batavia (modern Jakarta) in the 18<sup>th</sup> century built a relatively autonomous political community that was ostensibly made up of Chinese households who would follow Chinese customs in their daily lives. However, I show that since most of the female members of these households did not actually migrate from China, but rather were women of Indonesian descent who married into the Chinese community, Chinese customs dealing with gender roles were in fact a source of substantial disagreement. The elite Chinese men who governed the Chinese community had to use all the resources at their disposal to impose their vision of proper gendered behavior on their subjects. By focusing on how Chinese people experienced diversity, this paper avoids the Eurocentric approaches taken by previous scholarship.

## Preface

This thesis is original, unpublished, independent work by the author, Luther Cox Cenci.

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*for Salma*

On the first day of the 10th lunar month in the 45th year of the Qianlong reign, or 29 October, 1788 according to the Gregorian calendar, Zhong Chenguan 鍾辰觀 summoned his wayward wife, Liao Gengniang 廖庚娘 before the Chinese-administered court in Batavia, the capital of the Dutch United East India Company's commercial empire in Asia.<sup>1</sup> Outside the courtroom, the first rains of the wet season may have been hammering against the roof of the courtroom and splashing into the canals, but Zhong Chenguan entered the courtroom hoping for relief from more than the downpour. According to him, his wife had “eloped” (*siben* 私奔) with an Indonesian man whom he called Gaoshe 高奢, “bringing disgrace to his doorstep.”<sup>2</sup> His wife, accompanied to court by her father, testified that she had indeed eloped with Gaoshe, but not of her own volition. She claimed to have been under the influence of Gaoshe's “evil medicine” (*xieyao* 邪藥), which had “seized her mind and confused her spirit” and thereby led her to run off with him.<sup>3</sup>

Wang Zhusheng 王珠生 and Tang Bianshe 唐編舍, the two lieutenants of the Chinese council sitting as judges paused to consider the situation. The court secretary paused to mix more ink in his inkstone as the muted sound of conversation between the shoemaker and the gambler

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<sup>1</sup> Romanization and Naming: I have chosen to romanize Chinese names and terms according to their pronunciation in modern Mandarin dialect using the *pinyin* system, primarily because a clear standard for this system exists. However, a more authentic romanization would follow Hokkien/Minnan 閩南 pronunciation; unfortunately, romanization systems for this dialect are highly balkanized at the time of writing. For many of the Chinese given names in the sources, the last character is an honorific that may or may not replace the second character of the original name. Above, *guan* 觀 in Zhong Chenguan and *niang* 娘 in Liao Gengniang are honorifics, *guan* denoting a full-status male, and *niang* indicating that the individual is female.

<sup>2</sup> Zhong Chenguan 鍾辰觀 v. Liao Ganguan 廖干(乾)觀 and Liao Gengniang 廖庚娘, 29 October, 1788, in *Gong An Bu* 公案簿 [Minutes of the Board Meetings of the Chinese Council] vol. 1 [Hereafter GAB v.1], edited by Leonard Blussé and Wu Fengbin 吳鳳斌, (Xiamen: Xiamen daxue chubanshe, 2002), 87. All translations are my own.

<sup>3</sup> Ibid, 87.

waiting their turn drifted in from the courtyard.<sup>4</sup> When the judges leaned forward again, they first attempted to persuade Zhong Chenguan to forgive his wife.<sup>5</sup> When it became clear that he was unwilling to do so, they tried to make Liao Gengniang agree to return to her husband's household. She laughed at their naïvete, saying "You want my husband and I to get back together? I desire this greatly, but since my husband will not agree, what can be done about it?"<sup>6</sup> Apparently sensing that reconciliation was not feasible, the judges first determined that the couple had not yet produced children, and then probed Zhong Chenguan about separation, asking "If we were to grant you a divorce, and your wife was to remarry another, how would you feel?" Zhong replied, "If she were to remarry a Chinese man, I would agree to it. But if she were to secretly marry herself off to a foreigner (*fanren* 番人), and if I were to find out, I would petition for her to be sent to prison."<sup>7</sup> His wife agreed with these conditions, saying "After the divorce, if I am to return to the path of virtue (*fu cong liang* 復從良), I must marry a Chinese man, but if I don't, and I secretly marry myself off to a foreigner, I agree to Zhong Chen[guan]'s terms and would suffer myself to be punished on the spot."<sup>8</sup> Having negotiated this compromise, the judges tore up the couple's marriage license, made note of the ethnic stipulations on Liao Gengniang's ability to remarry, and formally released Liao into her father's custody to "await a suitable suitor."<sup>9</sup>

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<sup>4</sup> Wu Baoguan 吳抱觀 v. Tang Xinguan 湯新觀, 29 October, 1788, *GAB* v. 1, 87; Ji Jiangyuan 級江源 v. Chen Qinguan 陳晴觀, 29 October, 1788, *GAB* v. 1, 88.

<sup>5</sup> Zhong Chenguan v. Liao Gangan and Liao Gengniang, 29 October, 1788, *GAB* v. 1, 87.

<sup>6</sup> *Ibid.*, 87.

<sup>7</sup> *Ibid.*, 87.

<sup>8</sup> *Ibid.*, 87. In her statement, Liao is recorded as using the phrase *cong liang* 從良, which by this period had a specialized meaning in Qing legal discourse of transitioning from the (often hereditary) status of prostitute to that of ostensibly chaste commoner (*liangmin* 良民). Here, the formal legal categories probably did not apply, but the connotation remains. See Matthew H. Sommer, *Sex, Law and Society in Late Imperial China*, (Stanford: Stanford University Press, 2000), 235-241.

<sup>9</sup> Zhong Chenguan v. Liao Gangan and Liao Gengniang, 29 October, 1788, *GAB* v. 1, 87.

These negotiations revolved around Zhong Chenguan and Liao Gengniang's domestic lives and private dramas: indeed, Zhong only decided to empty his bedroom troubles onto a Batavian courtroom floor when his wife's supposedly scandalous behavior had already brought him public disgrace. These intimate struggles were animated by transoceanic forces and global conjunctures. Zhong identified himself as a member of the Chinese diasporic community in Batavia, one node in a dense web of maritime connections crisscrossing what the Chinese referred to as the *Nanyang* 南洋, or Southern Ocean(s). Chinese merchants and mariners had been plying the sealanes of the Nanyang in significant numbers since the Tang period (618-907) at the latest, but the 17th and 18th centuries had seen the pace of exchange in goods and people quicken rapidly.<sup>10</sup> Commercialization and a relaxation of the maritime prohibitions after the death of the Ming Jiajing emperor (1567) kicked off a boom in Chinese shipping to mainland and insular Southeast Asia. After intense naval and coastal conflicts between the ascendant Qing dynasty and Ming loyalists based in Fujian and Taiwan, maritime trade reached new peaks in the middle of the 18th century.<sup>11</sup> Riding alongside traveling merchants and costly cargoes of porcelain, camphor, and birds' nests were increasingly large numbers of Chinese migrants seeking their fortunes on the frontiers of overseas expansion.

An especially popular destination for these migrants in the 17th and early 18th centuries was Batavia (modern Jakarta), where a group of Chinese merchants from the entrepot of Banten

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<sup>10</sup> For the early Chinese Nanyang, see Angela Schottenhamer, "The 'China Seas' in World History: A General Outline of the Role of Chinese and East Asian Maritime Space from its Origins to c. 1800," *Journal of Marine and Island Cultures* 1, no. 2 (December 2012): 63-86 <https://doi.org/10.1016/j.imic.2012.11.002>

<sup>11</sup> James K. Chin, "Junk Trade, Business Networks, and Sojourning Communities: Hokkien Merchants in Early Maritime Asia," *Journal of Chinese Overseas* 6 (2012): 177-182, 190; Leonard Blussé, *Strange Company: Chinese Settlers, Mestizo Womenn, and the Dutch in VOC Batavia* (Leiden: Foris, 1986), 97-155; Blussé, "Junks to Java: Chinese Shipping to the Nanyang in the Second Half of the Eighteenth Century," in *Chinese Circulations: Capital, Commodities and Networks in Southeast Asia*, edited by Eric Tagliacozzo and Wen-Chin Chang, (Durham, NC: Duke University Press, 2011); Xing Hang, *Conflict and Commerce in Maritime East Asia: The Zheng Family and the Shaping of the Modern World, c. 1620-1720*, (Cambridge: Cambridge University Press, 2016).

had managed make themselves (and Chinese migrant labor) essential to the Dutch Vereenigde Oost-Indische Compagnie's (VOC) plans for commercial hegemony in Asia.<sup>12</sup> In part because the VOC was unable to read local Indonesian labor systems and harness indigenous workers without the assistance of the often hostile Javanese princes, the Chinese elite in Batavia profited by bringing in migrant Chinese labor first to build urban infrastructure on contract from the Dutch and then by growing and refining sugar in the countryside around the city.<sup>13</sup> Throughout the two centuries of VOC rule in Batavia, the Company's response to the problems of administering their large population of Chinese subjects was to rely on a small number of these wealthy Chinese elites as intermediaries.

The Company encouraged the gradual institutionalization of Chinese elite power within the diasporic community through the construction of a Chinese Council (*Chinaas Raad*, *gongguan* 公館), formed of a Captain, several Lieutenants (whose number increased gradually over time), as well as various secretaries, runners, and constables. The council was responsible for most administrative tasks involving Chinese residents, migrants, and trade, but also developed legal jurisdiction over domestic disputes in households headed by Chinese men, such as Zhong and Liao's. In the Company's eyes, the council's mandate was conditional on the maintenance of order among Batavia's Chinese residents.<sup>14</sup>

The company's faith in this entire system of delegated administration was tested in 1740, when the Chinese elite proved powerless to stop bands of unemployed Chinese in Batavia's rural

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<sup>12</sup> Blussé, *Strange Company*, 49-72

<sup>13</sup> Anthony Reid, "The Organization of Production on the Pre-Colonial Southeast Asian Port City" in *Brides of the Sea: Port Cities of Asia from the 16th-20th Centuries*, edited by Frank Broeze, (Honolulu: University of Hawaii Press, 1989); Blussé, *Strange Company*, 73-96.

<sup>14</sup> See "Voorschriften voor 'de burgerlijke samenleving' van de Chinezen binnen het gebied van de O. I. Compagnie" [Instructions for the "Civil Society" of the Chinese Under the Jurisdiction of the East India Company], 21 November, 1760, in *Nederlandsch-Indisch Plakaatboek, 1602-1811* [hereafter *NIPB*], vol. 7, edited by J. A. van der Chijs, (The Hague: M. Nijhof, 1890): p. 443-444.

hinterland from rising in open revolt against the Company. When these groups banded together and laid siege to the town, individuals high up in the VOC administration feared a fifth column effort from among the ten thousand Chinese living within the city walls. The Company's response was to mobilize the European population and its military forces in a devastating pogrom against the entire Chinese community within the city.<sup>15</sup> Tens of thousand of Chinese residents were murdered in the streets before the VOC forces sallied forth and routed the besiegers, many of whom continued the fight with the support of local Javanese rulers in a series of battles called the "Chinese War."<sup>16</sup> Once the military threat died down, however, the VOC were faced with making up for the loss of the economically indispensable Chinese community. The Company did everything in their power to lure Chinese merchants and settlers back to the city, and patch up relations with the Qing court. An essential part of this strategy was to reconstruct and strengthen the Chinese council's authority over the waves of new migrants that began arriving in the late 1740's.<sup>17</sup> In continuing to support ethnic elites as the direct administrators of their co-ethnic communities, the VOC's policies in the late 18th century diverged from the contemporaneous reforms being carried out by the English East India Company (EIC) in Bengal. Under Warren Hastings, the EIC had responded to the Bengal famine crisis by training English "collectors" to replace Indian judges and directly administer Indian law themselves to local subjects.<sup>18</sup> The VOC's reinforced emphasis on indirect rule was evidently

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<sup>15</sup> Blussé, *Strange Company*, 73-96, Mary Somers Heidhues, "1740 and the Chinese Massacre in Batavia: Some German Eyewitness Accounts," *Archipel* 77, no. 1 (2009).

<sup>16</sup> M.C. Ricklefs, "The Crisis of 1740-1 in Java: The Javanese, Chinese, Madurese and Dutch, and the Fall of the Court of Kartasura," *Bijdragen tot de Taal-, Land- en Volkenkunde van Nederlandsch-Indië* [BTLVNI] 139 (1983).

<sup>17</sup> This took place in part through an process of institutional forgetting: the VOC administrator blamed for the massacre was taken back to the Netherlands in chains, while the Chinese Council commissioned an enormous plaque for their chambers that ascribed responsibility for the initial revolt on some "bad elements" among the Chinese community. Blussé, *Strange Company*, 73-96.

<sup>18</sup> Bernard S. Cohn, "Law and the Colonial State in India," in *Colonialism and Its Forms of Knowledge: The British in India*, (Princeton: Princeton University Press, 1996), 60-61. It is worth noting that these efforts were not uniformly applied and were highly contentious at the time.

successful at preventing further outbreaks of organized violence. The size of the Chinese population quickly surpassed its pre-revolt levels, in part due to the Qing government's relaxation of prohibitions against overseas migrants in 1754.<sup>19</sup>

The existence of a large pre-Opium War Chinese diaspora in Southeast Asia is well-known among historians, as is the fact that some elite Chinese found positions of authority within colonial and “autonomous” Southeast Asian states. The Chinese diaspora is commonly interpreted as one of the many minority trade diasporas that used co-ethnic networks to reduce barriers to trade in the early modern world.<sup>20</sup> James K. Chin, for example, adopts this trade network approach to describe the highly influential Chinese diaspora from southern Fujian (*Minnan* 閩南).<sup>21</sup> The trade diaspora model may be useful when talking about the wealthiest Chinese with a direct role in mediating long distance trade, especially for earlier periods when this group made up a demographically significant portion of the diaspora.

Conflating the history of Chinese sojourning merchants with the history of the Chinese diaspora *per se*, however, collapses some important distinctions between elite Chinese merchants, like the members of the Chinese council in Batavia and their social peers, and the hundreds of thousands of ordinary migrants who were employed as petty traders and labourers throughout the *Nanyang*. Carl Trocki and Leonard Blussé both emphasize that the truly transformative effects of Chinese overseas expansion in Southeast Asia occurred when Chinese

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<sup>19</sup> Philip A. Kuhn, *Chinese Among Others: Emigration in Modern Times*, (Lanham, MD: Rowman & Littlefield, 2008): p. 91-94.

<sup>20</sup> James E. Rauch, “Business and Social Networks in International Trade,” *Journal of Economic Literature* 39, no. 4 (2001).

<sup>21</sup> Chin, “Junk Trade, Business Networks, and Sojourning Communities: Hokkien Merchants in Early Maritime Asia,” p. 193. See also Wang Gungwu, “Merchants Without Empire: the Hokkien Sojourning Communities,” in *The Rise of Merchant Empires: Long Distance Trade in the Early Modern World 1350–1750*, edited by James D. Tracy, (Cambridge, UK: Cambridge University Press, 1990).

merchant capital was paired with large quantities of Chinese migrant labor in the 18th century.<sup>22</sup>

In addition to constructing the city of Batavia, this merchant-labor complex was instrumental in the opening of gold and tin mines throughout Southeast Asia in the 18th and early 19th centuries, and diverging interests between merchant-elites and migrant labour arguably lies at the heart of the 1740 Chinese revolt.

However, even the literature that takes the concerns of ordinary Chinese migrants seriously is largely silent on the questions raised in Zhong and Liao's divorce case.<sup>23</sup> Why did Zhong seem to care so much about the ethnic identity of Liao's future husbands? Why did the Chinese council back Zhong's ethnic restrictions on Liao's marital future? How did the judges of the Chinese council adapt and construct law and legal authority to deal with the new circumstances of diasporic life? More broadly, how was the category of being "Chinese" construed, policed, and challenged in the 18th-century *Nanyang*?

If we are to take up these questions, it is important to be clear about what is and is not possible to say about "Chineseness" in this context. The vocabulary of Batavian life abounded with references to a Chinese nation, Chinese individuals, and Chinese customs - as will this paper. Frederick Cooper and Rogers Brubaker point out that what both historical actors and modern scholars might be tempted to label as an "identity" frequently in fact refers to a bundle of often contradictory social processes. They advocate the analytical separation of senses of "self-understanding" felt by individuals, often involuntary or coercive socio-political practices of

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<sup>22</sup> Carl Trocki, "Chinese Pioneering in Eighteenth-Century Southeast Asia," in *The Last Stand of Asian Autonomies: Responses to Modernity in the Diverse States of Southeast Asia and Korea: 1750-1900*, edited by Anthony Reid, (New York: St. Martin's, 1997), Blussé, *Strange Company*, 49-96

<sup>23</sup> To be fair, Leonard Blussé's work does grapple with issues of gender and bi-cultural family life, but primarily between Europeans and Asians, not Chinese and Indonesians. See Blussé, *Strange Company*, 172-259, Blussé, *Bitter Bonds: A Colonial Divorce Drama of the Seventeenth Century*, trans. Diane Webb, (Princeton: Markus Wiener, 2002).



“identification and classification,” and feelings of “commonality” in the form of group identity.<sup>24</sup>

This paper will show that in Batavia, these distinct modalities of being Chinese were frequently drawn into tension as officials and subjects navigated the contradictions between different constructions of proper Chinese behavior.

For Zhong, Liao, Liao’s father, Lieutenants Wang and Tang and most residents of Batavia who were classified as Chinese, the subjective sense of being Chinese - or not - must have played some role in their inner lives and self-narratives. However, these interior meanings recede from our view. Few of the people for whom the category was relevant were literate, even fewer of the people who could record their thinking on these issues did so, and virtually no private writing was deemed worthy of preservation by either the Dutch or Chinese authorities that possessed the necessary archival resources. What is left are a set of documentary artefacts of power: public proclamations, officially-commissioned chronicles, texts on customary law, and the minutes of court cases. Only in the last of these do the voices of individuals speaking on private issues appear, but even then only in a highly mediated fashion.

When plaintiffs like Zhong spoke in court, they did so hoping to enlist the coercive power of the legal system to punish or to command their opponents. Defendants like Liao sought to escape such power, or turn it on their accusers. Both shaped their testimony to persuade the court. Their speech was then recorded by clerical servants of the court, who packaged, summarized, and paraphrased their testimony to meet official expectations. When we read them today, their stories can never be seen “in themselves, as they might have been ‘in a free state’; they can no longer be separated out from the declamations, the tactical biases, the obligatory lies

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<sup>24</sup> Frederick Cooper and Rogers Brubaker, “Identity,” in *Colonialism in Question: Theory, Knowledge, History*, ed. Frederic Cooper, (Berkeley: University of California Press, 2005), 71-75.

that power games and power relations presuppose.”<sup>25</sup> Reading against the grain of these mediations in search of what Chinese subjects privately thought about Chineseness and non-Chineseness is at best extremely difficult. At worst, our desire to transform Chinese subjectivities into legible objects of knowledge may make them beholden to potentially alien categories. The nature of the documentary record and our tools for dealing with it may not be epistemologically sufficient to permit us to know much about how individual people grappled with the particular historical subjectivity of being Chinese in the 18th century overseas.<sup>26</sup>

Fortunately for the historian, in addition to a subjective self-understanding, Chineseness was repeatedly invoked in a bundle of practices that we might call *identification* and *categorization*, and which fundamentally (and traceably) shaped Batavian social, political, and legal life. Identification refers to active processes whereby individuals are called upon to locate themselves vis-à-vis known others or to place themselves in a category, and “invites us to specify the agents that are doing the identifying.”<sup>27</sup> It is difficult to discuss these identification practices in Batavia without reference to the heavily loaded term “pluralism.” The *locus classicus* of this term in modern scholarship is J.S. Furnivall’s claim that 20th century Burma and Java were each

composed of a medley of people - European, Chinese, Indian ... which mix but do not combine. Each group holds by its own religion, its own culture and language, its own ideas and ways. As individuals they meet, but only in the market-place, in buying and selling. There is a plural society, with different sections of the community living side by side, but separately, within the same political unit.<sup>28</sup>

In Furnivall’s account, the interpersonal and political dimensions of social life were both effectively contained within sectional categories, each corresponding to a self-evident ethnic

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<sup>25</sup> Michel Foucault, “Lives of Infamous Men,” in *The Essential Foucault*, vol 3, edited by James D. Faubion, (New York: The New Press, 2001): 161.

<sup>26</sup> At least, it is impossible without a commitment to use fiction to speak into the archival gaps, as some are willing to do. I remain wary. See Saidiya Hartman, “Venus in Two Acts,” *Small Axe* 26 (2008).

<sup>27</sup> Cooper and Brubaker, “Identity,” 71.

<sup>28</sup> J.S. Furnivall, *Colonial Policy and Practice: A Comparative Study of Burma and Netherlands India* (Cambridge, UK: Cambridge University Press, 1948), 304.

group. This paper supports the position taken by some more recent scholarship arguing that pluralism was primarily a constructed feature of Batavia's political and legal structure, rather than an accurate descriptor of private social life at any given point in time.<sup>29</sup> However, rather than being superstructural and irrelevant to 'real life,' ethnic categories - and the political institutions built around them - were inextricably linked with the private sphere. This paper will explore the productive tension between the ostensible simplicity of Chineseness as a political category and the complexity and diversity of social relations between individuals grouped within that category.

A certain subsection of Batavia's population was *ascribed* membership in a particular category (the Chinese nation) within this plural system and, by virtue of that ascribed status, was allocated certain responsibilities and privileges. Obviously, this Chinese nation (*natie* in Dutch) did not represent a group of citizens of a nation-state, as the modern usage of the term would suggest. Instead, this represented a distinct corporate group within Batavian society, whose group identity was theoretically premised on a common origin in the polity the Dutch referred to as China.<sup>30</sup> In Chinese, this group was referred to by the classifier *tangren* 唐人 (people/men from Tang, a toponym for China), defined in opposition to *fanren* 番人 (Indonesians, like Liao's lover) and *helan* 和蘭 (Hollanders). People classified as Chinese were responsible for paying specific taxes that did not apply to people in other categories. When Chinese-status people died, their estates were divided according to specific rules that did not apply outside the status-group. Chinese-status people could appeal for civil arbitration at specific courts closed to the legally non-Chinese. When the VOC delegated administrative and legal authority to a Chinese political

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<sup>29</sup> Charles A. Coppel, "Revisiting Furnivall's 'Plural Society: Colonial Java as a Mestizo Society?'" *Ethnic and Racial Studies Review* 20, no. 2 (1997).

<sup>30</sup> The origins and complexities of this concept will be explored later on.

body, the Chinese council, that authority was limited to a Chinese-status constituency. Similar assemblages of political and legal rights/obligations formed around other status-categories, such as VOC-employee or *inlander* (indigenous Javanese), although the degree of autonomy, nature of political representation, and character of the obligations varied substantially.<sup>31</sup> The multiple dimensions of citizenship in Batavia were determined by membership in one of these status-categories.

In the eyes of the VOC administration, this system of dividing subjects into neat categories was supposed to simplify the problems of ruling a multiethnic entrepôt. Policy could be targeted towards specific groups, and the assumed legitimacy of VOC-recognized elites within these groups would bolster Dutch authority. Yet this system assumed an easy correspondence between status-categories and real social groups whose *commonality* or *groupness* took the form of customs-in-common.<sup>32</sup> Consider Batavia's plural legal system. The Dutch acknowledged the Chinese Council's "power and right" (*de faculteit en het voorregt*) to settle "small affairs" and "domestic differences" among the members of the "Chinese nation" according to "their own laws and customs."<sup>33</sup> As we will see, in practice, the types of dispute that the Council adjudicated far exceeded this fairly limited official scope. The legitimacy of the Council's jurisdiction and the "laws and customs" it applied presumed the existence of a "Chinese nation" ready to accept that jurisdiction and who shared its ideas what constituted Chinese "laws and customs."

The messy dynamics of diasporic life fundamentally undermined these aspirations, and consequently threatened both the VOC's political strategy of ethnic pluralism and the Chinese

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<sup>31</sup> John Ball, *Indonesian Legal History, 1602-1848*, (Sydney: Oughtershaw Press, 1982), 47-77.

<sup>32</sup> Cooper and Brubaker, "Identity," 75-76.

<sup>33</sup> "Voorschriften voor "de burgerlijke samenleving" van de Chinezen," 21 November, 1760, *NIPB*, vol 7, 443-444.

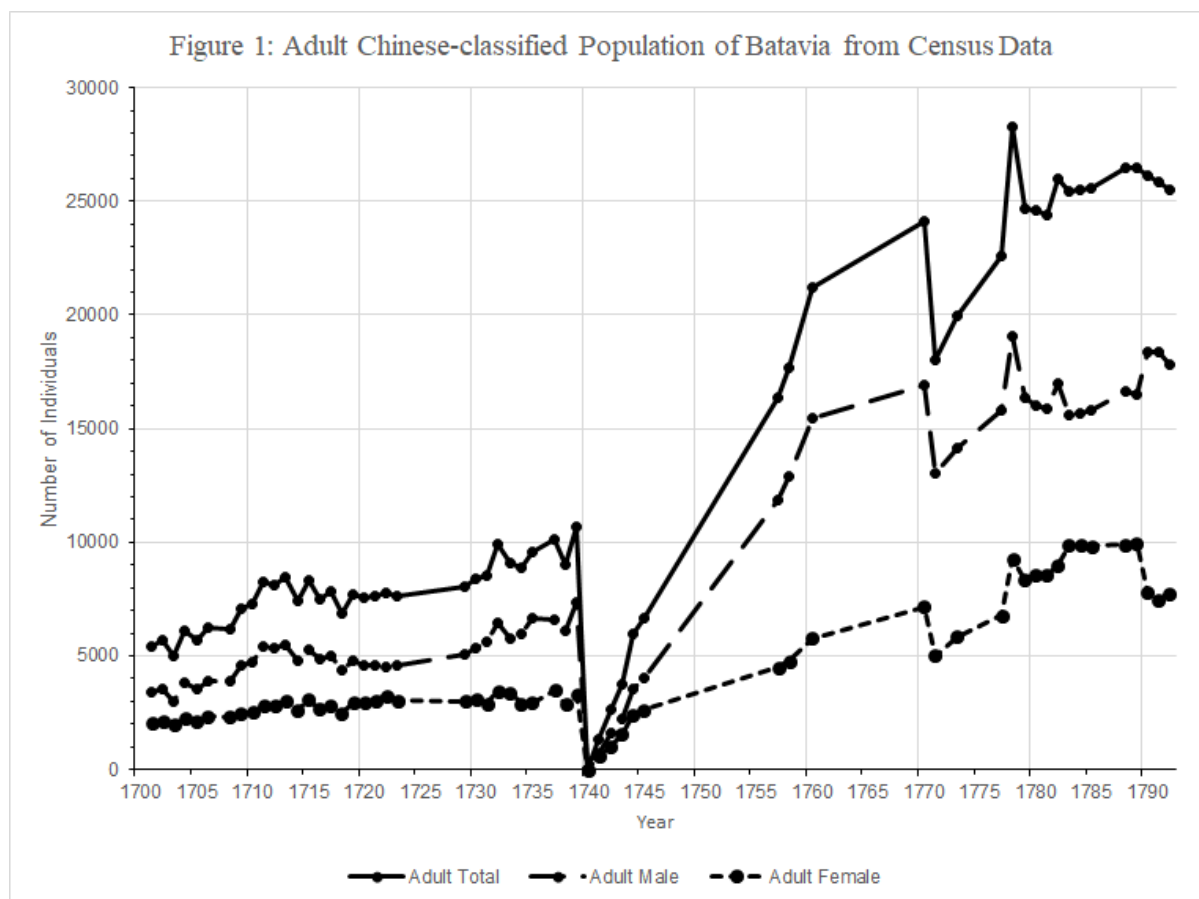
elite's power over their subjects. Several factors drove wedges between the representation of the "Chinese nation" as a coherent political entity and a much more complex social reality. One of the most important phenomena was the fact that the migrants arriving in Batavia from China during this period were overwhelmingly male.<sup>34</sup> In the context of the late imperial Chinese "marriage crunch," many of these men left home intending to earn enough money overseas to be able to afford a wife on their return.<sup>35</sup> Some did end up returning, but many others found it easier to find a female partner in Batavia. When the city was first settled in the 1620's, and when its Chinese community was repopulated by new (male) migrants after the disaster in 1740, this meant marrying or cohabitating with Indonesian women, whether locally born or from distant parts of the archipelago. Figure 1 illustrates these trends based on annual census data collected in Batavia city, its suburbs, and the *Ommelanden* (environs) directly subject to its administration.<sup>36</sup>

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<sup>34</sup> Kuhn, *Chinese Among Others*, 70.

<sup>35</sup> On the "marriage crunch" (large numbers of poor men remaining unmarried due to elite polygyny and skewed sex ratios), see Ted A. Telford, "Family and State in Qing China: Marriage in the Tongcheng Lineages, 1650-1880," in *Family Process and Political Process in Modern Chinese History*, vol. 2, (Taipei: Institute of Modern History, Academia Sinica, 1992), 924. For an articulation of its effects on male migration see, Kuhn, *Chinese Among Others*, 25-28.

<sup>36</sup> I produced this figure using raw data from a digital source publication by A.J. Gooszen, which in turn collates census figures from the Batavia *Daghregisters* (Court Diaries) for the period 1673-1792. The raw data follows the original tabular system in the *Daghregisters*, which subdivides district population into ethno-religious constituencies: "Europeans," "Mestizos," "Mardijkers" (freed slaves who converted to Christianity), "Moors and Gentoos" (Muslim and Hindu Indians), "Malays and Javanese," "Balinese and Makassarese," "Chinese," and "Slaves." As with most facets of the system of ethnic pluralism in Batavia, the classification was most likely based on the ascribed identity of the head of household, not on individual status, although the details are murky. A.J. (Hans) Gooszen, "Population Census in VOC Batavia, 1673-1792" [unpublished manuscript], Royal Dutch Academy of Sciences, DANS: Data Archiving and Networked Services, <https://doi.org/10.17026/dans-zd2-s4m7>



From a nadir in 1740, the city was rapidly repopulated by male Chinese migrants, reaching around 12,000 by 1757, and by a combination of local demographic growth and immigration thereafter. However, more than 4,700 adult women were counted within the “Chinese” census category in 1757; vanishingly few of these were likely to have been born to Chinese parents in Batavia, due to the effects of the massacre and the time lag to reach adult status.<sup>37</sup> By the late 1780’s, more than 10,000 adult women were classified as Chinese on the census. At most two generations had passed since the massacre, so the vast majority must have either been born to Indonesian parents, or of a union between a Chinese man and an Indonesian woman.

<sup>37</sup> Adult status on this census probably meant that the women were married or cohabitating with adult Chinese-status men, since the census returns contain separate categories for “daughters over the age of 14” and “daughters under the age of 14.” See A.J. (Hans) Gooszen, “Population Census in VOC Batavia, 1673-1792” [unpublished manuscript], DANS: Data Archiving and Networked Services, <https://doi.org/10.17026/dans-zd2-s4m7>

We should be somewhat circumspect about assuming a perfect equivalence between individuals counted as Chinese on the census and the political and legal constituency of the Chinese council. However, the broad outlines are clear: around one third of the members of the Chinese status-group were in fact Indonesian women or their direct descendants. Chinese men's marital and sexual liaisons actively brought a large number of non-Chinese women under the formal umbrella of the "Chinese nation." As a result, when the Chinese council applied "Chinese customary law" to this status-group constituency, they were not drawing on shared traditions common to all group members. Instead they were actively using their institutional power to assert a particular (Chinese, male) legal tradition as hegemonic over a highly heterogeneous population.

This paper will examine the Chinese council's attempts to construct and impose a particular vision of proper behavior for the "Chinese nation" as a status-group, and the active resistance that those attempts produced. It will pay particular attention to gender and attempts to enforce gender roles, since it was the area where the fiction of a homogenous Chinese ethnic group was most unstable. It will also pay close attention to law and the courts as the site where the Chinese council sought to intervene in the private lives of their subjects.

This paper will rotate through four vantage points in order to produce a multidimensional image of how these conflicts over gender, ethnicity, and law played out in late 18th-century Batavia. First, we will look at how negotiations between the VOC administration and the Chinese officers in the wake of the 1740 massacre allowed the Chinese elite to reinsert itself between the company administration and a constituency labeled the "Chinese nation," and from there to establish autonomous jurisdictions over certain affairs within that constituency. Next, we will examine how the Chinese elite used this platform to articulate normative, gendered

prescriptions about how this “Chinese” constituency ought to behave. Turning from representation to practice, we will explore the riotous profusion of legal strategies used by ordinary litigants to deploy, subvert, or reject this elite discourse in the courtroom. Finally, we will outline the ways that the Chinese elite and their allies within the Chinese constituency sought to reimpose order by capitalizing on their control over judicial power, including the right to impose judicial violence. By looking through each of these keyholes in sequence, this paper will expose not only the internal power relations of the early Chinese diaspora, but also the ways that the widespread European colonial strategy of plural administration catalyzed transformations within the colonized groups they purported to leave intact.

#### Pluralism, Knowledge and the Instrumentalities of Colonial Rule

When the European powers began acquiring territorial possessions in Asia, they each faced a historically unprecedented problem. Unlike the Americas, where indigenous modes of self-governance were usually brushed aside once the settler population reached critical mass, and where African slave populations could be governed through intense, direct coercion, Europeans recognized that Asian societies in India, China, and Southeast Asia could neither be displaced nor ruled by direct extension of European modes of governance.<sup>38</sup> Obviously, Europeans had to invent new discourses and techniques of power in the Americas to displace and dispossess indigenous groups, or develop regimes of plantation discipline. However, these were generally strategies of erasure, which denied that the non-European peoples in the American colonies ever possessed state-like institutions or traditions of self-governance worthy of European respect. In contrast, when the Dutch and English trade companies conquered territory in Asia, they were

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<sup>38</sup> Cohn, “Law and the Colonial State in India,” 57-59.



forced to recognize that indigenous groups had expectations of proper governance which had to be accounted for in colonial policy, if only to prevent interruptions in the flow of profits to the shareholders in Europe.

The construction of a “Chinese nation” as a political subset of the Batavian population (rather than a vague identity category) and the emergence of a Chinese elite as the representatives and administrators of that “nation” are inextricably related to the VOC’s efforts to overcome these problems of colonial rule. The VOC administration had to acknowledge the indispensability of Chinese merchants to their commercial policies, Chinese market-gardeners to their food supply, Chinese laborers to their military industries, and Chinese tax-farmers (and tax-payers) to their revenues. The Company’s economic reliance on the Chinese engendered intense anxiety about how to police this community so as to maintain the set of relations that underpinned its ability to produce profit for the company, and to protect it from the forces of disorder that would threaten that profitability. The Dutch needed to develop an entire administrative machinery to govern the Chinese (and their other Asian subjects), capable of collecting taxes, prosecuting criminals, uncovering sedition, preventing corruption, hounding debtors, and determining the ownership of property. Building this machinery involved solving a host of organizational, cultural, and economic problems, as the new government felt out how to divide itself into bureaus and chains of command, wrap itself in the trappings of legitimacy, and extract the resources it needed to maintain itself.

However, the thorniest problem concerned knowledge. How would officials sent from the Netherlands manage to gather the evidence needed to accurately determine if taxes were being paid, where criminals were hiding, or whether debtors really owed their creditors? Conversely, how would they know whether their punitive responses would trigger the invisible tripwires of

popular resentment and revolt, or form the butt of barroom jokes? They would need detailed, up-to-date knowledge of the social lives and expectations of their Asian subjects, most of whom did not share a common language with their Dutch rulers. In short, what the VOC needed to develop was a portfolio of what Bernard S. Cohn calls “investigative modalities,” a systematic approach to producing colonial knowledge involving “the definition of a body of information that is needed, the procedures by which appropriate knowledge is gathered, its ordering and classification, and then how it is transformed into usable forms.”<sup>39</sup>

The Company’s efforts to develop a set of investigative modalities sufficient to rule Batavia took several forms. First, they sought to register, track, and count the city’s population in order to assess taxes, control migration, and locate sources of unrest. Second, the Dutch-administered criminal system needed to produce lists of suspects, witnesses depositions, testimonies, and confessions. In civil cases, the court system needed bodies of knowledge about the diverse set of legal traditions that proliferated in Batavia: either literally embodied in the form of human representatives of those traditions, or codified into a *corpus* of laws that would allow Dutch judges to rule according to Asian law. The Chinese elite managed to insert themselves into each of these critical projects of knowledge production, offering to assist the VOC administration in collecting and codifying information on a specific subset of the Batavian population: the Chinese nation.

Before we move to look at each of these processes in turn, we need to define more precisely what we mean by the Chinese elite and why they were positioned to offer authoritative information about the broader Chinese community. When they wanted to know about the Chinese community, the Dutch did not turn at random to one of the various wealthy Chinese

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<sup>39</sup> Bernard S. Cohn, “Introduction,” in *Colonialism and Its Forms of Knowledge: The British in India*, (Princeton: Princeton University Press, 1996), 5.

merchants in Batavia. Instead, their relationship with the community was mediated through a political institution generally referred to in Dutch sources as the “Chinese officers”: the Chinese Captain and his various Lieutenants. The origins of this institution lie in the precolonial system for managing trade developed by Javanese rulers. Law codes like the Malay Code of Maritime Law (*Undang-undang laut*) recognize that the skipper or nakhoda (spelled *anachoda* in Dutch sources) had extensive powers while on board ship.<sup>40</sup> However, when the ships reached port and while the nakhodas and their crews waited for the monsoons to change directions, they were under the oversight of another foreign merchant/official appointed by the prince called the *syahbandar* (Persian for harbor-master).<sup>41</sup> These syahbandars were responsible for collecting port dues and solving disputes among the merchants and sailors from their community of shared origin, and for mediating between the prince and their compatriots. When the Dutch sought to move the nexus of the pepper trade from the Javanese port of Banten to their new base at Batavia in the 1620’s, a key part of their strategy was to attract wealthy Chinese merchants to reproduce this familiar structure. The early set of Chinese migrants (often those who had helped advance Dutch interests in Banten) produced the first set of Chinese “heads” or “chiefs” (*overste*), who were ordered to “resolve all civil matters” among their community of traders while “forwarding all heavy matters [to the Dutch administration]”.<sup>42</sup> These heads, renamed Captains, still enjoyed jurisdiction over conflicts that arose at sea on board the Chinese junk fleet calling at Batavia into

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<sup>40</sup> Anthony Reid, *Southeast Asia in the Age of Commerce, 1450-1680: Vol. II Expansion and Crisis*, (New Haven, Yale University Press, 1993), 125.

<sup>41</sup> *Ibid.*, 121.

<sup>42</sup> A separate syahbandarship was spun off of this office, responsible solely for the collection of customs revenue. B. Hoetink, “Chineesche Officieren te Batavia Onder de Compagnie” [Chinese Officers of Batavia Under the Company], *Bijdragen tot de Taal-, Land- en Volkenkunde van Nederlandsch-Indië* [BTLVNI] 78:1 (1922), 10-13. See also B. Hoetink, “Sjō Bing Kong: Het Eerste Hoofd der Chineezen te Batavia (Eene Nalezing)” [Sjō Bing Kong: The First Head of the Chinese of Batavia (A Gleaning)], *BTLVNI* 79:1 (1923), 7.

the late 18th century, as is evident in a large section of the cases put before the Chinese council.<sup>43</sup>

When the Company sought to learn and reproduce this system of managing foreign merchants, they seem to have done so by likening it to an analogous institution in late medieval and early modern Europe: the trading nation. In the Mediterranean and in the trading ports of the Low Countries, “merchants from the same nation (*nação, nazione*) were generally considered members of a single corporate group that protected its members and was held responsible for their actions ... The host government would deal with the leaders of these foreign merchant diasporas and confirm or, in many cases, further define their legal status.”<sup>44</sup> The choice of the term “Chinese nation” (*Chineese natie*) to describe a distinct corporate group subject to the authority of the Chinese officers suggests that the Dutch read the indigenous system in these terms.

However, both the indigenous system of *syahbandarships* and the European system of trading nations were of limited utility as precedents for governing the new forms of Chinese diasporic life that began to appear in Batavia. Instead of a narrow trade diaspora of sojourning traders, sailors, and local brokers, the burgeoning Chinese community after the 1680’s and especially after 1740 was composed in large part by migrant laborers, skilled sugar mill operators, artisans, and small retail merchants, many of whom established permanent residences and families. This meant that the VOC’s local administration and corporate institutions like the

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<sup>43</sup> For example, ordering the *nakhoda* of a junk to pay restitution for mistreating passengers, or ruling on complex consignment-trade issues. Chen Qinglong 陳慶隆 et al. v. Lin Siguan 林思觀 et al., 5 March, 1788, *GAB* v. 1, 28; Huang Dingzhun 黃定準 v. Li Kuiguan 李葵觀, 5 January, 1788, *GAB* v.1, 16-17.

<sup>44</sup> Ivana Elbl, “Nation, Bolsa, and Factory: Three Institutions of Late-Medieval Portuguese Trade with Flanders,” *The International History Review* 14, no. 1 (1992), 4-5; R. de Roover, “The Organization of Trade,” in *The Cambridge Economic History of Europe from the Decline of the Roman Empire*, vol. 3, edited by M.M. Postan, , E. E. Rich, and E. Miller (Cambridge: Cambridge University Press, 1963), 60-64; Daviken Studnicki-Gizbert, *A Nation upon the Ocean Sea: Portugal's Atlantic Diaspora and the Crisis of the Spanish Empire, 1492-1640* (London: Oxford University Press, 2007), 18-20.

Chinese council would have to transition from regulating maritime trade to governing an urban center and its rural hinterland.

The first step in the Chinese council's journey from the customs house into the entrails of colonial governance occurred in response to the Company's anxious desire to separate their Asian subjects into law-abiding and potentially rebellious categories. For the male members of the Chinese community in Batavia, the payment of a head-tax represented the central ritual of obedience to VOC authority, not to mention a major source of the town's revenues.<sup>45</sup> The collection of the head-tax was usually leased to a member of the Chinese community (usually the Chinese Captain) as a tax-farm.<sup>46</sup> This meant that the tax-farmer would pay the VOC government a sum fixed in advance or determined at auction in return for the right to collect the tax with his own workforce, in the expectation that the tax return would be higher than the rent on the tax farm. To limit the instability that free auctions of the tax farm produced, in the 18th century, the VOC limited eligibility to lease tax farms to the officially vetted members of the Chinese elite.<sup>47</sup> By 1760, the collection of the tax was a civil ritual conducted by the Chinese Captain and his lieutenants in the first days of the new year, heralded by criers and cymbalists making the rounds of the Chinese neighborhoods.<sup>48</sup> In addition to collecting tax revenue, the ritual performed an important ideological role in solidifying and defining the boundaries of the Chinese community. When the call went out for the Chinese nation to assemble and the cymbals crashed, the individuals who responded to the call were by definition the Chinese nation (or more

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<sup>45</sup> The head tax seems to have been negotiated as a way to avoid compulsory labor service on the town infrastructure projects. "Hoofd-geld der binnen Batavia woonachtige Chinezen" [Head-tax on the Chinese Residing in Batavia], 9 October, 1620, *NIPB*, vol. 1, 76-77.

<sup>46</sup> "Herstelling en verpachting van het hoofd-geld der Chinezen" [Restoration and Lease of the Head-Tax on the Chinese], 31 December, 1657, *NIPB*, vol. 2, 251-252.

<sup>47</sup> On the instability of free tax farm auctions, see Kwee Hui Kian, *The Political Economy of Java's Northeast Coast, c. 1740-1800: Elite Synergy*, (Leiden: Brill, 2006), 76-84.

<sup>48</sup> "Voorschriften voor "de burgerlijke samenleving" van de Chinezen," 21 November, 1760, *NIPB*, vol. 7, 433.

precisely: the law-abiding male taxpayers of the Chinese nation). Since the head-tax ritual only demanded men to present themselves as Chinese, this process of constituency-creation neatly sidestepped the problem of having to precisely define the corporate status of women associated with these Chinese men.

Refusal to partake in this annual ceremony or the material exchange of tax money invoked the decidedly non-ideological, repressive apparatus of the state: those who failed to appear on the designated day could be forced to pay a fine, or, if they had also avoided the ritual and tax that legitimized new Chinese immigrants, suffer deportation or forced labor.<sup>49</sup> For the VOC to punish, the VOC had to know who had assembled when called, and who had not. The Dutch seemed to have lacked either the time, personnel, or language skills to produce this knowledge themselves. Instead, the Captain Chinese and his Lieutenants were responsible for registering all potential and actual Chinese residents/taxpayers and compiling that information in a “general summary or roll” listing every male Chinese resident, his “name, birthdate or age, on what junk, from what place, in what year, he arrived, his place of residence and trade or craft.”<sup>50</sup>

However, by 1760, this basic system for registering the population had to be supplemented by a snowballing series of special registers designed to close loopholes in the master registration protocol. The Chinese officers were ordered to compile a separate register of immigrants so new arrivals could not escape registration. They were also required to produce registers of travelers temporarily absent from Batavia so nobody could avoid punishment by falsely claiming to have been absent during the annual registration ceremony.<sup>51</sup> The Dutch also

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<sup>49</sup> “Voorschriften voor “de burgerlijke samenleving” van de Chinezen,” 21 November, 1760, *NIPB*, vol. 7, 434; “Last op de Chinezen, die in de laatste 10 à 12 jaren te Batavia waren toegelaten, maar hun permissie-billet niet meer konden vertoonen, naar China terug te keeren” [Order for the Chinese, Who Have Arrived in the Last 10 to 12 Years, but can No Longer Produce a Permission-Bill to be deported to China], 10 June, 1727, *NIPB*, vol. 4, 197.

<sup>50</sup> “Voorschriften voor “de burgerlijke samenleving” van de Chinezen,” 21 November, 1760, *NIPB*, vol. 7, 434

<sup>51</sup> *Ibid*, 433-443.

demanded that they keep track of sub-groups they were particularly worried would escape the normal registration system due to their lifestyle or moral character. Thus, the Chinese officers had to maintain separate registers for the “Chinese who have a permanent residence here and who subsist on permitted sea-voyages,” for “the seafaring Chinese belonging to each junk or vessel” temporarily residing in Batavia until the turn of the monsoons, registers for the Chinese working on the sugar mills far from Batavia. and registers of the “lazy, useless, and wicked subjects of their nation” deemed fit for deportation.<sup>52</sup> Each of these lists had to be compared annually against the previous year’s registers. In 1802, even after the Company in Europe had gone bankrupt, the local administration was so worried by the “many Chinese ... who live here one day and leave for other places the next, and because of their business or trade, have not fixed residences” that the Chinese officers were further enjoined to keep a “separate census” of these transient citizens, to be updated whenever they moved residences.<sup>53</sup> When the Company thought there was high risk of fraud (as in the case of immigrants avoiding initial registration), the Chinese officers were supposed to maintain two separate ledgers, one populated with information volunteered by the immigrants, and another with data from the ships’ passenger manifests.

In short, the Company was deeply anxious to know which of the people they hailed as Chinese actually responded by assuming the officially-defined burdens of Chinese subjecthood. This desire to know demanded reams of documentation, which in turn required the operation of an extensive surveillance network. The Chinese officers sat at the controls of this knowledge machine, collecting raw intelligence and digesting it into processed reports. Officially, the

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<sup>52</sup> Ibid, 433-443.

<sup>53</sup> “Gewijzigde ordonnantie op de burgerlijke zamen-lewing van Chinezen” [Revised Ordinances on the Civil Society of the Chinese], 29 July, 1802, *NIPB*, vol. 13, 487.

Captain and his six Lieutenants had to track each of the eighteen thousand adult male members of their constituent nation, noting their arrival or coming of age, changes of domicile, marriage, trips out of the city, and eventually death or permanent departure. Their surveillance ought to have been producing volumes of statistical knowledge for the Dutch administration. Their registers would have perfectly enumerated and named the Chinese nation as a body of subjects. If members of the nation dropped off the register, they could be identified and punished as potential sources of unrest.

Practically speaking, however, there was no way that only seven Chinese officers could actually have ensured that no eligible Chinese person went unregistered. However, since they were the only set of people possessing direct and intimate knowledge of how the registers actually mapped to real people, the officers ultimately only had to produce an image of perfect registration. While the Dutch administration relied on the registration system to fulfill a variety of priceless civil functions, from controlling immigration to disciplining the unemployed, the fact that the Chinese officers operated this system as a tax-farm introduced a unique set of profitability considerations. Obviously, they would need to collect enough revenue to generate a return, but if the costs of tracking down tax evaders and forcing them to pay exceeded the value of the tax, it would undercut their bottom line. Considering that many delinquent taxpayers were probably unable to pay the tax, the profit-maximizing course of action for the Chinese officers would be to convince the Dutch that they were carrying out their duty to register every Chinese subject, while in practice only registering and collecting revenue from the easily-taxable.

Since it was in the officers' interest to keep this a secret, the only indication that they were practicing this type of strategy comes from the existence of Dutch measures to prevent it. In order to independently verify that the Chinese officers were doing their job, the Dutch introduced



the requirement that Chinese subjects carry documentation identifying them as legal Chinese residents and indicating that they had paid the head-tax. VOC officials could demand that anyone they suspected of belonging to the Chinese nation produce this documentation on request, or be subject to a fine of 100 rijksdaalders or 3 years on the city chain-gang.<sup>54</sup> Alongside these personal documents, Chinese households were required to post lists of registered residents on their doorposts, so that “it can always be determined who and how many people live in each Chinese house.”<sup>55</sup> The documentation system was supplemented by policies enjoining law-abiding residents to give up any unregistered Chinese subjects, “on pain of sharp punishment and being fined themselves.”<sup>56</sup> These measures reveal the VOC’s dissatisfaction with relying entirely on the Chinese officers to keep track of the Chinese nation, but it is likely that these checks and balances were never systematically enforced by the Company’s limited Dutch personnel.

These efforts to define, register, and extract revenue from a distinct Chinese nation were evidently onerous for many Chinese immigrants, some of whom would go to great lengths to avoid taxation or punishment for failure to register. The clearest example of this process of reactive “de-sinicization” took the form of religious conversion to Islam. A 1759 ordinance notes that

many Chinese of this jurisdiction, referred to as the “*paranakan*” [*peranakan*] or “turned” Chinese, have passed from their religion to that of Islam (many in order to free themselves from the ordinary head-tax) and many have subsequently failed to give themselves over to the authority of the [Chinese] headman, and lacking his supervision, can take up wandering and vangabondage.<sup>57</sup>

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<sup>54</sup> “Voorschriften voor “de burgerlijke samenleving” van de Chinezen,” 21 November, 1760, *NIPB*, vol. 7, 444.

<sup>55</sup> *Ibid*, 443.

<sup>56</sup> *Ibid*, 440-441.

<sup>57</sup> “Voorschrift nopens *peranakan* Chinezen” [Instructions regarding the *peranakan* Chinese], 11 December, 1759, *NIPB*, vol. 7, 356-357.

The VOC's solution to the de-facto plasticity of corporate status was to define the existing claimants to *peranakan* status as yet another distinct, registered corporate group in Batavia's plural order. Like their registration policies for the Chinese nation proper, the Company's efforts to register *peranakan* Chinese was designed to produce authoritative knowledge about group membership so that future claims to in-group status (and privilege/responsibility) could be adjudicated. In the case of the *peranakan*, the VOC's desire for neat, easily identifiable subject-categories manifested in a demand that each recognized *peranakan* be "issued a 'sjap' [sash] to be worn on the head ... " that would "allow them to be immediately categorized as *inlanders* [natives] and no longer members of the Chinese nation."<sup>58</sup> For the Chinese officers, this type of conversion was a major transgression, with the new *peranakan* legally considered dead and excluded from inheriting Chinese property.<sup>59</sup>

Since the VOC's registration system meant that the Chinese officers possessed the most detailed, up-to-date information about the members of the Chinese nation, it is unsurprising that the officers inserted themselves into other administrative processes where their expertise and knowledge about their constituency would be useful. One of these was Batavia's criminal justice system, where the Chinese officers controlled a great deal of the de-facto investigation and prosecution of cases, despite nominal Dutch oversight.

On paper, Batavia's criminal courts had equal jurisdiction over all residents, whether European, Chinese, Javanese, Mestizo, or "Moorish" (foreign Muslim merchants). All suspects were tried by the municipal Court of Aldermen (*Schepenbank*) as long as they were not VOC employees, and thus subject to the more prestigious and somewhat better-trained

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<sup>58</sup> Ibid, 357.

<sup>59</sup> Peter Heksteen, Huang Shilao, and Reinier de Klerck, "Chinaas Recht," [Chinese Law] 22 May, 1761, *NIPB* vol. 7, 476.

Council of Justice (*Raad van Justitie*).<sup>60</sup> Eric Jones has taken the structure of this court system to mean that Company and non-Company status distinctions were the “most fundamental and most important legal distinction in the early modern Dutch colonies,” trumping distinctions based on “extraction, gender, or status.”<sup>61</sup> However, his own evidence from the Court of Aldermen archives as well as the records of the Chinese Council show how the corporate status of many Chinese defendants or victims substantially transformed the character of the criminal justice they experienced.

Like criminal courts in the Netherlands, Batavia’s Court of Aldermen tried criminal cases using a jurisprudence based on Roman-Dutch civil law. This represented both a semi-codified body of criminal statutes subject to administrative revision and nullification, and a particular trial format. Unlike the English common law, criminal offenses were decided by a board of judges (the Aldermen), not a jury, and trials were inquisitorial, not adversarial. In the 18th century, the Board of Aldermen consisted of four VOC servants and five (European) burghers, although from 1620 to 1666 a Chinese alderman formally joined the court when it presided over cases involving a Chinese subject.<sup>62</sup> In addition to sitting as judges, the Aldermen were responsible for operating the city’s police system and thus also for identifying and prosecuting suspects.<sup>63</sup> In order to establish some separation between the judges and the prosecution, the VOC appointed a Bailiff (*Baljuw*) and a *Landdrost* (or *Drossard*) who were responsible for conducting criminal investigations and acting as public prosecutors for crimes occurring inside and outside the city of

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<sup>60</sup> Ball, *Indonesian Legal History*, 21-22.

<sup>61</sup> Eric Jones, *Wives, Slaves, and Concubines: A History of the Female Underclass in Southeast Asia*, (DeKalb, IL: Northern Illinois University Press, 2010), 77-78.

<sup>62</sup> Ball, *Indonesian Legal History*, 21-22. The position of Chinese alderman seems to have lapsed into disuse because no new alderman was selected to replace the deceased holder of that position, rather than any active policy of disenfranchisement.

<sup>63</sup> *Ibid.*

Batavia, respectively.<sup>64</sup> The minor Dutch officials appointed to these positions had to navigate Batavia's complex and foreign social ecology to identify suspects and build a case against them. In practice, when criminal cases involved the Chinese community, the Bailiff and *Landdrost* usually delegated the entire criminal investigation process to the Chinese officers, only intervening to formulate the final legal arguments in Dutch.

Jones shows this strategy in action in a murder case from 1791, where the victim was a (Indonesian) female slave of a wealthy Chinese lady named Tompel. The mysterious circumstances left Landdrost Steven Poelman with "suspicion of seduction (that is, kidnapping), yet who had murdered her remained an unsolved puzzle."<sup>65</sup> The crime might have remained unsolved if it were not for the offices of the Chinese Lieutenant Wu Zuanxu (吳纘緒, or Gouw Tjansie in contemporary Dutch transliteration), whom Jones claims "made most of the arrests and initial interrogations before turning the case over to the Schepenen [Aldermen]."<sup>66</sup> Wu and his cadre of *mata mata* (Malay for spies) persuaded the key witness to testify (eventually incriminating herself) and led the court to the two prime suspects, both of whom were convicted and executed.<sup>67</sup>

In very serious cases like Trompel's, where the discovery of the body ensured that the Dutch authorities were notified, the Bailiff or *Landdrost* had to actively seek out the assistance of the Chinese officers. For more minor criminal cases involving Chinese subjects, or cases where some of the parties hoped to conceal the fact of the crime, the Chinese officials often took care of crime detection, preliminary investigation, arrests, and witness deposition before even notifying the Dutch authorities. This is clear in some of the cases where aggrieved Chinese subjects

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<sup>64</sup> Ibid, 22-24.

<sup>65</sup> Jones, *Wives, Slaves, and Concubines*, 98.

<sup>66</sup> Ibid, 101.

<sup>67</sup> Ibid, 100-101.

demanded redress from the Chinese Council, which ordinarily heard civil complaints (on which more anon). Each of these cases had enough civil features to merit a hearing before the Council, after which the sitting Chinese judges decided the case was an essentially criminal matter and sent the issue to the Court of Aldermen. Complaints whose criminal characteristics were immediately apparent must have been dealt with in a similar fashion outside the courtroom, but do not appear in the Council's court minutes.

In 1788, for example, Gao Xiangguan (高香觀) and his housemate Cai Zhiguan (蔡治觀) testified before the Chinese Council that Gao Taoguan (高桃觀), Gao Xiangguan's nephew, had robbed Cai Zhiguan of a collection of Dutch and Javanese coins worth 600 rijksdollars or 1500 *guilders*. According to their testimony, Gao Taoguan had come by their residence several days prior to visit his uncle and share the evening meal. After eating, Cai Zhiguan and Gao Xiangguan felt their "heads getting heavy and their eyes getting dim" and were forced to retire to their sleeping mats. In his stupor, Cai Zhiguan allegedly saw Gao Taoguan use a chisel to break into his lockbox and make off with the contents, while Cai claimed to have been unable to cry out or move from his mat. They reported to the Chinese Council that Gao Taoguan must have poisoned the communal rice bowl (perhaps with opium?) in order to incapacitate them and successfully carry out his heist.<sup>68</sup>

The case seems to have been complicated enough to get a preliminary hearing in the Chinese Council court, but once the sitting judges decided that the case was sufficiently criminal in nature, they chose to send Gao Taoguan, the suspect, to the Landdrost to be prosecuted for theft. However, before calling the Dutch gendarmes to take him into custody, they collected all

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<sup>68</sup> Gao Xiangguan et al. (高香觀等) v. Gao Taoguan (高桃觀), 5 January, 1788, *GAB* v. 1, 15-16.

the testimony and evidence written in Chinese and had it translated into Dutch.<sup>69</sup> The Chinese Captain then accompanied the defendant to his hearing, presumably at the Court of Aldermen, where he appraised the Dutch judges of the situation as he saw it. A similar procedure was followed in other cases originating in the Chinese Council court but subsequently determined to fall under the Court of Aldermen's criminal jurisdiction, such as the suicide of a despairing female slave and the killing of a rebellious male slave aboard a Chinese slave-trading junk in 1787. The Court of Aldermen's decisions on these cases must have been heavily coloured by the way the Chinese officials packaged the evidence and selected suspects. It is also notable that the Chinese officials not only intervened in cases involving the fairly clearly defined body of Chinese men who were subject to the registration system, but also extended their investigative and prosecutorial scope to include dependents, slaves and associates, even when these were of Indonesian extraction.

In criminal cases involving Chinese litigants, the Chinese officers assumed de-facto responsibility over many of the Bailiff's and Landdrost's core competencies: they reported crimes, conducted police investigations, and produced bundles of evidence and testimony that were directly applied in the prosecution's case. In 1791, the Chinese officers seem to have demanded that these responsibilities required a formal expansion of their legal powers. The original text of their petition no longer exists, but the VOC's response states that the "Chinese Council of Batavia complained of the increasing depravity of the Chinese and requested more political and legal authority."<sup>70</sup> The nature of their request becomes clear in the administration's initial refusal, which orders that "verdicts of the meetings of the Chinese officials ... may not

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<sup>69</sup> Gao Xianguan et al. (高香觀等) v. Gao Taoguan (高桃觀) [second hearing], 9 January, 1788, *GAB* v. 1, 18.

<sup>70</sup> "Ampliatie van de voorschriften, vastgesteld op 21 November 1760, voor 'de burgerlyke samenleving' van de Chinezen" [Amplification of the 21 November 1760 Instructions for Chinese 'Civil Society'], 3 March 1791, *NIPB* v. 11, 264-265.

infringe on the private authority of the bailiff or drossard, except with the prior consent of the College of Aldermen,” reaffirming the Chinese Council’s de-jure subordination to the Dutch officials.<sup>71</sup> However, the Chinese officers continued to argue that their legal authority was unable to meet the demands of policing the Chinese nation. Although reform was delayed by the outbreak of the French Revolution and the bankruptcy of the Company in Europe, the Chinese officers saw their recognized powers substantially expanded in 1802. This expansion mostly served to bolster the Chinese council’s independent law enforcement powers. On the Council’s request, Chinese households were organized into 12-household tithings and 8-tithing hundreds under selected headmen, a model closely resembling the Qing *baojia* (保甲) mutual security system.<sup>72</sup> Like its imperial cousin, the Batavian system was designed to “make local society vulnerable, at least in theory, to complete supervision,” allowing intelligence to flow up through a defined hierarchy.<sup>73</sup> The Council was also granted permission to maintain a corps of pike-bearing watchmen, who would handle all nighttime police duties in the Chinese neighborhoods with no interference from the Bailiff and Landdrost’s own constabularies.<sup>74</sup> The revised ordinances mapped a different configuration of the Chinese nation than that defined by the head-tax system: the Chinese Council’s legal and political jurisdiction was formally acknowledged to operate over a Chinese nation seen as a collection of households, not a body of individual men with a traceable history of migration from China.

Like the Chinese officers’ mandate to track and register Batavia’s Chinese population, the Chinese council’s expanding role vis-a-vis the Chinese nation in Batavia’s criminal justice

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<sup>71</sup> Ibid.

<sup>72</sup> “Gewijzigde ordonnantie op de burgerlijke zamen- leving van Chinezen,” 29 July, 1802, *NIPB*, vol. 13, 486. Timothy Brook, *The Chinese State in Ming Society*, (London: Routledge, 2004), 36

<sup>73</sup> Brook, *The Chinese State in Ming Society*, 33.

<sup>74</sup> “Gewijzigde ordonnantie op de burgerlijke zamen- leving van Chinezen,” 29 July, 1802, *NIPB*, vol. 13, 502-505.

system was fundamentally predicated on their ability to provide the Dutch administration with knowledge it was unable to directly collect itself. The registration system was significant because it helped define the Chinese nation as a political and administrative entity, separate from other Batavian population groups. When we look at the Chinese officers' position within the Batavian legal system, we can start to see the ways that the ability to provide authoritative knowledge about a certain group of subjects conferred practical power over that group. In the criminal system, this power was indirect: the most the Chinese officers could do was to influence the ways the Dutch administration punished criminals, through partial control of the processes by which crimes were reported, investigated, and prosecuted. Furthermore, I am unaware of any evidence showing that the Chinese elite used this power to implement any systematic changes to Batavian society through criminal law. However, the close relationship that they developed with the Court of Aldermen placed the Chinese officers in a position to shape much more contested areas of Chinese communal life through the institutions of civil law.

#### Codifying Custom: Huang Shilao and the *Chinaas Recht*

As a commercial entrepôt drawing people and goods from origins as diverse as the Baltic Sea, the Sulu Archipelago, and the Taiwan Straits, Batavia harbored a bewildering array of lifeways. Members of every community formulated their own discourses about how life ought to be lived, drawing on traditions from their societies of extraction as well as the novelties of lived experience in the cosmopolitan port. The bubbling ferment was brought to a boil by daily interaction between groups, whose norms and behavior often diverged quite substantially. For the elites who filled both the VOC administration and the Chinese officer class, governance



necessarily involved settling disputes over property, inheritance, and debt, but how would government be possible in a society with so many different notions of how these disputes ought to be settled?

During the period of Company rule, the Dutch administration acknowledged the principle that different identity-groups ought to be able to live under “their own customs and under appointed heads” except in matters deemed of critical importance to the VOC’s interests.<sup>75</sup> Initially, this meant that Dutch civil law institutions would only apply in cases involving European citizens, while the heads of the other “nations” would apply their own ethnic legal traditions in internal disputes within their communities: different versions of *adat* customary law for the various groups of Indonesians, Chinese “customary law” for the Chinese.<sup>76</sup> The VOC saw this as a way to ensure social stability by maintaining institutional continuity with the pre-colonial order. In reality, the configuration of power within these groups was fundamentally reshaped through the Dutch institution of appointed national Captains. In the areas under direct Company rule, such as Batavia, Dutch concepts of territorial sovereignty also implied that Dutch courts assumed legal jurisdiction over all subjects when Javanese sovereign jurisdiction was extinguished. The contradictions between the VOC’s desire to leave indigenous institutions intact and its perceived mandate to exercise the legal authority that came with sovereignty created an exceptionally murky jurisdictional order, where Dutch, Indonesian, and Chinese courts all adjudicated civil matters, despite Dutch claims to final civil jurisdiction.

For the Dutch administrators arriving in Batavia in the 1750’s and 1760’s, this state of affairs would not do. Like many lawyers and intellectuals in the Netherlands itself, they felt that the futures of both the VOC’s commercial empire and the Dutch Republic as a sovereign state

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<sup>75</sup> Ball, *Indonesian Legal History*, 52.

<sup>76</sup> *Ibid*, 52; 64.

were in jeopardy.<sup>77</sup> A central source of anxiety was the perceived corruption and private self-interest among VOC servants (European and Asian) which made them betray the common good of the Company. A coterie of reformists within the Company administration seemed to believe, with Milanese jurist Cesare Beccaria, that the numerous inconsistencies, contradictions, and obscurities in the Batavian legal constitution allowed decisions on civil matters to be “the product of a judge’s good or bad logic, of his effortless or unhealthy digestion ... the violence of his passions ... the weaknesses he might suffer ... the judge’s relations with the plaintiff, and on all those minute factors that alter the appearance of an object in the fluctuating mind of man.”<sup>78</sup> Like Beccaria, they thought that the antidote to the corruptibility of human judges was the publication of a comprehensive, written code of laws, that would ensure that the “laws - unalterable except by the general will - are not corrupted as they wade through the throng of private interests.”<sup>79</sup> The central focus of their efforts was the compilation of the *Nieuwe Statuten van Batavia* (The New Statutes of Batavia), a mammoth compendium of 2369 articles, ostensibly containing a record of all VOC-issued civil legislation currently in effect for the company’s possessions in Asia, which was published in 1766.<sup>80</sup>

However, the growing desire to codify law among Dutch administrators ran into serious complications when it tried to make sense of the various “customary” non-European legal systems with whom they shared jurisdictional space. Generally speaking, neither the Indonesian headmen nor the Chinese officers who adjudicated civil cases in the territories ruled by the VOC

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<sup>77</sup> Peter A.J. van den Berg, *The Politics of European Codification: A History of the Unification of Law in France, Prussia, the Austrian Monarchy, and the Netherlands*, (Groningen: Europa Law Publishing, 2007), 218-221.

<sup>78</sup> Cesare Beccaria, “On Crimes and Punishments,” [1764] in *On Crimes and Punishments and Other Writings*, translated by Aaron Thomas and Jeremy Parzen, (Toronto, University of Toronto Press, 2008), 14

<sup>79</sup> Beccaria, “On Crimes and Punishments,” 16

<sup>80</sup> *NIPB vol. 9*; Ball, *Indonesian Legal History*, 33-35. The compendium was never officially ratified by the Council of Seventeen in the Netherlands, but were nevertheless considered “to have the binding force of law” well after the dissolution of the Company.

privileged written law in the same way that Europeans did. Of course, both groups had intellectual links to textual traditions, in the form of Islamic and Indian jurisprudence for the Indonesians, and the Ming and Qing codes (*lǜlì* 律例) for the Chinese. However, in both cases these textual traditions at least coexisted with (and in most cases were completely disregarded in favor of) local customary practice and innovations, and legitimacy came directly from the recognized authority of the person sitting as judge. When Dutch courts needed to make decisions on civil issues for members of non-European corporate communities, they generally had to consult directly with representatives of those communities, who would testify as to the nature of “customary” law or norms within their corporate body.<sup>81</sup> In the 1750’s and 1760’s, Dutch administrators evidently came to see this highly-personalized, consultative approach to pluralism as especially vulnerable to cooptation by ‘private interests.’ In response they undertook an ambitious but ultimately abortive program of codification, targeting both Indonesian groups and the Batavian Chinese. Four major compendia on Indonesian law (two for west Java, one for Cirebon, one for Makassar and Bone) were produced in the period 1749-1761, and a compendium for the Chinese was completed in 1761.<sup>82</sup> The aim of this program was to replace the old system, where customary law was inseparable from corruptible non-European bodies, with a new *corpus* of written, immutable principles distilling the legal traditions of subject peoples. In both intent and botched execution, it prefigured later European attempts to objectify and depersonalize indigenous legal systems in the colonies.<sup>83</sup>

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<sup>81</sup> This practice closely resembled pre-codification European practice in the Middle Ages, where royal courts would assemble lay judges or councils from local communities to “prove” local custom. See David Bederman, *Custom as a Source of Law*, (Cambridge, UK: Cambridge University Press, 2010), 24; David Ibbetson, “Custom in Medieval Law,” in *The Nature of Customary Law*, edited by Amanda Perreau-Saussine and James B. Murphy, (Cambridge, UK: Cambridge University Press, 2007), 158-161.

<sup>82</sup> Ball, *Indonesian Legal History*, 68-74, 77.

<sup>83</sup> These later attempts have been the subject of an literature too extensive to cover here. For the British in Bengal, see Cohn, “Law and the Colonial State in India,” for China, see Li Chen, *Chinese Law in Imperial Eyes: Sovereignty, Justice, and Transcultural Politics*, (New York: Columbia University Press, 2016), for later Dutch

In some cases, compendia of customary law were produced by translating legal texts constructed as authoritative by Orientalist scholars or their informants. Generally speaking, this ran the risk of misinterpreting the actual position of the text within local juridical practice, overemphasizing the role of (sometimes archaic) textual material by making false analogies with the unified civil codes that many Enlightenment scholars imagined for European states.<sup>84</sup> In the case of Chinese customary law, however, there was no apparent textual source of customary law. Instead, in February of 1756, Peter Heksteen, a secretary of the Batavia Board of Aldermen, and the Chinese Captain Huang Shilao (黃錫老) were jointly tasked with creating a compendium of Chinese customary civil law, later entitled *Chinaas Recht* (Chinese Law).<sup>85</sup> Based on the resulting text, the production process involved Heksteen posing questions about specific legal questions, mostly involving marriage, inheritance, divorce, and family property, and Huang responding with what Heksteen took to be Chinese “customs” (phrased as normative statements about the Chinese nation) regarding those matters. The central problem faced by this approach, along with similar efforts in medieval European courts and in other colonial codification projects, was that “custom” was actually a highly contested category.<sup>86</sup> Roman-Dutch legal discourse required legally admissible custom to be both “age-encrusted” and accepted by the

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attempts, see Peter Burns, “The Myth of Adat,” *The Journal of Legal Pluralism* 28 (1989): 1-129. For a rebuttal and attempted rehabilitation of some colonial scholars, see Franz von Benda-Beckmann and Keebet von Benda-Beckmann, “Myths and Stereotypes About Adat Law: A Reassessment of Van Vollenhoven in the Light of Current Struggles over Adat Law in Indonesia,” *BTLVNI* 167:2 (2011), 167-195.

<sup>84</sup> Examples include British scholarship on Indian and Chinese law: Cohn, “Law and the Colonial State in India” 65-75, Chen, *Chinese Law in Imperial Eyes*.

<sup>85</sup> Heksteen, Huang, and de Klerck, “Chinaas Recht,” 22 May, 1761, *NIPB* vol. 7, 476. After the compilation of the *Chinaas Recht*, Heksteen was promoted to Extraordinary Member of the Council of the Indies (the main governing body of the VOC in Asia), where he oversaw the compilation of the *Nieuwe Statuten*. Ball, *Indonesian Legal History*, 33.

<sup>86</sup> For example, James Whitman gives an example from 14th century France where litigants competed to produce witnesses willing to swear that their version of a local “custom” was truly “customary.” James Q. Whitman, “Why did the Revolutionary Lawyers Confuse Custom and Reason?” *University of Chicago Law Review* 58:4 (1998), 1337.

community, to be demonstrated by widespread practice.<sup>87</sup> However, as we will see, “Chinese” marital and family life in 18th century Batavia took so many different forms and involved individuals from so many ethnic backgrounds that the notion of a normative consensus regarding marriage, inheritance, or any other aspect of social life should have been absurd. In fact, Reinier de Klerk, the Extraordinary Member of the Council of the Indies who received Heksteen’ and Huang’s text repeatedly questioned the representative nature of Huang’s testimony in his annotations to the document.

The resulting text has little value as an accurate source of information about how members of the Chinese nation actually lived, despite its normative claims about the community. Other sources, like the records of cases directly overseen by the Chinese Council, can provide a clearer image of law in practice than this normative representation. However, it is particularly revealing as an encapsulation of how a powerful, literate Chinese man like Huang thought family life *ought* to be lived in the Chinese community. There is a marked contrast between the ostensibly normative subordination of women within the family in Huang’s text and their obvious resistance to those norms noted in de Klerck’s annotations and in the legal records of the Chinese council.

A central thrust of Huang’s vision for female members of the Chinese nation was aimed at eliminating the legal ability for women to independently own property within marriage or through inheritance. His first claim was that “unmarried women, no matter how old, are under the power of their fathers. Once married, they fall under the power of their husbands, who have full authority over them.”<sup>88</sup> Statements to this effect are repeated six times throughout the text. When their husbands were living, this meant that a “married woman may not dispose of her

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<sup>87</sup> David Bederman, *Custom as a Source of Law*, (Cambridge, UK: Cambridge University Press, 2010), 21, 24.

<sup>88</sup> Heksteen, Huang, and de Klerck, “Chinaas Recht,” 22 May, 1761, *NIPB* vol. 7, 476.

property or engage in trade; she depends for everything on her husband. He may sell or spend her dowry, but this is never undertaken without much debate and opposition on the part of the wife.”<sup>89</sup> An even more pressing concern was to prevent the widows of Chinese men from controlling their estates: in Huang’s version, a “widow must not alienate the effects of her husband’s estate without the prior knowledge and consent of the oldest male heir. If the deceased husband’s relatives continue to adopt one or more sons, they become parties to the estate and its effects.”<sup>90</sup> Similar provisions argue that Chinese custom prevents wives from exercising control over their husband’s effects or remarrying during his absence on a sojourn, even when he is gone for as long as ten or twenty years.<sup>91</sup>

These were controversial claims. De Klerck, the high Dutch official who reviewed the text, noted Huang’s assertion that husbands had full authority over their wives’ property contradicted a previous statement given to the Board of Aldermen by the Chinese officers in 1733 (now lost). At that time, de Klerck claimed the Chinese officers had told the court that no consensus on the issue obtained:

Among people of prestige and distinction who have married suitably and live decently, goods are held permanently in common [among married couples] without need for a single contract. Among the mean folk, there is no fixed custom. It remains the case that in Batavia under the Chinese, everyone is left to their own discretion when choosing whether to specify the community of property or to remain silent on the subject.<sup>92</sup>

Court cases from the 1780’s further show that many female members of the Chinese nation did not practically obey this supposed custom. Women not only independently engaged in a range of economic ventures including urban real estate investment, moneylending, and renting out agricultural land, but actively sought legal resolution to disputes involving their property in both

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<sup>89</sup> Ibid, 477.

<sup>90</sup> Ibid, 477.

<sup>91</sup> Ibid, 480-481.

<sup>92</sup> Heksteen, Huang, and de Klerck, “Chinaas Recht,” 22 May, 1761, *NIPB* vol. 7, 481

Chinese and Dutch courts.<sup>93</sup> While Guo-Quan Seng's research on 19th century Chinese probate records deals with a somewhat different post-VOC colonial regime, he argues that, by frequently favoring female relatives, the de-facto decisions of the Chinese probate court (also staffed with Chinese officers) "betrayed a somewhat higher status for the Chinese woman than the Chinese officers would admit."<sup>94</sup>

Huang's stubborn assertion of a patriarchal property regime in the face of actual practice reveals a deep-seated anxiety about the precarious nature of actual control over property among Chinese men. For new male Chinese migrants arriving in Batavia, the threat of incapacitating illness or death lay around every corner. The city's low-lying position and extensive network of brackish canals meant that by the late 18th century, Batavia had a well-deserved reputation as a haven for deadly diseases, most notably malaria. Roughly half of all newcomers (European and Chinese) died within their first six months in the city, with less intense but still substantial attrition taking its toll on the survivors for the remaining ten years it took to develop immunity.<sup>95</sup> Most of those born locally or exposed to the same tropical diseases in early childhood elsewhere in the archipelago, on the other hand, would already have developed resistance if they managed to survive to the age of marriage. As the demographic data shows, male members of the Chinese nation were very likely to belong to the first category, while their wives and sexual partners overwhelmingly belonged to the second. Differential disease mortality would have elevated the

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<sup>93</sup> Li Jinniang 李金娘 v. Ruan Shouniang 阮壽娘, 9 January, 1788, *GAB* vol. 1, 19; Wu Heniang 吳河娘 v. Chen Zaiguan 陳在觀, Zheng Yueniang 鄭月娘, 12 August, 1789, *GAB* vol. 1, 196; "Shikuibing lie shangtai weicha Huang Da zhangbu yu Wang Zhuniang jiaojie qianxiang" 實奎炳列上臺委查黃達賬簿與王珠娘交結錢項 ["The Schepenbank entrusts the Chinese Council with inspecting Huang Da's account book with regards to the sum owed Wang Zhuniang"], 17 March, 1790, *GAB* vol. 1, 255.

<sup>94</sup> Guo-Quan Seng, "Disputed Properties, Contested Identities: Family Law, Social Reform, and the Creole Chinese in Dutch Colonial Java (1830-1942)" (PhD diss., University of Chicago, 2015), 28.

<sup>95</sup> Jones, *Wives, Slaves, and Concubines*, 35; P. H. van der Brug, *Malaria en Malaise: De VOC in Batavia in de Achttiende Eeuw* [Malaria and Malaise: The VOC in Batavia in the Eighteenth Century] (Amsterdam: De Bataafsche Leeuw, 1994).

likelihood that a young wife would outlive her husband from a chance occurrence to an everyday fact of life. Given this state of affairs, Huang sought to shore up the claims of the husband's relatives and male heirs to the marital estate against the perceived threat posed by independent widows. This contestation over family law also had ethnic overtones, since men mostly claimed membership in the Chinese nation through extraction or descent, while women as often as not were born to Indonesian parents, and only became "Chinese" through marriage.

A second controversial assertion regarded "customary" ways of forming and dissolving marital partnerships. According to Huang, male-female relationships could fall into one of two legal categories. First was marriage (translated into Dutch as *huwelyken*), which was allegedly only considered valid by the community if the groom went through an elaborate courtship ritual, paying six visits to the bride's family bearing gifts, and eventually applied to the Chinese Council for a marriage license.<sup>96</sup> Huang argued that only legitimate wives married in this way were eligible to inherit a fraction of the estate, and only their children were considered legitimate and capable of receiving a full share of the inheritance.<sup>97</sup> Huang alleged that "divorce, except in cases of adultery, is seldom heard of among the men of our country ... A wife may not request a divorce for continual mistreatment, but must remain silent. When there is an inability to propagate the man's seed, the wife may not complain, but must remain submissive."<sup>98</sup>

Alongside this formal category of marriage, male-female relations could also involve the woman being categorized as an "attendant" or concubine (*byzitter*, lit. the one who sits alongside).<sup>99</sup> These relationships were explicitly sexual: Huang repeatedly refers to the offspring of a man and his attendants when discussing succession rules and inheritance. Huang also

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<sup>96</sup> Heksteen, Huang, and de Klerck, "Chinaas Recht," 22 May, 1761, *NIPB* vol. 7, 480.

<sup>97</sup> Heksteen, Huang, and de Klerck, "Chinaas Recht," 22 May, 1761, *NIPB* vol. 7, 477-478, 487.

<sup>98</sup> *Ibid*, 483.

<sup>99</sup> *Ibid*, 481.



described attendants in commodified terms: A man could only have one legitimate wife but could “purchase as many concubines as he [was] able to support.”<sup>100</sup>

Both of these categories undeniably existed within Batavian Chinese society. The Chinese Council archive possesses hundreds of formal marriage licenses from the 18th century.

<sup>101</sup> Likewise, women labeled *nübi* 女婢 (female bondswoman or slave) repeatedly appear within the records of the Chinese Council, such as the five Indonesian women manumitted in the late Lieutenant Gao Genguan’s 高根官 will (two of whom had borne him sons).<sup>102</sup> However, de Klerck and numerous other people who had seen Huang and Heksteen’s text expressed their doubts that all Chinese relationships fell explicitly within either of these categories. In particular, de Klerck notes that “many people” noted that the more casual relationships among “mean folk” (*gemeene volk*) were not marked by the elaborate cultural and legal rituals (and, presumably, payment of the tax on marriage licenses) Huang asserted were necessary to legitimate marriages.<sup>103</sup> “Most” of de Klerck’s informants nevertheless thought these unions should be granted legal status, in clear contradiction of Huang’s testimony. Modern scholars tend to confirm these observations by noting that the number of marriage licenses granted by the Chinese Council in the late 18th century was far too low given the reported size of the Chinese population.<sup>104</sup>

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<sup>100</sup> Ibid. 483.

<sup>101</sup> Marriage Registers (成婚註冊存案簿), Section 5.1, The Archive of the Kong Koan of Batavia (吧城公館), Leiden University Library, Leiden, [http://catalogue.leidenuniv.nl/UBL\\_V1:All\\_Content:UBL\\_DTL2950510](http://catalogue.leidenuniv.nl/UBL_V1:All_Content:UBL_DTL2950510)

<sup>102</sup> “Leizhenlan Gao Genguan zai Ba zuo yizhuzi” 雷珍蘭高根官在吧做遺囑字 [Lieutenant Gao Genguan’s Last Will and Testament, made at Batavia,” 22 November, 1787, *GAB* vol. 1, 8.

<sup>103</sup> Heksteen, Huang, and de Klerck, “Chinaas Recht,” 22 May, 1761, *NIPB* vol. 7, 480.

<sup>104</sup> Leonard Blussé, for example calculates an average of one hundred recorded marriages a year in the 18th century, in a population of 30,000. Leonard Blussé, “One Hundred Weddings and Many More Funerals a Year: Chinese Civil Society in Batavia at the End of the Eighteenth Century,” in *The Archives of the Kong Koan of Batavia*, edited by Leonard Blussé and Chen Menghong, (Leiden: Brill, 2003), 19

In short, Huang's testimony in the process of compiling the "Chinaas Recht" text clearly "misrepresented" the Chinese to the Dutch, presenting an image of accepted custom regarding gendered behavior, when in fact no such consensus existed. The fact that he did so suggests that Huang thought the Dutch codification project offered him an opportunity to make a necessary legal or moral intervention in Chinese gender relations. The form of his idealized representation, on the other hand, tells us a great deal about how elite Chinese men thought those relations should be structured. Women should be subject to agnatic male control at all times, remarriage should be rare and disgraceful, divorce should be infrequent and female adultery should be punished. The text ends with a passage directly attributed to Huang, in which he claimed Chinese political thought held that "the commonwealth or human society can be compared to three strong cords."<sup>105</sup>

The first cord is between the ruler and all the regents, judges and officials. All these and all those who depend on them must, like the strands of a rope, be unbreakably attached to one another.

The second cord is between a father and his family and descendants, who must live immutably clinging to one another and strive to grow the family through marriage and adoptions.

The third cord is between husband and wife, inseparably attached, the man following his profession and the wife keeping her house and household, without meddling in the things outside.<sup>106</sup>

Only when these three sets of obligations were fulfilled, Huang claimed, could the commonwealth flourish.

Written next to these sweeping assertions in de Klerck's minute handwriting is the following note:

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<sup>105</sup> Heksteen, Huang, and de Klerck, "Chinaas Recht," 22 May, 1761, *NIPB* vol. 7, 490.

<sup>106</sup> *Ibid*, 490.

The first and second of these remarks is generally understood and upheld in China as the most non-negotiable and unshakeable ground rules of the state, as necessary for the maintenance of the peace among the residents as it is for the bloom of the state.

But Chinese men and women succeed in corrupting the third according to their own desires no less than the shrewdest nations in all of Europe.<sup>107</sup>

As we will see, Huang's hegemonic vision of a perfectly gendered Chinese community was promptly seized, twisted, and shattered in turn by his virulently litigious subject as they sought satisfaction of their "own desires" in front of the magistrates of the Chinese Council.

### Gender in the Courtroom: Divorce and Family Law Cases before the Chinese Council

When Huang Shilao and Peter Heksteen sat down to draw up an authoritative guide to Chinese gender norms in the *Chinaas Recht*, Huang could exercise a monopoly on the representation of Chinese practices, subject to review only by Dutch officials with formal oversight over the compilation project. When Huang and his successors among the Chinese officers sat as judges in the courtroom of the Chinese council, however, they were forced to inhabit a space where their aspirations for gendered behavior had to contend with those of their constituents. Every week, two Chinese lieutenants heard petitions from members of the Chinese nation status-group, requesting that the court intervene in disputes with other members of the status-group. Court clerks recorded the proceedings of these hearings in the form of minutes written in vernacular Chinese. While the Council seems to have held court over a much longer span of time, the sole surviving records from the 18th century run from October 1787 to February 1791. During this three-year period, the court heard 580 cases in 664 hearings. The majority of these cases concern debt, breaches of contract, and other commercial disputes - these will not be examined here. However, I have identified 36 cases, spread over 52 hearings, where

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<sup>107</sup> Heksteen, Huang, and de Klerck, "Chinaas Recht," 22 May, 1761, *NIPB* vol. 7, 490.

the court was called to adjudicate domestic disputes between male and female litigants involving marriage, divorce, conflicts over child custody, marital abandonment, adultery, and spousal abuse.

In these cases, the judges, the plaintiff(s), and the defendant(s) each brought their own understanding of what type of behavior was acceptable from a wife, a husband, or a judge. Of course, power relations in the courtroom were highly unequal. However, not even the magistrates of the Chinese council were always able to unilaterally impose their views on the litigants who appeared before them. As a result, the court minutes offer an opportunity to explore how ordinary members of the Chinese nation status-group challenged and reacted to the patriarchal construction of gendered relations advanced by the elite men of the Chinese officer class. They expose the conditions under which these elites could successfully deploy their legal authority to intervene in gender relations, as well as the conditions that permitted successful resistance to these interventions.

There are some limitations to the court minutes as a source of information about gender relations in Chinese Batavia. Most glaring of these is that almost all the cases examined at least purport to involve heterosexual married couples - primarily because the Chinese council had special jurisdiction over this area of Chinese life as a result of their responsibility to grant marriage licenses and maintain a marriage register. These records offer little information on gender relations outside of the framework of marriage and the family. Commercial or financial disputes between male and female litigants are relatively rare, but they display little of the explicitly gendered discourses or judicial activism that typified marriage cases - the gender of the debtor or creditor seems to have had little bearing on the proceedings. Same-sex intimacy seems not to have produced the types of open litigation that permit analysis of heterosexual

relationships. The terse format of the minutes also means that they record little information about the social status and background of individual litigants, obscuring some of the internal complexity of the Chinese community. For all the frustration they pose to the historian, these source biases themselves reveal that gendered behavior within marriage was a particular source of concern for both judges and litigants.

The minutes reveal that not everyone agreed with Huang's maxim that Chinese women "may not request a divorce for continual mistreatment, but must remain silent."<sup>108</sup> Numerous women did exactly the opposite, arguing in court that the "continual mistreatment" they received diverged so radically from their expectations for acceptable marital relations that their marriages should be dissolved. Guo Zhenniang 郭貞娘 encapsulated this common argument in a petition delivered in September of 1789:

It has been three years since I entered my husband's house, and during that time I have not had a stitch of clothing to cover my body. When it comes to household matters, [my husband] completely fails to take care of them. When I argued, he beat and cursed me.

After this list of reasons why she believed that her spouse was not living up to her expectations for a husband, Guo emphasizes how her own behavior was a model of wifely patience and obedience, explaining that she had complained to the Chinese Captain many times before, but each time she had been told to return home to her husband. She declares that she "did what was asked, hoping that he would reform himself." Only when her husband continued to display "not the even the slightest change of heart or shift in thinking" (*haowu huixin fanyi* 毫無回心返意) did she decide to once again seek official redress.<sup>109</sup>

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<sup>108</sup> Heksteen, Huang, and de Klerck, "Chinaas Recht," 22 May, 1761, *NIPB* vol. 7, 483.

<sup>109</sup> Guo Zhenniang 郭貞娘 v. Xu Wuguan 許梧觀, 23 September, 1789, *GAB* v. 1, 214.

Many other female petitioners seem to have acknowledged a fairly stable concept of what constituted a model Chinese husband, even if they only defined it in the negative by detailing their grievances against their actual spouses. One central expectation was that husbands were ultimately responsible for providing material support for their wives, as evidenced by the numerous allegations of material neglect.<sup>110</sup> Second, female petitioners understandably viewed physical and verbal abuse as un-husbandly behavior.<sup>111</sup> Finally, although there is ample evidence that polygynous households and concubinage were common within some segments of the Chinese community, some women objected to these practices (and sometimes found the Chinese judges sympathetic to their complaints).<sup>112</sup> None of these constructions of masculinity wildly diverged from what Huang Shilao claims as the orthodox Chinese marital relationship: “husband and wife, inseparably attached, the man following his profession and the wife keeping her house and household.”<sup>113</sup> Their relative palatability (to elite men) may have been a forensic strategy developed by female litigants. Some women might have found it useful to frame their arguments using constructions of Chinese masculinity that would be familiar to the elite males

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<sup>110</sup> See, for example, Zhuo Weiguan 卓威觀 and Zhuo Guiniang 卓桂娘 v. Lin Ruilang 林瑞郎, 25 June, 1788, GAB v. 1, 59-60; Gong Xiniang 龔喜娘 v. Yang Jieguan 楊結觀, 4 March, 1789, GAB v. 1, 120; Huang Yinniang 黃蔭娘, Huang Yiguan 黃逸觀 v. Lin Jinsheng 林金生, 19 August, 1789, GAB v. 1, p. 201; Xu Yiniang 許益娘 v. Zhang Baoguang 張保光, 27 January, 1790, GAB v. 1, 247-248; Wang Wenniang 王汶娘 v. Lin Yongmao 林永茂, 21 July, 1790, GAB v. 1, 307; Huang Canguan 黃滄觀 v. Yang Xingguan 楊興觀, Yang Guiniang 楊桂娘, 11 August, 1790, GAB v. 1, 320-322; Lin Enniang 林恩娘 v. Xu Leiguan 許類觀, 3 November 1790, GAB v. 1, 352-353; Ye Wanniang 葉萬娘 v. Sun Qirui 孫奇瑞, 24 November, 1790, GAB v. 1, 356.

<sup>111</sup> Gong Xiniang 龔喜娘 v. Yang Jieguan 楊結觀, 4 March, 1789, GAB v. 1, 120; Huang Yinniang 黃蔭娘 v. Lin Jinsheng 林金生, 23 September, 1789, GAB v. 1, 215; Chen Lianniang 陳蓮娘 v. Lin Yinguan 林印觀, 12 May, 1790, GAB v. 1, 273; Zhang Diguan 張地觀 v. Nyai Cai Zhuang 雅蔡壯 [The Javanese term *nyai*, defined below, appears as a neologism in the minutes, created by appending a 女 radical under the character 雅. Modern character encoding sets do not contain this character, so it is replaced by the 雅 character in this paper], 2 June 1790, GAB v. 1, 280; Huang Canguan 黃滄觀 v. Yang Xingguan 楊興觀, Yang Guiniang 楊桂娘, 11 August, 1790, GAB v. 1, 320-322; Li Ruiniang 李瑞娘 v. Zhang Zuguan 張族觀, 1 September 1790, GAB v. 1, 327-328; Qiu Biniang 邱弼娘 v. Huang Liguan 黃理觀, 3 November, 1790, GAB v. 1, 354.

<sup>112</sup> Xu Yiniang 許益娘 v. Zhang Baoguang 張保光, 27 January, 1790, GAB v. 1, 247-248; Lin Jiezhen 黎捷振 v. Xie Yayan 謝亞燕, Peng Xinmei 彭新妹, 29 December, 1790, GAB v. 1, 367.

<sup>113</sup> Heksteen, Huang, and de Klerck, “Chinaas Recht,” 22 May, 1761, *NIPB* vol. 7, 490.

sitting as judges, allowing them to focus more exclusively on the controversial claim that deviations from these norms was sufficient cause for divorce.

Since the exchanges recorded in the minutes were shaped by the questions asked by the judges, the regular reappearance of a fairly small number of complaints may also have been an artifact of the legal tests applied by the Chinese judges. Generally speaking, the court minutes do not record every utterance made in court - the court clerks seem to have summarized lengthy question and answer sessions, selecting only those statements they thought were essential to include in the official record and omitting what they deemed routine or uninteresting. This can make understanding the nuances of judicial practice difficult to detect. However, one case record preserves an interchange between the judges and a woman seeking divorce:

The Court: Did your husband beat and curse you or not? A: No.

The Court: Is your husband a gambler or loose [in morals] (*dang* 蕩)? Do you lack for food or clothing? A: No.

The Court: Does your husband keep a concubine, or otherwise have illicit affairs? A: No.

The Court: If this is the case, this matter is already ended. Your husband is clearly a virtuous man; what reason could you have for not returning home with him?

This exchange suggests that the judges of the Chinese court had developed a panel of questions to test whether husbands met their criteria for “virtuous men.” The clerk most likely only recorded this routine interchange because it was unusual for a woman to answer no to all the questions asked. If this test was applied to other female applicants for divorce, it might help explain the regular recurrence of complaints about physical and verbal abuse, uncontrolled gambling, financial neglect, and objections to polygyny, as these were the responses the test was designed to elicit. Legally savvy women might also have been aware that the Chinese judges viewed these specific criteria as signs of defective husbandly behavior, and shaped their divorce petitions to exploit these biases.

However, some other female litigants advanced more independent formulations of acceptable gender relations. Several women stubbornly asserted the right to individual property and financial independence within the context of marriage. They not only argued that they were entitled to resist their husbands' attempts to claim their personal assets, but that these claims could violate the boundaries of acceptable marital behavior. Li Ruiniang 李瑞娘, for example, refused to secure her husband's purchase of goods on credit with her own assets, even when he retaliated by giving her a severe beating. Convinced that she was entitled to reject her husband's demands, she petitioned the court for a divorce in September of 1790.<sup>114</sup> Huang Yinniang's husband had similar designs on her assets, allegedly to fuel his ten-month sprees, where he would "get lost [pursuing] indulgence in the 'black devil' neighborhoods." (*milian zai wuguixiang* 迷戀在烏鬼巷).<sup>115</sup> His wife complained that he would "press her all day long for money," which she refused even in the face of physical retaliation. Not satisfied with drawing on his wife's assets, Huang Yinniang's husband tried to force her to take money from her mother's lockbox, which she again refused.<sup>116</sup> In her mind, this behavior was sufficient cause for divorce.

In another line of argument, several women defended their right to move about freely through the city, complaining that their husband's attempts to curtail their mobility constituted grounds for divorce. Among Hong Yueniang's many grievances against her husband was his tendency to "follow her around when she went out," a claim echoed three years later in Chen Lianniang's divorce petition.<sup>117</sup>

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<sup>114</sup> Li Ruiniang 李瑞娘 v. Zhang Zuguan 張族觀, 1 September 1790, GAB v. 1, 327-328.

<sup>115</sup> Huang Yinniang 黃蔭娘, Huang Yiguan 黃逸觀 v. Lin Jinsheng 林金生, 19 August, 1789, GAB v. 1, p. 201; Huang Yinniang 黃蔭娘 v. Lin Jinsheng 林金生, 23 September, 1789, GAB v. 1, 215. The term "black devil neighborhoods" is a pejorative reference to areas understood to be inhabited by people indigenous to the Indonesian archipelago.

<sup>116</sup> Huang Yinniang 黃蔭娘 v. Lin Jinsheng 林金生, 23 September, 1789, GAB v. 1, 215.

<sup>117</sup> Hong Yueniang 洪月娘 v. yifu Chen Rongguan 伊夫陳榮觀, Chen Puguan 陳普觀, Zhou Wenqu 周文取, 22 November 1787, GAB vol 1, 7-8; Chen Lianniang 陳蓮娘 v. Lin Yinguan 林印觀, 12 May, 1790, GAB v. 1, 273.



Most female litigants asserting that husbands had to respect their rights to private property and freedom of movement also made sure to lodge more widely accepted complaints of financial neglect and physical abuse. However, they appeared in court determined to defend their interests against the encroachment of elite male constructions of proper marital relations. Their arguments rejected the *Chinaas Recht*'s claims that Chinese-status "people of prestige and distinction who have married suitably and live decently" held goods in common without the need for contractual consent, and women were expected to avoid "meddling in the things outside" the home.<sup>118</sup> In their eyes, Chinese-status women could hold individual property within marriage and were free to move about publicly through the city.

While the women who appeared in court clearly expected the Chinese council to recognize their complaints about their husbands and intervene on their behalf, they found little sympathy in the council's verdicts. Whether the woman was complaining about material neglect, physical abuse, or encroachments on her personal and financial freedom, in most cases the judges of the Chinese council were unwilling to grant a divorce unless the woman's husband agreed to give her one. Guo Zhenniang claimed that her husband cursed her, beat her, and neglected her upkeep, but was denied a divorce for this reason. By his own admission, her husband had "gambled himself into servitude, where his wages truly did not meet their expenses" but since he did not agree to the divorce, the court ordered the couple to "return home and make peace, avoiding further enmity" (*huijia hehao, wu dei fanmu* 回家和好,毋得反目). Variations on this phrase echo throughout the court records in response to almost all of the unilateral female petitions for divorce. Only in the few cases where both husband and wife both agreed that a divorce was necessary would the court seriously evaluate whether the complaints

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<sup>118</sup> Heksteen, Huang, and de Klerck, "Chinaas Recht," 22 May, 1761, NIPB vol. 7, 481, 490.

met their grounds for divorce. If both parties wanted a divorce due to allegations of adultery,<sup>119</sup> financial neglect,<sup>120</sup> or physical abuse,<sup>121</sup> the court would try repeatedly to convince them to reconcile - if this was impossible, their marriage licenses were torn up, and their ability to remarry was noted in the marriage register. If the divorce was requested for other reasons, such as interpersonal conflicts, the case could be denied even if both husband and wife expressed their consent to the divorce.<sup>122</sup>

Besides either granting or denying divorce petitions, the judges of the Chinese council would occasionally order husband and wife to physically separate, but prohibited formal remarriage and stipulated alimony payments from the husband to the wife. This occurred rarely, but it seems to have been an option in two situations. Separations were granted, first, when physical abuse was particularly egregious but the husband refused to grant a divorce, and, second, when the wife did not consent to accompany her husband on a long absence from Batavia. For example, the court was preparing to deny Li Ruiniang's 李瑞娘 divorce petition, when she shocked the judge by shouting: "I would rather die than follow your order to return to my husband!" In further questioning about whether she was currently pregnant, she claimed that her husband had given her so severe a beating that it had interrupted her menstrual cycle. This seems to have convinced the judge that the usual injunction to reconcile was not feasible, so he

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<sup>119</sup> Successful divorce cases involving adultery: Hong Yueniang 洪月娘 v. yifu Chen Rongguan 伊夫陳榮觀, Chen Puguang 陳普觀, Zhou Wenqu 周文取, 22 November 1787, GAB vol 1, 7-8; Chen Zhenguan 陳枕觀 v. Wang Yanniang 王宴娘, 29 April 1789, GAB v. 1, 149-150; Gong Xiniang 龔喜娘 v. Yang Jieguan 楊結觀, 2 December, 1789, GAB v. 1, 233.

<sup>120</sup> Successful divorce cases involving financial neglect or abandonment: Wang Wenniang 王汶娘 v. Lin Yongmao 林永茂, 21 July, 1790, GAB v. 1, 307, continued in Wang Wenniang 王汶娘 v. Lin Yongmao 林永茂, 28 July 1790, GAB v. 1, 311; Huang Canguan 黃滄觀 v. Yang Xingguan 楊興觀, Yang Guiniang 楊桂娘, 11 August, 1790, GAB v. 1, 320-322.

<sup>121</sup> Successful divorce cases involving physical abuse: Huang Canguan 黃滄觀 v. Yang Xingguan 楊興觀, Yang Guiniang 楊桂娘, 11 August, 1790, GAB v. 1, 320-322.

<sup>122</sup> Chen Lianniang 陳蓮娘 v. Lin Yinguan 林印觀, 12 May, 1790, GAB v. 1, 273.

ordered the couple to split up and live separately, stipulating that the husband to pay her five rijksdollars a month for her upkeep. This was not a divorce, however: his verdict states that “both parties are not to remarry - if the wife commits adultery or anything disgraceful and is caught by her husband, she will be imprisoned; if the husband likewise has an affair, he will be similarly punished.”<sup>123</sup> Similar arrangements were made in one other serious case of abuse and a few cases where the husband either planned to travel or had been absent for long periods of time.<sup>124</sup>

Generally speaking, women found it very difficult to convince the elite male judges of the Chinese council that, when their husbands failed to meet their expectations for gendered behavior, this constituted sufficient grounds for divorce. A few extra-legal options remained for women truly committed to resisting their husbands and the court. First, women could try to simply weather the court’s attempts to coerce them into reconciling with their husbands. Chen Ainiang 陳愛娘 and her mother Nyai Cai Zhuang 蔡壯 took this path in 1790 after Chen Ainiang’s husband complained that his mother-in-law had absconded with his wife without his consent.<sup>125</sup> At first, only Chen Ainiang’s mother responded to the summons, claiming that her son-in-law had beaten her daughter “to the point that she was neither able to eat nor sleep,” let alone appear in court.<sup>126</sup> After four further failures to appear, the court runners finally dragged the reluctant Chen Ainiang before the Chinese magistrates, who applied the standard test and found no legitimate grounds to deny her husband his request to have her returned. Chen Ainiang

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<sup>123</sup> Li Ruiniang 李瑞娘 v. Zhang Zuguan 張族觀, 1 September 1790, GAB v. 1, 327-328.

<sup>124</sup> Qiu Biniang 邱弼娘 v. Huang Liguan 黃理觀, 3 November, 1790, GAB v. 1, 354; Lin Enniang 林恩娘 v. Xu Leiguan 許類觀, 3 November 1790, GAB v. 1, 352-353; Zheng Xunguan 鄭尋觀 v. Cha Tianxi 查天錫, 24 November, 1790, GAB v. 1, 355; Ye Wanniang 葉萬娘 v. Sun Qirui 孫奇瑞, 24 November, 1790, GAB v. 1, 356.

<sup>125</sup> Cai Zhuang’s honorific, Nyai, is an Indonesian word that can refer to either an older woman or the Indonesian concubine of a foreign man. It might indicate that the court saw Cai Zhuang as non-Chinese - her generational status certainly indicates that her parents were most likely Indonesian.

<sup>126</sup> Zhang Diguan 張地觀 v. Nyai Cai Zhuang 雅蔡壯, 2 June 1790, GAB v. 1, 280; Zhang Diguan 張地觀 v. Nyai Cai Zhuang 雅蔡壯, Chen Ainiang 陳愛娘, 21 July, 1790, GAB v. 1, 306.

refused to obey their verdict, and her husband had to take her out of the courtroom by force. Outside, her mother attempted to physically prevent her daughter from being taken away while shouting that she rejected the jurisdiction of the Chinese court and would throw herself at the feet of the nearest Dutchman to demand aid.<sup>127</sup>

Although Nyai Cai Zhuang was subdued and temporarily imprisoned for her behavior, both women were brought to court again the following week when Chen Ainiang's husband complained that she had run away again. Both mother and daughter were beaten in court for "daring to disobey orders and debase the natural hierarchy of human relations" (*gan fangming bailun* 敢方命敗倫). However, Chen Ainiang's husband was so shaken by their display of resistance that he declared that "if coercion is used to make us reconcile, I would fear that my life would be in danger." Having received the husband's permission, the court saw no other option but to finally grant the couple a divorce.<sup>128</sup> While clearly not for the faint-hearted, their experience shows it was possible to successfully resist the court's authority through civil disobedience. This case also indicates that the struggle to secure a divorce was fought not only by trying to convince the judges that a wife had been mistreated, but also by putting intense pressure on the husband to give his consent.

If women sought release from relationships where the husband had neglected to formally secure a marriage license, they could sometimes successfully convince the court that the marriage was invalid because of the lack of documentation. Many men, such as Huang Cangguan 黃滄觀 seem to have been apathetic to or ignorant of the Chinese Council's claim that only licensed marriages were true marriages: when they married their wives, "neither the [officially

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<sup>127</sup> Zhang Diguan 張地觀 v. Nyai Cai Zhuang 雅蔡壯, Chen Ainiang 陳愛娘, 28 July, 1790, GAB v. 1, 309.

<sup>128</sup> Zhang Diguan 張地觀 v. Chen Ainiang 陳愛娘, 4 August, 1790, GAB v. 1, 314-315.

stipulated] rituals or registration were carried out; the two families just agreed and the marriage was concluded just like that.” Huang Canguan’s case shows that these informal marriages could be indefensible in court, as the court refused to coerce his fugitive wife into signing one and returning home with him.<sup>129</sup>

However, these strategies of resistance were clearly options of last resort, with high levels of risk and uncertainty. The judges of the Chinese council subscribed to a view of Chinese customary law that held that divorces could only be legitimately granted for specific reasons with the consent of both parties. Since the judges retained jurisdiction over marriages between members of the Chinese nation, and that jurisdiction was reinforced by a substantial coercive apparatus, the alternative constructions of just marital relations held by some female members of the nation were faced with powerful opponents.

Theoretically speaking, male litigants who filed standard divorce petitions also needed to secure their wife’s consent to be granted a divorce. However, there are fewer cases of men initiating divorce proceedings, which is perhaps unsurprising considering the numerical imbalance between men and women in the Chinese status-group and the substantial material expense of securing a wife.<sup>130</sup> This male tendency to view divorce as a last resort is further supported by the numerous male litigants who asked that the Court’s coercive apparatus be deployed to recover wives who had absconded from their marriages.<sup>131</sup> However, when men did

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<sup>129</sup> Huang Canguan 黃滄觀 v. Yang Xingguan 楊興觀, Yang Guiniang 楊桂娘, 11 August, 1790, GAB v. 1, 320-322.

<sup>130</sup> Several cases in the minutes indicate that Chinese husbands were expected to pay a bride price of around 60 rijksdollars, either to the bride herself or to her family: see, for example Xu Wanniang 許婉娘 v. Lian Guiguan 連貴觀, 19 March, 1788, GAB v. 1, 32; Liu Qiguan 劉器觀 v. Han Taiguan 韓臺觀, Han Maoguan *bingbudao* 韓毛觀 (病不到) [not present due to illness], Nyai Han Hou 雅韓厚, Han Tieguan 韓貼觀, Han Binguan 韓斌觀, Han Maoguan 韓茂觀, Lu Heguan 盧合觀, 5 May, 1790, GAB v. 1, 270; Lin Jiezhen 黎捷振 v. Xie Yayan 謝亞燕, Peng Xinmei 彭新妹, 29 December, 1790, GAB v. 1, 367.

<sup>131</sup> Wang Haiguan 王海觀 v. Zhong Shuiguan 鍾水觀, 28 April, 1790, GAB v. 1, 264-265. Chen Yiguan 陳益觀 v. Zhou Rinian 周日娘, Nyai Youzheng 雅游政, 5 May, 1790, GAB v. 1, 269; Zhang Diguan 張地觀 v. Nyai Cai

request divorces, they relied heavily on two specific legal strategies. Like the petitions filed by female litigants, these cases reveal what ordinary Chinese-status men in Batavia expected as normative wifely behavior. However, they also reveal how men attempted to circumvent the requirement that they obtain their wives' consent prior to divorce by tapping into perceived elite anxieties about female behavior.

First, numerous men used divorce litigation to target their wives' public behavior, arguing their wives had injured them by engaging publicly in unfeminine activity. In September of 1788, the Chinese council issued a proclamation aimed at bringing "peace and quiet" to the Chinese neighborhoods. It banned non-Chinese (*fanren* 番人) from bearing arms at night and opium dens from being constructed in the Chinese districts, but it also specifically targeted certain female behavior as un-Chinese, unfeminine, and immoral. The third article of the proclamation declared that "when women gamble or attend dramatic performances, they wound our customs and debase our traditions (*shangbai fengsu* 傷敗風俗). It is not for women to do these things." The Chinese community was enjoined to carefully police female behavior to propagate "correct customs" (*zheng fengsu* 正風俗) and to prevent evil practices from "proliferating like swarms of wasps."<sup>132</sup> Women's behavior was construed as damaging *fengsu*, a concept that refers to the customary practices of a particular group of people, in this case the Chinese community.

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Zhuang 雅蔡壯, 2 June 1790, GAB v. 1, 280; Huang Cangguan 黃滄觀 v. Yang Xingguan 楊興觀, Yang Guiniang 楊桂娘, 11 August, 1790, GAB v. 1, 320-322; *Waitan Baoluman song Lin Wenshan bing qiqi Zeng Sheng zhi shi gongpan* 外澹褒擄蠻送林文山並其妻曾陞之事公判 [Landrost Baoluman forwards the case of Lin Wenshan's wife and Zeng Sheng for judgement], 22 September, 1790, GAB v. 1, 337.

<sup>132</sup> *Lin Jia Handan wei difang qingshi, ju yi kou ci chengyue Gongtang* 林甲漢丹為地方請事，具一口詞呈閱公堂 [Lieutenant Lin Handan submits a proposed proclamation to the Chinese Council in response to local conditions], 24 September, 1788, GAB v. 1, 84-85.

In their divorce petitions, male litigants repeatedly adopted this rhetoric, which presented certain types of supposedly unfeminine behavior as a threat to Chinese values. However, they usually added that their wives had injured them personally by bringing disgrace on their household. Lin Yinguan 林印觀 claimed that his wife did “not respect established manners,” and went “every day to enjoy dramatic performances;” when he had threatened to punish her, she refused to reform and thus he requested a divorce. His wife also was incensed that her husband had tried to force her to “wash the clothing of a young newly-arrived Chinese immigrant” (*xinke* 新客), possibly a son of her husband born to a wife in China.<sup>133</sup> Similarly, Xu Xieguan 許協觀 sought a divorce from his wife, who had “brought disgrace to his doorstep” by being caught gambling.<sup>134</sup> The husbands in both cases sought to highlight how their wives not only had disgraced them personally, but had also violated the “established manners” of the Chinese community through their disorderly public behavior.

Like many of the cases brought by female litigants, several male litigants seem to have framed their arguments in these terms because they assumed that adopting the Chinese Council’s rhetoric about female behavior would help them secure a personally advantageous verdict. Lin Jiezhen 林捷振 alleged that his wife “did not take care of the household as stipulated in the regulations” and that she “wandered in all directions on a daily basis.” However, unlike some other female litigants, his wife defended her behavior and refused to grant her husband a divorce. She countered that she “took care of the household according to the law” and denied that she had a “wandering heart.”<sup>135</sup> Lin Jiezhen’s true motivations for seeking a divorce were revealed in court the following week, when he tried to recover the engagement gifts that he had given to

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<sup>133</sup> Chen Lianniang 陳蓮娘 v. Lin Yinguan 林印觀, 12 May, 1790, GAB v. 1, 273.

<sup>134</sup> Xu Xieguan 許協觀 v. Chen Xiuniang 陳秀娘, 10 December, 1788, GAB v. 1, 104..

<sup>135</sup> Lin Jiezhen 黎捷振 v. Nyai Ouzheng 雅歐政, Ou Jianiang 歐甲娘, 22 December, 1790, GAB v. 1, 361.

another woman. He had told his erstwhile fiancée that he was unmarried, hoping to secure a divorce before she discovered the lie; now she refused to go through with the marriage or return the eighty rijksdollars, jewelry, and clothing he had given her as a “deposit.”<sup>136</sup> While concerns about his wife’s unfeminine behavior may have contributed to Lin’s dissatisfaction with his first marriage, later developments show how he deliberately sought to play up her unruliness as a strategy to persuade the judges of the Chinese council.

Wang Jiguan tried to deploy a similar strategy to wrest away control of his wife’s business and use its assets to repay his considerable debts. He argued that his wife “spent all day buying and selling without a sense of shame.” His attempts to make her cease this disgraceful activity were met with “continual clamour,” which disgraced him to the point that he “had no choice but to bend” and seek a divorce. His petition presents his wife’s behavior as a source of noise and disorder, in contrast to the expected domesticity and obedience. However, his mother in law and wife testified that Wang Jiguan had previously agreed to allow his wife to operate her market stall in front of their home, and their “days had passed in peace.” Later, when he borrowed two hundred rijksdollars that he was unable to repay, he began to press her to sign her store over to his name, and thus was himself responsible for disrupting the harmony of the household.<sup>137</sup> In both of these cases, the male litigants made conscious appeals to elite fears about disorderly female behavior and its effects on communal values. However, they were disappointed when the court saw through their attempts to defame their wives in pursuit of individual interests.

Husbands who alleged that their wives had engaged in adultery with non-Chinese men had a better chance of inducing the court to intervene in their marriages. Aside from the case that

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<sup>136</sup> Lin Jiezheng 黎捷振 v. Xie Yayan 謝亞燕, Peng Xinmei 彭新妹, 29 December, 1790, GAB v. 1, 367.

<sup>137</sup> Wang Jiguan 王機觀 v. qi Xie Qianniang 妻謝謙娘, 14 January, 1789, GAB v. 1, 114



opened this paper, numerous other male litigants framed their cases around the ethnic dimensions of their wives' extramarital affairs. Several divorce cases follow a very similar pattern to the dispute discussed in the introduction. Yang Jieguan, a butcher, testified that his wife had engaged in illicit relations with a *fanren*, a claim initially advanced in a successful attempt to discredit her petition for divorce on grounds of neglect and abuse.<sup>138</sup> Several months later, they reappeared in court, Yang Jieguan having been persuaded to allow the divorce conditional on the return of his marriage gifts.<sup>139</sup> This tentative agreement had collapsed by the next week, however, when Yang Jieguan reappeared, saying:

“when I agreed to divorce my wife, I assumed that this meant she would reform and marry a Chinese man (*tangren*) in the future. This was my original intent. However, my wife has subsequently chosen to cohabitate with a *fanren*. If we were to divorce now, she would certainly form a partnership with a fanren. Since this was not what I wanted, I report the truth to the court.”

The Chinese court agreed with Yang Jieguan that this type of behavior following an agreement to divorce constituted a violation of the spirit of the agreement, and refused to formally dissolve the marriage. His wife only managed to secure the divorce because the Chinese council permitted her to have the case tried in the Dutch Landdrost court, where she found a more sympathetic verdict.<sup>140</sup>

When male litigants accused their wives of extramarital affairs with non-Chinese men, the judges of the Chinese court were often willing to grant them divorces that specifically stipulated that the wives were free to remarry within, but not outside of the Chinese status-group. This suggests that they viewed the ethnic dimension of the offense as more important than the adultery itself. This possibility is reinforced by the exceptional efforts on the part of the Chinese

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<sup>138</sup> Gong Xiniang 龔喜娘 v. Yang Jieguan 楊結觀, 4 March, 1789, GAB v. 1, 120.

<sup>139</sup> Gong Xiniang 龔喜娘 v. Yang Jieguan 楊潔(結)觀, 21 Oct, 1789, GAB v. 1, 222.

<sup>140</sup> Gong Xiniang 龔喜娘 v. Yang Jieguan 楊結觀, 2 December, 1789, GAB v. 1, 233.

judges to punish and humiliate some of the women accused of relations with non-Chinese men. In July of 1790, a Chinese man notified the Chinese court that his sister-in-law Li Yanniang 李艷娘 had been “abducted” (in the words of the court minutes) by a Dutch pork butcher who resided near the Dutch municipal courthouse, inside the city walls. “Fortunately,” the Landdrost was in the city, and he sent his runners to track down the couple and turn Li Yanniang over to the Chinese council.<sup>141</sup> She was then married off to a Chinese-status man named Xie Daozhong 謝道忠. Li Yanniang seemed to have been unsatisfied with her new husband, as he appeared before the Chinese council in October to complain that she had eloped with a *fanren* flower-seller. He chased her down and brought her to court to ask for a divorce.<sup>142</sup>

Lieutenant Lin Chunguang 林春光, the sitting judge was incensed with Li Yanniang’s behavior and launched into the following diatribe:

This woman was previously abducted by the Dutch butcher, and luckily tracked down by the Landdrost’s men. Then, she was paired with [Xie] Daozhong to serve as her spouse, but she refused to reform. Now, she once again runs off after a *fanren*, wounding our customs and debasing our traditions (*shangfeng baisu* 傷風敗俗). There is nothing graver than this.

The Lieutenant, backed up by Captain Wang Zhusheng 王珠生, ordered that she be beaten with a bamboo while being paraded through the streets of the Chinese district so that “her misdeeds could serve as a warning to the masses.”<sup>143</sup> This type of spectacular physical punishment was repeated in at least one other case involving a Chinese-status wife who eloped with a non-

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<sup>141</sup> The Landdrost was the Dutch official nominally in charge of law enforcement for the areas outside the city walls, and the VOC employee who worked most closely with the Chinese council in judicial matters. *Wei chengnei Gu Risheng qimei Li Yanniang cunan* 為城內辜日生妻妹李艷娘存案 [Record regarding city resident Gu Risheng’s wife’s sister Li Yanniang], 30 July, 1790, GAB v. 1, 313.

<sup>142</sup> Xie Daozhong 謝道忠 v. Li Yanniang 李艷娘, 27 October, 1790, GAB v. 1, 349.

<sup>143</sup> *Ibid*, 349.

Chinese man during the three-year period covered by the records.<sup>144</sup> However, no similar punishment was applied in cases where adultery was not alleged to have crossed ethnic or corporate boundaries.<sup>145</sup>

These punishments, and the legal discourse that surrounded them, reveal some of the ways that ethnic tensions, contested understandings of gender, and the construction of a distinct Chinese community came together in the courtroom. Lieutenant Lin Chunguang's pronouncement that Li Yanniang had gravely "wounded our customs and debased our usages" was nearly the same language used in the Council's earlier proclamation condemning women who gambled or attended dramatic performances. Interethnic adultery and specific forms of conspicuous public female behavior were glossed as immoral, unfeminine, and ultimately, un-Chinese. In both cases, male litigants either held similar beliefs or recognized that appealing to elite anxieties about women might be an effective courtroom strategy.

The divorce cases discussed here reveal two facets of legal practice within the Chinese community in Batavia that initially appear at odds with one another. The jurisdiction of the elite male members of the Chinese Council was predicated on the assumption that the so-called Chinese nation shared a unified set of customary legal traditions. As some of the wealthiest and supposedly most respected members of that community, the VOC municipal government viewed the Chinese officers as the natural bearers of those legal customs. In practice, however, the courtroom served as a venue where ordinary male and female litigants could express their own views of what constituted grounds for divorce in the Chinese community. Some individuals, especially women, argued that mistreatment alone was sufficient cause for divorce and that it

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<sup>144</sup> Yang Chuguan 楊楚觀 v. Lin Zhenniang 林貞娘, Lin Kuiji 林魁吉, 20 October 1790, GAB v. 1, 346

<sup>145</sup> See, for example, Zhuo Weiguan 卓威觀 and Zhuo Guiniang 卓桂娘 v. Lin Ruilang 林瑞郎, 25 June, 1788, GAB v. 1, 59-60.

was unnecessary to secure consent from both parties. They also claimed that specific behaviors counted as mistreatment, such as encroachment on individual property rights within marriage or freedom of movement, despite the fact that elite men refused to recognize them as such. As a result, the divorce dramas acted out on the courtroom floor continually undermined the ideological foundations of Chinese council's judicial authority, repeatedly demonstrating that no stable customary consensus on key issues in gender relations existed within the Chinese status group.

At the same time, the power relations produced by that judicial authority created a platform from which the elite men on the Chinese Council could intervene in the private relationships of their constituents, promoting their hegemonic model of proper marital relations and suppressing alternative formulations. Their monopoly on judicial violence, supported by the VOC administration, allowed them to punish litigants who refused to abide by their rulings and make examples of individuals whose behavior they claimed violated customary boundaries. As an institution, the Chinese court could also shape constituent behavior in more subtle ways. Many of the petitions presented in court bear the unmistakable signs of having been sculpted to take advantage of elite sensibilities and anxieties. The court records suggest that women may have presented their grievances in terms that they knew the court acknowledged as legitimate grounds for divorce. Male litigants certainly did so, crafting arguments that deliberately played to elite anxieties about disorderly female behavior and interethnic sexual relations.

These interventions were only possible because of the unique jurisdiction that the Chinese Council held over marriage in Batavia. In many ways, the degree of control that the Council exercised over private marital relations was historically unprecedented. During the 18th century, state-controlled courts in both the Netherlands and China never claimed anything like

the exclusive right to grant, deny, and revoke marriage licenses. The system of marriage registration that emerged in Batavia was in many ways a technology of elite power. Since marriage licenses were obligatory, control over the license system allowed the male Chinese oligarchs who comprised the Council to set the terms under which marital partnerships could be formed and dissolved.

The significance of this legal innovation becomes clear if we consider what would have happened if there had been no court intervention in marital disputes. A recurring feature in the divorce cases was the tendency for women with grievances against their spouses to flee in search of protection from their parents or other men.<sup>146</sup> If the court had not intervened to coerce these wives to return to their husbands and punish those who harbored them, many of these escape attempts would have been successful. However, it is worth noting that there may also have been a higher degree of interfamilial conflict and violence over fugitive women if the court had not adjudicated these disputes.

## Conclusion

The Chinese elites who climbed to positions of authority in Batavia's colonial administration did so by presenting themselves as the natural leaders of a Chinese sub-community. The VOC expected them to put that authority to use by making that community legible (and thus governable) to Dutch administrators. Consequently, the Chinese officers

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<sup>146</sup> Zhuo Weiguan 卓威觀 and Zhuo Guiniang 卓桂娘 v. Lin Ruilang 林瑞郎, 25 June, 1788, GAB v. 1, 59-60; Wang Haiguan 王海觀 v. Zhong Shuiguan 鍾水觀, 28 April, 1790, GAB v. 1, 264-265; Chen Yiguan 陳益觀 v. Zhou Riniang 周日娘, Nyai Youzheng 雅游政, 5 May, 1790, GAB v. 1, 269; You Zhengguan 游政觀 v. Yao Dongguan 姚東觀, 5 May 1790, GAB v. 1, 271-272; Wu Wenbiao's 吳文標 report, 12 May, 1790, GAB v. 1, 275; Zhang Diguan 張地觀 v. Nyai Cai Zhuang 雅蔡壯, 2 June 1790, GAB v. 1, 280; Huang Cangguan 黃滄觀 v. Yang Xinguan 楊興觀, Yang Guiniang 楊桂娘, 11 August, 1790, GAB v. 1, 320-322; Lin Shangci 林上賜 v. Zhong Yinguan 鍾營觀, 22 September, 1790, GAB v. 1, 336.

managed to seize control over two knowledge processes that occupied a central role in urban governance. First, they exercised the right to independently produce and maintain a series of population and marriage registers that mapped out a distinct Chinese community subject to their authority. The process of registration was coupled with an extensive license system, which demanded that members of that Chinese community appear before the Chinese officers to seek permission to settle in the city, to leave it, to marry, or to divorce. Second, the Chinese officers monopolized the right to represent the Chinese community's legal traditions and values to the Dutch, whether in the form of informal consultations in Dutch courtrooms, formal codification projects, or the authority to use those traditions in their own court to adjudicate disputes among Chinese residents. This paper has suggested that, since the elite male officers of the Chinese council controlled these administrative functions, they were able to command an outsize degree of discursive and coercive power in the struggle to define Chinese communal norms. As a result, elite representations could crowd out alternative formulations of justice and the boundaries of acceptable behavior, especially in the gendered context of marriage—although this encroachment was stubbornly resisted by individual members of the Chinese community.

In light of these findings, we might want to revisit some important historical questions about the Chinese diaspora in Southeast Asia. First, the evidence presented here shows that we should rethink Furnivall's concept of a "plural society" in colonial Asia. They fail to reveal a unified, self contained community holding to "its own religion, its own culture and language, its own ideas and ways."<sup>147</sup> In fact, the court minutes of the Chinese council and de Klerck's commentary on the *Chinaas Recht* text show that views on what constituted Chinese "ways" were highly diverse, stratified by gender, class, and ethnic ancestry and influenced by

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<sup>147</sup> Furnivall, *Colonial Policy and Practice*, 311.

interactions with other groups. Furnivall also argues that plural societies are natural products of “economic forces” drawing different (presumably predefined) groups together for trade; plural societies, and their problems, are preserved “because [they are] unrestrained by social will” channeled into political action. Instead, I argue that “economic forces” such as Batavia’s marriage market militated strongly against the preservation of coherent group identities: constant recruitment of non-Chinese women to the status group through marriage and domestic servitude served to diversify the values held by members of the Chinese community. However, pluralism was significant as a system imposed from above, emerging out of the negotiated division of administrative and legal power between Chinese and Dutch elites. Elites envisioned a society where conflict between identity-groups could be mitigated by subdividing jurisdictions into ethnic categories. When coercive and disciplinary institutions were built around this vision, these institutions tried to maintain and police what elites perceived as the boundaries between ethnic groups, severely punishing certain types of transgressions and repressing alternative constructions of group values.

Second, I would advocate that the skeptical approach to claims about a unified Chinese community in Batavia advanced in this paper be applied more broadly both in the reading of primary sources from the period and the critical interpretation of more recent secondary scholarship. At a basic level, this paper builds off of the conclusions of path-breaking historians such as Wang Gungwu, Ng Chin-keong, and Leonard Blussé, who have argued persuasively that what they deem a “Chinese diaspora” played a central role in the massive changes that took place in maritime Asia during the early modern period.<sup>148</sup> Their arguments are consistent with those

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<sup>148</sup> For representative works, see Wang, “Merchants Without Empire,” Ng Chin-keong, *Trade and Society: The Amoy Network on the China Coast, 1683-1735* (Singapore: Singapore University Press, 1983), and Blussé, *Sojourners and Settlers*.

advanced here, in that they make it impossible to accept previously canonical claims that the “colonial culture” or “the social world” of the port cities rimming the South China Sea can be effectively analyzed by examining interactions between European immigrants and indigenous residents alone.<sup>149</sup> Cities like Batavia were not only sites for social and cultural interactions between a European “early modernity” and Indonesian “tradition.” On purely demographic grounds, more Indonesian people would have had direct interactions with Chinese immigrants than European ones, while the institution of the Chinese council ensured that large numbers of Indonesians had to reckon with a developing Batavian Chinese legal and governmental tradition. So far, the economic and political dimensions of these exchanges have attracted the most attention, but their cultural and social aspects remain largely unexplored. When thinking about cross-cultural interaction, however, it is essential to approach seemingly self-evident categories such as “the Chinese diaspora” with a great degree of caution. While much of the secondary literature repeats primary source references to a “Chinese nation” or “Chinese customs,” insufficient attention is paid to the specific historical processes that produced these categories, and the ideological and coercive work performed by appeals to Chinese identity.

Chinese constructions of law and gender followed some Chinese merchants into positions of power, even without a formal relationship with the Qing state. The power relations between these elites and the culturally and ethnically complex populations they administered resemble the power relations that developed between Europeans imperialists and colonial subjects in some respects. However, the behavior of Chinese elites was shaped by ideas whose content, contexts, and cultural genealogies differed substantially from those which developed among European colonialists. In Batavia, contests over the scope and intensity of elite Chinese power were waged

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<sup>149</sup> Jean Gelman-Taylor, *The Social World of Batavia: Europeans and Eurasians in Colonial Indonesia*, 2nd ed. (Madison: University of Wisconsin Press, 2009 [1983]), xvii.



in courtrooms and bedrooms more often than on the battlefield. This paper has sought to explore how these ideas and power relations intersected through a case study limited to issues surrounding law and gender in late 18th century Batavia. Future research is necessary to determine whether similar patterns developed in other nodes of Chinese settlement in the Nanyang and how they changed over time. It is essential, however, that close attention be paid to the internal dynamics within Chinese communities as well as the areas where their Chineseness was an administrative fiction rather than lived reality.

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