

知情者的無奈： 清乾隆朝縱姦賣妻諸案中的牽連致罪

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在傳統中國社會裡，行政執能的運作、地方秩序、治安的掌握仰賴保甲居中傳遞協調、稽查舉報。從實際刑科案例所見，肩負秩序維持使命者，不僅只社區裡的保長、甲首，尋常百姓亦在其中。清律一系列的稽查條例，促使所有窺悉他人異樣的小民男女，多少扮演著治安監守人的角色。一旦爆發人命糾紛，除了正犯主嫌之外，這些相對處在案件邊緣的鄰里、親友，甚至同行路人，往往以目擊者、關係人的身分，受到衙門傳喚、究詰。清律責賦所有人負起糾舉、報縣的治安稽查義務，立意雖在杜絕違法犯紀於未發之時，但在實踐上卻不免使原本立場清白的無辜者，捲進犯罪場景之中，難以全身而退。本文以乾隆朝刑科檔案裡的縱姦、賣妻故事為主要素材，探究一樁人命糾紛爆發時，那些無意間窺得內情的干連證佐、甚或僅僅是耳聞他人不法端倪的陌生路人，清律對他們的規範與期許、他們在案件環境中所扮演的角色、態度的轉變及其行動抉擇等等。

關鍵字：縱容通姦、賣妻、知情者、牽連致罪、社會控制、刑科題本

The Helplessness of Insiders: Guilt by Association in Cases of Illicit Sexual Intercourse and Wife-Selling during the Qianlong Period

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ABSTRACT

In traditional Chinese society, the tithing system played an important part in administration and the preservation of social order. Cases in the Qing judicial archives provide information about the workings of the tithing system, as well as clues about how ordinary people had a degree of responsibility for the maintenance of public security. A series of statutes forced anyone aware of an illegal activity to investigate it and take appropriate action. Once a homicide case occurred, in addition to the principal suspect, additional persons such as neighbors, relatives, and even strangers could be summoned to provide depositions and be questioned before a court. The aim of the Qing statutes was to prevent malfeasance by charging ordinary people with responsibility for reporting on the illicit activities of others. It even compelled innocent bystanders or witnesses to become involved. This study utilizes cases from *Xingke tiben* (Board of Punishments routine memorials) and other legal documents, all of which happen to deal with disputes about a husband's wife-selling and abetting or tolerating a wife's illicit intercourse, to investigate what the Qing judiciary expected bystanders to do, and how those involved responded.

Key Words: abetting or tolerating illicit sex, wife-selling, insiders, guilt by association, social control, *Xingke tiben* (board of punishments routine memorials)