

Abstract of Paper by Mary Szto

Until 1911 China's traditional legal system was relatively continuous for centuries. This regime was based on a rule of virtue and flourishing, in a weaving of ritual and law in multiple and parallel jurisdictions. These were the imperium, the ancestral clan, the merchant guild, and the spirit world. Like the relationship of *yin* and *yang*, in each jurisdiction, within ritual lay law, and within law, ritual. They are inseparable. As *yang* is superior to *yin*, ritual was favored over law; however, both mediated between Heaven and earth. Ritual is communion with, and law is accountability to, Heaven and the spirit world. Lawyers were deemed unnecessary because each person was responsible for fostering virtue and harmony. As traditional Chinese medicine (TCM) nourishes holistic health, aspects of traditional Chinese law (TCL) nourish holistic justice.

This article introduces flourishing and the invisible world within the traditional Chinese worldview, then the tapestry of multiple jurisdictions, and then communion and accountability in each jurisdiction. In addition to dynastic codes and courts, Chinese law can be found in these 'other' places: imperial and ancestral rites, family codes and courts, merchant codes and courts, and spirit codes and courts. Gifts and shared food and drink are the quintessential rites, representing at once celestial bounty, human cultivation, and communion with visible and invisible companions. They sealed pacts and also served as conflict prevention and resolution.

At the same time, codes embedded in ritual cultivated virtue, and each realm had courts to punish wrongdoers. State courts only intervened when other jurisdictions failed to act or could not resolve a conflict. Mediation, itself a ritual, was the prime method of conflict resolution among clan elders for family matters. Because of the ritual/law framework, this was also favored by magistrates.

Draft available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1766023

The Traditional Chinese Family: A Review from the Property Right

Dong JIANG

Associate Professor, Renmin University of China Law School

Email: luckyrucjd@hotmail.com

The scholars both in China and in the west have agreed that, family rather than individual, is the fundamental social unit in ancient China. However, the consensus on the significance of the role the family played in traditional China will not automatically result in the uniform understanding of a seemingly easy to be answered question: what family is in the long history prior to China's republic era. The ambiguity of the Chinese character “家” (Chia/Jia, family) may lead to the complexity of understanding what the word “family” actually means in ancient China, reasonably attributed to the difficulty in answering that simple but tricky question. Therefore, this article tries to probe into the nature of “family” in ancient China, with the perspective of exploring the relationship of its members in terms of property right and the emergence and resolution of the financial disputes within the boundary of the family. The family, the property right, the doctrine of “礼” (Li, rite) will be the critical concepts exploited in digging out the family related issues in ancient China.

Abstract of Paper by SHAN, Chun
Family Law and Confucian Ethics in the Qing Dynasty

The Qing Dynasty is the longest dynasty controlled by an ethnic minority among the twelve dynasties in Chinese history, and its legal system was mainly comprised of the Qing Dynasty Codes and the *Manzu* (herewith, *Man*) ethnic customs. Qing family law exhibits its features in marriage, concubinage, divorce, remarriage of widows and property inheritance. In the making of Qing family law, some traditional customs and usages of the *Man* people were reformed or rejected, and the traditional marriage of Han people based on the Six Rituals also underwent some legal transformation regarding Kinship Marriage (*Zhong Biao Hun*), property division among offspring of both the wife and concubines, and rights and obligations caused by such marriage. The official acquiescence and postponed confirmation of custom and usage among the plebeian have been attributed to the clashes and compromises between Confucian ethics, imperial authorities and social practices.

As the last dynasty in imperial China, the Qing Dynasty exhibited all the peculiarities of the traditional Chinese legal system, i.e., its civil service system by Confucian-styled examinations, criminal law and family law. These three departments of legality are ideologically related to Confucian ethics. In the juristic structure of the Confucian rule of virtue, the civil service examination, ritual-oriented criminal law and family law, mirrored the principle of filial piety and were the basis for national law. This spirit of the law sustained the unity and integrity of family and country, revealing moral obligation instead of individual right as central in Chinese legal philosophy. Justified by this Confucian political philosophy of integrating family and ruling the world (*Qi Jia Zhi Guo, Ping Tian Xia*), Qing family law fully attested to the correlation between family law and national law.

Abstract of Paper by Tahirih Lee

Imperial magistrates in the Qing dynasty (1644-1911) were all too familiar with litigation among family members. Because of a lack of procedural rules that limited the length and scope of litigation, family disputes dragged out in the courts at all levels of appeal. When a new set of courts opened up in Shanghai in the late nineteenth century, family members brought their disputes to them, only to find truncated procedures, limited possibilities for appeal, and judges who attempted to mediate such disputes to keep them out of court. A full-fledged mediation system grew out of these courts in Shanghai by the late 1920s in an attempt to keep family issues out of court.

For my presentation at the ASLH, I plan to first summarize the growing body of scholarship in China, Europe, and the United States on family lawsuits in the late Qing dynasty, and then to focus on the lawsuits between family members that I uncovered in my own archival research on the courts of Shanghai in the early twentieth century. I will use this material to examine the circumstances that conflicts among blood relations led to litigation, and how judges handled these matters, which laws and norms the judges applied, and concerns about such disputes by government officials.