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ARTICLE

TOWARDS A THICK DESCRIPTION OF CHINESE FAMILY AND POLITICAL CULTURE: CONFUCIANISM, SOCIALISM AND LIBERALISM IN CHINA

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Contemporary studies of Chinese family law generally follow a Western approach, viewing the family as a civil contract. This approach has several flaws. First, it cannot provide an explanation of why so much public attention has been given to family law issues. Second, it fails to understand the logic and practice of family issues in Chinese history. Third, it fails to understand the political significance of the family.

This article develops a new and more comprehensive understanding of Chinese family culture and its relationship to political culture. Employing what Clifford Geertz called "thick description," it studies how people have imagined the family-political nexus in Confucianism, socialism and liberalism as each has characterized a distinct period of Chinese history. It shows Confucian family is an ethical community of restraint of biological impulse; the socialist family is a community of sacrifice and labor; the liberal family is a community of market individuals; and the contemporary Chinese family is a combination of these three traditions. A thick description enables us to understand why there are public debates about family law. What is more, it sheds new light on why China's march toward the rule of law has not been very successful.

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INTRODUCTION

A. Background and Objectives of Study

In China, legal cases do not have a very high visibility. Rather than paying close attention to the legal cases and legal debate, people generally have more interest in political events and political news. To a certain extent, they consider legal cases as irrelevant to them as long as they are not involved as a partner. This stands sharply contrasted to the experiences in Western countries, where many legal cases arouse intense public attention.

However, family law cases seem to be exceptional. During the past several decades, many of the publicly debated cases arise from family law. For example, in the Concubine Case that decided in 2001, there is hot debate between the lawyers and the laypeople. In this case, Mr. Huang Yongbin and Mrs. Jiang Lunfang married in 1963 and had only a foster child. In 1994, after 31 years of marriage, Huang had an affair with woman named Zhang Xueying and moved out to live with her. On April 22, 2001, Huang made a will to bequeath his property to his mistress, Ms Zhang. After Huang's death, Ms Zhang sued Mrs Jiang to claim her legacy. The case soon aroused great public debate. Most lawyers

and legal scholars argued that the will was a lawful exercise of individual property rights. Lay people, in contrast, argued that such a will violated social morality and thus should be nullified.[1]

Why are there so many intense debates on Chinese family law and cases? We will argue that this attention is rooted in the set of political expectations with which Chinese society approaches the family. Family and state have long been intertwined in reciprocal relations of cause and effect. Controversies over family law are inevitably political controversies in China. Family law is an accessible site for giving voice to conflict over the fundamental visions of the state.

This interconnection of the familial and the political is not new in China. For example, in the founding period of the People's Republic of China, the Marriage Law was enacted even before the Constitution. Its importance was regarded by leaders as next only to the Constitution.[2] Looking further back at traditional Chinese society, the family in Confucian thought had been the starting point for constructing the social order.

This attitude towards the political character of the family stands in contrast to modern liberal understanding in which the family is viewed as private.[3] This approach of distinguishing the private from the public will not, however, take us very far in the study of the Chinese family. The deep connection between the family and the state in both Confucian and socialist thought means that we cannot study family culture without also studying political culture. In Confucianism, for example, both the family and the state are places to cultivate an ethical belief. The family is viewed as a model for the state, and at the same time the family is the source of the political culture. In Chinese socialism as well, family reform was considered an important part of political reform. The political character of the familial order remained even as Confucianism was rejected.

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[1] On October 11, 2001, the court held that the will was against social morality and ethics, thus nullified its effect and denied mistress Zhang's claim for legacy. See 四川省泸州市纳溪区人民法院民事判决书(2001)纳溪民初字第 561 号 (Zhang Xueying v. Jiang Lunfang, No. 561 of the Civil Judgement of Naxi District Court, Luzhou, Sichuan, 2001).

[2] After the New Marriage Law was legislated in 1950, Mao said "Marriage Law is a fundamental law, its universality and importance is next only to the Constitution." See MA Qi, 中国革命与婚姻家庭 (*Chinese Revolution, Marriage and Family*), Liaoning People's Publishing House (Shenyang), at 81 (1959).

[3] See, *e.g.* Lawrence H. Tribe, *American Constitutional Law*, Foundation Press (New York), at 987–8 (1978). (Arguing that the family unit is "a protection against state tyranny"). Hannah Arendt, *The Human Condition,* The University of Chicago Press (Chicago), at 115 (1958). (Arguing that the family is a private domain which tie man to mere biological existence, only the public domain could human beings realize freedom). Harvey Wilkinson & Edward White, *Constitutional Protection for Personal Lifestyles*, 62 Cornell L. Rev. 563 (1977); June Eichbaum, *Towards an Autonomy-Based Theory of Constitutional Privacy: Beyond the Ideology of Familial Privacy*, 14 Harv. C.R.-C.L. L. Rev. 361 (1979); David A. J. Richards, *The Individual, the Family, and the Constitution: A. Jurisprudential Perspective*, 55 N.Y.U. L. Rev. 1 (1980); Luois Henkin, *Privacy and Autonomy*, 74 Colum. L. Rev. 1410 (1974); Roger M. Smith, *The Constitution and Autonomy*, 60 Tex. L. Rev. 175 (1982).

Contemporary studies of Chinese family law generally follow a Western approach, viewing the family as a civil contract.[4] Accordingly, they study family law and the legal history of family in terms of the concepts and principles of contract law. This approach has several flaws. First, it cannot provide an explanation of why so much public attention has been given to family law issues. Second, it fails to understand the logic and practice of family issues in Chinese history. Third, it fails to understand the political significance of the family.

This article will develop a new and more comprehensive understanding of Chinese family culture and its relationship to political culture. Employing what Clifford Geertz called "thick description," we will study how people have imagined the family-political nexus in Confucianism, socialism and liberalism as each has characterized a distinct period of Chinese history. Specifically, we will explore the conceptions of ethics, equality, time, freedom, labor and community at issue in the family, in order to show the different worldviews of each tradition. In summary form, we aim to show that the Confucian family is an ethical community of restraint of biological impulse; the socialist family is a community of sacrifice and labor; and the liberal family is a community of market individuals. We will show the contemporary Chinese family to be a combination of the three traditions. Thick description will enable us to understand why there are public debates about family law. What is more, it will shed new light on why China's march toward the rule of law has not been very successful.

B. Methodology: Cultural Analysis

1. Culture and Thick Description. — The definition of culture that I employ is that developed in Clifford Geertz's work. According to Geertz, culture "denotes a historically transmitted pattern of meanings embodied in symbols, a system of inherited conceptions expressed in symbolic forms by means of which men communicate, perpetuate, and develop their knowledge about and attitudes toward life."[5] Thus, culture is a worldview or a set of beliefs in which people find meaning. To study culture requires what Gilbert Ryle and Clifford Geertz called "thick description" — a point they illustrate with the example of a wink.[6] Without a thick description of the context, the researcher cannot understand whether it means a conspiratorial signal to a friend or a flirt with others. A thick description thus should "contrive somehow first to grasp and then to render" the

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[4] Milton Reagan, *Family Law and the Pursuit of Intimacy*, New York University Press (New York), at 1–2 (1993). ("The premise of family law increasingly is that the vessel of family shouldn't be filled with substantive moral content, but should be left empty so that individuals can use it for their own purposes…The expression of this outlook in family law is rejection of status in favor of contract as the governing principle of family life").

[5] Clifford Geertz, *The Interpretation of Cultures: Selected Essays,* Basic Books (New York), at 89 (1973).

[6] Gilbert Ryle, *The Thinking of Thoughts: What Is Le Penseur Doing?* in Collected Papers, vol. 2, 480 (1971); See Geertz, fn. 5.

"multiplicity of complex conceptual structures."[7]

Professor Paul Kahn has employed the approach of thick description to study law.[8] He argues that law is a distinct cultural phenomenon which deserves special study.[9] While this may be true in the West, in China law is not a distinct cultural phenomenon. There has never been a strong belief in the rule of law; law is just one normative system among others. Thus, to study Chinese law, including cases, we will need also to consider less formal, normative practices of habit and belief within which the law is situated. A Chinese cultural study of law cannot assume that the object of inquiry — law — has the same boundaries as in the West.

2. Genealogical and Architectural Inquiry. — In the first three chapters of my study, which trace three eras of family law, we will employ a genealogical methodology. The genealogical approach, used by Nietzsche, Michel Foucault and Giorgio Agamben,[10] aims to show the "deep history" and contingent historical course of evolution of a system of thought.[11] It seeks to excavate the "remnants" of the past and to "trace the contingent, historical course by which these beliefs became ours."[12] It is thus different from doctrinal studies or abstract theory.

The fourth chapter of this article will turn from genealogy to architecture. By an architectural approach, I again refer to a conception employed by Professor Paul Kahn. An architectural approach starts with "a paradigmatic legal event and systematically uncovers the deep structure of the imagination that gives meaning to that event."[13] While

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[7] Id. Geertz, at 10.

[8] Paul Kahn, *Legitimacy and History: Self-Government in American Constitutional Theory*, Yale University Press (New Haven), (1992); Paul Kahn, *The Reign of Law: Marbury v. Madison and the Construction of America*, Yale University Press (New Haven), (1997); Paul Kahn, *The Cultural Study of Law: Reconstructing Legal Scholarship*, University of Chicago Press (Chicago), (1999); Paul Kahn, *Law and Love: The Trials of King Lear*, Yale University Press (New Haven), (2000); Paul Kahn, *Comparative Constitutionalism in a New Key*, 101 Mich. L. Rev. 2677 (2003); Paul Kahn, *Putting Liberalism in Its Place*, Princeton University Press (Princeton), (2005); Paul Kahn, *Out of Eden: Adam and Eve and the Problem of Evil*, Princeton University Press (Princeton), (2007); Paul Kahn, *Sacred Violence: Torture, Terror, and Sovereignty*, University of Michigan Press (Michigan), (2008); Paul Kahn, *Political Theology: Four New Chapters on the Concept of Sovereignty*, Columbia University Press (Columbia), (2011).

[9] See Paul Kahn, *The Cultural Study of Law: Reconstructing Legal Scholarship*, University of Chicago Press (Chicago), at 1 (1999). ["The culture of the rule of law itself…(is) a distinct way of understanding and perceiving meaning in the events of our political and social life"].

[10] Friedrich Wilhelm Nietzsche, *The Genealogy of Morals: A Polemic*, Oxford University Press (Oxford), (Horace Samuel trans., 1900); Michel Foucault, *Discipline and Punish: The Birth of the Prison*, Vintage Books (New York), (Alan Sheridan trans., 1977); Giorgio Agamben, *What is an Apparatus?*, Stanford University Press (Stanford), (David Kishik & Stefan Pedatella trans., 2009); Giorgio Agamben, *The Kingdom and the Glory: For a Theological Genealogy of Economy and Government*, Stanford University Press (Stanford), (Lorenzo Chiesa & Matteo Mandarini trans., 2011); Paul Kahn, *Putting Liberalism in Its Place*, Princeton University Press (Princeton), at 66–113 (2005).

[11] Paul Kahn, *Putting Liberalism in Its Place*, Princeton University Press (Princeton), at 66 (2005).

[12] Paul Kahn, *The Cultural Study of Law: Reconstructing Legal Scholarship*, University of Chicago Press (Chicago), at 41 (1999).

[13] Paul Kahn, *The Reign of Law: Marbury v. Madison and the Construction of America*, Yale University Press (New Haven), at 18 (1997).

the genealogical approach "traces the history of concepts," the architectural "maps the present structure of belief."[14]

C. Outline of Research

Our aim is to explore the symbolic logic of the family and juxtapose it to a corresponding political logic. Chapter I studies the Chinese Confucian family. The highest goal of Confucianism is to cultivate ethics through relationships and communities. By studying the Confucian understanding of marriage and family property, we will show that they both serve the purpose of building the ethical community. Many modern studies of Chinese family law anachronistically assume that conceptions of romantic love and individual property have always informed marriage practice. The method of thick description will show this not to be true.

Chapter II focuses on changing character of the family with the arrival of Chinese socialism. The unit of the family could no longer model an ethical community. The new project of state-building reflected the influence of Marxist theory. The new ethical community was one of blood and sweat. It relied upon sacrifice and labor, especially manual labor. The family was subordinate to the state. It became a secondary ethical community. The norms within this community had to reflect the priorities of the state. The individual body belonged in the first instance to the state. The family's role was to reproduce for the state.

Chapter III aims to understand the gradual liberalization of family and political culture after the Open and Reform Policy in 1978. In the 1980s, socialism and liberalism coexisted. The rhetoric was very liberal, yet labor still dominated the social construction of meaning. Over time, the socialist claim on culture gave away. A study of the 2001 Marriage Law and subsequent judicial interpretations will show that family culture has been radically reconstructed to reflect contemporary views of capital and contracts. There is no longer a place for community ethics in the market imagination of marriage. Labor too has lost its previously privileged meaning.

Chapter IV will focus on the Concubine Case mentioned earlier. An architectural study shows that contemporary Chinese political-familial culture is in fact a combination of three traditions: Confucianism, socialism and liberalism. The emphasis on individualism and private property shows the liberal understanding; the ethical understanding of the family shows the Confucian understanding; the continuing emphasis on labor shows the socialist understanding.

Chapter V of my study will give an overview of the contributions and implications

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[14] Paul Kahn, *The Cultural Study of Law: Reconstructing Legal Scholarship*, University of Chicago Press (Chicago), at 41 (1999).

that can be drawn from this article.

I. THE COMMUNITY OF ETHICS: FAMILY AND POLITICAL CULTURE IN CONFUCIANISM

A. The Self, the Family and the State: Ethics and Community in Confucianism

Confucianism had been the dominant ideology for 2,000 years in China. It is a social ethics and a political culture; it is not a philosophy or a religion. Instead of constructing abstract principles of justice, Confucianism develops a practice and a culture that relies heavily on interpersonal relationships and community.[15] The ambition is to achieve an ethical life that tames the natural bestiality in human beings.

According to Confucianism, there are five basic relationships in a society: ruler and subject, father and son, husband and wife, old and young, friend and friend. The guiding principle of all these relationships is called "li," which could be translated into English as rituals, customs, rites, etiquette, or ethics.[16] Only when "li" is fully implemented can individuals cultivate Confucian ethics and a society realize harmony. In the ideal Confucian society, there will be "love between father and son, duty between ruler and subject, distinction between husband and wife, precedence of the old over the young, and faith between friends."[17]

As we can see, three of the five relationships are familial. The family is not merely a private contractual relationship. Rather, it is the most important ethical community in which one cultivates ethics. In the Confucian understanding, if one can transcend egoism and constrain biological impulse in the family, one is likely to behave properly in the larger community.[18] Family order is thus at the same time a public issue. When Confucius himself was asked why he did not participate in public activity, he responded that "simply by being a good son and friendly to his brothers, a man can exert an influence upon government."[19]

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[15] The conception of ethics in Confucianism is similar to Philip Bobbitt's term "ethical argument," see Philip Bobbitt, *Constitutional Fate: Theory of the Constitution*, Oxford University Press (Oxford), at 94–5 (1982). ("Ethical arguments are not moral arguments. Ethical constitutional arguments do not claim that a particular solution is right or wrong in any sense larger than that the solution comports with sort of people we are and the means we have chosen to solve political and customary constitutional problems").

[16] It includes all the secular social functions of daily life. To some extent, it is akin to the Professor Robert Cover's nomos. See Robert Cover, *The Supreme Court 1982 term Foreword: Nomos and Narrative*, 97 Harvard Law Review 4 (1983).

[17] Mengzi (Mencius), (III A. 4) (D. C. Lau. trans., 1984).

[18] Wei-Ming Tu has argued that the Confucianism is a project of self-realization in terms of personal and communal self-transcendence. See Haejoang Cho, *The Psycho-Cultural Dynamics of the Confucian Family: Past and Present*, International Cultural Society of Korea (Seoul), at 190 (Walter Slote ed., 1986). ("As the self overcomes egoism to become authentically human. By analogy, the community must overcome parochialism, the state must overcome ethnocentrism and the world must overcome anthropocentrism to become authentically human").

[19] Lunyu (The Analects of Confucius), (2.21) (George, Allen and Unwin trans., 1938).

The family is also a model for constructing the social order. Drawing the analogy of the "the empire, the state and the family," Mencius applies the virtues of the family as the microcosm of the world to the state and to the empire as a whole.[20] The relationships within the larger community should imitate the culture and logic of the family.[21] For example, the ruler of the state is viewed as similar to the father in a family. Ideal Confucian officials are viewed as "parent officials" who should be benevolent to their "children people."[22]

The relationship of ruler-subject is considered as very similar to the father-son relationship. Confucianism hopes to build on the mutual affection in both of these two relationships.[23] Both relationships are to reflect the principle of the duty, rather than the pursuit of benefits. This is also true with the relationship between friends. The ideal Confucian friendship is based on the principle of mutuality and moral exhortation. It should never involve any utilitarian considerations. Expectations for benefits were viewed by Confucianism as the untamed desire of the body.

B. Marriage and Confucian Family Culture

Since family is the starting point for constructing the social order in Confucianism, the study of family culture is also a study of political culture. By studying family issues such as marriage, family property and inheritance, we draw a thick description of the Confucian understanding of ethics, equality, time, freedom, labor and community. This part will focus on the Confucian understanding of marriage.

The purpose of marriage in Confucianism is to build and maintain the familial community. First of all, it is the way to continue the family line. Second, and more importantly, marriage and life in the new family are also processes of ethical learning and building. Life in the family must transcend the biological impulse in order to realize Confucian ethics.[24]

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[20] Mengzi (Mencius), (IVA.5) (D. C. Lau trans., 1984).

[21] Confucian understanding of the family-state relationship is thus very different from that of the West from the beginning. In Plato's ideal city, for example, the family should be destroyed to build a just society. See Plato, *The Republic*, Book VI. Penguin edition (London), (Desomond Lee trans., 1955).

[22] Hegel is probably the most famous Western scholar who studied the isomorphism of the family and the state. See Merold Westphal, Hegel's Radical Idealism: Family and State as Ethical Communities, in *The State and Civil Society: Studies in Hegel's Political Philosophy,* Cambridge University Press (Oxford), (Z. A. Pelczynski ed.) (1984).

[23] Mengzi (Mencius) (IVB.3) (D. C. Lau. trans., 1984) ("If a prince treats his ministers as his hands and feet, they will treat him as their belly and heart. If he treats them as his horses and hounds, they will treat him as a mere fellow countryman. If he treats them as mud and weeds, they will treat him as an enemy").

[24] The Confucian understanding of the family is thus in sharp contrast to the economic analysis of the family. To the economist, the family is an institution to realize human desire. See *e.g*. Gary Becker, *A Treatise on the Family*, Harvard University Press (Boston), (1981); Richard Posner, *Sex and Reason*, Harvard University Press (Boston), (1992); Robert Ellickson, *The Household: Informal Order Around the Hearth*, Princeton University Press (Princeton), (2009).

This is why Confucianism emphasizes the distinction between genders.[25] Confucianism is very aware of the danger of sexual impulse, which threatens the family community and familial ethics. The indulgence in sexual matters, even within wedlock, may lead to irresponsibility toward other members. The married couple may, for example, not pay enough attention to the old and the young in the family. Thus, the most important duty for the wife is to fulfill the duty of the daughter-in-law and the role of the mother.

Since family is conceived as an ethical community, it is very difficult for this ideological framework to accommodate divorce. Divorce by mutual consent was allowed, but strongly discouraged. In theory, the husband alone had the right to initiate a divorce. He was granted the right under seven conditions: infertility, wanton conduct, neglect of the husband's parents, loquacity, theft, jealousy and chronic illness. However, the practice of marriage termination was, in fact, very rare and there were restrictions on the husband's right to do so. If the wife had no father or brothers living to whom she could be sent, if she had worn mourning for three years for her parents-in-law, or if the husband has risen from poverty to wealth during marriage, the husband could not terminate his marriage to his wife.[26] There was a strong belief in Confucianism that righteousness and harmony could be restored when there were problems within the family. Only when the purpose of building a harmonious family community was impossible to achieve could divorce be granted. In fact, the local magistrate could force spouses to divorce each other when there was domestic violence, especially violence to the elders in the family.[27]

Confucian marriage culture has drawn many criticisms in contemporary legal studies. While I share the modern values embodied in these criticisms and agree that the original Confucian practice of marriage has little redeeming value, many of these criticisms rely on anachronistic reasons. For example, some scholars argue that Confucian marriage was a coercive arrangement in which individuals had no freedom. Children and younger people were treated as property of their parents.[28] From the Confucian ethical point of view, these criticisms are modern misunderstandings. In Confucianism, there is no modern conception of individual freedom and individual will. The freedom of the individual must be realized through the family community and is deeply connected with ethics.

Another criticism of Confucian marriage law is the lack of love in the marital

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[25] 礼记•玉藻 (The Classic of Rites) ("The difference between men and women leads to the righteousness of couples, the righteousness of a couple leads to the benignity of fathers and sons, the benignity of fathers and sons leads to the justice of the ruler and the subjects").

[26] QU Tongzu,中国法律与中国社会 (*Chinese Law and Chinese History*), Zhonghua Book Company (Beijing), at 124–8 (1981).

[27] Compare Reva B. Siegel, *"The Rule of Love": Wife Beating as Prerogative*, 105 Yale L.J. 2117 (1996) (Reva Siegel' concern of the domestic violence seems to lead her very suspicious of the family community).

[28] MA Yinan, 婚姻家庭法新论 (*Towards a New Understanding of Marriage Law and Family Law*), Peking University Press (Beijing), at 86 (2002).

relationship.[29] In many cases, the bride and the groom were married without ever having met. From the modern perspective, the arrangement of marriage is totally unacceptable. Nevertheless, it should be noted that Confucianism does not object to emotional affection between husband and wife. In fact, one of the most important issues of building the family community is to build the proper emotional relationship between the husband and the wife. Confucianism is, however, hostile to romantic love.[30] In the Confucianism understanding, romantic love is a biological desire, which brings indulgence and irresponsibility, not freedom.[31]

C. Family Property and Confucian Family Culture

There have been scholarly disputes for a long time over the ownership of family property in ancient China. One view is that family property belongs to the household. Jernigan, for example, argues that "the father has control of the family property for life and can waste or squander it as he pleases."[32] Comparing the Chinese family law with ancient Roman law, Shiga Shuzo argues that the patriarchal powers of the two are similar.[33] The living father of a household had the exclusive authority to divide family property. "A consistent rule in the legislation was that as long as the father was alive, division of the household's property could take place only in obedience to his wishes."[34] Other scholars, such as Niida Noboru, argue that family property in Confucian China is joint property.[35]

In a sense, these understandings fail to comprehend the culture and practice of Chinese family property and inheritance. In Confucianized family culture, there is neither a conception of individual property nor of joint property owned by the couple. Property belongs to the whole familial community, including dead ancestors and unborn children.[36] Accordingly, the inheritance is familial, not individual. The inheritance should never be

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[29] See *e.g.* Kay Ann Johnson, *Women, the Family, and Peasant Revolution in China*, University of Chicago Press (Chicago), at 1 (1985). Christina K. Gilmartin ed., *Engendering China: Women, Culture, and the State*, Harvard University Press (Boston), (1994).

[30] Romantic love is a modern invention which is deeply connected with Rousseau. See Allan David Bloom, *Love and Friendship*, Simon & Schuster (New York), at 34, 86 (1993).

[31] Paul Kahn has linked the romantic love and pornography, both of which are instantiation of the ecstatic. See Paul Kahn, *Putting Liberalism in Its Place*, Princeton University Press (Princeton), at 201–18 (2005).

[32] T. R. Jernigan, *China in Law and Commerce*, Macmillan & Co., Ltd. (London), at 95 (1905).

[33] See *Twelve Tables* V.1, (S. P. Scott trans.), The General Trust Company (Cincinati), at 66 (1932) ("No matter in what way the head of a household may dispose of his estate, and appoint heirs to the same, or guardians; it shall have the force and effect of law").

[34] Shuzo Shiga, *Family Property and the Law of Inheritance in Traditional China*, *in Chinese Family Law and Social Change* (David C. Buxbaum ed.), University of Washington Press (Washington D.C.), at 135 (1978).

[35] Niida Noboru, *A History of Chinese status Law*, Books Express Publishing (Virginia) (2nd edition), (1942).

[36] Yang Mou-ch'un, *A Chinese Village: Taitou, Shantung Province*, Columbia University Press (New York), at Chapter 7 (1945).

decided by somebody alone since that would threaten the interests of other members in the familial community. Inheritance was always an issue subject to collective discussion among the family members. Inheritance usually did not take place at the moment family members died. In the ideal Confucian culture, inheritance is the natural outcome of a long period of community-building.

Modern legal systems recognize the legality of a testament except in some rare circumstances. In the Confucian culture, however, the testament was seen as too arbitrary and harmful to family ethics, because it was formed by a single person at a single moment. In traditional Chinese society, there were few cases in which testaments were employed to deal with the problem of inheritance. Indeed, most often the last words of the patriarch concerned moral teaching.[37]

D. Towards a Thick Description of Confucian Family and Political Culture

From the modern perspective, Confucian familial relationships were hierarchical, patriarchal and gendered. Authority lay with the father, the husband and the elders. However, formal inequality in the familial relationships did not lead to unconditional domination and subordination. Confucianism imposed a high standard on the benevolence of the father, the righteousness of the husband and the fraternity of the elder brother. Thus, Confucius used very harsh words to criticize an unmannerly old man: "In youth, not humble as befits a junior; in manhood, doing nothing worthy of being handed down. And merely to live on, getting older and older, is being a useless pest."[38] Although there are lots of formally unequal arrangements in Confucianism, the standard of ethics required everyone to constrain his/her biological desire, to "conquer oneself and return to ethics (li)."[39]

The Confucian understandings of freedom and time are also deeply connected with community. Confucianism does not view freedom as an exercise of individual will free from other people. On the contrary, freedom requires interpersonal relationships and community. To be free is not to liberate one from the community in order to realize the "true self."[40] It is not a "republic of choice" in which an individual exercises his or her individual will.[41] Rather, only within the ethical community can individuals realize

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[37] Yu Jiang, 论分家习惯与家的整体性——对滋贺秀三《中国家族法原理》的批评 (*On the Separation of the Family and the Integrity of the Family — A Critique of Shuzo Shiga's "Principles of Chinese Family Law"*), 24(1) 政法论坛 (Tribune of Political Science and Law) 32, (2006).

[38] In fact, Confucius even used his staff to "hit him on the shank." See Lunyu (*The Analects of Confucius*), (3.11) (George, Allen and Unwin trans., 1938).

[39] Lunyu (*The Analects of Confucius*), (12.1) (George Allen and Unwin trans., 1938).

[40] In this sense, the Confucian understanding of the freedom is radically different from Robert Unger's defense of the modernist personality. See Robert Mangabeira Unger, *Passion: An Essay on Personality*, the Free Press (New York), at 8 (1984) ("We always break through the contexts of practical or conceptual activity").

[41] Lawrence M. Friedman, *The Republic of Choice: Law, Authority, and Culture*, Harvard University Press (Boston), (1990).

freedom.[42] Also, the Confucian understanding of freedom is not an exercise of will at a single moment.[43] Freedom requires a lifelong process of ethical learning. This is vividly shown in Confucius' short autobiographical account of his own mental development: "at fifteen I set my heart on learning; at thirty I firmly took my stand; at forty I had no delusions; at fifty I knew the Mandate of Heaven; at sixty, my ear was an obedient organ for the reception of truth, at seventy I followed my heart's desire without overstepping the boundary of right."[44] It was not until seventy that Confucius himself was able to achieve the consistency of desire and choice.

Confucian understandings of equality, responsibility and freedom in the familial relationship show its distinct political character. Confucian political culture is a world of ethics. In Confucianism, there is no abstract equality of individuals and nothing like a liberal understanding of freedom. Everyone is in a web of normatively-charged relationships with others.

II. THE COMMUNITY OF SACRIFICE AND LABOR: FAMILY AND POLITICAL CULTURE IN SOCIALISM

After the Opium War in 1840 and the subsequent incursion into China by the West, Confucianism was no longer the only legitimate ideology in Chinese society. On 12 February 1912, the last emperor of the Qing dynasty abdicated his throne. Several years later, intellectuals of the so-called May Fourth Movement began to lead a revolt against Confucianism. They criticized Confucian culture, especially the family culture, as coercive. In the subsequent years, the Chinese Nationalist Party and the Chinese Communist Party (CCP) were founded. They fought the war against the Japanese invasion together and, then a civil war against each other. In 1949, after the CCP came to power, it quickly enacted and promulgated a revised marriage law. It accused the feudal marriage system of being arbitrary and oppressive. The new law promoted free choice of partners, monogamy, and gender equality.[45]

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[42] Confucian understanding of freedom is thus similar to Benjamin Constant's analysis of ancient liberty. According to Constant, modern liberty is the right to be free from the government. Ancient liberty, by contrast, must be realized by participating in government and sovereignty. The difference is that Confucianism does not view the state as the only community where one could realize ethical freedom. See Benjamin Constant, The Liberty of the Ancients Compared with That of the Moderns, in The Political Writings of Benjamin Constant (Biancamaria Fontana trans. and ed., 1988).

[43] Jed Rubenfeld has also argued that American constitutional self-government is a enduring commitment, not a freedom at a single moment. See Jed Rubenfeld, *Freedom and Time: A Theory of Constitutional Self-Government*, Yale University Press (New Haven), (2001).

[44] Lunyu (*The Analects of Confucius*), (12.1) (George Allen and Unwin trans., 1938).

[45] The Nationalist Party, which came to power in 1928, also tried to reform the Chinese family and political culture. It enacted the family law in 1931 that promoted equality between men and women, easier access to divorce, and the abolishment of concubinage. However, the Nationalist Party did not have a full control of the country, and most of these laws were not implemented or accepted by most people.

A. The Community of Blood and Sweat: Political Imagination in Socialism

In socialist China, comradeship became the most important relationship. The state became the ethical community that had the highest value. The new socialist state was based on an imagination of the blood and sacrifice.[46] The struggle of state-building led to millions of deaths. The image of the blood, which is largely considered as bestial and inhuman in Confucianism, became sacred in the socialist ideology.[47]

The Chinese socialist political culture was also deeply connected to Marxism. As defined in the classical works of Marx, the proletarians are industrial workers who must earn their living by selling their manual labor. This is a radical re-imagination of labor. In Confucianism, there was no distinction between mental and manual labor. Sometimes, mental labor was valued higher than the manual labor,[48] while in socialism mental labor became highly suspicious.

In the socialist ideology, anybody willing to sacrifice for the state and to do hard labor for the people is imagined as an equal member of the state.[49] The exploitative class, including landlords, rich landed peasants, and capitalists, are viewed as idle people, unwilling to perspire. By building a community of blood and sweat, the socialist imagination of the community was greatly intensified. Against this background, reform of the family took place. A study of family culture therefore helps us to further understand the Chinese socialist political culture.

B. Marriage and Socialist Family Culture

A meaningful marriage should be blessed by the state and the people. In the 1950 Marriage Law, civil registry was required for legal marriage. A wedding was no longer sufficient to make a marriage valid.[50] Marriage was now considered as a relationship between two lovers in the service of a higher political goal.[51] The couple should share the

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[46] In a sense, the Chinese socialist culture is similar to America, See Paul Kahn, *Sacred Violence: Torture, Terror*, *and Sovereignty*, University of Michigan Press (Michigan), (2008) arguing America is still committed to violent politics today; Samuel H. Beer, *To Make a Nation: The Rediscovery of American Federalism*, MA: Harvard University Press (Cambridge), (1993). (Arguing that the American nation was created by the war of independence).

[47] Liji ·Yuzao (*The Classic of Rites*). ("A superior man had his shambles and kitchen at a distance from the house; he did not tread wherever there was such a thing as blood or tainted air").

[48] Mengzi (Mencius) (III A.4) (D. C. Lau. trans., 1984). ("There are those who use their minds and there are those who use their muscles. The former govern; the latter are governed. Those who govern are supported by those who are governed").

[49] The conception of the people is a modern invention. See Edmund Morgan, *Inventing the People: The Rise of Popular Sovereignty in England and America*, Norton (New York), (1988).

[50] Compare Nancy F. Cott, *Public Vows: A History of Marriage and the Nation*, Harvard University Press (Boston), (2002). (Arguing that marriage is and always has been a public institution in America).

[51] Compare John Witte, *From Sacrament to Contract: Marriage, Religion, and Law in the Western Tradition*, John Knox Press (Westminster), at 16–41(1997). (Arguing that Catholic model of marriage is a natural association created by God to enable man and woman to "be fruitful and multiply" and to raise children in the service and love of God).

same ideology. Love was not possible if one of them had a feudalistic or capitalistic ideology. As a newspaper put it, "real love cannot exist between a feudalistic person and a progressive person."[52] Love without the proletariat ideology was seen as a remnant of feudalist love, which treats women as mere objects incapable of labor. The latter was thought of as the problem of capitalist love as well.[53] Only people willing to labor or people who had deep sympathy with the proletariat class could develop true love toward one another.[54]

The culture of divorce also changed. In 1950, shortly after passage of the New Marriage Law, the CCP launched a three-year campaign that attacked "feudal marriages." On the one hand, divorce practices were greatly liberalized. Divorce could be granted if the marriage was considered to have been arranged by the parents or the families.[55] To revolt against family-arranged marriage was considered real freedom, a pursuit of becoming a member of the state and the people. On the other hand, the socialist divorce culture also rejected the so-called capitalist ideology. After the revolution, a lot of poor peasants and workers came to power and wanted to divorce their illiterate and unattractive wives. In the socialist understanding, such divorce petitions reflected contempt toward the working class and manual labor.[56]

C. Family Property and Socialist Family Culture

A study of family property will help us to further understand the socialist family culture. Socialist family law proposed gender equality and adopted a more individualistic understanding of family property. According to Article 10 of the 1954 Marriage Law, "the husband and the wife shall have equal rights in the possession and management of family property." Also, Article 12 states that "the husband and the wife have the right to inherit

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[52] Su Li, 正确的社会主义爱情观 (*Building Up Socialist View of Love*), South Daily, Feb. 13, 1952, at A1.

[53] Karl Marx, *Economic and Philosophical Manuscripts of 1844*, (Dirk J. Struik ed., M. Milligan trans.) International Publishers (New York), (1964). (Marx mentioned four ways of alienation in capitalism: alienation of the man from the product of his/her labor; alienation of the man from the act of producing itself; alienation of the man from his or her "essence as a species"; alienation of the man from other workers).

[54] The law did not state explicitly to whom an individual should not marry. But in practice, people were encouraged to marry the progressive. In a case that was selected as a guiding case to implement the new marriage law, the daughter of a peasant wanted to marry the son of a poor peasant, but the local peasant association did not approve it. They appealed to the court and the court ruled that the peasant association could not coerce them not to marry. However, "to maintain the purity of the peasant class, the peasant association should persuade them not to marry before the girl was reformed to become a progressive person." See 婚姻法问题解答汇编 (*A Handbook on Marriage Law Problems*), Cultural Supply Agency Press (Guilin), at 146 (1951).

[55] In a case involving a child betrothal marriage, the court granted the divorce on the ground that "the feudal marriage system is both irrational and immortal… For this kind of marital relationship to continue would only add to the emotional suffering of both parties." See Philip C. C. Huang, *Chinese Civil Justice: Past and Present*, Rowman & Littlefield Publish (Lanham), at 111 (2010).

[56] MAO Zedong, 毛泽东在延安文艺座谈会上的讲话 (Talks at the Yenan Forum on Literature and Art), in 《毛泽东选集》第三卷 (*Selected Works of Mao Zedong, Vol. III*), The People's Press (Beijing), at 69–98 (1967).

each other's property."[57] The individual, rather than the family, seemed to be the right-holder of the family property in the New Marriage Law.

However, this is a misunderstanding of the nature of socialist family property. The individualistic narrative in the marriage law was intended to criticize gender inequality under the Confucian family property regime. It did not mean that socialist family law would share an individualistic and contractual view of the family. A close look at inheritance rights and practices shows that the family, rather than the individual, was still considered as the basic unit of the society. Most of the inheritance rights and practices remained unchanged compared to Confucian practices.[58] The CCP relied heavily on customary law and legal principles to deal with cases involving family property.[59] The family was still conceived as an ethical community in socialist family culture, although a secondary one. The family was imagined as a small labor community and still conceived as a place to support the old and foster the young, but now through labor.

D. The People's Two Bodies: Family and Political Culture in Socialism

Why was the family considered a secondary community in the socialist political culture?[60] The reason is that the emphasis on blood and sweat created a community of the political. The people were radically politicized by imagining violence and manual labor.[61] The family could not easily flourish in this imagination of labor.[62] It could not provide an imagination of manual labor and sacrifice in the public sphere. The body of the family was imagined as not as valuable as the body that belonged to the state and the people.[63] The family was, accordingly, encouraged to sacrifice for the state and the people when

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[57] 1954 年婚姻法 (*Marriage Law in 1954*), Article 10, 12 (promulgated by the Central People's Government Commission, Apr. 13, 1954, repealed Jan.,1981).

[58] In fact, no inheritance law was legislated before 1985.

[59] In the 1954 Marriage Law, Article 13 stated that "parents have the duty to rear and to educate their children; the children have the duty to support and to assist their parents. Neither the parents nor the children shall maltreat or desert one another." 婚姻法 (1954 年) (1954 Marriage Law) Article 13 (promulgated by the Central People's Government Commission, Apr. 13, repealed Jan., 1981).

[60] See Karl Marx and F. Engels, *The German Ideology*, Martino Publishing, (Mansfield Center), (R. Pascal trans., 1947); Friedrich Engels, *The Origin of the Family, Private Property and the State*, Penguin Books Limited, (New York), (E. B. Leacock ed., Alec West trans., 1972).

[61] The politics of socialism is thus radically different from Hannah Arendt's conception of politics. To Arendt, sacrifice and labor are connected to animal existence, which is very different from the activities of political action. See Hannah Arendt, *The Human Condition*, University of Chicago Press (Chicago), (1958); Hannah Arendt, *Karl Marx and the Tradition of Western Political Thought*, 69(2) Social Research 273, (2002).

[62] Compare Reva Siegel, *Home as Work: The First Woman's Rights Claims Concerning Wives' Household Labor, 1850–1880*, 103 Yale L.J.1073, 1079 (1994). (Arguing that feminists' imagination of labor changed after the Civil war. "Feminists began to disparage household labor from which they originally sought to emancipate themselves and to argue that women could achieve economic equality with men only by working outside the home for a market wage like men").

[63] Neil J. Diamant, *Revolutionizing the Family. Politics, Love, and Divorce in Urban and Rural China, 1949–1968*, University of California Press (Berkeley), at 223 (2000). (Arguing the socialist values won over Confucian values in the family during the socialist period).

necessary. This is exactly what happened to Mao and other leaders of the CCP. Several of Mao's family members died during the revolutionary period. His oldest son, who died in the Korean War shortly after the founding of the Peoples' Republic of China, was conceived as the oldest son of the republic.[64]

III. THE LIBERALIZATION OF FAMILY AND POLITICAL CULTURE: A STUDY OF LEGAL REFORM AFTER 1978

A. Between Socialism and Liberalism: Family and Political Culture in 1980s

Political and family culture were liberalized after 1978, when China launched its Reform and Open policy. The class struggle between the exploitative and the exploited was no longer a key issue. The government began to treat all its citizens as formally equal. Accordingly, the Marriage Law was revised in 1980. The new law emphasized that political status and upbringing should play no role in the marriage. Divorce became much easier. Article 25 of that law stated that when one party insists on divorce, the court should grant the divorce "in case of complete alienation of mutual affection."[65]

Nevertheless, socialist ideology still played an important role in the 1980s. This could be vividly seen in the case of in a hotly debated divorce case in the 1980s. The case involved Ms Yu Luojin, a female intellectual who had been persecuted in the Cultural Revolution. She had married Mr Cai Zhongpei, a poor worker in Beijing and received a lot of help from her husband, who had a better political status. In 1980, she filed for divorce on the ground that she and her husband "lacked emotional love." Her husband, however, denied that they lacked love and refused to divorce. This case soon became a public issue and most people were very sympathetic toward Mr Cai.[66] Liberalism may consider Ms Yu as a victim. In the socialist view, however, Mr Cai was the victim, for he had worked hard for the people and the family. The people's imagination of that labor shows that socialism was still an influential ideology.

One the other hand, the introduction of German civil law's conception of joint possession shows that liberal and individualist understandings of marriage were accepted to some extent by the legislators. The 1980 Marriage Law used the term "joint possession" instead of family communal property. In Article 13, it stated that "the property acquired during the marriage is the joint possession of the two parties unless they have agreed otherwise."[67] Yet, if we look closer at the law, we see the understanding of property was still deeply connected to the conception of labor. Property was viewed as

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[64] Ross Terrill, *Mao: A Biography*, Stanford University Press (Stanford), (1985).

[65] 中华人民共和国婚姻法 (1980 年) (1980 Marriage Law of the People's Republic of China), Article 25 (promulgated by National People's Congress, Sep. 10, 1980, revised Apr. 28, 2001).

[66] For a more detailed depiction of the case, see Emily Honig, *Private Issues, Public Discourse: The Life and Times of Yu Luojin*, Pacific Affairs 252–65 (Summer, 1984).

[67] See fn.65 Article 13.

the means to support the whole family, including the young and the old. It was not conceived as the "joint possession" of a couple that could be disposed of at will. The New Marriage Law stated that parents had the duty to rear and to educate their children, and children had the duty to support and to assist their parents. Even after the death of the couple, grandparents who had the capacity to bear the relevant costs had the duty to rear their grandchildren. In the 1985 Inheritance Law, it clearly stated that inheritance rights should be decided according to the labor that one had contributed.[68] The family was still considered as a community of labor in this period.

B. From Community to Contract: The Capitalization of Family and Political Culture After 1992

In 1992, the Chinese government began to openly emphasize the importance of the market. It stated officially that the market economy does not contradict "socialism with Chinese characteristics." With the development of the market economy, a vast number of laws were enacted or revised. In 1995, legal scholars and government officials began to revise the marriage law. In 2001, the New Marriage Law was passed. A study of the 2001 New Marriage Law shows how family and political culture are imagined among the social elites, especially legal elites.

Generally speaking, the 2001 New Marriage Law relies upon a typical capitalist understanding of marriage. Almost all the important provisions of the New Marriage Law are about marital property. The highest goal of the law is to protect the property rights of the individuals in the marriage, not to build the family community or to realize family ethics. Modeled on the business contract, marriage is seen as a small corporation or partnership.

A study of judicial interpretations of the law will help us to further understand the capitalist imagination of the family and political culture. The judicial interpretations issued by China's Supreme People's Court, which has semi-legislative functions, are a very important legal source in China. After the 2001 Marriage Law, the Supreme People's Court released three judicial interpretations of the law. According to these interpretations, the implementation of property law and contract law should have priority over considerations of the family community. Family law should never obstruct the free exercise of individual will in the market and the maximization of wealth. For example, Article 12 of the first judicial interpretation stipulated that once a party sells real property to a good faith purchaser without the consent of the spouse, the transaction is valid and

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[68] 中华人民共和国继承法 (1985 年) (1985 Law of Succession of the People's Republic of China), Article 13. (promulgated by National People's Congress, Apr. 10, 1985, effective Oct. 1, 1985.) ("Successors who have made the predominant contributions in maintaining the decedent or have lived with the decedent may be given a larger share"; "successors who had the ability and were in a position to maintain the decedent but failed to fulfill their duties shall be given no share or a smaller share of the estate").

the spouse cannot reclaim the property.[69] The spouse can only ask for monetary compensation when they get divorced. By imagining the individual as a subject in the market, the family was completely reformed in the direction of a contractual relationship.

The Chinese capitalist family is an embodiment of more general value of a capitalist political culture. In the capitalist understanding, for example, there is no ethical relationship or ethical community. The conception of freedom is closely related to desire and will, without content or a time dimension. There is no requirement of an ethical of restraint of bodily desire. Also, labor does not produce any particular meaning. Now the only value that can be measured is property.

To some extent, this part of the study reflects the family and political culture among social elites. However, these views do not necessarily reflect a general understanding. During the past 30 years, Chinese law has been rewritten by social elites and academics, the group that is also most likely to accept market liberalism.

IV. THE CONCUBINE CASE: AN ARCHITECTURAL STUDY OF CONTEMPORARY CHINESE FAMILY AND POLITICAL CULTURE

A. The Concubine Case and Its Background

The Concubine Case, mentioned at the beginning, is one of the most influential cases in family law in the past several decades. The issue was whether Mr Huang's will to bequeath his property to his mistress was lawful. To the court and those who support the result, the judgment was in accordance with law and morality. First, Mr Huang violated the marriage law and thus the will was illegal. Article 4 of the Marriage Law states that "husband and wife shall be faithful and respectful to each other."[70] Mr Huang's will was a direct outcome of his illegal act and thus invalid. Second, Article 24 of the Marriage Law states that "husband and wife shall have the right to inherit each other's property."[71] The will deprived Ms. Jiang, the legitimate wife, of her legal right to inheritance. Third, the will violated social morality and generally applicable legal principles. The General Principles of the Civil Law of the People's Republic of China states that "civil activities shall have respect for social ethics and shall not harm the public interest, undermine state economic plans or disrupt social economic order."[72]

To most lawyers, however, the judgment was wrong. First, the 1985 Inheritance Law

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[69] 最高人民法院关于使用中华人民共和国婚姻法若干问题的解释 (The Supreme People's Court's Interpretation of the Several Issues Concerning the Application of Marriage Law of the People's Republic of China), in 2001 China's Supreme People's Court's Gazette 30.

[70] 中华人民共和国婚姻法 (2001 年) (*2001 Marriage Law of the People's Republic of China),* Article 4 (promulgated by National People's Congress, Apr. 28, 2001, effective Apr. 28, 2001).

[71] Id. Article 24.

[72] 中华人民共和国民法通则 (1986 年) (1986 General Principles of the Civil Law of the People's Republic of China), Article 7 (promulgated by National People's Congress, Apr. 12, 2001, effective Jan. 1, 1987).

stipulates that "inheritance shall, after its opening, be handled in accordance with the provisions of statutory inheritance; where a will exists, it shall be handled in accordance with testamentary inheritance or as legacy."[73] In the Inheritance Law, there is no article that prohibits an individual from bequeathing his/her property to his mistress. Second, the Inheritance Law is a specific law that exclusively deals with inheritance. Thus, it should take precedence over the Marriage Law and the General Principles of the Civil Law of the People's Republic of China in dealing with cases concerning inheritance. Third, and most importantly, the court was incorrectly applying principles of morality, not law, to settle the case.

B. Liberalism and Confucianism: Family and Political Culture in the Concubine Case

To the lawyers who criticized the judgment, it is the individual that should be viewed as the basic unit of the society. While liberals in the West often criticize unrestricted property rights and the free exercise of contract, liberal scholars in China tend to view individual property rights as sacred. Xiao Han, a law professor and a famous public intellectual in China, views the right to bequeath as a free exercise of one's inalienable property rights.[74] He cites the Chinese Constitution to argue that the judgment was an infringement of the individual rights.[75] To Professor Xiao, individualism is a fundamental principle of the rule of law that cannot be trumped by marriage. Another liberal scholar, Professor He Haibo, points to the more fundamental disagreement between two sides and defends property rights as superior.[76]

By imagining individualism and private property as the most fundamental values in the society, Chinese liberals imagine a society in which no ethical or relational interest can take precedence. Family and marriage can not change the fact that people are always individuals in the market.

To those who support the judgment, marriage is not a contract. Rather, it is a process of relationship-building and ethical-construction. In their understanding, the family is one of the most important ethical communities and, as such, should be supported and protected by the state. The ethos of the state should not contradict family ethics. These people do not believe in the absolute priority of a liberal concept of a public/private distinction, private property, rule of law, and individual will. Their way of thinking is still closely related to the traditional Confucian understanding of family law.

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[74] XIAO Han, 被架空的继承法: 张学英诉蒋伦芳继承案的程序与实体评书 (The Nullified Succession Law: A Comment on the Procedure and Substance of Zhang Xueying v. Jiang Lunfang), in 私法 (*Private Law*), Yi Jimin ed., (2002).

[75] 中华人民共和国宪法 (1982 年) (*1982 Constitution of the People's Republic of China*), Article 13 ("The state protects the right of citizens to own lawfully earned income, savings, houses and other lawful property. The state protects by law the right of citizens to inherit private property").

[76] HE Haibo, 何以合法? 对 "二奶继承案" 的追问 (*What is Legality? Rethinking about the Concubine Case*), 3 中外法学 (Peking University Law Journal), (2009).

C. Socialism in the Debates Over Case's Facts: Imaging Labor in the Concubine Case

As the debate over the case went on, more details of the case facts were revealed. Some argued that Mr Huang's wife was in fact a lazy woman and Ms Zhang took care of Mr Huang for many years. They argued that Mr Huang and Ms Zhang were, in fact, more like a family and the integrity of this unconventional family should be protected by the state. The core image of the debates reflects imaginations of labor, especially manual labor. Lay people might disagree concerning which relationship should be considered as the "true family," but they shared the socialist understanding of labor.

CONCLUSIONS AND IMPLICATIONS

There are several conclusions and that can be drawn from this article. First, it helps to avoid anachronistic studies of Chinese family law. In Confucianism, there is no liberal conception of romantic love and individual property. Studies based on these conceptions misunderstand the internal logic of Confucian family culture and practices. Similarly, in Chinese socialism, there is no liberal understanding of love and individual property. Love and property are instead closely related to the understanding of labor, especially manual labor.

Second, it contributes to a more complete understanding of the family and political culture in different traditions. The Chinese Confucian community is based on ethics and constraint of biological impulses; the Chinese socialist community is based on sacrifice and labor; and Chinese liberal community is based on market-oriented individuals. Individuals imagine themselves differently in the family and the state across these three traditions.

Third, it contributes to a comprehensive understanding of contemporary Chinese family and political culture. A genealogical and architectural study shows that contemporary Chinese family and political culture is in fact a combination of three traditions: Confucianism, socialism and liberalism.[77] To comprehend why there are so many disagreements between legal academics and lay people in family law cases, we must look beyond the contractual study of the family law that dominates the academy today.[78]

This article also has some broader implications. First, it helps us to understand why China's march toward the rule of law has not been very successful. China has struggled for many years to build an effective legal system, as well as a strong belief in the rule of

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[77] Last year, the 17th Chinese Communist Party Central Committee's 6th Plenary Session's resolution declared that the CCP is the inheritor of traditional Chinese culture. See 中共十七届六中全会公报 (Gazette of the 17th Chinese Communist Party Central Committee's 6th Plenary Session) (2011). ("Since the day of its establishment, the Chinese Communist Party has been the faithful inheritor and advocate of the outstanding traditional Chinese culture, and the active initiator and developer of China's advanced culture").

[78] Paul Kahn, *Putting Liberalism in Its Place*, Princeton University Press (Princeton), (2005).

law. Many legal scholars ascribed the problem to the CCP and to political control. This may be true, but it is not the whole story. The belief in the rule of law is largely a liberal tradition in China. The legislation and interpretation of the law is strongly influenced by social elites and legal academics. When disputes arise, however, Chinese lay persons quickly turn to Confucian or socialist ethics for help.

Second, this article shows that liberalism is only one way of imagining the world. The political culture of liberalism is not universal and neutral.[79] Liberalism has its own distinct way of imagining ethics, equality, time, freedom, labor and community. It is necessary to employ a culture approach to study liberalism.[80] A thick description of Chinese liberalism shows how it too imagines a distinctive *nomos* — a normative universe.[81]

[79] On liberal neutrality, see John Rawls, *Political Liberalism,* Columbia University Press (Columbia), (1993); Ronald Dworkin, *Taking Rights Seriously*, Bloomsbury Academic (New York), (1978); Charles E. Larmore, *Patterns of Moral Complexity*, Cambridge University Press (Oxford), (1987).

[80] See *e.g.* Paul Kahn, *Torture and the Dream of Reason*, 78(3) Social Research, 747–65 (2012). (Employing the interpretive methodology of Freud to study liberalism's torture prohibition).

[81] Robert Cover, *The Supreme Court 1982 term Foreword: Nomos and Narrative*, 97 Harvard Law Review 4, (1983).