

Zhao Liuyang 趙劉洋. *Funi, jiating yu falü shijian: Qing yilai de falü shehuishi* 婦女, 家庭與法律實踐: 清代以來的法律社會史 (Women, family and legal practice: A social legal history since the Qing dynasty). Nanning: Guangxi shifan daxue chubanshe, 2022. 283 pp. RMB 68. ISBN 9787559843937.

In the past several decades, many scholars have tried to challenge the domination of the Eurocentric perspective in the field of Chinese legal history. Zhao Liuyang's book on women, family and legal practices adds to this long-term effort, and to our understanding of the critical process of legal transformation in marriage and family relations from the Qing dynasty to the present. Based on his study of legal cases on divorce over the past four decades, the author attempts to reinterpret the concept of divorce, relations between laws and family ethics, and related issues in the social and cultural context of Chinese laws and legal practice.

The book is divided into six chapters as well as an introduction and a brief retrospective conclusion. The Introduction is a theoretical critique of Western and Japanese studies of Chinese legal history. According to the author, Western scholarship views Chinese laws within the framework of modernity that asserts a static history of Chinese law over a thousand years. Meanwhile, Japanese scholarship, under the influence of the Western theory of Oriental despotism, interprets Chinese law as an instrument for autocratic ruling, which is the opposite of modern Western law. Under the strong influence of Weberian theory and Orientalism, both Western and Japanese legal scholarship has portrayed Chinese laws as lacking rationality, certainty, and vitality, and thus not conducive to the growth of capitalism in China.

The author questions Weberian formalistic rationality that excludes the elements of religions, morality, and emotion. In Chapter 1 he focuses on the dichotomous division between law and morality/ethics, arguing that there is a basic difference in the concept of "divorce" between modern Western societies and Chinese society. Qing law defined various forms of divorce, and ruled cases based on Confucian ethics/morality (*liyi* 禮義), not according to the emotional relations between the couple, unlike in cases of Western legal practice. The author claims that when the law enforces "backward" moral/ethical duties without offering legal protection, as happened in the Qing period, it will lead to an increasing number of women's suicides. On the other hand, when law encourages women to pursue a more "radical/advanced" moral attitude in marriage but unable to provide corresponding legal protection, it will also result in a high number of women's suicides, which studies have showed occurred in contemporary rural areas. To prove this point, the author presents numbers of Qing divorce cases in Chapter 2. The author also points

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out that in contrast to contemporary feminist scholarship that tries to prove women's autonomy in marriage, in the cases of "wife-renting" (*dianqi* 典妻) or "wife-selling" (*maixiu* 賣休) Qing law in fact viewed women as their husbands' appendages and treated wives as "goods" for circulation. Correspondingly, the legal authority also required women to be obedient to their husbands and their families, based on Confucian family ethics.

As a brief transitional unit, Chapter 3 deals with divorce law in the Republican period. According to the author, it was in this era that Chinese marriage law gradually transformed from its previous basis of Confucian family ethics to a more modern principle that respected the couple's individuality in marriage by giving the same rights to both men and women. In actual divorce cases, however, Republican legal practice was limited to urban areas and still maintained the legal legacy from the previous Qing law by putting certain restrictions on divorce.

In Chapters 4, 5, and 6, the author discusses the law and legal practice for divorce covering the 1950s, the reform period, up to the contemporary era. The author continues to criticize the Weberian theory of law as an abstract formalistic principle, arguing that although the 1950 Marriage Law firmly abolished various forms of "feudalist marriage" such as arranged marriage, buying-selling marriage, and concubinage, and encouraged women's free choice in marriage, the rule of divorce still largely rested on the grounds of "proper causes" (*zhengdang liyou* 正當理由). For divorce cases the Marriage Law left certain room for the considerations of social stability, moral factors, and family ethics, as well as that of the disadvantaged party in dividing family property. Also, in the courts' deliberations the "proper causes" were constantly adjusted according to changing social and political conditions, particularly in the first three decades of the PRC period (Chapter 4). In the Reform era, in response to the influence of Western values and ideas, there arose strong voices in Chinese society calling for the respect of individual rights in marriage. The 1980 revised Marriage Law, which was a response to this call, added the term "ruptured affectional relationship" (*ganqing polie* 感情破裂) to the grounds for divorce. Since it was difficult for judges to determine the condition of a ruptured affectional relationship in each individual case, judges had to extend their assessment of the quality of the marriage based on other factors. According to the author, the law does respect privy will in divorce cases, but the will of an individual can never be the sole ground for divorce, unlike in Western law. Thus, the author argues that Chinese law on divorce has not been based on a set of formalistic principles beyond concrete cases; instead, when the law deals with divorce disputes the settlements have never excluded moral and ethical considerations grounded on the principles of fairness, duty, and equality in dividing property

and in granting child custody (Chapter 5). In Chapter 6 the author utilizes the works of Gary S. Becker to reevaluate the theory of family relations on the basis of “rational choice” and the studies of Yan Yunxiang on “individualization of Chinese society” in the post-socialist society. Zhao agrees that the growing consciousness of individual rights in marriage, family, and property has indeed led Chinese society to gradually shift from familism to individualism. Nevertheless, based on reading judges’ deliberations in various divorce cases, the author demonstrates that these divorce settlements reflect the co-existence of individualism and familism. In contemporary China, on the one hand, conjugal relations have formed a dominant axis in family relations; on the other hand, the family structure continues to lean toward the shadow of traditional familism because young couples often need their parents’ financial assistance. Because of these links marriage law and social reality are now rebuilt into Chinese familial structure.

Although the author aims to contest the dominant view of Western progressivist modernity in the field of Chinese legal history, he seems unavoidably caught in the same framework he criticizes. For instance, when he compares two types of legal practices relating to moral/ethical principles, he claims that Qing legal practice was based on “backward” morality and ethics, while contemporary law encourages the “radical, pulling-ahead” moral goal of women’s liberation. In judging Qing morality and ethics as “backward” or women’s liberation as “radical,” the author seems to subscribe to some ideal of “progress,” and thereby falls into an essentialist trap of clichés. Nonetheless, this book contains enough information to make a worthy contribution toward challenging Eurocentric views of Chinese legal history.

Xiaoping Cong

University of Houston, Houston, Texas, USA

xcong@uh.edu