The Evolution of Partnerships in China: From the Perspective of Asset Partitioning

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The Evolution of Partnerships in China from the Perspective of Asset Partitioning

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Two of the world’s leading corporate law scholars, Henry Hansmann and Reinier Kraakman, recently shook the foundation of organizational law theory by suggesting that the genius behind modern business organizations was a concept that they have coined “asset partitioning.” Specifically, they argue that a critically important characteristic of almost all business organizations is the creation of rules that partition separate pools of assets between creditors of the firm and creditors of the firm’s investors. Building on this theory, in a recent Harvard Law Review article, “Law and the Rise of the Firm,” Hansmann, Kraakman, and Richard Squire further posit that, historically and at present, “entity shielding” (i.e., the rules that protect or partition the firm’s assets from the creditors of the firm’s investors) must be created by a country’s organizational law for large business organizations to develop. In fact, they suggest that entity shielding has been even more important than limited liability in the development of modern business organizational forms.

While their research presents a comprehensive “Western story” of the evolution of business entities, it does not mention China and other Asian jurisdictions. This Article attempts to fill this gap in the literature by examining Hansmann and Kraakman’s influential theory in the context of China. It accomplishes this by examining whether entity shielding existed in ancient China, which was one of the most advanced societies and economies in the ancient world. If this examination reveals that entity shielding did exist in ancient China,

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then it will reinforce Hansmann and Kraakman’s prominent theory by demonstrating that it can make sense of the development of business organizations both in the East and the West. This finding would also reinforce their suggestion that entity shielding generally is a universal prerequisite for large business organizations to function effectively. On the contrary, if there was an absence of entity shielding in ancient China, it would force us to rethink this theory further and it would bring new insight to the divergence between the East and West on the matter of entity shielding.

This Article brings unique insights from the complex evolution of Chinese partnerships to the recent debate on asset partitioning. By illustrating how Chinese partnerships have evolved and how Chinese perception has influenced this process, this Article shows that ancient Chinese partnerships did not exhibit a feature comparable to entity shielding vis-à-vis their European counterparts, especially the partnerships during Ancient Rome and the Italian Middle Ages.

It demonstrates that beneath the surface of great divergence in the institutionalization of business practices between China and the West are the great differences between both societies. These differences include different social and legal traditions, different social attitudes towards merchants and commerce and differing levels of development of commodity markets. In particular, Confucian distaste for profits and merchants, the emperors’ concern in maintaining centralized control over the state, and governments’ custom of utilizing merchants created huge obstacles to the development of partnerships and partnership law in ancient China. Also, there were alternative means for ordering behavior and protection of creditors, such as kinship obligations, lineage trusts, local customs and social norms. All these factors shaped Chinese business practice and led to the lack of a rule of entity shielding.
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I. Introduction

Two of the world’s leading corporate law scholars, Henry Hansmann and Reinier Kraakman, have recently developed an “asset partitioning” theory that has shaken the theoretical foundation of business organizational law. They argue that a critically important characteristic of almost all business organizations is the creation of rules that partition separate pools of assets between creditors of the firm and creditors of the firm’s investors. The two forms of asset partitioning are “owner shielding” (also known as limited liability) and “entity shielding.” The former refers to the rules that protect the personal assets of a firm’s owners from the firm’s creditors. The latter refers to rules that protect a firm’s assets from the owners’ personal creditors (and from creditors of other business ventures).

This entity shielding takes three major forms in modern legal entities: weak entity shielding, strong entity shielding, and complete entity shielding. Weak entity shielding grants the firm’s creditors priority over personal creditors in the division of firm assets, while strong entity shielding protects the owner’s share of the firm’s net assets from both firm owners and their personal creditors. For example, in the modern corporation, corporate creditors are protected from attempts by a shareholder or her personal creditors to liquidate the corporation’s assets. Complete entity shielding denies non-firm creditors any claim to firm assets.

Hansmann, Kraakman, and Squire (Hansmann et al.), in their 2006 Harvard Law Review article titled “Law and the Rise of the Firm,” further illustrate the importance of entity shielding in organizational law throughout the history of business organizations. By presenting the development of entity shielding in four historical epochs (i.e., Ancient Rome, the Italian Middle Ages, England of the seventeenth to nineteenth centuries, and the United States from the nineteenth century to the present) the authors illustrate that entity shielding is a necessary feature of the legal enti-
ty and that it can only be achieved through the special property rules of entity law.\textsuperscript{8}

This Article offers insight into the evolution of Chinese partnerships from the perspective of asset partitioning. By illustrating how Chinese partnerships are developed and how Chinese perception has influenced this process, this Article shows that Chinese partnerships do not exhibit a feature comparable to entity shielding vis-à-vis their European counterparts (e.g., partnerships during the Ancient Rome, Medieval and Renaissance Italy) due to the great divergence and difference between the two societies.

While Hansmann et al.’s article presents a comprehensive “Western story” of the development of entity shielding and evolution of business entities, it does not mention China, which is one of the world’s oldest civilizations. This Article attempts to fill this gap in the literature by examining the concept of entity shielding in the context of Ancient China. As China had one of the most advanced societies and powerful economies of the ancient world, this examination will test the robustness and universality of Hansmann et al.’s influential entity-shielding theory.

This Article demonstrates that, unlike its European counterparts such as those in Ancient Rome and the Italy during the medieval and renaissance periods, partnerships in ancient China did not have entity shielding. In particular, although the Song Dynasty was the most prosperous and populous civilization in the medieval world, the Song maritime partnerships did not possess entity shielding. This stands in stark contrast to Hansmann and Kraakman’s portrayal of the medieval \textit{commenda}. This Article argues that the lack of entity shielding in ancient Chinese partnerships was partially influenced by a deep anticommercial ideology and a strong demand for imperial control over the economy. Also, there were alternative customary rules, social norms, and rights in the society, and there was a lack of workable accounting methods and bankruptcy concepts. All these factors shaped Chinese business practice and led to the lack of the rule of entity shielding.

At the outset, it must be pointed out that this Article examines the evolution of partnerships rather than other business forms because the partnership was the dominant form of business organization in China’s long history.\textsuperscript{9} Partnership was developed as a response to various businesses needs in different eras and played a crucial role in the vibrant Chinese economy. Even in early modern China (early twentieth century), partnerships did not disappear because of the transplantation of

\textsuperscript{8} Id. at 1338.

\textsuperscript{9} The partnership was also the dominant form for organizing jointly owned business firms from ancient Roman times until the end of the nineteenth century. See Hansmann et al., \textit{New Business Entities, supra} note 2, at 6.
companies from Western world. On the contrary, partnerships were as important as companies at that time.\textsuperscript{10}

Moreover, in this Article, the term “partnership” (hehuo) has different connotations from that of the modern English “partnership,” which possesses the critical feature of “carrying out business in common with a view of profit.”\textsuperscript{11} In ancient Chinese documents, it refers not to a separate legal concept, but sometimes to an individually constituted relationship or a general category of relationships that share common characteristics. It could be referred to as a temporary cooperation (hezuo) or association (jieshe) between individuals for the purpose of achieving a similar objective, such as providing a social, cultural or political benefit for their family members. Partnerships could also be those societies with a primary purpose of pursuing or providing pecuniary benefits for their members.\textsuperscript{12}

Further, this Article does not examine Chinese partnerships after the Qing Dynasty: from the later part of the Qing Dynasty onwards, due to foreign invasions, internal rebellions, and civil wars, Chinese business activities experienced piecemeal development. Meanwhile, Western legal business forms were gradually introduced into China after the Qing Dynasty. These factors made it unlikely for partnerships to develop logically or naturally out of traditional Chinese concepts and ancient Chi-

\textsuperscript{10} In fact, even after experiencing two decades of instability—suffering from both Japanese invasion and the civil war—partnerships as business forms still existed on the eve of the founding of the People’s Republic of China (“PRC”) in 1949. Unfortunately, after the establishment of the PRC, the Communist Party abolished all laws enacted by the Republic of China (“ROC”), including legislation on partnerships. After the completion of the “three Socialist Reforms” in 1956, partnerships, together with other business vehicles, such as limited liability companies and joint stock companies, were discarded because they were considered “for-profit” vehicles and were results of capitalism. (One of the reasons why the PRC discarded the ROC-enacted business forms was the belief of communist justice and the fear that any creation of business law would infringe the sanctity of the socialist public-property system, since the public property system is the basis of the socialist economic system described in the PRC Constitution.) The first national PRC partnership law, i.e. the Partnership Enterprise Law (“PEL”) was not promulgated until 1997. The PEL is not developed naturally out of the traditional Chinese law, but a part of the state’s economic and legal reforms in the transitional period of 1990s. Today’s partnership enterprise regulated by the PEL does not succeed to the legal tradition and legacy of its Chinese ancestors. It is simply a creation of law that has less than a two-decade history. For a history of Chinese partnerships, see generally Fang Liufang, Xia Yuantao, Sang Binxue & Danian Zhang, \textit{Chinese Partnership}, 52(3) LAW \& CONTEMP. PROB. 43 (1989).

\textsuperscript{11} See Partnership Act, 1890, 53 & 54 Vict. C. 39, § 1(1) (Eng.).

\textsuperscript{12} In ancient China, there were a large number of “quasi-partnerships” whereby parties carried on businesses not purely for a view of profits. See Liu, \textit{infra} note 22, at ch. 2.

\textsuperscript{13} This Article does not examine the government-supervised and merchant-managed firms (guandu shangpan qiye) during the Qing Dynasty because they are not pure private commercial firms established by individuals. These are historical products created in the context of a special social and economic background in the later part of the Qing Dynasty.
Chinese law.

The remainder of this Article will proceed as follows. Part I examines the historical evolution of Chinese partnerships from the perspective of asset partitioning and by comparing it with its developments in its European counterparts. Importantly, this Part explores the most important historical periods in ancient China and ultimately concludes that partnerships in ancient China lacked entity shielding—the opposite of what Hansmann and Kraakman’s prominent theory predicts. Part II analyses the reasons why, contrary to Hansmann and Kraakman’s theory, entity shielding seems to have been absent in Chinese partnerships and the underlying reasons for this phenomenon. Part III offers concluding remarks.

II. The Evolution of Partnerships in China: A Fresh Examination of Asset Partitioning

To examine the concept of asset partitioning in the context of Ancient China, this part considers the development of the ancient Chinese partnership in three epochs: (1) the period between the Spring and Autumn Period and the Tang Dynasty (722 BC-907); (2) the Song and Yuan Dynasties (960-1368); and (3) the Ming and Qing Dynasties (1368-1911). In the course of this examination, comparisons will be made to Hansmann et al.’s description of the development of partnerships in Ancient Rome, Medieval, and Renaissance Italy.

A. Period from the Spring and Autumn Period to the Tang Dynasty (722BC-907)

1. The Rise of Partnerships

It is widely acknowledged that the earliest business partnerships in China can be traced back as far as to the Spring and Autumn Period (722 BC - 481 BC).16

14 In this Article, “ancient China” refers to the Chinese history from the Xia Dynasty to the Qing Dynasty (2100BC-1911). The Republic of China period (1911-1949) and the People’s Republic of China period (1949 to present) are considered as the modern China period. This Article does not examine the partnerships during the modern China period.
15 Between the Tang Dynasty and the Song Dynasty, there was a political disunity period called the “Five Dynasties and Ten Kingdoms” (wudai shiguo) (907-960). During this era, five regimes succeeded one another rapidly in control of northern China and ten more regimes occupied several parts of southern and western China. Considering the short history of this era, this Article does not attempt to explore the partnership forms during this period in detail.
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This period\textsuperscript{17} was characterized by wars and competition between hereditary noble states (\textit{zhuhouguo}). During this time, iron tools were available. Iron smelting became popular. Metal currencies were issued. All of these factors contributed to the flourishing of trade and commerce.\textsuperscript{18} In particular, hereditary nobles (\textit{zhuhou}) promulgated several policies to promote business in their controlled states. To ensure ordinary cross border trading among states, the states also included relevant agreements into the treaties (\textit{mengyue}).\textsuperscript{19} These incentives facilitated trade and boosted the financial status of the wealthy merchant class as well. As such, wealthy merchants started to advance their interests and increase capital by cooperation and partnerships thereby emerged.

One of the Chinese classics, the \textit{Spring and Autumn of Master Lü} (\textit{Lüshi Chunqiu}),\textsuperscript{20} records a much-told story that has been considered the earliest record on partnerships in Chinese history. It stated that Guan Zhong and Bao Shuya carried on businesses together in Nanyang. Although Guan Zhong received more profits than Bao, Bao did not consider him a greedy person because he understood that Guan Zhong was poor.\textsuperscript{21} Strictly speaking, this business relationship had little in common with the modern partnership form, as the two parties did not carry on business purely for profit. There were no liability or agency concepts within this temporary relationship either.

The Spring and Autumn period was followed by the Warring States Period (476 BC-221 BC). Even as late as the Wei Jin, Southern and Northern Dynasties (265-589), the partnership had not yet become a formal business entity with legal principles. People formed partnerships for various purposes, such as joint pursuit of business, joint production of food (\textit{gongzhong}) and joint rental of land (\textit{gongdian}).\textsuperscript{22} Their structures varied vastly as well. There were partnerships in which all partners provided cash and carried out business jointly. There were also partnerships in which members contributed in the form of either capital or labor only.\textsuperscript{23} In the Sui Dynasty.

\textsuperscript{17} The name of the Spring and Autumn Period comes from the Spring and Autumn Annals, a chronicle of the state of Lu.
\textsuperscript{18} Wu Jixuan, \textit{Reasons of Commodity Economy Prosperity in the Spring and Autumn and the Warring States Period}, 52 J. SHANDONG NORMAL U., no. 2, 2007, at 111, 112-13. [we think this is the appropriate bluebooking format for multi-volume journals].
\textsuperscript{19} Id. at 112.
\textsuperscript{20} \textit{SPRING AND AUTUMN OF MASTER LÜ} is a collection of essays compiled by the scholars under Chancellor Lü Buwei's patronage during the Qin Dynasty.
\textsuperscript{21} See Fang et al., supra note 10, at 43; Liu, supra note 16 at 3.
\textsuperscript{22} See Liu Qugen, \textit{Zhongguo Hehuozi Chutan} (Preliminary Studies on Ancient Chinese Partnerships) 57-70 (2007).
\textsuperscript{23} Id.
(581-619) and the Tang Dynasty (618-907), formal contracts called *heben* emerged and were extensively used in daily business operations.24

Nevertheless, compared to the best-developed enterprise forms in Ancient Rome such as the *family*, the *peculium*, and the *societas publicanorum*,25 Chinese partnerships in this period were less developed—in the sense that they were not regulated by any legislation. They were generally simple and temporary relationship or joint projects between two or more persons for economic or similar purposes, without the support of particular legal institutions.

The subsequent Part highlights three partnership forms developed during this period and examines whether they possessed a form of entity shielding.

2. Gong Mai

In the Han Dynasty (202 BC-220), a business form called the “Gong Mai” arose in the areas of delivery trade (fanyun) and small business shop trade,26 where merchants purchased goods for sale and shared profits jointly.27 From the Warring State Period to the Tang Dynasty, the Gong Mai was further developed. Merchants usually partnered with each other for the purpose of conducting business ventures.28 Nevertheless, it was not a separate business firm or a contracting entity but, in essence, a temporary business association. The structure of Gong Mai varied from place to place.29

Gong Mai was comparable to the ancient Roman commercial form, the *societas*30 in the sense that both had partners who carried out the business and shared profits and losses jointly. In particular, the Gong Mai, like the *societas*, lacked clear distinctions between the obligations and assets of the entity and of its members.31

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24 See Zou Jinwen, *Comparative Study on Partnership Business in Ancient China and Western Countries*, 2 COM. ECON. & MGMT. 78, 78 (1996). In addition, the partnership was widely used by individuals and government to conduct salt business during this period. See Ji Chengming, *The Method of Salt Industrial Management in the Tang Dynasty*, 3 HIST. SALT INDUSTRY 18, 20 (2001).


26 Liu, supra note 16, at 5.

27 Id. at 4.

28 Id.

29 Many merchants at that time established Gong Mai not necessarily for the purpose of profits. For detailed historical records on Gong Mai, see supra note 22, at 58-62.


31 Hansmann et al., *Law and the Rise of the Firm*, supra note 2, at 1356 (citing W.W. BUCKLAND, A TEXT-BOOK OF ROMAN LAW FROM AUGUSTUS TO JUSTINIAN 504-07 (1921)); see also
Nevertheless, Gong Mai was far less developed than the societas because unlike the societas, which was regulated by Roman law, there was no formal law governing Gong Mai. In particular, according to Roman law, the formation of a societas established binding obligations among the contracting parties.\textsuperscript{32} Partners had obligations to make contributions pertaining to their labor power and necessary capital for the business operation.\textsuperscript{33} Partners had to bear pro rata liability to a socius (partner) claim against others that derived from business carried on for the partnership.\textsuperscript{34} However, the Gong Mai did not have an equivalent concept of contractual obligation. No contract was required for the establishment of a Gong Mai and there was no rule on the enforcement of contracts either. Gong Mai does not appear to have possessed a sophisticated business form with clear distinction between the assets of the firm and those of its members, thus precluding the rules of asset partitioning.

3. Ling Ben Business

In the Warring States Period and the Qin Dynasty, with the substantial growth of social wealth, the number of prosperous landlords and noble families increased. Some wealthy masters did not want to conduct business and thus provided cash (called ben or benqian) to their servants for a business pursuit.\textsuperscript{35} Based on the trust between the masters and their servants, the masters normally did not get involved in the operation of the business, but simply benefited from profits gained from the business ventures. In addition, wealthy merchants also provided cash for talented individuals to engage in business ventures.\textsuperscript{36} In the Tang Dynasty, it was common for the head of a prosperous household (dajiazhang) to provide cash for their descendants to conduct business.\textsuperscript{37} This category of business association was known as the “Ling Ben” business.

The Ling Ben business was comparable to the ancient Roman peculium in the way that the master in a typical Rome peculium also provided his slaves or his sons with some assets (also called the peculium) for use in a business venture.\textsuperscript{38} However, unlike the Roman peculium, which exhibited a degree of owner shielding/limited lia-

\textsuperscript{32} \textit{Weber}, \textit{supra} note 30, at 53.
\textsuperscript{33} \textit{Id.}
\textsuperscript{34} \textit{Id.}
\textsuperscript{35} \textit{Liu}, \textit{supra} note 22, at 64-65.
\textsuperscript{36} \textit{Id.} at 64.
\textsuperscript{37} \textit{Id.} at 65-66.
\textsuperscript{38} Hansmann et al., \textit{Law and the Rise of the Firm}, \textit{supra} note 2, at 1358-59.
bility (i.e., the master’s liability was capped at the value of the peculium as long as he had not participated in managing it), the Ling Ben business did not appear to exhibit a separate concept of liability. In most of Lin Ben businesses, it was for the managers (e.g., the servants or the entrusted individuals) to bear risks and losses for the business ventures. Nevertheless, some historical records indicate that any losses and risks arising out of the business ventures were borne by the capital providers (e.g., the masters or the wealthy merchants), even though they did not manage the business themselves.

B. The Song Dynasty and the Yuan Dynasty (960-1368)

1. Partnerships in the Greatest Age

The Song Dynasty, which comprised two distinct periods, the Northern Song (960–1127) and the Southern Song (1127–1279), was described by Fairbank and Goldman as China’s greatest Age. Significantly, the economy of the Song Dynasty was the most prosperous and advanced in the medieval world. The largest cities in the world, with populations of over a million, were in China during this era, such as Kaifeng and Hangzhou. The Song was also the first government in the world to issue paper money (i.e., jiaozi). Succeeding the Song, the Yuan Dynasty existed in the thirteenth and fourteenth centuries.

Vibrant economic development certainly promoted the growth of business and trade. Thus, the merchant class during this period became more sophisticated and well respected than in earlier periods of China. For a long time before the Song dynasty, merchants (shang) were ranked at the bottom of the four groups of people in Chinese society, after the civil servants (shi), peasants (nong) and industrialists  

39 Id. at 1358.
40 See Liu, supra note 22, at 64-69.
41 Id.
42 See John King Fairbank & Merle Goldman, China: A New History 88 (2d ed. 2006).
43 Statistics show that the gross domestic product (“GDP”) of the Song Dynasty in the tenth century accounted for one third of the world’s economy. Wu Xiaobo, Haodang Liangqianlian (Vibrant Two Thousand Years) 4 (2012).
44 Fairbank & Goldman, supra note 42, at 89-92.
46 The Yuan Dynasty is considered both a successor to the Mongol Empire and as an imperial Chinese dynasty after the Song Dynasty.
47 For discussion of the economy of Yuan Dynasty, see Chen Gaohua & Shi Weimin, The Economic History of China (2000) at the chapter of “Economy of Yuan Dynasty”.

Partnerships were also developed into more advanced business forms and were extensively used in various areas, especially in maritime trading, transportation businesses, tea trading and commercial lending businesses (also known as gaolida). Partnerships in this period can be categorized into three major types according to the form of contribution. One was the partnership under which all partners contributed capital but only some partners were required to participate in the management. A second was the Capital Partnerships (ziben hehuo), where all partners provided capital and shared risk and profits jointly. Meanwhile, partners could carry out the partnership businesses themselves or employ others to manage the partnership business. These partnerships were commonly used in smuggling private tea, wine businesses, commercial lending and maritime businesses.

The Capital Partnership during this period was similar to the medieval Italian partnership, the compagnia in that both contained partners who contributed to the partnership in the form of both capital and service. However, they were different in various ways. First, unlike the compagnia, which was regulated by merchant laws, there was no written law governing the Capital Partnerships. The structure of the Capital Partnerships varied vastly from place to place. Second, the Capital Partnership did not acquire mutual agency and the concept of “joint and several liability” as the compagnia did. Some historical records showed that partners in some Capital Partnerships shared profits pro rata according to their capital contribution and bore unlimited personal liability for the investment. Third, compagnia provided a weak

49 See Liu, supra note 22, at 163-76. It must be noted that most of the commercial lending body lent the money at an exorbitant interest in ancient China.
50 Id. at 173-75.
51 As tea was monopolized by the imperial governments, private businessmen could only conduct tea business privately or by way of smuggling.
52 The wine trade was controlled by the Song Government.
53 See Liu, supra note 22, at 164-73.
54 For discussion on the compagnia, see, e.g., Hansmann et al., Law and the Rise of the Firm, supra note 2, at 1365; William Mitchell, Early Forms of Partnership, 3 SELECT ESSAYS IN ANGLO-AMERICAN LEGAL HISTORY 186 (1968).
55 See Hansmann et al., Law and the Rise of the Firm, supra note 2, at 1365.
56 The author has checked relevant literature but no written law or rule of partnerships is found. This proposition was also confirmed by Prof. Liu Qiugen, professor of ancient Chinese economic history and the author of a study on ancient Chinese partnerships, see supra note 22.
57 See Liu Qiugen, China’s Partnerships during the Tenth to the Fourteenth Century, 6 Hist. Stud. 109, 114-120 (2002).
58 Id. at 113-14, 119.
59 See Liu, supra note 22, at 180.
entity shielding in the sense that creditors of the firm would first exhaust partnership assets before taking the partners’ personal assets. However, there was no such rule for the Song Yuan Capital Partnerships. Above all, the Song Yuan Capital Partnerships did not provide any legal principle. It was a category of occasional commercial association only.

The third type of partnership was the Capital and Labor Partnership (ziben yu laowu hehuo). In these partnerships, some partners provided capital, and the other partners contributed labor and initiative. They existed in shop trade and commercial lending, and were particularly popular in overseas maritime trade and inland waterway trade. In the Yuan Dynasty, it was common for the great khan (emperor), his retinue, imperial kinsmen or queens to give their gold and silver ingots to a special group of traders called ortog (hantuo) and entrust ortog to make purchase and conduct business on their behalf. The ortog would share profits with the great khan and other noble members at the end of the business venture. However, based on the limited historical material possessed, it is not clear whether ortog were granted any form of entity or owner shielding.

In general, partnerships during the Song and Yuan did not contain any legal concept of “limited liability” or “entity shielding”. There was no written law governing the partnerships, either. This is in contrast to the comparable medieval Italy, which had a regime of weak entity shielding within partnerships, i.e. partnership creditors enjoyed a claim to partnership assets that was prior to the claim of the partners’ personal creditors.

The subsequent section will discuss the maritime partnerships in the Song Dynasty, which shared great resemblance to the medieval Italian commenda.

2. The Maritime Partnerships

In the Southern Song Dynasty (1127–1279), a maritime partnership regime arose as a financing device for inland or overseas maritime trade (the “Song Mari-

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60 Hansmann et al., Law and the Rise of the Firm, supra note 2, at 1367.
61 See generally Liu, supra note 22, at 170-73.
62 See id. at 170.
63 See Liu XINRU, THE SILK ROAD IN WORLD HISTORY 116-117 (2010); Liu, supra note 22, at 172-73.
64 However, the business structure, e.g. how exactly they share profits and liability were under research. There seemed to be no legal concepts of “share,” “agency,” or “liability” within this type of business.
65 See Liu, supra note 22, at 182.
66 Hansmann et al., Law and the Rise of the Firm, supra note 2, at 1366.
time Partnership”). In some maritime partnerships at this time, individual investors (who were usually the fellow-country men or personal acquaintances) would give money to the maritime merchants (haishang) before the overseas voyage for them to conduct the maritime trade. At the end of the voyage, the foreign goods (fanhuo) would be shared among the investors. The investors would then gain profits from reselling the goods.67 Meanwhile, the maritime merchants would receive profits from the investors. This business regime greatly reduced the risk of maritime trade and solved the problem of initial capital shortages for the investors.

This maritime partnership was very similar to the medieval commendae 68 as both regimes separated the roles of the capital providers and the business managers. The passive investors provided capital, and the traveling traders contributed labor and initiative. However, unlike the commendae, which provided limited liability for passive partners, there appeared to be no concept of limited liability in these Song maritime partnerships.69 Moreover, unlike the commendae which was later codified in France,70 Germany71 and reinforced in the English and American limited partnership Acts,72 the Song Maritime Partnership was not codified by written law.73 They were temporary business relationships lasting for a single voyage only.

Logically, the Song Maritime Partnerships exhibited basic prerequisites for a strong asset partitioning. Like the medieval commendae, the assets of the Song Maritime Partnership were also sequestered in the hull of the ship. Since the hull of the ship acted as a boundary for the partnership, there was a distinction between the assets of the partnerships and those of the partners. However, in contrast to the commendae, which provided creditors of the partnership priority over the personal creditors of the partners in their claim over the partnership assets,74 the Song Maritime Partnerships did not appear to be endowed with any form of entity shielding.

Moreover, unlike the medieval commendae, which was further developed into the modern limited partnership form, the Chinese Maritime Partnerships gradually

67 Liu, supra note 57, at 118 (citing History of the Song Dynasty (Songshi), at vol. 186).
68 For discussion on commendae, see, e.g., Mitchell, supra note 54, at 183.
69 See Liu, supra note 22, at 182.
71 See the “Limited Partnership” section of the German Commercial Code. HANDELSGESETZBUCH [HGB] [COMMERCIAL CODE], §161, (Ger.).
72 See 3 ALAN R BROMBERG AND LARRY E. RIBSTEIN, BROMBERG AND RIBSTEIN ON PARTNERSHIP § 11.02 (1st ed. 1988); Hansmann et al., Law and the Rise of the Firm, supra note 2, at 1372.
73 See Liu supra note 57, at 121.
74 Hansmann et al., Law and the Rise of the Firm, supra note 2, at 1366.
vanished in the following Yuan, Ming and Qing Dynasties. This was largely caused by the later emperors’ strict policy on overseas maritime trade. Since the Southern Song’s Qiandao era (1165-1173), the government started to impose harsh fines on individual merchants who attempted to engage in private overseas maritime trade. The Yuan government also enacted policies to ban overseas trade. Particularly, in order to gain profits from overseas maritime trade, Yuan promulgated the Government-Merchant Maritime Trade Policy (Guanbenchuan Maoyi). Under this policy, local governments would provide capital and build ships for maritime venture and force maritime traders (usually the ship captains) to conduct overseas ventures. To squeeze profits from the maritime trade, the governments and officials usually provided a small amount of cash to the maritime traders but obtained the foreign goods at a low price.

In the Ming Dynasty, a more stringent Sea Ban (haijin) policy was imposed to prohibit all maritime activities. For instance, individuals were not allowed to build ships with more than two masts and were not allowed to conduct overseas trade secretly. Those who violated the policy would be subject to harsh criminal punishment. To separate the Ming loyalists in Taiwan from mainland supplies, Qing government closed all ports along the coastal area in 1661. In 1757, the Qing government closed the custom offices in Fujian, Zhejiang, and Jiangsu, and ordered that all foreign trade had to be carried out in Guangzhou only (the one-port policy). These unfair and ruthless policies inevitably strangled the development of maritime trade and the Maritime Partnerships.

C. The Ming Dynasty and the Qing Dynasty (1368-1911)

1. Features of the Ming Qing Partnerships

The Ming Dynasty and early Qing Dynasty maintained the world’s largest economy during that period. By the end of Qing-Qianlong Emperor era, the Qing had more than one-third of the world’s population and produced the largest food output. With the expansion of domestic trade, large-scale labor specialization pro-

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76 See Liu, supra note 22, at 172.  
77 MINGSHI [HISTORY OF THE MING DYNASTY] vol. 205.  
79 Id.  
80 See JIANG GONGTAO, CHINA HISTORY: MING AND QING 120 (2010).
duction emerged in this period, especially in the areas of agriculture production and manufacturing industry.\textsuperscript{81} Therefore, many large-sized and capital-intensive partnerships with dozens of partners were established during this time.\textsuperscript{82}

Like their Song Yuan ancestors, partnerships during the Ming and Qing can also be divided into three types according to the form of contribution: the Capital Partnership under which all partners provided capital and managed the partnership business jointly; the Capital and Labor Partnership with passive partners, who provided capital, and active partners, who mainly contributed service; and the partnerships which combined the features of the previous two types of partnerships.\textsuperscript{83}

The Ming Qing Partnerships were more advanced than their Song Yuan ancestors in several aspects. First, unlike Song Yuan partnerships, which did not specify the liability issue on passive partners, \textit{de facto} unlimited personal liability\textsuperscript{84} and \textit{pro rata} personal liability were found in some Ming Qing partnership contracts.\textsuperscript{85} Second, formal written partnership contracts with detailed terms were extensively employed at this time.\textsuperscript{86} Apart from creditors’ rights, which were hardly mentioned in partnership agreements,\textsuperscript{87} issues relating to transfer of shares and distribution of profits were commonly specified.\textsuperscript{88}

The subsequent section will examine some typical partnerships and see whether they possess a form of entity shielding.

2. The He Hui

During the Ming and Qing dynasties, the He Hui, a long-existed voluntary

\textsuperscript{81} See generally Liu, \textit{supra} note 22, at chs. 5-6.

\textsuperscript{82} The number of partners was usually between ten to twenty, but not more than forty. Peng Jiushong & Chen Ran, \textit{Contractual Shareholding System in China}, 11 \textit{RESEARCHES IN CHINESE ECONOMIC HISTORY}, 58 (1994).

\textsuperscript{83} See Liu, \textit{supra} note 22, at 219-44; Liu Qiugen, Partnership Types in Industrial and Commercial Areas of the Ming Dynasty, 4 \textit{J. CHINESE SOC. & ECON. HIST.}, 58, 58-62 (2001).

\textsuperscript{84} For relevant cases, see Liu, \textit{supra} note 22, at 348 (citing 20 \textit{GUIYANG ZHILIZHOU LISHI} (History of the State of Guiyang)).

\textsuperscript{85} See 1 \textit{SICHUAN ARCHIVES & SICHUAN UNIV. EDS., A SELECTIVE COLLECTION OF BAXIAN ARCHIVES IN THE PERIOD OF QING-QIANLONG, JIAQING AND DAO GU ANG}, 340, 341, 391 (1989) [hereinafter BAXIAN ARCHIVES]; Li Yu, \textit{Features of Traditional Partnerships-Based on Baxian Archives}, 3 J. Guizhou Normal Univ. (Soc. Sci.) 33, 36 (2000). It must be pointed out that liability of the partners varied greatly from partnership to partnership during this time.

\textsuperscript{86} See Zou, \textit{supra} note 24, at 79; Yang Guozhen, \textit{The Contractual Form of Businessmen’s Heben Business since the Ming and Qing Dynasties}, 3 \textit{J. CHINESE SOC. & ECON. HIST.} 1 (1987).

\textsuperscript{87} The Qing Dynasty and the Republic of China, in 3 \textit{HUIZHOU MILLENNIUM CONTRACTUAL DOCUMENTS} (Inst. of Chinese History, Chinese Acad. of Soc. Sci. ed., 1993).

\textsuperscript{88} See Li Li, \textit{The Concept of ‘Huo’ in the Qing Civil Contracts}, 6 \textit{JURIST} 39 (2003).
association for the purpose of economic cooperation that emerged at the Tang and Song Dynasties, continued to be used in a great variety of areas, including household handicraft, commercial lending and inland delivery trade.\textsuperscript{89} There were various kinds of He Huis.\textsuperscript{90} For example, commercial He Huis (trade guilds) were usually formed to pool capital from businessmen and to make investments in various businesses together, especially in usury business.\textsuperscript{91}

Family relatives or merchants who shared the same place of origin (\textit{tongxiang}) also formed family He Huis (native-place guilds) to accommodate members and carry out family activities, such as family unity, cultural appreciation, birth or death anniversary, etc.\textsuperscript{92} He Huis usually had an indefinite lifespan, remaining intact over multiple generations. The names of He Huis also generally incorporated the common surname of all members.

Arguably, there exhibited a clear distinction of the assets of the He Hui from the personal assets of its members, and thus a certain level of asset partitioning.\textsuperscript{93} Usually, only competent family members or clan members were entitled to manage the He Hui business.\textsuperscript{94} Assets of the He Hui could only be used with approval of all members. Hence, outsiders or personal creditors of the He Hui members were unlikely to levy a direct claim on the assets of the He Hui.

However, as at the date of this Article, the author has yet to observe any evidence of written rules on entity shielding in these He Huis.\textsuperscript{95} Chinese legal codes provided no guidance in the regulation of He Huis.\textsuperscript{96} Some He Hui agreements specified that members of the He Hui should bear joint liability (\textit{liandai zeren}) for the debts of the He Hui after its dissolution (\textit{daohui}).\textsuperscript{97} As He Huis are usually formed in the context of clan members or acquaintances, disputes arising out from He Huis would be mainly solved by clan rules or the customs based on trust and morality.\textsuperscript{98}

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\textsuperscript{89} Liu, supra note 22, at 117-118.
\textsuperscript{90} According to Prof. Chen Baoliang, there were four major types of He Huis in ancient China: political-type He Huis; military-type He Huis, economic-type He Huis and cultural-type He Huis. Liu, supra note 22, at 117 (citing Chen Baoliang, \textit{China’s She and Hui} 14 (1996)).
\textsuperscript{91} Id. at 209.
\textsuperscript{92} Id. at 210.
\textsuperscript{93} For He Huis formed before the Tang Dynasty, it was unclear whether there was a distinction between the assets of He Huis and the assets of their members. See id. at 210.
\textsuperscript{94} See id. at 210.
\textsuperscript{95} This proposition was verified by Prof Liu Qiugen.
\textsuperscript{96} Id.
\textsuperscript{98} Id.
\end{flushleft}
3. The Well Salt Partnerships

As an important and profitable industry, the salt industry has long been run as a state-licensed monopoly.\textsuperscript{99} It had also been a major source of income for the imperial governments for centuries.\textsuperscript{100} In the Qing Dynasty, well salt mining and production was opened to private individuals.\textsuperscript{101} Thereafter, private well salt workshops were established in the Sichuan areas in increasing numbers. Sichuan areas processed abundant salt resources. One such area was the “salt city” in southern Sichuan, Zigong.\textsuperscript{102}

In Zigong, well salt was obtained by boiling brine raised from deep wells. The difficulty and complexity of well salt mining called for an advanced business vehicle with intensive commercial capital and labor.\textsuperscript{103} Therefore, the well salt partnership (jingyan hehuo)\textsuperscript{104} arose as a useful financing device in well salt mining\textsuperscript{105} and became one of the best-developed partnership forms in the Qing Dynasty and early modern China.\textsuperscript{106}

The Zigong well salt partnerships were characterized by large-scale, non-kin business partnerships.\textsuperscript{107} Different well salt partnerships were regulated by different partnerships or well rules. Typically, a well salt partnership in Zigong consisted of three parties: (1) the landlords, (2) the contractors (chengshouren) and (3) the investors

\textsuperscript{99} Salt has been a major industry in China for centuries, mainly because salt is a daily necessity for human life and as well as a taxed commodity. For further introduction of the salt industry in ancient China, see Tao-Chang Chiang, The Salt Industry of Ming China 65 GEOGRAPHICAL REV. 93, 93 (1975). See also, Ping-ti Ho, The Salt Merchants of Yang-Chow: A Study of Commercial Capitalism in Eighteenth-Century China 17(1/2) HARV. J. ASIATIC STUD. 130 (1954).

\textsuperscript{100} Tao-Chang Chiang, supra note 99, at 93.

\textsuperscript{101} Tao-Chang Chiang, Production of Salt in China, 1644-1911, 66 ANNALS ASS’N AM. GEOGRAPHERS 516, no. 4, 1976, at 527.

\textsuperscript{102} For further discussion on Sichuan well salt contracts, see e.g. WU ET AL., CHINA SALT INDUSTRY CONTRACTS – FOCUS ON EARLY MODERN SALT INDUSTRY CONTRACTS IN SICHUAN (2007); Zhang Honglin, The Partnership Relationship in Qing Sichuan Salt Well Production, 3 MOD. LEGAL STUD. 109 (1997) [hereinafter Zhang, The Partnership Relationship]; Zhang Honglin, Reasons for Disputes in Sichuan Salt Well Contracts in the Republic of China Period, 3 J. NINGXIA UNIV. (HUMANITIES & SOC. SCI. EDITION) 80 (2009) [hereinafter Zhang, Reasons for Disputes]; Zhi Guo, Debts in Traditional Salt Well Partnerships, 3 SICHUAN POLYTECHNIC INST. J. 15 (2007).

\textsuperscript{103} Zhang, Reasons for Disputes, supra note 102, at 80.

\textsuperscript{104} Some scholars considered the well salt firm as a joint stock company (qiegufenzhi). See Peng & Chen, supra note 82, at 65.

\textsuperscript{105} See Zhang, The Partnership Relationship, supra note 102, at 109; Zhang, Reasons for Disputes, supra note 102, at 80-81.

\textsuperscript{106} See ZIGONG ARCHIVES & RECS. ADMIN. ET AL. EDs., SELECTIVE ZIGONG SALT INDUSTRY CONTRACTS ACHIEVES 45 (China Soc. Sci. Press 1985) [hereinafter ZIGONG ARCHIVES].

\textsuperscript{107} See MADELEINE ZELIN, THE MERCHANTS OF ZIGONG: INDUSTRIAL ENTREPRENEURSHIP IN EARLY MODERN CHINA ch. 2 (2005).
As parties in the salt well partnership were entitled to shares of the firm, they are collectively referred to as shareholders of the firm hereinafter.

Many investors were wealthy salt merchants who had dominated the long distance salt trade. The investors only provided capital to the firm but did not participate in the management of the firm. The landlords contributed to the partnership in the form of “land”, which comprised of the so-called *yijing sanji* (one-well and three foundations), i.e. the salt well, the land attached to the well house, the storage room and the boiling room. However, the landlords did not participate in the management of the salt well and did not bear any expenses arising out of the daily operations. A *chengshouren* was a kind of venture capitalist or contractor who specialized in bringing together potential investors and locals with exploitable well land. Usually, *Chengshouren* only contributed labor and initiatives. They were mainly in charge of the well salt mining, including inviting investors to provide capital, collecting monthly cash contributions (*yuefei*) from investors, and organizing workers to conduct salt well mining. The structure of the well salt partnerships was a bit similar to the modern limited partnership form in the sense that both have a party who only contributes capital but does not participate in the management of the firm.

### a. Some Innovative Regimes

The *jingzhai jinghuan* was a typical regime created and applied in most of the well salt partnerships in the later part of the Qing Dynasty (late nineteenth century). Under this regime, debts of the salt well were paid with the salt well’s assets. Shareholders of the salt well were not liable for the debts of the salt well and had the right to reject any claim from the creditors of the well. Creditors of the salt well were not entitled to claim from the shareholders. Arguably, strong owner shielding was exhibited in the well salt partnership as the personal assets of firm owners were protected

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109. The landlords were entitled up to 20% of the total partnership shares, known as *dimai rifen* or *dimai guokou*. The contractors were entitled to partnership shares known as *chengshou gufen*. The investors were entitled to the majority of partnership shares, known as *gongben rifen*, *kerifen* or *kaiguo shuifen*. See BAXIAN ARCHIVES, supra note 85, at 268; ZIGONG ARCHIVES, supra note 106, at 49; Zhang, *The Partnership Relationship*, supra note 102, at 110; PENG JIUSONG ED., *CHINA CONTRACTUAL SHAREHOLDING SYSTEM* 173, 265 (1994).
111. Id.
112. MADELEINE ZELIN, *supra* note 107.
113. Id.
114. Id. at 109.
from the claims of the creditors of the firm.

As the well salt mining was a long-term and high-risk business with great uncertainties, it was difficult to predict the exact amount of cash contribution required for the whole project. Therefore, investors of the salt well were not required to make fixed contributions in one sitting. Capital contributions could be made in installments (usually monthly installments).\textsuperscript{116} Moreover, to ensure the funding of the salt well, investors who were unable to provide capital on time were required to disassociate from the partnership and other investors would be invited to join the firm.\textsuperscript{117}

A more advanced regime named as “\textit{shangzhongxiajie}” (the upper-middle-lower-portion regime), was widely found in historical records in the Qing - Tongzhi Emperor era (1862-1874).\textsuperscript{118} Under this regime, when the investors had difficulty in providing capital to the salt well, they were entitled to transfer their entire shares in the salt well to outsiders. The former investors were called “\textit{shangjie}” (the upper portion of the well) and the new investors were called “\textit{xiajie}” (the lower portion of the well).\textsuperscript{119} As the profile of investors changed from time to time, the debts of the partnership were unlikely to be paid with the personal assets of these outgoing partners. Thus, it appeared that there was a certain level of owner shielding for investors.

There were also a number of wells known as “\textit{zisunjing}” (descendant wells) in Zigong. These wells could last for an indefinite lifespan for the well owners’ descendants. Where the salt well was interrupted due to lack of funding, mine accidents, mine wall failures or vehicle collapses, descendants of the salt well’s owners were entitled to take over the well and continue the business by inviting other investors and contractors to join.\textsuperscript{120}

The mentioned \textit{shangzhongxiajie} regime and the \textit{zisunjing} regime ensured consistent and sufficient funding to the firm and made the well salt firm less likely to be bankrupt due to insufficient funding or change of owners. Regrettably, the concept of limited liability did not seem to be embodied in these partnerships. Some mining partnership agreements specified that partners had to be personally liable for the debts of the firm \textit{pro rata} to their capital contributions.\textsuperscript{121} As observed by Zerlin, among 133 verdicts in the nineteenth century Baxian, none contain evidence that business owners do not have to bear liability for the debts of the firm. Also, these

\begin{itemize}
  \item \textsuperscript{116} See \textit{ZIGONG ARCHIVES}, \textit{supra} note 106, at 332, 336, 347, 413; \textit{Liu}, \textit{supra} note 22, at 349-50.
  \item \textsuperscript{117} \textit{Liu}, \textit{supra} note 22, at 350.
  \item \textsuperscript{118} \textit{Id.} at 351.
  \item \textsuperscript{119} \textit{Id.} at 351-52.
  \item \textsuperscript{120} \textit{ZIGONG ARCHIVES}, \textit{supra} note 106, at Contract No. 24, 25, and 29.
  \item \textsuperscript{121} \textit{BAXIAN ARCHIVES}, \textit{supra} note 85, at 268,301; see also \textit{Liu}, \textit{supra} note 22, at 356-57.
\end{itemize}
verdicts indicate that there was no separation of debts of the business owners and the firm’s debts.\footnote{122}

\subsection*{b. Is There Entity Shielding?}

Arguably, in the well salt partnerships, there appeared to be a clear line drawn between the assets of the well salt and assets of its shareholders,\footnote{123} and thus a certain level of asset partitioning. Specifically, assets of the salt well were comprised of the salt well itself and the necessary equipment for salt mining and production, such as mining tools and salt boiling machines. Besides the tangible drilling tools and salt boiling machines, the major assets of the salt well firm were sequestered in the salt well itself and were unmovable properties. Therefore, it was impractical for the shareholders of the salt well to draw out or receive a part of their contribution separately from the firm. The intangible nature of the salt well itself also impaired the ability of personal creditors of these shareholders to levy a claim on the assets of the salt well. Arguably, there was relatively strong entity shielding.

However, there was no relevant written national legislation (\textit{liù}) or provincial legislation (\textit{shengli}) governing the well salt partnerships in Zigong for two centuries from early Qing dynasty to 1949.\footnote{124} They were mainly governed by the self-designed firm rules (\textit{changgui}), well rules (\textit{jinggui}) and the customary law developed by the individual in the regions.\footnote{125} Moreover, the author has not seen any well rule or firm rule providing entity shielding to these partnerships.\footnote{126} In particular, the well salt partnership agreements hardly mentioned or specified the issue of personal creditors’ rights or what rights accrued to which party in the event of the partners becoming insolvent.\footnote{127} A resolution over a well salt dispute issued by the Zigong local council committee\footnote{128} stated that “as most of the salt well firm rules are made in oral

\begin{thebibliography}{99}
\footnote{122}{Madeleine Zelin, \textit{The Firm in Early Modern China}, 4 STUD. IN QING HIST. 63, 68 (Feng Yongming trans., 2008).
\footnote{123}{See Liu, supra note 22, at 349.
\footnote{124}{Peng & Chen, supra note 82 at 61.
\footnote{125}{See id. (noting that well salt partnerships in Zigong were mainly governed by firm rules); Zhang, \textit{Reasons for Disputes}, supra note 102, at 85-86 (noting that well salt partnerships were governed by customary law and well rules, though, the quantity of customary law was very limited. Meanwhile, many disputes were not solved due to the lack of written law).
\footnote{126}{The author had checked some salt well firm rules while no rule on entity shielding was found. These historical records include: \textit{Tongzhi Fushun Xianzhi} (\textit{History of Fushun County During the Tongzhi Emperor Era}) vol. 30 and \textit{Zigong Archives}, supra note 106.
\footnote{127}{As at the date of this article, no relevant partnership terms on entity shielding were found in the Zigong Archives.
\footnote{128}{The Zigong local council committee was a local authority in Zigong area and it ex-}
form and there being no specific written rule, we had no law to follow and our government and courts had no legal basis on which to make judgment on this matter.”

4. The Coal Mining Partnerships

In response to the financing needs of capital-intensive workshops in the coal mining industries, large partnerships with more than a hundred partners sprung up in the Qing Dynasty. These firms were mainly located in Jingxi and Baxian areas, which were rich in coal resources.

Like the well salt partnership, a prototypical coal mining partnership also had three parties: (1) the landlord who possessed the coal mountain, (2) the contractors (chengrouren) who contributed labor and initiative, and (3) the investors who provided capital. These partnerships frequently combined investment from unrelated parties and sometimes incorporated labor shares. A regime that was similar to the mentioned shangzhongxiajie regime in the well salt partnerships, the xinyezhongyejiuye regime, was also available in the coal mining partnerships. Investors who were unable to provide capital consistently were entitled to transfer their partnership shares to outsiders and the transferees were entitled to be admitted as partners in the firm.

There also appeared a form of strong asset partitioning in the coal mining partnerships because the coal mountain itself acted as a clear boundary on firm assets. Many partnership agreements also specified that partners were not permitted to withdraw the partnership assets freely.

Worth noting, a coal mining partnership agreement in the Qing Dynasty clearly stated that “external debts of (personal) partners are irrelevant to the partnership.” Presumably, if such a dispute arose in court and the court enforced the agreement by preventing the debtor partner or his personal creditors’ from

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129 Zhang, Reasons for Disputes, supra note 102, at 86, (citing Huang Yongzeng, THE FIRST MONTH MEMO OF THE ZIGONG LOCAL COUNCIL 54-55 (Zigong difang yishihui diyiyue yishilu)).
130 It is difficult to estimate the size of these partnerships, however, evidence shows that these partnerships are capital-intensive. See Liu, supra note 22, at 336.
131 See Madeleine Zelin, Eastern Sichuan Coal Mines in the Late Qing, in NATION AND BEYOND (Joseph Esherick, Wen-Hsin Yeh and Madeleine Zelin eds., 2006).
132 See supra text accompanying notes 118-119.
133 Liu, supra note 22, at 353 (citing MINING INDUSTRY IN THE QING DYNASTY 415 (Institute of Qing History and Department of Chinese Political System of Renmin University of China eds., 1983)).
134 See, e.g., BAXIAN ARCHIVES, supra note 85, at 259, 268.
135 BAXIAN ARCHIVES, supra note 85, at 258; see also Liu, supra note 22, at 349.
demanding a payout of the partner’s share of firm assets, this would demonstrate strong entity shielding. Unfortunately, as of the date of this Article, the author has yet to observe any evidence of the hypothetical scenario above. Based on the historical materials examined, the author has not seen any rule providing entity shielding to the coal mining partnerships either.

III. Vibrant Partnerships History Without Vibrant Partnership Law

A. The Great Divergence

Hansmann et al. has argued that the entity shielding has been a necessary feature in organizational law throughout the history of business organizations. Even the slave-managed peculium firm in Ancient Rome had a degree of de facto entity shielding. However, there appeared to be no concept of entity shielding in ancient China. The Chinese story on the evolution of partnerships indicates the following

- Imperial codes did not offer a general-purpose unified and independent partnership form. Partnerships were mainly governed by customers, various business rules (e.g. guild rules, well rules and mine rules) and partnership agreements. Particularly, there seems to have been no written law granting weak or strong entity shielding to ancient Chinese partnerships, even in the late Imperial era. Customs and business rules governing the specific partnerships seem silent on the issue of entity shielding.

- We have seen some Chinese partnerships exhibited forms of asset partitioning, such as the Qing well salt partnership and the Qing coal mining partnership. Since these business forms exhibited a distinction between the assets of the partnership and those of its partners, presumably, personal creditors of the partners could not levy a claim on the assets of the firm. It is not prudent to state conclusively that ancient Chinese country courts (xian yamens) have never granted priority to partnership creditors over individual partners’ personal

136 Hansmann et al., supra note 2, at 1358-59.
137 Zou, supra note 24, at 80; see infra text accompanying note 141.
138 The author has also checked relevant literature, but no specific partnership legislation has been found.
creditors with respect to any partnership assets, or that the Chinese courts had never prevented the partners’ creditors from levying a claim on the assets of the partnership directly. However, as of the writing of this Article, the author has yet to observe any entity-shielding rule provided in the ancient partnership verdicts.\footnote{139}

In fact, before the first Company Law (\textit{Gongsi Lü}) was promulgated in 1904, there was no “company” concept in Chinese law and minimal attempt were made by imperial governments to regulate private economic activities.\footnote{140} In contrast to medieval Europe where merchant law was gradually developed, the converse was true in ancient China. Unlike continental jurisdictions such as France, which had enacted comprehensive civil and commercial codes since the early Nineteenth Century, there was no separate civil or commercial code in ancient China. Also, unlike Europe, which had a well-developed system of special merchant courts to enforce merchant law, there was no merchant court in China. Therefore, it is unsurprising that ancient China had no written rule of entity shielding and no single piece of partnership legislation.

A point worth noting is that the Qing Dynasty had made some effort to codify the partnership in the \textit{Civil Code of the Qing Dynasty 1911 (draft)}.\footnote{141} Unfortunately, this draft code was not enacted due to the collapse of the Qing Dynasty.\footnote{142} The succeeding Republic of China government also codified several business forms, such as the commandite company (\textit{lianghe gongsi})\footnote{143} and the silent partnership (\textit{yiming hehuo})\footnote{144} in the 1914 \textit{Company Regulation (Gongsi Tiaoli)}\footnote{145} and the 1929 \textit{Civil Code}.

\footnote{139} The verdicts in the Qing Dynasty are collectively published in the \textit{XIHUA NORMAL UNIVERSITY AND THE ARCHIVES ADMINISTRATION OF NANCHONG EDS., ARCHIVES OF COUNTIES IN SOUTHERN CHINA DURING THE QING(2010)}.
\footnote{141} The 1911 \textit{Civil Code (Draft) of the Qing Dynasty} was the first separate civil code in Chinese history. It incorporated substantial provisions from the then \textit{German Civil Code} and the \textit{Japanese Civil Code.}
\footnote{142} The Xinhai Revolution (also known as the 1911 Revolution) was a republican revolution which overthrew the Qing Dynasty and which established the Republic of China. The war lasted from October 10, 1911 and ended on February 12, 1912.
\footnote{143} The \textit{commandite company} is deemed to be a separate legal entity formed with the view for profit. \textit{Company Law of Republic of China 1929}, Art.1, 3, 89-98.
\footnote{144} \textit{Company Law of Republic of China 1929}, Art. 703, 705.
\footnote{145} \textit{The Company Regulation 1914} was enacted by the Yuan Shikai government on 13 January 1914.
\footnote{146} However, due to civil wars, the rise of communist party and the Japanese invasion, the drafting of the \textit{Civil Code of Republic of China} was not completed until 1929. For the legis-
Nevertheless, these business forms were not naturally developed out of Chinese business practice and traditional Chinese law, but were transplanted from Germany and Japan.\textsuperscript{147} Also, these business forms were shortly discarded by the People’s Republic of China (“PRC”) government in 1949 and failed to influence the PRC legislation on partnerships thereafter.\textsuperscript{148}

**B. Why Is There a Great Divergence?**

These interesting findings give rise to many vexing and open questions: why was there no statute governing partnerships or related business forms in ancient China? Why did not ancient Chinese written law grant any entity shielding (either weak or strong) to the various partnership forms? I look at economic, cultural and other social aspects of ancient Chinese society to explore possible answers to these questions.

1. Control of State and Merchants

The State’s restrictions and sanctions on commercial activities and the agriculture-based economy policy hindered the development of commercial law in ancient China. Since the Western Han Dynasty (around 200 BC), imperial China had begun to restrict commercial activities by enforcing a policy called “zhongnong yi shang” (looking after farmers and confining merchants).\textsuperscript{149} On the one hand, the governments took various strict measures to exercise and maintain strong centralized control over the economy, such as state monopoly, high taxation over some key commodities (e.g., salt, iron, coal, wine, silks, tea etc.), strict licensing control (often applied to long-distance trades) over key industries and

\textsuperscript{147} See Wang Yin, Minben Thoughts and Yishang Policy in Feudal China, 3 COLLECTED PAPERS OF HISTORY STUDIES 12 (2000); Kent Deng, Development and its Deadlock in Imperial China, 221 B.C.– 1840, A.D. 51 ECON. DEV. & CULTURAL CHANGE, no. 2, 2007, at 479 502.
sea bans on maritime trade. These policies deprived merchants of the opportunity for free enterprise and created enormous obstacles for the development of commercial activities.

On the other hand, there existed severe governmental discrimination against merchants. For example, in the Han Dynasty - Gaozu Emperor era, high levels of taxation were imposed on merchants. Also, merchant’s descendants were not permitted to work in the government. In the Tang Dynasty, merchants were not allowed to ride horses. Such policies led to low respect for merchants and traders for a long period in ancient China. Thus merchants were long considered of lowly status in the social hierarchy. They lacked the political power and social status of their Western counterparts during the same period.

As a result of these disincentives, commodity practices and private trade had long been restricted to local and small levels and ancient China was locked into a self-sufficient and small-scale peasant economy. The lack of a nationwide comprehensive commodity market would inevitably hinder the emergence of sophisticated merchant law innovations. Meanwhile, centuries of self-subsisting economy also affected the nation’s creative powers in the area of business organizations. This stood in contrast to medieval Europe where the trade was supported by extensive debt financing in the form of short and long-term credit from foreign customers and suppliers, and the need for credit and protection to creditors was relatively high.

Concerning partnerships, presumably, since they had long been used in a wide variety of industries ranging from inland agriculture production to overseas maritime trade, the need for a nation-wide unified partnership embodied with a single legal structure was relatively low. Partnership relationships were largely left for customary rules, partnership agreements, social norms and rites to regulate.

2. Confucianism and Limitations of the Law

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150 SI MAQIAN, SHIJI (THE RECORDS OF THE GRAND HISTORIAN), vol.30,
151 QUANTANGWEN (A COLLECTION OF ALL PRESERVED PROSE STYLE LITERATURE FROM THE TANG) vol.448.
152 Historical evidence suggests that the rural population occupied some 80% of imperial China’s total population and produced some two-thirds of the country’s GDP. Although commercial activities in the rural sector were commonplace, at least 60% of the total products were not subject to market sale. Deng, supra note 149, at 480.
153 China’s stubborn divergence in dialects was also a symptom of the same market fragmentation. See Deng, supra note 149, at 495.
154 See Hansmann et al., Law and the Rise of the Firm, supra note 2, at 1365.
Confucianism had been adopted as the official philosophy by the ruling class since the Han Dynasty (206 BC–220 AD). It had been strongly influencing the ruling strategy of each emperor, the enforcement of laws and the people’s pattern of thought across China’s long history. Confucianism was generally against the use of formal laws but emphasized the role of rite (li) as the tool for social order. Confucius believed that if people were guided by law (fa), and the law was enforced by the means of punishment, people would have no sense of shame. As a result, rather than being genuinely reformed, they would try to evade the punishment. However, if they were guided by virtue, and the order was enforced by rite, they would have the sense of shame and be subsequently reformed. It followed that laws were subordinated to morality. Under this guiding principle, it was difficult for law to develop as a separate institution. Instead, social norms, customs and other non-law institutions played an essential role in regulating civil and commercial activities.

In the case of Chinese partnerships, many partners were blood relatives of the same lineage or close friends from the same place or same guild. Their interests were protected by social norms, family rules, clan rules or guild rules. Conflicts arising from partnerships were normally settled within families, clans or guilds; or were mediated by clan leaders. Even when there were partnership agreements to regulate the cooperation relationship, liability for breach of contract or for partnership debts was rarely specified in those contracts. Significantly, ties of friendship and comradeship were highly emphasized in partnership contracts. For example, a partnership contract in the late Qing Dynasty specified that “…we (partners) shall treat each other as one. If anyone treats the others unfairly, he shall not be forgiven by heaven or hell.”

Secondly, as a huge centralized imperial state with vast territory, a big population and a dynamic economy, the prevalent task of the government was to maintain its absolute control over the state. It followed that the majority aim of the legal system was to preserve imperial control and social order. In particular, criminal penal law was used as an effective supplementary means for maintaining a hierarchical so-

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155 For discussion on the influence of Confucianism in ancient Chinese law, see QU TONGZU, CHINESE LAW AND CHINESE SOCIETY, at 328-46.
156 See FAIRBANK & GOLDMAN, supra note 42, at 183.
157 Ancient China’s merchant groups such as Anhui merchants (Huishang) and Shanxi merchants (Jinshang) had a tradition of conducting business only with clan members or with those who came from the same place. Confucianism is also the core culture value in their business transaction. For discussion on Huishang, see Zhong Tiande, An Aspect of Huizhou Merchant, in LIU MIAO (1987); for discussion on Jinshang, see LIANG XIAOMIN, XIAOMIN’S JIN SHANG 124 (2007).
158 See BAXIAN ARCHIVES, supra note 85, at 258.
cial relationship. From the first written legal code Fa Jing, to the last feudal legal code of China, the Da Qing Li Lü, criminal laws constituted the majority of written law.\(^{159}\) Imperial codes dealt only with civil matters that were in turn designed to sustain the patriarchal, patrilocal, and patrilineal Confucian family system.

In particular, there do not seem to be any provisions in the various imperial codes (e.g. Da Ming Lü and the Da Qing Li Lü), dealing with creditor protection or business promotions. Unlike European commercial law, which aimed to promote commercial practice and to meet merchants’ needs, the Chinese imperial codes were essentially a tool of administration by the ruling emperor and did not embody such a guiding spirit.

Thirdly, ancient China’s judiciary also failed to facilitate the development of civil and commercial law. In the formulation of civil verdicts, local magistrates rarely relied on or cited any specific codes or precedents, but elected to enforce social norms, especially, sentiment (qing) and rationality (li).\(^{160}\) For instance, in a Qing partnership dispute, partner B borrowed money from partner A repeatedly. Before A’s death, B still owed A a certain amount of money. A transferred the creditor’s right to his daughter-in-law, C, before witnesses (A’s son was away at that time). C brought an action against B for payment after the death of A’s son. The magistrate explained that “C has the book account and this proves the existence of the debt, while B also has the contract certifying the termination and liquidation of the partnership between A and B. Therefore, (We) need to make a compromise in order to (make the verdict) be consistent with Qing and Li (rite).” The magistrate then ruled that C should not claim debts that had occurred before a specific time. As to the debt of 140 string cashes (“diaooqian”, a currency number) incurred after the specific time, 20 string cashes should be waived as it had been paid. A sum of 20 string cashes should also be deducted as a compromise. Thus only 100 string cashes was required to be paid by B to C.\(^{161}\) Apparently, the magistrate did not cite any written law or custom in reaching the verdict, but endeavored to avoid souring the relationship (shangheqi) between the two parties so as

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\(^{159}\) Imperial codes mostly consisted of public law, referring to procedures, marriage, inheritance and other important matters related to government administration. See Fairbank & Goldman, *supra* note 42, at 183. In fact, there was not a distinction between private and public law in ancient China, unlike ancient Rome.


\(^{161}\) See Quing “Fupan lucun”, vol.4 (22a), in Shuzo Shiga et al., *supra* note 160, at 32.
to maintain social order.\textsuperscript{162}

The lack of enforceable legal rules on business activities and sophisticated courts to interpret and enforce merchant custom and practice sheds some light on the question why there was no equivalent merchant law in ancient China as that of Europe.

3. Lack of Sophisticated Property Rule and Bankruptcy Law

The presence of various societal factors is needed to support the development of entity shielding. Particularly, as observed by Hansmann \textit{et al.}, entity shielding requires the special property rules related to corporate law (in the sense of a separated legal entity).\textsuperscript{163} Broadly speaking, entity shielding limits the rights of personal creditors against firms’ assets, thereby making a distinction between personal and business creditors. Moreover, strong entity shielding additionally impairs the ability of personal creditors to liquidate firm assets.\textsuperscript{164} Thus, the enforcement of entity shielding generally requires the creation of a sophisticated bankruptcy system.\textsuperscript{165} To determine whether a personal creditor should be permitted to seize assets of the firm, a court must accurately assess the ratio between firm assets and debts.\textsuperscript{166}

On the one hand, the commodity economy was undeveloped in ancient China.\textsuperscript{167} The relationship between parties was not a simple commercial relationship. Particularly, as most partnerships were formed among close friends and relatives, the partnership relationship was a combination of business and kinship/social relationship. In the large number of ancient Chinese partnerships I have examined, the division between firm assets and personal assets was unclear. There were hardly any partnership contracts specifying the assets of the partnership or the partners, or the associated property rights and obligations. Also, as many partnership businesses were family or household business, partnership assets were owned by the head of the family. Therefore, it was difficult for the property rules (which govern the various forms of ownership, tenancy and exchange in property) to develop separately in ancient China.

On the other hand, the concept of insolvency could be found in Roman law.

\textsuperscript{162} See \textsc{Fairbank \& Goldman}, \textit{supra} note 42, at 185.
\textsuperscript{163} \textit{Id.} at 1338.
\textsuperscript{164} \textit{Id.}
\textsuperscript{165} \textit{Id.} at 1353.
\textsuperscript{166} \textit{Id.}
\textsuperscript{167} See \textit{supra} text accompanying notes 152-153.
in the sixth century.\textsuperscript{168} Italy enabled an individual merchant to be subjected to bankruptcy since the Middle Ages.\textsuperscript{169} Thereafter, the Italians introduced several important features on bankruptcy and the doctrine that suspension of payment by the debtor rendered him subject to bankruptcy process had become prevalent in many modern European systems.\textsuperscript{170} Nevertheless, there was no equivalent concept of bankruptcy under Chinese law till the later part of the Qing Dynasty.\textsuperscript{171} In 1906, the first Chinese bankruptcy law (\textit{Puochan Lü}) was enacted\textsuperscript{172} as a response to the demand for modernization and economic reform, but it was abolished shortly after in 1908.\textsuperscript{173} Thereafter, the Republic of China government enacted several bankruptcy statues. Nonetheless, these statutes were discarded by the PRC communist government in 1949.\textsuperscript{174} As of today, there is no personal insolvency law in China.

Although there was no advanced legal institution in ancient China to enforce contract or settle economic disputes among partners, there were a variety of sanctions available. Typically, there existed a well-recognized cultural tradition of non-forgiveness of debts, i.e. \textit{fuzhai zihuan} in ancient Chinese society. It means that a son subrogated and assumed his father’s debts. Indebtedness could also be passed on to debtor’s wife, sons, grandsons, servants or even his relatives.\textsuperscript{175} A grandson would be responsible for his grandfather’s debt or obligation even before he was born.\textsuperscript{176} Debts were passed from one generation to another.

Also, physical punishment was used to satisfy payment (\textit{yixingdaichang}). For instance, the Tang Code (\textit{Tang Lü Shu Yi}) imposed severe criminal penalties on debtors, such as beating with wooden staves and imprisonment to pressure defaulting debtors into paying the debts.\textsuperscript{177} In Tang and Song dynasties, creditors could require debtors who were unable to pay their debts to satisfy them with labor or rendering of

\begin{itemize}
  \item \textsuperscript{168} See Weber, supra note 30, at 58. The author notes the right of one of the partners to attack other partners upon the insolvency of one of them.
  \item \textsuperscript{169} See Hansmann et al., \textit{Law and the Rise of the Firm}, supra note 2, at 1367.
  \item \textsuperscript{170} See Levinthal, \textit{The Early History of Bankruptcy Law}, 66 U. Pa. L. Rev. 223, 242 (1918).
  \item \textsuperscript{171} See Yao Xiulan, \textit{Early Modern China Bankruptcy Law}, 5 MOD. LEGAL STUD. 151, (2003).
  \item \textsuperscript{172} \textit{Id.}\ The legal system on bankruptcy was gradually established in the 1920s during the period of the Nationalist Government of the Republic of China.
  \item \textsuperscript{173} Yao, supra note 171, at 152.
  \item \textsuperscript{174} Id. at 153-54.
  \item \textsuperscript{175} In some extreme cases, debtors’ relatives may be jointly liable for her debts. See Yuan Bihua, Expansion of Limited Liability 161-62 (2008) (unpublished PhD Thesis, Southwest University of Political Science and Law) (noting that there was no limited liability in ancient China), at 162.
  \item \textsuperscript{176} See Yao, supra note 171, at 151; Roman Tomasic & Margaret Wang, \textit{The Long March Towards China’s New Bankruptcy Law}, \textit{INSOLVENCY LAW IN EAST ASIA}, 93-94 (2006).
  \item \textsuperscript{177} See TANGLÜ SHUYI (Tang Code), vol. 26, Articles 398-400.
\end{itemize}
services. In addition, giving away one’s home servant as a means of setting-off the debts was also a common form of sanction to enforce contracts in ancient China.

While it is difficult to find precise answers for the absence of bankruptcy law in ancient China, one should be reminded that the major basis for the creditworthiness of ancient Chinese firms was trust between the parties, the harsh social attitude towards debtors underlined by personal liability, and various sanctions. Arguably, since creditors could always enforce their debts by claiming from debtor’s descendants and by many alternative sanctions, the need for a sophisticated bankruptcy institution and legislation in ancient China would be reduced.

4. Less-Developed Credit System and Accounting Method

Hansmann et al. argued that another likely contributor to the rise of entity shielding in the Middle Ages was the medieval revolution in bookkeeping methods, especially the innovation of double-entry accounting, which was the workable method for tracking a firm’s net value. Innovation of double-entry accounting method made it easier for owners and creditors to assess the value of firm assets and to distinguish permissible from impermissible distributions. This made creditors more likely to accept a firm’s business assets, rather than the owner’s personal assets, as the principal bond for the firm’s obligations.

Historical evidence finds that commercial double-entry accounting was found in the thirteenth century. It started being used in the fourteenth century in Europe. However, the western accounting methods were not introduced in China until the second half of the nineteenth century. In fact, China had a preliminary sin-

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179 In particular, as the prevailing private business activities in ancient China were small household trade, fluid and fungible nature of family assets made them a weak basis for firm credit. Thus, personal liability was important for creditworthiness. The use of personal liability to raise credit can be found in Renaissance Italy as well. See Hansmann et al., Law and the Rise of the Firm, supra note 2, at 1374.
180 See CHINA’S NEW ENTERPRISE BANKRUPTCY LAW: CONTEXT, INTERPRETATION AND APPLICATION, Rebecca Parry, Yongqian Xu & Haizheng Zhang eds., 2009.
181 See Hansmann et al., Law and the Rise of the Firm, supra note 2, at 1367.
gle-entry accounting method since the Shang Dynasty (1700BC—1046BC). An indigenous single-entry system based upon a simple principle, the so-called “sizhufa” (four columns system) was developed in the Tang Dynasty. Thereafter, the so-called “sanjiaozhang” (three footed account) was invented and marked the first use of a double-entry recording principle in China. In late Ming to early Qing era, Shanxi bankers (piaohao) created a more advanced double-entry accounting system, the “longmenzhang” (dragon gate ledger). Nonetheless, compared to the Italian double-entry method, the longmenzhang is much less advanced in terms of book structure and accounting items.

Also, unlike their Italian counterpart, which employed the double-entry system for the purposes of tracking credits and debits in external financial transactions—especially banking transaction, many Chinese firms kept accounts primarily as internal historical records of transaction, as memory aids to facilitate ordinary tasks of business. Even in the Qing Dynasty, the advanced longmenzhang was not widely used by commercial firms. The majority of small- and medium-sized commercial firms and old-style banks still used the old single-entry system based on the sizhufa. Many small-sized partnerships in the Qing Dynasty did not keep proper accounts regularly. Some partnerships did not settle accounts until disputes arose. In addition, while official state accounting (guanting kuaiji) was the predominant tool of imperial financial control, the development of private sector accounting lagged far behind. In contrast to the voluminous historical documents engendered by the fiscal activities of China’s dynasties, sources on private-sector accounting are said to be scarce or nonexistent. Arguably, all these factors influenced the level of entity shielding displayed by Chinese firms.

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184 See GUO DAOYANG, 1 A HISTORY OF ACCOUNTING IN CHINA, 54 (1982).
185 This was a single-entry system based upon a simple principle: the balance forwarded plus new receipts must equal outlays plus present balance.
186 See Robert Gardella, Squaring Accounts: Commercial Bookkeeping Methods and Capitalist Rationalism in Late Qing and Republican China, 51 J. ASIAN STUD., no. 2, 1992, at 317, 317-324. For China’s accounting history, see GUO DAOYANG, supra note 184.
187 See Gardella, supra note 186, at 322.
188 Id. at 324.
189 See BAXIAN ARCHIVES, supra note 85, at 341-370.
190 See Gardella, supra note 186, at 323.
IV. Conclusion

The emergence and evolution of various partnerships was a response to the needs of commerce during the several millennia of ancient China’s history. Fascinatingly, Chinese partnerships shared numerous similarities with its European counterparts in terms of business structure and features (e.g. Gong Mai vs. societas, Ling Ben vs. peculium, the Song maritime partnership vs. commenda, the Qing well salt partnership vs. the modern limited partnership). In some large Chinese partnerships, we also have seen a certain level of asset partitioning.

However, although vibrant partnerships were developed with admirable economy, Chinese partnerships do not exhibit a comparable entity shielding vis-à-vis their European counterparts. In fact, many ancient Chinese partnerships are generally organized as simple partnerships, relying on household or private capital and the resources of kin and friends. Unlike the Renaissance Italy and early modern England, which had a comprehensive credit system based on specialized legal and business institutions, ancient China’s credit system was based on a lower level of institutionalization consisting of social norms, the lineage and comrade trust. There appears to be no formal law governing partnerships and no legal rule on entity shielding. Especially, although there were advanced and large partnership forms in the later part of the Qing Dynasty, and they exhibit certain sophisticated features such as transferable shares scheme (e.g. shangzhongxiajie) and perpetual lifespan through transferable shares (e.g. zixunjing), there appeared no concept of separate legal personality or limited liability. The case of ancient Chinese partnerships indicates that asset partitioning and entity shielding was not the foundation and a necessary feature for business entities in ancient China.

This Article does not aim to emphasize that ancient China had a less-developed legal system than the West or that Roman law and medieval law were more successful in addressing creditors’ rights than its Chinese counterpart. In fact, the development of entity shielding requires various supporting factors within society. This Article shows that divergences in the institutionalization of business practices between ancient China and the West may be explained from a law and society approach. These differences included, inter alia, different ideologies, different social and legal traditions and different levels of development of commodity markets. In particular, Confucian distaste of profits and merchants, the emperors’ concern on maintaining centralized control over the state, and the governments’ and officials’ custom of utilizing merchants posed huge obstacles to the development of partnerships as well as partnership law in ancient China. Also, the peaceful development of commerce meant insufficient pressure for the Empire to innovate and produce gen-
eral-purpose commercial entities offering both weak and strong versions of entity shielding.

Moreover, without comprehensive merchant law, bankruptcy law and advanced accounting method, entity shielding is difficult to exist and develop as a necessary feature in ancient Chinese business organizations. Furthermore, although some of the necessary elements for developing entity-shielding rules were absent in ancient China, there were alternative means for ordering behavior and protection of creditors and investors, such as rites, kinship obligations, lineage and comrade trust, local customs and social norms. All these factors shaped Chinese business practice and attitudes about the role of law, which in turn led to the lack of entity shielding rule in ancient Chinese partnerships.