Gender and the Chinese Legal Profession in Historical Perspective: From Heaven and Earth to Rule of Woman?

Mary Szto
Gender and the Chinese Legal Profession in Historical Perspective: From Heaven and Earth to Rule of Woman?

By Mary Szto

In 2004 Song Yushui was chosen as one of the top ten judges in China. In a China Daily article entitled, “Judge tempers justice with understanding”, she recalls that as a child she wanted to become a modern “Bao Gong”. Bao Gong is a legendary Song Dynasty judge known for his incorruptible and indefatigable quest for justice.

In 2005 the New York Times published an article about Li Huijuan, another woman judge called, “A Judge Tests China’s Courts, Making History”. Judge Li’s 2003 provincial seed law ruling was the first time a Chinese judge had declared a law invalid. Constitutional law scholar He Weifang noted this was one of the “most important cases in the legal evolution of China”. In the same article, Judge Li describes how as a young girl she was influenced by her father’s refusal to accept bribes, and television soap operas about ancient Chinese judges. She said, “I saw these images of judges and lawyers defending the people. I thought it was glorious.”

This article explores the history of gender and the Chinese legal profession. 

Judges Song and Li represent the peaceful rise of the Chinese woman judge, and they

---

1 Visiting Associate Professor, Hofstra University School of Law. B.A., Wellesley College. M.A.R., Westminster Theological Seminary. J.D., Columbia Law School. With much gratitude to Prof. Sun Huei-min and Xu Huiting. Thank you also to Donald Polden, Diane Jonte-Pace, Chen Huiping, Daniel Derby, Guo Rui, Anna Han, Lien Ling Ling, James Kodera, Deborah Post, Xiao Bin, Nongji Zhang, and the Suffolk Law faculty; and my research assistants Adam Birnbaum, Fei Hongsun, Gan Tian, Maria Kallmeyer, Ying Li, Anthony Lim, Lin Hui, Caroline Ma, Peng Fanglan, Jennifer Wang, Wang Jin, and Su Yi. This article is in memory of my beloved mother, Clarice Huang Szto (1922-2007).


3 Id.

rightfully claim the tradition of the qingguan [清官], China’s ancient incorruptible judges. What is this legacy? Qingguan represent the wisdom of China’s rich legal tradition: balancing Heaven and earth. And although for thousands of years only men could become judges, district judges were called fumu guan, or father/mother officials. The peaceful rise of the Chinese woman judge is the fulfillment of this linguistic prophecy.

In Part I, I discuss why lawyers were deemed unnecessary in China and only men could be judges. This stems from traditional views of Heaven, earth, and the Way; the complementary forces of yinyang and seeking harmony; the Confucian gender roles of nei and wai (within and without) which subordinated women to men; and the li/fa construct, which subordinated law (fa) to ritual/virtue (li). Ironically Ban Zhao, the ancient Confucian woman scholar, wrote about the subordination of women to men, yet exemplified Confucian erudition and superiority. Thus, Confucian doctrine laid the seeds for both feminine subordination and cultivation.

In Part II, I illustrate how complementary gender roles were critical to thousands of years of reinforcing the li/fa construct. With respect to women, I re-tell ancient stories from Lienvzhuan [Biographies of Chinese Women], which was compiled during the Han Dynasty around 18 AD. Because women were nei (within), they were restricted to the “inner chambers” where they promoted li. Yet just as Ban Zhao was an exception to this restriction, in one account, a daughter was wai (without) and even served as an informal legal advocate for her father.

---

5 When Chinese words appear in this text, I sometimes include the Chinese character(s), Pinyin romanization and tone marks for ease of pronunciation and reading for Chinese readers and learners. Not enough texts have tone marks, making a difficult language to learn even more difficult. Mandarin Chinese has four tones: (1) high tone, e.g., ā; (2) rising tone, e.g., á; (3) low tone, e.g., ǎ and (4) falling tone, e.g., à. In most instances I use simplified Chinese characters.
I then describe the traditional male roles of the judge, and *songshi* and *shiye*, legal counsel who had no official role in court. These were the only formal legal actors until the 19th century and *songshi* were regularly disdained for promoting *fa*, and not *li*. Judges had no training in law; their only formal education was in *li*. The *songshi* and *shiye*, although considered inferior to judges, illustrate the complementary role of legal specialists. I re-tell stories of six *qingguan*, including Bao Gong. The *qingguan*, or legendary judges, balanced Heaven and earth, maternal and paternal wisdom and sometimes were portrayed as exercising spiritual powers.

In Part III, I discuss a turning point in China’s legal and gender history. This was the defeat of China in the first Opium War in 1842, which eventually brought extraterritoriality and foreign lawyers who practiced on Chinese soil. Later there was even a Mixed Court of Chinese and foreign judges. In this era Western missionaries, mainly women, also brought widespread education for women and protested foot binding. They were able to tap into the legacy of Ban Zhao-style cultivation of women. They also role-modeled women who balanced Heaven and earth by being *wai*. China’s first law schools opened, including in 1912 a women’s law school for revolutionaries who participated in the overthrow of the Qing Dynasty, China’s last imperial dynasty. In Republican China, lawyers were first allowed in 1912, but women lawyers were not allowed until 1927. A small number of Chinese women joined the ranks of lawyers. However, the judgeship eluded women in the Republican era (1912-1949). I re-tell their fascinating stories from the 1920’s through 1940’s, including the story of Zheng Yuxiu, the first Chinese woman lawyer, and Zhang Jinlan, the first Chinese woman judge.

In Part IV, I discuss developments after the founding of the People’s Republic of China in 1949, including her meteoric economic rise in the 21st century, stories of today’s women judges, and results of recent interviews and surveys taken within one legal community in Xiamen, Fujian Province. Since the end of the Cultural Revolution (1966-1976) and the beginning of the Open Economic Reform Era (1978-present), women have entered the judiciary in disproportionate numbers because these positions represent the
Confucian ideal of *nei* (within): they are perceived as suitable for women as wives, mothers, and daughters.\(^6\) Judgeships are low-paying and less prestigious than law firm positions, which are *wai* (without) and considered more suitable for men. In fact, Chinese law firm practice and negotiations often involve heavy drinking and entertaining, which is a modern equivalent of ritual, or *li*.

I conclude that a revolutionary space for women in China’s fascinating gender and legal history has opened up.\(^7\) The inadvertent conflation of Confucian gender stratification/cultivation and mainland economics and politics has led to the redefinition of the inner chambers to judicial chambers. However, Judges Song and Li show that inadvertence can be strategic. As they have revealed, the robust future of law in China, for men and women, lies in China’s rich past. In addition to the spiritual tradition of the *qingguan*, it lies within the erudition of Ban Zhao, the virtuous women of the *Lienvzhuan*, and all prior *shiye*, *songshi*, lawyers and judges who have exhibited the wisdom of Heaven and earth. Judges Song and Li demonstrate that this tradition is also progressive. We begin now with China’s ancient worldview.

**Part I: Heaven and Earth and Traditional Views of Law and Gender in China**

The intricate interaction of Heaven and earth underlies traditional Chinese views of law and gender. The universe is composed of an organic whole, or holy triad of

---

\(^6\) Interestingly enough, this is not the case in Japan. Women hold only around 10% of judicial positions and men “progress 1.2 times faster in their careers than their female colleagues.” Leon Wolff, “Gender, Justice and the Japanese Judiciary: Is there a Glass Ceiling for Female Judges in Japan?”. Manuscript on file with author.

\(^7\) I do not think this is a historical accident either: the richest person in China in 2007 was a 26 year old woman named Yang Huiyan. She owns 60% of the stock of father Yang Guoqiang’s real estate development company, Country Garden Holdings, Co., worth $15 billion. At least on paper, she is worth more than George Soros, Steve Jobs and Rupert Murdoch. David Barboza, “China Adds Billionaires with I.P.O.”, N. Y. Times, Apr. 21, 2007, at C1.
Heaven, earth and man\textsuperscript{8} that should be in harmony and balance. This was achieved by following *Tiāndào* [天道], or Way of Heaven\textsuperscript{9}; the forces of *yīn* and *yáng*\textsuperscript{10}; deities and spirits, including those of ancestors; and in Confucius’ analysis, an ordered hierarchy, tempered with reciprocal duties. Because Chinese tradition differentiated all phenomena in terms of *yīn* and *yáng*, and assigned one a superior position to the other, this tradition carries the seeds of both gender stratification and cultivation, the latter best exemplified by Ban Zhao, a Confucian woman scholar. This tradition is also grounded in ritual, which mediates between Heaven and earth. This leads to today’s preference for ceremony, mediation and *guānxi*\textsuperscript{11} over a Western notion of “rule of law”. Combined with this, the seeds of gender stratification and cultivation lead to our current phenomenon of the rise of the Chinese woman judge.

China’s heavenly order was called *Tiāndào* [天道] and the ruler of Heaven *Shàngdì* [上帝]; the universe is also populated by myriad deities, ancestral spirits and ghosts. *Yīn* and *yáng* interact to create all flux, change and movement in the universe. They are related to *qì* [气], which is the positive life energy in the universe and in each human being. Everything in the universe can be divided into *yīn* and *yáng*. For example, brightness, the sun, and heaven are *yáng*. Darkness, the moon, and the earth are *yīn*. Within *yīn* is the potential for *yáng*, and within *yáng* is the potential for *yīn*. Day becomes night and night becomes day. Therefore, although opposites, *yīnyáng* do not represent absolutes and achieving harmony and balance are key values in the Chinese worldview.

\textsuperscript{9} Id. at 2.
\textsuperscript{10} According to Paul Szto, Chinese-American theologian and the author’s father, *yīn* and *yáng* may have their origin in the dual relationships in the Christian Trinity of eternal procession between the Father and the Holy Spirit, and of eternal generation between the Father and the Son.
\textsuperscript{11} *Guānxi* [關際] refers to the art of building and using relationships to achieve mutual benefit.
Illustration 1. Within yang, the white curve, is the potential for yin, the black dot; and vice versa. They lie within a circle reflecting the unity of the universe.

How are harmony and balance achieved? They occur by observing hierarchy and mediation in nature and society. Within yinyang lies hierarchy; yang is superior to yin. The sun is greater than the moon. Likewise, in society, those in higher and lower positions should act properly towards each other. Also, both the emperor, and first-born son of each family were mediators, the emperor on behalf of the nation family [國家 guójiā], and the first-born son on behalf of each family [家庭 jiātíng].

Although not divine, the emperor was the Son of Heaven [天子 tiānzǐ], and a direct descendant of Shangdi. Therefore, he served as the mediator between Heaven and earth. In fact, the Chinese character for king, wáng, is three lines representing Heaven, earth and man with a line, the king, joining them: 王. The emperor possessed the Mandate of Heaven [天命 tiānmìng]; however, this could be lost through improper governance and was marked by the downfall of a dynasty. The emperor regularly offered sacrifices to Heaven and earth on behalf of the nation to seek the blessings of Heaven and his ancestors. (This was done until 1911). The emperor was male, however, he was

---

13 Kim, *supra* note 8, at 14.
called the father and mother of all people\textsuperscript{16} and all officials under him were called \textit{fùmù guān} [父母官], or “father/mother official”. The word for nation in Chinese is literally “nation family” [国家 guójìa]. This maternal and paternal role of all Chinese officials would ultimately lead to today’s rise of the Chinese woman judge, as well.

In addition to the emperor, sons played a critical role in the mediation of Heaven and earth by offering sacrifices to ancestors. Although only the emperor claimed descent from \textit{Shangdì} and could appeal to \textit{Shangdì} directly, all other Chinese claimed descent from ancestors whom they could appeal to. One’s ancestral line therefore was a familial link to Heaven, if one properly cared for one’s ancestors. Thus, ancestors and earthly descendants enjoyed a relationship of mutuality and complementarity. At death, the departed’s \textit{yin} would descend to earth and \textit{yang} ascend to heaven.\textsuperscript{17} If sons regularly offered ancestors food and other means for their sustenance in the after-life, these ancestral \textit{yang} spirits or \textit{shen} would intercede for their descendants before \textit{Shangdì} and provide fortune and prosperity for them.\textsuperscript{18} However, if proper ritual sacrifices were not followed, then ancestral ghosts, or \textit{gui}, composed of the departed’s \textit{yin}, would haunt and curse their descendants.\textsuperscript{19} Therefore, proper imperial and familial ritual sacrifices mediated by the emperor and other sons bound Heaven and earth together and assured blessing and protection. Put another way, the heart of Chinese society is the relationship between blessing and sacrifice. Ancestor worship is regularly observed today by Chinese on the mainland and around the world.\textsuperscript{20}

\begin{itemize}
\item \textsuperscript{17} Laurence G. Thompson, \textit{Chinese Religion: An Introduction} 10 (1975).
\item \textsuperscript{18} Id.
\item \textsuperscript{19} Id.
\item \textsuperscript{20} Anecdotally, while writing this article in Xiamen, China, I awoke one morning to a burning smell. I was concerned and asked the building management about it. Unperturbed, they immediately told me that because it was the first day of the lunar month that some neighbor must have been burning an offering to an ancestor.
\end{itemize}
Confucius (551-479 B.C.), China’s most influential sage, also taught that the Way of Heaven should be observed in other earthly relationships. Besides the relationship between Heaven and the emperor (the Mandate of Heaven), and the emperor and his subjects, Confucius taught about hierarchical relationships among father and son, husband and wife, older brother and younger brother, and friend and friend. Analogous to the relationship between heavenly and earthly beings, the superior member (first of each pairing) has the duty of care and provision; the inferior member has the duty of respect and obedience. Although friends appear to be equal, they usually develop a relationship akin to an older and younger sibling. These hierarchical relationships were expressed through lǐ, or ritual; the heart of lǐ is xiào or filial piety. The pictograph for xiao is the word for old, lǎo supported by a son.

Confucius emphasized the cultivation of hierarchical duties through proper rituals. He taught, “Look at nothing in defiance of ritual, listen to nothing in defiance of ritual, speak of nothing in defiance of ritual, never stir hand or foot in defiance of ritual.” In particular, he stressed the spirit behind the rituals and not the mere acts themselves. The traditional Chinese character for ritual, lǐ, is the combination of the characters for revelation and prayer and offering vessel. Shi was a representation of the sun, moon and stars that “provided omens for humans and over time came to be associated with the affairs of spiritual beings”. The earliest definition of lǐ, found in the oldest Chinese dictionary, the Shuowen Jiezi, was “a step or act, whereby we serve spiritual beings and obtain happiness.” So “rituals involved the sacrifice of food

---

21 According to Prof. Zhang Shoudong, the Mandate of Heaven is key to Confucius’ teaching. Conversation on June 15, 2008.
24 Prof. James Kodera first brought this to my attention. Conversation on October 24, 2007. See also Laurence G. Thompson, supra note 17, at 36.
26 Legge, The Li Ki 9-10 (1885), as cited by Mayfair Mei-hui Yang, id. at 223.
offerings to spiritual beings and ancestors in special vessels". Common rituals during Confucius’ day involved marriage, mourning, and ancestral ceremonies with poetry, music and dance, both among the general population and in the imperial court. To this day, Confucius himself is honored with biannual rituals of music and dance in Confucian temples.

We turn now to China’s gender hierarchy. Toward the end of the second and beginning of the first centuries B.C.E., the association of a gender hierarchy became common, yang representing men and yin women. Yang is also associated with reason 性 xìng and yin with emotion 情 qīng. Because yin was considered inferior to yang, wives were considered inferior to their husbands, and daughters inferior to sons. However, balance was achieved by women giving birth to sons. Therefore, the Chinese character for “good”, 好 hǎo is the picture of a woman 女 nǚ and a son 子 zì.

Sons were highly valued because they provided for their parents in life and as mentioned earlier, in death. The Chinese character for male, 男 nán [男] is composed of the characters for agricultural field, 田 tián [田] and power, 力 lì [力]. Sons worked in the field and cared for their parents while they lived. Also, as mentioned earlier, sons were the family priests because they offered the ancestral sacrifices to care for their parents after they died. Thus, sons were little emperors because they were a critical connector between Heaven and earth for each family. Today, because of the One-Child Policy (introduced in 1979), both sons and daughters are little emperors and family priests.

27 Mayfair Mei-hui Yang, supra note 25, at 223.
29 Id. at 164.
31 Anecdotally, in April 2008, my friend’s mother-in-law died. This Chinese woman was 95 years old. On her deathbed she had different parting words for each of her relatives.
In contrast to the priestly role that only sons played in traditional China, daughters married and became part of their husband’s families. They were therefore unavailable to care for their own parents in life or in death. All marriages were arranged and families had to pay a dowry when their daughters were married off. One ancient saying bluntly stated, “It is more profitable to raise geese than daughters”. Another promoted a dichotomy between virtue and talent for women: "A man with virtue is a man of talent, a woman without talent is a woman of virtue" [男 子 有 德 便 是 才，女 子 無 才 便 是 德， Nánzi yǒu dé biàn shì cái, nǚzi wú cái biàn shì dé]. In other words, in order to be a proper wife and mother, it was better for a woman to not be educated or cultivated.

A woman observed the Three Followings [ 从 sān cóng] during her life. She followed her parents until she married. She followed her husband while married, and she followed her son if widowed. Couples lived with the husband’s extended family. As a daughter-in-law, a woman’s duty was to exercise filial piety towards her in-laws and to bear an heir. If she failed in either, this was a ground for divorce.

One commentary to the Book of Changes [易經 Yìjīng], one of the Five Classics of Han Confucianism states,

Her last words to her son were to rest. Her last words to her daughter-in-law were to take care of her son. Her last words to her grandson were to bid him to perform the proper funeral rites.

Korea is another country heavily influenced by Confucianism. The New York Times reported recently that daughters are now valued as much as sons because they are taking care of their parents in their old age. According to reporter Choe Sang-Hun, “The most important factor in changing attitudes toward girls was the radical shift in the country’s economy that opened the doors to women in the work force as never before and dismantled long-held traditions, which so devalued daughters that mothers would often apologize for giving birth to a girl”. Choe Sang-Hun, “Where Boys were Kings, a Shift Toward Baby Girls”, N.Y. Times, Dec. 23, 2007.

Kim, supra note 8, at 4.

A woman’s correct role is within (nei [内]); a man’s correct role is without (wai [外]). Correctness of man and woman is the great principle of Heaven and Earth.\(^{35}\)

So, if a woman was a member of a privileged class she was to be restricted to the inner chambers, also known as the baton doors of the household and to be devoted to embroidery and other household arts. The thousand year practice of foot binding, finally banned in 1912, also literally ensured that women could not wander far from their inner chambers. So the rise of today’s woman judge in China is a redefinition of the inner chambers to judicial chambers. The rise of men lawyers in today’s China is a redefinition of wài [outside] from the agricultural field to the client development field.

The reality of nei and wai in traditional China was, however, complex and relative (pun intended!). Poorer women had to labor in outside fields and after the practice of foot binding began, often did not have their feet bound. They had no choice about being wai. Also, married women (almost all women) were the ultimate sojourners and outsiders and thus wai.\(^{36}\) They left their birth families to join their husband’s families (sometimes in distant villages with new dialects and customs) and then had to constantly win the affection of their husbands and in-laws lest they be divorced. In her book on the Sung and Yuan dynasties, historian Bettine Birge also points out that in wealthy households, women had “significant managerial responsibilities, including managing servants, arranging funerals” and exemplary widows had even wider duties including “public building projects or famine relief.”\(^{37}\)

We turn now to Ban Zhao (45-120?). Bān Zhāo is considered the most erudite woman in traditional Chinese history. She was a Confucian scholar who among

---

\(^{35}\) Yi 23/37, as quoted by Lisa Raphals, supra note 28, at 197.

\(^{36}\) A mother’s relatives are also referred to as wai (outside). For example, one’s mother’s mother is called wai po.

other volumes, authored Nǚ Jiè [女誡], or Precepts for Women. Her father was the famous historian Ban Biao (3-54) and after her historian brother Ban Gu’s (32-92) untimely death, she completed his court history of the Western Han dynasty. She was also the grandniece of the learned Consort Ban (48-6 BC).  

Like Confucius, Ban has been both revered and criticized. She represents both gender stratification and cultivation. Nǚ Jiè is a primer for wives and in it Ban emphasized the different nature of men and women. In Precept One she described the ideal character of a wife as one of humility and adaptability. However, in Precept Two, Ban writes that girls should be educated as well as boys. This paved the way for at least well-to-do families to educate their daughters, and the widespread education of girls many centuries later. In Precept Three, Ban writes that as yin and yang are different, so are husbands and wives. Men must act through resolution and strength, and women through flexibility, yieldingness and gentleness. With such character, wives must win the hearts of not only their husbands, but also of their husband’s families. In fact, because their husband’s mothers ruled the internal household, Ban specifically addressed a wife’s obedience to her mother-in-law, “…Do not think of opposing, or of discussing what is, what is not…this is what is called the imperative duty of obedience.” Ban Zhao’s sentiments about gender differentiation and harmony would be echoed centuries

---

40 Id. at 242.
41 Id.
42 Id. at 247.
43 Filial piety was also owed not only to one’s father, but to one’s mother, mother-in-law and stepmother. See Guo Jujing, The Twenty-Four Filial Exemplars (David K. Jordan trans., 1973, available at http://anthro.ucsd.edu/~dkjordan/scriptorium/xiao/xiaointro.html (last visited July 3, 2008).
later in the description of China’s women lawyers and judges by journalists in the 1930’s and 1940’s and today, and by China’s first woman judge, Zhang Jinlan.

Thus, the relationship of Heaven and earth, and *yinyang* provide the backdrop for both gender complementarity and stratification in the Chinese worldview. The Way of Heaven was balance and harmony, which was achieved by observing hierarchical roles, including between men and women. Among their other roles, sons, who were superior to daughters, offered rites to ancestral spirits, who in turn intervened on behalf of mortals before *Shangdi*, the ruler of Heaven. Sons mediated between Heaven and earth as the emperor did. Although thinkers like Ban Zhao taught that women could be educated, their nature and role was to be *nei*, or within, and men were to be *wai*, or without. Ultimately, the role of women was to bear sons: this was the critical balancing of the gender *yinyang* dialectic. However, Ban Zhao’s own educational and public stature, and the Confucian emphasis on cultivation paved the way for both the ready acceptance of widespread women’s education at the end of the Qing era and ultimately, the large number of women in judicial inner chambers today. We turn now to the relationship of law and morality in ancient China and how this led to both no legal profession in China until the twentieth century, and complementary roles for men and women within the *li/fa* [ritual/law] construct.
Illustration 2. A humorous Western look at male and female within the *yinyang* complex.  

*Traditional Views of Ritual and Law: Li and Fa in Ancient China*

As Heaven, earth and *yinyang* are the backdrop to Chinese gender complementarity and stratification, they are also the stage for Chinese morality/law (*li/fa*) complementarity and stratification. This remained throughout the Chinese dynasties, including the last dynasty, the Qing reign (1644-1911). According to Richard J. Smith, “During the Qing period, elite and popular religious beliefs and practices intertwined to produce a vast, multicolored fabric of institutional and individual worship.”  

Rulers and the general population sought the Way of Heaven. In fact, the administration of justice happened on three levels. It occurred in heavenly courts and lawsuits through deities, spirits and ghosts. It occurred at the family and village level where patriarchs and elders wielded authority with the help of ancestors and other spiritual beings. It occurred through government magistrates, who also sought the help of magistrates in the spirit world. At each level, *li* (ritual/propriety) was *yang*, and thus superior to *fa* (law/punishment), which was *yin*. If *li* failed, *fa* was used. The Legalists taught that rulers should govern a nation by *fa*, but Confucius taught that rulers should use *li*; *li* and *fa* were eventually harmonized as *yang* and *yin*. *Li* was enforced through the family and guilds and then gradually codified and enforced by the state. When *fa*, which was *yin* (inferior), was exercised, it was wielded by patriarchs and male magistrates because they were *wai* (without); women, although they were *yin* (inferior), inculcated *li*  

---

44 [Royston Robertson, cartoonist, holds copyright]  
(virtue) within the family because they were nei (within). Lawyers were deemed unnecessary because magistrates were supposed to act as father/mother officials. Just as it would be inappropriate for a child to bring a lawyer to a dispute to be resolved by the child’s parents, this was also the case in China’s courts.

The Chinese believed that heavenly justice lies behind temporal, worldly justice; therefore divination was a critical tool for both the state and family. If a ruler failed to properly care for his subjects, natural disasters would befall, or the ruler would lose the Mandate of Heaven [天 命 tiān mìng]. Also, if a family did not care for its ancestors, it would suffer misfortune. China’s earliest extant writings, the Shang oracle bones, were used by the Shang rulers to divine their ancestors’ revelations. Other regularly practiced divination methods involved the Yi Jing, meticulous astrology and fengshui, the art of placement of buildings, graves, etc. to maximize harmony with heaven. Legendary judges, like Bao Gong, also known as Baō Zhēng[包 拯], whom we will discuss further below, had supernatural powers. They sometimes relied on dreams, revelations, visitations from wronged ghosts, and prayer and fasting to obtain guidance or solve cases. In addition, the ancient Chinese believed that lawsuits could be filed in Heaven when justice could not be found on earth. With the introduction of Buddhism to China in the Han period (206-220AD), the Chinese also came to believe in various torturous penalties in the afterlife.

Alongside the ancient arts of divination, Confucianism and Legalism focused on achieving the Way of Heaven through other rituals and law, respectively. Confucianism and Legalism agreed that ultimately laws should be eliminated. However, they differed as to how this should be done. As mentioned earlier, Confucius taught the importance of instilling virtue through proper rituals. In this way, one’s body becomes a ritual vessel

---

48 Id.
for virtue.⁴⁹ He then took this one step further and advocated that rulers should govern
by li and not fa. He taught, “Lead a people by law…and they will have no shame, lead a
people by virtue and they will order themselves harmoniously”.⁵⁰ He also taught, “At
hearing legal proceedings I am no different from anybody else, but what is surely
necessary is to bring it about that there is no litigation.” [12:13]⁵¹ In effect, Confucius
taught preventive law through clear moral duties.

Confucius had critics. Mòzǐ (墨子) (470-390 B.C.) advocated universal love and
the equality of all people in contrast to hierarchical relationships.⁵² Also, Mozi taught
that tradition need not be slavishly adhered to, but that self-reflection and one’s own
experiences could be followed. Moreover, he taught that government should promote
universal love and mutual benefit as the Way of Heaven.⁵³

The Legalists agreed with Confucius that ultimately fa should be eliminated and
they agreed with Mozi that subjects should be treated equally⁵⁴. However, because they
also believed that human nature was corrupt and most leaders would not be paradigms of
virtue, they taught the Way of Heaven required transitory harsh laws to eliminate all
wrongdoing. Governing by li was foolish and the law “should be stronger than the
people.”⁵⁵ Justice had to be swift and certain and punishments so severe that they would
shock and intimidate.⁵⁶ In accordance with the Daoist concept of wúweí [無為], or non-

---

⁴⁹ Prof. Mayfair Mei-hui Yang came to this conclusion after comparing the characters for
ritual [禮] and body [體]; both have the “ritual vessel” phonetic element [豊]. Mayfair
Mei-hui Yang, supra note 25, at 226.
⁵⁰ Analects II, 3.
⁵¹ Analects
⁵² Mozi, Book 4.
⁵³ Kim, supra note 8, at 46.
⁵⁴ Id.
⁵⁵ Kim, supra note 8, at 6.
⁵⁶ Dora Shu-fang Dien, supra note 47, at 10.
interference, governance could be efficient and independent of the competence of the ruler if laws were proper.\textsuperscript{57}

After the Warring States period (451 BCE-221 BCE), China was finally unified by its only Legalist dynasty, the Qin dynasty (221 BCE-206 BCE). Emperor Qin’s harsh regime lasted only fifteen years. The Legalists were pragmatists and considered farmers and soldiers the most important members of the state.\textsuperscript{58} In contrast, Confucian and other scholars were deemed termites and reportedly Confucian texts were burned and 460 scholars were buried alive\textsuperscript{59}. However, a recent study of stele inscriptions during the Qin dynasty point out the importance of ritual in the Qin dynasty and its use to legitimate its reign.\textsuperscript{60} Interestingly, anti-Confucian rhetoric was revived during China’s modern Cultural Revolution (1966-1976) when Chairman Mao openly praised Emperor Qin and the Legalist tradition.\textsuperscript{61}

In the dynasties that followed the Qin reign, Confucianism became state orthodoxy. In a blending of \textit{li} and \textit{fa}, however, Chinese rulers practiced \textit{rú wài nei fā}\textsuperscript{62}, or outward Confucianism and inner Legalism. The state, clan and guilds (which were extensions of families and clans) also had complementary and sometimes overlapping jurisdictions.\textsuperscript{63} Families had legal authority over household members, which were both

\begin{itemize}
\item \textsuperscript{57} Id. at 8.
\item \textsuperscript{58} See Shang Jun Shu 1988: chapter 3; Han Feizi 1982 “Wu Du”, as cited by Mayfair Mei-hui Yang, \textit{supra} note 25, at 222.
\item \textsuperscript{59} Whether these events occurred is the subject of scholarly debate. See Martin Kern, \textit{The Stele Inscriptions of Ch’in Shih-Huang: Text and Ritual in Early Chinese Imperial Representation} 189 (2000).
\item \textsuperscript{60} Id.
\item \textsuperscript{61} The “Criticize Lin Biao, Criticize Confucius” campaign was officially launched in 1973. See Mayfair Mei-hui Yang, \textit{supra} note 25, at 210 ff.
\item \textsuperscript{62} Antoaneta Bezlova, “Beijing Embraces Confucian Communism”, September 15, 1999, referring to quote by Beijing University professor Zhao Zumo, available at \url{http://www.atimes.com/china/AI15Ad01.html} (last visited August 13, 2007).
\item \textsuperscript{63} For a discussion of \textit{li}/\textit{fa} and dispute resolution, see Urs Martin Lauchli, Cross-Cultural Negotiations, With A Special Focus On ADR With The Chinese, 26 Wm. Mitchell L. Rev. 1045 (2000).
\end{itemize}
economic and legal units and enforced family codes. Merchant guilds enforced merchant codes. The state intervened in difficult cases and those involving persons who could not be reformed by *li*, e.g., criminals and foreigners.

Over the centuries, state codes also embodied *li*. As early as the Western Zhou dynasty (1115 B.C. to 722 B.C.) *li* developed into a kind of unwritten law, violation of which led to punishment, *刑* [xíng], which was corporal punishment or death. The Tang Dynasty (618-907 AD) finished the Confucianism of the law. The Tang Code was “*Yī zhǔn hū li*” [一准乎礼] which means all provisions of the Tang Code were subject to *li* and were execution of *li*. Violating *li* equaled committing a crime. For example, cursing one’s parents was cause for execution.

Within this blended *li/fa* construct, legal study was discouraged by both Confucianists (*Rujia*) and Legalists (*Fajia*) and a legal profession never developed in traditional China. The Legalists asserted that once the law was published, what the people should do is simply obey it. In the North Song Dynasty, *Rujia* scholar Si Maguang (1018-1086 AD) taught that the knowledge of *li* was enough for a *Shìdàfù* [士大夫], or court official. Si even asserted that studying law would hinder a society in maintaining ethics. In fact, when deciding a case, an official could with the emperor’s assent, refer to *Rujia* opinion if there were no applicable statutes.

---

67 *Id.* at 58-61.
68 This was also a capital offense in the Old Testament. See Exodus 21.17.
Thus, in pursuit of the Way of Heaven and harmony, the ancients practiced
divination and sought heavenly counsel. In addition, the Confucian promotion of
mediation and li, and the Legalist application of fa blended together as yang and yin.  Li,
which was yang, or superior, was first enforced in the family and guilds; when courts
were used, which was yin, or inferior, their sentences were harsh and swift. Over the
centuries, more and more Confucian tenets found their way into written law administered
by the state. Magistrates were trained in the Confucian classics, and not fa. There was
no formal legal profession and women, because they were nei, or confined to the inner
chambers, were not part of the formal administration of law. Nevertheless, women
offered a complementary role in promoting li, or ritual, in their roles as daughters, wives
and mothers. We now turn to gender roles within the yinyang and li/fa construct. The
stories of the qingguan, or ancient model judges, provide powerful role models for
today’s legal professionals as Judges Song and Li have revealed. The women of the
ancient Liènǔzhuàn do as well.

Part II: Gender Roles within the Traditional Li/Fa Construct

Informal Counselors, Judges and Legal Personnel in Traditional China

The melding of li and fa was a potent formula that sustained Chinese civilization
for centuries. It gave Chinese rulers supreme moral authority and efficient tools to
enforce that authority. Complementary and hierarchical gender roles were also essential
to the longevity and potency of the li/fa complex. The Liènǔzhuàn [烈女傳], a
compilation of women’s biographies by Liu Xiang during the Han Dynasty around
18AD, depicts how women contributed robustly to li. They taught their children. They
advised and advocated for fathers, husbands, sons and brothers. Thus, although women
and fa were yin (inferior), because women were also nei (within), they focused on li
which was yang (superior). However, when necessary they appealed to fa; they
sometimes resolved disputes through powerful argumentation. Men were wai (without)
and thus held formal roles as magistrates/judges, legal advisors to magistrates/judges and legal advisors to litigants. Although they administered \textit{fa}, they often appealed to \textit{li}, which was \textit{yang}. Today’s Chinese women have joined the legal profession, however, because they remain \textit{nei}, they have disproportionately joined the ranks of the judiciary, which has become a new \textit{nei}, or inner chambers. Men dominate modern law firms, which are considered \textit{wai}. As Judges Song and Li demonstrate, however, today’s legal professionals can learn the proper balance of Heaven and earth, and \textit{li} and \textit{fa} from the fabled \textit{qingguan}, or incorruptible judges. They can also learn this from the wise women of the \textit{Lienüzhuan}.

\textit{The Wise Women of Lienüzhuan}

I will now re-tell four stories of ancient virtuous women who were moral teachers and even informal legal counselors to illustrate the role of women in the traditional \textit{li/fa} complex. Then I will discuss the role of male magistrates, their formal advisors and six legendary stories about \textit{qingguan}. Men were \textit{fa} within the \textit{li/fa} complex. However, the \textit{qingguan}, or exemplary judges, also integrated Heaven and earth, \textit{li} and \textit{fa} and motherly virtue.

\textit{Lienüzhuan} [烈女傳] was compiled by Liu Xiang (d. 5 BC), a Confucian scholar in the Han dynasty, to describe women of virtue who brought favor to their families and China, and women who brought ruin. It was written to persuade the emperor of the influence of women on statecraft. It includes stories from peasant women to wives of emperors. According to Dr. Robin R. Wang, \textit{Lienüzhuan} shows that within the Confucian tradition, women had a “privileged position in shap[ing] the person, family and state”.

\cite{Raphals, supra note 28, at 19.}

\cite{Robin R. Wang, “Virtue (de), Talent (cai) and Beauty (se): Authoring a Full-Fledged Womanhood in \textit{Lienuzhuan} (Biographies of Women)”. Available at
The first chapter is about motherly virtue [母儀 múyì] and the inculcation of moral character by mothers. The story of Mencius’ mother is illustrative of a working mother who is a powerful moral instructor, or paradigm of li. After living near a graveyard and market, she moves to be near a schoolhouse as this is the best environment for Mencius’ studies. When her young son returns one day and appears to be indifferent to his studies, his mother, a weaver, tears her weaving, and admonishes him. According to a translation by Dr. Raphals,

She tells him, ‘Your neglecting your studies is like my cutting this weaving…Just as in the case of a woman who neglects the means by which she eats, if a man neglects cultivating virtue, then if he does not become a thief or robber he will become a captive or a corvee laborer’. Mengzi was afraid, and morning and night, never stopped studying assiduously. He served his teacher Zi Si, and consequently became the most celebrated Ru [scholar] in the empire.73

So Chinese intellectual and cultural history might have taken a different path, but for Mengzi’s mother’s intervention.

Our second story is about the wife of Da Zi, an official of Tao. This story illustrates the virtuous wife, also a paradigm of li. She is a wise wife and counselor who handles a difficult situation with righteousness and mercy, despite her husband’s folly. Her husband amassed wealth at the expense of the people he governed and he refused his wife’s counsel. She tells her mother-in-law, “My husband’s ability is small yet his office is great; this is called rousing harm. He is without merit yet his family is rich; this is


72 Next to Confucius, Mencius (372-289 BCE) is the foremost Confucian thinker in the Chinese tradition.
73 LNZ 1:10b as translated by Lisa Raphals, supra note 28, at 34.
called amassing misfortune\textsuperscript{74}… his family is wealthy and the kingdom is poor; the ruler is not sedate and the people are not respectful. It is evidence of ruin to come. I desire to escape with my little son.” Her mother-in-law throws her out of their family and Da Zi’s wife leaves with her little son. Later Da Zi is executed for his deeds and his other relatives are also killed; Da Zi’s mother is spared because of her age.\textsuperscript{75} Da Zi’s wife returns with her small son, takes care of the mother-in-law who originally threw her out, and rectifies the situation.\textsuperscript{76} Thus, Da Zi is respectful but does not blindly follow corrupt authority. She also exhibits not only wisdom, but divine fortitude and forgiveness.

Our third story is about a virtuous daughter. This daughter is not only a paradigm of \textit{li}, but also of \textit{fa}. In fact, this daughter acts as a defense counselor for her father and a legal critic for the king! Ti Ying’s father, a duke, was condemned to corporal punishment. He had no sons to help him, which he laments. Ti Ying submits a petition to the king that she become a slave so her father can avoid mutilation. In her petition she states that her father, even though he has committed a wrong, wishes to correct his faults but will not be able to do so with the punishment due. This is a critique of the law.\textsuperscript{77} Ultimately the king agrees that the law is too cruel, revises the law of corporal punishment and excuses her father’s crime.\textsuperscript{78} Ti Ying is also respectful but willing to challenge injustice. She not only acts as an advocate but as a willing substitute for her father’s punishment.

In our fourth account, a poor woman successfully resolves a dispute with a neighbor through forceful argumentation. Her name is Xuwu. Her neighbor tries to bar her from a weaving association because Xuwu is too poor to bring her share of candles. Xuwu argues eloquently that her presence does not diminish the existing light; no one can

\textsuperscript{74} LNZ 2:6a-b, \textit{id.} at 36.  
\textsuperscript{75} LNZ 2:9 as translated by Albert O’Hara, in \textit{The Position of Woman in Early China} 64 (1946).  
\textsuperscript{76} Raphals, \textit{supra} note 28, at 37.  
\textsuperscript{77} LNZ 6.15, \textit{id.} at 48.  
\textsuperscript{78} O’Hara, \textit{supra} note 75, at 185.
refute her. Xuwu states, “If one more person is added to the room, the light will not
decrease; if one person goes out of the room, the light will not increase.”

Thus, according to the *Liènû Zhuàn*, China’s ancient women, from the poorest weaver to officials’ wives, were powerful models of *li*, wisdom and justice. They cultivated their children, knew what was reasonable and just, and even served as informal legal advocates. Their convictions were also demonstrated in their willingness to sacrifice themselves and forgive others. Thus, although women were *yin* and *nei*, they exerted influence in the *li/fa* framework. Their *li* was tempered with appropriate proportions of *fa*. They are models for today’s legal professionals. We turn now to the roles that men played in the traditional *li/fa* framework.

*Magistrates, Shiye and Songshi*

In traditional China, because they were *wai*, or outside actors, men served in the three legal roles that existed: magistrates, *songshi* and *shiye*. However, of these three roles, only a magistrate had an official role in a court proceeding. This section will describe each of these legal actors and their characteristics before discussing the *qingguan*, the advent of extraterritoriality and modern lawyers in the Republican era and today. In an odd turn, many men today aspire to be lawyers, and not judges because lawyers are perceived as *wai* and have more prestige. In traditional China, legal advisors to parties in litigation were disdained.

For centuries, the emperor and his subordinate officials acted as magistrates. There was no separate office for judge. This is because power was centralized in the emperor, and then in his agents in the provinces, prefectures and counties. The magistrate handled many duties, including ritual sacrifices, collection of taxes, public works, criminal prosecution and civil dispute resolution. If there was litigation, the

---

people hoped that the head official would represent the Son of Heaven—the emperor—to maintain justice. And the head official also hoped to execute his exclusive power in judicial affairs and therefore did not allow different voices in the court.  

Like the Emperor, each local official’s ritual sacrifices on behalf of the population within his jurisdiction were critical to his post. In fact, each magistrate had a spiritual counterpart, the chéng huáng [城隍]. The cheng huang was usually a deceased official who had been given spiritual authority by imperial commission and had jurisdiction over bereaved spirits, who reported to him all deeds that would otherwise go unrewarded or punished.

According to Laurence Thompson,

> upon arrival at a new post...[every magistrate was to] spend the night prior to formal assumption of his office in the temple of the cheng huang, purifying himself and praying for the assistance of his spiritual colleague. This procedure was also followed by magistrates baffled by a law case, and numerous instances are recorded of the cheng huang revealing the solution to his opposite number in a dream.

In accordance with li, before a case appeared before a magistrate, it usually first went before a family, clan and then village mediator. Some families in fact had written rules or codes called jiā xùn [家训]. If a dispute proceeded to the county level, magistrates conducted investigations and decided cases based on li, fa, and nature. Magistrates had advisors; these were called shiye. Sometimes defendants also had advisors called songshi. However, none of these advisors could attend court proceedings. Songshi were disreputable and considered shysters.

---

80 Kong Lingyi, Ren Song Ge [No Litigation], Stele of Ren Song Ge in Shandong Qubu Kong Temple; cited from Xu Jiali, Zhong Hua Min Guo Lu Shi Zhi Du Shi [History of Lawyer System in Republic of China] 25 (Zhongguo zhengfa da xue chu ban she 1998).
81 Thompson, supra note 17, at 77.
82 Id. at 81.
83 Id.
84 Conversation with Prof. Suh-jen Yang, February 15, 2008.
The main task of the magistrate was to maintain peace. Therefore he would often settle cases to maintain peace and harmony. In civil cases, magistrates applied *qing fa ben yuan qing* 善法本原情 which meant using *qingli* 情理, reason, and *renqing* 人情, feeling. The spirit of *qingli* and *renqing* is balance, compromise and flexibility. In criminal cases, where defendants had violated social order, they were punished harshly. It has been said that in the former cases, parties’ rights were blurred; in the latter, the parties had no rights.

One of the difficulties ancient judges also faced was the conflict of respecting the emperor and obeying the law. The emperor was not restricted by the law. Some ancient judges, at the risk of being killed, would try to persuade the emperor to obey the law. But more of them would obey the will of the emperor. Some judges, in fact, were only servants of the emperor. They did not judge cases according to the law and the facts but completely on the basis of the personal favor of the emperor. Judges also faced conflicts from nobles and local rich families. Judges that were just and serious would often be persecuted by nobles who took advantage of their position.

I will now briefly give six examples of legendary *qingguan* in China’s history, who did not cave into pressure from the emperor or nobles. I will then discuss *shiye* and *songshi*, China’s ancient legal advisors. As mentioned in our introduction, the *qingguan* have influenced Judges Li and Song, and many others to become judges today. They

---

86 Id. at 168.
88 *Every Aspect of Ancient Judges* at 182.
89 Id. at 191-95.
90 Id. at 201-04.
91 Id. at 196-200.
represent the best of China’s ancient legal tradition, the integration of Heaven and earth, and *fa* tempered by *li*.

*Qingguan*

*Qīngguān* are China’s legendary judges who exemplified moral fortitude and justice. They were characterized by devotion to China’s people, refusal to accept bribes, willingness to chastise the emperor or others in power, and dedication to a simple lifestyle that balanced work and family. They are regularly portrayed in Chinese operas and in today’s Chinese television dramas, which inspired Judges Song and Li. As described earlier, *qingguan* also possessed supernatural powers. In many Chinese villages, there are temples dedicated to Bao Gong, the most famous *qingguan*.

*Yàn Yīng [*晏婴]*

Our first *qingguan*, Yan Ying (?-500 B.C.), the prime minister to the three kings of the Qi nation for over 40 years, is known for his wisdom and incorruptibility. He considered the people’s interests to be the fundamental concern of the nation and he did not hesitate to confront the king. For example, many people suffered from a flood one summer. The king was impervious to the suffering of his people and kept dancing and drinking day and night. Yan Ying requested the king to send rice; but the king did nothing. Yan Ying was so outraged that he gave his own rice and furniture to the flood victims. He confronted the king, then resigned and went home. The king was moved when he saw that Yan Ying had given all of his rice to the victims; he immediately ordered rice sent to the victims.

---

93 Id. at 2.
94 Id. at 4-5.
Also, although Yan Ying was the prime minister, he lived a simple life. He even refused land granted by the king. What also made him a model of rectitude was his faithfulness to his wife. He refused to marry other women however beautiful and powerful they were.

**Shao Xinchen and Du Shi [邵信臣与杜诗]: “Parent” Officials**

Although there were no official women judges or magistrates, as mentioned earlier, righteous officials were referred to as parent officials. This was the case with our second and third qingguan, Shào Xīnchén and Dù Shī in the Han Dynasty.

Shao Xinchen was a mayor during the West Han Dynasty and was called Father Shao by the local people because he not only cared for the people considerately but also was strict with them. For example, he led the people to dig a trench and build dykes to irrigate the farmland when the farmland could not produce due to the drought. He also regulated fair use of the water so that water disputes were resolved and avoided. He also forbade exorbitant funeral customs. These drove some people to the edge of impoverishment or even selling their own children to pay back their debts.

Du Shi (?-38 A.D.) was the most respected official during the East Han Dynasty and was named Mother Du by the people. He punished criminals strictly irrespective of

---

95 *Id.* at 5.
96 *Id.* at 6-7.
97 *Id.* at 8-10.
98 *Id.* at 11.
99 *Id.* at 15.
100 *Id.* at 13.
101 *Id.*
102 *Id.* at 18.
how some superior officials interceded. 103 Although he earned a large salary, he did not purchase land for himself but spent his money on public projects such as irrigation works, and helping the poor. 104 Thus, like Yan Ying, Du Shi was modest, loved the people, and was incorruptible.

**Su Qiong 〔苏琼〕**

Our fourth qingguan was Sū Qióng. He lived during the Bei Dynasty (386-518 A.D). 105 While he was mayor of Nanqinghe, he successfully resolved a theft within a very short time, which discouraged thieves from stealing again. When he obtained a judicial position in the central government, he rectified many wrongly decided cases and released many wrongly convicted persons. 106 Once, there were two brothers who had a fierce dispute over the division of the family’s land. 107 Su did not question the over 100 witnesses involved; instead, he called the two brothers and admonished them with tears, “there is a saying that brotherhood could not be bought by any great sum of money…do you think it is worthwhile giving up your brotherhood simply due to [this] land?” 108 All the people in the court were moved to tears when listening to this touching speech. In the end, the case was settled. 109 Su also lived a simple life and refused any form of gifts. In order to prevent people from sending gifts to him, he even hung a watermelon given by a retired official on an eave. 110 After this demonstration, nobody dared to send any gifts to this incorruptible official. Thus Su demonstrated fa tempered by li, qingli and renqing.

**Bao Zheng [包拯] (999-1062)**

---

103 *Id.* at 17.
104 *Id.* at 19.
105 *Id.* at 60.
106 *Id.* at 62.
107 *Id.* at 65.
108 *Id.*
109 *Id.* at 65-66.
110 *Id.* at 67.
Our fifth qingguan, Bāo Zhēng, also known as Bao Gong, is perhaps the most beloved qingguan in Chinese history. Many villages have temples dedicated to him. Since the Song Dynasty, his life has been portrayed in many dramas and novels.\footnote{Id. at 98.} He is widely known for not showing favoritism either to his own relatives or to the relatives of the emperor. For example, one of his uncles acted wrongly. Bao seized his uncle and punished him strictly irrespective of what his relatives said.\footnote{Id. at 106.} He also stood up to the emperor’s brother-in-law Zhang Yaozuo three times with the result that even the emperor feared him.\footnote{Id. at 112-13.} Bao Zheng was also well known for his wisdom.\footnote{Id. at 107-08.} In the one recorded case of Bao Zheng, a farmer came to him one day with a cow whose mouth kept bleeding. The farmer complained that somebody had cut the cow’s tongue.\footnote{Id.} Bao told the farmer that he should kill the cow immediately after he went back home. The farmer didn’t understand why. But he followed the order. Three days later, another person came to the office claiming that the farmer should be punished for killing the cow. Bao realized that there were two explanations for the cow’s original bleeding. Either the farmer had inflicted the injury, or his accuser had.\footnote{Id.} The owner’s accuser confessed his crime.

Supernatural powers have been attributed to Bao Zheng. With the help of dreams, visitations from wronged ghosts, prayer and fasting, he dispenses justice among the living and dead.\footnote{Dien, supra note 47, at 54.} In one account, the ghost of a murdered victim speaks from a black pot and Judge Bao promptly has the murderers arrested.\footnote{Id. at 56-57.} In another, the ghost of a murdered concubine appears to Judge Bao at night and he then promptly arrests the murderer, the
concubine’s master’s first wife.\textsuperscript{119} Bao Zheng inspired Judge Song, our model judge mentioned at the beginning of this article. In 2008 in an effort to teach traditional culture, China’s Ministry of Education started a pilot program that includes teaching sixth graders the classical play \textit{Zha Mei An} about Bao Zheng’s investigation of a case involving the emperor's son-in-law.\textsuperscript{120}

\textbf{Hai Rui [海瑞] (1514-1587)}

The last story of our \textit{qingguan} is about Hài Rùi. Hai Rui lived during the Ming Dynasty and is also known for his incorruptibility and faithfulness.\textsuperscript{121} His life has also been portrayed in various dramas.\textsuperscript{122} He wrote in his article “\textit{Yan Shi Jiao Jie}” that “people should not live meaninglessly, but should live according to holy teaching. This doesn’t mean that one must do great deeds or be an official. It means that one should be faithful in every small matter…one should resist the temptation of money and external beauty; one should do more and say less. Don’t flatter your boss; don’t be proud when you accomplish something…”\textsuperscript{123}

In sum, \textit{qingguan} refused bribes, did not show favoritism to their relatives, admonished emperors, had the interests of the nation’s people in mind, and lived simply, without greed and in happy families. Although only men could be magistrates, and thus all \textit{qingguan} were male, they were called “father and mother” judges. They were both paternal and maternal figures to their subordinates. Sometimes the power to wield justice from the spiritual world was attributed to them. Thus they integrated heaven and earth, \textit{yinyang, li} and \textit{fa}, work and family, and practiced the \textit{dao} of justice. They are powerful

\textsuperscript{119} \textit{Id.} at 58-59.
\textsuperscript{121} \textit{Clean-fingered Spirit} at 129.
\textsuperscript{122} \textit{Id.} at 129-30.
\textsuperscript{123} \textit{Id.} at 131.
role models to our current male and female judges, as Judges Li and Song have revealed, and they are being promoted to China’s young today.

Shiye and Songshi

Now I will describe shiye and songshi. They are the closest to the modern profession of lawyer yet they had no official role during a trial in traditional China. This may be because they were not direct representatives of the Son of Heaven. Shiye who assisted officials in judging cases arose as a particular profession in the Qing Dynasty. Songshi helped litigants draft documents. However songshi were considered shysters and sometimes punished. This practice is still followed today, with reported beatings of attorneys, especially criminal defense lawyers. Shiye and songshi were men, but there is at least one recorded story of a female shiye. To the extent that shiye and songshi tempered fa with li, they are also role models for today’s lawyers and judges.

As mentioned earlier, in traditional China, judges did not receive formal legal training. They were instead trained only in li. All officials had to pass civil exams based on Sishuwujing, the Chinese classics, but they were not tested or experienced in practical problems. Shiye thus served as their advisors after these officials took office. Very often shiye were men who had failed to become officials but were still very learned. Many centuries later, after China began formal legal training in the late Qing period, those who failed to become officials again took on legal positions. So China’s earliest lawyers had a hard time establishing their legitimacy. Also, many of today’s judges in China have no formal legal training but are former military officials. However, unlike some of their male counterparts, many of today’s women judges have been appointed because of their formal legal training.

---

124 Guo Jian, Shi Ye Dang Jia-Ming Qing Guan Chang Mu Hou Gui Ze [Advisors Host the Government-Rule Behind the Screen in Offices in the Ming and Qing Dynasties] 106 (Zhongguo Yan Shi Chu ban she 2004). [Hereafter, Advisors]
Gender and the Chinese Legal Profession in Historical Perspective: 
From Heaven and Earth to Rule of Woman?
Mary Szto
Page 32 of 91

What sources did shiye use in counseling judges? Shiye considered law, Rujia classical works, history, resolved cases, custom and public opinion. Although resolved cases were not law, they were influential. As mentioned earlier, the goal of judgment was to seek peace between parties. Therefore, shiye would often postpone cases deliberately expecting the parties to settle their disputes privately.

Shiye were also conscious of their relationship to the afterlife. In order to accumulate yīndé [阴德; virtue in the afterlife] for their own descendants, shiye avoided death cases as much as possible. Also, usually they would not allow women witnesses in court for fear that women would feel ashamed in the court.

When dealing with difficult cases, shiye would investigate the scene of the incident and also rely on medical knowledge. When a case was heard in court, shiye always hid behind a folding screen. If a shiye found any defect in a witness’ testimony, he would pass a message to the magistrate.

Wāng Hūizǔ (汪輝祖) (1730-1807) was a model shiye. He was known to be very wise and familiar with the law and li. He resolved many difficult cases, and wrote books on how to be a good shiye, which were very popular at that time.

Interestingly enough, there was a woman shiye during the Qing dynasty but her name has not been recorded. Under Emperor Qianrong in Zhili Province, she served as a shiye for her father, brother and husband. She learned all knowledge needed to be a good

---

125 Id. at 114-19.
126 Id. at 122.
127 Id. at 146.
128 Id. at 128-132.
129 Id. at 151-52.
130 Id. at 158-63.
131 Id. at 173.
132 Id. at 28-29.
shiye (including law, economics, correspondence, and financial management) when she was with her father, a mayor. When her father became old, she handled his affairs and became a female shiye.¹³³

After her father died, she became an advisor for her brother until she was 39 years old. Then she married a new head of a county. After marriage, she assisted her husband in an inner office. Here she arranged for four concubines to copy documents according to her dictation and two older women to transmit the documents to her husband in the office. She was so excellent that her husband was promoted to be mayor of Zhili. However she advised him to submit his resignation reasoning that “you are only qualified to govern a county and I have no time and energy to help you because I have to manage the housework.” Then she showed him a resignation letter prepared for his signature and her husband signed his name. The couple then went back home to enjoy their lives.¹³⁴

Thus, although shiye did not appear formally in court proceedings, they were indispensable to the administration of justice in China’s courts. The best shiye combined li and fa and included at least one woman. This unnamed woman shiye in the Qing Dynasty pre-figured the mass movement of women from the inner chambers to the judicial chambers today. She stands in the grand legacy of Ban Zhao, the virtuous women of the Lienüzhuan and the qingguan. She was erudite, wise, and knew how to balance work and family.

Songshi

Songshi is the third legal role that men occupied in traditional China. Songshi advised litigants and were sometimes also called shiye. They came about because

¹³³ Id. at 35-36; see also Wu Chengqiao, Qing Dai Li Zhi Cong Tan [Official Governance in Qing Dynasty] Vol. 1, at 188-89 (Wen hai chu ban she 1966).
¹³⁴ Id.
ordinary litigants could not read or write. However, *songshi* were often considered obstructers of justice. They were either banned or severely restricted after the Tang dynasty. Their reputation marred the early practice of many lawyers during the Republican era centuries later, and in today’s China as well. Today criminal defense lawyers are sometimes beaten and jailed when they try to assist their clients.

Early in the Spring and Autumn era (770 B.C. - 475 B.C), Deng Xi in the Zheng Nation was perhaps the first *songshi*. However, he was perceived as a cunning person who confounded right and wrong and in the end was killed by the Prime Minister Zichan. In one account, Deng Xi instigated people to sue. A rich person drowned and his body was found by a poor person. The decedent’s family wanted to buy the body; but the poor person required too much money. The rich family did not want to pay this amount and went to Deng Xi for help. Deng Xi advised the rich family, “Don’t worry, insist on the price you offered; except for you, nobody would buy that body”. So the rich family did not bargain with the poor man. Then the poor person turned to Deng Xi. Deng told him, “Don’t worry, insist on the price you offered because apart from you, the rich family cannot bury their dead.” Deng Xi was thus criticized for promoting conflict and not harmony.

However, there were some upright *songshi*. During the Qing Dynasty (1644-1911), there was a famous *songshi* named Wu Moqing (吴墨卿) in Jiangsu. He would inquire into actual circumstances whenever people asked him to write a complaint. If the person’s case had no merit, he would try his best to help the parties achieve a settlement. If the person’s case was meritorious, he would also try his best to win the case for him.

---

135 *History of Lawyer System* at 26-27.
136 *Id.* at 28-29.
137 *Advisors* at 264.
138 *History of Lawyer System* at 32-33.
even if the official opposed the case. Thus he tempered *fa* with *li* and had the rectitude of the *qingguan*.

The Qing Dynasty government finally agreed to allow *daishu* to help litigants write legal documents. These were unpaid scriveners. However, the law put very strict requirements on *daishu* in order to prevent them from acting as *songshi*. Therefore there were few people who received a *daishu* qualification and *songshi* were still the main helpers for litigants.

Commoners also intervened in lawsuits. In the legendary Qing dynasty case of *Xiao Bai Cai*, the sister of the falsely accused doctor Yang filed an appeal for her brother while on a bed of nails. She was illiterate but had someone draft the appeal for her.

Ultimately, *songshi* demonstrated that the imperial government did not have a “monopoly on legal knowledge”. Although there was no lawful educational organization to teach legal knowledge, *songshi* created independent channels of learning and interpretation through publishing textbooks and personal teaching. They are

---

139 *Advisors* at 265-66.
141 *History of Lawyer System* at 31-32.
144 *Id.*
Gender and the Chinese Legal Profession in Historical Perspective: From Heaven and Earth to Rule of Woman?
Mary Szto
Page 36 of 91

known for influencing the legal order of the Ming and Qing Dynasties.\(^{145}\) However, there are also reports of legal draughtsmen receiving three years of penal servitude or worse.\(^{146}\)

Thus, in traditional China, men played public legal roles, as father/mother officials, shiye and songshi. Women played private legal roles as advisors, and moral teachers. Men were wai and women were nei. However, China’s legal structure in general was subordinate (yin) to its ethical and Confucian framework (yang) and an ultimate belief in divine justice. Qingguan, fabled incorruptible judges, balanced Heaven and earth and li and fa. They lived selfless and virtuous lives and loved the common people. Although shiye and songshi had no official court role, to the extent they tempered fa with li, they also served as models of virtue and talent for today’s lawyers and judges. The difficulty that songshi had in imperial China in maintaining their reputations, would influence the reputation of lawyers in the Republican era and today as well. We now turn to Part III. Here we discuss China in the 19\(^{th}\) century, the intervention of foreign lawyers, the birth of a legal profession in China and the turning point for women’s education. This would all pave the way for today’s peaceful rise of the women judge.

Part III: A Turning Point in Gender and Legal History

The Influence of Missionary Schools and Foreign Lawyers

The 1800’s were the last years of the Qing dynasty, China’s last imperial rulers, and brought the influence of Protestant Christian missionaries, the Opium War, foreign concessions, and foreign attorneys to China. These influences had a profound effect on gender roles and legal actors in China. Missionaries, mainly women, established the first formal schools for girls, boarding schools so that Chinese girls could remain separate from boys. Women missionaries served as role models for a blending of nei and wai and

\(^{145}\) Id.

co-mediators between Heaven and earth. Missionaries also discouraged foot binding for girls and women, which had been practiced for a millennium and promoted instead the natural foot movement. The Qing dynasty had earlier unsuccessfully tried to ban this. China’s disastrous defeat in the Opium War (1839-42)\textsuperscript{147} led to the establishment of foreign concessions on Chinese soil. These introduced extraterritoriality to China and the practice of foreign attorneys on Chinese soil. These foreign attorneys were the first attorneys to practice on Chinese soil. In 1911, at the time of the Xinhai Revolution, which overthrew the Qing dynasty, however, Chinese women had surpassed the educational goals of the Christian missionaries. They became political revolutionaries. All of these events set the stage for China’s modern legal professionals, including its first women lawyers and today’s peaceful rise of the Chinese woman judge.

\textit{Women’s Schools in China and the Inadvertent Beginnings of Legal Education}

Western Christian missionaries, mainly women, introduced widespread formal education for women in China. This was a turning point in China’s gender history. Prior to the missionaries founding girls’ schools, most women did not receive an education unless they were tutored in well-to-do families. And unlike Ban Zhao, most women did not receive extensive tutoring. The timing of China’s first women’s schools paralleled the development of women’s education and reform movements in the West, including the antislavery and temperance movements of the United States. In China girls’ schools were originally set up to provide wives for Chinese helpers and to train Bible women and teachers.\textsuperscript{148} This was similar to the founding of Christian schools in the West. Single women missionaries, who by the 1890’s were two-thirds of all missionaries in China,\textsuperscript{149}

\textsuperscript{147}The Opium War was precipitated by England’s importing of opium into China.
were key in promoting Chinese women’s education. They held that educating Chinese women would lead to Christian influence in Chinese homes.\textsuperscript{150} Ultimately the missionaries were successful in introducing women’s education, because of the legacy of women like Ban Zhao in the Confucian tradition. Women missionaries were also successful because they were female models of mediators between Heaven and earth.

To see how educational events developed in parallel fashion in the West and in China, we can consider the founding dates of schools in the United States. In 1829, America sent its first missionary to China, Dr. E.C. Bridgman. In 1833 Oberlin, America’s first co-educational college, was founded by two Presbyterian ministers. In 1836 America’s first women’s college, Wesleyan College in Macon, Georgia was founded by the Methodist Episcopal Church. The famous three Soong sisters who were major players in China’s modern era later attended this college.\textsuperscript{151} In 1848 the first women’s rights convention in the United States was held at the Wesleyan Chapel in Seneca Falls, New York.

In 1844 China’s first girl’s school was the Ningbo Girls School, founded by Maryann Aldersay of the British Oriental Society for the Advancement of Girls’ Education.\textsuperscript{152} Their curriculum included Biblical studies, Chinese, arithmetic and knitting and embroidery.\textsuperscript{153} This, except for the biblical content, was similar to what a proper


\textsuperscript{151} Ai-ling Soong (1890-1973) married H.H. Kung, one of China’s wealthiest men and finance minister; Ching-ling Soong (1892-1981) married Sun Yat-Sen, the founder of the Republic of China, and May-ling Soong (1898-2003), who later transferred to Wellesley, married Chiang Kai-Shek, the leader of the Guomindang and Republic of China.

\textsuperscript{152} Lu Meiyi, “The Awakening of Chinese Women and the Women’s Movement in the Early Twentieth Century” in Holding Up Half the Sky at 55. [Hereafter, Lu]

Chinese girl might learn from a home tutor. After one year Aldersay had fifteen students and after eight years she had 40 students.\textsuperscript{154} Over the next fifteen years, various missions organizations opened girls’ schools in Shanghai, Fuzhou, Guangzhou and Xiamen.\textsuperscript{155} By 1877, there were 2,101 girls enrolled in Catholic schools and in 1879 2,791 girls enrolled in Protestant schools.\textsuperscript{156} Some of these schools provided free education, food and accommodations for poor girls, and some of these young girls grew up to be teachers in schools later established by the Qing government.\textsuperscript{157} Also, some missionary families adopted Chinese girls and later sent them to the United States for education. Some of these Chinese women were the first to achieve advanced educational degrees.\textsuperscript{158}

During 1851-1864, the Taiping Rebellion, an insurrection promoted by a heretical Christian cult, overtook part of China. Although it was ultimately unsuccessful, the Taiping Rebellion was a native movement that at least nominally promoted the equality of the sexes, the banning of foot binding, and monogamy.

In 1874 in Xiamen, sixty Chinese Christian women gathered in church and with an English missionary and his wife founded China’s first “Natural Feet Society” and sparked the growing protest against foot binding.\textsuperscript{159} Missionaries also protested concubinage. Qing reformers such as Kang Youwei and Liang Qichao were influenced by missionary writings and Liang also advocated the abolition of foot binding and the promotion of girls’ schools.\textsuperscript{160}

\textsuperscript{155} Id.
\textsuperscript{156} Lu at 68, footnote 1.
\textsuperscript{157} Ida Belle Lewis, \textit{The Education of Girls in China} 18-25 (1919).
\textsuperscript{158} Interview with Prof. Lien Ling Ling on July 20, 2006 at Academica Sinica, Taipei.
\textsuperscript{159} Lu at 68, footnote 7.
\textsuperscript{160} Kwok at 106.
The first girls’ school founded by Chinese was in 1898; it was the Jingzheng Girls School in Shanghai.\footnote{Lu at 55.} It started with 20 students from the ages of eight and fifteen.\footnote{Wong, supra note 153, at 356.} By that time there were three hundred mission schools with more than 7000 girls.\footnote{Lewis, supra note 157, at 24.} In 1907 the Qing government promulgated the charter for China’s first government girls’ schools.\footnote{Lu at 55.} In 1909 there were 14,054 girls in schools founded by Chinese.\footnote{Lu at 68, footnote 1.} In 1922 there were 60,000 female students in mission schools.\footnote{Kwok at 17.}

Foreign missionaries also started the first three higher educational institutions for women in China. In 1905 the Imperial Examination was abolished, which ended the thousands years old monopoly of Confucian scholars on political rule. The same year the North China Union College for Women began to offer courses for women.\footnote{Kwok at 17.} In 1915 the Jin Ling Women’s College was founded in Nanjing by several mission boards with the assistance of Smith College in Massachusetts.\footnote{Id.} In 1917 the Methodist Women’s Foreign Missionary Society in America founded the South China College and offered a full college course.\footnote{Id.} In 1919 the Chinese government founded its first college for women, the Beijing National Women’s Normal School. In 1920 Peking University admitted two women students, this was the first co-educational higher education in China. This was also the same year that women gained the right to vote in the United States.

Thus, Christian missionaries, often single women, began widespread formal education for women in China, a turning point in China’s gender history. They introduced a different curriculum and encouraged women to become teachers, doctors,
and missionaries. Thus, they expanded the realm of nei to education and medical missionary work. As we shall discuss next, Chinese women took this one step further by becoming political revolutionaries. Some went from nei to wai in a very short period. This was fostered also by discourse by political reformers and revolutionaries who promoted women’s rights as a means to modernize China. This would pave the way for China’s first women lawyers in the Republican era, and later judges in today’s China.

**Women’s Groups and Political Revolution**

Following the short-lived Reform Movement of 1898 led by advisors to the Qing emperor, and the anti-foreign imperialist Boxer Rebellion of 1899-1901, the first decade of the 1900’s also saw the beginning of many women’s groups in China. These were composed of many women who had been educated in the missionary and other girls’ schools. Some of these women’s groups advocated political reform, women’s rights and charitable work.

The Qing dynasty was toppled in the Xinhai Revolution of 1911 and the Republic of China was founded. Women were active in this revolution including in revolutionary militias and in the years that followed, women persisted in continued political reform, anti-imperialist and revolutionary activities. Approximately two hundred women participated in the anti-Qing revolutionary group, Tongmenghui led by Dr. Sun Yat-Sen, including Zheng Yuxiu, the first Chinese woman lawyer. Many of them discovered their revolutionary fervor while studying in Japan. However, despite their bravery during the Revolution and Sun Yat-Sen’s letter that “There is no disparity

---

170 Because of an emphasis on a strain of Christian teaching called pietism, many Western Christian missionaries at the time failed to engage in dialogue concerning political reform.  
172 Lu at 57.  
173 Id. at 60.  
174 Id. at 56.
between men and women in terms of God-given rights...In the future, women’s rights to participate in politics is inevitable”, the Provisional Constitution of 1911 did not guarantee equality or political participation for women.  

The May 4th movement in 1919, originally a student protest against the treatment of China in the Treaty of Versailles following World War I, turned into a national movement that was a turning point for China’s politics, culture and women’s movement. It led the way for further critique of Western imperialism and traditional Confucian culture, and the founding of the Communist Party.

Female students organized marches, strikes and boycotts in support of the May 4th movement. Shortly thereafter Peking University and other colleges allowed women to matriculate. Prior to that time only universities organized by Western missionaries accepted women students.

In addition to promoting gender equality, the May 4th movement soundly condemned the role of women in the traditional Chinese family structure as virtuous mother and filial daughter and instead promoted “open social interactions” and “autonomy in marriage.” Also, a new Chinese character for “she” [她] was invented during this time. According to historian Christina Gilmartin, the 1920’s were also the “period of peak influence of feminism on Communist and Nationalist revolutionaries”. Most feminist authors at that time were male indicating that this held both personal and

176 Lu at 65.
177 Gilmartin at 23.
178 Lu at 65.
179 Id. at 66.
180 Gilmartin at 22.
181 Id. at 3.
However, Gilmartin writes that nevertheless patriarchal patterns pervaded the Communist party. Also, after the coalition between the Communist and Nationalist parties collapsed in 1927, the Nationalists embraced traditional roles for women and the Communists also turned away from many gender reforms.

Nevertheless, another critical turning point for the nation was the Long March in 1934, which included 2,500 women. The women who endured the Long March, which included intellectuals and peasants, became leaders who mobilized other women. This culminated in the founding of the All-China Women’s Federation in 1949. For forty years this organization was led by women veterans of the Long March, aside from the time of disruption of the Cultural Revolution.

Thus the 1800’s and early twentieth century saw not only revolutionary change for China, but for its women as well. Eventually improving the lives of Chinese women became tied with cries for national reform and revolution. Beginning with widespread primary and secondary education for girls provided by Christian women missionaries, Chinese girls were eventually welcomed into universities, both in China and abroad. Simultaneously foot binding declined and women took on lives as teachers, doctors, missionaries, and political revolutionaries. They quickly moved from nei to wai and from bound feet to bound books. As political revolutionaries they were introduced to the study of law. When lawyers were finally allowed in Republican China, women joined their ranks as soon they were able, however the judgeship eluded women in Republican China. This would lay the foundation for today’s Chinese women lawyers and judges.

---

182 Id. at 20.
183 Id. at 104-114.
184 Id. at 10-11.
185 It is estimated that altogether around 100,000 began the Long March and only 7,000 of these completed it. This retreat by the Communists resulted in Mao’s leadership of the Party and much needed support of the Communists by China’s peasant population.
186 Lu at 81, 87.
some ways, Chinese women were as progressive, if not more progressive than their Western sisters. In one generation some went from seclusion and immobility to being political revolutionaries. We turn now to the advent of extraterritoriality and China’s first foreign and then Chinese lawyers.

*Foreign Lawyers in China and Legal Reform*

Because China’s *li/fa* construct did not allow for lawyers, the first lawyers in China were foreign attorneys. They in fact practiced their own countries’ law in China because of the doctrine of extraterritoriality. This was part of a broader movement in which various Western powers had extracted extraterritorial rights in India, Japan, and other non-European nations. After China’s defeat in the first Opium War (1839-1842), foreign missionaries not only founded girls’ schools, but foreign attorneys practiced law in territories given to different countries. The foreign victors demanded this because they perceived China’s harsh punishments to be primitive and barbaric. This was ironic because the Chinese considered the foreigners barbaric. These foreign lawyers had a profound influence on Chinese legal actors. Some Chinese apprenticed for foreign lawyers and although China ultimately adopted a code that was modeled on that of civil law countries, including Japan, Germany and Switzerland, the model of the American and English practitioner has shaped the way Chinese lawyers practiced law then and now. I will now discuss how extraterritoriality came about and the legal reforms undertaken at the end of the Qing Dynasty and during the Republican era.

After China’s devastating defeat in the first Opium War, she signed the Treaty of Nanking in 1842 with Great Britain. While the Treaty itself did not specifically mention

---

extraterritoriality.\textsuperscript{188} Article XIII of the General Resolutions arranged for cross-cultural mediation and then adjudication according to the laws of the parties.\textsuperscript{189} Seeking similar access to China, the United States entered into its first treaty with China in 1844. This treaty, the Treaty of Wanghia, explicitly mentioned extraterritoriality.\textsuperscript{190,191} Because of the "most favored nation" clause, these extraterritorial rights were then claimed by all

\textsuperscript{188} Pär Cassel has argued that there was a tradition of extraterritoriality in China, including between the Han Chinese and Manchus. See “Excavating Extraterritoriality: the ‘Judicial Sub-Prefect’ as a Prototype for the Mixed Court in Shanghai”, Imperial Late China 24, No. 2 (Dec. 2003): 156-82.

\textsuperscript{189} Article XIII stated, “Whenever a British subject has to complain of a Chinese he must first proceed to the [British] Consulate and state his grievance. The Consul will thereupon enquire into the merits of the case and do his utmost to arrange it amicably. In like manner, if a Chinese have reason to complain of a British subject, he shall no less listen to his complaint, and endeavour to settle it in a friendly manner. . .If unfortunately, any disputes take place of such a nature that the Consul cannot arrange them amicably, then he shall request the assistance of a Chinese Officer that they may together examine into the merits of the case, and decide it equitably. Regarding the punishment of English criminals, the English Government will enact the laws necessary to attain that end, and the Consul will be empowered to put them into force and regarding the punishment of Chinese criminals, these will be tried and punished by their own laws, in the way provided for by correspondence which took place at Nanking, after the concluding of the peace.” Francis Lister Hawks Pott, A Short History of Shanghai, “The Beginnings of the Foreign Settlement” Available at http://www.earnshaw.com/shanghai-ed-india/tales/library/pott/pott02.htm. (Last visited on August 26, 2006). [Hereafter, Pott]

\textsuperscript{190} Regarding criminal acts, Article XXI of that Treaty read as follows:

Subjects of China who may be guilty of any criminal act towards citizens of the United States shall be arrested and punished by the Chinese authorities according to the laws of China, and citizens of the United States who may commit any crime in China shall be subject to be tried and punished only by the Consul or other public functionary of the United States thereto authorized according to the laws of the United States; and in order to secure the prevention of all controversy and disaffection, justice shall be equitably and impartially administered on both sides.

\textsuperscript{191} In 1882 the United States also passed the Chinese Exclusion Act. This resulted on a ban on Chinese immigration until 1943. The preamble to the 1883 Act stated, “…in the opinion of the Government of the United States the coming of Chinese laborers to this country endangers the good order of certain localities within the territory thereof…”.
nations entering into treaty relations with China. This paved the way for foreign attorneys to practice on Chinese soil and to eventually represent Chinese clients in the foreign concessions. This also paved the way for foreign judges to have jurisdiction over Chinese subjects there. From the perspective of one Western observer, Francis Pott, “The Chinese authorities appear to have entered into this arrangement in regard to extraterritoriality without protest. They were glad to be freed of the responsibility of controlling those who appeared to be turbulent foreigners and to hand them over to their own authorities”.  

Foreigners lived in settlements in the Treaty ports and because of political and civil unrest in China brought on by the Taiping Rebellion many Chinese sought refuge in the foreign settlements in Shanghai. This led to the founding of the Shanghai Mixed Court in 1864. In addition to the Mixed Court there were also foreign consular courts in Shanghai.

At first the Mixed Court was presided over by a deputy of the Shanghai Magistrate who alone heard criminal cases and civil cases between Chinese who resided in the foreign concessions. However, when a foreigner was involved, a delegate from one of the foreign consulates was to sit as assessor with the deputy. Appeals were to be heard by the Taotai sitting with a Consul as assessor. According to Pott, “Later the consular assessor became a party to the judgment in every case - in police cases because of the interest of the foreign community, and in suits between Chinese, on the ground that ‘the Chinese official, with his traditional methods of enforcing judgments, must not be admitted to an unfettered jurisdiction within the area reserved for foreign trade and residence. These changes, as we shall see later, came to be regarded by the Chinese as an infringement of their sovereign rights”.

In 1865 the British Government appointed Sir Edmund Homby as Chief Justice of

---

192 Pott.
193 Pott, Chapter VII, Municipal Development, 1860-1870
194 Id.
a British Court for Shanghai, and this Court, instead of the Consulate, now held authority over legal matters.\textsuperscript{195} As of 1911, there were fourteen treaty powers in Shanghai, and thus fourteen distinct courts, each administering its own national law.\textsuperscript{196} A census of 1895 reported that more Chinese in Shanghai lived in the foreign settlements than in the city; 286,753 lived in the settlements and 125,000 in the city. The census of the foreign population in 1905 showed 3713 British, 2157 Japanese, 1329 Portuguese, 991 Americans, 785 Germans and 568 Indians, out of a total of 11,497.\textsuperscript{197} The Mixed Court was returned to the Chinese and reorganized as the Provisional Court on January 1, 1927 over the protests of the American Far East Bar Association.\textsuperscript{198} Up until that time, foreign lawyers were quite prosperous in their representation of both foreign and Chinese clients.\textsuperscript{199} This prevented early Chinese lawyers from establishing their reputations.

Thus the defeat of China in the Opium War led not only to new schools for Chinese women, but treaty ports for foreign powers, extraterritoriality and the practice of foreign law by foreign attorneys on Chinese soil and eventually a Mixed Court in Shanghai. Because many Chinese also lived within the foreign concessions in Shanghai, this shaped the Chinese legal profession that was to follow. Shanghai was to become a leading center for Chinese lawyers then, as it is today. Until 1927, foreign lawyers dominated the practice of law in China. Women became lawyers in Shanghai as soon as they were allowed to in 1927, and some of their stories will be described below.

\textit{The Beginnings of Modern Legal Education in China and the Legal Profession}

\textsuperscript{195} \textit{Id.}
\textsuperscript{196} 1911 Encyclopedia Britannica, “Shanghai”. Available at http://www.1911encyclopedia.org/Shanghai. (Last visited August 26, 2006).
\textsuperscript{197} \textit{Id.}
\textsuperscript{199} Sun Huimin, Xing Bie yu Zhi Ye: Min Guo Shi Qi Shanghai de Nv Xing Zhongguo Lv Shi (1927-1949) [Gender and Profession: Chinese Female Lawyers in Shanghai in the Republican China (1927-1949)] Translation by Xu Huiting on file with author. [Hereafter \textit{Gender and Profession}].
As mentioned earlier, because of the *li/fa* construct, in traditional China government officials studied only the Confucian classics. There was only informal legal training promulgated by *shiye* and *songshi*. But China’s devastating defeat in several wars during the 19th century led to reform of this educational monopoly. The Qing first promoted Japanese legal education then schools of “law and politics”. Some Qing reformers also drafted regulations for lawyers. Although they were never promulgated, they served as a foundation for laws under the Republic of China. China allowed its first male lawyers the same year the Republic of China was founded in 1912, then instituted a series of modern laws and legal institutions until 1949, although their influence was limited. Women lawyers were not allowed until 1927. Because of the history of *songshi* and the competition of foreign lawyers, early Chinese lawyers faced obstacles in obtaining work and in establishing their reputations. However, after foreign lawyers were banned from representing Chinese clients in 1927, the prestige of Chinese lawyers grew. Also, as demonstrated later in the stories of early women lawyers, they often enjoyed a reputation for integrity and justice. They were able to do this to the extent they integrated *li* and *fa*.

Formal Chinese legal education had its humble beginnings in the late Qing dynasty. Because the Japanese were viewed as successful in achieving modern reforms200, the Qing dynasty promoted Japanese legal education in order to train new officials. However, there were more law graduates than there were positions for officials. Therefore law graduates who could not become officials became lawyers. It was because of this situation that lawyers were considered inferior to officials.201 Today the situation is reversed. Many judges today have less education than lawyers.

---

200 Japan shook off extraterritoriality in 1899 after aggressive military and legal campaigns.
With the exception of the Jingshi Law School, the Chinese government did not value law as an independent subject. Most schools offered “law and politics” and focused on cultivation of governmental officials and diplomats. Most law students were thus focused on reforming China and becoming an official.\(^{202}\) This was in line with the longstanding deference given to officials and not songshi or shiye. To this day, many law schools in China, are still called schools of “law and politics”.

In 1906, two Qing draftsmen, Shen Jiaben and Wu Tingfang completed a criminal and civil procedural law. This draft provided for professional lawyers.\(^{203}\) Although this draft was never adopted, a blueprint was available.\(^{204}\) Part of the purposes of the draft for lawyers was to combat the influence of foreign lawyers. Shen Jiaben wrote the emperor expressing concern that Chinese citizens who consulted foreign lawyers were disadvantaged when the foreign lawyers’ own countrymen were involved.\(^{205}\)

The 1909 Trial Courts Tentative Regulation and Courts Personnel Regulation in 1910 specifically provided for lawyers. Although these two regulations were not executed completely, they also provided a good basis for the establishment of a lawyer system for the Republic of China.\(^{206}\)

In 1911, Dr. Sun Yat-sen’s new republic included a reformed judicial system and lawyer system.\(^{207}\) Altogether, there were three stages in the development of professional lawyers in the Republic of China. The first stage was during the Nanjing tentative government and Beiyang government period (1912-1926). In this period, the tentative Lawyer Regulation and other subordinating rules were passed. In the second stage, i.e.,

---

202 Id. at 157, 195-96.  
203 History of Lawyer System at 17.  
204 Id. at 21.  
206 History of Lawyer System at 21.  
207 Id. at 37.
the Nanjing government period (1927-1940), major amendments were made by adopting the Lawyer Regulation and other correspondent regulations. In the third stage, after the end of Nanjing government, the Law Act was adopted in 1940.  

Women were allowed to become lawyers in the second stage.

In 1912, the Republic of China published the Tentative Lawyer Regulation. This system was modeled on those of Germany and Japan. According to these regulations, lawyers had to be male, above the age of 20, have graduated from a university of politics and law, have passed the lawyers examination and be members of a lawyers association. These regulations also officially authorized lawyers to appear in court, the first time in Chinese history.

In 1913 there were about 1,700 lawyers registered with the Ministry of Justice. In 1915-6 there were around forty-nine law colleges in China. In 1915, China’s most famous law school in the south was established at Soochow University, which was founded by American missionaries from the Methodist Episcopal Church South.

In 1917 lawyers were also authorized to draft contracts and wills and to enter into contracts on their client’s behalf.

---

208 Id. at 55.
209 Id. at 40.
210 Id. at 51.
211 Li, supra note 205, at 20.
212 Id.
213 Id.
215 Id. at 4.
Also, during the first stage (1912-1926), the lawyer system was only carried out in the central judicial organs and superior provincial courts and a small number of inferior courts. Judicial independence was established at this level. But as a separation of powers was put into practice gradually, the lawyer system also started to take effect below the provincial level. As noted, during this stage, women were not allowed to practice law.

The establishment of new courts, however, was a very difficult process due to frequent battles among military officers and warlords and a weak central government. As far as the first trial court in counties is concerned, among over 2000 counties, only 91 had special judicial organs. The majority still adopted the traditional model wherein the head of the county judged cases while dealing with administrative affairs.

Even in the new courts, the transition to a professional bar was difficult. Litigants were unfamiliar with retaining lawyers. Chinese litigants also often still enlisted the assistance of the foreign lawyers who practiced in the foreign concessions, or rented zones. After 1926, however, foreign lawyers were no longer allowed to represent Chinese clients. Therefore, Chinese lawyers became prosperous and many young people decided to become lawyers. Shanghai was an especially popular venue for lawyers.

The second stage of lawyer development began in 1927. In 1927, the Beiyang government promulgated the Lawyer Regulation. The Nanjing government adopted this regulation with some slight amendments. In this regulation, the restriction on female
lawyers was finally abolished\textsuperscript{223} and foreigners were forbidden from representing Chinese.

Between 1926 and 1934 the number of members of the Shanghai Bar Association increased from 235 to 1174 and thus became the largest bar association.\textsuperscript{224} However, fierce competition also developed among lawyers because of the larger number of lawyers. In 1935 there were 10,249 registered lawyers with the Ministry of Justice.\textsuperscript{225}

The government initiated revision of the Lawyer Regulation in 1935 and made a draft in 1940. This began the third stage of lawyer development. On January 11, 1941 the government issued and enforced the Lawyer Act (amended in 1945).\textsuperscript{226} However, the lawyer regulations in this early stage provided again and again that a lawyer must not act on behalf of clients actively or positively. Specifically, the lawyers were not to “help meritless litigation or goad litigation”. These regulations authorized officials to punish lawyers at will. Officials did not want an opponent to “control” them or supervise them.\textsuperscript{227} Thus some lawyers during this period still faced the disdain of the songshi.

The shape of China’s legal profession was also influenced by the law students who had graduated from Japanese law schools and the new local republican governments.\textsuperscript{228} In Professor Sun Huei-min’s study of lawyers in Shanghai in 1911-12, however, she found that although Japanese law graduates promoted the legal profession in Shanghai, they did not adopt many features of Japanese lawyers, but rather features

\begin{itemize}
  \item \textsuperscript{223} History of Lawyer System at 97.
  \item \textsuperscript{224} Shanghai Lv Shi Gong Hui Hui Yuan Tong Ji Biao [The Statistics of Members of Shanghai Bar Association], Shanghai Lv Shi Gong Hui Bao Gao Shu [Shanghai Bar Association Reports], Issue 33 (published year not available), pp.238-39.
  \item \textsuperscript{225} Li, supra note 205, at 20.
  \item \textsuperscript{226} History of Lawyer System at 97.
  \item \textsuperscript{227} Id. at 133.
  \item \textsuperscript{228} Sun Huimin, Zhongguo Lv Shi Zhi Du de Jian Li- Yi Shanghai Wei Zhong Xin de Guan Cha [Establishment of Chinese Lawyer System—an observation of Shanghai as a main object (1911-1912)], 3 Study on History of Chinese Legal System 121,153, 2001. [Hereafter, Establishment of Chinese Lawyer System].
\end{itemize}
from the common law practices of foreign lawyers in the rented zones, or foreign concessions. This was due in part to the Shanghai government’s amendment of the Mixed Court trial system.\textsuperscript{229}

Also, according to the study of one school, Soochow University Law School, its students in the 1930’s and 1940’s came from commercial or professional families and many students identified lawyers in their family. Women students also had stronger ties to the legal profession than their male counterparts. Almost 10% of women students listed a lawyer as a family head and another 8% listed a lawyer-relative as a guarantor. Professor Conner, author of this study on Soochow Law School, notes that only twenty five years after the founding of a private legal profession in China that some 20-30% of Soochow students had lawyers as family heads or guarantors.\textsuperscript{230}

Thus, China’s Republican era marked a swift introduction of a legal profession to China. This was brought about with legislation and instituting political and law departments, law schools, and bar associations. Foreign attorneys who practiced in the foreign concessions first dominated even the representation of Chinese clients. After 1926, however, they were no longer allowed to represent Chinese clients, and this spurred the growth and prestige of Chinese lawyers. Although the first law school for women was founded in 1911 to further train the women who had participated in the Xinhai Revolution, women were not allowed to practice law until 1927. This sixteen year gap would be a fruitful area for further study. We will now discuss women’s entry into the Chinese legal profession by examining Professor Sun’s study of Shanghai’s first women lawyers. They paved the way for today’s women judges.

\textit{China’s First Women Lawyers}

\textsuperscript{229} \textit{Id.}
\textsuperscript{230} Conner \textit{I} at 32.
Although women were not allowed to practice law until 1927, modern legal education for Chinese women began in 1911 as a result of the Xinhai Revolution. There were, in fact, Chinese law schools for women, as there were in the United States in the early years. The first law school for women grew out of the fervor of women who helped topple the Qing Dynasty. Later, women studied law in co-educational institutions. The first woman lawyer in China was a Frenchwoman, Flora Rosenberg, who practiced in the French Concession in 1921. After 1927, Chinese women joined the profession in small, but visible numbers. The first Chinese woman lawyer was Zheng Yuxiu, who had participated in the Xinhai Revolution. In Shanghai, the progress of Chinese women lawyers was regularly reported on in local newspapers. These news accounts demonstrate that they received some favor, especially when they were able to demonstrate their use of li and fa, qingli and renqing. They are similar to reports today about China’s women lawyers and judges.

Legal education for women in China, like women’s education in general, parallels closely developments in the United States. In the United States, law schools were founded for women because they were rejected from other law schools. In 1898, Ellen Spencer Mussy and Emma Gillett founded the Washington College of Law in the District of Columbia; it is now the law school of American University. In 1908, the Portia Law School in Boston was created for women to attend classes in the evening. It is now the New England School of Law.\(^{231}\)

One month after the Xinhai Revolution in 1911, China’s first school of law and politics for women, which was in Shanghai, was advertised. The advertisement read:

\[^{231}\] Professor Cunnea (pseudonym of L.S., Esq.), "A Timeline of Women's Legal History in the United States”. Available at [http://members.aol.com/aacdrnnea/lawtime.htm](http://members.aol.com/aacdrnnea/lawtime.htm) (Last visited March 31, 2007).
Since the Civil Army started the revolution, we women have been as fervent as men. When the Republican state is founded, we will gain suffrage so as to illumine the whole world. In order to [train talented women] for the future Congress, the first female law and politics school will be founded in Shanghai.\textsuperscript{232}

According to Professor Sun, Mr. Li Pingshu was the founder behind the Shanghai women’s law school. He recalled:

In the winter of the year of the Xinhai revolution, many female students came to Shanghai …to collect money for the army. But they did not succeed and were desperate. I had sympathy for them and discussed with my classmate Li Baoliang about founding a women’s law school…”.

After Mr. Li’s school was founded, there were several other schools founded for women; but their quality was poor and recruiting was difficult. In 1923, Shen Yibin, a women’s suffrage advocate, founded a women’s law and politics school with her husband in the English settlement of Shanghai.\textsuperscript{233} It soon became co-educational. In 1927 there were three women graduates.\textsuperscript{234} Between 1917 and 1932, Shanghai \textit{Fa Zheng Xue Yuan} (the original name is Shanghai \textit{Fa Zheng Da Xue}) had 18 women graduates among the 444 undergraduates of law and politics departments; and 29 women graduates among the

\textsuperscript{232} Ren She Nv Zi Fa Zheng Xue Tang Zhao Sheng Guang Gao [Notice of Recruiting Students of Female Law and Politics School], Min Li Bao, December 9, 1911 at 1.

\textsuperscript{233} A report of the English periodical \textit{Zhongguo Fa Xue Ping Lun} [The China Law Review] points out that the school was founded by a group named “Shanghai Nv Quan Yun Dong Xie Hui [The Shanghai Women’s Rights Movement Association] with the goal to train Chinese women to have ability to vote. “Current Event,” 1 China Law Review 154 (1923), as cited by Sun Huimin in \textit{Gender and Profession} at 5, footnote 17.

\textsuperscript{234} Ziwang, Visit with the Lawyer Shi Liang, 2 Fu Nv Sheng Huo [Women’s Life] 54 (1936), as cited by Sun Huimin in \textit{Gender and Profession} at 5 footnote 21.
479 graduate students;[^235] in other words, women graduates accounted for 5% of total graduates.

For Shanghai Fa Xue Yuan (Shanghai Law School, the original name is Shanghai Fa Ke Da Xue), between 1931 and 1948, among the 747 graduates in the law department, there were 62 women, accounting for 8%.[^236] These numbers can be contrasted with the overall number of female students in middle schools and colleges in the region during that time. In 1930 female middle school students accounted for over 10% of total students in the Jiangsu and Zhejiang areas and 20% in Shanghai. In 1931 women students were 11.79% of all college students.[^237] Therefore, overall, few women studied law.

From 1931-1949, women accounted for 12% of graduates from Soochow Law School but their numbers increased in later years; from 1941-1949 they comprised 18% of the student body.[^238] After WWII, two women taught law at Soochow Law School:

[^235]: Page 98 of this roll mistook the fourth female lawyer Chen Yunhuang to be male. This shows that the roll was probably not accurate in telling the total number of women graduates but it does reflect the great disparity between the number of male and female students in this school”, Sun Huimin in Gender and Profession at 6, footnote 28.

[^236]: Shanghai Fa Xue Yuan Fa Lv Xi Bi Ye Xue Sheng Diao Cha Biao [A Survey of Graduates of the Law Department of Shanghai Law School in 1946], Shanghai Fa Xue Yuan Dang An [Archives of Shanghai Law School], Shanghai Archives Office, Q 247-1-61, p.5, as cited by Sun Huimin in Gender and Profession at 6 footnote 29.

[^237]: Shanghai Fa Xue Yuan 34-37 Nian Du Bi Ye Sheng Ming Ce [The Roll of the Graduates in the 1934-1937 of Shanghai Law School] Shanghai Fa Xue Yuan Dang An [Archives of Shanghai Law School], Shanghai Archives Office, Q247-1-75; Shanghai Fa Xue Yuan Li Jie Bi Ye Sheng Ming Ce [The Roll of the Graduates of Shanghai Law School] Shanghai Fa Xue Yuan Dang An [Archives of Shanghai Law School], Shanghai Archives Office, Q247-1-77 as cited by Sun Huimin in Gender and Profession at 6 footnote 30.


[^239]: Conner I at 31. The percentage of women in legal education may have been higher in China than in the United States at that time. In 1972, only 9.2% of law students in the US
Cecilia Sieu-Ling Zung and Grace M.T. Tan, both after obtaining their J.S.D. degrees from New York University Law School. Interestingly, in the United States, women constituted only 3-4.5% of law students from 1947-1967 and in 1945 there were only three tenure-track women faculty at American Association of Law Schools member schools.

Thus, political revolution and allegiance to a new China catapulted some Chinese women into the legal profession and public office. Prepared by women’s primary and secondary education, provided either by missionaries or by the Chinese government, some Chinese women moved from nei to wai, and from li to fa. Women’s law schools were founded in China after 1911. However, gradually women began to attend co-educational schools. We turn now to Shanghai’s first women lawyers, Flora Rosenberg, Zheng Yuxiu and Zhang Shunqin, believed also to be the first women lawyers in China. They received their legal education overseas because reputable Chinese options were not available for them. We will then discuss those who followed and were chronicled in Shanghai’s newspapers during the Republican era. Courageous and creative, they paved the way for today’s Chinese lawyers and judges.

The First Women Lawyers in China

The first woman lawyer in Shanghai was in fact, a Frenchwoman, Flora Rosenberg, who practiced in the French Concession in 1921. She was heralded in Chinese newspapers at the time. The first Chinese woman lawyer was Zheng Yuxiu and the second was Zhang Shunqin. They received their legal education overseas.

---

240 Conner I at 24.
242 Sun Huimin, Gender and Profession at 1.
Zheng Yuxiu (1891-1959) was first a political revolutionary. She was born in Guangdong and as a small child learned to read ancient works and poems from her mother. Like many educated girls of her day, she then studied in a Christian school. She was a student at Tianjin Chongshi Church Female School. In 1905, at the age of 14, she went to study in Japan and then joined the China League Association (中国同盟会 Zhōngguó Tóngménghuì), one of the chief organizations that later overthrew the Qing government. Then she founded the Jingjin Classmates Association with Wang Jingwei, Li Shizeng and others and organized a secret assassination plot against the Qing Dynasty. She went back to China in 1911 and joined in the Xinhai Revolution [辛亥革命].

In 1914, at the age of 23 she went to France; she received her doctorate in law in 1925. She wrote on the constitutionality of China. Thus, like Flora Rosenberg she also studied in France. In the 1920’s she was also active in international women’s suffrage activities. In 1926 she returned to China and founded a law firm with her classmate Wei Daoming, who later married her.243 She was also the first Chinese lawyer to practice before the French courts in Shanghai.244

In March 1927, she was elected to be commissioner of the tentative Shanghai government. She was also later active in the Nanjing government and served as dean of the Shanghai Law and Politics College.

Among her writings were Wo de Ge Ming Shi Dai [My Revolutionary Age]《我的革命时代》, Tong Nian he Ge Ming de Hui Yi [The Memory of Childhood and Revolution]《童年和革命的回忆》, Zhongguo de Li Xian Yun Dong [The

---

The second female lawyer in Shanghai was Zhang Shunqin. She received her license in Britain and even practiced in London and Singapore. In China, she worked in the law firm of her brother-in-law, the famous lawyer Luo Jiawei.\(^{246}\)

Another lawyer of note was Shi Liang. Shi Liang graduated from the Shanghai Law and Politics University in 1927.\(^{247}\) In 1932 she opened her own law firm where she displayed an engraved sign that stated “to protect human rights”.\(^{248}\) In 1936 she was jailed for seven months by the Guomindang for Communist activity.\(^{249}\) During that time she served as a volunteer lawyer for fellow women prisoners.\(^{250}\) After 1949 she became the first minister of justice in the People’s Republic of China.\(^{251}\)

We turn now to newspaper accounts of early women lawyers in Shanghai during Republican China.

---


\(^{246}\) Siwei, Hai Shang You Yi Nv Lv Shi [Another Female Lawyer in Shanghai], Jing Bao, October 6, 1930, p.2, as cited by Sun Huimin in *Gender and Profession* at 8 footnote 40.


\(^{249}\) *Id.*

\(^{250}\) *Id.*

\(^{251}\) *Supra* note 247.
Professor Sun Huei-min has studied both news reports and archives of women lawyers during the years 1927-1949. Although the number of women lawyers was relatively low, they were well documented in the press. They sometimes received favorable press coverage for their intelligence and competence. One lawyer was criticized for advertising herself as a woman. However, some clients also considered them less powerful than their male counterparts. Their salaries were also lower. Also, although women lawyers did not exclusively represent women, they felt a special responsibility to reach out to women clients. They sometimes advertised themselves as female attorneys, wrote advice columns for women, and provided pro bono services for women. They were courageous and creative as they blended nei and wai, li and fa. However, the judiciary eluded Chinese women during the Republican Era.

Professor Sun has found that in the 1930’s newspapers reported on the first, second, third, etc., women lawyers. In 1933 a reporter published a list of 24 female lawyers. The press also reported on how many women members of the Shanghai Bar Association there were, and what their roles in it were. In 1936 there were over 50 women members, however, this was minute compared with the 1263 male members. While women became committee members of the bar association, they never entered the decision-making center of the association.

---

252 Junyi, Nv Lv Shi 24 Ren [24 Female Lawyers], Jin Gang Zuan, April 16, 1933, p.1 as cited by Sun Huimin in Gender and Profession at 8 footnote 43.
253 Shanghai Lv Shi Gong Hui Yuan Ren Shu Ji Cheng Jie Nian Biao, 1925 [The Yearly Report of the Number of Members and Reprimand of Shanghai Bar Association, 1925], Shanghai Lv Shi Gong Hui Dang An [Archives of the Shanghai Bar Association], Shanghai Archives, Q190-1-13739, p.190. “There is a list of women members on page 192 of the same volume in which 57 female names were listed and 8 of them quit the association and thus only 49 were members”, as cited by Sun Huimin in Gender and Profession at 9 footnote 46.
In general, the reputation of female lawyers in the press was better than that of men lawyers. According to Professor Sun,

When the reporter of Zheng Yi [Justice], Wang Jianfu, reported on the spring conference of the Shanghai Bar Association in 1932, he praised Yang Zhihao for good communication, Zhou Wenji for eloquence, and Zhu Sue for a sharp writing style.²⁵⁴ And the reporter of Jin Gang Zuan, Liao Weng wrote a report “Jin Guo Bu Rang Xv Mei” (“Women are not inferior to men”) describing the heroic posture of a female lawyer named Zhou Wenji when she appeared in a local court in Shanghai:

A female lawyer named Zhou Wenji appeared in the local court the other day. There were several lawyers in the court, who did not pay attention to her. But after the court hearing began, Lawyer Zhou stood up and made a very excellent presentation with pure Peking language. She was quite calm, and presented leisurely and gracefully. She presented very clear, logical reasoning by referring to the jurisprudence and articulating her legal opinion. All the people in the court marveled at her excellent performance.²⁵⁵

Many years later, this report would match the impressions of female law students in the surveys I took in 2005. Female students today excel in international moot court competitions.

²⁵⁴ Wang Jianfu, Lv Shi Gong Hui Gai Xuan xiang Wen [ Detailed News on the Reelection of the Bar Association], Zhengyi [Justice], March 28, 1932, p.2, as cited by Sun Huimin in Gender and Profession at 10 footnote 49.
²⁵⁵ Liaoweng, Zhi Fen Bu Rang Xv Mei [Women are Not Inferior to Men], Jin Gang Zuan, September 5, 1932, p.1, as cited by Sun Huimin in Gender and Profession at 10 footnote 50.
Another judge commented on a female lawyer in his 1934 diary as follows, “…presented clearly, articulately, fairly logically. At present, there is even such a talented woman, which is very uncommon and precious.” 256

One 1934 report also remarked on the private life of a woman lawyer, Tu Kenfan, indicating that nei was just important as wai: “Ms. Tu was the minor owner of a large toggery in Nanjing Road. She owned much wealth and was a famous merchant in Shanghai. Ms. Tu is very good with her husband and therefore their marriage is very successful.” 257

Women attorneys advertised in newspapers, as did men attorneys. Tu Kuenfan presented a flattering picture of herself in the newspaper Jing Bao and then invited reporters to a banquet. The newspaper wrote afterwards,

Tu loves justice and does not care whether the client pays her. If she loses a case, she cannot eat and even weeps. Whenever she accepts a difficult case, she will consult experienced colleagues with the aim of winning. Therefore people like to retain her. 258

Another woman attorney, Han Jiazheng was reprimanded by the bar association for advertising herself as “Han Jiazheng, woman lawyer”. In a letter sent to her and noticed to all bar members, the committee stated,

256 Peng Sufu Ri Ji [Peng Sufu’s Diary], the dairy of January 12, 1934, Archives of Shanghai Bar Association, Shanghai Archives, Q 190-1-827, as cited by Sun Huimin in Gender and Profession at 11 footnote 57.

257 Chanmian, Tu Kunfan Nv Lv Shi Xi Bei Sui Yuan zhi Xing [The Female Lawyer Tu Kunfan’s Visit to Suiyuan in the Northwest], Jin Gang Zuan, December 8, 1936, p.1, as cited by Sun Huimin in Gender and Profession at 10 footnote 51.

258 Xiao Zhen, Hao Sheng Nv Lv Shi [Admirable Female Lawyers], Jing Bao, July 28, 1933, p.3, as cited by Sun Huimin in Gender and Profession at 12 footnote 61.
Lawyers serve society irrespective of their gender according to the law and the job is in essence different from business competition. Therefore the judicial department has ordered again and again that lawyers should respect themselves and pay attention to duty and ethics. Now you have published the above-mentioned advertisements in the newspaper attempting to show your special characteristics. This deed is nearly boasting and is indeed not in line with proper ethics.\footnote{Shanghai Lv Shi Gong Hui Chang Wu Wei Yuan Hui Zhi Han Jiazheng Hui Yuan Han Gao (Chu Gao), August 3, 1934 [Letter from the Standing Committee of the Shanghai Bar Association to the member Han Jiazheng, August 3, 1934], Shanghai Lv Shi Gong Hui Bao Gao Shu [Reports of Shanghai Bar Association] (publishing year not available, but should be after June 1935), p.102, as cited by Sun Huimin in \textit{Gender and Profession} at 13 footnotes 63 and 64.}

Han protested, asserting that by using “female” in the advertisement she was stating a fact and not trying to “gain attention by stressing her difference”.\footnote{Han Jiazheng Zhi Shanghai Lv Shi Gong Hui Chang Wu Wei Yuan Hui Han, August 4, 1934 [Letter from Han Jiazheng to the Standing Committee of Shanghai Bar Association, August 4, 1934], Archives of the Shanghai Bar Association, Shanghai Archives, Q 190-1-13671, p.9, as cited by Sun Huimin in \textit{Gender and Profession} at 13 footnote 65.}

Some women lawyers also wrote legal advice columns. Han Xuezhang tried a friendly tone. In March 1939 she wrote,

The issue you raised is called non-marital children in the civil law, which means children not born by a formal couple. But according to item 1 of Art.1065, ‘non-marital children may be perceived as marital children. If a non-marital child is nurtured by his or her father, it is considered to be adoption.’ Although Debao is not a marital child of Zhang Jun, since he is nurtured by Mr. Zhang and Mr. Zhang signed his name when Debao went to school there is strong evidence of nurturing. So it is of course an adoption. Since it is an adoption, Debao is considered to be a marital child. How could his
Gender and the Chinese Legal Profession in Historical Perspective: 
From Heaven and Earth to Rule of Woman? 
Mary Szto 
Page 64 of 91 
stepmother refuse to accept him? No problem, you can sue her and gain the inheritance.  

Being a woman lawyer not only attracted media attention but prejudice. The reporter of Da Gong Bao Jiang Yixiao wrote in 1936 that society perceived “female lawyers … as [not as] powerful as male lawyers in dealing with cases.” Even Zheng Yvxiu who had a doctorate in law was deemed to have lacked experience. The well-known “third female lawyer in Shanghai” Yang Zhihao was even dropped by her client right before a court hearing in a well-publicized case. 

There was also an income gap between male and female attorneys. In 1946, the Shanghai bar association required each member to report their income, which the association divided into six grades. Of the 958 members who should pay tax, 62 were listed in the highest grade Jia A, and only one, Han Xuezhang was female. In the first three grades, besides Han Xuezhang, there were only two other females, i.e. Shi Liang and Zhu Kuangzheng.

---

261 Xin Xiang [Mail Box], Shanghai Fu Nv [Shanghai Women], Vol.2 Issue 9 (1939), p.32, as cited by Sun Huimin in Gender and Profession at 16 footnote 83. 
262 Ms. Yixiao, Shanghai Zhi Ye Fu Nv Fang Wen Ji: Lv Shi Jiang Huiro Nv Shi [Interviews of Shanghai Professional Women: the Lawyer Ms. Jiang Huiruo], Da Gong Bao, Shanghai edition, September 29, 1936, p.6, as cited by Sun Huimin in Gender and Profession at 17 footnote 85. 
264 Yang Zhihao and her teacher Zheng Yvxiu were attorneys for the wife in the well-reported case in which Dr. Tang Huixuan accused his wife of fornication. But the wife fired Yang Zhihao just before the hearing was about to begin and retained the experienced and well-known male lawyers Yan Yinwu and Jiang Yiping. Bo Shi Kong Qi Tong Jian An [ A Doctor Accused His Wife of Fornication], Min Guo Daily [Republican China Daily], November 13, 1930, no. 2 of page 3; November 23, 1930, no.4 of page 2, as cited by Sun Huimin in Gender and Profession at 13 footnote 69. 
265 Shanghai Lv Shi Gong Hui Zhi Cai Zheng Bu Shanghai Zhi Jie Shui Jv Han, August 4, 1937, Archives of Shanghai Bar Association, Shanghai Archives, Q 190-1-13855, p.34. Shanghai Lv Shi Gong Hui Hui Yuan 35 Nian Du Er Jia Suo De Sui E Deng Ji Ping
Some women lawyers deemed it their responsibility to champion women’s rights. Jin Shiyin called on new female lawyers in the article “The Particular Responsibility of Female Lawyers Nowadays” in 1931, to give up the greedy image of male lawyers who served wrongdoers, and to provide legal counseling services for women for free so as to help them to be rid of oppression and to strive for rights.\footnote{Jin Shiyin, Jin Ri Nv Lv Shi de Te Bie Ze Ren [The Particular Responsibility of Female Lawyers Nowadays], Women Gong Ming [Women Resonance], Issue 52 (July 15, 1931), p.10-4, as cited by Sun Huimin in \textit{Gender and Profession} at 14 footnote 75.}

Jiang Huiruo was a volunteer legal counselor in the \textit{Fu Nv Xie Jin Hui} (Association for the Advancement of Feminism 婦女协进会). When interviewed in 1936 she stated,

I entered the law and politics school in 1930. The north and the south had been united and the women’s movement was proceeding very heatedly. However, I realized that although women received equal rights in name, in reality women were still oppressed, exploited, and ravaged by the male-dominated society although women’s status had improved a little. They did not know how to seek redress for injustice or where to appeal for their suffering. Therefore I decided to study law. I wished I could help alleviate their suffering and give those who have suffered injustice just assistance.\footnote{Ms. Yixiao, Shanghai Zhi Ye Fu Nv Fang Wen Ji: Lv Shi Jiang Huiruo Nv Shi [Interviews of Shanghai Professional Women: the Lawyer Ms. Jiang Huiruo], Da Gong Bao, Shanghai edition, September 29, 1936, p.6, as cited by Sun Huimin in \textit{Gender and Profession} at 15 footnote 76.}

Like other women volunteer lawyers, Jiang sacrificed in order to provide free legal services to needy women. For example, she did not receive any payment from the
women who sought help from the association but instead had to spend her own money for transportation and documentation fees. But as long as she could resolve her client’s troubles, she felt satisfied, comforted and joyful.\(^{268}\)

Professor Sun has also studied the archives of the law firms of Yv Xiufang and Shi Liang. During 1946 and 1949, Yu Xiufang dealt with at least 52 cases. Her main business was criminal defense cases and her clients were also mainly male. Of the 52 cases, there were 11 civil and 29 criminal cases. The 11 civil cases could be divided into two types: marriage cases (6) and tenancy cases (5). In the 29 criminal cases Yv dealt with, at least 5 of them were caused by marriage conflicts and six clients in these 5 cases were females.\(^{269}\)

As with Yv Xiufang, the clients of Shi Liang and Lu Shaohua’s law firm were mainly male. In 1947, Cao Qingyun destroyed the reception room of Shi Liang’s law firm simply because Shi Liang was his wife’s attorney in the marital dispute.\(^{270}\)

Thus, China’s earliest women lawyers, although few in number, opened their own offices, advertised their services, joined bar associations, and enjoyed various reputations for being articulate, skilled, kind, passionate for justice, and less competent than their male counterparts. Some sought to represent women clients and to write advice columns for women, but in general they represented both men and women, and sometimes mainly men. As pioneering women who lived nei and wai lives, they were courageous, and creative in integrating li and fa. We will now discuss China’s first woman judge, Zhang Jinlan. In contrast to today’s large numbers of women judges in economic reform-era

---

\(^{268}\) Id. at 7.

\(^{269}\) Gender and Profession at 17.

\(^{270}\) Tian Huijing (the clerk of Lu Shaohua and Shi Liang’s law firm) Zhi Cao Qingyun Han, December 20, 1947 [Letter from Tian Huijing (the clerk of Lu Shaohua and Shi Liang’s law firm) to Cao Qingyun, December 20, 1947], Shanghai Lv Shi Gong Hui Dang An [Archives of Shanghai Bar Association], Shanghai Archives, Q 190-1-14557, p.6, as cited by Sun Huimin in Gender and Profession at 18 footnote 95.
China, Republican China did not have its first women judge until approximately twenty years after women were allowed to practice law. This could be because the prestige of judges may have been higher in the Republican era. In the Republican era, lawyers still had to deal with the memories of the *songshi*. So today’s large number of women judges is unprecedented.

*China’s First Woman Judge*

China’s first woman judge was Zhang Jinlan.\(^{271}\) Like Ban Zhao centuries earlier, she was influenced by her father’s and brother’s work. Also like Ban Zhao she advocated the harmonization of *yin* and *yang*, *li* and *fa*. Zhang’s father was a famous lawyer, and her brother worked in a local court. She graduated first in her class at Xibei University in 1942.\(^{272}\) She decided to take part in the judicial officer examination in Xian and walked alone for over 200 li to travel there. She became a judge advocate in Xijing in Shanxi. In October 1948, she flew to Tainan from Nanjing and was appointed judge of the Tainan court. She spent most of her career in Taiwan.

In one famous case adjudged by Zhang, a female lecturer Zhu Zhenyun committed suicide because she was abandoned by her lover who had a wife on mainland China. In the first instance, the man Wang Shi’an was sentenced to three years in jail. Wang appealed. On appeal, in opposition to public sentiment about the case, Judge Zhang announced that Wang was not guilty and released him. Zhang stated that “Wang is morally obligated to undertake liability for the female lecturer’s death; however, in the legal sense, Zhu is not only an adult, but also highly educated, and therefore should be able to reason rationally”.\(^{273}\)

\(^{271}\) The first woman judge after 1949 was Fei Lulu. She served as a judge of the Higher Court of Tianjin for five years. Then she spent twenty years “branded as a rightist ostracized by society.” “Woman recalls a life helping others”, China Daily, March 4, 1996.

\(^{272}\) See http://www.huaxia-han.com/bbs/dispbbs.asp?boardid=8&id=45939

\(^{273}\) *Id.*
In April 1956, Zhang was appointed to be a judge on the Supreme Court of Taiwan. Upon the 30th anniversary of her graduation from college, she wrote that a woman should learn the strengths of men and avoid the weaknesses of women and cooperate with men in order to make great achievement in the society.\(^{274}\) Thus, in words sounding like her ancient sister Ban Zhao, Zhang’s success appears to be at least in part due to a *yinyang* harmonization of gender roles.

Thus, during the Republican era, the legal profession was formally established. As political revolutionaries, women gained first access to legal education and then in 1927 the formal right to become lawyers. Although their numbers were few, they received favorable press coverage and a few built large and lucrative practices. Some especially undertook to help indigent women clients and address women’s rights. After about twenty years, China had its first woman judge. Like Ban Zhao many centuries before, she advocated a harmonization of gender roles. We turn now to law and gender in the People’s Republic of China. Both a renewed disdain for *fa*, and surge in legal professionalism have led to the phenomenon of the peaceful rise of the Chinese woman judge. Part IV is our final chapter in the history of law and gender.

**Part IV: Law and Gender in New China**

In 1949 Chairman Mao founded the People’s Republic of China. New China brought women’s equality to the forefront for the whole nation. However, Professor Mayfair Yang and others have called Maoist China, especially the Cultural Revolution (1966-1976), an era of “gender erasure” where women were denied a separate identity,\(^{275}\) and the recent years of economic reform an era of “female commodification” where

\(^{274}\) *Id.*

\(^{275}\) Mayfair Mei-hui Yang, “From Gender Erasure to Gender Difference: State Feminism, Consumer Sexuality, and Women’s Public Sphere in China”, in Mayfair Mei-hui Yang, Editor, *Spaces of Their Own: Women’s Public Sphere in Transnational China* 41 (1999).
skimpily clad women regularly adorn advertising. The One-Child Policy introduced in 1979 has also skewed the number of females in China. To this day, women also represent a small percentage of government officials. In 2007, they made up 20 percent of the parliament and less than 8 percent of the Communist Party’s elite Central Committee. Although the legal profession suffered a setback after 1949, and near extinction during the Cultural Revolution, since then, lawyers have grown in number and prestige. And women have joined the ranks of judges in disproportionate numbers due to the general lack of prestige for judges and lingering Confucian gender stratification. However, as Judges Song and Li demonstrate, this entry is also due to the legacy of the qingguan and can be revolutionary as well.

In September 1949, when the “Common Principles” were passed at the Chinese People’s Political Consultative Conference, women made up 10.4% of the representatives and it was announced that the government was “discarding the feudal system of oppressing women.” In 1950, a new marriage law was promulgated that allowed freedom of marriage. Mao also proclaimed that “women hold up half the sky” and women entered the ranks of men who worked outside the home. In 1956, women made up 12% of national people’s representatives.

The new government also abolished the former legal system and profession. In fact, lawyers from the old regime were deemed “litigation tricksters” and

---

276 Id. at 47.
279 Id. at 97.
“representatives of an exploiting class”. So this was ironically a fallback to the legal skepticism of the imperial era towards *songshi*.

During the 1950’s China borrowed heavily from Soviet legal models and a new lawyer system did allow for defense attorneys. In 1957 there were around 2,500 full time lawyers and 300 adjunct lawyers, however, lawyers were public servants and no private law firms were allowed. In the middle of 1957, during the Anti-Rightist Movement, lawyers were criticized as Rightists and sent to the countryside and in 1959, the Ministry of Justice was dismantled. Also, during the devastating Cultural Revolution of 1966-1976, higher education and a formal legal system was halted, and lawyers and judges were sent to the countryside to work, along with other intellectuals. Although Confucius was one of the main targets of the Cultural Revolution, this also was an ironic recall of his view of law and lawyers. The first woman judge after 1949 was Fei Lulu. She served as a judge of the Higher Court of Tianjin for five years. However, then she spent twenty years “branded as a rightist ostracized by society.” During the Cultural Revolution she was forced to clean toilets.

Since 1978, China’s Open Reform Policy has led to the reestablishment of its law schools and formal legal system. This period also introduced a socialist market economy and the “One Child Policy”. Many have argued that both have led to new discrimination against women in China, including female infanticide, forced abortions, and job discrimination. Female infanticide and forced abortions are due in part to the traditional preference for sons discussed earlier. China’s economic policies have led to its meteoric rise to being the world’s fourth largest economy today.

282 *Lawyers in China* at 20.
283 Id.
284 *Supra* note 271.
285 Id.
In 1979 the Ministry of Justice was re-established and it was authorized to administer the legal profession. In 1980 the Provisional Regulations of the People’s Republic of China on Lawyers was promulgated. Lawyers were defined as “legal workers of the State”. From 1979 to 1984, there were about 11,000 lawyers in China. By 1992, there were 45,666, and by 1997, 98,902 lawyers. In 1986 the Ministry of Justice began administering a national bar examination. The same year the All-China National Lawyers Association was established. In 2005 there were 244,000 candidates for the examination. In 2008, there are over 143,000 lawyers in China.

In 1988 the first co-operative law firm appeared in Baoding city in Hebei province. In 1993 the Ministry of Justice issued Proposals on Deepening Lawyers’ Reform that allowed for partnership law firms. In 1995 the Judiciary Law outlined educational and legal standards for judges. In 1997 the Lawyers Law came into force. Lawyers are now characterized as “legal practitioners” and no longer as “legal workers of the state”. In 2005 the Lawyers Law was revised to allow criminal defense attorneys more access to clients and evidence, and greater ease in forming law firms.

Lawyers and judges sometimes have a tense relationship: ill-trained judges are criticized for ignoring legal arguments made by attorneys. In one extreme case in 1995, lawyer Zhou Chengxi was handcuffed by three judges in an intermediate court and beaten

---

287 *Lawyers in China* at 20.
289 *Id.*
292 *Lawyers in China* at 20.
293 *Id.*
294 *Id.*
for over 75 minutes because he “insisted on his opinion in a civil case.” Lawyers sometimes resort to bribes and other favors to persuade judges. Lawyers have also been kidnapped, detained, and punished for representing their clients. Judges also may be punished for rendering incorrect decisions.

Lawyers also sometimes have adversarial relationships with their clients because of some clients’ failure to pay lawyers’ fees. In his 2001 study of Beijing lawyers and their screening conversations with potential clients, Professor Ethan Michelson quotes Lawyer Zhong, who states, “As a lawyer, you must conquer your client. 70 percent of a lawyer’s time and effort is spent on clients…The contradictions between lawyers and clients are the most concentrated. If the lawyer loses control, the lawyer will suffer the most harm of all…This is ten years of experience in a nutshell”. Also, lawyers sometimes screen out problematic clients by using moral stereotypes, e.g., divorcees are difficult people. Although Michelson’s article argues that today’s lawyers obstruct justice because of this type of screening, ironically, this defensive posture by today’s lawyers harks back to accusations against songshi that songshi obstructed justice because they encouraged litigation.

In 1995 the State Council announced that “equality of the sexes” was basic national policy and began the Program for Chinese Women’s Development. In 1998, women represented 21.82 percent of all representatives elected to the ninth National People’s Congress. In 2000 women represented 36.2% of all cadres in public management positions.

---

296 Lawyers in China at 20.
298 Id.
299 Id. at 21 (2006).
300 Wang, supra note 278, at 98.
301 Id. at 99.
Thus since 1949, the history of the People’s Republic of China shows first a dismantling of the legal profession that was earlier in place, and then after the Cultural Revolution, a surge in personnel unprecedented in world legal history. This surge has accompanied phenomenal unprecedented economic growth. The history of women in the PRC shows a state policy of gender equality. This has led to large numbers of women in the legal profession and judiciary. As described below, however, this state policy has been harmonized with Confucian gender roles. Chinese women are expected to be the new li and nei of the legal profession.

Today’s Chinese women lawyers and judges

The number of Chinese women lawyers and judges has been steadily increasing. However, in newspapers and books, their roles as both legal professionals and family members are often presented as conflicting. Also, their perceived female traits are pointed out in how they handle themselves professionally. In general, Chinese women lawyers and judges are praised when they are able to harmonize their roles as wives, mothers, and professionals. Also, they are praised when they bring traditional virtues such as diligence, compassion and patience to their work. Thus, contemporary accounts recall ancient authors like Ban Zhao, and the newspaper reports of the 1930’s. Women are portrayed in a positive light when they balance li and fa, nei and wai and see their roles as complementary to that of men. Interestingly, some of today’s women lawyers and judges see their work as gender-neutral and usually do not portray themselves as using feminine traits in their work. After reviewing recent statistics about women lawyers and judges, and their perceived characteristics, we will hear the accounts of six women judges, including Judges Song and Li, whom we began our article with.
In 1994 the Chinese Women Judges Association was formed as part of the All-China Women’s Federation. In 1996, while there were around 98,000 lawyers in China, there were 156,000 judges. Of that number, 15% were women judges. Four years later, there were 21,000 female judges or 19% of all judges. However, in certain courts the percentage of women judges was much higher. In 1998 it was reported that 43.5% of all judges in Beijing’s Xicheng district were women. In 2004 38.6% of all judges in Shanghai were women. Interestingly, that same year, only 25% of all federal judges in the United States were women. The higher percentage of judges in at least two of China’s cities may be due to the number of female law graduates there who choose judgeships. Many judges outside of China’s cities have not received formal legal education.

Book accounts herald feminine advantages for lawyers and judges. In a 2002 book on Shanghai’s famous women lawyers, it was noted that 21.8% of lawyers were women. Moreover, the text went on to point out the “natural advantages” of female lawyers,

They are rather practical when analyzing the issues. And they also cherish their current positions with a great ambition and passion. They are kind and

---

302 "Judiciary promotes women’s role”, China Daily, Oct. 9, 1996.
303 Id.
304 Wang, supra note 278, at 99. Another statistic was cited in 1996. According to the China Daily, there were 23,000 women judges, or around 15% of all 156,000 judges. “Judiciary promotes women’s role”, supra note 302.
306 Fa Ting li de Gu Shi—Shanghai Nv Fa Guan Si Fa Wei Min Shi Lu [Stories from the Court—The Record of Shanghai Female Judges in Judging Cases] 1(Zheng Zhaofang, et al. ed., Shanghai ren min chu ban she, 2004). [Hereafter, Stories from the Court]
considerate. They are apt to sympathize with the weak and try their best to resolve difficulties for them. Besides, they are very careful and fastidious.\textsuperscript{309}

In a book published in 2004 about women judges, they were noted to have peculiar prudence and exquisite character and to also be very passionate and patient.\textsuperscript{310} On March 9, 2005 it was reported that 34 women judges were recognized as “national outstanding judges” by the Supreme Court of China. Echoing ancient \textit{nei/wai} principles, Gu Xiulian, the chair of the National Women’s League and associate chief of the Standing Committee of the National People’s Congress, praised the female judges and staff for coping with the double pressure of work and family, study and life and noted their perceived feminine traits: “In the court, they are just judges and in the family, they are good daughters, gentle wives and kind mothers.\textsuperscript{311} Female judges play an important role in the court. They are capable and experienced and rational, and meanwhile they are considerate, sentimental and gentle”.\textsuperscript{312} This harks back to the ancient uses of \textit{qingli} and \textit{renqing} by magistrates and the writings of Ban Zhao.

We now turn to other newspaper and book accounts of five women judges, two from 1998 and three from 2004-2005, that track Chair Gu’s statements. The first two, Judge Zhao and Judge Xu, are part of Beijing’s Xicheng District Court. Judge Zhao’s account illustrates the perceived conflict between judging and being a wife and mother. And interestingly, she speaks of overcoming feminine traits in the courtroom. Judge Xu’s account illustrates the low prestige of the judgeship.\textsuperscript{313}

In 1998 Judge Zhao Qingli had been a judge for twelve years. Her husband is a businessman who frequently travels to India and her son was four years old. A China Daily account states:

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{309} Id.
\item \textsuperscript{310} \textit{Supra} note 306.
\item \textsuperscript{311} Id.
\item \textsuperscript{312} Id.
\item \textsuperscript{313} \textit{Supra} note 305.
\end{itemize}
\end{footnotesize}
In court, she wears a tight-fitting uniform and sits with the national emblem on the wall behind her. “Does the plaintiff have additional remarks?” the judge asked in a low, dignified voice, making her authority clear to the courtroom. But after the session, Zhao Qingli is relaxed and soft. Dressed in pink, with a short hair-cut, she speaks in a gentle voice. Away from the court, Zhao admits she is a very different person. “It will be hard for me to control the situation if I talk only in a gentle voice,” said Zhao. “But if I take my court persona home, my son won’t live with me,” she said with a smile.\(^{314}\)

Later in the article, Judge Zhao states that in the court there is no “real gender difference…It is a question of being what I need to be when I’m in the court. When I’m doing my job, I’m very determined and decisive because that’s how I have to be…we have to be strong-minded and aggressive. But of course, we must hold onto justice first of all.”\(^{315}\) Judge Zhao also states in the article that because of his travels her husband is unavailable to do housework; in the previous three months she has slept only three hours a day and she reviews court files deep into the night, while her four year old son is asleep.\(^{316}\)

Another judge in Judge Zhao’s court, Judge Xu talked about vacillating over her career choice. Although she enjoyed her work, she almost decided to change her job. What convinced her to remain were the words of a schoolmate at her twentieth class reunion. He had moved to the United States and become very wealthy through the securities business. Although everyone else thought he was the most successful graduate in the class, he pulled Judge Zhao aside, took a picture with her and told her how honored he was to know a woman judge in China.\(^{317}\)

\(^{314}\) Id.
\(^{315}\) Id.
\(^{316}\) Id.
\(^{317}\) Id.
We now turn to 2004-5 accounts of three other judges. They illustrate how women judges are praised for traditional virtues and how at least one of them harmonizes her role with male judges. They are Judges Song and Guo in Beijing, and Judge Yang in Shanghai.

As mentioned at the beginning of this article, Song Yushui is a renowned judge in Beijing. She was chosen as one of the top ten legal professionals in China in 2004 (2004十大法制人物) and has been called a female Baogong. She has served as director of the intellectual property division of the Haidian court in Beijing. Her colleague Ma Xiurong regards Song as a judge who combines traditional virtues with modern savvy. According to Ma, these traditional virtues are diligence, and respecting and understanding others. Judge Song’s savvy is combining modern jurisprudence with the circumstances of China. For example, “What is justice? What should a judge do? Does justice mean that judges should sit there, separated from the people, alone, stony? Song listens to the parties patiently; this role is needed because at present, the people do not simply focus on a fair judgment but expect comfort from the judgment”.

Song herself mentions that “we also want to help the parties to accomplish their interests as far as possible”. When questioned about the differences between women and men judges, Song downplays them and answers that men and women judges must work together harmoniously,

Men and women constitute a harmonious society, both female judges and male judges are undertaking the holy mission of judging. Female judges often work beside male judges who have strong abilities in leadership and work with boldness. As far as judges as a profession is concerned, there are not too many differences between men and women... Harmony and balance is the object sought.

by judges. Therefore as a female judge, one should not attack men because of gender; rather one should respect oneself, be independent, and respect male judges so that men will respect women accordingly and peace may be accomplished.

Song also references the spiritual nature of judging, when she states that “Promoting and upholding justice is a judge’s sacred responsibility.”\textsuperscript{319} Also, “Sternness and solemnity are a judge’s external image. But a judge’s heart should be full of kindness and sympathy as well as a passion for justice.”\textsuperscript{320} According to the China Daily, she also said that a “judge should try to promote a close relationship between her-or himself and the parties involved in any case, so that they can communicate more readily with the judge and accept the judges’ decisions or ruling.”\textsuperscript{321}

Guo Qiuxiang, our fourth judge, is a judge in the criminal division of Shijingshan court in Beijing and has also been recognized as a model judge. She is considered firm but gentle.\textsuperscript{322} In one case involving complex accounting she uncovered 100,000 yuan more in wrongdoing. Due to her diligence, most economical criminal cases are given to her for hearing.\textsuperscript{323}

She has also been praised for judging juvenile criminal cases with the traditional virtues of patience and compassion. Once she judged a case involving a teenager whose father was dead and whose mother had married another person. After the hearing, she gave the boy her contact number and welcomed him to turn to her if there was any difficulty. The boy was penniless after being released and was almost in despair. He then turned to Judge Guo. Guo encouraged him to live a positive life and the boy was then

\textsuperscript{319} Supra note 2.
\textsuperscript{320} Id.
\textsuperscript{321} Id.
\textsuperscript{323} Id.
willing to go back to his hometown to live a new life. Judge Guo gave him some money and bought him a ticket home.\(^{324}\)

Our fifth judge, Gong Yanmin \(\text{龚燕敏}\), the chief justice in the first Civil Division of the Nanhui Area Court, Shanghai\(^ {325}\) has also been commended for her balance of law and compassion. She handled a case that involved a dispute between a father who wanted custody of his daughter and a grandfather who had cared for the daughter after the mother had died.\(^ {326}\) The father had never cared for his daughter before and the ten year old girl, Ye Fan, wanted to continue to live with her grandparents.\(^ {327}\)

Judge Gong patiently persuaded the two parties to calm down and helped them to think from the perspective of benefiting the child. In addition, the judge even visited Ye Fan’s school to interview her. Judge Gong then decided that according to civil and marriage law, the father’s duty as a parent had not been terminated. However, a transitional period of six months would be allowed for Ye Fan to continue to live with her grandparents.\(^ {328}\) Neither party appealed and the case received favorable press.\(^ {329}\) Wang An, associate head of Nanhui Area Court commended Judge Gong’s decision for its exquisite and considerate nature. He wrote, “It is a creative application of the law and shows love for a minor.”\(^ {330}\) Also, “Gong found the best combination of law and emotion and achieved a great social effect. She is really a professional judge.”\(^ {331}\)

Our last profile in this section is our most controversial but illustrative example of the powerful legacy of the \textit{qingguan}. As mentioned at the beginning of this article, in 2003 Judge Lǐ Huījuān (李 慧娟) ruled that a provincial seed law was invalid because it

\(^{324}\) \textit{Id.}  
\(^{325}\) \textit{Stories from the Court} at 1.  
\(^{326}\) \textit{Id.}  
\(^{327}\) \textit{Id.}  
\(^{328}\) \textit{Id.} at 2-3.  
\(^{329}\) \textit{Id.} at 3.  
\(^{330}\) \textit{Id.} at 3-4.  
\(^{331}\) \textit{Id.} at 4.
conflicted with a national law. This was the first time in China’s history that a judge had so ruled. A masters graduate of the prestigious University of Politics and Law in Beijing, Judge Li served at the Luoyang Municipal Intermediate Court in Henan Province. In a dispute between two local companies, she was the presiding judge on a panel that had to decide which damage calculation to use, that of the national Seed Law, or of a seed pricing regulation promulgated by the Henan Provincial People’s Congress. The case was apparently politically charged and twice Judge Li was approached by the parties while the case was pending. She avoided contact with them.

Based on their understanding of Article 64 of the Legislation Law, Judge Li’s panel not only applied the national law, but also stated the conflicting provincial law was “naturally” invalid [自然无效]. When the Henan Provincial People’s Congress heard of the decision, Judge Li and Judge Zhao Guangyun, who had approved the opinion, were dismissed from their jobs. Distraught, Judge Li contacted her husband who worked in Beijing as a software developer. Her husband urged her to seek help in Beijing. She wrote a “long passionate letter” to the China Women Judges’ Association in which she “promised to ‘undergo criticism and education’ if she had erred. But if I’m right, I will protect my integrity and defend the integrity of the law, even if it means being like a

---

332 Yardley, supra note 4.
334 Yardley, supra note 4.
335 Supra note 333. Article 64 states in part, “Where a national law or administrative regulation enacted by the state has come into force, any provision in the local decree which contravenes it shall be invalid, and the enacting body shall amend or repeal such provision on a timely basis.” The Legislation Law of the People’s Republic of China.
337 Yardley, supra note 4.
338 Id.
moth that flies into a flame. ‘” 339 She also wrote, “An order by those in power has forced local leaders, none of whom dared to stand on principle, to sacrifice me. I’m just an ordinary person, a female judge who tried to protect the law. Who is going to protect my rights?” 340

The Association “told [Judge Li] that she had been treated too harshly and agreed to contact someone at the People’s Supreme Court.” 341 This ultimately led to media attention and support from legal scholars and attorneys for Judge Li. They petitioned the National People’s Congress and organized a conference at Tsinghua University’s law school on judicial reform. 342 China’s legal framework allows for the Standing Committee of the National People’s Congress to invalidate a law. Up until the controversy over the seed case, however, there was no mechanism in place for the Committee to review laws. Since then the National People’s Congress has set up a review panel and Judge Li’s job was reinstated. With increasing legislation, many conflicts exist between laws, however, judges usually enforce the national law without declaring the local law invalid. Judge Li and her panel took the bold step of stating the provincial law was invalid.

According to Judge Li, the provincial law was invalid because of the Legislation Law; her ruling merely stated its invalidity and did not cause it. 343 Xiao Taifu, a member of the Beijing Lawyers’ Association, has described Judge Li’s approach as trailblazing [chuàng xīn 创新] and not in conflict with the Constitution. 344 As mentioned earlier, Judge Li’s role models were her official father who refused bribes and the ancient judges she watched on television, the qingguan.

339 Id.
340 Id.
341 Id.
342 Id.
343 Zhao, supra note 336.
344 Id.
Thus China’s legal profession, though halted during the Cultural Revolution, has grown exponentially since then. Women have not only joined its ranks but have especially swelled the ranks of the judiciary in urban spots. In newspaper and book accounts, these women practitioners and judges are noted for balancing *li* and *fa*, *qingli* and *renqing*, law and emotion, work and family and displaying female virtues. Echoing their ancient sister Ban Zhao, they themselves sometimes advocate a complementary and harmonious existence with their male counterparts. However, unlike Ban Zhao they sometimes consider their work gender-neutral. Judges Song Yushui and Li Huijuan, mentioned at the beginning of this article, also identify with China’s *qingguan* and Judge Song has been called a female Baogong. Judge Li has made history as the first judge to rule a provincial law invalid. Her role models for pursuing justice included the ancient *qingguan*. And her appeal to the China Women Judges’ Association as a “female judge” led to her vindication after she was dismissed from her job.

I will now discuss observations about gender and law from surveys and interviews conducted among one legal community in Fujian Province in 2005. They also imply a Confucian gender distinction of *nei* and *wai* and explain why so many women have become judges. However, they fail to state the historical significance of women in the legal profession and judiciary and their potential to impact China’s rule of law.

*2005 Surveys and Interviews*

In the spring of 2005 I conducted surveys and interviews of Chinese law students, professors, lawyers and judges when I was a visiting professor in Fujian Province. I discovered attitudes about law and gender that reflect ancient Chinese norms but which have been creatively adapted to contemporary legal professional circumstances.

Altogether I interviewed around 30 persons and received 60 written surveys. I inquired about reasons for attending law school, aspirations for after law school, reasons
for professional choices and gender perceptions in and out of law school. The results revealed that as in the U.S., media images are a powerful influence on prospective law students. Also, during law school, female students are perceived as more diligent and receive higher grades while male students are perceived as more creative. Male professors are perceived as better classroom instructors and researchers because women professors have home and family responsibilities. Females are discouraged from entering law firms because they are considered more suitable for men. Civil service positions and judgeships are considered more suitable for women because they provide a stable and secure environment for women. Thus women have become the new li in an updated li/fa construct. I conclude that a revolutionary space has opened up for women judges in our present era.

Reasons for Entering Law School

Very few students came from families with lawyers, because their parents were in the generation that could not attend college because of the Cultural Revolution. However, they had parents who encouraged them to attend law school because the legal profession is considered prestigious in China today. This is a far cry from the days of the late Qing dynasty, the early days of the Republic, and the time of the Cultural Revolution. Several female students mentioned that while they were growing up they watched television shows produced in Hong Kong about lawyers. One remarked that when she was around 10 years old in 1992 she watched a Hong Kong TV show with a female lawyer named Xuan Xuan. Xuan Xuan’s father was a judge, and her sister was a lawyer also. Xuan Xuan was attractive, well-dressed and a successful and honorable lawyer. She was smart, articulate and aggressive in court. However, in her personal life she was gentle. She was not married, but had a good-looking boyfriend. Thus, while Judges Song and Li looked to stories about Judge Bao to inspire them, today’s generation of female students look to Hong Kong TV shows, which of course, have been influenced by the British legal system. None of the students mentioned Judge Bao.
Gender Perceptions in Law School

Students and faculty of both genders agreed that female students were more diligent and received higher grades. They are better able to memorize materials. Also, there is a perception that females have better English skills and therefore now dominate the moot court teams that participate in prestigious international competitions that use English, e.g., the Jessup Competition and the Willem C. Vis International Commercial Arbitration Moot in Vienna. However, students and faculty members of both genders commented that male students were more logical, creative, independent, big picture-oriented and were preferred as research assistants. Students mentioned that female faculty were less humorous in the classroom and stuck pretty close to their texts. They were gentle and more caring about students. Students sometimes preferred male faculty because they were humorous, more lively lecturers, and more systematic. Among students and male faculty there was a perception that women faculty were not as accomplished scholars because they had the demands of taking care of children, parents and in-laws. Also, students remarked that if a woman professor was unmarried, she was pitied. Thus, women expect to marry and raise children. A single life is considered odd.

View of Law Professors

One professor who had graduated in the 1980’s remarked that at that time lawyers had a low social status because they were perceived to be helping “bad people”. She

345 Cui Yuqing, “China has a strong demand for lawyers”, China Economic Net, October 11, 2005.
considers some female students as “too passive” and she encourages them not just rely on the achievements of their boyfriends and husbands. She mentioned that most well-known excellent lawyers are male; women lawyers have child-care responsibilities. Also, if a woman is a successful lawyer but has a poor family life, this is considered disgraceful. She also mentioned that some women who were successful lawyers had been divorced by their husbands, therefore some women prefer to be unsuccessful lawyers.

One male professor noted that women professors get along with students better and may be more concerned with the overall well-being of their students. Another male professor noted that female students are more diligent and speak up more in class. Two male professors noted that male students are more logical.

One male professor noted that eight to nine years ago, there were more male students than female students; since then there are now more female students than male students. In the entering class of 2004 undergraduate law students, 2/3 were female. However, it is much easier for male students to get jobs. Law firms require ying chou (entertaining clients), chu chai (business travel) and long hours.

When asked what percentage of housework he did, one married male law professor wrote 20%. Thus, among professors there is also a clear gender-role consciousness. Female professors are expected to subordinate their professional work to caring for their families and a successful female should be wary of alienating a spouse.

Gender Perceptions about Law Firms

According to popular perceptions among students, law firm practice includes the necessity of entertaining clients (应酬 yīng chōu) and business trips (出差 chū chāi). Ying chou can take a variety of forms, for example, drinking with clients and judges and
sometimes providing evening entertainment including female companions. *Ying chou* literally means obligatory rewards and the character for *chou* is composed of the characters for wine vessel 酉 and land 州. (According to one source outside of this survey, law firm negotiations in Beijing are often carried on with heavy drinking). Female students were discouraged from entering law firms for these reasons. Such a lifestyle was not conducive to raising a child, housekeeping, and one’s responsibilities to one’s parents.

One female law student remarked that it was dangerous for a woman to become a lawyer because clients might take revenge on a lawyer. Also another remarked that if a woman is a civil servant, it’s easier to find a husband because a civil position is a stable job. Another female student remarked that “all lawyers said their work is too difficult for females and not good for family life.”

According to one female attorney, law firms require young lawyers to find their own clients and their salaries are based on these cases. She said that women have a harder time getting clients. She also agreed that lawyers have to *ying chou*. She said that women attorneys were more detail-oriented, diligent and patient. What she liked about her position was the flexibility of it, since she could decide how much time to invest into her work. Before she had a child she would often eat with colleagues and not leave work until 9pm. After she had her child, she decided to limit her hours to 8.30am-5pm. She said that some clients don’t want a woman attorney; however, women clients involved in a divorce sometimes do want a female attorney.

One married female lawyer revealed that she did most of the housework. Two male lawyers revealed that they did 30% of housework and their wives 70%. One male lawyer wrote that a maid did the housework and a nanny did the child-rearing. One female lawyer wrote that she did 50% of the housework; she also wrote that some clients doubt her ability.
Several lawyers wrote that they were pleased with their salaries and this was a source of job satisfaction for them. Thus, the perception of law firms is that they are not the best environment for women because they would interfere with family responsibilities.

Mayfair Yang’s book on the art of *guanxi* indicates that there may be a gender divide on the ability to attract clients.\(^{346}\) Based on interviews she conducted in the 1980’s she found that there was a perception that women should not be seen too often in public; this would damage their social reputations. Women, however, could be active in guanxi networks with other women and over “small things”.\(^{347}\)

***Judges***

By passing the national bar examination, law graduates may become judges right after school. Judges receive a fixed salary and have stable hours, though with increased case loads, these are getting longer and longer. One married female judge revealed that she did 80% of the housework and 70% of the child-rearing. Another married judge revealed she did 80% of the housework and child-rearing. Another married judge revealed that she did 70% of the housework and 80% of the child-rearing. Another revealed that she did 60% of the housework and child-rearing. One revealed that she took care of her daughter, while her husband did the housework. Another married judge revealed that she did 80% of the housework. Finally, one judge wrote that female judges obey ethics rules better and refuse dinner invitations from parties.

I interviewed one legal journalist. She said that in one year she had observed around 200 trials. Around 50% of the judges were women, however, only 3-4 main lawyers handling these cases were women; ten assistant lawyers were women. She

---

\(^{346}\) Yang, *supra* note 25 at 78-85.

\(^{347}\) *Id.*
thought that being a judge was well-suited to the female personality, however the salary was considered low, only two to three thousand yuan a month. She said that the female judges were more serious and wise (明睿 míngruì); the male judges were more imposing (威慑力 wēishèlì).

Thus, according to surveys and interviews conducted in one legal community, today’s lawyers, law students and judges are keenly aware of gender roles and have adapted complementary Confucian categories of nei and wai accordingly. Although male students and professors are perceived to be more creative and outgoing, female students and professors are considered to be more diligent and family-oriented. Female students are quickly becoming the majority of law students. They are encouraged to become judges because this is more conducive to their family roles as nei. Men are encouraged to become lawyers because this is considered wai and involves business trips and entertaining clients. The practice of ying chou appears to be an updated version of ancient rituals. Women judges, although facing increasingly longer hours, still do most of the housework.

Conclusion

China’s new legal profession, like the rest of China, is in the process of a historic sea-change. However, although it represents a new institution in China’s long history, ancient attitudes towards gender and law influence its contours today. The ancient Chinese believed that Heaven and earth and yinyang should be in harmony. Women are yin and men are yang. Yang was considered superior to yin so men were considered superior to women and their role was to be wai, outside the home, while women were supposed to be nei, or inside the home. As the Emperor mediated between Heaven and earth, sons mediated between ancestral spirits and earthly descendants. Husbands navigated the divide between the family home and the outside world.
The ancient Chinese also believed that law is *yin* and *li*, or morality, is *yang*; therefore, morality is superior to law. Because of the *nei/wai* distinction, only men could become officials who acted as magistrates (there was no separate position for judges), or *shiye*, their advisors, or *songshi*, the often despised advisors to litigants. However, women nevertheless promoted *li* and justice in their families, and indirectly in society through influencing their husbands, sons and brothers. China’s more celebrated judges were called *qingguan*. They were legendary, spiritual, wise and just judges. Although women could not be *qingguan*, inspiring stories of virtuous, righteous and wise women were catalogued in the ancient *Lienüzhuan* as they promoted virtue from the inner chambers. One story was even about a daughter who argued her father’s case before the Emperor. Thus gender roles were critical to preserving the *li/fa* construct for centuries.

A turning point for law and gender was in the nineteenth century. Christian women missionaries to China introduced widespread formal education for women. This paralleled the rise of women’s education in the West. Women missionaries modeled co-mediation with men of Heaven and earth, and a blending of *nei* and *wai*. China’s defeat in the Opium War brought foreign concessions, extraterritoriality and lawyers to China. The late Qing dynasty hurriedly instituted legal and educational reforms. The Republic of China continued these reforms and China’s legal profession was born. However, these early lawyers had to contend with perceptions of a second-class status, much like the *songshi* of old. Surprisingly, despite centuries of subordination, Chinese women were active in achieving not only revolutionary reform in early 20th century China, but in joining the ranks of China’s new legal profession during the Republican era. Although they were later discontinued, several law schools for women were founded at the dawn of Republican China. During the 1930’s and 1940’s Chinese women practiced law and regularly made headlines. In one generation they went from having bound feet to being political revolutionaries and legal innovators. Their quick ascent was due in part to the tradition of feminine scholarly cultivation exemplified by Ban Zhao, the ancient woman
Confucian scholar. However, there were hardly any women judges during the Republican era.

After the founding of the People’s Republic of China, the status of law and lawyers wavered. During the Cultural Revolution, along with the rest of society, the legal profession suffered a huge setback. However, the crisis of the Cultural Revolution led to a decision not only to open up China to economic reform, but also to legal reforms. This has led to China’s phenomenal economic growth and growing prestigious legal profession.

While the stigma of being a lawyer is fading in China (it still exists for criminal defense attorneys), today’s men and women wrestle with, as in the rest of the world, how traditional gender roles shape professional choices and conduct. Many women have

__Professor Shu-chin Grace Kuo notes that the Confucian respect for intellectuals and emphasis on education has benefited Taiwanese women legal professionals. In her study of women legal professionals in Taiwan she found gender stratification among lawyers, judges and prosecutors. Shu-chin Grace Kuo, “Symposium: The Feminism and Legal Theory Project: Celebrating Twenty Years of Feminist Pedagogy, Praxis and Prisms: Rethinking the Masculine Character of the Legal Profession: A Case Study of Female Legal Professionals and their Gendered Life in Taiwan.” 13 Am. U.J. Gender Soc. Pol’y & L. 25, 46 (2005).__

__Although the legal profession in the U.S. is much older, women did not join in large numbers until the 1970’s after the women’s liberation movement. Today women constitute around 47% of all law students, 30.2% of lawyers, and 23% of federal judges. A Current Glance at Women in the Law, 2006, American Bar Association Commission on Women in the Profession. Like other professional and executive positions, the glass ceiling is a reality in many law firms. Although many women join law firms in the U.S., few stay. In 2005 about 17% of partners in major law firms are women, compared with 13% in 1995. According to a March 19, 2006 article in the New York Times entitled “Why Do So Few Women Reach the Top of Big Law Firms?” reasons as to why women join law firms but do not remain include “errant mentoring, opaque networking opportunities, low-grade case assignments or arbitrary male control of key management committees”, and the difficulty of self and social expectations about household roles and child-rearing. Women still do the majority of housework even though they are employed outside their homes. One woman partner has said of her firm, “We are very accommodating with leaves and flexible schedules, and even with that we still lose women. I think the pressures on women from spouses, family, peers, schools and others__
become judges because this is *nei*, or more suitable for women than the practice of law. It is also lower-paying and less prestigious. Whether by human accident or divine design, however, a window of opportunity has opened up for China’s women judges. This is the first time in China’s history that there are so many women judges. As China’s political and legal system changes, these judicial positions may yield a powerful sphere of influence. Judge Li Huijian’s landmark decision on judicial independence, mentioned at the beginning of this article and in Part IV, illustrates this. Thus, China’s women judges, along with their male counterparts, are making their mark in the most populous country in the world. Like Judges Song and Li they can be inspired by China’s incorruptible, courageous and compassionate *qingguan*, the ancient wise women of the *Liènǚzhuàn* and the virtuous *shiye, songshi* and pioneer lawyers and judges that followed. At their best, these legal ancestors harmonized Heaven and Earth, virtue and talent. This Chinese legal tradition can be both timeless and progressive.

---

is huge.” Also, in the U.S., judges usually come from the ranks of seasoned litigators; therefore many women end up working in in-house counsel positions rather than as judges.