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Strengthening the Rule of Virtue and Finding Chinese Law in "Other" Places: Gods, Kin, Guilds and Gifts

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Discussions about the rule of law in China today often do not consider the role of virtue or ritual. At the same time, many bemoan slow or no legal reform. Before the tumultuous events of the 20th century, traditional Chinese law (TCL) was remarkably continuous and stable for centuries. It was a blend of ritual and law focused on flourishing and virtue formation. Ritual was communion with, and law accountability to, the invisible spirit world. This inseparable blend spanned multiple jurisdictions, from state codes and courts to divine petitions and courts, to ancestral rites and family codes, to merchant codes and courts. Chinese law can be found in these ‘other places’, including gifts and feasts. Effective legal reform today should also include an exploration of current rituals and invisible accountability, multiple fora and a strengthening of the rule of virtue. Present-day practices of lavish gifts, banquets and wine, familiar to those who do business and practice law in China, become comprehensible within this framework.
Discussions about the rule of law in China today often do not consider the role of virtue or ritual. At the same time, many bemoan slow or no legal reform. Prof. Minzer states that despite reforms in the 1980s and 1990s that China has turned away from law back to practices such as mediation. He also urges a third wave of Chinese legal scholarship that goes beyond formal legal institutions. What drives China’s present and future legal landscape? Mediation is not only a pre-1978 Maoist practice, but also an ancient ritual whose goal is virtue formation. This article proposes that contemporary law is animated in part by the ancient blend of ritual and law in traditional Chinese law (TCL), and preference for ritual over law. Therefore, effective legal reform should include a study of contemporary rituals, and the rule of virtue should be strengthened as well as the rule of law.

Although China’s current legal regime began only in 1978, TCL was relatively continuous and stable for hundreds of years until the tumultuous events of the 20th century. It preferred the rule of virtue as expressed through ritual. The goal of this article is twofold: to present the inseparable blend of ritual and law in TCL in four parallel and overlapping jurisdictions, and to present several contemporary examples of this as well.

We will first explore the foundation of TCL, that is, flourishing and the invisible world within the traditional Chinese worldview, then the tapestry of its multiple jurisdictions, and then communion (ritual) and accountability (law) in each jurisdiction. In addition to dynastic codes and courts, TCL can be found in these ‘other’ places: imperial and ancestral rites, family codes and courts, merchant codes and courts, and spirit codes.

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2 Id. at 64.
3 Traditional Chinese medicine is commonly known as TCM; I am unaware of traditional Chinese law being abbreviated as TCL elsewhere. I use TCL to propose that TCL is often complementary to Western law, and can be used as ancient wisdom in contemporary practice.
and courts. Gifts and shared food and drink are the quintessential rites, and are the common thread in each jurisdiction.

We will also consider contemporary rituals familiar to those who do business and practice law: lavish gifts, banquets and wine. They become comprehensible within the TLC framework. China is now the world’s fastest growing luxury goods market. Banquets for officials account for one third of the nation’s dining out expenses. Also, drinking regularly accompanies negotiations but unfortunately officials have died because of excessive drinking at state functions. I conclude by urging the further study of contemporary rituals and invisible accountability embedded in Chinese law today, and an examination and strengthening of the rule of virtue to avoid excesses. Without exploring ritual and other codes, China’s traditional state codes seem incomplete; without exploring contemporary rituals, China’s current legal regime likewise is incomplete. Let us now turn to the foundation of TCL.

**FLOURISHING, THE INVISIBLE, AND VIRTUOUS EXCHANGE**

I met a Chinese graduate student this summer. We made an appointment to talk. She brought peaches. I treated her for a dinner of lotus roots, dumplings and eight-treasure rice porridge and gave her advice about her research on civic virtue.

TCL is part of a worldview in which Heaven, earth and man are a lively whole, and a virtuous hierarchy. The visible and invisible worlds are interdependent. Following Heaven leads to flourishing. Nature, deities and ancestors reveal Heaven’s will. At the same time, spirits are dependent on the living for sustenance.

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6 Id.

7 July 22, 2010, Fujian, China.

8 See Hyung I. Kim, *FUNDAMENTAL LEGAL CONCEPTS OF CHINA AND THE WEST: A COMPARATIVE STUDY* 13 (1981). This is also known as 三界 Sānjíè in Daoist thought.

9 Chinese characters and pinyin Romanization and tone marks are used in this article to aid Chinese readers and learners.

10 People and spirits are both composed of qi and ontologically the same. Stephen
Every person, living and dead, therefore can cultivate virtue through ritual gifts of shared food. Subordinates offer food and wine, and seek blessing from superiors, including ancestors and spirits. Superiors bless subordinates. The Chinese characters for “gift” mean ritual object [礼物 lǐwù]. Moreover, the feast pulls the universe together. It represents abundance from Heaven, human cultivation, and communion with invisible and visible companions. Prayer, music and dance often animate liturgies as they embody harmony. Mutuality, love and filial piety also direct these virtuous exchanges.

Thus, everything, including justice, has both visible and invisible dimensions. We commune with the spirits through food and drink and are accountable to them through law. Law is embedded within ritual.

MULTIPLE AND PARALLEL JURISDICTIONS

The ancients who wished to illustrate illustrious virtue under Heaven, first ordered well their own states. Wishing to order well their states, they first regulated their families. Wishing to regulate their families, they first cultivated their persons. Wishing to cultivate their persons, they first rectified their hearts. Wishing to rectify their hearts, they first sought to be sincere in their thoughts. Wishing to be sincere in their thoughts, they first extended to the utmost their knowledge. Such extension of knowledge lay in the investigation of things.

The Great Learning


12 The Great Learning, a Confucian classic, was translated by the Scottish missionary and first professor of Chinese at Oxford University, James Legge; this translation was published in 1893. I have modified Legge’s translation from “throughout the kingdom” to “under Heaven”. Legge’s translation is available at http://chinese.dsturgeon.net/text.pl?node=10381&if=en
In TCL there were multiple and parallel earthly and spiritual authorities and jurisdictions. Within each, ritual and law were blended.

Until 1911 the Emperor and his officials had authority over their corresponding terrestrial territory. Family clans and merchant guilds had authority over their members. Each of these earthly authorities was in turn, responsible to corresponding spiritual authorities. They regularly honored and consulted their spiritual parallels. In fact, the Chinese spirit world with its intricate bureaucracy of deities, ancestor spirits and ghosts, resembles a Chinese society of officials, kinsmen and outsiders. In each of these parallel mundane and spiritual jurisdictions, ritual and codes promoted flourishing and virtue; and courts sought to rectify injustice. As there were several levels of earthly courts, there were several levels of spirit courts. If justice was not achieved in an earthly court, this could be rectified in a spirit court. In fact, this is the theme of many a Chinese opera.

Therefore, harmony between Heaven and earth, and on earth, involves mediation and virtuous exchanges on multiple levels; the Emperor offered ritual sacrifices of harvest and animals in exchange for Heavenly favor. His officials offered sacrifices to their spiritual counterparts and other deities. For families, first-born sons offered sacrifices to ancestors. Merchant guilds offered sacrifices, banquets and plays to deities of commerce and wealth.

Proper rituals led not only to prosperity in this lifetime, but also for the life to come. If one honored one’s earthly and spiritual superiors, surely one’s descendants would follow suit. Therefore, gift giving and feasting, then and now, are pillars of Chinese social interaction, negotiation and justice. They are the pinnacle of communal abundance, contract formation and dispute resolution. Also, codes that promote accountability were embedded in ritual; just as virtue leads to flourishing, failure to observe codes might lead to harsh consequences in this life and the life to come. Within each realm of the imperium, family, guild and spirit world, courts enforced codes.

Let us now take a closer look at these multiple and parallel jurisdictions and the blending of ritual and law in each.

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A. The Emperor and His Officials

[The worthy ruler] reverently enacts the suburban sacrifice,
dutifully serves his ancestors, manifests filial and brotherly love, encourages filial conduct...enlightens [the people] with education, moves [them] with rites and music...He will not rely on favors to demonstrate his love for his people nor severe measures to prompt them to act...Therefore when the ruler relies on virtue to administer the state, it is sweeter than honey or sugar and firmer than glue or lacquer.

Dong Zhongshu

...In rites, it is better to be sparing than to be excessive....


The Emperor and his officials modeled communion and accountability by offering sacrifices, including food and wine, to deities and spirits, and by enforcing codes embedded in those rituals. Performing rituals were prime duties of the Emperor and his officials. This section will address the blending of ritual and law in the imperial sacrifices, the Mandate of Heaven and rule of virtue, ritual drunkenness, China’s earliest law code on ritual vessels, the City Gods and underworld courts, imperial deference to family and merchant courts, and petitions. Today gifts, food and wine remain prime rituals among government officials and others, but excessive drinking at official functions has led to reported deaths. China is also the fastest growing luxury goods market and City God temples remain popular. Present practices should be bounded by a rule of virtue, and further study done on current ritual practices blended with law.

The Emperor was the chief pivot between Heaven and Earth. The Chinese character for king, wáng 王, shows the one who bridges the three lines representing Heaven, man and earth by comprehending the Way.

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Although not himself divine, the Emperor was known as the Son of Heaven [天子 Tiānzǐ]. The word for country in Chinese is nation family [国家 guójiā]. On behalf of the nation family, until 1911 the Emperor offered regular sacrifices of food, wine and animals. The Emperor would fast and pray, and seek blessing for his country.

Beijing and the Emperor’s residence, the Forbidden City (completed in 1420), like previous imperial cities, were designed to maximize the Emperor’s mediation. Beijing was built on a North-South axis. Because yang, the superior force of the universe, was believed to be in the south, the Emperor’s throne faced south. At the Winter Solstice, he sacrificed to Heaven at the Temple of Heaven, south of the Forbidden City. At the Summer Solstice he sacrificed to Earth, at an altar north of the city. At the Spring and Autumn Equinoxes he sacrificed to both his ancestors and to the Soil and Grain Gods, whose altars were located east and west respectively, outside the front gate of the Forbidden City. Thus the Emperor mediated between Heaven, earth, time and space as a servant of the universe.

Figure 2. Forbidden City from Ming Dynasty painting.

The Emperor’s rites can be traced to ancestral rites in the Shang

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18 Id. at 142.
19 Id. at 125-131.
dynasty (1556-1046 BC). The Shang kings offered sacrifices to Shàngdì [上帝], the supreme ruler of Heaven. The earliest extant Chinese writings, the Shang oracle bones, show that the Shang king communicated with Shangdi through the mediation of his ancestors. 21 When the Zhou dynasty overthrew the Shang dynasty, the Zhou kings popularized the notion of the Mandate of Heaven. The king held the Mandate of Heaven [天命 Tiānmìng]. However, if the king did not discern the will of Heaven and did not rule virtuously, he would lose the Mandate of Heaven. Disfavor from Heaven was evidenced by natural disasters, e.g., floods, famine, and ultimately, civil unrest and a successful overthrow of the previous regime. The Mandate of Heaven is the foundation of all Chinese rule. It is simultaneously a religious and political principle. Dynastic change was thus based on the virtue of the new ruler; however, subsequent rulers were privileged by birth. 22

Interestingly, one of the ancient forms of the character for Heaven, 天, resembles a human figure, leaving some to speculate that Heaven is personal and not an impersonal force.

![Figure 3 Bronze Script for Tian, "Heaven"](image)

As the Emperor sacrificed to Heaven, each official under the Emperor offered sacrifices to his spiritual counterpart and other deities who had authority over his jurisdiction. Ritual duties were a prime responsibility of each official. The district magistrate’s rituals included seasonal sacrifices to “Confucius, the Gods of Soil and Grain, the spirits of wind, clouds, thunder, rain, mountains, streams, and the City God.” 23 This was due to a belief that the spirits could provide a complementary flourishing of nature and society. One imperial stele inscription at the Beijing City God


23 A.R. Zito, City Gods, Filiality, and Hegemony in Late Imperial China, MODERN CHINA 333, 342 (Jul., 1987).
Temple in 1726 stated,

For the harmony of yin and yang, for correct wind and seasonal rain, for a dense population, for a proliferation and luxuriance of growing things, for a glowing, a flowing, a growing, a showing and for help toward a lush begetting, there is only the protection of the spirits.\(^{24}\)

Confucianism, which was official state doctrine from the Han Dynasty (206 BC-220 AD) through 1911, reinforced the centrality of ritual in a well-ordered society.\(^{25}\) However, this meant the spirit behind the rituals and not the mere acts themselves.\(^{26}\) In Confucianism, one’s body becomes a ritual vessel for virtue\(^{27}\) and gifts of virtue lie at the heart of ritual. In the words of historian Angela Zito,

If a man was a perfect vessel, then what he bore inside himself, his reverence (jing) and integrity (cheng), were the perfect gifts. In these rites, power was actualized in the giving rather than receiving.\(^{28}\)

Thus, the Emperor and his officials were supposed to be themselves vessels of virtue and to rule by virtue.

Interestingly, writings from the Zhou era (1046-256 BC), including the Book of Odes, indicate the importance of wine offerings and ritual

\(^{24}\) Yongzheng emperor, Imperial Stele Inscription commemorating the renovation of the City God Temple of Beijing, dated 1726, Shuntian fuzhi, 1886: 6.19b-20a, as stated by Zito, id., at 344.

\(^{25}\) Confucius 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.” ANALECTS 12.1. Confucius also taught that if leaders governed by virtue and sacrifice, their subordinates would in turn be ruled by their consciences and sense of shame. He taught, “Lead a people by law…and they will have no shame, lead a people by virtue and they will order themselves harmoniously”. ANALECTS 2.3 Ritual is thus preventive law. Klaus Mühlhahn, CRIMINAL JUSTICE IN CHINA: A HISTORY 17 (2009). Therefore, officials were trained in the Confucian classics and schooled in ritual, including music, dance and poetry.

\(^{26}\) Conversation with Prof. Zhang Shoudong, China University of Political Science & Law, in Beijing. (June 15, 2008).

\(^{27}\) 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, GIFTS, FAVORS, AND BANQUETS: THE ART OF SOCIAL RELATIONSHIPS IN CHINA 226 (1994)

\(^{28}\) Zito, supra note 23, at 352.
drunkenness in aristocratic sacrifices, which the imperial sacrifices stemmed from. In communicating with ancestors, an impersonator, sometimes the grandson of the deceased ancestor, would eat and drink the finest food and numerous wine offerings and be entertained with singing and dancing. After the impersonator was drunk, he could be a medium for the deceased ancestor. It is estimated that in a ritual ceremony, an impersonator might consume “between 2.4 and 3.9 ounces of pure alcohol (equivalent to between 5 and 8 bar shots of eighty-proof liquor).”

Also, after food and drink were offered to the ancestral spirits and they were satiated and inebriated, family members would eat and drink until drunk. Inebriation served two functions: showing the mutuality of abundant gifts of the ancestors and their descendants and the necessity of a ritualistic “alcohol-induced trance”. As mentioned below, ritual drunkenness is commonly used today by government officials and others in contract negotiations, but has led to reported deaths by officials.

City Gods played a critical role in the priesthood of government officials and the blending of ritual and law. City Gods were appointed by the Imperial government to partner with living magistrates. They were usually spirits of deceased virtuous officials. Capital cities and other cities of import had a City God Temple. It is believed that City Gods were successors to ancient soil gods; the Tang (618-907 AD), Song (960-1279 AD) and subsequent dynasties actively promoted their worship. According to regulations, before assuming his new post, each magistrate spent the night in the City God Temple purifying himself and praying to the City God. An 1879 manual for local government states,

The district magistrate governs the visible, the City God the invisible. Generating benefit and warding off harm for the people

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29 Ebrey, supra note 21.
31 Id. at 32.
32 Id.
33 Laurence G. Thompson, CHINESE RELIGION: AN INTRODUCTION 81 (1975)
36 Thompson, supra note 33.
are the duties of the magistrate. Bringing down blessings and warning off natural disaster are the duties of the City God.  

As living magistrates presided over the imperial courts, the City God was responsible for turning souls over to underworld courts. The City God was also in charge of bereaved spirits, who reported miscarriages of justice or unrewarded good deeds. In fact, what is unique to the Chinese view of the afterworld is its “complex underworld judicial system charged with keeping track of the words and deeds of the living, as well as duly administering the requisite forms of retribution after death.”

City God Temples had elaborate illustrations of underworld courts and punishments. There are ten magistrates and courts in hell. Each court resembles an earthly magistrate’s court. In the first court, exceptionally noble souls ascend directly to heaven without being punished. However, the vast majority of souls endure punishment or receive rewards in the remaining courts for both acts and thoughts. In the last court, the soul prepares to return to earth, either as another human or other creature. Seasonal processions in honor of the City God also warned the populace of the underworld courts. In these processions, people dressed as hellish imps and executioners led others attired as prisoners to their underworld punishments.

Ultimately, transgressions were offenses against the spirit world. The character for crime is 罪 [zuì], which shows an offense against the clan head’s sacrifices to the ancestors and heaven. As virtue involved a filling

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37 Huang Liuhong, in Worshipping the City God, in COMPLETE BOOK OF LUCK AND BENEFIT 24.10b (1879), as quoted by Zito, supra note 23, at 341 (Jul., 1987).

38 Thompson, supra note 33.


40 Or in some accounts, eighteen courts in hell.

41 Reincarnation was introduced to China by Buddhist adherents.


43 Klaus Mühlhahn, CRIMINAL JUSTICE IN CHINA: A HISTORY 16 (2009).

44 Id. at 16.
of the body with heavenly blessing, its opposing force, punishment for vice, was a “trimming” of the criminal and hellish rituals. Dong Zhongshu, the Han thinker, also held that improper punishments led to a rise in evil spirits. China’s earliest laws, lists of crimes and punishments, were engraved on bronze sacrificial tripods called 鼎, which were ritual cooking pots.

Today, City God Temples are still popular. They are being renovated in various cities and are visited by government officials and commoners alike. Government officials have also been reported praying to the City God to rid the construction industry of corruption.

In addition to the partnership of City Gods and magistrates, the imperial blend of ritual and law was also present in deference to the family and merchant jurisdictions. The formal Imperial governing structure extended only as far as the county level. Each county official, among his other duties, i.e., rites, collecting taxes and promoting education, also presided over legal matters. However, most conflicts were expected to be resolved by 乡保, village elders or merchant guilds who used a combination of mediation and trials embedded in ritual. Xiangbao were unpaid heads of villages chosen by the villagers and confirmed by the state. For legal matters, county officials privately hired advisors, 书役, to assist them in application of dynastic codes; liaised with xiangbao as go-betweens with would-be litigants in extrajudicial mediation; and consulted the City Gods. In fabled stories of the 清官, virtuous magistrates fasted, prayed and also received guidance on individual cases from troubled spirits whose murders had not been solved. Lawyers were

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45 Id.
46 Id. at 24.
47 Paper, supra note 30, at 40.
49 CPC Officials’ Visit to Temple Sparks Off Debate on Ideology, supra note 48.
50 Philip C.C. Huang, CHINESE CIVIL JUSTICE, PAST AND PRESENT 63 (2010).
51 Id. at 64.
52 Id.
53 A.R. Zito, supra note 23, at 335.
54 Dora Shu-Fang Dien, THE CHINESE WORLDVIEW REGARDING
considered superfluous and in fact, shysters and tricksters, stirring up trouble, instead of harmony. They were outsiders in earthly proceedings in a world of blended ritual and law.

Petitions also represent another blending of imperial ritual and law. Commoners petitioned officials and their superiors to correct injustices. Petitioners went as far as the imperial capital and would bang on grievance drums outside of offices to summon officials. Today the practice of petitioning officials, or xīnfāng [信访], still far exceeds use of courts.

Four examples of contemporary rituals among officials become comprehensible in the light of centuries-old traditional ritual practices. However, they should be bounded by a rule of virtue. These are gifts of luxury goods, extravagant banquets, heavy drinking, and contract formation over banquets and drinking. Gifts are a popular custom among and to officials, including gifts of luxury goods, because ritual still predominates over law. Luxury gifts reflect the ancient practice of seeking blessing and guidance from superiors and spiritual counterparts by offering abundant gifts. Every year when the National People’s Congress and Chinese People’s Political Consultative Conference meet, luxury item stores are flooded with buyers. Although gifts to officials are illegal, some officials purchase gifts for senior officials, sometimes on behalf of private individuals. China is now the fastest-growing luxury goods market in the world, with an estimated $7.6 billion in sales in 2009 representing 27.5% of the world’s total; industry experts say 50% of sales are gifts to government officials.

Also, drinking remains a ritual among today’s officials. This harks back to the ancient practice of inebriation to show the mutuality of abundant gifts of ancestors and descendants, and to enable a descendant to be a
medium for ancestors. Today’s drinking, however, has led to reported deaths of officials. In a 2009 article in the China Daily, Professor Li Chengyan, of the school of government at Peking University, stated,

Ritualized drinking is deeply ingrained in the relationships between [today’s] government officials. Drinking with official guests or other officials at alcohol-soaked events is considered part of the job…A banquet [is] a mandatory exercise to welcome VIPs and [is] usually covered by public funds… Officials are used to sealing deals and making decisions at dinner tables.

In the same article, an anonymous official in Shandong Province said,

We would lose face if we could not get our guests drunk. Refusing to drink is considered disrespectful. Neither my guests nor I want to get drunk but we have to play under the unspoken rule, which has been around for so long. We don’t know how to do business otherwise.

Some officials especially hire clerks who can be "drinking assistants" at these functions. This is much like the ancient practice of using drunken grandsons to be a medium for ancestors. Banquets for officials today account for approximately one third of the country’s annual dining out expenditures, or 500 billion Yuan ($73 billion).

Thus, the imperium was a blend of ritual and law; from the priestly duties of offering abundant gifts of food and wine of the Emperor and his officials in accordance with the Mandate of Heaven; to ritual drunkenness to communicate with ancestors; to the parallel rule of spirits, City Gods and underworld courts; to early law codes on ritual vessels; to deference to

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63 Ganbei Culture Killing Officials, supra note 5. This article describes the deaths of officials who died because of excessive drinking at state functions. One account reads, “Jin Guoqing, deputy director of water resources in Xinzhou district, Wuhan, the provincial capital of Hubei, died following a dinner last week. The 47-year-old had been entertaining official guests when he fell unconscious. He was rushed to [the] hospital but his heart had already stopped beating, said medical staff. Hospital records indicated Jin’s excessive drinking had triggered a heart attack, which led to his death”.

64 Id.
65 Id.
66 Id.
family and guild ritual rule and petitions. Present ritual practices of extravagant gifts, banquets and drinking among officials become comprehensible in historical context. They are consonant with the extensive ritual duties of traditional officials and the notion of the body as a ritual vessel. However, contemporary rituals should be bounded by a rule of virtue to avoid excesses. The purpose of ritual is to be oneself a gift or vessel for virtue. Other contemporary rituals blended in law should be explored as well. We now turn to the parallel blend of ritual and law in the family.

B. Families and Ancestral Spirits

We had pizza in an ancestral hall that now served as a restaurant. Our Chinese law student hosts were visibly perturbed. One said, “I don’t think the ancestors would be very pleased with this. This is disrespectful”. The other nodded in agreement.

As mentioned earlier, crimes originated as offenses against family and clan rituals. Imperial rites also stemmed from ancestral rites. We now turn to the blending of ritual and law in families. According to one foreign observer in the early 20th century, “The most potent agent in forming Chinese law and maintaining its permanence is ancestral worship.” We will first discuss the ritual practices of the family, and then the law embedded in those practices, including the Kitchen God as a spiritual family police officer, contracts for marriage, the preparation of deceased loved ones for the underworld courts, and family codes and enforcement in ancestral halls. Ancestral halls served as courtrooms for family proceedings. Imperial courts deferred to family rulings when possible. Family and clan rituals were also conflict prevention, contract formation and dispute resolution. As feasts and wine were the prime imperial ritual, feasts and wine honoring ancestors bind family rituals together as well.

In addition to the mediation of the Emperor and his officials, each family has a heavenly link through their ancestral spirits. One’s ancestral line is thus each Chinese person’s direct link to Heaven and blessing.

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67 June 27, 2010, Fujian, China.
68 George Jamieson, CHINESE FAMILY AND COMMERCIAL LAW 6 (1921). Jamieson was British Consul-General in Shanghai and a judge of the Shanghai Mixed Court that adjudicated cases of foreign and Chinese residents in the Shanghai International Settlement.
69 In the 1992 movie Qiu Ju Da Guansi, the protagonist seeks justice through the courts; however, food plays a prominent role in almost every scene, and both the New Year’s and birth rituals depicted also act as fora for conflict resolution.
Family rituals involve communion with ancestors and other spirits on a daily and seasonal basis, and upon special occasions such as birthdays, reaching adulthood, marriage, family code enforcement, dispute resolution and death. As mentioned earlier, the living and the dead are mutually dependent. Living family members provide deceased loved ones with sustenance for their after-life and reports of family events. In turn, deceased loved ones provide guidance and blessing for life on earth. If descendants do not care for ancestors, the ancestors become hungry ghosts. These neglected ghosts wander the earth, haunt their descendants and wreak other havoc.

Therefore, the Chinese home is also a temple. Each home has a family altar with the souls of immediate ancestors present, e.g., one’s deceased parents and grandparents. More distant ancestors are present in village ancestral shrines. Daily food, mainly fruit and cooked foods favored by deceased loved ones, may be offered at home family altars and then shared by living family members. On holidays, birthdays and weddings, more elaborate meals are offered. Graves are visited at least once a year on Qingming Jie [清明节], the tomb-sweeping holiday. Banned for many years on the mainland, the Chinese government re-established Qingming Jie as a national holiday in 2008. At Qingming Jie, in addition to a meal shared with deceased loved ones at the gravesite, offerings of accommodations for the after-life are also made, by burning paper replicas of houses, clothing, and today, cars and computers.

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71 Chinese food and holidays contain in microcosm the Chinese worldview. It is not an accident that Chinese cuisine is unending in variety, taste and delight. The abundance and richness of the Chinese meal represents both the ritual and heavenly nature of eating and sacrifices offered to heavenly beings, and the medicinal value of food in balancing yinyang and the five elements [五行: wǔxíng].

72 Interestingly, the ritual of shared food and wine with ancestors at the grave is also observed among some in Russia, and in Estonia among the Seto people. See James Hastings and John A. Selbie, the Encyclopedia of Religion and Ethics, Part 8, p. 509 and “The Seto People”, Passport Magazine, available at http://www.passportmagazine.ru/article/450/ I am thankful to Dr. Daniel Yee for bringing this to my attention.


74 For a recent Westerner’s account of celebrating Qingming Festival with his Chinese wife’s family, see Stuart Beaton, Getting close with wife’s ancestors, CHINA DAILY, April 13, 2010. http://www.chinadaily.com.cn/life/2010-04/13/content_9722080.htm (last visited August 14, 2010).

75 Interestingly, at the Jewish holiday Sukkot, ancestors are also invited to feast with
Since Mao’s death in 1976, some Chinese families also have altars to Chairman Mao in their homes.\textsuperscript{76} He is considered the father of New China, the People’s Republic of China. Also, food offerings have been made at memorials of Communist martyrs\textsuperscript{77} and commemorative meals have been held in their honor at \textit{Qingming Jie}\textsuperscript{78}.

The eldest son was responsible for sacrifices to ancestors. He is therefore a little emperor within family rituals. Much of traditional family law was based on preserving the eldest son’s position as chief provider not only for his parents during their lifetime, but also in their after-life.

Also, as government officials sacrificed to their spiritual counterparts and other spirits, families attended to local deities and spirits surrounding and inside the home. Just as a city has a City God, each locality has a deity, the Earth God \textsuperscript{土地公 tǔdīgōng}; each Chinese home a deity, the Kitchen God, or Stove God \textsuperscript{灶神 zàoshén}; and each individual deities that accompany them through life, recording good and evil deeds\textsuperscript{79}. Village clans worshipped the Earth God for local blessings. Families had home altars to the Earth God and Kitchen God, along with the ancestral altars mentioned earlier. In addition to serving as the family’s guardian, the Kitchen God also was a spiritual police officer.\textsuperscript{80} Right before each new year he is sent to Heaven to report on the family’s deeds and their subsequent fortune is based on his report. Interestingly, he can be persuaded to relay only good reports by offerings of glutinous rice cakes.\textsuperscript{81}

Clan rites also included coming of age rites, marriage and burials. These also centered on honoring ancestors through feasts and wine. Capping involved a young man of twenty coming of age and assuming an adult name and responsibilities. On an auspicious day in the ancestral

\begin{footnotes}
\item[76] Conversation with Nan Li, journalist, in New York City. (February 22, 2009). This was observed in the 1990’s in rural areas in Fujian and Guangzhou provinces.
\item[77] Paper, \textit{supra} note 30, at 45, citing Paul Levine, “The Daily Life and Year Cycles as Observed in Nanjing, PRC, 1979-81”, unpublished paper presented to the Mid-West Regional Seminar, Chicago at 11.
\item[78] \textit{Id.} at 50.
\item[79] \textit{THE SPIRITS OF CHINESE RELIGION, supra} note 10, at 28.
\item[81] These are known as \textit{nián gāo}, the delicious Chinese New Year’s treat.
\end{footnotes}
temple, his head was capped and hair gathered into a bun. In early times, this ceremony also included ritual offerings of alcohol and food to ancestors, one’s mother, other relatives and guests. Hair-pinning was the equivalent ceremony for an engaged young woman but in the inner chambers of the home.

Marriage involved a matchmaker bringing together two families, a written contract, consultation with ancestors, and gifts and banquets to seal the marriage contract. The marriage ceremony was an offering first at the bridegroom’s ancestral hall, then an offering to the ancestors in the couple’s bedroom, and then an offering to the groom’s parents the following day. Matches were made in Heaven: they were determined by auspicious birthdates and the absence of misfortune after consultation with the ancestors. One of the chief functions of marriage was to provide sons who would not only provide for parents in this life, but offer sacrifices for the life to come.

Families played an integral role in preparations for the underworld courts described earlier. Three years of mourning rites both honored one’s ancestors and ensured their safe passage through the underworld courts. Mourning rites consisted of wearing mourning garments and a series of sacrificial meals. At death, the \( yin \) part of the human soul, or \( pðò\) would descend with the corpse. As mentioned earlier, if not nurtured with future sacrifices, it might return as a “hungry ghost” to haunt descendants or others. The \( yang \) part of the human soul, or \( hùn \) would ascend and might simultaneously dwell in Heaven, another being, the ancestral tablets or among the ancestors. The character for \( hùn \) is composed of two other characters, the one for “cloud” \( yún \) and the one for “ghost” \( guì \). In funeral rites, the \( hùn \) spirit is fixed in a rectangular wooden tablet kept first at home and then in a clan hall. And the ancient practice

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82 Paper, supra note 30, at 33.
84 Paper, supra note 30, at 34.
85 A slip containing the prospective bride’s birth date would be placed on the family altar of the groom’s family. If within three days, there was a disruption in the home, including breaking of a bowl, death of a farm animal, or illness or death in the family, the match would be called off. Id. at 25.
86 Paper, supra note 30, at 34.
87 THE SPIRITS OF CHINESE RELIGION, supra note 10, at 31.
88 Id.
89 THE SPIRITS OF CHINESE RELIGION, supra note 10, at 19.
of fengshui was used to determine how a tomb should be aligned with heavenly perfection to guide souls in their new environment.90

Interestingly, the underworld courts are known for bureaucratic errors.91 Just as families could persuade the Kitchen God to give lenient family reports at New Year’s with glutinous rice cakes, they could also influence underworld judgments for deceased loved ones with sacrifices and gifts. Underworld clerks could also be bribed.92

As law was embedded in ritual in the nation family, each clan also had their own family codes, known as jiāxùn [家训], which were a blend of ritual and law. Clans occasionally registered their regulations with the local authorities.93 If a family member violated a family regulation, the father and elders, if necessary, would determine and enforce a punishment. The character for father, or 父 [fǔ], is a pictograph of a hand holding a stick94 as the enforcer of rules.95 The ancestral hall served as the family courtroom.96 Male clan leaders were summoned by a gong, and proceedings were preceded by ancestor worship.97 Punishments were often harsh and hellish.98 As stated earlier, magistrates were discouraged from becoming involved with family matters. According to a traditional saying, “Even an honest official has difficulty judging family matters.”99

As a blend of ritual and law, family codes contained ancient wisdom

90 When applied to daily living structures, the fengshui master’s goal was to establish heaven on earth. Stephen L. Field, The Cosmological Origins of Fengshui, http://www.fengshuigate.com/cosmology.html [last visited August 22, 2007]
91 K.E. Brashier, Punishments Assigned, http://academic.reed.edu/hellscrolls/scrolls/Aseries/A01/A01d.html For a depiction of the underground courts in hell scrolls, see Taizong’s Hell, a website developed by K.E. Brashier at Reed College http://people.reed.edu/~brashiek/scrolls.html
93 David Buxbaum, A Case Study of the Dynamics of Some Aspects of Family Law and Social Change in Rural China 8 (1968).
96 Gray, supra note 42, at 219-220 describes the procedure for husbands seeking divorce. The proceedings are held in the ancestral hall.
97 Id.
98 Id. at 220-227, describing punishments for adultery, beating one’s parents-in-law, etc.
99 清官难断家务事 [qīngguān nán duàn jiāwù shì]
about virtue, faithfulness, frugality and love. The following are taken from the 17th century classic “Maxims for the Well-Governed Household” written by Zhu Yong Chun,

Be simple and plain in your personal life but resort to the best possible way to bring up and teach children. Do not covet unearned profits. Do not drink to excess...When you see poor and unfortunate relatives or neighbors, you must show sympathy for and assist them...Avoid litigation, for it can only end in trouble...Be in accord with the times and listen to the commands of Heaven.  

Zhu’s family code was lyrical. One translator, Dr. Hsiang-Tung Chang, remarked that although not a poem, the code had a rhythm and beauty that could “infiltrate the heart of every man and woman, old and young, who read it aloud like they sing a folk song.” Zhu’s code was also used for calligraphic exercises. Family codes were designed to penetrate the soul and to be learned by repetition.

Thus in addition to the imperium, the family represented an integral blending of ritual and law as well. Led principally by first-born sons, families made food and wine offerings to ancestors and other spirits on a daily and seasonal basis. These spirits included the Kitchen God who served as a spiritual guardian and police officer in each home. Ancestors provided guidance and blessing for coming of age ceremonies, marriages, conflict prevention, dispute resolution and family code enforcement. Marriages were contracts formed through food offerings and consultations with ancestors. Through funeral rites, families prepared deceased loved ones for the underworld courts. Imperial magistrates usually deferred to clan leaders who enforced family codes which promoted virtue. These family codes discouraged litigation and urged charity and frugality. Violations of family codes were tried in ancestral halls presided over by ancestors and clan leaders. Ancestral worship preceded these trials. We now turn to the parallel blend of ritual and law in merchant guilds.

C. Merchant Guilds

We stayed at a Holiday Inn in Shanghai. The concierge was
especially helpful. We asked, “What is ‘concierge’ in Chinese?” The answer was “礼部” [lǐ bù], or literally, “Department of Rites.”

It was reported in 2006 that the State had issued the Compulsory State Standards for the Production of Mooncakes.

In traditional China, merchant guilds also represented another realm of intertwined ritual and law that overlapped with imperial and family rites and codes. Commercial activity centered on worship, banquets, ritual and law. Wealth and prosperity were blessings from Heaven bestowed upon those who worshipped Heaven, and fulfilled righteousness and justice. This was in line with Confucian teaching that righteousness was superior to pursuing profit. Merchants developed guilds that worshipped guild gods, set rules for merchant activity, and administered justice in guild courts. Just as ancestor worship preceded the convening of family courts in ancestral halls, guild worship preceded guild courts convened in temples. Also, just as magistrates deferred to family ritual rulings when possible, they deferred to guild rules and courts as well.

Guilds existed in China for hundreds of years. They were often located in temples or met in temples. Just as families offered sustenance for this world and the world to come, guilds took care of members in this world and the world to come. They did this by reporting annually to and seeking the blessing of the guild gods, usually the deity or deities who founded the trade. The invitation to the annual meeting was a call to worship the guild

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103 June 21, 2010, Shanghai, China.
104 Market still craves luxurious mooncakes, PEOPLE’S DAILY ONLINE, October 5, 2006 at http://english.peopledaily.com.cn/200610/05/eng20061005_309196.html (last visited July 29, 2010). During the Mid-autumn Festival, which traditionally marked the beginning of the harvest season, mooncakes, a holiday treat, are given as presents. Recently, mooncakes have been accompanied by luxury items such as wine or fine watches, and are sometimes used to bribe officials. According to the State standards, mooncake packaging must represent no more than 25 per cent of the total cost of the mooncake product, and the average space between mooncakes in a box should not exceed 2.5 centimeters. Id.
105 ANALECTS 4.16. 子曰: "君子喻於義, 小人喻於利." The Master said, "The mind of the superior man is conversant with righteousness; the mind of the mean man is conversant with gain." The Chinese Classics, volume 1, James Legge, translator, 1861.
107 Id. at 577.
god, and to prepare a feast and play for him.\textsuperscript{108}

Guilds were local.\textsuperscript{109} The carpenter’s guild in Shanghai, for instance, was not related to the carpenter’s guild in Peking. The guilds set prices and wages and monopolized trade and services in particular areas. They also protected members from undue taxes from officials. The guilds also provided financial and medical assistance to their members.\textsuperscript{110} Some guilds also ensured a proper burial for their members in the guild grounds.\textsuperscript{111}

Guild rules varied; some concerned dues, election of officers, standardized weights, measures and practices, dispute resolution among members, and prevention of and sanctions against dishonest practices.\textsuperscript{112}

In 1928 John Stewart Burgess published a survey of 42 guilds in Peking.\textsuperscript{113} Here is a description of an annual guild meeting:

“The members…register [as their arrive] and pay their fees for the year. Each guildsman worships before the [deity] Master Lu Pan as soon as he has registered. Later professional actors give a play. Before and after the play and between the acts business is discussed. The guild rules are read, an announcement is made regarding the punishment of offenders…On the day of the religious ceremony the officials have a feast.\textsuperscript{114}

If a member failed to pay a fine, the officials requested the fine in person. If the fines were still not paid then the member was fined an amount for buying incense, or another sum of money. The worse cases required being forced to kneel before the guild god and expulsion from the guild.\textsuperscript{115}

\textsuperscript{109} Id. at 127, quoting Edward Thomas Williams, CHINA, YESTERDAY AND TODAY 189 (1927).
\textsuperscript{110} Id. at 170.
\textsuperscript{111} Golas, supra note 106, at 562,574 .
\textsuperscript{112} Chinese Guilds and Their Rules, THE CHINA REVIEW 12 (July-August 1883) at 5-7. [Available at sunzi.lib.hku.hk/hkjo/view/26/2601420.pdf].
\textsuperscript{113} THE GUILDS OF PEKING. At that time there were probably 128 guilds in Peking. J.S. Burgess, The Guilds and Trade Associations of China, The Annals of the American Academy of Political and Social Science November 1930 152: 72-80 at 74. [available at http://ann.sagepub.com/content/152/1/72.citation].
\textsuperscript{114} THE GUILDS OF PEKING, supra note 108, at 96.
\textsuperscript{115} Id. at 97.
Mr. Burgess also described an annual meeting of the Blind Guild observed by a foreigner.\textsuperscript{116} Here, too, worship and feasting served as the focal point for guild business and was the prelude to a legal proceeding. This guild was composed of blind persons who made their living by singing, story telling and entertaining. The meeting began with worship of the guild gods that consisted of offering food and incense, and kneeling before the gods of Heaven, Earth and Men while music played.\textsuperscript{117} The food consisted of “chicken, pork, fish, wine, vegetables, fruit and rice”.\textsuperscript{118} Then guild musicians performed for two hours.\textsuperscript{119} After a business meeting, the annual report was burned and offered to the guild gods.\textsuperscript{120} Then the executive committee constituted itself as a court and tried cases of those accused of breaking guild rules, and settling disputes among guild members.\textsuperscript{121} Before the Republic of China was founded in 1912, the guild punished older members with fines and younger members with “50, 70, or 100 strokes” of the bamboo.\textsuperscript{122} After the trials a feast was served, followed by burning money before the gods.\textsuperscript{123} For purposes of the court, members of the executive committee were designated with titles such as “Judge, Attorney-General, Prosecuting Attorney, Grand Jury, Jury of the Court, Sheriff, Counselor, Protector, Law Proctor, Witness, Adviser, Inspector, Investigator, Reporter, Chief of Police, Police, Executioner, and Warrant Carrier”.\textsuperscript{124}

Apprenticeships also involved an intertwining of ritual and law and feasting. When an apprentice entered a guild, an apprenticeship contract was drawn up. The apprentice bowed to his master and the mentor had authority over the apprentice and the right to discipline him. Among the Paper Hangers, if a probationary period of four months’ trial was passed, the apprentice’s parent or older brother would prepare a feast of several tables for the “managers of shops and noted members”. By attending this feast they become witnesses and guarantors of the apprenticeship.\textsuperscript{125} The banquet was thus a legal ceremony.

\textsuperscript{116} Id. at 103-6.
\textsuperscript{117} Id. at 104-5.
\textsuperscript{118} Id. at 104.
\textsuperscript{119} Id. at 105.
\textsuperscript{120} Id.
\textsuperscript{121} Id.
\textsuperscript{122} Id.
\textsuperscript{123} Id.
\textsuperscript{124} Id.
\textsuperscript{125} Id. at 158-9.
At the end of an apprenticeship in the Blind Workers Guild, the apprentice held a feast for his master and knelt and gave gifts to the master and the master’s wife. The apprentice contract was then burned in the presence of guests.126

Guild members avoided official courts but sometimes were sued by non-guild members. In these cases the official courts often decided cases in accordance with guild rules.127 Boycotts were used effectively against offenders of guild rules and also against foreign concerns.128 Inter-guild disputes were “settled by informal groups of neutral guildsmen.”129

After the Republic of China was founded in 1911, the Beijing Chamber of Commerce began to replace guilds. For a while the Chamber of Commerce had its own court as well. This was used to decide commercial matters, including inter-guild disputes.130 Some guilds lasted until the 1940’s.131

Today, shared food at banquets, ritual drinking and other rites remain a prime way of conducting and negotiating business in China.132 It is not an uncommon practice to negotiate the value of a contract based on the number of cups of wine drunk, e.g., one million RMB per cup.133

Thus, for centuries merchant guilds also involved an intertwining of ritual and law, parallel and overlapping with imperial and family rites and law. Merchant guilds enforced merchant codes at gatherings honoring guild gods. Worship and feasting preceded guild justice. The banquet not only sealed guild business, but also apprenticeship and other contracts. Just as imperial courts deferred to family rulings when possible, they deferred to guild rulings and merchant codes as well. We now turn to another look at spirit courts.

126 Id. at 164 .  
127 Id. at 207, quoting Edward Thomas Williams, CHINA, YESTERDAY AND TODAY, 203-4 (1927). [if this is incorrect it could be S. Wells Williams, The Middle Kingdom (1883)]  
128 Id. at 208.  
129 Id. at 229.  
130 Id.  
131 Golas, supra note 106, at 564.  
133 Anecdotes relayed to author.
We were in Beijing. Our computer had failed and an Apple distributor in Beijing supplied a new hard drive. We asked if a guarantee was available. The answer was “no”, but the supplier offered to take an oath.\textsuperscript{134}

As mentioned, spiritual authorities were regularly consulted by government officials, families and merchant guilds in administering justice. Also, after death, each soul encountered the underworld courts and punishments described earlier. In this section we will see that spirit courts could also be consulted during one’s lifetime by commoners, through the mediation of Daoist priests. Although no lawyers were involved in imperial courts, Daoist priests served as “lawyers” in spirit courts. They were the “lawyers” in TCL. Spirits were also subject to spirit codes and tomb contracts with the deceased.

In addition to finding punishment or rewards after death, ordinary Chinese could appeal for intervention from spiritual courts during their lifetimes. Also, according to early Daoist views, misfortune during one’s life might be due to an underworld lawsuit brought by a deceased party against a family member or oneself.\textsuperscript{135} Retribution, known as \textit{bàoyìng} [报应] is critical to the Chinese worldview and central to Chinese justice.\textsuperscript{136}

The Chinese have a long tradition of judicial rituals in which they call upon certain deities to intervene on earth to achieve justice.\textsuperscript{137} In addition to the City God mentioned earlier, other deities who can be appealed to are the Emperor of the Eastern Peak [东岳 大帝 Dōngyuè dàdì], and the Bodhisattva Dizang [地藏王菩萨 Dìzàngwáng púsà].\textsuperscript{138} Common to these judicial rituals is the making of oaths [立誓 lìshì] and filing of underworld indictments [告 状 gào yīnzhòu, also known as 放告 fànggào].\textsuperscript{139} Oaths included blood covenants [血 盟 xuěméng], covenant and malediction rituals [盟诅 méngzǔ], and oaths combined with the beheading of chickens [斩鸡头 zhǎn jītóu].\textsuperscript{140} Underworld indictments

\begin{thebibliography}{99}
\bibitem{note134} June 2009, Beijing, China.
\bibitem{note135} Hansen, \textit{supra} note 92, at 190.
\bibitem{note136} \textit{DIVINE JUSTICE, supra} note 39, at 4.
\bibitem{note137} \textit{Id.} at 5.
\bibitem{note138} \textit{Id.}
\bibitem{note139} \textit{Id.}
\bibitem{note140} \textit{Id.}
\end{thebibliography}
included allegations against the living, the dead, and evil spirits. One Daoist text identifies eighty-one possible underworld lawsuits and the expertise of Daoist ritual practitioners in these suits, including navigating corruption in the underworld courts. Other rituals could be performed to reconcile parties, and seek justice for being falsely accused.

In contemporary Taiwan, politicians have not hesitated to take oaths in popular local temples to protest accusations of lying or vote-buying. Also, over 3000 people a year file indictment rituals at the Dizang Abbey, a popular temple. And local police and prosecutors also seek spiritual help at temples for difficult to solve cases.

The Chinese also believed in the existence of Guǐlù, or Spirit Codes, that governed the underworld. One Daoist sect held that netherworld law principles were the same as earthly ones so the Spirit Code was remarkably similar to the dynastic penal codes. From the first through twentieth centuries, many persons were buried with tomb contracts that invoked Guǐlù. During the Song Dynasty (960-1276) there was a manual for government officials that contained model tomb contracts and also cited Guǐlù as authority. These tomb contracts resembled land contracts, in that they mentioned a plot of land, and a buyer and seller. The buyers were the deceased and the sellers were the earth gods. One copy of the contract was placed in the ground for the gods. Another copy was placed in the coffin for the deceased in case it was needed in the underworld to prove his ownership of the funeral plot. The purpose of these contracts seemed to guarantee the safe passage of the deceased into the underworld.

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141 Id.
142 Hansen, supra note 92, at 191.
143 Id. at 192.
144 DIVINE JUSTICE, supra note 39, at 5.
145 Paul R. Katz, Religion and the State in Post-war Taiwan, in RELIGION IN CHINA TODAY 102 (Daniel L. Overmyer ed. 2003).
146 Id.
147 Id. at 103.
149 Hansen, supra note 92, at 204.
150 LAW OF THE SPIRITS supra note 148, at 284, 286.
151 Id. at 284.
152 Id. at 284-5.
153 Id. at 284.
154 Id. at 285.
155 Id.
and immunity from prosecution from underworld courts. Thus, it was commonly believed that the spirits could be bound by contracts that resembled earthly contracts.

At the same time, many stories circulated about proceedings in these underground courts. Typically they were collected from persons who had lost consciousness, and then upon regaining it, recounted journeys to the underworld to participate as witnesses in underworld proceedings. These underground proceedings rectified miscarriages of justice on earth.

Thus, the Chinese spirit world also included an intertwining of ritual and law through underworld court proceedings mediated by Daoist priests, spirit codes, and tomb contracts. Although lawyers were not involved in imperial courts, Daoist priests, by bringing underworld petitions on behalf of adherents, were the “lawyers” in TCL. The imperium, families and merchant courts were deeply attentive to underworld justice.

CONCLUSION

The sun had set, and as I walked along the beach boardwalk I heard loud gongs and music. I quickly crossed the Fujian street of cars and city buses and found a stage filled with a troupe of opera performers. I thought I would stay for a few minutes but realized that by the time the performance had ended, that the street opera had been three hours long! It was a tale of injustice finally rectified in a spiritual court. The scenes intertwining earthly and divine magistrates were seamless. Afterwards I realized the opera had taken place in front of the local temple. It was an offering for the temple.

Sacrifice is not a thing that comes from without; from centering it emerges and is born in the heart/mind. The heart/mind being deeply moved, it offers upwards in ritual.

Record of Rites

China’s traditional legal system was embedded in a rich fabric of virtue cultivation and celestrial ritual. This fabric was woven with sacrifice.

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156 Id.
157 Id. at 284-6.
158 Id. at 286-9, 290-2.
159 July 15, 2010, Fujian, China.
160 LJZY 49/2:1602, as translated by Angela Zito, supra note 17, at 154.
and blessing in multiple and parallel jurisdictions. Each earthly agent appealed to his spiritual counterpart. The Emperor worshiped Heaven and officials worshiped the City Gods and other deities in the heavenly bureaucracy. Sons offered sacrifices to ancestors. Merchant guilds offered sacrifices, banquets and plays to deities of commerce and wealth. Gifts, banquets and wine sealed pacts, and also served as conflict prevention and resolution. Shared food and wine is China’s prime ritual. It represents abundance from Heaven, human cultivation, and communion with invisible and visible companions.

At the same time, codes embedded in ritual in the multiple jurisdictions of the state, family, merchant, and spiritual realms, cultivated virtue, and each realm had courts to punish the wrongdoers. China’s earliest legal codes were literally on ritual cooking vessels. State courts only intervened when other jurisdictions failed to act or could not resolve a conflict. Spiritual courts rectified what was left unadjudicated or wrongly adjudicated, in earthly courts. At all levels, spiritual authorities and courts could be appealed to to intervene and although no lawyers were allowed in imperial courts, Daoist priests served as “lawyers” for underworld courts. Ritual and law, and the visible and invisible, were thus wed. Without studying ritual, or family or merchant codes, China’s traditional state codes seem incomplete. Like the relationship of yin and yang, ritual lies in law, and law in ritual. And as yang is superior to yin, ritual dominates law.

This ritual/law virtue framework needs further exploration in contemporary discussions of Chinese law. Otherwise, contemporary Chinese law appears incomplete. Not only will current legal practice and rituals, including abundant gifts, banquets, and drinking, become more

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162 Contemporary Chinese law practice also involves karaoke and the wuxiu [afternoon
comprehensible, but a contemporary rule of virtue can also be fostered. These need to be considered: intentionally updating traditional rituals and codes with appropriate virtuous boundaries, or even creating new rituals; so that rituals are not corrosive, but life-giving, cleansing, nourishing, and just. The goal of ritual is to become oneself a gift of virtue. This can be done in other legal traditions as well: promoting virtue formation and harmony, as well as appropriate dispute resolution and litigation. The rule of virtue can be strengthened, as well as the rule of law!

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Author has been participant-observer. Interestingly, shared Chinese food is also a common ritual in American law firms, particularly for lawyers working at night. American trial lawyers also use rituals in winning cases. Benjamin Weiser, “In a Field of Reason, Lawyers Woo Luck Too”, N.Y.TIMES, February 17, 2011. This article describes rituals such as eating at the same restaurant, wearing a particular suit, etc., that have led to successful verdicts.

In the Christian tradition, in the Sermon on the Mount, Jesus Christ taught that certain conflict and litigation could impede worship, “Therefore, if you are offering your gift at the altar and there remember that your brother has something against you, leave your gift there in front of the altar. First go and be reconciled to your brother; then come and offer your gift. Settle matters quickly with your adversary who is taking you to court. Do it while you are still with him on the way, or he may hand you over to the judge, and the judge may hand you over to the officer, and you may be thrown into prison. I tell you the truth, you will not get out until you have paid the last penny.” Matthew 5.23-26. St. Paul taught the virtue of self-sacrifice, “Therefore, I urge you,…in light of God’s mercy, to offer your bodies as living sacrifices, holy and pleasing to God…Be devoted to one another in brotherly love…Live in harmony with one another…overcome evil with good.” Romans 12.1, 10a, 16a, 21b.” Also, St. Paul wrote, “Do not get drunk on wine…but be filled with the Holy Spirit. Ephesians 5.18. The Holy Bible, New International Version. Copyright ©1973,1978,1984 by the International Bible Society.