

antiquity], which is the first chapter of *Shi yu Zhongguo wenhua* [Literati and Chinese culture] (Shanghai: Shanghai renmin chubanshe, 1987). See especially pp. 9-26.

12. Yü Ying-shih was specifically referring to the transition in intellectual history from Confucianism to neo-Daoism and Buddhism during the third and the fourth centuries. See his "Intellectual Breakthroughs," p. 158.
13. See ch. 4, "Handai xunli yu wenhua chuanbo" [The subofficial functionaries of the Han Dynasty and the spreading of culture], and ch. 8, "Zhongguo jinshi zongjiao lunli yu shangren jingshen" [The religious ethics and the merchant spirit of China's modern times], in Yü Ying-shih's *Shi yu Zhongguo wenhua*.
14. See, for example, Joan Scott, "Gender: A Useful Category of Historical Analysis," in her *Gender and the Politics of History* (New York: Columbia University Press, 1988), pp. 28-55.
15. *Mencius* [Mengzi] was added to the classics during the Song period.
16. Ko, *Teachers of the Inner Chambers*, p. 9.
17. Susan Mann, "What Can Feminist Theory Do for the Study of Chinese History? A Brief Review of Scholarship in the U.S.," in *Jindai Zhongguo jinshi shi yanjiu* [Research on women in modern Chinese history] 1 (June 1993): 241-60.
18. Alcuin Blamires, *The Case for Women in Medieval Culture* (Oxford: Clarendon Press, 1997), p. 9.
19. *Ibid.*
20. Nancy Armstrong, "Postface, Chinese Women in a Comparative Perspective: A Response," in *Writing Women in Late Imperial China*, eds. Ellen Widmer and Kang-I Sun Chang (Stanford: Stanford University Press, 1997), pp. 420-1.
21. See Margery Wolf, *Women and the Family in Rural Taiwan* (Stanford: Stanford University Press, 1972), pp. 32-41. Susan Mann praises this work as the first "pathbreaking work exploring the relationship between gender and power in Chinese society." See Mann, p. 242.
22. Armstrong, pp. 420-1.
23. Denise Riley, "Am I That Name?" *Feminism and the Category of "Women" in History* (Minneapolis: University of Minnesota, 1988), pp. 96-101.
24. See Ko, "The Body as Attire."
25. Blamires, p. 11.
26. I am extending Rey Chow's suggestion that "the use of 'woman' needs to become a tool of formal analysis that would unsettle the very notion of 'tradition' itself," on p. 52 of her *Woman and Chinese Modernity: The Politics of Reading Between West and East* (Minneapolis: University of Minnesota Press, 1991).
27. Blamires, p. 18.

CHAPTER ONE

THE DEATH OF A PRINCESS: CODIFYING CLASSICAL FAMILY ETHICS IN EARLY MEDIEVAL CHINA

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Women's involvement in legal cases, whether as victims, criminals, or arbiters, shows that the road to Confucianization in early medieval China was bumpy, especially in the Northern Dynasties.

Introduction

Marriage and family ethics are often believed to play an effective role in stabilizing a society. Thus, the codification of such ethics readily attracts the attention of ruling authorities. In western Europe, biblical teaching on marriage and family was interpreted and taught by the twelfth-century canonists, not only to direct people toward a more sacred life but also to increase the secular power of the Catholic Church, which was engaged in a contest with the feudal lords. The Church was not powerful either as a political entity or as a social force in the early Middle Ages. The monastic reform in the tenth and eleventh centuries, however, built up a cult of celibacy within clerical circles and freshened up the tainted image of the papacy. Through the Church courts, then, the Church established its power to regulate the marriage customs of the laity and to give spiritual justifications for marital ethics.¹ In China, it was the Confucian Classics that provided such ethics, and the state, instead of any religious organization, was the institution that undertook the task of enforcing those marital and familial norms.

Since the last century, traditional Chinese society has been perceived as almost monolithically Confucian, and the state, with a legal mechanism at its disposal, has often been seen as a willing participant in the "inevitable" development of Confucianization. However, like the Catholic Church before the Cluniac reform, the state (or better, states) in early medieval China was not yet sufficiently powerful to carry out its will. During the period of disunion between the fall of the Han Dynasty (206 B.C.E.—222 C.E.) and the reunification of the Sui (581—618), the state was divided and without encompassing power. (See Appendix I for Chinese dynasties till the seventh century.) Moreover, ethnic diversities, struggles for political survival, and differences in social structure all contributed to discrepancies in ethical values both among states and within a government. The issue was not only whether the ruling authorities intended to Confucianize society through the codification of classical ethics, but also, first, which aspects of those marital and familial ethics were integrated into the law; second, in what way the codification was carried out; and, third, who the ruling authorities were.

With regard to the first issue—which marital and familial ethics were integrated into the law—the codification of classical ethics in Chinese history was most vividly demonstrated in the application of *wufu*, the five degrees of mourning, to revising the law and making verdicts.² The "Sangfu" [Mourning] chapter of *Yi li* [The book of ceremonies], which contains a discussion of the five degrees of mourning (see Appendix II), established the duration and clothing (mostly flax) for mourning a family member. The duration of mourning, ranging from three months to three years, and flax clothing of five different qualities and shapes, were assigned to each family member, corresponding to his or her relation with the deceased in terms of closeness and status. The mourning-obligation system thus exemplified the scope and composition of the patriarchal family.³ As shown in Appendix II, the mourning obligations were fashioned around the male members of the family. According to the "Sangfu" chapter, while a man stayed in his natal family with his relations to other members uninterrupted, a woman's mourning obligations changed with her marital status. When she married out of her natal family and into her husband's, her mourning obligations for her natal family members were reduced, while those for her husband's family were given priority.⁴ As the *Yi li* put it, a father was the "heaven" to his child; the husband, the "heaven" to his wife. Since a person could not have two heavens, a woman's "heaven"—her greatest mourning obligation—was transferred from her father to her husband. The key points are that a woman's family identity shifted after her marriage, and that she was inferior to her husband in his family.⁵

As for the second issue, the implementation of these ethical standards, imperial decrees, and officials' memorials were often cited to demonstrate progress in the codification of Confucian ethics.⁶ For instance, early in the Western Jin period (265—317), it was decreed that the five degrees of mourning should be employed as a principle for legal decisions⁷; that is to say, graded penalties would be meted out by justices to show and to ensure the definition of the hierarchy within a family should its members become involved in legal cases. However, careful investigation suggests that the application of the five degrees of mourning in verdicts varied among cases in different regimes due to factors including court politics, pleas from powerful aristocrats, possible nomadic influence, and personal characteristics of different rulers, which were all related to the third issue, the makeup of the ruling authority.

This article examines a case in the sixth century to trace progress and regress in the codification of Confucian ethics by the state. This disastrous case involved Grand Princess Lanling of the Northern Wei Dynasty (386—534), founded by the Tuoba clan of the nomadic Xianbei people, and her husband Liu Hui, son of an imperial clansman from the Liu-Song Dynasty of the South (420—79) who had surrendered to the northern rulers. Their violent marriage ended with a miscarriage and the death of the princess. The story of her death provides valuable insights into the relationship among state, family, and ethics in early medieval China. The case involved sex crimes, marital violence, concealment, and collective responsibilities among family members—all important aspects of the more general problem of the codification of classical ethics. To reach a verdict, court officials cited statutes and precedents from earlier periods, exemplifying how the Northern Wei both continued and deviated from the legal practices of their predecessors in the Han and subsequent dynasties.

In this article, we will first reconstruct the case of Princess Lanling, based on the "Biography of Liu Hui" and the "Monograph of Law" in the *Wei shu* [The history of the (Northern) Wei Dynasty],⁸ and then examine the arguments of Cui Zuan, the most important official involved. Subsequently, we will investigate three elements in codifying the classical family ethics displayed by this case: (1) sex crimes; (2) marital violence; and (3) familism, which includes the issues of concealment and collective responsibility (*lianruo*). Along with the analysis, related statutes and cases will be cited to demonstrate the rationale of the contending arguments. Finally, we will discuss the positions and backgrounds of the participants not only to show various influential components of the ruling body—a nomadic woman ruler versus her legal bureaucrats—but also to underline the complexity of the Confucianization of Chinese society.

The Marriage of Grand Princess Lanling and Liu Hui

Grand Princess Lanling married Liu Hui at the turn of the sixth century. The princess is said to have been so jealous that she once killed a maid impregnated by Liu Hui. Still furious, the princess aborted and mutilated the unborn child, stuffed the maid with straw, and showed her naked to Liu Hui. Appalled and angered by the princess's behavior, Liu Hui determined to ignore her after this incident. The situation was reported to Empress Dowager Ling (reigned 516-28), the princess's sister-in-law and regent of the Northern Wei government at that time. After an investigation, Liu Hui was deprived of his noble title and was divorced, some ten years after his marriage to the princess. The reason given was that they no longer had "reason to be husband and wife."⁹

One year later, however, probably at the princess's request, a powerful eunuch and an imperial clansman who had handled the divorce investigation asked the Empress Dowager for the reunion of the princess and Liu Hui. The Empress Dowager was reluctant to grant the request at first, fearing that the princess would not mend her ways. After repeated petitions from the two, the Empress Dowager finally granted the request, escorted the princess out of the imperial palace personally, and asked her to exercise more discretion in the future.¹⁰

In 519 or 520, when the princess was pregnant, Liu Hui committed adultery with commoner Zhang's sister Zhang Rongfei and commoner Chen's sister Chen Huimeng.¹¹ History says that the princess changed her tactics and at first held her temper; however, agitated by her female relatives, she started fighting with Liu Hui again. Liu Hui pushed her out of bed, beat her, and stamped on her. She suffered a miscarriage and later died. In the meantime, Liu Hui had fled.¹² A reward, equaling an earlier one for a rebel, was offered for his arrest.¹³ During the period between the princess's miscarriage and her death, when Liu Hui was still in hiding, the court fell into serious debate over the charges and verdicts for the two adulterous women and their brothers.¹⁴ Bureaucrats challenged imperial decrees that favored severe punishments.

The Department of Chancellery (*mensxia*) proposed that both Liu Hui and the two adulteresses be sentenced to death; the women's brothers should be banished to the borderland since they knew of the situation and did not prevent it from happening.¹⁵ An imperial decree approved the proposal but reduced the women's death penalty to beating and head-shaving (*kuimian fujong*)¹⁶ followed by palace slavery. Cui Zuan, then director of the three dukes (*sangong langzhong*) in the Department of State Affairs (*shangshu sheng*), did not agree with the verdict.¹⁷ His argument consisted of four

major points, including the verdicts for the three parties involved and a contention over the division of bureaucratic power.

The first point addressed the verdict for Liu Hui—whether his death sentence was appropriate according to various law codes. Cui Zuan claimed that the law was the foundation of government and should not be affected or altered by emotion or affinity. Liu Hui had not committed treason, and it was wrong to treat him as if he had. His crime, Cui Zuan tried to convince the imperial authority, was killing his unborn child. Cui Zuan cited the "Law of Assault" (*Douli*) of the Northern Wei, saying that one who killed one's grandchild or child by beating would be sentenced to four years' labor, while one who killed one's grandchild or child with a weapon such as a knife would be sentenced to five years' labor. If one killed with love or hatred in mind, the penalty would be one degree more severe. He then argued that, even though the princess was prestigious, her aborted child was still Liu Hui's flesh, and thus his penalty should have been decided accordingly.¹⁸

Although historical records do not explain why Liu Hui was treated as a traitor, the way Cui Zuan argued for him provides some hints. Treason law since the Han Dynasty considered a person who killed an imperial family member a traitor.¹⁹ That the imperial authority applied this precedent to Liu Hui suggests that it considered the aborted child an imperial family member. This runs against the idea of the patriarchal family defined in the *Yi li*. When Cui Zuan suggested a verdict based on the "Law of Assault," he was actually arguing for the recognition of the patriarchal family as described in the Confucian Classics. If the unborn child was perceived as Liu Hui's child instead of the princess's flesh, Liu Hui should not have been treated as a traitor who had killed an imperial family member. Instead, he should have been charged with killing his child.²⁰

Second, Cui Zuan argued that, although the imperial decree showed mercy and reduced the two adulterous women's penalty, the punishment was still too harsh for their deeds. If they were considered Liu Hui's accessories, their sentence should have been postponed until he was captured. Cui Zuan cited a statute of 511 that maintained that the verdict for a principal criminal should be given before that for the accessories if the penalty involved banishment and execution (*xing*).²¹ Besides, Cui Zuan argued, what Zhang Rongfei and Chen Huimeng had committed was adultery; if they were caught at the scene of the crime with clear evidence, then they should have been convicted and punished as adulteresses. In no way should they be sentenced to slavery.²² Cui Zuan did not quote any law code on the penalty for adultery, but his colleague, You Zhao, then

right vice director (*yü pu-yü*) in the Department of State Affairs, came to his support and called for the labor penalty for the women.

Cui Zuan's third point focused on the innocence of the two brothers and the unfair application of collective responsibilities in their sentence. According to Zhang's testimony, his sister Rongfei was already married and had two daughters. Since the *Yi li* held that the husband was a married woman's heaven, Cui Zuan argued, her husband instead of her brother should have been responsible if she committed a crime. Cui Zuan referred to an important legal revision on collective responsibility from the Cao-Wei (220-65) and Western Jin periods; this revision mandated that a maiden be punished for her parents' treacherous crime and a wife for her husband's.²³ Moreover, Cui Zuan contended, the law allowed concealment among *jijin*, family members with one year's mourning obligation, even if they had committed only ordinary crimes. The government should not have required siblings, also defined as *jijin*, to testify about scandalous behavior such as adultery—not to mention that there was no collective responsibility in adultery cases anyway. Therefore, Cui Zuan asserted, the court should not punish the brothers because of its resentment against Liu Hui.²⁴

What Cui Zuan referred to here were the two most important items in the Confucian ethical code: the right of concealment among family members, and the collective responsibility of the family as a whole. Both practices were based on the scope of the patriarchal family as defined by the five degrees of mourning prescribed in the *Yi li*. The statute on concealment was codified in the middle of the first century B.C.E. under the Han Dynasty. The treason case that stirred debates on women's collective responsibility took place near the end of the Cao-Wei rule and finally led to a modification of relevant laws in the beginning of the Western Jin period. Cui Zuan's reference to them indicates that the once-nomadic Xianbei continued the law of its Han predecessors and illustrates Cui's own efforts to integrate Confucian family ethics into legal decisions.

The fourth aspect of Cui Zuan's argument concerned the division of duties and power in government. He stated directly that officials of the Department of Chancellery belonged to the imperial palace; their job was to report cases and memorials, not to decide verdicts.²⁵ Who then was to decide the verdict? Cui Zuan did not make this explicit. But there is good reason to believe that the Department of State Affairs should have been the office in charge, especially since all disagreements came from officials of that department.

Yuan Xiuyi, imperial secretary (*shangshu*) of the Department of State Affairs, agreed with Cui Zuan's argument on the innocence of the broth-

ers and cited the *Spring and Autumn Annals (Chunqiu)* to prove the cessation of connections between a married woman and her natal family. Since her natal family would not be accountable for any crimes committed by her, her brother should not have been charged and punished.²⁶ You Zhao, mentioned earlier, not only agreed with Cui Zuan's objections, but also emphasized that it was not the business of the Department of Chancellery to investigate felonies and propose verdicts. He therefore suggested that the court put the appropriate office in charge and retry the case.²⁷

These proposals were not appreciated by the imperial authority. The imperial decree following the discussions confirmed the earlier verdicts. It explained that such a heavy reward was offered because Liu Hui's crime could not be pardoned and he had to be arrested. The decree claimed that the two women had indulged their passions and confused Liu Hui's mind by adultery, which caused the disastrous miscarriage of the princess. "[If they are] not executed, how can [the court] punish and purge [others in the future]?" questioned the decree. Though the decree acknowledged the validity of the bureaucrats' legal arguments on collective responsibility, it still accused the two brothers of failing to prevent the crime and concealing it after the fact. The wording of the decree affirmed the brothers' role in introducing their sisters to Liu Hui and suggested the importance of a harsh penalty as a warning to potential criminals, thus rationalizing the severe punishment meted out to the two brothers.²⁸

With regard to the division of duties in government, the imperial court stated bluntly that it had the right to put the Chancellery in charge because, first, this was not an ordinary case, and, second, there had been imperial prisons since ancient times and not all cases were to be decided by judicial bureaucrats. The decree then accused the Department of State Affairs of misleading the populace by "going against righteousness." Cui Zuan was therefore deprived of his official position while the other two officials who had raised objections were deprived of their salaries for a period of time.²⁹

Princess Lanling died from the miscarriage after the punishment was meted out. The *Wei shu* states that the Empress Dowager was so sad that she not only attended the funeral, crying wholeheartedly, but also accompanied the funeral procession personally several miles out of the capital. Later she told one of her officials that she could not help but cry in excess because the princess tolerated Liu Hui and never spoke up although she was insulted by him more than once. She said, according to the *Wei shu*, "There was no such [woman] in the past, nor is there any such today. That is why I feel so sorry." Liu Hui was later captured but was pardoned due to an amnesty right before his execution. He regained his

noble and official title in 522 but died, presumably from natural causes, the following year.³⁰

This case easily attracts a historian's attention. Inspired by today's historiography, we see in the story a rare opportunity to exercise our newly acquired sensitivity to issues of class, ethnicity, and gender. The match was an intermarriage between a nomadic princess and the son of an ethnic Han who had surrendered to the nomads. The debates occurred between the imperial regent, a nomadic woman ruler who wanted to avenge her sister-in-law, and her legal bureaucrats, who were either of Han ethnic origin or Confucian educational background. The case concerned not only members of the imperial family but also commoners, and the debates mainly concerned the latter's verdicts. In part because of its complexity, this case serves as a valuable example for discussing the codification of Confucian ethics in early medieval China. In addition, it includes almost every aspect of criminal law and litigation in which a traditional Chinese woman could be involved: sex crimes, marital violence, and issues of legal familism such as concealment and collective responsibility.³¹ A closer look at each of these three aspects shows that not only did the codification of Confucian ethics advance and backslide, but also women and marriage-related issues were often important checkpoints of such development. Furthermore, the imperial intervention of a Northern Wei female regent congregated in one case social, class, and gender issues—cruxes in contemporary discourse as well.

Sex Crimes and Their Punishment

Although Liu Hui, Zhang Rongfei, and Chen Huimeng all committed adultery and were sentenced to death, Liu Hui was not charged or pursued as an adulterer. Instead, he was accused of treason for killing an imperial family member. Similarly, when Cui Zuan opposed the original verdict by the Chancellery and argued for a lighter penalty for Liu Hui, he did not base his argument on Liu Hui's crime as an adulterer but on the definition of treason. It was not that the Xianbei imperial authority did not punish sex crimes such as adultery, but that a punishment for adultery would not be severe enough. Given the statement Cui Zuan made about Liu Hui's killing his own flesh and the "Law of Assault," one suspects that Cui Zuan was proposing a four- or five-year labor penalty for Liu Hui. This could have been a more severe punishment than any Liu Hui might have received for adultery only.³²

Legal penalization of sex criminals, both adulterers and fornicators, was an established tradition since the early imperial period. It is often assumed

that women were punished more severely than men for sex crimes, but historical evidence suggests that generational taboos and incestuous conduct were more critical factors than gender in deciding the verdicts. We will examine the penalty for adulterous men first before turning to that for women.

Under the Han, a man who committed adultery could be punished by a monetary fine, deprivation of his noble title (if he had one), or manual labor service for three years. If his accomplice was one of his senior relatives, such as a wife or concubine of his father or paternal uncle, he could be put to death.³³ The Jin court carried on the Han spirit. According to Jin law, one who committed fornication with a widow would be sentenced to three years' penalty, while one who committed adultery with his paternal uncle's wife would be sentenced to *qishi* (execution in the marketplace).³⁴ The Southern Dynasties (420–589) adhered to the Jin codes, making few revisions, and one can be certain that they also punished sex criminals although no detailed statutes and cases are available.³⁵

There is no law book left from the Northern Wei to show the penalty for an adulterous man. Cases mentioned in the dynastic history, *Wei shu*, indicate that sex criminals were punished much more severely in the early years of the nomadic Xianbei rule than in later years. Tribal laws executed men and women who "had intercourse outside propriety."³⁶ At least six times after the establishment of the Northern Wei Dynasty in 386, the Xianbei imperial authority decreed the revision of the law.³⁷ Although no specific information on changing the punishment was left in historical records, later penalties for adultery must have been more lenient for both aristocrats and commoners.

Due to the nature of the historical documents, extant relevant cases are mostly about aristocratic men. These cases suggest that unless the crime involved sedition, which often required more-severe punishment, imperial clansmen and officials, whether committing adultery with aristocratic or common women, were only deprived of their official titles when their conduct was uncovered, often by the husband of the accomplice.³⁸ If their partners were widows, the result for these adulterous men ranged from marriage to the woman to simply being despised by their contemporaries.³⁹ Sometimes it seems as if adultery did not attract much attention if the man was not involved in other, more complicated criminal cases. Recorded stories suggest that adulterous imperial clansmen could be impeached, beaten, or executed only if they were also liable for administrative corruption or treason.⁴⁰

With regard to women, Cui Zuan's protest obviously does not consider the reduction from the death penalty for the two adulteresses fair enough,

and it also suggests that adultery was not perceived as a heinous crime for women either. Although some Han Dynasty legal documents mention the death penalty for adulterous women (harsher than the penalty for men), there is no indication of such a penalty being carried out in Han times or later.⁴¹ In most of the adultery cases recorded in the *Wèi shu*, which mainly involve the aristocracy, there was no mention of the penalty for the woman. In some of the cases the adultery may have been tolerated either by the legal authority or by the husbands.⁴² Some women were forced to marry their lovers.⁴³

However, some adulterous women were killed not by legal verdict but by their husbands, who often paid the price later. *Wèi shu* records an official, Wei Rong, who killed his wife Ms. Li because he suspected her of an extramarital affair with an imperial clansman. He later committed suicide for fear that his crime would be uncovered.⁴⁴ A certain aristocrat who had married an imperial princess was suspected of murdering her to avenge her notorious penchant for adultery. Though no charge was pressed while the princess's brother was on the throne, the man was deprived of his noble title and barred from all official posts when Empress Dowager Ling, the princess's sister-in-law, came to power.⁴⁵

By and large, though sex crimes were considered destructive of family ethics and marital stability, neither men nor women would be sentenced to death simply for adultery should they be brought to court. With regard to the scope of and hierarchy within a patriarchal family, the overall picture suggests a selective application of classical ethics in the codification process.

First of all, though women in the late imperial period were supposed to be penalized more harshly than men for sexual misconduct, these cases have not shown such a practice among the aristocracy in the early medieval period.⁴⁶ How a commoner who committed adultery would be penalized is not clear. Nevertheless, based on the arguments of Cui Zuan and You Zhao, one can assume sentences of hard labor. According to the Jin code cited above, fornication with a widow warranted a sentence of three years' labor. The Tang code (*Tang ii*) of the seventh century made it even more explicit that men and women were to be penalized equally: one and a half years for fornicators, and two for adulterers.⁴⁷

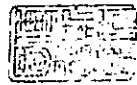
Second, intergenerational sex and incestuous behavior, which might have been punished with decapitation under the Han, did not seem to have been a serious concern under the Northern Wei. Some of the adultery cases actually happened between close relatives. For instance, Ms. Zheng, who lived in Empress Dowager Ling's time, committed adultery with the nephew of her husband. She was neither divorced nor

penalized. No word was given on the punishment of the nephew, whose conduct would have brought execution had he lived in the Western Jin period.⁴⁸ Also in Empress Dowager Ling's time an imperial clansman was impeached for adultery with his paternal first cousin's wife. We have no evidence of the verdict, but one suspects that he was at least deprived of his noble title. Whatever the original verdict, he was pardoned during an amnesty and then appointed to an official post. The fact that his accomplice was the wife of his paternal first cousin, a relative with a one-year mourning obligation, seemed to have been insignificant in the legal process.⁴⁹

Finally, it is interesting that in the Northern Wei period, the adultery of a wife did not justify murder as it did under murder law in later periods.⁵⁰ Since the early imperial period legal authority penalized violence among family members, but in later periods the penalties given were graded according to the hierarchical relations of those involved.⁵¹ As a result, the verdicts for marital violence cases let us determine if the law considered a woman inferior to her husband. Let us now look at cases that explicate this aspect in the codification of classical family ethics.

Marital Violence and the Status of Women in the Family

Under the Han Dynasty, husbands and wives do not seem to have been punished differently for violence, and it is not until the Tang Dynasty (618-907) that we see graded punishments.⁵² This suggests that the codification of husbands' and wives' relative status took place in the period between the Han and the Tang, when Liu Hui's case happened. Court discussion on Liu Hui's case did not mention the penalty for marital violence. Although Cui Zuan attempted to shift the focus of the debate on Liu Hui's sentence to child-killing, the imperial decree apparently did not follow his line of argument. It seems as if the court did not emphasize any specific action on the part of Liu Hui, but perceived his crimes as a whole, from adultery to the beating of the princess that caused the miscarriage. Given the remarks made by Empress Dowager Ling in grieving the princess's death, one suspects that the dowager's chief concern was the injury Liu Hui inflicted on the pregnant princess, not the injury to the unborn child.⁵³ Lacking codes and statutes from the period of disunion, we do not know for sure how husbands and wives were treated by law in instances of marital violence at that time. But judging from punishments meted out in cases of sex crimes during similar periods, we may conclude that the court would not argue along that line since a husband's beating



his wife may not have been perceived as a heinous crime and the punishment therefore would not be sufficiently severe.

Based on extant cases, it seems that men injured their wives for various reasons and received various punishments for their deeds. If the beating resulted in death, brutal husbands could be executed by law. One man in the fourth century beat and eventually killed his wife when he had a relapse into madness. Although some officials argued for a lighter penalty based on his lack of intent, he was sentenced to death.⁵⁴ In the time of Emperor Xiaowen (r. 471-99) of the Northern Wei, a man beat his wife for drinking liquor and killed her by accident. He was first sentenced to death by a local official, but his son's appeal moved the minister who reported the case to the throne, and the emperor reduced the penalty to exile.⁵⁵ Adultery cases cited above, in which murderous husbands killed themselves, also confirm that a man who slew his wife could face the death penalty regardless of the reasons for his action. Sometimes, imperial intervention might mean that violent husbands could be sentenced to death for lesser crimes. One official in the third century ordered his servant to beat his wife because he believed she was having an affair with the reigning emperor. The wife sued the husband, and he was later executed.⁵⁶

Other times, violent husbands got off lightly or were even set free, especially if the connection between the beating and the death were not ascertained.⁵⁷ An official in the third century hit the stomach of his pregnant wife with a sword handle when she candidly analyzed his personality. One account says that the blow caused her miscarriage and death, but no one filed any accusation, apparently due to the difficulty in establishing the case.⁵⁸ Basically, two elements that would lead to punishment in such a case were absent: first, a confirmation of the connection between the beating and the death, and second, a qualified person to file the accusation.

The verification of the causality between the beating and the death was further complicated by a standard legal practice called "protecting the innocent" (*baogou*), which granted a grace period of a certain number of days to be specified by law to observe the beaten party. If the victim suffered serious injury or even death within that period, the offender would then be charged.⁵⁹ For instance, the Tang law commanded that one who hurt others with hands or legs would be charged with injury if the victim suffered serious damage, such as a miscarriage, within ten days.⁶⁰ Under such conditions, a husband who beat his wife and caused a miscarriage would not be pardoned. However, the law required the injured wife to bring charges personally; only when the beating resulted in her death could someone else file an accusation against the husband. As a result, most abuses probably remained undiscovered. To add insult to injury, even when death

did result, the children of the offender were not permitted to file an accusation, for laws from the Qin Dynasty (221-206 B.C.E.) prohibited family inferiors, such as children and slaves, from accusing superiors, such as parents and masters.⁶¹ Therefore, throughout early medieval China, a son could not expose his father's violence against his mother, though he might be the only or most important witness.

When mothers were the offenders, however, the situation differed depending on who was injured or killed and on different interpretations of family ethics between the South and the North. First of all, women's acts of violence often came from jealousy and usually were aimed at their rivals instead of their husbands: some women killed or tortured their husbands' concubines and maids. Grand Princess Lanling's mutilation of the maid impregnated by Liu Hui is only one example. Moreover, although laws had prohibited killing maids and slaves since the Han Dynasty, it is likely that most violence of this kind remained hidden due to the legal procedure required to establish a case,⁶² which often let the offenders maneuver around the law. However, if the woman's attack was aimed at her husband, there was a good chance her deeds would be exposed. The following two cases, focusing directly on injury to husbands, show both the consequences involving the wives and the children and the different interpretation of Confucian ethics by the Southern and the Northern Dynasties.

In the Liu-Song South, a certain Tang Ci died from vomiting toxic worms after he attended a banquet. Before he died, he told his wife Ms. Zhang to dissect his body afterwards so that the reason for his death could be revealed. Ms. Zhang did so and was charged by the local official with cruelty; her son Tang Fu was also accused since he did not stop her. But the local official could not decide on a verdict right away because this case happened just before a general amnesty.⁶³ The case was presented to the court along with pertinent information: the Liu-Song law ruled that (1) one who ruined a corpse would be sentenced to a four years' penalty; (2) a wife who injured her husband would be sentenced to five years' punishment; and (3) a son who was not filial to his parents (*buxiao*) would be sentenced to *qishi* (execution in the marketplace).

In the court discussion, some officials tried to argue for Ms. Zhang and her son by pointing out their obedience to Tang Ci's will and their lack of intent to hurt. But others argued that if the law considered that merely to remove a corpse from the road, which was much less injurious to the corpse than to dissect it, was "to go against moderation and rupture reason" (*bidao*), then to dissect a corpse would be worthy of even greater punishment. There could have been a lighter penalty in this case if other

codes were applied or if the amnesty were considered. However, in the final verdict Ms. Zhang was charged with *bu'dao*, a crime with an impious and heinous connotation, and Tang Fu with being unfilial.⁶⁴ Both crimes warranted the death penalty.⁶⁵ The case shows that a southern woman who injured her husband would be punished more severely than the culprit in an ordinary injury case, a spirit not seen in the Han documents but firmly integrated into the Tang code. The final verdict suggests that harsher punishment was applied in order to make clear the superiority of husband over wife, which was ordained in the *Yi li*. Moreover, the charge of being unfilial made against Tang Fu in this case and his final execution also reveal the dilemma a child would have to face.

In the North, however, legal debates indicate a more lenient treatment of a child who concealed his mother's violence. At the beginning of the Eastern Wei Dynasty (534-50), a new set of laws was proclaimed, presumably to confirm the legal practices of the preceding Northern Wei Dynasty.⁶⁶ According to the law, a son should not report his mother to the government if she killed his father; one who reported his own mother to the authorities would be executed. Court official Dou Yuan disagreed with the law and sent a memorial to the throne. His argument was based on the idea that a wife and mother occupied a status inferior to that of a husband and father in legal matters:

If one's father kills one's mother, it is a husband killing a wife. Since a mother holds an inferior status in the family, it is right for the son not to report the homicide. But it is not right for a son to conceal the crime if his mother kills his father. . . . If he conceals such a crime, he demonstrates that he only knows his mother but not his father. This is the attitude of the wild men; such behavior is close to that of a beast. . . . A father is the heaven for both a mother and a son. When she kills her husband, she destroys the heaven for both of them. This is a crime that cannot be pardoned. The moment she commits the killing, the affection between mother and son is severed. Therefore, the son should not conceal the crime in the name of the mother and son relationship.⁶⁷

The emperor sent his memorial to the Department of State Affairs for discussion. Feng Junyi, then gentleman of the three dukes, disapproved, arguing that

A person receives flesh and care from both parents and has the same affection for both of them. Now [Dou Yuan's] presumptuous distinction between superiority and inferiority is hard to endure and bears no historical precedent. If one's mother kills one's father and is executed after one's report, then

her death is caused by her child. There is no country that does not have mothers. Where can this child go?⁶⁸

In response to the Department of State Affairs, Dou Yuan cited examples and prescriptions from classics such as the *Yi li* to prove that he was arguing on a historical foundation. However, no further response was heard from the imperial court, and the matter stopped at this point, suggesting that Feng Junyi's opinions were accepted and Dou Yuan's were dismissed.⁶⁹

Since this account of Dou Yuan's legal thinking was included in the "Biographies of Good Officials" in the standard northern histories, perhaps both Wei Shou, the author of *Wei shu*, and Li Yanshou, the author of *Bei shi*, considered Dou's ideas laudable. However, such ideas were probably not in accord with contemporary perceptions of family relations or with legal practices in the Northern Dynasties. The Tang code explicitly prescribed that a son was to report homicide within the family only if his father was killed by his father's legal wife (*zhimu*), his foster mother (*simu*), or his stepmother (*jimu*).⁷⁰ That no word was given concerning the killing of one's father by one's birth mother indicates the continuance of the Northern Wei legal practices: on the assumption that he should love both parents equally, a son was supposed to treat them equally, at least in the area of concealment.

We can make several observations based on our discussion of these often-fragmentary cases related to marital violence. First, while men usually directed their violence against their wives, women usually assaulted rivals for their husbands' affection. Second, when death resulted, it was difficult to build injury cases unless the husbands were the victims. Third, should a case be established, penalties differed due to varied factors, such as personal relations or noble status, and were not necessarily related to the status of husband and wife in the family. However, we can be certain of two points in terms of the codification of Confucian ethics. First, while there is no indication that in Han times graded punishment was given to husband and wife in cases of marital violence, the Southern Dynasties nevertheless penalized offending wives more severely than offenders in regular violence cases. Second, though most family violence was hard to expose due to the legal procedures required to establish a case, the law of the Northern Dynasties, after ardent debate, still allowed a son to conceal his mother's violence against his father.

Concealment actually correlated with collective responsibility in legal practice. Those who were allowed to conceal a crime such as marital violence would not be punished later when the crime was uncovered. However, those who were expected to uncover a crime such as high treason

of collective responsibility. Her mother filed a plea for mercy and brought the issue of a woman's collective responsibility into question. A court discussion was proposed in favor of not punishing the married daughter of the offender.⁷⁴ One of the arguments ran thus:

A woman has the obligation to follow three men in her life and not to arbitrarily seek her own way.⁷⁵ If she is married, her mourning period for her parents will be reduced; therefore, it is clear that her affection for them should be different from that of a maiden. However, according to the law, when a parent commits a crime, a married daughter will be punished; when the husband's family is executed, the wife will also be put to death. She has to endure penalty from both sides. Once a woman is married, she is the wife of another surname; if she gives birth to a child, she is the mother of another family. A man cannot be executed for connections to both families. This neither shows pity for weakness of a woman nor does it clarify the law.⁷⁶

The official in charge therefore suggested that a maiden should be responsible only for charges against her parents, while a married woman should be penalized only for her husband's family. The emperor accordingly decreed a change in the law. When the newly established Jin Dynasty proclaimed its revised law code in 267, both divorced mothers and married daughters were exempted from the collective responsibility of their previous families. The revised Jin code also stated explicitly that "future verdicts will be decided based on the principle of the five degrees of mourning in order to enforce the [Confucian] ethical teaching."⁷⁷

This principle must have been an integral part of Northern Wei legal ideas by the sixth century since Cui Zuan cited it when he came to the brothers' defense. However, the principle, in its original spirit and later application, meant that women were not only collectively executed for treachery crimes committed by their male family members, but also punished for various misdeeds done by their husbands.⁷⁸ Interestingly, it was often when the officials in charge pitied women for their "weakness in nature" that the government began discussions on legal revision.

At the turn of the fourth century, the execution of Ms. Xie, arrested for her father's treason one day before her wedding, induced a discussion on reducing the penalty for women in cases of high treason.⁷⁹ In 307, family execution was abolished by the Jin court. Although it was revived in 325, women in the family would have their death penalties reduced.⁸⁰ The Southern Dynasties continued this practice of reductions: according to the Southern Liang code, one who committed high treason would be decapitated; his father, sons, and brothers would be executed; and his mother,

would later be punished collectively if they did not report it. To decide who would or would not be exempt from responsibility was therefore to demonstrate the scope of and the hierarchy within the family. We will now turn to the issue of legal familism, the third aspect in the codification of classical ethics, to investigate the family identity of women.

Legal Familism and the Family Identity of Women

In his objection to the charge brought against the two brothers, Cui Zuan cited a statute—apparently a continuation of a Western Han practice—to affirm the brothers' right to conceal the crime. In 66 B.C.E., Emperor Xuandi (r. 73–49 B.C.E.) decreed that whoever concealed his parents or grandparents would be pardoned, as would a wife concealing her husband, while whoever concealed his sons, grandsons, or wife would be tried in front of the emperor if the case involved the death penalty.⁷¹ According to the mourning obligations that represented degrees of relations, one had to pay one to three years' mourning to these family members. Relatives with a one-year mourning obligation (*jijin*) therefore became the outer limit of concealment.⁷² Dou Yuan's argument on a mother's legal inferiority and the eventual dismissal of this argument show that concealment between parents and children was allowed throughout the Northern Dynasties.

Other than grandparents and grandchildren, *jijin* also included brothers (see Appendix II). The scope of concealment allowed in the Han code may have been extended in the post-Han periods. When Cui Zuan defended the two brothers, he cited the law and claimed that *jijin* could conceal one another in ordinary cases, not to mention in scandalous cases such as adultery. He also dismissed the verdict that the two brothers should have been punished on the basis of collective responsibility, not only because the law did not require such punishment for adultery cases but also because members of a married woman's natal family bore no such responsibility for her.

Since the preimperial period, collective responsibility had been an important method for deterring people from committing crimes and for discouraging hidden criminal liabilities. The practice underwent some alterations under the Han due to new ideological thinking and sociopolitical circumstances, but it never disappeared and was inherited by subsequent dynasties.⁷³ While arguing that the two brothers had no responsibility for their adulterous sisters, Cui Zuan also referred to the high treason case of Guanqiu Jian in the Cao-Wei period (220–65), which eventually led to the revision of law under the early Western Jin.

When Guanqiu Jian was executed for treachery, his married and pregnant granddaughter was awaiting execution in keeping with the principle

wife, concubines, and other female family members would be sentenced to official slavery rather than collective execution.⁸¹

Such a reduction was also visible in the Northern Dynasties. In the early fourth century, before the Tuoba clan established the northern empire, harsh laws were applied to facilitate the clan's rule: a traitor's family members, both men and women, would be decapitated. In 431, however, in a revision of law decreed by the new emperor,⁸² one who was convicted of treason would be cut asunder at the waist, and family members registered in the same household (*tongji*) would be put to death, but boys under fourteen were to be castrated, and women were to be put into official slavery.⁸³

A woman's collective responsibility for her husband did not stop at treason, nor was official slavery the only penalty. Near the end of the Eastern Han Dynasty, the government executed women whose husbands evaded conscription.⁸⁴ In the Northern Wei, if a subofficial clerk (*li*) escaped after criminal conduct, his wife and children would be banished to the borderland.⁸⁵ Women who were arrested because their husbands were runaways could only contest their marital status if they wanted to escape the harshest penalty.

Sympathetic officials who pleaded for these women often based their arguments on the Confucian Classics on marriage. In some cases, argument was made on the Confucian principles that defined a "wife" in a patriarchal household. In other cases, it was made on the basis of women's three followings (*santong*). For instance, one official managed to save a woman's life by showing the lack of complete Confucian rites in her wedding; since her marital status was not yet confirmed, she could not be punished collectively for her husband.⁸⁶ In another case, one official freed a widow from conscription for a crime committed by her husband's relatives by claiming that the one she should have followed was her son.⁸⁷ Whatever the situation, the family identity of women was expressed through marriage, and in verdicts concerning concealment and collective responsibilities we see gradual conformity to Confucian family ethics throughout the Six Dynasties.

It was according to these precedents that Cui Zuan argued for the two brothers' innocence and defined the nature of Liu Hui's crime. Since a woman's family identity changed upon her marriage, the people responsible for her, Cui Zuan maintained, should also change. If a married woman identified herself with her husband's family, then what Liu Hui committed was not the murder of an imperial family member, but the murder of his own flesh. However, the Northern Wei imperial court did not follow Cui Zuan's argument. Instead, the final verdict in Liu Hui's case showed the tension within the ruling class between the imperial power, represented by a nomadic woman ruler, and the legal bureaucrats, mostly of Confucian educational background.

A Woman Ruler versus Her Legal Bureaucrats

Many factors were present in Liu Hui's case; some had more influence in the final outcome than others.⁸⁸ Two factors, however, cannot be overlooked: imperial interference in deciding the verdict and the gendered nature of such interference.

Though often perceived as a driving force in implementing Confucian ethics, the ruling authorities in various dynasties in fact applied classical ideals highly selectively. For instance, when promoting classical values, Chinese governments since the early imperial period endeavored to suppress the custom of revenge, which was sanctioned in the classics, so that governmental power over people's lives would not be undermined.⁸⁹ Guanqiu Jian's case, cited earlier, demonstrates that the law was revised to conform to Confucian ethics in response to pleas from powerful families and not because of imperial intervention. In fact, imperial power was often exerted when such codification ran contrary to the interests of the ruling house. In Liu Hui's case, Cui Zuan's argument based on classical marital ethics was not appreciated, and the imperial power used the Department of Chancellery to express its disagreement forcefully.

Under the Northern Wei, the chancellery was supposed to serve as a channel through which the Secretariat (*zhongshu sheng*) submitted proposals to the throne and imperial pronouncements were put in final form before being transmitted to the Department of State Affairs for implementation.⁹⁰ That is why its duty was considered only as "presentation and delivery" by Cui Zuan and You Zhao.⁹¹ However, as the executive agency closest to the imperial power, the chancellery in practice often contended for influence in policy decisions. Cui Zuan and You Zhao, both from the Department of State Affairs, which carried on general administrative business, including litigation, protested against imperial interference as exhibited by the verdict of the chancellery. Their arguments grew out of the idea of the division of governmental power and their background of legal studies.

Cui Zuan came from the celebrated Boling Cui family, which produced several important legal bureaucrats for the Northern Wei.⁹² Cui Zuan himself became noted for his brilliant opinions as a prosecutor before he was appointed director of the three dukes in the Department of State Affairs.⁹³ You Zhao came from the Guangping You family, which was also notable for its legal heritage.⁹⁴ You Zhao served as chief minister for law enforcement (*tinqwei shaoting*) during Emperor Xuanwu's reign and became right vice director in the Department of State Affairs before Cui Zuan argued for Liu Hui's case.⁹⁵

Legal studies had been carried on in certain families since the Eastern Han. Though encountering setbacks toward the fall of the Han Dynasty, legal learning appears to have been preserved through family tradition throughout the unstable Six Dynasties.⁹⁶ In addition to the Boling Cui and the Guangping You, the Qinghe Cui and the Bohai Feng families were among the most distinguished in the Northern Dynasties.⁹⁷ One of the best-known kinsmen from the Feng family was Feng Junyi, mentioned earlier, who argued on the basis of the impartiality and consistency of the law against Dou Yuan's proposal for ranking one's father above one's mother.⁹⁸

All these families from Shandong maintained the legacy of legislation from Han times throughout the Six Dynasties and contributed to the unified Sui and Tang Dynasties as well.⁹⁹ When Cui Zuan and You Zhao argued in Liu Hui's case, they were actually protesting against imperial interference as members of their family's profession. The only other person who also argued in Liu Hui's case, but who did not mention the division of power in government or protest against imperial interference, was the imperial secretary Yuan Xiuyi. Yuan Xiuyi, however, cited stories from Confucian texts that demonstrated the changed relationship between a woman and her natal family after her marriage. Since he was an imperial clansman of nomadic Xianbei ethnicity, his argument confirmed the sinification of the Tuoba ruling authority at that time.

Although the sinification movement of the Northern Wei was not fulfilled until Emperor Xiaowen (471-99) was on the throne,¹⁰⁰ the Xianbei government actually had maintained some aspects of the Han legacy in its rule over the northern territory from earlier days. Legal revisions undertaken since the establishment of the Northern Wei suggest tremendous dependence on the conventional wisdom of the Han and subsequent dynasties. Remarks by various legal bureaucrats cited above were full of quotations and interpretations of Confucian Classics. The codification of Confucian ethics appears to have been adopted by the Northern Wei. However, Liu Hui's case, occurring decades after the sinification movement, illustrated again the unpredictability of imperial attitudes in the process of Confucianization.

Imperial interference this time came from a woman ruler whose already-unusual non-Han ethnic background was further complicated by a gendered attitude. Modern scholars argue over whether women rulers are more favorable toward their female subjects, and carefully scrutinize women rulers for feminist sensitivities. Take Wu Zetian (r. 684-705), the only female emperor in Chinese history, for example. A recent study¹⁰¹ suggests that, although notorious for her ruthlessness towards competitors, Wu nevertheless revealed her "proto-feminist sentiments" through institu-

tional modifications and public performances. The most significant indication of such sentiments for our subject was that Wu increased the mourning period for a deceased mother from one to three years, whether or not the father was alive at the time. Since the scope of and the hierarchy within a patriarchal family were demonstrated by the system of mourning obligations, to disregard that system challenged Confucian family ethics. In view of this, Empress Dowager Ling's words and deeds will most likely cause one to assume some feminist sentiment. The many cases cited above, in which adulterous women were pardoned and murderous husbands were punished in Empress Dowager Ling's reign, seem to substantiate such an assumption. We see a gendered attitude most vividly in the case of Grand Princess Ji'nan (see note 45) and Prince Runan (see note 53). While the princess's brother, the reigning emperor Xuanwu, never desired to avenge his sister's death by imperial interference, the succeeding regent Empress Dowager Ling punished the princess's murderous husband without hesitation. In Prince Runan's case, in order to protect beaten royal wives, Empress Dowager Ling went even further to punish her violent male in-laws, whose family she should have identified with.

Male and female rulers seem to have also shown different attitudes toward jealous women. While Emperor Ming (r. 466-72) of the Liu-Song Dynasty repeatedly reprimanded jealous princesses and official wives,¹⁰² Empress Dowager Ling was determined to condemn violent and unfaithful husbands. Her marveling at how Lanling tolerated Liu Hui indicates contemporary sentiments on marital egalitarianism in the North.¹⁰³ The original verdict—that Liu Hui was a traitor who killed an imperial family member—suggests that the court considered the unborn child mainly as the princess's flesh and ignored the classical instruction on the shift of a woman's family identity upon her marriage. However, the fact that Empress Dowager Ling harshly punished female commoners such as Zhang Rongfei and Chen Huimeng raises suspicions concerning the "quality" of her feminist sentiment. Yet, given the comparisons presented above, suffice it to say that Empress Dowager Ling's interference in Liu Hui's case reveals a certain kind of gender awareness, although not without class prejudice.

Conclusion

As stated in the beginning, the codification of marriage and family ethics often attracts the attention of ruling authorities. We have a case in another society in which a religious institution applied such a codification not only to exercise social control but also to empower itself in contention with the lay authorities. Studies of medieval Europe show that the papacy's promotion of

sexual and marital ethics increased its power, on the one hand, and helped separate jurisdiction between clerical and secular authorities, on the other. In China, however, it was the state, rather than a Buddhist or Daoist organization, that undertook such responsibility. And the state in early medieval China was facing competing ethics as well as authorities in and around itself.

When Ch'ü T'ung-tsu wrote *Law and Society in Traditional China* in 1965 to describe the Confucianized legal system, he rightly started his book by introducing the scope of a patriarchal family based on the five degrees of mourning and included a section discussing the legal position of a wife in that family. With evidence collected mainly from the late imperial period, Ch'ü concluded that a wife had a legal status dramatically inferior to that of her husband as a result of the codification of classical Confucian ethics.¹⁰⁴ Later research, with more information from the early imperial period, has enriched these arguments and revised this general view by showing the workings of a "pre-Confucian" society in Han times.¹⁰⁵ To date, the earliest complete extant law book is the Tang code, which forms the basis of Ch'ü's argument about early imperial China. The development of law between the Han and the Tang, in which the codification of Confucian ethics presumably occurred, not to mention women's legal status in that period, remains obscure to us due to the insufficient and scattered nature of the source material. Chen Yinke, in a remarkable display of erudition and ingenuity, successfully traced the origins of the Tang code from earlier periods, but Chen's research focused mainly on the heritage of legal studies and the construction of legal systems, without getting into the details of law codes, legal cases, and their verdicts.¹⁰⁶

This article uses Liu Hui's case in the early sixth century as an example and a point of departure not only to examine the codification of Confucian values but also to substantiate the inheritance of legal practices between the Han and the Tang. Several points can be made here.

First of all, in addition to Chen Yinke's efforts in reviewing the heritage of legal institutions, actual accounts of crimes and the arguments and judgments they inspired reveal much about the content of legal learning in early medieval China. The five degrees of mourning, which showed the scope of a patriarchal family and demonstrated the Confucian ideals of marital hierarchy, were mentioned constantly and implemented in various verdicts. Cui Zuan's reference to concealment among *jiqin* and women's collective responsibility indicates the Xianbei inheritance of the law of the Han, Cao-Wei, and Jin Dynasties and adds important evidence to Chen Yinke's work on the origins and inheritance of the Sui-Tang legal systems.

Second, it seems that the codification of classical family ethics in legal revisions was not necessarily due to the rulers' original intention to Con-

fucianize, and that conflict of interest within government bodies occurred from time to time. Guanqiu Jian's case in the Cao-Wei period shows that Confucian principles were raised in legal arguments and integrated into statutes sometimes because of the personal interests of the powerful. In view of this, it is not surprising to see that the codification of Confucian ethics suffered setbacks once in a while; it was not favored wholeheartedly by the imperial authority when running contrary to imperial interests. Liu Hui's case is only one example.

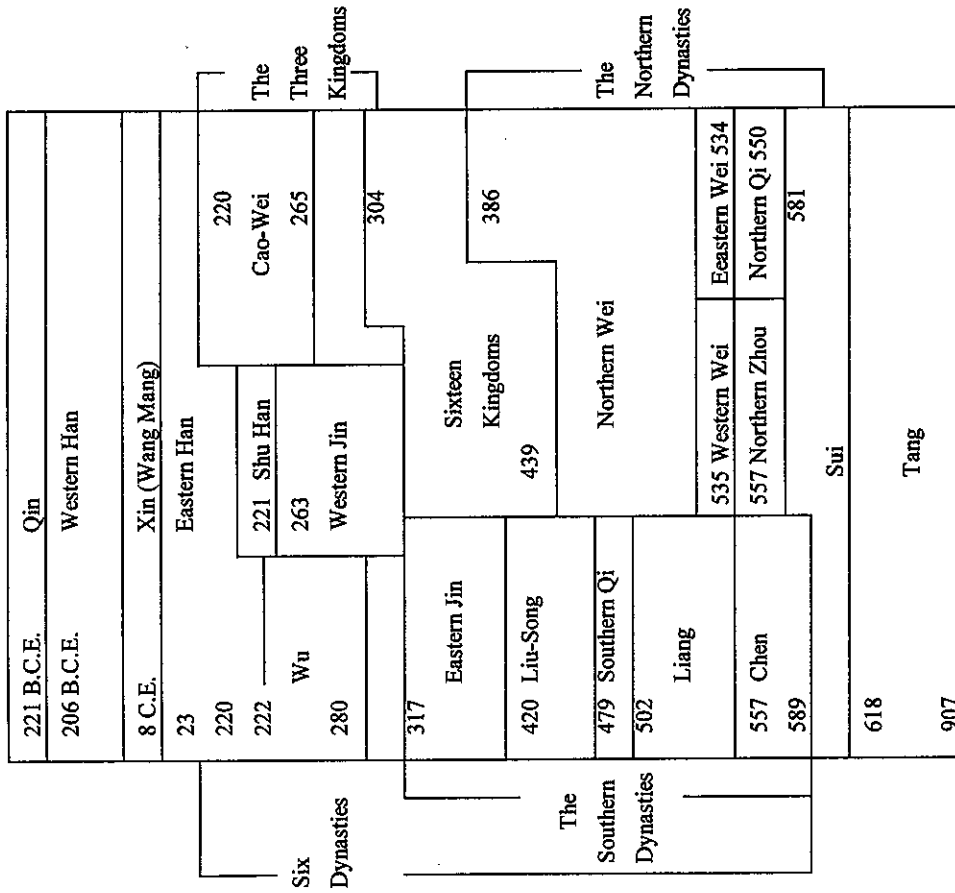
Third, using women's involvement in criminal cases as an indicator, one can easily perceive that the road to Confucianization was bumpy, especially in the Northern Dynasties. For instance, the punishment for sex crimes varied in different cases under different regimes, not only because of the aristocratic status of those involved but also because of the lack of Confucian propriety at the time. Adulterers and fornicators in the Northern Dynasties, regardless of their gender and generation, seem to have been penalized relatively lightly in most cases.

As for marital violence, it seems that murderous conduct between husband and wife tended to be punished severely. However, extant cases imply some regional differences. While a southern wife would be penalized more harshly than offenders in ordinary cases, a northern husband would be executed for killing his wife by accident. Moreover, a southern son would be decapitated for not reporting his mother's dissection of his father's remains, even for medical reasons. A northern son was, however, allowed by law not to disclose his mother's murder of his father.

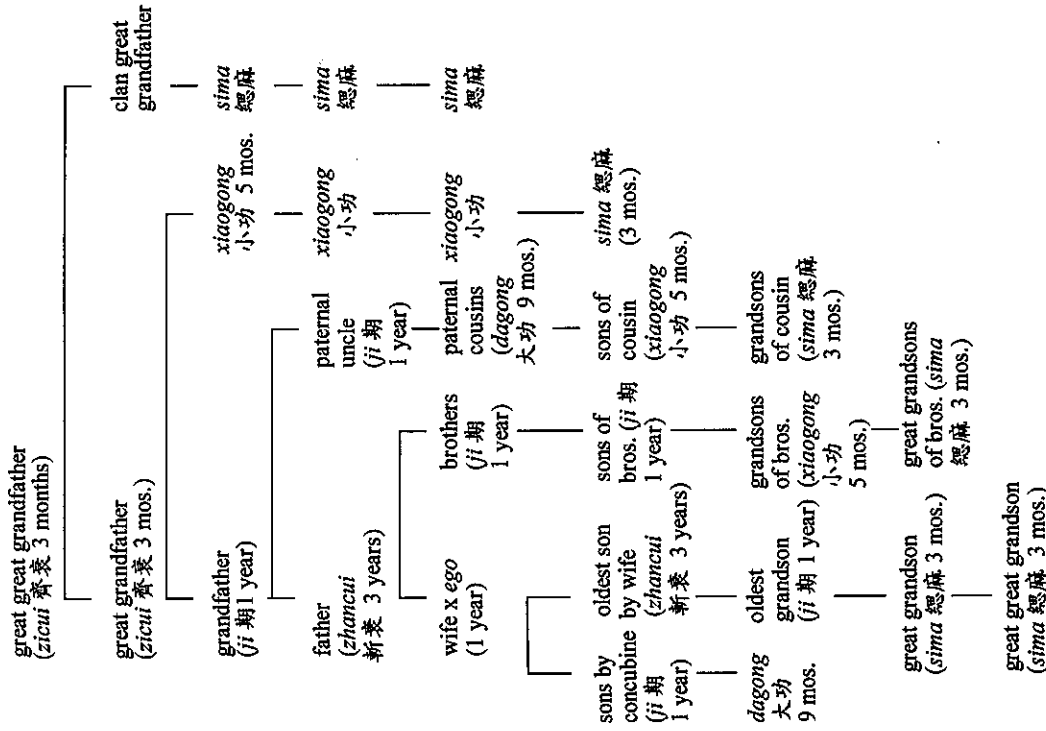
It appears that Confucian family ethics were applied more in cases concerned with concealment and collective responsibilities than in cases of sex crimes and marital violence. At least in the North, the five degrees of mourning were used more often to define a woman's family identity than to define her status as inferior to that of her husband within that patriarchal family. Dou Yuan's argument and its dismissal demonstrate that the Confucian ideal of the husband's superiority and the wife's inferiority was not yet successfully incorporated into legal practices in the North till the end of the Six Dynasties in the latter half of the sixth century.

Finally, the issue of women rulers provides a useful insight for scholars of women's history. Inspired by historical events, we learn that, when we discuss women's legal positions, we need to examine not only women's places in laws and cases, but also women's accessibility to legal agents and their influence in making laws. Although there are constant debates over the feminist quality of powerful women, it appears that women need to be in power to change their lot. This is perhaps a lesson history could teach to sisters of our time.

APPENDIX I
CHINESE DYNASTIES FROM QIN TO TANG



APPENDIX II: MOURNING OBLIGATIONS



Note: Time spans in parentheses are ego's obligations to his relatives. This table is based on "Sangfu" in *Yi Ji*. It defines the scope of a family and its relatives in the classics, and exemplifies the patrilineal nature of such a family.

Notes

1. For the Roman, Frankish, and biblical influences on medieval marriage, see Christopher Brooke, *The Medieval Idea of Marriage* (Oxford: Oxford University Press, 1989). For the struggle between the Church and the Frankish monarchy, and the building up of papal authority, see Brian Tierney, *The Crisis of Church and State 1150-1300*, part I, "The First Thousand Years" (Toronto: University of Toronto Press, 1988). For the monastic reform and its influence, see Geoffrey Barraclough, *The Medieval Papacy* (New York: W.W. Norton & Company, 1979). For canon law on Christian marriage, see Charles Donahue, Jr., "The Canon Law on the Formation of Marriage and Social Practice in the Later Middle Ages," *Journal of Family History* 18 (Summer 1983): 144-58. For the Catholic Church's assumption of power through the institution of marriage, see Georges Duby, *The Knight, the Lady and the Priest*, trans. Barbara Bray (New York: Pantheon Books, 1983), pp. 282-4.
2. See Ch'ü T'ung-tsu, *Law and Society in Traditional China* (1961; repr. Paris: Mouton, 1965), ch. I, "Family and Tsu."
3. See the chapter "Sangfu" [Mourning] in *Yi li* [The book of ceremonies], in *Shisan jing zhushu* (1821; repr. Taipei: Ywen Yinshuguan, 1981). For the definition and the scope of the family, see Tu Cheng-sheng, *Ch'üai shihui yü guojia* [Society and state in ancient China], part five, "Lizhi jiazü yü lunli" [Rites, lineage, and ethics] (Taipei: Yunchen wenhua chubanshe, 1992), pp. 729-876; for a detailed discussion and the implications of the mourning system for relations among family members, see Jen-der Lee, "Xi Han lüling zhong de jiating lunli guan" [Ethical ideas in law of the Western Han Dynasty], *Zhongguo lishi xuehui shixue jikan* 19 (1987): 2-11.
4. For instance, she would pay three years of mourning to her father if a maiden, but only one if married. Her biggest mourning obligation, three years, would be paid to her husband.
5. This is illustrated by the fact that her son could only pay one year of mourning to her if her husband was still alive when she died. Only if her husband died before her could her son pay her three years. Even then, her son's mourning clothes for her would not be as coarse as those he wore for his father. For detailed regulations among various family members, see the "Sangfu" chapter in the *Yi li*.
6. For examples, see Zhu Zongbin, "Luelun jin lü rujia hua" [On the Confucianization of the Jin law], *Zhongguo shi yanjiu* 2.26 (1985): 101-24.
7. *Jin shu* [The history of the Jin Dynasty], by Fang Xuanling (Beijing: Zhonghua shuju, 1974), ch. 30, p. 927.
8. Liu Hui's biography is attached to his father's in ch. 59 of *Wei shu* [The history of the (Northern) Wei Dynasty], by Wei Shou (Beijing: Zhonghua shuju, 1974); see also ch. 111, "Monograph of Law."
9. Grand Princess Lanling was married when her brother, Empress Dowager Ling's husband, reigned. Empress Dowager Ling was in power during the

APPENDIX III
INTENT, MISTAKE OF FACT, AND ACTUAL ACCIDENT

| Dynasty | Sources | Intent | Mistake of Fact | Actual Accident |
|---------|--|----------------|------------------------------|----------------------|
| Zhou | <i>Zhou li</i> 周禮 | | <i>bushi</i> 不識 | <i>guoshi</i> 過失 |
| Han | Zheng Xuan's Commentary 鄭玄注 | <i>yi</i> 意 | <i>bushen</i> 不審 | <i>wu</i> 誤 |
| Jin | Zhang Fei's (Chang Fei) Preface to Chin (Jin) law 張斐晉律序 | <i>gu</i> 故 | <i>shi</i> 失 | <i>guoshi</i> 過失 |
| Tang | <i>Tang Code</i> 唐律 | <i>gu</i> 故 | <i>wu</i> 誤 | <i>guoshi</i> 過失 |
| | Wallacker's translation | | slipup, physical error | trespassory [sic] |

- whole of her son's reign (516-28), except for one interruption (520-4), which was the result of a coup. See *Wei shu*, ch. 59, pp. 1311-2.
10. *Wei shu*, ch. 59, p. 1312.
11. The sources disagree over precisely when the crime was committed. Liu Hui's biography in *Wei shu* says that he committed adultery early in the Zhengguang era (520-4), but the "Monograph of Law" in *Wei shu* records that the case happened in the Shengui era (518-9). See *Wei shu*, ch. 59, p. 1312; and ch. 111, p. 2886.
12. *Wei shu*, ch. 59, p. 1312.
13. *Ibid.*, ch. 111, p. 2886. For this earlier treason case, see ch. 9, p. 229; and ch. 58, p. 1292.
14. *Ibid.*, ch. 111, p. 2886.
15. Cui Zuan's memorial indicates that the two brothers' families may have also been banished to Dunhuang with them. See *Wei shu*, ch. 111, p. 2886. For the English translations of the official titles, see Charles O. Hucker, *A Dictionary of Official Titles in Imperial China* (Stanford: Stanford University Press, 1985).
16. The "Biography of Liu Hui" states that the two women were beaten with bamboo sticks (*chi*). See *Wei shu*, ch. 59, p. 1312.
17. *Wei shu*, ch. 111, p. 2886.
18. *Ibid.*
19. Wang Chien-wen, "Xi Han lüling yu guojia zhengdang xing—yi lüling zhong de 'buda' wei zhongxin" [Western Han law codes and the legitimacy of the state—a study of the "crimes of depravity"], *Xin shixue* 3.3 (1992): 1-36. Also see Jen-der Lee, "Family Execution and Collective Responsibilities in Han Law: Its Change of Nature and Significance," unpublished manuscript.
20. *Wei shu*, ch. 111, p. 2886.
21. *Ibid.* In legal documents, *xing* could mean banishment and execution; it could also mean any punishment under the five-year labor penalty. It is understood here as banishment and execution.
22. *Wei shu*, ch. 111, pp. 2886-7.
23. *Ibid.*, p. 2887.
24. *Ibid.*
25. *Ibid.*, p. 2886.
26. *Ibid.*, p. 2887.
27. *Ibid.* There is no record available to show the specific penalty for fornication and adultery in the Northern Wei Dynasty. But the Tang code, issued with annotations in 653, required one-and-a-half-years' labor for fornication and two years' for adultery. See *Tang li shuyi* [Annotations on the Tang code], by Zhangsun Wuji (died 689) (Taipei: Hongwenguan chubanshe, 1986), ch. 26, "Zali" [Miscellaneous codes], p. 493; and Wallace Johnson, trans., *Specific Articles*, vol. 2 of *The Tang Code* (Princeton: Princeton University Press, 1997), ch. 26, "Miscellaneous Articles" ("Zali"), p. 474.

28. *Wei shu*, ch. 111, pp. 2887-8.
29. *Ibid.*
30. *Wei shu*, ch. 59, p. 1312.
31. Due to the fragmentary nature of the material, we do not know their categories in the law of the Northern Wei. The *Tang li shuyi* included sex crimes in the "Miscellaneous Articles" and categorized marital violence and legal responsibilities of the family under "Assault and Accusations" ("Dousong"), all with specific regulations and penalties.
32. It was a well-established tradition since the preimperial period that verdicts would be decided according to the state of mind of the criminals when they committed a crime. Although Liu Hui did not kill the unborn baby on purpose, he could still have killed it due to his hatred toward the princess. Cui Zuan did not mention whether Liu Hui should have been charged with *yi* (intent) or not. But it looks as if he was trying to find a middle ground between Liu Hui's execution as a traitor and a very light penalty simply as an adulterer, with which the imperial authority would certainly disagree. For definitions of various mind-sets in different dynasties, see Appendix III, "Intent, Mistake of Fact, and Actual Accident."
33. See Jen-der Lee, "Xi Han lüling."
34. *Jin shu*, ch. 30, p. 927.
35. Cheng Shude, *Jiu chao li kao* [A study of Chinese law of nine dynasties (from the Han to the Su)], ch. 13, "Nan-Bei chao zhu lu kao xu" [Preface to the law codes of the Southern Dynasties] (Shanghai: The Commercial Press, 1927).
36. *Wei shu*, ch. 111, p. 2873.
37. At least six revisions of the law were made during the one hundred and fifty years of Xianbei rule: 428-31, 451, 453-65, 466-70, 481, and 504. See *Wei shu*, ch. 111, pp. 2874-80. Also see Chen Yinke, "Sui Tang zhidu yuanyuan hualun gao" [On the origins of the institutions in the Sui and Tang Dynasties], part four, "Xinglü" [Law and penalty], in *Chen Yinke xiansheng lunwen ji* [Collected essays of Mr. Chen Yinke] (1944; repr. Taipei: Jushi chubanshe, 1977), pp. 94-109.
38. For instance, Yuan Shen, prince of Guangyang in Empress Dowager Ling's time, was accused by Yuan Hui, prince of Chengyang, of committing adultery with his wife Ms. Yu. After a discussion among imperial clansmen, Yuan Shen was deprived of his official title and sent back to his principality. See *Wei shu*, ch. 18, p. 429. The other case involved a male official and a female commoner. Dou Sengyan was accused by a commoner named Jia Miao of committing adultery with his wife; Dou Sengyan was also deprived of his official title. See *Wei shu*, ch. 46, p. 1036.
39. For instance, after Pei Xun's affair with the widowed grand princess Taiyuan came to light, he was ordered by the emperor to marry her. See *Wei shu*, ch. 45, p. 1022. Lu Zhengsi committed adultery with the widow of his brother and was impeached. There is no mention of further punishment except

- being despised by his contemporaries. See *Wei shu*, ch. 47, p. 1053. Zheng Yanzu committed adultery with his cousin and "showed no sense of guilt although his contemporaries felt shame for him." See *Wei shu*, ch. 56, p. 1242.
40. See the cases of Yuan Gan and Yuan Xiang in *Wei shu*, ch. 21, pp. 543, 561-3.
41. Jen-der Lee, "Xi Han lilüing."
42. Ms. Yu (mentioned earlier in Yuan Shen's case) seems to have avoided legal penalties. See also the case of Ms. Zheng, discussed later, in *Wei shu*, ch. 47, p. 1062.
43. The widowed grand princess Taiyuan, mentioned earlier, was married to her accomplice Pei Xun by Emperor Xiaoming (r. 516-28), probably by suggestion of the regent, Empress Dowager Ling. The *Wei shu* also records that Princess Taiyuan bore a son, Yu Yan, from her adulterous affair with Yu Xianye. Yan was given several official posts by Emperor Xiaojing (r. 534-50). Given the time span, this Princess Taiyuan must have been the same person as the Princess Taiyuan in Empress Dowager Ling's time. See *Wei shu*, ch. 26, p. 658; ch. 33, p. 1022.
44. Wei Rong thought his wife had an affair with Yuan Jingzhe, prince of Zhangwu. See *Wei shu*, ch. 45, p. 1015.
45. This was the case of Grand Princess Ji'nan and her husband, Lu Daoqian. See *Wei shu*, ch. 47, p. 1051.
46. See Ch'ü Tung-tsu, p. 110. For recent studies on women's status in late imperial law, see Paul S. Ropp, "The Status of Women in Late Imperial China: Evidence from Letters, Laws and Literature," paper presented at the American Historical Association, Washington D.C., December 26-9, 1987; also Paola Paderni, "I Thought I Would Have Some Happy Days: Women Eloping in Eighteenth-Century China," *Late Imperial China* 16.1 (1995): 1-32.
47. See *Tang li shuyi*, ch. 26, "Zalu," p. 493; and Johnson, trans., *Specific Articles*, vol. 2 of *The Tang Code*, ch. 26, "Miscellaneous Articles," p. 473.
48. See *Wei shu*, ch. 47, p. 1061.
49. This was Yuan Qin, who was impeached by Feng Hui, a legal bureaucrat from the Bohai Feng family. See *Wei shu*, ch. 12, p. 443, and ch. 32, p. 762. Also see note 97 below.
50. See Ch'ü T'ung-tsu's discussion on the position of a wife in *Law and Society in Traditional China*, pp. 102-10.
51. For instance, parents who either injured or killed their children were often punished less severely than those who assaulted strangers, while children who assaulted their parents would definitely be punished more sternly for being unfilial. For Han practice, see Jen-der Lee, "Xi Han lilüing," pp. 14-21. For related statutes and cases in the period during the Northern and Southern dynasties, see Jen-der Lee, "Han Sui zhijian de 'shengzi buju' wentü" [Infanticide and child abandonment from Han to Sui], *The Bulletin of the Institute of History and Philology, Academia Sinica* 66.3 (1995): 747-812.

52. The *T'ang Code* prescribed that one who injured his wife would be sentenced to "being caned eighty strokes," two degrees less than one who injured a stranger, who would receive one hundred strokes. A woman who injured her husband, however, would be sentenced to one year's labor, one degree more than a woman who injured a stranger. If the injury resulted in death, the offenders would be sentenced to death regardless of their status in the family. See *Tang li shuyi*, ch. 22, "Douli," pp. 409-10; and Johnson, trans., *Specific Articles*, vol. 2 of *The Tang Code*, ch. 22, "Assaults and Accusations," pp. 358-61.
53. Another relevant incident involves an order Empress Dowager Ling made concerning Prince Runan, who constantly assaulted his wife and concubines after he decided to cultivate immortality through vegetarianism and homosexuality. When Empress Dowager Ling found out, she ordered that whenever a princess was ill for over one hundred days, the case had to be reported to the imperial court, and that any prince who beat his wife would be demoted. See *Wei shu*, ch. 22, p. 593.
54. Zu Taizhi, "Yi Qian Geng shaqi shi" [On Qian Geng's killing his wife], in *Quan jin wen* [Comprehensive collection of literature from the Jin Dynasty], ch. 138, p. 12a., in *Quan shanggu sandai Qin-Han Sanguo liuchao wen* [Comprehensive collection of literature from ancient times to the Six Dynasties], comp. Yan Kejun (1894; repr. Beijing: Zhonghua shuju, 1958).
55. This was Zhangsun Lü's case. See *Wei shu*, ch. 77, p. 1882.
56. This is Liu Yan's case in the Shu Han period (222-80). During this time, it was a regular ceremony for officials' wives and mothers to go to the imperial palace to offer congratulations on the occasion of certain festivals. Liu Yan's wife Ms. Hu went to one of these ceremonies and was kept in the palace for a month by special order of the empress dowager. This made Liu Yan suspect that she was having an extramarital affair. After Liu Yan's execution, however, the congratulatory ceremonies were abolished. Since it was unusual for a man to be executed for simply beating his wife, it is reasonable to believe that there was imperial interference in the verdict. See *Sanguo zhi* [The history of the Three Kingdoms], by Chen Shou (Beijing: Zhonghua shuju, 1959), ch. 40, p. 1002.
57. *Nan shi* [The history of the Southern Dynasties] records the case of Liu Rong, an aristocrat in the fifth century who injured his wife with a knife, probably in a fight, and was only deprived of his noble title. See *Nan shi* by Li Yanshou (Beijing: Zhonghua shuju, 1975), ch. 15, p. 428.
58. See Yu Huan, *Wei lue*, cited in *Sanguo zhi*, ch. 9, p. 290.
59. For the grace period from ancient times to the Han period, see Cheng Shude, *Jin chao li kao*, ch. 4, p. 28.
60. There was also a twenty-day "protecting the innocent" grace period for beatings with instruments like sticks; a thirty-day one for those who injured others with knives, hot water, or fire; and a fifty-day one for those who broke others' limbs and bones. See *Tang li shuyi*, ch. 22, "Douli," pp.

- 388-9; and Wallace Johnson, trans., *Specific Articles*, vol. 2 of *The Tang Code*, ch. 22, "Assaults and Accusations," pp. 333-4.
61. See A.F.P. Hulswé, *Remnants of Qin Law* (Leiden: E. J. Brill, 1985), p. 148.
62. Both Zhangsun Zhi's case in the Northern Wei period and Hu Changcan's case in the Northern Qi period (550-77) indicate little legal interference in cases involving the killing of maids within a family. Zhangsun Zhi, a general-official near the end of the Northern Wei period, had an affair with Ms. Luo, then murdered her husband and married her. The *Wei shu* states that Luo was very jealous because she was some ten years older than Zhi. Even though she prevented him from taking concubines and killed at least four of his servants, he still "loved and respected" her very much. Neither accusation nor legal interference was ever mentioned. See *Wei shu*, ch. 25, p. 649.
- Hu Changcan of the Northern Qi period was known for his lust. His wife Ms. Wang once killed one of his maids. Hu Changcan was very angry with her and refused to see her for three years. But there is no legal activity indicated in this case either. See *Bei shu* [The history of the Northern Dynasties], by Li Yanshou (Beijing: Zhonghua shuju, 1974), ch. 80, p. 2691.
63. *Song shu* [The history of the (Liu) Song Dynasty], by Shen Yue (Beijing: Zhonghua shuju, 1974), ch. 81, p. 2080.
64. *Song shu*, ch. 81, p. 2080.
65. In his "Preface to the Jin Law," Zhang Fei (Chang Fei) interpreted *budao* as "to go against moderation and rupture reason" (*nijie juef*); since the Han period it was often preceded by *dani* (great rebellion) to designate treason cases; it was also one of the Ten Abominations in the Tang code. In the Jin law, *budao* was a more serious crime than *bijing* (disrespect), which was defined as "to fall short in rites and to reject moderation." Since *bijing* criminals were to be sentenced to execution in the marketplace by the Jin code, there is no doubt that Ms. Zhang would have been executed even though there is no specific information about her penalty. For discussion on *budao* in Han times, see Oba Osamu, *Shin Kan hōseishi no kenkyū* [Study on the legal history of the Qin and Han Dynasties] (Tokyo: Sobunsha, 1982), pp. 151-64. For *budao* and *bijing* in the Jin law, see *Jin shu*, ch. 30, p. 928. Translation by Benjamin E. Wallacker, "Chang Fei's [Zhang Fei's] Preface to the Chin Code of Law," *T'oung Pao* 72.4-5 (1986): 229-68. For the Ten Admonitions in the Tang code, see *Tang li shuyi*, ch. 1, "Mingli," pp. 6-15; and Wallace Johnson, trans., *General Principles*, vol. 1 of *The Tang Code*, ch. 1, "General Principles," pp. 61-83.
66. Both the Eastern Wei and the early Northern Qi followed Northern Wei law. Not until 564, when legal scholars finished the modification, did the Northern Qi government issue a new set of dynastic laws. See *Sui shu* [The history of the Sui Dynasty], by Wei Zheng (580-643) et al. (Beijing: Zhonghua shuju, 1973), ch. 25, pp. 704-6. For discussion of the modification of law in the Northern Dynasties, see Chen Yinke, "Sui Tang zhidi," part four, "Xinglü."

67. *Wei shu*, ch. 88, pp. 1909-10; *Bei shi*, ch. 86, pp. 2871-2.
68. *Wei shu*, ch. 88, p. 1910; *Bei shi*, ch. 86, pp. 2871-2.
69. *Wei shu*, ch. 88, pp. 1911-2; *Bei shi*, ch. 86, pp. 2871-2.
70. *Tang li shuyi*, ch. 22, "Dousong," pp. 409-10; Johnson, trans., *Specific Articles*, vol. 2 of *The Tang Code*, ch. 22, "Assault and Accusations," pp. 358-61. For the definition of the three mothers in the Tang law, see *Tang li shuyi*, ch. 1, "Mingli," p. 259, and Johnson, trans., *General Principles*, vol. 1 of *The Tang Code*, ch. 1, "General Principles," pp. 136-7.
71. *Han shu* [The history of the Former Han Dynasty], by Ban Gu (Beijing: Zhonghua shuju, 1962), ch. 8, p. 251.
72. See Appendix II for the mourning obligations.
73. For example, the application of *dani budao* (high treason and crimes of depravity) changed throughout the Former and Later Han Dynasties. First, owing to ideological reasons such as ethical ideas and cosmological thinking, family relations of a criminal sentenced to death would have been excluded to the borderland after Emperor Zhao di (r. 86-74 B.C.E.) of the Former Han Dynasty. Second, due to the growing influence of powerful families from the beginning of the Eastern Han period, the range of collective responsibilities among family members also grew. While only one's parents, wife, and children would be responsible under the Western Han, relatives within the five degrees of mourning would also be punished under the Eastern Han. Third, since powerful families and intellectual families became synonymous and more influential in the political field, the punishment of exclusion from governmental service became more common and forceful under the Eastern Han. See Jen-der Lee, "Xi Han lilings," pp. 34-9; also Jen-der Lee, "Family Execution."
74. When Guanqiu Jian was executed for high treason in 255, his son Guanqiu Dian and Dian's wife Ms. Xun should also have been sentenced to death in accordance with the principle of collective responsibility. But Xun Yi, Ms. Xun's paternal male third cousin, had a marriage alliance with Sima Shi, then regent, and pleaded with the emperor, who let Ms. Xun divorce Dian to save her own life. Ms. Xun's daughter, Jian's granddaughter, Guanqiu Zhi, already married and pregnant, was under arrest and awaiting execution because of her collective responsibility for her natal family. Ms. Xun asked the Metropolitan Commandant (*sili jiaowei*) He Zeng for mercy and said she would become an official slave to save her daughter from the death penalty. He Zeng pitied her and told his assistant magistrate (*zhubai*) Cheng Xian to propose the court discussion cited here. For details, see *Jin shu*, ch. 30, p. 926. The principle that a divorced wife would not be collectively punished for crimes of her ex-husband and his family, on which basis Ms. Xun was spared, was codified by the end of the Former Han Dynasty. See *Han shu*, ch. 81, p. 3355.
75. This is the *sancang*, the women's three followings, also prescribed in the "Sangfu" chapter of the *Yi li*. It demanded that a woman follow her father

- before she got married, her husband after she got married, and her son when she was widowed.
76. *Jin shu*, ch. 30, p. 926.
77. *Ibid.*, p. 927.
78. Under the Eastern Jin, a female shaman was sentenced to slavery for her husband's involvement in a robbery. See *Nan shi*, ch. 14, p. 386.
79. In 300, one day before Ms. Xie was to marry into the Pei family, her father, Xie Jie, was accused of treason and given the sentence of family execution. The Pei attempted to save Ms. Xie's life, perhaps by faking the wedding date, on the basis of the code of exemption of the "married daughter." But Ms. Xie refused and said that there was no point living on alone when her family was destroyed. She then died in accordance with the law of collective responsibility. Later the imperial court began to discuss reducing collective execution of women. See *Jin shu*, ch. 60, p. 1633.
80. *Jin shu*, ch. 5, p. 116; ch. 6, p. 163.
81. *Sui shu*, ch. 25, p. 699.
82. It was Emperor Taiwu (r. 424-51) of the Northern Wei who ordered a program, headed by Cui Hao, then Minister of Education (*shu*), to revise the law code. See *Wei shu*, ch. 111, p. 2873.
83. *Wei shu*, ch. 111, p. 2874. The Northern Wei may have applied family execution also to nontrason cases prior to 474. Emperor Xiaowen issued a decree in 474 to stop household execution (*menfang zhi zhu*) in nontrason cases and to punish only the person who committed the crime. See *Wei shu*, ch. 111, p. 2876.
84. *Sanguo zhi*, ch. 22, p. 650.
85. *Wei shu*, ch. 64, pp. 1422-3.
86. For instance, Ms. Bai in the third century was sentenced to *qishi* only several days after her wedding because her husband had fled to avoid the military draft—this was even before he had formally received her. Only after the local assistant magistrate Lu Yu argued the case in her favor was her punishment reduced from the death penalty. Lu Yu referred to two principles. First, the classical rites required the bride to be presented in the ancestor temple five days after the wedding so that she could be established as a "wife" (*fu*) in the household. If she died within those five days, she would be returned to her natal family for burial. Second, legal precedent suggested that accomplices should be punished less severely than the principal criminals and that it was better to release a suspect than to kill an innocent person. Lu Yu apparently cited the first principle to show that Ms. Bai was not yet a fully received member of her husband's family, and intended to apply the second one, which was also quoted by Cui Zuan when he pleaded for the two adulteresses, to propose a lighter punishment for Ms. Bai. See *Sanguo zhi*, ch. 22, p. 650.

87. In a Liu-Song case, a widow was first sentenced for the robbery committed by the sons of her husband's brother, who were her relatives of one-year's mourning obligation (*jijin*). Since Liu-Song law required that *jijin* of convicted robbers must be conscripted, she was to be penalized, and her sons, who had only nine-months' mourning obligation for their robber cousins, would be drafted together with their mother into military service, both due to the law of collective responsibility. She was pardoned only after the official in charge argued in her favor, on the basis of the principle of a woman's "three followings" (*santong*), which was also prescribed in the *Yi li*: since her husband was already dead when the crime was committed, she was supposed to follow the way of her sons; in no way should she have been collectively responsible for her nephew's criminal deeds. See *Song shu*, ch. 64, p. 1704.
88. One could suspect that Liu Hui's southern origin may have caused antipathy from the Xianbei imperial house, but extant historical documents do not confirm this suspicion. Whether the fact that Liu Hui was from the South made him inferior in the northern court and in this case is hard to determine. The wording in the verdict never mentions his southern background, and the biography of Liu Hui and his father shows no sign of discrimination. It could be that Empress Dowager Ling's anger towards Liu Hui was more the result of her feelings for her sister-in-law than of Liu Hui's southern origins. For Liu Hui's origins, see *Wei shu*, ch. 59, pp. 1307-12.
89. See Jen-der Lee, "Conflicts and Compromise between Legal Authority and Ethical Ideas: From the Perspectives of Revenge in Han Times," *Journal of Social Sciences and Philosophy* 1.1 (1988): 359-408.
90. For the development of the Secretariat, Chancellery, and Department of State Affairs, see Yen Keng-wang, "Bei Wei shangshu zhidu kao" [On the system of shangshu of the Northern Wei], *The Bulletin of the Institute of History and Philology, Academia Sinica* 18 (1948): 252-360; and Zheng Qinren, *Bei Wei guanliao jigou yanjiu xubian* [Second study on the bureaucratic system of the Northern Wei] (Taipei: Daohe chubanshe, 1995), pp. 5-10.
91. *Wei shu*, ch. 111, pp. 2886, 2887.
92. Cui Ting participated in legal revision in Emperor Xiaowen's reign (471-99) when Empress Dowager Wenming was the regent (466-7, 476-90). He was highly commended by Li Chong, then imperial secretary and leader of the government transformation movement, and was once rewarded by the emperor with eight hundred bolts of cloth, eight hundred bushels of grain, two horses, and two oxen for his contribution. His brother Cui Zhen was appointed chief minister for law enforcement at the beginning of Emperor Xuanwu's reign (500-15) and was praised for his keen investigation as well as fair judgment. Cui Xiaofen, Cui Ting's son, was also known for his capability in legal judgment and served as chamberlain for law enforcement (*tingwei*) at the beginning of Emperor Xiaoming's reign

- (516–28). Cui Zuan was Cui Xiaofen's kinsman. For the Cui family and their legal contribution, see *Wei shu*, ch. 57, pp. 1264–72. For the Boling Cui family and its history, see Patricia Buckley Ebrey, *Aristocratic Families of Early Imperial China: A Case Study of the Po-ling Ts'ui Family* (Cambridge: Cambridge University Press, 1978). Boling is close to Anping city in present-day Shandong province. See Tan Qixiang, *Zhongguo lishi ditu ji* [The historical atlas of China], vol. 4 (Shanghai: Cartographic Publishing House, 1982).
93. *Wei shu*, ch. 57, p. 1275.
94. You Zhao's father, You Minggen, was in charge of the Department of State Affairs in Emperor Xiaowen's reign and participated in legal revision. The *Wei shu* states that he was so diligent in his legal profession that the emperor once rewarded him with one thousand bolts of cloth and one thousand *hu* of grain. In 451 You Minggen's paternal cousin You Ya was appointed by Emperor Taiwu (r. 423–52) to revise the law codes to better fit the Tuoba's rule in China. For You Minggen's legal profession, see *Wei shu*, ch. 55, p. 1215. For You Ya's legal contribution, see *Wei shu*, ch. 54, p. 1195, ch. 111, p. 2875. For discussion of the legal tradition of the You family and its significance in revising Northern Wei law in line with Han legal tradition, see Chen Yinke, "Sui Tang zhidu." Guangping is close to Handan in present-day Shandong province. See Tan, *Zhongguo lishi ditu ji*, vol. 4. *Wei shu*, ch. 55, pp. 1216–7.
95. Legal studies may have encountered some setbacks at the end of the Eastern Han period, when the government recruitment system placed more emphasis on literary ability than on administrative and legal knowledge. It is said that legal knowledge was so lost among the scholars in the central government that the Cao-Wei Dynasty had to establish erudites (*boshi*) for legal learning (*li boshi*) to preserve such knowledge and train legal officials for the government. For the development of legal learning under the Eastern Han, see Hsing Yi-tien, "Qin Han de liling xue—jian lun Cao-Wei li boshi de chuxian" [The rise and decline of law-learning in Qin Han officialdom—an explanation of the emergence of the Erudites of law in the early third century], *The Bulletin of the Institute of History and Philology, Academia Sinica* 54.4 (1983): 51–101.
97. Cui Hong and his son Cui Hao of the Qinghe Cui family led the legal revisions in the reigns of Emperor Daowu (389–409) and Emperor Taiwu, respectively. See *Wei shu*, ch. 111, p. 2874. Feng Hui of the Bohai Feng family was praised by his contemporaries for impeaching imperial clansman Yuan Qin for adultery under the rule of Empress Dowager Ling. See *Wei shu*, ch. 32, pp. 760–3; also see note 49 above. His kinswoman Ms. Feng, who married into the Qinghe Cui family, was so renowned for her knowledge of legal precedents that she was recorded in the "Biographies of Women" in *Wei shu*. See *Wei shu*, ch. 92, p. 1978. Qinghe is near Linqing county, and Bohai is near Dongguang county in present-day Shandong province. For their locations, see Tan, *Zhongguo lishi ditu ji*, vol. 4.

98. Feng Junyi was actually in command of the legal revision around 534, which resulted in the proclamation of a new law for the succeeding Northern Qi Dynasty (550–77). See *Bei Qi shu* [The history of the Northern Qi], by Li Baiyao (Beijing: Zhonghua shuju, 1972), ch. 43, p. 573; and *Wei shu*, ch. 98, pp. 1908–12.
99. Chen Yinke's study of the origins of the legal system of the Sui and Tang Dynasties argues this point in detail. See Chen Yinke, "Sui Tang zhidu." A recent study by Kang Le suggests that Empress Dowager Wenming, who was regent in most of Xiaowen's time, was actually the mastermind of this movement. For her efforts in transforming the government and the impact of the sinification movement on the Xianbei imperial clansmen, see Kang Le, *Cong xijiao dao nanjiao* [From the west suburb to the south suburb] (Taipei: Daohe chubanshe, 1995), part two, "Empress Dowager Wenming," pp. 111–64.
101. See Chen Jo-shui, "Empress Wu and Proto-Feminist Sentiments in Tang China," in *Imperial Rule and Cultural Change in Traditional China*, eds. Frederick Brandauer and Chun-chieh Huang (Seattle: University of Washington Press, 1995), pp. 77–116.
102. Emperor Ming (r. 466–72) of the Liu-Song not only interfered in marriage issues personally, but also intended to promote female tolerance by circulating "antijealousy" literature. After executing an official's wife, Emperor Ming told one of his officials to write a book named *The Stories of Jealous Wives*, presumably to show their miserable fate and to warn other women. Before a certain aristocrat was about to marry an imperial daughter, the emperor asked an official to compose an article in the name of the aristocrat. In this article, he was supposed to decline the marriage proposal because of other aristocrats' painful experiences in marrying jealous princesses. For Emperor Ming's actions, see *Song shu*, ch. 41, pp. 1290–2; for different attitudes toward jealous women in the North and the South, see Jen-der Lee, "Jealousy in the Six Dynasties: Crime in the South and Virtue in the North," unpublished manuscript.
103. For the sentiment of marital egalitarianism under the Northern Dynasties, see Jen-der Lee, "Women and Marriage in China during the Period of Disunion," Ph.D. diss., University of Washington, 1992, ch. 4, "Conflict and Termination of Marriage"; also, Jen-der Lee, "The Life of Women in the Six Dynasties," *Journal of Women and Gender Studies* 4 (1993): 47–80.
104. Ch'ü Tung-tsu, chs. I–II.
105. Jack Dull, "Marriage and Divorce in Han China: A Glimpse at Pre-Confucian Society," in *Chinese Family Law and Social Change*, ed. David C. Buxbaum (Seattle: University of Washington Press, 1978), pp. 23–74.
106. See Chen Yinke, "Sui Tang zhidu," part four, "Xingli," in *Chen Yinke xiansheng lunwen ji*.

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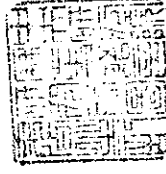
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Sherry J. Mou
Editor



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