

9. Crime and Punishment

The Case of Liu Hui in the *Wei shu*

JEN-DER LEE

The ruling authorities generally try to systematize the ethics of marriage and family, believing that they often help stabilize society.¹ In western Europe in the Middle Ages, 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 church's secular influence. Through the ecclesiastical courts, the church established its authority to regulate the laity's marriage customs and to provide spiritual justification for its marital ethics.² In contrast, in China, the Confucian Classics provided the ethics of marriage and family, and the state, instead of a religious organization, undertook the task of enforcing them.

Since the late nineteenth century, traditional Chinese society has been perceived as Confucian, and the state, with a legal mechanism at its disposal, was often seen as a willing participant in the "inevitable" development of Confucianization. However, like the Catholic Church before monastic reform, the state (or, better, states) in early medieval China was not yet powerful enough to enforce its will. During the disunion between the third and the sixth centuries, no single state could rule all of China. Moreover, ethnic diversities, struggles for political survival, and differences in social structure all contributed to discrepancies in ethical values, both between states and within a single government. The issue, then, was not whether the ruling authorities intended to Con-

fucianize society through the codification of classical ethics but, first, what aspects of marital and familial ethics would be made law; second, how these laws would be enacted; and, third, who the ruling authorities would be.

To understand the complicated interactions among the three issues in the codification of classical ethics, we must scrutinize statutes and cases and also analyze the rationale and arguments behind them. What I discuss and translate in this chapter is a case recorded in the "Monograph on Law" (*Xingfa zhi* 刑罰志) in the *Wei shu* 魏書, the history of the Northern Wei (386–534), a dynasty founded by the Tuoba 拓跋 clan of the nomadic Xianbei 鮮卑 people. This disastrous case involved Grand Princess Lanling 蘭陵, the daughter of Emperor Xiaowen 孝文 (r. 471–499), who was famous for his sinification movement, and her husband, Liu Hui 劉輝, the grandson of a surrendered imperial clansman from the Southern Liu-Song 劉宋 dynasty (420–479). The couple's marriage was marred by Liu Hui's extramarital affairs and ended with the princess's miscarriage and death. The legal debates surrounding the case are recorded in the "Monograph on Law," and the vicissitudes of their marriage are described in Liu Hui's biography in the *Wei shu*. The case concerned sex crimes, marital violence, concealment, and family members' collective responsibilities, all of which were important aspects of the more general problem of codifying classical ethics. In arguing the case, 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.

According to Liu Hui's biography in the *Wei shu*, the princess is said to have been very jealous and once even killed a maid whom Hui had impregnated. When that did not calm her fury, the princess aborted and mutilated the unborn child, stuffed the maid with straw, and showed her naked to Hui. Appalled and angered by the princess's behavior, Hui decided to ignore her. The situation was reported to Empress Dowager Ling 靈太后 (r. 516–528), the princess's sister-in-law and the reigning regent of the Northern Wei government at that time. After an investigation, Hui was divested of his noble title and was divorced. One year later, however, the princess asked to be reunited with him. At first, the empress dowager was reluctant to grant her request, for fear that the princess had not changed her behavior, but after repeated pleas, she eventually agreed. It is said that the empress dowager not only escorted the princess out of the imperial palace personally, but also asked her to exercise more discretion in the future.³

Sometime between 519 and 520, when the princess was pregnant, Hui committed adultery with both Rongfei 容妃, the sister of the commoner Zhang Zhishou 張智壽, and Hui-meng 慧猛, the sister of Chen Qinghe 陳慶和.⁴ According to Liu Hui's biography, the princess changed her tactics and kept her temper under control. But after being provoked by her female relatives, she started fighting with Hui again. Hui thereupon pushed her out of bed, beat her,

and stamped on her, causing a miscarriage. He then fled. A reward was offered for Liu Hui's arrest, and the ones already caught were to be punished. Both measures were opposed by Cui Zuan 崔纂, then the Director of the Three Dukes (*San gong lang zhong* 三公郎中) in the Department of State Affairs (*Shang shu sheng* 尚書省), and his colleagues. Cui Zuan's argument consists of four major points, including the judgments for the three parties involved and his contention over the division of bureaucratic power.

Cui Zuan's first point addresses the verdict for Liu Hui. Although the "Monograph on Law" does not explain why the arrest warrant treats Liu Hui as a traitor, Cui Zuan's argument provides some hints. Since the Han dynasty, a person who killed an imperial family member had been considered a traitor.⁵ That the imperial authority applied this reasoning to charge Liu Hui with treason suggests that it considered the aborted child mainly the princess's flesh and thus a member of the imperial family. This finding, however, contradicts the idea of a patriarchal family described in the *Etiquette and Rituals* (*Yili* 儀禮), according to which one's principal parental relation is with one's father, not one's mother. Thus when Cui Zuan cites the "law of assault" (*doulü* 鬥律) to propose a sentence of hard labor for Hui's killing his own child, he actually is arguing for recognition of the patriarchal family described in the Confucian Classics.

Cui Zuan's second point concerns the two adulterous women. He uses an earlier statute to contend that Liu Hui, as the principal criminal, should be arrested and judged before the women, as his accessories, are put on trial. Besides, he points out, because Rongfei's and Huimeng's only crime was adultery, they should not have been sentenced to slavery. Although Cui Zuan did not refer to any law code regarding the penalty for adultery, his colleague You Zhao 游肇, Right Vice Director (*You pu yi* 右僕射) in the Department of State Affairs, came to his support and also called for the women to be sentenced to hard labor.

Cui Zuan's third point focuses on the innocence of the two brothers and the unfair application of collective responsibilities to their sentence. What Cui Zuan is referring to here are the two most important items in the codification of Confucian ethics: the permitted concealment by family members and the collective responsibility of the family as a whole. Both practices were based on the scope of the patriarchal family, which is defined by the *Etiquette and Rituals* as a system called "the five degrees of mourning" (*wu fu* 五服). The statute on concealment was codified in the mid-first century B.C.E. during the Han dynasty, which allowed *jiqin* 期親, family members with a one-year mourning obligation, such as siblings, to conceal one another's criminal behavior. The case of treason that prompted debates on women's collective responsibility took place near the end of the Cao-Wei 曹魏 rule (220–265) and finally led to the modification of the relevant laws in the beginning of the Western Jin 晉 (265–316). Cui Zuan's reference to them indicates that the once nomadic Xianbei continued the law of their Han predecessors and illustrates Cui's own efforts to integrate Confucian family ethics in legal decisions.

The fourth aspect of Cui Zuan's argument pertains to the division of duties and power in government. He protests the participation of the Department of Chancellery (*Men xia sheng* 門下省) in legal cases and states that it was not the department's responsibility to decide on a verdict. Whose responsibility was it, then? Cui Zuan does not explicitly say. But there is good reason to believe that the Department of State Affairs should have been the office in charge, especially when all the disagreements came from officials of that department. Yuan Xiuyi 元修義, Imperial Secretary (*Shang-shu* 尚書) in the Department of State Affairs, supported Cui Zuan's argument regarding the brothers' innocence and cited the *Spring and Autumn Annals* (*Chunqiu* 春秋) to prove the ending of connections between a married woman and her birth family. You Zhao, the Right Vice Director mentioned earlier, also agreed with Cui Zuan's objections, asking the court to put the appropriate office in charge and retry the case.

All these arguments and proposals, however, were not appreciated by the imperial authority—that is, Empress Dowager Ling, who ruled on behalf of her teenage son. Consequently, the imperial decree following these discussions not only confirmed the earlier verdicts, but also punished Cui Zuan and his colleagues.

Grand 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, sobbing, but also accompanied the funeral procession for several miles out of the capital. Later she told one of her officials that she could not help but weep because the princess tolerated Liu Hui and never spoke up, even though he repeatedly insulted her. According to the *Wei shu*, she stated, "There was no such [woman] in the past, nor is there any such [woman] today. That is why I feel so sorry." Although Liu Hui was later captured, he was pardoned by an amnesty granted immediately before his execution. He regained his noble and official titles in 522 but died, presumably a natural death, the following year.⁶

The "Monograph on Law" covers the legal development over the 150 years of the Northern Wei, and fully one-sixth of it is devoted to this case. At the end of the nineteenth century, an essay on legal thought by the reformist judge Shen Jiaben 沈家本 (1840–1913) even used this case as an example.⁷ Indeed, the substantial and lasting interest in Liu Hui's case testifies to its significance and gives us valuable insights into the relationship of state, family, and ethics in early medieval China. Moreover, inspired by today's historiography, we can see in this story a rare opportunity to exercise our newly acquired sensitivity to the issues of class, ethnicity, and gender. In this case, the match was a marriage between a nomadic princess and the offspring of a surrendered ethnic Han. The debate was between the imperial regent, a nomadic woman ruler who wanted to avenge her sister-in-law, and her legal bureaucrats, who had either a Han ethnic origin or a Confucian educational background. The story concerns both members of the imperial family and commoners, and the debates were mainly about the verdicts for commoners.

The case of Liu Hui therefore serves as an instructive example and a point of departure for us to examine the three issues in the codification of Confucian ethics. The first issue—the inculcation of marital and familial ethics into the law, Cui Zuan's citation of the "law of assault," his reference to concealment by family members, and his insistence on the brothers' innocence—illustrates the idea of a patriarchal family in accordance with the *wu fu* mourning system. The key point is, first, that a woman's family identity shifts after her marriage and, second, that her status is inferior to that of her husband in her husband's family.

In regard to the second issue, the implementation of these ethical standards, imperial decrees were most often cited to prove progress in the codification of Confucian ethics. For instance, early in the Western Jin, it was decreed that the five degrees of mourning be employed as a principle for legal decisions. That is, the justices would be permitted to impose several levels of penalties to show and ensure the family's hierarchy should its members become involved in legal cases. Nonetheless, the serious debates and final decisions concerning Liu Hui's story, some two hundred years after the Western Jin decree, suggest that codifying classical values was difficult. The application of patriarchal ideals in rendering verdicts varied among cases in different regimes owing to many different factors—court politics, pleas from powerful aristocrats, influences arising from a nomadic cultural background, as well as the individual characteristics of different rulers—all of which in turn relate to the third issue, the makeup of the ruling authority. The road to Confucianization could be bumpy, and it was not favored unconditionally by the imperial court when it ran counter to the imperial interest. In Liu Hui's case, that interest comprised class, gender, and ethnicity.

FURTHER READING

For a detailed analysis of Liu Hui's case and its significance in the codification of Confucian ethics in medieval China, see Jen-der Lee, "The Death of a Princess: Codifying Classical Family Ethics in Early Medieval China," in *Presence and Presentation: Women in the Chinese Literati Tradition*, ed. Sherry Mou (New York: St. Martin's Press, 1999), 1–37. For women rulers of medieval China and their influence on the revision of laws, see Kang Le 康樂, *Cong Xijiao dao Nanjiao 從西郊到南郊* (Taipei: Daohe Press, 1995), part 2, "Empress Dowager Wenming" 文明太后, 111–64. See also Jo-shui Chen, "Empress Wu and Proto-Feminist Sentiments in Tang China," in *Imperial Rulership and Cultural Change in Traditional China*, ed. Frederick Brandauer and Chu-chieh Huang (Seattle: University of Washington Press, 1995), 77–116. For a classic work on Confucian influence on Chinese law, see Ch'ü T'ung-tsu, *Law and Society in Traditional China* (The Hague: Mouton, 1965). For pre-Confucian society and its legal prac-

tices in Han times, see Jack Dull, "Marriage and Divorce in Han China: A Glimpse at 'Pre-Confucian' Society," in *Chinese Family Law and Social Change in Historical and Comparative Perspective*, ed. David C. Buxbaum (Seattle: University of Washington Press, 1978), 23–74. For a more general discussion of legal practices in medieval China, see Chen Yinke 陳寅恪, "Sui Tang zhidu yuanyuan luelungao" 隋唐制度淵源略論稿, in *Chen Yinke xiansheng lunwen ji 陳寅恪先生論文集* (1944; repr., Taipei: Jiushi chubanshe, 1977).



The Case of Liu Hui

In the Shengui era [518–519], Grand Princess Lanling's husband, Commandant Escort [*Fu ma du wei* 駙馬都尉] Liu Hui, committed adultery with Zhang Zhishou's sister Rongfei and Chen Qinghe's sister Huimeng, both commoners of Heyin 河陰 County, and beat the pregnant princess, which caused her miscarriage. Hui feared being punished and fled. The Department of Chancellery issued the [following] verdict: "Everyone [involved in the adultery] is sentenced to death, and Zhishou and Qinghe are banished to the borderland, since they knew of the situation but did not [try to] prevent it." The imperial decree stated, "The proposal is approved except that Rongfei and Huimeng are exempted from the death penalty. They shall be punished by having their head shaved and by being beaten, followed by becoming palace slaves."

Cui Zuan, Director of the Three Dukes in the Department of State Affairs, dissented, saying, "I humbly read the imperial decree, which rewards the one who arrests Liu Hui: if he is a worker, he will be promoted two degrees in the office; if he is a commoner, he will receive one degree into the nobility; if he is from a special-service household, he will be exempted from his service; and if he is a slave, he will be set free. Even though Liu Hui has not committed treason, the reward [for catching him] is equal to those offered for catching the traitor Liu Xuanming 劉宣明.⁸ Moreover, the Department of Chancellery proposes, 'Rongfei and Huimeng committed adultery with Hui; they confused him and made him angry at the princess, thus causing him to beat her and to harm her fetus. Although there is no corresponding regulation in the law, their crime deserves a severe penalty, and therefore they should be sentenced to death. The families of Zhishou and the others will be banished to Dunhuang 敦煌 to serve in the military.' The imperial benevolence is extensive and [thus] will not carry out the verdict immediately. But even though it has pardoned their lives, I personally think it still is not right. The law is what the High Emperor relied on to rule All Under Heaven; it should not be strengthened or weakened because of favor or anger, and it should not be affected and altered by affinity or distance. According to the 'law of assault': 'Grandparents and parents who, out of anger, kill their grandchildren or children with a weapon will be sentenced to

five years' labor, a person who kills by beating will be sentenced to four years' labor. If a person kills intentionally out of love or hatred, the punishment will be one degree more severe.' Even though the princess married down and has more prestige than an ordinary spouse, she is still a man's wife. [Consequently,] one cannot consider her fetus to not be her husband's child. In addition, according to the old statute issued by the previous court in the fourth year of the Yongping era [511], 'All penalties concerning banishment and death should wait for the principal criminal to be given the verdict before the accessories [to the crime] are judged.' To investigate the branch, one must start from the root. The sentence should be postponed while Hui is still in hiding; in no way should one put aside the principal criminal while punishing the accessories. Banishment and death are different punishments, and now may not be the time to decide [between them]. Officials of the Department of Chancellery belong to the imperial palace, and their job is to report cases and memorials. In the past, when Bing Ji was the prime minister, he did not bother with street fights but investigated the panting of oxen. Was this not for the sake of division of government?⁹ What Rongfei and others did was adultery. If they had been caught in the dirty beds, their [crime] would have been obvious, and they should have been sentenced according to the relevant laws. Why, [then,] were they judged as if they had offended the palace and [thus] were sentenced to slavery? According to Zhishou's testimony, his sister is married to the Manager of Requisitioned Labor Administration [*Si shi cao canjun* 司士曹參軍], Luo Xiangui 羅顯貴, and has produced two daughters with her husband; therefore, she is the mother of another family. The *Record of Rites* [*Liji* 禮記] states that a woman does not marry two husbands, just as a person does not have two heavens. If she behaves badly in private, the blame will fall on her husband; the fault is not her brother's. In the past, during the Wei Jin dynasties when collective execution among the five lineages was still being used, a pregnant mother could still be put to death [for a crime committed by a member of her birth family] after her child was born. To contest [this sentence], He Zeng 何曾 argued, 'An unmarried woman should be responsible for charges against her parents, whereas a married woman should be punished for [crimes committed by] her husband's family.' This has been the irrevocable and right order and the common principle in the past and the present. The law allows a person to conceal a family member if the latter commits an ordinary crime, much less the shameful act of adultery. How can one ask a brother to testify [against his sister for her adultery]? Here the punishments [according to the verdicts] exceed the criminals' wrongdoings, and human relations [according to the verdicts] go against legal precedents. According to the law, there is no collective responsibility for adultery. [The court] should not increase the brothers' punishment because of its anger with Hui. To execute a man in the market is to abandon him along with the people, whereas to ennoble a man in the court is to honor him along with the people. Both actions should show [that the court] has no secrets under heaven and is not deceiving

people's ears and eyes. How can one carry out within the Four Seas a verdict that is not in accordance with the correct laws? Once the laws and norms have been lost, even the speediest horse cannot get them back! Since the imperial decree has been issued, it should be followed, but those decisions that are not legal should be reconsidered."

Yuan Xiuyi, the imperial secretary of the Department of State Affairs, stated, "In the past, when Ai Jiang 哀姜 violated the rites in the kingdom of Lu 魯, [her brother,] the Duke of Qi 齊, took her back and executed her, and thus was criticized in the *Spring and Autumn Annals* [*Chunqiu* 春秋].¹⁰ Also, when Xia Ji 夏姬 committed adultery in the kingdom of Chen 陳, people blamed only [her son] Zhengshu 徵舒, but not her parents.¹¹ [Both cases] show that a woman[']s status is established outside [her family] and that any crime she commits while violating the rites does not concern her birth family. How can the brothers be responsible for the sins of their married sisters?" You Zhao, the Right Vice Director of the Department of State Affairs, submitted a memorial to the throne that says, "Your humble and unworthy subjects participate in this important office and have the duty to provide good suggestions and to remove the bad ones. The Department of Chancellery is responsible for delivering orders and documents in and out [of the palace] and is an excellent [source of] general regulations. There are offices for handling the cases of wicked people violating the law. It is not the business [of the Department of Chancellery] to investigate felonies and to pass judgment. The adulterous behaviors of Rongfei and others should be punished only by hard labor. The law does not say that they should be executed.¹² Indeed, according to the legal codes and precedents, it is too severe to find a brother responsible for his married sister. Moreover, although Hui did run away, he does not deserve the death penalty; it also is excessive to issue a reward to catch him that equals the one to catch a traitor. A verdict that does not follow the law should be reconsidered. I beg [the court] to put the appropriate office in charge and to retry every aspect of the case."

The imperial decree states, "Hui broke the laws and violated the norms, and his crime cannot be pardoned. The substantial reward is offered to ensure his arrest. Rongfei and Huimeng committed adultery with Hui; they indulged their passions and confused Hui, which caused the princess's tragedy. If [they are] not executed, how can [the court] punish and purge [others in the future]? Although the brothers should not be responsible for their married sisters' crimes, Zhishou and Qinghe knew of their sisters' adultery but did not prevent it from happening; they tempted Liu Hui and collaborated in the shameful infidelity. They corrupted customs and defiled mores and [so] should be punished more severely. That is why the Department of Chancellery, instead of a regular office, was asked to try the case. How can it be considered an ordinary case and follow the usual procedures? Moreover, there have been imperial jurisdictions since ancient times: How can all cases belong to the legal bureaucracy? The Department of State Affairs should work on the basics and serve as the [imperial]

spokesman. Not learning how deeply it violates the norms and not knowing how much it violates the customs, [the Department of State Affairs] has deviated from the correct way and arbitrarily executed the law. It has utterly betrayed our trust and therefore seriously deserves punishment. [Accordingly,] Cui Zuan shall be removed from his office, and the other court officials from the Department of State Affairs shall be deprived of their salary for a season."¹³

[WS 111.2886-88]

NOTES

1. Part of this introduction draws material from Jen-der Lee, "The Death of a Princess: Codifying Classical Family Ethics in Early Medieval China," in *Presence and Presentation: Women in the Chinese Literati Tradition*, ed. Sherry Mou (New York: St. Martin's Press, 1999), 1-37.
2. 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 (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: The Making of Modern Marriage in Medieval France*, trans. Barbara Bray (New York: Pantheon Books, 1983), 282-84.
3. WS 59.1311-12.
4. The sources disagree over precisely when the crime was committed. Liu Hui's biography in the *Wei shu* states that he committed adultery early in the Zhengguang era (520-524), but the "Monograph on Law" in the *Wei shu*'s records that this took place in the Shengui era (518-519). See WS 59.1312 and 111.2886.
5. Wang Chien-wen 王健文, "Xi-Han lüling yu guojia zhengdangxing: yi lüling zhongde budao wei zhongxin" 西漢律令與國家正當性—以律令中的"不道"為中心, *Xin shi xue* 新史學 3, no. 3 (1992): 1-36.
6. WS 59.1312.
7. Shen Jiaben 沈家本, *Jiyi wencun* 寄篋文存 (Taipei: Commercial Press, 1976), *juan* 4, "Learning to Make a Verdict" (*Xue duan* 學斷).
8. For this earlier treason case, see WS 9.229 and 58.1292.
9. Bing Ji 邴吉 was the prime minister of the Han Emperor Xuan (r. 73-49) who inquired about the oxen's panting and not about street fights because he believed that the prime minister was responsible for watching the climate that affected agriculture and people's welfare and that the police should be responsible for street fights. For his story, see HS 74.3147.
10. Ai Jiang was married to Duke Zhuang 莊公 of the Lu kingdom, committed adultery with Zhuang's brother, and participated in the succession struggles after Zhuang died. Her elder brother, Duke Huan 桓公 of the Qi kingdom, took her back, executed her, and returned her body to the successor of the Lu in 659 B.C.E. See the record of this event in *Zuozhuan zhushu* 左傳注疏, SSJZ 29.197-98.

11. After her husband died, Xia Ji committed adultery with two court officials and the Duke of Chen. Her son, Xia Zhengshu, was so angry that he killed the duke. The two court officials consequently feared for their lives and asked the kingdom of Chu for asylum, thus giving the ambitious King Zhuang of the Chu a chance to kill Zhengshu and eliminate the kingdom of Chen, in 599 B.C.E. See the record of this event in *Zuozhuan zhushu* 22.380-82.
12. There are no records showing the specific penalty for fornication and adultery in the Northern Wei dynasty. But the Tang Code, issued with annotations in 653, lists one and a half years for fornication and two years of hard labor for adultery. See Wallace Johnson, *The Tang Code*, 2 vols. (1979; repr., Princeton, N.J.: Princeton University Press, 1997).
13. For reading *yishi* 一時 to mean a season of three months in the Northern Wei's salary system, see Zhou Yiliang 周一良, "Banlu yu shangren" 班祿與商人, in *Wei Jin Nanbeichao shi zhaji* 魏晉南北朝史札記 (Beijing: Zhonghua shuju, 1985), 397-99.