

## **Law based on Local Customs: Law and Local Order under the Yuan Dynasty through the Example of Marriage Customs and Matrimonial Law**

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### **Abstract**

Law under the Yuan dynasty is most commonly characterized as a system with legal provisions that were formulated based on local customs. Due to this view, much of the scholarship to date has focused on non-Han customs, such as levirate marriage. However, it is much less common to study what Han custom actually meant and how it developed. This study analyzes the historical background and development of Yuan marriage laws, and focuses on the competition and negotiation between Confucian norms and local customs under the said principle of formulating legal provisions based on local customs. Examining these issues help to correct the notion that Yuan law was lax and minimally restrictive.

Institutionally the judicial power of Yuan local officials was quite limited, and for a long time they did not have legal codes to adhere to. Therefore they reported numerous trivial civil conflicts to government agencies for resolution, including the Central Secretariat (*zhongshu sheng*), Bureau of Military Affairs (*shumi yuan*), the Censorate (*yushi tai*), and the Six Ministries. The Yuan central government expected to make marriage certificates (*hunshu*) contractual. Under the marriage code that it issued, betrothal gifts were increasingly standardized so the legal disputes that

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arose from marriages were limited. Also, Han officials in local offices performed their duties in observing local customs, and put forward discussions of what the original customs of Han people actually meant. Based on these discussions they proposed to restore the Tang code. They also argued for government control over marriage customs, so that other customs can be annihilated. Such discussions among them dominated the Chinese legal tradition under the Yuan dynasty. It also introduced Neo-Confucian ideas into law and brought about the competition between Neo-Confucian ideas and local customs.

In short, Mongol rule provided its Han subjects with a rather tolerant space for morals, customs, and law during the Yuan dynasty. Even though this was the case, Yuan law was neither lax nor minimally restrictive. On the contrary, due to the efforts of Han radical moralists to define “customs” for Mongol rulers, Yuan law was sometimes pretty severe and had been increasingly so during the dynasty.

Keywords: Yuan dynasty, law based on local custom, matrimonial law, marriage customs