

Contemporary Chinese Legal System



Dr. Haihong Liu, SISU Spring Semester, 2016-2017

Schedule

Week	Date	Topic	
1	Feb 23	No Class	
2	March 2	Topic 1: Chinese legal system in general-Chinese Legal Culture and Traditions	
3	March 9	Topic 1 Chinese legal system in general - Experience of Law in PRC	
4	March 16	Topic 2: Chinese Constitutional Law & Rule of Law-Chinese Constitution	
5	March23	Topic 2: Chinese Constitutional Law & Rule of Law-Legal Institutions and the Administration of Justice and Law	
6	March30	Topic 2: Chinese Constitutional Law & Rule of Law-Sources of Law and Law-making	
7	April 6	Topic 3: Chinese laws in operation-public law	
8	April 13	Topic 3: Chinese laws in operation-civil law	
9	April 20	Topic 3: Chinese laws in operation-Business law	
10	April 27	Topic 3: Chinese laws in operation-Foreign Trade & Investment law	
11	May 4	Internship: Visit the legal department of a multinational company in Shanghai (The time may be changed)	
12	May 11	Topic 4: Dispute Resolutions	
13	May 18	Topic5-Implementation and Enforcement of Law	







Chinese style of crossing the road

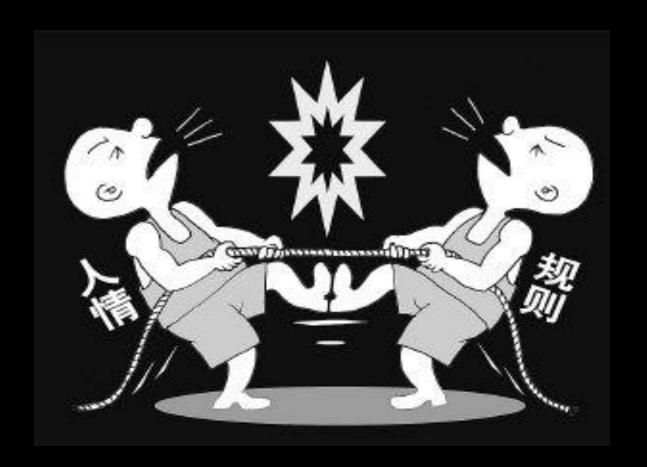




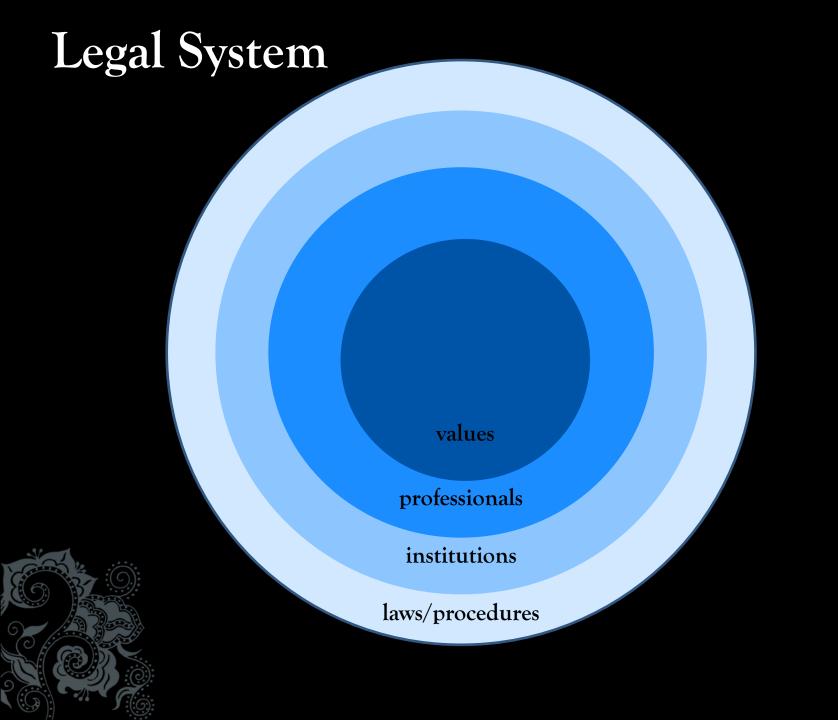
Qiu Ju Goes to Court



To go to court or not?

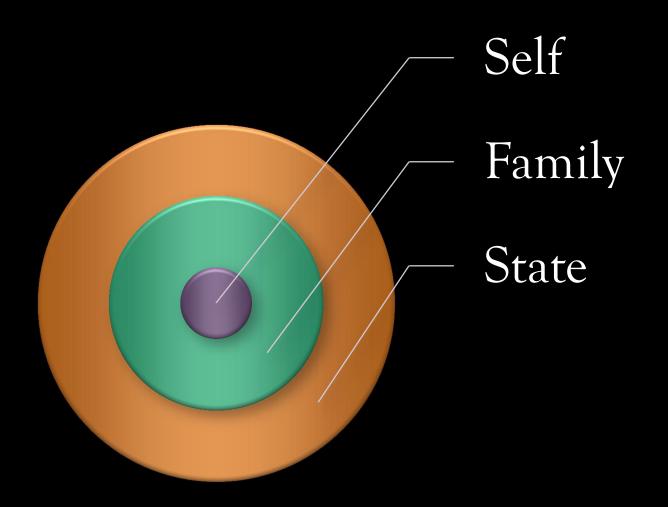






Structure of Traditional Chinese Society

- Differential Mode of Association



Chinese Rural Society Differential Mode of Association



Ten Lun 伦Ten relationship:

- Gods and ghosts
- Monarchs and subjects
- ♦ Fathers and sons
- The noble and the base
- The intimate and the unconnected
- The rewarded and the punished
- Husbands and wives
- Public afffairs and private affairs
- Seniors and juniors
- Superiors and inferious The Book of Rites

San Gang Wu Chang (三纲五常: three principles & five constants)

- 1. Three principles
 - A. Emperor is the principle of subjects;
 - B. Father is the principle of son;
 - C. Husband is the principle of wife

2. Five constants:

仁(Ren) kindness; 义(Yi) loyalty; 礼(Li) courtesy & rites; 智(Zhi) wisdom; and信(Xin) trust. Regarded as in the human nature.

The function of *Li*

- Men's statuses shall be clearly defined; their expected roles properly carried out
- ♦ Li: rules of behavior varying in accordance with one's status defined in the various forms of social relationship; Formulated by the Confucianists
- The function of *Li* is to achieve differentiation: when a person's title and position are different, the *Li* used are also different.

Conflict between the public and the private



Dilemma



Emperor Shun





Advocate General Gao Yao

Dilemma

"When Shun was emperor and Gaoyao was the Judge, if Shun's father had killed a man, what should have happened?"

In that case, would Shun not have tried to stop it?

Then what would Shun have done?

Gaoyao would have arrested him.

How could Shun have stopped it? Gaoyao would have had the authority to deal with the matter.

"Shun would have regarded abandoning the empire as throwing away a worn-out shoe. He would have secretly carried the old man on his back and fled to the edge of the sea. He would have lived there all his life happily and forgotten all about the empire."

-- The Works of Mencius, Book 7, chap.35

Lack of organizational morality



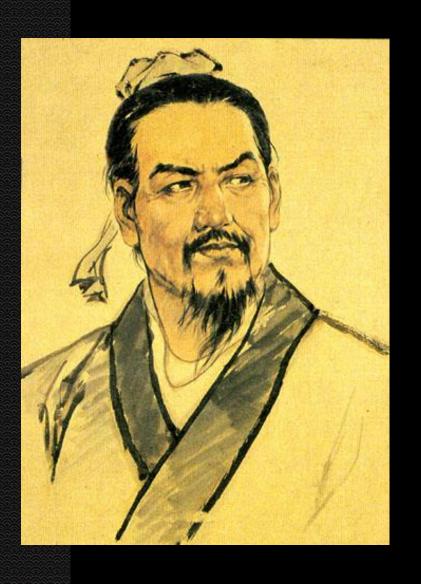
Chinese pattern of social organization embraces no ethnical concepts that transcend specific types of human relationships.

With "mutuality" as the core feature, "ren" is situational ethics



- ♦ Confucianists advocated "Control oneself and conform to rituals (克己复礼)"
- * the state should be led by the people with virtue (美德) and thus create a sense of shame which will prevent bad conduct
- Moral education is basic, punishment is supplementary

Confucian



- law is to be publicly promulgated standards of conduct backed by state coercion (punishment)
- The rulers creates the law, the ministers abide by the law, subjects are punished by the law, all are subject to law.
- Strict regulation and control over government officials

Han feizi Legalism(法家思想)

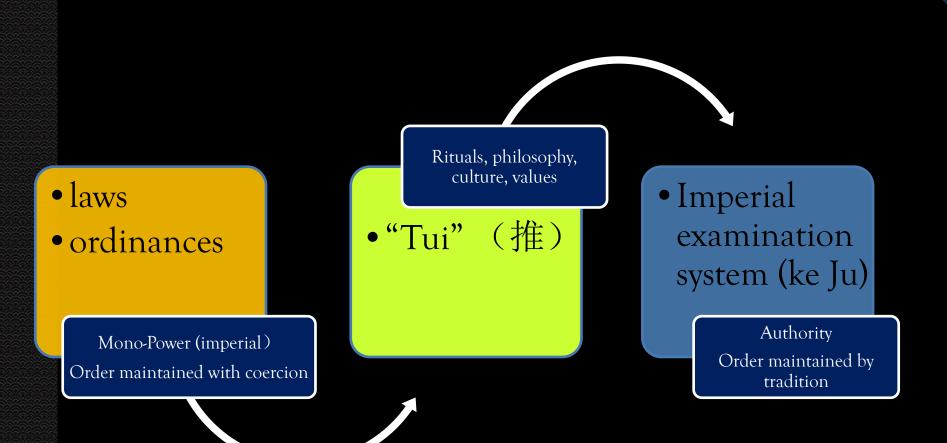
Role of Law in society



Legalism: dominant yet instrumental

Confucianism: secondary, yet still instrumental

Governance of Imperial China



Zhaohua, Sichuan

(a history of over 4000 years, 2244 years as a county)



Outside Government Office (衙门)





Main Gate





Inscribed Tablet





Screen Wall





Court Room 公堂





Ward





Secondary Court Room





Examination Hall





Marking Room





Rank 1's Paper





Confucious Temple (文庙)





Legal Culture in Ancient China

Differentiated or equal treatment

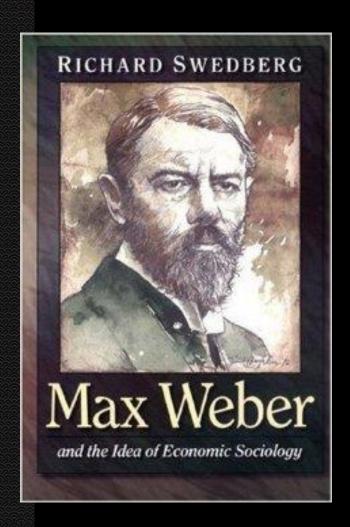
Collectivism or individualism

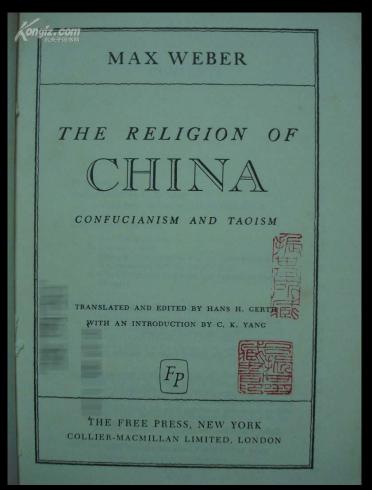
Harmony or Lawsuit

Morality or Penalty

Law is a tool for governance

Chinese Law through Max's Weber's Lense





Developmental Stages of Western Law

	Non-rational	Rational
Formal	1. Revealed Law	4 Positive law
Substantive	2. Traditional Law	3 Natural Law

the poly-contextuality of traditional chinese law

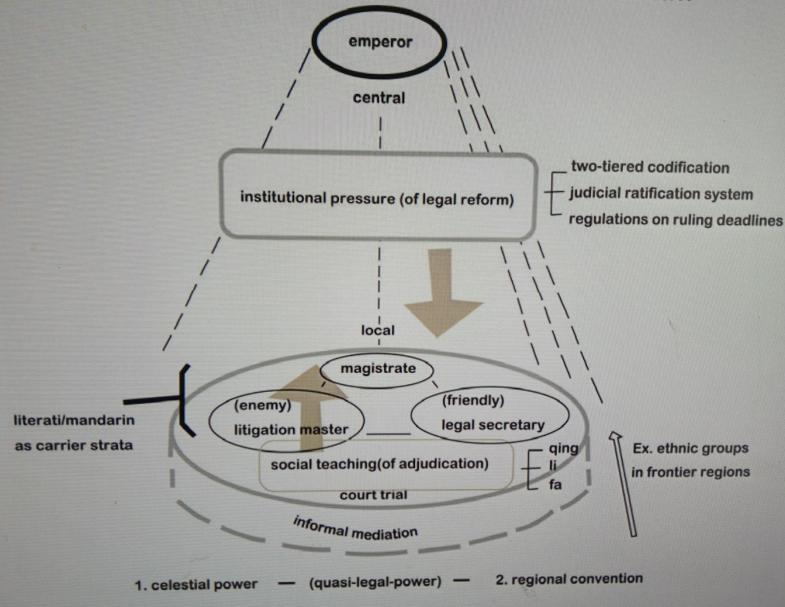


Figure: The poly-contextuality of traditional Chinese Law





What are the problems which such polycontextuality of traditional Chinese law will cause?

At bottom level (professionals)





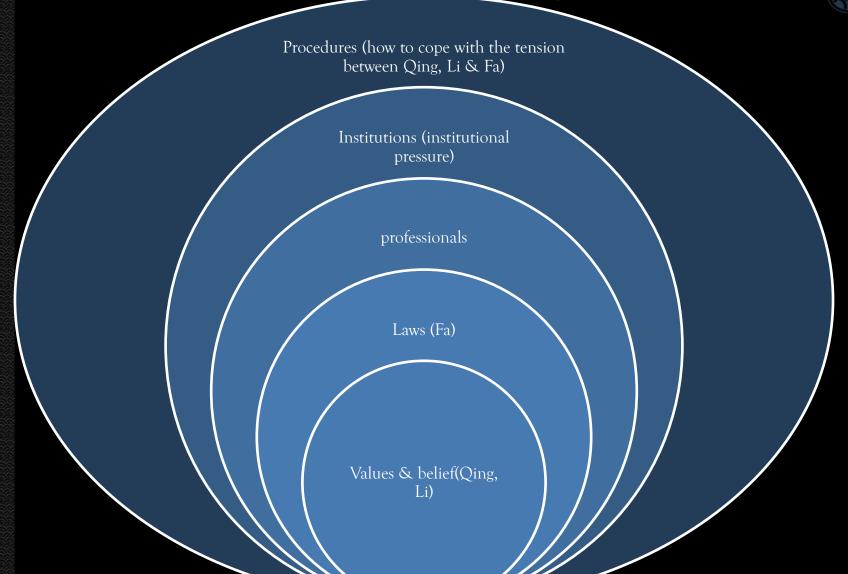




- Judicial accountability
- Professional stability
- Procedural reform
- People's assessor
- Ideological and political awareness



Contemporary Challenge for Chinese Legal System





Question:

How are the factors of legal philosophy and culture shape the legal system in traditional China? Compared with the situation in your country.