The Inheritance Rights of Daughters

The Song Anomaly?

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Scholars of Chinese legal and social history have long been intrigued by apparent evidence that daughters had stronger rights to family property during the Southern Song than at any other time in Chinese history before the twentieth century. The evidence comes from the *Collection of Lucid Decisions by Celebrated Judges* (*Minggong shupan qingmingji*, hereafter referred to as *Qingmingji*), a collection of 473 Southern Song judgments. A number of cases contained therein suggest that a daughter had the legal right to a set share of property half the size of a son's share at the time of family division and that she enjoyed a greater claim still if her father's household died out for lack of an heir.

The subject was the focal point of a heated debate between Niida Noboru and Shiga Shūzō in the 1950s and 1960s (Niida, 1942, 1962; Shiga, 1953-55, 1967). At issue was not only the rights of daughters, but what they reveal about the nature of family property and the relationship between property inheritance and ritual/lineal succession in imperial China.

Following in the tradition of his mentor, Nakata Kaoru, Niida contends that family property was jointly owned by all members of the household, male or female (*kazoku kyōsansei*). It was this co-ownership, not any principle of ritual or lineal succession, that dictated

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AUTHOR'S NOTE: *A number of people read and offered helpful criticisms on the article. My thanks to the participants at the conference on "Code and Practice in Imperial Chinese Law," UCLA, August 8-10, 1993, most especially Harold Kahn, Joseph Esherick, and Matthew Sommer. Thanks also to Shinno Reiko, Richard von Glahn, and Robert Hymes. I owe a special debt of thanks to Philip Huang for reading and commenting on the various drafts of this article.*

MODERN CHINA, Vol. 21 No. 3, July 1995 269-309

the transmission of property from one generation to the next. In Niida's view, daughters were co-owners (*kyōyūsha*, *gongyouzhe*) of family property along with sons and enjoyed the same kind of rights to that property, although admittedly not to the same degree.

Niida sees the supposed expansion of daughters' inheritance rights in the Southern Song as a development that proves his point. For him, the Southern Song laws were but the most developed expression in Chinese history of a daughter's status as a co-owner of family property. As for their origin, Niida contends that they were the result of the absorption into imperial law of local customs in South China after the Song state's move there with the Jin conquest of 1127. His emphasis on local customs in this issue is in keeping with the theme of his life's work: Laws generally derive from social practice.

In direct opposition to Niida, Shiga argues that the basic unit of ownership of family property was not the entire family, but the "father-son unit" (*fushi ittai*, *fuzi yiti*). Unlike Niida, Shiga holds that property inheritance and ritual/lineal succession were inextricably linked. Because only sons could succeed to the ancestral sacrifices, only they could inherit property. A daughter had only the right to support as a dependent "beneficiary" (*juekisha*) while growing up and the right to a dowry when she married.

Shiga sees the Southern Song phenomenon as an aberration that does not disprove his central point. He contends that whatever their origin, the supposed laws did not derive, as Niida would have it, from social practice. He also contends that those laws were, at any rate, wholly unique to the Southern Song and, as such, should be seen as little more than anomalies from the perspective of Chinese history as a whole. Shiga's argument also is in keeping with the theme of all of his work. He is most interested in uncovering the enduring general principles underlying both social practice and the law in Chinese history and less concerned about specific laws in any particular period or about change over time.

Interest in the *Qingmingji* cases and in the Niida-Shiga debate has been rekindled in recent years with the publication in 1987 of an expanded and widely available edition of the collection. In this renewed debate, some scholars have cast their vote decisively for Niida's argument (Yanagida, 1989, 1990; Birge, 1992), whereas others share Shiga's skepticism (Nagata, 1991; Itabashi, 1993).

Patricia Ebrey has provided an entirely different interpretation of the Southern Song cases. She argues that with the decline of aristocratic society and the rise of gentry society the balance in marriage payments shifted from large bride prices in the Tang to large dowries in the Song as elite men sought through their daughters' marriages advantageous affinal ties that would aid in their families' political advancement. The increasing importance of dowries brought about a revision of state law on inheritance in the Song to ensure that orphaned daughters would be properly endowed (Ebrey, 1991).

How one sees the inheritance rights of daughters in the Song necessarily influences the assessment of those rights in later dynasties. None of the above scholars directly addresses the question of change in daughters' rights in the post-Song period, mainly because their interest in the issue is subordinate to other concerns: Shiga and Niida on the nature of family property and the relationship between inheritance and succession, and Ebrey on dowry escalation in the Song. But insofar as Niida and Ebrey in their separate ways see the Southern Song developments as unique, they imply that there was a sharp contraction in daughters' rights in the post-Song period. On the other hand, Shiga tends to emphasize continuity rather than change. Thus the precise nature of the post-Song changes has yet to be spelled out.

This article examines the relevant Song laws and legal cases on daughters' inheritance rights. On the whole, I find Shiga's argument on this particular issue to be the most convincing of the three. However, I also find that he shares with Niida and Ebrey certain assumptions about the putative laws and the pertinent *Qingmingji* cases that stand in the way of a clearer understanding of daughters' inheritance rights in the Southern Song.

Looking first at the laws on daughters' rights to the family property when the household died out, the article argues that those laws derived not from social practice, as Niida contends, nor a concern to protect orphaned daughters, as Ebrey contends. Yet neither were they mere anomalies, as Shiga suggests. Rather, they were the products of a systematic effort by the Song state to stake out a greater claim of its own to the property of extinct households. As for the supposed right of an unmarried daughter to a share of the family estate half the size of a son's share, the article demonstrates that all three scholars have given too much credence to the evidence that supposedly suggests the

existence of a half-share law. Such a law probably did not exist, but even if it did, it was highly anomalous not just in the context of all of Chinese history, as Shiga contends, but also in the context of the Southern Song itself. The article ends with a look at the inheritance rights of daughters in the post-Song period to see what did and did not change.

THE SOURCES

Before launching into the main issues, it would be useful to discuss briefly the materials available for the study of daughters' inheritance rights in the Song because it is the nature of the sources that makes defining those rights so difficult. The Song code (*Song xingtong*) was issued in 963, at the very beginning of the dynasty, and was not amended or added to thereafter, even though many laws were later promulgated that overrode its statutes. Most laws originated (to use the classification of the time) as "edicts, regulations, rules, and specifications" (*chi, ling, ge, shi*), some of which can be found in surviving compilations, but most of which cannot. The latter can only be found in indirect sources, mainly the *Song huiyao* (Collected Song Documents), the *Xu zizhi tongjian* (Continuation of the Comprehensive Mirror for Aid in Government), the legal chapters in the *Songshi* (History of the Song), and the *Qingmingji* itself.

The main difficulty with using the *Qingmingji* is that it does not overlap chronologically with the other indirect sources. Its cases date mainly from the 1220s to the 1260s, whereas the *Song huiyao*, the most important supplementary source for civil laws, ends coverage around 1220, at the same time that the *Xu zizhi tongjian* and the *Songshi* become increasingly abbreviated. We thus lack outside sources with which to verify the information on laws contained in the *Qingmingji*.

THE INHERITANCE RIGHTS OF DAUGHTERS OF EXTINCT HOUSEHOLDS

The key to understanding changes in daughters' inheritance rights in the Song was state policy on households that had died out for the

lack of a male heir. The term "extinct household" (*juehu* or *hujue*) had two meanings in the Tang and Song periods. It meant, on the one hand, the extinction of a patriline. The Tang laws on succession read in part that "those without heirs become extinct households" (*wuhouzhe wei hujue*) (Tang lü shuyi, 1983: 238). On the other hand, the term also meant the extinction of a household as a taxable unit. A household with a male head was called a "tax household" (*kehu*); a household headed by a widow with no sons, either biological or adopted, was called a "female household" (*nühu*), and after her death the household would become an extinct household (Ma, 1324: 13/138-39).

From the state's perspective, the extinction of a household had necessarily to include both the extinction of a male patriline and the extinction of a tax unit. For this reason, the term did not apply to an undivided household of several brothers living together and sharing the ownership of the family property. Even if one of the brothers (and his wife) died without any male heirs, the rest of the household remained intact as a tax-paying unit. The state would not consider it to be extinct.

Thus the term applied only to a family in which the father had already divided the common property with his brothers and had already set up residence as a separate household. If the father (and the mother) died without any male heirs, then his household became extinct in both senses of the word: his patriline had died out and his household had ceased to exist as a taxable unit.

Under Tang law, if the deceased father had not made other arrangements in a will, then the property of his extinguished household was to go to his daughters; if he had no daughters, then to his nearest agnatic male kin (*jinqin*, brothers, nephews, uncles, cousins); and if he had no such kin, then to the state (Niida, comp. 1964 [1933]: 835-36). Tang law did not distinguish among daughters on the basis of marital status.

In the Song the policy on the disposition of juehu property was transformed. Unlike Tang law, Song law differentiated among unmarried, returned (*guizong*), and married daughters.[1] Unmarried daughters retained their rights to juehu property, but those of married and returned daughters were severely curtailed (see Table 1). If returned daughters were the sole surviving members of an extinct household, they were to receive only half of the property and the state was to receive the rest. If married daughters were the sole survivors of an

TABLE 1: Distribution of Extinct Household Property in the Southern Song

	Daughter(s)' Share	*Postmortem Heir's Share*	*State's Share*
Daughter(s) Only			
Unmarried daughter(s)	1		
Unmarried & returned daughter(s)	1		
Returned daughter(s)	1/2		1/2
Married daughter(s)	1/3		2/3
Daughter(s) plus Postmortem heir			
Unmarried daughter(s)	3/4	1/4	
Unmarried & returned daughter(s)	4/5	1/5	
Returned daughter(s)	1/2	1/4	1/4
Married daughter(s)	1/3	1/3	1/3
No daughter(s)		1/3	2/3

Source: Qingmingji, 1987: 265-68, 287-89, 315-16.

extinct household, they would be entitled to only one third of the property, with the other two thirds going to the state. However, if they had either unmarried or returned sisters, they would receive nothing.

Song law also made a novel distinction between the premortem and postmortem appointment of an heir and limited the amount of property that could go to one established posthumously.[2] Tang law had conferred on adopted heirs, whether established before or after the death of the parents, the same rights and obligations as natural-born sons. Indeed, so long as there was an heir, even one appointed posthumously, the household would not be considered legally extinct, and its property would not be treated as extinct household property.

Song law, however, created the new legal status of the posthumously appointed heir. When an heirless man or, after his death, his widow adopted an heir, the process was called *liji* ("adopting an heir"). However, if a man or his wife had not adopted an heir, then the household would become extinct with their deaths. In this situation, if the husband's relatives designated an heir on his behalf posthumously, the process was called *mingji* ("appointing an heir").

Only heirs adopted by parents before their deaths bore the same rights and responsibilities as a biological son, including the right to inherit the family property in its entirety. Those appointed by others after the parents' death had no right to inherit the family estate; they

only had a right to juehu property—a right that they had to share with daughters and the state (Qingmingji, 1987: 265-68, 287-89). By the 1220s at the latest, a law specifying in great detail the division of extinct household property among a postmortem heir, daughters, and the state was in place. The most a postmortem heir could acquire was one third (Table 1).

Close agnatic male kin no longer had any rights to the property of an extinct household (Table 1). In the Tang, they could acquire all of the property if the extinguished household had no daughters. However, in 1015 they lost this right through an imperial edict that ruled that henceforth the landed property of extinct households was not to be given to male relatives, but instead was to be confiscated and then either sold off or rented out by the state (Song huiyao, 1964: 4812). The only chance any male relative stood of securing juehu property was through posthumous appointment of an heir for the deceased head of the extinct household, either himself or one of his sons or grandsons, depending on his generational relationship to the deceased. Even then the amount of property he could acquire could be no more than one third.

The most important change in the Song was the expansion in the state's claim on the property of extinct households. In the Tang, the state had reserved the right to confiscate juehu property only if there were no daughters and no close male kin, but during the Song it gradually extended its rights. It did so by first restricting in absolute terms what daughters and postmortem heirs could receive. By the end of the twelfth century, they could acquire all property valued at less than 500 *guan* (1 guan was nominally 1,000 copper cash); only 500 guan of property valued from 500 to 1,500 guan; and only one third of property valued above 1,500 guan, with a cap of 3,000 guan. If the value of the property reached 20,000 guan and above, they could acquire an additional 2,000 guan, for a total of 5,000 guan. All property above those ceilings was to go to the state (Song huiyao, 1964: 5905-06; Xu zizhi tongjian, 1958: 3922; Qingmingji, 1987: 110-11, 287-89). To help put these amounts in perspective, the conditional sale price of a mu of land in the early thirteenth century ranged from 9 to 14 guan (Qingmingji, 1987: 170, 315).

The Song's right to juehu property did not end with this "cut" off the top. It also staked out a claim to what remained. It eventually

extended this claim to include all situations except when there were unmarried daughters. Its portion of the property in other circumstances ranged from one fourth to two thirds, depending on the marital status of any daughters and the presence or absence of a postmortem heir (Table 1).

As we have seen, the rights of returned and married daughters were limited correspondingly. Whereas in the Tang they had the same rights as unmarried daughters to extinct household property, their legal share contracted and the state's expanded in the Song. The rights of male kin were similarly limited. Whereas in the Tang they had first rights after daughters, they were now completely excluded.

From the state's perspective, the most crucial change was its distinction between liji and mingji and the corresponding restriction of the rights of posthumous male heirs. In social practice, the most common way of dealing with the property of a man who died without an heir was for his relatives to appoint one for him. Limiting the rights of those so appointed was the key to the state's expanded claim.

The state's distinction between liji and mingji had the coincidental consequence of enlarging the rights of daughters vis-à-vis posthumously appointed heirs. Daughters in the Tang had no claims on the family estate—outside of provisions for their marriages—in the presence of a male heir. Thus daughters gained with the expansion of the state's claim over extinct household property.

However, a daughter's right to extinguished household property was by no means absolute. Both in the Song and in the Tang, the juehu laws came into effect only when the deceased had not arranged for the disposition of his property in a will. Any bequests in a will would override the laws. This meant, of course, that a daughter could be left a larger share than mandated in law, but it also meant that she could be left with a smaller one.

At the same time, the Song, unlike the Tang, set limits on the amount of property that a man without male posterity could bequeath to other people by will (Xing, 1992). The ceilings on wills were essentially the same as those placed on hujue property (see above). Here, too, the state was staking out a claim to property that lacked a male heir.

How are we to explain the changes in the Song? Although noting the escalating claims of the state and the elimination of the claims of

close male kin, Niida nevertheless locates the primary source of the Song juehu laws in local custom. He contends that the Southern Song legal distinction between liji and mingji and the consequent expansion in the rights of daughters at the expense of postmortem heirs resulted from the incorporation of local customs of southern China into imperial law (Niida, 1962: 391).

There is no evidence in the *Qingmingji* cases to suggest a distinction between premortem and postmortem heirs in popular practice. On the contrary, there is evidence that the distinction was imposed by law. For example, in his review of a succession dispute in Jianchang county (Jiangxi) in the 1240s, the official Liu Kezhuang noted that the defendant, Tian Tongshi, "had initially been ignorant of the law and had wanted his son to receive all of Shiguang's [the deceased's] property.... Now that he is aware of the law that unmarried daughters are to receive three fourths and the posthumously designated heir only one fourth, he is willing for the property to be divided that way" (Qingmingji, 1987: 253). There are four other cases that document the same point (pp. 107-8, 110-11, 265-68, 287-89). Social practice was not the source of the distinction.

In a different vein, Ebrey argues that the source of these changes in the juehu laws lay solely in the Song state's desire to ensure adequate dowries for orphaned daughters. To be sure, the finely tuned attention to the different needs of unmarried, returned, and married daughters does suggest that a concern with dowry did indeed play a part in the making of the laws. However, Ebrey's interpretation overlooks the crucial consideration of the state's own share.

Even Shiga shares the assumption that the juehu laws of the Song were mainly concerned with inheritance and succession, that is, with the extinction of a household as the extinction of a patriline. By doing so, he, like the others, does not consider sufficiently the extinct household from the state's point of view, that is, as a unit of taxation. It was surely no coincidence that the majority of the juehu regulations of the Song came into being as agricultural and tax policies (and are classified thus in the sources) and not as inheritance and succession laws. Song policy on extinct households can be fully understood only by taking the state's interests into account.

The state's interest in juehu property was threefold. First, it was vitally concerned that the land continued to be farmed, taxes paid, and labor services rendered. Song law required that the extinction of a household be reported to local officials within three days after the death of the surviving parent (Wei, 1988: 31) or, as one Northern Song official sarcastically put it, even before "the deceased's eyes have fully closed" (*sizhe mu wei ming*) (Li Xin, n.d.: 22/16b). The fear behind the urgency was that the land would lie fallow or that other families in the village would secretly assume cultivation of it. Either outcome would deprive the state of much-needed taxes and labor services.

A related concern was the state's desire to check the engrossment of land by powerful official and gentry families who, through a combination of legal exemptions and illegal means, were able to evade labor service duties and taxes. The state saw these "aggrandizers" (*jianbing zhi jia*) as responsible for a growing inequality in land ownership and the disproportionately heavy tax and service burden born by the peasantry. As is well known, land engrossment became a particular target of Wang Anshi's New Policies reforms between 1068 and 1076. It also was of great concern in the early Southern Song, when the state sought to prevent aggrandizers from privately reclaiming the vast stretches of the Huainan region (the area between the Huai and Yangzi rivers) that had been heavily devastated and depopulated during the recent wars (Wei, 1988: 38; Zhu, 1983: 248-54). Not surprisingly, as state concern with land engrossment grew from the mid-eleventh century, the laws on extinct households became more stringent, especially by setting absolute ceilings on the amounts of juehu property that daughters and posthumous heirs could receive. In this context, the laws on extinct household property should be seen as part of the Song's attempt to limit the concentration of land ownership.

Finally, the Song state also saw juehu property, especially land, as a more immediate source of revenue.[3] After its reversion to the state, juehu land, much like abandoned land (*taotian*), was categorized as "official land" (*guantian*), which could be rented out or sold. The sale of juehu property was the preferred method in the Song, with rental a temporary measure in the event that the land found no buyers (Wei, 1988: 35-38).

The Song's reasons for staking such a large claim to juehu property were no doubt related to the vast increase in the cost of war and defense. As is well known, during the Song a professional standing army of about 1.2 million men replaced the Tang's comparatively inexpensive militia system. The cost of maintaining this army absorbed an enormous amount of the state's revenue. Paul Smith has calculated that in the middle of the eleventh century defense expenditures, by themselves, cost the state 83% of its annual income in cash and 43% of its total annual income (cash plus tax payments in kind), thereby "surpassing by 35 percent the entire Ming budget of 1502" (Smith, 1991: 8). The situation became even graver in the next century, after the Song lost half of the country and thus much of its productive base to the Jin in 1127.

The Song state resorted to a number of novel measures to raise its income, including staking out a larger claim to the property of extinct households. The state's increasing share of that property, as we have seen, came at the expense of married daughters, returned daughters (when there were also no unmarried daughters), agnatic male kin, and heirs appointed posthumously.

Underlying the state's extension of its right to juehu property was its claim to absolute ownership of all land in the realm. After all, the laws on extinct households were first formulated within the context of the equal field system of the Tang, and in that system the state claimed ownership of all land and the right to parcel it out as it saw fit. Much of Song law, based as it was on Tang law, continued in this tradition, even as it was being forced to confront the reality of private property. In both periods, the property of extinct households "belonged" first and foremost to the state and, that being the case, it was up to the state to determine how it was to be distributed. Thus the juehu laws spoke in terms of "giving" (*gei*, or *yu*) the property to daughters, postmortem heirs, or close male relatives. They did not use the language of property inheritance (*chengshou*, or *chengfen*).

What do these specific Song laws tell us generally about daughters' rights to inherit family property? Niida argues that as joint owners of family property, daughters, like wives, possessed rights of survivorship (*zonmeishaken*) when the family had no biological or adopted

sons (Niida, 1942: 61, 479; 1964: 383). After the death of her husband (and barring the subsequent adoption of an heir), a widow became the sole surviving owner of the family property. The same held true for a daughter who outlived her parents. What distinguished the different survivorship rights of widows and daughters was when these rights came into effect. They did not differ in kind.

Shiga, on the other hand, argues that a daughter's right was fundamentally different from a wife's. In his analysis, outside of the father-son unit, the most important relationship was that between husband and wife, the husband-wife unit (*fusai ittai, fuqi yiti*). Much like a son whose "personality is absorbed into the father's, whereas after the latter's death his personality is extended into that of his son," the wife's "personality is absorbed into the husband's, whereas after the latter's death his personality is represented by the wife" (Shiga, 1978: 119-20). No such bond existed between a father and his daughter. It was no accident, Shiga maintains, that a sonless household was considered extinct only after the death of *both* the husband and the wife. A wife could represent her husband, but a daughter, even if unmarried, could not represent her father. Speaking metaphorically, Shiga concludes that with the dying out of the household, family property as an organic entity also died, and what a daughter received was nothing more than the corpse (*zangai*) (Shiga, 1953-55: part 4, 38-46).

Shiga's argument is the more persuasive of the two. What the Song juehu laws show most conclusively is how conditional a daughter's right to family property was. It could be abrogated by the whims of the father in his will and by the designs of the state in its revenue concerns in ways that a son's or even a widow's right to family property could not.

The difference between a widow's right and a daughter's right calls for a stricter definition of terms. Because a widow was entitled to family property only in the absence of any male heirs, either biological or adopted, her right can best be characterized as inheritance by default (of male heirs). Because a daughter was entitled to family property only in the absence of any male heirs and a widowed mother, she too inherited only by default. Yet, at the same time, her right to do so was dependent on the wishes of her father and existing state policy. Thus her right can best be characterized as *conditional* inheritance by default.

THE SUPPOSED RIGHT OF DAUGHTERS TO HALF-SHARES OF THE FAMILY ESTATE

The question of an unmarried daughter's legal right to a set share of family property half the size of a son's share is the more difficult and the more controversial of the two issues. Unlike the juehu laws, the evidence for which comes from outside sources as well as from a variety of *Qingmingji* judgments, the evidence for a supposed half-share law comes from just two *Qingmingji* cases of a single official. Also, unlike the juehu laws, which granted daughters property only in the absence of biological sons or a premortem adopted heir, the supposed half-share law granted unmarried daughters property even in the presence of sons or a premortem heir. According to the half-share formula, the division between one son and one unmarried daughter would be two thirds to the son and one third to the daughter; between one son and two unmarried daughters, one half to the son and one fourth to each of the daughters; between two sons and one unmarried daughter, two fifths to each of the sons and one fifth to the daughter; between two sons and two unmarried daughters, one third to each of the sons and one sixth to each of the daughters, and so on.

Niida contends that half-shares for unmarried daughters were a prevalent social practice that then became embodied in state law. Here we will first examine his evidence for a half-share custom and then his evidence for a half-share law.

THE EVIDENCE ON SOCIAL PRACTICE

The only proof Niida provides of half-shares as a widespread custom is the following *Qingmingji* case, which was adjudicated by the official Fan Yingling in the 1220s during either his term as the magistrate of Chongren county (Jiangxi) or his term as the vice-prefect (*tongpan*) of Fuzhou prefecture (Jiangxi) and then of Qizhou prefecture (Hubei).[4]

Zheng Yingchen had two daughters, Xiaochun and Xiaode, but no successor (*si*). He therefore adopted (*guofang*) a son, Xiaoxian, from another branch of the family. Before his death, Zheng Yingchen drew up a will, leaving to each of his daughters 130 mu of land and one storehouse (out of his total wealth of 3,000 mu and 10 storehouses).

After his death, his adopted son, Xiaoxian, brought suit, claiming that the will was not authentic. When the case reached Fan Yingling, he admonished Xiaoxian for his greediness, pointing out to him that "if the customary practice (*li*) of equal division (*junfen*) in some other prefectures were to be applied to this case, then two daughters and an adopted son (*yangzi*) would each receive one half of the property" (*Ruo yi tajun junfen zhi li chu zhi, ernü yu yangzi ge he shou qi ban*). Instead of stubbornly contesting the will, Xiaoxian should be thankful that no such custom existed in his home prefecture. Fan Yingling then ordered the daughters to be given the property specified in the will (Qingmingji, 1987: 290-91).

In Niida's argument, the crucial part of this case is Fan Yingling's reference to a custom in other localities. Because the distribution of property works out to one half for an adopted son and one half for the two daughters (or one fourth each) in that reference, Niida concludes that the general principle of division in the custom was half-shares for daughters.

However, Niida's interpretation of this line completely ignores the phrase "equal division" (*junfen*). It would seem that an accurate reading would have to account not only for the actual distribution of property in the latter part of the sentence, but also for the phrase "equal division" in the first part. The only reading that does is one that takes equal division here to mean equal division between an adopted son and *all* daughters. Thus, if there was just one daughter, she would receive one half of the family estate, with the other half going to the adopted son. If there were three or more daughters, they would collectively receive one half of the estate, with the other half going to the adopted son. The lawsuit before Fan Yingling just *happened* to involve two daughters so that in his hypothetical application of the custom to make his point to Xiaoxian, equal division between all of the daughters and one adopted son worked out to each daughter receiving the equivalent of half of the adopted son's share. Thus half-shares for the two daughters in this sentence was purely coincidental. It was not the principle of division at work.

Niida also assumes this localized custom applied not just to daughters and adopted sons but also to daughters and biological sons (Niida, 1964: 381-82), but this assumption is not born out by the facts of the case. Fan Yingling gave prominence to Xiaoxian's status as an adopted

son throughout his judgment, always referring to him as either a *yangzi* or a *guofang zhi ren*. He also wrote that because the two daughters "were born of their father," it would not be proper if they "could not receive any benefit at all from the ancestral property (*zuye*) and for all of it to go to the adopted son (*guofang zhi ren*)." There is also nothing in his statement about the social practice in some other places that would suggest that he had anything other than adopted sons in mind. It cannot be assumed that this localized custom pertained also to families with biological sons.

Further, the custom to which Fan Yingling referred was the exception rather than the rule.[5] In common social practice, all sons, whether biological or adopted, had the right to inherit their father's property in its entirety. In this case, for instance, the adopted son, Xiaoxian, fully expected to inherit all of his adoptive father's property, begrudging his sisters even the small bequests in the will. All other relevant *Qingmingji* cases on succession and inheritance demonstrate the same point: In popular practice, sons, whether biological or adopted, had full rights to succeed to their father's property, whereas their sisters were customarily entitled at most to dowries, the amount of which was left to the discretion of the father and, if he had left no will, to the sons themselves (e.g., Qingmingji, 1987: 107-8, 110-11, 141-42, 175-76, 215-17, 217-223, 237-38, 265-68, 287-89, 296-97).

In the end, this case cannot bear the weight of Niida's conclusions. It suggests only the existence of a localized practice of a fifty-fifty division of property between an adopted son and all daughters. It does not confirm the existence of a custom according each unmarried daughter a share of property half the size of a son's share.

THE EVIDENCE FOR A SUPPOSED HALF-SHARE LAW

Niida's evidence for a state law decreeing half-shares for unmarried daughters comes from the following two cases reviewed by Liu Kezhuang when he served as the judicial commissioner (*tidian xingyu gongshi*) for the Jiangnan Eastern Circuit from 1244 to 1248.[6]

1. Zhou Bing of Poyang county, Jiangxi, had a daughter, who had married uxorilocally, and a son who was born after his death (*yifu zhi nan*). The uxorilocal son-in-law, Li Yinglong, claimed that before he died Zhou Bing had promised him one half of the family's property.

The county official (*xianwei*, "county sheriff") who originally heard the case dismissed the son-in-law's claim of one half and accorded him three tenths instead. As his justification for doing so, the official cited the famous case from the Xianping reign (998-1003) in which the official Zhang Yong (Zhang Guaiya) determined that the proper division between a son and a uxorilocal son-in-law was seven tenths and three tenths.[7] The case was appealed to Judicial Commissioner Liu, who responded that "according to the law, when the parents are already both dead and the sons and daughters divide the property, a daughter is to receive one half of what a son receives (*zai fa, fumu yi wang, ernü fenchan, nü he de nan zhi ban*)." He therefore ruled that the property be divided into three shares, with two shares going to the posthumous son and one share going to the daughter (Qingmingji, 1987: 277-78; Liu, n.d.: 1725).

2. Vice-magistrate (*xiancheng*) Tian of Jianchang county, Jiangxi, though never formally married, had two sons, an elder adopted son, Shiguang, and a younger natural son, Zhenzhen, born of a concubine, Liu Shi. The adopted son, Shiguang, also never married, had no sons, but did have two young daughters born of a relationship with a maid of the household, Qiuju (see chart below). First Vice-magistrate Tian died, and then his adopted son, Shiguang. The occasion of the lawsuit was the subsequent attempt by the Vice-magistrate's younger brother, Tian Tongshi, to establish one of his own sons, Shide, as Shiguang's heir. Liu Shi contested his attempt in court on the very sound legal grounds that such a succession would violate the proper order, because Shide and Shiguang, as cousins, belonged to the same generation.

When the case reached Commissioner Liu Kezhuang on appeal, he decided, first of all, to permit the succession on testimony of the lineage head that there was no suitable candidate of the proper generation. He then ruled that Vice-magistrate Tian's property was to be divided into two equal shares: one going to Zhenzhen and the other to Shiguang's descendants. As for the latter share, because Shide was a postmortem heir, Commissioner Liu applied the laws on extinct households, granting Shide one fourth and Shiguang's two unmarried daughters three fourths.

The case, however, did not end there. Liu Shi rather belatedly informed the court that she also had two young daughters, both the children of Vice-magistrate Tian. Taking this new fact into considera-

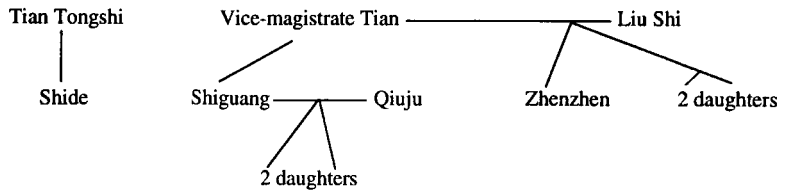

Figure 1: Vice-magistrate Tian's Family

tion, Commissioner Liu wrote: "In my previous decision, I was unaware that Liu Shi also has two daughters. Because these two daughters are the Vice-magistrate's biological daughters (*qinnü*), if [Shiguang] were still alive, he would divide the property equally with Zhenzhen, and the two daughters would each receive one-half of what a son receives (*ernü ge he de nan zhi ban*)." Commissioner Liu went on to note that in this formula Vice-magistrate Tian's property would be divided into thirds, with one third going to Shiguang, one third to Zhenzhen, and one third to the two daughters (one sixth, or a half-share each).

In the end, for reasons that are not all that clear, Commissioner Liu Kezhuang decided not to divide the property strictly by this formula, although half-shares for daughters did figure into his ruling. He first divided the property into two equal shares: one going to Zhenzhen and his two sisters, and the other going to Qiuju's two daughters and the postmortem heir, Shide. To determine the distribution of the share going to Qiuju's two daughters and Shide, Commissioner Liu applied the law on extinct households, but with some adjustment to provide Shide the wherewithal to see to his adoptive father's funeral. To determine the distribution of the share going to Zhenzhen and his two sisters, Commissioner Liu applied the half-share formula, granting Zhenzhen one half of the share and each daughter one fourth (Qingmingji, 1987: 251-57; Liu, n.d.: 1726-30).

DISCUSSION

On the face of it, the evidence does seem unequivocal. Commissioner Liu Kezhuang did indeed seem to have a specific law in mind

during his adjudication of these two cases. He also did seem to believe that the law required him to grant each daughter a share half the size of a son's share.

Before examining Liu Kezhuang's specific references to a half-share law in more detail, it would be helpful first to step back and evaluate a supposed half-share law in the context of the times. If such a law truly existed, I argue, it would have had to have been a highly anomalous one at best.

Liu Kezhuang's references to a half-share law first have to be weighed against all evidence to the contrary. No other official in the *Qingmingji*, many of whose cases also date from the 1240s and after, cited a half-share law explicitly or decreed a property division that suggests that they were following any such law implicitly. In fact, these other cases, plus all outside sources, point overwhelmingly to the opposite conclusion: Equal division among sons, with at most dowry provisions for unmarried daughters, was the custom and the law in the Song just as it was in all other periods of imperial Chinese history.

Liu Kezhuang's references also have to be weighed against the following contemporaneous case from Tongcheng county (Hubei), which cites an entirely different law about an unmarried daughter's right to family property at the time of division. The case concerns the disposition of property among three married daughters, one unmarried daughter, and the adopted son of the only son. The presiding official wrote that the "established law" (*dingfa*) prescribes that "in the division of property, unmarried sons are to be given marriage expenses (*pincai*), unmarried or returned sisters and daughters [of marriageable age] are to be given dowries (*jiazi*), and those [sisters and daughters] who have not yet reached marriageable age are to be given some property (*caichan*), the value of which cannot exceed the value of the dowry." The deceased father's property, the judge concluded, was to go to the son's adopted heir. The unmarried daughter, who had already attained the marriageable age of 13 *sui*, was entitled only to a dowry (Qingmingji, 1987: 215-17). Clearly, the legal basis for the judge's ruling here was not half-shares for unmarried daughters.

A half-share law also would have been utterly inconsistent with the laws on extinct households and on wills. As discussed above, an heir established before the death of both parents shared the same rights to

family property as a birth son. Only in the case of a posthumously designated heir did the regulations on daughters' shares come into play. The numerous *Qingmingji* cases that applied this law provide ample testimony that it was by no means a dead letter in the latter decades of the Southern Song. The problem is how to reconcile this law, which entitled a premortem adopted heir to all of the family property even in the presence of unmarried daughters, with some half-share law, which presumably entitled unmarried daughters to half-shares even in the presence of a premortem adopted heir.

A similar sort of conflict would arise with the ceilings imposed on bequeathed property and extinct household property. As we have seen, Song law set strict limits on how much an heirless man could bequeath to daughters and others. These ceilings came to be attached to the juehu laws, thus restricting the amounts that daughters, posthumously appointed heirs, and others could receive of extinct household property. How do we square these ceilings with a half-share law, through which a daughter could acquire property in excess of the legal limit?

As we also have seen, a daughter's right to the property of an extinguished household was not absolute. The precise apportionment of property spelled out in the regulations applied only when the deceased had not left a will providing for some other disposition of his property. Because a daughter's claim to family property was conditional even in the absence of a male heir, it is difficult to see how she could have at the same time an absolute right to a half-share of the family estate even in the presence of a natural or a premortem adopted son.

We need also to consider carefully the implications of daughters' half-shares for both individual families and the state. If each unmarried daughter, as Niida and others suppose, was entitled to a share one half the size of a son's, the bulk of the family property could be given, depending on the composition of the family, to daughters and through their subsequent marriages be forever lost to their father's patriline. For example, if the daughters in a family outnumbered sons by a ratio of 2-to-1, then they would together receive half of the family property at the time of division. If they outnumbered sons by a higher ratio, they would receive more than half of the family estate. The effect of this would only multiply down through the generations with future family divisions.

Conceivably for elite families, the impact of a half-share law might not have been so great. After all, as Ebrey shows, they had already become accustomed to bestowing large endowments on their daughters in the hope of forging politically expedient marriage alliances. Moreover, because their financial resources encompassed more than just land, they had the option of giving a daughter her half-share in money, other movable goods, or both, thereby keeping the land more or less intact for transmission down the patriline. For peasant families, however, who usually lacked resources other than land and who lacked the political incentives operative among the elite, the legal imperative to provide unmarried daughters with a half-share of the family estate could have (again depending on the composition of the family) a devastating impact on the livelihood of the immediate generation as well as future ones.

It seems that a half-share law also would not have been in the state's own best fiscal interests. As in other dynasties, the Song's land tax and labor service systems depended on a certain congruence between the location of the property and the residence of its owner to work effectively. The more distant the property from the person, the more difficult it was to coordinate the registration of households and property and the assessment and collection of taxes and services. Song officials complained generally of the ways in which geographically dispersed landownership confounded the state-imposed community-based mechanisms for assessment and collection (McKnight, 1971), and specifically of the difficulty of keeping track of wealth transmitted through dowry (Song huiyao, 1964: 6342).

Any half-share law would only have aggravated the problem. Because marriage was principally exogamous, an unmarried daughter's rights to her half-share of the family property would leave the village with her as dowry on her marriage into a family in another village. As prescribed in law, the responsibility for the payment of the taxes and services on that property would transfer to the head of her marital household (Ma, 1324: 13: 138-39; Qingmingji, 1987: 607). Thus the land itself and the taxpaying household would be located in two different villages. Multiplied countless times, this would result in a widespread divergence between the residence of taxable households and the location of their property—a nightmarish situation for state tax collection.

Given the possible consequences of a half-share law, the Southern Song would have had to have a very compelling reason for promulgating it. Niida's explanation that the Song state absorbed local custom after its move south is not very convincing. His argument depends first on establishing that a social practice of half-shares to daughters did indeed exist in the territory of the Southern Song. This article already has dealt with the proof he offers on this score, but, as we have seen, Niida's reading of it is highly questionable. Moreover, none of the other approximately seventy *Qingmingji* cases on inheritance, succession, or property division confirm the existence of any such custom.

Even if this custom did exist, Niida would still have to explain why the Song state supposedly saw fit to make it into law. As it is, he supplies no specific rationale; instead, he presents the process as little more than one of passive absorption. However, this is hardly adequate because it still begs the question of why the state would turn this particular custom into law when it so resolutely held the line against others, such as different-surname adoption, same-generation succession, and uxorilocal son-in-law inheritance, to name just a few.

On the face of it, Patricia Ebrey's dowry explanation appears the more convincing. She argues that a half-share law, like daughters' property entitlements in the juehu laws, was instituted to protect orphaned daughters from unscrupulous brothers, uncles, and others, and to ensure that they were provided with the dowries that were so vital in the Song to contracting decent marriages. Thus her interpretation differs from Niida's in that it furnishes a specific reason for the promulgation of the law. It also differs in that it contends that the half-share law came into effect only in the case of household division after the death of the parents (i.e., when the daughters are orphaned), whereas Niida contends that the law applied to all household divisions, whether before or after the death of the parents.

Yet, Ebrey's argument also falls short in the end. In the first place, it conflicts with the ample evidence she herself presents of grave official concern over the escalation in dowries and the rise of mercenary marriage. With its officials so deploring the practice of large dowries, why would the Song state adopt a law that would only encourage the trend?

More important, Ebrey's argument rests on the assumption that in his presentation of the half-share law, Liu Kezhuang was deliberately

drawing a distinction between household division before the death of the parents and household division after the death of the parents. From this assumption she concludes that the half-share law applied only when the death of both parents left daughters orphaned and in need of state protection from unscrupulous male relatives. It did not apply when the parents were still alive and could see to their unmarried daughters' dowries at the time of family division.

I would argue that Liu Kezhuang was not making any such distinction. He was merely describing the conditions under which family partition was legally permissible and therefore presumably practiced. Unlike in later dynasties, when the legal codes incorporated a substatute permitting premortem household division if the parents or parent so desired it (Xue Yunsheng, 1970 [1905]: 087-01), Song (and before it Tang) law took a very strict position on the matter. Although there is some evidence to suggest that the state was beginning to moderate its tough stance in the late twelfth and early thirteenth centuries, the officials represented in the *Qingmingji* generally assumed that the division of family property would take place only after the death of both parents.[8] Liu Kezhuang was no exception. He was not drawing a distinction between premortem and postmortem household division because in his legal universe premortem division simply did not exist. In this respect, Ebrey's argument also rests on a shaky foundation.

A half-share law, then, was implausible, even within the context of the Southern Song. There is absolutely no evidence of its existence outside of Liu Kezhuang's two cases. It would have been completely inconsistent with the body of existing laws on daughters' inheritance rights. It would not have been in the best interests of peasant families, let alone in the best interests of the state. And the state would not have had any compelling reason to promulgate it in the first place.

EXPLAINING THE LIU KEZHUANG ANOMALY

If a half-share law was implausible in the context of the times, how then do we explain Liu Kezhuang's two references? First, it should be pointed out that he was not quoting any law verbatim, for the language in which he cast his references differed from normal legal usage. His more complete reference is "according to the law, when the parents

are already both dead and the sons and daughters divide the property, a daughter is to receive one-half of what a son receives (*zai fa, fumu yi wang, ernü fenchan, nü he de nan zhi ban*)." No other known Song law used "sons and daughters" (*ernü*) in reference to the division of family property, using "brothers" (*xiongdi*) or "sons and grandsons" (*zisun*) instead. The phrase was also exceedingly uncommon in ordinary legal discourse, as evidenced by other cases in the *Qingmingji*.

Moreover, other Song laws, as we have seen, drew very precise distinctions among daughters based on marital status. A half-share law for unmarried daughters, one would expect, would have done so also. However, Liu uses "daughter" (*nü*) instead of "unmarried daughter" (*zaishinü*). For this reason, too, it seems that he was not quoting word for word, but merely paraphrasing.

What law, then, was Liu Kezhuang paraphrasing? It is possible that there existed some idiosyncratic law that Liu Kezhuang decided to apply to the two cases before him. After all, law was exceptionally fluid throughout the Song with the endless stream of edicts from emperors and regulations from the various ministries. Moreover, any previous law, no matter how old, was held to be still in force unless specifically revoked or replaced, and any imperial decision, even on a single individual case, automatically became law unless explicitly specified otherwise (McKnight, 1987). The situation was even more chaotic in the thirteenth century because the periodic compilations that helped to keep matters under control were far and fewer in between (Shen, n.d.: 1013-30). Out of the vast body of edicts and regulations, Liu Kezhuang conceivably came across one that he interpreted and used as he did.

However, a much more likely explanation for Liu's two references is that he was paraphrasing a law cited in another case in the *Qingmingji*. That case was adjudicated by the official Hu Ying when he served as the supervisor of relief granaries (*tiju changping*) for Hunan in the early 1240s (Qingmingji, 1987: 280-82).[9] The law that Hu Ying quoted was: *ü zaishinü yi zi cheng fu fen fa gei ban*.

There are several reasons to suggest that Liu Kezhuang did indeed have this law in mind. In his judgment on the uxorilocal son-in-law case, for instance, he specifically referred to his paraphrased law as a *tiaoling* ("regulation"), such as those issued by the various ministries.[10] Hu Ying referred to the law he cited as a *tiao* as in *zhaotiao* ("in

accordance with the tiao"), and tiao used in this way was usually a shorthand reference in the *Qingmingji* for tiaoling (Qingmingji, 1987: 253, 266-67, 289).

There is also an important chronological correspondence. Liu himself applied no such half-share regulation earlier in his career as the magistrate of Jianyang county (Fujian) in the 1220s, even when it would have been appropriate for him to do so (Qingmingji, 1987: 353-56). This suggests that the regulation he paraphrased in his two cases was a relatively recent one that came into being sometime between his term as a magistrate in the 1220s and his term as a judicial commissioner from 1244 to 1248. The judgment in which Hu Ying cited this regulation dates from the early 1240s.

Most important, this regulation could be read to mean that each unmarried daughter was to receive a share half the size of a son's share. The phrase *zaishinü* could be taken as singular—"an unmarried daughter," just as the *zi* in *zi cheng fu fen* could be either "son" or "sons." The phrase *zi cheng fu fen* was often used by officials in the *Qingmingji* cases to mean simply "son(s) inherit their father's property" (e.g., Qingmingji, 1987: 175, 268). Implicit in this usage was the principle of equal division among sons. Finally, the "half" (*ban*) in the regulation would explain where exactly Liu Kezhuang came up with the idea of half-shares (and not third-shares, quarter-shares, and so on) for daughters because, as we have seen, it cannot be found in normal customary practice.

The regulation that Hu Ying cited thus could be translated literally as "an unmarried daughter, in accordance with the law that son(s) inherit equally their father's property, is to be given half"; or more grammatically as "an unmarried daughter is to be given half of what a son receives in accordance with the law that son(s) inherit equally their father's property."

Liu Kezhuang's own description of the way the supposed half-share law was to be applied further suggests that he actually had this regulation in mind. In his judgment on the Vice-Magistrate Tian case, he wrote: "Because these two daughters are the Vice-magistrate's biological daughters (*qinnü*), if [Shiguang] were still alive, he would divide the property equally with Zhenzhen, and the two daughters would each receive one half of what a son receives." According to Liu Kezhuang, the Vice-magistrate's property was first to be divided

equally between the two brothers, Shiguang and Zhenzhen. Here he was applying "the law that son(s) inherit equally their father's property" (*yi zi cheng fu fen fa*). Having arrived at what a son's share would be, each daughter was then to be granted half of it. Here he was applying "each daughter . . . is to receive half" (*zaishinü . . . gei ban*).

The problem, of course, is that Liu's way of calculating a half-share for each daughter just does not work. Equal division between two sons, for instance, would result in each receiving one half of their father's property. A share for each daughter equal to one half of a son's share would result in each receiving one fourth of their father's property. The sum of the four children's shares (1/2 + 1/2 + 1/4 + 1/4) would exceed the total amount of the father's property. A son's share cannot be computed before a daughter's share because what a daughter received would affect what a son could receive. The shares of sons and daughters had to be calculated simultaneously.

What all this suggests is that the regulation should actually be read differently. To break it down again, *zaishinü*, of course, could be plural instead of singular—"unmarried daughters" instead of "an unmarried daughter." The phrase *yi zi cheng fu fen fa* could be read "according to the law that son(s) inherit their father's *share*." This law (*fa*) comes directly from the statute in both the Tang and the Song codes on family division: "Whenever real estate (*tianzhai*) and other property is to be divided, it shall be divided equally among brothers. . . . If a brother has died, his son(s) shall inherit his share (*zi cheng fu fen*)" (Song xingtong, 1984: 197; Niida, comp. 1964 [1933]: 245-46).[11] The *zi cheng fu fen* here means literally "son(s) inherit their father's share [of undivided family property]."

The phrase *zi cheng fu fen* thus could be read in two different ways depending on the context. Liu Kezhuang's interpretation that "son(s) inherit equally their father's property" applied to a household with only one couple in the senior generation. Upon the death of the man, his sons were to inherit his property in equal shares. The households in Liu's two cases were of this sort. But the actual passage in the code that "son(s) inherit their father's share [of undivided family property]" applied only to an undivided household in which two or more brothers (and their wives) comprised the senior generation and owned property in common. Upon the death of one of the brothers, his sons were to succeed to his share of that property.

The final phrase, *gei ban*, identifies the regulation as a law on extinct households. As already discussed, because the state saw juehu property as something it "owned" that it then distributed to others, its laws used the language of "giving" (*gei* or *yu*) rather than the language of inheritance. As a juehu law, this regulation called for one half of the property to be given to unmarried daughters, the implication being that the state was to retain the other half.

Putting it all together, the regulation should be read: "Unmarried daughter(s) are to be given one half of what son(s) would have received [had there been son(s)] in accordance with the law that son(s) inherit their father's share [of undivided family property]"; or, in other words, unmarried daughters are to be given one half of their father's share of undivided family property in the absence of sons or an adopted heir.

This reading is exactly how Hu Ying himself understood and applied the regulation in the lawsuit before him. In that case, Zeng Ergu of Shaoyang county, Hunan, had brought suit against one or several of her uncles for illegally appropriating her deceased father's property. Hu Ying, explicitly referring to the circumstances as the extinction of a household, ruled in her favor. He ordered that she receive one half of her father's share of the as-yet-undivided family estate according to the regulation *zaishinà yi zi chengfu fenfa gei ban*. He also noted that the regulation stipulated that the other half was to revert to the state (Qingmingji, 1987: 280-82).[12]

This case makes clear that, contrary to Liu Kezhuang's reading, this regulation, like the other juehu laws, came into effect only when the father lacked a natural or an adopted son to carry on his line and to inherit his property, which in this case consisted of his share in the undivided estate he held with his brothers. The regulation did not grant an unmarried daughter any rights to her father's share of an undivided family estate in the presence of a natural or adopted heir.

This case also makes clear that, again contrary to Liu's reading, the regulation did not call for a half-share for *each* unmarried daughter. Because son(s) would have been entitled to 100% of the father's share of an undivided estate, then a single daughter would receive 50%, with the other 50% going to the state, just as this case itself indicates. If there were two daughters, then conceivably each could receive 50% and the state nothing. But what about three or more daughters? Each

could not possibly receive one half of what a son or sons would have received. Thus half-shares for daughters was not the principle of division in this juehu regulation. Rather, like the other juehu laws, it spoke not about what each daughter was to receive individually, but about what all daughters were to receive collectively—one half of what son(s) would have received of their father's share of undivided property.[13]

The regulation Hu Ying cited, I would argue, was a latter-day supplement to the earlier juehu laws. It was intended to cover a situation that those laws did not and, by doing so, expand both the definition of what constituted juehu property and the state's claim to it. As explained above, those earlier juehu laws applied only to a household in which the father's property was his alone and not property that he still owned with any brother(s). Upon the death of the heirless father and mother, the household would become extinct in both meanings of the word: the father's patriline would die out as would his household as a tax unit. In those circumstances, the juehu laws discussed in the first part of this article would take effect. Unmarried daughters would be entitled to all of their father's property up to the legal limit if no heir was appointed posthumously. If one was, they would receive three fourths and the heir one fourth.

Those laws did not apply to an undivided household in which brothers owned the property together. The death of an heirless brother and his wife did not constitute extinction because the rest of the household remained as a taxpaying unit. In those circumstances, the Song code's statute on family division was to be applied.

The Song code of 963 (following Tang law) stipulated that if a deceased brother had sons, either biological or adopted, his share of the family estate was to go to them at the time of household division (*zi cheng fu fen*). If he had no sons, then his share was to go to his widow so long as she did not remarry (*fu cheng fu fen*). If he had no faithful widow, then his share was to be absorbed into the general pot for division among his surviving brothers and their sons (Song xingtong: 197). Daughters were not entitled to succeed to their father's share of the undivided family property. Nor did the state lay claim to it because, again, it did not define the situation as the extinction of a household.

With the promulgation of the regulation cited by Hu Ying, however, the state staked out such a claim in the late Southern Song.[14] Whereas

previously a deceased brother's share of undivided family property had more or less simply disappeared if he had no heirs or no faithful widow to receive it, that share was now defined as potential juehu property, which, at the time of family partition, would be divided equally between unmarried daughters and the state.

For unmarried daughters, of course, the regulation represented an expansion in their rights to family property. However, as with the other juehu laws, that expansion came only coincidentally with the extension of the state's claim.

Thus the key to Liu Kezhuang's two anomalous cases probably lies also in the extinct household laws of the Song. All evidence points to the likelihood that the source of his paraphrased law was the juehu regulation on the disposition of a father's share of undivided property.

LIU KEZHUANG AND THE QINGMINGJI

Given that a half-share law probably did not exist, one might wonder why the compiler(s) of the *Qingmingji* saw fit to include Liu Kezhuang's two cases in the collection in the first place. Would not their very inclusion suggest that there was nothing questionable about them?

It should first be noted that the *Qingmingji* was not an imperially sponsored work but a private compilation. The Song edition, preface 1261, was compiled by a scholar known only by the pseudonym Manting Zengsun, and the much larger Ming edition, preface 1569, by a scholar named Zhang Siwei (Chen, 1987: 650-52). As with other such private compilations, the purpose of which was to entertain as much as it was to educate, fidelity to the law was not the sole consideration behind the selection of cases for inclusion. As a result, the *Qingmingji* contains all manner of decisions that did not conform to written law.

More important, in both the Song and Ming editions, Liu Kezhuang's case concerning the uxorilocal son-in-law appears under the title "A son-in-law must not claim one half of the property of his wife's family" (*nüxu buying zhongfen qijia caichan*). The compilers thus did not present the case as an illustration of the practical application of some half-share law. Rather, they made a deliberate decision to highlight the issue of a uxorilocal son-in-law's property rights and downplay Liu Kezhuang's reference to half-shares for daughters.

The Ming edition of the *Qingmingji* does not contain Liu's other case at all, and the Song edition does not contain the relevant part about half-shares for daughters (Chen, 1987: 649; Qingmingji, 1987: 254). It includes only the first half of the dispute under the title "Posthumous heirs can only acquire one fourth of the property" (*jijue zisun zhi de caichan sifen zhi yi*), stopping right at the point of Commissioner Liu's discovery of the existence of Vice-magistrate Tian's two daughters and his application of a supposed half-share formula. (The full text appears only in the 1987 Zhonghua shuju edition of the *Qingmingji*, which draws on Liu Kezhuang's collected writings to complete the case [Qingmingji, 1987: 254].) The Song compiler's decision not to relate the entire case strongly suggests that he also found Liu's reference to some half-share law to be problematical.

In short, the way in which the compilers of the *Qingmingji* dealt with Liu Kezhuang's two cases does not validate their contents. On the contrary, it casts even greater doubt on the presumed existence of a half-share law.

DAUGHTERS' INHERITANCE RIGHTS IN THE POST-SONG PERIOD

If we accept that a half-share law did not exist or, at the very least, was a highly anomalous law that had virtually no impact on legal and social practice, then the changes in daughters' inheritance rights in the post-Song period were much less dramatic than Niida and Ebrey would have us believe. However, that does not mean that no change took place, as Shiga tends to suggest, because after the Song there was a contraction in the legal rights of daughters to inherit by default and at the same time an expansion in the rights of potential male heirs. These two developments were closely related, and one cannot be understood without the other.

The post-Song changes were of two types. The first was a series of changes that represented a reversion to earlier Tang law. The second and the more important was a series of changes that represented change not just from the Song but from the Tang as well.

Neither the legal distinction between premortem and postmortem heirs or the legal distinction among daughters based on marital status survived the fall of the Southern Song. Beginning in the Yuan, any

heir to the patriline, whether appointed before or after the adoptive parents' death, had full rights to the family property. Thus daughters of extinguished households no longer enjoyed any legal claim to share in the family property with posthumously established male successors. At the same time, by the Ming and Qing, the law was no longer distinguishing among daughters on the basis of their marital status. As in the Tang, all biological daughters (*qinnü*) again shared the same rights to juehu property (Xue Yunsheng, 1970 [1905]: 088-02; Shiga, 1967: 409).[15]

Moreover, post-Song law did not accord unmarried daughters rights to one half of their father's share of a family estate in the default of a male heir. This change also represented a return to Tang law, in which unmarried daughters of a deceased brother in an undivided household were at most to be provided with marriage funds.

Partly as a result of the above changes, the state in the post-Song period pared down its own stake in juehu property. It no longer commanded a share along with posthumous heirs and returned and married daughters, and it no longer placed ceilings on what they could receive. By the Ming and Qing, the state reserved the right to confiscate juehu property only if there were no male heirs and no daughters of whatever marital status. A daughter's right to juehu property thus became less contingent on the will of the state, although it remained as dependent as ever on the will of the father.

Finally, there was a restoration in the Qing of the rights of agnatic male kin to extinct household property. Ming law continued to exclude male relatives, stating that officials are to confiscate (*ruguan*) the property outright if there were no male heirs and no surviving daughters. The Qing incorporated this law into its code and revised it in 1740 to make confiscation no longer compulsory but only something that local officials should consider, depending on the circumstances (Xue Yunsheng, 1970 [1905]: 088-02). The reason for the amendment, the *Qing huidian* explained, was that "when a person dies and the household becomes extinct, unless there is some crime to be taken into consideration, it is not appropriate to speak of confiscation" (Qinding da Qing huidian shili, 1899: juan 753). Through this change, agnatic male kin regained the legal right to juehu property in the absence of posthumous male heirs and daughters. This also represented a reversion, albeit a rather belated one, to Tang law.

Thus, by the eighteenth century, the Tang order of rights to extinct household property had been fully restored—posthumous heirs, then daughters of whatever marital status, and then agnatic male kin. But this surface similarity masks a deeper transformation, and that was the imperial state's recognition of the private ownership of land. While in theory all land in the realm continued to belong to the emperor, in practice the state came to recognize, and through its laws to protect, private ownership. Its claim on extinct household property changed accordingly. As we have seen, in both the Tang and the Song, the state perceived juehu property as something it owned that it then "gave" to others. In the Ming and Qing, however, the laws explicitly used the language of inheritance; for example, in the Ming "daughters are to *chengfen*" and in the Qing "daughters are to *chengshou*" (Shiga, 1967: 409; Xue Yunsheng, 1970 [1905]: 088-02). The change in terminology implies that the state no longer saw the property of extinct households as something it gave to daughters, but rather as something they inherited. The state's retreat from its claim on juehu property became complete in the eighteenth century with its relinquishment of the right of confiscation, except as part of the penalty for crimes committed.

Aside from the state's changing relationship with juehu property, the other big change from both the Tang and the Song was that the appointment of an heir became ever increasingly a legal (as well as a moral) obligation. To accommodate this heightened legal imperative, the dynastic codes expanded the range of permissible heirs. As a result, the scope of daughter inheritance by default grew narrower and narrower.

Tang and Song law nowhere specifies that heirs had to be appointed for extinct households, but Ming and Qing law stipulated that in the event a household dies out, an heir was to be appointed from among the suitable heirs within the five grades of mourning. Only if no such possible heir existed could daughters inherit (Xue Yunsheng, 1970 [1905]: 088-02). A daughter's legal rights to juehu property thus took second place to those of all of her agnatic male cousins out to fourth cousins (*zu xiongdi*).

Interestingly, this reordering of rights was reflected concretely by the introduction into legal discourse of the idea that potential heirs within the five grades of mourning had an actual legal claim on the succession and through it the property of the deceased. Those possess-

ing such a claim were called in the Ming and Qing *yingji zhi ren*, loosely translatable as "the person who ought to be appointed to succeed." In legal texts and case records, the phrase often was juxtaposed against another, *aiji zhi ren* or "the person one would like to appoint to succeed" (Xue Yunsheng, 1970 [1905]: 078-05, 088-02; Taiwan sifa renshi bian, 1961: 642-44). Though both might be related to the deceased, the former had the right to the succession because he was the more closely related of the two. For him to be legally dispossessed of this right, it had to be proven to a magistrate's satisfaction that he had disqualified himself through previous acts of unfilial behavior toward the deceased and, if she were still alive, his widow. By contrast, in Tang and Song law no male relative—no matter how close the relationship with the deceased—had a superior *legal* claim to the succession.

The enhanced legal imperative to continue the patriline created the need for a larger pool of possible heirs. First, this was accomplished by pushing the range of potential candidates out beyond the boundaries of the five degrees of mourning. Tang and Song law had restricted legal heirs to male agnates of the proper generational order within the "same lineage" (*tongzong*), defined by the five degrees of mourning (Tang lü shuyi: 237; Song xingtong, 1984: 193). Subsequent dynastic codes, however, enlarged the pool of candidates. In the Ming and Qing, the law found acceptable as heirs male relatives outside of the five degrees of mourning and even males of the appropriate generation who merely bore the same surname as the adopting father (on the assumption that somewhere in the past, however distant, the two families must have been related) (Xue Yunsheng, 1970 [1905]: 078-01).

Furthermore, the law concerning the acceptable candidates *within* the five grades of mourning was itself revised to provide greater latitude in the selection of an heir. In the eighteenth century the Qing code incorporated a substatute permitting combined succession (*jiantiao*), whereby an only son could succeed his father as well as one (or more) of his father's brothers (Xue Yunsheng, 1970 [1905]: 078-05). Previously, combined succession, though a common social practice, had been strictly forbidden because it violated mourning and sacrificial rituals: a man could not be the full-fledged son of two sets of parents simultaneously. In 1785, however, amid escalating legal cases about even more irregular types of succession (same-generation

succession, different-surname succession, and so on), the court relented and permitted combined succession. It solved the ritual problem by decreeing that if a single heir succeeded both the eldest brother (the main branch, *zhangfang*) and a younger brother (secondary branch, *cifang*), he was to wear the three years' mourning for the eldest brother and his wife, and only the one year's mourning for the other brother and his wife. If a single heir succeeded to two younger brothers, then he was to wear the three years' mourning for his birth parents and only the one year's mourning for his other set of parents (Taiwan sifa renshi bian, 1961: 756-59). Of course with combined succession came the right to inherit the property of both branches.

The effects of these changes on daughters' legal inheritance rights should be obvious. The more necessary and the easier it became to find an heir, the less likely it became for daughters to inherit by default. There was thus in written law a contraction of daughter inheritance by default, most dramatically from the Song, but even from the Tang.

The question remains as to whether this contraction in law reflected a similar contraction in reality. It seems that it did not because the changes outlined above resulted from the incorporation into the codes of different social practices of long standing. Even in the Song, the claims of male cousins to the property of an extinct household took precedence over the claims of daughters in social practice, despite the law limiting the rights of heirs appointed posthumously. Similarly, there existed in social practice, if not in law, the clear understanding that the nephew most closely related to the deceased had a superior claim to the succession and the property that went with it. People in search of an heir had never kept to the kinship boundaries prescribed in the Tang and Song codes. The contraction in daughters' rights in law did not reflect so much a similar contraction in fact as a narrowing of the gap between codified law and customary practice.

CONCLUSION

The inheritance rights of daughters in the Song, then, were not fundamentally different from those in other periods. They only had what daughters at other times had—the conditional right to inherit by default. As this article has argued, a half-share law probably did not

exist, but even if it did, it was an anomaly not just in the long sweep of Chinese history, as Shiga would contend, but even in the Southern Song itself.

What was truly exceptional about the Song was the extent of its claim on the property of extinct households. The Song state established more precise regulations on the disposition of juehu property than any other dynasty, and it did so for reasons that had more to do with the extraordinary fiscal pressures it faced than with any concern about succession, inheritance, or dowry. The Song laws had a mixed effect on daughters' inheritance rights, expanding them in certain situations but contracting them in others.

After the Song, imperial law and popular practice converged with the state's recognition of private ownership of land and with the incorporation of a number of customary expectations and practices into the legal codes. As a result, a daughter's right to inherit by default became more contingent than ever before. But like the Song laws, the post-Song laws represented only a change in the conditions attached to daughter inheritance. They did not represent a change in its essential nature.

APPENDIX

aiji zhi ren 爱继之人
caichan 財產
chengfen 承分
chengshou 承受
chi ling ge shi 敕令格式
Chongren xian 崇仁縣
cifang 次房
dingfa 定法
ernü 兒女
ernü fenchan 兒女分產
ernü ge he de nan zhi ban 二女各合得男之半
fa 法
Fan Yingling 范應鈴
fu cheng fu fen 婦承夫分
fuqi yiti 夫妻一體
fusai ittai 夫妻一體
fushi ittai 父子一體
Fuzhou 撫州
fuzi yiti 父子一體
gei 給
gongyouzhe 共有者
guan 貫
guantian 官田
guizong 歸宗
guofang 過房
guofang zhi ren 過房之人
hujue 戶絕
Hu Ying 胡穎
jianbing zhi jia 兼併之家
Jianchang xian 建昌縣
jiantiao 兼祧
Jianyang xian 建陽縣
jiazi 嫁資
jijue zisun zhi de 繼絕子孫止得
caichan sifen zhi yi 財產四分之一
jinqin 近親
juehu 絕戶
juekisha 受益者
junfen 均分
kazoku kyōsansei 家族共產制
kehu 課戶
kyōyūsha 共有者
liji 立繼
Liu Kezhuang 劉克莊
Liu Shi 劉氏
Li Yinglong 李應龍
lütiao 律條
Manting Zengsun 幔亭曾孫
Minggong shupan qingmingji 明公書判清明集
mingji 命繼
mingji zhi ren 命繼之人

(continued)

APPENDIX Continued

mu 畝
nü 女
nühu 女戶
nüxu buying zhongfen qijia caichan 女婿不應中分妻家財產
pincai 聘財
Poyang xian 鄱陽縣
Qing huidian 清會典
qinnü 親女
Qiuju 秋菊
Qizhou 蘄州
ruguan 入官
ruo yi tajun junfen zhi li chu zhi ernü yu yangzi ge he shou qi ban 若以他郡均分之例處之二女與養子各合受其半
Shaoyang xian 邵陽縣
Shide 世德
shifeng 食封
Shiguang 世光
si 嗣
sichan 私產
sizhe mu wei ming 死者目未瞑
Song huiyao 宋會要
Songshi 宋史
tajun 他郡
Tang liudian 唐六典
taotian 逃田
Tian Tongshi 田通仕
tianzhai 田宅
tiao 條
tiaoling 條令
tidian xingyu gongshi 提點刑獄公事
tiju changping 提舉常平
Tongcheng xian 通城縣
tongpan 通判
tongzong 同宗
wuhouzhe wei hujue 無後者為戶絕
xiancheng 縣丞
xianwei 縣尉
Xiaochun 孝純
Xiaode 孝德
Xiaoxian 孝先
xiongdi 兄弟
Xu zizhi tongjian 續資治通鑑
yangzi 養子
yifu zhi nan 遺腹之男
yingji zhi ren 應繼之人
yu 與

APPENDIX Continued

zai fa fumu yi wang ernü fenchan 在法 父母已亡兒女分產

nü he de nan zhi ban 女合得男之半

zaishinü yi zi cheng 在室女依子承

fu fen fa gei ban 父分法給半

zangai 殘骸

Zeng Ergu 曾二姑

zhangfang 長房

Zhang Siwei 張四維

Zhang Yong (Guaiya) 張詠（乖崖）

zhaotiao 照條

Zheng Yingchen 鄭應辰

Zhenzhen 珍珍

Zhou Bing 周丙

zi cheng fu fen 子承父分

zisun 子孫

zonmeishaken 在命者權

zu xiongdi 族兄弟

zuye 祖業

NOTES

1. A "returned daughter" was defined by the code as one who had returned to live at her natal home after being expelled from her husband's family or left widowed without a son and without a share of her marital family's property (Song xingtong, 1984: 198).

2. A clear-cut legal distinction between premortem and postmortem heirs came rather late in the development of the Song juehu laws. The occasion was a memorial submitted in 1132 by the judicial commissioner of the Jiangnan Eastern Circuit. He pointed out that an heir established for an extinct household existed in a kind of legal limbo, not entitled to the property of his birth family and not entitled to the property of his adoptive family, and recommended that posthu-

mously appointed heirs (*mingji zhi ren*) be treated the same as married daughters and be given one third of the juehu property (Song huiyao, 1964: 5905).

3. The clearest evidence that the state also saw juehu property as a source of revenue comes from arguments denouncing the laws. For instance, in 1113 an official objected to the uncertain legal status of posthumously appointed heirs and urged that they be accorded full rights to juehu property to ensure the continuance of patrilines. He allowed that his recommendation would deprive the state of revenue from juehu property, but at the same time noted that this revenue was in any event quite small (Song huiyao, 1964: 1316). Other complaints also charged the government with sacrificing its concern for the people to its desire for more revenue (see, for example, Li Tao: 383; Qingmingji, 1987: 282).

4. For a biography of Fan Yingling, see *Songshi* (1977: 410/12344-47).

5. The *tajun* in Fan Yingling's reference is ambiguous and supplies no clues about the extent of the custom. Convinced that a half-share law existed and that it therefore must have reflected popular practice, Niida takes *tajun* to mean "other prefectures," thereby implying that the custom existed widely. However, the phrase can also mean just "one other prefecture" or, as I have translated it, "some other prefectures."

6. For a biography of Liu Kezhuang, see Lu (n.d.: 29/12a-17b). Both of these cases also appear in Liu Kezhuang's collected works in which he identifies them explicitly as cases he heard during the time he served as the judicial commissioner for the Jiangnan Eastern Circuit. See Liu (n.d.: 1712, 1725, 1726-30).

7. Zhang Yong's case concerned a dispute between a rich Hangzhou man's son and uxorilocal son-in-law over the family property. Gravely ill, the man had entrusted his three *sui* son to the care of his son-in-law and had instructed that after his death seven tenths of his property was to go to the son-in-law and only three tenths to his son. The son had now grown up and was contesting that division. Praising the father's foresight, Zhang Yong explained to the litigants that the father had divided the property as he had for fear that his young son would die at the hands of his son-in-law if he received the greater share of the property. Zhang therefore ruled that the father's disposition of the property was to be reversed, with three tenths going to the son-in-law and seven tenths to the son (Li Tao, n.d.: 44/11b).

8. One judge even went so far as to order a mother and her three sons to reunite their household and property even though all parties had divided willingly in the first place (Qingmingji, 1987: 278-79). The Song state abhorred family partition before the death of the parents not only for ideological reasons, but also for practical reasons. In the Song's labor service system, households were categorized into five grades on the basis of total wealth. Households would divide before the death of the parents as a way to lower their grade and hence their liability (Song huiyao, 1964: 6248; Zhao, 1969: 143). The moderation of the Song's position came in an 1192 law, which allowed parents to give a son a portion of the family estate and to let him live separately (Qingmingji, 1987: 371-72).

9. For a biography of Hu Ying, see *Songshi* (1977: 416/12478-79). His case under discussion here bears no date, but other evidence in the *Qingmingji* makes clear that he served as the supervisor of relief granaries for Hunan in the early 1240s (Qingmingji, 1987: 97-98, 124-26, 322-24).

10. Because Liu Kezhuang referred to his paraphrased law as a "regulation" (*tiaoling*) and not a "statute" (*lütiao*), it is also obvious that he did not have in mind the statute in the Song (and Tang) code that specified that at the time of family division unmarried sisters and daughters were each to receive for marriage expenses one half of what a son received for the same purpose (Song xingtong, 1984: 197; Niida, comp. 1964 [1933]: 245-46).

11. The translation here follows that in Jing (1994: 53).

12. However, rather than confiscating the other half of the share, Hu Ying ordered instead that it be divided equally between her two uncles—no doubt for the sake of restoring family harmony. He also ruled that, in addition to the one-half portion of her father's share of the undivided family property, Zeng Ergu was to receive all of her father's privately acquired property in accordance with the juehu regulations. Private property (*sichan*) in an undivided family consisted of official salaries, wives' dowries, and any land or businesses acquired without using common family funds. For the distinction between private and family property, see Niida (1942: 455-59), Shiga (1967: 507-11), and Ebrey (1984: 198-200).

13. Ebrey cites Hu Ying's case as proof that in an undivided family a deceased father's "daughters could succeed to his share of the property just as though the house had died out" (Ebrey, 1991: 107). This reading also is not quite accurate. The regulation clearly accorded unmarried daughters only half of their father's share of the family estate, with the other half going to the state.

14. One inspiration for this regulation may have been the law specifying the order of inheritance to property that came with titles of nobility (*shifeng*). The *Tang liudian* (Tang Administrative Code) stipulates that if the holder has no sons and no surviving widow, then his unmarried daughters together are to receive one half of the property. It further specifies that the proportion is not to be increased no matter how many daughters a man might have (cited in Niida, 1942: 526-27).

15. Yuan law still distinguished between unmarried and married daughters and, like the Song, permitted the latter only one third of juehu property (Shen ke Yuan dianzhang, 1931: 19/12b-14a). This distinction disappeared in the Ming.

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