STRENGTHENING THE RULE OF VIRTUE AND FINDING CHINESE LAW IN “OTHER” PLACES: GODS, KIN, GUILDS, AND GIFTS

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Discussions about the rule of law in China today often do not consider the role of virtue or ritual. At the same time, many bemoan slow or no legal reform. Before the tumultuous events of the twentieth century, traditional Chinese law (TCL) was remarkably continuous and stable for centuries. It was a blend of ritual and law focused on flourishing and virtue formation. Ritual was communion with, and law accountability to, the invisible spirit world. This inseparable blend spanned multiple jurisdictions, from state codes and courts to divine petitions and courts, to ancestral rites and family codes, to merchant codes and courts. Chinese law can be found in these “other places,” including gifts and feasts. Effective legal reform today should also include an exploration of current rituals and invisible accountability, multiple fora and a strengthening of the rule of virtue. Present-day practices of lavish gifts, banquets and wine, familiar to those who do business or practice law in China, become comprehensible within this framework.

I. INTRODUCTION

Discussions about the rule of law in China today often do not consider the role of virtue or ritual. At the same time, many bemoan slow or no legal reform. Prof. Minzner states that, despite reforms in the 1980s and 1990s, China has turned away from law back to practices such as mediation. He also urges a third wave of Chinese

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1. Carl F. Minzner, China’s Turn Against Law, 59 AM. J. COMP. L. 935, 935-
legal scholarship that goes beyond formal legal institutions. What drives China’s present and future legal landscape? Mediation is not only a pre-1978 Maoist practice, but also an ancient ritual whose goal is virtue formation. This article proposes that contemporary law is animated in part by the ancient blend of ritual and law in traditional Chinese law (TCL), and by preference for ritual over law. Therefore, effective legal reform should include a study of contemporary rituals, and the rule of virtue should be strengthened as well as the rule of law.

Although China’s current legal regime began only in 1978, TCL was relatively continuous and stable for hundreds of years until the tumultuous events of the twentieth century. It preferred the rule of virtue as expressed through ritual. The goal of this article is two-fold: to present the inseparable blend of ritual and law in TCL in four parallel and overlapping jurisdictions, and to present several contemporary examples of this as well.

We will first explore the foundation of TCL—that is, flourishing and the invisible world within the traditional Chinese worldview—then the tapestry of its multiple jurisdictions, and then communion (ritual) and accountability (law) in each jurisdiction. In addition to dynastic codes and courts, TCL can be found in these “other” places: imperial and ancestral rites, family codes and courts, merchant codes and courts, and spirit codes and courts. Gifts and shared food and drink are the quintessential rites, and are the common thread in each jurisdiction.

We will also consider contemporary rituals familiar to those who do business and practice law: lavish gifts, banquets, and wine. They become comprehensible within the TCL framework. China is now the world’s fastest-growing luxury goods market. Banquets for officials account for one third of the nation’s dining out expenses. Also, drinking regularly accompanies negotiations, but unfortunately, officials have died because of excessive drinking at

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2. *Id.* at 975 (advocating third wave approach to Chinese legal scholarship).
3. Traditional Chinese medicine is commonly known as TCM. I am unaware of traditional Chinese law being abbreviated as TCL elsewhere. I use TCL to propose that TCL is often complementary to Western law, and can be used as ancient wisdom in contemporary practice.
state functions. I conclude by urging not only the further study of contemporary rituals and invisible accountability embedded in Chinese law today, but also an examination and strengthening of the rule of virtue to avoid excesses. Without exploring ritual and other codes, China’s traditional state codes seem incomplete; without exploring contemporary rituals, China’s current legal regime likewise is incomplete. Let us now turn to the foundation of TCL.

II. FLOURISHING, THE INVISIBLE AND VIRTUOUS EXCHANGE

I met a Chinese graduate student this summer. We made an appointment to talk. She brought peaches. I treated her for a dinner of lotus roots, dumplings and eight-treasure rice porridge, and gave her advice about her research on civic virtue.

TCL is part of a worldview in which Heaven, earth, and man are a lively whole and a virtuous hierarchy. The visible and invisible worlds are interdependent. Following Heaven [天道, Tiān Dào] leads to flourishing. Nature, deities and ancestors reveal Heaven’s will. At the same time, spirits are dependent on the living for sustenance.

Every person, living and dead, therefore can cultivate virtue through ritual gifts of shared food. Subordinates offer food and wine, and seek blessing from superiors, including ancestors and spirits. Superiors bless subordinates. The Chinese characters for “gift” mean ritual object [礼物, lǐwù]. Moreover, the feast pulls the universe together. It represents abundance from Heaven, human cultivation, and communion with invisible and visible companions. Prayer, music, and dance often animate liturgies as they embody harmony. Mutuality, love, and filial piety also direct these virtuous exchanges.

6. See id. (explaining disastrous consequences of excessive drinking at banquets).
7. Interview with student, in Fujian, China (July 22, 2010).
8. HYUNG I. KIM, FUNDAMENTAL LEGAL CONCEPTS OF CHINA AND THE WEST: A COMPARATIVE STUDY 13 (1981). This is also known as Sānjiè [三界] in Daoist thought.
9. Chinese characters and Pinyin Romanization and tone marks are used in this article to aid Chinese readers and learners.
Thus, everything, including justice, has both visible and invisible dimensions. We commune with the spirits through food and drink and are accountable to them through law. Law is embedded within ritual.

III. MULTIPLE AND PARALLEL JURISDICTIONS

古之欲明明德於天下者，先治其國；欲治其國者，先齊其家；欲齊其家者，先修其身；欲修其身者，先正其心；欲正其心者，先誠其意；欲誠其意者，先致其知，致知在格。

The ancients who wished to illustrate illustrious virtue under Heaven first ordered well their own states. Wishing to order well their states, they first regulated their families. Wishing to regulate their families, they first cultivated their persons. Wishing to cultivate their persons, they first rectified their hearts. Wishing to rectify their hearts, they first sought to be sincere in their thoughts. Wishing to be sincere in their thoughts, they first extended to the utmost their knowledge. Such extension of knowledge lay in the investigation of things.\(^\text{12}\)

In TCL, there were multiple and parallel earthly and spiritual authorities and jurisdictions. Within each, ritual and law were blended.

Until 1911, the Emperor and his officials had authority over their corresponding terrestrial territory. Family clans and merchant guilds had authority over their members. Each of these earthly authorities was, in turn, responsible to corresponding spiritual authorities. They regularly honored and consulted their spiritual parallels. In fact, the Chinese spirit world, with its intricate bureaucracy of deities, ancestor spirits, and ghosts, resembles a Chinese society of officials, kinsmen, and outsiders.\(^\text{13}\) In each of these parallel mundane and spiritual jurisdictions, ritual and codes promoted flourishing and virtue; courts sought to rectify injustice. As there were several levels of earthly courts, there were several levels of spirit courts. If justice was not achieved in an earthly court,

\(^{12}\) Confucius, Dà Xué (大學) [The Great Learning] 2 (James Legge trans., 1893)(c.500-200 B.C.E.). The Great Learning, a Confucian classic, was translated by the Scottish missionary and first professor of Chinese at Oxford University, James Legge. I have modified Legge’s translation from “throughout the kingdom” to “under Heaven.”

\(^{13}\) Steven Feuchtwang, Domestic and Communal Worship in Taiwan, in RELIGION AND RITUAL IN CHINESE SOCIETY 105, 105-29 (Arthur P. Wolf ed., 1974); see Arthur P. Wolf, Gods, Ghosts, and Ancestors, in RELIGION AND RITUAL IN CHINESE SOCIETY, supra, at 131, 131-82.
this could be rectified in a spirit court. In fact, this is the theme of many a Chinese opera.

Therefore, harmony between Heaven and earth, and on earth, involves mediation and virtuous exchanges on multiple levels. The Emperor offered ritual sacrifices of harvest and animals in exchange for Heavenly favor. His officials offered sacrifices to their spiritual counterparts and other deities. For families, first-born sons offered sacrifices to ancestors. Merchant guilds offered sacrifices, banquets, and plays to deities of commerce and wealth.

Proper rituals led not only to prosperity in this lifetime, but also in the life to come. If one honored one’s earthly and spiritual superiors, surely one’s descendants would follow suit. Therefore, gift-giving and feasting, then and now, are pillars of Chinese social interaction, negotiation, and justice. They are the pinnacle of communal abundance, contract formation, and dispute resolution. Also, codes that promote accountability were embedded in ritual; just as virtue leads to flourishing, failure to observe codes might lead to harsh consequences in this life and the life to come. Within each realm of the imperium, family, guild, and spirit world, courts enforced codes. Let us now take a closer look at these multiple and parallel jurisdictions and the blending of ritual and law in each.
A. The Emperor and His Officials

[The worthy ruler] reverently enacts the suburban sacrifice, dutifully serves his ancestors, manifests filial and brotherly love, encourages filial conduct . . . enlightens [the people] with education, moves [them] with rites and music . . . . He will not rely on favors to demonstrate his love for his people nor severe measures to prompt them to act . . . . Therefore when the ruler relies on virtue to administer the state, it is sweeter than honey or sugar and firmer than glue or lacquer. 14

“[I]n rites, it is better to be sparing than to be excessive.” 15 The Emperor and his officials modeled communion and accountability by offering sacrifices, including food and wine, to deities and spirits, and by enforcing codes embedded in those rituals. Performing

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rituals was the prime duty of the Emperor and his officials. This section will address the blending of ritual and law in the imperial sacrifices; the Mandate of Heaven and rule of virtue; ritual drunkenness; China’s earliest law code on ritual vessels; the City Gods and underworld courts; imperial deference to family and merchant courts; and petitions. Today, gifts, food, and wine remain prime rituals among government officials and others, but excessive drinking at official functions has led to reported deaths. China is also the fastest-growing luxury goods market and City God temples remain popular. Present practices should be bounded by a rule of virtue, and further study done on current ritual practices blended with law.

The Emperor was the chief pivot between Heaven and Earth. The Chinese character for king, 王 [wáng], shows the one who bridges the three lines representing Heaven, man and earth by comprehending the Way. Although not himself divine, the Emperor was known as the Son of Heaven [天子, Tiānzǐ]. The word for country in Chinese is nation family [国家, guójiā]. On behalf of the nation family, until 1911 the Emperor offered regular sacrifices of food, wine, and animals. The Emperor would fast and pray, seeking blessing for his country.

Beijing and the Emperor’s residence, the Forbidden City (completed in 1420), like previous imperial cities, were designed to maximize the Emperor’s mediation. Beijing was built on a North-South axis. Because yang, the superior force of the universe, was believed to be in the south, the Emperor’s throne faced south. At the Winter Solstice, he sacrificed to Heaven at the Temple of Heaven, south of the Forbidden City. At the Summer Solstice he sacrificed to Earth, at an altar north of the city. At the Spring and Autumn Equinoxes, he sacrificed to both his ancestors and to the Soil and Grain Gods, whose altars were located east and west,

16. See Jia, supra note 5 (noting deaths after excessive drinking at banquets).

17. See Barboza, supra note 4, at A4 (stating China’s top position in luxury goods market).

18. See Dong Zhongshu, The Way of the King Penetrates Three [Chunjiu fanlu yizheng 11:9a-12a-SQ], in 1 SOURCES OF CHINESE TRADITION: FROM EARLIEST TIMES TO 1600, supra note 14, at 500, 300-01 (describing symbolism of character for king).


20. See id. at 142 (describing relationship between axiality and principles of yin and yang).
respectively, outside the front gate of the Forbidden City. Thus the Emperor mediated between Heaven, earth, time, and space as a servant of the universe.

![Figure 2. Forbidden City from Ming Dynasty painting](image)

The Emperor’s rites can be traced to ancestral rites in the Shang dynasty (1556-1046 B.C.). The Shang kings offered sacrifices to Shàngdì [上帝], the supreme ruler of Heaven. The earliest extant Chinese writings, the Shang oracle bones, show that the Shang king communicated with Shàngdì through the mediation of his ancestors. When the Zhou dynasty overthrew the Shang dynasty, the Zhou kings popularized the notion of the Mandate of Heaven. The king held the Mandate of Heaven [天命, Tiānmìng]. However, if the king did not discern the will of Heaven and did not rule virtuously, he would lose the Mandate of Heaven. Disfavor from Heaven was evidenced by natural disasters, e.g., floods, famine, and ultimately, civil unrest and a successful overthrow of the previous regime. The Mandate of Heaven is the foundation of all Chinese rule. It is simultaneously a religious and political principle. Dynastic change was thus based on the virtue of the new ruler; however, subsequent rulers were privileged by birth.

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21. *Id.* at 125-32 (illustrating design and function of various altars).
22. The Beijing Palace-City Scroll (北京宮城图). The scroll is on display at the National Museum of China, Beijing.
Interestingly, one of the ancient forms of the character for Heaven, 天 [Tian], resembles a human figure, leaving some to speculate that Heaven is personal and not an impersonal force.

Figure 3. Bronze Script for Tian, "Heaven"

As the Emperor sacrificed to Heaven, each official under the Emperor offered sacrifices to his spiritual counterpart and other deities who had authority over his jurisdiction. Ritual duties were a prime responsibility of each official. The district magistrate’s rituals included seasonal sacrifices to “Confucius, the Gods of Soil and Grain, the spirits of wind, clouds, thunder, rain, mountains, streams, and the City God.”25 This was due to a belief that the spirits could provide a complementary flourishing of nature and society. One imperial stele inscription at the Beijing City God Temple in 1726 stated:

For the harmony of yin and yang, for correct wind and seasonal rain, for a dense population, for a proliferation and luxuriance of growing things, for a glowing, a flowing, a growing, a showing and for help toward a lush begetting, there is only the protection of the spirits.26

Confucianism, which was official state doctrine from the Han Dynasty (206 B.C.-220 A.D.) through 1911, reinforced the centrality of ritual in a well-ordered society.27 However, this meant the spirit

26. Id. at 344 (quoting Yongzheng emperor commemorating renovation of City God Temple of Beijing).
27. CONFUCIUS, THE ANALECTS OF CONFUCIUS 2:3, 12:1 (Burton Watson trans., 2007) (discussing importance of respecting rituals). Confucius taught, “Look at nothing in defiance of ritual, listen to nothing in defiance of ritual, speak of nothing in defiance of ritual, never stir hand or foot in defiance of ritual.” Id. at 12:1. Confucius also taught that if leaders governed by virtue and sacrifice, their subordinates would in turn be ruled by their consciences and sense of shame. He taught, “Lead a people by law . . . and they will have no shame, lead a people by virtue and they will order themselves harmoniously.” Id. at 2:3. Ritual is thus preventive law. See KLAUS MÜHLHAHN, CRIMINAL JUSTICE IN CHINA: A HISTORY 17 (2009). Therefore, officials were trained in the Confucian classics and schooled in ritual, including music, dance and poetry.
behind the rituals and not the mere acts themselves. In Confucianism, one’s body becomes a ritual vessel for virtue and gifts of virtue lie at the heart of ritual. In the words of historian Angela Zito, “[i]f a man was a perfect vessel, then what he bore inside himself, his reverence (jing) and integrity (cheng), were the perfect gifts. In these rites, power was actualized in the giving rather than receiving.”

Thus, the Emperor and his officials were supposed to be themselves vessels of virtue and to rule by virtue. Interestingly, writings from the Zhou era (1046-256 B.C.), including the Book of Odes, indicate the importance of wine offerings and ritual drunkenness in aristocratic sacrifices, from which the imperial sacrifices stemmed. In communicating with ancestors, an impersonator, sometimes the grandson of the deceased ancestor, would eat and drink the finest food and numerous wine offerings and be entertained with singing and dancing. After the impersonator was drunk, he could serve as a medium for the deceased ancestor. It is estimated that in a ritual ceremony, an impersonator might consume “between 2.4 and 3.9 ounces of pure alcohol”—roughly five to eight bar shots of eighty-proof liquor.

Also, after the ancestral spirits were satiated and inebriated on the offerings of food and drink, family members would eat and drink until drunk. Inebriation served two functions: showing the mutuality of abundant gifts of the ancestors and their descendants, and the necessity of a ritualistic “alcohol-induced trance.” As mentioned below, ritual drunkenness is commonly used today by government officials and others in contract negotiations, but has led to reported deaths by officials.

City Gods played a critical role in the priesthood of government officials and the blending of ritual and law. City Gods were appointed by the imperial government to partner

29. MAYFAIR MEI-HUI YANG, GIFTS, FAVORS, AND BANQUETS: THE ART OF SOCIAL RELATIONSHIPS IN CHINA 226 (David Laitin & George Steinmetz eds., 1994). Prof. Mayfair Mei-hui Yang came to this conclusion after comparing the characters for ritual and body; both have the “ritual vessel” phonetic element. Id.
31. EBREY, supra note 23, at 21.
32. PAPER, supra note 11, at 113-14.
33. Id. at 32 (describing events associated with clan rituals).
34. Id. (noting importance of inebriation to clan rituals).
with living magistrates. They were usually spirits of deceased virtuous officials. They were usually spirits of deceased virtuous officials. Capital cities and other cities of import had a City God Temple. It is believed that City Gods were successors to ancient soil gods; the Tang (618-907 AD), Song (960-1279 AD) and subsequent dynasties actively promoted their worship. According to regulations, before assuming his new post, each magistrate spent the night in the City God Temple purifying himself and praying to the City God. An 1879 manual for local government states, “The district magistrate governs the visible, the City God the invisible. Generating benefit and warding off harm for the people are the duties of the magistrate. Bringing down blessings and warning off natural disaster are the duties of the City God.”

As living magistrates presided over the imperial courts, the City God was responsible for turning souls over to underworld courts. The City God was also in charge of bereaved spirits, who reported miscarriages of justice or unrewarded good deeds. In fact, what is unique to the Chinese view of the afterworld is its “complex underworld judicial system charged with keeping track of the words and deeds of the living, as well as duly administering the requisite forms of retribution after death.” City God Temples had elaborate illustrations of underworld courts and punishments. There are ten magistrates and courts in hell. Each court resembles an earthly magistrate’s court. In the first court, exceptionally noble souls ascend directly to heaven without being punished. However, the vast majority of souls endure punishment or receive rewards in the remaining courts for both acts and thoughts. In the last court, the soul prepares to return to earth, either as another human or other creature. Seasonal processions in honor of the City God also warned the populace of the underworld courts. In these processions,

38. Thompson, supra note 35, at 78.
40. Thompson, supra note 35, at 78.
42. In some accounts, there were eighteen courts in hell.
43. Reincarnation was introduced to China by Buddhist adherents.
people dressed as hellish imps and executioners led others attired as prisoners to their underworld punishments.44

Ultimately, transgressions were offenses against the spirit world.45 The character for crime, 罪 [zuì], shows an offense against the clan head’s sacrifices to the ancestors and heaven.46 As virtue involved a filling of the body with heavenly blessing, its opposing force, punishment for vice, was a “trimming” of the criminal47 and hellish rituals. Dong Zhongshu, the Han thinker, also believed that improper punishments led to a rise in evil spirits.48 China’s earliest laws, lists of crimes and punishments, were engraved on bronze sacrificial tripods, 鼎 [ding], which were ritual cooking pots.49

Today, City God Temples are still popular. They are being renovated in various cities and are visited by government officials and commoners alike.50 Government officials have also been reported praying to the City God to rid the construction industry of corruption.51

In addition to the partnership of City Gods and magistrates, the imperial blend of ritual and law was also present in deference to the family and merchant jurisdictions. The formal imperial governing structure extended only as far as the county level. Each county official, among his other duties (i.e., rites, collecting taxes and promoting education), also presided over legal matters. However,


45. MÜHLHAHN, supra note 27, at 16 (introducing interplay between crime and punishment and religion).

46. Id. (examining Dong Zhangshu’s assertions regarding improper punishments).

47. Id.

48. Id. at 24.

49. PAPER, supra note 11, at 40 (describing memorization techniques for early Chinese laws).


51. Debate over Ideology, supra note 50.
most conflicts were expected to be resolved by xiāngbāo [乡保], village elders or merchant guilds\(^{52}\) who used a combination of mediation and trials embedded in ritual. Xiangbāo were unpaid heads of villages chosen by the villagers and confirmed by the state.\(^{53}\) For legal matters, county officials privately hired advisors, shiye, to advise them in application of dynastic codes, to liaise with xiāngbǎo as go-betweens with would-be litigants in extra-judicial mediation,\(^{54}\) and to consult the City Gods.\(^{55}\) In fabled stories of the qīngguān [清官], virtuous magistrates fasted, prayed, and also received guidance on individual cases from troubled spirits whose murders had not been solved.\(^{56}\) Lawyers were considered superfluous and were in fact viewed as shysters and tricksters who stirred up trouble instead of harmony. They were outsiders in earthly proceedings in a world of blended ritual and law.

Petitions also represent another blending of imperial ritual and law. Commoners petitioned officials and their superiors to correct injustices. Petitioners would travel as far as the imperial capital and would bang on grievance drums outside of offices to summon officials.\(^{57}\) Today, the practice of petitioning officials, or xīnfāng [信访], still far exceeds use of courts.\(^{58}\)

Four examples of contemporary rituals among officials become comprehensible in the light of centuries-old traditional ritual practices. However, they should be bounded by a rule of virtue. These are (1) gifts of luxury goods, (2) extravagant banquets, (3) heavy drinking, and (4) contract formation over banquets and drinking. Gifts are a popular custom among and to officials, including gifts of luxury goods, because ritual still predominates over law. Luxury gifts reflect the ancient practice of seeking blessing and guidance from superiors and spiritual counterparts by offering

\(^{52}\) PHILIP C.C. HUANG, CHINESE CIVIL JUSTICE, PAST AND PRESENT 63 (2010).

\(^{53}\) Id. at 64 (describing xiangbao as “liaison” between court system and societal mediation system).

\(^{54}\) Id.

\(^{55}\) Id., supra note 25, at 335.


\(^{58}\) Xinfang means “letters and visits.”

\(^{59}\) Minzner, supra note 57, at 105.
abundant gifts. Every year when the National People’s Congress and Chinese People’s Political Consultative Conference meet, luxury item stores are flooded with buyers.60 Although gifts to officials are illegal, some officials purchase gifts for senior officials, sometimes on behalf of private individuals.61 China is now the fastest-growing luxury goods market in the world, with an estimated $7.6 billion in sales in 200962 representing 27.5% of the world’s total63; industry experts say 50% of sales are gifts to government officials.64

Also, drinking remains a ritual among today’s officials. This harks back to the ancient practice of inebriation to show the mutuality of abundant gifts of ancestors and descendants, and to enable a descendant to be a medium for ancestors. Today’s drinking, however, has led to reported deaths of officials.65 In a 2009 article in the China Daily, Professor Li Chengyan, of the school of government at Peking University, stated:

Ritualized drinking is deeply ingrained in the relationships between [today’s] government officials. Drinking with official guests or other officials at alcohol-soaked events is considered part of the job . . . . A banquet [is] a mandatory exercise to welcome VIPs and [is] usually covered by public funds . . . . Officials are used to sealing deals and making decisions at dinner tables.66

In the same article, an anonymous official in Shandong Province said:

We would lose face if we could not get our guests drunk. Refusing to drink is considered disrespectful. Neither my guests nor I want to get

60. Barboza, supra note 4, at A4 (discussing National People’s Congress and Chinese People’s Political Consultative Conference meeting).
61. See id. (explaining gifts violate selectively enforced bribery laws).
62. Id. (discussing China’s luxury goods market).
64. Barboza, supra note 4, at A4.
65. Jia, supra note 5 (discussing alcohol abuse among public officials). This article describes the deaths of officials who died because of excessive drinking at state functions. Id. One account reads:
Jin Guoqing, deputy director of water resources in Xinzhou district, Wuhan, the provincial capital of Hubei, died following a dinner last week. The 47-year-old had been entertaining official guests when he fell unconscious. He was rushed to [the] hospital but his heart had already stopped beating, said medical staff. Hospital records indicated Jin’s excessive drinking had triggered a heart attack, which led to his death.
Id.
66. Id.
drunk but we have to play under the unspoken rule, which has been around for so long. We don’t know how to do business otherwise.

Some officials especially hire clerks who can be "drinking assistants" at these functions.67 This is much like the ancient practice of using drunken grandsons to be a medium for ancestors. Banquets for officials today account for approximately one third of the country’s annual dining out expenditures, or 500 billion Yuan ($73 billion).68

Thus, the imperium was a blend of ritual and law: from the priestly duties of offering abundant gifts of food and wine to the Emperor and his officials in accordance with the Mandate of Heaven; to ritual drunkenness to communicate with ancestors; to the parallel rule of spirits, City Gods and underworld courts; to early law codes on ritual vessels; to deference to family and guild ritual rule; and petitions. Present ritual practices of extravagant gifts, banquets and drinking among officials become comprehensible in historical context. They are consonant with the extensive ritual duties of traditional officials and the notion of the body as a ritual vessel. However, contemporary rituals should be bounded by a rule of virtue to avoid excesses. The purpose of ritual is to be oneself a gift or vessel for virtue. Other contemporary rituals blended in law should be explored as well. We now turn to the parallel blend of ritual and law in the family.

**B. Families and Ancestral Spirits**

We had pizza in an ancestral hall that now served as a restaurant. Our Chinese law student hosts were visibly perturbed. One said, “I don’t think the ancestors would be very pleased with this. This is disrespectful.” The other nodded in agreement.

As mentioned earlier, crimes originated as offenses against family and clan rituals. Imperial rites also stemmed from ancestral rites. We now turn to the blending of ritual and law in families. According to one foreign observer in the early twentieth century, “[t]he most potent agent in forming Chinese law and maintaining its permanence is ancestral worship.”69 We will first discuss the ritual

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67. *Id.* (discussing alcohol use at state functions).
68. *Id.* (citing dining-out expenditures for officials in proportion to China’s total yearly expenditures).
69. **GEORGE JAMIESON, CHINESE FAMILY AND COMMERCIAL LAW** 6 (1921). Jamieson was British Consul-General in Shanghai and a judge of the Shanghai Mixed Court that adjudicated cases of foreign and Chinese residents in the Shanghai International Settlement.
practices of the family, and then the law embedded in those practices, including the Kitchen God as a spiritual family police officer, contracts for marriage, the preparation of deceased loved ones for the underworld courts, and family codes and enforcement in ancestral halls. Ancestral halls served as courtrooms for family proceedings. Imperial courts deferred to family rulings when possible. Family and clan rituals were also conflict prevention\textsuperscript{70}, contract formation and dispute resolution. As feasts and wine were the prime imperial ritual, feasts and wine honoring ancestors bind family rituals together as well.

In addition to the mediation of the Emperor and his officials, each family has a heavenly link through their ancestral spirits. One’s ancestral line is thus each Chinese person’s direct link to Heaven and blessing. Family rituals involve communion with ancestors and other spirits on a daily and seasonal basis, and upon special occasions such as birthdays, reaching adulthood, marriage, family code enforcement, dispute resolution and death. As mentioned earlier, the living and the dead are mutually dependent. Living family members provide deceased loved ones with sustenance for their afterlife and reports of family events. In turn, deceased loved ones provide guidance and blessing for life on earth. If descendants do not care for ancestors, the ancestors become hungry ghosts. These neglected ghosts wander the earth, haunt their descendants and wreak other havoc.

Therefore, the Chinese home is also a temple.\textsuperscript{71} Each home has a family altar with the souls of immediate ancestors present (e.g., one’s deceased parents and grandparents). More distant ancestors are present in village ancestral shrines. Daily food, mainly fruit and cooked foods favored by deceased loved ones, may be offered at home family altars and then shared by living family members. On holidays, birthdays and weddings, more elaborate meals are offered.\textsuperscript{72} Graves are visited at least once a year on \textit{Qīngmíng Jié}.

\textsuperscript{70} In the 1992 movie \textit{Qiu Ju Da Guansi}, the protagonist seeks justice through the courts; however, food plays a prominent role in almost every scene, and both the New Year and birth rituals depicted also act as fora for conflict resolution. \textit{Qiu Ju Da Guansi} (Sil-Metropole Org., Youth Film Studio of Beijing Film Acad. 1992)


\textsuperscript{72} Chinese food and holidays contain in microcosm the Chinese worldview. It is not an accident that Chinese cuisine is unending in variety, taste, and delight. The abundance and richness of the Chinese meal represents both the ritual and heavenly nature of eating and sacrifices offered to heavenly beings, as well as the
Banned for many years on the mainland, the Chinese government re-established *Qīngmíng Jié* as a national holiday in 2008. At *Qīngmíng Jié*, in addition to a meal shared with deceased loved ones at the gravesite, offerings of accommodations for the afterlife are also made, by burning paper replicas of houses, clothing and, today, cars and computers.

Since Mao’s death in 1976, some Chinese families also have altars to Chairman Mao in their homes. He is considered the father of New China, the People’s Republic of China. Also, food offerings have been made at memorials of Communist martyrs and commemorative meals have been held in their honor at *Qīngmíng Jié*.

The eldest son was responsible for sacrifices to ancestors. He is therefore a little emperor within family rituals. Much of traditional family law was based on preserving the eldest son’s position as chief provider, not only for his parents during their lifetime, but also in their afterlife.

As government officials sacrificed to their spiritual counterparts and other spirits, families attended to local deities and spirits surrounding and inside the home. Just as a city has a City God, each locality has a deity, the Earth God (*tǔdìgōng*); each Chinese home has a deity, the Kitchen God, or Stove God (*zàoshén*); and each individual has deities that accompany them through life, medicinal value of food in balancing *yīnyáng* and the five elements [*wǔxíng*].

73. Interestingly, the ritual of shared food and wine with ancestors at the grave is also observed among some in Russia and in Estonia among the Seto people. Piers Gladstone, *The Seto People*, PASSPORT MAGAZINE, May 2006, available at http://www.passportmagazin.ru/article/450. I am thankful to Dr. Daniel Yee for bringing this to my attention.


76. Interview with Nan Li, Journalist, in New York City, NY (Feb. 22, 2009). This was observed in the 1990s in rural areas in Fujian and Guangzhou provinces.

77. PAPER, supra note 11, at 45.

78. Id. at 50 (explicating ritual offerings made to Communist martyrs).
recording good and evil deeds. 79 Village clans worshipped the Earth God for local blessings. Families had home altars to the Earth God and Kitchen God, along with the ancestral altars mentioned earlier. In addition to serving as the family’s guardian, the Kitchen God also was a spiritual police officer. 80 Right before each new year, he is sent to Heaven to report on the family’s deeds and their subsequent fortune is based on his report. Interestingly, he can be persuaded to relay only good reports by offerings of glutinous rice cakes. 81

Clan rites also included coming of age rites, marriage, and burials. These centered on honoring ancestors through feasts and wine. Capping involved a young man of twenty coming of age and assuming an adult name and responsibilities. On an auspicious day in the ancestral temple, his head was capped and hair gathered into a bun. In early times, this ceremony also included ritual offerings of alcohol and food to ancestors, one’s mother, other relatives, and guests. 82 Hair-pinning was the equivalent ceremony for an engaged young woman, but in the inner chambers of the home.

Marriage involved a matchmaker bringing together two families, a written contract, consultation with ancestors, and gifts and banquets to seal the marriage contract. 83 The marriage ceremony first required an offering at the bridegroom’s ancestral hall, then an offering to the ancestors in the couple’s bedroom, and finally an offering to the groom’s parents the following day. 84 Matches were made in Heaven; they were determined by auspicious birthdates and the absence of misfortune after consultation with the ancestors. 85 One of the chief functions of marriage was to provide sons who would not only provide for parents in this life, but also offer sacrifices for the life to come.

Families played an integral role in preparations for the underworld courts. Three years of mourning rites both honored

80. Wolf, supra note 13, at 133.
81. These are known as nian gao, the delicious Chinese New Year’s treat.
82. PAPER, supra note 11, at 33.
84. PAPER, supra note 11, at 34.
85. Id. A slip containing the prospective bride’s birth date would be placed on the groom’s family altar. If within three days there was a disruption in the home, including breaking of a bowl, death of a farm animal, or illness or death in the family, the match would be called off. Id. at 25.
one’s ancestors and ensured their safe passage through the underworld courts. Mourning rites consisted of wearing mourning garments and consuming a series of sacrificial meals. At death, the yin part of the human soul, or pò [魄], would descend with the corpse. As mentioned earlier, if not nurtured with future sacrifices, it might return as a “hungry ghost” to haunt descendants or others. The yang part of the human soul, or hún [魂], would ascend and might simultaneously dwell in Heaven, another being, the ancestral tablets, or among the ancestors. The character for hún is composed of two other characters—the one for “cloud” [云] and the one for “ghost” [鬼]. In funeral rites, the hún spirit is fixed in a rectangular wooden tablet kept first at home and then in a clan hall. The ancient practice of fengshui was used to determine how a tomb should be aligned with heavenly perfection to guide souls in their new environment.

Interestingly, the underworld courts are known for bureaucratic errors. Just as families could persuade the Kitchen God to give lenient family reports at New Year’s with glutinous rice cakes, they could also influence underworld judgments for deceased loved ones with sacrifices and gifts. Underworld clerks could also be bribed.

As law was embedded in ritual in the nation family, each clan also had their own family codes, known as jiāxùn [家训], that were a blend of ritual and law. Clans occasionally registered their regulations with the local authorities. If a family member violated a family regulation, the father and elders, if necessary, would determine and enforce a punishment. The character for father, 父 [fù], is a pictograph of a hand holding a stick, as the enforcer of
rules. The ancestral hall served as the family courtroom. Male clan leaders were summoned by a gong, and proceedings were preceded by ancestor worship. Punishments were often harsh andhellish. As stated earlier, magistrates were discouraged from becoming involved with family matters. According to a traditional saying, “Even an honest official has difficulty judging family matters.”

As a blend of ritual and law, family codes contained ancient wisdom about virtue, faithfulness, frugality, and love. The following are taken from the seventeenth century classic, *Maxims for the Well-Governed Household*, written by Zhu Yong Chun:

Be simple and plain in your personal life but resort to the best possible way to bring up and teach children. Do not covet unearned profits. Do not drink to excess . . . . When you see poor and unfortunate relatives or neighbors, you must show sympathy for and assist them . . . . Avoid litigation, for it can only end in trouble . . . . Be in accord with the times and listen to the commands of Heaven.

Zhu’s family code was lyrical. One translator, Dr. Hsiang-Tung Chang, remarked that although not a poem, the code had a rhythm and beauty that could “infiltrate the heart of every man and woman, old and young, who read it aloud like they sing a folk song.”

Zhu’s code was also used for calligraphic exercises. Family codes were designed to penetrate the soul and to be learned by repetition.

Thus in addition to the imperium, the family also represented an integral blending of ritual and law. Led principally by first-born sons, families made daily and seasonal offerings of food and wine to ancestors and other spirits. These spirits included the Kitchen God, who served as a spiritual guardian and police officer in each home. Ancestors provided guidance and blessing for coming of age ceremonies, marriages, conflict prevention, dispute resolution, and

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95. RICK HARBAUGH, CHINESE CHARACTERS: A GENEALOGY AND DICTIONARY XX (2009).
96. See GRAY, supra note 44, at 219-20 (describing procedure for husbands seeking divorce). The proceedings are held in the ancestral hall. *Id.*
97. *Id.* at 220.
98. *Id.* at 220-27 (describing punishments for adultery, beating one’s parents-in-law, etc.).
99. 清官难断家务事 [qīngguān nán duàn jiāwù shì].
100. CHU YUNG-CH’UN, MAXIMS FOR THE WELL-GOVERNED HOUSEHOLD 8-10 (Edward H. Kaplan trans., Western Washington 1971).
102. CHU YUNG-CH’UN, supra note 100, at 1.
family code enforcement. Marriages were contracts formed through food offerings and consultations with ancestors. Through funeral rites, families prepared deceased loved ones for the underworld courts. Imperial magistrates usually deferred to clan leaders who enforced family codes, which promoted virtue. These family codes discouraged litigation and urged charity and frugality. Violations of family codes were tried in ancestral halls presided over by ancestors and clan leaders. Ancestral worship preceded these trials. We now turn to the parallel blend of ritual and law in merchant guilds.

C. Merchant Guilds

We stayed at a Holiday Inn in Shanghai. The concierge was especially helpful. We asked, what is “concierge” in Chinese? The answer was 礼部 [lǐbù], or literally, “Department of Rites.”

It was reported in 2006 that the State had issued the Compulsory State Standards for the Production of Mooncakes.103

In traditional China, merchant guilds also represented another realm of intertwined ritual and law that overlapped with imperial and family rites and codes. Commercial activity centered on worship, banquets, ritual, and law. Wealth and prosperity were blessings from Heaven bestowed upon those who worshipped Heaven and prioritized righteousness and justice. This is consistent with the Confucian teaching that righteousness is superior to pursuing profit.104 Merchants developed guilds that worshipped guild gods, set rules for merchant activity, and administered justice in guild courts. Just as ancestor worship preceded the convening of family courts in ancestral halls, guild worship preceded guild courts convened in temples. Also, just as magistrates deferred to family ritual rulings when possible, they deferred to guild rules and courts as well.

103. Market Still Craves Luxurious Mooncakes, PEOPLES DAILY ONLINE, Oct. 5, 2006, http://english.peopledaily.com.cn/200610/05/eng20061005_309196.html (describing cultural value of mooncakes). During the Mid-Autumn Festival, which traditionally marks the beginning of the harvest season, friends and family would give each other mooncakes as presents. Recently, people have started to use mooncakes accompanied by luxury items such as wine or fine watches to bribe officials. According to the Compulsory State Standards for the Production of Mooncakes, mooncake packaging must represent no more than twenty-five percent of the total cost of the mooncake product, and the average space between mooncakes in a box should not exceed 2.5 centimeters. Id.

104. CONFUCIUS, ANALECTS 4.16, in 26 THE CHINESE CLASSICS (James Legge trans., The Riverside Press 1882) (quoting from the Book of Rites). “The mind of the superior man is conversant with righteousness; the mind of the mean man is conversant with gain.” Id.
Guilds existed in China for hundreds of years. They were often located in temples or convened in temples. Just as families offered sustenance for this world and the world to come, guilds took care of members in this world and the world to come. They did this by reporting annually to, and seeking the blessing of, the guild gods, usually the deity or deities who founded the trade. The invitation to the annual meeting was a call to worship the guild god, and to prepare a feast and play for him.

Guilds were local. The carpenter’s guild in Shanghai, for instance, was not related to the carpenter’s guild in Peking. The guilds set prices and wages and monopolized trade and services in particular areas. They protected members from undue taxes from officials. The guilds provided financial and medical assistance to their members. Some guilds also ensured a proper burial for their members in the guild grounds.

Guild rules varied; some concerned dues, election of officers, standardized weights, measures and practices, dispute resolution among members, and prevention of and sanctions against dishonest practices.

In 1928, John Stewart Burgess published a survey of forty-two guilds in Peking. Here is a description of an annual guild meeting:

The members . . . register [as they arrive] and pay their fees for the year. Each guildsman worships before the [deity] Master Lu Pan as soon as he has registered. Later professional actors give a play. Before and after the play and between the acts business is discussed. The guild rules are read, an announcement is made regarding the punishment of offenders . . . . On the day of the religious ceremony the officials have a feast.

If a member failed to pay a fine, the officials requested the fine in person. If the fines were still not paid, the member was fined an

106. Id. at 577 (discussing role of religion in guilds’ ability to achieve goals).
108. Id. at 127 (characterizing area of guilds’ operations as local).
109. Id. at 170 (describing philanthropy behind Chinese guilds).
110. Golas, supra note 105, at 562, 574 (discussing early guild activity).
111. K., Chinese Guilds and Their Rules, 12 China Rev. 5, 5-7 (1883) (describing Chinese guild regulations).
113. Burgess, supra note 107, at 96 (describing guild meetings).
amount for buying incense, or another sum of money. Worse cases required being forced to kneel before the guild god and expulsion from the guild.\textsuperscript{114}

Mr. Burgess also described an annual meeting of the Blind Guild observed by a foreigner.\textsuperscript{115} Here, too, worship and feasting served as the focal point for guild business and was the prelude to a legal proceeding. This guild was composed of blind persons who made their living by singing, story-telling, and entertaining. The meeting began with worship of the guild gods that consisted of offering food and incense, and kneeling before the gods of Heaven, Earth, and Men while music played.\textsuperscript{116} The food consisted of “chicken, pork, fish, wine, vegetables, fruit, and rice.”\textsuperscript{117} Then guild musicians performed for two hours.\textsuperscript{118} After a business meeting, the annual report was burned and offered to the guild gods.\textsuperscript{119} Then the executive committee constituted itself as a court and tried cases of those accused of breaking guild rules, and settling disputes among guild members.\textsuperscript{120} Before the Republic of China was founded in 1912, the guild punished older members with fines and younger members with “50, 70, or 100 strokes” of the bamboo.\textsuperscript{121} After the trials, a feast was served, followed by burning money before the gods.\textsuperscript{122} For purposes of the court, members of the executive committee were designated with titles such as “Judge, Attorney-General, Prosecuting Attorney, Grand Jury, Jury of the Court, Sheriff, Counselor, Protector, Law Proctor, Witness, Adviser, Inspector, Investigator, Reporter, Chief of Police, Police, Executioner, and Warrant Carrier”.\textsuperscript{123}

Apprenticeships also involved an intertwining of ritual, law, and feasting. When an apprentice entered a guild, an apprenticeship contract was drawn up. The apprentice bowed to his master and the mentor had authority over the apprentice and the right to discipline him. Among the Paper Hangers, if a four month probationary period passed, the apprentice’s parent or older brother would prepare a feast of several tables for the “managers of shops and noted members.”

\begin{footnotes}
\item[114]Id. at 97 (noting guild income came from membership dues).
\item[115]Id. at 103-06 (describing Blind Guilds).
\item[116]Id. at 104-05 (discussing progression of meetings).
\item[117]Id. at 104.
\item[118]BURGESS, supra note 107, at 105.
\item[119]Id.
\item[120]Id.
\item[121]Id.
\item[122]Id.
\item[123]BURGESS, supra note 107, at 105.
\end{footnotes}
By attending this feast, they become witnesses and guarantors of the apprenticeship.\footnote{Id. at 158-59.} The banquet was thus a legal ceremony.

At the end of an apprenticeship in the Blind Workers Guild, the apprentice held a feast for his master and knelt and gave gifts to the master and the master’s wife. The apprentice contract was then burned in the presence of guests.\footnote{Id. at 164.}

Guild members avoided official courts but sometimes were sued by non-guild members. In these cases, the official courts often decided cases in accordance with guild rules.\footnote{Id. at 207.} Boycotts were used effectively against offenders of guild rules and also against foreign concerns.\footnote{Id. at 208.} Inter-guild disputes were “settled by informal groups of neutral guildsmen.”\footnote{BURGESS, supra note 107, at 229.}

After the Republic of China was founded in 1911, the Beijing Chamber of Commerce began to replace guilds. For a while the Chamber of Commerce had its own court as well. This was used to decide commercial matters, including inter-guild disputes.\footnote{Id.} Some guilds lasted until the 1940s.\footnote{GOLAS, supra note 105, at 564.}

Today, shared food at banquets, ritual drinking, and other rites remain a prime way of conducting and negotiating business in China.\footnote{INGMAR WIENEN, DEVELOPING INTERNATIONAL BUSINESS IN THE CONTEXT OF CULTURE AND ETHICS IN TRANSFORMATION: THE EXAMPLE OF CHINA 116-18 (2002).} It is not an uncommon practice to negotiate the value of a contract based on the number of cups of wine drunk (e.g., one million RMB per cup).\footnote{Anecdotes relayed to author.}

Thus, for centuries merchant guilds also involved an intertwining of ritual and law, parallel and overlapping with imperial and family rites and law. Merchant guilds enforced merchant codes at gatherings honoring guild gods. Worship and feasting preceded guild justice. The banquet not only sealed guild business, but also apprenticeship and other contracts. Just as imperial courts deferred to family rulings when possible, they deferred to guild rulings and merchant codes as well. We now turn to another look at spirit courts.
D. Spirit Courts, Contracts, and Codes

We were in Beijing. Our computer had failed and an Apple distributor in Beijing supplied a new hard drive. We asked if a guarantee was available. The answer was “no” but the supplier offered to take an oath.\textsuperscript{133}

As mentioned, spiritual authorities were regularly consulted by government officials, families, and merchant guilds in administering justice. Also, after death, each soul encountered the underworld courts and punishments described earlier. In this section, we will see that spirit courts could also be consulted during one’s lifetime, even by commoners, through the mediation of Daoist priests. Although no lawyers were involved in imperial courts, Daoist priests served as “lawyers” in spirit courts. They were the “lawyers” in TCL. Spirits were also subject to spirit codes and tomb contracts with the deceased.

In addition to finding punishment or rewards after death, ordinary Chinese could appeal for intervention from spiritual courts during their lifetimes. According to early Daoist views, misfortune during one’s life might be due to an underworld lawsuit brought by a deceased party against a family member or oneself.\textsuperscript{134} Retribution, known as bāoyìng [报应], is critical to the Chinese worldview and central to Chinese justice.\textsuperscript{135}

The Chinese have a long tradition of judicial rituals in which they call upon certain deities to intervene on earth to achieve justice.\textsuperscript{136} In addition to the City God mentioned earlier, other deities to whom appeals can be made are the Emperor of the Eastern Peak [东岳大帝, Dōngyüè dàdì] and the Bodhisattva Dizang [地藏王菩萨, Dìzàngwáng púsà].\textsuperscript{137} Common to these judicial rituals is the making of oaths [立誓, lìshì] and filing of underworld indictments [告状, gào yīnzhuàng, also known as, 放告, fànggào].\textsuperscript{138} Oaths included blood covenants [血盟, xuèméng], covenant and malediction rituals [盟诅, méngzǔ], and oaths combined with the beheading of chickens [斩鸡头, zhǎn jītóu].\textsuperscript{139} Underworld indictments included allegations against the living, the dead, and evil spirits.\textsuperscript{140} One Daoist text identifies eighty-one possible underworld

\textsuperscript{133} June 2009, Beijing, China.
\textsuperscript{134} HANSEN, supra note 92, at 190.
\textsuperscript{135} KATZ, supra note 41, at 4.
\textsuperscript{136} Id. at 5.
\textsuperscript{137} Id.
\textsuperscript{138} Id.
\textsuperscript{139} Id.
\textsuperscript{140} KATZ, supra note 41, at 5.
lawsuits and the expertise of Daoist ritual practitioners in these suits, including navigating corruption in the underworld courts. Other rituals could be performed to reconcile parties, or to seek justice for being falsely accused.

In contemporary Taiwan, politicians have not hesitated to take oaths in popular local temples to protest accusations of lying or vote-buying. Over 3000 people a year file indictment rituals at the Dizang Abbey, a popular temple. Local police and prosecutors also seek spiritual help at temples for cases that are difficult to solve.

The Chinese also believed in the existence of Guǐlǜ, or Spirit Codes, that governed the underworld. One Daoist sect held that netherworld law principles were the same as earthly ones, so the Spirit Code was remarkably similar to the dynastic penal codes. From the first century through the twentieth, many persons were buried with tomb contracts that invoked Guǐlǜ. During the Song Dynasty (960-1276 A.D.), there was a manual for government officials that contained model tomb contracts and also cited Guǐlǜ as authority. These tomb contracts resembled land contracts in that they mentioned a plot of land, a buyer, and a seller. The buyers were the deceased and the sellers were the earth gods. One copy of the contract was placed in the ground for the gods. Another copy was placed in the coffin for the deceased in case it was needed in the underworld to prove his ownership of the funeral plot. The purpose of these contracts seemed to be to guarantee the safe passage of the deceased into the underworld and immunity from prosecution from underworld courts. Thus, it was commonly believed that the

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141. Hansen, supra note 92, at 191.  
142. Id. at 192.  
143. Katz, supra note 41, at 5.  
145. Id.  
146. Id. at 103.  
148. Hansen, supra note 92, at 204.  
149. Hansen, supra note 147, at 284, 286.  
150. Id. at 284.  
151. Id. at 284-85.  
152. Id. at 284.  
153. Id. at 285.  
154. Hansen, supra note 147, at 285.  
155. Id.
spirits could be bound by contracts that resembled earthly contracts.156

At the same time, many stories circulated about proceedings in these underground courts. Typically they were collected from persons who had lost consciousness and then, upon regaining it, recounted journeys to the underworld to participate as witnesses in underworld proceedings.157 These underground proceedings rectified miscarriages of justice on earth.

Thus, the Chinese spirit world also included an intertwining of ritual and law through underworld court proceedings mediated by Daoist priests, spirit codes, and tomb contracts. Although lawyers were not involved in imperial courts, Daoist priests were the “lawyers” in TCL because they brought underworld petitions on behalf of adherents. The imperium, families, and merchant courts were deeply attentive to underworld justice.

IV. CONCLUSION

The sun had set, and as I walked along the beach boardwalk I heard loud gongs and music. I quickly crossed the Fujian street of cars and city buses and found a stage filled with a troupe of opera performers. I thought I would stay for a few minutes but realized that by the time the performance had ended, that the street opera had been three hours long! It was a tale of injustice finally rectified in a spiritual court. The scenes intertwining earthly and divine magistrates were seamless. Afterwards, I realized the opera had taken place in front of the local temple. It was an offering for the temple.158

Sacrifice is not a thing that comes from without; from centering, it emerges and is born in the heart/mind. The heart/mind being deeply moved, it offers upwards in ritual.159

China’s traditional legal system was embedded in a rich fabric of virtue cultivation and celestial ritual. This fabric was woven with sacrifice and blessing in multiple and parallel jurisdictions. Each earthly agent appealed to his spiritual counterpart. The Emperor worshipped Heaven and officials worshipped the City Gods and other deities in the heavenly bureaucracy. Sons offered sacrifices to ancestors. Merchant guilds offered sacrifices, banquets, and plays to deities of commerce and wealth. Gifts, banquets, and wine-sealed pacts served as conflict prevention and resolution. Shared food and

156. Id. at 284-86.
157. Id. at 286-89, 290-92.
159. ZITO, supra note 19, at 154.
wine is China’s prime ritual. It represents abundance from Heaven, human cultivation, and communion with invisible and visible companions.

At the same time, codes embedded in ritual in the multiple jurisdictions of the state, family, merchant, and spiritual realms, cultivated virtue and had courts to punish the wrongdoers. China’s earliest legal codes were literally on ritual cooking vessels. State courts only intervened when other jurisdictions failed to act or could not resolve a conflict. Spiritual courts rectified what was left unadjudicated or wrongly adjudicated by earthly courts. At all levels, spiritual authorities and courts could be appealed to intervene and although no lawyers were allowed in imperial courts, Daoist priests served as “lawyers” for underworld courts. Ritual and law, and the visible and invisible, were thus wed. Without studying ritual, or family or merchant codes, China’s traditional state codes seem incomplete. Like the relationship of yin and yang, ritual lies in law, and law in ritual. And as yang is superior to yin, ritual dominates law.

This ritual-law virtue framework needs further exploration in contemporary discussions of Chinese law. Otherwise, contemporary Chinese law appears incomplete. Not only will current legal practice and rituals, including abundant gifts, banquets and drinking, become more comprehensible, but a contemporary rule of virtue can also be fostered. These need to be considered: intentionally updating traditional rituals and codes with appropriate


161. Contemporary Chinese law practice also involves karaoke and the wuxiu, or afternoon nap. The author has been a participant-observer. Interestingly, shared Chinese food is also a common ritual in American law firms, particularly for lawyers working at night. American trial lawyers also use rituals in winning cases. See, e.g., Benjamin Weiser, In a Field of Reason and Skill, Lawyers Woo Luck With Ritual, N.Y.TIMES, Feb. 18, 2011, at A1. This article describes rituals, such as eating at the same restaurant or wearing a particular suit, that have led to successful verdicts.
virtuous boundaries, or even creating new rituals, so that rituals are not corrosive but life-giving, cleansing, nourishing and just. The goal of ritual is to become a gift of virtue. This can be done in other legal traditions as well: promoting virtue formation and harmony, as well as appropriate dispute resolution and litigation. The rule of virtue can be strengthened, as well as the rule of law.

162. In the Christian tradition, in the Sermon on the Mount, Jesus Christ taught that certain conflict and litigation could impede worship. Therefore, if you are offering your gift at the altar and there remember that your brother has something against you, leave your gift there in front of the altar. First go and be reconciled to your brother; then come and offer your gift. Settle matters quickly with your adversary who is taking you to court. Do it while you are still with him on the way, or he may hand you over to the judge, and the judge may hand you over to the officer, and you may be thrown into prison. I tell you the truth, you will not get out until you have paid the last penny.

Matthew 5:23-26. St. Paul taught the virtue of self-sacrifice, “Therefore, I urge you . . . in light of God’s mercy, to offer your bodies as living sacrifices, holy and pleasing to God . . . . Be devoted to one another in brotherly love . . . . Live in harmony with one another . . . overcome evil with good.” Romans 12:1, 12:10a, 12:16a, 12:21b. Also, St. Paul wrote, “Do not get drunk on wine . . . but be filled with the Holy Spirit.” Ephesians 5:18.