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Levirate Marriage and the Revival of Widow Chastity in Yüan China

Widow chastity appears as a virtue for women in Confucian texts dating from at least the Former Han dynasty. Liu Hsiang 劉向 (ca. 78–8 BC) mentions it in his *Biographies of Virtuous Women*, and Pan Chao 班昭 (ca. 48–120 AD) promoted it in her *Precepts for Women*.¹ The Han government rewarded widow chastity together with other exemplary behavior by men and women with door insignia and sometimes gifts of grain or silk. Similar rewards continued through the T'ang and Sung dynasties.² Nevertheless,

AN EARLIER version of this essay was presented at a panel of the Association for Asian Studies, Annual Meeting, April 6, 1995. I thank the discussants Morris Rossabi and Willard Peterson, as well as Hung Chin-fu, Sugiyama Masaaki, Yao Dali, Paul Smith, and Herbert Franke for valuable insights. I also thank *Asia Major*'s anonymous reader for many important corrections and suggestions.

¹ *Lieh-nü chuan pu-chu* 列女傳補注 (Kuo-hsüeh chi-pen ts'ung-shu edn.; Taipei: Shang-wu yin-shu kuan, 1968) ch. 4, pp. 74–76, ch. 5, p. 87; Albert O'Hara, trans., *The Position of Woman in Early China, According to the Lieh nü chuan, "The Biographies of Eminent Chinese Women"* (Westport, Conn.: Hyperion Press, 1945), pp. 122–24, 139; Pan Chao, *Nü-chieh* 女誡 ch. 5, in *Hou Han shu* 後漢書 (Peking: Chung-hua shu-chü) 84, p. 2790; Nancy Lee Swann, *Pan Chao: Foremost Woman Scholar of China* (N.Y.: Century, 1932), p. 87. Liu Tseng-kui 劉增貴, *Han-tai hun-yin chih-tu* 漢代婚姻制度 (Taipei: Hua-shih ch'u-pan she, 1980), p. 27, argues that Liu Hsiang did not emphasize widow chastity, which gained prominence only in Later Han; cf. conclusion of Ch'en Tung-yüan 陳東原 that remarriage was more common in Later Han than Former; *Chung-kuo fu-nü sheng-huo shih* 中國婦女生活史 (Taipei: Shang-wu, 1986; orig. edn. Peking, 1937), pp. 55–57. Surveying the five Confucian classics, we find the idea of widow chastity in the *Li-chi* (compiled in the Han), and in Han interpretations of the *Shih-ching* 詩經. See *Li-chi* 禮記 (Shanghai: Ku-chi, 1987) 9, sect. "Chiao-t'e-sheng 郊特牲," p. 149; and James Legge, trans., *The Li Ki* (Oxford: Oxford U.P., 1885; rpt., Delhi: Motilal Banarsidass, 1992) 1, p. 439. For *Shih-ching*, see *Mao-shih cheng-i* 毛詩正義, in *Shih-san ching chu-shu fu-chiao k'an-chi* 十三經注疏附校勘記 (rpt. Peking: Chung-hua, 1980) 3, pp. 312–13 (Mao #45); and James Legge, trans., *The She King*, vol. 4 of *The Chinese Classics* (Oxford, 1893; rpt. Taipei: SMC Publishing, 1991), book 4, part 1, p. 73. For general discussion, see Marina Sung, "The Chinese Lieh-nü Tradition," esp. pp. 71–72, and Richard Guisso, "Thunder Over the Lake: The Five Classics and the Perception of Woman in Early China," both in R. Guisso and S. Johannesen, eds., *Women in China: Current Directions in Historical Scholarship* (Youngstown, N.Y.: Philo Press, 1981).

² Liu, *Han-tai hun-yin*, pp. 26–27. The Later Han government called on local officials to educate the populace and encourage moral behavior by awarding door insignia to filial sons and grandsons, chaste women, dutiful wives, those who cancelled debts or provided famine relief, and exceptional scholars; *Hou Han-shu, chih* 志 28, p. 3624. Similar measures were

these rewards were irregular in amount and frequency, and widow chastity was not especially emphasized compared to other virtues, such as filial piety.³ There was no strong taboo against remarriage, nor any legal sanction against it. The dynastic histories routinely recorded the remarriage of imperial princesses, and having had more than one husband did not prevent a woman from receiving highest honors from the state. On the contrary, marriage and property law from Han through Sung tended to encourage widow remarriage: it allowed women to retain their dowry and contract remarriages in cases of widowhood or divorce. As can be expected under such circumstances, widows from Han to Sung, both elite and commoner, frequently remarried.⁴

taken in later dynasties. See discussions in Lau Nap-yin 柳立言, "Ch'ien-t'an Sung-tai fu-nü te shou-chieh yü tsai-chia" 淺談宋代婦女的守節與再嫁, *Hsin shih-hsüeh* 新史學 2.4 (1991), pp. 37-38; and Mark Elvin, "Female Virtue and the State in China," *Past and Present* 104 (August 1984), pp. 115-23. See also Patricia Ebrey, *The Inner Quarters: Marriage and the Lives of Chinese Women in the Sung Period* (Berkeley: U. of California P., 1993), pp. 195-96. Beginning in the Sui, "virtuous households," including those with chaste widows, were exempted from corvée labor duty. A decree of 1020 in the Sung granted corvée exemption to households honored with door insignia, and this order was reiterated in 1023; *Sung hui-yao chi-kao* 宋會要輯稿 (1957; Peking: Chung-hua, 1987; hereafter cited as *SHY*), sect. "li 禮," ch. 61, p. 1688.

³ See Nieh Ch'ung-ch'i 聶崇岐, "Nü-tzu tsai-chia wen-t'i chih li-shih te yen-pien" 女子再嫁問題之歷史的演變 (orig. 1941?), and Tung Chia-tsun 董家遵, "Li-tai chieh-fu lieh-nü te t'ung-chi" 歷代節婦烈女的統計 (orig. 1937), both rpt. in Pao Chia-lin 鮑家麟, ed., *Chung-kuo fu-nü shih lun-chi* 中國婦女史論集 (Taipei: Tao-hsiang ch'u-pan she, 1988). See also Liu, *Han-tai hun-yin*, p. 27; Jennifer Holmgren, "Widow Chastity in the Northern Dynasties: The *Lieh-nü* Biographies in the *Wei-shu*," *Papers on Far Eastern History* 23 (March 1981), pp. 165-86. A review of door insignia and material rewards granted in the Sung, as recorded in *SHY*, reveals that few were on account of widow chastity. Of a total of 84 rewards, 73 went to men and 11 to women. Of those to women, only four were for widow chastity. The vast majority of rewards were to men for filial piety or for maintaining large communal families. See *SHY*, "li" 61, pp. 1687-94.

⁴ For Han, see Liu, *Han-tai hun-yin*, p. 25; Yang Shu-wei 楊樹達, *Han-tai hun-sang li-su k'ao* 漢代婚喪禮俗考 (Shanghai: Shang-wu, 1933), pp. 53-64; and P'eng Wei 彭衛, *Han-tai hun-yin hsing-t'ai* 漢代婚姻形態 (Sian: San-ch'in ch'u-pan she, 1988), pp. 195-212. For later dynasties, see Tung Chia-tsun, "Ts'ung Han tao Sung kua-fu tsai-chia hsi-su k'ao" 從漢到宋寡婦再嫁習俗考 (orig. 1934), rpt. in Pao, ed., *Fu-nü shih lun-chi*, pp. 139-64; Chang Pang-wei 張邦偉, "Sung-tai fu-nü tsai-chia wen-t'i t'an-t'ao" 宋代婦女再嫁問題探討, in Teng Kuang-ming 鄧廣銘 and Hsü Kuei 徐規, eds., *Sung-shih yen-chiu lun-wen chi* 宋史研究論文集 (Hang-chou: Chekiang jen-min ch'u-pan she, 1987); and idem, *Hun-yin yü she hui Sung tai* 婚姻與社會宋代 (Ch'eng-tu: Ssu-ch'uan jen-min ch'u-pan she, 1989), esp. pp. 65-75. See also Ch'en Tung-yüan, *Chung-kuo fu-nü sheng-huo shih*, pp. 55-59, 118-22; and Ch'en Ku-yüan 陳顧遠, *Chung-kuo hun-yin shih* 中國婚姻史 (orig. 1936; Taipei: Shang-wu, 1992), pp. 227-33. Various factors influenced the frequency of remarriage in different social classes and historical periods. For an analysis of these issues, see Jennifer Holmgren, "The Economic Foundations of Virtue: Widow-Remarriage in Early and Modern China," *The Australian Journal of Chinese Affairs* 13 (Jan. 1985), pp. 1-27; and Lau, "Ch'ien-t'an Sung-tai."

Only after the Sung, in the late imperial period, did widow chastity gain systematic legal support, state sponsorship, and widespread social prominence. Numerous studies have documented this change and have discussed the place of widow chastity in the social and political life of the Ming and Ch'ing. These have described, among other things, government and private actions to promote widow chastity, the proliferation of institutions to support chaste widows, and the significance of widow chastity within a broad social context.⁵ Nevertheless, scant attention has been paid to the first codification of laws promoting widow chastity, which occurred under the Yüan dynasty. This article examines the transformation of marriage and property law during the Mongol-Yüan that brought the law into line with Confucian ideals of widow chastity. It will argue that it is no coincidence that this occurred under a foreign conquest regime. Moreover, it will show that widow chastity laws evolved in the context of the practice of levirate marriage, common among the Mongols and practiced by some Chinese at that time, and that these laws were intimately related to the confusion and controversy generated by the clash between Mongol and Chinese culture and competing models of marriage and family.

In the pages below, I will describe how changing marriage law under the Yüan created the opportunity for a rethinking of traditional practices and the assertion of orthodox Confucian values. I will begin by describing Sung laws that supported widow remarriage and the gradual hardening of

⁵ In addition to works already cited above, see, e. g., Susan Mann, "Widows in the Kinship, Class, and Community Structures of Qing Dynasty China," *JAS* 46.1 (Feb. 1987), pp. 37-56; Fuma Susumu 夫馬進, "Chūgoku MinShin jidai ni okeru kafu no chii to kyōsei saikon no fūshū" 中國明清時代における寡婦の地位と強制再婚の風習, in Maekawa Kazuya 前川利也, ed., *Kazoku, setai, kamon: kōgyōka izen no sekai kara* 家族世帯家門工業化以前の世 界から (Tokyo: Minerva, 1993); Chia-lin Pao Tao, "Chaste Widows and Institutions to Support Them in Late-Ching China," *AM* 3d ser. 4.1 (1991), pp. 101-19; Kao Mai 高邁, "Wo kuo chen-chieh t'ang chih-tu te yen-pien" 我國貞節堂制度的演變 (orig. 1935), rpt. in Pao, ed., *Fu-nü shih lun-chi*, pp. 205-11; T'ien Ju-k'ang, *Male Anxiety and Female Chastity: A Comprehensive Study of Chinese Ethical Values in Ming and Ch'ing Times*, T'oung Pao Monograph Series 14 (Leiden: E. J. Brill, 1988); Angela Ki Che Leung, "To Chasten Society: The Development of Widow Homes in the Ch'ing, 1773-1911," in *Family Process and Political Process in Modern Chinese History* (Taipei: Inst. of Modern History, Academia Sinica, 1992) 1, rpt. *Late Imperial China* 14.2 (Dec. 1993), pp. 1-32; Ann Waltner, "Widows and Remarriage in Ming and Early Qing China," in Guisso and Johannesen, eds., *Women in China*; Katherine Carlitz, "The Social Uses of Female Virtue in Late Ming Editions of *Lienü Zhuan*," *Late Imperial China* 12.2 (1991), pp. 117-48; and, most recently, Tu Fang-ch'in 杜芳琴, "Shang lieh yü ch'ang chieh: Ming-Ch'ing chen-chieh te t'e-tien chi ch'i yüan-yin" 尚烈與倡節明清貞節的特點及其原因, paper presented at conference "Women in Confucian Cultures" (San Diego, June 28-July 1, 1996).

attitudes against it of Confucian reformers. Then I will discuss changes in marriage and levirate laws under the Yüan, decade by decade, as the government struggled to reconcile contradictory practices and expectations in an ethnically diverse empire. Finally, I will show how this process resulted in an unprecedented legislative initiative that created for the first time a legal framework, adopted by later dynasties, that supported widow chastity and condemned remarriage.

LEGAL SUPPORT FOR REMARRIAGE IN THE SUNG AND FLEXIBLE ADHERENCE TO CONFUCIAN VALUES

During the Sung dynasty, a widow could easily contract a remarriage, and her right to do so was protected by law.⁶ Sung property law encouraged widows to return home and remarry. A wife's property (which for an elite woman often included land) was legally and customarily differentiated from that of her husband throughout both their lifetimes. If she were widowed, she could take all of her property out of her first marriage and into a second. The standard practice for a younger woman was to return home to her natal family and for her own parents to arrange a remarriage. A daughter might remain for some time in her natal home before remarrying, and there was a special legal term for such women, *kui-tsung* 歸宗, with specific rights to property spelled out for them in Sung law should their parents die while they were thus residing at home.⁷ Laws protecting

⁶ A dramatic example of this legal protection comes in a written judgement by Hu Ying (c.s. 1232), where he strongly defends a woman's right to remarry on her own initiative (the woman in question married three times), despite his personal opposition to remarriage; *Ming-kung shu-p'an ch'ing-ming chi* 名公書判清明集 (orig. 1261; rpt. of 1569 edn. Peking: Chung-hua, 1987) 9, p. 344. At times during the Sung and previous dynasties the government placed certain restrictions on widow remarriage, such as not marrying during the mourning period for the husband; but even these were irregularly enforced. See Chang, "Sung-tai fu-nü," pp. 589-90.

⁷ The issue of Sung women's property, including that of once-married daughters who returned home, has been the subject of much recent research. See Bettine Birge, *Women, Property and Confucian Reaction in Sung and Yüan China* (Cambridge U.P., forthcoming); Yüan Li 袁俐, "Sung-tai nü-hsing ts'ai-ch'an ch'üan shu-lun" 宋代女性財產權述論 (orig. 1988), rpt. in Pao Chia-lin, ed., *Chung-kuo fu-nü shih lun-chi hsi-chi* 中國婦女史論集續集 (Taipei: Tao-hsiang ch'u-pan she, 1991), pp. 173-214; Yanagida Setsuko 柳田節子, "NanSōki kasan bunkatsu ni okeru joshōbun ni tsuite" 南宋期家産分割における女承分について, in Kinugawa Tsuyoshi 衣川強, ed., *Ryū Shiken hakushi shōju kinen Sōshi kenkyū ronshū* 劉子健博士頌壽紀念宋史研究論集 (Tokyo: Dōhōsha, 1989), pp. 213-42. Other important contributions are: Shiga Shūzō 滋賀秀三, *Chūgoku kazokuhō no genri* 中國家族法の原理 (Tokyo:

the property of once-married women made remarriage relatively easy and made young widows into attractive marriage partners. Such widows might bring considerable wealth into the second marriage, and in some cases could contract the remarriage themselves.

When widows did stay chaste, they often did so in their natal homes.⁸ Stories of young widows resisting remarriage are likewise about resisting the arrangements of the natal parents, not those of the deceased husband's parents; and by law in the T'ang and Sung, natal parents and grandparents alone could force a widow to remarry.⁹ The Sung dynastic history, completed in the Yüan, continues to record remarriages of the emperor's relatives, including imperial princesses.¹⁰ An elite woman's remarriage could still be mentioned in such official texts. The expectation among both commoners and elites in the Sung that a young Chinese widow would

Sōbunsha, 1967; rpt. 1981), esp. pp. 415–24; various works by Niida Noboru 仁井田, esp. *Chūgoku hōseishi kenkyū* 中國法制史研究 (Tokyo: Tōkyō daigaku shuppankai, 1962–64; rpt. 1991) 3, pp. 365–92, and 4, pp. 371–436; and *Chūgoku mibunhō shi* 中國身分法史 (original title: *Shina* 支那 *mibunhō shi*; Tokyo: Tōkyō daigaku shuppankai, 1942; rpt. 1983), pp. 652–68; Gudula Linck, *Zur Sozialgeschichte der chinesischen Familie im 13. Jahrhundert: Untersuchungen am "Ming-gong shu-pan qing-ming ji"* (Stuttgart: Franz Steiner Verlag, 1986) esp. chap. 2 and p. 130; Patricia Ebrey, "Women in the Kinship System of the Southern Song Upper Class," in Guisso and Johannesen, eds., *Women in China*, pp. 113–28, and idem, *Inner Quarters*, esp. pp. 104–9.

⁸ Even chaste widows in hagiographical texts are usually described as returning to their natal homes to stay chaste there, rather than staying in the homes of their husbands to serve in-laws. In *Sung hui-yao*, three of the four chaste widows granted door insignia returned to their natal families; *SHY*, "li" 61, pp. 1688–91. The Sung dynastic history (completed under the Yüan) presents a similar picture, giving just 6 biogs. for chaste widows out of a total of 47 women treated in the 39 entries in the *Lieh-nü* section. Only two state clearly that the woman stayed in her husband's home to serve in-laws, while three clearly say she did not. (A seventh is praised merely for not remarrying during a 25-year separation from her husband caused by the Jurchen invasion.) *Sung shih* 宋史 (Peking: Chung-hua, 1977) 460, pp. 13479–88. References to young widows returning to natal families are numerous in Sung funerary inscriptions (e.g., Ebrey, *Inner Quarters*, pp. 189, 205–6), gazetteers, and miscellanies.

⁹ *Tang lü shu-i* 唐律疏議 (rpt.: Peking: Chung-hua, 1993 [1983]) 14, p. 265; *Sung hsing-t'ung* 宋刑統 (rpt.; Peking: Chung-hua, 1984) 14, pp. 220–21. For widows resisting efforts by natal parents to arrange remarriages, see *SHY*, "li" 61, pp. 1690–91; and *Sung shih* 460, pp. 13479–88 (where 3 of 6 chaste-widow biogs. describe natal parents' urging the widow to remarry). Such stories are prevalent from Han times on. For Han, see Yang, *Han-tai hun-sang*, pp. 55–62. From Han to Sung, widow remarriage was by custom arranged by natal parents, not in-laws. In contrast to the natal parents, a widow's in-laws often wanted her to stay in their home to serve them and raise their grandchildren. In the Yüan, the balance of power between natal parents and in-laws in this regard became an issue of legislation, and I will return to it below.

¹⁰ *Sung shih* 248, pp. 8771, 8788, mentions the remarriage of two princesses, while a third is known from other sources to have remarried; See also Chang, "Sung-tai fu-nü," pp. 583, 593, and n. 4. For remarriages of other women related to the emperor, see *Sung shih* 243, pp. 8630–31, and Ebrey, *Inner Quarters*, pp. 205–6.

probably return to her natal family and remarry contrasted sharply with expectations and customs of the Mongols, as will be seen below.

Not everyone in the Sung approved of the custom of remarriage. The most famous opponent was Ch'eng I 程頤 (1033-1107), who brought attention to the issue of widow chastity by his oft quoted dictum that it was better for a widow to starve to death than to remarry.¹¹ But Ch'eng I himself tempered his judgement according to circumstances and made the distinction between ideals and reality. Thus, he criticized the widow of his nephew and her new father-in-law for her remarriage, which left his family with an orphaned son,¹² but he praised his father for arranging the remarriage of a widowed and childless grandniece.¹³

Chu Hsi 朱熹 (1130-1200) emphasized the importance of widow chastity by including Ch'eng I's harsh prohibition in the *Reflections on Things at Hand* (*Chin-ssu lu* 近思錄),¹⁴ but he also included Ch'eng I's account of his father arranging the remarriage of the grandniece.¹⁵ Like Ch'eng I, Chu accepted the distinction between ideals and practical necessity, as in his reply to his students when they questioned him about Ch'eng I's father:

Someone asked, "Taking the widowed grandniece home and giving her in marriage seems to contradict the teaching that a widow should not remarry. How about it?"

Chu Hsi answered, "Generally speaking, that should be the case. But people cannot follow that absolutely."¹⁶

In a letter to a friend, Chu admitted that widow chastity was "impracticable" (*yü-k'uo* 迂闊), though he urged his friend to go against custom and follow principle in preventing his sister from remarrying. She did remarry in

¹¹ *Ho-nan Ch'eng-shih i-shu* 河南程氏遺書 (Kuo-hsüeh chi-pen ts'ung-shu edn.; Taipei: Shang-wu, 1968) 22B, p. 328.

¹² *Ho-nan Ch'eng-shih wai-shu* 河南程氏外書, in *Erh-Ch'eng chi* 二程集 (Peking: Chung-hua, 1981), vol. 2, ch. 11, p. 413. See discussion in Lau, "Ch'ien-t'an Sung-tai," pp. 43-44.

¹³ *Ho-nan Ch'eng-shih wen-chi* 河南程氏文集, in *Erh-Ch'eng chi*, vol. 2, ch. 12, p. 651.

¹⁴ Wing-tsit Chan, trans., *Reflections on Things at Hand: The Neo-Confucian Anthology* (New York: Columbia U.P., 1967), p. 177. The controversial nature of this passage is underscored by the fact that Chang Po-hsing 張伯行 (1651-1725) left it out of his edition of *Chin-ssu lu*, replacing it with another; see *Chin-ssu lu* 近思錄 (Kuo-hsüeh chi-pen ts'ung-shu edn.) 6, p. 194. As a result, it is missing from many modern editions.

¹⁵ *Chin-ssu lu* 6, p. 195-96; cf. Chan, trans., *Reflections*, p. 179.

¹⁶ *Chu-tzu yü-lei* 朱子語類 (Peking: Chung-hua, 1986) 96, p. 2473, trans. Chan, *Reflections*, p. 179.

the end.¹⁷ I have found no evidence that either Ch'eng I or Chu Hsi challenged the legal rights of widows that made remarriage so convenient.

The strong rights of widows to return to their natal families and to take their dowry property with them, however, did not go unchallenged during the Sung. Towards the end of the dynasty some of Chu Hsi's followers began to take seriously the classical prohibitions against widow remarriage. Chu Hsi's son-in-law and follower Huang Kan 黃榦 (1152-1221) argued that principle and morality had to take precedence over laws and customs, and in this vein he wrote judgements that contradicted the legal precedents that had operated until his time. He called on widows to stay chaste and live in their husbands' households while serving their in-laws and preserving their own and their husbands' property for their children. He also ordered wives to share their dowry property with their husbands' families. Even Huang Kan, though, admitted that if a woman had no children, she had the legal right to return to her natal family with her dowry (both land and movables) in tow; he did not propose that women be separated from their property.¹⁸

Opposition to widow remarriage and women's personal property rights by Confucians of the Ch'eng-Chu school does not seem to have affected either Sung laws or practice. Throughout the dynasty nearly all magistrates upheld a woman's right to return home if widowed and to take all of her dowry into a second marriage. Even magistrates who expressed support for Ch'eng-Chu morality and opposed widow remarriage felt bound to enforce women's rights in this regard.¹⁹

This situation was to change during the Yüan dynasty. From the time that the Mongols conquered North China in the 1230s, through the invasion of South China in the 1270s, and into the fourteenth century, laws and customs affecting widow remarriage and women's property

¹⁷ *Hui-an hsien-sheng Chu wen-kung wen-chi* 晦菴先生朱文公文集 (SPTK) 26, pp. 28b-29a. See also Bettine Birge, "Chu Hsi and Women's Education," in Wm. Theodore deBary and John Chaffee, eds., *Neo-Confucian Education: The Formative Stage* (Berkeley: U. California P., 1989), pp. 339-40; Ch'en, *Fu-nü sheng-huo*, pp. 137-39; Lau, "Ch'ien-t'an Sung-tai," pp. 40-46. Cf. Julia Ching, "Sung Philosophers on Women," *MS* 42 (1994), pp. 270-72.

¹⁸ *Ming-kung shu-p'an Ch'ing-ming chi*, appendix 2, pp. 603-4, 606-8; *Mien-chai chi* 勉齋集 (SKCS chen-pen edn.) 33, pp. 30b-32a, 34b. For a thorough discussion, see Bettine Birge, "Women and Property in Sung Dynasty China" (Ph.D. diss., Columbia U., 1992), pp. 239-59.

¹⁹ Birge, "Women and Property," esp. chaps. 2, 3.

underwent profound change, ironically bringing them more into line with the philosophy of the Chu Hsi school. In the century after Huang Kan's death, there occurred a shift in attitudes towards widows and the enactment of new legislation to back up sanctions against remarriage. A series of unprecedented laws deprived widows of personal property rights, made it harder for them to return home, and transferred power over their remarriage from their natal parents to their in-laws. These laws were all carried over into the following dynasties. In the remainder of this article, I will describe the complex process by which these new laws and hardening attitudes came about.

MARRIAGE AND THE LEVIRATE IN MONGOL SOCIETY

The Mongols were a nomadic people who practiced no fixed agriculture and for whom wealth and power were understood in terms of control over people, together with herds and grazing rights, rather than control over land. Steppe society lacked the complex land rights and resulting social stratification characteristic of highly developed agricultural populations like the Chinese.²⁰ The institution of marriage among the Mongols also reflected this property regime. Daughters did not receive a dowry when they married that would mark and maintain them in a particular social class. Rather, among both rich and poor Mongols, rights to the woman's person were transferred to the groom's family in return for a payment of brideprice.²¹ If the prospective groom could not afford the price (which could be high), he might have to labor for several years in his wife's family to pay off the debt.²² Brides could also be obtained by capture, or by

²⁰ For a general description of Mongol nomadic society, see David Morgan, *The Mongols* (Oxford: Blackwell, 1986), pp. 32–40. The general “anarchic” and “classlessness” of Mongol society is well illustrated in John M. Smith, Jr., “Mongol and Nomadic Taxation,” *HJAS* 30 (1970), esp. pp. 78–79, 83–85.

²¹ Jennifer Holmgren, “Observations on Marriage and Inheritance Practices in Early Mongol and Yüan Society, with Particular Reference to the Levirate,” *Journal of Asian History*, 20.2 (1986), pp. 129–30. See also William Rockhill, trans., *The Journey of William of Rubruck to the Eastern Parts of the World, 1253–55, as Narrated by Himself* (Nendeln, Liechtenstein: Kraus Reprint Ltd., 1967; orig. London: Hakluyt Society, 1900), p. 77. This situation supports Jack Goody's contention that in sedentary societies with firm property rights and social hierarchy a system of dowry operated, while in societies without strict land rights or social divisions brideprice predominated. See Jack Goody, *The Oriental, the Ancient and the Primitive* (Cambridge: Cambridge U.P., 1990), and Goody and S. J. Tambiah, *Bridewealth and Dowry* (Cambridge: Cambridge U.P., 1973).

²² There is strong evidence that Chinggis Khan had to do this; see Holmgren, “Observa-

inheritance from an older male relative. This latter was called the levirate.

The levirate operated most often in the case of a younger brother inheriting his older brother's widow, but it could also operate across generations: a son could inherit his father's secondary wives, a nephew his uncle's widow, etc. In Mongol law, the first husband had to be senior to the second. The levirate illustrated the concept that rights over the woman's body and labor belonged now to her husband's family, in perpetuity. Levirate marriage also had an important economic function in the Mongol household. It provided wives for younger males without the high outlay of brideprice. It also prevented the loss of the labor power of the woman herself. Additionally, a wife was usually given livestock and other property from her husband sometime after she married, and the levirate ensured that these assets stayed in the family.²³

The levirate operated differently depending on social class. In poor families, especially those with no eligible levir, a widow might be driven out as one more mouth to feed.²⁴ In wealthy families, especially if the woman were the senior wife, the widow might resist a levirate marriage and use her assets to maintain an independent household with herself at the head.²⁵ This was possible because Mongol women in fact often had considerable authority in the household. They were responsible for managing the camp when the husband was away on hunting or military campaigns, and some could acquire considerable wealth of their own. Women who avoided levirate marriage in this way had to remain unmarried. The levirate operated most often among families who were neither extremely wealthy nor extremely poor, the majority. Among all social groups there was virtually no concept of a widow returning home or of leaving the family to remarry an outsider. Indeed, remarriage to a man outside of the husband's

tions," pp. 132–34.

²³ Ibid., pp. 131, 152–53.

²⁴ This may have happened to the mother of Chinggis Khan. She was abandoned by the family even though her deceased husband had a younger brother; Holmgren, "Observations," pp. 134–35; Paul Ratchnevsky (trans. Thomas Haining), *Genghis Khan: His Life and Legacy* (Oxford: Blackwell, 1991), pp. 22–23.

²⁵ Holmgren, "Observations," pp. 161–67; Morris Rossabi, "Khubilai Khan and the Women in His Family," in *Studia Sino-Mongolica: Festschrift für Herbert Franke* (Wiesbaden: Franz Steiner Verlag, 1979), pp. 155, 160. For comments on the operation of the levirate (or lack of it) for Hö'elun and Khubilai's mother Sorghaghtani-Beki, see Ratchnevsky, *Genghis Khan*, pp. 22, 98. For more on both these women and their widowhood, including Sorghaghtani-Beki's resistance to the levirate, see Rossabi, "Khubilai Khan and the Women," esp. pp. 155–66. In fact, very few Mongol women in the highest elite remarried in levirate unions or otherwise.

family, common among the Chinese, seems to have been almost unheard of in Mongol society.²⁶

The Chinese abhorred the practice of the levirate, and considered sexual relations between a widow and any of her husband's relatives to be incest. It is significant that contemporary authors also contrasted the Mongol custom of widows staying in the husband's family with the Chinese custom of widows returning to their natal home. The physical location of the widow was tied in many minds to ethnicity. Comments on levirate marriage underscore the fact that the Chinese expected a widow to return to her natal family, and found continued residence in the husband's household to be an alien custom linked with the unnatural and immoral act of levirate marriage. A Sung author writing about the Jurchen just after 1138 declared:

It is the custom of the caitiffs to take their wives from another family, but if the husband dies the wife is not ordered to return to her family. Instead, brothers or nephews [of the deceased] are all allowed to become engaged to her. There are even people who have made their stepmother their wife, just like dogs or pigs. With the Chinese this is different because they know that it would be against the law.²⁷

More than a century later, one of Khubilai's advisors, Hu Chih-yü 胡祗遯 (1227-1295), made a similar distinction between Mongol culture and Chinese culture. He contrasted Mongol widows, who stayed in the husband's household to enter levirate unions, with Chinese widows, who returned home. In response to the problem of marriage law under Mongol

²⁶ Holmgren, "Observations," esp. pp. 151-57. Mongol religious beliefs reinforced attitudes against widow remarriage to outsiders. The Mongols believed that a wife would be reunited with her first husband after death. Marriage outside the family defiled the widow, but levirate marriage did not. See John A. Boyle, "The Thirteenth-century Mongols' Conception of the After Life: Evidence of Their Funerary Practices," *Mongolian Studies* 1 (1974) pp. 6-7; Rossabi, "Khubilai and the Women," p. 155; Henry Serruys, "Remains of Mongol Customs in China during the Early Ming Period," *MS* 16 (1957), p. 174; Rockhill, trans., *William of Rubruck*, pp. 77-78.

²⁷ *Lu-t'ing shih-shih* 虜廷事實, in *Shuo-fu san-chung* 說郭三種 (Shanghai: Ku-chi, 1988) 8, p. 173; trans. Herbert Franke, "Jurchen Customary Law and the Chinese Law of the Chin Dynasty," in Dieter Eikemeier and Herbert Franke, eds., *State and Law in East Asia: Festschrift Karl Büniger* (Wiesbaden: Otto Harrassowitz, 1981), p. 228, and idem, "Women under the Dynasties of Conquest," in Lionello Lanciotti, ed., *La Donna nella Cina Imperiale e nella Cina Repubblicana* (Florence: Leo S. Olschki Editore, 1980), p. 31.

rule, he advocated a dual system whereby the Mongol “Northerners” would follow their own laws and customs and the Chinese “Southerners” would follow theirs: “the Northerners [Mongols and other non-Han] should still practice the levirate, the Southerners [Chinese] should still return home [when widowed].”²⁸ In cases of cross-cultural marriage, he proposed that the ethnic group of the husband take priority.

Comments like these about both the Jurchen and the Mongols illustrate the problems generated by conflicting definitions of marriage among different ethnic groups. They also show that differences in marriage practice were seen in spatial terms: Chinese widows returned home, Mongol and Jurchen widows did not. These dichotomies were to break down during the succeeding decades.

1260–1271: SEPARATION OF MONGOL AND CHINESE LAW

The process by which marriage laws were transformed to promote widow chastity was a complicated one, full of reversals and inconsistencies, that took place in stages between the start of Khubilai’s reign in 1260 and the 1330s. When Khubilai came to the throne in 1260, he took the advice of Hu Chih-yü and maintained separate legal systems for the Chinese and Inner Asians. The Chinese came under the jurisdiction of the T’ai-ho Code (T’ai-ho lü 泰和律) of 1202, of the Jurchen Chin dynasty, from whom the Mongols had conquered North China. (The Mongols of course did not yet occupy south China.) While the T’ai-ho Code had been an attempt to unify Chinese and Jurchen law, it specifically maintained separate laws for Chinese and Jurchen in areas where customs were seen to be irreconcilable.²⁹ Notably, levirate marriage was one of these, and it was outlawed for the Chinese. The code read:

Chinese and Po-hai people are not included among those who may inherit a wife from relatives within the mourning circle.³⁰

²⁸ *Tzu-shan ta ch’üan-chi* 紫山大全集 21, pp. 7a–b; as cited in Hung Chin-fu 洪金富, “Yüan-tai te shou-chi hun” 元代的收繼婚, in *Chung-kuo chin-shih she-hui wen-hua shih lun-wen-chi* 中國近世社會文化史論文集 (Taipei: Academia Sinica, 1992), p. 288.

²⁹ Herbert Franke, “The Legal System of the Chin Dynasty,” in Kinugawa, ed., *Ryü Shiken*, pp. 387–409, esp. pp. 401–2.

³⁰ *Ta-Yüan sheng-cheng kuo-ch’ao tien-chang* 大元聖政國朝典章 (photortp. of Yüan edn.; Taipei: Ku-kung po-wu kuan, 1976; usually referred to as *Yüan tien-chang*, hereafter cited as *YTC*) 18, p. 26a–b #826 (numbers following *YTC* citation reflect ordination of all documents

This statute implies that remarriage for Chinese women outside of the mourning circle was allowable. An earlier order from the Jurchen emperor Shih-tsung 世宗 in 1169 made this explicit, and again emphasized the custom of Chinese widows returning home: “the wives of [deceased] brothers of Chinese and Po-hai 渤海 men are to return to their natal families at the end of the mourning period and may remarry in accordance with the rites.”³¹

Up to the end of 1271, Khubilai’s administration and officials at all levels of government both Chinese and Mongol enforced the T’ai-ho Code among the Chinese. Different offices consistently ruled that Chinese could not appeal to non-Chinese law, and these rulings were applied in numerous examples to levirate marriage. For instance, in 1270 a man from Ho-chien 河間 circuit filed a lawsuit complaining that his wife’s daughter, Ch’ing-erh 青兒,³² had observed the full mourning period for her deceased husband, but that her husband’s older brother, Ts’ui Ta 崔大, would not let her return home (presumably to remarry). Instead the brother Ts’ui Ta insisted that Ch’ing-erh marry his younger brother Ts’ui Lü-chü 崔驢駒 in a levirate union. The circuit-level judge sent the case up to the Law Office (Fa-ssu 法司) in the central government,³³ which rendered a decision citing verbatim the prohibition on levirate marriage for the Chinese from the T’ai-ho Code. This decision was in turn approved by the Central Secretariat which repeated an earlier communiqué outlawing levirate marriage for the Chinese:

According to the old regulations: when people of the same group commit crimes against each other, they should follow their own

in *YTC*). For evidence that *YTC* here quotes the T’ai-ho Code, see Yeh Ch’ien-chao 葉潛昭, *Chin-lü chih yen-chiu* 金律之研究 (Taipei: Shang-wu, 1972), pp. 17–18.

³¹ *Chin shih* 金史 (Kuo-fang yen-chiu edn.) 6, p. 49; also quoted in Hung, “Yüan-tai,” p. 283. Hung interprets the term *hsü-hun* 續婚 to mean “levirate marriage” rather than “remarriage (to an outsider)”; thus he reads this passage differently to mean that Chinese and Po-hai widows could choose between returning home, staying in the husband’s house to marry in a levirate union, or remaining chaste for life; p. 283. Herbert Franke interprets the passage as I do here. See Franke, “Jurchen Customary Law,” p. 228; and idem, “Women under the Dynasties of Conquest,” p. 31.

³² The wording implies that this is a daughter by a previous marriage.

³³ The Law Office (Fa-ssu) served as a court of appeals similar to the Ministry of Punishments (Hsing-pu 刑部) until 1271 when the T’ai-ho Code was abrogated; David Farquhar, *The Government of China under Mongolian Rule: A Reference Guide*, Münchener ostasiatische Studien 53 (Stuttgart: Franz Steiner Verlag, 1990), p. 199. For more on this office, see Miyazaki Ichisada 宮崎市定, “SōGen jidai no hōsei to saiban kikō” 宋元時代の法制と裁判機構, rpt. idem, *Ajiashi kenkyū* アジア史研究 (Kyoto: Dōhōsha, 1975) 4, pp. 226–27.

customary law. Chinese and others may not apply other laws by analogy to settle cases. . . .

There is to be no levirate marriage. If the woman in question wishes to stay chaste after the mourning period is over, or wishes to return to her natal family and remarry, she should be allowed to do so.³⁴

Finally, in the second month of 1271,³⁵ the emperor himself, Khubilai, issued an edict that stated the separation of law by nationality and reiterated a Chinese widow's right to return to her natal home. This was in the form of "General Rules for Marriage and Betrothal Gifts," item six of which reads:

When people of the various nationalities marry within their ethnic group, they should each follow their own customary laws. Those who marry across ethnic group should follow [the customs of] the husband.³⁶

Item five of these rules reads:

If a woman [wishes to] stay chaste after the mourning period is over, and wishes to return to her natal family, she should be allowed to do so. Her parents-in-law may not on their own initiative arrange a remarriage for her.³⁷

³⁴ *YTC* 18, p. 26b #826. Note that this seems to raise the possibility of staying chaste in the husband's family, a rather problematic proposition in the face of pressure for a levirate union, as seen below.

³⁵ I give dates according to the Chinese lunar calendar; that is, I have preserved the number of the month as it is recorded in the original Chinese, while I have converted the year to the western calendar. This means that months at the beginning or end of the year I name may in fact fall into the preceding or following year by strict western reckoning.

³⁶ *YTC* 18, p. 2b #771. Mongols were exempted from these rules, which I understand to mean that Mongol women in inter-ethnic marriages were not subject to Chinese customs. My interpretation of this edict draws on *T'ung-chih t'iao-ko* 通制條格, ed. Huang Shih-chien 黃時鑑 (rpt. of Yuan fragment: Hangchou: Che-chiang ku-chi, 1986; hereafter, *TCIK*) 4, p. 47. The idea that the husband should take precedence is reminiscent of the suggestion of Khubilai's advisor Hu Chih-yü (1227-1295), cited above, and he may have influenced this edict.

³⁷ *YTC* 18, p. 2b #771; *TCIK* 3, p. 40. See also Hung, "Yüan-tai," p. 294. The edict is also quoted in *YTC* 18, pp. 13b-14a #793 and 18, p. 14a #795.

As we have seen, Khubilai's edict was consistent with the decisions of his subordinate administrators.

During this early period, there was broad agreement between different offices and between officials of different ethnicities concerning the application of marriage and family law. The application of the T'ai-ho Code through 1271 and legal decisions based on it illustrate the relative freedom of Chinese women to return to their natal families and remarry when widowed.

The other items of Khubilai's "General Rules for Marriage," however, reveal that some Chinese were beginning to adopt non-Han customs. Item One of the rules set out limits on betrothal gifts; item three prohibited same surname marriages, saying that those already contracted could stand; and item four prohibited Chinese men from taking more than one wife.³⁸ All of these refer to standard marriage practices of the steppe peoples: huge betrothal gifts, same surname marriage, and multiple wives; and Khubilai's edict exempted Mongols from the laws prohibiting them. Evidently the Han residents of north China were beginning to adopt some of the practices of the steppe peoples who had governed them for much of the twelfth and thirteenth centuries (or longer in some areas). This mixture of customs began to cause confusion, and eventually resulted in an end to separate laws for Chinese and non-Chinese.

1271 – 1276: MONGOLIZATION OF THE LAW

In the eleventh month of 1271 Khubilai adopted the title Yüan for his dynasty, and at the same time abolished the use of the T'ai-ho Code. This ended the relative consistency of verdicts upholding Chin law for the Chinese up to that time, and it created considerable concern on the part of Chinese officials about the lack of any formal law code.

The abolition of the T'ai-ho Code had an immediate effect on levirate marriage and the separation of Chinese and Mongol law. Just one month later, in the twelfth month of 1271,³⁹ the issue of levirate marriage came before the Central Secretariat. Two of Khubilai's top advisors submitted a

³⁸ *YC* 18, p. 13b-14a #793; *TCIK* 4, p. 47. See the similar prohibition on multiple wives in the Tang Code, article 177; *Tang-li shu-i* 13, p. 255.

³⁹ By the western calendar, the day would actually fall in January of 1272. For consistency I will refer to the decree throughout as the edict of "1271." (See n. 35, above.)

memorial recommending that the levirate be abolished.⁴⁰ In response, Khubilai issued a blanket decree declaring that, on the contrary, any man had the right to take his father's wife or an older sister-in-law in levirate marriage. The surviving document reads:

In response to the memorial, the emperor issued a decree, saying: "Quickly have this order sent out: One's sisters-in-law or father's secondary wives should be taken in levirate marriage." Thus said the decree. Respect this.⁴¹

Khubilai's decree represented a sharp break with the policies of his government up to that time, and seems inconsistent with his usual tolerance of indigenous customs. We cannot know exactly why this change came about. One possibility is that intermarriage between Mongols and Chinese, with the resulting mixed race offspring, was making it hard to enforce laws on the basis of ethnicity. It is also possible that Khubilai wished to unify the law of the land, and the growing number of Chinese practicing the levirate made this feasible. Shake-ups in the government might also have played a role. Inter-ethnic and personal rivalries plagued Khubilai's reign in this period. For instance, the Uighur Confucian Lien Hsi-hsien 廉希憲 (1231–1280), who in the 1260s influenced Khubilai to maintain a Chinese style government, resigned from the Central Secretariat in 1270. Competition

⁴⁰ The advisors' names were Dashman (Ta-shih-man 荅失蠻) and Sangha (Hsiang-ke 相哥). These were possibly Sangha, the Uighurized Tibetan infamous for his corruption and harsh fiscal measures, executed in 1291, and Dashman (1248–1304), the high official of the Kereit tribe who served Khubilai from an early age. The identification of these two is uncertain, since other people at the time shared these names, and neither one of them appears in the sources until later. Nevertheless, it is likely that these are the two, given the closeness to the throne of the officials who submitted the memorial (indicated by the language of the text) and the life circumstances of the two men. Both were at Khubilai's court in 1271. See *YS* 元史 (Peking: Chung-hua, 1992 [1976]; hereafter, *YS*) 205, p. 4570; *Hsin Yuan-shih* 新元史 133, p. 573C; 223, p. 868A, and *Meng-wu-erh shih-chi* 蒙兀兒史記 50, p. 384b; 106, p. 665a, both rpt. in *Yüan-shih erh-chung* 元史二種 (Shanghai: Ku-chi, 1989); and *Mu-yen chi* 牧庵集 (SPTK edn.) 13, pp. 112–14. I thank Herbert Franke and Sugiyama Masaaki for discussions of these names.

⁴¹ *YTC* 18, p. 23a #818. Some scholars have suggested that this edict was meant only for Mongols, but I agree with Hung Chin-fu that this is unlikely since Mongols already practiced the levirate; and as we will see below the edict was applied to Chinese. See Hung, "Yüan-tai," p. 294; Henry Serruys, "Remains of Mongol Customs," p. 181; Rossabi, "Khubilai Khan and the Women," p. 175, n. 18. See also Paul Ratchnevsky, "The Levirate in the Legislation of the Yuan Dynasty," in *Tamura hakushi shōju tōyōshi ronsō* 田村博士頌壽東洋史論叢 (Tokyo: Dōhōsha, 1968), p. 46; Holmgren, "Observations," p. 179.

with the Muslim advisor Ahmad (d. 1282) was the obvious reason, but significantly, his biographers also cite Lien's wish to protest "inconsistencies in Khubilai's edicts."⁴²

The new blanket levirate law was immediately applied to the Chinese, and began to cause considerable confusion. Over the next few years, there was disagreement between different courts over the application of levirate law. Some lower courts continued to reject levirate marriages on the basis of long-standing Chinese laws, while offices of the central government harshly enforced the 1271 edict.

In one case, in the fifth month of 1273, a mother named Kuo Ah-Ch'in 郭阿秦 sued to force the fiancée of her recently deceased older son to marry her younger son in a levirate union. The judges at the prefectural level in Ta-tu 大都 (Peking) decided against the levirate marriage on four grounds:

1. the original marriage with Kuo Ah-Ch'in's older son had not actually taken place;
2. Kuo Ah-Ch'in had only paid the initial go-between gift and not the actual betrothal gifts;
3. Kuo Ah-Ch'in's younger son was only 12 *sui*, not yet old enough to marry, while the girl was 17 *sui*; and
4. the girl's father, who strongly objected to the marriage, had already received the full compliment of betrothal gifts and contracted a legal marriage to someone else.⁴³

Despite these compelling reasons to forgo a levirate marriage, upon review the Ministry of Revenue sided with Kuo Ah-Ch'in. They declared that "previously issued imperial edicts must be respected," and ordered the girl to marry Ah-Ch'in's twelve-year-old son. Kuo Ah-Ch'in was ordered to pay up the rest of the betrothal gifts as promised, and the girl's father was to return the betrothal gifts he had received from the other family.

Other verdicts demonstrate similar harsh enforcement of the levirate at the national level, among Chinese. In some cases, the woman had only been engaged and the marriage not consummated, in others the levir

⁴² Hsiao Ch'i-ch'ing, "Lien hsi-hsien," in de Rachewiltz, ed., *In the Service of the Khan* (Wiesbaden: Otto Harrassowitz, 1993), pp. 492-43. In the same month as Lien's resignation, Khubilai had established the Secretariat for State Affairs with Ahmad at its head.

⁴³ *YC* 18, p. 24a #822. Hung "Yüan-tai," p. 303-4.

already had a wife or was under age, and in others the levirate marriage took place during the mourning period, a violation of Chinese law and Confucian ethics.⁴⁴ In every case, an office of the central government forced the woman into a levirate union, over her objections and those of her parents. In two cases where the levir was already married or engaged, the Ministry of Revenue noted that the levirate marriage contradicted Khubilai's 1271 second month "General Rules on Marriage and Betrothal Gifts" that prohibited a Chinese man from taking two wives, but declared that the more recent law on the levirate took precedence.⁴⁵ In the case of Kuo Ah-Ch'in above, the verdict of the Ministry of Revenue contradicted the item of Khubilai's "General Rules" that prohibited in-laws from forcing widows into second marriages. Evidently the more recent edict on levirate marriage took precedence over this rule as well.

The rule that a widow could stay chaste and return to her natal family, also included in the 1271 "Rules on Marriage," was also swept aside. In a decision of 1273, the Ministry of Revenue rejected the suit of a widow that she be allowed to stay chaste and raise her son, as approved by her in-laws. She had been living in her in-laws' house, but had fled to her own parents after being raped by her brother-in-law. The Ministry forced her to marry her younger brother-in-law who had raped her, against the wishes of his parents and despite the fact that he was already married to someone else. This ruling firmly denied the widow any control over her own person.⁴⁶

In an interesting variation that shows the confusion and disagreement at lower levels of government over levirate marriage, one widow *wanted* to marry her brother-in-law over the objections of her parents and the local authorities. Wang Yin-yin 王銀銀 lived as a widow with her son and her late husband's younger brother, Cheng Wo-wo 鄭窩窩. She became pregnant by the brother and the two ran off together to escape punishment. The local authorities apprehended them and threw Cheng in prison, shackled in a cangue, for committing illicit intercourse. Meanwhile, Yin-yin's mother

⁴⁴ *YTC* 18, p. 24a #822; 18, p. 24a #821 (betrothal only); 18, pp. 24a-b #823; 18, pp. 23b-24a #820; 18, p. 24a #822 (two wives, or underage); 18, pp. 24a-b #823 (during mourning period). Note that several cases presented multiple grounds on which to object to the levirate marriage. I am relying on the names given in the texts to determine the ethnic group of the litigants. This is not entirely reliable, but given the nature of the objections raised to the levirate in these cases, the litigants are almost certainly Chinese.

⁴⁵ *YTC* 18, pp. 24a-b #823.

⁴⁶ *YTC* 18, pp. 23b-24a #820. Cf. Hung, "Yüan-tai," p. 302; Ratchnevsky, "The Levirate," p. 46.

accepted betrothal gifts for her marriage to someone else. The case came before the Ministry of War and Punishments at the end of 1272,⁴⁷ which reversed the lower court action. Citing Khubilai's edict of the year before, the Ministry ordered that Cheng be released and be given Wang Yin-yin in levirate marriage.⁴⁸

In another interesting twist, when Chinese did try to take advantage of the law allowing (or forcing) levirate marriages, they often got tripped up. In 1275 the former director-general (*tsung-kuan* 總管) of Nan-ching 南京 circuit (Kaifeng), a Chinese named T'ien Ta-ch'eng 田大成, married his younger brother's widow in a levirate union. The Ministry of War (Ping-pu 兵部) declared the marriage illegal and punished T'ien with 87 blows of the bamboo and dismissal from office. The widow got 57 blows. They declared that by taking his younger brother's widow in marriage, T'ien had "destroyed human relations and damaged civilized customs."⁴⁹ The Mongol prohibition on taking a younger brother's wife was poorly understood by the Chinese, who were used to older men taking young concubines, and for whom traditional law harshly punished sex with the wife or concubine of a man's elder, such as his father or older brother. The culture gap between the Mongols and the Chinese could not be bridged by imperial edicts or laws made in the capital. Thus during the early 1270s Mongol laws and Chinese practice came into frequent conflict.

1276-1294: LENIENT ENFORCEMENT OF MONGOL LAWS, REASSERTION OF CHINESE VALUES

The harsh enforcement of the levirate among Chinese, brought on by Khubilai's edict of 1271, did not last long. As the conquest of southern China progressed in the 1270s, a number of Chinese officials were brought north to help administer the newly conquered territories, and already in the late 1270s they seem to have been having an effect on policies towards marriage. By 1276, when the conquest of Southern China was virtually complete, the sources show a distinct softening of the harsh attitudes of the

⁴⁷ These two ministries were combined off and on during the Yüan. See Farquhar, *Government of China*, p. 197.

⁴⁸ *YTC* 18, pp. 23a-b #819; see also Hung, "Yüan-tai," p. 302.

⁴⁹ *YTC* 18, p. 26b #828; Hung, "Yüan-tai," p. 304. About the incident *Yüan shih* says that T'ien had already died when the final verdict came down and that his wife was punished with 80 strokes; *IS* 8, pp. 161-62.

early 1270s. In a reversal of the trend during the early 1270s, the local authorities often supported forced levirate marriages while the central government rejected them. The change of policy was ushered in by a dramatic turnaround on the part of the Ministry of Revenue in 1276 that allowed all widows to escape levirate marriages by staying chaste.

The suit that precipitated the ruling originated in southern Shan-tung, P'u-t'ai 蒲臺 county, where a man sued to force his older brother's widow to marry him "according to the regulations" (or precedents, *i-li* 依例).⁵⁰ The widow, Ah-Chuang 阿莊, told the authorities that she wished to stay celibate and not marry anyone, including her husband's younger brother. Moreover, she dramatically proclaimed that if her actions were "contrary to principle" (*fei-li* 非理), she would willingly undergo a punishment of 107 strokes (the severest punishment for an improper marriage). The county magistrate ruled against Ah-Chuang, saying that since the man inherited his older brother's tax and corvée obligation, he should also inherit widow Ah-Chuang. This was entirely in accord with Khubilai's blanket edict of 1271, and consistent with central government verdicts of the past few years. Nevertheless, on review, the Ministry of Revenue disagreed.

In its verdict, the Ministry cited verbatim the two contradictory edicts of Khubilai's: one in the second month of 1271, the "General Rules on Marriage" declaring that a woman was allowed to stay chaste and could not be forced into a second marriage by her in-laws, and the other, issued in the twelfth month of the same year, allowing all men to take their father's or older brother's wives in levirate marriages.⁵¹ To reconcile these two orders, the Ministry issued a general directive, "to be distributed widely, with the hope that it will prevent further lawsuits" on this issue. It read:

From now on it should be as follows: If a widow wishes to stay chaste, the man eligible to take her in levirate marriage may not harass her, but must allow her to preserve her chastity. If however, the woman seeks to remarry, both she and the prospective husband are to be punished, and the eligible levir is to be allowed to marry her.⁵²

⁵⁰ *YTC* 18, p. 27a #830.

⁵¹ *YTC* 18, p. 27a #830. The original edicts are recorded in *YTC* 18, p. 2b #771; 18, p. 23a #818, respectively (cited above).

⁵² *YTC* 18, p. 27a #830; *TCIK* 3, p. 40 has a summary of the ruling (with the widow's name incorrectly given as Ah-Tsang 阿臧 instead of Ah-Chuang 阿莊). See also Hung, "Yüan-tai," p. 305; and cf. Ratchnevsky, "The Levirate," pp. 50–51. (The *YTC* entry refers to

We can infer that this ruling applied to all ethnic groups. The Ministry cited the precedent of a woman in Ts'ao-chou 曹州 (Shantung) with the Arabic name Fatima (Fa-tu-ma 法都馬), who may well have been Muslim. As for Mongols, it was already not unusual for elite Mongol women to stay chaste as the head of a household rather than enter a levirate union.⁵³

The ruling of 1276 set the stage for all kinds of other exceptions to levirate marriage, though not its actual revocation nor a return to Chin law that exempted Chinese from it. In four verdicts between 1277 and 1291, one from the Ministry of Revenue, two from the Ministry of Rites (a Confucian stronghold), and one from the Censorate, a levirate marriage was rejected because the levir was too young.⁵⁴ In one of these decisions, by the Ministry of Rites dated 1281, the levir was 12 *sui*, the same age as that in the case of 1273, when the Ministry of Revenue enforced a levirate marriage.⁵⁵

Other reversals of policy addressed the issue of the widow having been merely betrothed and not actually married. In contradiction to a 1273 ruling by the Ministry of Revenue, both the Ministry of Rites and the Regional Secretariat of Ho-nan rejected the demands of a levir on the grounds that the original marriage was not actually consummated.⁵⁶ In two other rulings, again by the Ministry of Rites, a levirate marriage was prohibited because the levir was already married to someone else.⁵⁷ In a third, the Ministry of Rites forced a man to break off his engagement to marry uxorilocally after he inherited his brother's wife in a levirate union.⁵⁸ These last three rulings by the Ministry of Rites made taking two wives

two separate cases, which Ratchnevsky combines into one.)

⁵³ *YTC* 18, p. 27a. On elite Mongol women avoiding the levirate through chastity, see Holmgren, "Observations," pp. 161–67.

⁵⁴ These were dated 1277, 1279, 1281, and 1291. *YTC* 18, pp. 27a–b #831; 18, p. 27b #832; 18, p. 9a #784; cf. *TCIK* 3, p. 41. (This last is an alternate record of the 1279 case in *YTC* 18, p. 27b #832. The *TCIK* version cites the widow having only been engaged, not the age difference, for rejecting the levirate union.)

⁵⁵ See *YTC* 18, p. 24a #822, cited above. In a decision of 1277 the Ministry of Revenue already reversed its own 1273 ruling and rejected a levir for being too young. His exact age is not given, only that it differs from the girl's by almost a generation; *YTC* 18, pp. 27a–b #831.

⁵⁶ *TCIK* 3, p. 40; 3, pp. 40–41. The first of these cases is the same as *YTC* 18, p. 27b #832, the 1279 case cited above, but a different reason is given for rejecting the levirate union.

⁵⁷ *TCIK* 3, p. 41 (1279); 3, pp. 40–41 (1300). The first of these was an uxorilocal marriage. This form of marriage presented another obstacle to the smooth operation of the levirate among Chinese. See Holmgren, "Observations," pp. 132, 179–80, and the next example below.

⁵⁸ *TCIK* 3, pp. 41–42 (1279).

illegal once again for the Chinese, and thereby reversed the 1273 decision of the Ministry of Revenue.

While officials in the central government were reversing earlier policies on levirate marriage, Chinese continued to be caught applying it in ways that were anathema even to Mongols. In the eighth month of 1277, the Ministry of Rites sent a communication to the Ministry of Punishments asking for a ruling on a man who had married his *younger* brother's widow. Chang I 張義, of P'ing-yang 平陽 circuit in Shansi, claimed he had permission from his mother to take his brother's widow in marriage, but the widow's family, a military household, brought the suit to court. The punishment was severe: 107 strokes for Chang I, 97 for his wife (though her family brought the case), 37 for the go-between, and dissolution of the marriage.⁵⁹ Regarding the mother who had colluded in the illegal marriage, the judges wrote:

As for [Chang's] mother Ah-Wang 阿王 who arranged the marriage, if we do not punish her as a warning to others, the laws and rites will be sullied and disordered. If she is not yet too old, she is to be beaten with 57 strokes of the bamboo.⁶⁰

The language was similar to the condemnation of T'ien Ta-ch'eng, the director-general of Nan-ching circuit, in 1275, whom the Ministry of War accused of "destroying human relations" and "damaging civilized customs,"⁶¹ cited above. T'ien got a slightly lighter sentence of 87 strokes (perhaps because he was an official), but both cases show that the Mongols had their own strict ethical standards that were a mystery to many Chinese.

⁵⁹ *YTC* 18, pp. 26b-27a #829; *Ta-Yüan sheng-cheng tien-chang hsin-chi chih-chih t'iao-li* 新集至治條例 (1323 supplement to *YTC*, pub. as part of *YTC*; Taipei: Ku-kung po-wu kuan, 1976; hereafter cited as *YTC*), sect. "Hu-pu 戶部, hun-yin 婚姻," p. 4a; Hung, "Yüan tai," p. 306. The case went to the Ministry of Punishments because it involved a military household. Cf. Ratchnevsky ("The Levirate," pp. 54-55), who did not have the benefit of the 1976 Palace Museum edition of *YTC*, nor the corrections by Ch'en Yüan to the edition by Shen Chia-pen 沈家本 (1840-1913) that he used. In the Shen Chia-pen edn., several lines from the previous case are accidentally inserted into this one, rendering it quite different from the Yüan original. See *Ta-Yüan sheng-cheng kuo-ch'ao tien-chang* (Shen Chia-pen edn.; rpt. Taipei: Wen-hai, 1974) 18, pp. 40a-b; and Ch'en Yüan 陳垣, *Shen-k'o Yüan tien-chang chiao-pu* 沈刻元典章校補 (Peking: Pei-ching ta-hsüeh yen-chiu so kuo-li men, 1931) *tien-chang* 典章 18, p. 5a.

⁶⁰ *YTC* 18, p. 27a #829. Elderly people could be excused from corporal punishment.

⁶¹ *YTC* 18, p. 26b #828.

During these years after the conquest of the South, 1276–1294, Mongol policies supporting levirate marriages were countered and Chinese values were reasserted. Nevertheless, the reversal of policy did not yet go so far as to assert the strict Confucian values of the Chu Hsi school. Judges who rejected levirate marriages still expected a widow to return to her natal family and remarry. In the cases mentioned above, all three central offices involved, the Ministry of Revenue, Ministry of Rites, and the Censorate, explicitly allowed the widow to return to her natal family and marry someone else. (One woman even married three times.)⁶² Moreover, the offices of the central government tended to be lenient in the application of marriage laws and to uphold the right of widows to remarry under a range of circumstances. In particular, in two examples the Censorate declined to annul remarriages to outsiders that took place during the mourning period for the first husband, even when a levir was seeking to marry the widow.⁶³ This lenient attitude towards the mourning period, the residence of widows, and remarriage, was to change in the fourteenth century.

1294–1330: THE CONFUCIAN TRANSFORMATION AFTER KHUBILAI AND NEW SANCTIONS AGAINST WIDOW REMARRIAGE

In 1294, the great ruler Khubilai khan (Emperor Shih-tsu 世祖) died, and was succeeded by his grandson Temür (Emperor Ch'eng-tsung 成宗; r. 1294–1307). Temür generally continued the policies of Khubilai and retained the top ministers from the end of Khubilai's reign (such as the grand councillor Oljei) in his administration. Nevertheless, from early on he paid attention to Confucianism and promoted Confucian scholars, and his reign was marked by increasing influence of Confucian advisors.⁶⁴ Two figures in particular were especially influential: the Mongolian minister Khar-

⁶² *YTC* 18, p. 9a #784.

⁶³ *YTC* 18, p. 9a #784 (two cases in text, dated 1275, 1290). In the later of the two cases, the local branch Censorate wanted to confiscate the betrothal gifts because the second marriage was contracted during the mourning period, but the central Censorate rejected this.

⁶⁴ For instance, after his accession, Temür issued a decree to respect Confucius, built a new temple to Confucius in the capital, and increased the enrollment of students in the School for the Sons of the State (Kuo-tzu hsieh 國子學); Hsiao Ch'i-ch'ing, "Mid-Yüan Politics," chap. 6 of Herbert Franke and Denis Twitchett, eds., *The Cambridge History of China: Vol. 6, Alien Regimes and Border States, 907–1368* (Cambridge: Cambridge U.P., 1994), pp. 496–48.

ghasun 哈刺哈孫 (1257–1308), who was a strong supporter of Confucianism and became especially prominent after 1303, and the Turkish Khangli statesman Bukhmu 不忽木 (1255–1300), who was actually educated in the School for the Sons of the State (Kuo-tzu hsüeh 國子學) by none other than the great Chu Hsi follower Hsü Heng 許衡 (1209–81). Moreover, the Confucianism that began to influence the Yüan regime more and more at this time was the Confucianism of the Chu Hsi school, as interpreted by Huang Kan, Chu Hsi's son-in-law. All three lineages by which Chu Hsi's thought entered north China were strongly influenced by the thought of Huang Kan. His interpretation of the Learning of the Way (*tao-hsüeh* 道學) became the Confucianism (or as some would say, neo-Confucianism) of the late Yüan dynasty.⁶⁵ In the area of marriage and property law, we also find remarkable traces of the influence of Huang Kan's thought.

Temür's early reign was marked by the continued move away from harsh taxation policies, including the cancelation of tax debts and the granting of tax exemptions for parts or all of the country. In 1302 he even issued an order not to collect tax revenues beyond the established quotas for an area.⁶⁶ Perhaps as a result of this shift away from the previous obsession with revenue, cases of marriage and inheritance came to be handled almost exclusively by the Ministry of Rites, rather than the Ministry of Revenue as in Khubilai's reign. This major shift of responsibility indicates that marriage was no longer in the realm of revenue (once dominated by Muslim financial advisors known for rapacious tax measures), but entered the realm of "rites," a more arcane arena where issues of Confucian ethics and morality dominated. This change had the effect one might anticipate: issues of levirate marriage, the mourning period, widow chastity, and women's property all shifted towards a Chinese Confucian perspective. In particular, the social agenda articulated by Huang Kan gained unprecedented legislative support.

The most obvious sign of a shift towards Confucian values during Temür's reign (1294–1307), and in the years after, was a steady increase in limits placed on levirate unions, as ruling after ruling, usually by the Ministry

⁶⁵ Wing-tsit Chan, "Chu Hsi and Yüan Neo-Confucianism," in Hok-lam Chan and Wm. T. deBary, eds., *Yüan Thought: Chinese Thought and Religion under the Mongols* (New York: Columbia U.P., 1982), esp. pp. 198–201.

⁶⁶ Hsiao, "Mid-Yüan Politics," p. 497; *IS* 20, p. 440.

of Rites, rejected them. Reasons for rejecting the levirate marriage varied: in one case the levir had become a monk, in another the request came too late, after the widow had married someone else. In yet another, a cousin's suit to marry the widow was rejected because the younger brother of the deceased had already allowed the widow to return home, thus cancelling any claims of a more distant levir. Uxorilocal marriage was also given as a reason not to allow the levirate to operate.⁶⁷ In rulings from 1308 by the Ministry of Rites and 1321 by the Ministry of Punishments, prohibitions on levirate marriage by a relative older than the husband were reiterated and harsh punishments were standardized.⁶⁸ In 1304, the Ministry of Rites outlawed levirate unions between a widow and her husband's nephew for all Chinese. The test case involved the widow of a Chinese war slave; and the Ministry declared: "Even though the man is the slave of a Mongol soldier, he is a Chinese with a surname. Levirate marriage between a nephew and aunt sullies and confuses human relations. It should be outlawed."⁶⁹ In some respects this represented a return to the idea of separate laws for Mongols and Chinese. In 1330 levirate marriage in all forms was outlawed for the Chinese, but already in this earlier period the trend was moving in that direction.

Another issue in regard to which Confucian influences began to be felt in Temür's reign was the mourning period. Prohibitions on marriage and remarriage during the mourning period had been on the books and were even reiterated during Khubilai's reign. But as we saw above, the mourning period was laxly enforced and was a rather weak factor compared to others in legal decisions. In the 1270s even forced levirate unions under questionable conditions were upheld during mourning, and afterwards in 1290, one woman remarried twice while still in mourning for her first husband, and the marriages were not dissolved (though the second was delayed until mourning was over).⁷⁰ Towards the end of Khubilai's reign, this lax attitude began to change.

Considerable confusion existed about marriage during the mourning period. Many Chinese seem to have thought that it did not affect levirate

⁶⁷ *TCIK* 3, pp. 40–42.

⁶⁸ *YTCHC*, sect. "Hu-pu, hun-yin," pp. 4a–b.

⁶⁹ *TCIK* 3, p. 42. The Chinese war slave is described as a shepherd, "huo-ni-ch'ih" 火你赤, Mongolian *khonichi*. See Ratchnevsky, "The Levirate," p. 56 (he mistakenly gives the date as 1308).

⁷⁰ *YTC* 18, p. 24b #823; *YTC* 18, p. 9a #784.

marriages, and intentionally contracted them during the wake in front of the father's or brother's corpse. The Ministry of Rites dissolved such marriages in 1288 and again in 1298. In the former case, a son had already been born to the couple.⁷¹ In the latter, a Chinese official, chiliarch Wang Chi-tsu 王繼祖, took his father's wife in a levirate union and knelt with her before his father's body to pay obeisance, all on the very day of the death. The Ministry dissolved the marriage and dismissed the man from office, saying, "When his father died, and the body still lay out, Wang Chi-tsu forgot his grief and contracted a marriage. Nothing confuses norms and destroys customs more seriously than this."⁷² As the mourning period came to be more strictly enforced, women could use it to resist levirate marriages or other forced remarriages. In 1304 the Ministry of Rites allowed the widow of a goldsmith to dissolve a marriage because it had been forced on her during the mourning period.⁷³ On the other hand, women who wanted to remarry could be prevented from doing so during the mourning period. In numerous cases marriages were dissolved because the wife was still legally in mourning for a previous husband. Punishments varied, consisting of beatings from 57 to as high as 107 strokes. Then in 1320 the Ministry of Punishments standardized the punishments at 67 strokes for the woman who remarried, 57 for the man, 47 for the elder who presided over the wedding, and 37 for the go-between who arranged it. The marriage was to be dissolved and any betrothal gifts, engagement gifts, payments to the go-between, etc. were to be confiscated.⁷⁴ If the man and others involved did not know the woman was in mourning, the punishments were reduced. Though these did not forbid a woman from remarrying entirely, they prevented her from doing so during the first 27 months after her husband had died. The next year, in 1321, the Ministry of Rites (on the recommendation of the Ministry of Punishments) extended sanctions to *men* who married while in mourning for a mother or grandmother.⁷⁵

As levirate laws were relaxed, the issue of widow chastity took on new significance. In most of the above cases where levirate marriages were

⁷¹ *YTC* 18, p. 33b #846; Hung, "Yüan-tai," pp. 295, 308. I am following Hung's corrections of two corruptions in the text.

⁷² *YTC* 18, p. 33b #846.

⁷³ *TCIK* 4, pp. 60–61. This was not actually a levirate marriage. Artisans were a controlled occupational group during the Yüan, thus we see local officials trying to dictate marriages among them.

⁷⁴ *YCHC*, sect. "*Hu-pu, hun-yin*," pp., 3a–b.

⁷⁵ *YCHC*, "*Hu-pu, hun-yin*," p. 3b.

dissolved, the widow in question was allowed to return to her natal family and remarry an outsider. But as it became easier for Chinese widows to return home, with the relaxation and abrogation of levirate laws, other objections to widow remarriage emerged. The party suing for the levirate marriage sometimes argued explicitly that the loss of the widow would be a financial hardship or that she was needed to care for grandchildren.⁷⁶ The government acknowledged the economic basis for the levirate in a decision about military personnel made in 1296. In a case involving the widow of a Chinese man in the “newly incorporated” Southern Sung army (*hsin-fu chün* 新附軍), the Ministry of Rites agreed with the Branch Secretariat of Kiangsi, which declared that since a brother, nephew or son of the soldier had to take over his military service, his widow or daughter too should be inherited by this relative and remain registered with the military household. A man’s womenfolk were part of his estate as it were. Only if an eligible levir were unavailable could the wife or daughter marry whom she chose.⁷⁷

Another major concern was that a wife who left the family might take away its assets when she remarried. The complaint of a Chinese named Li T’ung 李通 was representative of this, when he filed a suit claiming that soon after his older brother died while serving in Kuang-tung, the widow had remarried taking away all his brother’s assets. This sort of problem arose most in faraway places like Kuang-tung. In response, the Regional Investigation Office (Lien-fang ssu 廉訪司) of Hai-pei kuang-tung 海北廣東 circuit submitted a report in the eleventh month of 1299 recommending that such widows be prevented from remarrying on their own:

Kuang-tung is a malaria-infested area. Officials from the north are separated from their families by ten thousand *li*. Those who succumb to the infectious earth and water and get sick and die are too many to count. Their wives and concubines are unable to stay chaste and [typically] get remarried. They gather the property and slaves that rightly belong to their former husband and take them all away. Even before the flesh and bones of the deceased official have grown cold, his family’s private assets and attendants already belong to someone else. ... From now on, when officials who serve in Kuang-tung pass

⁷⁶ E.g., see *YCHC*, “*Hu-pu, hun-yin*,” p. 4a.

⁷⁷ *YTC* 18, p. 18b #806. Ratchnevsky, “The Levirate,” p. 57. I am following Ratchnevsky’s reading, which seems to be the only plausible interpretation of the corrupted text.

away, the household members old and young who are left behind must obey the local authorities, and according to the regulations be sent back to the official's family. They may not get remarried on their own initiative. Those who offend against this [and remarry] will be prosecuted by the government accordingly, and the [new] marriage will be dissolved. If the family property of the former husband has already been disposed of and lost, the wife or concubine will be forced to make restitution. Such a provision will cut off the source of lawsuits, and will help correct human relations and improve customs.⁷⁸

The Ministry of Rites approved the suggestion and the Central Secretariat made it into law.⁷⁹

The above examples deal with widows as assets themselves in a household and the fear that widows could gain control of the husband's assets, or his family's property. The issue of a woman's own personal property was also not ignored. In 1303, the Yüan government, for the first time in Chinese history, promulgated a law that prevented a woman from taking her dowry into a second marriage. Up until this time, Chinese women from property holding families took assets with them into marriage in the form of dowry. This property legally remained the wife's own, and in cases of either widowhood or divorce, she could take it with her out of the marriage and into a remarriage. While we have no direct evidence of women taking their property out of marriages in the Yüan, as we do in the Sung, as late as 1281 the Yüan government upheld the T'ang and Sung law, found also in the Chin code, that a wife's dowry was not included in family division.⁸⁰ Even Huang Kan, who opposed women holding private property, had not tried to separate a wife from her dowry.⁸¹ Dowry property helped support a principal wife in a particular social class for her whole lifetime. During the economically volatile times of the Sung, families placed particular emphasis on dowry and for elite women these could be

⁷⁸ *YTC* 18, pp. 15b-16a #799.

⁷⁹ *YTC* 18, p. 16a #799; *TCIK* 4, p. 50. In a related decision in 1289, the Ministry of Rites prohibited wives of soldiers who had gone on campaign from remarrying under the assumption that the soldier had died. The ruling was again in response to complaints from the Kuang-tung area, this time saying that the parents of soldiers' wives often arranged hasty remarriages when soldiers failed to return promptly from campaigns; *YTC* 18, p. 18b #805.

⁸⁰ *YTC* 19, pp. 10b-11a.

⁸¹ Birge, "Women and Property," pp. 239-62.

generous.⁸² Steppe society in contrast did not operate on a dowry system. While Mongol wives had assets of their own, these usually came from the husband's camp. Moreover levirate marriage, and chastity for elite Mongol widows, kept a woman's assets within the household. To a non-Chinese, the idea that a woman could take property out of the household must have seemed alien and ill-advised. It is thus not surprising that under the Mongol-Yüan regime it was possible for the government for the first time to strip women of their rights to their own dowry. It is also no coincidence that this happened in the early 1300s, when Confucian officials in the Ministry of Rites, influenced by the teachings of Huang Kan which condemned remarriage and women's property rights, were promoting their values in the arena of marriage and family.

Appropriately, the new regulation depriving women of life-long dowry rights originated from the suggestion of a Mongolian (or Uighur) local official and was promulgated by the Ministry of Rites. We do not know what lawsuit or observation prompted the new measure, but the author, director-general of Hui-chou 徽州 circuit (just southwest of Hang-chou), Dorchi (To-erh-ch'ih 朵兒赤), makes clear from his wording that it was a break from the past. It attacked head on the property rights of widows and divorcées that until that time had made remarriage financially viable. The measure read:

Regarding dowry lands and other goods that a woman brings into her marriage: from now on if a woman who has once been married wishes to marry again to someone else, whether she is divorced while her [first] husband is alive, or is living as a widow after her husband has died, her dowry property and other assets that she originally brought into her marriage should all be taken over by the family of her former husband. She is absolutely not permitted to take them away with herself, as was formerly done.⁸³

⁸² Ebrey, *Inner Quarters*, pp. 99–103; idem, "Shifts in Marriage Finance from the Sixth to the Thirteenth Century," in Rubie Watson and Patricia Ebrey, eds., *Marriage and Inequality in Chinese Society* (Berkeley: U. California P., 1991), pp. 97–132.

⁸³ *YTC* 18, pp. 21b–22a #816; *TCIK* 4, pp. 49–50. The *TCIK* version, labeled "sixth month of 1303," is shorter and worded slightly differently than that in *Yüan tien-chang*, the content, however, is identical. See also Niida Noboru 仁井田, *TôSô hôritsu bunsho no kenkyû* 唐宋法律文書の研究 (Tokyo: Tôhō bunka gakuin, 1937; rpt. Tokyo U., 1983) p. 498; Shiga, *Genri*, p. 528, and p. 546, n. 37; Yanagida Setsuko 柳田節子, "Gendai joshi no zaisan shōkei" 元代女子の財産承継, in *SōGen shakai keizaishi kenkyū* 宋元社會經濟史研究

The local ruling was passed up for review until it reached the Ministry of Rites.⁸⁴ The Ministry approved the decision, but with an important modification. It recognized that this unprecedented separation of a woman from her property left wives vulnerable to expulsion by greedy families, who might covet the large dowries elite women held. Thus it added the provision: "If a wife is expelled without proper cause, this regulation will not apply."⁸⁵ This protected a woman from being arbitrarily expelled from her husband's home and losing her dowry to them. The Central Secretariat accepted the ruling with the modification and promulgated it nationally as a new law. This new legislation was a major break from the past; it placed the central government unequivocally on the side of widow chastity, and for the first time sacrificed women's property rights for the sake of this goal.

The change in the law in 1303 was of profound significance for widows and their ability to remarry, but it was only one among several items of new legislation in these years to promote widow chastity. In the first month of 1304, just seven months after the property ruling by the Ministry of Rites, emperor Temür issued a decree ordering local officials to encourage widow chastity by helping impoverished widows:

Wives who stay chaste after the mourning period is over should be allowed to do as they like [and not be forced to remarry]. If their chastity is especially meritorious, and they are unable to support themselves, local officials are to provide grain to relieve them.⁸⁶

The wording of the decree hints that widows may have been getting forced into remarriages. The decree also addresses the primary reason for remarriage: poverty. Customs and expectations about remarriage could not easily be changed, but the government could institute financial incentives. We cannot know how often the local authorities in fact supported poor widows at this time, but subsequent actions by the government suggest that claims of widow chastity in search of state rewards were proliferating.

(Tokyo: Sōbunsha, 1995), pp. 261–62. These authors fail to note the newness of this regulation.

⁸⁴ The ruling was reported by the Pacification Office of Che-hsi, and from there passed up to the Chiang-che Branch Secretariat. The Branch Secretariat would report to the Central Secretariat, which sent it to the Ministry of Rites for a ruling. The fact that the decision was sent up to the central government for review further points to the fact that it was understood to be precedent setting.

⁸⁵ *ITC* 18, p. 22a #816.

⁸⁶ *ITC* 3, p. 40.

Later in 1304, the Ministry of Rites provided further incentives to encourage widow chastity, while instituting guidelines to limit rewards. In the eighth month of 1304, for the first time, the state assigned a specific definition to “chaste widowhood.” The woman had to have been widowed before she was 30, to have made a public vow of chastity, and to have stayed chaste until she was over 50 years old. The Ministry of Rites ordered officials to report “meritorious” widows to the government so that their households could receive official door insignia (*ching-piao men-lü* 旌表門閭) and exemption from corvée labor service.⁸⁷

The long order explicitly cited the need to “encourage the reform of greedy habits and by example promote worthy customs,” by issuing rewards for virtues such as filial piety and chaste widowhood. It also complained, however, that “rich and powerful households” were “scheming to avoid corvée duty” by making spurious claims to virtue.⁸⁸ To stop the proliferation of claims and to guard against false declarations, the Secretariat set forth procedures to verify reports of filial piety and widow chastity. First, a local sponsor had to present the case to the authorities. Local officials were to question relatives and neighbors to verify the person’s virtuous behavior and then pass the case on up to the central government. If false reports were made, both the sponsor and the local authorities were to be punished. The Ministry of Rites addressed both filial piety and widow chastity: two issues of primary concern to Confucian reformers of the Learning of the Way school. The Yüan order marked the beginning of the systematic state sponsorship of widow chastity that so affected women in later periods. Rather than stemming the flood of applications for corvée exemption based on widow chastity, however, the 1304 communication may have increased it. We begin to find in the collected works of Yüan officials petitions requesting government recognition of widows in their families and the concomitant financial rewards.⁸⁹

Temür khaghan died in the first month of 1307,⁹⁰ and a violent

⁸⁷ *YTC* 33: 13a–b #1363. The wording of the order indicates that the Yüan government up to this time had been rewarding households of chaste widows, vaguely defined, with door insignia and exemption from corvée service on an irregular basis, as previous dynasties had done.

⁸⁸ *YTC* 33, p. 13a #1363.

⁸⁹ E.g., Wang Yün 王惲, *Ch’ü-chien hsien-sheng ta-ch’üan wen-chi* 秋澗先生大全文集 (SPTK edn.) 85, pp. 11b–12a (p. 818).

⁹⁰ *IS* 21, pp. 472, 475 (n. 28). By the western calendar the day was February 2, 1307.

succession crisis ensued. The victor in this battle was Khaishan 海山, who became the next khaghan as Emperor Wu-tsung 武宗 (r. 1307-11). Khaishan had spent his life on the steppe as a military commander, and when he came to power, he granted top posts to his personal retainers, nearly all inner Asians.⁹¹ These men and the emperor himself had little interest in Confucianism, and their policies reversed direction from those in Temür's reign and at the end of Khubilai's. In the area of marriage law, the influence of the steppe is also noticeable, but with the important qualification that the restrictions on a widow's freedom instituted by Khaishan's government, while going further than Chinese Confucians would have, corresponded in many respects with principles of the Chu Hsi school as articulated by Huang Kan.

The case in point was a ruling of 1309 declaring that from then on the husband's parents, not the wife's natal parents, should control a widow's remarriage. The measure not only stripped widows and their natal families of control of the widow's person, but also transferred any financial benefit of remarriage to the husband's parents by saying that they should keep any betrothal gifts paid. In other words, the steppe concept of "purchasing" a wife, whose body and assets in essence belonged to the husband's family for life, was now translated into Chinese imperial law. Significantly, the measure was proposed by the Secretariat for State Affairs (Shang-shu sheng 尚書省), which had just been reestablished one month before in the eighth month of 1309.⁹² Khaishan reestablished the unpopular Secretariat and packed it with his inner Asian allies in order to stem a fiscal crisis without cutting rewards to his cronies. The authors of the proposal were aware that they were departing from previous law and practice for they carefully built their case by including a review of previous edicts on the subject. They quoted Khubilai's edict of 1271, second month, "General Rules for Marriage and Betrothal Gifts," saying that widows should be allowed to return home after the mourning period and could not be forced into a remarriage.⁹³ Next they quoted Khubilai's rather contradictory edict of the

⁹¹ John Dardess, *Conquerors and Confucians: Aspects of Political Change in Late Yüan China* (New York: Columbia U.P., 1973), pp. 10-18; Hsiao, "Mid-Yüan Politics," pp. 504-12.

⁹² *IS* 23, p. 514.

⁹³ *YTC* 18, p. 14a #795; the original is found in *YTC* 18, p. 2b; 18, pp. 13b-14a #771, #793; and *TCIK* 3, p. 40. The 1309 text gives the date as *chih-yuan* 至元 28 (1291), but the original is *chih-yuan* 8 (1271). Although it is possible that the edict was reissued in 1291, more likely the 1309 text is corrupted.

twelfth month of that year that a widow could be forced into a union with an eligible levir.⁹⁴ Then they explained how families with sons were becoming impoverished when the son died and the widow remarried, and that the woman or her natal parents benefited from the remarriage:

Communiqués from every branch secretariat tell how wives when their husbands have died do not stay chaste in their husbands' households, but return to their natal families. During the mourning period, they accept meat, wine, bolts of cloth, and paper money from others, and on their own initiative remarry. ... For this reason, the families of the husband's father and mother are gradually becoming impoverished.⁹⁵

They concluded with the proposal:

From now on, if a woman wishes to stay chaste after her husband has died, she should be made to do so in her husband's household. If there is no brother-in-law eligible for a levirate marriage, and she wishes to remarry, she should comply with her father- and mother-in-law, who will receive the betrothal gifts and arrange the remarriage. How would this be?⁹⁶

The emperor approved the proposal and it was made into law. The decree betrays Mongol attitudes towards marriage in that the wife's person, once transferred to her husband's household, belonged to them. If widowed, she no longer had the ability to return to her natal parents, but would have to stay and contribute her labor to her in-laws. Remarriage to an outsider was also eliminated, as in Mongol customary practice. The widow had the limited choice of marrying a levir or staying chaste. With the laws of 1303 and 1309, women were now bound as never before to the household of their first marriage. Both their personal dowry assets and their own person were placed legally under the control of their in-laws. Chastity alone offered a widow some degree of control over her own life, but rather little at that. The law of 1309 went well beyond what Huang Kan called for back in the Sung, for he did after all concede that a widow without children could return home. But by a strange confluence of interests bet-

⁹⁴ Original found in *YTC* 18, p. 23a #818.

⁹⁵ *YTC* 18, pp. 14a-b #795.

⁹⁶ *YTC* 18, p. 14b #795.

ween steppe culture and Confucian ideals, the 1309 decree gave unprecedented legal support to Huang's ideal of a widow staying chaste and serving her in-laws in their home.⁹⁷

The coincidental similarities between Chu Hsi ideals and Mongol practices are further evident when we note that, when a new Confucian-oriented khaghan came to power, the trend towards reduced autonomy for wives and widows continued. In 1311, Khaishan's younger brother Ayurbarwada (Jen-tsung 仁宗; r. 1311–1320) came to the throne. In contrast to his brother Khaishan, Ayurbarwada was interested in Chinese learning and surrounded himself with Chinese advisors. He made conscious attempts to govern according to Confucian dictates.⁹⁸ In 1313 he agreed to reinstitute Chinese-style civil service examinations, most significantly based on the prescriptions of Chu Hsi and his followers for reform of these examinations.⁹⁹ But while in areas like the civil service examinations, Ayurbarwada's Confucian oriented policies were opposite those of Khaishan's steppe oriented ones, when it came to laws on marriage and women, their policies had the same result: reduced rights for widows.

In the same year that the khaghan approved the reinstatement of the civil service examinations, the Central Secretariat approved a new law that

⁹⁷ *YTC*'s heading for the ruling, "The father- and mother-in-law may marry off their son's wife," reflects a break with Khubilai's policies that generally followed Chinese tradition; the heading of the ruling applying Khubilai's edict of 1271, 11th mo., reads negatively: "The father- and mother-in-law may not marry off their son's wife." Differing only by the word "not" (*pu* 不), the two rulings appear within a page of each other in the 1322 orig. edn.: *YTC* 18, pp. 13b–14a.

⁹⁸ Hsiao, "Mid-Yüan Politics," p. 513. For Ayurbarwada's Chinese orientation, as opposed to his brother's steppe background, see also Dardess, *Conquerors and Confucians*, pp. 13–15; and Herbert Franke, "Could the Mongol Emperors Read and Write Chinese?" *AMNS* 3 (1952), esp. pp. 31–33.

⁹⁹ In a sharp break from the past, the new examinations were based on the Four Books with Chu Hsi's commentaries, and they emphasized understanding of the classics over literary composition. For the interesting process by which the exams were revived, see deBary, *Neo-Confucian Orthodoxy and the Learning of the Mind-and-Heart* (N.Y.: Columbia U.P., 1981), pp. 1–66; and Yao Ta-li 姚大力, "Yüan-ch'ao k'o-chü chih-tu te hsing-fa chi ch'i she-hui pei-ching" 元朝科舉制度的行發及其社會背景, *Yüan-shih chi pei-fang min-tsu shih yen-chiu chi-k'an* 元史及北方民族史研究集刊 6 (Dec. 1982), pp. 26–59. For the pre-Yüan debate in Chinese Confucian circles over the value of classical studies vs. literary composition, see Peter K. Bol, *This Culture of Ours* (Stanford: Stanford U.P., 1992), and Hoyt Tillman, *Confucian Discourse and Chu Hsi's Ascendancy* (Honolulu: U. Hawaii P., 1992). The process by which the examinations were reinstated and transformed according to Chu Hsi's dictates parallels the transformation of marriage law, as I am describing. While the details differ significantly, both reveal negotiation between Mongol interests, traditional Chinese practices, and the ideals of the Chu Hsi school that resulted in new structures of law and society.

prohibited women, and especially widows, from bringing lawsuits to court. The law was based on a report from the Supervisor (*fu-p'an* 府判) of Chang-te 彰德 circuit (modern Anyang in northern Honan) submitted in the twelfth month of 1313. It complained that the region was plagued by endless litigation over "land, buildings, movable property, marriage and debts," and that among the litigants were "shameless women who fomented disputes, misrepresented male relatives," and "knowingly made false claims." In particular, the report insisted that young widows prolonged cases in order to display their good looks and interact with the crowds; moreover, such women would visit tea houses and wine taverns and lodge with Buddhist and Taoist monks. To stop this behavior and prevent "damage to the way women should behave," the report proposed:

From now on, it is not permitted for a woman (*fu-jen* 婦人) to file a lawsuit. If there are no males in her entire family (*ch'üan chia* 全家) and the matter cannot be settled through private means, such that it is necessary to bring a suit before the authorities, she is allowed to have a relative from her lineage (*tsung-tsu ch'in-jen* 宗族親人) represent her in the suit.¹⁰⁰

The report was sent to the Ministry of Punishments (Hsing-pu 刑部), which approved it with the important modification that it would not apply to widows without relatives to represent them or widows who had to bring suits on behalf of sons who were incapable of representing themselves for some reason. Thus women were not entirely excluded from court.¹⁰¹ The

¹⁰⁰ *YTC* 53, p. 19a. A French translation of much of this case is found in Paul Ratchnevsky, *Un Code des Yuan* (Paris: Collège de France, 1985) 4, pp. 226–29. See also Ratchnevsky, "Jurisdiction, Penal Code, and Cultural Confrontation under Mongol-Yüan Law," *AM* 3d ser. 6.1 (1993), p. 177. It is interesting that we find here a reference to the lineage, something absent from the earlier decisions on property.

¹⁰¹ In fact, when this provision was included in the 1334 legal compilation *Ching-shih ta-tien* 經世大典, it was considerably watered down, saying only that women could not represent men in court, except for widows representing their sons; *YS* 105, p. 2671. For verification that this part of the *YS* is from *Ching-shih ta-tien*, see Su Chen-shen 蘇振申, *Yüan cheng-shu Ching-shih ta-tien chih yen-chiu* 元政書經世大典之研究 (Taipei: Chung-kuo wen-hua ta-hsüeh, 1984), p. 53; and Paul Chen, *Chinese Legal Tradition under the Mongols: The Code of 1291 as Reconstructed* (Princeton: Princeton U.P., 1979), p. 35. See also Ratchnevsky, *Un Code* 4, p. 226. A similar watered down version is already found in the introduction to a collection of legal petition forms published between 1330 and 1333 for people filing lawsuits; *Shih-lin kuang-chi* 事林廣記, comp. Ch'en Yüan-ching 陳元靚 (rpt. of Yüan edn.; Kyoto: Chübun shuppan sha, 1988) *pieh-chi* 別集 4, p. 1006; and Huang Shih-chien 黃時鑑, ed., *Yüan-tai fa*

Central Secretariat included the Ministry's proviso when it promulgated the new law.

The legislation of the early 1300s gave legal grounding to a marriage regime consistent with the Chu Hsi school's promotion of widow chastity; nevertheless, things were not so simple for widows who wished to stay chaste, especially when they were forced to stay in the home of their deceased husband. The continued operation of the levirate made women susceptible to rape by other men in the household, who still believed they had the right to marry the widow in a levirate union. In a dramatic case of 1318, a young widow who had refused to marry her husband's younger brother was raped by him with the help of two other brothers. The text in the *Statutes and Precedents of the Yüan* (*Yüan tien-chang* 元典章) includes a graphic description of the rape, and judges at every level, up to the Central Secretariat, condemned it. The main perpetrator received a beating of 97 strokes and the widow was allowed to return to her father's home with her four children, and there remain celibate. But the ruling continued that if she remarried, she would have to marry the brother-in-law who had violated her.¹⁰² The Confucian ideal of a widow living harmoniously in her husband's household conflicted with the continued operation of the levirate. The result was that widows still had to be allowed to return to their natal families, though marriage to an outsider was less and less an option. As in this case, it was entirely forbidden if an eligible levir wished to marry the widow.

The rape case of 1318 confirms that chastity was now a legitimate way to escape levirate marriage. The change from earlier Yüan policy is underlined by comparing the 1318 case with one from 1273, that coincidentally appears just previous in the *Yüan tien-chang*. In the 1273 case, the widow claimed she wanted to stay chaste but had been raped by her brother-in-law, who additionally was already engaged to someone else. The widow lost her suit and was forced to marry her alleged attacker.¹⁰³ While the judges in 1318 included a detailed description of the rape (presumably supplied by the woman herself), the authorities in 1273 left out such details

lü tzu-liao chi-ts'un 元代法律資料輯存 (Kiangsu: Che-jiang ku-chi, 1988), p. 228.

¹⁰² *YTC* 18, pp. 24b-25a #824. See also Hung, "Yüan-tai," pp. 312-13; Ratchnevsky, "The Levirate," p. 61, n. 21. In seeming contravention of the 1313 law, the suit was brought by the widow herself.

¹⁰³ *YTC* 18, pp. 24a-b #823. The text of this case can only be understood if some of the names are read as corruptions. My reading has benefited from discussion with Prof. Hung Chin-fu and the students in his graduate seminar at Ch'ing-hua University in Spring of 1994.

and instead accused the woman of willingly having intercourse with the brother-in-law, even though she was suing to escape the marriage.

In the 1318 rape case, as in others, the widow had to vow lifelong chastity to qualify for exemption from a levirate marriage. Such vows carried considerable legal importance and had to be registered with the authorities. At the same time, various restrictions on remarriage were by this time in place. Remarriage was forbidden by law during the mourning period or without the consent of any eligible levir. Moreover, when a widow did marry an outsider, she was stripped of her dowry and the marriage was supposed to be arranged by her in-laws. To ensure a legal remarriage, widows could petition for a certificate of remarriage. Standardized forms for such petitions survive from the Yüan. An example in a 1325 collection reveals that poverty was the only acceptable legal reason to remarry. In addition to claiming destitution, a widow on these petitions had to vow she had no children, was not pregnant, and had observed proper mourning for her first husband.¹⁰⁴ We have seen above that in 1303 emperor Temür urged local officials to provide sustenance to impoverished widows; but it is unlikely that many of them received this, and these same officials had to recognize that remarriage was usually a more realistic choice for such women (despite Ch'eng I's famous pronouncement that it was better for a widow to starve to death).

In 1330, emperor Wen-tsung 文宗 finally outlawed all forms of levirate marriage for the Chinese and others who had not formerly practiced it:

Among those for whom it is not their original custom, it is an offense for a man to take his elder sister-in-law or a son to take his father's secondary wives in a levirate union.¹⁰⁵

At the same time, more and more emphasis was getting placed on widow chastity, and chaste widows in increasing numbers were gaining recognition and rewards of various kinds. We even find examples of Mongol women gaining fame and fortune for resisting levirate marriage, which remained legal for Mongols.¹⁰⁶

¹⁰⁴ *Shih-lin kuang-chi, pieh-chi* 4, p. 1016. It is rpt. in Huang, ed., *Yüan-tai fa-lü tzu-liao chi-t's'un*, pp. 236-37.

¹⁰⁵ *IS* 34, p. 767; Hung, "Yüan-tai," p. 294. These two forms of the levirate were the only ones still practiced by the Chinese, thus this edict effectively outlawed all forms.

¹⁰⁶ *IS* 33, p. 746; 34, p. 767; 118, pp. 2916-17; 200, p. 4495; Hung, "Yüan-tai," p. 314.

The Ming and Ch'ing codes harshly outlawed the levirate in all its forms. The closer the relation, the harsher the punishment: the punishment for marrying a brother's widow was strangling.¹⁰⁷ But the popularity of chastity and the condemnation of remarriage to an outsider remained in place. In particular, subsequent dynasties adopted the most important of the legislation from the early 1300s that promoted widow chastity. The original Yüan definition of a chaste widow was copied into Ming and Ch'ing law.¹⁰⁸ Government rewards for widow chastity continued and were gradually augmented. The 1303 law that prevented a widow from keeping her dowry was carried over into all later codes in China. Both the Ming and Ch'ing codes adopted virtually the same language of the 1303 Yüan order where they said:

When a widow remarries, the property of her husband and the dowry that she originally possessed should all be taken over by the family of her former husband.¹⁰⁹

Written judgements from the Ming and Ch'ing show that this statute was applied in legal decisions.¹¹⁰

CONCLUSION

Between the 1260s and the 1320s, laws affecting remarriage and widow chastity underwent a transformation. Some of the basic assumptions that had traditionally operated in Chinese society were swept aside. In particular, a widow's right to return home and remarry and a woman's right to keep her dowry with her in case of widowhood or divorce were eliminated.

The women in these examples had much to gain by remaining chaste, including control of assets. In one case, that of a close relative of the emperor, the imperial princess Sengge Ragi, the emperor showered her with honors and treasure under the pretext that she resisted a levirate remarriage; *IS* 33, p. 746.

¹⁰⁷ Ch'ü T'ung-tsu, *Law and Society in Traditional China* (Paris: Mouton and Co., 1965), p. 97.

¹⁰⁸ Elvin, "Female Virtue and the State in China," pp. 123-24.

¹⁰⁹ Cited in Shiga, *Genri*, p. 332. See also Ch'ü, *Law and Society*, p. 104, n. 74. The text from the T'ung-chih 9 (1870) reissue of the Ch'ing code is reproduced in Chinese in Pierre Hoang, *Le Mariage Chinois au Point de Vue Legal* (Shanghai: Catholic Mission Press, 1915), p. 160. A French translation is given on p. 165.

¹¹⁰ Shiga, *Genri*, pp. 422-23.

Up until the fourteenth century, from earliest historical times as far as we can tell, Chinese women of means had property attached to them and could expect to keep this for their entire lives. Property law through the end of the Sung encouraged widow remarriage by allowing widows to take their dowry into a second marriage. Moreover, a widow's freedom over her own person, her right to return to her natal home, went unchallenged. The evidence suggests that, indeed, when a young woman was widowed, she most often returned to her natal family, and if she remarried, her natal parents arranged the new union and received the betrothal gifts. While Confucian texts deplored remarriage, there was little or no social stigma attached to it, and no legal sanction against it. Even the dynastic histories recorded the remarriage of elite women without comment.

In the Sung dynasty, Confucian revivalists began to promote widow chastity and even challenged some of the laws that discouraged it. Huang Kan, the most outspoken of Chu Hsi's followers in this regard, wanted a widow to stay in her husband's family to care for his mother and children and use what property she had to help support them. Nevertheless, even Huang did not fundamentally challenge the premise that widows had rights to their property and control of their person. He conceded that if a widow had no children, she had the right to take her property into a second marriage. Moreover, while Huang and others denounced remarriage generally, no changes in the law took place, and evidence from the thirteenth century shows that return to the natal family and remarriage was still the standard practice for Chinese widows.

With the Mongol invasion of China, Chinese were confronted with marriage practices very different from their own. The custom of levirate marriage kept a Mongol widow in the home of her husband, where she could be forced to marry one of his relatives, and where her labor and assets stayed under the control of the husband's family. In contrast to Chinese custom, Mongol widows almost never returned to their natal families and almost never remarried outsiders.

By the 1270s some Chinese had begun to practice levirate marriage. While many undoubtedly still expected a widow to return home and would not have challenged her right to take away her dowry, others began to challenge these rights and force widows into levirate unions. In 1271 the levirate was legalized for all peoples in the Yüan empire, in such a way that widows of any nationality could be forced into levirate unions against their

will. Such harsh enforcement of levirate law caused serious confusion and conflict; it was incompatible with traditional Chinese notions of incest, and it contradicted assumptions about marriage and personal autonomy. Moreover it was incompatible with other regulations. As a result, strict interpretation of the law ended after 1276, and a new provision allowed widows to evade levirate marriage by staying chaste. This provisional form of levirate law, applied to all nationalities, struck a compromise between Chinese notions of widow autonomy and Mongol custom that kept a woman's labor and assets under the control of the husband's family. Under these circumstances, widow chastity gained new appeal, on both a moral and practical basis. In families with an eligible levir, chastity provided the only way for a widow to retain control of her property and her husband's, and retain control of her person. This new dynamic between widow chastity and levirate marriage persisted uneasily in China for the next half century, until 1330.

By challenging Chinese traditions, the operation of the levirate opened up an opportunity for the laws to be changed along the lines of the agenda of Huang Kan and the Chu Hsi school. Certain assumptions behind the practice of the levirate coincided with ideas promoted by the Chu Hsi school and made these far more palatable than they had been in the Sung. In particular, the concept that a widow should stay in the home of her husband, promoted by a minority and generally alien to Chinese of the early thirteenth century, had become widely accepted by the fourteenth. The old dichotomy between Chinese and Mongol custom, whereby Chinese widows returned home and Mongol widows did not, had broken down. This made it possible in the early fourteenth century for followers of Chu Hsi, both Mongol and Chinese, from their positions on the Board of Rites, to implement legislation enforcing a new marriage regime.

In the early 1300s, the Board of Rites instituted a string of new laws, unprecedented in Chinese history, that went beyond what even Huang Kan had advocated in promoting widow chastity. Widows were stripped of their dowry rights and forced to leave their assets behind if they left their first marriage. The authority to arrange a remarriage was transferred from the woman herself or her natal family to the husband's parents, and the latter from then on could keep any betrothal gifts received. Women, especially widows, were barred from court, and were thus prevented from suing to keep their property or to remarry. For the first time, the

government defined “chaste widowhood” and systematized rewards for this virtue. It called on officials to support impoverished widows to prevent remarriage, and it prevented widows of officials in faraway places like Kuang-tung from remarrying at all before being shipped back to their deceased husband’s family. Nearly all of the laws were carried into later dynasties.

This legislation represented a reconceptualization of Chinese marriage that lasted for the rest of imperial times. The new laws of the early fourteenth century tipped the scales of justice from the side of a woman and her natal family towards the side of her husband and his parents. They supported widow chastity and eliminated the traditional financial benefits of widow remarriage for the woman. The patrilineal ideals of the Chu Hsi school, as seen in the writings of Huang Kan, were now enforced by legal sanction and social coercion as they never had been before. What later Confucians took to be classically inspired laws promoting timeless standards were in fact the result of changes made possible by a confusing encounter between Chinese and Mongolian culture.

LIST OF ABBREVIATIONS

<i>SHY</i>	<i>Sung hui-yao chi-kao</i> 宋會要輯稿
<i>TCTK</i>	<i>Tung-chih t'iao-ko</i> 通制條格
<i>YS</i>	<i>Yüan-shih</i> 元史
<i>YTC</i>	<i>Ta-Yüan sheng-cheng kuo-ch'ao tien-chang</i> 大元聖政國朝典章
<i>YTCHC</i>	<i>Ta-Yüan sheng-cheng tien-chang hsin-chi chih-chih t'iao-li</i> 典章新集至治條例