

## Chapter 2

### Social Structure: *Lisu*, *Qingyi* and Law

As have been seen previously, *Social Structure* is a macro conceptual framework which Liang Shu-ming constructed to characterise the peculiarity of traditional Chinese society. In retrospect, being an analytical reference, this framework was initiated by *The Theory of Rural Reconstruction* in 1937 and had been reworked continuously in more matured detail, culminating in *Essential Meanings of the Chinese Culture* in 1949. In addition, certain treatises and essays published during the 1930s–1940s also contributed to the elaboration and interpretation of this conception.

In Liang Shu-ming's rendering, the "social structure" generalizes a framework in which a twofold level of structure inheres, namely, the superstructure and the infrastructure. He exposes the interactions between them within a certain society. Viewed from the intersecting section, this structure lays out and accommodates a number of elemental fractions, such as politics, economy, custom, usage and law and so forth, all of which are substantively important in portraying and being constitutive of a certain pattern of culture. In viewing this paradigmatic formulation, however, one can declare that a striking influence upon it imposed by Marxism's historical materialism and political economy can be detected, as well as a similarity between this conceptual framework and Ray Huang's paradigm of *Macro History*.<sup>1</sup> Here putting the possible differences between them aside, as I try to do now, this chapter will analyse a few fundamental issues underlying Chinese society in relation to Liang Shu-ming's understanding about law by reference to this conceptual instrument. The chief characteristics of traditional Chinese society in his analysis are the following, which will be discussed in turn:

- Ethical-orientated and occupation-differentiated;
- *Lisu* as a socio-legal norm in great tradition and little tradition;
- *Qingyi*: an obscurity between subjectivity and objectivity; and
- Two law/laws

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<sup>1</sup>Cf., in general, Ray Huang, *China: A Macro history*; "Endless Complications and Unexpected Turns".

## Ethical-Oriented and Occupation-Differentiated

The principle feature which was intrinsically inherent in and characterised the traditional Chinese social structure, according to Liang Shu-ming, could be portrayed in and concluded by an aphoristic terminology of “ethical-oriented and occupation-differentiated” (伦理本位, 职业分途). As an axiomatic paradigmatic interpretation about the pattern of both traditional Chinese society and its people’s way of life in Liang Shu-ming’s system of thought, this conceptual approach during the past decades constituted a primary cause of conflict with the Chinese Communists and has been charged by both the Chinese Communists and liberals with a significant failure to recognise that there had existed Western-style classes and a class struggle in traditional Chinese society. But for Liang Shu-ming this conceptual reflection was not ungrounded, but rather a deeply-rooted conclusion based upon considerable empirical studies. The “ethical-oriented”, or “ethical centricism” literally,<sup>2</sup> as Liang Shu-ming saw it, situated China, in the sense of an ultimate why, as a cultural organic whole rather than a state, or more accurately, a modern-styled national state. This organic whole as a community was moulded upon an ethical axial principle, and was centered on one cultural code of ethics.<sup>3</sup> That is to say, by stretching and expanding along the ethical relationships, ring upon ring, from family to the whole society and even up till “all under heaven”, this community had been fabricated as a macro-pattern of ethical circles which was like waves spreading from the centre to the brim, ripple upon ripple. A universal order is presupposed as its final formulation. In this regard Professor Fei Xiao-tong provides a very similar description. Seen through his eyes,

Social relationships in China possess a self-centered quality. Like the ripples formed from a stone thrown into a lake, each circle spreading out from the centre becomes more distant and at the same time more insignificant. With this pattern, we are faced with the basic characteristic of Chinese social structure, or what the Confucian school has called *renlun* (human relationships). What is *lun*? To me, insofar as it is used to describe Chinese social relationships, the term itself signifies the ripplelike effect created from circles of relationships that spread out from the self, an effect that produces a pattern of discrete circles. ...*Lun* stresses differentiation. *Lun* is order based on classifications.<sup>4</sup>

It is in this sense that China was not a nation state in the full-sense of this term but rather an universal world. This Chinese notion about their engagement with the outside world was somewhat similar to that of Germany when Kant wrote his *Zum*

<sup>2</sup>Wen-shun Chi provided a brief explanation about this conception in his *Ideological Conflicts in Modern China: Democracy and Authoritarianism*, at 185–193.

<sup>3</sup>Cf., *ibid.*, at 185.

<sup>4</sup>Fei Xiao-tong, *From the Soul: The Foundation of Chinese Society* (first published in 1945 and translated into English with an introduction and epilogue by Gary G. Hamilton and Wang Zheng), at 65–66.

*ewigen Frieden* in 1795.<sup>5</sup> Indeed, that existence reflected in Kant's idea of "perpetual peace" was nothing but an image of a universal order, a philosophical conception of a world republic and an historical prognosis from the point of view of moral duty, but not a nation state. Before I descend to detail, here I should say something in general about the "state". It would be worth while to be aware that China had a concept of state as early as the late *Zhou* times—or in the words of Professor Lien-sheng Yang, "at least a vague concept of state". When Liang Shu-ming says China was a cultural community, he is not denying the concept of state. As a matter of fact, when Mencius specified the three treasures of a state ruler: land, people, and government he was practically defining a state.<sup>6</sup> It is for this reason that Liang Shu-ming argued that the traditional China was a state and yet was not a state. Rather, state and society were merged into one in this context.

As Liang Shu-ming argued, all relationships in traditional Chinese society were conceptualised into a family-like model,<sup>7</sup> namely, the whole society was regarded as a single extended family. The ethical principle and familial relationship then became the basis in organising society and in correlating the members of this cultural community. The well-known Confucian basic five social relations, therefore, were not only ethical but also political and legal requirements. Starting from this axial principle, Liang Shu-ming stated,

Everyone in this society is borne with certain duties for all his ethical-related people while all whom have the same relationships with him also take corresponding duties for him. Hence all people in this society are related and bound together by this connection

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<sup>5</sup>For this conception of *perpetual peace* cf., James Bohman and Mathias Lutz-Hochmann (eds.), *Perpetual Peace: Essays on Kant's Cosmopolitan Ideal*; Robert Caponigri, *Introduction to perpetual Peace: A Philosophical Essay by Immanuel Kant*, at XI; Jurgen Habermas, "Kant's Idea of Perpetual Peace: At Two Hundred Years' Historical Remove". For a study about this historical transition in which Germany turns itself from an universal order to a nation-state, cf., in general, Hans Kohn, *Prelude to Nation-state: The French and Germany Experience, 1789–1815; The Mind of Germany: The Education of A Nation*. Also cf., the section *Liang Shu-ming and Savigny* in Chap. 3 of this book.

<sup>6</sup>In his *Prolegomena to The Ch'un Ts'ew with the Tso chuen* published in 1872, James Legge bitterly criticised China's ministers and people for their failure to "realise the fact that China is only one of many independent nations in the world". But what history tells us could be another story. In this regard, as pointed out by Professor Yang, "The Chinese world order is often described as having been a Sinocentric hierarchy. In theory, it should have been hierarchical in at least three ways, China being internal, large, and high the barbarians being external, small, and low. Reviewing the whole range of Chinese history, however, one finds this multidimensional Sinocentric world order was a myth backed up at different times by realities of varying degree, sometimes approaching nil. ... In studying the Chinese world order it is important to distinguish myth and reality wherever possible. Both can be influential. One may prefer to call a myth a cultural or psychological reality. Nevertheless, it should be distinguished from a political reality" For a detailed discussion in this matter see Lien-sheng Yang, "Historical Notes on the Chinese World Order", in John King Fairbank (ed.), *The Chinese World Order: Traditional China's Foreign Relations*, at 20, 21 and 22.

<sup>7</sup>LSM, *Essential Meanings of the Chinese Culture* (1949), 3: 81; *The Theory of Rural Reconstruction* (1937), 2: 174.

unconsciously and (Chinese society) then becomes a kind of (loose) organisation imperceptibly.<sup>8</sup>

It is in this sense that people have a moral obligation to support their relatives and to help fellow townsmen and friends in need, and visa versa. This social connection is a kind of ethical web, but, he argued, definitely not the so-called patriarchy clan system accepted by faddish popular views.<sup>9</sup> The “ethical” construct by its nature signifies that Chinese society has been held together traditionally through inner discipline and ethical consciousness, rather than a “cold” legal confinement and an external armed force. Within this scheme, Chinese society was maintained by a spirit of emotional merger of the self with others and of yielding rather than struggling with one another. Mutual affection and harmony prevail. Extending from this light, Liang Shu-ming continued that an ethical relationship in the Chinese social discourse is nothing but a personal spiritual-level bond through emotional merger, namely, a human tie through *qingyi* (情义) in accordance with *lisu* (礼俗). These two concepts constitute the nuclear constituents in the formation of traditional Chinese law, and unveil its normative and spiritual dimension respectively. Hence they can be regarded as essential to understanding and identifying the traditional Chinese law. Here let us concentrate first on an analysis of the rest of the “social structure” before these two concepts are detailed in the following parts of this chapter.<sup>10</sup>

*Occupation-differentiated* implies that distinctive opposing classes did not exist in the traditional Chinese society. Rather, Chinese society in the imperial era was formed fundamentally in accordance with the scheme of professional differentiation. Although Liang Shu-ming admits that classes are a general phenomenon in human society, China is an exception to this rule for class formation in China was not conspicuous. What replaced clearly antagonistic classes which existed in the West was occupation-differentiated groups of people in China. According to his reasoning, which stemmed from an empirical survey, this uniqueness originated in the fact that the traditional Chinese society lacked the basic conditions upon which classes could be set forth. In *Essential Meanings of the Chinese Culture* Liang Shu-ming constructed his argumentation by starting from a consideration of land distribution in an agricultural country like the traditional Chinese society. As he saw it, “the key lies in the land distribution if we intend to discuss the issue whether or not there are classes in an agricultural society like China.”<sup>11</sup> From this logical

<sup>8</sup>LSM, *Essential Meanings of the Chinese Culture* (1949), 3: 81–82; *The Theory of Rural Reconstruction* (1937), 2: 175.

<sup>9</sup>LSM, *Essential Meanings of the Chinese Culture* (1949), 3: 80–81.

<sup>10</sup>There are volumes of writings about Liang Shu-ming’s conceptual formulation of “ethical-orientation and occupation-differentiation. But the most penetrating and stimulating view about it, I suggest, should be one given by great Confucian thinker Tang Jun-yi. For details see his “More on the Conflict between Chinese Nationalism and Marxism-Leninism and the Chinese Way”, in his *Chinese Humanity and Modern World* (supplement), at 425, 434–435, 417.

<sup>11</sup>LSM, *Essential Meanings of the Chinese Culture* (1949), 3: 146.

starting-point, Liang Shu-ming concluded there were two features of land-holding patterns in that traditional society. Firstly, land can be freely bought and sold by everyone; secondly, there was not a noticeable phenomenon of land concentration and monopoly while in general a majority of people own their land. The extent of land concentration would be slightly different between North and South China, but, Liang Shu-ming argued, the basic situation was simply the same as he described. In addition, since China had not developed a highly industrial and commercial society and the absence of primogeniture, which resulted in the customary and legal provision of equal distribution among heirs, the concentration of capital failed to occur. There being no concentration of capital economically, therefore, no antagonistic classes in the fully Western sense of this term existed politically, even if different social ranks or strata undeniably existed. A logical conclusion, Liang Shu-ming asserted, is that antagonistic classes, such as feudal lords and peasant serfs in medieval Europe, or slaves and slave holders, capitalists and labourers in the West in recent centuries, did not exist in traditional China.

In this light, the four customary divisions of population all consisted of so-called Chinese people in the imperial era. They were *shi* (士), *nong* (农), *gong* (工) and *shang* (商), namely, scholars, farmers, artisans and merchants. These four groups of Chinese people distinguished themselves by their own professional or occupational differentiation and were in general coordinated interdependently. The nullification of hereditary, feudal nobility by *Zhou* times, which was accompanied later by the imperial examination system, provided a mechanism through which a mobility and flexibility was possible among those four groups of people. It implied that official status was always open to those who studied the classics and were able to pass the imperial examinations. Hence, from his definition that a state is formed on the basis of class rule Liang Shu-ming asserted that traditional China was not a state in the full-sense of this term. Consequently, a way of rule such as legalistic government based on external force would not be congenial with, and workable and serviceable for this society.<sup>12</sup> Rather, this society was based upon something else, as Liang Shu-ming indicates to us, that is *lisu* (礼俗). For this reason, we can understand Liang Shu-ming's denial of the existence of distinctive, antagonistic classes in the traditional Chinese society and, why he dismissed the whole presumptions of the Marxist theory of classes and class struggle, which carries a foreshadowing of the conflict both before and after 1949 with Chinese Communists who regard classes and class struggle as a basic, universal fact of the whole of human history. Also for this reason Liang Shu-ming commented that Mao's success, which Mao claimed was achieved through a revolution based upon class struggle in China is purely fictitious, a fab-

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<sup>12</sup>For a detailed exploration about these two characteristics of traditional Chinese society, see LSM, *Essential Meanings of the Chinese Culture* (1949), at Chaps. 5 and 8 respectively.

rication out of thin air, since Chinese society was devoid of distinctive opposing classes.<sup>13</sup>

Here let me move to discuss briefly these two key conceptions, *qingyi* (情义) and *lisu* (礼俗), which are deduced from the principle characteristics of traditional Chinese society as described above by Liang Shu-ming. Etymologically, *qingyi* (情义) is a word made up of two parts and its different meanings are brought together in this compound accepted through common practice. There is no direct English language equivalent but the term *qing* (情) could be translated literally as human feeling (in opposition to human reason), emotion, affection and sentiment. On a level, *Yi* (义) means righteousness and justice proportionately. *Qingyi* (情义) as a compound therefore signifies interpersonal human ties and, in Liang Shu-ming's own words, reveals the fact that the legitimacy of ethics (*lunli* 伦理) in Chinese understanding had been vested/embedded in this human emotional merger with righteousness. *Lunli* cannot be justified until it has been conceived of as a revelation of human feelings and righteousness. Speaking in terms of the normative order, the Chinese way of life as organised by reference to this ethical context is neither an organised collective way of life nor an individual-oriented one. According to Liang Shu-ming, it is rather something which mediates between these two ways. *Qingyi* (情义), he posited, centered in this ethical web as latitude while *lisu* (礼俗) functions as longitude.

This characterization of Chinese society inevitably lead to a question of how this society had been governed or administrated, or in the other words, upon what kind of faculty this society or this way of life had relied in organising itself and governing its members' common practice. It is in this aspect that Liang Shu-ming suggested an interpretation by employing the conception of *lisu* (礼俗). In Liang Shu-ming's discourse, *lisu* (礼俗) as a system of human regulation, refers not only to the customary rules but also to a norm linking them with formal legality. *Li* (礼), could be translated variously as propriety, moral rules of correct conduct and good manners, or even tact, and embodies the Confucian moral principles governing human order and human behaviour. Being a compound of both levels of Confucian teachings for internal space and rules of correct conduct for external space, *li* (礼) is concerned closely with Confucian conceptions of sincerity (诚) and trustworthiness (信) in dealing with proper

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<sup>13</sup>On this aspect it was said by Professor Wen-shun Chi that

The class conflict is inherent to the process of development is insisted on by the communists. In 1949, Mao wrote in *On the People's Democracy Dictatorship*: "The problem of the Communists is... one of working hard to create the conditions for classes, state power, and political powers to wither away...and for mankind to enter the era of one world." But if Liang is right in regarding China as having no classes and no massive state and political power to wither away, then the conditions to be created by Mao are irrelevant, because, from Liang's viewpoint, China has already approached closer to "one world" than she can approach through the conditions Mao wished to create.

For the details cf., *op. cit.*, at 188. For Liang Shu-ming's comments see his "Try to Explain the Roots of Lots of Mistakes Mao Ze-dong Made in His Later Years" (1981), 7: 520–521.

relationships among men.<sup>14</sup> In this case *li* (禮) is a code of human conduct enforced by society—inner discipline—rather than by government, although *li* (禮) in a sense had been commingled with *fa* (law literally but it could be much narrower in scope than law in the Western sense), and functions partially as a source of law. When *li* (禮) descends into the realm of people's daily life and has been extended to be the rules of correct conduct for people's common practice, it would blend and combine with custom, usage and habitual manners of behaviour. Through this faculty, *li* (禮) turns itself into *lisu* (禮俗)—a customary *li* (禮) as well as a normative custom. *Lisu* (禮俗) then keeps an ambiguous difference from but commingles with the written black-letter-law. On this account, although the word used by the *Tang Code* is *li* (禮) rather than *lisu* (禮俗), the relation it stated is simply what is embedded among *lisu* (禮俗) and law—black-letter-law—when it provided: “That which deviates from *li* (禮) comes within the competence of legal penalties. Violations of *li* (禮) are subject to punishment.”<sup>15</sup>

It is in the light of this fact that we can understand why Liang Shu-ming suggested that it is *lisu* (禮俗) upon which the traditional Chinese social order had been based.<sup>16</sup> Indeed, “The Scholar officials were emotionally committed to the Confucian values which had long been accepted as ultimate truth.” As said by T'ung-Tsu Cu'u (Qu Tong-zu), “They considered these basic principles of the *li* as the universal, unalterable principles. Once these were abandoned, the existing socio-political order would collapse, and Chinese culture would come to an end. They took it upon themselves to defend these values passionately.”<sup>17</sup> Also, it is for this reason that we must be aware that there could be two different meanings of “law” when we speak by using the same word “law” in the case of a comparison between the West and China. This issue will be discussed in Section *Two law/laws* after we have a glance on what *lisu* and *qingyi* signify to traditional Chinese law.

## Lisu (禮俗): Great Tradition and Little Tradition

It should be noticed that there was a very special social group of people in traditional Chinese society. Speaking in the terms of the source of meaning in a certain culture and society, this group held the intellectual authority and normally played the role of an interpreter of this meaning. On the other hand, viewed from the normative function of a certain system of order, this group constitutes a third sphere between state and society, between the political and the civil, by identifying itself as a social

<sup>14</sup>Luke Lee and Whalen Lai suggested that Confucian sincerity and trustworthiness are equivalent with good faith and *Pacta sunt servanda* in the Western legal conception. For details see “The Chinese Conceptions of Law: Confucian, Legalist, and Buddhist”, in *29 The Hastings Law Journal* (1978), at 1309.

<sup>15</sup>Quoted from Luke T. Lee and Whalen W. Lai, *ibid.*, at 1309. *The Tang Code* had been translated into English with an introduction by Johnson Stephen Wallace.

<sup>16</sup>LSM, *Essential Meanings of the Chinese Culture* (1949), 3: 66; *The Theory of Rural Reconstruction* (1937), 2: 170.

<sup>17</sup>T'ung-Tsu Ch'u, *Law and Society in Traditional China*, at 287.



stratum of which is constituted by the scholar-officials, both the makers and enactors of law. But as a bearer and keeper of social consciousness—as its source of meaning, its freedom and its autonomy—this group has always by its virtue been opposed to contemporary authority. As we noticed earlier, this group is nothing but one division of the population in the imperial China: the *shi* (士), or literati and intelligentsia.

For one thing, *shi* (士) takes the role of lawmaking by reference to *li* (礼) and, therefore, is entrusted with the state's priesthood. For another, *shi* (士) takes the role of expositing and customizing the requirements of law among the populace by commingling and compromising with the living custom (*su* 俗). When they are doing so they are not simply dependent upon the logic of law but rather appeal to the faculty of human reason and the Confucian's *Heaven Principle*, which makes law reasonable and justified as much as possible. Through this process *lisu* (礼俗) has been formed as a web of *Nomos* covering the whole society. This way of government is neither a legalistic rule nor Aristocracy, and could be described as a *li-fa* formula (礼法结构) which was embodied and incarnated as *lisu* (礼俗) in its appearance in the daily routines of the populace. Liang Shu-ming claimed triumphantly that this characteristic is simply evident for his arguments about the social structure in traditional China. In Liang Shu-ming's own words, the blending of *li* (礼) and *su* (俗) denotes the fact that *li* (礼), which is representative of literati culture, has had transformed into *su* (俗) after it has been popularized with the populace while *su* (俗), which has grown from and is rooted in social memories, takes the role of adjusting to and bearing with *li* (礼). By this process, *li* (礼) and *su* (俗) therefore have been compounded and dovetailed as *lisu* (礼俗), or in a reverse form, *lisu* (礼俗) become the confluence of these two elemental apparatus.

By quoting Robert Redfield's paradigmatic dichotomy of great tradition and little tradition,<sup>18</sup> I would suggest what Liang Shu-ming here exactly documented is the absence of a distinctive separation between great tradition and little tradition in the realm of law in traditional China. Furthermore, as Liang Shu-ming saw it, the fact itself that *li* (礼) has been transformed to *su* (俗)—courtesy or propriety that comes to be widely practiced, and thereby becomes a custom—signifies it becomes “something that is observed unanimously by all people”<sup>19</sup> and symbolised the birth of a kind of custom or popular customary practice. So-called culture, as we know in the view of Liang Shu-ming, is simply used in the sense of “a bundle of customs”.<sup>20</sup>

In this regard, Professor Yu Ying-shi contributes a very similar observation that the connection between these two traditions in traditional China could be much closer than that in other societies. Actually, as he indicated, in the imperial era of China, “great tradition totally embodies little tradition” while “little tradition basically is a covert form of the former.”<sup>21</sup> It is in this light that the statement,

<sup>18</sup>For a detailed narrative of this paradigm see his *The Little Community and Peasant Society and Culture*, at Chap. 3, especially at 42 Sq.

<sup>19</sup>LSM, *The Theory of Rural Reconstruction* (1937), 2: 384–385.

<sup>20</sup>LSM, *Essential Meanings of the Chinese Culture* (1949), 3: 207. Also cf., section *Cultural predigestion and blending* in Chapter VII of the book.

<sup>21</sup>Yu Ying-shi, “Viewing Tradition in the Perspective of Historiography”, in his selected works *Historiography and Tradition*, at 11–17.



“which is pure Savigny”,<sup>22</sup> made by Scotsman John Reddie, I would like to suggest ardently, is also well-suited to the Chinese situation when he narrates things in the West, especially the evolution of common law:

The first link of the great chain of law is formed by custom, and usage, and the adoption of those rules which instinctive expediency suggests...For laws are nationally individual, and are as characteristically peculiar to the people, amongst whom they arise, as their religion, or language. And although their origin may sometimes be lost in the remoteness of tradition, yet it is based upon the most stable foundation—the spontaneous acknowledgment of the nation.<sup>23</sup>

Returning to Liang Shu-ming's analysis, the peculiarity of traditional Chinese law lay in the fact that *li* (礼) and *su* (俗) had been blended together so harmoniously that both had merged into an organic whole. This new integral whole is nothing, as Liang Shu-ming saw it, but well-founded and close-knit *lisu* (礼俗). Thus law in the traditional Chinese sense originally resulted from both conceptual and institutional arrangements, as the *Tang Code* states above. In the meantime, *lisu* (礼俗) embodied and implicated the requirement of formal legality. Dialectically, if we are speaking in the context of traditional Chinese society, the situation was just as Liang Shu-ming described, namely, that *lisu* (礼俗) reveals a goal of human life that is morally idealized by Confucianism while law is a revelation of the living reality which existed in this society and which often was laid open by legalist expositions. Consequently, in a sense, *lisu* (礼俗) may be defined as an assemblage of (Confucian) teachings which is declarative of a way of human self-cultivation through which humankind tries to attain the goal in their inter-worldly pursuit; while law functions as a scheme of applying rules to acts of persons subject to *lisu* (礼俗) and of expressing the fact that any disobedience would be liable to suffer certain sanctions in the external conduct. Liang Shu-ming argued that although law and morality are independent of command, albeit both depend upon a sense of right and wrong. Law solely depends upon the idea of lawfulness and unlawfulness. Since *lisu* (礼俗) had become a moralized command based upon the teaching of men, their duty and the reason for it, (Confucian) morality hence was customized to popular beliefs. *Lisu* (礼俗) was not only declarative of customary moral command, but also of *li*, which law should follow and accept, but acts within a narrower range. This apparatus explains why the content and function of law in traditional Chinese society was limited.<sup>24</sup>

One could claim that there is quite a similarity amongst relationships between law and morality in the West, and between law and *lisu* (礼俗) in the traditional Chinese society. But the differentiation is still evident. Let us take one aspect. As we have seen it, *lisu* (礼俗) functions as a component apparatus in which customary moral command and legal requirement coexists. No aspect of *lisu* (礼俗) is

<sup>22</sup>Peter Stein, *Legal Evolution: The Story of an Idea*, at 73.

<sup>23</sup>Scotsman John Reddie, “Letter to the Lord High Chancellor of Great Britain on the Expediency of the Proposal to Form A New Civil Code for England”, as cited in Peter Stein, *op. cit.*, at 73.

<sup>24</sup>LSM, *Essential Meanings of the Chinese Culture* (1949), 3: 121.

completely obligatory and not all the precepts of *lisu* (礼俗) which constitutes the regulatory system of a people have equal importance. Thus, *lisu* (礼俗) is like morality and yet is not morality; law is separate from *lisu* (礼俗) while the latter does link with formal legality closely. It is for this reason that, in considering this uniqueness of social order and governmental processes, one of the expositions proposed for itself that in traditional China there is a dichotomous structure of legality, namely, the formal legalist statutory law created by state and the “customary” law or unofficial law accepted and enacted in popular society. That is to say, the traditional Chinese law could be clarified into two types: civil law and state law. The two of them often are merged together as *lisu* (礼俗), while they had been described by one word: law—a terminology of course which is not used in its Western sense.<sup>25</sup> Thus, law plays a behind the scenes role and *lisu* (礼俗) deals with daily routines at the front. The normative order of traditional Chinese society as something of 扶乩 under heaven”, therefore, presents itself as an ambiguous as well as a clear-boundary in the *li-fa* formula.

Ironically, the past structure of Chinese society may have been as pictured above in Liang Shu-ming’s eyes, but Chinese history in this century is in conflict with this view. The incompatibility between the two traditions, including legal traditions, in the Chinese social reality of this century may have been more distinctive and distressing than at anytime in any other places. Descriptions, such as “two worlds”<sup>26</sup> in portraying Chinese urban life of the first half of this century or the dichotomy of “regime culture and sub-elite culture”<sup>27</sup> in clarifying opposing camps of legal thinking in the second half of the century in China, articulate the embarrassment of this extreme incompatibility and animosity.

In the realm of law, the conflicts between Russian-styled Marxist jurisprudence, which was an official ideology, and the traditional Confucianism which vests in the Chinese soul and life, and between them and the codification of recent years which has been undertaken under the influences of the Western legal ideas, from both liberal and conservative traditions, exemplify strikingly the universality of this incompatibility.<sup>28</sup> As an inevitable phenomena which would occur during the very period when a radical social transformation was in process, it articulates the necessity and urgency of reconstructing and reconciling the two traditions. As an exemplar, this explains why Liang Shu-ming often admonishes the iconoclastic

<sup>25</sup>For a detailed survey on this legal phenomenon see generally Liang Zhi-ping, *The Customary Law in Qing: Society versus State*, especially at 129 sq. Geoffrey MacCormack, *The Spirit of Traditional Chinese Law*, at Chap. 2 “varieties of law”, in particular, the section “unofficial law”, at 23–27. Also cf., fn. 109 in Part three of the book.

<sup>26</sup>Rhoads Murphy, “The Treaty Ports and China’s Modernisation”, in Mark Klvin and G. William Skinner (eds.), *The Chinese City between Two Worlds*, at 57 sq.

<sup>27</sup>Pitman B. Potter, “Law and Culture in Modern Chinese Society”, in *Proceedings of International Conference on Value in Chinese Societies* (II), at 893–915.

<sup>28</sup>Cf., the descriptions on this disharmony between morality and law in modern Chinese law, both substantive and procedural, ontological and epistemological, in the section *A joint production: the moral and the legal* in Chapter XII, and *Conclusion* of the book’ Part Three.

radicals that either the formation of the new social order or the new legality in China will be predicated upon the making of new *lisu* (礼俗). The new order and new legal system, which would be a reflection of the mind and life, the *Nomos* and *Physis*, of the Chinese people, cannot be achieved until this new *lisu* (礼俗) has been integrated.<sup>29</sup> It is in the light of this observation that *Qingyi* (情义) as a spiritual dimension is so crucial in understanding Chinese law, and, going further, in reconstructing and rejuvenating Chinese legal tradition.

## Qingyi: An Obscurity Between Subjectivity and Objectivity

Let us start with an etymological explanation. As has been shown briefly in the previous section, *qing* (情) can quite literally be rendered into English as feeling, affection and sentiment, or emotion. *Yi* (义) is a word that could be normally translated into English as righteousness, justice or human ties, depending upon the context into which it is translated. Considering the reason that a translation cannot carry the etymological trail that informs the meaning of the original word into the new language, we merely can say the compound *Qingyi* (情义) is a human tie based upon righteousness and affection. Functionally, it also could be described as an interchange of love and support which is undertaken in a web-like interaction of person-to-person. Ongoing over many years, it has been retained deep in the Chinese people's consciousness as a command of conscience and taken to their hearts as an emotional comprehension, through which a common-ground for mutual understanding and shared consensus could have been achieved.

If it is acceptable that Carleton Kemp Allen said "The Starting-point of all custom is convention rather than conflict, just as the starting point of all society is agreement rather than dissension,"<sup>30</sup> then *qingyi* is a definite basis upon which a convention and agreement could be reached for the Chinese. In the Chinese mind, we can claim that no more flagrant instance could yet have been found than a deed which hurts this kind of human affection and offends against righteousness. By going further, this would not be a concern but for the fact that such a "past" conception is still active in consciously framing the understandings of law in the contemporary world and in making them intelligible.<sup>31</sup> The reason why Liang

<sup>29</sup>LSM, *The Theory of Rural Reconstruction* (1937), at 174–185.

<sup>30</sup>Carleton Kemp Allen, *Law in the Making* (1930), at 30.

<sup>31</sup>It should be noticed that there is a character in Chinese that aptly expresses the Janus-faced message of this gift of face. This is the character *bao* 报. This character, under certain circumstances, can mean a gift offered in appreciation, while at other times, it can mean to extract revenge. This linguistic slip stands as a sign of a much deeper conceptual slippage that an incorrect response to the gift can bring. If the gift of face, of love, benevolence and support is spurned, then the face of the giver is lost and revenge sought. *Qingyi* or *renqing*, can therefore turn the giver of love and support into the deliverer of retribution. For details see Michael Dutton and Xu Zhang-run, "Facing Difference: Relations, Change and the Prison Sector in Contemporary China",

Shu-ming crystallized this concept and was concerned with it so deeply can be obtained partially by examining this clue.

In Liang Shu-ming's reading, the traditional Chinese framework in which the relationship amongst men was confined was not oriented around a dichotomous formula of rights *vis-à-vis* duties/obligations. Rather, *quanli* (权利 rights)<sup>32</sup>—if we borrow this word to express the fact that human-beings have been qualified by nature to claim what is their own due—would be laid in and vested in the fulfillment of duties. Perhaps the implication of this word can be best understood if our attention turns to an entirely different department of meanings. As a matter of fact, the traditional Chinese definition of human ties had been confined and interpreted in accordance with the Confucian concepts, such as filial piety,<sup>33</sup> propriety and so on, rather than in the terms of rights *vis-à-vis* duty.<sup>34</sup> It is in this context that, Liang Shu-ming suggested, *qingyi* (情义) provides a definitive boundary for this confinement through the pathway of “internal-directed force” or “inwardly-directed force” (向内用力), i.e., in Liang Shu-ming's terminology, approximately, of a self-examination of conscience and self-discipline. Hence it features as an example which differs from that of the West. In arguing this point Liang Shu-ming always perceived this issue in a comparative view when he pronounced

In comparison with the West, all social custom and state's law such as in China contain a devoted sympathy with one another among people while all of them in the West always reside desperately in the circumstance where a diametrically opposing contention exists among people. As for the maintenance of social order, the West falls back upon law while China depends heavenly upon the *lisu* (礼俗). Consequently, the conception of rights constitutes a foundation for the modern Western law and the essence of Chinese *lisu* (礼俗) yet lies in human affection and righteousness.<sup>35</sup>

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(Footnote 31 continued)

in Robert P. Weiss and Nigel South (ed.), *Comparing Prison Systems*, at 299–323. For an original elaboration and interpretation on the conception *bao* 报 see Lien-sheng Yang, “The Concept of ‘Pao’ as a Basis for Social Relations in China”, in John K. Fairbank (ed.), *Chinese Thought and Institutions*, at 291–309. Cf., Tang Jun-yi, “On Spirit of *Bao* in Chinese Humanity”, in his *Chinese Humanity and Modern World* (supplement), at 360–369; Wen Chong-yi, “Pay A Debt of Gratitude and Revenge: An Analysis on Interpersonal Interaction”, in Yang Guo-shu (ed.), *The Chinese Mind*, at 347–382. For a case study on this subject see generally Yan Yun-xiang, *The Flow of Gifts: Reciprocity and Social Networks in A China Village*.

<sup>32</sup>Cf., Li Gui-lian, “My Account about *Quanli*”, in 1 *Beijing University law Review* (1998), at 115–129.

<sup>33</sup>It is true that translation always obliterates the shadowy etymology which links words to their original meaning. In the current example, “filial piety” as English expression for *xiao* (孝) could ignore the different significance of *patria potestas*. For a detailed analysis see Gary G. Hamilton, “Patriarchy, Patrimonialism, and Filial Piety: A Comparison of China and Western Europe”, in *Conference Proceedings of Traditional Chinese Ethics*, at 203–240; also cf., in general, Yang Guo-shu, “A Conceptual Analysis on Chinese *Xiao*”, in his *The Chinese Mind*, at 39–73; Robert Bellah, “Father and Son in Christianity and Confucianism”, in his *Beyond Belief*, at 76–99.

<sup>34</sup>LSM, *Eastern and Western Cultures and Their Philosophies* (1921), 1: 479.

<sup>35</sup>LSM, *The Theory of Rural Reconstruction* (1937), 2: 169. Re., the relative discussion in section *Law: public and private* in Chapter X of the book.

But, at least on the surface, provided that this Western concept of rights can be understood in the sense of *zhengdangheli* (正当合理 means literally a judgment or sense of justice, proper, reasonable or equitable), Liang Shu-ming construed that it would tally completely with Chinese propositions about this word. However, it would be a contradiction with the Chinese stance if this conception signifies that independent individuals are born with a liberty to claim their own dues which are defined in a legal schemata. This alignment, which is characterised extremely by such severalty-personality, is very different from the accustomed concept of a web-like arrangement orienting around *qingyi*—namely, to a large extent, an obligation-orientation in a sense. A deep rationale of this schematisation lies in the fact that, in Liang Shu-ming's view, the traditional Chinese society

makes no distinctive recognition between one's own and other's, and has not very many considerations on the matter of rights and obligations (in the modern Western sense of individuals). Rather, the principled postulations, such as filial piety and propriety, respect for one another among brothers and yielding to each other among your partners, are more important in defining human ties. When (Chinese people) esteem human affection they are oblivious of themselves.<sup>36</sup>

Based upon the same ground, nearly three decades later, by employing the dichotomous formula of rights vis-à-vis duty, Liang Shu-ming continued his argumentation and presented it precisely by stating that in traditional Chinese society,

everyone fulfills one's own duties/obligations first while everyone had better not claim their own rights until they have been bestowed by the other party...the fulfillment of duties/obligations by all sides respectively signifies the realisation of their own rights, which neither have been missed out nor staved off...the balance (between person and person, individuals and their groups) would be established upon the basis of mutually considering and respecting your partners to be superior to yourselves.<sup>37</sup>

In enhancing his argumentation, Liang Shu-ming exemplified the relationship between parents and their children. As proof, it is perfectly justified that parents should rear and bring up their children according to their ethical and legal obligations to which parentage itself is deserved, no matter in what kind of pattern of cultures. The variation lies in the fact that, however, it would be not in conformity with the Chinese ethical sagacity if children could claim forcefully that "I am entitled to this right" and "you should feed me; you should give me a certain of mount money for my education".<sup>38</sup> Therein lies a paradox. That is, it does not mean children have not been entitled to their rights to be reared and brought up by their parents. Rather, their due positions cannot be expressed in the setting of rights versus duties/obligations, a cold legalistic bond rather than human ties cultivated in the spirit of human affection and righteousness according to Chinese *lisu* (礼俗). It is for this reason that, on the other hand, parents cannot make a responding claim to

<sup>36</sup>LSM, *Eastern and Western Cultures and Their Philosophies* (1921), 1: 479.

<sup>37</sup>LSM, *Essential Meanings of the Chinese Culture* (1949), 3:93, 95.

<sup>38</sup>*Ibid.*, at 3: 93.

their children such as “you have a duty/obligation to support me”. If they do so, they degrade the human ties between them to the level of a legalistic-bounded intellectual calculation.

Duties/obligation as an objective bond exists between them realistically. Any one of the parties in this interaction who fail to fulfill his or her responsibilities will be blamed as atrocious or outrageous according to the same spirit of human affection and righteousness in conformity with *lisu* (礼俗). The discretion underlying this seemingly implausible paradox is that, as Liang Shu-ming comprehended, the inner logic of *lisu* (礼俗) is human affection and righteousness (*qingyi*) rather than the formalist legalistic-bounded arrangement of rights vis-à-vis obligations. That is, in a sense, your rights vest in your fulfillment of your duties/obligations first. It is in the light of his observation that we can say a comparison between Liang Shu-ming and B. Malinowski is desirable. When Malinowski tried to give “an anthropological definition of law” he said that

The rules of law stand out from the rest in that they are felt and regarded as the obligations of one person and the rightful claims of another. They are sanctioned not by a mere psychological motive, but by a definite social machinery of binding force, based, as we know, upon mutual dependence, and realized in the equivalent arrangement of reciprocal services, as well as in the combination of such claims into strands of multiple relationship, the ceremonial manner in which most transactions are carried out, which entails public control and criticism, adds still more to their binding forces.<sup>39</sup>

We could translate the term “social machinery of binding force” into *lisu* (礼俗), but we cannot exclude the “psychological motive” from Liang Shu-ming’s reading of law. Using the latter concept, Liang Shu-ming counters strongly the more popular tendency of distinguishing traditional Chinese law from the Western pattern of law by clarifying it as an obligation-oriented or collective-oriented pattern in comparison with that of the rights-oriented and individual-oriented pattern which has been displayed in the West. He fashioned his theory by excluding the employment of these disputed conceptual notions which confuse the interpretation. On the one hand, he admitted that traditional Chinese law itself suggests a tendency that can be described as obligation-orientation. But on the other hand, he argued that such terminology, either obligation-oriented *versus* rights-oriented or individual-oriented *versus* collective-oriented, cannot reflect truthfully and meaningfully the very peculiarity of the traditional Chinese laws for they are originally a reflection of a different mind and life.

This terminology used as cognitive instruments had been abstracted from the life and mind of a society where a diametric opposition of individuals and their organized groups plays a key role in constructing the Machiavellian mechanism of the order. Consequently, the Chinese value-grounding and value-preference for *lisu* (礼俗) and *qingyi* (情义) determines the traditional Chinese law as well as Chinese society and cannot be interpreted correctly in these terms. To yield the point of defining law in terms of “orientation”, Liang Shu-ming claimed traditional Chinese

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<sup>39</sup>Bronislaw Malinowski, *Crime and Custom in Savage Society*, at 55.

law could be epitomized as ethical-orientation. As he reminded his readers, the term “ethical” (*lunli* 伦理) proposes a web-like interpersonal exchange of love and support by adhering to the inner logic of *lisu* (礼俗)—*videlicet*, Confucian humanities based upon affection and righteousness. In ordinary times, it is this “ethical-orientation” that has served to maintain social order. The absence of conceptions ranging from public law *versus* private law to political state *versus* civil society, on the one level, also can be explained by this element.<sup>40</sup>

To be sure, although Liang Shu-ming rejected the applicability of those terminological doctrines, he yet implied the absence of the conception of the individual in Chinese culture should be responsible for its dysfunction. Spanning his lifetime, his regret for this absence had been repeated time and again on various occasions. Having put his consistent value-judgment on the basis that “A society would be absolutely insalubrious if individuality cannot be developed; the respect for individuals is an eternal truth after all”,<sup>41</sup> Liang Shu-ming condemned the traditional Chinese way of life governed by the formal ethical code born in the Song Dynasty:

For thousands of years it made us impotent in any attempt to liberate ourselves from various authorities, so individuality as well as the individual’s social nature could not developed. This is our biggest point of inferiority compared to the West.<sup>42</sup>

In the section “Why there had not been the conceptions of individual rights and freedom (in the traditional Chinese society)” in his *Essential Meanings of the Chinese Culture*, Liang Shu-ming spoke out vehemently that

The most severe solecism and errancy of Chinese culture is the failure to discover the conception of the individual. A (individual) person almost has not his turn to speak out for himself on his stand. How many (individual’s) affectionate appeals had been depressed, obliterated and suffocated!”<sup>43</sup>

Truly, we must concede then, and we do concede without any hesitation, that this absence of efforts in conceptualising the individual has constituted a fatal weakness of the Chinese culture and Chinese law. It is in the light of this observation that it should be stated that imposing the Western conception of the individual and the attitude of respect for the individual into Chinese culture had constituted, and remains, one of the crucial directions for both the reconstruction of Chinese culture and its legal culture.

<sup>40</sup>LSM, *Essential Meanings of the Chinese Culture* (1949), 3: 83–85.

<sup>41</sup>LSM, “*The First Road That Will Not Work for Us Politically*” (1930), 5: 137.

<sup>42</sup>LSM, *Eastern and Western Cultures and Their Philosophies* (1921), 1: 479.

<sup>43</sup>LSM, *Essential Meanings of the Chinese Culture* (1949), 3:251.



## Two Law/Laws

Considering the social and cultural context as I had tried to show above, it is deserved to note that there could be two different things in mind, in reality, when the word *law* or *fa* (法) has been used in describing a normative entity in both China and the West without any necessary clarification about their idiosyncrasies. Although it is perhaps a little dangerous to pass at one jump from this law to that law, a stepping-stone which will make the transition both easy and permissible could be found. Hitherto it has been clear that the conception of law in the traditional Chinese reading differs from the meaning the West imposes on it. Comparatively, the presuppositions about law and the expectations on it, in the Chinese reading, is also quite limited. When talking of law and custom, Giorgio Del Vecchio states that “We never blame physical facts, but only the psychical character that they reveal.”<sup>44</sup> Quoting this sentence, I would like to suggest, today that what we need to do is neither blame the way of life which gave its bequeathing endowment to the traditional Chinese law nor the mind by which this law was characterised. Rather, a conscientious and earnest exposition directed to revealing its true picture is more important.

When some researchers, for example, the French jurist Escarra,<sup>45</sup> state their belief that the Chinese traditionally hold the law in low esteem, they actually refer to *fa* rather than law. After this Chinese character *fa* (法) has been rendered literally into a “foreign” language as law, *droit* or *Recht*, the translation tells readers another story. Putting aside the different ways that law is defined in the West, if we take the Western concept of law in a general common understanding as a reference in interpreting the Chinese counterpart, the Chinese equivalents of these two approaches to law are *fa* (法) and *li* (礼), which Luke T. Lee and Whalen W. Lai argue are terms representing a conventional conceptual dichotomy which had become accentuated and institutionalized, running through the Chinese legal tradition.<sup>46</sup> The term *fa* (法) literally often refers to an equivalent which is defined in the sense of the Western positive statutory law while *li* (礼), or equivalently *lisu* (礼俗) in the words of Liang Shu-ming, is a truly “living law of the people”.

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<sup>44</sup>Giorgio Del Vecchio, “The Homo Juridicus and the Inadequacy of Law as A Norm of Life”, in 11 *Tulane law Review* (1937), at 520. Quoted from Jerome Hall (ed.) *Readings in Jurisprudence*, at 933.

<sup>45</sup>In *Le Droit Chinois*, Escarra points that Chinese law is not “law” in the Western sense at all. “Where it is anything else but a fiction, the opposition traditionally established between Orient and Occident is met nowhere more clearly than in the domain of law.” The Westerners view the law as almost sacrosanct, as the regulator of the social conduct of all people while the Chinese hold law in low esteem. For details see the book above which translated into English by G. Brown, at 10, 11.

<sup>46</sup>The two approaches Lee and Lai refer to is the Austinian definition of law and the “living law of the people” posited by Eugen Ehrlich. Cf., Lee and Lai, “The Chinese Conceptions of Law: Confucian, Legalist, and Buddhist”, in 29 *The Hastings Law Journal* (1978), at 1308. For Ehrlich’s concept of law see his *Fundamental Principle of the Sociology of Law* (1936), at 373,493.

Elaborating on this understanding, we can realise why Liang Shu-ming claimed that “we almost can say that China had no legal system, but rather only *li* (礼).”<sup>47</sup> On another occasion, Liang Shu-ming recapitulated this perspective that

As for the thing “law”, China almost did not have it. The law in China since ancient times was nothing but penal law, which functioned as a supplement and assistance to *lisu* (礼俗), and was used merely in the case of no other alternatives.<sup>48</sup>

Here the “law” in Liang Shu-ming’s cognition equates obviously to that normative entity in the West when used to translate the word *fa* (法). Actually, Yan fu (1853–1921),<sup>49</sup> who translated Montesquieu’s *The Spirit of Laws* and Adam Smith’s *Wealth of Nations* into Chinese, already reminded his Chinese readers that the single word “law” in the Western sense implies a fourfold component of meanings in Chinese, that is, reason or justice (*li* 理), propriety (*li* 礼), *fa* (law literally) and institutional arrangements or system (*zhi* 制); law in the full sense of this word in the West in fact includes the contents of Chinese propriety (beside that of *fa*).<sup>50</sup>

In the light of this observation, Liang Shu-ming revealed a perplexing phenomenon that the Chinese stay traditionally at a respectful distance from law (*fa*) while they completely appreciate *lisu* (礼俗) as an amiable good-natured *Nomos* which, in their esteem, is not only agreeable with and congenial to their minds, but also serviceable and workable for their life. This also explains why both criminal and civil cases on many occasions were preferred to be settled out of court in the imperial era.<sup>51</sup> Furthermore, the dichotomy of *li* (礼) and *fa* (法) determines that the traditional Chinese social order, especially at the level of “little tradition”, had been maintained mainly upon the basis of *lisu* (礼俗) rather than “state’s statutory law”, albeit the latter totally reflects and establishes kinship with the requirements of the former. Under this circumstance, as Liang Shu-ming saw, it is often unnecessary to use law (*fa*) and law is also unable to do anything.<sup>52</sup> Hence, when a quite widespread view claims that *li* (礼) could be comparative with the natural law, I would like to suggest, this is quite positively reasonable for *li* (礼) provides both a macro framework and the inner-worldly source of deep meaning in which the Chinese life

<sup>47</sup>LSM, “*The First Road that Will Not Work for Us Politically*” (1930), 5: 162.

<sup>48</sup>LSM, *Essential Meanings of the Chinese Culture* (1949), 3: 199.

<sup>49</sup>There are many Writings about Yan Fu in both Chinese and English. There is a very brief but profound introductory description about him in Chow Tse-tsung’s *The May Fourth Movement: Intellectual Revolution in Modern China*, at 64. For other materials about his career and thought in Chinese, cf., note 47 in Chapter III of this book, and in English see Benjamin I. Schwartz, *In Search of Wealth and Power: Yen Fu and the West*. Also cf., Wang Qu-chang, *A Chronological Biography of Yan Ji-dao*; Lin Bao-chun, *Yan Fu: A Pioneering Thinker in Modern Chinese thought*.

<sup>50</sup>Yan Fu, *Writings of Yan Fu* (Vol., IV), at 936.

<sup>51</sup>LSM, *Essential Meanings of the Chinese Culture* (1949), 3: 158.

<sup>52</sup>LSM, *The Theory of Rural Reconstruction* (1937), 2:174–179.

and mind are structured fundamentally in its own Axial Age.<sup>53</sup> This aspect constitutes one of the peculiarities of the traditional Chinese act of government and the way of maintenance of social order.<sup>54</sup>

Thus, it is understandable when Liang Shu-ming argues time and again that the construction of a new legal system or even constitutional government is given no urgent and predominant position in the Chinese course of “cultural reformation and national self-salvation”. On the contrary, the province of law in China would be considerably limited, both in the past and at present. Facing the flotilla of claims which advocated a horizontal transplantation of the Western legal system, Liang Shu-ming argued that in China a new social order only could be predicated upon the formation of the new *lisu* (礼俗), and the new law which should be congenial to and adoptable by the Chinese, both in their life and mind, would not be shaped until a new *lisu* (礼俗) had matured in due course itself.

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<sup>53</sup>Here I adduce this notion from Karl Jaspers. For a detailed original analysis see in general his *The Origin and Goal of History*. The original version in Germany was published in 1949. For a comparison between *li* and natural law, see Liang Zhi-ping, *Search for an Eternal Harmony in a Natural Order: Studies on Traditional Chinese Legal Culture*, at Chapter “Natural Law”.

<sup>54</sup>It is partially true that, to a much greater extent than is true of Western law, as stated by Lee and Lai in their *op. cit.*, paper, it must include the study of philosophy, religion, classics, history, politics, economics, sociology, and psychology. Preoccupation with scrutinizing, analysing, and comparing statutes and court decisions—a skill that Western lawyers employ with dexterity and felicity—is futile and misleading because such an approach, devoid of insight into the makeup of Chinese society, would at best deal with symptoms and not causes. For details see their co-authored paper, *op. cit.*, at 1329.

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