

Analysis of “Family” and Its Related Systems in the Category of Kinship Law

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Received: 22 April 2023; Accepted: 12 May 2023; Published: 4 June 2023

Abstract:

Different from Western society, Chinese culture is based on “family”, which extends a whole set of thinking and life style. The process of exploring the system of traditional kinship law and inheritance law in ancient China is actually to study a whole set of internal operating system and operating logic with “family” as the unit. In order to absorb nutrients from the ancient private law system to promote and improve the development of kinship law and civil law in China, it is necessary for this paper to explore the internal meaning of “family” and a series of related systems derived from it from multiple perspectives.

Keywords:

Law of Kinship, “Family”, Patriarch, Family Property

1. Introduction

“Family” is a mirror reflecting Chinese social reality and legal system, through which we can examine the subjective existence of the Chinese system and its differences from the Western social system in the process of development. This article tries to analyze the relevant contents of “Family” from many sides, so as to get a deeper understanding of “Family” in the category of private law.

2. The Conceptual Analysis of “Family”

2.1. The inner meaning of “Family”

Just as the word “relatives” has different meanings and scope of application in China and Japan, Japanese jurist Shiga Hideyoshi compared and analyzed the differences between “Family” in China and Japan in Principles of Chinese Family Law, and roughly came to the following conclusion: “the concept of family that is formalized in thinking” does not exist in China. “Family”, whether in the broad sense or the narrow sense, can not exceed the meaning of the group of peers. Shiga justifies his conclusion by referring to the difference between two aspects. First of all, “Family” in Japan does not simply refer to a solid organization composed of people, but an abstract concept that is not interfered by objective factors. It is more endowed with the meaning of “name” and “family symbol”, that is, social evaluation and

family identity are linked. What kind of family status is assumed, also means what level of prestige and evaluation. In China, social fame does not depend on family status, but on a person's moral conduct and own qualifications.

Second, the Japanese concept of “Family” is often linked to specific occupations or to specific skills or abilities that have been passed down through the family. If the younger heirs do not inherit or lack the family’s specialized skills or abilities, they may be banned or expelled from the family. It can be concluded that the ultimate acquisition of family identity in Japan is based on congenital kinship ties, but also depends on acquired abilities and qualifications. [1] In short, “Family” is a cross-century management of a certain industry, or to the state, government service in exchange for salary of the enterprise, at the same time has a specific service function for the society. However, “family property” is not a necessary component in the composition of “Family” in China. Family identity can be obtained by blood relatives, in-laws or even fictitious kinship relationships (such as adoption). Accordingly, Shiga concludes, the Chinese “Family” is more for its own purposes, for survival and breed. Once the first level of demand is filled, people will be satisfied. Therefore, people and property are the elements of “Family” in China, and name and karma are the elements of “Family” in Japan. There is no “Family” in China beyond the abstract concept.

Shiga Hideyoshi objectively shows the differences in the forms of expression and logical composition of the “Family” between China and Japan through the comparative study of the above two aspects. However, despite his own subjective views, the final conclusion is still controversial. In fact, compared with Japan, China also has the concept of “Family”, but its expression is more hidden and flexible.

“Family” in China also contains the meaning of “family business”. [2] Kinship is the basic bond that connects the members of the family. But “Family” does not confine itself to this group. It extends to a larger area and allows kinship to form a network of connections for larger social groups. The patrilineal kinship group still maintains the original social relations of the family to a certain extent after its members are separated. All kinds of social obligations still link them together. In the case of major situations presided over by the parents, other small families should follow the unified command, and the social obligations that help each other will be operated within the paternal kinship group. In the process of constructing social ethics, Confucianism in ancient China realized the analogy from “home” to “state” with the help of the concept of “Family”, and the ethical requirements of home for internal members eventually became the source of the legitimacy of social professional ethics. Therefore, “Family” has the function of the so-called “business” for society, and is free from the limitations of physical concepts.

Shiga’s understanding of the continuation of the Chinese “Family” is also inappropriate. People’s childhood not only accepted the feeding of their parents, but also accepted the economic support of their parents. Working for their parents is their duty. But as individuals grow up, and young people become the majority of the labor force, parents still hold property rights, and they will be unhappy. So parents gradually relinquish their rights as they retire from the workforce due to old age. In short, as people grow older and more dependent on their children, their authority diminishes proportionally. On the contrary, with the acquisition of property and independent status, the next generation also assumes the obligation to support the elderly. It is important to note that the death of parent does not mean the end of a child's obligation. The selection of a cemetery, the handling of funerals and regular

sacrifices are the children continue to fulfill their obligations. When a person dies, his immediate family is required to wear Special clothes and wrap a long white band around their head, which stretches to the ground. It is the responsibility of the descendants to repair and clean the graves of their ancestors, which lasts for five generations. In peacetime, every important day to sacrifice, burning paper money to illustrate the economic obligations of the descendants to the previous generation. Since the deceased cannot exert direct control or influence over these obligations, religious belief becomes a strong binding force. [3] Leaving ancestral tombs damaged, and selling ancestral homes and family property to others. It is a sign of filial piety to continue to bear the responsibility of offering sacrifices and maintaining the land, and to do the opposite will be criticized and cursed by others as unfilial. Thus, in China, there is no essential difference between the duty of the heir and the merit of the "Family". However, in China, the inheritance of "Family" is obligatory, which indirectly points to the overall requirement of ethics and social order, while in Japan, the reputation of "Family" depends on social responsibility.

Through the analysis and dialectical consideration of Shiga Hideyoshi's conclusion, it is found that the "Family" in ancient China not only has the responsibility ethic color of "co-construction of family and state" at the national level, but also includes the individual social relations. Therefore, we can conclude that "Family" doesn't take entity organization as the necessary condition for its existence, and blood relationship is not the only element to construct "Family". China has an abstract concept of "Family". Since then, we have a broader understanding of "Family" from the conceptual dimension.

2.2. Statutory social organization

The existence and construction of "Family" is not always maintained by consanguinity and marriage, but mixed with economic and ethical considerations in its formation process. Two unrelated groups may also be called a family for the sake of family continuity. From this point of view, "Family" is sometimes more like a group composed of contracts. One fact that should not be overlooked is the existence of families bound together by contract. Specifically, they often ostensibly in the name of sacrifice or revision of the family tree to set up a kind of trust of the covenant organization, the real purpose of this organization - capital management. On the surface, the purpose of the agreement is to guarantee the funds for the sacrifice. But in fact, if only to honor ancestors, then should not be excluded from the "Family" of the family members who have not paid. Therefore, the so-called purpose of offering sacrifices to the public is just a family cloak for seeking ideological legitimacy under the background of suppressing commerce. Through this coat, the actual business behavior not only conforms to Confucian ethics, but also raises commercial funds. The above examples show that "Family" is not only created through blood and in-laws. Blood relationship is only a necessary but not sufficient condition for becoming a member of a clan. Families sometimes act more like "companies" based on contractual relationships. In the process of family bonding, the flexibility of the practical operation goes far beyond the principled bondage of blood relationship. Therefore, from this point of view, the family is not a simple blood organization, but more like a market economic organization designed for the continuation of "Family".

Another example of the contractual nature of a family comes from adoption. In traditional Chinese ethics, continuity of personal and family life is achieved by raising the next generation. If there is no male offspring, it means that the ancestors have no

one to sacrifice, and the life of the “Family” has come to an end. Obviously, the parents who uphold the traditional family concept cannot accept this fate arrangement. The clan code, in keeping with Confucian ideals, ostensibly forbade adoption by interracial groups. In practice, however, such prohibitions are often ineffective. Family members who have no children often adopt a different surname through the roundabout practice of “live-in sons-in-law”, thus maintaining the existence of the “Family”. In the contract of attachment, both parties often agree that the “son-in-law” needs to change the surname; And the main family needs to pay “son-in-law” a certain amount of property as consideration. At this time, men are often poor families, and they hope to become “son-in-law” by signing contracts to solve their livelihood problems. The main family, in addition to the ethical pressure to carry on the family line, is more to avoid the dispersion of the family property. Therefore, it is necessary to create a successor of the same family name. In a word, in the process of absorbing family members and combining families, the flexibility of practical operation is far beyond the principled bondage of blood relationship. Therefore, from this point of view, the family is not a simple blood organization, but more like a market economic organization designed for the continuation of “Family”.

“Family” is a basic group of people who own property. It is the basic social unit of production and consumption, so it becomes the basis of group ownership. [4] Property is one of the most basic elements of production and living unit under the feudal system in ancient China. Therefore, starting from the perspective of property has become an important way to understand the Integrated China - “Family”.

3. The Combination of “Family” and Property Ownership

3.1. “Cohabitation and shared wealth” - an important feature of “Family”

Cohabitation is not simply a geographical fact of living in the same house. For example, if a family is prosperous due to limited space, and a new home is built in another place, and some members of the family move to the new home without a separate order, it is not called a separate family. To put it accurately, it is called ‘cohabitation and living in separate houses’. In the Records of the Grand Historian, it is recorded that Zhang Shizhi had been a knight in the capital for ten years and had “cohabited” with his brother who was in the countryside. This indicates that cohabitation relationships that are geographically unrelated to the place of residence can be maintained. Behind this concept of cohabitation and shared wealth lies a profound legal logic:

At first, the core of the concept of cohabitation and shared wealth is that everyone’s labor income is handed over to the family planning responsible person, namely the clan leader, for the benefit of all members. This phenomenon is presented in the form of common cultivation and harvest when all members work as laborers to cultivate the land. In addition, the scope of labor income can be extended to personal sideline income. This means that as long as the “cohabitation” relationship is still maintained, income from sidelines or going out for business also belongs entirely to the family. [5] It denies the existence of personal private ownership, and according to the law, every dynasty prohibits descendants and parents from having “foreign wealth”, otherwise they will be imposed a penalty. From this, it can be seen that not concealing personal income is a basic rule that every family member must abide by, and it is also the first requirement of the principle of “Cohabitation and shared wealth”.

Next, the essential living expenses of each person living together are fully provided by their family. Taking Zhang Shizhi as an example, during his ten-year tenure as a cavalry man in the palace, his elder brother Zhang Zhong provided money every month to maintain expenses. The basis for Zhang Shizhi's cohabitation with his brother is also here. In addition, at that time, people who went out to work had to make necessary private expenses based on their own income to maintain their livelihood, and the income they held was fully included in the family's property in terms of calculation. At this time, this part was considered as the living expenses borne by the author for the convenience of expenses. In addition, who can earn how much money is not considered a problem, and the consumption aspect should be used as a fair benchmark for everyone. Fairness in food consumption is particularly important. [6] Cooking together and eating together are vivid portrayals of family life. When property is divided, most of the time it is simply a division of the existing indoor space or the division of the existing room into several equal rooms, but after the division only meals are eaten separately. So in a sense, the stove is the center and the symbol of the home. Therefore, in a sense, the stove is the center and symbol of the home. Thus, cohabitation is called "have a picnic together", while separation was also known as "cooking separately" in ancient times.

3.2. "household division" - Separation of "Family"

In the Warring States Period of China, the property inheritance mode of household division appeared, and it has continued to the present. It is essentially the division and inheritance of family property between the children due to the intergenerational transmission. [7] After the baby is born, because he is not yet capable of acquiring objects, he is dependent on others to provide for him. The role of the family is to bring up an incapacitated infant to become a qualified member of society. Children meet their needs through their parents' exposure to all kinds of things. Initially, you can't use anything without parental consent. The clothes on the body, put on or take off the mother's advice; Cooked food must be eaten with the mother's permission; Relatives give him gifts or lucky money is kept by his mother. To control children's acquisition of goods under the supervision of adults is mainly to maximize the interests of children before they obtain full capacity for civil conduct or to prevent children from damaging goods due to unskilled skills. So when children grow up to take care of themselves, that control diminishes. Children's knowledge and experience growth and into the community to participate in labor, gradually obtained the right to use items belonging to the home. [8] But what they can really use for themselves is still very limited, and the type and amount of things they consume are still monitored by their parents.

This kind of property inheritance, that is, the important time node in the process of property transmission, occurs at the time of marriage. The parents of both men and women should base their own property on the newly married couple in the name of betrothal gifts, and the combination of the two becomes the core of the family property. Although they have their own house and property, from the bride's point of view, she seems to acquire the new property ownership, but also lose the right to use the property in her own home. The house and property belonged to his brother and brother. In fact, the bride is not as free in her husband's house as she is in her own house, and her influence over things is extremely limited. [9] She has no right to share in common the personal possessions of any member of the family, except those of her husband. For the male family, father, mother and son are the three essential elements

in a family. They form a triangular structure, which is stable and harmonious in a certain period of time. But over time, as the sons grow up and combine with the other half to form a new triangular structure, the woman becomes the disintegrating force in the husband's family, leading to the break-up of the family. To quote Mr. Fei Xiaotong, "The tendency of the family's collective economy to disintegrate often begins with her."

Due to family division, the original balance has been disrupted. The original triangle formed by parents may break, but separating does not mean breaking any connection. [10] While the father is alive, he can exert influence over the land and houses used by the son. Sons are not allowed to sell land against their father's wishes, so the separation does not mean the complete end of the economic relationship between parents and children. On the other hand, although the separation of the family has the factor of separation, but the inheritance of family property is strictly limited to the scope of the family, unrelated people are never allowed to inherit family property. The inheritance and continuation of the family is an important way for the family to reproduce. No matter how many times there are divisions, there are still cultural and ethical ties between homes, between parents' homes and their children's homes. So, the "separation" here has a specific meaning.

4. The Master of the "Family" - Clan Chief

In families where siblings live together, the older brother is referred to as the parent, but the status of the younger brother and the older brother is equal. In a family where the father and son live together, although the parent (Clan Chief) has ownership of all the property, this ownership is obtained based on the father's identity, not solely for the sake of the parent. The literal meaning of a parent is to refer to the person with the highest ranking in the family, but if a person in the position of being called a parent has a unique and extensive right, power, or responsibility, then in terms of all relationships in family property, the concept of a parent here is a broader one. We are discussing parents in a broad sense.

The Qing Dynasty statute Household Law household service in which it is stipulated: "Anyone who cohabits with a lower level child and does not allow their elders to privately take their own property shall be punished with ten taels of silver and twenty lashes, with an additional one for every ten taels of silver, and the punishment shall be one hundred sticks. If they cohabit with a higher level elder, their property shall be divided, and if it is not evenly distributed, their crime shall also be the same." The "private property" here refers to the pawning of clothes and daily necessities, or the indiscriminate spending of money and goods. It can be seen that parents do not have the right to decide such important matters as land sale, but also require that daily consumption or expenditure be decided by parents. The law gives parents the right of agency in daily family affairs. In the case where parents have the right to manage family affairs, there are no issues with the exercise of direct family members as clan leaders due to the direct effects of family property ownership. [11] When collateral relatives serve as clan leaders, because they are only one of the co-owners of the family property, the management power here is granted based on the commission of other co owners within the family, that is, the source of this right is the result of legal or customary arrangements. Therefore, for the benefit of the entire family, the exercise of its management power should uphold fairness and impartiality. When parents do not handle daily household chores properly or their subjective purposes are not right, the family will protest against this, and as a last resort, co

owners of the property can also demand a separation. If there is any improper behavior related to the division of family property, it is also possible for children to sue elders.

Back to the Zhou Dynasty, a small-scale peasant economy emerged with families as the unit of labor production. At this point, personal color is diluted in the agricultural economy where families are the production unit, because individuals who leave their families are like leaves leaving their roots and gradually dying. In the context of this small-scale peasant economy, parental rights have emerged. The overall interests of the family were the legislative purpose of the ancient natural person capacity system, implemented through parental rights. The oldest male elder or someone elected within the family is the only person with full civil capacity who represents the family, and all other members of the family are within the scope of their rights.

At the same time, the ruling class's policy of emphasizing agriculture and suppressing commerce has led people to focus on agricultural production, resulting in a bias towards commerce: that is, it is considered an industry engaged by the lower class. Especially for parents with absolute authority in their families who do not actively engage in the business sector, they feel that the benefits brought by agriculture are the safest and least discriminatory. Therefore, there is a situation where parents hope to enjoy the rich wealth brought by business, but are unwilling to directly participate. So other members of the family act as agents to participate in civil and commercial activities. Thus, there is a phenomenon where parents recognize their ability to exercise parental authority by authorizing other family members. The amount of behavioral ability that family members can acquire at this time is determined by parents taking into account various factors [12] such as personal qualities. Similarly, in the case of the father as the head of the clan, although the management of household chores has always been in his own hands, his ability to handle affairs decreases as he ages. After consulting with family members, he will delegate some of the power to others. This approach is similar to the current agency system in civil law.

5. Conclusions

When Hegel studied the history of China, he believed that it had developed into the present state very early, and the historical stage had stalled for a long time. The reason for this situation is that China's objective existence and subjective spirit are unified, and the tension between the individual and the entity is lacking. The individual cannot introspect and find the confrontation between himself and the entity. The unity of individual and entity generates "family", and the unity of entity spirit and individual spirit is "family spirit". "Home" became the key concept of Hegel's construction of Chinese philosophy of social history, and even influenced Weber's judgment on Chinese legal model. The concept of "family" has exerted a profound influence on the enactment and promulgation of kinship law and inheritance law in contemporary China, and provided a rich theoretical basis for the promulgation of China's Civil Code.

Conflicts of Interest

The author declares that there is no conflict of interest regarding the publication of this article.

Funding

This research received no specific grant from any funding agency in the public, commercial or not-for-profit sectors.

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