

Chapter VIII

Fictitious Ancestors, Fictitious Land, and Fictitious Governments: Death and Lineage in Qing South China

MATSUBARA Kentaro

Introduction

This paper aims to provide an overview of how lineages in Qing South China might have made use of various types of socio-legal fictions in the organisation of their affairs. It is in this context that I wish to place the practice of ancestral property holding, which can be understood as a form of strategic donation, widely observed in Qing China. Ancestral property was established separately from the household property that would typically provide the family's day-to-day expenses, usually with particular social aims. These aims varied in their degree of specificity; these would include rituals for specific ancestors, aiding the poor within the lineage, or a more general "welfare of the village". The establishment would take the form of explicit donations from individuals, or an implied donation, meaning that an amount would be set aside in the process of household division, whereby the newly established ancestral property would consist of property that would otherwise have been distributed among the sons partaking in the division.

1. Fictitious Ancestors: Death and Property in Traditional China

At the basis of ancestral property holding are the practices regarding family property, widely observed throughout China in the imperial periods. I have tried to articulate these practices in another paper [Matsubara 2020], and will here provide the basic outline.

The primary unit of property holding in Qing China is known to have been the household. The household typically consisted of three generations, with the household head and his wife as the two members of the first generation, their sons, sons' wives, and unmarried daughters in the second generation, and the sons' children forming the third generation.

What characterised the household group was the notion of *tongju gongcai* 同居共財, common residence and joint property. This meant that the income from the members' work would all go into one common fund, and the expenditure of all members would also come from that common fund. While there were certain exceptions (such as individual income from exceptional personal skill on the part of a son, or the dowry brought in by one of the sons' wives going into a separate account particular to the son in question), the daily life of the household consisted of living through this joint fund, eating together what could be provided by that fund. If land was purchased by that fund, that would form part of the household property, and if there was a shortfall in meeting the needs for the household members' daily survival, one might sell off such land to provide for such needs.

While the members of a household were equal in benefiting from the property and funds, their use and disposal was solely in the hands of the household head. The household head could also use the family property as security in borrowing money, and expect other family members to be responsible for that debt in the case of a default, but other family members could not incur a debt and expect the household head to honour it in a similar situation [Shiga 1967 and others].

The guiding principle in these practices was the idea of *zong* 宗, the notion of the continuity of paternal descent, where father and child are linked by sharing in the same *qi* 氣, the latter being perceived as an essence of a person's life, unique not to each individual, but to each line of paternal descent. Each household and its head are seen as the current incarnations of the *zong*, and their activities, both economic and ritual, ensure the survival and flourishing of the paternal line [Matsubara 2020].

The economic unit of the household, characterised by common residence and joint property, would reach the end of its lifespan when its members decided to divide the property. An important point to note is that this did not necessarily coincide with the death of the household head. Division could take place within the head's lifetime, in which case he would decide when to execute this division. Typically, when the head felt that each of his sons was ready to take on the responsibilities of a household head, he would retire with an old age pension for himself (*yanglaofen* 養老分), and divide the rest of the property equally among his sons.

If such a division was not carried out within the household head's lifetime, the sons would continue to live in a state of common residence and joint property, taking decisions about the use and disposal of the household property on themselves. They could either choose to continue this form of living indefinitely (although these were rarer cases), or pick a later date for the division. Again, they would divide the property equally among themselves (possibly with an extra portion for the brother taking charge of ritual duties), leaving aside a pension for their mother if she was alive, and funds for the dowry of any unmarried sisters.

Equality of division was a vital aspect of this division, a rule which could be

enforced through a legal process, in spite of a household head's wish to favour certain sons over others [Shiga 1967, 190–194]. This aspect, of the household head being unable to freely choose how to divide the family property, indicates how the property was not perceived to belong to the household head individually, but to the wider group forming the continuity of the male line. In that regard, custom surveys have revealed the notion that the household property ultimately “belongs” not to the household head but to the continuity of the male line—expressed as *zuzong* 族宗—and the household head was merely entrusted with its management for a limited period of time, so he could look after the property for the succeeding generations [Shiga 1967, 213].

The practice of equal division of household property, while conforming to the ideal of the healthy flourishing of a paternal line's *qi*, could pose problems for the continuity of a family's business interests. If the household unit was engaged in a business venture, then the integrity of its capital would be an important factor in the continuation of this venture. If the property were to be divided equally among sons at each generation, this continuation would be jeopardised each time such division took place.

To be clear, this was a difficulty that had its origins in the close relationship between agreements on property rights and paternal descent in Qing society. Such matters as the division of profits among investors in joint ventures, which might be decided through the workings of contract law in our societies, were largely agreed upon through notions regarding descent [Faure 2006].

One method by which the Chinese family would overcome this difficulty was to have multiple holding units within the line of descent. It was possible to designate a—deceased—ancestor as the nominal holder of certain property, appoint a family member to manage this property, and allow all direct descendants of this ancestor to benefit from it. Given the prevalent practices concerning household division, this establishment of ancestral property was an ingeniously simple and effective way to preserve the integrity of a body of family property.¹

Such ancestral property, which would be held either in the name of the ancestor himself or an ancestral “hall” (*tang* 堂) commemorating that ancestor (many such holding entities would use both the individual name and the *tang* name), could be established largely through two methods.

Firstly, if it was a matter of continuing a household business interest at the same time as carrying out household division, one could keep part of the household property undivided, and establish with it an ancestral holding in the name of the household's head (alive or deceased). Either the head himself or one of the sons could take on the role of managing this property, the business interest could continue with this property as its capital. The rest of the household property could be di-

¹ Early analyses of this practice can be found in Freedman [1958].

vided among the sons, and the sons could go about their daily lives using the divided portions of the property, while collaborating and jointly benefiting from the business based on the undivided property. This business concern, once established as an ancestral property, could persist beyond the immediate generations, and potentially last indefinitely.

Secondly, ancestral property could be created by “donating” property to an earlier—usually long dead—ancestor, establishing a body of property from which (all) the descendants of the ancestor in question could benefit. For example, an individual who enjoyed commercial success could purchase property that would generate an income, donate it to the founding ancestor of his home village, appoint a manager of the property, and the entire village (who all claim descent from this founding ancestor) would be the rightful beneficiaries of this property.

In the absence of a positive corporate law and a legally defined shareholding structure, the institutional underpinning for business concerns that outlasted individual life-spans could be provided by this fiction of a property-holding (deceased) ancestor, whose property generates wealth that could be distributed among a strictly defined group of people.

The institution of ancestral property was structurally analogous to household property in two important ways. Firstly, it had the duality of “belonging” to an individual (either the household head or the ancestor in question) on one hand while directly benefiting a specific group of individuals defined by their relationship of direct descent from that individual. Secondly, a particular individual (or group of individuals) was charged with the management and decision-making regarding that property. In the case of the household, it could be the household head himself, or if it was a household group persisting (without division) after the head’s death or retirement, the son(s) given the position of manager, usually styled *dangjia* 当家, would take charge of the management, ensuring that the whole household group benefited from the property [Shiga 1967]. In the case of ancestral property, a manager (often styled *sili* 司理) would be appointed—the Hong Kong colonial government, for example, would require the registration of a *sili* in recognising this form of property holding—and would be charged with the responsibility of reporting on the finances regarding the property to the beneficiaries. In the absence of the ancestor himself, the manager’s relationship with the rest of the group of beneficiaries was parallel to that between the *dangjia* and household members in the case of household property.

This structure, parallel with everyday household property holding, would have made it simpler for members to operate, and to largely agree on its practicalities. Moreover, this practice of ancestral property holding had the relative flexibility of enabling different groups to set up capital jointly. If the aim was to provide material comfort for an entire village, setting up property in the name of its founding ancestor would cater to such needs. Similarly, if one were to set up capital for a

group that stemmed from a recently existent household group, holding that capital in the name of the deceased head of that household group would serve the purpose.

While such institutions had their own limitations in capital-accumulation [Faure 2006], it was widely utilised, especially in South China. The clash between these institutions and English trust law provided an interesting case-study for colonial legal administration, but this will be a topic for a separate discussion [Matsubara 2009]. Suffice it is here to note how the use of fiction—a dead ancestor as property owner—would provide one of the cornerstones of the property regime in Qing South China.

2. Fictitious Marriages: Inheritance Measures in the Absence of Heirs

The abovementioned notion of *zong*, continuity of the paternal line through the identification between father and son who share the same *qi*, was put into practice through ritual obligations, as much as it provided the basic logic for property holding practices.

The central obligation of the descendant in this regard was to carry out rituals of sacrifice to the ancestors. These included communal rituals at ancestral halls, grave veneration often in smaller units, and daily sacrifice in the home to immediate ancestors. Indeed, the dead would become ancestors (*zu* 祖, not *gui* 鬼 or devils) by having descendants sacrificing to them.

On the part of the living, this would be an impetus to ensure they had at least one line of successors who would continue the rituals of sacrifice, enabling them to participate in the continuity of the *zong* as ancestors. One such strategy would be adoption, where a family member of the correct generation (ideally a nephew) is named the heir to continue the rituals. The notion of sharing in the same *qi* generally forbade adoption from different surname groups, and the all-important notion of seniority within the line of descent would manifest itself in the practice of ensuring that the adopted son was of the correct generation.

Another practice related to securing an heir was that of posthumous marriage. This could take place in cases where a son died without having married, either leaving the parents without an heir, or (at least) in a condition where the son himself would not have anyone to sacrifice to him in death. In such a case, the parents would search for a “bride” to marry the deceased son. Typically, this would be a woman who died before marriage. Her corpse would be dug up, the families would perform a wedding of the two deceased people, and bury them together. If the families could “adopt” (and somehow raise) a child of the correct generation as the heir to this posthumously married couple, sacrifice could be continued for the prematurely deceased son and his posthumously married wife.

While the motivations for such a practice would inevitably be multilayered

(it is often explained in the context of sympathy regarding the child's loneliness in an afterlife), it is clear that this fictitious marriage has an affinity with the more general notion of the continuity of the *zong*.²

Moreover, these posthumous marriages could be recorded in lineage genealogies (*zupu* 族譜) as normal marriages. Thus the couple becomes integrated seamlessly into the written records of the group's ancestry, records that are used to determine lines of descent, rights to ancestral property, and ritual obligations.

3. Fictions of the Genealogy: Ancestors and Local Social Structuring

It is to these genealogical records we now turn. These are records kept by paternal descent groups, giving the names of the ancestors and enabling the different lines of descent to be distinguished, which in turn would (at the very least) determine who had the rights to which ancestral property, as well as who took part in which rituals. However, the purpose of the genealogy was also multilayered, and there was space for different kinds of fiction [Faure 1992].

To illustrate this point, we will look into the compilation process needed for different levels of ancestry in the making of a written genealogy.

One premise of the Chinese surname group is that in theory at least, all persons born with a particular surname can ultimately trace their ancestry to one common ancestor, the first individual who used that surname. The feats of these legendary individuals are recorded in what became Confucian classics, and very often the genealogical records of a surname group would start with such an individual.

This would be followed by an array of ancient high officials who held office in the successive ancient dynasties. It is not rare to find figures from the official dynastic histories in these genealogies, regardless of the current status of the particular groups compiling them. What this part of the ancestry does is to link the family group with a state orthodoxy of legitimate dynasties, their emperors, and high officials. It shows a clear agenda of self-identification with a state culture and claim to prestige.

The next part of a list of ancestors would consist of provincial officials who took office in the areas where the lineage group is known to have resided. The compilation process would have involved research into local records, and identifying officials with the same surname stationed in the region. This connects the current

² The multilayered nature of the motivations can also be attested by the fact that the practice survives to this day: See, for example, this report from 2021 (<https://www.scmp.com/news/people-culture/social-welfare/article/3157492/explainer-chinas-ghost-marriages-still-see-dead>. Accessed April 29, 2023).

resident group to the abovementioned state culture.³

Having brought the line of descent from ancient Chinese history to the locale of residence, the next important step was to establish who the founding ancestor of the current village of residence might be for the descent group. It has been argued that this was of paramount importance because of the notion of settlement rights. The difficulty in obtaining local recognition to have the right to settle in an area can vary, according to local politics. However, one rule is clear, and that is that once an individual is recognised as a settler, his sons, by virtue of inheriting his *qi*, automatically qualify for the same settlement. In other words, that individual can be the founder of a local lineage, connecting, through his settlement, the group consisting of his agnatic descendants to the land [Faure 1986].

Once the genealogy has recounted the ancestors who have resided in the location of the current residence, the activities mentioned become more varied, with successes in official examinations, commercial success, or leadership in local politics often earning special mention. In areas such as the New Territories of Hong Kong, the physical distance from local, provincial, or central government made the processes of local social structuring largely independent from government intervention. At the same time, notions of paternal descent, which were vital in allocating rights to property as well as forming cohesive groups, were also used in creative ways to form links with the state orthodoxy, allowing the inhabitants to identify with the rule of an emperor whose officials they may never have actually met.

4. Fictitious Land

The abovementioned distance from the government had another effect on the property regime, and this was that the state could not be relied on for the protection of property rights. This was partly because of the inability of the legal system to enforce civil judgments [Shiga 1984], and partly to do with the lack of accurate land-holding records on the part of the government.

While the early Ming government established the *lijia* 里甲 system based on cadastral surveys and registration of households and their property for tax purposes, these records quickly became obsolete, due to a combination of factors including the practice of equal division of household property in inheritance, government reluctance to update and increase the tax burden, and the prohibitive cost of regular cadastral surveys [Matsubara 2011].

This led to the practice of using old registered households (*laohu* 老戶) for the payment of tax, with entire villages or lineages being registered under one

³ A clear example of this (and how it appears to be a fictitious process) can be found in Matsubara [2011].

household name. Moreover, taxation was unified as a land tax during the Qing period, and the tax burden would be recorded in land acreage, even if the government was not in possession of any information as to where that land might be. In that respect, the taxed land was fictitious, with a specific acreage attached to it, but with no physical existence. The government would know which local leader to contact in order to secure the payment of the tax for that household, and the local leader would organise the payment among village members.

Registered households at this point became tax accounts, and practices of tax-dodging by way of trying to attribute the payment of certain parts of the tax owed by the household to other villages or local leaders became rife [Matsubara 2011]. Such manipulation of these tax accounts only became possible because of the fictitious nature of the land being taxed in them.

5. Fictitious Government

We have thus looked at some aspects of local social structuring through the lineage in South China. On one hand, the social processes forming lineage groups, villages, and alliances could take place without state intervention. On the other hand, the state was a major presence in the mental landscapes of the participants of these social processes, and identification with a state culture was an important feature of these processes.

This self-identification with the state was the context in which people might choose to register for tax, the management of a tax account (registered household) adding legitimacy and prestige to the social group and its leadership organising the payment of tax [Faure 1989].

This duality underlies the dual role of the genealogy. On one hand, the genealogy provides the social framework which allows communities to allocate rights among their members without state intervention, allowing for independence from the dynastic state. On the other hand, through its claim to descent from high officials and conformity to Confucian orthodoxy, the genealogy provides a link to the wider state culture, and consequently the dynastic state.

Through the compilation of these genealogies, establishment of ancestral property, and the building of ancestral halls, local communities identifying as lineages would, without the need for governmental intervention, become integrated as part of the Qing state.⁴ This self-identification formed an important part of state

⁴ The process of local social structuring had one other vital component, namely popular religion, as its motor for the formation of social ties across lineages, but that (more obviously) fictitious side of social formation will not be our focus here. For an account of its role, see Faure [1986].

integration of the area.

One aspect of this self-identification was that the daily social organisation of the lineage, again without government intervention, would be conducted in the language of the state. Here, I mention one example in which a village notice—a notice to be displayed in the village with the purpose of regulating the behaviour of those who read it—was formulated in such language.

In Hoi Ha village in the New Territories of Hong Kong, a notice prohibiting the cutting of trees was formulated as a direct order from the county magistrate of Xin'an.⁵ This prohibition, designed to protect the *fengshui* 風水 (geomantic environment) surrounding the village, was written as a warning to any party—including the boat-dwellers explicitly referred to in the notice—who might wish to cut those trees.

While using official language and taking the form of a magistrate's decree, the document bears no date of issue, and it leaves blank the part which specifies the particular village and surname groups for which it was written. There is no sign of authorisation from the actual magistrate who supposedly wrote the document.

The way in which government authority was resorted to in this case is indicative of how a government or a government official could be brought into the fictions of social ordering. With no active intervention on the part of the actual county government, the villagers directly cite governmental authority in their attempts at social ordering.

Conclusion

This paper has looked into some socio-legal fictions employed by lineages in South China during the Qing period.

The use of ancestors in property holding was a basis for social organisations ordering property holding and territorial cohesion. These organisations in turn relied on the notion of *zong*, involving the continuity of paternal descent, and the maintenance of this notion as a principle for social organisation would make use of such fictions as posthumous marriages.

Local social organisation through these lineages was remarkably uniform over a wider area [Duara 1988], and this was partly due to different lineages organising themselves in such a way that interlocked with the narrative of the Confucian state culture. Ancestral rituals were arranged in such a way as to prioritise ancestors

⁵ Hong Kong Village Life Collection (Hong Kong Central Library) MS383. Moreover, a handbook titled *Tieshi duilian* 帖式對聯 (formulae for couplets) HKVLC 160/R802.79 4431, contains the entry "(formula for) notice of Xin'an magistrate's prohibition of hills" (pp. 193a–193b).

who held official titles and prestige. Filial piety (*xiao* 孝) shown to these ancestors who were loyal (*zhong* 忠) to successive emperors would link these lineages with the state narrative, even without direct contact with the government.

The government itself employed the fiction of land acreage and tax based on this acreage, while local communities could make use of fictitious government documents, drawing on the accepted authority of the state in its own organisation.

Donations to ancestors and the establishment of ancestral property functioned in the social dynamics involving such fictions, and how these dynamics converged in a state with a centralised bureaucracy, which in turn would place itself at the centre of a changing international order, is a subject for further enquiry.

Bibliography

- Duara, Prasenjit. 1988. *Culture, Power and the State: Rural North China, 1900–1942*. Stanford: Stanford University Press.
- Faure, David. 1986. *The Structure of Chinese Rural Society: Lineage and Village in the Eastern New Territories, Hong Kong*. Hong Kong: Oxford University Press.
- . 1989. The Lineage as a Cultural Invention: The Case of the Pearl River Delta. *Modern China* 15 (1): 4–36.
- . 1992. The Written and the Unwritten: The Political Agenda of the Written Genealogy. In *Jinshin jiazhu yu zhengzhi bijiao lishi lunwenji* 近世家族與政治比較歷史論文集 [Family process and political process in modern Chinese history], edited by Zhongyang yanjiuyuan jindaishi yanjiusuo 中央研究院近代史研究所, 1:259–296. Taipei: Zhongyang yanjiuyuan jindaishi yanjiusuo.
- . 2006. *China and Capitalism: A History of Business Enterprise in Modern China*. Hong Kong: Hong Kong University Press.
- Freedman, Maurice. 1958. *Lineage Organization in Southeastern China*. London: The Athlone Press.
- Matsubara Kentaro (Songyuan Jiantailang 松原健太郎). 2009. Shi xintuo haishi faren? Zhongguo zongzu caichan de guanzhi wenti 是信託還是法人？中國宗族財產的管治問題 [Trust or corporation? Chinese lineage property management and colonial law]. *Lishi renleixue xuekan* 歷史人類學學刊 7 (2): 73–104.
- . 2011. Land Registration and Local Society in Qing China: Taxation and Property Rights in Mid-Nineteenth Century Guangdong. *The International Journal of Asian Studies* 8 (2): 163–187.

- . 2020. Death is Nothing at All: Heirs, Their Absence and Lineage Strategies in Traditional China. In *Under Guardianship: Properties without Owner and Vacant Successions in a Comparative Perspective, 13th–20th Centuries*, edited by Alessandro Buono and Luca Gabbiani. L'Atelier du Centre de recherches historiques, no. 22. <https://doi.org/10.4000/acrh.11472>.
- Shiga Shūzō 滋賀秀三. 1967. *Chūgoku kazoku hō no genri* 中国家族法の原理 [Principles of Chinese family law]. Tokyo: Sōbunsha.
- . 1984. *Shindai Chūgoku no hō to saiban* 清代中国の法と裁判 [Law and justice in Qing China]. Tokyo: Sōbunsha.