

SOME CONSIDERATIONS REGARDING THE INHERITANCE RIGHTS OF THE SURVIVING SPOUSE IN CHINESE LAW

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ABSTRACT

Asia is the largest continent on Earth¹ and due to its vastness, it is difficult to analyze and present the culture and legal reasoning behind the laws of Asian countries. Asian states have suffered, over the centuries, the influences of colonialism from states such as: Great Britain, France, Germany, Holland, Portugal, Spain, Switzerland and the United States of America. The influences of colonialism intersected with Chinese, Buddhist, Hindu, and Islamic legal traditions. However, from a legal point of view, among Asian states, there are commonalities related to religion, similar historical influences and approach to the processes of modernization and industrialization. These aspects common to Asian countries have existed since pre-colonial times.

KEYWORDS: colonialism, inheritance law, China, civil law, intestate succession, history, family law, Asian legal doctrine

INTRODUCTION

Many studies dealing with the transformation of traditional laws in controlled territories show that colonial powers and indigenous elites deliberately manipulated customary laws according to their political and economic interests². For example, in Indonesia, the Dutch colonialists used a custom called adat³ to stop the religious and political influences of Islam. Cases under the adat indigenous law were heard by a Landraad, a Dutch judge, and an Indonesian official who was often an Islamic preacher. Colonial powers with

¹ The population represents more than 60% of the entire world population, that is, out of about 7 billion inhabitants of the Planet, 4 billion live in Asia, and the population grows every year by 50 million inhabitants. The population of Asia is multi-denominational, from Orthodox Christians, which predominate in the Russian Federation, to Islam, to Judaism in Israel, Orthodox in Armenia and Georgia, Hinduism in India, Buddhism combined with Taoism in China and Korea, and Shintoism in Japan.

² M. Chanock, *Law, Custom and Social Order: The Colonial Experience in Malawi and Zambia*, Cambridge University Press, 1985, pp. 12-18; Christian Erni, *The evolution of the concept of indigenous peoples and its application in Asia, tribes, states and colonialism in Asia*, DISCUSSION PAPER 2014, INTERNATIONAL WORK GROUP FOR INDIGENOUS AFFAIRS, Copenhagen, Denmark, p. 5.

³ Adat is a custom specific to Malaysia and Indonesia. Adat was the traditional, unwritten code that governed all aspects of a person's life, from birth to death. Before the 14th century, there were two forms of adat in Malaysia. In the year 1870, the Dutch colonialists wanted to declare the territories unused by the indigenous people as lost lands, in order to earn from renting or leasing them for the benefit of private companies. Professor Cornelis van Vollenhoven, professor of law at the University of Leiden, attacked this policy on the grounds that it was an abuse, the respective territories belonging to the indigenous people. The Dutch colonialists tried in many ways to oppose the professor, going as far as establishing a university based on ideologies contrary to the aforementioned professor, establishing the Faculty of Indology, that is, the Faculty for the Study of Indonesian Law, in Utrecht, where they tried to educate officials who they were to administer the colonies in such a way as to protect the private interests of the companies within those colonies at the expense of the indigenous population.

civil law traditions, such as the Dutch, flirted with the idea of codifying the Indonesians' unwritten laws. Ironically, Professor Cees van Vollenhoven, although a staunch defender of the indigenous population, consistently opposed the creation of a legal code of Indonesia on the grounds that "there is no lawyer's law in native Indonesia"⁴. He published throughout his career, starting in 1880, various works in which he explained the appropriate law, specific to indigenous people⁵.

In Britain's Asian colonies, the English applied their own law to all indigenous people in the conquered territories, less so in the area of personal laws, i.e. family and inheritance laws⁶. However, legal aspects related to family law and inheritance law were tried in British courts but with the help of local counselors.

The transformation of traditional laws in Asian states was not only in the interest of the colonial powers. Interestingly, after gaining independence, the young states, led by Western-educated elites eager to develop and modernize them, had an ambivalent view of the rule of law in that they sought to avoid a return to colonial subordination and wanting to compete with the colonialist states. However, the traditions of the place, which represented local interests, proved to be incompatible with the interests of the new central governments, having little relevance in the modern transactions that followed.

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The People's Republic of China is the most populous country in the world. China's history has been tumultuous and has been marked by many wars, dismemberments, reunifications, and different imperial dynasties, each with a different take on the act of governing and maintaining peace.

Throughout its history, three major legal and philosophical currents have distinguished themselves and make their presence felt even today in the legal system of the People's Republic of China (PRC).

The most important current, whose influences have endured to this day, not only in the PRC, but throughout the Asian continent, is Confucianism. The most important principle of Confucianism is called Li. This principle has two general meanings: firstly, it refers to rituals, that is, to the protocol that all people must follow in social relations, and the second meaning of the principle refers to the obligation of people to respect the social hierarchy, ensuring in this way, social harmony⁷.

The second most important principle of Confucianism is Ren⁸, by virtue of which family, social and hierarchical relationships must be based on feelings of empathy⁹.

⁴ He stated that in Indonesia there is no law of lawyers in native Indonesia, referring to the fact that the Dutch Government was trying to impose its own legal system on Indonesia, eliminating the adat law system.

⁵ C. Fasseur, Colonial dilemma – Van Vollenhoven and the Struggle between Adat law and Western Law in Indonesia, in *The Revival of Tradition in Indonesian Politics*, Routledge, London, 2007, p.2.

⁶ M. B. Hooker, *A Concise Legal History of South-East Asia*, Clarendon Press, Oxford, 1978, pp. 123-152.

⁷ Chenglin Liu, *Confucius and the Chinese Legal Tradition*, Digital Commons at St. Mary's University, California, 2020, p. 503.

⁸ The Ren principle means love and benevolence.

⁹ According to this principle, in the relationship between parent and son, the child must be totally obedient, and the parent must give him love and empathy, and these aspects must be reflected in all interpersonal relationships.

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The second notable trend is legalism. The main philosophy of legalism was not concern for human welfare or limiting the power of emperors. The main concern of legalism was the desire to impose extremely strict laws, on the grounds that the imposition of strict laws is the most effective tool in creating an invincible political and military apparatus. We note that the notion of law in the legalistic current does not refer to the rights and obligations of citizens, as perceived by us Europeans, but to the immeasurable power of the emperor. It is interesting that the followers of legalism believed in the equality of persons before the law, only that the emperor was above any law¹⁰.

The third notable current is Taoism, which promoted the idea of adopting laws that were not invasive in nature, such as those promoted by the followers of legalism. Taoism does not emphasize the observance of certain protocols and social hierarchies, imposed by Confucianism.

The basic idea of Taoism is the Tao, in essence, promoting the natural balance of things. As such, in the Taoist view, the Government should not intervene in people's lives, except to maintain a minimum of social order, allowing things to run naturally, with no harsh punishments or oppressive social relations¹¹.

The Constitution of the PRC, at art. 13, recognizes the right of all citizens to own and inherit private property under the law¹².

The Civil Code of the PRC was adopted in 2020 and is the first codification of civil laws and includes regulations on private law, family law, succession law, etc. Until the time of codification in matters of succession, the Inheritance Law of 1985 applied. The regulation of the Civil Code has not undergone any changes, it being effectively identical to the regulation of the Law of Inheritance of 1985.

Chinese succession law recognizes two types of inheritance: legal and testamentary.

At art. 1126 Civil Code of the PRC, the legislature states that "Men and women are equal in their right to inherit".

The Chinese legislature has established two classes of heirs, as follows: 1. The surviving spouse, children¹³ and parents of the deceased belong to the first class of heirs; 2. the second class of heirs includes brothers and sisters¹⁴, maternal and paternal grandparents¹⁵.

Interestingly, Chinese law recognizes the right to inheritance for widowed daughters-in-law and widowed sons-in-law, provided they have contributed substantially to the financial well-being of their in-laws. Moreover, they are considered first-class heirs¹⁶.

In principle, the heirs of the same class will equally share the estate of the deceased. But, in the distribution of the patrimony, special financial needs and the inability of some family members to work are taken into account. Also, an heir who contributed substantially

¹⁰ *Ibidem* p. 505.

¹¹ *Ibidem* p. 513.

¹² Constituția RPC a fost adoptată în prima sesiune a celui de-al XIII-lea Congres Național al Poporului Chinez, în anul 2018.

¹³ All children of the deceased are part of the first class of heirs; natural, adopted, out-of-wedlock children, step-children raised by the deceased.

¹⁴ The second class of heirs includes uterine brothers, consanguine, brothers who were adopted and brothers-in-law/sister-in-law, who were supported or financially supported the deceased.

¹⁵ Art. 1127 Civil Code of the PRC.

¹⁶ *Ibidem* art. 1129.

to the financial support of the deceased or actually lived with him may receive a larger share of the inheritance. Per a contrario, in a situation where there is an heir who could have financially supported the deceased, but did not, he will receive a smaller share of the inheritance, or he will not receive it at all¹⁷. If there are people who do not belong to any class of heirs, but who financially supported the deceased or were supported by him, they will receive a share of the estate¹⁸.

Art. 1132 of the Civil Code of the People's Republic of China states that "any problem arising in relation to inheritance will, in the first instance, be resolved at the level of the family council, in the spirit of amicability, unity, mutual understanding and accommodation". If the family council meeting did not lead to the desired results, the heirs will turn to the People's Mediation Committee or start a court case. In terms of testamentary inheritance, there are several types of wills.

Chinese succession law recognizes audio or video recorded wills as valid, provided two witnesses are present to be recorded for identification. The testator and his witnesses have the obligation to make known the year, month and day of making the audio or video will¹⁹.

In Chinese succession law, the will is revocable. Also, the will shall be void in the following situations: the person who drew it up does not have full legal capacity, or is mentally alienated; the will does not include the real intentions of the testator, the will was made by fraudulent means or violence, the will was falsified and in the situation where the will was modified by another person, (only the modified parts will be invalidated)²⁰.

Regarding the inheritance reserve, the Chinese legislator considered that it should be for the benefit of persons who do not have the ability to work or have no source of income²¹. A legal heir will acquire the status of reserved heir only if he is unable to work or do not earn any kind of income.

One aspect of Chinese succession law, which is totally different from European law, is that the judges of the courts in which disputes dealing with succession reservation are discussed, the court shall analyse the relations that the deceased had during his life with the legal heirs, taking into account both the needs of the heirs as well as the economic relations between the deceased and them²². The inheritance reserve model allows judges to redistribute shares and assets of the inheritance for the benefit of heirs who present certain disadvantages or persons to whom certain moral merits are attributed²³.

¹⁷ *Ibidem* art. 1130

¹⁸ *Ibidem* art. 1131.

¹⁹ *Ibidem* art. 1137.

²⁰ *Ibidem*, art. 1143.

²¹ *Ibidem*, art. 1141.

²² Andrew Watson Brown, *China and the United States: Yin and Yang Intestacy*, Santa Clara Law Review, vol 59, nr. 1/2019, p. 253.

²³ The case of Mr. Ping's estate. The late Yu Ping died without leaving a will, leaving behind an elderly wife and a son who is grown and financially independent. Mr. Yu learned about the precarious financial situation of an old man in the countryside near his home. He voluntarily decided to donate 10 yen each month. Mr. Yu has donated this amount for more than a decade. After his death, the court decided that the surviving wife should receive a larger share than his son, taking into account her age and needs, and the old man to whom the deceased donated 10 yen monthly, received 500 yen from the estate successor.

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As aforementioned, we understand that the surviving spouse is part of the first class of heirs and will enjoy a share equal to that of the other heirs who are in the same class with him. Also, the Chinese judge can, depending on the circumstances of the surviving spouse and other heirs of the deceased, modify as they see fit, both the shares and the persons who will benefit from the estate²⁴.

Regarding the exercise of the right of succession option, it differs according to the type of inheritance.

If an heir, after the opening of the inheritance, wants to renounce the inheritance, he can do so, provided that the renunciation is expressed in writing, before the patrimony has been divided.

In the case of testamentary inheritance, the heirs (surviving spouse), have a 60-day period to choose whether to accept or renounce the inheritance. If the 60-day period has expired, without the heirs exercising their right of option, it will be considered that they have renounced the inheritance²⁵.

The relinquishing heir has no responsibility for the estate's debts or related taxes.

After analyzing the legal system of the PRC and how the Chinese legislator thinks about the distribution of a person's inheritance, we notice that it is a flexible system, in the sense that each family member who is also an heir will benefit from the inheritance that it is due, depending on the current needs, the relationships he had during his life with the deceased and, even depending on the moral merits. Moreover, the Chinese legal system also grants the benefit of inheritance to people who have no degree of kinship with the deceased, provided that they were financially dependent on him or, during his life, provided him with financial support.

It is not by chance that I began the analysis of the Chinese legal system, by presenting the great legal and philosophical currents on which the entire existence of Chinese society is based. Their influences can also be found in the way the Chinese legislator understands to regulate the legal relationships of succession law.

Even if the rules of inheritance are clear and stable, there is a lot of leeway for the judge to impose a decision that is fair towards the entirety of the surviving family members but also to people that had a special relation to the defunct.

CONCLUSIONS

The Chinese legislative system has been a melting pot of different social and legal currents that resulted in the current Civil Code of the PRC. In the realm of inheritance law the Chinese lawmaker took into consideration not only the relations ruled by bonds of blood but also the individual relations of every human that has played an important part in the life of

²⁴ In 1991, Mr. Wang Weifa died of cancer. He is survived by 4 first-class heirs: his surviving wife, their 10-year-old daughter, and his parents. The deceased's parents were infirm and financially dependent on their deceased son. The Court considered the desperate circumstances of the deceased's parents and increased their shares due to the deceased's parents and daughter to the detriment of the surviving wife. The court explained that its decision reflects the basic principle of the Chinese inheritance system, to support the elderly and provide a good upbringing for children.

²⁵ Art. 1124 Civil Code of the PRC.

the defunct. It focuses as much on supporting the family of the deceased as it focuses on the desire to compensate fairly all the people that are deserving of such rewards coming from the estate. It's a delicate dance between straight forward rules and the liberty of the judge to make decisions towards the goal of reaching fair and just solutions.

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