



Law and Society in Traditional China by Qu Tongzu [T'ung-Tsu Ch'ü] Local Government in China under the Ch'ing by Qu Tongzu [T'ung-Tsu Ch'ü]

Author(s): Barbara Celarent

Source: *American Journal of Sociology*, Vol. 116, No. 3 (November 2010), pp. 1046-1052

Published by: [The University of Chicago Press](http://www.press.uchicago.edu)

Stable URL: <http://www.jstor.org/stable/10.1086/658248>

Accessed: 19/06/2011 17:56

Your use of the JSTOR archive indicates your acceptance of JSTOR's Terms and Conditions of Use, available at <http://www.jstor.org/page/info/about/policies/terms.jsp>. JSTOR's Terms and Conditions of Use provides, in part, that unless you have obtained prior permission, you may not download an entire issue of a journal or multiple copies of articles, and you may use content in the JSTOR archive only for your personal, non-commercial use.

Please contact the publisher regarding any further use of this work. Publisher contact information may be obtained at <http://www.jstor.org/action/showPublisher?publisherCode=ucpress>.

Each copy of any part of a JSTOR transmission must contain the same copyright notice that appears on the screen or printed page of such transmission.

JSTOR is a not-for-profit service that helps scholars, researchers, and students discover, use, and build upon a wide range of content in a trusted digital archive. We use information technology and tools to increase productivity and facilitate new forms of scholarship. For more information about JSTOR, please contact support@jstor.org.



The University of Chicago Press is collaborating with JSTOR to digitize, preserve and extend access to *American Journal of Sociology*.

Law and Society in Traditional China. By Qu Tongzu [T'ung-Tsu Ch'ü]. Paris: Mouton, 1961. Pp. 304.

Local Government in China under the Ch'ing. By Qu Tongzu [T'ung-Tsu Ch'ü]. Cambridge, Mass.: Harvard University Press, 1962. Pp. xiv+360.

Barbara Celarent*
University of Atlantis

After an auspicious start in the 1930s, Chinese sociology survived war, revolution, and rehabilitation to emerge in the late 20th century as a vibrant tradition. But the Cultural Revolution marked that history ineluctably. In China, political debates over the practical utility of scholarship and the possibility of scientific detachment were not windy tempests in academic teapots, as they were in the Western metropolis. Such storms had real consequences. Many of the leaders of early Chinese sociology disappeared from view in the 1960s, and only a few remained to create a post-Mao sociology in the years after 1980.

All the same, the reader of classical Chinese sociology has wide choices. Fei Xiaotong wrote ethnographies and rural studies that were widely read in the West, as was his colleague Shi Guoheng's *China Enters the Machine Age*, a human-relations-school ethnography of a factory in wartime Kunming. However, both these works bear the mark of the West more strongly than do the magisterial books of the historical sociologist Qu Tongzu. Originally written in Chinese but then expanded and translated by its author during the 1950s, Qu's painstaking *Law and Society in Traditional China* is a tightly organized exposition of the laws governing the foci of traditional Chinese social structure. Qu's *Local Government in China under the Ch'ing* then analyzes the machinery that put that law into practice in the last of the Chinese dynasties.

Qu's work is overwhelmingly rooted in Chinese sources. To be sure, he occasionally nodded to Western scholarship. His Columbia colleagues Merton and MacIver made cameo appearances in the footnotes of *Local Government* (pp. 340 n. 3, 327 n. 87), and A. L. Kroeber, S. M. Lipset, and MacIver had all commented on portions of *Law and Society* prior to publication. But the West in fact had little to offer Qu's project. Max Weber's original sources on China comprised a few translations of central chronicles (e.g., the *Shiji* of Sima Qian and the *Yu zhuan zizhi tongjian gangmu san bian* of Emperor Qianlong), scattered other translations, and the late-19th-century issues of the *Peking Gazette*, all of which were routinely translated into Western languages. By contrast, Qu's *Law and Society* lists hundreds of Chinese language sources (along with a few Japanese and more than a few Western sources), running from law codes to encyclopedias to dynastic histories to court records to administrative ma-

*Another review from 2049 to share with *AJS* readers.—*Ed.*

terials. *Local Government* also draws deeply from primary materials. It has been criticized for its lack of Manchu sources, to be sure, but certainly not for lack of Chinese. Thus, while exposure to Western scholarship eventually made Qu somewhat more willing to abstract and to theorize, it little affected the Chinese core of his work. Because Qu's family was deeply rooted in Chinese learning, that core is thoroughly familial. To know his family is thus to begin to know his scholarship.

Qu Tongzu's grandfather, Qu Hongji, was one of the leading politicians and intellectuals of the late Qing. Born in 1850, Qu Hongji took the highest examination degree (*Jinshi*) in the tenth year of Tongzhi (1871) and went to the Hanlin Academy, which acted as court secretariat and also maintained the Confucian examination system that had selected Chinese officials for centuries. He later became an examination administrator in Henan and Sichuan before returning to the central court at Xi'an during its flight from the Boxer Rebellion. There he became identified with the "purification clique," a somewhat conservative group of scholars committed to rigorous Confucian values and opposed to the dominant, hands-on politicians (and incipient warlords) like Li Hongzhang and Yuan Shikai. Qu's bureaucratic ascent was backed by Dowager Empress Cixi, and eventually he became minister of foreign affairs. (Like most senior bureaucrats, he was also several other things: member of the Government Affairs Bureau, manager of the Beijing-Tianjin Railroad, joint director of the General Office of Railways and Mines, and, most important, joint director of the Finance Bureau.) But his position as grand councillor inevitably brought Hongji into open conflict with Yuan Shikai; the wily Yuan allied with the corrupt Prince Qing to persuade Cixi that Qu was in contact with the deposed reform leader Kang Youwei. Dismissed from court in 1907, Qu returned to private life in Hunan and later Shanghai, where he would help educate his grandson.

Qu Hongji had two wives, the later of whom (the grandmother of Tongzu) was the daughter of a provincial administrator and was celebrated for her calligraphy. His two sons were similarly eminent. Qu Xuanzhi (Tongzu's father) graduated from the imperial translation school, then served in the Bureau of Administration, and, after caring for his parents after the 1911 Revolution, later became an ambassador, dying in Europe in 1923. Qu Duizhi (Tongzu's uncle) graduated from Fudan University and became a secretary of state in the Beiyang government (the weak central government of the warlord period); later he became a distinguished historian. Moreover, Duizhi's wife was the granddaughter of Zeng Guofan, probably the single most powerful Han Chinese of the mid-19th century.

Born in 1910, Qu Tongzu thus grew up in an utterly elite household, albeit one that had lost its political position, and, after the 1911 Revolution, its money. Tongzu was educated in the classics by his grandfather and grandmother until the former's death in 1919. After his father went to Europe, Tongzu was raised by his historian uncle. His school education

completed, he entered sociology training at Yenching under Wu Wenzao, along with Fei Xiaotong and two others. His strength in the classics led Wu to steer him toward social history, and his master's thesis on Chinese feudal society was published in 1937. In 1939, when Yenching was overrun, he moved with Wu to Yunnan where he undertook his work on law and society, which became a Chinese book in 1947 and was published in translation in 1961. In 1945, he was invited by Karl August Wittfogel to Columbia, where he undertook work on Han social structure that would eventually be published in 1972. In 1955, he moved to Harvard's East Asian Center, where he researched and published *Local Government*. After a brief tour at the University of British Columbia (1962–65), Qu returned to China in the midst of the Cultural Revolution. Unemployed, he returned to Hunan and eventually worked there in a local history institute through the 1970s. He was invited to the Institute of Modern History at the Chinese Academy of Social Sciences in 1978. Qu died—very nearly a centenarian—in 2008.

From this extraordinary heritage and industrious career come *Law and Society* and *Local Government*, a beautifully matched pair of books. The former gives us the legal system of traditional China, while the latter portrays the local administrators who put that legal system into practice. The former shows us the law not only in its abstractions but also in dozens of actual cases and their dispositions. The latter gives us not only the social framework in which those cases took shape: the magistrates with their runners and clerks and personal servants and private secretaries; the elaborate system of supervision and regulation looking over the magistrate's shoulder; and the local gentry with their connections and power. But it also gives us the endless corruption—some of it legalized—necessary to finance local justice and government as well as the strangely interlocked and seemingly perverse incentives that drove the entire local government system. Together the two books make a profound impression. They present what a Western reader, for example, can only see as an enduring marriage of rationality and irrationality, both carried to extremes unknown in the West before or since the unveiling of China's singular experience. It is a social system organized along fundamentally different dimensions than those of Western Europe or the Islamic world, a profound Other to both of them.

Several aspects of that social system are immediately apparent. The first is the sheer weight of institutional memory and records. *Law and Society* lists about 400 Chinese language sources and *Local Government* lists nearly the same number. Many of these works are hundreds—sometimes thousands—of years old. We hear that during the Liang dynasty (AD 502–557) Wang Seng-Pien's mother beat him even when he was over 40 (*LS*, p. 21). We learn that in 167 BC a filial daughter asked to become a government slave so that her father would not be punished by mutilation (*LS*, p. 74). We learn that in Tang and Song times a semislave or his wife who struck a freeman was punished one degree more severely than if the

same crime had been committed against an equal (*LS*, p. 186). We learn that in Suzhou at the turn of the 18th century, people used at weddings fans decorated with the mark of the Hanlin Academy, even though this was forbidden to all but members of the academy and their families (*LS*, p. 163). We learn that in 1764 the punishment for causing the death of a parent by accident was immediate strangling (*LS*, p. 48). The sheer amount of material is overwhelming. And not only do we have the regulations themselves, but also memoirs of magistrates reporting how those regulations were avoided, or ignored, or appealed, or modified during particular dynasties.

This then is a society that remembers itself in writing. The contrast with oral societies—Kenya's Gikuyu, for example—is overwhelming. How should we think about that weight of written history? Is it a burden to escape? Is it a resource to cherish? The Chinese themselves have had their book burnings and their “new editions” that carefully omitted whatever the ruling emperor wanted to forget. Yet at the same time, Qu's work, following the scholarly tradition of his grandfather and uncle, bespeaks an almost avaricious sense of tradition, as if no possible fact can be lost without irreparable damage.

A second aspect of this society is its intense subjection to rules. In part this is a methodological artifact. Much of Qu's evidence comes by inference, rather than from the legal codes and cases themselves. Thus, he infers things like gender relations by triangulating between the laws governing those relations and the various indicators of the meaning and efficacy of those laws. The rapid passing of new laws indicates that the old ones didn't work, for example. More important, Qu infers the social structure from the ways in which punishments for particular offenses are modified because of relations of kinship or marriage or status or slavery. It is only because the punishments for a given violation vary systematically by those relations that Qu is able to discover something about the relations themselves, on which there is otherwise little data.

But the dominance of rules for social relations is not only a methodological artifact. It is also a social reality. The reader of *Law and Society* is overwhelmed by the emphasis on punishment. If we look at Pollock and Maitland's monumental *History of English Law before the Time of Edward I* (Cambridge University Press, 1899), we find that punishment plays little role at all. It is by the differing abilities of different kinds of people to hold property and to demand redress that Pollock and Maitland infer the medieval social structure. Crime and punishment take a mere 100 pages toward the end of their two thick volumes. But if the difference between Qu and Pollock and Maitland is obvious, the reason for it is not. Was this a difference in Chinese and Western society as they had been, in their time? Or was it, rather, a difference in the preoccupations of the Chinese and the Western historians as they looked back on their societies?

The answer becomes clear in *Law and Society* when Qu takes up the question of “*Li* versus law”: social order through rites and inner controls

versus social order via rules and punishments. Although written in the 1940s, this chapter is focused on a philosophical debate more than 2,000 years old, familiar to any educated Chinese as the debate between Xun zi and his student Han Fei. The texts discussed by Qu include extensive passages from the *Liji*, one of the five Confucian classics and a book Qu would have known by heart. By contrast, while Maitland does quote ancient writers (e.g., Augustine on *mens rea*), his interest lies only in the later transformations of their doctrines. He looks back at a history; Qu looks out on a stability.

If rules and punishments form the foundations of *Law and Society*, it is practicality and indeed corruption that are the integument of *Local Government*. The Chinese central government appointed local magistrates in five-year rotations (to prevent the emergence of local powerholders), but allocated them no funds to conduct their administrations. They had to maintain order, build infrastructure, and collect the onerous central taxes using funds raised locally. Those funds were raised partly by legally recognized fees, partly by formerly illegal fees that had become legitimized with time, and partly by bribery and corruption. Since the rotating magistrates had no local power bases, a horde of corrupt workers—runners, clerks, even the “servants” of the magistrates—bought and sold influence as middle men between the magistrates and the citizens, deceiving and swindling both sides. A small class of professional administrators—the “private secretaries”—were the magistrates’ only protection, and indeed from these private secretaries (often graduates of the lower levels of the examination system) were recruited a surprising number of magistrates. Off to the side stood the local gentry, largely exempt from the magistrates’ authority but holding substantial local power and extorting their share of profit by quietly selling that power to the highest bidder.

Nothing could be further from the deadly seriousness of *Law and Society*. There we learn of filial children beheaded for failing to save a parent from dying in a work accident. But in the bizarre world of *Local Government* runners in these very cases are taking cover-up money from the witnesses and the accused, clerks are taking money to modify (in the process of copying) the legal charges carefully drawn up by the magistrate’s private secretary, and so on. Even the magistrates themselves are on the take, forced to violate the rules in order to raise the funds necessary to function. And if the book itself does not make this morass of practical corruption sufficiently clear, the notes—140 pages of them—are essentially another book, where Qu, writing in a less formal tone, explains the details, explores the scholarly controversies, provides strange examples, and further undercuts and ironizes his main text. These notes give the reader an almost frightening sense of inferiority before a scholar who knows so many texts. Indeed, one wonders if such mastery is, in fact, genuinely possible by a single individual or whether these notes may not themselves continue some ancient tradition of annotated commentary.

We are fortunate that there is a fictional account of this magistrates’

world, the hilarious *Rulin Waishi* (The scholars) of Wu Jingzasi. In this long satirical novel from the 18th century, Wu pillories the scholarly class and the magistrates, in the process portraying every bribe and confidence game mentioned in Qu's long catalog. Wu's one or two admirable characters are honorable but ineffectual men who "succeed" by withdrawing from active life. They reinforce the picture given in Qu's book, which leads one to wonder how any magistrate ever succeeded in governance. Nor can we understand how such a system functioned—apparently so effectively—for so long.

We are left by Qu's books with a stunning contradiction between appearance and reality, between rule and misrule, between honor and corruption, between rationality and irrationality. But it is a great mistake to treat this contradiction as such. It is rather evidence that the world discussed by Qu—and by Wu centuries before him—is simply a world organized along different lines than the other civilizations of the Eurasian land mass. Perhaps this is not contradiction at all, but simply the untranslatability that is true cultural difference.

One suspects the latter because of another striking fact: the absence from Qu's histories of any real sense of historical development. The "traditional China" of the first book is more or less eternal. The different codes and practices of the different dynasties are discussed, indeed discussed in detail. But why those differences happened is never explored. Nor is there presented a narrative from one China to a later China, much less a progressive evolutionary account of a changing society. Qu's study thus presents an eternal present just as surely as does a Malinowskian ethnography of a primitive tribe. The wars of conquest by the Mongols and the Manchus, the recurrent famines and rebellions, the occasional breakup of China into warring states, the ebb and flow of Daoism, Buddhism, and dozens of popular sects and secret societies: nearly all of this disappears into the single present of "traditional China." (There are for example only five pages on racial differences related to the conquest dynasties.) Rather, the core of Chinese society is made up of five elements: family and lineage, marriage, styles of life and ceremonies, formal distinctions of strata, and magic. All of these, of course, are ancient topics discussed in such classics as the Book of Changes, the Record of Rites, the Great Learning, and so on.

Qu's books thus challenge us to look at 2,000 years of time and not see "history." By contrast, since the return to China of a generation of scholars trained in the graduate schools of the West, there has emerged a very Western history of China. In that history, this older, cyclical reading of China has been exchanged for a historicist reading. The stable centuries of the past have become a teleological narrative leading to now. The new reading is full of critical events and revolutions, which are powered by underlying forces of inscrutable power. As in the social history of the West, whole subliterations have emerged studying when exactly these forces first sprang up, when the tributaries of change flowed into the

rivers of transformation that ran inevitably into the oceanic present. What were once thought to be incidental rebellions are now defined as major events. Dynastic decline has become transformative progress.

But to read Qu is to read a superficially Westernized scholar who nonetheless still views the world through the lens of constancy that characterized classical China. True to his life experience, he knows that everything changed in 1911, but true to his grandfather's training he knows that the world prior to 1911 was a world that, although constantly changing, was ever the same. The question for readers is whether that constancy is located in the events themselves or in the minds that view them. It has been said that historicism is the religion of the west. To read Qu is to decide whether you wish to attend that church.