CHAPTER 2

Kinship Hierarchies and Property Institutions in Late Qing and Republican China

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Introduction

One of the most striking things about Qing and Republican property institutions is that they were surprisingly protective—in some instances, over-protective—of the economic interests of poorer landholders. An especially compelling example is the redemption of collateralized property, a vital concern for lower-income households that relied on land-pawning instruments, typically the “dian” sale (“conditional sale”), for monetary liquidity.¹ Despite vigorous opposition by the wealthiest segments of society, customary law in most of China granted “dian” sellers—in other words, “land pawnors”—an essentially unlimited right of redemption, viable for decades after the initial sale.²

Preexisting studies tend to portray these norms as symptoms of a “precommercial” society: Philip Huang and others argue, for example, that the peculiarly strong protection of land redemption rights in Chinese property customs stem from certain cultural, even semi-religious, characteristics that directly encouraged such protection: Chinese rural communities adhered, they claim, to “precommerical” moral ideals of “permanence in landholding,” partially due to the lack of market integration, labor mobility, and economic specialization.³

The problem, however, is that Qing and Republican China was far from “precommercial.” Recent scholarship demonstrates that Chinese households,

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³ Huang, Code, 74; Melissa Macauley, Social Power and Legal Culture: Litigation Masters in Late Imperial China (Stanford: Stanford University Press, 1998), 234.
wealthy and poor alike, were, to an extent quite comparable with Western European households, economically rational and ruthlessly self-interested.⁴ In addition, the economy was significantly market-based, while land ownership was increasingly commoditized and impersonal.⁵ There is, in fact, no real evidence that people agreed on “precommercial” ideals of “permanence in landholding.” Quite the opposite, this chapter presents considerable evidence that property norms, particularly “dian” redemption norms, were generally the product of fiercely self-interested negotiation: Higher-income households tended to resist generous “dian” redemption norms, whereas smallholders were almost uniformly in favor. But why, under those circumstances, were the actual institutional outcomes often more favorable to smallholders?

Utilizing several newly available court archives and contract collections from the late Qing and Republican eras, along with some more traditional sources such as Japanese rural surveys of North China, this chapter argues that some of the answer probably lies in the way rural Chinese society allocated social status, rank, and authority: The status and rank of many rural individuals in Qing and Republican China depended significantly on their generational seniority within their respective patrilineal descent groups. Both formal and customary law often recognized the sociopolitical dominance of senior relatives over junior ones, as did a plethora of private writings and lineage registries. What scholars have largely failed to realize is that, despite creating systematic inequalities at the individual level, these kinship hierarchies also tended to confer large status benefits on lower-income households: Because status was so closely tied to age and generational seniority, the system allowed for significant status mobility within many individual lifetimes. Such people automatically gained status as they aged, theoretically independent of personal wealth. In practice, of course, wealth remained a valuable social asset, but even so, the

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