exhausted. In any case, the function of philosophical teachings in the tradition of Chinese philosophy, especially of Confucianism, has not been the increase of positive knowledge, but rather the elevation of the mind – a reaching out for what is beyond the present actual world, and for values that are higher than those being practised. This explains the lack of specific discussion of the notions of justice, rights and so forth. It also means that Chinese philosophies were often divorced from reality and monopolised by certain social elites. More importantly, once a philosophy was adopted by the imperial government it became the state orthodoxy, with the result that philosophical teachings were often manipulated, distorted, and sometimes abused by the ruling elites for their own political purposes. Traditional philosophy thus has to be distinguished from state ideology in practice. Indeed, recent archaeological discoveries of ancient covenant texts, and the opening of archives for scholarly scrutiny and study have brought into question previous assumptions about early Chinese law, which were based on philosophical teachings and thus confused the expression of ideals with actual social practice and social reality. However, as this revaluation has just begun, more scholarly studies are still wanting. Many of the new conclusions are thus necessarily tentative.

Bearing in mind these points, in this chapter we will first briefly review the traditional legal culture through an examination of the basic premises of major philosophies in traditional China, and outline certain fundamental features of the traditional legal system. This will then be followed by an examination of the modern legal reforms in the Qing Dynasty and under the Kuomintang (KMT). The experience of law in the PRC since 1949 will be dealt with in the next chapter.

2. Legal Culture and Heritage

2.1. An Overview

One of the early misconceptions about traditional Chinese society is that there was no law in traditional China. On the contrary, law in China has a long history and rich sources. The Tang Code (Tianli Shuiyi), first promulgated in AD 652 with 502 articles, in total, contained not only legal provisions, but also commentaries which tracked the historical origins of various provisions. The earliest published law is believed to have been the 'Book of Punishment' (Xingshu), which was inscribed on a set of bronze tripod vessels probably in 536 BC. More recently, archaeologists have unearthed covenant texts dating back to the Spring and Autumn Period (770–481 BC), thus confirming the existence of written law during that period. The bamboo strips found in 1975 contain strikingly sophisticated laws and institutions from the Qin Dynasty (221–206 BC). These legal arrangements, it is claimed, represent the most advanced stage of legal development of the time in the world. It has been demonstrated by these discoveries that law in traditional China was much more prominent in social life than was previously understood.

The traditional legal system, which continued from one dynasty to another for several thousand years, was seemingly deliberately broken off by modern legal reforms at the turn of the 20th century. It was further repudiated from 1949 onwards as

Lesprit des lois has played a large role in inducing such a misconception, which is common in the West and has not been entirely dispelled even among the writings of well-informed scholars. See MacCormack, supra note 2, at xiii-xiv.


On the basis of a study of these unearthed covenant texts, a prominent legal historian, Professor Zhang Jingsan, has argued that Chinese legal history can be traced back to much earlier than the 21st century BC, the date commonly accepted by Chinese scholars. See Zhang Jingsan, A Collection of Papers on Legal History (Fazhi Jianshu) (Beijing: Press of the Masses, 1988), at 1 & 27-28.


Turner, supra note 12, at 25. This is particularly true if we not only see law as being state positive law. As will be shown below, civil matters in traditional China were often left not unregulated but to be dealt with largely by local customary laws.
being a feudalist remnant. However, certain fundamental features of the traditional legal culture clearly persist in the contemporary legal system and in social attitudes towards law. The past, as Tu Wei-ming reminds us, 'lives on in China, muted and transformed in certain ways, vital and persistent in others.'

Traditional Chinese conceptions of law have been largely influenced by the writings of traditional schools of philosophy. Of these, three have had a particular influence, namely Ru Jia (Confucianism); Fa Jia (Legalism); and Yin-Yang Jia, with Confucianism being the dominant force since the Han Dynasty (206 BC).

2.2. Confucianism

The starting point of Confucianism was its emphasis on the educational function of morality (li) in governing a state. That is, Confucians believed that people were educable and, by education through li, an ideal social order could be created on the basis of virtue (de). Regarding the role of law (fa), Confucians strongly opposed the Legalists who emphasised the necessity of using severe punishment for maintaining a desired social order. According to Confucianism, only a government based on virtue could truly win the hearts of men. This idea is reflected in one of the most cited Confucian passages:

Lead the people by examples, govern them by systems of punishment (xing), and they will flee from you and lose all self-respect. But lead them by virtue and keep them in order by the established morality (li), and they will keep their self-respect and come to you.

In short, a good government was seen as a government based on virtue (de) and li.

---

21 Until quite recently, scholars in the PRC had insisted that traditional legal culture was a part of the 'feudalist tradition' that was only abolished in 1949 when the PRC was established. See Chinese Encyclopaedia - Law, supra note 15, at 4-7. See also infra note 183. It is only more recently that traditional legal culture has been treated more seriously as part of a cultural heritage that still has some value in shaping the future of Chinese law. See e.g. 'Taking Traditions Seriously in Creating the Future - A Report on the Seminar on Recent American Academic Writings on Traditional Chinese Law', (no. 3, 1995) Studies in Law (Fuxue Yanjiu) 84.


23 For an excellent summary of Chinese philosophy, see Fung Yu-lan, supra note 2.

24 Bodde & Morris, supra note 2, at 20-21. It should be pointed out that Confucianism is not a gender neutral philosophy; thus the use of gender neutral words may in fact distort Confucian doctrines. I have used the past tense here and below in describing the main features of the traditional philosophies. I am however not suggesting that they are totally irrelevant in China today. See supra note 22.

This well-ordered society, according to Confucianism, consisted of five cardinal relations of men. They were the relationship of ruler and minister; of father and son; of husband and wife; of elder brother and younger brother; and of friend and friend. Out of the five, three clearly belonged to the family, but the remaining two could also be conceived of in terms of the family: the relationship between the ruler and the minister could be seen as analogous to that between the father and son, while that between friend and friend was like the one between elder and younger brother. In fact, the concept of family was one of the fundamental concepts in Confucianism, and the concept of state was only an extension of that of family. Individuals were no more than members of a family or a social group; there was little significance for their separate and independent existence, least of all the appreciation of liberty and individual rights. To govern a state was similar to regulating a family, which was achieved through the cultivation of individual morality, as the Confucian social formula suggested: cultivating the personality — regulating family life — ordering a state — ensuring world peace (xiushen — qijia — zhiguo — pingtianxiao). The fusion of the concept of family with that of state thus provided a basis for elevating morality to the status of state law.

Corresponding to the concept of li, the Chinese family system was a hierarchical system. Members were differentiated according to criteria of generation, age, degree of relationship and sex, with one's status determining one's different obligations and duties. Citizens of a state, like members in an extended family, were similarly ranked as noble and humble, with varying levels of superordination and subordination.

---

35 Ibid., at 21.
37 It is stated in the Great Learning, one of the Confucian classics, that: 'The ancients who wished to illustrate illustrious virtue through the kingdom, first ordered well their own states. Wishing to order well their states, they regulated their families. Wishing to regulate their families, they first cultivated their persons'. Cited in T'ung-ts'ao Chi, supra note 2, at 255.
38 In fact, a great part of Confucianism is the rational justification or theoretical expression of the Chinese family system as a social system. See Fung Yu-lan, supra note 2, at 21-22. Xun-zi (Hsun tzu), also a great Confucian scholar, once replied when asked about ways of governing a country: 'I have heard only about self-cultivation, but never about ways of governing a country.' Cited in T'ung-ts'ao Chi, supra note 2, at 255.
39 A Confucian passage says: 'The father should be kind, the son filial, the elder brother affectionate, the younger brother respectful, the husband good-natured, the wife gentle, the mother-in-law kind, the daughter-in-law obedient — all in conformity to li.' Cited in Chang Chin-tsen, supra note 26, at 2. For further discussions on the hierarchical relationship, see T'ung-Ts'ao Chi, supra note 2, at 226-231.
40 One Confucian passage states: 'There must be gradations of the noble and the ignoble, differences of dress for different people, and different positions for high and low officials at court.' Cited in Chang Chin-tsen, supra note 26, at 2.
41 Cited in Fung Yu-lan, supra note 2, at 41.
42 Cited in Chang Chin-tsen, supra note 26, at 2.
43 Mencius, cited in Fung Yu-lan, supra note 2, at 151.
44 T'ung-Ts'ao Chi, supra note 2, at 239.
45 The character of 'fa' (law), however, was commonly used interchangeable with the character 'xing' (punishment). See further discussions of the concept of law in sections 2.3 and 2.5 below.
46 Confucius, cited in Bodde & Morris, supra note 2, at 21.
47 T'ung-Ts'ao Chi, supra note 2, at 268.
48 Xun-zi, cited in T'ung-ts'ao Chi, supra note 2, at 269.
49 See T'ung-ts'ao Chi, supra note 2, at 271.
after their commission.\textsuperscript{50} To a Confucianist, law had only short-term effects whereas liver had a broad and permanent influence on members of the society.

Confucianists also opposed the improper application of laws, requiring that people should be educated before they could be punished by law. Confucius once said: 'To put the people to death without having instructed them; – this is called cruelty. To require from them, suddenly, the full task of work, without having given them warning; – this is called oppression.'\textsuperscript{51} To him, not to instruct people and to put them on trial was to kill the innocent. He insisted that if the law was improper the people should not be punished, for the guilt was then not on the side of the people.\textsuperscript{52}

2.3. Legalism

In strong contrast to the Confucian conception that all men are educable, Legalists believed that man was naturally evil.\textsuperscript{53} Their main concern was thus primarily with evil behaviour, and the primary function of law in their conception was to prevent evil, not to encourage good behaviour.\textsuperscript{54} Thus Legalism was primarily associated with the concept of punishment, indeed, severe punishment.

To a Legalist, neither moral influence could determine the social order, nor the virtue of the ruler be powerful enough to transform society or create order or disorder.\textsuperscript{55} To him, a uniform law was the only means to govern a state, and law must be universally applicable to all.\textsuperscript{56} The commonly cited Legalist idea of government is summarised as 'ignoring the [difference between] the close, the remote, the noble, the humble, and evaluating all by the law.'\textsuperscript{57} On the basis of the face value of this idea of government, many Chinese scholars have since the 1920s held the view that the historical struggle between Confucianism and Legalism was the struggle between the idea of rule by man and the rule of law.\textsuperscript{58} However, this interpretation is not without major problems. Firstly, Legalists neither opposed social differentiation between the noble and the humble or between the ruler and the ruled, nor did they reject privileges for the nobles and rulers; though they considered such matters minor, irrelevant, and even a hindrance to the governing of a state.\textsuperscript{59} Equality before the law had its own specific connotation: 'The ruler creates the law; the ministers abide by the law; and subjects are punished by the law. All (the ruler, the minister, the superior, the inferior, the noble, and the humble) are subject to law.'\textsuperscript{60} Indeed, the real objectives of Legalist theory were 'to respect the position and prerogative of the prince and to support authoritarian policies.'\textsuperscript{61} Secondly, although Legalists defined law in many ways, such as 'measures', 'rules', and 'codified books',\textsuperscript{62} they all emphasised severe punishment, and some even advocated that 'bad law is better than no law.'\textsuperscript{63} This conception was derived from their belief that human nature was inherently evil and that, therefore, only 'force and power can suppress violence and that kindness and leniency cannot put an end to social anarchy'.\textsuperscript{64} One of the most famous Legalists, Han Fei Zi, once said that: 'It is by means of strict penalties and heavy punishments that the affairs of state are managed.'\textsuperscript{65} Shang Yang, whose reform helped the Qin State to conquer other states and unify China, said: 'Nothing is more basic for putting an end to crimes than the imposition of heavy punishment,'\textsuperscript{66} and 'in applying punishments, light offences should be punished heavily'.\textsuperscript{67} The Legalists believed that law was the order imposed by the state to suppress individuals' desires on the grounds that it was the nature of man to seek profit and avoid harm and that, therefore, rewards and punishments were two effective ways of governing, i.e. to establish the interdicts and commands of the state.\textsuperscript{68}

As Legalists diametrically opposed the Confucian idea of 'rule by man', they also advocated strict regulation of and control over government officials (backed
by severe punishment) and, thus, the establishment of a sophisticated and complex system of administrative law.69

Not only did the Legalists reject the Confucian idea of government by virtue, they also believed power and terror were the only tools that a ruler needed to govern a state.70 The only dynasty established with the help of Legalism, the Qin Dynasty (221–207 BC), was a short-lived reign of terror,71 which ended the first (and only) period of ‘a hundred schools of thought contending with each other’ in Chinese history, when all books of teaching of other philosophical schools were burned, and when Confucianists were buried alive en masse.

In short, the legacy left by the Legalists are the concept of law as severe punishment and the need for detailed regulation and control of government officials. Its important principle of equality before the law, however it was interpreted, disappeared entirely after the end of the Qin Dynasty.72

2.4. State Orthodoxy and Practice - the Confucianisation of Law

Confucianists are often described as educators and moralists, but they were also statesmen.73 Legalists too were largely politicians who had a keen understanding of real and practical politics and provided practical solutions to rulers for the problems they faced. They were thus known as ‘men of methods’ (fashi zhishi).74 Thus, the dispute between Confucianism and Legalism was more than philosophical contention; it was a political struggle for supremacy and domination in state ideology and hence state politics.

The struggle for ideological supremacy must be understood within the framework of the Chinese concept of ‘Great Uniformity’ (dayitong). This was first associated

---

69 MacCormack, supra note 2, at 4-5.
70 Yu Ronggen, supra note 27, at 63.
71 Qin is also known as ‘the state of tiger and wolf’. Its unification of China was based on its military power and the brutal and ruthless ideology of Legalists. See Fung Yu-lan, supra note 2, at 191.
72 MacCormack, supra note 2, at 5.
73 T’ung-tsu Ch’ü, supra note 2, at 263. One of the well-known Confucian teachings is ‘academic excellence leads to officialdom’. Indeed, Confucius himself spent 14 years travelling to different kingdoms seeking official appointment. See Kuang Yamin, A Critical Biography of Confucius (Kunzzi Pingzhu) (Jinan: Qiru Press, 1985), ch. 2.
74 See Fung Yu-lan, supra note 2, at 156. As pragmatic politicians, their rejection of the ideas of various schools of philosophy was for appearances only; they actually took whatever they found useful from these ideas for the purpose of government. Indeed, two of the most famous Legalists, Li Shi and Han Fei Zi (Li Siu and Han Fei Tsu) were students of one of the most famous Confucianists, Xun Zi (T’uan Tsu). For a brief account of the origin of Legalism, see Fung Yu-lan, supra note 2, at 30-37. For the relations between Legalism and other schools of philosophy, see Fung Yu-lan, id., 155-165.
75 Fung Yu-lan, supra note 2, at 180.
76 Hence the above-mentioned burning of all books other than Legalist teachings, and the killing of Confucianists. Books of medicine and other technologies were spared as they were seen as having nothing to do with 'ideology'. See Fung Yu-lan, supra note 2, at 205.
77 Fung Yu-lan, supra note 2, at 191.
78 Fung Yu-lan, supra note 2, at 205.
79 Fung Yu-lan, supra note 2, at 206.
80 For further discussions on this political background, see Fung Yu-lan, supra note 2, at 204-206.
81 See T’ung-tsu Ch’ü, supra note 2, at 267-273.
tradition, and that of the Five Elements. According to him, the five elements of the universe corresponded with the five human relations, thus justifying the differentiated social relations within Confucianism. The theory of Yin-Yang meanwhile justified the supplementary function of punishment in governing a state, with Li, being Yang, as the first instrument, and punishment, being Yin, as a supplementary tool for governing a state. In this way he laid down the theoretical foundation for the harmonisation between Confucianism and Legalism.

Dong Zhongshu persuaded Emperor Wu to unify state ideology by placing Confucianism in a dominant position, and it was to remain the state orthodoxy in China for nearly two thousand years. However, this Confucianism was now very different from that of the previous Zhou and Warring States periods, having absorbed many ideas from other rival schools, including, of course, Legalism.

Eventually the gap between Li and law (punishment) was filled during a later dynasty, when the Tang (T'ang) Code was enacted in AD 653, bringing about the ultimate completion of the process of Confucianisation of Law. This process was further reinforced by the direct influence of Confucianism on the administration of justice. Since official positions required the study of Confucianism, and judicial and administrative functions were not separated, Confucian scholars thus controlled the interpretation of the law in addition to controlling its formulation and revision.

Fung Yu-lan, supra note 2, at 192-193. The philosophy of Yin-Yang and that of the Five Elements are inter-related; they are both theories of cosmology. The Chinese Yin-Yang philosophy explains the origin of the world: the interaction of Yang (originally meaning sunshine, and later developed to represent masculinity, activity, heat, brightness, dryness, hardness, etc.) and Yin (originally meaning absence of sunshine, later developed to represent femininity, passivity, cold, darkness, wetness, softness, etc.) produces all phenomena of the universe. The philosophy of the Five Elements explains the structure of the world: the universe consists of five powers (Wood, Fire, Soil, Metal, and Water). For further discussion on the very complicated philosophy of Yin-Yang and the Five Elements, see Fung Yu-lan, supra note 2, at 129-142.

That is ruler and minister, father and son, husband and wife, elder brother and younger brother, and friend and friend.

For further discussion of the philosophy of Dong Zhongshu, see Fung Yu-lan, supra note 2, at 191-206. Dong Zhongshu was however not the first philosopher to approach law with Yin-Yang and Five Elements philosophies. See Wang Limin, 'Yin-Yang and Five Elements and Ancient Law in Our Country', (no. 4, 1994) Law Review (Faxue Pinglun) 74.

For a discussion of changes of Confucianism in Chinese history, see Ting Wei-chih, 'The Phases of Changes in Confucianism', (no. 12, 1978) Studies in History (LiShi Yangjiu) 25; Duan Qinggan, 'A Brief Discussion on the Evolution of Legal Ideology in Qin and Han Dynasties', (no. 5, 1988) Studies in Law (Faxue Yangjiu) 45; and Bodde & Morris, supra note 2, at 27. Some scholars have thus declared that Confucianism since Han was no longer genuine Confucian teaching, but fake, distorted and imposed 'Confucianism' manipulated by the ruling elites. See Kuang Yamin, supra note 73, at 29.

See T'ung-tsu Ch'ü, supra note 2, at 267-279, and Bodde & Morris, supra note 2, at 27-29.

2.5. The Legacy of History

The influence of Chinese law has produced a large number of contemporary Chinese laws. These have been based on the immediate circumstances (what

80. Chunqiu (Ch'ün-chiu) was a Confucian classic. See T'ung-tsu Ch'ü, supra note 2, at 275-276.
82. Fung Yu-lan, supra note 2, at 215.
83. Thus one Chinese scholar has asserted that if Confucius was now given a copy of the western code and a Chinese code for him to identify which one was Chinese law, he would now mistake the western code as Chinese law and vice versa. See Fan Zhongxin, supra note 5, at 138.
the Chinese call 'reality'). The prevailing political ideology of the time in question will better explain the meaning of any specific legal provisions, but the values and techniques of traditional Chinese law continue to influence contemporary legal thinking and practice.

In this section, we will outline the fundamental features of traditional Chinese law as evidenced in state positive law,96 which has continued to influence and even shape contemporary Chinese law.

(1) Law as a political tool: In contrast to Western legal tradition, traditional Chinese law was not attributed to any divine origin, although Taoism and Buddhism did have some influence.97 Both Confucianism and Legalism were primarily concerned with determining and maintaining a desired social order.98 Thus law in China was first and foremost a political tool, operating in a vertical direction, with its primary concern being state interests, rather than on a horizontal plane between individuals. As such it was not very interested in social regulations among autonomous individuals, and least of all in defending individual rights against the state.99 In this sense the initial stimulus of traditional Chinese law was therefore also unrelated to economic development,60 although some contemporary Chinese scholars have argued that law was often used to implement 'economic reforms' in traditional China.97

(2) Law as an administrative tool: Largely as a legacy of the influence of Legalism,99 traditional Chinese positive law was also a tool for state administration. The sophisticated and complex bureaucracy established and developed since the Qin period facilitated the development of, and was backed by, an equally sophisticated and highly developed system of administrative law, with its primary attention on punishment rather than on adjudication. It was the belief of Chinese rulers that 'the wise emperor governs his officials, not his subjects'99 Thus detailed rules on officials' obligations and powers, such as the Tang Liu Dian, Ming Hui Dian, and Qing Hui Dian were codified separately and systematically.100

With law as an administrative tool, it is not surprising to note that there was no concept of the separation of powers. The administration of justice was always a part of general administration and judicial personnel were a part of the 'executive'.101 Further, as administration was within the domain of the emperor and his officials, the activities of legal specialists and the development of a legal profession were strongly discouraged, if not prohibited, by all dynasties. Indeed, lawyers were politely described as 'litigation tricksters' or 'pettifoggers' and less politely as tigers, wolves or demons.102

(3) Law as a supplementary/secondary tool: With Confucianism as the state orthodoxy, state positive law was not seen as a primary regulator for state affairs, much less as a regulator for affairs among individuals. It was the primary regulator. Indeed, the invention of fa (law) was attributed to a 'barbarian' people, the Miao people, who, it was alleged, 'made no use of spiritual cultivation, but controlled by means

96 Bodde & Morris, supra note 2, at 10-11.
98 See supra note 69.
99 Zhang Jinfan (1988), supra note 18, at 19; Jones, supra note 6, at 6.
101 A local magistrate was 'the judge, the tax collector and the general administrator. He had charge of the postal service, salt administration, pao-chia, police, public works, granaries, social welfare, education, and religious and ceremonial functions.' See Tung-tsu Chi, Local Government in China under the Ch'ing, quoted in Jones, supra note 6, at 10.
102 MacCormack, supra note 2, at 25.
of punishments. The ancient character for fa represented a fierce animal. As a supplementary means for social control, the word fa (law) is more a synonym for the word punishment, with its first and primary meaning being penal law. Civil matters were seen as trivial (xigu) and the claims and suits of citizens between themselves were of secondary interest to the state; they were largely left to be regulated by customary law. When they were regulated by state law, penal sanctions were always attached to prevent the breakdown of the desired social order. The best summary of the attitude towards law as a supplementary means for social control is the Chinese saying chuli ruxing (‘Outside the li are punishments’).

(4) Law as a tool for social stability: The Confucianisation of law also produced two distinctive features of Chinese law. First, the upholding of Confucianism as state orthodoxy led to the remarkably long continuation of a core group of legal provisions, which survived many centuries of development with little change. Secondly, it also led to the upholding of a hierarchical relationship, with the family as the basic unit. The abstract concept of the individual was conspicuously lacking in traditional Chinese law. Since rules were seen as laid down by ancestors and inherited by generations, it is not surprising that modern law reforms, which were later to undermine the foundation of the traditional institutions and structure, as discussed below, were strongly resisted by conservative forces in the society.

In short, traditional Chinese positive law was mainly conceived of as penal law, operated in a vertical direction, and used as a supplementary means for maintaining a hierarchical social relationship that continued for centuries.

3. The Beginning of Modernisation – The Wholesale Westernisation of Chinese Law

3.1. Constitutional and Political Reform at Gunpoint

Modern law reform, a process initially mainly concerned with the revision and making of law, started in the late nineteenth century when traditional values and systems were facing strong internal and external challenges and pressures for reform. Internally, a commodity economy had emerged, and at the same time, there was widespread social unrest (e.g. the Taiping Rebellion of 1851–1864 and the Boxer Rebellion of 1900) and official corruption. Externally, Western economic, cultural and political ideas had penetrated into China, and with the invasion of foreign ideas China also suffered from repeated humiliations at the hands of outside powers, including the defeat by Japan in the Sino-Japanese war of 1895 and, consequently, had to concede to demands of extra-territoriality by these powers. In response, intellectuals and other social elites began attempts to modernise (such as the Self-Strengthening Movement of 1860–1894), to press for reform (such as the Hundred Days Reform of 1898) or even to call for revolution. These challenges and pressures both weakened the central government and at the same time made the Chinese even more aware of the serious defects of their societal structures. A climate for change was thus created which was to undermine the foundations of traditional ideology, culture and social structure. More importantly for legal transplant, the Western

---

103 Quoted in Bodde & Morris, supra note 2, at 13.
104 See Chinese Encyclopaedia – Law, supra note 15, at 76.
105 Schwartz, supra note 33, at 65.
107 There are disagreements among scholars as to whether the imperial state saw civil matters as trivial and that customary laws were not part of state law. For instance, Alford insists that it is wrong to believe that the imperial state was indifferent to civil law matters and the regulation of these matters by local customs should be seen as a kind of controlled delegation of authority. See William F. Alford, To Steal a Book Is an Elegant Offence: Intellectual Property Law in Chinese Civilisation (Stanford: Stanford University Press, 1995), at 11. A prominent Chinese scholar, Liang Zhiping, however declares that, if understood in the Chinese cultural context and compared to the notion of ‘civil law’ or ‘private law’ as understood in the West, there was only one law in traditional China, and that was penal law. See Liang Zhiping (1997), supra note 92, at 249. This disagreement seems to be more about characterising traditional Chinese customary law than about its function in society. In fact, most scholars agree that customary law was officially recognised as having legal effect by authorities and played an important role in Chinese traditional society. See Zhang Jinfan (1988), supra note 18, at 6; Bodde & Morris, supra note 2, at 5-6; and MacCormack, supra note 2, at 23-27.
109 MacCormack, supra note 2, at 1.
112 M.J. Meijer, Marriage Law and Policy in the Chinese People’s Republic (Hong Kong: Hong Kong University Press, 1971), at 21.