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# LAW AND SOCIETY IN TRADITIONAL CHINA

T'ung Tsu Ch'ü



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T'UNG-TSU CH'Ü  
(1910–2008)



# 中华现代学术名著丛书

## (120 周年纪念版)

### 出版说明

商务印书馆自 1897 年始创,以“昌明教育,开启民智”为宗旨,于建馆翌年便出版了《马氏文通》,这部学术经典既是中国学术现代化的标志之一,也开启了商务印书馆百年学术出版的序幕。

其后,商务印书馆一直与中华现代学术相伴而行,出版了大批具有鲜明原创精神并富于学术建树的经典著作,诸多开山之著、奠基之作都是在本馆首次问世。这些学术经典的出版,使本馆得以引领现代学术发展,激动社会思想潮流,参与民族新文化的构筑,也分享中国学界的历史荣光。

1949 年以后,本馆虽以译译世界学术名著、编纂中外辞书为侧重,但原创学术著作的出版从未止步。2009 年起,我馆陆续出版“中华现代学术名著丛书”,全面整理中华现代学术成果,深入探寻现代中国的百年学脉。

丛书收录上自晚清下至 1980 年代末中国原创学术名著(包括外文著作),以人文社会科学为主,涵盖文学、历史学、哲学、法学、政治学、经济学、社会学、教育学、地理学、心理学、科学史等众多学科。意在辨章学术,考镜源流,收录各学科学派的名家名作,展现传统文化的新变,追溯现代文化的根基。丛书立足于精选、精编、精校,冀望无论多少年,皆能傲立于书架,更与“汉译世界学术名著丛书”共相辉映,昭示中华学术与世界学术于思想性和独创性上皆可等量齐观,为中国乃至东方学术在世界范围内赢得应有的地位。

2017年2月11日,商务印书馆迎来了120岁的生日。为纪念本馆与中华现代学术风雨同行的这段历程,我们整体推出“中华现代学术名著丛书”120周年纪念版(200种),既有益于文化积累,也便于研读查考,同时向长期支持丛书出版的诸位学界通人致以感激和敬意。

“新故相推,日生不滞。”两个甲子后的今天,商务印书馆又站在了一个新的历史节点上。传承前辈的出版精神,迎接时代的新使命,且行且思,我们责无旁贷。

商务印书馆编辑部

2017年11月



## 凡 例

一、“中华现代学术名著丛书”收录晚清以迄 20 世纪 80 年代末,为中华学人所著,成就斐然、泽被学林之学术著作。入选著作以名著为主,酌量选录名篇合集。

二、入选著作内容、编次一仍其旧,唯各书卷首冠以作者照片、手迹等。卷末附作者学术年表和题解文章,诚邀专家学者撰写而成,意在介绍作者学术成就,著作成书背景、学术价值及版本流变等情况。

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五、原书为直(横)排繁体者,除个别特殊情况,均改作横排简体。其中原书无标点或仅有简单断句者,一律改为新式标点,专名号从略。

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七、原书因年代久远而字迹模糊或纸页残缺者,据所缺字数用“□”表示;字数难以确定者,则用“(下缺)”表示。



## FOREWORD

The statement that China is passing through an unprecedented revolution has almost become a platitude, but its very obviousness in no way diminishes its truth. The changes which this huge and venerable country experienced in the past are negligible when compared with the developments of the last decade. The reason for this difference in degree—which amounts to a qualitative change—is that developments in the past hardly influenced fundamentals, if they ever did so at all, whereas the present transformation deeply affects them. It is even consciously aimed at changing the social structure and all that this entails.

What is, or rather what was the social structure of the Chinese? Ever since the West became acquainted with China, Westerners have tried to answer this question, but it is only in recent years that both in the East and in the West attempts have been made to do so in a manner compatible with modern scholarship. The need was felt to provide an accurate gauge by which to measure the intensity of the impact of the West—a need felt both by social and political scientists in their endeavour to understand the process of acculturation synchronically and diachronically. Examples of this type of study are the works by Olga Lang and Marion B. Levy on the Chinese family, and Chang Chung-li's study of the formation and the functions of the Chinese gentry in the 19th century. <sup>①</sup>

An insight into the social structure of China and an under-

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<sup>①</sup> Olga Lang, *Chinese family and society* (New Haven, 1946); Marion B. Levy, *The family revolution in modern China* (Cambridge, 1949); Chang Chung-li, *The Chinese gentry* (Washington, 1955). These few books are only mentioned by way of illustration; they are far from exhausting the long list of such studies.



standing of its inner workings are essential for any student, not only for the student of China's past, but also, and most particularly, for the student of China's present. For although the ideas and ideals which are being put into practice in China today are essentially occidental in origin and nature, they are applied in a Chinese milieu. Their "challenge" can only bring forth a Chinese "response".

In order to arrive at a correct appreciation and a clear analysis of this response a thorough understanding of ancient China's society is a prerequisite. It also would make for a better insight into many problems in Chinese history.

The present work by Professor Chü<sup>②</sup> gives us a detailed analysis of the hierarchical structure of China's pre-modern society, and of the rules which this society evolved to regulate the behaviour of its members. As regards the latter, it is not so much a survey of the regulations in force at different periods as a study of their operation and their effectiveness and of the constant interplay between the living society and its rules, both as formulated and as silently understood. In view of the peculiar nature of China's written codes with their predominant stress on public law,<sup>③</sup> it goes without saying that Professor Chü pays the greatest attention to customary law, both as it was established in the so-called treatises on ritual and similar texts and as it can be deduced from other material.

A special word should be said about Professor Chü's basic assumption that during the last two thousand years Chinese society was static. The historian will be inclined at first to disagree, but on second thought he will realise that in spite of all growth

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② I am well aware of the fact that according to the Wade-Giles system of transcription this surname is spelled Ch'ü.

③ See for a discussion of this point i. a. M. H. van der Valk's contribution to *L'étranger, Recueils de la Société Jean Bodin*, IX and X (Bruxelles, 1958), pp. 267-303.



and change (the ultimate disappearance of the feudal nobility, the emergence of a class resembling the third estate in the West though without its political power, etc. ), the fundamental conditions which determined the structure of Chinese society remained unchanged. Without agreeing either to the theories of Marx or to those of his apparent antipode Wittfogel concerning oriental modes of production or oriental despotism, it is easy to appreciate the profoundly conservative traits of predominantly agricultural societies, where seafaring and trade played a relatively unimportant and subservient part. It should not, however, be forgotten that during all these centuries Chinese authors, notwithstanding their great historical sense, consciously or unconsciously assumed that Chinese society *was* static. This explains the enormous force of historical precedent. What had been applicable once, they felt, might be applied again.

The influence of the ancient structure of Chinese society and of ancient Chinese law, as well as of the specifically Chinese views on the function of law, remains to this day—in the fields both of public and of private law. This is clearly shown by recent developments in family law<sup>④</sup> and in criminal law.<sup>⑤</sup> As always, a better understanding of the past will lead to a clearer appreciation of the present. It is my sincere belief that Professor Chü's book will contribute to this better understanding and make for a clearer appreciation.

This preface should have been written by the eminent Western specialist in the domain of Chinese law, Jean Escarra, Pro-

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④ M. H. van der Valk, *Conservative tendencies in modern Chinese family law* (Leiden, 1956).

⑤ Communication on 8 September 1959 by K. Grüll during the 12th Annual Conference on Chinese Studies, held at Cambridge.



fesseur à l'Université de Paris. <sup>⑥</sup> He died before he had the opportunity to make even a first draft. I consider it a great honour that Professor Chü has asked me to write a preface to his book. It affords me the pleasure of stating my indebtedness to both the late Jean Escarra and to Professor Chü, both of whom I, in common with many others, honour as having been my teachers through their works.

Leiden

A. F. P. HULSEWÉ

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<sup>⑥</sup> For a brief life history of this eminent scholar see *T'oung Pao* XLIV (1956), p. 304ff.; this obituary note also contains a bibliography of his works on Chinese law.



## PREFACE

This is the English version of my earlier work in Chinese, *Chinese Law and Chinese Society* (published in 1947), which was mainly based upon my lectures on Chinese social and legal history at the National Yünnan University, China. I have made a free translation, and I have also taken this opportunity to improve my work by including those sources not available in the libraries of Kunming when during the war I prepared my Chinese text, and those works published after 1947. Besides, I have not hesitated to make changes when I felt that a different presentation was preferable or when I developed ideas different from my earlier viewpoint. Revisions are to be found here and there, especially in Section 3 of Chapter VI, which was largely rewritten. But the main theme and the basic concepts remain the same.

My gratitude is due to Professor A. F. P. Hulsewé for his kindness in providing the Foreword. I am indebted to the late Professor Jean Escarra, an authority on Chinese law, who scrutinized my manuscript and offered valuable criticism. Professor A. L. Kroeber and Professor M. H. Fried read the entire manuscript; Professor R. M. MacIver and Professor S. M. Lipset read the chapters on social classes. For their comments I am most grateful. My thanks are also due to Professor Paul Demiéville and Mr. Fang Chao-ying for their suggestions and advice. Professor L. S. Yang had read my original book in Chinese before I began to prepare the English version, and therefore I have been able to benefit greatly from his criticism and suggestions. The author, of course, assumes complete responsibility for the faults and shortcomings of this book. I wish to thank Mrs. Esther S. Goldfrank, who edited my manuscript,



and Mrs. Ruth S. Ricard, who typed it.

To the Institute of Pacific Relations I am indebted for its sponsoring of the preparation of the English version, which was completed in 1955. Finally, I wish to acknowledge my gratitude to the Center for East Asian Studies of Harvard University for financial assistance toward the publication of this book.

Cambridge, Massachusetts

T'UNG-TSU CH'Ü

October, 1959



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