The Cut-off Household as a Legal Issue in Traditional China

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Abstract
This paper intends to trace the origin and development of hujue 戶絕 (Cut-off Household), a traditional legal term, starting from the Tang dynasty all the way down to the Qing. This legal term also represented a social phenomenon in different times. In the Song dynasty, hujue was often discussed on official and other legal documents probably because it was deemed a significant issue; however, it had drawn less attention of the authorities of later dynasties. The author tries to delve into the development of Cut-off Household as a legal issue, and offers some viewpoints and interpretations.

Keywords: hujue, Cut-off Household, inheritance, traditional Chinese laws
I. Introduction

The term of Cut-off Household (hujue 戶絕) seems to become an important issue first in the Tang Dynasty (618-907). A household was claimed to be cut off when both parents were dead and there were no male children to succeed the family line and carry on the ancestral sacrifices. Based on a rough statistics from genealogies, a research shows that about 22% of men had no surviving sons between 1050 and 1400. When a family was dying out (without an heir), a number of remedial ways could be taken. For example, the household head could adopt a son to avoid the family line being cut off. If no sons were adopted the parents could marry in a son-in-law to continue the family line. In case the above two alternatives were not available or not chosen, and when the father of the family was deceased, the mother could have the power to adopt an heir to bear the surname of his husband (a symbol of continuation of the family). This is called liji 立 继. If both parents were dead, the eldest of the close agnatic relatives could find for the would be Cut-off Household a male child as legitimate heir. This is called mingji 命 继.

In traditional China, the issue of hujue or its remedial approaches were often followed by litigations since the property of the families, which were to be cut off or prevented to be cut off, could easily trigger a feud among family members and people who actively involved. When the lawsuits were brought to the government, the state had to regulate the behavior of litigants, arbitrate among parties in disputes, and make final judgment on the issue of distributing property. The extant sources, more in the Song (960-1279) than any other dynasty, allow us to understand, to a certain degree, how the problem of hujue had been dealt.

However, to deal with history we have to be sensitive to the sources we examine and make correct distinctions among norms, laws, and facts. In doing so, an objective interpretation is more likely to be obtained. Among the various sources, the legal as well as other official documents were the most reliable and relevant to the topic of this paper. Nevertheless, one thing that should be noted is that the laws and official records do not reflect the actual practice. Instead, they show the intentions of the elite class who wish to shape the society, and to a lesser degree their compromises with the customs of the populace. This paper intends to explore the issue of Cut-off Household in traditional China through a chronological review of major official documents, and try to explain the development of this social phenomenon.

II. Tang Dynasty (618–907)

As mentioned above, the term of Cut-off Household probably appeared first in the Tang with legal meaning. The government officially sanctioned that the entire property (after the deduction of funeral and charity expenses) left behind by the Cut-off Household went to the daughters. Other relatives could have a share of the property depending on the degrees of their closeness to the deceased if he had had no daughters. If there were no daughters or relatives, the government would audit the property and examine the case to see if there was a will involved. If there were no litigations or relatives, the government would audit the property and examine the case to see if there was a will involved. The government would stop its intervention if there was a will, and recall the effect of the ordinance. Obviously, the Tang government’s first priority was to honor the power of the will, and secondly to protect the right of the daughters for fear

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that other relatives might arrogate the property.\(^2\)

The limited Tang sources prevent us from making any statement other than this general principle.

The Tang Death and Funeral Ordinance (\textit{Tang sanzang ling唐喪葬令}) issued in 737 stated that when the family died out, the daughters inherited their father’s entire estate after they paid for the funeral and charity expenses. If there were no daughters, the property went to the relatives of the deceased. If there were no relatives, the property would be audited by the government. This ordinance was not applicable if there was a valid will.\(^3\)

In the Tang Code (\textit{Tang lu shuyi唐律疏議}), the term \textit{hujue} was only mentioned once in the commentary to one article. It prescribed a certain punishment for people who illegally set up an heir (the status of the eldest son of the legal wife), and a sequence of priorities in choosing a legal heir. If there were no heirs to succeed the family it was called \textit{hujue}, a Cut-off Household.\(^4\) There was no evidence showing that the government moved one step forward to enjoin people to set up an heir even under adverse situations, for example, when there were no qualified candidates. Presumably, a household would be forced to be cut off if there were no such potential heirs as prescribed by the law. Adopting a son from different surname groups was not taken as legal.

### III. Song Dynasty (960-1279)

\(^2\) For detailed discussions, please refer to Brian E. McKnight, “\textit{Who gets it when you go: the legal consequences of the ending of households (juehu絕戶) in the Song Dynasty (960-1279 C.E.)},” \textit{JESHO} 43.3, Koninklijke Brill NV, Leiden, 2000, pp. 314-63.

\(^3\) Niida Noboru仁井田陞, \textit{Toryo shui唐令拾遺}, Changchun: Changchun chubanshe, 1989, p. 770..


middle range. This ordinance was obviously a supplement to the above article in the Song Code and gave local officials more flexibility to handle the Cut-off Household’s farms. This was also a reflection of some related legal confusions. The two articles in the Song Code specified the way to handle the Cut-off Household’s land and other properties; the land was to be “leased” by the close relatives of the deceased. However, the Chunhua Household Ordinance stated that the land was to be “distributed” among close relatives according to the Household Ordinance (not dated).

Illegal transactions of Cut-off Household’s property were not allowed by the Song government. In 1009, someone memorialized to confiscate the money earned from selling the property of the Cut-off Household by the wife who married again. The emperor ordered that the property (already sold) went to the new owner, the earned profit money went to the survivors of the Cut-off Household.\(^7\)

The government also gave instructions dividing Cut-off Household’s land into two major parts with different ways of disposal. In 1015, the government issued an edict stating that the Cut-off Household’s land would not be distributed among close relatives or sold, or confiscated (without discretion). The fertile part of the land would not be sold but rather be leased to people after the deduction of tax.\(^8\) Whether the close relatives of the deceased had the priority to rent the land or not was not clear. One assumption is that the edict was simply intended to correct the local officials’ ways of handling the Cut-off Household’s land. In 1019, the emperor ordered the responsible officials to examine the land as soon as there was a report of Cut-off Household. The fertile part should be leased and the infertile part was allowed to be sold. This was a reminder to some local officials who handled the issue quite the opposite way.\(^9\) However, setting up rents for the land was also a problem for some administrators. In 1021, a Vice Director proposed to sell the land of the Cut-off Household because he worried that the rent was too high to afford by the tenants.\(^10\)

Henceforward, the Song government had actively involved itself in the Cut-off Household’s property. In 1026, the Song government issued *Huji caichan tiaoguan* 戶絕財產條貫 (Articles for Dealing with Cut-off Household’s Property) to specify some rules to handle the Cut-off Household’s property, a way to clarify confusions of the law. It also marked a change of handling the Cut-off Household’s property. It stated that the property (including money, farms, and houses) was to be set aside one third to the married daughters if there were no unmarried daughters. The same amount went to the married-out aunts if there were no married daughters. Tow thirds of the property was to be distributed among relatives, married-in son-in-law, foster sons, stepsons who had lived with the deceased over three years. If there were no married-out aunts, the entire property went to the above people who had lived with the deceased. Otherwise, the property would be confiscated by the state, but the farms were to be distributed among close relatives of the deceased. If there were no close relatives, the farms would go to the tenants or partners of the deceased. However, the power of a will superseded the above rules.\(^11\)

When the value of the Cut-off Household’s

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\(^6\) Niida Noboru, *Toryo shui*, p. 772.


\(^10\) *Ibid.*, vol. 155, p. 6056

property was too high, the local official sometimes would report to the emperor. In 1028, there was a report from a local official asking for sanction on the property of a Cut-off Household which was worth ten thousand cash. It stated that the family had married daughter(s) and a co-dwelling nephew. Even though the local official cited the law saying that the daughter(s) should get one third, the nephew should get two thirds. However, because the property value was huge, he would not decide by himself and reported to the imperial court. The emperor sanctioned that the government should not confiscate any part of the property, and the daughter(s) and the nephew should both get equal share. In 1038, an earthquake destroyed twenty five households and made them Cut-off Households. The local official suggested confiscating their property. The emperor sanctioned that if the close relatives, who did not live with the deceased, wanted to buy the farms, the state should sell them with a 70% discount. We should notice that the emperor’s decisions were probably based on his own discretion and a way to show his benevolence. For example, in 1076, an edict was issued ordering local officials to accommodate widows, widowers, loners, the sick and crippled with the Cut-off Household’s houses. If there were no houses, the government should provide them with houses using the property of the Cut-off Household. However, the emperor’s intervention would have created more confusion in handling, and for us in understanding, the issue of Cut-off Household.

2. Southern Song (1127-1279)

The issue of Cut-off Household continued to draw the attention of the Southern Song government.

12 Li Tao, *Xu zizhi tongjian changbian*, vol. 106, p. 2467.

In 1132, the Household Department (Hubu 戶部) replied to a circuit official concerning how to distribute property to a posthumous heir. The judgment, which was based on the rules of the Cut-off Household Married Daughter Law (*Hujue chujianu fa* 戶絕出嫁女法), was that the heir should get one third of the property and no more than three thousand strings of cash. In 1156, the Household Department ordered some prefects to sell the Cut-off Household’s lands, and some others to continue leasing lands to tenants and increase the rent. A rule set up in 1162 for distributing property (under a will) between married-in sons-in-law and adopted sons. The state intervened and overruled the power of the will by stating that the will could only bequeath one third of the property to the married-in sons-in-law, and the rest (two thirds) should go to the adopted son. If the property was less than one thousand strings, it was to be distributed evenly between the two parties. One third went to the married-in son-in-law and the rest to the adopted son if the amount exceeded fifteen hundred strings of cash. The maximum amount the married-in son-in-law could get was three thousand. In 1163, an edict ordered to handle any lands or houses which had been deserted for twenty years according to the Cut-off Household Law. In 1174, an edict was issued to Hubei Circuit 湖北路 asking local officials to encourage people to rent the deserted Cut-off Household’s land and not to sell them.

For the sake of charity, the Song emperors sometimes issued ordinances to help the Cut-off Household. The Song Household Ordinance (*Song huling* 宋戶令; ca. 1174-90) stated that the Cut-off Household should be given three thousand strings of
cash; an authorization should be requested if the amount given reached twenty thousand.20 The Song Qingyuan Household Ordinance (ca. 1195-1200) stated that according to the Household Ordinance (not dated), if the Cut-off Household had property, the clan head and neighbors should report it to the government and receive a certain amount of money (no more than three hundred strings of cash) for funeral expenses. If the value of the Cut-off Household’s property exceeded ten thousand strings of cash, the money given should not exceed fifty strings.21

The above passages inform us how the Southern Song government was involved in the Cut-off Household. It not only actively managed the property but also paid attention to the needs of the Cut-off Household. We also see that it was rather difficult and complicated to handle the issue. The emperor and central government had to redefine and reiterate their policies to respond to various situations. Nevertheless, how successfully the job had been done was unknown to us.

The Judgments (Minggong shupan qingming ji; ca. 1260-65), a collection of judgments in the Southern Song, gives us more detailed information about the disputes concerning the Cut-off Household’s property. The first case involved two older brothers who struggled for setting up an heir for their deceased younger brother (obviously for the sake of his property) and disputed with his widow who then remarried. The judge made a decision not based on the law (which would have had the property confiscated), and distributed the property evenly among the three parties. The judge also mentioned that the posthumous heir should get one fourth of the property of the family he succeeded.22 This case showed that even there was a law ready to be applied, the magistrate made the judgment based on his own decision. The discrepancy between law and practice was demonstrated by many legal cases in traditional China. The interpreters of law had a mindset not restricted only to the legal concerns.23

The second case involved a dispute between the married-in son-in-law and the posthumous heir. The judgment was to distribute the property evenly between the two parties. The judge stated that his rule was also in accordance with the law which he did not detail.24

In the third case the judge cited a law saying the married-in son-in-law should get three tenths of the property at the time when the household was cut off (both parents were dead) if he made contribution to the family by running business using his father-in-law’s financial resources.25

In the fourth case, a law was mentioned to regulate the distribution of Cut-off Household’s property. The judge said that the posthumous heir inherited one fourth of the property if there were unmarried daughters; he received one fifth if there were also returned daughters. If there were only returned daughters, the heir received half of the remained portion after giving the daughters (according to the law), the rest would be confiscated.

20 Niida, p. 772.
21 Ibid., p. 773.
22 Minggong shupan qingming ji 名公書判清明集 (The Collection of Enlightened Judgments), Beijing: Zhonghua shuju, vol. 4, 1987, p. 110. It is abbreviated as QMJ in the following citations.
23 To interpret the Song legal thinking, Patricia Ebrey argues that “Chinese judges did not bring lengthy legal training to their work, and consequently their decisions reflect their notions of justice and ‘human feelings’(renqing) as much as an unambiguous body of legal interpretations.” See Patricia Ebrey, “Conceptions of the family in the Sung China”, Journal of Asian Studies, 43.2, 1984, p. 233.
If there were only married daughters, the property was to be divided into three equal portions; two went to the daughters and one was confiscated. If the family had no daughters at all, the posthumous heir received one third of the property up to the value of three thousand strings of cash. If the property was worth more than twenty thousand, two thousand was added to the heir’s share (that is five thousand altogether).\(^26\)

In the fifth case, the judge sanctioned the case according to a related ordinance. He said that the Cut-off Household’s property should be inherited by all unmarried daughters, while the returned daughters received only half of the amount.\(^27\)

The above accounts of the Judgments give us a general impression similar to the one we get from the Song Encyclopedia (\textit{Song huiyao jigao 宋會要輯稿}), that is, the sequence of priority in dividing property of the Cut-off Household. The government put the unmarried daughters on top of the ranking followed by the returned, married daughters and the posthumous heir. The share of the married-in sons-in-law was depending on their contribution to the household. Their shares versus the posthumous heir’s were not entirely clear; individual cases varied.

Various sources from the Song show us that the Cut-off Household was an important issue; however, we are not informed why it was important. Based on the research by Yang and Zeng, it is suggested that the Cut-off Household’s lands were an important asset to the Song government.\(^28\) They were incorporated into the so-called Official Lands (\textit{guantian 官田}) and was utilized by the government for financial purposes. The wars and natural disasters contributed to the increase of Cut-off Households and the lands they left unattended.\(^29\) Consequently, disposal of this kind of lands was a great concern for both central and local governments who involved themselves actively in this issue to create guidelines as how to properly handle the Cut-off Household’s lands, and warned against local government and powerful families who intended to arrogate the lands and evade taxes.\(^30\)

The response to the government’s disposal concerning this issue was not clearly recorded in official documents while it left a few traces in the Collected Works (\textit{Wenji 文集}) of the contemporary scholars. A Song scholar complained about the cruelty of the Cut-off Household Law (not specified), saying the law was enforced by the government most comprehensively, although the law promised to relieve the Cut-off Household in monetary form. However, it was actually ordering the magistrate to extract people of their properties without providing anything for expenses.\(^31\) In 1111, the Song

\(^{26}\) \textit{QMJ}, vol. 8, pp. 287-9. Some modern scholars have different interpretations on this law. For example, Bettine Birge in her \textit{Holding her Own: Women, Property, and Confucian Reaction in Song and Yuan China (90-1368)}, 1995, unpublished book, argues that the posthumous heir had the same share (one third) as the returned daughters and the state (confiscation). However, Ye Xiaoxin 葉孝信, a Chinese scholar, argues that the posthumous heir would get 41.6%, the returned daughters get 50%, and the state gets 8.4%. For detail, please refer to Birge, p. 130 and Ye Xiaoxin, \textit{Zhongguo minfā shì 中國民法史}, Beijing: Zhonghua shuju, 1993, p. 418.

\(^{27}\) \textit{QMJ}, vol. 9, p. 316.
government had financial difficulties and ordered to sell Official Lands including confiscated Cut-off Household’s lands. Later on, the government set up an institution called Searching Institute for Land of the Western City (Xicheng guatian suo 西城括田所) to enforce people to rent some infertile lands, and moreover, to arrogate people’s lands by means of burning the evidence of their ownership or claiming their lands as deserted.32 Another contemporary scholar witnessed this tragedy and described it vividly in his personal work.33 Thus, the law concerning the Cut-off Household could be used by the central government as a pretense to deprive people of their properties. The law was not in accordance with the practice when special situations were considered at the national level. However, we can conclude that the financial concern, among others, contributed to the decision that the Song government placed the issue of Cut-off Household as an important one on its agenda.

The second possible reason that the issue drew the government’s attention was perhaps due to the special concerns of a related issue, that is, the distribution of properties among the family members of the Cut-off Household. The phenomenon of “dowry escalation” in the Song suggested by Patricia Ebrey34 could probably contribute to, at least on the local level, the explanation why the issue was discussed frequently. The Song government was actively involved in the individual families that faced the decision of distributing property, intending to protect the right of the daughters (with special focus on unmarried ones) and set aside a portion of the property for their future use.

It is also possible that the Song legal rules, protecting women’s inheritance rights, backfired and triggered more legal cases in the Southern Song. As Birge suggests that the beginning of the process of stripping these rights and upholding agnatic patriline was already in place and can also be discerned in the Judgments or Qingming ji 清明集. Confucian ideals were being taken more seriously and the trend moved toward lineage organization emphasizing keeping property within the agnatic patriline.35

IV. Jin Dynasty (1115-1234)

Jin History (Jin shi 金史) has a record about the Cut-off Household. During the reign of Jin Zhangzong 金章宗 (r. 1190-1208), the emperor ordered for the first time that the houses and lands of the Cut-off Household be given one third to the daughters and granddaughters (without mentioning what kind of marital status the daughter had).36 This record did not give us a total picture of how the Cut-off Household’s property was divided among relatives except that the daughters and granddaughters were apportioned one third of the property. At least, the daughters’ right was mentioned and presumably protected.

V. Mongol (1206-1270) and Yuan Dynasty (1271-1368)

In the Yuan Code (Da Yuan shengzheng dianzhang 大元聖政國朝典章), a few statues concerning the Household Department were stipulated as guidelines for handling the Cut-off Household’s property. The statue of 1264 (Shengzhi 書珍本初輯), Shanghai: the Commercial Press, 1935.

tiaohua (聖旨條畫) set the rule that if there were no appropriate inheritors (qualified sons, nephews, brothers of the deceased), the property should be confiscated and the land leased out. All the profit it makes should be recorded. If there were children (male or female) under the age of ten, the government will pay for their livelihood, and the property should be audited and managed by the government and all the future profits earned from the property should be recorded and reported to a superior government. The government would return the entire property to the children of the deceased when they reached the age of fifteen or if the son was old enough to marry.  

In the Yuan, unmarried daughters could inherit the entire property of the family if it was cut off. In 1273, the Household Department requested a final decision from the imperial court concerning the inheritance of a daughter who was claimed to be engaged to a man before her household died out. However, the engagement was not recognized by the state as valid since there was no hard evidence to prove it. Therefore, the daughter was taken as unmarried daughter (and thus could inherit the entire property). Nevertheless, because she was only thirteen, the property she was going to inherit would be managed by the government until she marries in a husband to succeed her natal family. One interpretation of this case is that the daughter must marry in a husband in order to inherit the entire property. This is a trace showing that the Yuan government encouraged people to continue the family line with its intervention in place when the family decided not to set up a posthumous heir, possibly due to lack of qualified candidates.

In 2012, a legal sanction was recorded in the Da Yuan Shengzheng Guochao Dianzhang ruling the disputed distribution of a household’s property between a son born by a concubine and an adopted eldest son. The eldest son, previously chosen from the same surname group, was later argued against his inheritance rights when his adopting father died. The Secretariat (Zhongshu sheng 中書省) ruled that the adopted son should inherit half of the property of the household because there were numerous precedents of adopted heirs with different surnames inheriting official titles and properties in the Lower Yangtze area (Jiangnan 江南), let alone in this case the adopted son was from the same surname group. From this citation, we see a contradiction between Confucian values which forbade adoption of a son

37 Da Yuan Shengzheng Guochao Dianzhang 大元聖政國朝典章, Taipei: Wenhai chubanshe, 1964, vol. 19, pp. 287. Although Ye Xiaoxin argues that there were some ambiguities in the law since there was no mention of the case if the age of the children involved were between ten and fifteen; however, another article in Da Yuan Shengzheng Guochao Dianzhang (involved a thirteen-year-old daughter) seems to suggest that there was an unintentional error in the Shengzh shengtiaohua which stipulated that the government would audit the property of the Cut-off Household when the children were under “ten” (should be “fifteen”). Please refer to Ye Xiaoxin, Zhongguo minfa shi 中國民法史, Beijing: Zhonghua shuju, 1993, p. 505.


40 Ibid., vol. 19, p. 290.
with different surname, and the practice of law which compromised the customs in a certain area. We also see the trend of flexibility in adoption which might have decreased the number of Cut-off Households.

VI. Ming Dynasty (1368-1644)

One article in the Household Ordinance (Huling 戶令) of the Great Ming Ordinance (Da Ming ling 大明令) stated that if there were no qualified inheritors from the same patriline, the natal daughters should inherit the Cut-off Household’s property; if there were no daughters, the property would be confiscated by the state. A related article stipulated that the property should be inherited evenly by both the designated heir and the married-in son-in-law (who took care of his father-in-law till death); if there was no designation, the head of the kin could make a decision on this matter according to the precedents.41 The oversimplified stipulation in the Ming law, compared to those in the preceding dynasties especially the Song, is not informative to describe or reflect the issue discussed in the Ming social context. However, it might explain that the issue of Cut-off Household was no longer important in the Ming. It drew the government’s attention when there were some people of the Military Household (Junhu 軍戶) falsely claimed their families as being cut off to avoid military service. An article in the Household Obligation (Hu yi 戶役) of the Great Ming Law (Da Ming lu 大明律) stated that people were forbidden to register in other areas or under any other household as a married-in son-in-law to evade military service and whoever falsely reported a Cut-off Household would be punished.42

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VII. Qing Dynasty (1644-1911)

The Qing government, like its predecessor in the Ming, did not mention much about how to handle the Cut-off Household. Also, the issue had not been widely discussed as it was in the Song and Yuan. In the record of The New and Comprehensive Compilation of Qing Code with Sub-statutes (Da Qing luli huitong xinzuan 大清律例會通新纂), one rule stated that the Cut-off Household’s land was to be distributed among natal daughters. If there were no daughters then seven tenths of the land was confiscated and three tenths set aside for the sacrificial expenses. If the land was less than thirty mu 歐, it was to be entirely used for the sacrifices.43 The Qing government ordered to set aside a portion of the property for sacrificial uses to emphasize the importance of Confucian patriarchal values. Another statute was set to regulate the servants of the Eight Flags (Baqi 八旗) Cut-off Household. They were managed under the Precedents of Confiscation of Cut-off Household’s Property (juehu caichan ruguan li 絕戶財產入官例).44

As for the issue of adoption, one Qing record revealed how it was handled. In the *Qinding hubu zeli* (Imperial Sanctioned Rules and Precedents of the Household Department), the emperor enjoined the Eight Flags (Manchu) people to exhaust all potential candidates from the sons of brothers when setting up posthumous heirs. The second priority was to find an heir from remote relatives of the same surname groups, and followed by the third alternative, i.e., adopting relatives of different surnames. People would incur punishment if they designated heirs from a different surname group when there were candidates of the same surname.45 In 1775 and again in 1801, the emperors permitted one male to succeed two separate family lines under special conditions.46 From the above rules we see the flexibility of adoption. First, an unprecedented rule was set up to allow one male to inherit two different lines; second, the searching sphere for adoption could extend to people of different surnames (without specification of ages). Perhaps these rules, with the emperor’s encouraging tones to prevent a household from being cut off, really had an effect on people’s practice and contributed to the reduction in Cut-off Households in the Qing Dynasty. Or, perhaps they were set up to curb excessive adoptions not prescribed by the law. Either way fits in an assumption that more adoptions were made to stop the issue of Cut-off Household from playing an important role on the government’s agenda of late imperial China.

Another angle to see the development of this issue has to be through the degree of acceptance of the Confucian values. Bettine Birge shows us a correlation between the upholding of Confucian ideals and a process of stripping women’s rights already underway in the Southern Song. She also suggests that in the Yuan, legal cases concerning daughters’ inheritance in a Cut-off Household were complicated and rather confused. Moreover, there was a lack of the clear law that we saw in the Song that guaranteed daughters’ inheritance.47 This was also true in the Ming and Qing and could serve as a possible interpretation of the way the government’s handling the Cut-off Household property concerning women. The government deliberately downplayed women’s role in the Cut-off Household’s inheritance and silenced many related legal cases, and thus discounted the importance of the issue of Cut-off Household as a whole.

**VIII. Conclusion**

As the extant sources have demonstrated, the issue of Cut-off Household was complicated and it was more frequently discussed in the Song than any other dynasty in traditional China. The state’s disposal of Cut-off Household’s property could lead to its distribution among relatives with or without a portion going to the state, its entire confiscation by the government, or its being managed or audited by the state temporarily until a qualified heir was set up or the inheritor reached a legal age to inherit. Some evidence shows that the confiscated land from the Cut-off Household became an important asset of the state.

We also see that the government’s sanctions were not always in accordance with the law. In traditional China, the law enforcement had been a weak part of the government. The laws had been challenged and forced to be revised through the interactions among the law makers who wished to

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45 *Qinding hubu zeli*, vol. 2, pp. 53-4.

shape the society into their ideal type, the law interpreters (judges from different areas with different educational backgrounds and ideologies), and the commoners whose behavior was affected by the law. As the country developed, so did the political, social, and economic situations change. The codification of new laws could not always meet the needs of the people in the changing social content. A good interpreter of law may bridge the gap.

Finally, from the above sources we find that the issue of Cut-off Household had gradually lost its importance on the government’s agenda of late imperial China. One possible explanation is that the related cases decreased drastically because more adoptions were involved. There were more adoptions either because they were encouraged by the government or they were deemed essential by the people in later periods. The second possible explanation is that governments of later times maneuvered to downplay women’s role in Cut-off Household’s inheritance that gradually made the issue in general less significant.

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傳統中國的法律問題：「戶絕」的探討

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摘　要

本文旨在追溯傳統中國的一個法律問題—戶絕，它的緣起以及後續的發展。從唐朝一直到最後一個帝制政府清朝，作者在探究的過程中企圖找到這個法律議題所代表的社會意義，並詮釋為何「戶絕」在宋朝被頻頻論及，之後朝代漸漸失去政府關注，它的發展與被重視的程度多寡背後所代表的歷史意義為何。

關鍵詞：戶絕、繼承、傳統中國法律